
Bayside Council ABN 80 690 785 443 of 141 Coward Street, Mascot

(“Council”)

and

Australand Residential Botany Pty Limited ACN 109 029 487 of 1
Homebush Bay Drive, Rhodes

(“Developer”)

and

Botany No. 1 Pty Ltd ACN 169 289 794 of 2-6 Clevedon Street, Botany

(“Landowner”)

Planning Agreement

Environmental Planning and Assessment Act 1979

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THIS Agreement is dated

2017

PARTIES:

Bayside Council ABN 80 690 785 443 of 141 Coward Street Mascot NSW (**Council**)

and

Australand Residential Botany Pty Ltd ACN 109 029 487 of 1 Homebush Bay Drive, Rhodes, New South Wales (**Developer**)

and

Botany No.1 Pty Ltd ACN 169 289 794 of 2-6 Clevedon Street, Botany (**Landowner**)

1 INTRODUCTION

- A. Australand Residential Botany Pty Ltd ("**Developer**") is the developer of land located at 54-58 Pemberton Street, Botany as described in Schedule 3 to this Agreement.
- B. Botany No. 1 Pty Ltd ("**Landowner**") is the owner of the land located at 54-58 Pemberton Street, Botany as described in Schedule 3 to this Agreement.
- C. The Developer has entered into an agreement with the Landowner to develop the Land.
- D. On 15 July 2015 the Sydney East Joint Regional Planning Panel determined to grant Development Consent for the Development. The Development Consent has subsequently been amended and on the Commencing Date the Notice of Determination for the Development Consent (reference DA 13/208/06 & 13/208/07) dated 13 March 2017 includes conditions relevant to this Agreement, including the following:

4. Planning Agreement

- a) *Prior to the issue of any Construction Certificate for above ground works, in accordance with the letter of offer dated 26 June 2015, the landowner and Botany Bay City Council are to enter into a planning agreement under Section 93F of the Environmental Planning and Assessment Act 1979.*
- b) *The preparation of the Planning Agreement and the works subject to the Planning Agreement are to be at no cost to Council.*
- c) *Should the planning agreement not have been executed by both parties prior to the issue of the construction certificate for above ground works, payment of development contributions should be made, in accordance with the City of Botany Bay Contributions Plan 2005 -2010, as follows:*

Development Stage 1

Residential: ~~\$7,794,000~~ \$7,830,000

Less employee credits: ~~\$30,227.54~~ \$35,693.16

Total Payable: ~~\$7,763,772.46~~ \$7,794,306.84

Development Stage 2 – \$18,000

However, no contributions are payable for Development Stage 2, in accordance with the offer to enter into a Works In Kind Agreement for the turning area at the end of Mahroot Street.

The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.

The contributions are to be paid prior to issue any construction certificate for above ground work.

- d) Should c) above have occurred, then following the planning agreement being executed by both parties, Council will refund to the applicant any amount over and above that is payable under the planning agreement.
- E. On 16 August 2016 the Developer paid the Development Contributions in the amount of \$7,830,000 under condition 4(c) of the Development Consent.
- F. The Developer intends to carry out the Development on the Land in accordance with Development Consent obtained for the Land.
- G. As contemplated by section 93F of the *Environmental Planning and Assessment Act 1979*, the Developer, the Landowner and the Council have agreed to enter into this Agreement for the purpose of the Developer and the Landowner making contributions for public purposes under the *Environmental Planning and Assessment Act 1979*.

IT IS AGREED:

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this **Agreement**, unless the context clearly indicates otherwise:

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

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.

Agreement means this Voluntary Planning Agreement between the parties.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law or an Authority.

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

Certificate of Practical Completion means a written notice from the Council to the Developer stating that the Embellishment Work Contribution in respect of which the Council has received a Notice of Practical Completion has achieved Practical Completion on a specified date.

Commencing Date means the date this Agreement is executed by all parties in accordance with the Regulation.

Commercial Lot means the single commercial lot or parent commercial lot within the Development.

Consultant has the same meaning as in the Records.

Contributions means the aggregate of the:

- (a) Creation of Public Access Easements over East-West Pedestrian Link;
- (b) Creation of Public Access Easements over North-South Pedestrian Link;
- (a) Dedication of land to the Council for the Park Contribution;
- (b) East-West Pedestrian Link Embellishment Contribution;
- (c) Monetary Contribution
- (d) North-South Pedestrian Link Embellishment Contribution;
- (e) Park Embellishment Contribution;
- (f) Widening of New Street 1 Contribution; and
- (g) Widening of Pemberton Street Contribution.

to be provided to the Council by the Developer and the Landowner at no cost or risk to Council and in accordance with this Agreement.

Conveyancing Act means the *Conveyancing Act 1919* (NSW) (as amended).

Council's Representative means the person specified in Schedule 2 who is duly authorised to give approval under this Agreement or such other person as notified by the Council from time to time.

Creation of Public Access Easements over East-West Pedestrian Link means the creation of Public Access Easements over the East-West Pedestrian Link between the Park and Pemberton Street, to be undertaken by the Developers in accordance with clause 4 of Schedule 4.

Creation of Public Access Easements over North-South Pedestrian Link means the Public Access Easements over the North-South Pedestrian Link between the Park and the North South Pedestrian Link to be undertaken by the Developers in accordance with clause 6 of Schedule 4.

Dedication of land to the Council for the Park Contribution means the dedication by the Landowner to Council of the land which forms the proposed Park in accordance with clause 2 of Schedule 4.

Defect means anything that adversely affects the structural integrity, functionality or use of an Embellishment Work Contribution.

Defects Liability Period means the period of 12 months beginning on the date on which the Embellishment Work Contributions achieved Practical Completion.

Developer's Representative means the person specified in Schedule 2 who is duly authorised to give and receive notices under this Agreement as agent for the Developer, or such other person as notified by the Developer to Council from time to time.

Development means the Development described in the Development Consent.

Development Consent means the Notice of Determination issued by Council on 24 July 2015, reference number DA 2013/208 and includes all modifications made under section 96 of the Act to that consent from time to time.

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

East-West Pedestrian Link means the east-west pedestrian link to be created by the Developer between the Park and Pemberton Street as shown in the Landscape Plans and known as Bagnall Path.

East-West Pedestrian Link Embellishment Contribution means all the works associated with the construction and embellishment of the East-West Pedestrian Link to be undertaken by the Developer in accordance with clause 5 of Schedule 4.

Embellishment Work Contribution means (as the context requires) the applicable works required for:

- (a) Park Embellishment Contribution;
- (b) East-West Pedestrian Link Embellishment Contribution; and
- (c) North-South Pedestrian Link Embellishment Contribution,

as set out in Schedule 4.

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

GST has the same meaning as in the GST Law.

GST Law means the *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 (as amended).

Guarantee means an irrevocable and unconditional bank guarantee, unlimited in time, issued by a bank licensed to carry on business in Australia that is:

- (a) in favour of the Council to pay an amount or amounts of money to the Council on demand and without reference to the Developer or the Landowner;
- (b) for the Guarantee Amount; and
- (c) on such other terms and conditions the Council may approve from time to time.

Guarantee Amount means the amounts specified in Column 2 of Schedule 5 as varied from time to time in accordance with this Agreement.

Item of Work means an item of the Embellishment Work Contribution as specified in Schedule 4.

Land means the land described in Schedule 3 of this Agreement, or any further subdivision, consolidation or amalgamation of those titles.

Landowner means Botany No. 1 Pty Limited (ACN 169 289 794).

Landscape Plans means the plans stamped as approved by the Council under the Development Consent at Schedule 8.

Law means any constitution or provision, statute, act, regulation, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment rule of common law or equity, rule approval consent or condition of approval or consent imposed by a competent entity exercising statutory jurisdiction in the relevant matter. Development Consent and/or this Agreement is invalid and includes but is not limited to any proceedings in which such a declaration is sought which are heard on remitter from another Court following an appeal.

LEP means the *Botany Bay Local Environmental Plan 2013*.

LPI means the Land and Property Information Division of the NSW Department of Finance and Services.

Monetary Contribution means the monetary contribution payable by the Developer to the Council as calculated in accordance with Schedule 4.

New Street 1 means the street identified as New Street 1 in the Landscape Plans and known as Mahroot Street.

North-South Pedestrian Link means the north-south pedestrian link created by the Developer as shown in the Landscape Plans known as Platypus Walk.

North-South Pedestrian Link Embellishment Contribution means all works associated with the construction and embellishment of the North South Pedestrian Link to be undertaken by the Developer in accordance with clause 7 of Schedule 4.

Notice of Practical Completion means a written notice from the Developer to the Council which specifies that the Developer considers that a particular Embellishment Work Contribution will achieve Practical Completion on a particular date.

Occupation Certificate means an 'occupation certificate' as defined in the Act, granted in respect of the Development and arising from the Development Consent and includes an interim Occupation Certificate.

Party means a party to this Agreement, and includes their successors and assigns.

Park means the land with an area of at least 3,000sqm facing Wilson Street and identified on the Landscape Plans as a proposed public reserve and which is known as Hillier Park being Lot 29 DP 1231098.

Park Embellishment Contribution means the carrying out of the Park Embellishment Works by the Developer in accordance with clause 3 of Schedule 4.

Park Embellishment Works means all works associated with improving or establishing the Park, including but not limited to drainage, imported materials, landscaping, lighting equipment and installation, footpaths, walls, furniture, public art, servicing, fencing, playground and fitness equipment, and includes works outside the boundary of the Park to allow public access to the Park.

Power of Attorney means the Power of Attorney dated 12 May 2014 executed by the Landowner.

Practical Completion means, in respect of an Embellishment Work Contribution, the stage in the construction of the Embellishment Work Contribution when construction is complete except for minor omissions and Defects:

- (a) which do not prohibit; or
- (b) which may be readily rectified without prohibiting,

the Embellishment Work Contribution from being reasonably used for its intended purpose.

Public Access Easement means the proposed instrument and terms of easement to be created in respect of the East-West Pedestrian Link and the North-South Pedestrian Link under this Agreement in accordance with section 88B of the Conveyancing Act or as amended with the consent of both Parties, providing for:

- (a) public access and usage rights over the Through-Site Links; and
- (b) public access over the Through-Site Links area at appropriate times to cater for site security and public liability management.

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

Records means the Rockdale Technical Guide-Works-As-Executed Records.

Rectification Certificate means a compliance certificate within the meaning of section 109C(1)(a)(v) of the Act to the effect that work the subject of Rectification Notice has been completed as specified in the notice.

Rectification Notice means a written notice that identifies a breach of this Agreement in respect of any work required to be carried out by the Developer as an Embellishment Work Contribution, containing sufficient detail of the work to be done to enable the Council to issue a Rectification Certificate and requiring the breach to be rectified within a reasonable specified time.

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

Registrar-General means the Registrar-General who maintains the Register.

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

Related Entities has the meaning it has in the Corporations Act.

Relevant Building means Building B as described in the Development Consent.

Residential Lot means a single residential lot.

Stage means a stage of the Development approved by the Development Consent, including subdivision, or otherwise approved in writing by the Council for the purposes of this Agreement.

Through-Site Links means (as the context requires):

- (a) the East-West Pedestrian Link; and
- (b) the North-South Pedestrian Link.

Through-Site Links Contribution means the construction of the Through-Site Links and the creation of Public Access Easements in accordance with Schedule 4.

Widening of New Street 1 Contribution means the widening of New Street 1 and associated landscape works by the Developer and dedication of land to the Council by the Landowner to be undertaken in accordance with clause 9 of Schedule 4.

Widening of Pemberton Street Contribution means the widening of Pemberton Street in accordance with the Development Consent to be undertaken by the Developer and the dedication of a 4 metres wide strip of land for road widening purposes adjoining the Development for the full length of the site frontage to Pemberton Street to the Council by the Landowner, in accordance with clause 8 of Schedule 4.

Works-As-Executed Records means a plan setting out a record of construction completed in accordance with the Records.

2.2 Interpretation

In this Agreement unless the context clearly indicates otherwise:

- (a) a reference to **this Agreement** or another document means this Agreement or that other document and any document which varies, supplements, replaces, assigns or novates this Agreement 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 Agreement;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this Agreement;
- (f) the **schedules** form part of this Agreement;

- (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 Agreement;
-
- (k) the obligations of a party are **joint** and **several**, but an obligation of a Developer binds that Developer individually only;
 - (l) a requirement to do any **thing** includes a requirement to cause that thing to be done and a requirement not to do any thing 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 and all amounts payable under this Agreement are payable 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;
 - (s) neither this Agreement 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; and
 - (t) a word defined in the Act has the same meaning in this Agreement, unless otherwise defined.

3 OPERATION AND APPLICATION OF THIS AGREEMENT

3.1 Operation

- (a) This Agreement applies to the Land and the Development and is binding on each party to it and their respective heirs, successors, transferees and assignees.
- (b) This Agreement operates from the Commencing Date.

3.2 Planning agreement under the Act

This Agreement constitutes a planning agreement within the meaning of section 93F of the Act, governed by subdivision 2 of Division 6 of Part 4 of the Act.

4 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT

4.1 Application of Sections 94, 94A and 94EF of Act

- (a) For the purposes of section 93F(3)(d) of the Act, the Parties expressly agree that the application of sections 94, 94A and 94EF of the Act are not excluded.

5 CONTRIBUTIONS AND ACKNOWLEDGEMENTS

5.1 Developer and Landowner to provide Contributions

The Developer and the Landowner undertake at their cost and risk, to provide to the Council, the Contributions in accordance with Schedule 4 and otherwise in accordance with this Agreement.

5.2 Dedication of Land

- (a) A Contribution comprising the dedication of land is made for the purposes of this Agreement when:
- (i) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - (ii) the Council is given:
 - A. an instrument in registrable form under the *Real Property Act 1900* duly executed by the Landowner as transferor (being an instrument that will be effective to transfer the title to the land to the Council when executed by the Council as transferee and registered),
 - B. the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - C. a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- (b) Despite any other provision in this Agreement, the Parties agree that the timeframe for the dedication of land is as set out in Schedule 4 and may occur before Practical Completion.

5.3 Deemed acceptance

If the Council does not respond in writing to the documents referred to in clause 5.2(a)(ii) within 20 Business Days, all documents referred to in clause 5.2(a)(ii) are deemed acceptable to the Council.

5.4 Landowner warranties and Council acknowledgments

- (a) The Landowner warrants that the land dedicated to the Council under this Agreement is free of all encumbrances and affectations except for:

- (i) the encumbrances identified in Schedule 7; and
 - (ii) any sewer, drainage, electricity, gas, telecommunication or other services or facilities approved in connection with the Development or as otherwise agreed in writing by the Council.
- (b) After the land is dedicated to the Council in accordance with clause 5.4(a), the Council accepts ownership, possession and control of that land and of any Embellishment Work Contribution carried out on that land but only in the event that the Developer warrants that all work that is the subject of any Embellishment Work Contribution is carried out in a workmanlike manner and subject to clauses 5.5, 8 and 13 of this Agreement.

5.5 Embellishment Work Contribution

- (a) Without limiting any other provision of this Agreement, any Embellishment Work Contributions that are required to be carried out by the Developer under this Agreement are to be carried out in accordance with any design or specification specified by the Council and in accordance with any relevant Approval and any other applicable Law.
- (b) Embellishment Work Contributions required to be carried out by the Developer under this Agreement are made and completed for the purposes of this Agreement when the Council has served a Certificate of Practical Completion on the Developer in respect of all Items of Work.
- (c) The Developer is to permit Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Embellishment Work Contribution.
- (d) The Council is to permit the Developer to enter and occupy any land owned or controlled by Council for the purpose of enabling the Developer to carry out any Embellishment Work Contribution under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.
- (e) When an Item of Work has been completed, the Developer must issue the Council with a Notice of Practical Completion in respect of the works. The Notice of Practical Completion must be accompanied by:
 - (i) a draft copy of the Works-As-Executed Records in respect of the works; and
 - (ii) a Playground Certification in respect of the Park Embellishment Work,
- (f) Within 10 Business Days of receipt of a Notice of Practical Completion by the Council, the Council and the Developer will undertake a joint site inspection of the Item of Work/s the subject of the Notice of Practical Completion.
- (g) Within 15 Business Days of receiving a Notice of Practical Completion the Council must (acting reasonably):
 - (i) serve a Certificate of Practical Completion on the Developer; or

- (ii) serve a written notice on the Developer specifying;
 - A) that the relevant Item of Work has not achieved Practical Completion; and
 - B) a list of Defects in the relevant Item of Work and the work the Council requires the Developer to carry out in order for the relevant Embellishment Work Contribution to achieve Practical Completion.
- (h) If the Council does not comply with clause 5.5(g) the relevant Item of Work is deemed to have been subject to a Certificate of Practical Completion on the date specified in the Notice of Practical Completion.
- (i) If the Council serves a notice on the Developer under clause 5.5(g)(ii) the Developer must:
 - (i) carry out work specified in the notice within a reasonable time and then serve on the Council a new Notice of Practical Completion; or
 - (ii) serve a notice on the Council disputing the matters set out in the notice served under 5.5(g)(ii).
- (j) If the Developer serves a notice on the Council under clause 5.5(i)(ii), clause 8 applies.
- (k) Despite any other provision in this Agreement, the Council and the Developer agree that an Occupation Certificate for a relevant Item of Work is conclusive evidence of binding completion of that Item of Work.
- (l) Within 40 Business Dates of the date of a Certificate of Practice Completion, the Developer must submit the relevant Works-As-Executed Records to the Council, to the satisfaction of the Council.

5.6 Monetary Contributions

- (a) A Monetary Contribution is made for the purposes of this Agreement when the Council receives the applicable staged amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council, in accordance with clause 1 of Schedule 4.
- (b) The Parties agree that the Development Consent provides for the payment by the Developer of contributions under s94 of the Act.
- (c) The parties note that as at the Commencing Date, the Developer has paid the full amount of s94 contributions payable under condition 4(c) of the Development Consent in the amount of \$7,830,000.
- (d) Within 7 days of the Council issuing a Certificate of Practical Completion in respect of all of the Embellishment Work Contribution, the Council agrees to refund to the Developer the difference between the amount paid by the Developer to the Council

under the Development Consent and the amount of Monetary Contributions otherwise payable under this Agreement.

- (e) The Council and the Developer agree that the amount to be refunded in accordance with the Development Consent and clause 5.6(d) above is calculated in accordance with the following deductions for:
 - (i) the existing worker population, being \$35,824.12; and
 - (ii) the value of the Embellishment Work Contribution, being \$2,309,235.00

6 REGISTRATION

Within 30 Business Days of the execution of this Agreement, the Developer and the Landowner will at their cost register this Agreement in accordance with section 93H of the *Real Property Act 1900* (NSW) in the relevant folio of the Register for Lot 29 DP 1231098.

7 ENFORCEMENT

7.1 Developer to provide security

- (a) Clause 7.1 and 7.2 apply if and when the Developer makes payment of Contributions in accordance with Condition 4(c) of the Development Consent.
- (b) The Parties agree that the Developer's obligations to provide the Contributions will be secured by the Developer providing security to the Council in the form of a Guarantee within five (5) Business Days of the Commencing Date..
- (c) Council may call upon the Guarantee, to satisfy, either wholly or partly, the Developer's obligation to make Contributions in accordance with clause 5 and Schedule 4 of this Agreement.
- (d) Should Council use the part or whole of the monies under the Bank Guarantee under clause 7.1(c), the Developer shall, on being advised in writing by Council to do so, immediately take steps to ensure that the Bank Guarantee is provided for the Guarantee Amount for the benefit of Council.

7.2 Release of Security

- (a) The Council is to release and return 90% of the monetary amount under the Guarantee within 14 Business Days after:
 - (i) all Development Contributions have been made to the satisfaction of the Council; and
 - (ii) the Council has received a written request to do so from the Developer.
- (b) The Council is to release and return any remaining monies under the Guarantee upon the end of the last Defects Liability Period, provided that:
 - (i) if the Council has given a Rectification Notice, a Rectification Certificate or Compliance Certificate has been issued in respect of that notice;

- (ii) there is no Dispute between the Parties.

7.3 Release and discharge of Agreement by Council

- (a) The Council must promptly do all things reasonably required by the Developer or the Landowner to release and discharge this Agreement from the title to the Land (such that the Agreement is no longer registered by the Registrar-General under section 93H of the Act in relation to the Land) upon the Council's Representative being satisfied, acting reasonably, that the Developer and the Landowner have provided all Contributions under this Agreement and the Developer and the Landowner are not in breach of this Agreement.
- (b) The Developer will pay the Council's reasonable cost and expenses incurred under this clause 7.3.

8 DISPUTE RESOLUTION

8.1 Dispute resolution – expert determination

- (a) This clause applies to a Dispute between any of the Parties to this Agreement concerning a matter arising in connection with this Agreement that can be determined by an appropriately qualified expert if:
 - (i) the Parties to the Dispute agree that it can be so determined, or
 - (ii) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- (b) A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- (c) If a notice is given under clause 8.1, the Parties are to meet within 14 Business Days of the notice in an attempt to resolve the Dispute.
- (d) If the Dispute is not resolved within a further 28 Business Days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- (e) The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- (f) Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- (g) The Parties are to share equally the costs of the President, the expert, and the expert determination.

8.2 Dispute Resolution - mediation

- (a) This clause applies to any Dispute arising in connection with this Agreement other than a Dispute to which clause 8.1 applies.

- (b) Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- (c) If a notice is given under clause 8.2, the Parties are to meet within 14 Business Days of the notice in an attempt to resolve the Dispute.
- (d) If the Dispute is not resolved within a further 28 Business Days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- (e) If the Dispute is not resolved by mediation within a further 28 Business Days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- (f) Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (g) The Parties are to share equally the costs of the President, the mediator, and the mediation.

8.3 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 8 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 8 for any purpose other than in an attempt to settle the dispute, except to the extent that such information or documents is otherwise publicly available or otherwise came into the possession of a Party other than during the dispute resolution process.

8.4 No prejudice

This clause 8 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 Agreement.

9 TERMINATION

This Agreement ends on the first to occur of the following:

- (a) the Agreement is terminated by operation of Law;
- (b) all the obligations on the Parties under this Agreement are performed or satisfied by the Parties and after the end of the last Defects Liability Period.

10 GST

10.1 Construction

In this clause 10:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) GST Law has the same meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, government corporation, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member

10.2 Consideration GST exclusive

- (a) Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST exclusive consideration**).

10.3 Application of Divisions 81 and 82

Without limiting the application of clauses 10.4 to 10.10 the parties intend to apply Division 81 and Division 82 of the GST Law to supplies made under or in connection with this document to the extent permitted by law.

10.4 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

10.5 Timing of GST payment

The amount referred to in clause 10.4 must be paid in addition to the GST-exclusive consideration at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

10.6 Tax Invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to a payment under clause 10.4.

10.7 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under clause 10.4 will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

10.8 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This clause 10.8 does not limit the application of clause 10.4, if appropriate, to the Reimbursable Expense as reduced in accordance with clause 10.8(a).

10.9 No merger

This clause 10 will not merge on completion or termination of this Agreement.

11 ASSIGNMENT AND NOVATION

11.1 Consent

No Party may assign the rights or benefits of this Agreement to any person except in accordance with clause 11.2 and 11.3 or otherwise with the consent of the other Parties.

11.2 Landowner rights to transfer Land

- (a) The Landowner (including a person appointed under the Power of Attorney) must not sell or transfer to another person the whole or part of any part of the Land on which this Agreement remains registered under section 93H of the Act (other than a Residential Lot or Commercial Lot).
- (b) Notwithstanding clause 11.2(a) the Landowner (including a person appointed under the Power of Attorney) may sell or transfer the whole or any part of the Land (as the case may be) to a transferee if prior to the proposed sale or transfer:

- (i) the Developer or Landowner has, at no cost to the Council, first procured the execution of the transferee, of an Agreement in favour of the Council on terms reasonably satisfactory to the Council:
 - (ii) A transferee has provided a replacement Guarantee for the Guarantee Amount;
 - (iii) The Developer and the Landowner satisfy the Council (acting reasonably and without delay) that they are not in material breach of their obligations under this Agreement.
-
- (c) The Developer will pay the Council's reasonable costs and expenses incurred under this clause 11.2.
 - (d) The parties acknowledge and agree that the Development includes stratum, strata and Torrens Title subdivision and the Developer or Landowner may create dealings with respect to the subdivided land (including but not limited to sales contracts, leases, licences, easements and other dealings) without requiring that transferee to enter into an Agreement with the Council and the interest so created will not be in breach of this Agreement.

11.3 Transfer of land between Related Entities

- (a) The provisions of clause 11.2 do not apply where the Landowner transfers any part of the Land it owns to any of its Related Entities, provided that this Agreement is registered on the part of the Land transferred in accordance with clause 6 of this Agreement.
- (b) The Related Entity receiving the transfer under clause 11.3 must notify the Council in writing within 20 Business Days of the transfer indicating that the transfer has occurred and identifying that the Land, or any part thereof, has been transferred.
- (c) In the event of the Land being transferred to a Related Entity, the Developer covenants and agree that all existing Guarantees will be honoured until such time as new Guarantees are entered into in accordance with clause 11.4.

11.4 Substitution of Security

As soon as is practicable after the Developer has entered into an assignment, transfer or novation in accordance with clause 11.2 or 11.3 and the relevant transferee provides a new Guarantee in terms acceptable to the Council in accordance with this Agreement in substitution for an existing Guarantee, the Council must, if so directed by the Developer that provided the existing Guarantee, promptly release and return the existing Guarantee to that Developer.

12 CAPACITY

12.1 General warranties

Each Party warrants to each other Party that:

- (a) this Agreement creates legal, valid and binding obligations, enforceable against the relevant Party in accordance with its terms;
- (b) it has full capacity to enter into this Agreement; and
- (c) it is able to fully comply with its obligations under this Agreement.

13 RECTIFICATION OF DEFECTS

- (a) The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- (b) The Developer must comply with a Rectification Notice at its cost within a reasonable period (having regard to the nature of the Defect).
- (c) When the Developer considers that it has complied with a Rectification Notice it may request the Council to issue a Rectification Certificate relating to the work the subject of the relevant Rectification Notice.
- (d) Within 14 Business Days of receipt of the Developer's request under clause 13.3, the Council must:
 - (i) issue a Rectification Certificate to the Developer if it is satisfied that the Developer has complied with the relevant Rectification Notice; or
 - (ii) give the Developer notice of its decision to refuse to issue a Rectification Certificate containing sufficient detail of the reasons for its decision so as to inform the Developer of the work that needs to be done to enable the Council to issue a Rectification Certificate.
- (e) Without limiting any other right of the Developer, on receipt of a notice under clause 13.4(b), the Developer may obtain a Compliance Certificate from an accredited certifier, appointed by agreement between the parties acting reasonably, in relation to the work the subject of the Rectification Notice.
- (f) A Rectification Certificate or Compliance Certificate referred to in clause 13.5 discharges the Developer from any further obligation to comply with a Rectification Notice.
- (g) If the Developer does not fully comply with a Rectification Notice, the Council may rectify the Defect and may recover the reasonable cost of doing so as a debt due in a court of competent jurisdiction.

14 GENERAL PROVISIONS

14.1 Entire Agreement

This Agreement constitutes the entire agreement between the Parties regarding the matters set out in them and supersedes any prior representations, understandings or arrangements made between all the Parties, whether orally or in writing.

14.2 Variation

This Agreement must not be varied except by a later written document executed by all Parties.

14.3 Waiver

A right created by this Agreement 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.

14.4 Further assurances

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests that are necessary or desirable to give full effect to the arrangements contained in this Agreement.

14.5 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 Agreement,

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.

14.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Agreement.
- (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.

14.7 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 Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

14.8 Compliance with Laws

If a Law is changed or a new Law comes into force (both referred to as "New Law") and the Developers are obliged by the New Law to do something or pay an amount for a purpose which it is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the New Law and this Agreement,

compliance with this Agreement will constitute compliance with the New Law and compliance with the New Law will constitute compliance with this Agreement.

14.9 Requirements under section 93F of the Act

The Parties acknowledge and agree that the table in Schedule 1 provides for certain terms, conditions and procedures for the purpose of the Agreement complying with the Act.

14.10 Preservation of existing rights

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

14.11 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 Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

14.12 Counterparts

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

14.13 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Agreement 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.

14.14 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 Agreement.

14.15 No fetter

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

14.16 Explanatory note

The Parties agree that the Explanatory Note must not be used to assist in construing this Agreement.

14.17 Expenses

- (a) The Developer must pay their own and the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation and execution of this Agreement.
- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Agreement and the Explanatory Note in accordance with the Regulation.

14.18 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this Agreement 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 email; 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 email, on the Business Day that the sender receives a 'delivery receipt'; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.
- (c) If a Party gives the other Party 10 Business Days' notice of a change of its postal address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- (d) If any notice, consent, information, application or request is delivered, or a delivery receipt in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.
- (e) Each Developer appoints the Developer's Representative as its agent, for the sole purpose of giving and receiving notices under this Agreement, in accordance with the instructions of and agreements between the Developers. However, any notices or communications from a Developer override those from the Developer's Representative if they are inconsistent.

Executed as a Deed

Executed as a deed by Bayside Council)
by its authorised delegate on)
)
)


.....
Signature of witness
Hecker Johnson
.....
(Print) Full Name


.....
Signature of General Manager
MEREDITH WALLACE
.....
(Print) Full Name

Signed, sealed and delivered for and on behalf
of **Australand Residential Botany Pty Limited**
(AC 109 029 487) in accordance with section
127(1) of the Corporations Act 2001 (Cth):

.....
Signature of Director
.....

.....
Signature of Director/Secretary
.....

Signed, sealed and delivered for and on)
behalf of **Botany No. 1 Pty Ltd (ACN 169**)
289 794) in accordance with section)
127(1) of the Corporations Act 2001 (Cth):

.....
Signature of Director
.....

.....
Signature of Director/Secretary
.....

Executed as a Deed

Executed as a deed by Bayside Council)
by its authorised delegate on)
)
)


.....
Signature of witness
Heather Johnson
.....
(Print) Full Name


.....
Signature of General Manager
MEREDITH WALLACE
.....
(Print) Full Name

Signed, sealed and delivered for and on behalf
of **Australand Residential Botany Pty Limited**
(AC 109 029 487) in accordance with section
127(1) of the Corporations Act 2001 (Cth):

.....
Signature of Director
.....

.....
Signature of Director/Secretary
.....

Signed, sealed and delivered for and on)
behalf of **Botany No. 1 Pty Ltd (ACN 169**)
289 794) in accordance with section)
127(1) of the Corporations Act 2001 (Cth):

.....
Signature of Director
.....

.....
Signature of Director/Secretary
.....

SCHEDULE 1: s93F Requirements

Table 1 – Requirements under section 93F of the Act (clause 3)

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

REQUIREMENT UNDER THE ACT	THIS AGREEMENT
<p>Planning instrument and/or development application – (section 93F(2))</p> <p>The Developer and the Landowner has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) Yes</p>
<p>Description of land to which this Agreement applies – (section 93F(3)(a))</p>	The whole of the Land
<p>Description of change to the environmental planning instrument to which this Agreement applies and/or the development to which this Agreement applies – (section 93F(3)(b))</p>	The Development Consent.
<p>The scope, timing and manner of delivery of contribution required by this Agreement – (section 93F(3)(c))</p>	See Schedule 4
<p>Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))</p>	The application of section 94 and 94A of the Act is not excluded in respect of this Agreement.
<p>Applicability of section 94EF of the Act – (section 93F(3)(d))</p>	The application of section 94EF of the Act is not excluded in respect of this Agreement.
<p>Consideration of benefits under this Agreement if section 94 applies – (section 93F(5))</p>	Not applicable
<p>Mechanism for Dispute Resolution – (section 93F(3)(f))</p>	See clause 8
<p>Enforcement of this Agreement – (section 93F(3)(g))</p>	See clause 7

No obligation to grant consent or exercise functions – (section 93F(10))	See clause 14.15
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Table 2 – Other matters

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

SCHEDULE 2: Address for Service

Address for Service (clause 2.1)

COUNCIL

BAYSIDE COUNCIL (ABN 80 690 785 443)

Contact: The General Manager

Address: 141 Coward Street, Mascot, New South Wales, 2020

Email: council@bayside.nsw.gov.au

COUNCIL REPRESENTATIVE: Manager Strategic Planning

DEVELOPER

AUSTRALAND RESIDENTIAL BOTANY PTY LIMITED (ACN 109 029 487)

Contact: c/- Frasers Property Australia Pty Ltd, Attention: Chris Koukoutaris

Address: P.O Box 3307, Rhodes NSW 2138

Email address: Chris.Koukoutaris@frasersproperty.com.au

LANDOWNER

BOTANY NO.1 PTY LTD (ACN 169 289 794)

Contact: c/- Frasers Property Australia Pty Ltd, Attention: Chris Koukoutaris

Address: P.O Box 3307, Rhodes NSW 2138

Email address: Chris.Koukoutaris@frasersproperty.com.au

SCHEDULE 3: The Land**Land (clause 2.1)**

Column 1	Column 2
Lot Number	Deposited Plan
21	1231098
22	1231098
23	1231098
24	1231098
25	1231098
26	1231098
27	1231098
28	1231098
29	1231098
30	1231098
31	1231098

SCHEDULE 4: Contributions**Contributions (clause 5)****1 Contributions**

The Developer undertakes to provide the Contributions in accordance with this Schedule and in the manner set out in the table below:

	Column 1	Column 2
Item	Contributions	Delivery Event and timing for delivery
1	Dedication of land to the Council for the Park Contribution	Dedication of at least 3,000sqm area of land which forms the Park by the Landowner to the Council at no cost to the Council in accordance with clause 2 of this Schedule 4 – prior to the issue of any Occupation Certificate for the Development.
2	Park Embellishment Contribution	Embellishment of the Park by the Developer at no cost to the Council in accordance with clause 3 of this Schedule 4 – prior to the issue of any Occupation Certificate for the Relevant Building in the Development.
3	Creation of Public Access Easements over East-West Pedestrian Link	Construction of the East-West Pedestrian Link by the Developer and registration of the Public Access Easement by the Landowner in accordance with clause 4 of this Schedule 4 – prior to the issue of any Occupation Certificate for the Relevant Building in the Development.
4	East-West Pedestrian Link Embellishment Contribution	Embellishment of the East-West Pedestrian Link by the Developer at no cost to the Council in accordance with clause 5 of this Schedule 4 – prior to the issue of any Occupation Certificate for the Relevant Building in the Development.
5	Creation of Public Access Easements over North-South Pedestrian Link	Construction of the North-South Pedestrian Link by the Developer and registration of the Public Access Easement by the Landowner in accordance with clause 6 of this Schedule 4 – prior to the issue of any Occupation Certificate for the Relevant Building in the Development.
6	North-South Pedestrian Link Embellishment Contribution	Embellishment of the North-South Pedestrian Link by the Developer at no cost to the Council in accordance with clause 7 of this Schedule 4 – prior to the issue of any Occupation Certificate for the Relevant Building in the Development.
7	Widening of Pemberton Street Contribution	Widening of Pemberton Street including new on-street parking, street trees and footpath to be undertaken by the Developer at no cost to the Council and the dedication of land to the Council by the Landowner at no

		cost to the Council in accordance with clause 8 of this Schedule 4 – prior to the issue of any Occupation Certificate for the Relevant Building in the Development.
8	Widening of New Street 1 Contribution	Widening of New Street 1 including new street trees and footpath to be undertaken by the Developer at no cost to the Council and the dedication of land to the Council by the Landowner) at no cost to the Council in accordance with clause 9 of this Schedule 4 – prior to issue of any Occupation Certificate for the Relevant Building in the Development.
9	Monetary Contribution	Payment of the Monetary Contribution by the Developer in accordance with clause 10 of this Schedule 4 – prior to any interim or actual occupation certificate for any Residential Lot or Commercial Lot.

2 Dedication of land to the Council for the Proposed Park Contribution

The Landowner must (at its cost) carry out all steps required to dedicate and transfer the Park to the Council.

3 Park Embellishment Contribution

- (a) The Developer must (at its cost) complete the Park Embellishment Works in accordance with the Development Consent and in a good and workmanlike manner, and otherwise in accordance with the provisions of this Agreement by the date or time specified in Column 2 of the table in clause 1 of this Schedule 4.

4 Creation of Public Access Easements over East-West Pedestrian Link

- (a) The Developer must (at its cost):
- (i) construct the East-West Pedestrian Link in a good and workmanlike manner, and otherwise in accordance with the provisions of this Agreement; and
- (b) The Landowner must (at its cost)
- (i) create and register an easement for pedestrian and cycle access in favour of the Council over the part of the Land on which the East-West Pedestrian Link is located;
- by the date or time specified in Column 2 of the table in clause 1 of this Schedule 4.
- (c) The Landowner must comply with any reasonable directions by Council or Council's Representative in respect of the creation and registration of the easement.

5 East-West Pedestrian Link Embellishment Contribution

The Developer must (at its own cost) embellish the East-West Pedestrian Link in accordance with the Development Consent and in a good and workmanlike manner, and otherwise in accordance with the provisions of this Agreement by the date or time specified in Column 2 of the table in clause 1 of this Schedule 4.

6 Creation of Public Access Easements over North-South Pedestrian Link

(a) The Developer must (at its cost):

- (i) construct the North-South Pedestrian Link in accordance with the Development Consent and in a good and workmanlike manner, and otherwise in accordance with the provisions of this Agreement; and

(b) The Landowner must (at its cost):

- (ii) create and register an easement for pedestrian and cycle access in favour of the Council over the part of the Land on which the North-South Pedestrian Link is located;

by the date or time specified in Column 2 of the table in clause 1 of this Schedule 4.

(b) The Developer must comply with any reasonable directions by Council or Council's Representative in respect of the creation and registration of the easement.

7 North-South Pedestrian Link Embellishment Contribution

The Developer must (at its cost) embellish the North-South Pedestrian Link in accordance with the Development Consent and in a good and workmanlike manner, and otherwise in accordance with the provisions of this Agreement by the date or time specified in Column 2 of the table in clause 1 of this Schedule 4.

8 Widening of Pemberton Street Contribution

(a) The Developer must (at its cost) widen Pemberton Street including new on-street parking, street trees and footpath in accordance with the Development Consent.

(b) The Landowner must (at its cost) carry out all steps required to dedicate and transfer the land shown in the Development Consent as being set aside for road widening in Pemberton Street to the Council.

9 Widening of New Street 1 Contribution

(a) The Developer must (at its cost) widen New Street 1 in accordance with the Development Consent including new street trees and footpath.

(b) The Landowner must (at its cost) carry out all steps required to dedicate and transfer the land shown in the Development Consent as being set aside for road widening in New Street 1 to the Council.

10 Monetary Contribution

- (a) Subject to clause 10(b) of this Schedule 4, the Developer must pay the Monetary Contribution in accordance with the following formula:

$$M = X (435) - K - A$$

Where:

M = Monetary Contribution

X = \$18,000

K = Credit for existing worker population component of Park Embellishment Contribution, being \$35,824.12

A = The value of the Embellishment Work Contribution as determined in accordance with the table in Schedule 6, section 2.

The parties acknowledge that the number of dwellings at 435 includes all residential lots

- (b) The Monetary Contribution must be paid in accordance with the timing specified in Column 2 of the table in clause 1 of this Schedule 4.
- (c) The Council and Developer agree that \$18,000 per dwelling is a cap and is not subject to any increases for any reasons, including without limitation any increases in the Consumer Price Index.

SCHEDULE 5: Guarantee**Guarantees (clause 7.1)**

Column 1	Column 2	Column 3
Guarantee	Value	Date to be provided by the Developer
Contributions	\$2,309,235.00	Within five (5) Business Days of the Commencing Date.

SCHEDULE 6: Agreed Costings**Agreed costings and designs of Park, Pedestrian Links, Pemberton and New Street****SECTION 1****Description of works****East-West Pedestrian Link**

The embellishment of the East- West Pedestrian Link to be undertaken by the Developer in accordance with clause 5 of Schedule 4 as set out in the plans listed in Section 3.

Park

All works associated with improving or establishing the Park, including but not limited to drainage, imported materials, landscaping, lighting equipment and installation, footpaths, walls, furniture, public art, servicing, fencing, playground equipment, and includes works outside the boundary of the Park to allow public access to the Park as set out in the plans listed in Section 3..

North-South Pedestrian Link

The embellishment of the North- South Pedestrian Link to be undertaken by the Developer in accordance with clause 7 of Schedule 4 as set out in the plans listed in Section 3.

Pemberton Street

The widening of Pemberton Street in accordance with the Development Consent by the Developer including the dedication of a 4 metres wide strip of land for road widening purposes adjoining and for the full length of the site frontage to Pemberton Street to the Council by the Landowner in accordance with clause 8 of Schedule 4 as set out in the plans listed in Section 3.

New Street

Widening of New Street 1 and associated landscape works by the Developer and dedication of land to the Council to be undertaken by the Landowner in accordance with clause 9 of Schedule 4 as set out in the plans listed in Section 3.

SECTION 2**Agreed costs**

The Parties agree that the total cost of the Embellishment Work Contribution is \$2,309,235.

SCHEDULE 7: Encumbrances

List of encumbrances

Lot 29 in DP 1231098

- (AA) EASEMENT FOR DRAINAGE (CONVEYANCE BOOK 1517 No. 745)
- (K) EASEMENT FOR FIRE SEPARATION 3.3 WIDE
- (L) EASEMENT FOR FIRE SEPARATION 3.3 WIDE

Lot 30 in DP 1231098

N/A

Lot 31 in DP 1231098

N/A

SCHEDULE 8: Landscaping Plans

Moduplay Compact Swing XSWA 1001

FFP DOUBLE IN_GROUND FOOTINGS: LOOSEFILL I.A. SITE 1088 Rev 0

Plan of Easement for Electricity and other purposes within Lot 200 DP 1216329

Moduplay Motorcycle Rocker XSPA 1042

142 Rev C Picket fence and gate design

0214-0625-CD-410 Rev-08 Public Park General Arrangement Plan, Plan 1 of 2

0214-0625-CD-411 Rev-07 Public Park Typical Details Plan 2 of 2

0214-0625-CD-412 Rev-01 Public Park Detailed Sections

CD-S-O-1101 Rev 1 Public Park Plans and Details

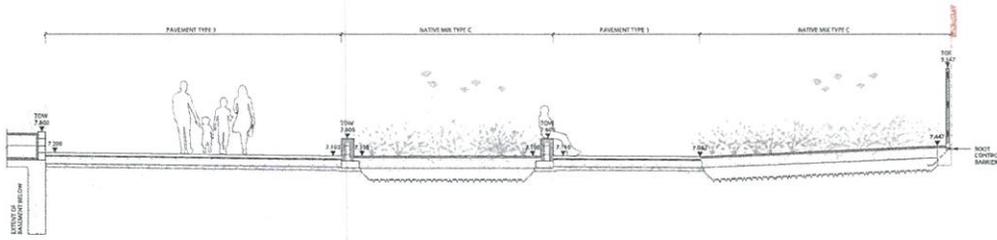
0214-0625-CD-415 Rev-03 Pocket Park General Arrangement Plan, Plan 1 of 1

0214-0625-CD-415 Rev-04 Pocket Park General Arrangement Plan, Plan 1 of 1

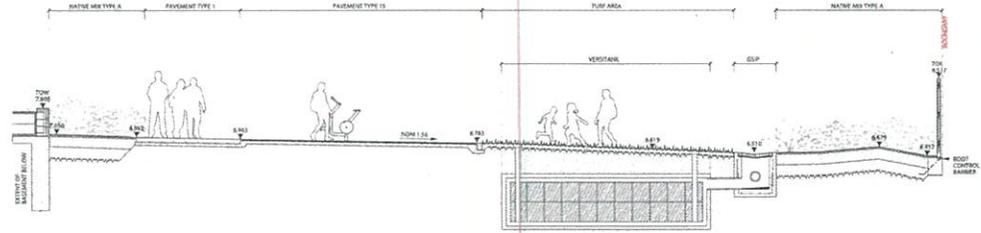
0214-0625-CD-240 Rev-04 Site Irrigation Plan

Letter dated 2 November 2017 from SCP engineers and development consultants: Certificate of Design Compliance.

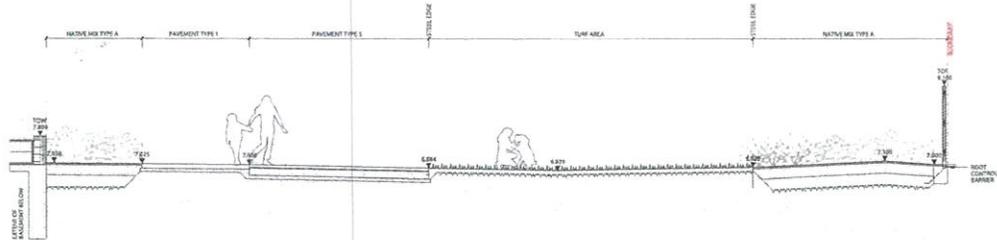
APPROVED
 Bayville Council
 BY: N. ElMasri DATE 20/12/13



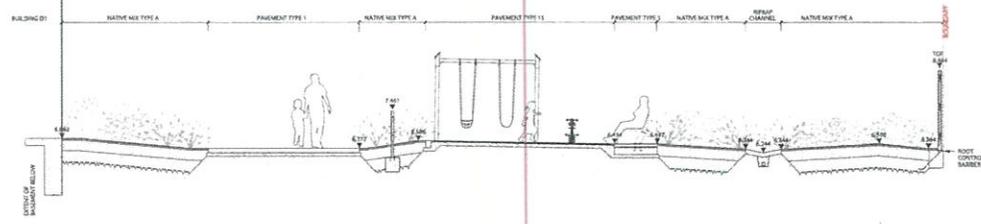
A TAYLORS WALK PUBLIC PARK SECTION
 DETAILED SECTION



C TAYLORS WALK PUBLIC PARK SECTION
 DETAILED SECTION



B TAYLORS WALK PUBLIC PARK SECTION
 DETAILED SECTION



D TAYLORS WALK PUBLIC PARK SECTION
 DETAILED SECTION

REVISIONS

NO.	DESCRIPTION	DATE	BY	CHKD
01	ISSUE FOR CONSTRUCTION	14/12/13	GG	GG

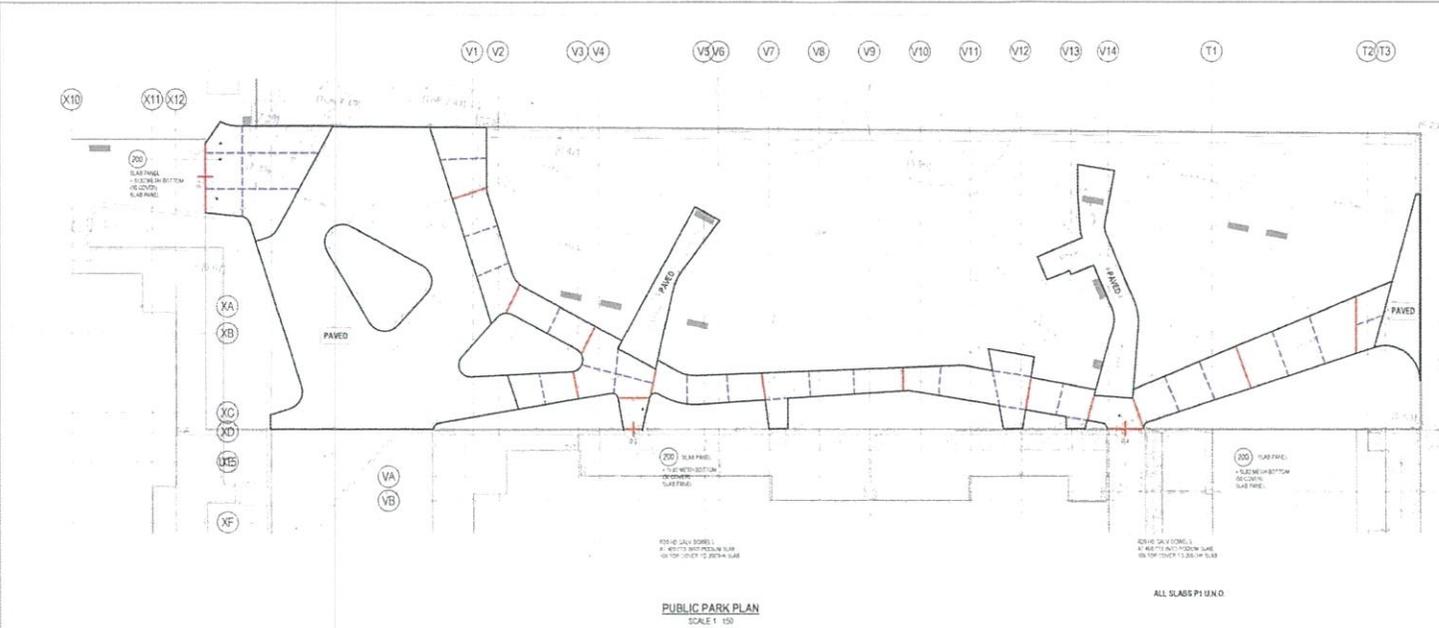
GENERAL NOTES

1. ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED ARE IN METERS AND TO FACE UNLESS OTHERWISE SPECIFIED.
2. ALL DIMENSIONS MUST BE VERIFIED IMMEDIATELY TO THE SUBSTRATE.
3. THESE DIMENSIONS ARE TO BE READ IN CONJUNCTION WITH THE DETAILS, SPECIFICATIONS AND EXPLANATIONS THEREON.
4. LOCATE AND PROTECT ALL UNDERGROUND UTILITIES PRIOR TO ANY CONSTRUCTION. MAKE GOOD ALL DAMAGE TO EXISTING UTILITIES CAUSED BY THE ACTIVITIES OF THESE WORKS.
5. THESE DIMENSIONS ARE TO BE FINISHED IN CONCRETE.

These drawings are the property of the copyright holder and shall remain the property of the copyright holder. No part of these drawings may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the copyright holder.

BUILDER RICHARD CROOKES CONSTRUCTIONS	ARCHITECT GROUP USA <small>Group USA Pty Ltd 2001/100 St Georges Road, Suite 100 Sydney NSW 2000 Australia Tel: +61 (0)2 9211 9999 Fax: +61 (0)2 9211 9998 Email: info@groupusa.com.au</small>	PROJECT TAYLOR'S WALK 52-54 PEMBERTON STREET, BOTANY	PUBLIC PARK DETAILED SECTIONS		
		CLIENT FRASERS PROPERTY	DRAWING No. 0214-0625-CD-412	REV 01	DATE 01/12/13
FOR CONSTRUCTION		SCALE AS SHOWN	DATE 14.11.13	APPD GG	

Tract
 Landscape Architects
 Urban Designers
 Town Planners
Level 8/95 Macquarie Street North Sydney NSW 2060
 Ph: +61 (0)2 9550 4700
 www.tract.com.au



PAVEMENT & SUBGRADE
 ALL PAVED AREAS SHALL BE CONSTRUCTED TO THE FINISH LEVEL SHOWN ON THIS PLAN. THE SUBGRADE SHALL BE TO THE FINISH LEVEL SHOWN ON THIS PLAN. THE FINISH LEVEL SHALL BE TO THE FINISH LEVEL SHOWN ON THIS PLAN.

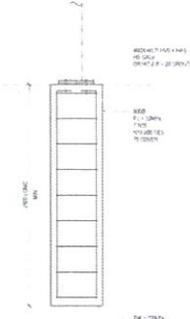
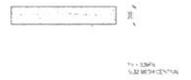
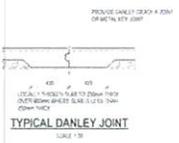
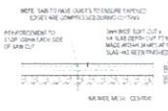
SLAB ON GROUND NOTES

CONCRETE COMPRESSION STRENGTH TO BE 30 MPa AT 28 DAYS.
 SLAB TO BE REINFORCED WITH 10% TO 12% WELDED WIRE MESH.
 REINFORCEMENT SHALL BE TO THE FINISH LEVEL SHOWN ON THIS PLAN.
 ALL PAVED AREAS SHALL BE CONSTRUCTED TO THE FINISH LEVEL SHOWN ON THIS PLAN.

BULK EARTHWORKS SPECIFICATION

ALL EARTHWORKS SHALL BE TO THE FINISH LEVEL SHOWN ON THIS PLAN.
 ALL EARTHWORKS SHALL BE TO THE FINISH LEVEL SHOWN ON THIS PLAN.
 ALL EARTHWORKS SHALL BE TO THE FINISH LEVEL SHOWN ON THIS PLAN.

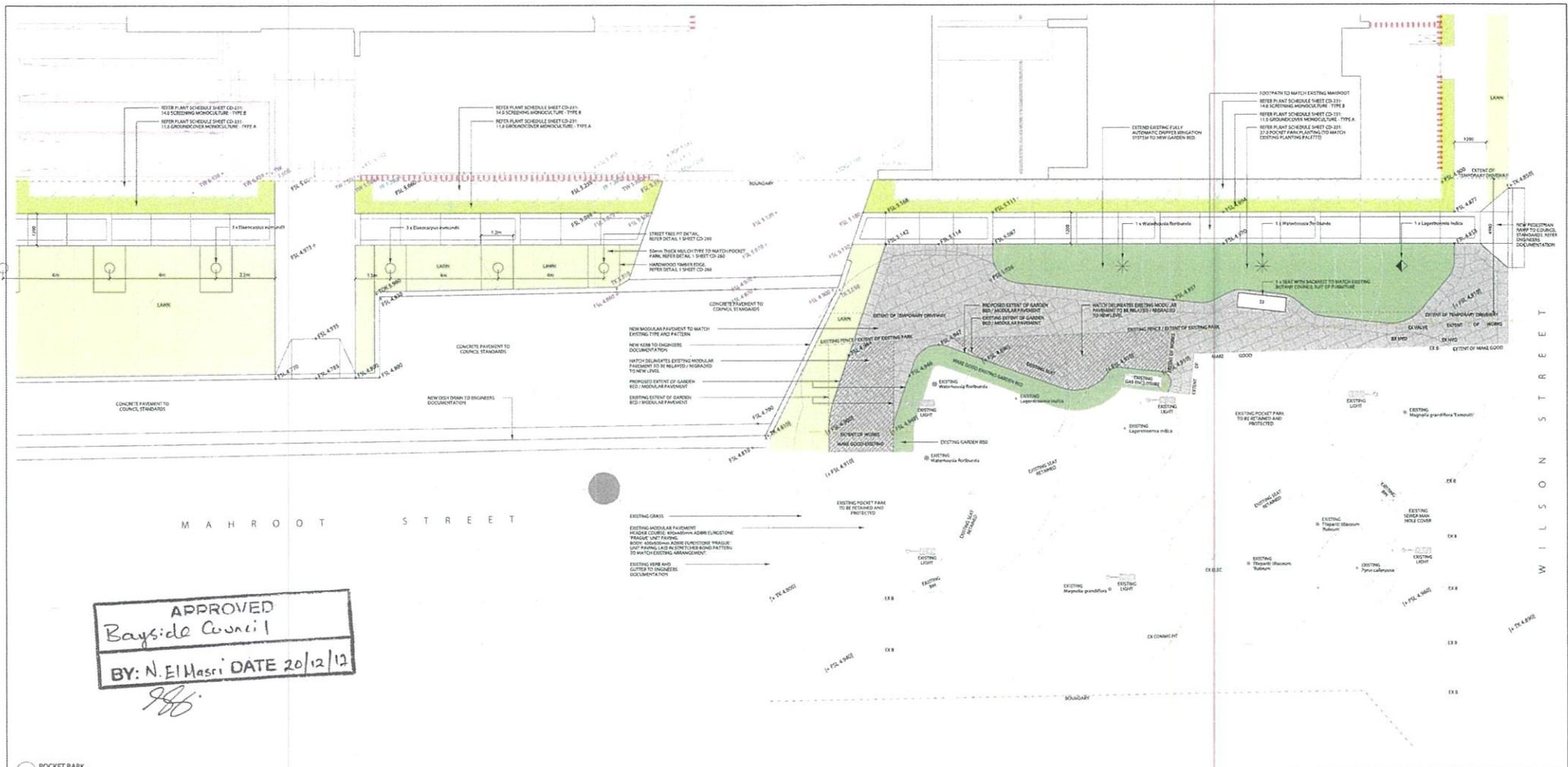
ITEM	QUANTITY	UNIT	REMARKS
GRAVEL	1000	m ³	FOR PAVED AREAS
CONCRETE	1000	m ³	FOR PAVED AREAS
WELDED WIRE MESH	1000	m ²	FOR PAVED AREAS
...



APPROVED
Bayside Council
 BY: N. Elhasri DATE 20/12/12

FRASERS PROPERTY AUSTRALIA
 52-54 FEMBERTON ST. BOTANY
 PUBLIC PARK PLANS & DETAILS

CD-S-O-1101 1



APPROVED
 Bayside Council
 BY: N. El Masri DATE 20/12/12
980

**POCKET PARK
DETAIL LANDSCAPE PLAN**

LEGEND

Existing trees to be retained and protected	Modular Pavement laid on wet bed to match existing Mahroot Council 100mm x 100mm rubber granules Triplex with geogrid	Garden Bed Screen block to be used. This should to match existing within Pocket Park	EXISTING LIGHT	Existing Light to be retained and protected	FSL 5.255 +	Proposed Finished Surface Level
Electrician symbol - Luminaire Quantifying Size at Mahroot 10m high x 6m wide Ref Sheet 200	Existing modular pavement to be replaced / upgraded to new level	Soft Leaf Buffalo Lawn Common Bush and shrubbery Cultivated substrate	EXISTING SEAT	Existing Seat to be retained and protected	TK 4.05 +	Proposed Top of Kerb Level
L1 Legerporems Indica x Copper Myrtle Size at Mahroot 8m high x 5m wide Ref Sheet 200	Footpaths 300x300mm Unburnt Stone pavers in geometric with board finish to border concrete and treading 6m (10%) with 10% concrete with to cover specification. Refer CD 4.0.200 PUBLIC DOMAIN SHEET 1 & CD 4.0.200 PUBLIC DOMAIN SHEET 2 prepared by Group GSA	Proposed Seat with backrest Refer Furniture Schedule	EXISTING GAS ENCLOSURE	Existing Gas Enclosure to be retained and protected	TK 5.050 +	Proposed Top of Form Level as per Engineers Documentation
WE 100mm x 100mm x 100mm Weeping Lilly Lilly Size at Mahroot 1.5m high x 1m wide Ref Sheet 200	Proposed Ramp Refer Engineers Documentation	Boundary	EXISTING BIN	Existing Bin to be retained and protected	[FSL 4.800 +]	Existing Finished Surface Level
	Line of Works Allow make good to disturbed areas beyond	Existing Fence / Extent of Existing Pocket Park	EXISTING TOWER MAIN HOLE COVER	Existing Tower Main Hole Cover	[TK 4.800 +]	Existing Top of Kerb Level

FURNITURE SCHEDULE

No of Item	Item Description	Product Ref.	Supplier	Material	Colour	Finish	Dimensions	Quantity
1	Seat Type 1 - 3000mm Seat with Backrest	EM177	Exhibition	Stainless Hardwood Timber 31.250 x 215.250mm x 50mm	N/A	Brushed Glass Frame 31.250 x 215.250mm	10721 x 11900 x 11050mm	1

- REVISIONS**
- | NO | DESCRIPTION | DATE | BY |
|----|-------------------|----------|----|
| 01 | ISSUED FOR PERMIT | 08/12/12 | MM |
| 02 | ISSUED FOR PERMIT | 08/12/12 | MM |
| 03 | ISSUED FOR PERMIT | 08/12/12 | MM |
| 04 | ISSUED FOR PERMIT | 08/12/12 | MM |
- GENERAL NOTES**
1. ALL MATERIALS SPECIFIED IN THIS DOCUMENT ARE TO BE USED UNLESS OTHERWISE SPECIFIED.
 2. ALL DIMENSIONS SHOULD BE REPORTED UNLESS OTHERWISE SPECIFIED.
 3. THIS DRAWING IS TO BE USED IN CONJUNCTION WITH THE GENERAL SPECIFICATIONS AND TECHNICAL SPECIFICATIONS.
 4. ALL WORK IS TO BE COMPLETED IN ACCORDANCE WITH THE RELEVANT STANDARDS AND ALL CHANGES TO EXISTING WORKS SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
 5. THIS DRAWING IS TO BE PRINTED IN COLOUR.

MATERIALS PALETTE



13. Existing Bench Seat
Product Name: Exhibition Seat
Product Code: EM177
Supplier: Exhibition
Refer Furniture Schedule for details

Existing Pavement and Planting to Pocket Park

Existing Footpath Detail to Mahroot Street

REVISIONS

NO	DESCRIPTION	DATE	BY
01	ISSUED FOR PERMIT	08/12/12	MM
02	ISSUED FOR PERMIT	08/12/12	MM
03	ISSUED FOR PERMIT	08/12/12	MM
04	ISSUED FOR PERMIT	08/12/12	MM

GENERAL NOTES

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<p>BUILDER</p> <p>RICHARD CROOKES CONSTRUCTIONS</p>	<p>ARCHITECT</p> <p>GROUP GSA</p>	<p>PROJECT</p> <p>TAILOR'S WALK 52-54 PEMBERTON STREET, ROTARY</p>	<p>POCKET PARK GENERAL ARRANGEMENT PLAN PLAN 1 OF 1</p>
<p>CLIENT</p> <p>FRASERS PROPERTY</p>	<p>DRAWING NO.</p> <p>0214-0625-CD-415</p>	<p>DATE</p> <p>03.03.17</p>	<p>SCALE</p> <p>AS SHOWN</p>

**Tract Architects
Urban Designers
Town Planners**



commercial systems
Compact Swing
XSWA 1001

No	Code	Name	Qty
Components			
1		Top Beam	1
2		Post	2
2		Clamp Set 2 Pce	4
3		Cap	2
Hardware			
4		Torx Bolt 3/8, 50mm	4
5		Torx Bolt 3/8, 65mm	8
6		Torx Bolt 3/8, 40mm	4
7		Tee Nut 3/8	12
8		Hex Bolt 3/4 UNF	2
9		Cap 2pce Plastic	4

Free Height of Fall (FHOF)

The highest point of intended body support for this activity is: The Swing Seat

FHOF = 1300mm

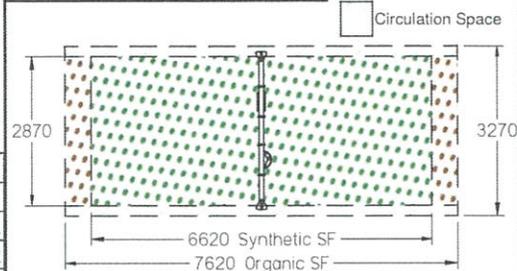
Safety Requirements

Please note the equipment space, free space and fall zone requirements in figure 1.

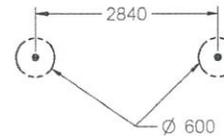
Other Information

Age Range: 3 - Teenager
Supervision Required: Moderate
Indoor Use Only: No
Climate Sensitive: Mild
Vandal Resistant: No
Orientation Comment: If possible, install in a North South orientation

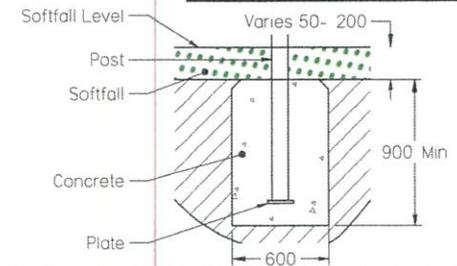
Safety Plan Fig 1



Footing Plan

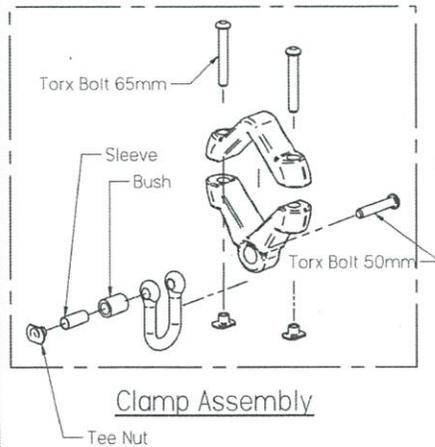
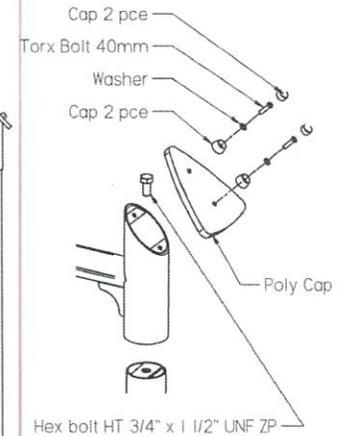
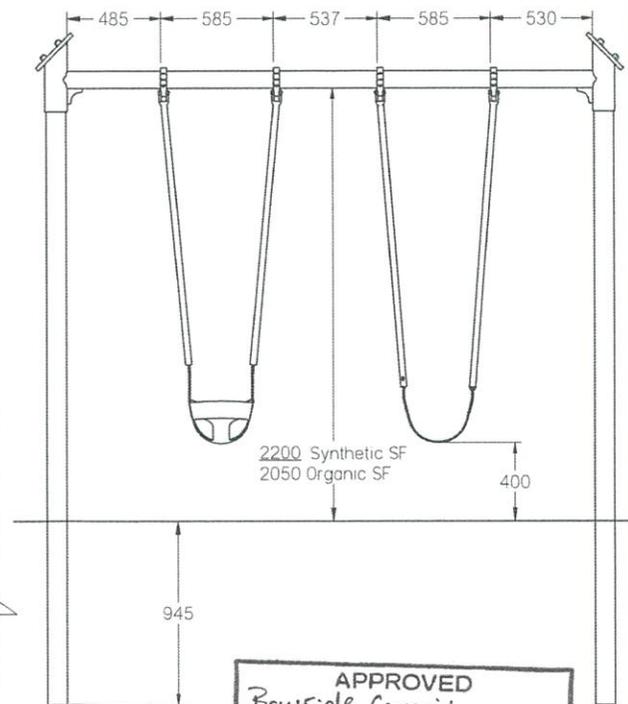


Concrete: 25mpa
Reinforcement: None



Method

- 1 Assemble Clamps, Top Beam and Caps
2. Create footing holes
3. Erect assembled swing and pour footing



APPROVED
Bayside Council
BY: N. ElMasri DATE 20/12/17

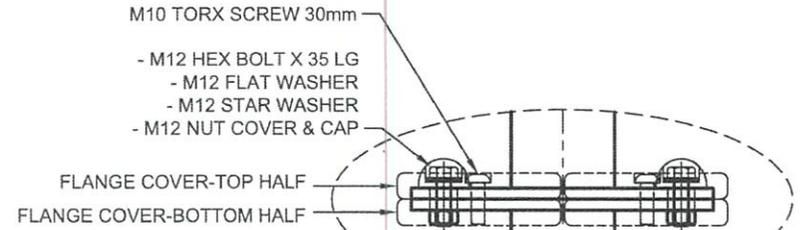
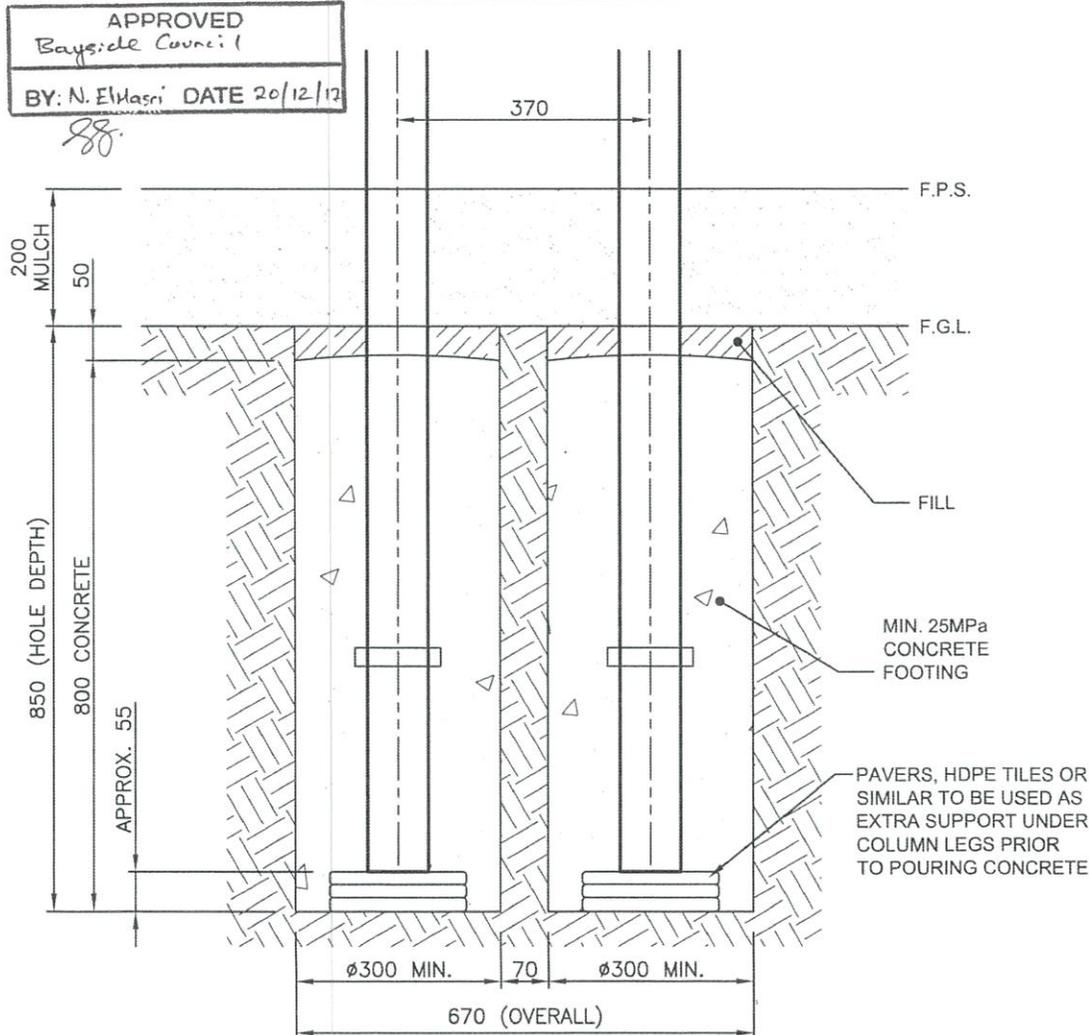
©MODUPLAY

NOTES: I.A.S. = IMPACT ATTENUATING SURFACE
 F.P.S. = FINISHED PLAYGROUND SURFACE
 F.G.L. = FINISHED GROUND LEVEL

CONCRETE MUST
 BE MIXED WET
 BEFORE POURING

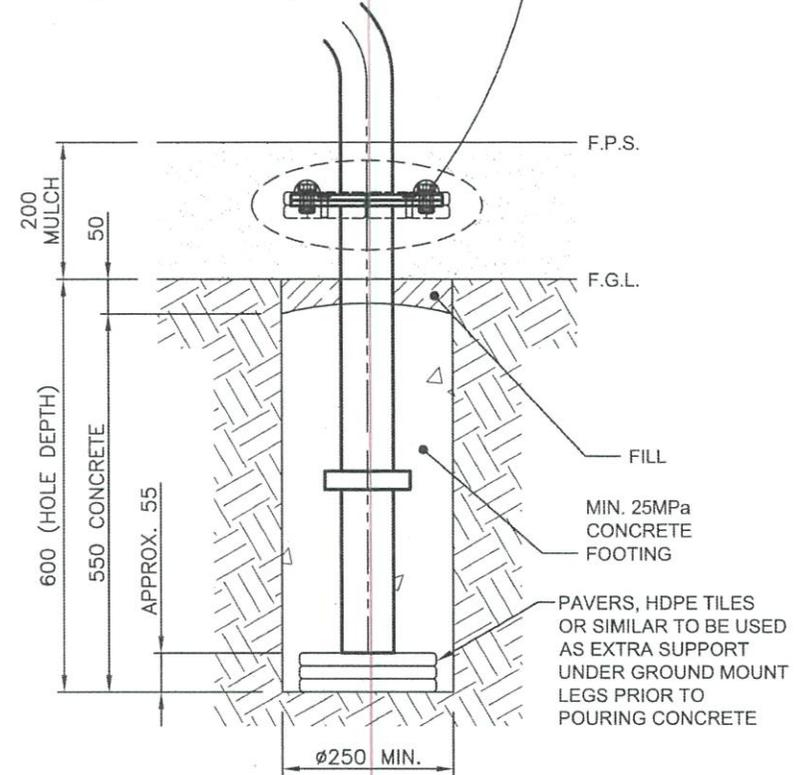
THIS SPECIFICATION IS BASED ON STANDARD SOIL CONDITIONS.
 FOR AREAS WITH NON-STANDARD SOIL TYPE (IE. SOFT/SANDY OR GRANULAR),
 FOOTING SIZE WILL NEED TO BE CONFIRMED BY ENGINEER

DOUBLE COLUMN



**ACCESSORY
 GROUND MOUNT**

(WHERE APPLICABLE)



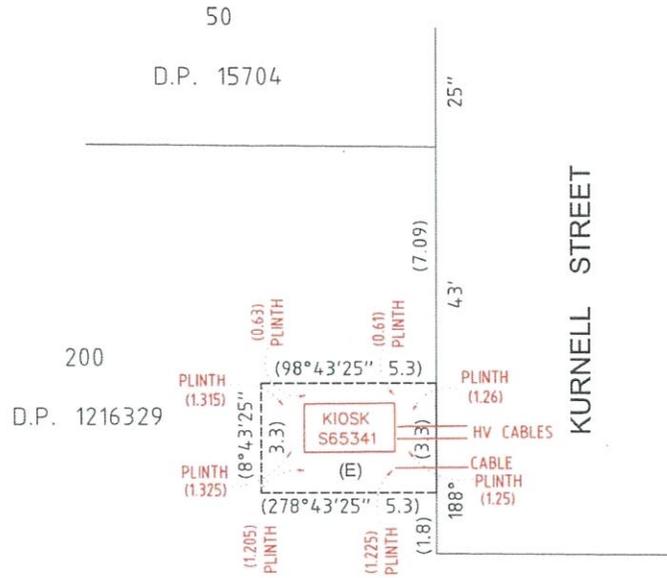
TITLE: FFP DOUBLE IN-GROUND FOOTINGS: LOOSEFILL I.A.S.

	DATE DRAWN	DRAWN BY	Dimensions in mm
	11/02/2016	J.H.	unless stated otherwise
DRG No:	SITE 1088		0
			REV





APPROVED
 Bayside Council
 BY: N. ElHassri DATE 20/12/17



(E) EASEMENT FOR ELECTRICITY & OTHER PURPOSES
 3.3 WIDE

THE LOCATION OF THE KIOSK AND
 CABLES AS SHOWN IN RED HAS BEEN
 SURVEYED BY ME.

JAMES PATRICK THORPE MIS. AUST.
 REGISTERED SURVEYOR
 DATE: 3-2-2017
 BEVERIDGE WILLIAMS inc. DUNLOP THORPE & CO.

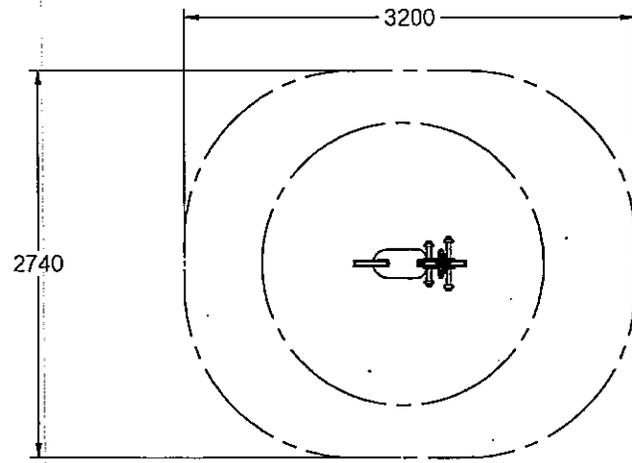
Surveyor: JAMES PATRICK THORPE
 Date of Survey: 27 - 1 - 2017
 Surveyor's Ref: 1601542 KIOSK 2

PLAN OF EASEMENT FOR ELECTRICITY
 AND OTHER PURPOSES WITHIN
 LOT 200 D.P.1216329

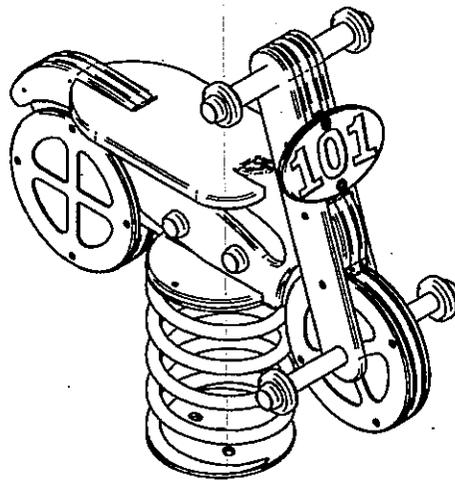
LGA: BAYSIDE
 Locality: BOTANY
 Subdivision No:

Registered

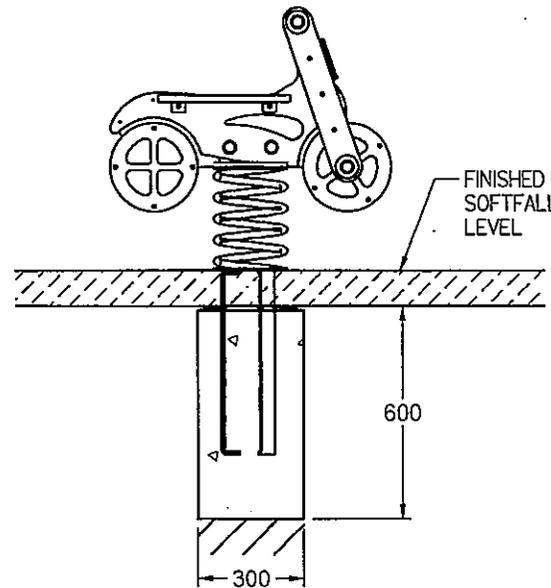
Lengths are in metres. Reduction Ratio 1:150



1:50



PICTORIAL



FOOTING DETAIL

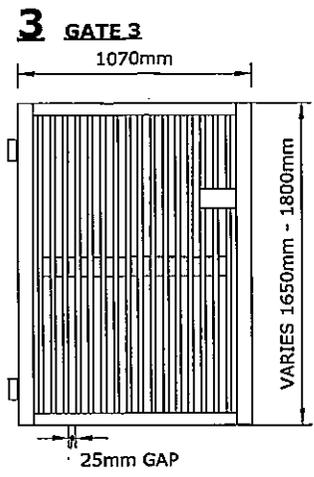
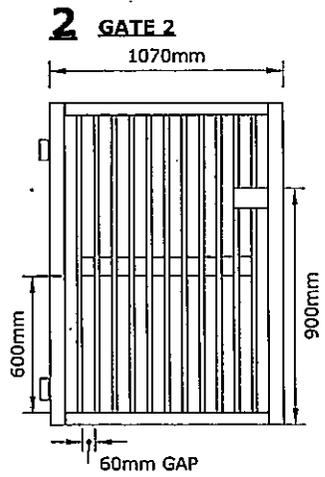
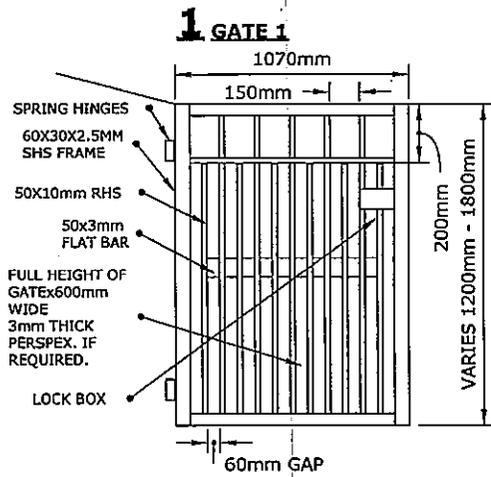
ENGINEERING NOTES:

1. FOOTINGS TO BE EXCAVATED INTO FIRM UNIFORM NATURAL GROUND WITH A SAFE BEARING CAPACITY OF AT LEAST 100KPa.
2. ALL CONCRETE ASSUMES GRADE N25 (25MPa), IN ACCORDANCE WITH AS3600.
3. FOUNDATIONS MUST COMPLY WITH THESE DRAWINGS AND/OR AS-4685.1:2014, SECTION 4.2.14.
4. IMPACT ATTENUATING APPROVED SOFT-FALL MATERIAL IS TO BE INSTALLED AS PER AS-4685.1:2014 & AS/NZS-4422:1996
5. COLOURED 'LOCTITE' MUST BE APPLIED TO ALL FIXINGS.

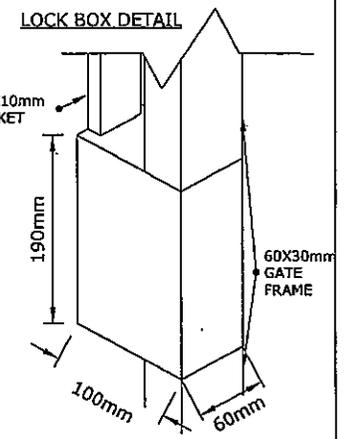
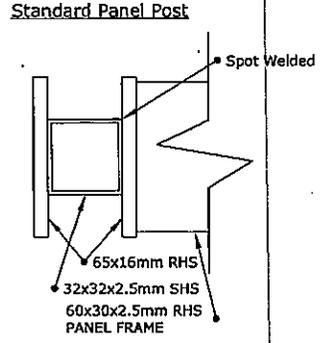
APPROVED
Bayside Council
 BY: N. ElMassi DATE 20/12/17

DO NOT SCALE DRAWINGS

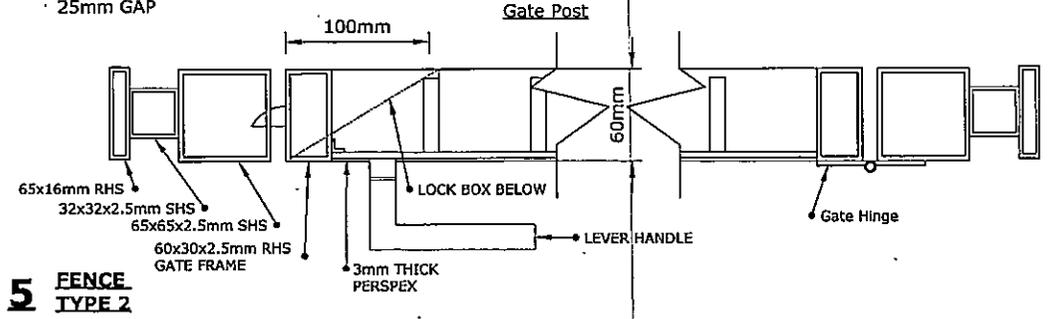
Product Motorcycle Rocker		@MODUPLAY commercial systems PH: 02 4272 1644	SCALE 1:10 SHEET 1 OF 1	REV 0 SIZE A4	DWG NO. XSPA 1042 [Drawing No.]
Activity Type Installation	ALL DIMS IN MM				0



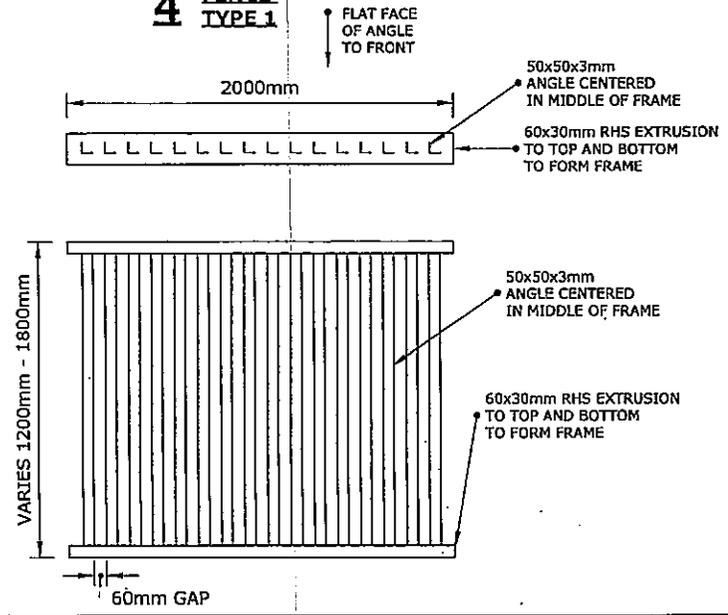
6 POST DETAIL & SECTIONS



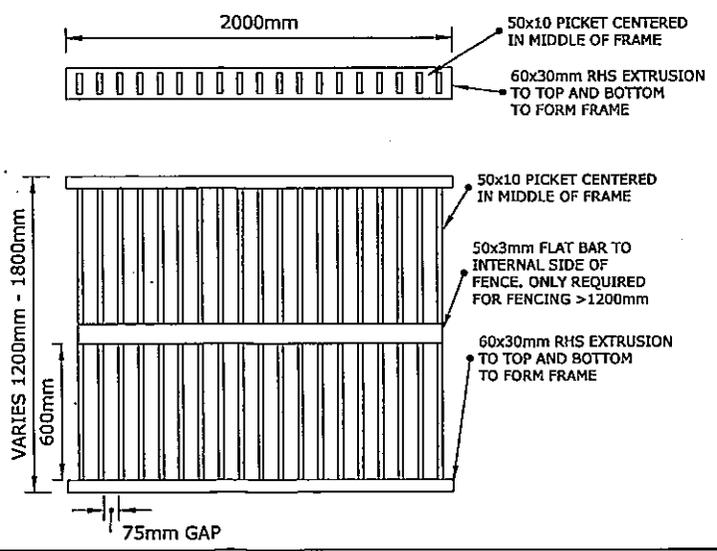
APPROVED
Bayside Council
BY: N. ElMasri DATE 20/12/17
ES



4 FENCE TYPE 1



5 FENCE TYPE 2



- LOCKING DETAILS:**
- Lockwood Syngy 3572 Vest 60Mm Sc
 - Kaba Furn Std Int Lvr Only
 - Abus 570 Ext'd Cylinder 50mm
 - BRM590ESC - Oval Escution

C	FENCE & GATE DESIGN	BP	15-06-17
REV	DESCRIPTION	BY	DATE
DRAWN:	DWG #	TITLE: PICKET FENCE & GATE DESIGN	
BP	142		
REV:	DATE:	PROJECT: TAYLOR'S WALK	
C	15-06-17		



L2 Danchen House
507 Kent St Sydney NSW 2000
ABN 80 003 076 024

T (02) 9267 9312
mail@scpsconsult.com.au
www.scpsconsult.com.au

DIRECTORS

PJ Trickett BE(Hons), Dip Tech, MIE Aust, CPEng
BJ King BE, NZCE, MIE Aust, CPEng
P Siewert BE(Hons), MIE Aust, CPEng
D Templeton BE(Hons), MIE Aust, CPEng, RPEQ

Our Ref. 160012

Richard Crookes Construction
3/4 Broadcast Way,
Artarmon NSW 2064

Attention: Joshua Sanderson
Senior Project Engineer

APPROVED
Bayside Council
BY: N. El Masri DATE 20/12/17

CERTIFICATE OF DESIGN COMPLIANCE

Project Name: Tailors Walk Botany Development
Project Address: 50-54 Pemberton St
Botany NSW 2019

I, **Daniel Lee** of SCP Consulting Pty Ltd at Level 2, 507 Kent Street, Sydney NSW 2000 designed the stormwater drainage system and co-ordinated the design with the Tract Landscape Architects with respect to levels and pit locations and flow paths. The depth and velocity of flows for the site have been determined to ensure a suitable level of performance in accordance with respect to safety of resident and the public during storm events up to the 1 % AEP rainfall intensity as required by the BCA.

I hereby certify that:

The overland flow from stormwater runoff in events up to the 1% AEP for the main park and pocket park (as shown in the drawings listed below) meet the performance standards as set out in the Botany City Council Stormwater Technical Manual and the performance requirements of AS3500.3 Stormwater Drainage.

(list drawing numbers and revision)

Landscape Drawings				
0214-0625-CD-210(6)	0214-0625-CD-302(4)	0214-0625-CD-305(4)	0214-0625-CD-410 (7)	

Signed: 
Name: Daniel Lee BE (Civil) MBA NPER3 CPEng
Title: Senior Civil Engineer

Dated: 2 Nov 2017