

15 April 2015

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HELMORE
ACCOUNTANTS

Voluntary Planning Agreement

Parramatta City Council
ACN 49 907 174 773



JKN Para Pty Ltd
ACN 159 177 170

x 

Toplace Pty Ltd
ACN 135 918 491

x 

Jean Nassif

x 

Newcastle

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Agreement

Date *15 April 2015*

Parties

First party

Name Parramatta City Council (**Council**)
ACN 49 907 174 773
Contact The Chief Executive Officer
Telephone (02) 9806 5050

Second party

Name JKN Para Pty Ltd (**Developer**)
ACN 159 177 170
Contact Jean Nassif
Telephone

Third party

Name Toplace Pty Ltd (**Toplace**)
ACN 135 918 491
Contact Jean Nassif
Telephone

Fourth party

Name Jean Nassif (**Nassif**)
Telephone

Background

- A. The Council owns the Land.
- B. On or about 12 September 2012, the parties entered into a Project Delivery Agreement for the carrying out of the Development on the Land. Toplace and Nassif entered into the Project Delivery Agreement as guarantors.
- C. The Project Delivery Agreement contains detailed provisions relating to the design, finance, construction, marketing and sale of the Development, including a public car park to be delivered to Council.
- D. The Developer proposes to carry out the Development on the Land and has submitted the Development Application. The design of the Development has been selected as a result of an Architectural Design Competition undertaken in accordance with clause 22B of the LEP.

- E. Clause 21 of the LEP provides that the height of a building on any land is not to exceed the maximum height shown on the land on the Height of Buildings Map. The Height of Buildings Map currently provides a maximum building height for the Land of 54 metres.
- F. Clause 22 of the LEP provides that the maximum floor space ratio on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The Floor Space Ratio Map currently provides a maximum floor space ratio for the Land of 6:1.
- G. The Developer has sought a change to the LEP by way of a planning proposal. Council resolved to endorse the planning proposal on 16 December 2013 and gateway determination of the planning proposal was made on 18 February 2014. Community consultation on the planning proposal occurred between 2 April 2014 and 7 May 2014.
- H. The planning proposal seeks an amendment to the LEP to insert a site specific clause that will exempt the site from the application of clauses 21 and 22 of the LEP and allow for:
 - (a) a maximum height of 91.3m;
 - (b) a maximum gross floor area of 36,000 square metres, excluding any space used only for private balconies and communal open space; and
 - (c) a maximum gross floor area of 2,750 square metres for the purpose of communal and private open space areas,but only where the design of the building or alteration is the result of an architectural design competition, the consent authority is of the opinion that the development exhibits design excellence and the consent authority is of the opinion that the development provides an appropriate public benefit in the form of a public car park.
- I. The Developer has made an offer to enter into a planning agreement with Council requiring the Developer to deliver the public car park and other public infrastructure associated with the Development. The Parties wish to formalise that arrangement by entering into this agreement in accordance with section 93F of the Act.
- J. The parties intend that this agreement will amend or vary the Project Delivery Agreement to the extent necessary to give effect to the terms of this agreement. Toplace and Nassif, as parties to the Project Delivery Agreement, have agreed to enter into this agreement only for the purposes of agreeing to any such variations or amendments to the Project Delivery Agreement.

Operative part

1 Definitions

In this agreement, unless context indicates a contrary intention:

Act means the *Environmental Planning and Assessment Act 1979* (NSW);

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Bank Guarantee means the Initial Bank Guarantee under the Project Delivery Agreement;

Bond means an insurance bond from a AAA credit rated institution.

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Construction Certificate means a construction certificate as defined under section 109C of the Act;

Construction Terms means the terms set out in Schedule 1;

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

Controller has the meaning it has in the Corporations Act;

Corporations Act means the *Corporations Act 2001 (Cth)*;

Development means the development proposed for the Land in the event that the Instrument Change is made, being development for the purposes of a mixed use development generally comprising:

- (a) The removal of the existing at grade Council car park;
- (b) Erection of an approximately 30 storey mixed use building containing approximately 425 apartments and approximately 317 square metres of retail space at Macquarie and Hassall Street frontages;
- (c) Approximately three levels of basement car parking (being about 389 spaces); and
- (d) Approximately seven levels of public car parking (being about 715 spaces).

Development Application means development application DA852/2013 lodged with Council on 23 December 2013 for the Development;

Development Consent has the same meaning as in the Act;

Fax Number means a party's facsimile number set out in the Notices clause of this agreement;

Floor Space Ratio Map has the same meaning as in the LEP;

GST has the same meaning as in the GST Law;

GST Law has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST;

Height of Buildings Map has the same meaning as in the LEP;

Insolvency Event means the happening of any of these events:

- (a) a body corporate is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) a body corporate has a Controller appointed, is under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) a body corporate is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by Council);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 40 Business Days), resolution passed, proposal put forward or any other action taken, in each case in connection with that body corporate, which:
 - (i) is preparatory to or could result in any of (a), (b) or (c) above; or
 - (ii) which results in the appointment of a liquidator or provisional liquidator in respect of a body corporate;
- (e) as a result of the operation of section 459F(1) of the Corporations Act a body corporate is taken to have failed to comply with a statutory demand;
- (f) a body corporate is, or it makes a statement from which Council reasonably deduces that the body corporate is, the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which PCC reasonably deduces it is so subject);
- (g) a body corporate is otherwise unable to pay its debts when they fall due;
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that person under the Law of any jurisdiction;

Instrument Change means a change to the LEP to exempt the site from the application of clauses 21 and 22 of the LEP and allow for:

- (a) a maximum height of 91.3m;
- (b) a maximum gross floor area of 36,000 square metres, excluding any space used only for private balconies and communal open space; and

- (c) a maximum gross floor area of 2,750 square metres for the purpose of communal and private open space areas,

but only where the design of the building or alteration is the result of an architectural design competition, the consent authority is of the opinion that the development exhibits design excellence and the consent authority is of the opinion that the development provides a public car park;

Land means Lot 3A DP 322456, Lot 4A DP 322456, Lot 5 DP 7809, Lot 1 DP 128928, Lot 20 DP 706341, Lot C DP 390897 and Lot 1 DP 555756, known as 189 Macquarie Street, Parramatta;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b); and

LEP means the *Parramatta City Centre Local Environmental Plan 2007*;

Occupation Certificate means an occupation certificate as defined under section 109C of the Act, and includes an interim Occupation Certificate or a final Occupation Certificate;

Practical Completion means,

- (a) in relation to the Public Car Park, practical completion of any works determined in accordance with the Project Delivery Agreement, and
- (b) in relation to the Road Works, Streetscape Works or Public Thoroughfare Works, practical completion determined in accordance with the Construction Terms;

Project Delivery Agreement means the Project Delivery Agreement between Council and the Developer for the carrying out of the Development of the Land, as amended or varied between the parties to that agreement from time to time;

Public Car Park means the public car park forming part of the Development containing at least 650 car spaces and includes electronic signage for the car park;

Public Thoroughfare Works means the works, including associated landscaping and public art works, on that part of the Land and any building on the Land necessary to create a Through Site Link as shown on the plan at Annexure B and in accordance with any detailed design approved by Council under the Construction Terms;

Receiver includes a receiver or receiver and manager;

Register means the Torrens Title register maintained under the *Real Property Act 1900* (NSW);

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW);

Road Works means the installation of a new roundabout at the intersection of Hassall and Wigram Streets, generally in accordance with the plans at Annexure A and any detailed design approved by Council under the Construction Terms; and

Streetscape Works means the upgrade of Macquarie and Hassall Streets, including footpaths and verges, generally in accordance with the plans at Annexure B and any detailed design approved by Council under the Construction Terms.

2 Interpretation

In this agreement, unless context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(requirements)** a requirement to do anything includes a requirement to cause that thing to be done, and a requirement not to do anything includes a requirement to prevent that thing being done;
- (g) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (h) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (i) **(singular)** the singular includes the plural and vice-versa;
- (j) **(gender)** words importing one gender include all other genders;
- (k) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies

that part performance of an obligation constitutes performance of that obligation;

- (l) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (m) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (n) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (o) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (p) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (q) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (r) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (s) **(month)** a reference to a month is a reference to a calendar month.
- (t) **(year)** a reference to a year is a reference to twelve consecutive calendar months;

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 93F of the Act.
- (b) The parties acknowledge and agree that Toplace and Nassif execute this agreement only for the purposes of agreeing to any amendment or variation of the Project Delivery Agreement in accordance with clause 10.1(d), clause 12(c) of Schedule 1 and clause 15.2 of Schedule 1.

4 Application of this Agreement

This agreement applies to:

- (a) The Land,
- (b) The Instrument Change, and
- (c) The Development.

5 Operation of this Agreement

The parties agree that this agreement operates on and from the date the Instrument Change is made, being the date the Instrument Change is published on the NSW Legislation Website.

6 Contributions to be made under this agreement

6.1 *Public Car Park*

- (a) The Developer will design, finance, construct and deliver to Council the Public Car Park in accordance with the terms of the Project Delivery Agreement and any Development Consent for the Public Car Park.
- (b) The Developer and the Council acknowledge and agree that the purpose of the Public Car Park is to improve the public car parking in the area surrounding the Development.
- (c) The Public Car Park required under this agreement will be taken to have been delivered for the purposes of this agreement when Practical Completion has been achieved for those works.
- (d) The Public Car Park must be delivered to Council in accordance with the Milestone Dates set out in the Project Delivery Agreement.

6.2 *Road Works, Streetscape Works and Public Thoroughfare Works*

- (a) Any application for the Development must include the Public Thoroughfare Works.
- (b) The Developer will design, finance, construct and deliver to Council the Road Works, Streetscape Works and Public Thoroughfare Works in accordance with the terms of the Construction Terms and any Development Consent for those works.
- (c) The Developer and the Council acknowledge and agree that the purpose of the Road Works is to improve traffic management and flow surrounding the Development.
- (d) The Developer and the Council acknowledge and agree that the Streetscape Works and Public Thoroughfare Works will serve the following purposes:
 - (i) Increase the amount of and improve public domain areas in the vicinity of the Development;
 - (ii) Improve pedestrian circulation and the amenity of the public domain in the vicinity of the Development; and

- (iii) Create a safe pedestrian environment in the vicinity of the Development.
- (e) The Road Works, Streetscape Works and Public Thoroughfare Works required under this agreement will be taken to have been delivered for the purposes of this agreement when:
 - (i) Practical Completion has been achieved for those works and the works are delivered to Council in accordance with the Construction Terms; and
 - (ii) with respect to the Streetscape Works and Public Thoroughfare Works, the Land has been subdivided to the satisfaction of Council to create a separate lot (or lots) to be retained in Council ownership containing those works.
- (f) The Road Works must be delivered to Council on or before the date on which any Occupation Certificate is issued in respect of the Public Car Park, or in any event, prior to the date the Public Car Park is occupied or used as a car park.
- (g) The Streetscape Works and Public Thoroughfare Works must be delivered to Council on or before the date on which any Occupation Certificate is issued in respect of that part of the Development constituting the residential tower, or in any event, prior to the occupation of that part of the Development.
- (h) For the avoidance of doubt, the land on which the Road Works, Streetscape Works and Public Thoroughfare Works are located will be retained in Council ownership.

7 Application of sections 94, 94A and 94EF of the Act

- (a) This agreement excludes the application of section 94 of the Act to the Development.
- (b) This agreement partly excludes the application of section 94A of the Act to the Development, to the extent that section 94A contributions payable for the Development will be calculated in accordance with any relevant Contributions Plan (including any indexation as required by that Plan) and reduced by the following amounts:
 - (i) \$836,352.00 (including GST), being the section 94A contributions for the Public Car Park component of the Development as agreed between the Developer and the Council; and
 - (ii) an amount equivalent to \$38,000.00 (including GST) multiplied by the number of public car spaces delivered to Council as part of the Development that are in addition to the minimum 650 car spaces for the Public Car Park,

provided however that, despite the preceding provisions of this clause, the amount of section 94A contributions payable shall be a minimum of \$1,000,000.00.

- (c) When determining the amount of section 94A contributions payable for the Development in accordance with clause 7(b), the applicable deductions as set out in clause 7(b)(i) and (ii) will be indexed in accordance with any relevant Contributions Plan, so that the total contributions calculated for the Development and the amount of the deductions are all indexed in the same way.
- (d) For the avoidance of doubt, the minimum amount payable for section 94A contributions as specified in clause 7(b) is not to be indexed.
- (e) This agreement does not exclude section 94EF of the Act to the Development.

8 Registration of this Agreement

8.1 Registration of this agreement

- (a) The Developer agrees that it will procure the registration of this agreement, under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land in accordance with section 93H of the Act.
- (b) The Developer at its own expense will, promptly after this agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land; or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title, to enable the registration of this agreement in accordance with clause 8.1(a).
- (c) The Developer at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation but in any event, no later than 40 Business Days after that date; and
 - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

8.2 Removal from Register

- (a) The Council agrees that notification of this agreement may be removed from the Register of the Land, provided that:

- (i) the Public Car Park, the Road Works, the Streetscape Works and Public Thoroughfare Works have been delivered in accordance with this agreement;
 - (ii) the Land has been subdivided in accordance with clause 6.2(e)(ii); and
 - (iii) all money or contributions payable under this agreement or any Development Consent granted for the Development have been paid.
- (b) The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

9 Dispute Resolution

9.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

9.2 Notice of Dispute

The party wishing to commence the dispute resolution processes must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute;
- (b) The alleged basis of the dispute; and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

9.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 14 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) Resolve the dispute during the course of that meeting;
 - (ii) Agree that further material, expert determination in accordance with clause 9.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event, the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) Agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

9.4 Further Notice if Not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 9.5 or by expert determination under clause 9.6.

9.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within five Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) The mediator will be agreed between the parties, or failing agreement within five Business Days of receipt of the Determination Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 9.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment.
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within five Business Days of receipt of the Determination Notice notify each other of their representatives that will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within five Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and unless waived by the parties, may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in unreasonable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

9.6 *Expert determination*

If the dispute is not resolved under clause 9.3 or clause 9.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by Council and the Developer; and
 - (ii) in the event that no agreement is reached or no appointment is made within 30 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties unless:
 - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

9.7 *Litigation*

If the dispute is not finally resolved in accordance with this clause 9, then either party is at liberty to litigate the dispute.

9.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 9.1, the referral to or undertaking of a dispute resolution process under this clause 9 does not suspend the parties' obligations under this agreement.

10 Security and Enforcement

10.1 Bank Guarantee

- (a) The parties acknowledge that the Developer is required to provide to the Council the Bank Guarantee under the Project Delivery Agreement.
- (b) The parties agree that the Council may call on the Bank Guarantee provided under the Project Delivery Agreement, if:
 - (i) the Developer is in material or substantial breach of this agreement and has failed to rectify the breach after having been given reasonable notice (which must not be less than 20 Business Days) in writing to do so; or
 - (ii) an Insolvency Event occurs in respect of the Developer.
- (c) Subject to this clause, the Council may apply the proceeds of the Bank Guarantee in satisfaction of:
 - (i) any obligation of the Developer under this agreement to carry out the Road Works, the Streetscape Works or the Public Thoroughfare Works, and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (d) The parties acknowledge and agree that the Project Delivery Agreement is amended or varied to the extent necessary to give effect to this clause 10.1 and to enable the Council to call on the Bank Guarantee in accordance with this clause.
- (e) Nothing in this clause 10.1 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,
 that is not or cannot be satisfied by calling on the Bank Guarantee.

10.2 Restriction on the issue of Certificates

- (a) For the purposes of section 109F(1) of the Act and clause 146A of the Regulation, the Developer must provide the Bank Guarantee to Council prior to the issue of any Construction Certificate for the Development or any part of the Development.
- (b) For the purposes of section 109H(2) of the Act, the Developer must:
 - (i) deliver the Public Car Park in accordance with clause 6.1 prior to the issue of any Occupation Certificate for the Development or any part of the Development;

- (ii) deliver the Road Works in accordance with clause 6.2 prior to the issue of any Occupation Certificate for the Public Car Park or any part of the Public Car Park, and
 - (iii) deliver the Streetscape Works and Public Thoroughfare Works in accordance with clause 6.2 prior to the issue of any Occupation Certificate for any part of the Development constituting the residential tower or part of the residential tower.
- (c) For the avoidance of doubt, the Developer must pay all section 94A contributions for the Development to be calculated under this agreement in accordance with and at the times specified in the conditions of any Development Consent granted.

10.3 General Enforcement

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

11 Review

- (a) This agreement may be reviewed or modified and any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in or as a consequence of a review.

12 Assignment

- (a) The parties must not assign or otherwise transfer their rights under this agreement without the prior written consent of the other party.
- (b) The Developer must not assign or dispose of any right, title or interest under this agreement to another person or entity (**Assignee**) unless:
 - (i) the Developer satisfies Council that the proposed Assignee is financially capable of complying with the Developer's obligations under this agreement;

- (ii) the Developer satisfies Council that the rights of the Council will not be diminished or fettered in any way;
- (iii) the Assignee delivers to the Council a novation deed signed by the Assignee in a form and of such substance as is acceptable to the Council containing provisions under which the Assignee agrees to comply with all the outstanding obligations of the Developer under this agreement;
- (iv) any default by the Developer under any provisions of this agreement have been remedied by the Developer or waived by the Council on such conditions as the Council may determine; and
- (v) the Developer and the Assignee pay the Council's reasonable costs in relation to the novation deed and the assignment.

13 No fetter

13.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including but not limited to any statutory power or discretion of the Council relating to the Instrument Change or the assessment and determination of any Development Application for the Development (all referred to in this agreement as a "Discretion").

13.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter to the extent that is possible having regard to the relevant court judgment.

14 Notices

14.1 Notices

Subject to clause 14.2, any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;

- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by fax at the Address or Fax Number below, or at the Address or Fax Number last notified by the intended recipient to the sender after the date of this agreement:
- (i) to Parramatta City Council: PO Box 32, Parramatta NSW 2124
Fax: 02 9806 5917
Attention: The Chief Executive Officer;
 - (ii) to JKN Para Pty Ltd, Toplace Pty Ltd and Jean Nassif: 121 Majors Bay Road, Concord NSW 2137
Fax: 02 9747 0540
Attention: Mark Fitzpatrick
- (c) is taken to be given and made:
- (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an Address in the same country) or seven Business Days after the date of posting (if posted to an Address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's Fax Number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

14.2 Notices sent by email

- (a) A party may serve a Notice by email if the Notice:
- (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;
 - (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
 - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
 - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
 - (A) to Parramatta City Council: Attention: The Chief Executive Officer

council@parracity.nsw.gov.au;

(B) to JKN Para Pty Ltd, Attention: Mark Fitzpatrick
Toplace Pty Ltd and mfitzpatrick@toplace.com.au
Jean Nassif:

- (b) The recipient of a Notice served under this clause 14.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause (b) does not invalidate service of a Notice under this clause.

14.3 *Receipt of Notices sent by email*

- (a) A Notice sent under clause 14.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,whichever occurs first.
- (b) If under clause (a) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

15 General

15.1 *Relationship between parties*

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

15.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a

Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

15.3 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

15.4 Variation

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties.

15.5 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

15.6 Legal expenses

The Developer must pay the Council's legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this agreement.

15.7 Entire agreement

- (a) Subject to the Project Delivery Agreement, the contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.
- (b) Nothing in this agreement can or will be taken to diminish or effect the obligations of the Developer under the Project Delivery Agreement.

15.8 Invalidity

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.

- (c) The remainder of this agreement has full effect even if clause 15.8(b)(i) or (ii) applies.

15.9 Waiver

A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

15.10 Governing law and jurisdiction

- (a) The Laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

15.11 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

Schedule 1 Construction Terms

1 Interpretation

For the purposes of this Schedule 1, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply and, unless context indicates a contrary intention:

Builder means any entity contracted under the Construction Contract to carry out the Works.

Construction Contract means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

Contamination has the same meaning as in the *Contaminated Land Management Act 1997*.

Defects Liability Period means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Works.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 1 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and / or installation.

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a Development Consent or an Approval and which are necessary or desirable for the construction, operation or occupation of the Development.

Works means the Road Works, the Streetscape Works and the Public Thoroughfare Works.

2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of a Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then:

- (a) the Developer will acquire all Approvals necessary to carry out the Works at its own cost; and
- (b) the Council will give the Developer a reasonable period to obtain such Approvals.

2.3 The Developer must ensure that the Works carried out under this agreement are carried out:

- (a) in accordance with the relevant Development Consents for the Works and all Approvals and the requirements of all Laws, including without limitation, occupational health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that if there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

3 Costs of Works

All costs of the Works must be borne by the Developer.

4 Project Management and Contractor Engagement

4.1 The Developer will be responsible for managing the Works.

4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to:

- (a) carry out the Developer's obligations in this agreement and in accordance with these Construction Terms as part of any Construction Contract; and
- (b) accommodate and attend if required any on-site meetings of the Joint Management Committee established under the Project Delivery Agreement.

5 Design Development

5.1 Concept Design

Council and the Developer acknowledge and agree that the Works will be in accordance with the concept design in the plans attached in Annexure A and Annexure B.

5.2 Detailed Design

- (a) The Developer must provide a copy of the draft Detailed Design to the Council.
- (b) Within 20 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.
- (c) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design is not completed and agreed within 20 Business Days of Council providing its suggested amendments in accordance with clause 5.2(b) of this Schedule 1, to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, acting reasonably, be entitled to decide on any outstanding or undecided matter or item arising out of this clause 5.2 relating to areas that are to

be accessible to the public, provided that any decision made by Council under this clause:

- (i) is consistent with the intent of this agreement; and
- (ii) is consistent with the Development Consent; and
- (iii) does not:
 - (A) materially and adversely affect the Development,
 - (B) substantially delay completion of the Development; or
 - (C) substantially increase the cost of carrying out the Development.
- (e) Any acceptance by the Council of the Detailed Design under this clause 5.2 of Schedule 1 is not to be taken as approval of or to any Construction Certificate for the Works.

5.3 Good faith

The Council and the Developer must act promptly and in good faith to consult in relation to the Detailed Design.

6 Carrying out of Works

6.1 Communication

The Developer must keep Council informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

6.2 Standard of Works

- (a) The Developer shall, unless otherwise provided use good quality new materials, which must be suitable for the purposes for which they are required under this agreement when carrying out the works.
- (b) The Works must be carried out in accordance with the following:
 - (i) Any relevant Australian Standard;
 - (ii) The Building Code of Australia;
 - (iii) Any relevant manufacturers' standards; and
 - (iv) Any relevant public domain guidelines, requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement,so that the Works when completed, are suitable for the purpose for which they are required as contemplated by this agreement.
- (c) The Developer will obtain the relevant standards and specifications, guidelines, requirements or other policies referred to in clause 6.2(b)(iv)

of this Schedule 1 from Council, if the Council fails to deliver them to the Developer.

7 Inspection

- (a) The Council may enter the Land to inspect the progress of the Works, subject to:
 - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer;
 - (iv) exercising its rights under this clause entirely at its own risk in all respects; and
 - (v) being accompanied by the Developer or its nominee, or as otherwise agreed.
- (b) The Council may, within 5 Business Days of carrying out an inspection, notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance. Such work may include, but is not limited to:
 - (i) removal of defective or non-complying material from the Land;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Works.
- (c) If the Developer is issued a direction to carry out further work under clause 7(b) of this Schedule 1, the Developer must, at the Developer's cost, rectify the defect or non-compliance specified in the notice within the time period specified in the notice.
- (d) If the Developer fails to comply with a direction to carry out work given under clause 7(b) of this Schedule 1, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required works have been completed to the Council's satisfaction, acting reasonably.
- (e) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under clause 7(b) of this Schedule 1 does not constitute:
 - (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the Works; or

- (iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

8 Completion

8.1 Practical Completion

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a notice to the Council accompanied by complete works as executed plans and a request for written certification from the Council that the Works are complete.
- (b) Within 20 Business Days of receipt of the notice under clause 8.1(a) of this Schedule 1, the Council will carry out an inspection of the Works and will either:
 - (i) provide written certification to the Developer that the Works have been completed; or
 - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 8.1(b)(2) of this Schedule 1, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice and make a further request under clause 8.1(a) of this Schedule 1 for written certification that the Works have been completed.
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works under clause 8(1)(b)(i) of this Schedule 1.

8.2 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete copies of:
 - (i) all "as built" drawings, specifications and relevant operation and service manuals;
 - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require; and
 - (iii) copies of all Approvals required for the occupation or use of the land subject to the Works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works,

provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

8.3 Assignment of Warranties and Causes of Action

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council, including but not limited to:
 - (i) appointing the Council as its attorney to exercise its rights and powers under any Construction Contract, including any right to conduct proceedings or prosecute any action to enforce the Developer's rights against others under any Construction Contract;
 - (ii) executing all such documents and doing all such things on the Council's behalf as are necessary or desirable to enable the Council to rectify any defects in accordance with the terms of this agreement and any Construction Contract; and
 - (iii) provide any assistance required for the purpose of defending or settling any claim or the pursuit of any rights of recovery from others under any Construction Contract.

9 Defects Liability

9.1 Defects Liability Period

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
 - (i) action required to be undertaken by the Developer to rectify that defect; and
 - (ii) the period of time within which the defect must be rectified, which must be reasonable having regard to the nature and extent of the rectification required.
- (b) The Developer must comply with the Rectification Notice by:
 - (i) procuring the performance of the work required to rectify the defect within the time period specified by the Council or such other time as agreed between the Council and the Developer;
 - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and

- (iii) carrying out the rectification.
- (c) The Council must give the Developer and its contractors any access required to carry out the rectification works.
- (d) When the Developer considers that a rectification is complete, the Developer must notify the Council that the works subject to the relevant Rectification Notice are complete and provide documentation, plans or invoices which establish that those works were carried out.
- (e) The Council may inspect the rectification works within 20 Business Days of receiving a notice from the Developer under clause 9.1(d) of this Schedule 1 and:
 - (i) issue a further Rectification Notice if it is not reasonably satisfied that the rectification is complete; or
 - (ii) notify the Developer in writing that it is satisfied the rectification work is complete.
- (f) The Developer must meet all costs of and incidental to rectification of defects under this clause 9.1.
- (g) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to rectify the defect, including accessing and occupying any part of the Land without further notice to the Developer, and may:
 - (i) call upon any Bond or Bank Guarantee provided to the Council under clause 9.2 of this Schedule 1 to meet its costs of rectifying the defect; and
 - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in rectifying the defect.

9.2 Security for Defects Liability

- (a) Prior to the issue of a Certificate of Practical Completion for each item of the Works the Developer must deliver, to the Council, Bonds or Bank Guarantees in an amount equivalent to 2.5% of the construction costs for the particular item of Works.
- (b) The Developer advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
 - (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
 - (ii) the Developer procures an agreement from the Builder that the Council will be entitled to call on any Bond or Bank Guarantee

provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.

- (c) Within 10 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in clause 9.2(a) of this Schedule 1 for that item of Works (or any remaining balance of it) to the Developer.
- (d) Notwithstanding clause 9.2(c) of this Schedule 1, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that defect has been rectified.

10 Reinstatement on damage or destruction

10.1 The Developer may, but is not obliged to, reinstate any Works where damage or destruction (that is not a defect in the Works) is the result of:

- (a) Any negligence act or omission of Council or its employees, consultants or agents relating to any part of the Works; or
- (b) The use or occupation by Council or its employees, consultants or agents, Council's representatives or other contractor of Council of any part of the Works.

10.2 If the Developer reinstates any Works as contemplated by this clause, Council must, within 15 Business Days of being presented with a tax invoice for the reasonable costs of the reinstatement works, pay to the Developer the cost of the reinstatement works as set out in that tax invoice.

11 Risk

The Developer undertakes the Works entirely at its own risk.

12 Insurance

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure that all insurances required under the Project Delivery Agreement cover or are extended to cover the Works.
- (b) The Developer must provide evidence of currency of insurance and evidence that the insurances cover the relevant Works as required by clause 12(a) of this Schedule 1 prior to commencement of the construction of any of the Works and upon request by the Council throughout the term of this agreement.
- (c) For the avoidance of doubt, the parties agree that the Project Delivery Agreement is amended or varied to the extent necessary to give effect to this clause 12 of Schedule 1.

13 Indemnities

The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all Claims in connection with the

carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen negligence, default, act or omission.

14 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors holds all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer has or receives intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

15 Condition of the Land and Contamination

- 15.1 The Developer acknowledges and agrees that the representations and warranties made by it under the Project Delivery Agreement in relation to the condition of the Land apply to the Streetscape Works and Public Thoroughfare Works required under this agreement, so far as those works are located on the Land.
- 15.2 For the avoidance of doubt, the parties agree that the Project Delivery Agreement is amended or varied to the extent necessary to give effect to clause 15.1 of Schedule 1.
- 15.3 With respect to the Road Works and any part of the Streetscape Works not located on the Land, the Developer acknowledges and agrees:
- (a) that it is responsible for the management and remediation of any Contamination present upon or under the land on which those works are to be carried out;
 - (b) it will attend to any necessary remediation at its own costs; and
 - (c) to the fullest extent permitted by law releases the Council from any Claim which might arise from any Contamination with respect to the land on which those works are to be carried out.

Executed as an agreement

Signed for and behalf of Parramatta City Council in accordance with a resolution of the Council dated 23 February 2015:



Signature of Chief Executive Officer



Signature of Lord Mayor

G. C. BYER

Name of Chief Executive Officer

S. D. Lloyd


Name of Lord Mayor

~~Executed by JKN Para Pty Ltd ACN 150-177-170 in accordance with section 127 of the Corporations Act 2001 (Cth) by:~~

Executed by JKN Para Pty Ltd's attorney (who by signing this document confirms she does not have notice of termination, suspension or revocation of the power) under the power of attorney specified:


Signature of witness
Signature of Director

Mark Fitzpatrick
Name of witness
Print name of Director


Signature of Attorney
Signature of Director/Secretary

Power of attorney dated: 4/9/12
~~BOOK: 4654 No. 990~~
Book: 4637 No: 689

Evelyn Nassif
Name of attorney
Print name of Director/Secretary

~~Executed by Toplace Pty Ltd AGN 135-918 491 in accordance with section 127 of the Corporations Act 2001 (Cth) by:~~

) Executed by Toplace Pty Ltd's attorney (confirms she) (who by signing this document, does not have notice of the termination, suspension or revocation of the power) under the power of attorney specified:

~~Signature of witness~~
~~Signature of Director~~

~~Signature of Attorney~~
~~Signature of Director/Secretary~~
Power of attorney dated: 20/12/11
BOOK: 4626 NO: 968

~~Mark Fitzpatrick~~
~~Name of witness~~
~~Print name of Director~~

~~Evelyn Nassif~~
~~Name of Attorney~~
~~Print name of Director/Secretary~~

~~Signed by Jean Nassif in the presence of:~~

) signed by Jean Nassif's attorney (who by signing this document confirms she does not have notice of termination, suspension or revocation of the power) under the power of attorney specified:

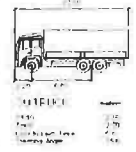
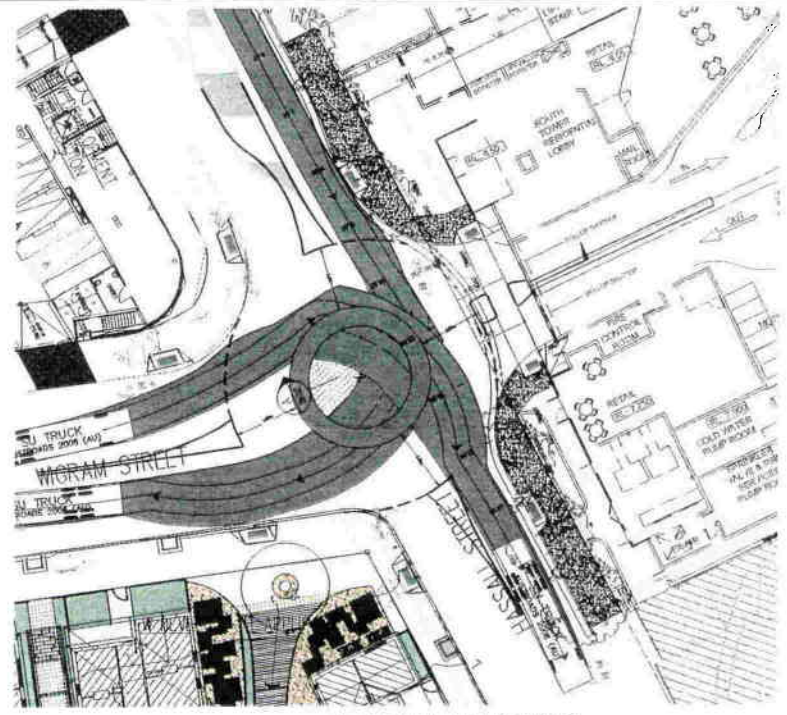
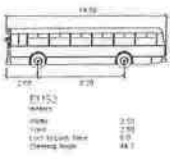
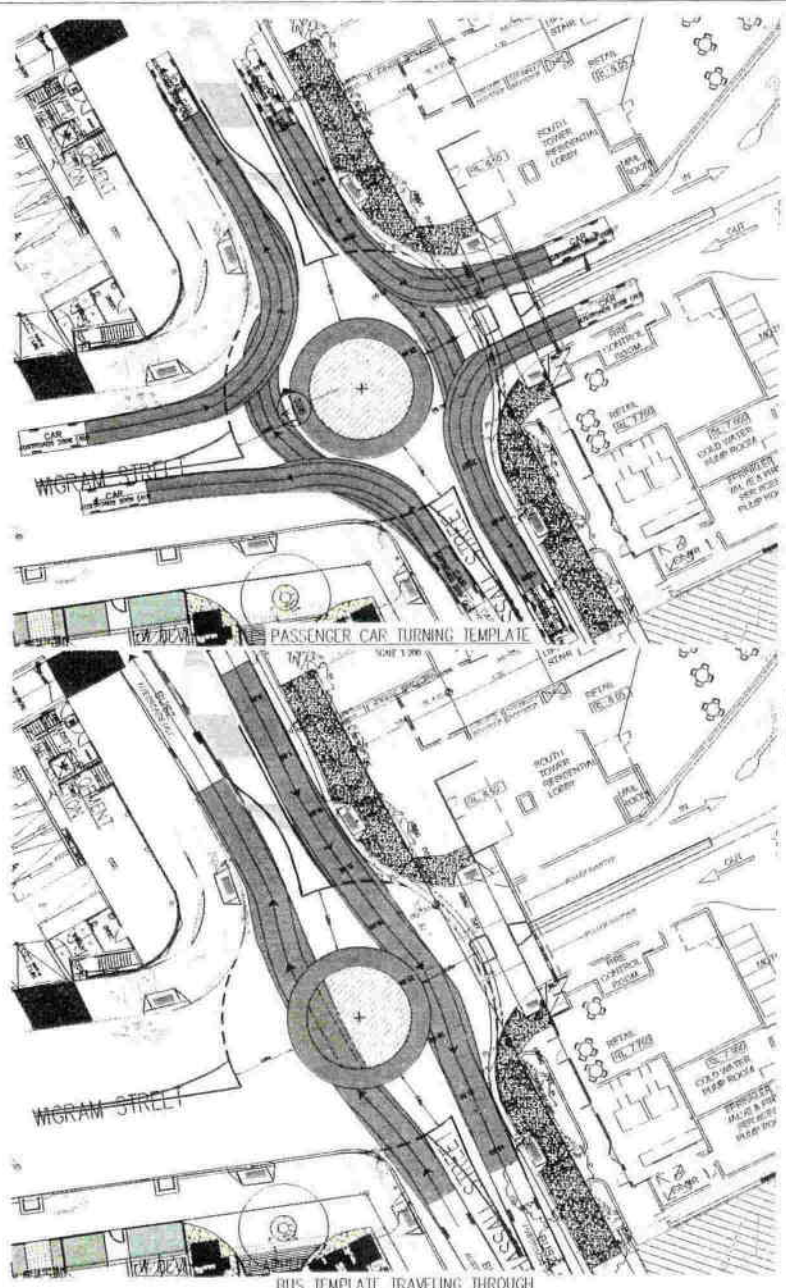
~~Signature of witness~~
~~Signature of Witness~~

~~Signature of Attorney~~
~~Signature of Jean Nassif~~
Power of attorney dated: 20/12/11
BOOK: 4626 NO: 968

~~Mark Fitzpatrick~~
~~Print name of Witness~~

~~Evelyn Nassif~~
~~Name of attorney~~

Annexure A Road Works



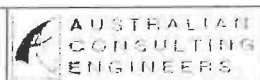
TYPICAL CROSS SECTION THROUGH PROPOSED ROUNDABOUT - HASSALL STREET (SECTION A-A)



NO.	REVISION	DATE	BY	CHKD.	APP'D.	DESCRIPTION
1	ISSUE FOR APPROVAL	10/07/14				
2	ISSUE FOR COMMENT	24/07/14				
3	FOR APPROVAL	10/08/14				
4	FOR APPROVAL	10/08/14				
5	FOR APPROVAL	10/08/14				
6	FOR APPROVAL	10/08/14				
7	FOR APPROVAL	10/08/14				
8	FOR APPROVAL	10/08/14				
9	FOR APPROVAL	10/08/14				
10	FOR APPROVAL	10/08/14				

PROJECT: PROPOSED CARPARK REDEVELOPMENT 189 MACQUARIE STREET PARRAMATTA

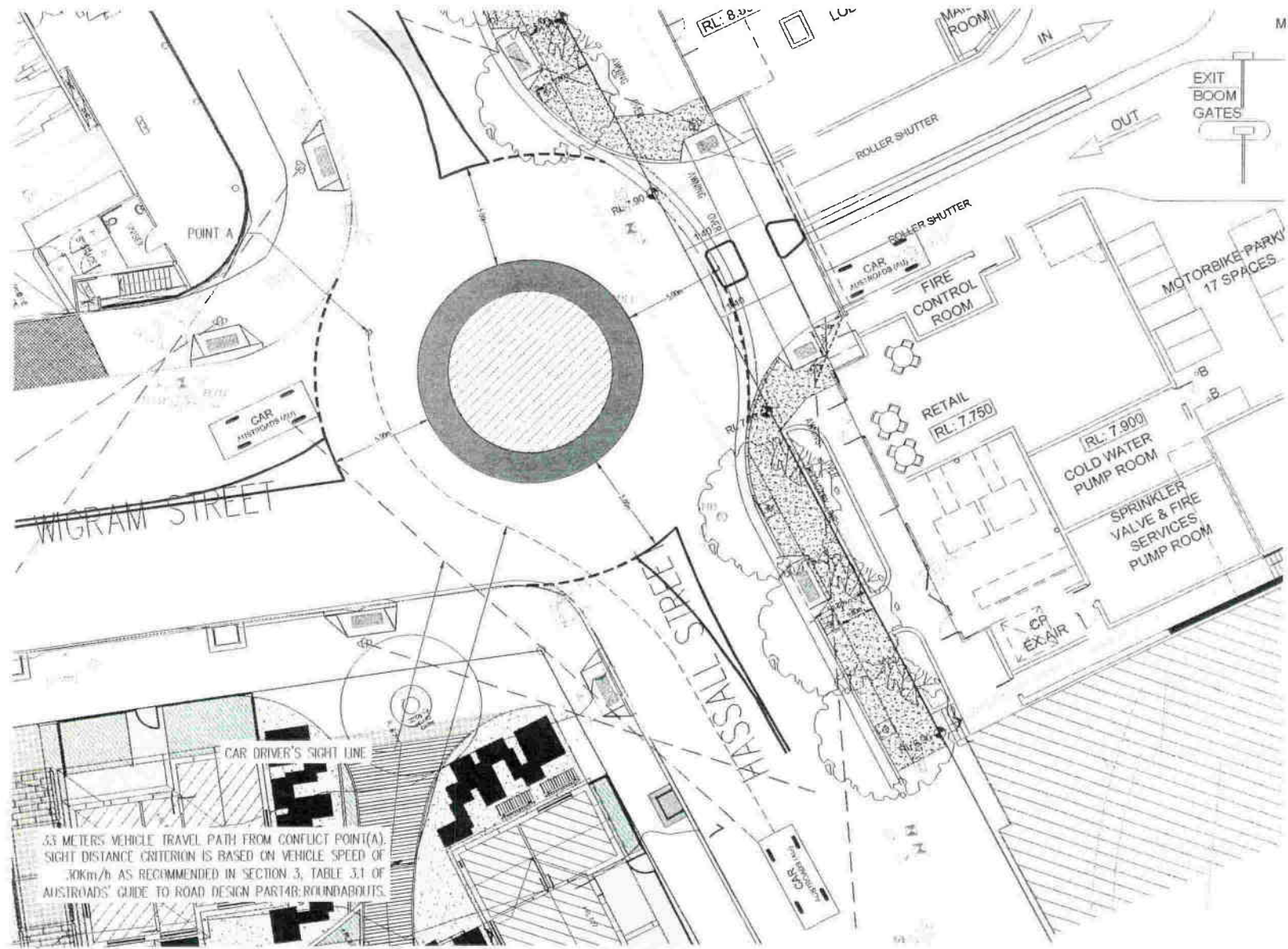
CLIENT: Toplace Pty Ltd
 189 MACQUARIE STREET
 PARRAMATTA NSW 2150
 Tel: 02 9622 0100 Fax: 02 9622 0244



PROJECT: PROPOSED CARPARK REDEVELOPMENT 189 MACQUARIE STREET PARRAMATTA

SHEET TITLE: VEHICLE TURNING TEMPLATE & TYPICAL CROSS SECTION HASSALL STREET

DATE	BY	CHKD.	APP'D.	PROJECT NO.	DRAWN	SCALE	DATE
JUN 14	K.E.	K.T.	ASH	120668			
	AS SHOWN						
				SK02			

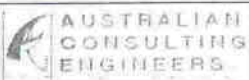


33 METERS VEHICLE TRAVEL PATH FROM CONFLICT POINT (A). SIGHT DISTANCE CRITERION IS BASED ON VEHICLE SPEED OF 30km/h AS RECOMMENDED IN SECTION 3, TABLE 3.1 OF AUSTRROADS' GUIDE TO ROAD DESIGN PART4B: ROUNDABOUTS.

PASSENGER CAR TURNING TEMPLATE
SCALE 1:200



<table border="1"> <tr> <td>DATE</td> <td>DESCRIPTION</td> <td>BY</td> <td>CHECKED</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>				DATE	DESCRIPTION	BY	CHECKED					<p>PROJECT: PROPOSED CARPARK REDEVELOPMENT 189 MACQUARIE STREET PARRAMATTA</p>				<p>DRAWN: Y.L.</p>				<p>PROJECT NO: 120668</p>			
DATE	DESCRIPTION	BY	CHECKED																				
<p>C: ISSUED FOR APPROVAL</p>				<p>DATE: JULY 14</p>				<p>SCALE: AS SHOWN</p>				<p>REV: C</p>											
<p>D: ISSUED FOR INFORMATION</p>				<p>DATE: </p>				<p>SCALE: </p>				<p>REV: </p>											
<p>A: FOR CONSTRUCTION</p>				<p>DATE: </p>				<p>SCALE: </p>				<p>REV: </p>											
<p>DATE: </p>				<p> </p>				<p> </p>				<p> </p>											



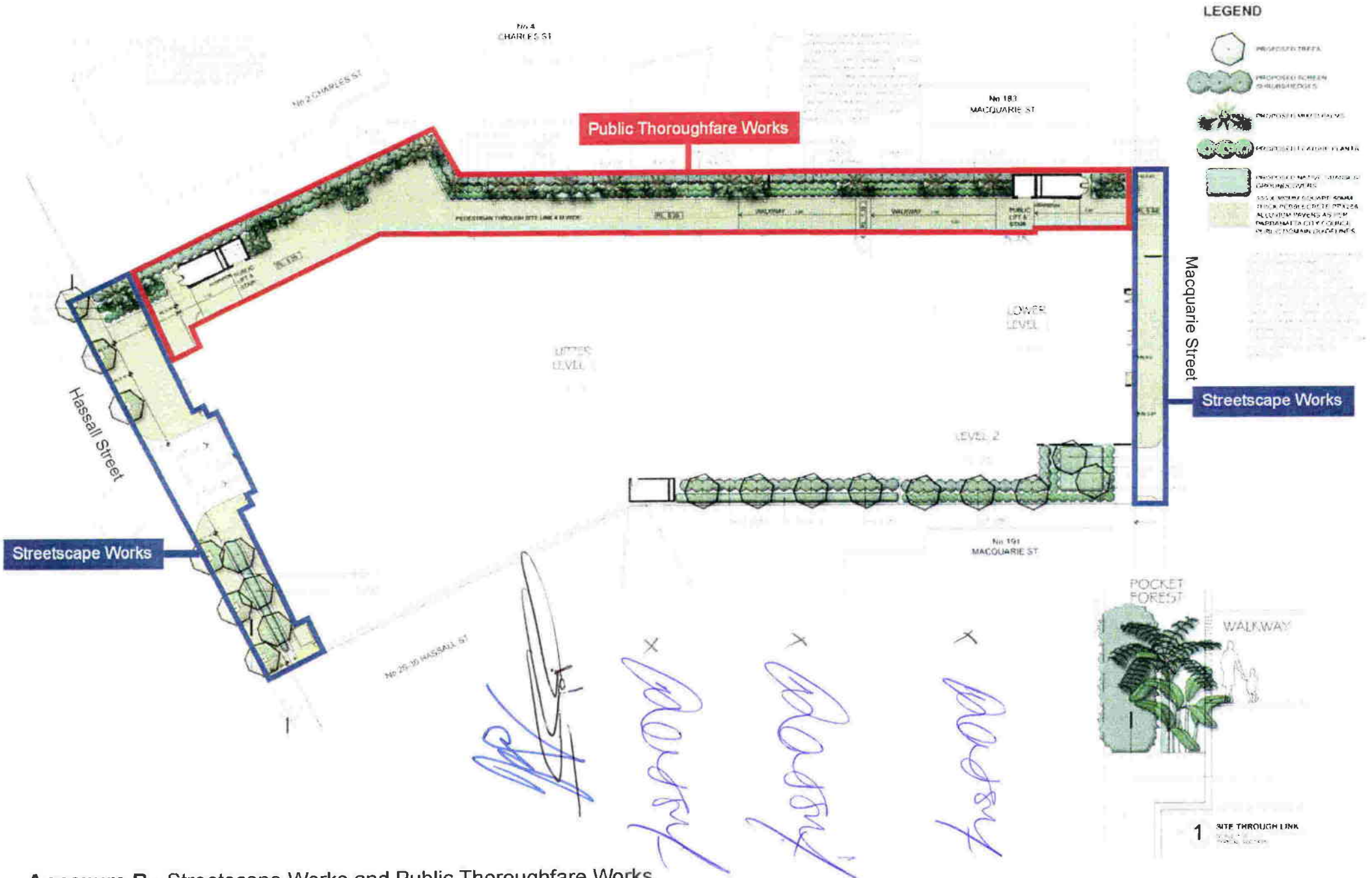
PROJECT: PROPOSED CARPARK REDEVELOPMENT 189 MACQUARIE STREET PARRAMATTA

DRAWN: Y.L.

PROJECT NO: 120668

REV: C

Annexure B Streetscape Works and Public
Thoroughfare Works



Annexure B - Streetscape Works and Public Thoroughfare Works

copy

Power of Attorney

JKN Para Pty Ltd

And

Evelyn Nassif

Blackstone Waterhouse
Level 25, 2 Park Street
SYDNEY NSW 2000
DX 132 SYDNEY
Tel: (02) 9279 0288
Fax: (02) 9279 0277
www.blackstonewaterhouse.com.au
Ref: MF: 12209

Power of attorney

Date	4 SEPTEMBER 2012
Parties	<p>JKN Para Pty Ltd ACN 159 177 170 of Shop 3, 143-147 Parramatta Road Concord NSW</p> <p style="text-align: right;">(Principal)</p> <p>Evelyn Nassif of 55 Greens Avenue, Oatlands NSW 2117f</p> <p style="text-align: right;">(Attorney)</p>

1. Grant**1.1 Grant**

The Principal appoints the Attorney to be its lawfully appointed attorney. The Attorney may exercise the authority conferred on the Attorney by Part 2 of the *Powers of Attorney Act 2003* (NSW) to do on behalf of the Principal anything that the Principal may lawfully authorise an attorney to do.

1.2 Operation

This power of attorney operates immediately upon execution.

2. Deed

This document acts as a Deed. The Attorney may register this power of attorney.

3. Ratification & indemnity

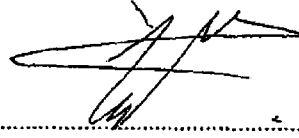
- (a) The Principal declares that all acts, matters and things done by the Attorney in exercising powers under this power of attorney will be as valid and effective as if they had been done by the Principal.
- (b) The Principal agrees to ratify and confirm whatever the Attorney does in exercising powers under this power of attorney, including anything done between the revocation by any means of this power of attorney and such revocation becoming known to the Attorney.
- (c) The Principal declares that a person (including, but not limited to, a firm, body corporate, unincorporated association or authority) who deals with the Attorney in good faith may accept a written statement signed by the Attorney to the effect that this power of attorney has not, within the knowledge of the Attorney, been revoked as conclusive evidence of that fact.

Power of Attorney

BlackstoneWaterhouseLawyers

Executed as a Deed

**Signed sealed and delivered by JKN Para
Pty Ltd in accordance with s.127 of the
Corporations Act 2001:**



.....
) Signature of Jean Nassif (sole director/secretary)

**REGISTERED
4/9/2012
BK 4637 NO 689**



Power of Attorney

**Eveash Tst Co Pty Ltd
HPA Group Pty Ltd
A.F.T. Developments Pty Ltd
JKN Australia Pty Ltd
JKN Property Group Pty Ltd
JKN 1 Pty Ltd
JKN 2 Pty Ltd
Mascot 3 Pty Ltd
Mascot 4 Pty Ltd
Toplace Pty Ltd
Jean Nassif**

And

Evelyn Nassif

**Blackstone Waterhouse
Level 25, 2 Park Street
SYDNEY NSW 2000
DX 132 SYDNEY
Tel: (02) 9279 0288
Fax: (02) 9279 0277
www.blackstonewaterhouse.com.au
Ref: MF: 11410**

Power of attorney

Date	20 DECEMBER 2011
Parties	<p>Eveash Tst Co Pty Ltd ACN 125 047 583, HPA Group Pty Ltd ACN 133 013 662, A.F.T. Developments Pty Ltd ACN 140 777 411, JKN Australia Pty Ltd ACN 151 283 635, JKN Property Group Pty Ltd ACN 153 730 379, JKN 1 Pty Ltd ACN 152 773 683, JKN 2 Pty Ltd ACN 153 379 232, Mascot 3 Pty Ltd ACN 142 600 397 , Mascot 4 Pty Ltd ACN 146 970 729, Toplace Pty Ltd CAN 135 918 491 and Jean Nassif all of Shop 3, 143-149 Parramatta Road Concord NSW</p> <p style="text-align: right;">(together Principals)</p> <p>Evelyn Nassif of 55 Greens Avenue, Oatlands NSW 2117f</p> <p style="text-align: right;">(Attorney)</p>

1. Grant

1.1 Grant

Each of the Principals jointly and severally appoints the Attorney to be its lawfully appointed attorney. The Attorney may exercise the authority conferred on the Attorney by Part 2 of the Powers of Attorney Act 2003 (NSW) to do on behalf of each Principal anything that a Principal may lawfully authorise an attorney to do.

1.2 Operation

This power of attorney operates immediately upon execution.

2. Deed

This document acts as a Deed. The Attorney may register this power of attorney.

3. Ratification & indemnity

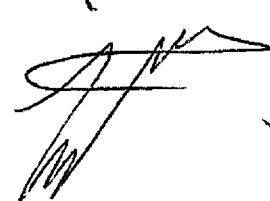
- (a) The Principals each declare that all acts, matters and things done by the Attorney in exercising powers under this power of attorney will be as valid and effective as if they had been done by the relevant Principals.
- (b) The Principals agree to ratify and confirm whatever the Attorney does in exercising powers under this power of attorney, including anything done between the revocation by any means of this power of attorney and such revocation becoming known to the Attorney.

(c) The Principal declares that a person (including, but not limited to, a firm, body corporate, unincorporated association or authority) who deals with the Attorney in good faith may accept a written statement signed by the Attorney to the effect that this power of attorney has not, within the knowledge of the Attorney, been revoked as conclusive evidence of that fact.

Executed as a Deed

Signed sealed and delivered by Eveash Tst Co Pty Ltd in accordance with s.127 of the Corporations Act 2001:)
)
)

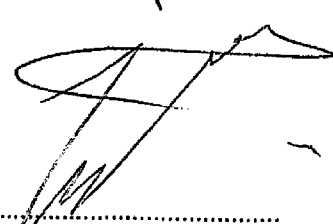
.....
Signature of director
.....
(Print) Full Name



.....
Signature of Jean Nassif (sole director/secretary)

Signed sealed and delivered by HPA Group Pty Ltd in accordance with s.127 of the Corporations Act 2001:)
)
)

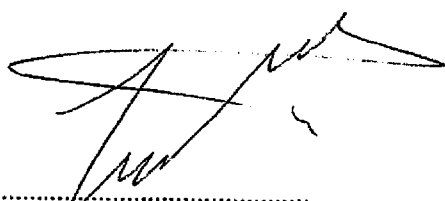
.....
Signature of director
.....
(Print) Full Name



.....
Signature of Jean Nassif (sole director/secretary)

Signed sealed and delivered by A.F.T. Developments Pty Ltd in accordance with s.127 of the Corporations Act 2001:)
)
)

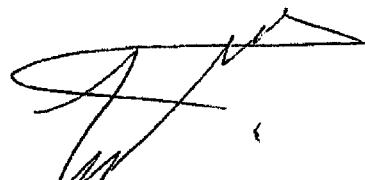
.....
Signature of director
.....
(Print) Full Name



.....
Signature of Jean Nassif (sole director/secretary)

Signed sealed and delivered by JKN Australia Pty Ltd in accordance with s.127 of the Corporations Act 2001:)
)
)

.....
Signature of director
.....
(Print) Full Name



.....
Signature of Jean Nassif (sole director/secretary)

Power of Attorney

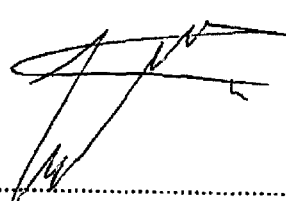
BlackstoneWaterhouseLawyers

**Signed sealed and delivered by JKN
Property Group Pty Ltd** in accordance with
s.127 of the Corporations Act 2001:

.....
Signature of director

.....
(Print) Full Name

.....
Signature of Jean Nassif (sole director/secretary)

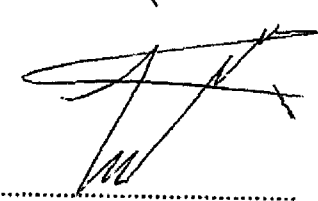


**Signed sealed and delivered by JKN 1 Pty
Ltd** in accordance with s.127 of the
Corporations Act 2001:

.....
Signature of director

.....
(Print) Full Name

.....
Signature of Jean Nassif (sole director/secretary)

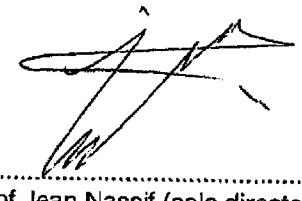


**Signed sealed and delivered by JKN 2 Pty
Ltd** in accordance with s.127 of the
Corporations Act 2001:

.....
Signature of director

.....
(Print) Full Name

.....
Signature of Jean Nassif (sole director/secretary)

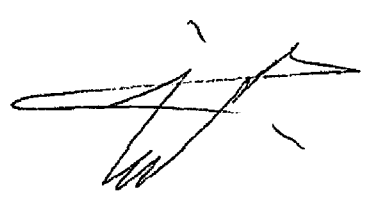


**Signed sealed and delivered by Mascot 3
Pty Ltd** in accordance with s.127 of the
Corporations Act 2001:

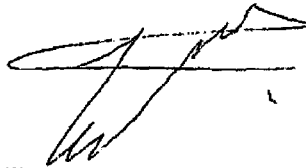
.....
Signature of director

.....
(Print) Full Name

.....
Signature of Jean Nassif (sole director/secretary)



Signed sealed and delivered by Mascot 4 Pty Ltd in accordance with s.127 of the Corporations Act 2001:)
)
)



.....
Signature of director

.....
Signature of Jean Nassif (sole director/secretary)

.....
(Print) Full Name

Signed sealed and delivered by Toplace Pty Ltd in accordance with s.127 of the Corporations Act 2001:)
)
)

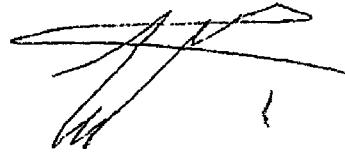


.....
Signature of director

.....
Signature of Jean Nassif (sole director/secretary)

.....
(Print) Full Name

Signed sealed and delivered by Jean Nassif in the presence of:)
)
)



.....
Signature of witness

.....
Signature

MARK FITZPATRICK
.....
(Print) Full Name

JEAN NASSIF
.....
(Print) Full Name

REGISTERED
25/1/2012
BK 4626 NO 968

