

MEMORANDUM

To: Secretariat - Sydney Western City Planning Panel

From: Gavin Cherry, Development Assessment Coordinator

Date: 14 October 2019

Subject: Development Application DA18/0264 – Construction of a Part Twelve (12) Storey & Part Fifteen (15) Storey Mixed Use Development including Basement, Podium Level 1 & Level 2 Car Parking, Ground Floor Business and Commercial Uses, 187 Residential Apartments & Construction and Dedication of a Public Road, Stormwater Drainage, Civil and Public Domain Works & Landscaping, Nos. 87 – 93 Union Road, Penrith

I refer to the above matter scheduled for determination with the Sydney Western City Planning Panel on 21 October 2019.

A Further Assessment Report Addendum has been prepared and referred to the Sydney Western Sydney Planning Panel in preparation for the above scheduled meeting. This report responds to a preliminary offer to enter into a voluntary planning agreement for the delivery of community infrastructure by the applicant.

Following the preparation and finalisation of that addendum report, a formalised letter of offer to enter into a voluntary planning agreement has now been received. The terms of the offer are consistent with the terms of the preliminary offer on which the addendum assessment report is based, and on which the development application is recommended for approval. Council's Community Infrastructure Panel have further considered the formalised offer and confirmed that their previous agreement to the offer, as outlined within the circulated assessment addendum report, remains in place.

To assist the Panel in the consideration of this matter, the formal letter of offer now received from the applicant is attached to this memorandum for circulation to the Panel Members having regard to the considerations outlined within Clause 8.7 of Penrith Local Environmental Plan 2010.

Further to this formal letter of offer, the applicant has also requested amendments to the recommended conditions of consent to enable staging of the development. The request seeks to construct the podium car park and Building 1 (southern building) within Stage 1 and to construct Building 2 (northern building) within a later stage (referred to as Stage 2). It is understood that this request relates to the intended staging of construction certificates.

A copy of the plans requested to be included within the staged conditions of consent are also attached to this memorandum. The request to include these plans and effectively stage construction of the development is being considered by Council and a further memorandum will be presented to the Panel at the above scheduled meeting. This advice will outline Council's position on the staging request and the implications of the requested staging on the full list of recommended conditions of consent as currently prepared.



Gavin Cherry
Development Assessment Coordinator



ANGEL PLACE
LEVEL 8, 123 PITT STREET
SYDNEY NSW 2000

URBIS.COM.AU
Urbis Pty Ltd
ABN 50 105 256 228

10 October 2019

Mr Peter Wood
Development Services Manager
Penrith City Council
via email

Dear Peter,

DA18_0264 - OFFER TO ENTER INTO A VOLUNTARY PLANNING AGREEMENT WITH PENRITH CITY COUNCIL

This letter of offer to enter into a Voluntary Planning Agreement is provided on behalf of Toga Penrith Developments.

Offer

Toga Penrith Developments (**developer**) offer to enter into a Voluntary Planning Agreement (**VPA**) under section 7.4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* with Penrith City Council (**the Council**).

This letter of offer supersedes all previous correspondence, including VPA letters of offer, issued in relation to DA18_0264.

Land to which the VPA applies

87-93 Union Road, Penrith, legally described as Lot 300 in Deposited Plan 1243401 (**Land**).

Development to which the VPA relates

The VPA will relate to DA18/0264, to be determined in its current form, under which the developer seeks consent for:

Construction of a Part Twelve (12) Storey & Part Fifteen (15) Storey Mixed Use Development including Basement, Podium Level 1 & Level 2 Car Parking, Ground Floor Business and Commercial Uses, 187 Residential Apartments & Construction and Dedication of a Public Road, Stormwater Drainage, Civil and Public Domain Works & Landscaping.

(Proposed Development)

This offer is made with consent of the registered owner(s) of the land.

Nature and timing of public benefits/contributions offered under the VPA

Nature and Extent

The nature and extent of the contributions offered under the VPA in connection with the Proposed Development, and the time and manner by which the contributions must to be made, are as follows:

1. Delivery of a new road on the Land (at no cost to Council) at the location shown on the plan at **Appendix C** which will include:
 - Design and construction of a new road which lies within the boundaries of the Land (**New Road**).
 - Construction of the civil works required to deliver the New Road including associated footpaths, landscape islands, kerb and gutter, asphalt roads, line markings, and road and street signage in accordance with relevant conditions of consent and Council civil construction specifications.
 - Provision of services required to deliver the New Road, including cut and demolition of existing hard stand area, excavation, concrete pipework, backfill, connection to existing main, surcharge inlet pits, street lighting to be connected into existing grid in consultation with the Council.
 - Associated professional fees and project management.

(the **Road Works**)
 2. Dedication of 1,623sqm of land to the Council for the purposes of the New Road and associated footpath and public domain works (**Land Dedication**) in the location shown on the plan at **Appendix C**.
- (collectively, the **Road Contribution**)
3. Monetary contributions in the amount of \$503,227.00 (**Monetary Contribution**), pursuant to satisfaction of the section 7.11 developer contributions applicable to the Proposed Development, being the Penrith City Cultural Facilities Development Contributions Plan (**Cultural Facilities Plan**) and Penrith City District Open Space Facilities Development Contributions Plan (**District Open Space Plan**).

Timing

The Road Works and Land Dedication will be completed prior to the issuance of the first occupation certificate for the Proposed Development.

The Monetary Contribution will be paid prior to the issuance of a construction certification in relation to the Proposed Development.

Conditions of the VPA Offer - Road Contribution and Monetary Contribution

The developer's offer of the Road Contribution and Monetary Contribution is contingent on the following:

1. The Road Contribution will be taken to fully satisfy:
 - a) any Community Infrastructure Contributions payable, calculated in accordance with the Penrith City Community Infrastructure Policy (**the Policy**), in respect of the Proposed Development; and
 - b) any section 7.11 developer contributions payable in respect of the Proposed Development calculated in accordance with the Penrith City Centre Civic Improvement Plan (**Civic Centre Improvement Plan**).

- Table 1 – Value of Contributions Required by the Council Policy and Contributions Plans**

Policy	Contribution required for the Development
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Community Infrastructure Contribution Levy under the Penrith City Community Infrastructure Policy <i>Based on \$150/sqm GFA above the height of building control plus 10% design excellence</i>	<p>\$1,257,795</p>
Applicable S7.11 Developer Contributions (Civic Centre Improvement Plan, Cultural Facilities, and District Open Space) <i>To be indexed annually against CPI as per the terms of the relevant contributions plan</i>	<p><i>Civic Centre Improvement Plan - \$2,067,285</i></p> <p><i>Cultural Facilities - \$76,745</i></p> <p><i>District Open Space - \$739,772</i></p> <p>Total: \$2,883,802</p>
Total Value of Contributions Required	<p>\$4,141,597</p>

Policy	Value of
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	Public Benefit Offer
Agreed amount for the dedication of the New Road land <i>69% of the total land dedication area</i> <i>The agreed amount does not represent the market value for the highest and best use potential for the land</i>	\$2,001,000
S7.11 Developer Contributions Construction of New Road <i>69% of the construction of the new road delivered as a public benefit</i> Cultural Facilities and District Open Space	 \$1,637,370 <i>Cultural Facilities - \$76,745</i> <i>District Open Space - \$426,482</i>
Agreed Total Offer Amount	\$4,141,597



By way of summary, the conditions of the developer's offer to enter into a VPA in accordance with this letter are as follows:

- under the Council Policy and the relevant section 7.11 contributions plans the developer is required to pay **\$4,141,597.00** in contributions (**Table 1**);
- under the VPA, the developer is offering **\$4,141,597.00** by way of the Road Contribution and Monetary Contributions (**Table 2**).

For avoidance of doubt, the Land includes both the eastern and western parcels of Lot 300 in Deposited Plan 1243401.

The developer is open to considering further refinements to the terms of this offer letter as may be desired by Council (with the total developer's offer amount capped at \$4,141,597) subject to mutual agreement being reached with Council in relation to such refinements.

Time when the VPA would be entered into

The VPA would be entered into by the developer and the Council *after* any approval has been granted to the DA in the form currently proposed, and prior to construction commencement for the Proposed Development.

Commencement of the VPA

The VPA is to take effect on execution by the developer and the Council.

Application of s7.11, s7.12 and s7.24 to the Development

The VPA will exclude the application of sections 7.11 and 7.12 of the EP&A Act to the Proposed Development unless otherwise specified by the terms of the offer.

The VPA is to include a provision to the effect that the Council must in determining the application of a section 7.11 or section 7.12 contribution or levy to the Development and any future development on the Land, take into consideration the benefits provided by the developer under the VPA as required under section 7.4(3)(e) of the EP&A Act.

The VPA will not exclude the application of section 7.24 of the EP&A Act to the Proposed Development.

Registration

The VPA is to be registered on the title of the Land.

Assignment and dealings

Although the developer has no current or future plans or proposal to assign or transfer its interest in the Land, it is proposed for the VPA to include a provision dealing with assignment and the transfer of the developer's interest in Land.

The provision will be to the effect that if the developer enters into an agreement with a third party to sell, transfer, assign or novate or similarly deal with its right, title or interest in the Land or its rights or obligations under the VPA, the developer may not complete the sale, transfer, assignment or novation, unless before completion of the relevant transaction, the developer:



- (a) at no cost to the Council, has first procured the execution by the third party of an agreement in favour of the Council on the same terms as the VPA as if the third party were a party to the VPA; and
- (b) satisfies the Council that it is not in breach of its obligations under the VPA at the time of completion of the transaction with the third party.

The above requirements are not to operate where:

- (a) the developer provides notice to the Council that it will retain responsibility for the contributions under the VPA;
- (b) the contributions obligations under the VPA have been satisfied; or
- (c) the transaction is by way of a mortgage or charge.

Resolution of disputes

Any dispute under the VPA is to be resolved by expert determination or mediation in accordance with processes specified in the VPA.

Legal costs

The VPA is to provide that each party is to pay its own legal and other costs incurred relating to the VPA.

Other matters

The VPA is to include a provision to the effect that the VPA does not limit or fetter in any way the exercise of any statutory discretion or duty imposed on the Council.

The VPA is to include administrative provisions relating to:

- (d) notices;
- (e) entire agreement;
- (f) governing law and jurisdiction – in this case New South Wales;
- (g) the process for amending the VPA;
- (h) waiver; and
- (i) execution of the VPA in counterparts.

Should you have any questions regarding the content included within this Letter of Offer, please contact me.

Yours sincerely,



A handwritten signature in black ink, appearing to read "John Wynne". The signature is fluid and cursive, with the first name "John" and last name "Wynne" clearly distinguishable.

John Wynne
Group Director

Appendix A – Cost Plan Summary

Appendix B – Land Valuation Report

Appendix C – Draft Subdivision Plan

Appendix D – Owners Consent

Appendix A – Cost Plan Summary

Bernardo Reiter Landa
Toga Pty Ltd
Level 5, 45 Jones St, Ultimo
Sydney NSW 2007

12 August 2019

Dear Sir,

PENRITH VPA – STAGE 1

As requested, we have prepared a VPA Estimate for Stage 1 (which includes the new road connecting Union Road and High Street and associated footpath and landscaping works surrounding the new road) of this project and advise you that WTP's VPA Cost Estimate totals \$2,373,000 excluding GST.

The above cost estimate is based on the following information issued to WTP:

1. New Road – Stage 1 Road Works Area
2. RBG-DA SET-05.05.19 (4)
3. Email; TOGA - Updating cost plan for VPA works at Penrith

The following are excluded from the cost estimate:

1. Land costs, legal fees, interest charges and financing costs
2. Development Application fees and charges
3. Statutory authority fees and charges (Telstra, Integral Energy, Sydney Water and Agility)
4. Full remediation of the proposed road site
5. Artworks and sculptures
6. Development Management Fees
7. Professional Fees

Should you require any further information or wish to discuss any aspect of the attached, please do not hesitate to contact us.

Yours faithfully
WT PARTNERSHIP



IAN MENZIES
National Director

WTP Australia Pty Ltd ACN 605 212 182 ABN 69 605 212 182
Level 26, 45 Clarence Street Sydney NSW 2000
T: +61 2 9929 7422 E: sydney@wtpartnership.com.au



Appendix B – Land Valuation

Privileged and Confidential

9th August 2019

Toga Penrith Developments Pty Ltd
Level 5, 45 Jones Street,
ULTIMO NSW 2007
Attention: Ms Kate Hemphill

Dear Kate,

**Re: Toga Penrith Developments Pty Ltd - Dedication of Land under VPA
87 to 93 Union Road Penrith, Part Lot 300 DP 1243401**

Further to the written instructions from Addisons on your behalf we have enclosed our assessment of the Market Value of the land proposed to be acquired for road purposes (the New Road), in relation to the VPA.

Our assessment of the Market Value of the New Road land is \$5,280,000 in accordance with the compensation payable under section 55(a) of the *Land Acquisition (Just Terms Compensation) Act 1991*.

Yours sincerely
Dempsey Valuation and Advisory

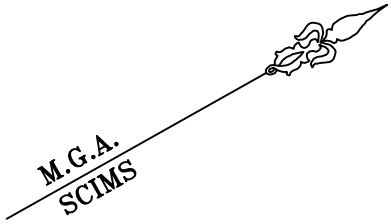


Peter A. Dempsey, FAPI
Director

Appendix C – Draft Subdivision Plan

PLAN FORM 6 (2017)	DEPOSITED PLAN ADMINISTRATION SHEET	Sheet 1 of 2 sheet(s)
<div style="text-align: right;">Office Use Only</div> Registered: Title System:	<div style="text-align: right;">Office Use Only</div> <h1 style="text-align: center;">DRAFT</h1> <h2 style="text-align: center;">PRINTED 9 AUG 2019</h2> <h3 style="text-align: center;">ISSUE 1</h3>	
PLAN OF PROPOSED SUBDIVISION OF LOT 100 IN DP 1241802 FOR ROAD DEDICATION PURPOSES	LGA: PENRITH Locality: PENRITH Parish: MULGOA County: CUMBERLAND	
<div style="text-align: center;">Survey Certificate</div> I, KARL ROBERTSON of Veris Australia Pty Ltd Suite 301 Level 3 55 Holt St Surry Hills NSW 2010 a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i> , certify that *(a) The land shown in the plan was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2017</i> , is accurate and the survey was completed on: _____, or *(b) The part of the land shown in the plan (*being/*excluding** _____) was surveyed in accordance with the <i>Surveying and Spatial</i> <i>Information Regulation 2017</i>, the part surveyed is accurate and the survey was completed on, _____ the part not surveyed was compiled in accordance with that Regulation, or *(c) The land shown in this plan was compiled in accordance with the <i>Surveying and Spatial Information Regulation 2017</i>. Datum Line: 'X' - 'Y' Type: *Urban/* Rural The terrain is *Level-Undulating / *Steep-Mountainous . Signature: _____ Dated: _____ Surveyor Identification No: 7835 Surveyor registered under the <i>Surveying and Spatial Information Act 2002</i> <small>*Strike through if inapplicable. ^Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.</small>	<div style="text-align: center;">Crown Lands NSW/Western Lands Office Approval</div> I..... (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given. Signature: Date: File Number: Office: <div style="text-align: center;">Subdivision Certificate</div> I..... *Authorised Person/*General Manager/*accredited Certifier, certify that the provisions of s.109J of the <i>Environmental Planning and</i> <i>Assessment Act 1979</i> have been satisfied in relation to the proposed subdivision, new road or reserve set out herein. Signature: Accreditation number: Consent/Authority: Date of Endorsement: Subdivision Certificate no: File number: *Strike through if inapplicable	
Plans used in the preparation of survey/ compilation	STATEMENTS of intention to dedicate public roads, public reserves and drainage easements, acquire/resume land. <p style="text-align: center;"><i>IT IS INTENDED TO DEDICATE LOT 7 TO THE PUBLIC AS PUBLIC ROAD</i></p> If space is insufficient continue on PLAN FORM 6A	
SURVEYORS REFERENCE: 170912 DROAD	Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A	

PLAN FORM 6A (2017)		DEPOSITED PLAN ADMINISTRATION SHEET	Sheet 2 of 2 sheet(s)
Office Use Only		Office Use Only	
Registered:		<h1 style="text-align: center;">DRAFT</h1> <h2 style="text-align: center;">PRINTED 9 AUG 2019</h2> <h3 style="text-align: center;">ISSUE 1</h3>	
PLAN OF PROPOSED SUBDIVISION OF LOT 100 IN DP 1241802 FOR ROAD DEDICATION PURPOSES			
Subdivision Certificate No: Date of Endorsement:		This sheet is for the provision of the following information as required: <ul style="list-style-type: none"> • A schedule of lots and addresses - See 60(c) SSI Regulation 2017 • Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919 • Signatures and seals - see 195D Conveyancing Act 1919 • Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets. 	
If space is insufficient use additional annexure sheet			
SURVEYORS REFERENCE: 170912 DROAD			



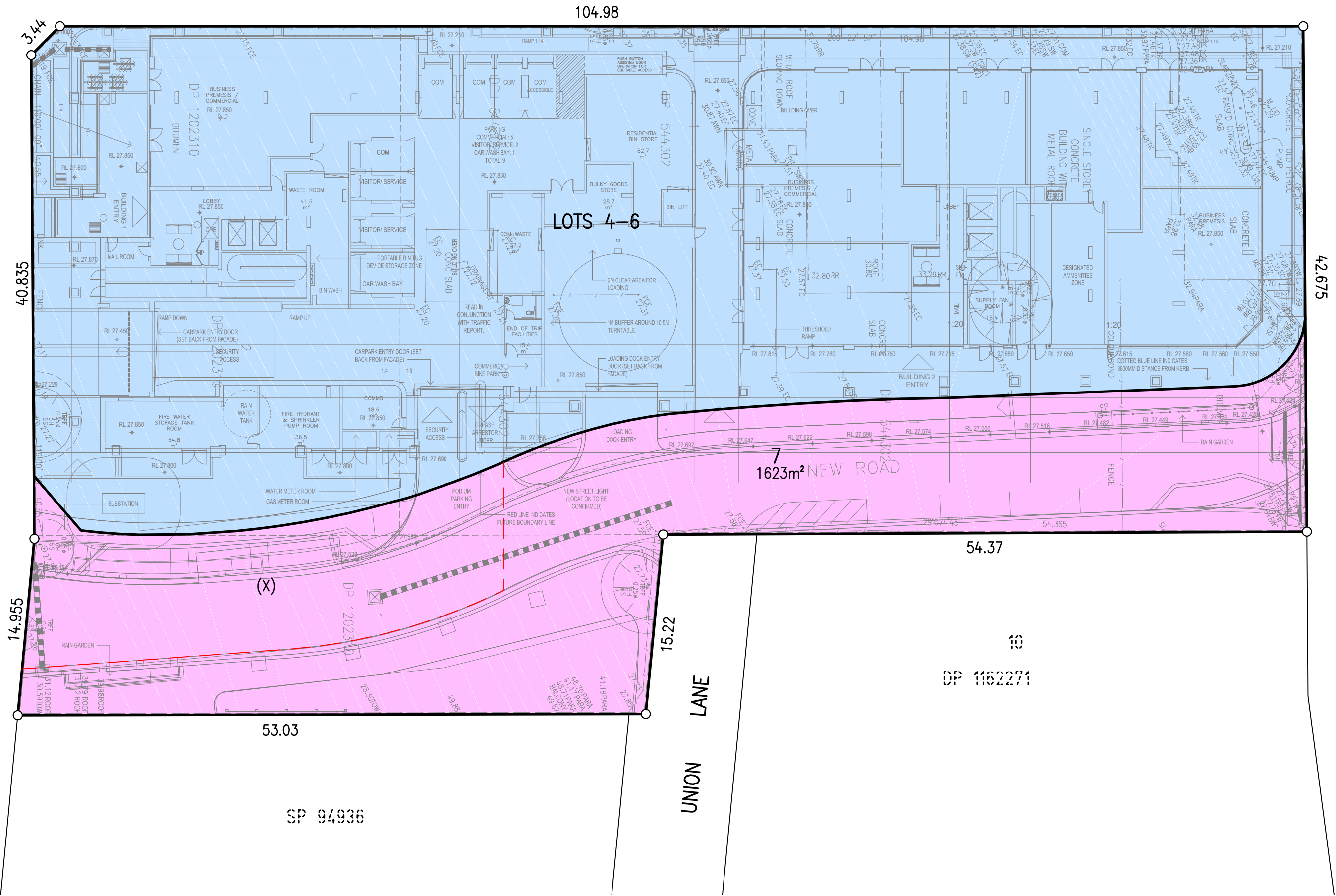
JOHN

TIPPING

GROVE

UNION ROAD

GREAT WESTERN HIGHWAY



NOTE : BOUNDARY AND AREAS SUBJECT TO FINAL SURVEY
IT IS INTENDED TO DEDICATE LOT 7 TO THE PUBLIC AS PUBLIC ROAD
(X) 441.8m²

<div>SURVEYOR</div> <div>Name: KARL ROBERTSON</div> <div>Date:</div> <div>Reference: 170912 DROAD</div>	<div>PLAN OF PROPOSED SUBDIVISION OF</div> <div>LOT 100 IN DP 1241802 FOR ROAD</div> <div>DEDICATION PURPOSES</div>	<div>LGA: PENRITH</div> <div>Locality: PENRITH</div> <div>Reduction Ratio: 1:300</div> <div>Lengths are in metres.</div>	<div>REGISTERED</div> <div>CONTRACT PLAN</div> <div>Plan compiled from</div> <div>architectural CAD data.</div> <div>Plan is subject to final</div> <div>survey after completion</div> <div>of construction.</div>	<div>DRAFT</div> <div>PRINTED 9 AUG 2019</div> <div>ISSUE 1</div>
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Appendix D – Owner’s Consent

9 August 2019



Mr Peter Wood
Development Services Manager
Penrith City Council

Dear Peter,

Re: Toga Penrith Developments Pty Limited

Toga Penrith Developments Pty Ltd (TOGA) is the owner of the property identified by 87-89 Union Road, Penrith, Lot 300 DP123401 (the Site).

TOGA hereby provides owners consent to lodge the VPA letter of offer in relation to DA18/0264. All persons listed in Schedule A are authorised to execute, negotiate and lodge any applications, documents and proposals for *the Site*.

SCHEDULE A

Toga Penrith Developments Pty Limited

Allan Vidor, Director
Adrian Whiting, Company Secretary
Fabrizio Perilli, Chief Executive Officer
Kate Hemphill, Group General Counsel

Adam Marrs Ekamper, CFO
Paul Shaw, Executive General Manager Development
Lauren Williams, Project Director

Executed by **Toga Penrith Developments Pty Ltd** in accordance with section 127(1) of the Corporations Act 2001:

Lauren Williams - Project Director

Name of Company Secretary / Director (print)



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Nominated Architects: Adam Haddow-7188 | John Pradel-7004

Rev	Date	Revision
33	15.06.2018	ISSUE FOR DA - VERSION 2
61	17.10.2018	ISSUED FOR FINAL REVIEW

Structural Engineer
Webber Design
Mechanical / Hydraulic Engineer
JHA Consulting Engineers
Electrical Engineer
JHA Consulting Engineers
Fire Engineer
Olsson Fire & Risk
Access Consultant
Accessible Building Solutions
Basix
EMF Griffiths
Building Key



Project
634-652 HIGH ST & 87-91 UNION RD,
PENRITH

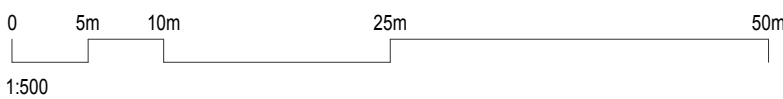
Drawing Name
Staging Plan- Construction
Staging Diagram, Plan

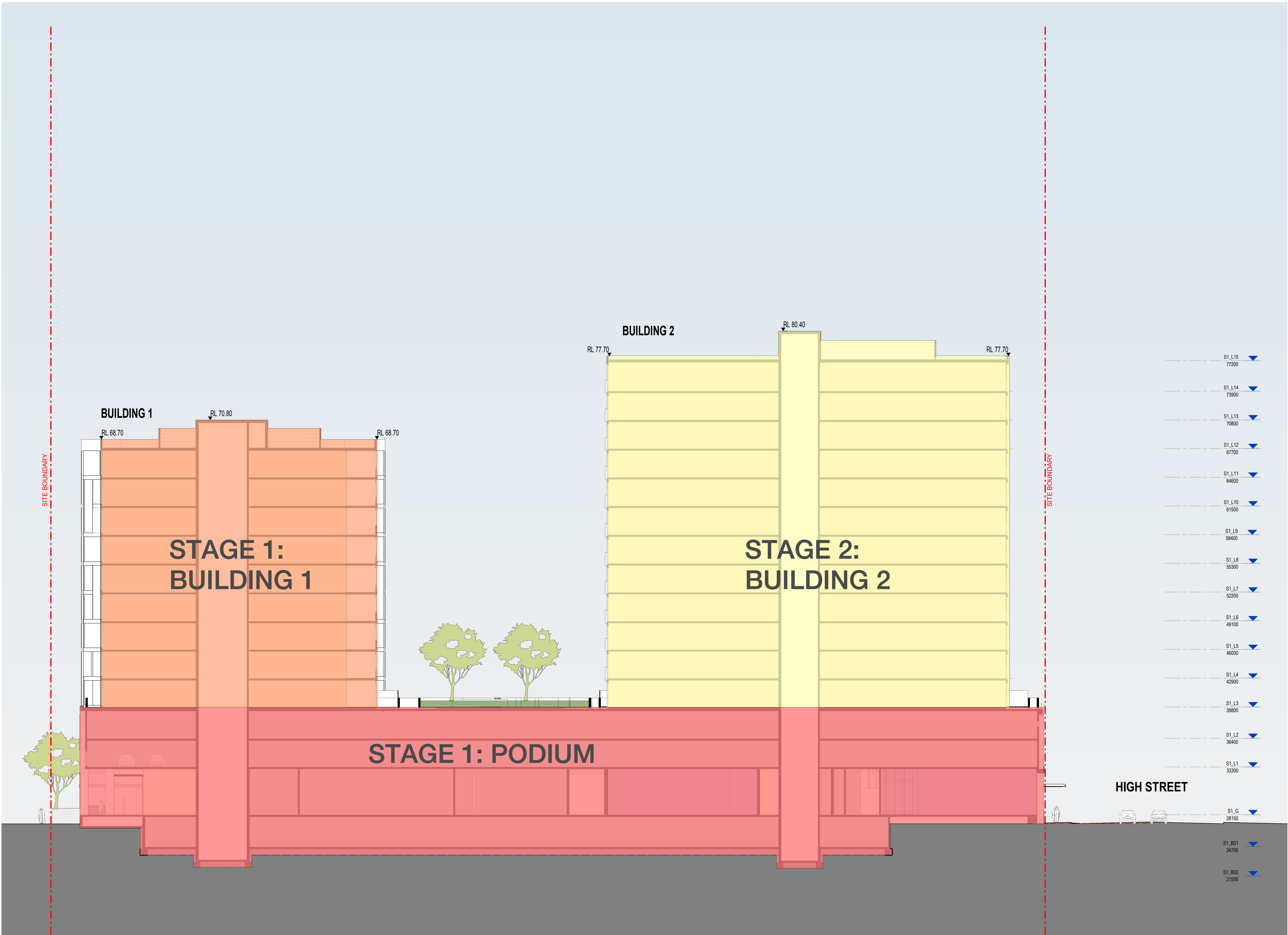
Date	Scale	Sheet Size
17.10.2018	1 : 500	@ A1

Drawn	Chk.
JR	KL

Job No.	Drawing No.	Revision
5754	AR-1-0102A51	

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Nominated Architects: Adam Haddow-7188 | John Pradel-7004

Rev	Date	Revision
33	15.06.2018	ISSUE FOR DA - VERSION 2
51	17.10.2018	ISSUED FOR FINAL REVIEW

Structural Engineer

Webber Design

Mechanical / Hydraulic Engineer

JHA Consulting Engineers

Electrical Engineer

JHA Consulting Engineers

Fire Engineer

Olsson Fire & Risk

Access Consultant

Accessible Building Solutions

Basix

EMF Griffiths

Building Key

Client



Project

634-652 HIGH ST & 87-91 UNION RD,
PENRITH

Drawing Name

Staging Plan- Construction
Staging Diagram, Section

Date	Scale	Sheet Size
17.10.2018	1 : 200	@ A1

Drawn Chk.

JR KL

Job No.	Drawing No.	Revision
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5754 AR-1-0102B/51

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