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1A and 1B Queen Street Auburn Planning Agreement

Section 93F of the *Environmental
Planning and Assessment Act
1979*

AET Ltd ATF Auburn Ownership Trust (**Developer**)
Cumberland Council (**Council**)

Date: 6 MARCH, 2017

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Form: 11R
 Release: 4:2

REQUEST
 New South Wales
 Real Property Act 1900

AM213205R

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

All Statutory Declarations and evidence that are lodged in support of land dealings will be treated as publicly accessible and will be disclosed to persons upon request.

(A) **STAMP DUTY** If applicable. Office of State Revenue use only

(B) **TORRENS TITLE** 1/1160950 ; 2/1160950

(C) **REGISTERED DEALING**

Number	Torrens Title

(D) **LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE
W	LTS LOCKLEY LOCKED BAG 5 GORDON 2072 epland@lockley.com.au Reference: 41954	R

(E) **APPLICANT** Australian Executor Trustees Limited ATF Auburn Ownership Trust

(F) **NATURE OF REQUEST** Registration of Planning Agreement pursuant to s93H Environmental Planning and Assessment Act 1979

(G) **TEXT OF REQUEST**
 Registration of Planning Agreement on Title

DATE

(H) Certified correct for the purposes of the Real Property Act 1900 by the company named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below.



Handwritten: Ut Prod
 4A
 3/3/17

Company: AUSTRALIAN EXECUTOR TRUSTEES LIMITED (ACN 007 869 794)
 Authority:

Signature of authorised person: *[Signature]*

Signature of authorised person: *[Signature]*

Name of authorised person: KERRY NGAI
 Office held: AUTHORIZED OFFICER

Name of authorised person: Marjorie Hortinela
 Office held: Authorised Officer

(I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS. The applicant certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No. Full name: Signature:

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.
 ALL HANDWRITING MUST BE IN BLOCK CAPITALS Page 1 of 1 1607

1A and 1B Queen Street Planning Agreement

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Details

Parties

Name **AET Ltd ATF Auburn Ownership Trust c/- EG Funds Management**
Short form name **Developer**
Notice details Telephone: [02 9220 7033]
Facsimile: [02 8823 1005]
Email: [jfoong@eg.com.au]
Representative: [Justin Foong]

Name **Cumberland Council**
Short form name **Council**
Notice details Telephone: 9735 1355
Facsimile: 9643 1120
Email: Monica.Cologna@cumberland.nsw.gov.au
Representative: Manager Strategy Cumberland Council

Items

- Item 1** **Development Site**
See definition of Development Site in clause 1.1.
- Item 2** **Development**
See definition of Development in clause 1.1.
- Item 3** **Development Contributions**
See Schedule 1.
- Item 4** **Security**
See Part D
- Item 5** **Registration**
This Deed will be registered on the titles to the land on the Development Site, as soon as practicable following the execution of this Deed.
- Item 6** **Restriction on dealings**
See clause 21.
- Item 7** **Dispute Resolution**
See Part C

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Background

- A The Developer is the owner of the Development Site and the proponent of the Proposed Rezoning.
- B The Council is the relevant local government authority in respect of the Development Site. The JRPP is the relevant planning authority in respect of the Proposed Rezoning in accordance with sections 58 and 59 of the Act.
- C As part of the JRPP's consideration of the Proposed Rezoning, the Record of Panel Recommendations dated 21 April 2016 from the JRPP expresses the view that a rezoning to higher density residential uses is appropriate in principle but also stated:
- "The Panel is unwilling to approve a planning proposal where inadequate levels of service would result on the local road network. Therefore, prior to further consideration of the proposal, the Panel requires the applicant and Council to agree on works and other measures necessary to ensure no deterioration in levels of service will occur on local roads affected by the proposal."*
- D The purpose of this Deed is to agree on the provision of traffic works by the Developer to ensure that there is no deterioration in the levels of service on local roads affected by the Proposed Rezoning.
- E The Parties agree that the matter raised by the JRPP referred to at paragraph C is addressed provided that:
- (i) this Deed is executed;
 - (ii) this Deed is lodged for registration with Land and Property Information; and
 - (iii) receipt of lodgement to Land and Property Information is provided to the Council
- F Subject to the making of the environmental planning instrument that gives effect to the Proposed Rezoning, the Developer has agreed to provide the Development Contributions described in Schedule 1 of this Deed.

Agreed terms

Part A – Preliminary

1. Defined terms & interpretation

1.1 In this Deed the following definitions apply

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

APRA means the Australian Prudential Regulation Authority.

Approval includes approval, authority, consent, licence or permission.

Authority means the New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money in accordance with the Deed to the Council on demand issued by:

(a) one of the following trading banks:

- (i) Australia and New Zealand Banking Group Limited,
- (ii) Commonwealth Bank of Australia,
- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (v) St George Bank Limited,
- (vi) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, order, judgment, proceeding or right of action.

Cost means a cost, charge, expense, outgoing, payment, fee, legal costs and other expenditure of any nature.

Construction Terms means the terms set out in Schedule 5 of this Deed.

CPI means the published Consumer Price Index (All Groups – Sydney), or if that index is no longer published, then any other index which, in the reasonable opinion of the Parties, is an equivalent index.

Dedication means the dedication of the Road Land free of cost to Council

Dedication Terms means the terms set out in Schedule 6 of this Deed.

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Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Defect means a material defect arising from materials, workmanship or design which adversely affects any part of the Intersection Works other than:

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

Defects Liability Period means the period commencing on the day after the completion of the Intersection Works and ending 12 months after that day.

Delivery Date means the time by which the Development Contributions are to be provided as per Column 4 of Schedule 1.

Development means any development (up to the maximum FSR for the Development Site) of the Development Site that is only permissible by reason of the proposed rezoning coming into force on the Enactment Date and includes demolition of the existing structures on the Development Site for the development, subdivision, the remediation of the Development Site for the development and the preparation of the Development Site for the development.

Development Contributions means the Intersection Works and the Dedication as specified in Schedule 1.

Development Site means the land specified in Schedule 2 including any subdivided lots of this land.

Dispute means a dispute between the Parties under or in relation to this Deed.

Enactment Date means the date at which an environmental planning instrument is made that gives effect to the Proposed Rezoning.

Financial Year means each 12 month period during the Term commencing on 1 July and ending on 30 June.

FSR means the floor space ratio as defined and calculated under the environmental planning instrument for the Development.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as 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.

Intersection Site means the land subject to the Intersection Works and includes the Road Land.

Intersection Works means the upgrade of the intersection of Queen Street and Marion Street Auburn to a new roundabout, generally in accordance with the plans prepared by

James Taylor & Associates, Civil and Structural Engineers, dated 20 October 2016, Revision C and provided at Schedule 3.

Item means the item specified in Column 1 of Schedule 1.

JRPP means the Sydney West Joint Regional Planning Panel.

Material Change means a substantial change in the Road Standards including a change that requires additional land to the Road Land to be acquired to carry out the Intersection Works or the need for signalisation at the Intersection Site.

Party means a party to this Deed.

Proposed Rezoning is application 2013SYW073 in respect of the proposed rezoning of the Development Site to R4 High Density Residential under the provisions of the *Auburn Local Environment Plan 2010*

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

Road Land means that land being generally shown in Schedule 4 as "Proposed area of dedication to Cumberland City Council".

Road Standard means the relevant Austroads and RMS Guidelines.

Security means a Bank Guarantee executed to the satisfaction of the Council and indexed in accordance with CPI from the date of this Deed.

Term means the period commencing on the Enactment Date and ending upon the termination of this Deed.

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- (e) A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- (f) A reference in this Deed 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.

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- (g) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, assigned, novated, supplemented or replaced.
- (h) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (i) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (j) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (k) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (l) References to the word 'include' or 'including' are to be construed without limitation.
- (m) A reference to this Deed includes the agreement recorded in this Deed.
- (n) A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- (o) A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- (p) Any schedules, appendices and attachments form part of this Deed.
- (q) Notes appearing in this Deed are operative provisions of this Deed.

2. Status of this Deed

- (a) This Deed is a planning agreement pursuant to section 93F(1)(a) of the Act.

3. Commencement

- (a) The Deed commences when it has been executed by all the Parties.
- (b) The Developer's obligation to provide the Development Contributions only arises on the Enactment Date. This Deed otherwise has no binding obligations on the Developer with respect to the Development Contributions.
- (c) The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4. Registration of Planning Agreement

- (a) The Parties agree that prior to the Enactment Date:
 - (i) the Deed will be lodged with the Registrar General in registrable form for registration on the title of the Development Site; and
 - (ii) receipt of lodgement to Land and Property Information will be provided to the Council.
- (b) This Deed will be registered within 6 months from the commencement of this Deed pursuant to section 93H of the Act.
- (c) The Developer will, at its own expense, do all things necessary to procure the registration of the Deed to occur in accordance with clause 4(a), including, but not limited to, attending to any requisitions raised by the Registrar general in relation to registration as soon as possible.
- (d) When the Development Contributions have been provided to the Council's reasonable satisfaction in accordance with this Deed the Developer may request that the Deed be released from the title of the Development Site.
- (e) The Council will not withhold its consent to the release of the Deed from the title to the Development Site under this clause provided the terms of this Deed have been complied with and the Developer pays all costs, expenses and fees of the Council relating to such release.
- (f) Prior to lodgement for registration, the Developer warrants that it has obtained any necessary express written consent to register this Deed under section 93H of the Act, including:
 - (i) if this Deed relates to land on the Development Site under the *Real Property Act* 1900, each person who has an estate or interest in the Land registered under that Act; or
 - (ii) if this Deed relates to land on the Development Site not under the *Real Property Act* 1900, each person who is seized or possessed of an estate or interest in the Land.
- (g) The Parties will co-operate with each other to ensure that the Deed is registered by the Registrar General (LPI) as provided for in section 93H of the Act as soon as possible.

5. Application of this Deed

- (a) This Deed applies to the Development Site, the Intersection Site and the Road Land.



6. Warranties

- (a) The Parties warrant to each other that they:
 - (i) have full capacity to enter into this Deed; and
 - (ii) are able to fully comply with their obligations under this Deed.

7. Further Agreements

- (a) The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

8. Surrender of right of appeal, etc.

- (a) The parties are not to commence or maintain, or to cause or procure the commencement or maintenance of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed in so far as the subject-matter of the proceedings relates to this Deed.

9. Term

- (a) The Term of this Deed is the period between the Enactment Date and the date at which this Deed ceases to operate in accordance with clause 24.

Part B – Development Contributions

10. Provision of Development Contributions

- (a) The Developer is to make the Development Contributions to the Council in accordance with the Delivery Date and the terms of this Deed.
- (b) If the Intersection Works cannot be provided by the Delivery Date due to a Material Change, the Developer must notify the Council within ten business days.
- (c) If clause 10(b) applies,
 - (i) the Developer must provide the cost of the Intersection Works (as indexed in accordance with Clause 12) to the Council as a monetary contribution within ten business days of the notification to the Council;
 - (ii) the Parties take all necessary steps to complete the Dedication of the Road Land as soon as practicable; and

- (iii) the provision to the Council of the relevant monetary contribution and the Dedication satisfies the Developer's obligations under this Deed with respect to the Development Contributions.

11. Costs

- (a) The Developer acknowledges that it is responsible for the total costs of the Intersection Works including any costs above the estimate of the costs of the Intersection Works referred to in Schedule 1.

12. Indexing of Cost of Intersection Works

- (a) The value of the Intersection Works will be subject to a CPI increase each year using the following formula:

$$IDC = ODC \times CP2/CP1$$

Where:

IDC = indexed Intersection Works

ODC = estimate of the costs of the Intersection Works referred to in Schedule 1 original Intersection Works

CP2 = Consumer Price Index All Group Index Number for Sydney at the time the contribution is payable

CP1 = Consumer Price Index All Group Index Number for Sydney at the date of this Deed.

13. Carrying out of Intersection Works

- (a) The Developer will construct and complete the Intersection Works in accordance with:
 - (i) any necessary Approvals required for the Intersection Works; and
 - (ii) the Construction Terms.
- (b) The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.
- (c) Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 13(b).

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14. Dedication of Road Land

- (a) The Developer will dedicate the Road Land in accordance with the Dedication Terms.
- (b) The Council agrees that for the purposes of calculating the site area for the purpose of applying a FSR for the Development on the Development Site the area of the Road Land is to be included as part of the site area.
- (c) If required, the Council agrees to grant landowner's consent for the Road Land as part of the lodgement of any future development application for the Development on the Development Site, pursuant to clause 49 of the Regulation.

15. Relationship with Section 94 and Section 94A Contributions

- (a) This Deed does not exclude the application of section 94 and section 94A of the Act to the Development. The Development Contributions under this Deed are to be taken into account in determining any section 94 and section 94A of the Act contributions for the Development in accordance with this clause.
- (b) The Developer is to be given a credit from the Council of fifteen percent (15%) of the total contributions payable under section 94 and section 94A of the Act for the Development.
- (c) For the purposes of clause 15(b) the contribution payable under section 94 and section 94A of the Act for each of the development applications for the Development is to be calculated by taking 15% off the total section 94 and section 94A contributions payable for the development proposed in a development application for the Development on the Development Site as determined by the relevant section 94 and section 94A contributions plans at the time when each development application is finally determined (it is this figure that is to be then indexed under any indexing condition up to the payment of the contribution under each development consent).
- (d) For avoidance of doubt the cost of the Intersection Works and the value of the Road Land to be dedicated are not relevant and are not to be taken into account for the calculation of the fifteen percent (15%) credit referred to in clause 15(b)

Part C – Dispute Resolution

16. Dispute resolution – expert determination

- (a) This clause applies to a Dispute between the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - (i) the Parties to the Dispute agree that it can be so determined; or
 - (ii) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- (b) A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- (c) If a notice is given under clause 16(b), the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- (d) If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- (e) The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- (f) Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- (g) The Parties are to share equally the costs of the President, the expert, and the expert determination.

17. Dispute Resolution - mediation

- (a) This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 16 applies.
- (b) Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- (c) If a notice is given under clause 17(b), the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- (d) If the Dispute is not resolved within a further 28 days of the meeting referred to in clause 17(c), the Parties are to mediate the Dispute in accordance with the

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Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.

- (e) If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- (f) Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (g) The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part D - Enforcement

18. Security for performance of obligations

- (a) The Developer is to provide Security to the Council in the amount of \$480,670.00 (as indexed in accordance with Clause 12) in relation to the Developer's obligation to make the Development Contributions on or before three (3) months after the Enactment Date.
- (b) The Council may call-up and apply the Security in accordance with clause 19 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- (c) The Council is to release and return the Security or any unused part of it to the Developer after the Road Land has been dedicated and after the end of the Defects Liability Period for the Intersection Works.
- (d) The Developer may at any time provide the Council with a replacement Security.
- (e) On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- (f) If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- (g) At the start of every Financial Year during the Term, the Developer is to review the Security provided to the Council and ensure it is maintained at the current indexed value.

- (h) If the Developer does not dedicate land required to be dedicated under this Agreement at the time at which it is required to be dedicated or at all, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre acquisition procedure under the Just Terms Act.
- (i) Council is to only acquire land pursuant to clause 18(h) if:
 - (i) to do so is reasonable having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement; and
 - (ii) Council has given the Developer 30 days' notice of the proposed acquisition of land.
- (j) Clause 18(h) constitutes an agreement for the purposes of s30 of the *Just Terms Act*.
- (k) If, as a result of the acquisition referred to in clause 18(h) the Council must pay compensation to any person other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council, or the Council can call on any Security.
- (l) Except as otherwise agreed between the Parties, the Developer must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), on both the date that the Landowner is liable to transfer that land to the Council under this Agreement, and the date on which the Council compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.
- (m) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Land.
- (n) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause including without limitation: signing any documents or forms and paying Council's costs arising under clause 18(h).

19. Breach of obligations

- (a) If the Council considers that the Developer is in breach of any obligation under this Deed (acting reasonably), it may give a written notice to the Developer

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specifying the nature and extent of the breach and requiring the Developer to rectify the breach.

- (b) If the Developer fails to fully comply with a notice referred to in clause 19(a) within 40 business days and there is no dispute resolution procedure possible under clauses 16 and 17, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- (c) Nothing in this clause 19 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

20. Enforcement in a court of competent jurisdiction

- (a) Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- (b) Before commencing legal proceedings, the parties must act in good faith and use best endeavours to resolve any dispute in accordance with clauses 16 and 17.
- (c) Subject to clause 20(b) nothing in this Deed prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - (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 Deed or any matter to which this Deed relates.

Part E – Restriction on Dealings

21. Restriction on dealings

- (a) The Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Development Site or its interest in the Development Site or attempt or purport to do so unless
 - (i) this Deed is registered on the title of the Development Site in accordance with this Deed,
 - (ii) the Developer has given the Council no less than ten (10) business days' notice in writing of the proposed sale, transfer, assignment, novation,

- charge, encumbrance or other dealing with its rights in respect of the Development Site, and
- (iii) the Developer has at no cost to Council procured from any buyer, transferee, assignee or novatee an agreement in favour of Council whereby the buyer, transferee, assignee or novatee is contractually bound with Council to perform the Developer's obligations under this Deed.
 - (b) The Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Development Site or its interest in the Development Site or attempt or purport to do so without the Council's consent if the Developer is in breach of this Deed.
 - (c) This clause ceases to apply once the Developer has complied with its obligations to make the Development Contributions.

Part F– Indemnities and Insurance

22. Release

The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

23. Indemnity and Insurance

- (a) The Developer indemnifies and releases Council against all damage, expenses, losses, liabilities, costs (including legal costs on a full indemnity basis), charges or Claims incurred or received by Council to the extent that it arises from any act or omission by the Developer (or any person or agent contracted or engaged or employed by the Developer) in connection with:
 - (i) the carrying out or execution of all or any of the Intersection Works or
 - (ii) any breach of this Deed by the Developer.
- (b) The Developer or agent or subcontractor of the Developer is to take out and keep current to the reasonable satisfaction of the Council the following insurances in relation to the Intersection Works required to be carried out by the Developer under this Deed up until the work is taken to have been completed in accordance with this Deed:
 - (i) contract works insurance, noting the Council as an interested party, for the full replacement value of the Intersection Works (including the cost of

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- demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Intersection Works (both during and after construction);
- (ii) public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any servant, agent or subcontractor of the Developer, for liability to any third party;
 - (iii) workers' compensation insurance as required by law, and
 - (iv) any other insurance required by law.
- (c) The Developer is not to commence to carry out any work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause (b).
- (d) If the Developer fails to comply with clause 23(b) or (c) the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate (acting reasonably) including:
- (i) by calling upon the Security provided by the Developer to the Council under this Deed in relation to the Intersection Works, or
 - (ii) recovery as a debt due in a court of competent jurisdiction.

Part G— Other Provisions

24. Operation of Deed in Certain Circumstances

- (a) The Parties agree that this Deed terminates if the Relevant Authority advises the Developer that the Application for the Proposed Rezoning is refused.
- (b) The Parties agree that this Deed may be released from the title of the Development Site if
 - (i) the Development Contributions have been provided to the Council's reasonable satisfaction in accordance with clause 10; or
 - (ii) this Deed is terminated under clause 24(a).
- (c) The Parties agree that the 15% credit provisions in clause 15 will continue to apply to any development applications for the Development on the Development Site that are finally determined after the Deed has been released from the title of the Development Site under clause 24(b)(i)

25. Notices

- (a) Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - (i) delivered or posted to that Party at its address set out in the Details Page, or
 - (ii) emailed to that Party at its email address set out in the Details Page.
- (b) If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- (c) Any notice, consent, information, application or request is to be treated as given or made if it is:
 - (i) delivered, when it is left at the relevant address,
 - (ii) sent by post, 2 business days after it is posted,
 - (iii) or
 - (iv) sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- (d) If any notice, consent, information, application or request is delivered, on a day that is not a business day, or if on a business day, after 5pm 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.

26. Approvals and Consent

- (a) Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.

27. Costs

- (a) The Developer is to pay the Council's reasonable itemised costs of the preparation of this Deed to a maximum of \$10,000.00 within 14 days of the provision of an itemised invoice.

28. Entire Deed

- B** (a) This Deed contains all matters about which the Parties have agreed in relation to the matters it deals with.
- (b) 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 Deed was executed, except as permitted by law.

29. Further Acts

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

30. Governing Law and Jurisdiction

- (a) This Deed is governed by the law of New South Wales.
- (b) The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- (c) The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

31. No Fetter

- (a) Nothing in this Deed shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
- (b) If, contrary to the operation of this clause, any provision of this planning agreement is held by a Court of competent jurisdiction to constitute an unlawful fetter on any discretion, power or duty, the parties agree:
- (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied, and
- (ii) to endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

32. Illegality

If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

33. Severability

- (a) If a clause or part of a clause of this Deed 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.
- (b) 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 Deed, but the rest of this Deed is not affected.

34. Amendment

No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

35. Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

36. GST

- (a) 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").
- (b) If a Party to this Deed (the "Supplier") makes a supply under or in connection with this Deed and is liable by law to pay GST on that supply, then the consideration

B

otherwise payable by the recipient of the supply (the "Recipient") will be increased by an amount equal to the GST paid or payable by the Supplier on that supply ("GST Amount").

- (c) If this Deed 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.
- (d) If a party to this Deed has the benefit of an indemnity for a cost, expense, loss or outgoing ("indemnified cost") under this Deed, 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.
- (e) The Recipient need not pay the GST Amount for a supply until the Supplier has issued it with a tax invoice for that supply.
- (f) Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Deed are GST exclusive.

37. Explanatory Note

- (a) The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

Schedule 2 - Land to which this Planning Agreement relates (Clause 1)

Land to which this Planning Agreement relates

1. The land in Lots 1 and 2 DP 1160950 known as 1A and 1B Queen Street, Auburn.
2. The Road Land.
3. The Intersection Site.

Schedule 3 – Plan of Intersection Works

Indicative Plan

REFERENCE DOCUMENTS

1. SURVEY DRAWING PREPARED BY
 SYDNEY CIVIL ENGINEERS
 REF No. 41954/01
 DATED 04/05/16

2. SURVEY DRAWING PREPARED BY
 HARGREAVES SURVEYERS
 SYDNEY REF. 412 024/04/14
 REF No. 0225.
 DATED 31-03-10

NO.	DATE	DESCRIPTION	BY
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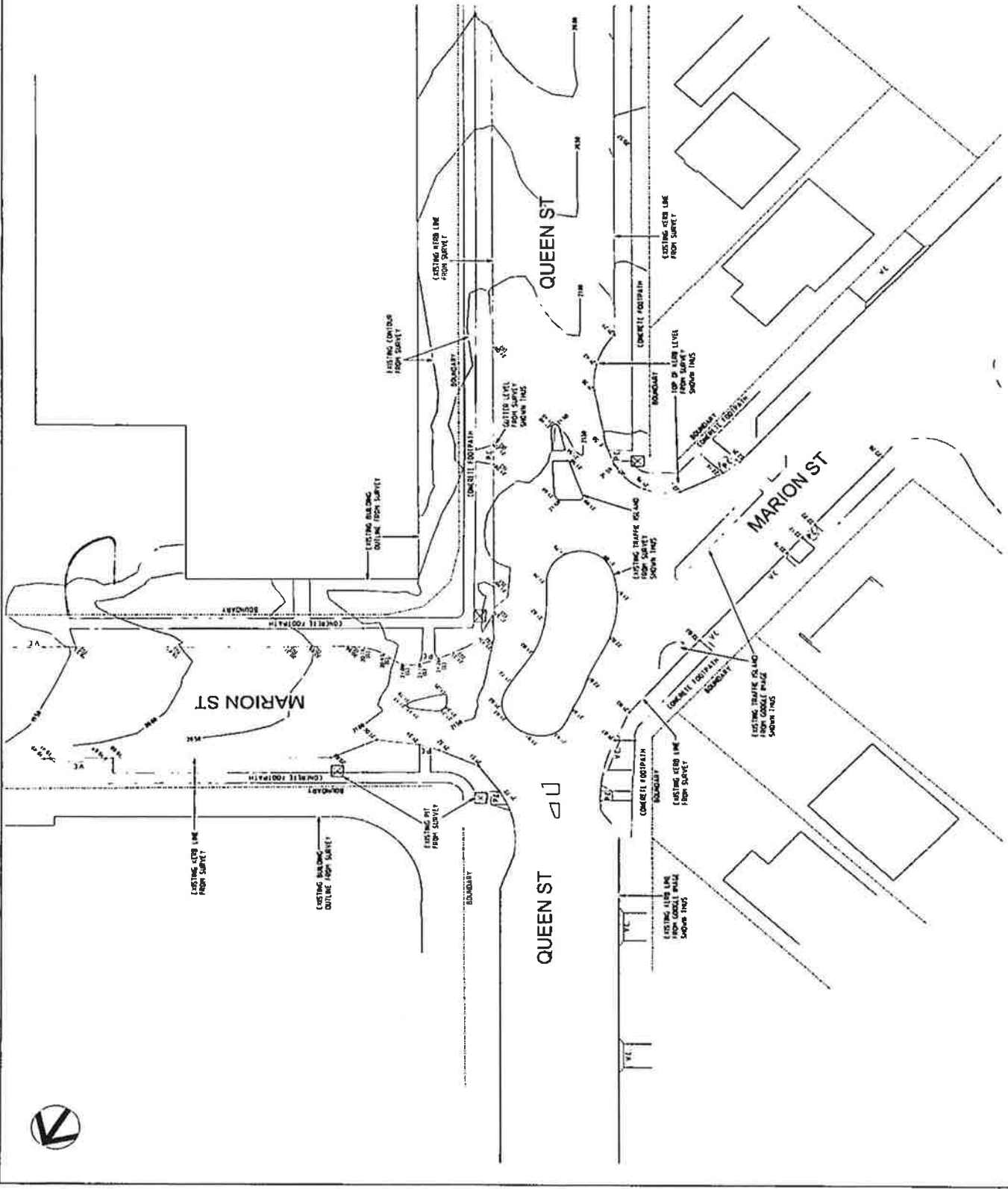
James Taylor & Associates
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 WWW: www.jta.com.au

A.J.C.
 ADDRESS: 101 MARION STREET, SYDNEY NSW 2000
 PHONE: 02 9550 1111 FAX: 02 9550 1112

ROUNDABOUT
 QUEEN STREET & MARION STREET
 INTERSECTION AUBURN NSW

EXISTING SITE PLAN

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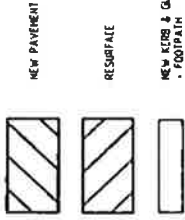


EXISTING SITE PLAN
 SCALE 1:1000

P.L. DEWITT, MELBOURNE CROSSING
 V.C. DEWITT, WELLS CROSSING

REFER DRAWING FOR ALL EXISTING
 SITE PLANS & SURVEY DOCUMENTS

LEGEND



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3	3	13/03/2017	ISSUED FOR PERMIT
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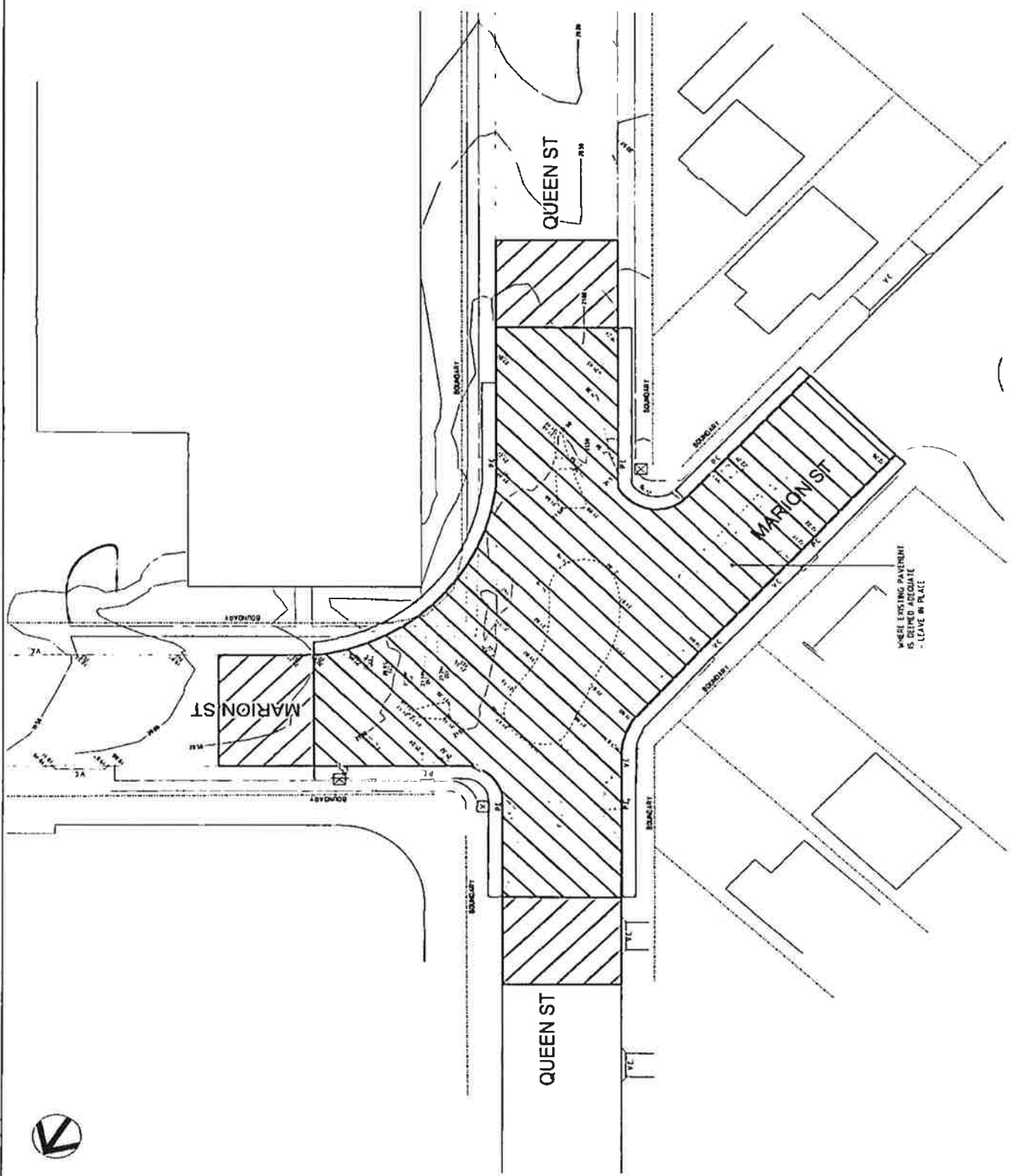
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 AND THE AUSTRALIAN STANDARD AS/NZS 1755:2000
 ROADWORKS - LIGHTING AND SAFETY

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 www.james-taylor.com.au

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 ROADWORKS - LIGHTING AND SAFETY

ROADWORKS
 MARION STREET & QUEEN STREET
 INTERSECTION AUBURN NSW
 PAVEMENT PLAN

PROJECT NO.	5905
DATE	13/03/2017
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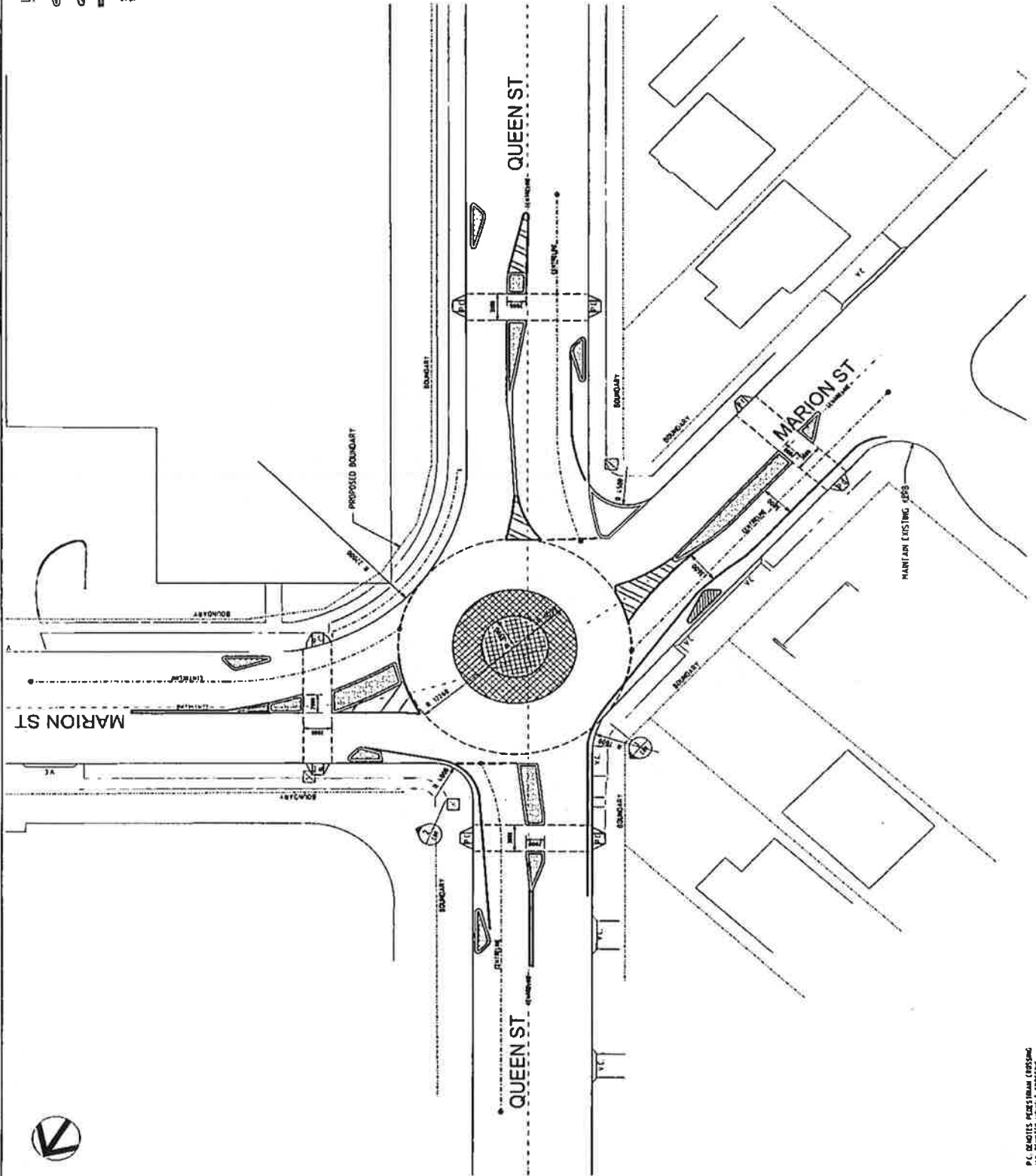
WHERE EXISTING PAVEMENT
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 - LEAVE IN PLACE

PAVEMENT PLAN
 SCALE: AS SHOWN

P.C. DENOTES POINT OF CURVATURE CROSSING
 V.C. DENOTES WHEEL TRACKS

LEGEND

-  BASED MEDIAN/SPLITTER ISLAND
-  PAVED PAVEMENT
-  LINE MARKINGS TO ALIGN
-  SPLITTER ISLANDS - PLEASANT BAYS
-  SMALL CORNER WITH BAY BARRELS

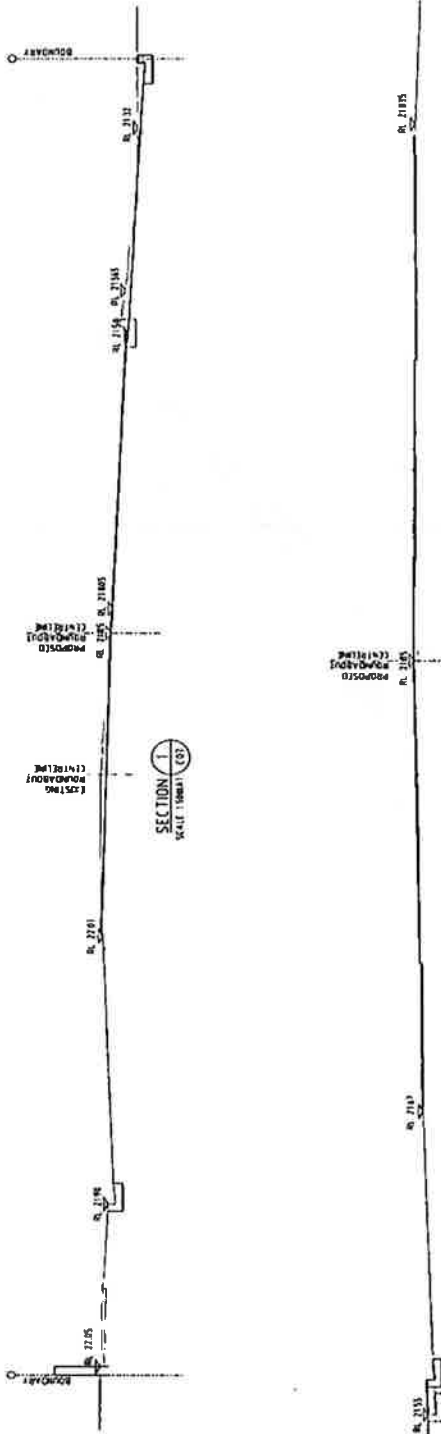


SEIOUT PLAN
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P.C. DETAILS PER STRAIGHT CROSSING
 V.L. DETAILS VEHICLE CROSSING

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 WWW: WWW.JTAND.AU
 PROJECT NO. 5905
 PROJECT NAME: ROUNDABOUT QUEEN STREET & MARION STREET INTERSECTION AUBURN NSW
 SHEET NO. 007
 DATE: 29 MAY 2017



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SECTION	SECTIONS
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APPROVED	DATE
SCALE	C09
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James Taylor & Associates
 Civil & Structural Consulting Engineers
 SUITE 201, 88 MARCY ROAD SUITE 201, 44° 45' 00" N
 111° 33' 00" W, 010 000
 TEL: 601 875 2222
 FAX: 601 875 2222
 www.james-taylor.com

A 11-C
 PREPARED BY: JAMES TAYLOR
 CHECKED BY: JAMES TAYLOR
 DATE: 13/03/2017

ROUNDABOUT
 GREEN STREET & MARION STREET
 INTERSECTION AUBURN MSW

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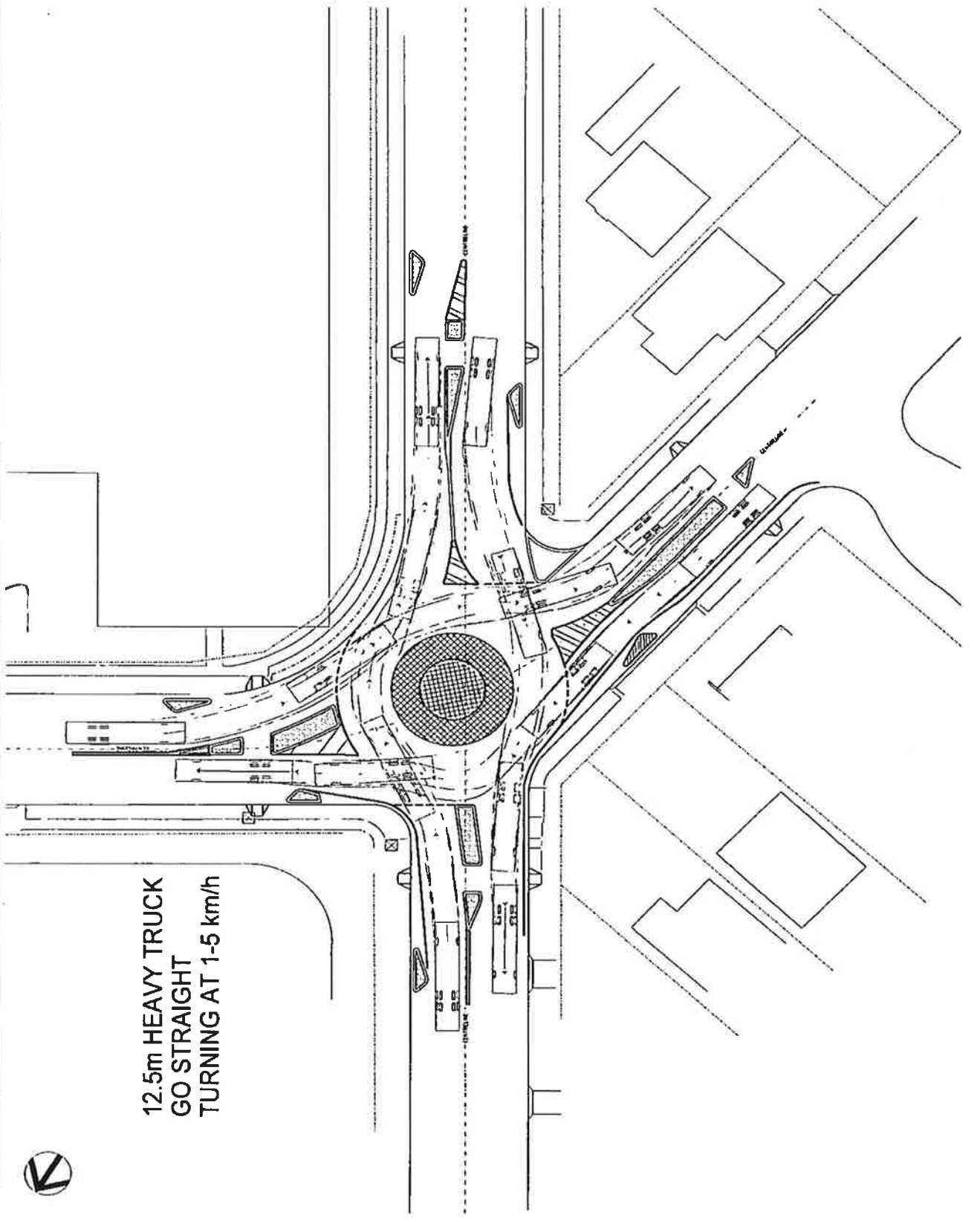
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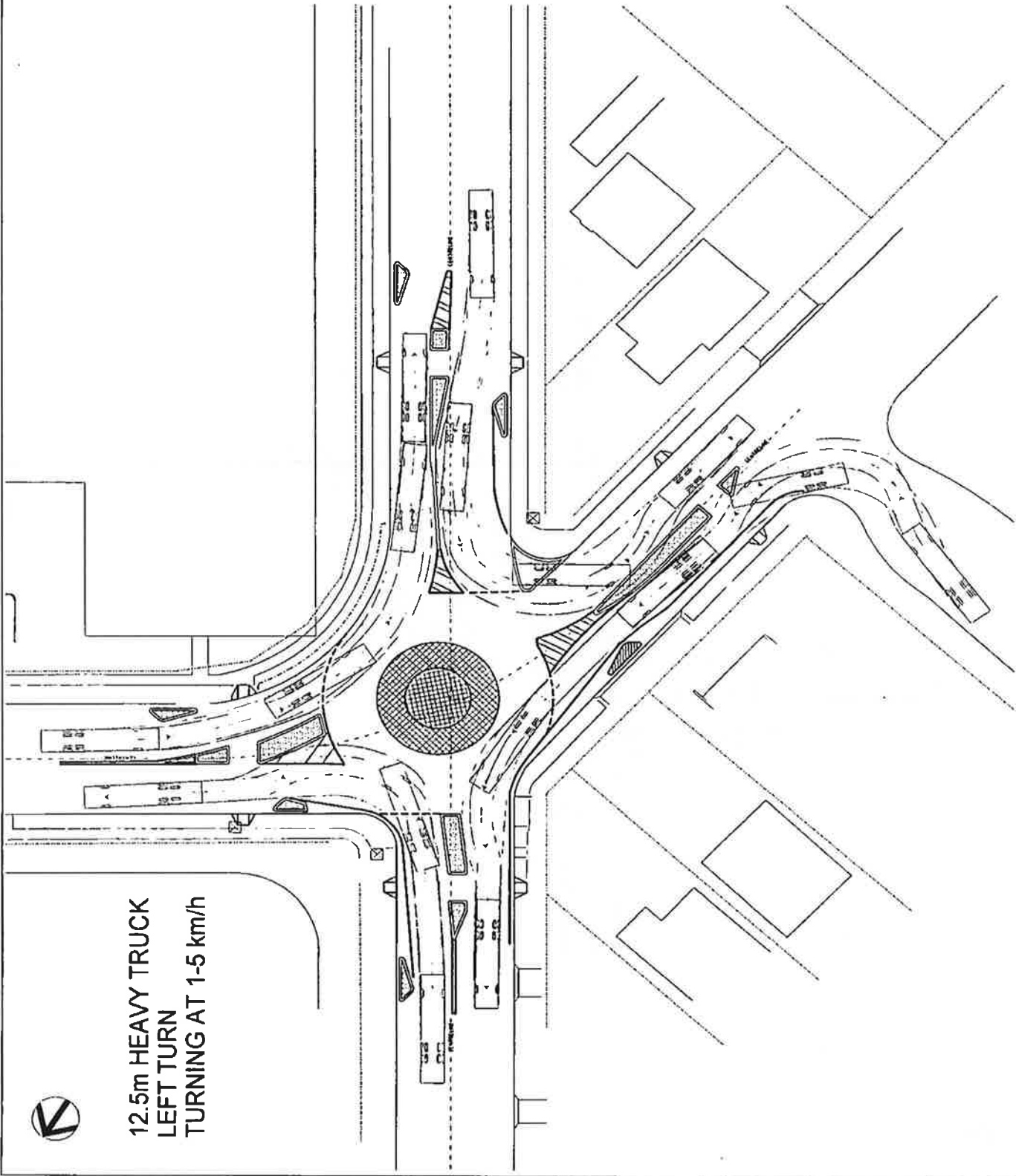
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99	JT	13/03/2017	ISSUED FOR PERMIT
100	JT	13/03/2017	ISSUED FOR PERMIT



12.5m HEAVY TRUCK
 GO STRAIGHT
 TURNING AT 1-5 km/h



TURNING VEHICLES
 SCALE 1:1000



12.5m HEAVY TRUCK
 LEFT TURN
 TURNING AT 1-5 km/h

TURNING VEHICLES
 SCALE 1:1000

NO. BY	DATE	DESCRIPTION
1	12/18/16	ISSUE FOR PERMITS
2	12/18/16	ISSUE FOR PERMITS
3	12/18/16	ISSUE FOR PERMITS
4	12/18/16	ISSUE FOR PERMITS
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100	12/18/16	ISSUE FOR PERMITS

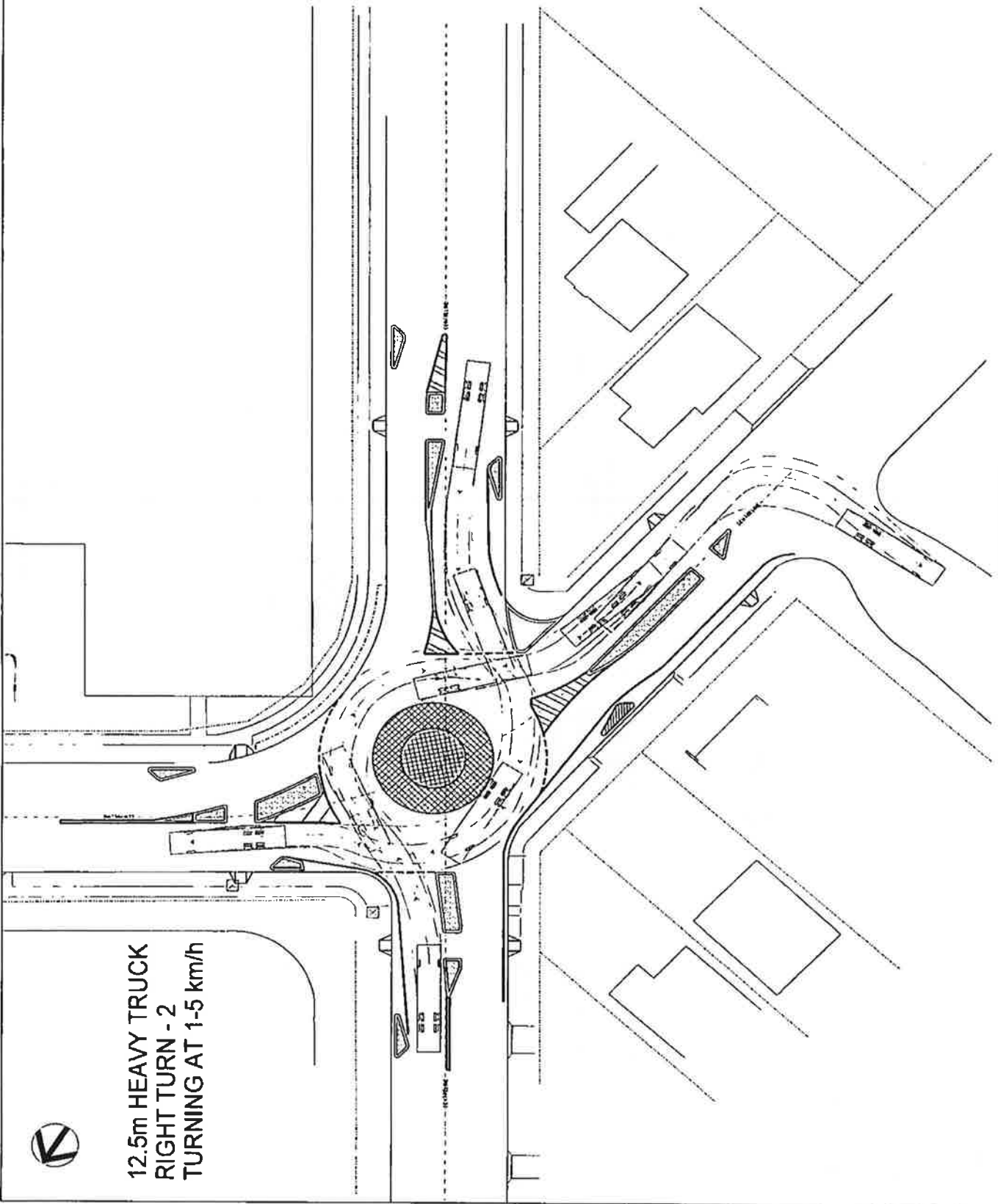
James Taylor & Associates
 Civil & Structural Consulting Engineers
 SUITE 101 15 WATSON ROAD AUBURN, NSW 1500
 PH: 61 61 633 0115
 FAX: 61 61 633 0116
 WWW: www.james-taylor.com.au

PROJECT
 A.P.C. 10 NORTH STREET, AUBURN NSW 1500
 PROJECT NO. 5905
 DRAWING NO. -C11
 SCALE 1:1000

ROUNDABOUT
 QUEEN STREET & MARION STREET
 INTERSECTION AUBURN NSW
 TURNING VEHICLES
 12.5m HEAVY TRUCK - SHEET 2

NO.	REV.	DATE	BY	CHKD.	DESCRIPTION
1		2017/03/13			ISSUED FOR PERMIT
2		2017/03/13			ISSUED FOR PERMIT
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James Taylor & Associates
 Civil Structural Consulting Engineers
 10/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000/1001/1002/1003/1004/1005/1006/1007/1008/1009/1010/1011/1012/1013/1014/1015/1016/1017/1018/1019/1020/1021/1022/1023/1024/1025/1026/1027/1028/1029/1030/1031/1032/1033/1034/1035/1036/1037/1038/1039/1040/1041/1042/1043/1044/1045/1046/1047/1048/1049/1050/1051/1052/1053/1054/1055/1056/1057/1058/1059/1060/1061/1062/1063/1064/1065/1066/1067/1068/1069/1070/1071/1072/1073/1074/1075/1076/1077/1078/1079/1080/1081/1082/1083/1084/1085/1086/1087/1088/1089/1090/1091/1092/1093/1094/1095/1096/1097/1098/1099/1100/1101/1102/1103/1104/1105/1106/1107/1108/1109/1110/1111/1112/1113/1114/1115/1116/1117/1118/1119/1120/1121/1122/1123/1124/1125/1126/1127/1128/1129/1130/1131/1132/1133/1134/1135/1136/1137/1138/1139/1140/1141/1142/1143/1144/1145/1146/1147/1148/1149/1150/1151/1152/1153/1154/1155/1156/1157/1158/1159/1160/1161/1162/1163/1164/1165/1166/1167/1168/1169/1170/1171/1172/1173/1174/1175/1176/1177/1178/1179/1180/1181/1182/1183/1184/1185/1186/1187/1188/1189/1190/1191/1192/1193/1194/1195/1196/1197/1198/1199/1200/1201/1202/1203/1204/1205/1206/1207/1208/1209/1210/1211/1212/1213/1214/1215/1216/1217/1218/1219/1220/1221/1222/1223/1224/1225/1226/1227/1228/1229/1230/1231/1232/1233/1234/1235/1236/1237/1238/1239/1240/1241/1242/1243/1244/1245/1246/1247/1248/1249/1250/1251/1252/1253/1254/1255/1256/1257/1258/1259/1260/1261/1262/1263/1264/1265/1266/1267/1268/1269/1270/1271/1272/1273/1274/1275/1276/1277/1278/1279/1280/1281/1282/1283/1284/1285/1286/1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12.5m HEAVY TRUCK
 RIGHT TURN - 2
 TURNING AT 1.5 km/h

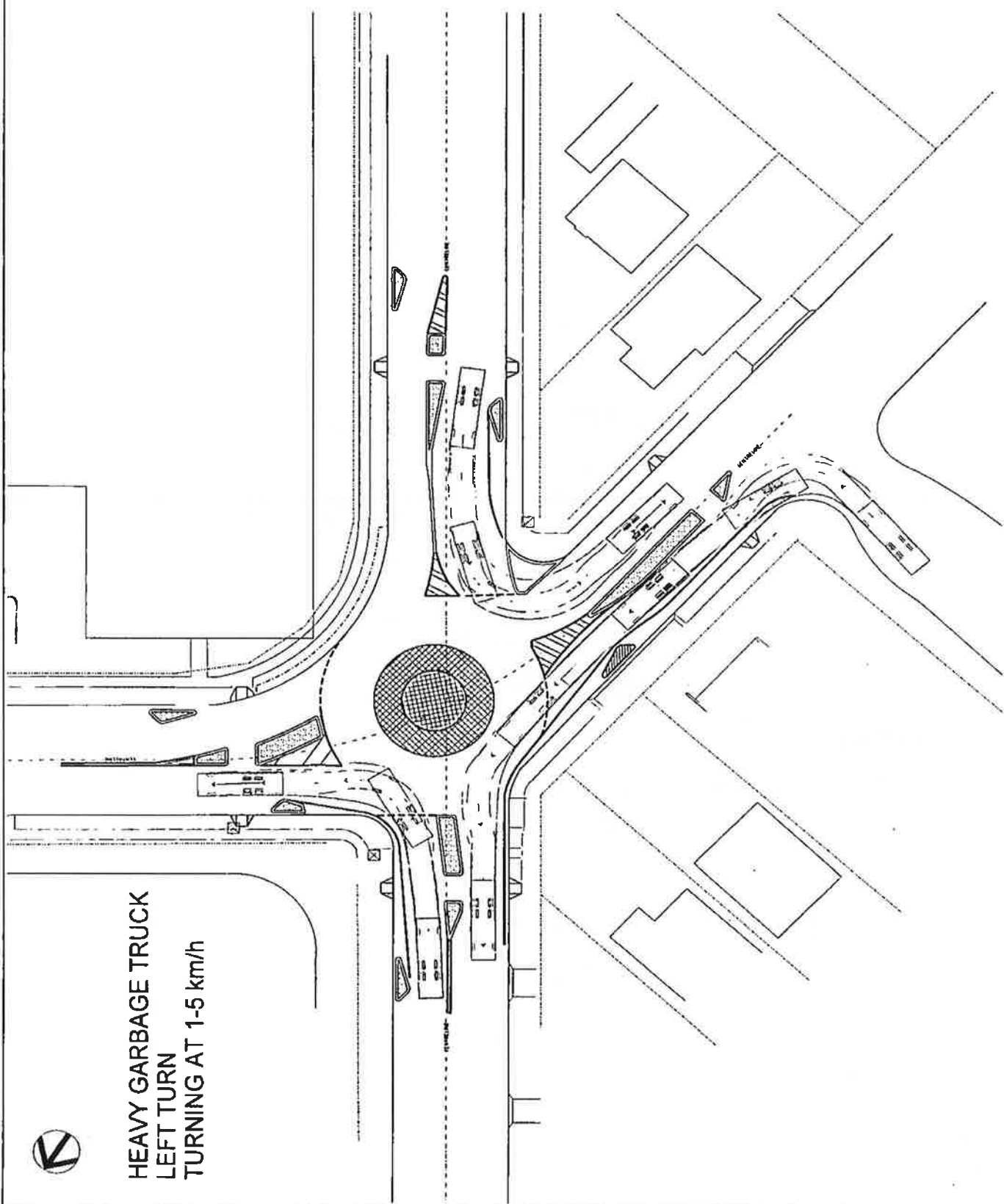


TURNING VEHICLES
 SCALE 1:1000

NO. OF	DATE	BY	DESCRIPTION
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100	13/03/2017	JTA	ISSUED FOR PERMIT

James Taylor & Associates
 Civil & Structural Consulting Engineers
 2000 20th Street NW, Calgary, Alberta, T2M 0P8
 Tel: 403.243.8888 Fax: 403.243.8889
 www.jta.ca

ROUNDABOUT
 QUEEN STREET & MARION STREET
 INTERSECTION AUBURN NSW
 TURNING VEHICLES
 12.5m HEAVY TRUCK - SHEET 2
 DESIGN BY: JTA
 PROJECT NO: 5905
 SHEET NO: 13
 DATE: 13/03/2017

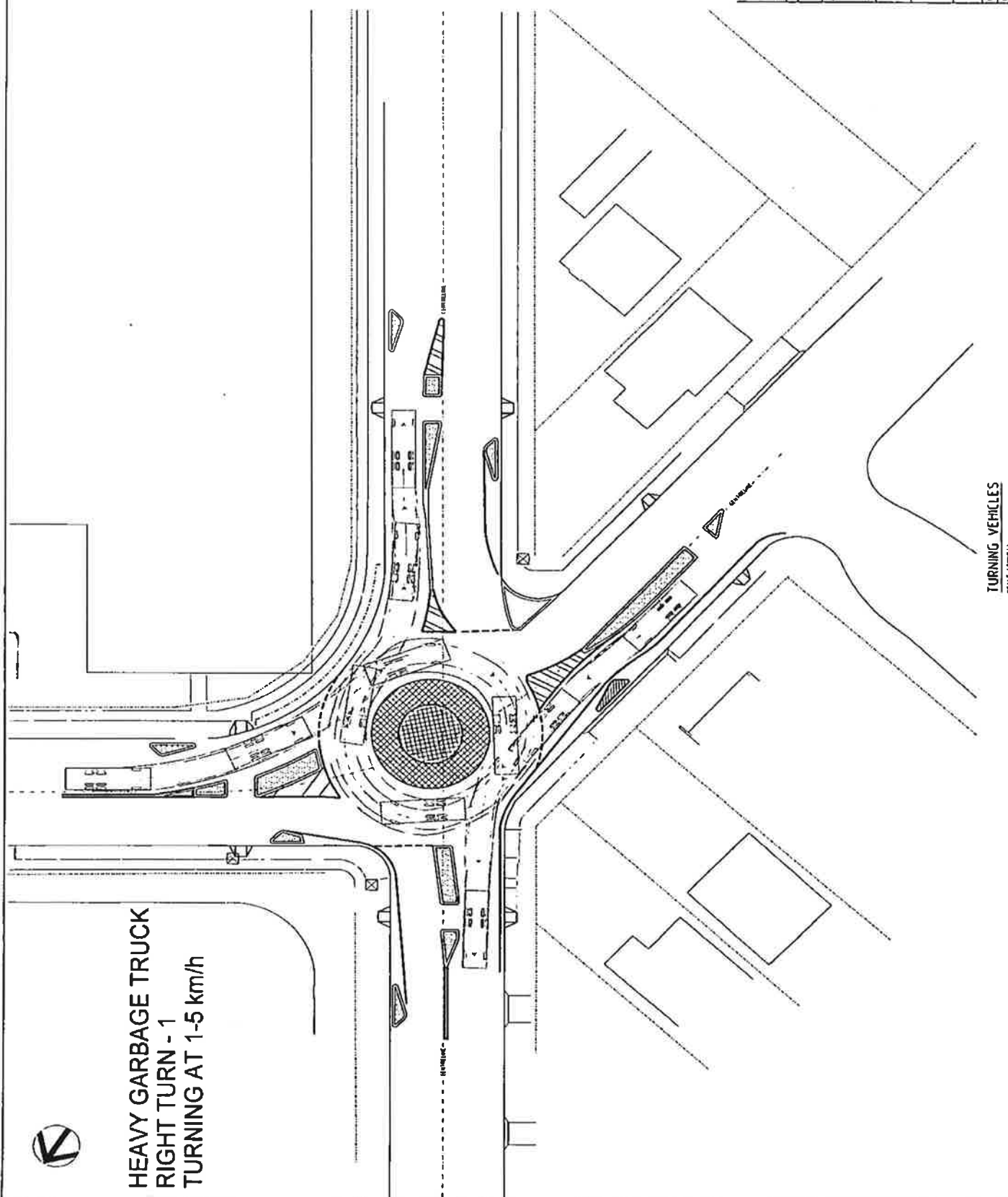


HEAVY GARBAGE TRUCK
 LEFT TURN
 TURNING AT 1-5 km/h

TURNING VEHICLES
 SCALE 1:1000

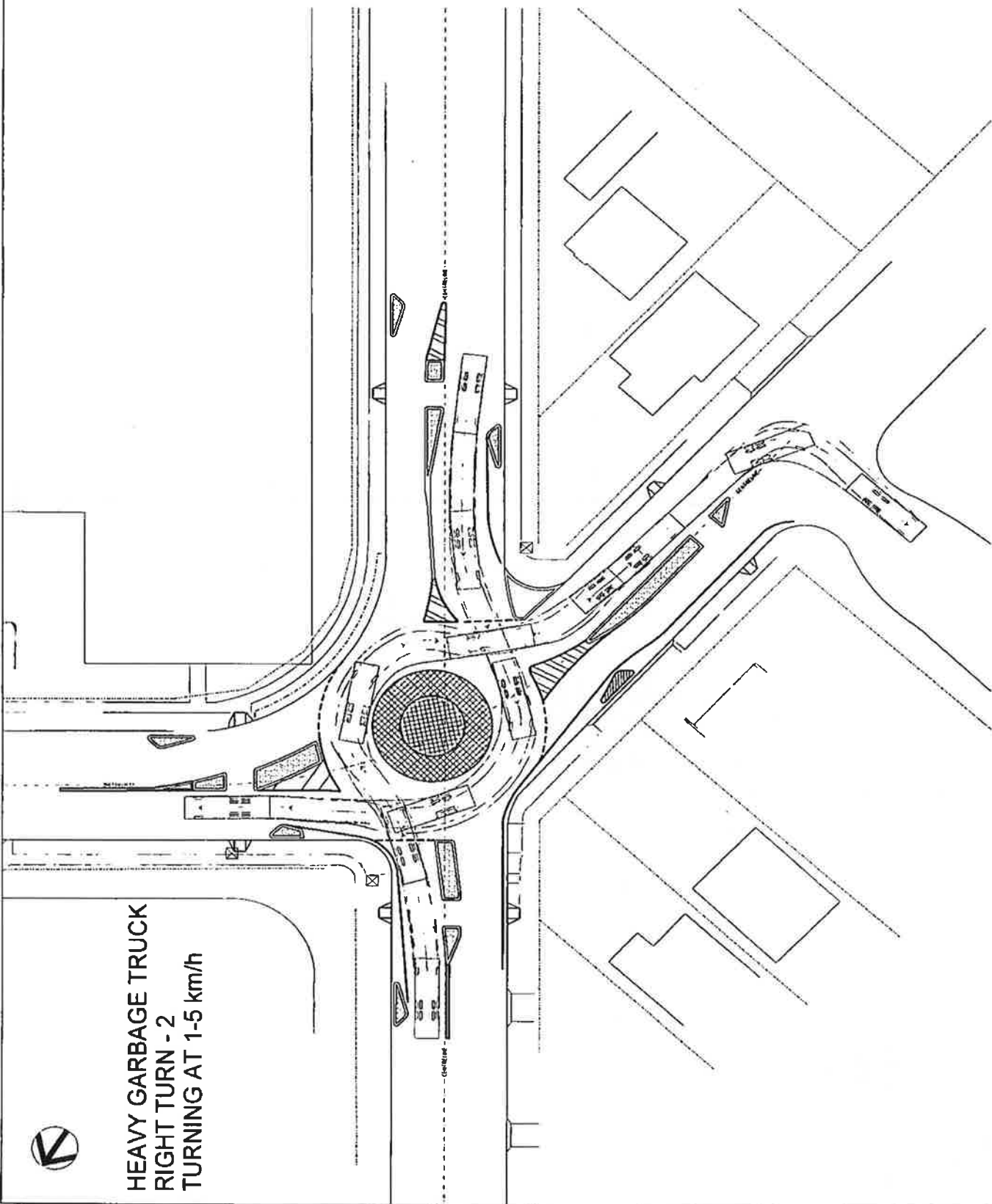
NO.	BY	DATE	DESCRIPTION	SCALE	BY	DATE
1						
James Taylor & Associates Civil & Structural Consulting Engineers SUITE 101, 101 WILSON ROAD, WILSON, NSW 2157 TEL: 02 9388 4444 FAX: 02 9388 4444 www.james-taylor.com.au						
ROUNDABOUT GREEN STREET & MARION STREET INTERSECTION AUBURN NSW TURNING VEHICLES HEAVY GARBAGE TRUCK - SHEET 2						
PROJECT NO. 5905					DRAWN BY N	
CHECKED BY JTC					SCALE 1:1000	
PROJECT NO. 5905					SHEET NO. CTS A	

NO.	REV.	DATE	DESCRIPTION	BY	CHKD.
James Taylor & Associates Civil & Structural Consulting Engineers SUITE 201, 76 MARLBOROUGH AVENUE, SYDNEY NSW TEL: (02) 9550 9999 FAX: (02) 9550 9999 www.jta.com.au					
ADDRESS: 76 MARLBOROUGH STREET, SYDNEY NSW 2000 PHONE: (02) 9550 9999 FAX: (02) 9550 9999					
ROUNDABOUT QUEEN STREET & MARION STREET INTERSECTION AUBURN NSW					
TURNING VEHICLES HEAVY GARBAGE TRUCK - SHEET 3					
DATE	BY	PROJECT NO.	SCALE	SHEET NO.	
		5905		C 16	



HEAVY GARBAGE TRUCK
 RIGHT TURN - 1
 TURNING AT 1-5 km/h

TURNING VEHICLES
 SCALE 1:1000



**HEAVY GARBAGE TRUCK
 RIGHT TURN - 2
 TURNING AT 1-5 km/h**

TURNING VEHICLES
 SCALE: 1:1000

NO.	DATE	DESCRIPTION	BY	CHKD
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2	13/03/2017	REVISED TO SHOW	J.T.C.	J.T.C.
3	13/03/2017	REVISED TO SHOW	J.T.C.	J.T.C.
4	13/03/2017	REVISED TO SHOW	J.T.C.	J.T.C.
5	13/03/2017	REVISED TO SHOW	J.T.C.	J.T.C.
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 +61 2 942 99330
 www.james-taylor.com.au

PROJECT
 A.J.C. - QUEEN STREET INTERSECTION WITH 100
 PHASE 1A PERMIT - 13.03.2017

ROUNDABOUT
 QUEEN STREET & MAURON STREET
 INTERSECTION AUSTRALIAN NSW

TURNING VEHICLES
 HEAVY GARBAGE TRUCK - SHEET 2

DESIGN BY JAMES TAYLOR
DATE 13/03/2017

SCALE 1:1000

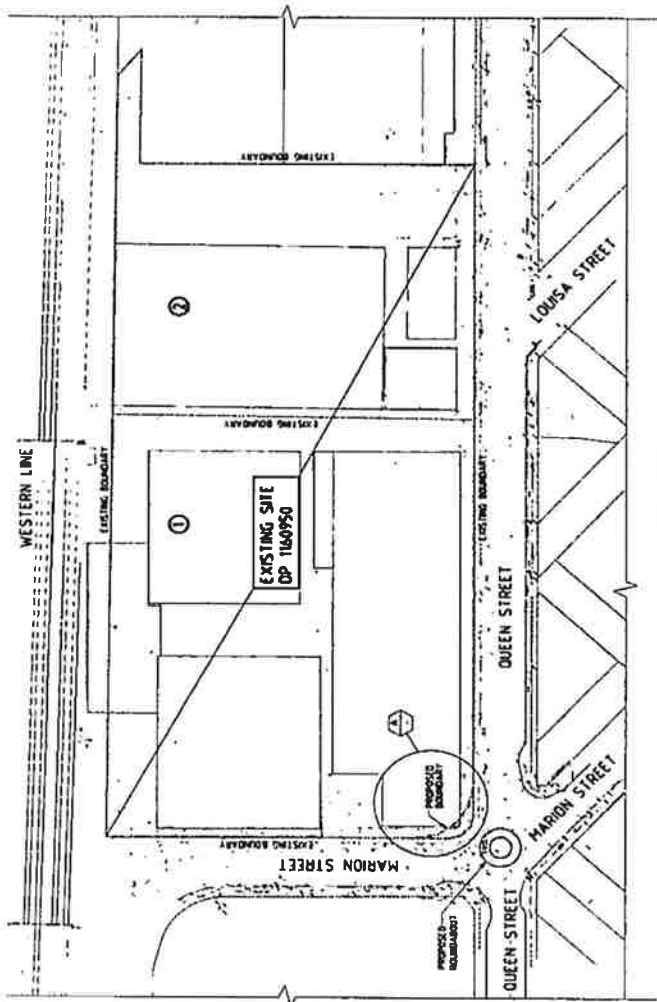
DATE 13/03/2017

BY J.T.C.

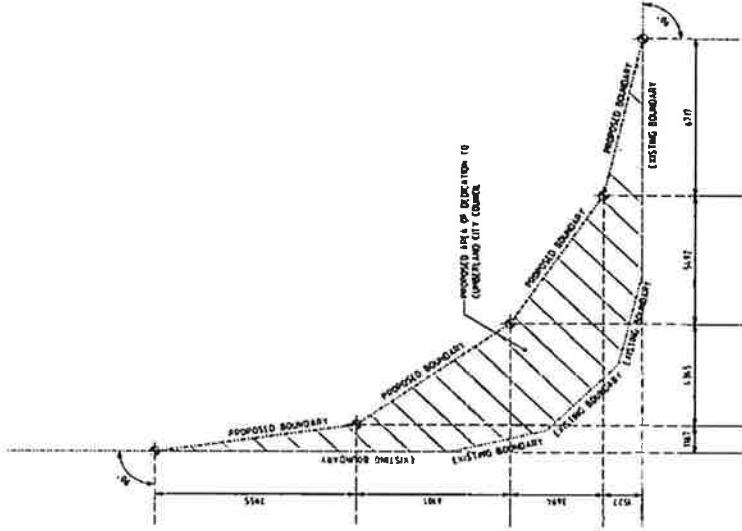
NO. 117

A

Schedule 4 – Road Land



SITE PLAN
 SCALE 1:10000



DETAIL A
 SCALE 1:10000

APPROXIMATE AREA OF DEVIATION = 0.14 m²

PROPOSED BOUNDARY AMENDMENTS FOR PROPOSED ROUNDABOUT CONSTRUCTION

NOTE: DIMENSIONS INDICATED ARE NOMINAL & SUBJECT TO FINALISED DESIGN OF THE ROUNDABOUT

- REFERENCE DOCUMENTS**
- 1 SURVEY DRAWING PREPARED BY LIS LOCALITY REF: 1160950 DATED 08/07/15
 - 2 SURVEY DRAWING PREPARED BY JAMES TAYLOR & ASSOCIATES REF: 1160950 DATED 24-03-16

NO.	DATE	DESCRIPTION	BY	CHKD
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100	24/03/16	ISSUED FOR PERMIT	JT	MT

James Taylor & Associates
 Civil & Structural Consulting Engineers
 10/117 WILSON ROAD, WILSON, SA 5037
 Tel: 08 8333 8888 Fax: 08 8333 8889
 Email: info@jta.com.au
 www.jta.com.au

PROJECT
 ADDRESS: 74 WYLLIE STREET, LYONSDALE, VIC 3086
 NAME OF PROJECT: 74 WYLLIE STREET

ROUNDABOUT
 QUEEN STREET & MARION STREET
 INTERSECTION AUBURN NSW

PROPOSED BOUNDARY SETOUT PLAN

NO.	DATE	DESCRIPTION	BY	CHKD
1	24/03/16	ISSUED FOR PERMIT	JT	MT
2	24/03/16	ISSUED FOR PERMIT	JT	MT
3	24/03/16	ISSUED FOR PERMIT	JT	MT
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Schedule 5 – The Construction Terms

1. Approvals and Design Details

- (a) The Developer must obtain at the Developer's cost any necessary approvals (including any approval under the Road Act) for the Intersection Works.
- (b) The Intersection Works must be carried out:
 - (i) in accordance with all Approvals including conditions and the requirements for all applicable Laws including without limitation occupational health and safety legislation, and
 - (ii) in a good and workmanlike manner so that they are diligently progressed until completion.
- (c) The Developer will be responsible for constructing and managing the Intersection Works.
- (d) The Developer will ensure that any contractor it engages to carry out the Intersection Works or any part of the Intersection Works agrees to carry out the Developer's obligations in these Construction Terms as part of any contractual relationship entered into between the Developer and its contractor.
- (e) The Developer must prepare draft detailed construction plans and specifications for the Intersection Works and provide a copy to Council as part of any Approval under the Roads Act.
- (f) The Council and the Developer must work in consultation with each other to prepare and agree on the final plans and specifications for the Intersection Works and both must act reasonably and with due expedition in their consultations with each other. The Council is to act reasonably and with due expedition in the assessment and determination of any application for the Intersection Works.

2. Carrying out of Road Works

- (a) Council authorises the Developer to enter occupy and use the Intersection Site for the purpose of carrying out the approved Intersection Works,
- (b) The Developer is to ensure, insofar as reasonably practicable in relation to the carrying out of the Intersection Works that:
 - (i) all necessary measures are taken to protect people and property, and
 - (ii) nuisances and unreasonable noise and disturbances are prevented.
- (c) Except as authorised in writing by Council, the Developer is not to unreasonably obstruct or damage any road, footpath, drain or watercourse or other public utility

or service on or near land on which the Intersection Works is or is to be carried out and is to remove immediately and at its own cost any such obstruction and make good any damage caused as a consequence of the obstruction.

- (d) The approved Intersection Works are not to be varied by the Developer unless:
 - (i) the Parties agree in writing to the variation, and
 - (ii) any Approval or process required under the Act or any other law to the variation is first obtained or carried out.

3. Council Inspection of the Intersection Site and Intersection Works

- (a) Council may enter the Intersection Site and Intersection Works to inspect the progress of the Intersection Works subject to:
 - (i) the terms of any contract between the Developer and its contractors,
 - (ii) giving reasonable notice of at least two (2) business days to the Developer,
 - (iii) complying with all reasonable directions of the Developer and its contractors,
 - (iv) exercising its rights under this clause at its own risk in all respects, and
 - (v) being accompanied by the Developer or its nominees or as otherwise agreed.
- (b) Council may within five (5) business days of carrying out an inspection notify the Developer of any defect or non-compliance in the Intersection Works and direct the Developer to carry out work to rectify the defect or non-compliance. Such work may include but is not limited to:
 - (i) removing of defective or non-complying material from the Intersection Site and Intersection Works,
 - (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 Intersection Site or Intersection Works.
- (c) If the Developer is issued a direction to carry out further works under this clause the Developer must, at the Developer's cost, rectify the defect or non-compliance specified in the notice within the time specified (that time period being reasonable).
- (d) If the Developer fails to comply with a direction to carry out work given under this clause in relation to the Intersection Works, Council will be entitled to refuse to accept delivery of the Intersection Works (or the relevant part of the Intersection

B

Works) until the required works have been completed to the Council's reasonable satisfaction.

4. Completion

- (a) The Intersection Works or any part of the Intersection Works are completed when the Developer provides full works as executed plans and the Council has advised the Developer in writing that the approved Intersection Works have been completed to the Council's satisfaction in accordance with the relevant Approvals for the Intersection Works.
- (b) The Council will advise the Developer within 1 month as to whether the Intersection Works have been completed to Council's reasonable satisfaction.
- (c) The Developer will use reasonable endeavours to assign or cause to be assigned to Council the benefit of any warranties, guarantees, Claims and causes of action obtained by the Developer with respect to any of the works, materials or goods incorporated in or forming part of the Intersection Works.

5. Defects Liability

- (a) During the Defects Liability Period Council may give to the Developer a rectification notice (Rectification Notice) including a reasonable period to remedy any defect.
- (b) Subject to the resolution of a dispute in accordance with this Deed the Developer is to comply with the Rectification Notice at its own cost and to the reasonable satisfaction of the Council.

Schedule 6 – The Dedication Terms

1. Dedication and Transfer of Land

- (a) The Developer must prepare and procure registration of any necessary plan of subdivision (Plan of Subdivision) to dedicate and transfer the Road Land at no cost to the Council.
- (b) The Road Land is to be used by Council for the Intersection Works and public road (including footpaths and nature strips).
- (c) In accordance with the timing provisions of Column 4 of Part B of Schedule 1, the Developer will appropriately execute and deliver to the Council any necessary Transfer and the items referred to in clause 1(d) and (e).
- (d) The Council is authorised to date and insert into the Transfer particulars of the title to enable the Transfer to be registered. For the avoidance of doubt, the date of the Transfer will be the date of the registration of the Plan of Subdivision creating the area or the lot to be dedicated/transferred to Council.
- (e) The Developer will deliver to Council at the same time it delivers the Transfer to Council:
 - (i) a letter addressed to the Registrar General (LPI) authorising and instructing the Registrar General (LPI) to forward the certificate of title to the Road Land to the Council following registration of the Plan of Subdivision;
 - (ii) if required by Council to permit the release of the certificate of title, a letter to the same effect from any mortgagee of the Road Land and the most recent lodging party (of the certificates of title relating to the Road Land) by the then registered proprietor;
 - (iii) discharges of all encumbrances affecting the Road Land to be dedicated to Council, including without limit:
 - (A) discharges of mortgages in registrable form in respect of all mortgages affecting the Road Land,
 - (B) withdrawals of caveats in registrable form in respect of any caveat (excluding a caveat lodged by Council under this Deed) affecting the Road Land.
 - (iv) a cheque in favour Land and Property Information, NSW for the registration fees on the Transfer and discharges of all encumbrances;

IBB

- (v) a current clear land tax certificate from Office of State Revenue in respect to the Road Land;
 - (vi) appropriate evidence of all outgoing rates having been paid in respect of the Road Land Dedication transfer; and
 - (vii) a clearance certificate within the meaning of s14-220 of Schedule 1 to the Taxation Administration Act 1953 for the period one month prior to the dedication of the Road Land,
- (f) Upon dedication and transfer of the Road Land to the Council the Developer will deliver to Council any updated certificates and appropriate evidence of the items referred to in clause 1(v), (vi) and (vii).

Signing page

EXECUTED as a deed.



The Common Seal of **Australian Executor Trustees Ltd** (ABN 84 007 869 794) was hereunto affixed with the authority of :

Signed arhayem

ANNETTE REHAYEM

Authorised Officer

← Pina Spathis ←
Signed

PINA SPATHIS

Authorised Officer

EXECUTED by **Cumberland Council** in accordance with section 683 of the *Local Government Act 1993*)
)
)
)
)

 M Ryan
Signature of General Manager
MALCOLM RYAN

Name of General Manager
(BLOCK LETTERS)

Resolution of the Council dated
30 November 2016
Authority of General Manager

InfoTrack
An Approved LPI NSW
Information Broker



LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 1/1160950

SEARCH DATE	TIME	EDITION NO	DATE
1/11/2016	1:13 PM	3	15/7/2013

LAND

LOT 1 IN DEPOSITED PLAN 1160950
AT AUBURN
LOCAL GOVERNMENT AREA CUMBERLAND
PARISH OF LIBERTY PLAINS COUNTY OF CUMBERLAND
TITLE DIAGRAM DP1160950

FIRST SCHEDULE

AUSTRALIAN EXECUTOR TRUSTEES LIMITED

SECOND SCHEDULE (5 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 AD972786 LEASE TO WAREHOUSING AND DISTRIBUTION SOLUTIONS PTY LIMITED OF BUILDING C, 1A QUEEN STREET, AUBURN.
EXPIRES: 14/1/2014.
- * AI615212 VARIATION OF LEASE AD972786 EXPIRY DATE NOW
31/12/2015.
- * AK403107 VARIATION OF LEASE AD972786 EXPIRY DATE NOW
30/9/2016.
- 3 AE179882 MORTGAGE TO NATIONAL AUSTRALIA BANK LIMITED
- 4 DP1160950 RIGHT OF CARRIAGEWAY 10 METRE(S) WIDE AFFECTING THE
PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 5 AH838866 THIS EDITION ISSUED PURSUANT TO S.111 REAL PROPERTY
ACT, 1900

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

160439

PRINTED ON 1/11/2016

* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register. InfoTrack an approved NSW Information Broker hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with Section 96B(2) of the Real Property Act 1900.

InfoTrack
An Approved LPI NSW
Information Broker

Title Search



LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 2/1160950

SEARCH DATE	TIME	EDITION NO	DATE
1/11/2016	1:13 PM	3	15/7/2013

LAND

LOT 2 IN DEPOSITED PLAN 1160950
AT AUBURN
LOCAL GOVERNMENT AREA CUMBERLAND
PARISH OF LIBERTY PLAINS COUNTY OF CUMBERLAND
TITLE DIAGRAM DP1160950

FIRST SCHEDULE

AUSTRALIAN EXECUTOR TRUSTEES LIMITED

SECOND SCHEDULE (9 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 G645364 EASEMENT FOR TRANSMISSION LINE 6.095 METRE(S) WIDE AFFECTING THE PART(S) SHOWN WO BURDENED IN THE TITLE DIAGRAM
- 3 J605225 EASEMENT FOR ELECTRICITY PURPOSES 3.05 METRE(S) WIDE AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 4 X485457 EASEMENT FOR ELECTRICITY PURPOSES 7.6 METRE(S) WIDE AND VARIABLE AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM
- * 5 5078517 LEASE TO AUSGRID (SEE AJ71566) OF SUBSTATION NO.1544 TOGETHER WITH RIGHT OF WAY & EASEMENT FOR ELECTRICITY PURPOSES OVER ANOTHER PART OF THE LAND ABOVE DESCRIBED SHOWN IN PLAN WITH 5078517. EXPIRES: 31/1/2048.
- 6 AE179882 MORTGAGE TO NATIONAL AUSTRALIA BANK LIMITED
- 7 AG110242 LEASE TO RECALL INFORMATION MANAGEMENT PTY LIMITED OF OFFICE 1A, WAREHOUSE 1B, WAREHOUSE4B, 1A QUEEN STREET, AUBURN. EXPIRES: 31/12/2015.
- * AK106916 VARIATION OF LEASE AG110242 EXPIRY DATE NOW 31/12/2016.
- 8 DP1160950 RIGHT OF CARRIAGEWAY 10 METRE(S) WIDE APPURTENANT TO THE LAND ABOVE DESCRIBED
- 9 AH838866 THIS EDITION ISSUED PURSUANT TO S.111 REAL PROPERTY ACT, 1900

NOTATIONS

DP1221148 PLAN OF PROPOSED EASEMENT

END OF PAGE 1 - CONTINUED OVER

160439

PRINTED ON 1/11/2016

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 2/1160950

PAGE 2

NOTATIONS (CONTINUED)

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

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PRINTED ON 1/11/2016

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Building C, 1A Queen Street
Auburn NSW 2144
Entrance Via Marion St & Kerr Pde.

Tel: 02 9643 5200
Fax: 02 9643 5233
Web: www.wads.com.au
Email: info@wads.com.au

1ST FEBRUARY 2016

BY EXPRESS POST

Land & Property Information, NSW
1 Prince Albert Road
Queens Square
SYDNEY NSW 2000

Dear Sirs/Madam,

Lots 1 and 2 in DP 1160950 (Land)
1A and 1B Queen Street, Auburn (Premises)

Warehouse and Distribution Solutions Pty Limited refers to its registered interest being dealing AD972786 registered on folio identifier Lot 1 of DP 1160950 (**Land**).

Warehouse and Distribution Solutions Pty Limited consents to the registration of the Request attaching a Voluntary Planning Agreement between AET Ltd ATF Auburn Ownership Trust and Cumberland Council. A copy of which has been provided to us by the registered proprietor.

Yours faithfully

Anil Kumar
Director
Warehousing & Distribution Solutions Pty Ltd

Warehousing & Distribution Solutions Pty Ltd ABN. 57 101 478 862



nabcorporate



THIS IS AN ANNEXURE TO VOLUNTARY PLANNING AGREEMENT BETWEEN
AET LTD ATF AUBURN OWNERSHIP TRUST ABN 84 007 869 794, CUMBERLAND
COUNCIL AND NATIONAL AUSTRALIA BANK LIMITED ABN 12 004 044 937


DATED

FOLIO IDENTIFIERS: 2/1160950 AND 1/1160950

NATIONAL AUSTRALIA BANK LIMITED ABN 12 004 044 937 as mortgagee under
Mortgage Registered No. AE179882 hereby consents to the within **Voluntary Planning
Agreement** but without prejudice to and reserving all its rights powers and remedies under
its security.

DATED at Sydney this 13 day of DECEMBER 2016

SIGNED SEALED AND DELIVERED for
and on behalf of **NATIONAL AUSTRALIA
BANK LIMITED ABN 12004 044 937** by
its Attorney who holds the position of
Level 3 Attorney under Power of Attorney
Registered No. 39 Book 4512 in the
presence of:



Witness Signature
YUNN CHIN
Analyst Client Support
NAB Corporate NSW & ACT

Print name



Attorney Signature
DANIEL MILLAR
SENIOR ASSOCIATE
NAB Corporate Property NSW

Print name

nabcorporate



THIS IS AN ANNEXURE TO VOLUNTARY PLANNING AGREEMENT BETWEEN
AET LTD ATF AUBURN OWNERSHIP TRUST ABN 84 007 869 794, CUMBERLAND
COUNCIL AND NATIONAL AUSTRALIA BANK LIMITED ABN 12 004 044 937


DATED

FOLIO IDENTIFIERS: 2/1160950 AND 1/1160950

NATIONAL AUSTRALIA BANK LIMITED ABN 12 004 044 937 as mortgagee under
Mortgage Registered No. AE179882 hereby consents to the within **Voluntary Planning
Agreement** but without prejudice to and reserving all its rights powers and remedies under
its security.

DATED at SYDNEY this 13 day of DECEMBER 2016

SIGNED SEALED AND DELIVERED for
and on behalf of NATIONAL AUSTRALIA
BANK LIMITED ABN 12004 044 937 by
its Attorney who holds the position of
Level 3 Attorney under Power of Attorney
Registered No. 39 Book 4512 in the
presence of:



Witness Signature
YUNN CHIN
Analyst Client Support
NAB Corporate NSW & ACT

Print name



Attorney Signature
DANIEL MILLAR
SENIOR ASSOCIATE
NAB Corporate Property NSW

Print name



Iron Mountain Australia Group Pty Ltd
ABN 25 024 270 991

Level 2 170-180 Bourke Rd Alexandria NSW 2015
Locked Bag 5031, South Sydney Business Hub

19 December 2016

Land & Property Information, NSW

1 Prince Albert Road

Queens Square

SYDNEY NSW 2000

Dear Sirs/Madam,

Lessee

Lots 1 and 2 in DP 1160950 (Land)

1A and 1B Queen Street, Auburn (Premises)

Recall Information Management Pty Limited refers to its registered interest being dealing AC110242 registered on folio identifier Lot 2 of DP 1160950 (Land).

Recall Information Management Pty Limited consents to the registration of the Request attaching a Voluntary Planning Agreement between AET Ltd ATF Auburn Ownership Trust and Cumberland Council. A copy of which has been provided to us by the registered proprietor.

Yours faithfully

A handwritten signature in black ink, appearing to read "Andrew Letfallah", written over a horizontal line.

Andrew Letfallah

Head, Operational Excellence & Property



TELEPHONE: (02) 8569 6584
EMAIL: development@ausgrid.com.au
REFERENCE: TRIM 2014/17392/11

ATTN: Justin Foong
1 Farrer Place
Sydney NSW 2000

570 George Street
Sydney NSW 2000
All mail to GPO Box 4009
Sydney NSW 2001
T +61 2 131 525
F +61 2 9269 2830
www.ausgrid.com.au

Re: - Queen St and Marion St Auburn - Reconstruct roundabout at intersection of Queen St and Marion St

This letter is Ausgrid's response under clause 45(2) of the State Environmental planning Policy (Infrastructure) 2007.

The assessment and evaluation of environmental impacts for a new development consent (or where a development consent is modified) is undertaken in accordance with requirements of Section 79C of the Environmental Planning and Assessment Act 1979. One of the obligations upon consent authorities, such as local councils, is to consider the suitability of the site for the development which can include a consideration of whether the proposal is compatible with the surrounding land uses and the existing environment.

In this regard, Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.

With Regard to: Reconstruct roundabout at intersection of Queen St and Marion St at Queen St and Marion St Auburn

- Pavement Plan Drawing No: 5905 (August 2016)

Ausgrid consents to the above mentioned development subject to the following conditions:-

Proximity to Existing Network Assets

Overhead Powerlines

There are existing overhead electricity network assets in Marion Street and Queen Street
Safework NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given the locating and operations of cranes and the location of any scaffolding.

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, www.ausgrid.com.au

Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site.

Underground Cables

There are existing underground electricity network assets in Marion Street and Queen Street
Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

Please do not hesitate to contact David Su on Ph: (02) 8569 6584 (please quote our ref: Trim 2014/17392/11) should you require any further information.

Yours Sincerely, David



David Su
Asset Protection Officer
Ausgrid - Network Operations
Ph: (02) 8569 6584


Consent of Lessee – Registered Lease 5078517

The lessee Alpha Distribution Ministerial Holding Corporation ABN 67 505 337 385 consents to the registration of this Request.

Signed, sealed and delivered for and on)
behalf of Alpha Distribution Ministerial)
Holding Corporation 67 505 387 385 in)
the presence of:)
)
)

 3/3/17

Signature of Witness



Signature of Agent for Rob Whitfield, NSW
Treasury Secretary (NSW Treasurer's
delegate under delegation dated
24 November 2015), on behalf of Alpha
Distribution Ministerial Holding
Corporation

VINCE TARI

Print name of Witness

ANGELO KRIZKOTOS

Name of Agent in full
3/3/17

126 Phillip Street Sydney NSW 2000