

**Minister for Planning**  
ABN 38 755 709 681

and

**Scentre Limited**  
ACN 000 317 279

and

**Orta Pty Ltd**  
ACN 008 617 810

**Planning Agreement**

**Environmental Planning and Assessment Act 1979**

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THIS deed is dated

2015

## PARTIES:

**MINISTER FOR PLANNING** (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney, New South Wales, 2000 (**Minister**) and

**SCENTRE LIMITED** (ACN 000 317 279) (formerly known as Westfield Limited) of Level 30, 85 Castlereagh Street, Sydney New South Wales, 2000 (**Developer**) and

**ORTA PTY LTD** (ACN 008 617 810) of Level 30, 85 Castlereagh Street, Sydney New South Wales, 2000 (**Developer**).

## INTRODUCTION:

- A** The Developer owns the Land.
- B** The Developer proposes to develop the Land for commercial, retail and other uses consistent with B4 Mixed Use zone, including use as a bulky goods/retail outlet and associated car parking development, and seeks an amendment of the LEPs (or such other relevant local environmental plan in respect of the Land in force at the time the Land is rezoned) (**the LEPs**) to rezone the Land to Zone B4 Mixed Use as reflected in the Standard Instrument – Principal Local Environmental Plan.
- C** The Land is part of a larger site that is proposed to be rezoned (**Deferred Land**). The Developer has requested that the Deferred Land, which includes the Land, be rezoned with a combination of the following zones: RU6 Transition, R1 General Residential, B3 Commercial Core, B4 Mixed Use and E2 Environmental Conservation. The EIE for the proposed amendments to the LEPs that relate to the proposed rezoning of the Deferred Land was publicly exhibited from 17 September 2014 to 20 October 2014 (**EIE**).
- D** Subject to approval of the EIE, and the proposed amendments to the LEPs being made, the Developer proposes to make one or more Development Applications to the Consent Authority in respect of the Land.
- E** Before the Minister can consider amending the LEPs to rezone the Land, the Minister must be satisfied that satisfactory arrangements have been made to adequately contribute to the provision of State infrastructure in respect of the Land. The Developer has agreed to enter into this deed to satisfy the Minister in this regard.

## IT IS AGREED:

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

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

**Address for Service** means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

**Approval** means any approval, consent, authorisation, licence, registration, order, permission, concurrence, Subdivision Certificate, Construction Certificate, Occupation Certificate or Complying Development Certificate which may be required to carry out the Development.

**Authority** means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

**Bank Guarantee** means an irrevocable and unconditional undertaking:

- a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

**Business Day** means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in NSW, and concludes at 5 pm on that day.

**Complying Development Certificate** has the same meaning as in the Act.

**Consent Authority** means Wyong Shire Council.

**Construction Certificate** has the same meaning as in the Act.

**Defect Liability Period** means either:

- a) where the expression is defined in a Works Authorisation Deed, the definition of "Defect Liability Period" in that agreement; or
- b) where the expression is not defined in a Works Authorisation Deed, 12 months from the date on which RMS notified the Developer in writing that Practical Completion of the Works has been achieved.

**Deferred Land** means the land marked by a heavy line and labelled "Subject Land" on the plan attached to this deed at **Annexure C**.

**Development** means the development of the Land for commercial and retail uses and other uses consistent with B4 Mixed Use zone, including use as a bulky goods/retail outlet, and associated car parking development, generally in accordance with the EIE and the Tuggerah Town Centre Planning Report dated July 2014 prepared by the Department of Planning and Environment. It could also include development of the Land for other uses that become permissible if the Land is rezoned as Zone B4 Mixed Use under the proposed amendment to the LEP, including but not limited to Residential Flat Buildings.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means the Road Works Contribution to be provided by the Developer in accordance with Schedule 4 of this Deed.

**EIE** means the Explanation of Intended Effect of the proposed amendments to the LEPs to rezone the Deferred Land, including the Land, which was publicly exhibited by the Department of Planning and Environment from 17 September 2014 to 20 October 2014. The EIE includes the proposed changes to the LEPs that relate to the Land and to which this deed applies.

**Explanatory Note** means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

**General Register of Deeds** means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

**GST** means any form of goods and services tax payable under the GST Legislation.

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insurance Bond** means an irrevocable and unconditional undertaking:

- a) by an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

**Land** means the land described in Schedule 3 of this deed.

**Legislative Requirements** include:

- a) an act, ordinance, regulation, by-law, order, award and proclamation of the Commonwealth and the State of New South Wales;
- b) Approval of an Authority (including any condition or requirement under an Approval); and
- c) any requirement to pay fees and charges in connection with paragraphs a) and b).

**LEPs** means the Wyong Local Environmental Plan 1991 and the Wyong Local Environmental Plan 2013.

**Minister** means the Minister for Planning from time to time and includes the Minister's nominee.

**Planning Application** means:

- a) a Development Application; or
- b) any other application required under the Act,

which seeks approval for the subdivision of the Land.

**Practical Completion** means either:

- a) where the expression is defined in a Works Authorisation Deed, the definition of "Practical Completion" in that agreement;
- b) where the expression is not defined in a Works Authorisation Deed, that stage in the execution of the Works under this deed:

- A. the Works (including any associated works necessary for public access) have been completed and are ready for their intended public use and occupation or handover to a relevant Authority, as the case may be, except for minor omissions and minor defects which:
  - (i) have been so identified on a list issued to the Developer by RMS,
  - (ii) do not impede the use of the Works by the public for the continuous safe passage of vehicular traffic and pedestrians;
  - (iii) will not prejudice the convenient and safe use of the Works during rectification; and
  - (iv) the RMS Representative determines that the Developer has reasonable grounds for not rectifying prior to public use and occupation;
- B. all inspections and tests necessary to be carried out and passed before the Works, or a part thereof, are used and occupied by the public or handed over to a relevant Authority have been carried out and passed, and all test results and conformance data from these inspections and tests have been provided to RMS;
- C. all relevant Legislative Requirements in respect of the Works have been carried out or satisfied;
- D. all documents, certifications and information required under this deed which, in the opinion of RMS, are essential for the use, operation and maintenance of the Works have been supplied, including all shop drawings and draft as-built drawings, all original manufacturers' or suppliers' warranties required by this deed, all Approvals required to be obtained have been obtained from relevant Authorities and all other material provided as requested by RMS; and
- E. with the approval of RMS, the Developer has commissioned into operation the Works including all plant incorporated into the Works and any traffic signalling equipment and demonstrated to the satisfaction of RMS that the commissioning has been successful.

**Real Property Act** means the *Real Property Act 1900* (NSW).

**Register** means the Torrens title register maintained under the Real Property Act.

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

**Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Road Works** means the Road Works - Left In/Left Out Works and the Road Works - Intersection Traffic Light Work.

**Road Works Contribution** means the carrying out and completion of the Road Works - Left In/Left Out Works and the Road Works - Intersection Traffic Light Work by the Developer as set out in Schedule 4.

**Road Works – Left In/Left Out Works** means the left in/left out works on Wyong Road as shown on the plan attached to this deed at **Annexure A**.

**Road Works – Intersection Traffic Light Works** means the upgrade of the intersection of Tonkiss Street and Wyong Road to full traffic signal control as shown on the plan attached to this deed at **Annexure A**.

**RMS** means Roads Maritime Services.

**RMS Representative** means either:

- a) where the expression is defined in a Works Authorisation Deed, the definition of "RMS Representative" in that agreement; or
- b) where the expression is not defined in a Works Authorisation Deed, means the authorised representative of RMS as advised by RMS from time to time.

**Secretary** means the Secretary of the Department of Planning and Environment from time to time.

**Security** means the Bank Guarantee or Insurance Bond.

**SEPP** means the State environmental planning policy that will be made in accordance with Part 3, Division 2 of the Act that is consistent with the EIE.

**Special Infrastructure Contribution** means a contribution determined in accordance with section 94EE of the Act with respect to the Land.

**Total Floor Area** means the cumulative sum of the floor area in square metres of each floor of each building on the Land measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- a) the area of a mezzanine, and
  - b) habitable rooms in a basement or an attic, and
  - c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes:
- d) any area for common vertical circulation, such as lifts and stairs, and
  - e) any basement:
    - (i) storage, and
    - (ii) vehicular access, loading areas, garbage and services, and
  - f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
  - g) car parking to meet any requirements of the consent authority (including access to that car parking), and
  - h) any space used for the loading or unloading of goods (including access to it), and
  - i) terraces and balconies with outer walls less than 1.4 metres high, and
  - j) voids above a floor at the level of a storey or storey above.



**Tax** means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

**Works** means either:

- a) where the expression is defined in a Works Authorisation Deed, the definition of "Works" in that agreement; or
- b) where the expression is not defined in a Works Authorisation Deed, Road Works within the meaning of this deed.

**Works Authorisation Deed** means a work authorisation deed or other legally binding agreement between the Developer and the RMS which:

- a) governs the carrying out and completion of the Road Works - Left In/Left Out Works and/or the Road Works - Intersection Traffic Light Work;
- b) includes a date upon which the Road Works - Left In/Left Out Works and/or the Road Works - Intersection Traffic Light Work must reach practical completion; and
- c) includes a mechanism for appropriate security to be provided by the Developer to guarantee the carrying out of the Road Works - Left In/Left Out Works and/or the Road Works - Intersection Traffic Light Work.

## 1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- f) the **schedules** form part of this deed;
- g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;

- h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- i) a reference to a **corporation** includes its successors and permitted assigns;
- j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- l) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- m) **including** and **includes** are not words of limitation;
- n) a word that is derived from a defined word has a corresponding meaning;
- o) **monetary amounts** are expressed in Australian dollars;
- p) the singular includes the plural and vice-versa;
- q) words importing one gender include all other genders;
- r) a reference to a thing includes each part of that thing; and
- s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## **2 OPERATION AND APPLICATION OF THIS DEED**

### **2.1 Operation**

This deed will commence from the date the SEPP rezones the Land to Zone B4 Mixed Use, if the Land is so rezoned.

### **2.2 Planning agreement under the Act**

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

### **2.3 Application**

This deed applies to:

- a) the Land; and
- b) the Development; and
- c) the proposed amendments to the LEPs consistent with the EIE.

### **3 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT**

- 3.1** The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

### **4 DEVELOPMENT CONTRIBUTION**

#### **4.1 Developer to provide Development Contribution**

The Developer undertakes to provide or procure the provision of, to the Minister or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4 to this deed.

### **5 ENFORCEMENT**

#### **5.1 Developer to provide security**

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5.

### **6 REGISTRATION**

#### **6.1 Registration of deed**

Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense will take all practical steps and otherwise do anything to procure:

- a) the consent of each person who:
  - (i) has an estate or interest in the Land registered under the Real Property Act; or
  - (ii) is seized or possessed or an estate or interest in the Land; and
- b) the execution of any documents; and
- c) the production of the relevant certificates of title; and
- d) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

#### **6.2 Evidence of registration**

The Developer will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

#### **6.3 Release and discharge of deed**

- a) The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

- b) If this deed is registered on any other land which is not part of the Land as a result of an error on the Register or otherwise, the Minister will if requested by the Developer assist the Developer to release and discharge this deed with respect to such other land which is not part of the Land.

#### **6.4 Developer's Interest in Land**

The Developer represents and warrants that it is:

- a) the owner of the Land; or
- b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 6.1 of this deed; and
- c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by subclause a) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 6.

### **7 DISPUTE RESOLUTION**

#### **7.1 Not commence**

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 7.

#### **7.2 Written notice of dispute**

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

#### **7.3 Attempt to resolve**

On receipt of notice under clause 7.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

#### **7.4 Mediation**

If the parties do not agree within 21 Business Days of receipt of notice under clause 7.2 (or any further period agreed in writing by them) as to:

- a) the dispute resolution technique and procedures to be adopted;
- b) the timetable for all steps in those procedures; or
- c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program of the Law Society of NSW as published on its website and as varied from time to time. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

## **7.5 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2 then any party which has complied with the provisions of this clause 7 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

## **7.6 Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 7 for any purpose other than in an attempt to settle the dispute.

## **7.7 No prejudice**

This clause 7 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

# **8 GST**

## **8.1 Definitions**

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

## **8.2 Intention of the parties**

The parties intend that:

- a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

## **8.3 Reimbursement**

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

## **8.4 Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 8.

## **8.5 Additional Amounts for GST**

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer will ensure that:

- a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- b) the Developer provides a Tax Invoice to the Minister.

## **8.6 Non-monetary consideration**

Clause 8.5 applies to non-monetary consideration.

## **8.7 Assumptions**

The Developer acknowledges and agrees that in calculating any amounts payable under clause 8.5 the Developer will assume the Minister is not entitled to any input tax credit.

## **8.8 No merger**

This clause will not merge on completion or termination of this deed.

# **9 ASSIGNMENT**

## **9.1 Consent**

This deed is personal to each party and no party may assign the rights or benefits of this deed to any person except:

- a) to a Related Body Corporate, after obtaining the consent of the Minister, which the Minister must not withhold if he is reasonably satisfied that the Related Body Corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or
- b) to any other person, with the prior consent of the Minister, which the Minister may give, give conditionally or withhold in its absolute discretion.

**9.2** The Minister may require, as a condition of any consent given under this clause 9, that the proposed assignor and assignee of rights or benefits of this document enter into a deed with the Minister (**Novation Deed**), giving the Minister such assurance of ongoing satisfaction of the proposed assignor's obligations under this document as the Minister (acting reasonably) considers appropriate, including the provision of appropriate security in accordance with clause 5.1 and Schedule 5 of this Deed and an indemnity in favour of the Minister in respect of any breach of this document by the proposed assignor.

**9.3** The Minister may assign the rights and benefits of this document in his absolute discretion, without the need for consent from the Developer.

## 10 DEALINGS WITH LAND

- a) Subject to where there has been a release and discharge of this deed under clause 6.3 in respect of the whole or any part of the Land to which this clause 10 relates, the Developer may not sell, transfer, assign, dispose of or mortgage the whole or any part of the Land (**Dealing**) unless, before the Developer enters into a Dealing with another person (**Land Transferee**):
  - (i) the Developer satisfies the Minister (acting reasonably) that the proposed Land Transferee is financially capable of complying with those of the Developer's obligations under this deed which the Minister (acting reasonably) specifies, by notice in writing to the Developer, must be adopted by the Land Transferee (**Required Obligations**);
  - (ii) the Land Transferee signs a deed in favour of the Minister (**Novation Deed**) under which the Land Transferee agrees to comply with the Required Obligations as if it were the Developer, as appropriate (including the provision of appropriate security in accordance with clause 5.1 and schedule 5 of this deed and other obligations which arose before the Dealing), and to indemnify the Minister in respect of any breach of this deed by the Developer;
  - (iii) any default by the Developer has been remedied by the Developer (as appropriate), unless that default has been waived expressly by the Minister; and
  - (iv) the Developer and the Land Transferee pay the Minister's reasonable costs in relation to that Dealing, including, without limitation, legal and administrative costs.
- b) If the Developer enters into a Dealing and fully satisfies the requirements of clause 10 a) with respect to that Dealing, the Developer (as appropriate) will be released from its obligations under this deed with respect to the land the subject of that Dealing.

## 11 CAPACITY

### 11.1 General warranties

Each party warrants to each other party that:

- a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

### 11.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

## 12 REPORTING REQUIREMENT

- a) On each anniversary of the date of this deed or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report which must include those matters set out in clauses 12 b) and c), as applicable.
- b) If the Developer has not provided any part of the Development Contribution in the 12 month period immediately preceding the relevant anniversary of this deed, the Report must include:
  - (i) a description of the status of the Development;

- (ii) a forecast in relation to the anticipated progression and completion of the Development; and
  - (iii) an estimated date for when the Developer expects to lodge the first Planning Application.
- c) If the Developer has provided any part of the Development Contribution under this deed, the report must include:
  - (i) details of all Development Consents or Approvals granted in relation to the Development;
  - (ii) a schedule that details the Contribution Amount provided under this deed as at the date of the report; and
  - (iii) an estimated date for when the Developer expects to lodge the next Planning Application.
- d) In addition to the report to be provided under paragraph a) the Developer must notify the Secretary in writing:
  - (i) within 28 days of lodging any application for approval; and
  - (ii) within 28 days of receiving any approval,

for any Development which will result in an increase to the Total Floor Area on the Land.
- e) At least 14 days prior to any application for a Construction Certificate, a Complying Development Certificate or before the physical commencement of any building work that will result in the Total Floor Area on the Land being 14,000 square metres or greater, the Developer must notify the Secretary in writing that such an application is intended to be made or such work is intended to commence and provide evidence that the Works Authorisation Deed for the Road Works has been executed with RMS.
- f) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information, which, in the reasonable opinion of the Secretary, are necessary for the Secretary to assess the status of the Development.

## **13 GENERAL PROVISIONS**

### **13.1 Entire deed**

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

### **13.2 Variation**

This deed must not be varied except by a later written document executed by all parties.



**13.3 Waiver**

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

**13.4 Further assurances**

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

**13.5 Time for doing acts**

a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

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

**13.6 Governing law and jurisdiction**

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

**13.7 Severance**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

**13.8 Preservation of existing rights**

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

**13.9 No merger**

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

**13.10 Counterparts**

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

**13.11 Relationship of parties**

Unless otherwise stated:

- a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

**13.12 Good faith**

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

**13.13 No fetter**

Nothing in this deed shall be construed as requiring either the Ministers to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Ministers in exercising any of the Minister's statutory functions, powers, authorities or duties.

**13.14 Explanatory note**

The Explanatory Note must not be used to assist in construing this deed.

**13.15 Expenses and stamp duty**

- a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- d) The Developer must provide the Minister with bank cheques in respect of the Minister's costs pursuant to subclauses a) and b).
  - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
  - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

**13.16 Notices**

- a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
- (i) hand delivered; or
  - (ii) sent by facsimile transmission; or
  - (iii) sent by prepaid ordinary mail within Australia.
- b) A Notice is given if:
- (i) hand delivered, on the date of delivery;
  - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
  - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

**SCHEDULE 1****Table 1 – Requirements under section 93F of the Act (clause 2.2)**

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

<b>REQUIREMENT UNDER THE ACT</b>	<b>THIS DEED</b>
<b>Planning instrument and/or development application – (section 93F(2))</b> The Developer has: a) sought a change to an environmental planning instrument. b) made, or proposes to make, a Development Application. c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	a) Yes b) Yes c) N/A
<b>Description of land to which this deed applies – (section 93F(3)(a))</b>	See Schedule 3
<b>Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))</b>	The Developer has proposed an amendment to the LEPs to rezone the Deferred Land, which includes the Land, to RU6 Transition, R1 General Residential, B3 Commercial Core, B4 Mixed Use and E2 Environmental Conservation. A component of the proposed amendment relating to the Deferred Land is the proposal to rezone the Land from 10(a) Investigation Precinct Zone to B4 Mixed Use to make the Development permissible with consent on the Land.
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</b>	See Schedule 4
<b>Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))</b>	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
<b>Applicability of section 94EF of the Act – (section 93F(3)(d))</b>	The application of section 94EF of the Act is excluded in respect of the Development.
<b>Consideration of benefits under this deed if section 94 applies – (section 93F(5))</b>	No

REQUIREMENT UNDER THE ACT	THIS DEED
<b>Mechanism for Dispute Resolution – (section 93F(3)(f))</b>	See clause 7
<b>Enforcement of this deed – (section 93F(3)(g))</b>	See clause 5
<b>No obligation to grant consent or exercise functions – (section 93F(10))</b>	See clause 13.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
<b>Registration of the Planning Agreement –</b> (section 93H of the Act)	Yes (see clause 6)
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	Yes – see Schedule 4.
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	Yes – see Schedule 4.
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	No

**SCHEDULE 2**

**Address for Service (clause 1.1)**

**Minister**

**Contact:** The Secretary

**Address:** Department of Planning and Environment  
23-33 Bridge Street  
SYDNEY NSW 2000

**Facsimile No:** (02) 9228 6191

**Developer**

**Contact:** The Company Secretary  
Scentre Limited and Orta Pty Ltd

**Address:** Level 30, 85 Castlereagh Street, SYDNEY NSW 2000

**Facsimile No:** (02) 9358 7241

**SCHEDULE 3****Land (clause 1.1)**

The Land is that part of the land comprising part of Lot 3 in DP 1084221 and part of Lot 2 in DP 1056960 having an area of 130,000 square meters (which excludes for the avoidance of doubt any part of Tonkiss Street) and as configured and shown hatched on the plan attached to this deed at **Annexure B**

Orta Pty Limited is the registered proprietor of Lot 3 in DP 1084221.

Scentre Limited (formerly known as Westfield Limited) is the registered proprietor of Lot 2 in DP 1056960.



**SCHEDULE 4****Development Contributions (clause 4)****1 Development Contribution**

(a) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

<b>Development Contribution</b>	<b>Timing</b>
<p>Road Works Contribution – Left In/Left Out Works</p> <p>and</p> <p>Road Works Contribution – Intersection Traffic Light Works</p>	<p><b>Entry into Works Authorisation Deed</b></p> <p>Entry into a Works Authorisation Deed with the RMS for the Road Works – Left In/Left Out Works and the Road Works – Intersection Traffic Light Works – prior to:</p> <ul style="list-style-type: none"> <li>i. the issue of a Construction Certificate for any building work on the Land that will result in the Total Floor Area on the Land being 14,000 square metres or greater; or</li> <li>ii. the issue of a Complying Development Certificate in relation to any building work on the Land that will result in the Total Floor Area on the Land being 14,000 square metres or greater; or</li> <li>iii. if no Construction Certificate or Complying Development Certificate is required for building work on the Land, but there will be building work on the Land that will result in the Total Floor Area on the Land being 14,000 square metres or greater, before the physical commencement of that building work.</li> </ul> <p><b>Practical Completion of Road Works</b></p> <p>Practical Completion of both the Road Works – Left In/Left Out Works and the Road Works – Intersection Traffic Light Works – must occur prior to the earlier of the following:</p> <ul style="list-style-type: none"> <li>i. the issue of an Occupation Certificate (interim or final) for any building work on the Land that results in the Total Floor Area on the Land being 14,000 square metres or greater; or</li> <li>ii. 24 months from the date a Works Authorisation Deed for the Road Works – Left In/Left Out Works and the Road Works – Intersection Traffic Light Works is executed by the Developer and the RMS.</li> </ul>

b) The Minister and the Developer acknowledge and agree that the Road Works - Left In/Left Out Works and the Road Works - Intersection Traffic Light Works together are the Development Contribution under this deed.

- c) The Developer must provide the Development Contribution in accordance with clause 2 of this Schedule 4.

## 2 Road Works Contribution

- (a) For each or both of the Road Works - Left In/Left Out Works and the Road Works – Intersection Traffic Light Works the Developer must:
  - (i) consult with the RMS and the Minister on the details of the Road Works;
  - (ii) provide to the Minister a copy of a draft Works Authorisation Deed with the RMS to carry out the Road Works; and
  - (iii) enter into a Works Authorisation Deed with RMS upon terms and conditions which each of the RMS and the Developer have agreed in respect of the carrying out and completion of the applicable Road Works.
- (b) The Developer must enter into a Works Authorisation Deed for the Road Works – Left In/Left Out Works and the Road Works – Intersection Traffic Light Works within the timing specified in clause 1(a) of this Schedule 4. The Developer must notify the Minister promptly following entry into a Works Authorisation Deed and provide the Minister with a copy of that agreement.
- (c) The Developer must comply with the terms and conditions of the Works Authorisation Deed including any requirement to provide security and to achieve Practical Completion of the Road Works.
- (d) The Developer must achieve Practical Completion of the Road Works within the timing specified in the table in clause 1(a) of this Schedule 4.
- (e) At least 14 days prior to any application for a Construction Certificate or a Complying Development Certificate or before the physical commencement of any building work that will result in the Total Floor Area on the Land being 14,000 square metres or greater, the Developer must provide notice to the Minister in writing that such an application is intended to be made or such work is intended to commence.
- (f) The Developer may not commence any building work or apply for a Construction Certificate or Complying Development Certificate for any building work on the Land that will result in the Total Floor Area on the Land being 14,000 square metres or greater unless the Minister or the Minister's nominee has certified that the Developer has entered into a Works Authorisation Deed with the RMS in respect of the Road Works.
- (g) The Developer may not apply for an Occupation Certificate (interim or final) for any building work on the Land that has resulted in the Total Floor Area on the Land being 14,000 square metres or greater unless the Minister or the Minister's nominee has certified that the Developer has achieved Practical Completion of the Road Works.
- (h) The parties agree that the requirement to enter into a Works Authorisation Deed with the RMS in respect of the Road Works, and to obtain a certificate from the Minister or Minister's nominee in accordance with clause 2(f) of this Schedule 4, before the issue of a Construction Certificate, is a restriction on the issue of the Construction Certificate for the purposes of section 109F(1)(a) of the Act and clause 146A of the Regulation.
- (i) The parties agree that the requirement to achieve Practical Completion of the Road Works, and to obtain a certificate from the Minister or Minister's nominee in accordance with clause 2(g) of this Schedule 4, before the issue of an Occupation Certificate, is a restriction on the issue of the Occupation Certificate (interim or final) for the purposes of section 109H(2) of the Act and clause 25E(2)(g) of the Regulation.

- (j) The Minister agrees to consider any application made by the Developer under this Deed including any request for certification of entry into a Works Authorisation Deed or Practical Completion of Road Works under clause 2 of Schedule 4 promptly and in a reasonable manner.

## SCHEDULE 5

### Security terms (clause 5)

#### 1 Developer to provide Bank Guarantee or Insurance Bond

- (a) In order to secure the payment or performance of the Development Contribution, the Developer has agreed to provide security in the form of Bank Guarantees or Insurance Bonds.
- (b) Each Bank Guarantee or Insurance Bond must:
  - (i) name the "Minister for Planning and Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
  - (ii) not have an expiry date.

#### 2 Bank Guarantee or Insurance Bond

- (a) Upon execution of this deed, the Developer will provide security to the Minister in the form of two Bank Guarantees or the Insurance Bonds for a face value equivalent to \$5,000,000 (**First Security** – to secure the Road Works - Left In/Left Out Works) and \$10,000,000 (**Second Security** – to secure the Road Works – Intersection Traffic Light Works) respectively.
- (b) From the date of execution of this deed until the date that the Developer achieves Practical Completion of both the Road Works - Left In/Left Out Works and the Road Works – Intersection Traffic Light Works under a Works Authorisation Deed and completes the process set out in Schedule 4 of this deed, the Minister will be entitled to retain the First Security and the Second Security, subject to clause 4 of this Schedule 4.
- (c) Upon Practical Completion of the Road Works, 50% of the First Security and the Second Security will be refunded to the developer within 14 Business Days. The remaining 50% of the First Security and the Second Security will be refunded within 14 Business Days of the end of the Defect Liability Period.

#### 3 Claims under Bank Guarantee or Insurance Bond

- (a) The Minister may call upon the First Security and the Second Security (as appropriate) where the Developer has failed to secure the performance of the Development Contribution on or before the date for performance under this deed. The Minister may retain and apply such monies towards recouping all or part of any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon any Bank Guarantee or Insurance Bond the Minister must give the Developer not less than 10 Business Days written notice.
- (c) If :
  - (i) the Minister calls upon any Bank Guarantee or Insurance Bond; and
  - (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and

- (iii) has notified the Developer of the call upon the Bank Guarantee or the Insurance Bond in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Bank Guarantee or Insurance Bond to ensure that at all times until the date that the Developer has provided the relevant part of the Development Contribution in full, the Minister is in possession of Bank Guarantees or Insurance Bonds for a face value equivalent to \$5,000,000 and \$10,000,000 respectively.

#### **4 Release of Bank Guarantee or Insurance Bond**

**(a) If:**

- (i) the Developer has achieved Practical Completion of the Road Works - Left In/Left Out Works under a Works Authorisation Deed and has otherwise satisfied all other relevant obligations under this deed; and
- (ii) the whole of the monies secured by the First Security have not been expended and the monies are accounted for in accordance with clause 3 of this Schedule 4,

then:

- (iii) within 14 Business Days of Practical Completion of the Road Works – Left In/Left Out Works, the Minister will return to the Developer:

- (A) 50% of the First Security (less any costs, charges, duties and taxes payable), or

- (B) the difference between the remainder of the monies secured by the Bank Guarantee or the Insurance Bond (as the case may be) and 50% of the First Security;

and

- (iv) within 14 Business Days after the end of the Defect Liability Period, the Minister will return to the Developer:

- (A) 50% of the First Security (less any costs, charges, duties and taxes payable), or

- (B) the remainder of the monies secured by the Bank Guarantee or the Insurance Bond (as the case may be).

**(b) If:**

- (i) the Developer has achieved Practical Completion of the Road Works – Intersection Traffic Light Works under a Works Authorisation Deed and has otherwise satisfied all other relevant obligations under this deed; and
- (ii) the whole of the monies secured by the Second Security have not been expended and the monies are accounted for in accordance with clause 3 of this Schedule 4,

then:

- (iii) within 14 Business Days of Practical Completion of the Road Works – Intersection Traffic Light Works, the Minister will return to the Developer:

- (A) 50% of the Second Security (less any costs, charges, duties and taxes payable), or
- (B) the difference between the remainder of the monies secured by the Bank Guarantee or the Insurance Bond (as the case may be) and 50% of the Second Security;

and

- (iv) within 14 Business Days after the end of the Defect Liability Period, the Minister will return to the Developer:

- (C) 50% of the Second Security (less any costs, charges, duties and taxes payable), or
- (D) the remainder of the monies secured by the Bank Guarantee or the Insurance Bond (as the case may be).

- (c) If the Developer provides security to the RMS under a Works Authorisation Deed for the Road Works to secure the Practical Completion of the Road Works, and the Minister in her absolute discretion agrees in writing that the security provided to the RMS is adequate, the Minister may return the First Security and/or the Second Security to the Developer.

## **5 Release of Bank Guarantee or Insurance Bond following sale of Land or Assignment**

If:

- (a) the Developer has sold, transferred or disposed of the whole (or any part) of the Land or assigned the rights or benefits of this deed; and
- (b) the Land Transferee or assignee has provided a new or additional Bank Guarantee or Insurance Bond as part of any requirement of the Minister under clauses 9 and/or 10 of this deed so that the Minister holds one or more additional Bank Guarantees or Insurance Bonds with a face value equivalent to that stated in clause 2(a) of this Schedule 5; and
- (d) the whole of the monies secured by the original Bank Guarantees or the Insurance Bonds have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

then the Minister will promptly return the original Bank Guarantees or Insurance Bonds (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the original Bank Guarantees or Insurance Bonds (as the case may be), to the Developer.

**EXECUTED** as a deed

**Signed sealed and delivered** for and on behalf of the **Minister for Planning** in the presence of:

.....  
Signature of Witness

.....  
Signature of the Minister for Planning or delegate

.....  
Name of Witness in full

.....  
Minister for Planning or delegate

**Signed sealed and delivered by Scentre Limited** ACN 000 317 279 in accordance with section 127 of the Corporations Act:

.....  


.....  
Signature of Director

**Peter Allen**

.....  
Name of Director

**Signed sealed and delivered by Orta Pty Ltd** ACN 008 617 810 in accordance with section 127 of the Corporations Act 2001:

.....  


.....  
Signature of Director

**Peter Allen**

.....  
Name of Director

.....  


.....  
Signature of Director/Secretary

**PAUL FRANCIS GIUGNI**

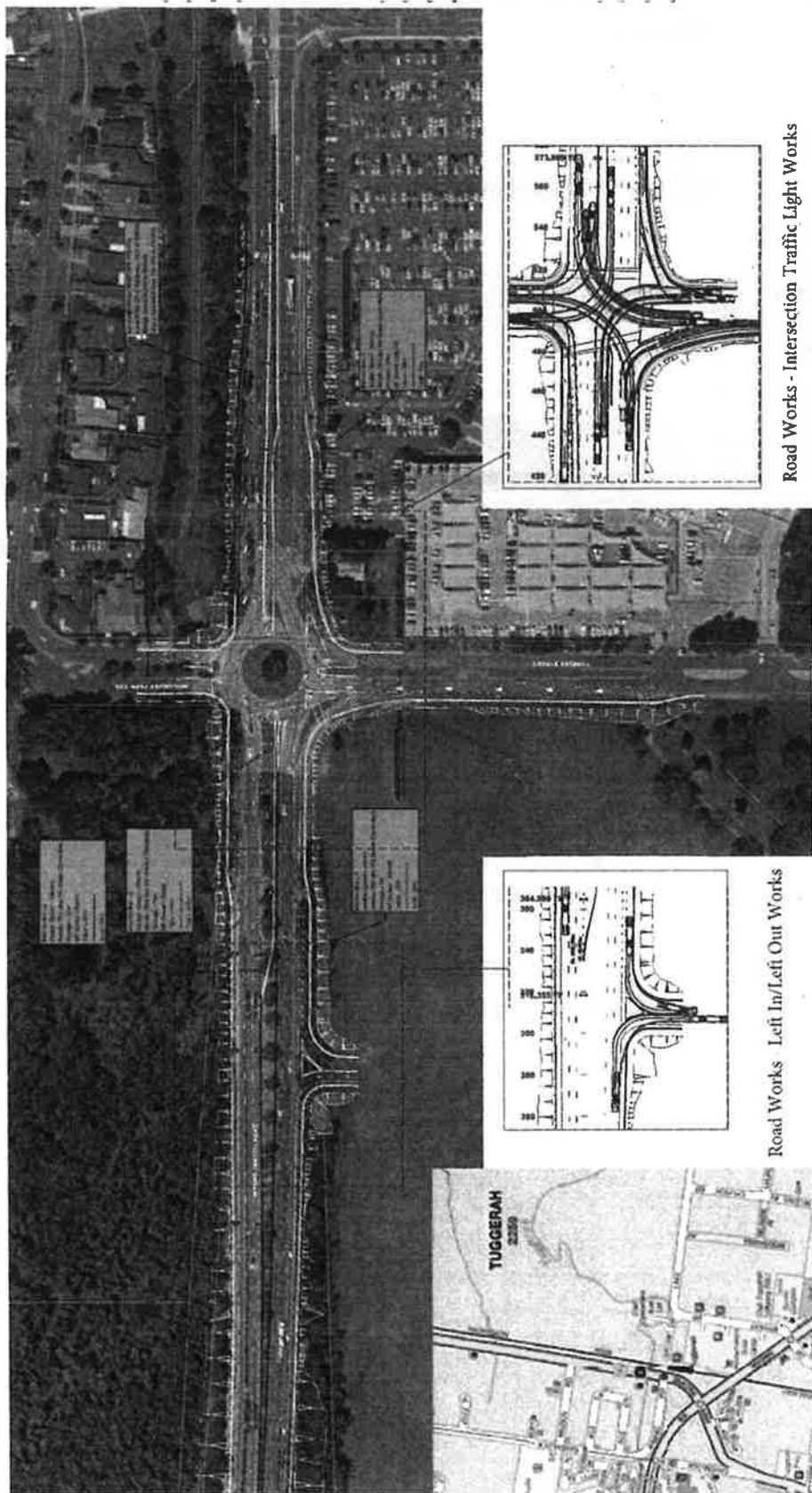
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Name of Director/Secretary

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Signature of Director/Secretary

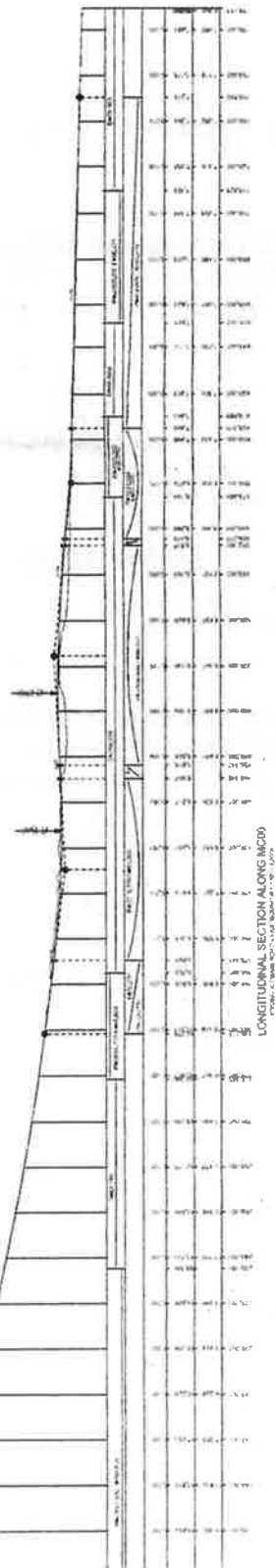
**PAUL FRANCIS GIUGNI**

.....  
Name of Director/Secretary

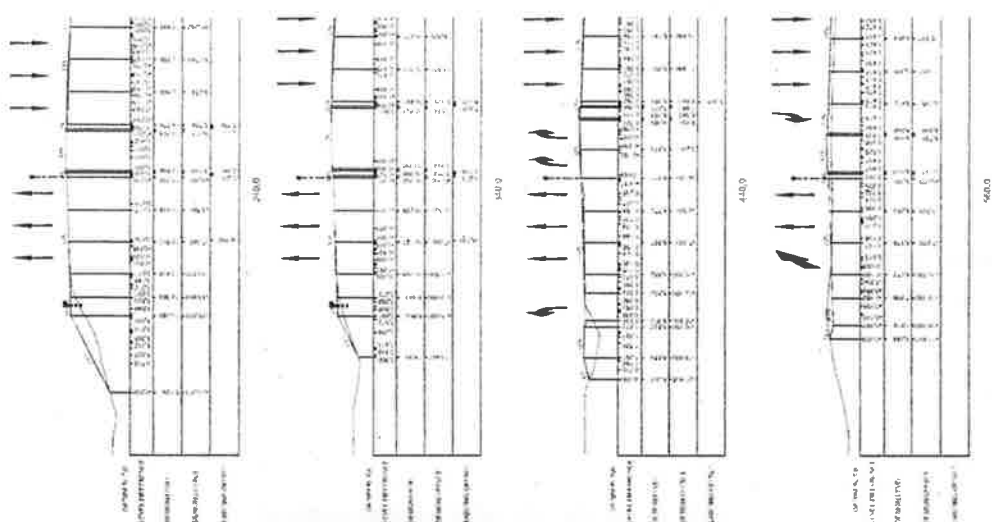


Road Works - Intersection Traffic Light Works

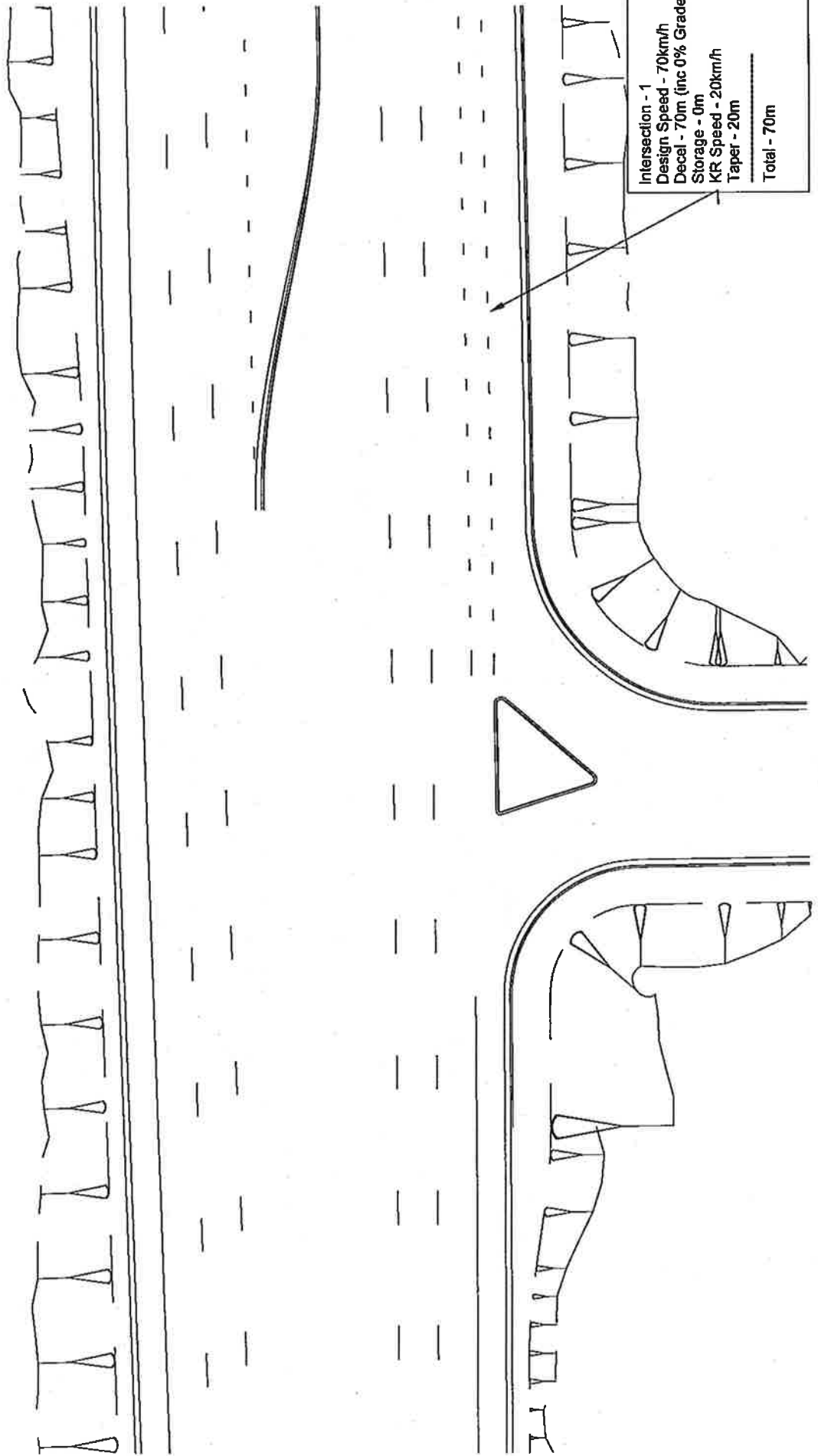
Road Works - Left In/Left Out Works

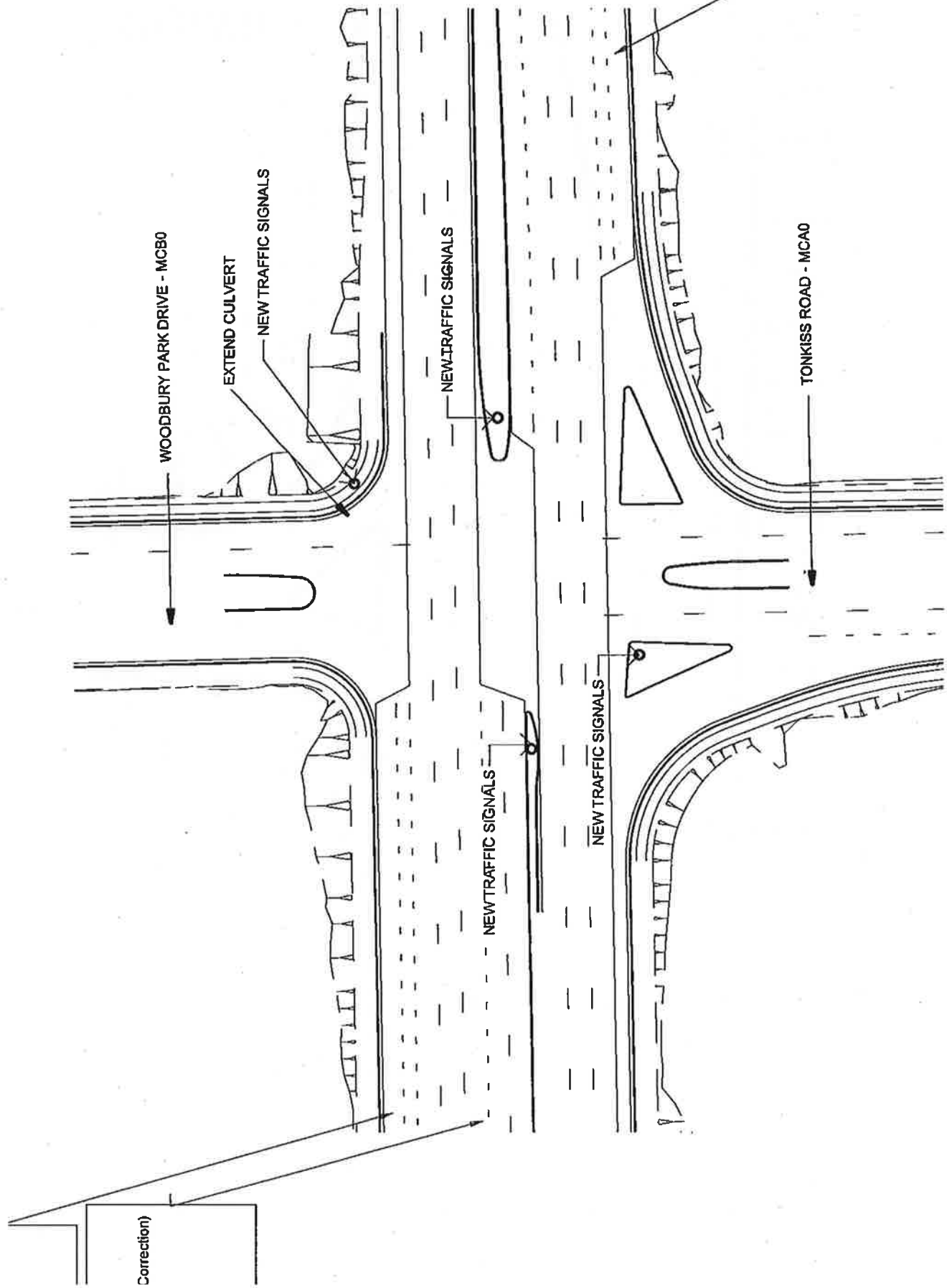


LONGITUDINAL SECTION ALONG MC20

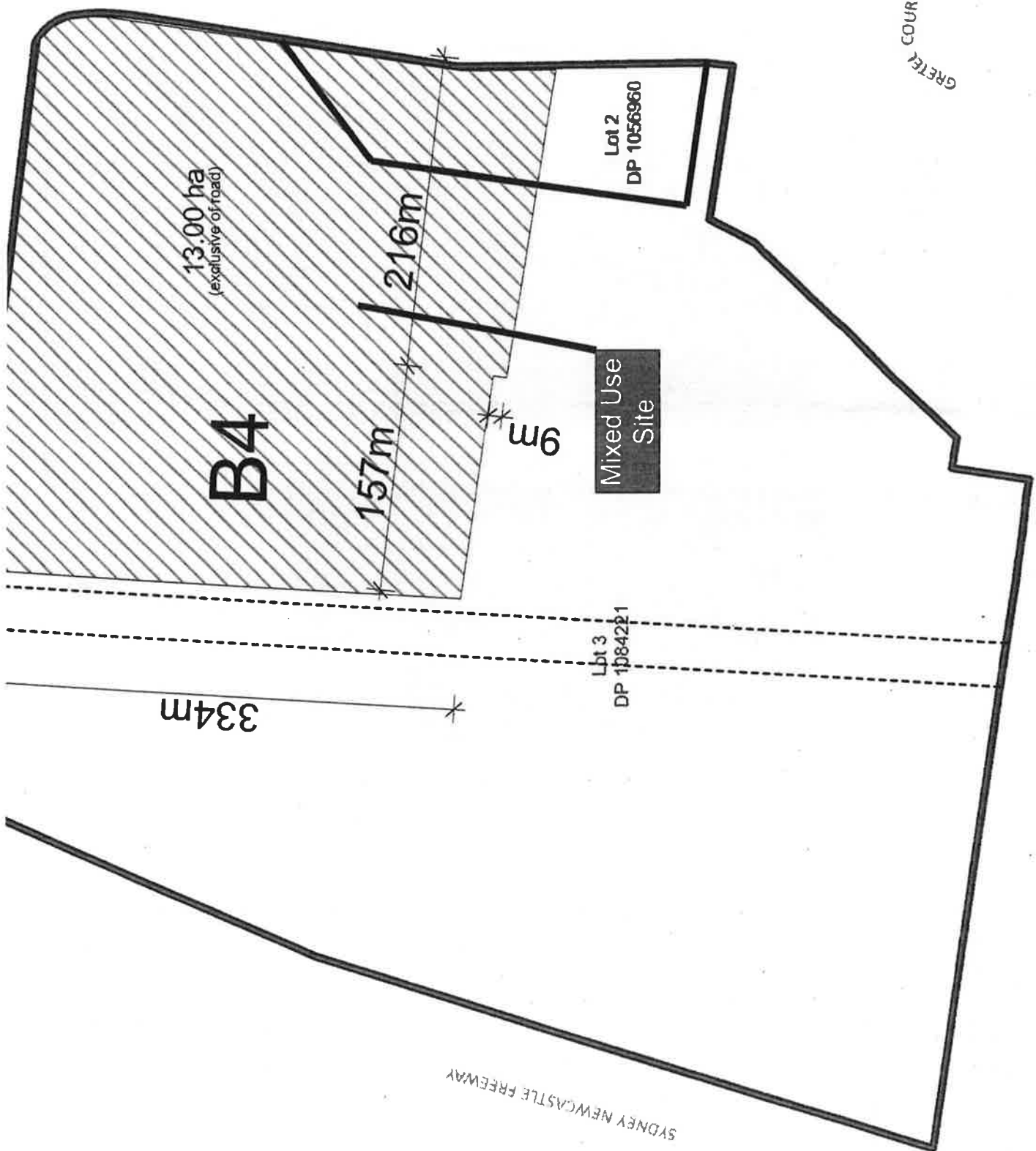




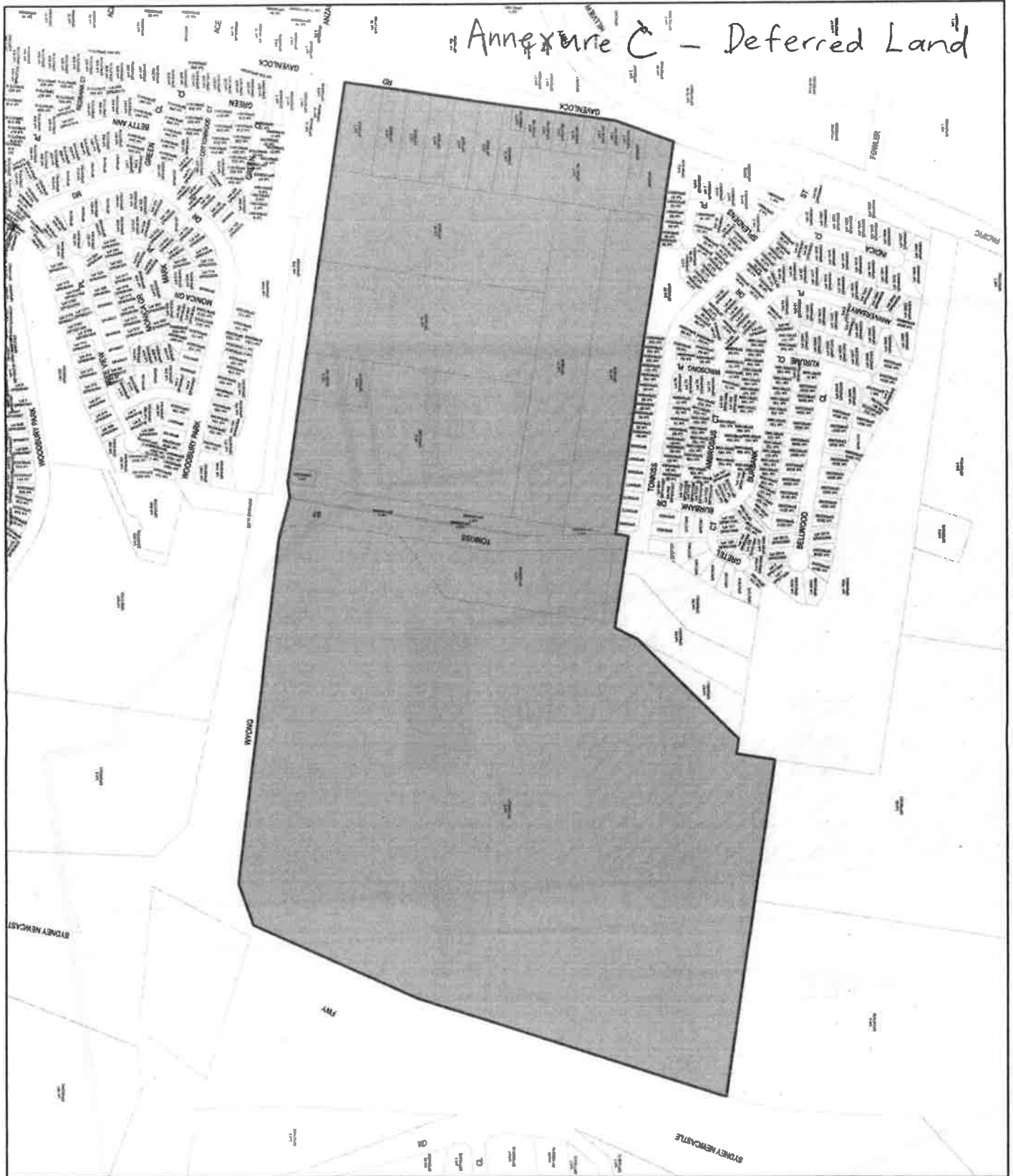




Intersection - 1
Design Speed - 70km/h
Decel - 70m (inc 0% Grade Correct)
Storage - 0m
KR Speed - 20km/h
Taper - 20m
Total - 70m



# Annexure C - Deferred Land



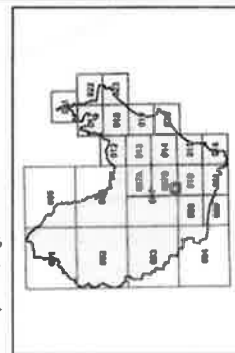
**Wyong Local  
Environmental  
Plan 2013  
(Amendment No 9)**

**Site Identification Map**  
Part of map title:  
8550\_COM\_LZN\_013\_20140617

**Proposed Zone**  
Subject Land

Cadastral  
Cadastral 1/22/2014 © Land and Property Information (LPI)

This map is for explanation purposes only.  
This map is not a legal document.



Map Information  
8550\_COM\_LZN\_013\_20140617