

Date 23, 1, 2014

Planning Agreement

21 Hassall Street, Parramatta

Parramatta City Council
ABN 49 907 174 773

and

Imperia Capital Pty Ltd
ABN 44 527 441 437

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Planning Agreement

Dated 16/01/2014

Parties

Name	Parramatta Council ABN 49 907 174 773
Address	30 Darcy Street, Parramatta, NSW
Facsimile	
Short name	Parramatta

Name	Imperia Capital Pty Ltd ABN 44 527 441 437
Address	P.O. Box 6, Lane Cove, NSW
Facsimile	
Short name	Developer

Background

- A. Parramatta is the Consent Authority pursuant to the EPAA Act for the Development.
- B. The Developer is the owner, or is entitled to be the owner of the Land.
- C. The Developer intends to carry out the Development.
- D. The parties wish to enter into a planning agreement in relation to the Developer's offer to provide the Public Benefits on the terms and conditions set out in this planning agreement.

It is agreed

1. Planning agreement under the EPAA Act

1.1 Section 93F

The parties agree that this document is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the EPAA Act.

1.2 Application

The planning agreement constituted by this document applies to the:

1.2.1 the Land; and

1.2.2 the Development.

2. Operation and Development Consent Lapsing

2.1 Development Consent Lapsing

The parties agree that this planning agreement is effective and binding on the parties from the date on which the Consent Authority determines the Development Application and grants Development Consent.

2.2 Development Consent Lapsing

2.2.1 This planning agreement will be at an end and taken to have been revoked and neither party will have any obligation to the other if the Development Consent:

(a) lapses by the effluxion of time; or

(b) is surrendered.

2.2.2 Each party will sign all documents and do all things reasonably required to procure the removal of this planning agreement as an encumbrance on the Register by appropriate notification or request if the Development Consent:

(a) lapses by the effluxion of time; or

(b) is surrendered.

3. Definitions

In this planning agreement unless expressed or implied to the contrary:

Business Day means any day on which trading banks are open for business in New South Wales other than a Saturday, Sunday or a public holiday in New South Wales.

Claimant has the meaning given to that term in clause 15.1.

Claim Notice has the meaning given to that term in clause 15.1.

Construction Certificate has the meaning given to that term in the EPAA Act.

Completion means the stage in the construction of the Developer's Works when, in Parramatta's opinion (acting reasonably), the Developer's Works are complete except for minor omissions and minor Defects which are non-essential and:

- (a) which do not prevent the Developer's Works from being reasonably capable of being used for their intended purpose;
- (b) which Parramatta determines the Developer has reasonable grounds for not promptly rectifying; and
- (c) the rectification of which will not prejudice the convenient use of the land on which the Developer's Works were undertaken.

Consent Authority means the governmental agency having the function to determine a development application.

Consumer Price Index means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Dealing has the meaning given to that term in clause 14.

Defect means a defect arising from materials or workmanship or design other than:

- (a) minor shrinkage;
- (b) minor settlement cracks; or
- (c) normal wear and tear.

Defects Liability Period means the period of 12 months from the date on which the Developer's Works reach Completion.

Development means the proposal of the general nature set out in Item 2 of Schedule 1 to be undertaken by the Developer.

Development Consent means the determination in respect of the Development Application by the Consent Authority the terms of which appear in the notice of determination issued by the Consent Authority including all future modifications under the EPAA Act.

Developer's Works means works described in Item 5 of Schedule 1, as refined and developed in accordance with this planning agreement.

Development Application means the application described in Item 3 of Schedule 1.

Discretion has the meaning given to that term in clause 5.1.

Dispute Notice has the meaning given to that term in clause 15.4.

EPAA Act means the *Environmental Planning & Assessment Act 1979 (NSW)*.

Incoming Party has the meaning given to that term in clause 14.1.

Index Number means:

- (a) the consumer price index (all groups) for Sydney published from time to time by the Australian Bureau of Statistics; or
- (b) if the Index Number no longer exists, it means an index that the Landlord decides reflects changes in the cost of living.

Item means an item in Schedule 1.

Land means the land described in Item 1 of Schedule 1.

Law means:

- (a) the common law including the principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws, or consents by a governmental agency.

New Law means a Law that is amended, varied or changed or a new Law either of which comes into force on or after the date of this planning agreement.

Occupation Certificate means a certificate referred to in Section 109C(1)(b) of the EPAA Act.

planning agreement means this document and includes all schedules and annexures to it.

Prescribed Rate means the rate prescribed from time to time under the Uniform Civil Procedure Rules 2005 as the rate of interest on judgment debts, calculated daily and compounded on the last day of each month.

Public Benefits means the public benefits described in Item 4 of Schedule 1 to be delivered under this planning agreement.

Quarter means each consecutive period of three months (or part of it) ending on the respective last days of March, June, September and December.

Register means the Torrens Title register held by the New South Wales office of Land and Property Information.

Respondent has the meaning given to that term in clause 15.

Schedule means a schedule to this planning agreement.

Security means an unconditional and irrevocable bank guarantee or bank guarantees for the Security Amount issued by a trading bank or other financial institution acceptable to Parramatta which does not have an expiry date and is otherwise on terms and conditions acceptable to Parramatta.

Security Amount means the amount stated in Item 6 of Schedule 1 adjusted from time to time under clause 13.2.

Security Amount Review Date means each anniversary of the date of this planning agreement.

4. Interpretation

4.1 Governing Law and Jurisdiction

This planning agreement is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

4.2 Persons

In this planning agreement, a reference to:

- 4.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 4.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and
- 4.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

4.3 Joint and Several

If a party consists of more than one person, this planning agreement binds them jointly and each of them severally.

4.4 Legislation

In this planning agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

4.5 Clauses and Headings

In this planning agreement:

- 4.5.1 a reference to this planning agreement or other document includes this planning agreement or the other document as varied or replaced regardless of any change in the identity of the parties;
- 4.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this planning agreement all of which are deemed part of this planning agreement;
- 4.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 4.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this planning agreement;
- 4.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 4.5.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation';

- 4.5.7 a reference to **governmental agency** means the Crown, any government, any *governmental ministry or department*, or any Crown, governmental, semi-governmental, statutory, parliamentary, administrative, fiscal, public, municipal, local, judicial or regulatory entity, agency, instrumentality, authority, court, commission, tribunal or statutory corporation having jurisdiction over or in respect of the Land or its use or both; and
- 4.5.8 a reference to any notice, claim, demand, consent, agreement, approval, authorisation, specification, direction, disclosure, notification, request, communication, appointment, or waiver being given or made by a party to this Agreement is a reference to its being given or made in writing, and the expression **notice** includes any of the foregoing.

4.6 Severance

- 4.6.1 If a provision in this planning agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 4.6.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining parts of that provision or any other provision of this planning agreement.

4.7 Business Day

If a payment or other act is required by this planning agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

4.8 Number and Gender

In this planning agreement, a reference to:

- 4.8.1 the singular includes the plural and vice versa; and
- 4.8.2 a gender includes the other genders.

5. No Fetter

5.1 Discretion

This planning agreement is not intended to operate to fetter, in any unlawful manner:

- 5.1.1 the sovereignty of the Parliament of the State of New South Wales to make any Law;
- 5.1.2 the power of the executive government of the State of New South Wales to make any statutory rules; or
- 5.1.3 the exercise of any statutory power or discretion of any Minister of the State of New South Wales or any governmental agency (including Parramatta),

(all referred to in this planning agreement as a '**Discretion**').

5.2 No Fetter

No provision in this planning agreement is intended to, or does, constitute any unlawful fetter of any Discretion. If, contrary to the operation of this clause 5, any provision of this planning agreement is held by Court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- 5.2.1 they will take all practice steps, including the execution of any further documents to ensure the objective of this clause 5 is substantially satisfied;
- 5.2.2 in the event that clause 5.1 cannot be achieved without giving rise to unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this planning agreement has full force and effect; and
- 5.2.3 to endeavour to satisfy the common objectives of the parties in relation to the provision of this planning agreement which is held to be an lawful fetter to the extent that is possible having regard to the relevant Court judgement.

5.3 Conflict

In the event of any conflict between the exercise of Discretion and the performance or obligations under this planning agreement, the former prevails.

6. Registration

6.1 Procure Registration

The Developer must:

- 6.3.1 procure registration of this planning agreement on the Register pertaining to the Land no later than 20 Business Days after the date of this planning agreement in accordance with this clause 6 including obtaining the consent of any mortgagee or other person who has an interest in the Land; and
- 6.3.2 deliver to Parramatta a title search of the Land confirming registration of this planning agreement.

6.2 Effect of Registration

The parties agree and acknowledge that if any of the Land is subdivided and sold, then all of the obligations of this planning agreement are jointly and severally binding on, and enforceable against, the owner of each subdivided parcel of land from time to time, on whose title this planning agreement is registered, as if each owner for the time being had entered into this planning agreement.

6.3 Release

Parramatta agrees to provide a release and discharge of this planning agreement with respect to any part of the Land if the Developer requests a release and discharge of this planning agreement (whether in full or part) and:

- 6.3.1 in the case of a request for a full release and discharge, the Developer has complied with all of the Developer's obligations under this planning agreement to Parramatta's satisfaction; or
- 6.3.2 in the case of a request for partial release and discharge, the Developer has, at the time of the request complied with it's obligations under this planning agreement to

Parramatta's satisfaction to the extent that they effect that part of the Land to which the partial release relates.

7. Review

This planning agreement may be reviewed or modified by agreement of the parties using their best endeavours and acting in good faith.

8. EPAA Act Application

8.1 Sections 94, 94A and 94EF of the EPAA Act

Section 94, 94A and 94EF of the EPAA Act apply to the Development.

8.2 Benefits

The benefits obtained by Parramatta under this planning agreement are not to be taken into consideration in determining any development contribution under section 94 and section 94A of the EPAA Act in respect of to the Development.

9. Public Benefits

9.1 Delivery

The Developer must, at no cost to Parramatta, do all things required to deliver the Public Benefits in accordance with this planning agreement.

10. Design of the Developer's Works

10.1 Definition of Scope

The parties acknowledge and agree that further design detail and refinement of the Developer's Works is necessary having regard to the following:

10.1.1 conditions reasonably affecting the Developer's Works that were not reasonably capable of identification on or before the date of this planning agreement;

10.1.2 the extent to which the design of any part of the Developer's Works has been completed to Parramatta's reasonable satisfaction (in its capacity as party to this document and not as a governmental agency);

10.1.3 any or all policies, procedures and standards identified in the description of the Developer's Works; and

10.1.4 the condition of any other permit or approval that is required in order to carry out, complete the Developer's Works.

10.2 Developer to Prepare

Before making application for a Construction Certificate in respect of the Development, the Developer must prepare detailed plans and specifications for the Developer's Works and deliver those plans and specifications to Parramatta for approval. The Developer must:

- 10.2.1 consult with Parramatta in connection with the preparation of the detailed plans and specifications; and
- 10.2.2 ensure that the Developer's Works are designed in a manner so that they are fit for purpose, and suitable for their intended use.

10.3 Parramatta to Respond

- 10.3.1 Parramatta must give the Developer a notice stating whether the detailed plans and specifications delivered under clause 10.2 are satisfactory or unsatisfactory and this notice must be given no later than 20 Business Days after the date on which Parramatta is delivered the detailed plans and specifications delivered under clause 10.2.
- 10.3.2 Parramatta must include in any notice given under clause 10.3.1 advising that the detailed plans and specifications are unsatisfactory further information and comments (as the case may be) that explains the basis for Parramatta's opinion and the modifications required in order for them to be considered satisfactory.
- 10.3.3 The Developer must promptly amend the proposed design to take into account the further information and comments given by Parramatta in a notice given under clause 10.3.2.

10.4 Failure to Prepare

- 10.4.1 Parramatta may make an appropriation from the Security for the purposes of paying all costs and expenses Parramatta reasonably anticipates that it will incur (or actually does incur) in the preparation of detailed plans and specifications for the Developer's Works if the Developer:
 - (a) does not prepare and deliver the detailed plans and specifications to Parramatta in accordance with clause 10.2; or
 - (b) does not within 6 months of being given a notice under clause 10.3 deliver amended plans and specifications that take into account the further information and comments contained in the notice given under clause 10.3.
- 10.4.2 Parramatta must give the Developer a notice stating the amount of any appropriation from the Security made under clause 10.4.1 promptly after doing so.

10.5 Valuation of the Developer's Works

- 10.5.1 Contemporaneously with the detailed plans and specifications given to Parramatta under clause 10.2, the Developer must deliver to Parramatta a detailed cost estimate in respect of the Developer's Works. The detailed costs estimate must:
 - (a) be in a form Parramatta considers reasonably acceptable; and
 - (b) be prepared by a duly qualified quantity surveyor approved by Parramatta (acting reasonably).

- 10.5.2 In respect of the costs estimate delivered to Parramatta under clause 10.5.1, Parramatta (acting reasonably) may:
- (a) reject items stated in the costs estimate which are not directly related to the Developer's Works;
 - (b) require substantiation for the costs of items where Parramatta considers the amount estimated is excessive or inaccurate in the circumstances; or
 - (c) require an adjustment to the costs estimate to reflect a variation to the design not reflected in the costs estimate.
- 10.5.3 The parties acknowledge and agree that the value of the Developer's Works may be adjusted having regard to the valuation process set out in this clause 10.5.
- 10.5.4 The Developer is not entitled to change or reduce the scope of the Developer's Works by reason only that the costs incurred in the execution of the Developer's Works are greater than:
- (a) the estimated costs stated in the cost estimate given to Parramatta under this clause 10.5; or
 - (b) any amount identified in this planning agreement.

10.6 Construction plans

- 10.6.1 The Developer must complete construction drawings in accordance with the design developed and approved by Parramatta under this clause 10.
- 10.6.2 The construction drawings prepared for the purposes of this clause 10.6 may be prepared simultaneously (and comprise the same detailed plans and specifications) as those submitted for approval under clause 10.2.

10.7 Variation or Approval

- 10.7.1 Parramatta may by giving the Developer a notice approve, vary or direct a variation to the construction design drawings for the Developer's Works so as to reflect the documents or standards (as the case may be) set out in this planning agreement.
- 10.7.2 The Developer must comply with any direction given by Parramatta under clause 10.7.1 in respect of the design and implementation of the Developer's Works.

11. Execution of the Developer's Works

11.1 Approvals and Consents

- 11.1.1 The Developer must, at its own cost, obtain all approvals and consents from any relevant governmental agencies having jurisdiction over or in respect of the Developer's Works.
- 11.1.2 Before commencing the Developer's Works, the Developer must give Parramatta copies of all approvals and consents relating to the Developer's Works.
- 11.1.3 The Developer is to liaise with the property owner of the property no.124 Wigram Street, Harris Park in order to obtain permission from the land owner for the removal of a tree associated with the Developer's Works.

11.2 Construction Work

The Developer must at its cost:

- 11.2.1 carry out and complete the Developer's Works in accordance with all approvals and consents relating to the Developer's Works issued by any relevant governmental agencies having jurisdiction over or in respect of the Developer's Works;
- 11.2.2 ensure that the Developer's Works are conducted in a proper and workmanlike manner so that they are structurally sound, fit for purpose, and suitable for their intended use; and
- 11.2.3 promptly notify Parramatta of any delays which it experiences in completing the Developer's Works.

11.3 Construction licence

- 11.3.1 The parties acknowledge and agree that the Developer's Works will be conducted:
 - (a) on the Land;
 - (b) on other land owned or controlled by Parramatta located in the vicinity of the Land; and
 - (c) on other land owned or controlled by third parties in the vicinity of the Land.(collectively referred to as the **Works Site**).
- 11.3.2 The parties acknowledge and agree that configuration of the Works Site will be more precisely defined in conjunction with the design development and refinement of the Developer's Works. The parties will conduct negotiations in good faith to reach agreement on the precise configuration and size of the Works Site.
- 11.3.3 The Developer must give Parramatta not less than 20 Business Days' notice of the date on which access to the Works Site for is required for the purposes of conducting the Developer's Works. Parramatta must do all things reasonable necessary to give the Developer access to the site of the Developer's Works on the date stated in the notice given under this clause 11.3.3.
- 11.3.4 For the purposes of conducting the Developer's Works, Parramatta grants to the Developer a licence to occupy and use the Works Site.
- 11.3.5 The licence granted under this clause 11.3:
 - (a) begins on the date on which Parramatta deliver physical access to the Works Site; and
 - (b) continues until the earlier to occur of the date on which Completion of the Works is achieved or the Developer is expelled from the Works Site under clause 11.12.2 or the sooner termination of this planning agreement.
- 11.3.6 No fee is payable by the Developer in connection with the use of the Works Site in accordance with the licence granted under this clause 11.3.
- 11.3.7 For the purposes of the Workplace Health & Safety Regulation 2011, Parramatta:
 - (a) appoints the Developer a principal contractor; and

- (b) authorises the Developer to exercise such authority as is necessary to discharge the responsibilities imposed on a principal contractor under the laws relating to occupational health and safety.

11.4 Inspection of Works

- 11.4.1 Two weeks prior to the commencement, the Developer must consult Council as to whether any inspections will be required during the undertaking of the Developer's Works.
- 11.4.2 Parramatta may (but is not obliged) at reasonable times and on reasonable notice inspect the Developer's Works during the course of construction.
- 11.4.3 Parramatta will promptly notify the Developer of any material or significant Defect, error or omission in the Developer's Works identified during or as the result of such inspection. The parties expressly agree that any failure to identify a Defect, error and omission, will not be construed as amounting to an acceptance by Parramatta of that Defect, error or omission.

11.5 Indemnity

The Developer indemnifies and releases Parramatta against all damage, expense, loss or liability of any nature suffered or incurred by Parramatta arising from any act or omission by the Developer (or any person engaged or employed by the Developer) in connection with:

- 11.5.1 the conduct of the Developer's Works; and
- 11.5.2 the use and occupation of the Works Site.

11.6 Insurance

The Developer must establish and maintain:

- 11.6.1 public liability insurance for an amount not less than \$20 million (or such greater amount Parramatta reasonably requires) covering all aspects of the Developer's Works and submit to Parramatta a copy of the certificate of insurance prior to the commencement of the construction of the Developer's Works and at all other times Parramatta reasonably required;
- 11.6.2 all other insurance policies in respect of the Developer's Works Parramatta considers reasonably necessary including:
 - (a) insurance of the Developer's Works and insurance against death or injury to persons employed in the conduct of the Developer's Works; and
 - (b) any other insurances required at law;
- 11.6.3 professional indemnity insurance in respect of the design of the Developer's Works for an amount not less than \$20 million (or such greater amount Parramatta reasonably requires).

11.7 Insurance requirements

All insurance policies the Developer must keep current under this planning agreement must:

- 11.7.1 be established with one or more insurance companies which are respectable, reputable and financially sound, approved by Parramatta (such approval not to be unreasonably withheld);

- 11.7.2 name Parramatta as an insured party;
- 11.7.3 cover the parties for their respective interests;
- 11.7.4 be kept current until the Developer's Works achieve Completion.

11.8 Evidence

No later than 10 Business Days after any request by Parramatta, the Developer must provide Parramatta with a certificate of currency (or such other evidence as the Parramatta may reasonably require) in respect of any insurance that must be established and maintained under this planning agreement:

11.9 Date of Completion of Works

The Developer must ensure that the Developer's Works reach Completion prior to the issuing of an Occupation Certificate (interim or otherwise) in respect of the Development.

11.10 Completion

If the Developer (acting reasonably) considers that the Developer's Works have reached Completion, the Developer must give Parramatta a notice that includes:

- 11.10.1 a statement from the person with direct responsibility carriage and supervision of that work that in their opinion the Developer's Works have reached Completion;
- 11.10.2 a statement from a duly qualified certifier that in their opinion the Developer's Works have reached Completion;
- 11.10.3 certificates of compliance that works have been completed in accordance with relevant standards;
- 11.10.4 a statement from the person with direct responsibility carriage and supervision of that sets out the total amount of costs and expenses actually incurred by the Developer in the conduct of the Developer's Works and a certification from a certified practising accountant or auditor that the statement is accurate and complete;
- 11.10.5 copies of any warranties, guarantees, maintenance information or other material reasonably required for the ongoing nature of the work; and
- 11.10.6 at least 3 sets of the "Works as Executed" drawings of the Developer's Works, prepared by a Registered Surveyor, including 1 set in electronic format.

11.11 Parramatta Final Inspection

11.11.1 Parramatta must inspect the Developer's Works within 20 Business Days of receiving notice from the Developer pursuant to clause 11.10. Promptly after such an inspection Parramatta must give the Developer a notice that states whether Parramatta:

- (a) concurs that Completion has been achieved; or
- (b) disagrees that Completion has been achieved and identifies the errors or omissions which in Parramatta's opinion prevent Completion; or
- (c) issue a notice of the nature identified in clause 11.12.

11.11.2 Nothing in this clause 11.11 will be constructed to reduce or waive in any manner the Developer's responsibility to correct minor Defects of minor omissions, whether or not these are identified by Parramatta.

11.12 Non-completion of Developer's Works

11.12.1 Parramatta may permit the Developer not to complete the Developer's Works (or part of them) by issuing a notice to the Developer, expressly stating that completion of the items identified in that notice is not required to achieve Completion.

11.12.2 If the Developer fails to complete the whole of the Developer's Works in the form and to the standards required under this planning agreement and all approvals and consents relating to the Developer's Works issued by any relevant governmental agencies having jurisdiction over or in respect of the Developer's Work, then Parramatta may expel the Developer from the Works Site and complete the Developer's Works in such manner as Parramatta thinks fit.

11.12.3 Parramatta may make appropriations from the Security:

- (a) in anticipation of costs and expenses Parramatta reasonably considers will be incurred in connection with the conduct of the Developer's Works; or
- (b) to reimburse Parramatta for costs and expenses it has actually incurred in connection with the conduct of the Developer's Works.

11.12.4 To the extent that expenditure incurred by Parramatta in the conduct of the Developer's Works exceeds the Security Amount available for appropriation at the relevant time, Parramatta may recover any such shortfall from the Developer as a debt due.

12. Defects Liability

12.1 Defects in the Developer's Works

If Parramatta notifies the Developer of a Defect in the Developer's Works within the Defects Liability Period, the Developer must remedy that Defect to Parramatta's satisfaction, within a period allowed by Parramatta (acting reasonably).

12.2 Security for Defects Liability Period

12.2.1 The Developer agrees that Parramatta is not required to release the Security to the Developer before the expiration of the Defects Liability Period.

12.2.2 If the Developer does not rectify any Defect in the Developer's Works within 20 Business Days after being notified of the Defect, then Parramatta may rectify the Defect notified to the Developer and at its election:

- (a) give the Developer a notice stating the amount of the costs and expenses reasonable anticipated to be incurred (or actually incurred) in the rectification of the notified Defect and the Developer must pay to Parramatta the amount stated in the notice no later 10 Business Days after being given such notice; or
- (b) make an appropriation from the Security for an amount equal to the costs and expenses reasonable anticipated to be incurred (or actually incurred) in the rectification of the notified.

13. Security

13.1 Delivery

On the date of this planning agreement, the Developer must deliver the Security to Parramatta as security for the performance by the Developer of its obligations under this planning agreement.

13.2 Security Amount Adjustment

The Security Amount is to be adjusted on the relevant Security Amount Review Date in accordance with the following calculation:

$$A = \frac{B \times D}{C}$$

where:

- A is the adjusted Security Amount applicable from the relevant Security Amount Review Date;
- B is the Security Amount applicable immediately prior to the relevant Security Amount Review Date;
- C is the Index Number for the Quarter ending immediately before the date of this planning agreement or the last prior Security Amount Review Date (whichever is the later); and
- D is the Index Number for the Quarter ending immediately before the relevant Security Amount Review Date.

13.3 Security Substitution or Top up

The Developer agrees to give Parramatta a substitute or supplement Security for the revised Security Amount no later than 20 Business Days after each Security Amount Review Date.

13.4 Appropriation

The Developer acknowledges and agrees that:

- 13.4.1 Parramatta may make an appropriation from the Security to compensate or reimburse Parramatta for loss it has suffered or the costs and expenses it has incurred as a result of the breach of this planning agreement by the Developer; and
- 13.4.2 Parramatta may make an appropriation from the Security despite any objection, claim or direction by the Developer to the contrary.

13.5 Replacement bank guarantee

At Parramatta's request, the Developer must provide an additional or supplement Security for the Security Amount if there has been appropriation that results in the value of the Security held by Parramatta after appropriation being less than Security Amount.

13.6 Security Reduction

Parramatta agrees that the Security Amount is reduced to an amount equal 20% of the total amount of the costs and expenses incurred by the Developer in the conduct of that part of the Developer's Works.

13.6.1 on and from the date on which the Developer's Works reach Completion; and

13.6.2 only if at the time stated in clause 13.6.1 there is no subsisting default in the performance or observance of the Developer's obligations under this planning agreement.

13.7 Security return

Parramatta must return the Security to the Developer without delay after the expiration of the Defects Liability Period if there is:

13.7.1 No subsisting default by the Developer that has not been waived by Parramatta; and

13.7.2 any Defect that has been notified to the Developer and has not been rectified.

14. Assignment and Other Dealings

14.1 Land Owner Dealings

Prior to the registration of the planning agreement under clause 6, the Developer must not sell, transfer, assign, mortgage, lease or otherwise deal with (**Dealing**) its right, title and interest in the Land (if any) or its rights and obligations under this planning agreement, or allow any interest in them to arise or be varied, in each case, without Parramatta's consent and unless, before any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

14.1.1 gives Parramatta not less than 10 Business Days' notice of the proposed Dealing; and

14.1.2 procures that the transferee, assignee or novatee (**incoming party**) signs and delivers to Parramatta prior to any such Dealing taking effect, a deed in favour of the Developer in form and substance acceptable to Parramatta whereby:

(a) the incoming party becomes contractually bound to perform all of the Developer's obligations (including obligations which ay have arisen before the transfer, assignment or novation takes effect) and have the benefit of all the Developer's rights under this planning agreement; and

(b) the Developer agrees to pay the legal costs and expenses incurred by Parramatta in connection with the negotiation, preparation and signature of such deed.

14.2 Restriction on Transfer of Shares

If the Developer is a corporation (other than a corporation listed on the Australian Stock Exchange (**ASX**)), a change in effective control of the Developer (by way of change in shareholding ownership or otherwise) is deemed to be a dealing for the purposes of clause 14.1 and the requirements of clause 14.1 apply.

14.3 Sale Notification

The Developer must give Parramatta a written notice advising Parramatta of the sale or transfer of the Land no later than 10 business days after any such sale or transfer.

15. Dispute Resolution

15.1 Notice of Dispute

If a party claims that a dispute has arisen under this planning agreement (**Claimant**), it must give notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).

15.2 Claim Notice Response

Within 20 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

15.3 Negotiation

The nominated representatives must:

- 15.3.1 meet to discuss the matter in good faith within 10 Business Days after the Respondent has given a notice advising of its representatives; and
- 15.3.2 use reasonable endeavours to settle or resolve a dispute within 15 Business Days after they have met.

15.4 Further Notice

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a notice calling for the termination of the dispute (**Dispute Notice**).

15.5 Mediation

The parties agree that a dispute will be mediated if it is the subject of a Dispute Notice, in which case:

- 15.5.1 the parties must agree to the terms of reference for the mediation within 5 Business Days of receipt of the Dispute Notice, the terms shall include a requirement that the mediation rules at the Institute of Arbitrators and Mediators Australia (NSW Chapter) applies;
- 15.5.2 the mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- 15.5.3 the mediator appointed pursuant to clause 15.5.2 must:
 - (a) have reasonable qualifications and practical experience in the area of the dispute; and
 - (b) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose and such interest or duty before his appointment;

- 15.5.4 the mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- 15.5.5 the parties must within 5 Business Days of receipt of the Dispute Notice notify each other if their representatives will be involved in the mediation;
- 15.5.6 the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which the subject of the mediation settlement for the purpose of enforcing that mediation settlement;
- 15.5.7 in relation to costs and expenses:
- (a) each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (b) the costs of the mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full cost of the mediation be borne by that party.

15.6 Litigation

If a dispute is not finally resolved in accordance with this clause 15.6, either party is at liberty to litigate the dispute.

15.7 Continue to Perform Obligations

Each party must continue to perform its obligations under this planning agreement, notwithstanding the existence of a dispute.

16. Costs, GST and Interest

16.1 Preparation Costs

No later than 10 Business Days after being given a demand by Parramatta, the Developer must pay all Parramatta's reasonable legal and administrative costs and expenses in relation to:

- 16.1.1 the negotiation, preparation and signature of this planning agreement;
- 16.1.2 the giving effect to this planning agreement;
- 16.1.3 any enforcement of the rights conferred under this planning agreement; and
- 16.1.4 the costs of any expert determination carried out under this planning agreement.

16.2 Advertising Costs

The Developer agrees to pay or reimburse the costs and expenses incurred by Parramatta in connection with the advertising and exhibiting this planning agreement in accordance with the EPAA Act.

16.3 GST

- 16.3.1 In this clause 16.3 words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.

- 16.3.2 Except as otherwise provided by this clause 16.3, all consideration payable under this planning agreement in relation to any supply is exclusive of GST.
- 16.3.3 If GST is payable in respect of any supply made by a supplier under this planning agreement, subject to clause 16.3.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this planning agreement.
- 16.3.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under this clause 16.3.

16.4 Interest

If the Developer does not pay any other moneys payable under this planning agreement on time, the Developer must pay interest at the Prescribed Rate on the outstanding amount for the period from the day the unpaid money was due until it is paid. The interest must be paid to Parramatta no later than 10 Business Days after Parramatta has given the Developer a demand for any interest.

17. Notices

17.1 Service of Notice

A notice or other communication required or permitted, under this planning agreement, to be served on a person must be in writing and may be served:

- 17.1.1 personally on the person;
- 17.1.2 by leaving it at the person's current address for service;
- 17.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 17.1.4 by facsimile to the person's current number for service.

17.2 Particulars for Service

- 17.2.1 The particulars for service of each party are set out on page one of this planning agreement under the heading 'parties'.
- 17.2.2 A party may change the address, facsimile or email number for service by giving notice to the other party.
- 17.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

17.3 Time of Service

A notice or other communication is deemed served:

- 17.3.1 if served personally or left at the person's address, upon service;
- 17.3.2 if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 5 Business Days after posting;

17.3.3 if served by facsimile, subject to clause 17.3.4, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;

17.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

18. Approvals and Consents

The parties acknowledge that:

18.1.1 except as otherwise stated in this planning agreement and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this planning agreement in that party's absolute discretion and subject to any conditions determined by the party;

18.1.2 a party is not obliged to give its reasons for giving or withholding approval or consent or for giving approval or consent subject to conditions; and

18.1.3 this planning agreement does not impose any obligations on a governmental agency to:

- (a) grant a development consent where it is acting as a Consent Authority; or
- (b) exercise any function under any Laws (including the EPAA Act).

19. Representations and Warranties

The parties represent and warrant that they have the power to enter into this planning agreement and comply with their obligations under this planning agreement and that entry into this planning agreement will not result in the breach of any Law.

20. New Laws

If the Developer is obliged by a New Law to do something to pay an amount which it is already contractually obliged to do or pay under this planning agreement then, to the extent only that the relevant obligation is required under both the New Law and this planning agreement, compliance with the New Law will constitute compliance with the relevant obligation under this planning agreement.

21. General

21.1 Amendment

This planning agreement may only be varied or replaced by a planning agreement duly signed by the parties.

21.2 Entire Understanding

This planning agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties,

explanations and commitments, expressed or implied, affecting this subject matter are superseded by this planning agreement and have no effect.

21.3 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this planning agreement.

21.4 Waiver and Exercise of Rights

21.4.1 A single or partial exercise or waiver of a right relating to this planning agreement does not prevent any other exercise of that right or the exercise of any other right.

21.4.2 No party will be liable for any loss or expenses incurred by the other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

21.5 Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in this planning agreement.

21.6 No Relationship

21.6.1 No party to this planning agreement has the power to obligate or bind any other party.

21.6.2 Nothing in this planning agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties.

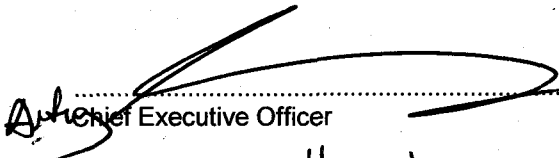
21.6.3 Nothing in this planning agreement will be deemed to authorise or empower a party to act as agent for the other party.

Signing Page

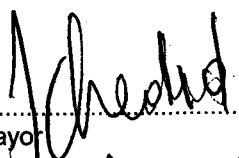
Executed by the parties

THE OFFICIAL SEAL of PARRAMATTA
CITY COUNCIL was affixed in the presence of
, and the sealing is
attested by:

)
)
)
)
)


.....
Chief Executive Officer

Sue Weatherley
.....
Name of Chief Executive Officer


.....
Lord Mayor

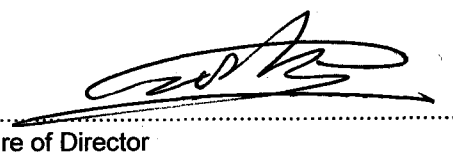
John Chedid
.....
Name of Lord Mayor

EXECUTED by IMPERIA CAPITAL PTY LTD
in accordance with Section 127 of the
Corporations Act 2001 in the presence of:

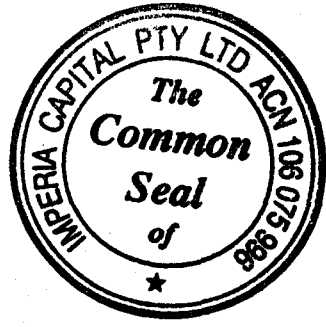
)
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.....
Signature of Secretary/Director

.....
Name of Secretary/Director


.....
Signature of Director

KWEI CHIEH CHEW
.....
Name of Director



THE COMMON SEAL OF THE COUNCIL
OF THE CITY OF PARRAMATTA WAS
HEREUNTO AFFIXED THIS 23rd DAY
OF January 2014 PURSUANT TO A
RESOLUTION OF COUNCIL PASSED
AT ITS MEETING HELD ON THE
11th DAY OF November 2013.
Minute Number 14292

Schedule 1

Reference Schedule

Item	Name	Description
1	Land	The land contained in Lot 12 Deposited Plan 654190 and known as 21 Hassall Street, Parramatta, NSW
2	Development	The development involves demolition and construction of a 10 storey mixed use development containing 1 retail outlet and 30 dwellings over basement car parking more particularly described in the Development Application
3	Development Application	The development application made under the EPAA Act and lodged with the Consent Authority (being DA/87/2013) and includes all plans, reports, models, photomontages, material boards (as amended or supplemented) submitted to the Consent Authority prior to the determination of the application involving (amongst other things) a change in the configuration of the development
4	Public Benefits	The delivery of the Developer's Works
5	Developer's Works	The works generally described and illustrated in Schedule 2.
6	Security Amount	\$180,000

Schedule 2

Developer's Works

The Developer is to carry out the works detailed in this schedule.

SCHEDULE OF ITEMS:

PEDESTRIAN PAVEMENT

P01: Sawcut, demolish and remove existing footpath and excavate to a min. 240mm depth to achieve required depths for proposed works.

P01: Supply and install 300 x 300 x 60mm thick 'Alluvium' typical concrete pedestrian pavers as required. Allow an extra 10% for paver cuts. No paver cuts to be less than 300mm. Use 300 x 600 x 60mm thick pavers and cut as required. Pavement to include subgrade preparation, base course, compaction, concrete blinding layer, mortar bedding layer, formwork, sealants, joints and finishes. Refer to Parramatta City Council's Standard Detail DS40.

DRIVEWAY

D01: Sawcut, demolish and remove existing concrete driveway and excavate to a min. 290mm depth to achieve required depths for proposed works.

D01: Supply and install 148 x 148 x 60mm thick 'Alluvium' typical concrete driveway pavers as required. Allow an extra 10% for paver cuts. No paver cuts to be less than 148mm. Use 148 x 300 x 60mm thick pavers and cut as required. Pavement to include subgrade preparation, base course, compaction, concrete blinding layer, mortar bedding layer, formwork, sealants, joints and finishes. Refer to Parramatta City Council's Standard Detail DS40 and DS9.

D02: Supply and install stainless steel tactile indicator studs as required adjoining proposed driveway. Refer to Parramatta City Council's Standard Detail DS40

KERB AND GUTTER WORKS

KG01: Sawcut, demolish and remove existing concrete kerb and gutter including 500mm width road pavement and excavate to achieve required depths for proposed works.

KG01: Supply and install 150mm high concrete kerb and gutter including 500mm road restoration. Kerb and gutter to include subgrade preparation, base course, compaction, concrete, asphaltic concrete, dowels, formwork, joints, sealants and finishes. Refer to Parramatta City Council's Standard Detail DS1 'Type 1'. Note: all kerb and gutter and road pavement shall finish flush with existing finished surfaces. All levels and water flows shall be continuous to existing finishes and drainage points.

KG02: Sawcut, demolish and remove existing concrete driveway layback including 500mm width road pavement and excavate to achieve required depths for proposed works.

KG02: Supply and install heavy duty concrete layback including 500mm road restoration. Layback to include subgrade preparation, base course, compaction, concrete, asphaltic concrete, dowels, formwork, joints, sealants and finishes. Refer to Parramatta City Council's Standard Detail DS1 'Type 3'. Note: layback and road pavement shall finish flush with existing finished surfaces.

KG03: Sawcut, demolish and remove existing drainage lintel and grate. Replace with 1.8m long precast concrete lintel and grate. Refer to Parramatta City Council's Standard Detail DS21 (Standard kerb inlet pit (on grade)).

SERVICES AND PIT LIDS

SPL01: Remove and excavate existing pit lids, frames and concrete collars (if present). Install new pit frames and pit lids as required. Raise/ lower/ realign to suit proposed pavement works (Note: includes water hydrant lids in road way). Consult with required service authorities.

SPL02: Supply and install 500 x 500mm asphalt infill around base of existing telegraph pole. Ensure top of asphalt finishes flush with top of pavement finishes.

SIGNS

S01: Demolish and remove existing construction sign and 2 x sign posts inclusive of concrete footings and backfill holes as required.

S02: Remove, salvage and store on site for reuse existing parking sign. Demolish and remove existing sign post and concrete footing.

S02: Reinstall salvaged parking sign with new sign post (including 'V' lock sleeve and concrete footing in its original location). Refer to Parramatta City Council's Standard Detail DS11A.

S03: Remove, salvage and store on site for reuse existing parking meter. Demolish and remove existing concrete footing (by others). Liaise with Council officer Jody Carter on 9806 5685.

S03: Reinstall salvaged parking meter inclusive of concrete footing (by others). Liaise with Council officer Jody Carter on 9806 5685.

TREE / STUMP REMOVAL IN PEDESTRIAN PAVEMENT

SG01: Stump grind, demolish and remove existing tree roots to min. 300mm depth to allow for proposed pavement and concrete hob works. Tree removal works shall be undertaken by a qualified arborist.

PROPOSED TREES AND TREE SURROUNDS

T01: Tree species: *Magnolia x grandiflora* 'Little Gem'
Size: Min. 100 litre bag
Preparation: Excavate to a minimum depth of 600mm for proposed tree pits.

Planting: Supply and install imported garden mix soil to tree pits. Refer to Parramatta City Council's Standard Detail DS39.
Tree Surround: Supply and install 'Stoneset' porous pavement to top of tree pit. Refer to Parramatta City Council's Standard Detail DS39.

WORKS IN PARTNERSHIP WITH PRIVATE PROPERTY

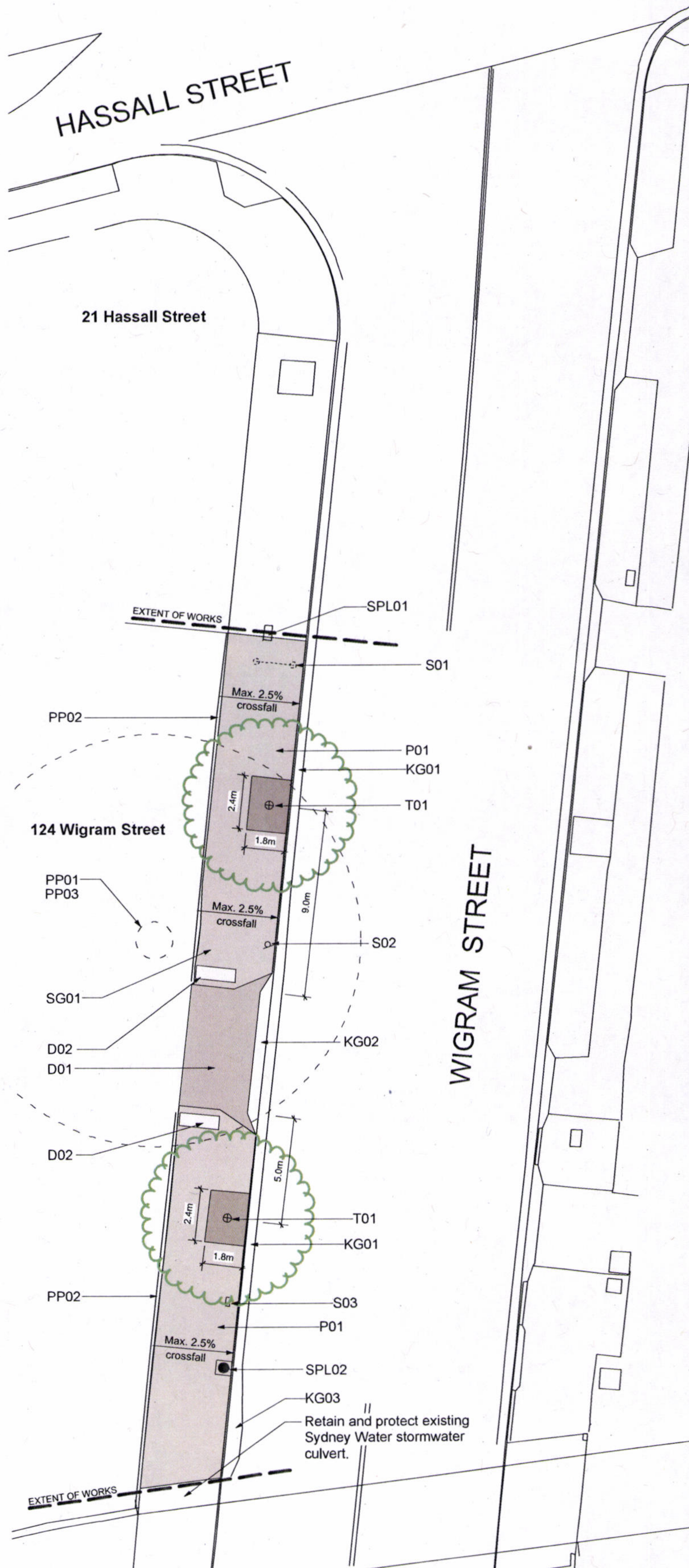
PP01: Demolish and remove existing trees inclusive of tree stump and tree roots in private property impacting on executing the proposed works. Works will include modifications and adjustments to water mains to achieve tree pit works. Private property must submit permit for tree removal. Developer / contractor to co-ordinate with property owner.

PP02: Demolish and remove existing property fence inclusive of concrete footings.

PP02: Demolish and remove existing stone and concrete hob wall in preparation for new hob wall works.

PP02: Supply and install min. 200mm high x 150mm wide 25MPa concrete hob wall along property boundary. Supply and install fence to top of hob walling (fence type to be determined in consultation with private property owners). Includes subgrade preparation, base course, compaction, concrete, dowels (if required), formwork, joints, finishes.

PP03: Reinstall and modify as required water mains and connections in private property. Includes works directly related to proposed tree removal in private property.



NOTES:

PRELIMINARIES AND SITE ESTABLISHMENT

Works shall include preliminaries and site establishment. Includes preparation, implementation, and maintenance of site preliminaries plan, pedestrian and traffic control plan and an erosion and sedimentation control plan. Preliminaries shall also include temporary fencing, barriers, traffic control, pedestrian / traffic signage, temporary access crossings and ramp, project signage for community notice, required approvals and permits from stakeholders, etc for the duration of the project.

DISPOSAL OF MATERIALS

All demolition material must be disposed of at an EPA approved tipping site. Proof of documents must be made available to Council officers upon request.

UNDERGROUND SERVICES

No underground services have been shown on this concept drawing. The developer / contractor shall undertake their own 'Dial before you dig' prior to any construction works commencing. The developer / contractor shall consult with the relevant service authorities.

MAINTENANCE AND PLANT ESTABLISHMENT PERIOD

To ensure the quality and plant success it is recommended a maintenance and plant establishment period be implemented to ensure the success of the tree plantings. The recommended duration is 12 weeks from time of planting. During this period watering, fertiliser, etc are to be implemented to promote plant success.

LIST OF PARRAMATTA CITY COUNCIL'S STANDARD DETAILS

Below is a list of Parramatta City Council's Standard Details relevant to the detailed design and construction of this project.

- DS1
- DS9
- DS11A
- DS21
- DS39
- DS40

AGREEMENTS / PERMIT TO ENTER ON PRIVATE PROPERTY

The developer / contractor shall sort written approval from the private property owners to undertake works. Consultation / notification of works with the private property owners and tenants shall be issued in writing prior to construction. Any construction / property access constraints shall also be issued in writing.

Following agreement of any tree removal the private property owners are to submit a tree removal permit to Council for approval.

ALIGNMENTS PLAN

Works must align with the levels on the adjoining public domain. An Alignments Plan is to be provided with detailed design drawings.

FINISHES

Finishes are to be contiguous with that used at 21 Hassall Street.



PROJECT

124 WIGRAM STREET
PUBLIC DOMAIN WORKS

PROJECT LOCATION

FRONTAGE TO
124 WIGRAM STREET

SUBURB

PARRAMATTA

PREPARED BY

PARRAMATTA CITY COUNCIL | CAPITAL PROJECTS

DRAWN BY

AC

CHECKED

PL

SCALE

1:100 | A1

PLAN No.

N/A

PROJECT No.

N/A

DRAWING No.

1

DRAWING TITLE

LANDSCAPE CONCEPT

