

## Planning Agreement

CITY OF PARRAMATTA COUNCIL

and

G1 (AUST) PTY LTD

65-71 Cowper Street, Granville


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EBSWORTH

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INTERIM GENERAL MANAGER

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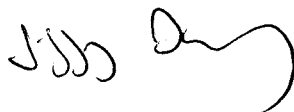
*JSSD* 

## Planning Agreement: 65-71 Cowper Street, Granville

<b>Date</b>	19 September 2016
<b>Parties</b>	<p><b>CITY OF PARRAMATTA COUNCIL</b> (formerly PARRAMATTA CITY COUNCIL) 126 Church Street, Parramatta NSW 2150 <b>(Council)</b></p> <p><b>G1 (AUST) PTY LTD</b> ACN 167 054 480 Level 1, Suite 1, 181 Macquarie Street, Parramatta NSW 2150 <b>(Developer)</b></p>
<b>Recitals</b>	<p>A. The Developer is the owner of the Land.</p> <p>B. The rear of the Land adjoins an existing unnamed laneway which provides vehicular access to the Land.</p> <p>C. The Developer has lodged with Council a Development Application seeking approval to carry out the Development on the land.</p> <p>D. The Development Application was accompanied by an offer by the Developer to enter into a Planning Agreement with the Council to carry out the Developer's Works and make the Developer's Contribution.</p> <p>E. The Council is the consent Authority and has determined the Development Application by the granting of consent subject to conditions.</p> <p>F. Under the Development Consent, the laneway is to be extended over part of the Land with the approved Development being cantilevered over that part of the Land.</p> <p>G. The Developer and the Council agree to enter into this Agreement.</p>

The parties agree, in consideration of, among other things, the mutual promises contained in this Agreement as follows:



**1. Planning Agreement under the Act**

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- 1.1 The parties agree that this Agreement is a Planning Agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.
- 1.2 The Developer's Contribution only applies to the Development Application as approved by Council excluding any amendment or modification (other than any approval of the modification application lodged by the Developer with Council on 8 June 2016).

**2. Application of Section 94 and 94A of the Act to the Development**

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The parties agree that this Agreement does not exclude the operation of Section 94 and 94A of the Act in relation to the Development Application.

**3. Scope and application of this Agreement**

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This Agreement binds the parties and applies to the Land on which the Development is to be carried out by the Developer.

**4. Operation of this Agreement**

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This Agreement takes effect on execution of this Agreement.

**5. Definitions and interpretation**

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**5.1 Definitions**

In this Agreement, the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under that Act;

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

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

**Completion** means the stage in the construction of the Developer's Works when, in the reasonable discretion of the Council's Representative and notified under clause 8.5(a) or (c), 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 purposes;
- (b) which the Council determines the Developer has reasonable grounds for not promptly rectifying; and
- (c) the rectification of which will not prejudice the convenient use of the Developer's Works;

**Council's Representative** means the person specified in Item 2 of Schedule 1 who is duly authorised to give approval under this Agreement;

**Dedicated Land** means the part of the Land described in Item 6 of Schedule 1.

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

**Developer** means the Owner of the Land and the entity described in Item 1 of Schedule 1.

**Development** means the proposal of the general nature set out in Item 4 of Schedule 1 to be completed by the Developer in accordance with the Development Consent;

**Development Application** means the development application identified in Item 4 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended or supplemented) submitted to the consent authority before the determination of that Application;

**Development Consent** means the approval granted by the Council to the Development Application for the Development identified in Item 4 of Schedule 1 and includes all modifications made to that consent;

**Developer's Contribution** means the sum of the Developer's Works, dedication of the Dedicated Land to Council and grant of the Easements to Council;

**Developer's Works** means the works identified in Item 6 of Schedule 1 and in Schedule 2, as refined and developed in accordance with this Agreement;

**Discharge of Mortgage** means a discharge of any registered mortgage over the title to the Dedicated Land.

**Easements** means the easements created in accordance with clause 9 upon the terms specified in Annexure "C".

**GST** has the same meaning as in the GST Law;

**GST Law** has the 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;

**Guarantee** means an unconditional bank guarantee or bank guarantees, unlimited in time, issued by a bank licensed to carry on business in Australia that:

- (a) is in favour of the Council;
- (b) for the Guarantee Amount; and
- (c) on such other terms and conditions the Council may approve from time to time;

**Guarantee Amount** means the amount specified in Item 8 of Schedule 1 as varied from time to time in accordance with this Agreement;

**LPI** means Land and Property Information New South Wales.

**Land** means the land identified in Item 3 of Schedule 1, comprising the land the subject of the Development Application;

**Law** means

- (a) Any law applicable including the common law and principles of equity, legislation, ordinances, regulations, by-laws and other subordinate legislation; and
- (b) Any Approval, including any condition or requirement under it.

**Loss** means any loss, claim, action, liability, damage, demands, cost, charge, which Council, its employees, officers, agents, contractors and workmen sustains, pays, suffers or incurs or is liable for arising in connection with the carrying out by the Developer of any item of the Developer's Work and the performance by the Developer of any obligation under this Agreement, including (but not limited to) reasonable legal and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability, and all amounts reasonably paid in settlement of any claim or action.

**Occupation Certificate** means an interim or final occupation certificate and has the same meaning as in the Act;

**Owner** means GA (Aust) Pty Ltd (ACN 167 054 480);

**Party** means a party to this agreement, and includes their successors and assigns;

**Project Manager** means the person identified in Item 5 of Schedule 1;

**Public Benefit** means the public benefits identified in Item 6 & 7 of Schedule 1;

**Regulation** means the Environmental Planning and Assessment Regulation 2000;

**Strata Plan** means the strata plan for the Development;

**Subdivision Plan** means the plan referred to in clause 9.2;

**Quantity Surveyor** means a duly qualified quantity surveyor of at least five year's experience in the assessment of building material and construction costs;

**Transfer** means the transfer referred to in clause 9.4.

## 5.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) a reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (f) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular.
- (g) references to the word 'include' or 'including' are to be construed without limitation.
- (h) reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

- (i) Any schedules and attachments form part of this Agreement.
- (j) A word defined in the Act has the same meaning in this Agreement.

**6. Approval of Developer's Works**

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6.1 The Developer shall carry out the Developer's Works within the time frame described in Schedule 2.

**6.2 Definition of Scope of Works**

- (a) The parties agree that the works described in Schedule 2 comprise the Developer's Works for the purposes of this Agreement.
- (b) The parties agree that further design detail and refinement may be necessary to take into account any approvals or the Development Consent granted in respect of the Developer's Works.

**6.3 Plans**

- (a) The Developer shall carry out the Developer's Works by itself or by a contractor in accordance with the plans and detailed designs approved by the Council and described in Schedule 2.
- (b) Where the Council has not provided a design, the Developer shall prepare and submit to the Council a detailed description including plans of the Developer's Works for approval as described in Schedule 2
- (c) The Council will promptly (and in any event within 40 days of submission) give the Developer notice whether or not the design drawings and description of the Developer's Works referred to under clause 6.1 is satisfactory. If the design or description is not satisfactory, then the Council will identify the further information, or modifications, (as the case may be) which are required. The Developer must promptly amend the proposed design to take into account the comments made by the Council under this clause.

**7. Final Design of the Developer's Works**

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**7.1 Preparation of the Plans and Specifications**

The Developer must complete construction drawings in accordance with the design developed and approved by Council under clause 6.

**7.2 Approval or variation by the Council**

The Council may by written notice to the Developer and the Project Manager approve, vary or direct the Developer to vary 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 Schedule 3.

**7.3 Directions by the Council**

Subject to clause 14, the Developer must comply with any direction given by the Council under the clause 7.2 in respect of the design and implementation of the Developer's Works.





**8. Construction of Developer's Works**

**8.1 Indemnity and Insurance**

- (a) The Developer indemnifies the Council from all Loss caused by the performance of the Development Works except to the extent that the Loss is caused or contributed to by the negligence or omission by the Council or any of the Council's servants, agents or contractors.
- (b) The Developer must:
  - (i) maintain public liability insurance, with an insurer approved by the Council, with the Council identified as an interested party, for an amount not less than the amount stated in Item 9 of Schedule 1 covering all aspects of the Developer's Works and submit a copy of the certificate of insurance to the Council before the commencement of the construction of the Developer's Work;
  - (ii) maintain all other reasonably necessary and prudent insurance policies in respect of the Developer's Works including
    - (A) construction insurance in relation to the Developer's Works;
    - (B) insurance against death or injury to persons employed or otherwise engaged in relation to the undertaking of the Developer's Works, and
    - (C) any other insurances required at law; and
  - (iii) maintain the insurances required under clause 8.1(b) until the expiration of the Defects Liability Period.

**8.2 Approvals and consents**

- (a) The Developer must (at its cost) obtain all relevant approvals and consents for the Developer's Works whether from the Council or any other relevant government agency, including any necessary road opening permit.
- (b) Before commencing the Developer's Works, the Developer must give to the Council copies of all approvals and consents for the Developer's Works.

**8.3 Construction Work**

The Developer must (at its cost):

- (a) carry out and complete the Developer's Works in accordance with all relevant laws all approvals and consents relating to the Developer's Works (including the approval by the Council of plans and any other information submitted under this Agreement) within the timeframe set out in Schedule 2; and
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this Agreement so that they are structurally sound, fit for purpose, and suitable for their intended use; and
- (c) unless required under the Development Consent, contact Council's Representative prior to commencement of the Developer's Works to determine whether Council require any inspection prior to commencement and/or during construction of the Developer's Works; and

- (d) promptly advise the Council's Representative of any significant delays which it experiences in completing the Developer's Works; and
- (e) comply with any reasonable directions from the Council in respect of the construction of the Developer's Works.

**8.4 Management of Works**

The Council as a party to this Agreement and not as an authority may (but is not obliged to):

- (a) inspect the Developer's Works during the course of construction at any stage as determined by it at reasonable times and upon giving reasonable notice; and
- (b) notify the Developer's representative in good faith of any material or significant defect, error or omission relating to the construction or installation of the Developer's Works identified during or as the result of such inspection; and

The parties expressly agree that any failure to identify a defect, error and omission, will not be construed as amounting to an acceptance by the Council of that defect, error or omission.

**8.5 Works completion**

When, in the opinion of the Developer, the Developer's Works have reached Completion, the Developer must notify the Council's Representative in writing, and must include in that notice:

- (a) 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; and
- (b) copies of any certification, warranties, guarantees, maintenance information or other material reasonably required for the ongoing repair, maintenance, or servicing (as the case may be) of any part of the Developer's Works; and
- (c) at least three sets of the 'as built' drawings of the Developer's Works,

including one set in electronic format.

**8.6 Final Inspection by Council**

The Council shall inspect the Developer's Works with the Developer or its representative and the Council must by notice in writing:

- (a) concur that Completion has been achieved; or
- (b) disagree that Completion has been achieved and (if the Council's representative so disagrees) identify the errors or omissions which have been identified and which in the opinion of the Council's representatives prevent Completion; or
- (c) issue a notice of the nature identified in clause 8.7.

Nothing in this clause 8.6, or in any notice issued under this clause 8.6, will be construed to reduce or waive in any manner the Developer's responsibility to correct minor defects or minor omissions, whether or not these are identified by Council.

**8.7 Date of Completion of Developer's Works**

The Developer must ensure that the Developer's Works reach Completion on or before the dates set out in Schedule 2.

**8.8 Non-completion of Developer's Works**

- (a) The Council may permit the Developer not to complete the Developer's Works (or part of them) by issuing a notice in writing to the Developer, expressly stating that completion of the items identified in that notice is not required in fulfilment of this Agreement.
- (b) If the Council permits the Developer not to complete the Developer's Works (or any part of them), the Council may make an appropriation from the Guarantee in such amount as the Council considers necessary. The Developer shall be given seven days notice of any such appropriation.
- (c) If the Developer fails to complete the whole of the Developer's Works in the form and to the standards required under this Agreement, then Council in its discretion may either:
  - (i) complete the Developer's Works; or
  - (ii) modify the Public Benefits to reasonably achieve the objectives identified in this Agreement or the Development Consent

and may recover all costs of and reasonably incidental to that work from the Developer. The Council may apply the monies secured from the Bank Guarantee and (to the extent that expenditure exceeds the amount secured) recover any shortfall from the Developer as a debt due and owing.

**9. Dedicated Land and Easements**

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9.1 The Developer must at no cost to Council, carry out all steps required to:

- (a) dedicate the Dedicated Land to the Council; and
- (b) create the Easements in favour of Council

in accordance with the Development Consent (as modified).

9.2 The Developer must as its expense:

- (a) prepare the plan of subdivision;
- (b) obtain the Council's approval of the Subdivision Plan; and
- (c) obtain registration of the Subdivision Plan and the Easements with the LPI.

9.3 The dedication of the land referred to in clause 9.1 must occur after completion of the Development but before the grant of an Occupation Certificate in respect of any part of the Development.

9.4 The Developer's Contribution comprising dedication of the Dedicated Land to Council and grant of the Easements to Council will be made when an instrument in registrable form under the Real Property Act 1900 is registered at the LPI thereby transferring unencumbered title in the Dedicated Land to Council and creating the Easements.

9.5 Following Completion, the Developer must promptly:

- (a) lodge the Transfer and the Discharge of Mortgage at the LPI for registration;
- (b) do all things reasonably necessary to enable the Transfer and the Discharge of Mortgage to be registered at the LPI as soon as practicable; and

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- (c) notify the Council in writing of such registration.

**10. Defects Liability Period**

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**10.1 Defects in the Developer's Works**

If the Council notifies the Developer of a defect in the Developer's Works within the Defects Liability Period, then the Developer must at the Developer's expense, remedy that defect to the reasonable satisfaction of the Council's Representative, within a reasonable period (having regard to the nature of the defect).

**10.2 Security for Defects Liability Period**

Until the expiration of the Defects Liability Period, the Council may retain from the Guarantee an amount equal to 10% of the Guarantee Amount.

**10.3 Application of Security**

If the Developer does not rectify any defect in the Developer's Works duly notified under clause 10.1, then the Council may

- (a) rectify the defect in the Developer's Works;
- (b) may make an appropriation from the Guarantee for the costs of and arising from the rectification; and
- (c) (to the extent that the costs exceed the Guarantee held) may recover the costs from the Developer as a debt due and owing.

**11. Security**

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**11.1 Provision of Security**

The Developer must, provide the Guarantee to the Council simultaneously upon execution of this Agreement in the amount set out in Item 8 of Schedule 1.

**11.2 Rights and remedies of the Council**

- (a) The Developer expressly acknowledges and agrees that the Council may make an appropriation from the Guarantee upon the giving of seven days notice to the Developer, in such amount as the Council thinks fit if:
  - (i) the Developer's Works do not reach Completion by the time specified in Schedule 2 or;
  - (ii) the Council in exercising its powers under this Agreement reasonably incurs expense or liability.
- (b) The amount appropriated by the Council under clause 11.2(a) must be applied towards:
  - (i) the costs and expenses incurred by the Council rectifying any default by the Developer under this Agreement;
  - (ii) carrying out the Developer's Works; or

- (iii) carrying out any other works to achieve the Public Benefits as the Council considers appropriate.

**11.3 Right to claim not affected**

The Developer acknowledges and agrees that the rights of the Council under this Agreement do not derogate from any other rights at law or in equity in relation to any default by the Developer.

**11.4 Adjustment of Guarantee Amount**

- (a) On each anniversary of the date of this Agreement ('adjustment date'), the Guarantee Amount may be adjusted by the Council to a revised amount derived by applying the following formula:

$$RGA = \frac{GA \times A}{B}$$

where:

- RGA is the Revised Guarantee Amount applicable from the relevant adjustment date;
- GA is the Guarantee Amount that is current on the relevant adjustment date;
- A is the index number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics and published immediately before the relevant adjustment date;
- B is the index number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics and published immediately before the later of the date of this Agreement (in the case of the first adjustment of the guarantee) and, (in the case of subsequent adjustments), the immediately preceding adjustment date.
- (b) The Council may give the Developer written notice of the revised Guarantee Amount to apply from the relevant adjustment date. If the Council does not do so, then the existing Guarantee will be retained.
- (c) The Developer must give the Council a replacement or further Guarantee so that the Council holds Guarantees for an amount equal to the revised guarantee amount no later than 14 days after receipt of a notice given under clause 11.4(b).

**11.5 Release of the Guarantee**

If upon Completion:

- (a) the whole of the monies secured under the Guarantee have not been expended, and the monies accounted for in accordance with clause 10.3 and 11.2; and
- (b) the Council's Representative (acting reasonably) is satisfied that there are no actual or contingent liabilities of the Council arising as a result of the performance of any Developer's Works,

then subject to clause 10.2, the Council will promptly return the Guarantee within 14 days, or the remainder of the monies secured under that Guarantee (as the case may be), to the Developer or as the Developer directs.

**11.6 Release of undertaking**

If upon the expiration of the Defects Liability Period:

- (a) the whole of the monies secured under clause 10.2 have not been expended, and the monies accounted for in accordance with clause 10.3 and 11.2; and
- (b) the Council's Representative (acting reasonably) is satisfied that there are no actual or contingent liabilities of the Council arising as a result of the performance of any Developer's Works,

then the Council will promptly return the said monies within 14 days, or the remainder of the monies secured under that Guarantee (as the case may be), to the Developer or as the Developer directs.

**12. Expenditure by the Council**

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**12.1 Expenditure by the Council**

If the Council carries out the Developer's Works under clause 11.2, or 8.8 then the Council:

- (a) is not required to expend more money than is secured by the Guarantee. The Council may in its discretion elect not to carry out items of Developer's Works to ensure that the Developer's Works can be achieved for an amount equal to, or less than, the amount secured by the Guarantee at that time; or
- (b) may expend more money than is secured by the Guarantee in order to deliver the Developer's Works.

**12.2 Debt due and owing to the Council**

If Council expends more money than is secured by the Guarantee in either carrying out or in rectifying the Developer's Works (whether that expenditure is incurred under clause 12.1 or 10.3), then the amount in excess of the Guarantee will be deemed to be a debt immediately due and owing to the Council by the Developer.

**13. Registration of this Agreement**

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**13.1 Registration of Agreement**

The Developer must promptly:

- (a) obtain any necessary consents to the registration of this Agreement on the title to the Land;
- (b) lodge the Agreement for registration with the LPI;
- (c) promptly comply with any requisitions that may be raised with regard to registration of the Agreement from the LPI;
- (d) produce to the Council within 35 days of execution of this Agreement, details of lodgement of this Agreement with the LPI; and
- (e) following registration of this Agreement, notify the Council of registration, enclosing a title search of the Land confirming the registration.

**13.2 Removal of Agreement**

- (a) When the Strata Plan is lodged at the LPI for registration, the Council shall at the Developer's expense, do all things and execute all documents necessary to cause this Agreement to then be only registered on the title of the common property comprised within the Strata Plan.
- (b) 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 the Council will promptly execute any form and supply such other information and do any thing as reasonably required by the Owner or the Developer to enable the removal of this Agreement from the title of the common property comprised within the Strata Plan.

**14. Dispute Resolution**

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**14.1 Reference to dispute**

If a dispute arises between the parties in relation to this Agreement, then either party may seek to resolve in accordance with this clause 14 provided that nothing in this clause prevents either party from seeking urgent interlocutory relief in relation to a breach of this Agreement.

**14.2 Notice of dispute**

The party wishing to commence dispute resolution processes must notify the other of:

- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve latter than by way of this clause 14;
- (b) the intent to involve this clause 14;
- (c) (if practicable) the outcomes which the notifying party wishes to achieve;
- (d) any material impact which the dispute has upon the completion of the Developer's Works (and in particular the completion of the remainder of the Development).

The contents of a notice issued under the clause 14.2 are deemed to be confidential. The party issuing the notice may (but is not obliged) to assert legal professional privilege in respect of the contents.

**14.3 Principals of parties to meet**

The principals of the parties (and in the case of the Council, the principal may include the person acting the role of General Manager as defined in the Local Government Act, or such person as is nominated by that officer in writing) must promptly (and in any event within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve the dispute during the course of that meeting;
- (b) agree that further material, expert opinion, or consideration is needed to effectively resolve the dispute (in which event the parties will in good faith agree to a timetable for resolution);
- (c) 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.

**14.4 Neither party may constrain**

If:

- (a) at least one meeting has been held in accordance with clause 14.3; and
- (b) the parties have been unable to reach an outcome identified in clause 14.2(a) to (c); and
- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 14.3;

then that party may, by 14 day's notice to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause 14 does not of itself amount to a breach of the Agreement.

**15. Notices**

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**15.1 Service of Notice**

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out in Item 10 of Schedule 1; or
- (b) faxed to that Party at its fax number set out in Item 10 of Schedule 1.

**15.2 Change of address**

If a Party gives the other Party 10 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

**15.3 Time of service of Notice**

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address.
- (b) if it is sent by post, two business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

**15.4 Service after hours, on weekends and holidays**

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5:00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

**16. Approvals and consent**

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Except as otherwise set out in this Agreement, a party may give or withhold an Approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving



consent or for giving consent subject to conditions. A Party must give its reasons for withholding consent or for giving consent subject to conditions.

**17. Variation of Agreement**

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17.1 The parties may agree to vary the terms of this Agreement. Any such variation shall be evidenced by a written variation executed by the Parties and must comply with the provisions of Section 93G of the *Environmental Planning and Assessment Act 1979*.

**18. Costs**

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**18.1 Legal and administrative costs**

- (a) Each party must pay their own legal costs with respect to the negotiation, preparation and execution of this Agreement.
- (b) The Developer must pay on demand all legal costs (assessed on an indemnity basis) and out of pocket disbursements incurred by the Council of and incidental to:
  - (i) the giving effect to this Agreement; and
  - (ii) any enforcement of the rights under this Agreement.

**18.2 Stamp duty**

The Developer is liable for and must pay all stamp duty (including any fine or penalty except where it arises from default by any other party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

**18.3 Survey and Registration Fees**

The Developer must pay all costs, fees and expenses incurred with respect to preparation and registration of the Subdivision Plan, the Transfer and the Discharge of Mortgage.

**19. Entire Agreement**

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This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

**20. Further acts**

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Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

**21. Governing law and jurisdiction**

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This Agreement is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

**22. Joint and several liability**

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Any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually.

**23. No fetter**

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Nothing in this Agreement will be construed as limiting or fettering in any way the exercise by Council of any statutory discretion or duty.

**24. Representations and warranties**

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The Parties represent and warrant that they have power to enter into this Agreement and that entry into this Agreement will not result in the breach of any law.

**25. Severability**

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If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the remainder of this Agreement is not affected.

**26. Modification**

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Subject to clause 17 of this Agreement no modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.

**27. Waiver**

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A waiver by either Party is only effective if it is given in writing, and that waiver will only relate to the particular obligation or breach (as the case may be) identified in that communication.

**28. GST**

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- 28.1 In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (the 'GST Act').
- 28.2 If a party to this Agreement (the 'Supplier') makes a supply under or in connection with this Agreement and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.
- 28.3 If this Agreement requires a party to pay for, or reimburse any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.
- 28.4 If a party to this Agreement has the benefit of an indemnity for a cost, expense, loss or outgoing (**indemnified cost**) under this Agreement, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.
- 28.5 Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Agreement.
- 28.6 Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Agreement are GST exclusive.

**29. Counterparts**

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- 29.1 This Agreement may be executed in any number of counterparts.
- 29.2 All counterparts taken together will be taken to constitute one Agreement.

**30. Assignment and Transfer**

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- 30.1 Unless the matters specified in clause 30.2 are satisfied, the Developer must not to do any of the following:
  - (a) transfer or assign the Land to any person, or
  - (b) assign, transfer dispose or novate to any person the Developer's rights or obligations under this Agreement.
- 30.2 The matters required to be satisfied for the purposes of clause 30.1 are as follows:
  - (a) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to the Council acting reasonable;
  - (b) the Council, by notice in writing to the Developer, has stated that evidence satisfactory to the Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement;
  - (c) the Developer is not in breach of this Agreement; and
  - (d) the Council otherwise consents to the transfer, assignment or novation in writing.
- 30.3 Any purported dealing in breach of this clause 30.2 is of no effect.
- 30.4 Notwithstanding clause 30.1 the Developer may enter into a contract for sale, and may sell and transfer to a transferee part of the Land forming a strata lot in any proposed strata plan, without compliance with clause 30.2.

**31. Explanatory Note relating to this Agreement**

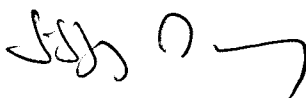
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- 31.1 Schedule 4 contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 31.2 Pursuant to clause 25E(7) of the Regulation, each Party agrees that the Explanatory Note in Schedule 4 is not to be used to assist in constructing this Agreement.

**Schedule 1 - Reference Schedule**

<b>Item 1</b>	<b>Developer's Details</b>	Developer's Name: G1 (Aust) Pty Limited Developer's ACN: 167 054 480 Developer's Address: Level 1, Suite 1, 181 Macquarie Street, Parramatta
<b>Item 2</b>	<b>Council's Representative</b>	Chief Executive Officer Telephone: 9806 5050 Facsimile: 9806 5917 Email: council@parracity.nsw.gov.au
<b>Item 3</b>	<b>Land</b>	Lot 1 in DP 194680, Lots 1 & 2 DP 700183, Lot 21 Sec A DP 979437, Lot 1 DP 594661
<b>Item 4</b>	<b>Development Application</b>	DA/683/2014 for alterations and additions to an approved shop top housing development containing ground floor retail units and 43 apartments. The application seeks approval and changes to the internal layout/extend façade and provides an additional 25 apartments
<b>Item 5</b>	<b>Project Manager</b>	NA
<b>Item 6</b>	<b>Dedicated Land</b>	A lot comprising an area of approximately 135 sqm shown as (Y) on the proposed plan of subdivision of the Land comprising Annexure "A"
<b>Item 7</b>	<b>Developer Works</b>	Construction of roadway including but not limited to trafficable paving, drainage, driveway crossing, pedestrian safety and vehicle management as described in Schedule 2.
<b>Item 8</b>	<b>Guarantee Amount</b>	\$154,394.00 Provided by 2 guarantees as follows: One for 90% of the guarantee amount; and the second for 10% of the guarantee amount.
<b>Item 9</b>	<b>Public Liability Insurance</b>	\$20 Million
<b>Item 10</b>	<b>Notices</b>	<b>Council</b> Council Name: City of Parramatta Council Address: 126 Church St Parramatta NSW 2150 Attention: Interim General Manager Telephone: 9806 5050 Facsimile: 9806 5917 Email: council@parracity.nsw.gov.au

	<p><b>Developer</b></p> <p>Name: G1 (Aust) Pty Limited</p> <p>Address: Level 1, Suite 1, 1818 Macquarie Street, Parramatta NSW 2150</p> <p>Attention:</p> <p>Telephone:</p> <p>Facsimile:</p> <p>Email:</p>
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**Schedule 2 - Developer's Works**


**Section 1**

**Developer's Works:**

1. Construction of roadway over the unnamed laneway as shown in red on the Civil Works Plans prepared by CAM Consulting dated 22 June 2016 Revision F drawing number C15095 - C'00 General Layout Plan a copy of which is annexed as Annexure "B" to this Agreement.

**Completion of Works**

2. The Developer's Works shall be completed prior to the issue of any Occupation Certificate for the Development.



**Schedule 3 - Standards**

- 1. A. **Relevant Australian Standards – Roads (including pedestrian areas)**
- B. **Council Standards (All Works)**
- 2. **Standard of Developer's Works**

The Developer shall and must cause the Developer's Works to be carried out in a proper and workmanlike manner.

The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:

- (A) any relevant Australian Standard;
- (B) the Parramatta City Council Public Domain Guidelines March 2014 and any other 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; and
- (C) the Development Consent (including any modification).



Schedule 4 - Explanatory Note

Handwritten signature in black ink, appearing to be 'JWS' followed by a stylized flourish.Handwritten signature in black ink, consisting of a circular scribble above a horizontal line with a small upward tick at the end.



## EXPLANATORY NOTE

### Voluntary Planning Agreement 65-71 Cowper Street, Granville

#### **Introduction**

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft Voluntary Planning Agreement (**Planning Agreement**) made pursuant to Section 93F of the *Environmental Planning and Assessment Act 1979*, in relation to a development consent no. DA/683/2014 (**Consent**) as amended, being for alterations and additions to an approved shop top housing development at 65-71 Cowper Street, Granville (**Development**).

This Explanatory Note has been prepared jointly by the parties, as required by Clause 25E(3) of the *Environmental Planning and Assessment Regulation 2000*. This explanatory note is not to be used to assist in construing the Planning Agreement.

#### **Parties to the Planning Agreement**

The parties to the Planning Agreement are G1 (Aust) Pty Ltd (**Developers**) and City of Parramatta Council (**Council**).

#### **Description of the subject land**

The Planning Agreement applies to 65-71 Cowper Street, Granville, being Lot 1 DP 194680; Lot 21 Sec A DP 979437; Lot 1 DP 700183; and Lot 1 DP 594661 (**Land**).

#### **Description of the proposed Development**

The Consent is for alterations and additions to an approved shop top housing development as approved by Council on 16 May 2015.

The Planning Agreement is sought to address condition no. 107A of the development consent issued to DA/683/2014. Condition 107A reads as follows;

*107A. Prior to the issue of an Occupation Certificate, a Voluntary Planning Agreement is to be entered into for the construction and dedication of the laneway at no cost to Council.*

The Planning Agreement will also ensure consistency with condition nos. 105 and 107, which read as follows:

*105. The area to contribute to the creation of the laneway as illustrated in the approved plans is to be constructed (including but not limited to, trafficable paving, drainage, driveway crossings, pedestrian safety and vehicle management) and is to be dedicated to Council, prior to the issue of the Occupation Certificate at no cost to Council. Council's Asset Strategy and Property Management are to be contacted to facilitate the dedication.*

107. *A stratum plan of subdivision to be created above and below the portion of the road that has the basement below it and the building above prior to issue of occupation certificate.*

Following analysis by Council, it was deemed that part of the land to be dedicated as public road under DA/683/2014 should be alternatively subject to an easement for access and an easement for support .A Section 96 application is currently being assessed by Council to modify the above conditions to reflect Council's request. The modified conditions are likely to read as follows and are consistent with the Planning Agreement as drafted:

105. *The area to contribute to the creation of the laneway as illustrated in the approved plans is to be constructed (including but not limited to, trafficable paving, drainage, driveway crossings, pedestrian safety and vehicle management) and is to be in part dedicated to Council, and in part subject to easement for access and easement for support, prior to the issue of the Occupation Certificate at no cost to Council. Council's Asset Strategy and Property Management are to be contacted to facilitate the dedication and easements.*

107 *Easements for access and support are to be created above and below the portion of the road that has the basement below it and the building above prior to issue of Occupation Certificate.*

107A. *Prior to the issue of the Occupation Certificate, a Voluntary Planning Agreement is to be entered into for the construction and part dedication of the laneway and part easement for access and easement for support as required by Council, at no cost to Council. Council's Land Use Team is to be contact to commence negotiations.*

### **Summary of objectives, nature and effect of the Planning Agreement**

The objective of the Planning Agreement is to secure delivery of land dedication, easements for access and support, and laneway construction applicable under the Consent. The nature and effect of the Planning Agreement will involve the implementation of Developer Obligations, as set out in the Planning Agreement, and include:

- Dedication of land as public road (approximately 135sqm); and
- Easement for support and access, variable in width limited in height and depth; and
- Construction of a laneway (including any pavement, footpath, kerb and guttering) at the rear of the site.

## **ASSESSMENT OF THE MERITS OF THE PLANNING AGREEMENT**

### ***The planning purposes served by the Planning Agreement***

In accordance with Section 93F(2) of the EPA Act, the Planning Agreement has the following public purposes:

- The provision of infrastructure relating to land.

The Developer Obligations outlined in the Planning Agreement provide a reasonable means for achieving these purposes.

### ***How the Planning Agreement promotes the objects of the Environmental Planning and Assessment Act 1979***

In accordance with Section 5 of the EPA Act, the Planning Agreement promotes the Objects of the EPA Act and specifically achieves the Objectives stated at Section 5(a)(i) to 5(a)(vii) in the following manner:

- Represents an orderly and economic use and development of land; and
- Provides land for public purposes and community facilities (road), through the implementation of the Developer Obligations outlined within the Planning Agreement.

### ***How the Planning Agreement promotes the public interest***

The Planning Agreement is in the public interest as it will result in land dedication, easement for access and support, and construction of laneway for public purposes. These works will contribute towards meeting the present and future needs of the local community.

### ***How the Planning Agreement promotes the objects of the Local Government Act 1993***

The Planning Agreement is consistent with the following purposes of the *Local Government Act 1993*:

- To give Councils the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and the wider public.
- To give Councils a role in the management, improvement and development of the resources of their areas.

### ***How the Planning Agreement promotes elements of Council's charter***

In accordance with Clause 25E(2)(d), Council's charter is provided at Section 8 of the Local Government Act 1993. In this respect, the Planning Agreement promotes the Council's charter in the following ways:

- Provides adequate, equitable and appropriate services and facilities for the community, in the form of the Developers' Obligations, as outlined in the Planning Agreement.

***Whether the Planning Agreement, amendment or revocation conforms with Council's capital works program***

Council's Corporate Plan incorporates capital work projects aimed at vehicular and pedestrian connections. In this respect, the terms of the Planning Agreement conforms to that intent.

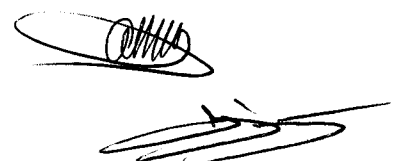
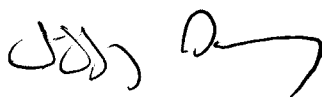
***Whether the Planning Agreement specifies that certain requirements of the Planning Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

All of the Works must be delivered to the Council in accordance with the Planning Agreement.

***The Impact of the Planning Agreement on the Public or any Section of the Public***

The Planning Agreement will not adversely affect the public in any manner as it places obligations on the Developers that will affect the Developers and the Land only.

The Planning Agreement will benefit the public because it will enable the delivery of new infrastructure.

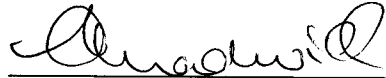


Executed as an Agreement.

Executed for and on behalf of City of Parramatta Council in accordance with in the presence of:

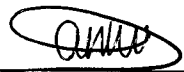
  
Signature of

GREGORY DYER  
Full name (print)


  
Signature of

Amanda Chadwick  
Full name (print)

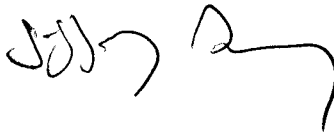
Executed by G1 (Aust) Pty Ltd ACN 167 054 480 in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

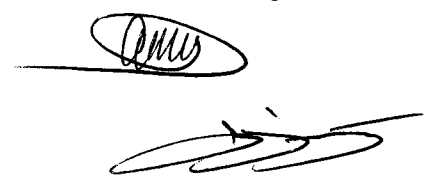
  
Signature of Director

AMANDA WEHBE  
Full name (print)

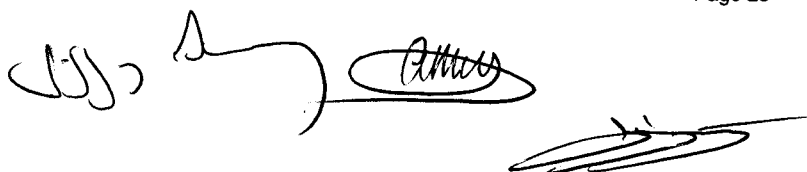
  
Signature of Director/Company Secretary

JEFFREY SAHYOUN  
Full name (print)





Annexure "A" Dedicated Land Plan

Handwritten signatures and scribbles at the bottom of the page. On the left, there is a signature that appears to be 'SSJ'. To its right is a large, stylized signature that looks like 'A' followed by a long horizontal line. Further right is a signature that appears to be 'Amos' inside an oval. On the far right, there is a large, dark scribble.

**NOTE:**

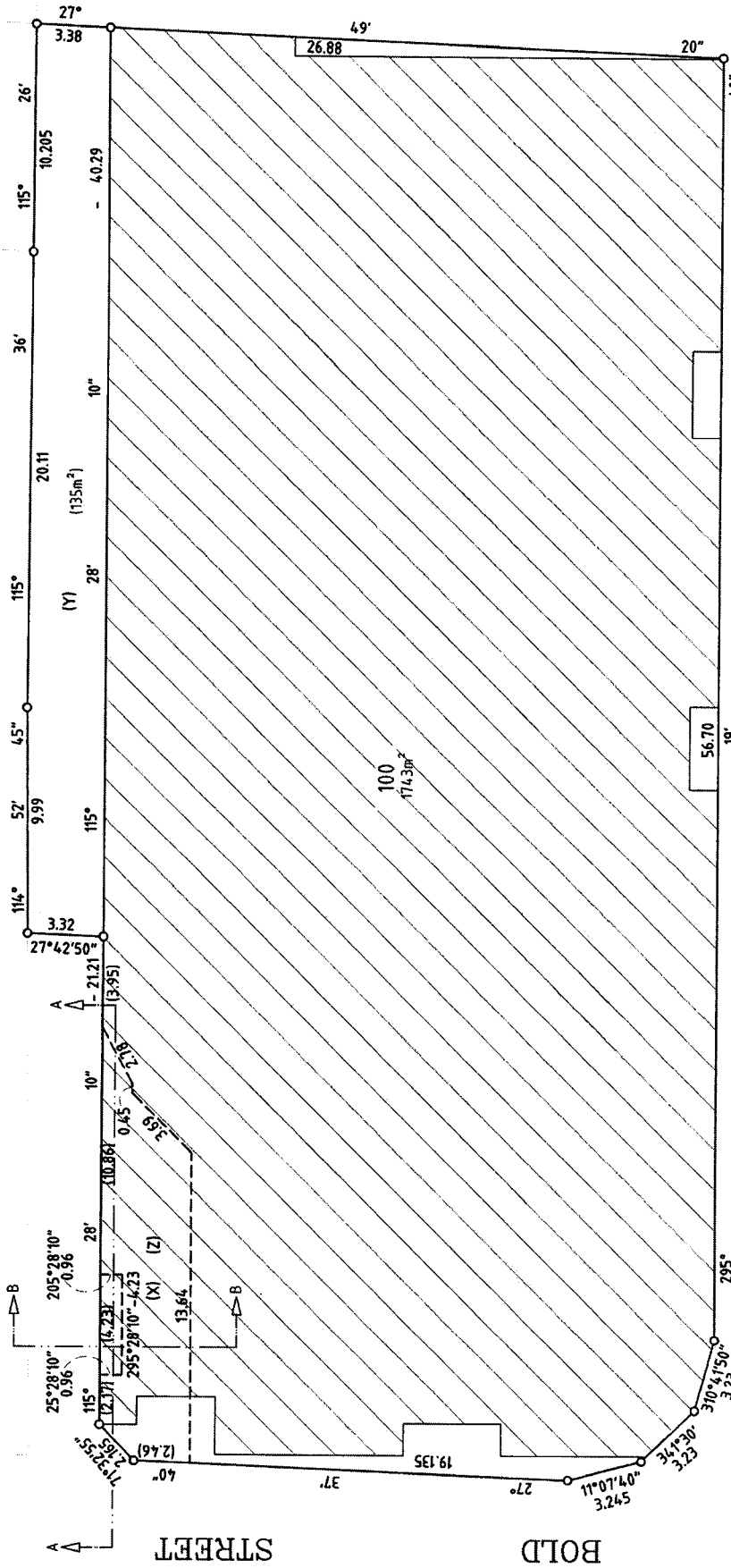
THIS IS A PRELIMINARY DRAFT DEPOSITED PLAN. THE LOTS SHOWN HEREON HAVE NOT BEEN FULLY SURVEYED AND ALL DIMENSIONS, REDUCED LEVELS AND AREA'S SHOWN ARE SUBJECT TO FINAL SURVEY.

(X) RIGHT OF ACCESS VARIABLE WIDTH LIMITED IN DEPTH AND HEIGHT (SEE SHEET 2)

(Y) ROAD WIDENING VARIABLE WIDTH

(Z) EASEMENT FOR SUPPORT OF ROAD WAY VARIABLE WIDTH LIMITED IN DEPTH AND HEIGHT (SEE SHEET 2)

(Y) TO BE DEDICATED AS PUBLIC ROAD



Surveyor : ATS SURVEYORS  
 Date of Survey : / /20  
 Surveyor's Ref : 7898-dp1

PLAN OF SUBDIVISION OF LOT 1 IN D.P. 594661,  
 LOT 1 & 2 IN D.P. 700183, LOT 21, SEC A IN  
 D.P. 979437 & LOT 1 IN D.P. 194680

LGA: PARRAMATTA  
 Locality : GRANVILLE  
 Subdivision No:  
 Lengths are in metres. Reduction Ratio 1: 200

Registered

DP ISSUE F

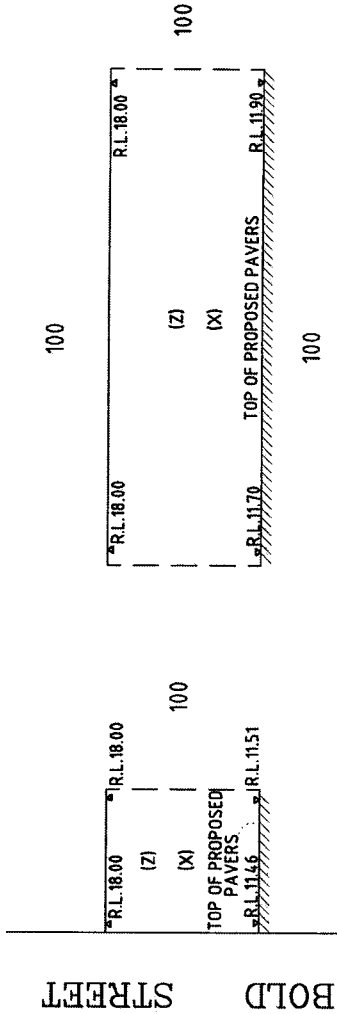
00	10	20	30	40	50	60	70	80	90	100	110	120	130	140
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**NOTE:**

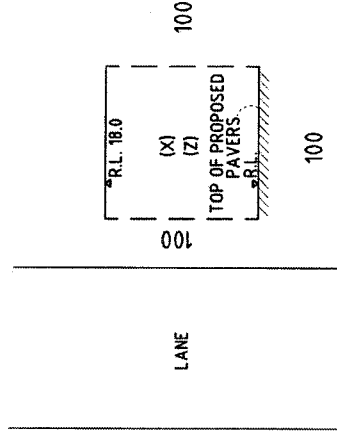
THIS IS A PRELIMINARY DRAFT DEPOSITED PLAN. THE LOTS SHOWN HEREON HAVE NOT BEEN FULLY SURVEYED AND ALL DIMENSIONS AND AREAS SHOWN ARE SUBJECT TO FINAL SURVEY.

(X) RIGHT OF ACCESS VARIABLE WIDTH LIMITED IN DEPTH AND HEIGHT (AS PER SECTION AA & BB)  
 (Z) EASEMENT FOR SUPPORT OF ROAD WAY VARIABLE WIDTH LIMITED IN DEPTH AND HEIGHT (AS PER SECTION AA & AB)

NOTE: R.L.'s OF THE LIMIT IN DEPTH ARE INDICATIVE AND SUBJECTED TO FINAL SURVEY



SECTION - AA -  
METS



SECTION - BB -  
METS

Surveyor : ATS SURVEYORS  
 Date of Survey : / /20  
 Surveyor's Ref : 7898-dp1

PLAN OF SUBDIVISION OF LOT 1 IN D.P. 594661,  
 LOT 1 & 2 IN D.P. 700183, LOT 21, SEC A IN  
 D.P. 979437 & LOT 1 IN D.P. 194680

LGA: PARRAMATTA  
 Locality : GRANVILLE  
 Subdivision No:  
 Lengths are in metres. Reduction Ratio 1: -

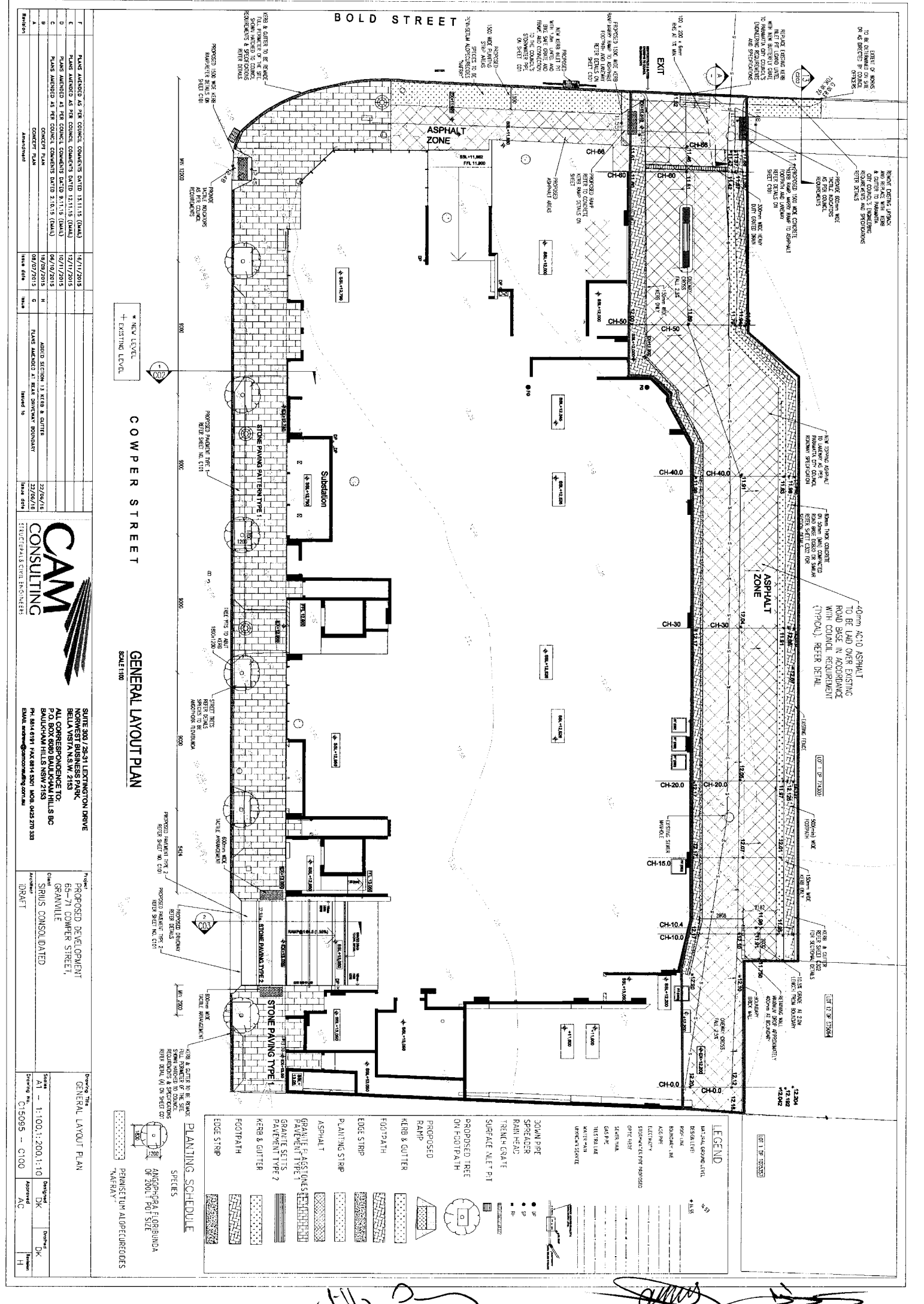
Registered

DP ISSUE F



Annexure "B" - Developer's Works plan

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Revision	Author	Date	Description
A	AW	14/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
B	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
C	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
D	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
E	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
F	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
G	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
H	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
I	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
J	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
K	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
L	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
M	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
N	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
O	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
P	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
Q	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
R	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
S	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
T	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
U	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
V	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
W	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
X	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
Y	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)
Z	AW	16/07/2015	PLANS APPROVED AS PER COUNCIL COMMENTS DATED 12/11/15 (GMA)

+ NEW LEVEL  
 + EXISTING LEVEL

COMPER STREET  
 SCALE 1:100

GENERAL LAYOUT PLAN  
 SCALE 1:100

**CAM CONSULTING**  
 SUITE 300 / 29-31 LEXINGTON DRIVE  
 NORTHWEST BUSINESS PARK  
 BELLA VISTA N.S.W. 2153  
 ALL CORRESPONDENCE TO:  
 P.O. BOX 6000 BALDWIN HILLS BC  
 BALDWIN HILLS NSW 2153  
 PH 8484 6191 FAX 8484 5001 MOB 0422 270 283  
 EMAIL [enquiries@camconsulting.com.au](mailto:enquiries@camconsulting.com.au)

Proposed Development  
 65-71 COMPER STREET  
 GRANVILLE  
 SRULUS CONSULTAIED  
 ARCHITECT  
 ID:AHAT

Drawing Title  
 GENERAL LAYOUT PLAN

Scale	Author	Checked	Approved	Date
A1	AW	DK	DK	1:100, 1:200, 1:10
C15095	AW	AC	AC	C100

PENINSULTUM ALPPECURDIOFUS  
 "YAFRAY"  
 ANGOPHORA FLOMBUNDA  
 OF 200L POT SIZE

Species	Quantity
ANGOPHORA FLOMBUNDA	1
PENINSULTUM ALPPECURDIOFUS	1

LEGEND  
 1:100  
 1:200  
 1:500  
 1:1000  
 1:2000  
 1:5000  
 1:10000

Symbol	Description
(Circle with cross)	PROPOSED TREE ON FOOTPATH
(Triangle)	PROPOSED RAMP
(Line with dots)	KERB & GUTTER
(Line with dashes)	FOOTPATH
(Line with solid dots)	EDGE STRIP
(Line with diagonal dots)	PLANTING STRIP
(Line with horizontal dots)	ASPHALT
(Line with vertical dots)	GRANITE FLAGSTONE PAVING TYPE 1
(Line with diagonal dots)	GRANITE SETTS PAVING TYPE 2
(Line with horizontal dots)	KERB & GUTTER
(Line with vertical dots)	FOOTPATH
(Line with solid dots)	EDGE STRIP

**Annexure "C" - Terms of Easements**

**1. Right of Access variable width, limited in stratum (x)**

**1.1 Definitions**

For the purpose of clause 1 of this Instrument, the following words have the following meanings:

**Council** means the City of Parramatta Council and its successors.

**Easement** means the Easement created in accordance with clause 1 of this Instrument.

**Lighting** means all lighting within the Lot Burdened required by the Council from time to time in accordance with the Easement.

**Lot Burdened** means that part of the land having the burden of the Easement which the Plan indicates is the site of the Easement.

**Owner of the Lot Burdened** means the registered proprietor of the Lot Burdened from time to time.

**Plan** means the plan to which this Instrument relates.

**Signage** means all safety signage within the Lot Burdened required by the Council from time to time in accordance with the Easement.

**Support Column** means the column structure within the Lot Burdened which supports the building above the Lot Burdened.

**1.2 Terms of Easement**

Full right for:

- (a) the public at all times to enter, pass and repass over the Lot Burdened with and without vehicles, motor bikes and bicycles;
- (b) the Council to require the Support Column, the Lighting and the Signage to remain within the Lot Burdened; and
- (c) the Council and the servants, agents and contractors of the Council at all times to enter, pass and repass over the Lot Burdened (in common with the public) with or without vehicles, plant and equipment and to remain on the Lot Burdened for so long as may be necessary for the purpose of performing the Council's rights under clause 1.3(b) and the Council's obligations under clause 1.4(a).

- 1.3 (a) The Owner of the Lot Burdened must at all times at its expense:
1. keep the Lot Burdened fully lit 24 hours every day in accordance with the lighting standards specified by the Council from time to time as being appropriate for a public road which requires lighting;
  2. take all reasonable steps to protect the Support Column against loss, destruction or damage (including providing and maintaining all appropriate protection barriers);
  3. keep the Lot Burdened (including the Support Column, the Lighting, and the Signage Column) in good repair and condition at all times;
  4. keep the Lot Burdened clean and free from rubbish; and
  5. promptly comply with all reasonable directions by the Council in relation to maintenance and repair of the Lighting and the Signage.
- (b) If the Owner of the Lot Burdened does not perform any obligation under clause 1.3(a), the Council may undertake the required work and recover the costs of all such work from the Owner of the Lot Burdened as a liquidated debt.
- 1.4 (a) The Council must at its expense, from time to time and at all times as soon as practicable and so far as reasonably necessary promptly make good and remedy any damage caused to the Lot Burdened arising from any exercise of the Council's rights under clauses 1.2 and 1.3(b).
- (b) If the Council does not rectify any damage under clause 1.4(a), then the Owner of the Lot Burdened may undertake the required work and recover the costs of all such work from the Council as a liquidated debt.
- (c) Notwithstanding clauses 1.4(a) and 1.4(b), the Council shall not be liable for any loss, destruction or damage to the Support Column, the Lighting or the Signage.
- 1.5 **Release and Variation of Easement**
- (a) The Council is solely empowered to release the Easement.
- (b) The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.

2. **Easement for Support variable width, limited in stratum (Z)**

2.1 **Definitions**

For the purpose of clause 2 of this Instrument, the following words have the following meanings:

**Council** means the City of Parramatta Council and its successors.

**Easement** means the Easement created in accordance with clause 2 of this Instrument.

**Lot Benefitted** means the part of the land having the benefit of the Easement which the Plan includes as the site of the Easement.

**Lot Burdened** means that part of the land having the burden of the Easement which the Plan indicates is the site of the Easement.

**Owner of the Lot Burdened** means the registered proprietor of the Lot Burdened from time to time.

**Plan** means the plan to which this Instrument relates.

**Road** means the part of the Lot Benefitted which is used as a public road.

**2.2 Terms of Easement**

Full right for the public and the Council to require the Road to be fully supported by the Lot Burdened at all times.

- 2.3 (a) The Owner of the Lot Burdened must at all times at its expense:
  - (1) provide and maintain support of the Road;
  - (2) promptly comply with all reasonable directions by the Council in relation to providing and maintaining support of the Road; and
  - (3) maintain appropriate insurance in the name of the Owner of the Lot Burdened and noting the Council's interest against damage and destruction of any structure which forms part of the Road for the full replacement value.
- (b) If the Owner of the Lot Burdened does not perform any obligation under clause 2.3(a), the Council may undertake the required work and recover the costs of all such work from the Owner of the Lot Burdened as a liquidated debt.

- 2.4 (a) The Council must at its expense, from time to time and at all times as soon as practicable and so far as reasonably necessary promptly make good and remedy any damage caused to the Lot Burdened arising from any exercise of the Council's rights under clause 2.3(b).
- (b) If the Council does not rectify any damage under clause 2.4(a), then the Owner of the Lot Burdened may undertake the required work and recover the costs of such work from the Council as a liquidated debt.

**2.5 Release and Variation of Easement**

- (a) The Council is solely empowered to release the Easement.
- (b) The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.

  
JEFFREY SANYOUUN  
DIRECTOR

  
AMANDA WEHBE  
DIRECTOR.

  
GREGORY DYER  
19/4