

Planning Agreement

Council of the City of Botany Bay

The Trust Company Ltd ACN 004 027 749 as custodian
for the Goodman Australia Industrial Trust No. 1

Goodman Property Services (Aust) Pty Ltd

gadens

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Ref AQW/MDS/35603485

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Planning Agreement

Dated

Parties

1. **Council of the City of Botany Bay** of 141 Coward Street, Mascot NSW 2020 (**Council**).
2. **The Trust Company Ltd ACN 004 027 749 as custodian for the Goodman Australia Industrial Trust No. 1** of Level 17, 60 Castlereagh Street, Sydney NSW 2000 (**Landowner**).
3. **Goodman Property Services (Aust) Pty Ltd** of Level 17, 60 Castlereagh Street, Sydney NSW 2000 (**Developer**).

Background

- A. The Landowner is the registered owner of the Land.
- B. On 7 July 2006, Orica Australia Pty Ltd submitted Major Project Application (MP06_019) seeking to remediate and develop the "Southlands" site on McPherson Street, Banksmeadow into an industrial and warehouse estate. The proposal is separated into three stages, which allows development to be carried out on parts of the site as they have been remediated. Stage 1 of the proposal was approved on 16 April 2012 by the then Minister for Planning and Infrastructure and includes the following works:
 - (i) site remediation works over the whole site (Areas 1, 2 and 3);
 - (ii) flood mitigation and drainage works over Areas 1, 2 and possibly area 3;
 - (iii) staged subdivision of Areas 1, 2 and 3 into 9 lots;
 - (iv) filling of the land on the site's western side to raise it above the 1 in 100 year flood levels;
 - (v) establishment of 6 industrial use warehouses (with a gross floor area 48,000m²) in Area 1, each with ancillary office components;
 - (vi) traffic improvement works at the intersection of Hill Street and Botany Road;
 - (vii) construction of a new private entry road from McPherson Street to Area 1; and
 - (viii) car parking and landscaping works (**Project Approval**).
- C. The Project Approval was subsequently modified on 14 August 2013 (Project Approval as Amended).
- D. On 10 October 2014, Goodman Property Services (Aust) Pty Ltd submitted an application (MP06_0191 MOD 2) seeking to modify the Project Approval as Amended to change the configuration of the site layout and the building footprints on the site (**Modification Application**). The Minister for Planning provided approval to this application on 22 April 2015. The key changes proposed by the modification application include:
 - (i) alteration of building footprints by consolidating the six approved warehouses into two larger warehouses. The total GFA is to be increased from 36,170m² to 43,360m².

- (ii) reconfiguration of internal circulation and loading areas to improve efficiency and functionality; and
 - (iii) integration and relocation of car parking areas to provide two consolidated onsite parking areas serving the two warehouses On-site parking to be reduced from 341 to 286 spaces.
- E. The Developer intends to carry out the Project Approval as further amended by the Modification Application.
- F. The parties agree that the approved Modification Application (MP06_0191 MOD 2) would require the payment of a section 94 development contribution in the maximum amount of \$3,133,577.00.
- G. In lieu of payment of a monetary contribution in accordance with section 94 of the Act, the Developer and the Land Owner offer to provide to the Council public benefits with a total value of \$3,133,577.00.
- H. The aforesaid public benefits shall be provided in order of priority in the form of:
 - i. the provision of a Monetary Contribution for the upgrade and repair of public road pavement to Hills, Exell and McPherson Streets;
 - ii. the dedication of land to Council extending the cycle way on Coal Pier road along the western edge of Southlands;
 - iii. construction of Cycleway Extension Works; and
 - iv. the provision of a Monetary Contribution for upgrading of the drainage to the stormwater system in accordance with the recommendations to be adopted by Council arising from the "Springvale Drain and Floodvale Drain Risk Management Study".
- I. The value of the Monetary Contribution is in accordance with this deed.
- J. The Monetary Contribution is to be applied in the order specified in clause H with any balance, after completion those works, to be applied to public infrastructure at Council's discretion.
- K. The Pavement Upgrade Works to Hills, Exell and McPherson Streets are to be completed by March 2016.
- L. The Cycleway Extension Works and dedication of land are required to be completed within one year after the issue of the first occupation certificate.
- M. The Drainage Upgrade Works are to be commenced within 8 months of the Springvale Drain and Floodvale Drain Risk Management Study being finalised, the recommendations adopted by Council and works having been placed in the Council's Capital Works budget.

Operative provisions

1. Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. Planning Agreement under the Act

The parties agree that this document is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. Application of this Document

This document applies to the Land.

4. Operation of this Document

- (a) This document takes effect on the date it is executed by both parties.

5. Contributions

- (a) Section 94 is excluded in respect of the Development.
- (b) Section 94A is excluded in respect of the Development.
- (c) Section 94EF is not excluded in respect of the Development.
- (d) The parties agree that the dedication of the Contribution Land, construction of the Cycleway Extension Works and payment of a monetary amount for the provision of the Pavement and Drainage Works will together be provided (in lieu of a s.94 monetary contribution) in the combined amount and land-value of \$3,133,577.00.
- (e) In the event that there is a surplus of funds following the provision of the aforementioned public benefits then the developer and the land owner shall pay the balance of the \$3,133,577.00 contribution as a monetary payment to the Council and the Council shall apply this balance towards other public works as the Council sees fit.

6. Public benefits – Cycleway Extension Works and Dedication of Land

- (a) The Developer offers to carry out works for the extension of the cycle way on Coal Pier Road along the western edge of Southlands (the Cycleway Extension Works), as a material public benefit associated with the Project Approval.
- (b) The Cycleway Extension Works will be undertaken generally in accordance with the Plan of cycleway extension works provided for at Schedule 2, with a value agreed by both the Developer and Council to be \$96,222.
- (c) The Landowner offers to dedicate the Contribution Land generally in accordance with the location of the Cycleway Extension Works. The value of the Contribution Land is agreed by both the Developer and Council to be \$50,000.
- (d) Within one year after the issue of the first occupation certificate the Developer is required to have carried out and completed the Cycleway Extension Works in accordance with this Agreement and the Landowner is required to have dedicated the Contribution Land to Council.

7. Monetary Contribution for Pavement and Drainage Works

- (a) The Developer offers to provide a monetary contribution for the provision of the following works as material public benefits:
 - (i) The Pavement Works to Hills, Exell and McPherson Streets;
 - (ii) The Drainage Upgrade Works in accordance with recommendations adopted by Council contained in the Springvale Drain and Floodvale Drain Risk Management Study.

(together, **the Pavement and Drainage Works**).
- (b) The Developer is to provide the Monetary Contribution for the provision of the Pavement Works Council generally in accordance with the Plan of Pavement Works provided for at Schedule 1 in the amount of \$1,630,000 (approx) including GST and
- (c) The Developer is to provide an amount of \$1,357,355 (approx) for the Drainage Works, being the Total Contribution Amount less the value of the Contribution Land and cost of the Cycleway Extension Works.
- (d) The Pavement Works will be undertaken by Council generally in accordance with the Plan of pavement works provided for at Schedule 1.
- (e) The Drainage Upgrade Works will be undertaken by Council in accordance with the Final Plan of Drainage Upgrade Works that is relevant to the precinct and that has been adopted by Council to be implemented. The final adopted Plan will be referred to the Developer for comment, prior to construction.
- (f) The cost of the Drainage Upgrade Works is to constitute at least 90% of the Monetary Contribution remaining after completion of the Pavement Works and Cycleway Extension Works and Dedication of Land.

8. Completion of Pavement and Drainage Works

- (a) **Date by which Pavement Works to be finalised**
 - (i) The parties agree that the Pavement Works are to be finalised by March 2016.
- (b) **Date by which Drainage Upgrade Works to commence**
 - (i) The parties agree that the Drainage Upgrade Works are to be commenced within 8 months of the Springvale Drain and Floodvale Drain Risk Management Study being adopted by Council and the works relevant to the precinct being placed in the Capital Works Program by Council.

9. Pavement and Drainage Works

a) Further requirements for the Pavement and Drainage Works

The parties agree that with respect to the Pavement and Drainage Works further design detail and refinement will be necessary in order to finalise the design and scope of the Pavement and Drainage Works having regard to the following:

- (i) site conditions reasonably affecting the Pavement and Drainage Works which were not reasonably capable of identification on or before the date of this deed;
- (ii) the extent of any design refinement that may be required to change the scope of the Pavement and Drainage Works as a result of costs;
- (iii) to accommodate the Standards in accordance with the reasonable requirements of the Council.
- (iv) the final findings and those recommendations that are adopted by Council contained in Springvale Drain and Floodvale Drain Risk Management Study.
- (v) if the recommendations contained in the Springvale Drain and Floodvale Drain Risk Management Study require works to be undertaken which would exceed the value of the Monetary Contribution, the extent of the works to be undertaken as required by the Agreement is to be at Council's discretion, to the value of the contribution only.
- (vi) Council will undertake specific drainage works recommended by the Springvale Drain and Floodvale Drain Risk Management Study with the cost of these works to constitute at least 90% of the Monetary Contribution remaining after completion of the Pavement Works and Cycleway Extension Works and Dedication of Land.

10. Monetary contribution

(a) Payment of a monetary contribution

- (i) The Monetary Contribution Amount is to be paid by the Developer to Council at Execution of this agreement on or before 15 December 2015.
- (ii) The Monetary Contribution Amount is to be applied by Council in the following order:
 - 1) The Pavement Works; followed by
 - 2) The Drainage Upgrade Works.

11. Dedication of land

(a) Value of Contribution Land

- (i) The Developer and the Council agree that the Value of the Contribution Land is \$50,000.

(b) Dedication of the Contribution Land

- (i) Prior to the issue of the first occupation certificate relating to the Modification application, the Landowner is to dedicate the Contribution Land to Council.
- (ii) Council agrees to accept the dedication of the Contribution Land and undertake all reasonable steps to have the subdivision of that land approved and the dedication registered with the Land Titles Office.
- (iii) The Developer is to pay for all reasonable costs incurred by the Council associated with the dedication of the Contribution Land and registration with the Land Titles Office.

12. Registration of this Document

- (a) The parties agree to promptly do all things necessary for Council to procure the registration of this document in the relevant folio of the Register for the Land in accordance with section 93H of the Act.
- (b) The Developer will obtain all consents to the registration of this document on the title to the land as required by Land and Property Information.
- (c) The Developer must within 20 Business Days of execution of this document produce to the Council:
 - (i) Any letters of consent necessary for the registration of this document and any other documents that may be required by the Registrar-General;
 - (ii) A copy of the production slip number as evidence that the certificate of title has been produced to the Land and Property Information for the purpose of the registration of the document; and
 - (iii) A bank cheque for the registration fees payable in relation to the registration of this document on the title to the Land.
- (d) The parties must promptly comply with any requisitions that may be raised with regard to registration of this document from Land and Property Information.
- (e) The Council will notify the Developer and Landowner following registration of this document by the Council.
- (f) The parties agree that, after execution of this agreement, the Council shall acquire an interest capable of supporting a caveat over the land and that the Council may, at its sole discretion and at the cost of the developer, lodge and maintain a caveat on title if the developer and the land owner do not promptly do all things necessary to procure the registration of this document in the relevant folio of the Register for the Land in accordance with section 93H of the Act.

13. Release and discharge of Document by Council

- (a) The Council must promptly do all things reasonably required by the Developer to release and discharge this document with respect to any part of the Land (such that this document is no longer registered by the Registrar-General under section 93H of the Act in relation to that part of the Land) upon the earlier of:
 - (i) Termination of the document under clause 14;
 - (ii) The occurrence of any of the release and discharge events in clause 15.

14. Termination of the Document

- (a) Either party may terminate this document if:
 - (i) The document commences, but the Development Consent issued for the Development Application lapses or is declared void or invalid;
 - (ii) The Development Consent issued for the Development Application is surrendered within the meaning of the Act; or

- (iii) This document is superseded by a future document relating to the Land.

15. Release and discharge

The Developer is released and discharged from its obligations upon payment of Monetary Contribution Amount or under this document upon termination under clause 14.

16. Dispute resolution

(a) Notice of Dispute

If a party claims that a dispute has arisen under this document (**Claimant**), it must give written notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 16(a).

(b) Response to Notice

Within 10 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute

(c) Negotiation

The nominated representative must:

- (i) meet to discuss the matter in good faith within 5 business days after service by the Respondent of notice of its representative;
- (ii) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

(d) Further Notice if Not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**) by mediation under clause 16(e).

(e) Mediation

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

- (i) the parties must agree to the terms of reference of the mediation within 3 business days of the receipt of the Dispute Notice (the terms will include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (ii) the Mediator will be agreed between the parties, or failing document within 3 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (iii) the Mediator appointed pursuant to this clause 16(e) must:
 - (A) have reasonable qualifications and practical experience in the area of the dispute; and

- (B) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
 - (iv) the Mediator will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
 - (v) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
 - (vi) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
 - (vii) must convene and attend the mediation within 21 days of the date of the Dispute Notice;
 - (viii) in relation to costs and expenses:
 - (A) each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (B) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.
- (f) **Litigation**
- If the dispute is not finally resolved in accordance with this clause 16, either party is at liberty to litigate the dispute.
- (g) **Continue to perform obligations**
- Each party must continue to perform its obligations under this document, despite the existence of a dispute.

17. Enforcement

This document may be enforced by either party in any court of competent jurisdiction in the State of New South Wales.

18. Notices

- (a) Any notice, consent, information, application or request that must or may be given or made to a party under this document 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 below;
 - (ii) faxed to that party at its fax number set out below;

Council

Attention: General Manager

Address: 141 Coward Street,
Mascot NSW 2020
Fax Number: (02) 9366 3777

Developer

Address: Level 17
60 Castlereagh St
Sydney NSW 2000

Fax Number: (02) 9230 7444

Landowner

Attention: Samantha Evans
Address: Level12, 123 Pitt Street, Sydney 2000
Fax Number: (02) 92307 444

- (b) If a party gives the other party 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 2 business days after it is posted;
 - (iii) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- (d) If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5.00pm 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.

19. Approvals and consent

- (a) Except as otherwise set out in this document, and subject to any statutory obligations, a party must act promptly and reasonably in giving or withholding an approval or consent to be given under this document.

20. Costs

- (a) The Developer will bear their own cost and Council's full costs of negotiating, preparing and execution of this document. The Developer will bear any reasonable costs associated with its stamping and registration.

21. Entire Agreement

- (a) This document contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another

party, or by a director, officer, agent or employee of that party, before this document was executed, except as permitted by law.

22. Further acts

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

23. Governing law and jurisdiction

This document is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

24. Joint and individual liability and benefits

Except as otherwise set out in this document, any document, covenant, representation or warranty under this document by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

25. Limitation of liability

Limitation of The Trust Company's Liability

- (a) The Trust Company enters into this agreement as custodian for the Trust and in no other capacity.
- (b) The parties other than the Trust Company acknowledge that the Obligations are incurred by The Trust Company solely in its capacity as custodian of the Assets and that The Trust Company will cease to have any Obligation under this agreement if The Trust Company ceases for any reason to be owner of the Assets.
- (c) The Trust Company will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:
 - (a) by the Trustee; or
 - (b) out of the Assets in respect of any liability incurred by it.

The obligation of the Trustee to indemnify The Trust Company and the right of The Trust Company to be indemnified out of the Assets are limited.

- (d) The parties other than The Trust Company may enforce their rights against The Trust Company arising from non-performance of the Obligations only to the extent of The Trust Company indemnities referred to in clause 23.3.
- (e) Subject to clause 23.6, if any party other than The Trust Company does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:

- (a) bringing proceedings against The Trust Company in its personal capacity; or
 - (b) applying to have The Trust Company wound up or proving in the winding up of The Trust Company.
- (f) Except in the case of and to the extent of fraud, negligence or breach of duty on the part of The Trust Company under its custody agreement with the Trustee, the parties other than The Trust Company waive their rights and release The Trust Company from any personal liability whatsoever, in respect of any loss or damage:
- (a) which they may suffer as a result of any:
 - (b) breach by The Trust Company of any of its Obligations; or
 - (c) non-performance by The Trust Company of the Obligations; and
 - (d) which cannot be paid or satisfied by the indemnities set out above in clause 3.3 in respect of any liability incurred by it.
- (g) The parties other than The Trust Company acknowledge that the whole of this Agreement is subject to this clause, and subject to clause 23.6, The Trust Company shall in no circumstances be required to satisfy any liability arising under, or for non-performance or breach of any Obligations under or in respect of, this Agreement or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets other than to the extent that this Agreement requires satisfaction out of the Assets under The Trust Company's control and in its possession as and when they are available to The Trust Company to be applied in exoneration for such liability.
- (h) The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this Agreement. The parties agree that no act or omission of The Trust Company (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of The Trust Company for the purposes of clause 23.6 to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.
- (i) No attorney, agent or other person appointed in accordance with this Agreement has authority to act on behalf of The Trust Company in a way which exposes The Trust Company to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of The Trust Company for the purposes of clause 23.6.

Limitation of Trustee's Liability

(j) **Capacity**

The Trustee's liability under this Deed of Agreement is limited to the Trustee's Capacity and the Trustee is not liable in any other capacity.

(k) **Limitation**

Subject to clause 23.10 the liability of the Trustee in respect of any cause of action, claim or loss arising:

- (a) under or in connection with this Agreement;
- (b) in connection with any transaction, conduct or any other agreement contemplated by this Agreement; or

- (c) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this Agreement,

(each, a **Trust Claim**), is limited to the Assets. The right of the parties other than the Trustee to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally.

(l) **Acknowledgment of limitations**

The parties other than the Trustee agree and acknowledge that they must not, in respect of any Trust Claim:

- (a) subject to clause 4.4, bring proceedings against the Trustee in its personal capacity;
- (b) seek to appoint an administrator or liquidator to the Trustee;
- (c) commence the winding-up, dissolution or administration of the Trustee; or
- (d) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

(m) **Exception**

If the Trustee acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- (a) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (b) the actual amount recoverable by the Trustee in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee may be personally liable.

26. No fetter

Nothing in this document will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

27. Representations and warranties

The parties represent and warrant that they have power to enter into this document and comply with their obligations under the document and that entry into this document will not result in the breach of any law.

28. Severability

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

29. Modification

No modification of this document will be of any force or effect unless it is in writing and signed by the parties to this document.

30. Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this document, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. 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.

31. GST

If any party reasonably decides that it is liable to pay GST on a supply made to the other party under this document and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

32. Definitions and interpretation

(a) Definitions

In this document unless the context otherwise requires:

Act means the *Environmental Planning and Assessment Act 1979*.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.

Contribution Land means the land identified in Plan "X" provided for in Schedule 2.

Project Application means MP06_019 which incorporates Stage 1 to remediate and develop the Southlands site on McPherson Street, Banksmeadow into an industrial and warehouse estate approved on 16 April 2012 as amended and includes the latest modification application submitted on 10 October 2014 and approved by the Minister for Planning on 22 April 2014.

Development Contribution means a monetary contribution, the dedication, of land free of cost or the provision of a material public benefit.

Environmental Planning Instrument means an environmental planning instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 of the Act and in force.

Floor Space Ratio (FSR) has the same meaning as in the LEP.

GST has the same meaning as in the GST Law.

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

Land means Southlands site at McPherson Street, Banksmeadow in the Botany Bay local government area.

LEP means *Botany Bay Local Environmental Plan 2013* as in force at the date of this agreement.

Modification application means the application submitted on 10 October 2014 seeking to modify the configuration of the site layout and the building footprints on the site (no changes proposed to the underground works required by the original application) and approved by the Minister for Planning on 22 April 2014.

Monetary Contribution means \$2,987,355.00 being, the Total Contribution Amount of \$3,133,577.00 less the cost of the Cycleway Extension Works (\$96,222.00) and value of the Contribution Land (\$50,000.00).

Original application as amended means MP06_019 submitted on 7 July 2006 to remediate and develop the Southlands site on McPherson Street, Banksmeadow into an industrial and warehouse estate, which was approved on 16 April 2012 and includes any amendments originally approved.

Southlands means the whole of the Land.

The Cycleway Extension Works means construction of a new 2.4 metre wide cycle path connecting to the existing cycle path along the western boundary to Southlands on the Coal Pier Road frontage.

The Drainage Upgrade Works means drainage works recommended by the Springvale Drain and Floodvale Drain Risk Management Study.

The Pavement Works means roadwork pavement repairs to Hills, Exell and McPherson Streets.

Pavement and Drainage Works means the works listed and as generally described in Schedule 1, comprising:

- (i) The Drainage Upgrade Works; and
- (ii) The Pavement Works.

Pavement and Drainage Works **Amount** means the cost of the Pavement and Drainage works.

Project Approval as Amended means Project Application (MP06_019) as approved on 16 April 2012.

The Monetary Contribution Amount means \$2,987,355.00 being, the Total Contribution Amount less the cost of the Cycleway Extension Works (\$96,222.00) and value of the Contribution Land (\$50,000.00).

The Total VPA Value means \$3,133,577.00

The Total Contribution Amount means \$3,133,577.00.

The Trust means the Goodman Australia Industrial Trust No. 1

The Trust Company means The Trust Company Ltd ACN 004 027 749 as custodian for the Goodman Australia Industrial Trust No. 1.

(b) **Interpretation**

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

- (i) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (ii) a reference in this document to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney;
- (iii) if the day on which any act, matter or thing is to be done under this document is not a business day, the act, matter or thing must be done on the next business day;
- (iv) a reference in this document to dollars or \$ means Australian dollars and all amounts payable under this document are payable in Australian dollars;
- (v) a reference in this document 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;
- (vi) a reference in this document to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (vii) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document;
- (viii) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (ix) 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;
- (x) 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;
- (xi) references to the word 'include' or 'including' are to be construed without limitation;
- (xii) a reference to this document includes the agreement recorded in this document;
- (xiii) a reference to a party to this document includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns;
- (xiv) any schedules and attachments form part of this document.

Executed as an agreement

The common seal of Council of the City of Botany Bay was affixed under a resolution passed by Council on

in the presence of:



General Manager

Signed on behalf of **Goodman Property Services (Aust) Pty Ltd** by *its attorney under Power of Attorney No 75 Book 4507 dated 13/12/06*



~~Secretary/Director~~ *witness signature*
Michelle BAN

Print name



~~Director~~ *Attorney signature*
Samantha Evans

Print name

Signed on behalf of **The Trust Company Ltd ACN 004 027 749** as custodian for the **Goodman Australia Industrial Trust No. 1** by: *its attorney under Power of Attorney*



~~Secretary/Director~~ *witness signature*
Guy Smith.

Print name



~~Director~~ *Attorney signature*
INGE KARTIKA


Print name
Manager

Schedule 1 – Plan Pavement Works



Location	Hill Street, Botany	
	From: McPherson Street To: Botany Road	
Length	Width	Area
135.0m	8.3m	1235.5m ²
Treatment	Full width 220mm Mill & Fill with 2 layers of 85mm Ac20 and top layer of 50mm AC14	

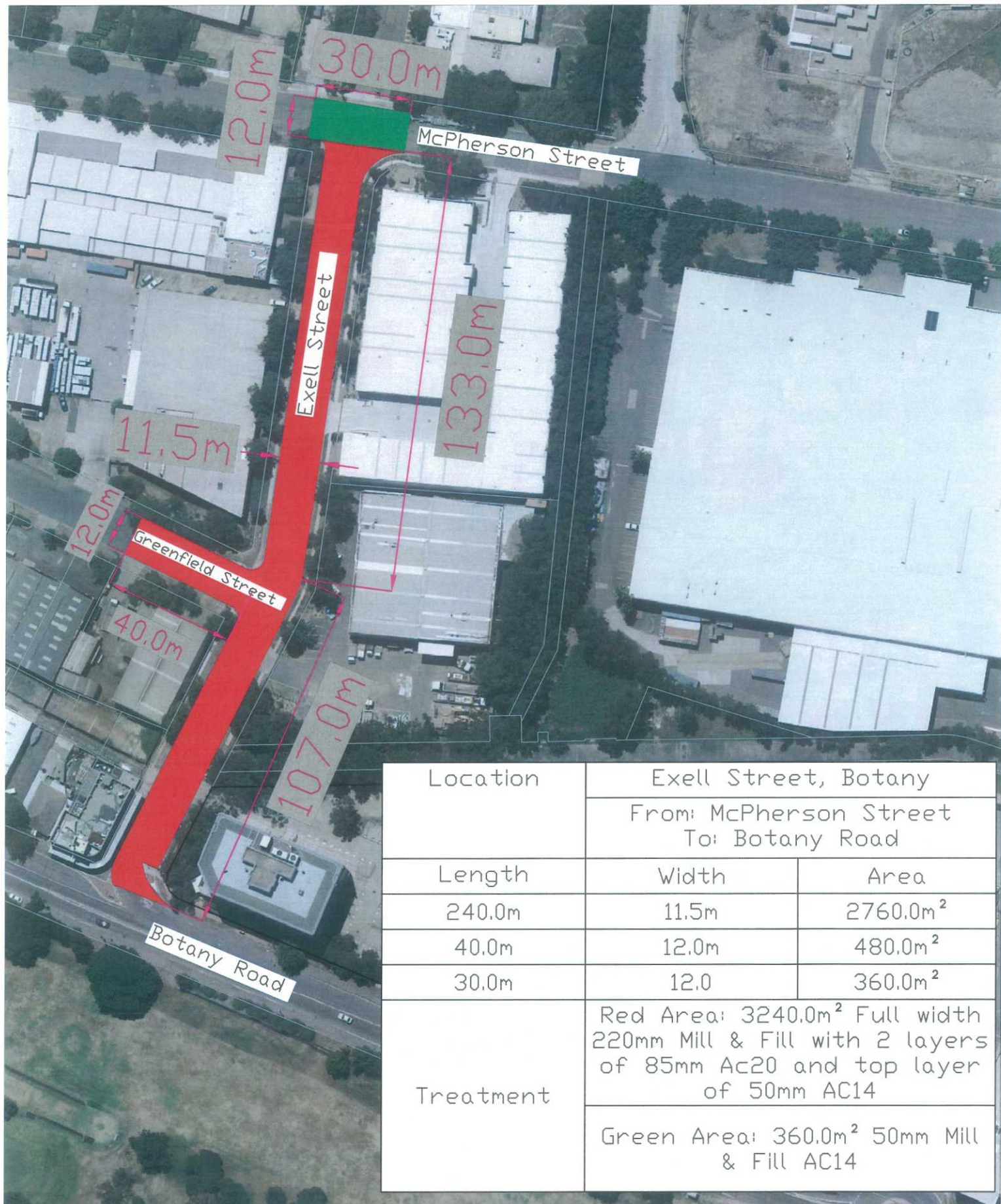
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Title: Hills Street Road Works	
Legend 	Cadastre
	Street Name
	 Area of Work



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Title: Exell Street Road Works

Legend



Cadastre

Street Name




Area of Work



Location	McPherson Street, Botany	
	From: Coal Pier Road To: Dead End	
Length	Width	Area
576.0m	12.0m	6912.0m ²
Treatment	Full width 220mm Mill & Fill with 2 layers of 85mm Ac20 and top layer of 50mm AC14	



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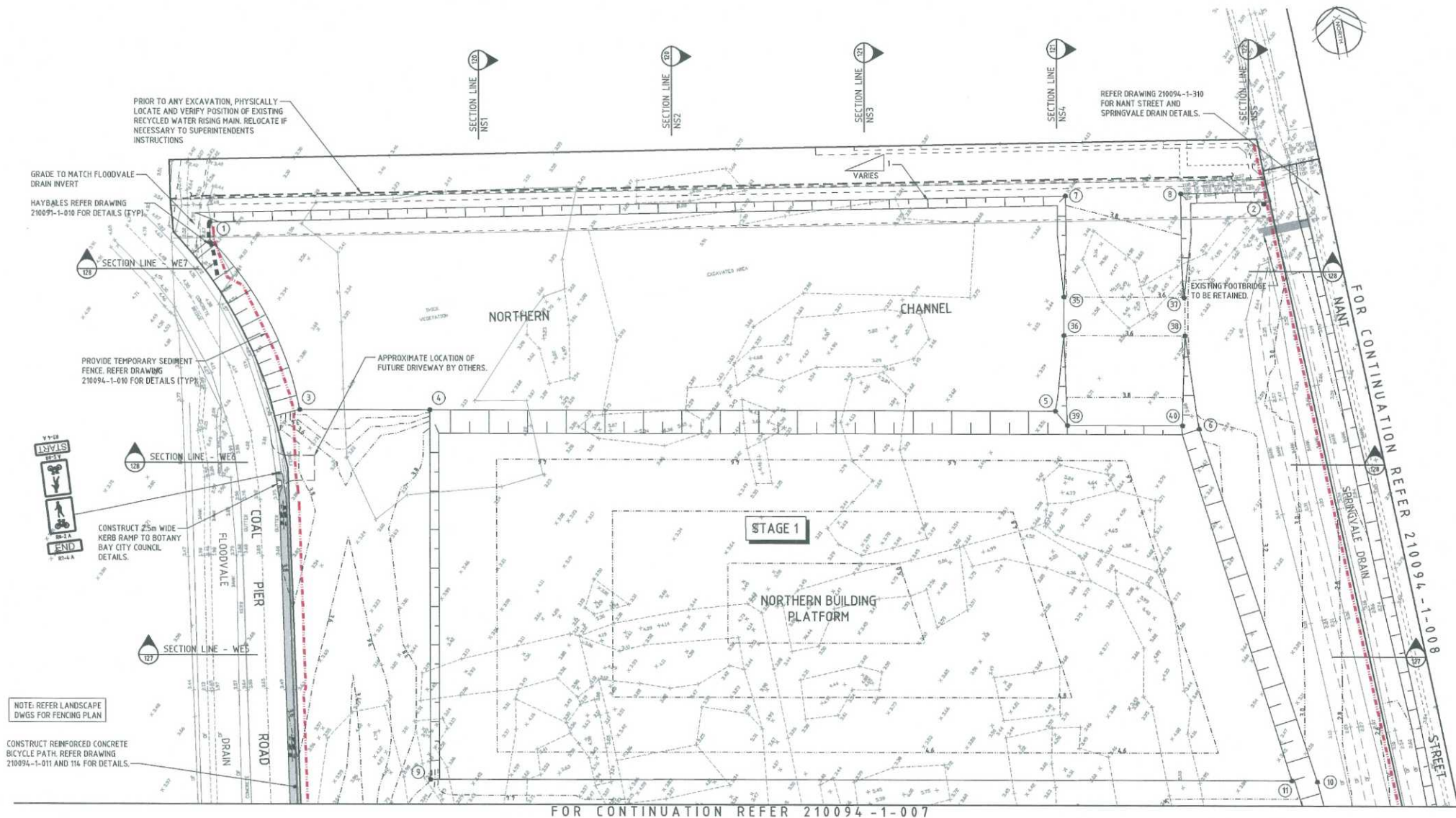
CITY OF BOTANY BAY
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Title: McPherson Street Road Works

Legend	
	Cadastre
	Street Name
	Area of Work

Schedule 2 – Plan of Cycleway Extension Works



Z	12.05.14	ISSUED FOR CONSTRUCTION	RT	RL
I	16.04.14	ISSUED FOR CONSTRUCTION	DB	RL
H	16.10.13	ISSUED FOR CONSTRUCTION CERTIFICATE	RT	RL
G	02.10.13	ISSUED FOR CONSTRUCTION CERTIFICATE	RT	RL
E	21.01.13	ISSUED FOR REPAIRING	DB	RL
F	25.10.12	ISSUED FOR TENDER/CONSTRUCTION CERTIFICATE	MDH	RL
D	11.10.12	RE-ISSUED FOR CONSTRUCTION CERTIFICATE	RH	RL
C	29.08.12	ISSUED FOR TENDER/CONSTRUCTION CERTIFICATE	MDH	RL
B	07.08.12	REVISED PRELIMINARY ISSUE	SJP	RL
Rev	Date	Description	Drawn	Appr.



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22 Lavender NSW Australia 2205
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Email Sydney@cardno.com.au Web www.cardno.com.au

Drawn	ASD	Date	MAY'12
Checked	RL	Date	MAY'12
Designed	RH	Date	MAY'12
Verified	RL	Date	MAY'12
Approved	RL	Date	MAY'12

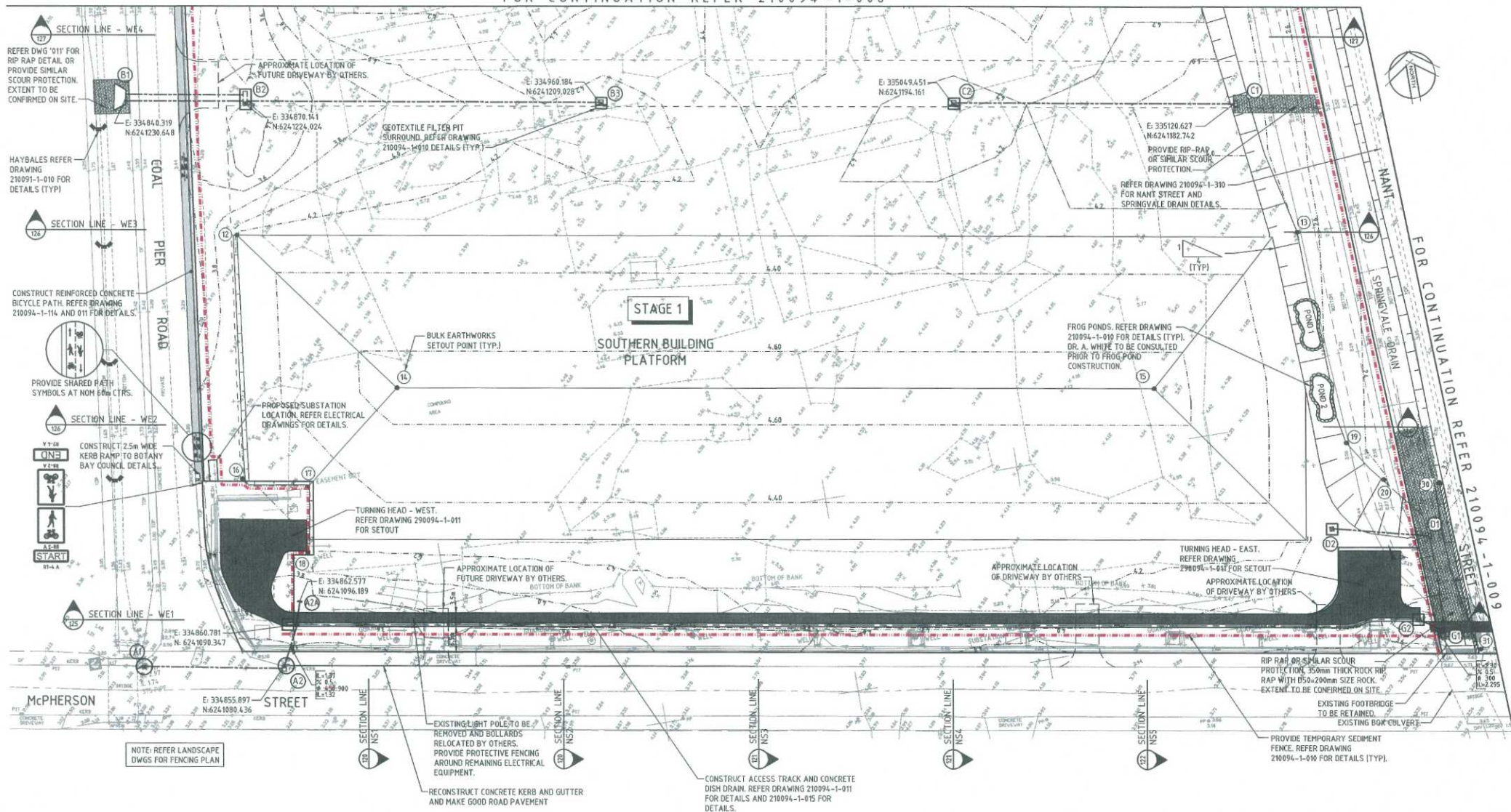
Client **ORICA**
SOUTHLANDS INDUSTRIAL ESTATE
CIVIL WORKS PACKAGE
BULK EARTHWORKS SITEWORKS SEDIMENT AND EROSION CONTROL PLAN SHEET 1

NOTE:
NO FILLING (INCLUDING TEMPORARY STOCKPILES) SHALL BE CARRIED OUT WITHIN SERVICES EASEMENT WITHOUT PRIOR WRITTEN APPROVAL FROM THE SUPERINTENDENT.

Status	ISSUED FOR CONSTRUCTION			
Date	MAY'12	Date	AHD	Scale
Drawing Number	210094-1-006			
Revision	2			

10 20 30 40 50 60 70 80 90 100 110 120 130 140 150m ON A1 ORIGINAL

FOR CONTINUATION REFER 210094 -1-006



2	12.05.14	ISSUED FOR CONSTRUCTION	RT	RL
1	16.04.14	ISSUED FOR CONSTRUCTION	DB	RL
J	16.10.13	ISSUED FOR CONSTRUCTION CERTIFICATE	RT	RL
H	02.10.13	ISSUED FOR CONSTRUCTION CERTIFICATE	RT	RL
G	21.02.13	SCOUR PROTECTION NOTES ADDED	ASD	RL
F	21.01.13	ISSUED FOR REPRICING	DUB	RL
E	25.10.12	ISSUED FOR TENDER/CONSTRUCTION CERTIFICATE	MDM	RH
D	11.10.12	RE-ISSUED FOR CONSTRUCTION CERTIFICATE	RM	RL
C	29.08.12	ISSUED FOR TENDER/CONSTRUCTION CERTIFICATE	MDM	RL
Rev	Date	Description	Drawn	Appr.



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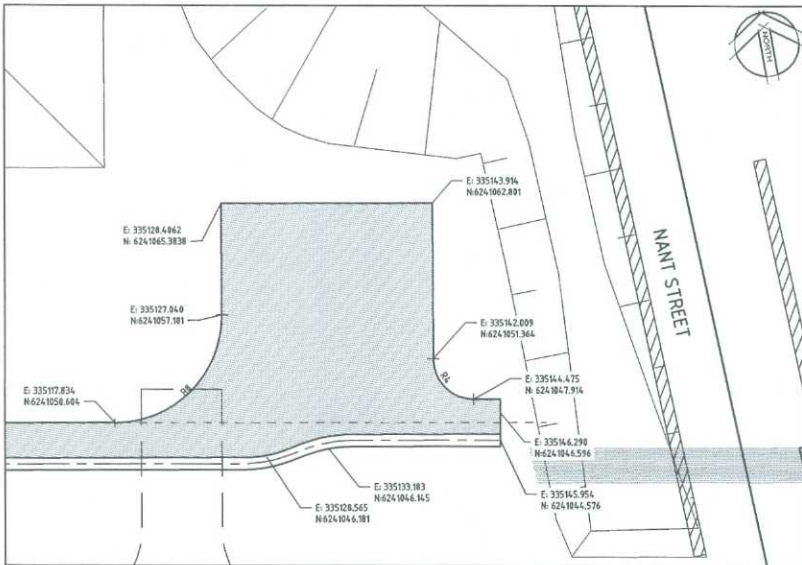
ABN 95 881 945 835
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St Leonards NSW Australia 2060
Phone 644 20 9456 2700 Fax 644 20 9429 9178
Email: Sydney@cardno.com.au Website: www.cardno.com.au

Drawn	ASD	Date	MAY '12
Checked	RL	Date	MAY '12
Designed	RH	Date	MAY '12
Verified	RL	Date	MAY '12
Approved	RL	Date	MAY '12

Client **ORICA**
SOUTHLANDS INDUSTRIAL ESTATE
CIVIL WORKS PACKAGE
BULK EARTHWORKS SITEWORKS SEDIMENT AND EROSION CONTROL PLAN SHEET 2

Status	ISSUED FOR CONSTRUCTION			
Date	MAY '12	Datum	AHD	Scale
Drawing Number	210094-1-007			
Revision	2			

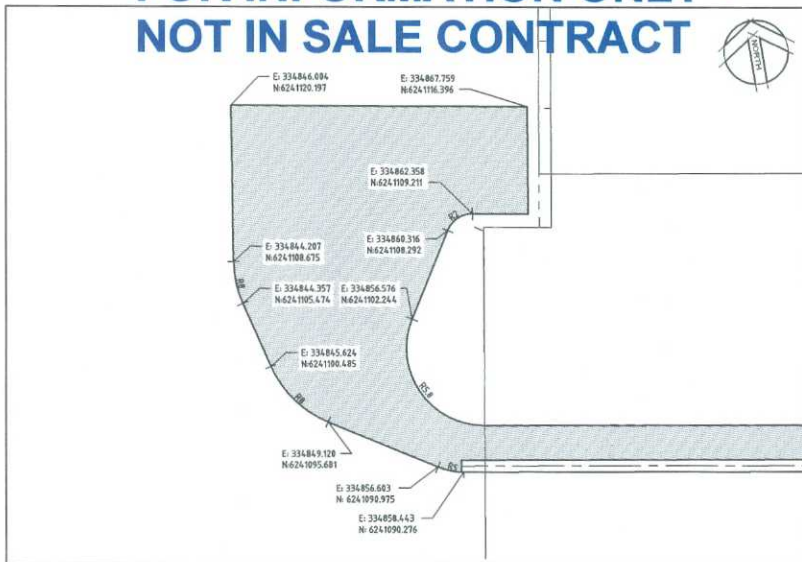
ON A1 ORIGINAL



TURNING HEAD - EAST SETOUT PLAN

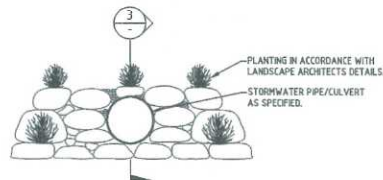
SCALE 1:200

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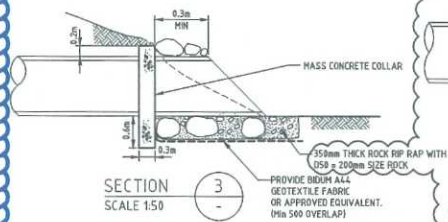
TURNING HEAD - WEST SETOUT PLAN

SCALE 1:200



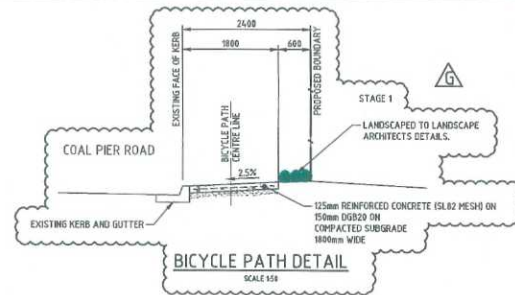
ROCK HEADWALL - TYPICAL ARRANGEMENT

SCALE 1:100



SECTION 3

SCALE 1:50



BICYCLE PATH DETAIL

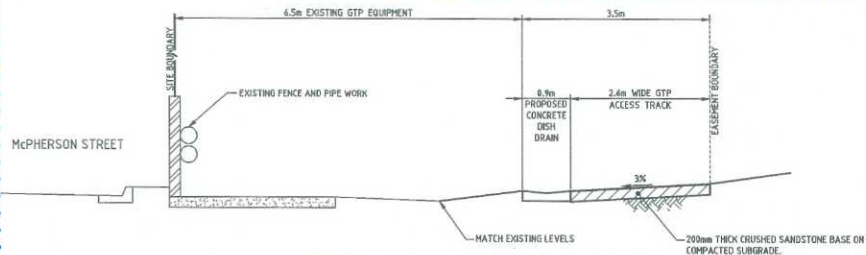
SCALE 1:50

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DISH DRAIN (DD)

SCALE 1:50



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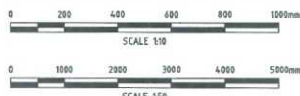
**NOT IN THIS
CONTRACT**



GTP ACCESS TRACK - STAGE 2

SCALE 1:50

Rev	Date	Description	Drawn	Appr.
1	12.05.14	ISSUED FOR CONSTRUCTION	RT	RL
2	16.06.14	ISSUED FOR CONSTRUCTION	DB	RL
3	19.07.14	REISSUED FOR CONSTRUCTION CERTIFICATE	RT	RL
4	21.02.15	PRECAST HEADWALL DETAIL ADDED	ASD	RL
5	21.01.15	ISSUED FOR REPRICING	DJB	RL
6	25.10.12	ISSUED FOR TENDER/CONSTRUCTION CERTIFICATE	MDH	RL
7	29.08.12	ISSUED FOR CONSTRUCTION CERTIFICATE	MDH	RL
8	07.08.12	REVISED PRELIMINARY ISSUE	SJP	RL
9	01.08.12	PRELIMINARY ISSUE	MDH	RL



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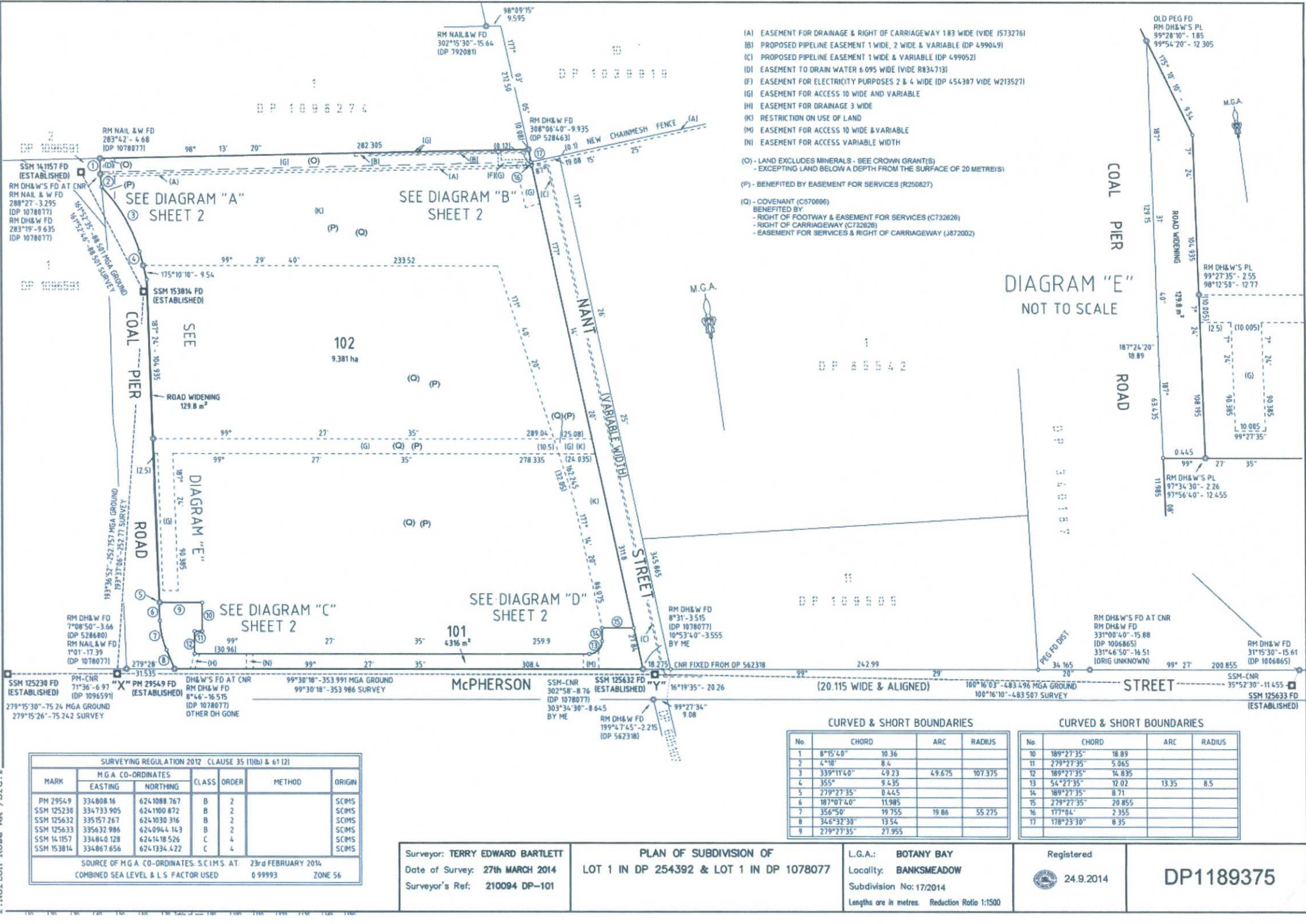
Drawn ASD	Date AUG 12
Checked RL	Date AUG 12
Designed RH	Date AUG 12
Verified RH	Date AUG 12
Approved RL	Date AUG 12

ORICA
SOUTHLANDS
INDUSTRIAL ESTATE
CIVIL WORKS PACKAGE
SITEWORKS DETAILS - SHEET 2

Status	Issued For Construction
Date	Aug 12
Drawn	AHD
Scale	1:100
Size	A1
Revision	2

210094-1-011

Schedule 3 – Plan of Contribution Land



- (A) EASEMENT FOR DRAINAGE & RIGHT OF CARRIAGEWAY 1.83 WIDE (VIDE J573276)
- (B) PROPOSED PIPELINE EASEMENT 1 WIDE, 2 WIDE & VARIABLE (DP 499049)
- (C) PROPOSED PIPELINE EASEMENT 1 WIDE & VARIABLE (DP 499052)
- (D) EASEMENT TO DRAIN WATER 6.095 WIDE (VIDE R834713)
- (E) EASEMENT FOR ELECTRICITY PURPOSES 2 & 4 WIDE (DP 454307 WIDE W213527)
- (F) EASEMENT FOR ACCESS 10 WIDE AND VARIABLE
- (G) EASEMENT FOR DRAINAGE 3 WIDE
- (H) EASEMENT FOR ACCESS 10 WIDE AND VARIABLE
- (I) EASEMENT FOR ACCESS VARIABLE WIDTH
- (J) LAND EXCLUDES MINERALS - SEE CROWN GRANT(S)
- (K) EXCEPTING LAND BELOW A DEPTH FROM THE SURFACE OF 20 METRE(S)
- (L) BENEFITED BY EASEMENT FOR SERVICES (R250827)
- (M) COVENANT (C570006)
- (N) BENEFITED BY:
 - RIGHT OF FOOTWAY & EASEMENT FOR SERVICES (C732626)
 - RIGHT OF CARRIAGEWAY (C732626)
 - EASEMENT FOR SERVICES & RIGHT OF CARRIAGEWAY (J872002)

DIAGRAM "E"
NOT TO SCALE

COAL PIER
ROAD

SEE DIAGRAM "A"
SHEET 2

SEE DIAGRAM "B"
SHEET 2

DIAGRAM "E"

SEE DIAGRAM "C"
SHEET 2

SEE DIAGRAM "D"
SHEET 2

SURVEYING REGULATION 2012 (CLAUSE 35 (1)(b) & 61 (2))					
MARK	M.G.A. CO-ORDINATES		CLASS	ORDER	METHOD
	EASTING	NORTHING			
PM 2954.9	334008.16	6241088.767	B	2	SCIMS
SSM 125230	334733.905	6241000.872	B	2	SCIMS
SSM 125632	335157.267	6241030.316	B	2	SCIMS
SSM 125633	335632.986	624094.143	B	2	SCIMS
SSM 141157	334840.128	6241418.526	C	4	SCIMS
SSM 153814	334867.656	6241334.422	C	4	SCIMS
SOURCE OF M.G.A. CO-ORDINATES: SCIMS AT 23rd FEBRUARY 2014					
COMBINED SEA LEVEL & L.S. FACTOR USED 0.99993 ZONE 56					

Surveyor: TERRY EDWARD BARTLETT
Date of Survey: 27th MARCH 2014
Surveyor's Ref: 210094 DP-101

PLAN OF SUBDIVISION OF
LOT 1 IN DP 254392 & LOT 1 IN DP 1078077

L.G.A.: BOTANY BAY
Locality: BANKSMEADOW
Subdivision No: 17/2014
Lengths are in metres. Reduction Ratio 1:1500

Registered
24.9.2014

DP1189375

CURVED & SHORT BOUNDARIES			
No	CHORD	ARC	RADIUS
1	8°15'40"	10.36	
2	4°10"	8.4	
3	339°11'40"	4.23	49.675
4	355°	9.435	
5	279°27'35"	0.445	
6	187°07'40"	11.985	
7	356°50"	19.755	55.275
8	346°32'30"	13.54	
9	279°27'35"	27.955	

CURVED & SHORT BOUNDARIES			
No	CHORD	ARC	RADIUS
10	189°27'35"	18.89	
11	279°27'35"	5.065	
12	189°27'35"	14.835	
13	54°27'35"	12.02	13.35
14	189°27'35"	8.71	
15	279°27'35"	20.855	
16	177°04"	2.355	
17	178°23'30"	8.35	

Schedule 4 – Requirements under section 93F of the Act

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

Requirement under the Act	This document
Planning instrument and/or development application – (section 93F(2)) The Developer has: <ul style="list-style-type: none"> (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 who paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No. (b) Yes. (c) No.
Description of land to which this document applies – (section 93F(3)(a))	The Land as defined in clause 32.
Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies – (section 93F(3)(b))	The Modification Application as defined in clause 32.
The scope, timing and manner of delivery of contribution required by this document – (section 93F(3)(c))	See clause 6 and 8.
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of section 94 and 94A of the Act is excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development.
Consideration of benefits under this document if section 94 applies – (section 93F(5))	No.
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 16.
Enforcement of this document – (section 93F(3)(g))	See clauses 17.
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 22.