

DATED: 23 November 2015
2015

BETWEEN:

BOTANY BAY CITY COUNCIL
(Council)

AND:

RHODES STREET PTY LTD (A.C.N.
163 565 204)
(Applicant)

AND:

JEAN NASSIF
(Guarantor)

DEED OF AGREEMENT

HOUSTON DEARN O'CONNOR

Solicitors
Suite 33, 5th Floor
12 Railway Parade
BURWOOD NSW 2134

DX 8565 BURWOOD

Tel: 9744 9247

Fax: 9744 6739

REF: TOC:ac:113139-505

THIS DEED made the

day of

2015

BETWEEN: **BOTANY BAY CITY COUNCIL** of 141 Coward Street, Mascot in the State of New South Wales (**Council**) of the first part

AND: **JKN RHODES STREET PTY LTD (A.C.N. 163 565 204) (JKN)** of 121 Majors Bay Road, Concord 2137 (**Applicant**) of the second part

AND: **JEAN NASSIF** of Unit 2301, 20 Porter Street North Entrance, Meadowbank 2114 of the said State (**Guarantor**) of the third part.

WHEREAS:

- A. JKN is the registered proprietor of the land known as 39 Rhodes Street, Botany and 47A Rhodes Street, Hillsdale New South Wales, being the whole of the land comprised in Certificate of Title Folio Identifiers SP1/33080, SP2/33080, SP3/33080, SP4/33080, SP5/33080, SP6/33080, SP7/33080, and Lot 1 in DP1200144 (**Site**).
- B. JKN, the Applicant, is the Developer of the Site. Jean Nassif, the Guarantor, is the Director of JKN.
- C. Krikis Tayler Architects lodged a development application with the Council, on behalf of JKN, on 24 December 2013, for demolition and the subsequent construction of three (3) residential flat buildings, with associated development, on the Site (**DA13/279**).
- D. JKN offered, through their architects Krikis Tayler Architects, by letter dated 28 January 2015 to enter into a voluntary planning agreement with the Council whereby they, inter alia, agreed to prior to the issue of any occupation certificate, carry out the works on Grace Campbell Reserve generally shown in drawing

number 96.15(14)/034 'A', prepared by iScape Landscape Architecture dated January 2015 (**Plan**), such Plan and letter annexed hereto and marked "A".

E. On 2 February 2015, DA13/279 was approved by Commissioner O'Neil in respect of the Site which approved the ultimate construction of residential flat building (**Consent**).

F. Condition 7 of the Consent provides:

7 Public Domain Works and Voluntary Planning Agreement

In accordance with the letter dated 28 January 2015, the applicant and the landowner are to enter into a Voluntary Planning agreement under section 93F of the Environmental Planning and Assessment Act 1979 with Botany Bay Council to undertake the public domain works within Grace Campbell Reserve. The Voluntary Planning Agreement is to be entered into, prior to the issue of any Construction Certificate which includes above ground works, or as otherwise agreed by the General Manager. The works the subject of the Voluntary Planning Agreement are to be carried out and completed prior to the issue of any Occupations Certificate. The Concept Landscape plans prepared by Iscape Landscape Architect (drawing no. 96.15 (14) 034 "A" Revision A dated 28.01.15) is to be amended as follows, prior to the issue of any Construction Certificate which includes above ground works:

- *A replacement timber post & rail fence to match existing, to be provided on the Denison & Rhodes Street frontages to Grace Campbell Reserve. Gates are to be provided by Council.*
- *The Kunzea on the eastern boundary of property at 23 Grace Campbell Crescent to be deleted and the Banksia trees retained.*

G. The Plan has been amended in accordance with Condition 7 (**Amended Plan**). The Amended Plan, titled 'Final VPA Landscape Plan' (drawing number 96.15(14)/034 'B' Revision B) prepared by iScape Landscape Architecture dated 19 June 2015, is annexed hereto and marked "B".

- H. In accordance with the offer made by JKN, and Condition 7 of the Consent, the Parties now enter into this agreement as follows.

NOW THIS DEED WITNESSES as follows:

1. The Parties agree that this Agreement is a planning agreement within the meaning of section 93F of the Environmental Planning and Assessment Act 1979 (**Act**) and governed by subdivision 2 of Division 6 of Part 4 of the Act (**Planning Agreement**).
2. This Planning Agreement shall be binding on the Parties hereto and upon their respective heirs, executors, transferees and assigns.
3. The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of any rights of the Council existing at law or which the Council would otherwise have available to it.
4. In case one or more of the provisions contained in this Planning Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining conditions contained therein shall not thereby be affected.
5. Nothing in this agreement shall 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 shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
6. The Applicant and the Guarantor covenant jointly and severally with the Council as follows:
 - (a) that within 2 months from the date of this Planning Agreement, they shall do all things reasonably necessary to obtain any consents necessary to the registration of this Planning Agreement over the title to the Site pursuant to Section 93H of the Act from all persons who have an interest in the Site;

- (b) that forthwith after receiving the consents specified in subclause (a) hereof they shall cause this Planning Agreement to be registered on the title of the Site with such registration occurring no later than within 2 months of the date of this Planning Agreement;
- (c) that if this Planning Agreement is not registered on the title to the Site, and if JKN should propose to sell any or all of the Site, then it shall:
 - (i) within seven (7) days of listing any or all of the Site for sale, either through an agent or privately, notify the Council of such intention;
 - (ii) as a condition of any sale, require that the incoming purchaser enter into with Council a like Planning Agreement to this present Planning Agreement in which the same covenants as set out herein shall apply;
 - (iii) within seven (7) days of exchange of contracts for the sale of any or all of the Site, notify the Council of the sale and provide the Council with a copy of the contract;
 - (iv) within twenty one (21) days of receipt from the Council of a replacement Planning Agreement between the Council and the purchaser substantially in the form of this Planning Agreement, have it executed by the purchaser and return it to the Council;
 - (v) that if this Planning Agreement is not registered on the title to the Site, and if JKN should propose otherwise than by sale to transfer or assign its interest in any or all of the Site or any part thereof to a transferee or assignee, then it shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with the Council substantially in the form of this Planning Agreement insofar as concerns the interest assigned or transferred and shall provide same to the Council.

- (d) prior to the issue of any Occupation Certificate for the development at the Site, be it interim or final, the works specified in the Amended Plan to Grace Campbell Reserve (**Landscape Upgrade Works**) (such works not to include any decontamination or remediation of Grace Campbell Reserve, if necessary for its use as a Park) shall be carried out to Council's reasonable satisfaction.
 - (e) to lodge all necessary applications with Council seeking approval for the Landscape Upgrade Works;
 - (f) to pay the Council's reasonable solicitor/client costs and disbursements of and incidental to the preparation, execution and stamping of this Planning Agreement and of and incidental to Council preparing and registering a Caveat and if necessary the consenting and agreement to a new Planning Agreement to be entered into with any purchaser or assignee required by subclause (c) hereof.
7. Council will grant all necessary access to Grace Campbell Reserve to the Applicant, their servants and agents, to carry out the Landscape Upgrade Works.
 8. The Applicant and the Guarantor further covenant and agree with the Council that the Council shall be entitled to register a caveat at Land & Property Information New South Wales over the title of the Site to protect its interest herein pursuant to this Planning Agreement pending the registration of this Planning Agreement over the title to the Site.
 9. Should the Applicant and the Guarantor be in breach of any of the terms of this Planning Agreement, and not rectify the default within twenty one (21) days of receiving notice from Council to do so (except if a delay in rectification is likely to cause irremediable damage or prejudice to Council, in which case no notice is required) Council shall be entitled, at its option, to enforce by way of injunctive relief in the Supreme Court any provisions of this Planning Agreement which have been breached, or to seek damages or seek to enforce the provisions of any Development Consent whether by way of an order of the kind specified in

Section 121B of the Act, by Class 4 proceedings in the Land and Environment Court, or otherwise.

10. Any amendment or variation to this Planning Agreement is not effective unless it is in writing and signed by all the parties.
11. The explanatory note put on exhibition with this Planning Agreement is not to be used in construing the terms of this Planning Agreement.
12. In the event of any disagreement between the parties hereto arising out the provisions of this Planning Agreement, and if the parties are unable within a reasonable time to resolve such disagreement amicably, either party may serve notice on the other requiring the matter to be referred to a conciliation by a single conciliator at the Australian Commercial Disputes Centre Limited in Sydney. The Parties shall thereafter in good faith seek to resolve the matter through conciliation and the Parties shall equally bear the cost of such conciliation. The Parties must keep confidential and must not disclose or rely upon, or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a party, an expert or the conciliator during the conciliation relating to a possible settlement of the dispute;
 - (b) admissions or concessions made by a party during the conciliation in relation to the dispute; and
 - (c) information, documents or other material, including any confidential information, concerning the dispute which are disclosed by a party during the conciliation unless such information, documents or facts would have been otherwise discoverable in judicial or arbitral proceedings.
13. This Planning Agreement does not exclude the application of Section 94, 94A or 94EF of the Act to the development. Benefits under the Planning Agreement

are not to be taken into consideration in determining a development contribution under Section 94 of the Act.

14. (a) All words in this clause which are also defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (**GST Act**) have a corresponding meaning to that in the GST Act;
- (b) the consideration for any supply under this Planning Agreement excludes GST;
- (c) where a party to this Planning Agreement is taken to have made a supply to another party, the recipient of that supply must, in addition to the consideration payable for the supply and when paying the consideration for the supply, also pay to the maker of the supply an amount equal to the GST payable in respect of that supply. The recipient of a supply must also pay the GST payable in respect of a supply for which no monetary consideration is payable when the maker of the supply demands payment;
- (d) the maker of a supply must give the recipient a tax invoice in the form required by the GST Act at the same time it receives payment from the recipient of the GST payable for that supply;
- (e) despite any other provision of this Agreement, any amount payable under this Agreement, which is calculated by reference to an amount paid or incurred by a party to this Planning Agreement, is reduced by the amount of any input tax credit to which that party or a member of its GST Group is entitled in respect of that amount.
15. Once the Council is satisfied that the Applicant and the Guarantor have fully complied with all of their obligations under this Planning Agreement, the Council agrees to provide a full release and discharge of this Planning Agreement with respect of the whole of the Site. In such circumstances Council will do all things reasonably necessary, including the execution of any documents to enable Applicant to remove the notation of this Planning Agreement, and or removal of

any caveat, on the title to the Site.

16. Subject to Clause 6(c), this Planning Agreement is personal to each party and neither party may assign the rights or benefits of this agreement to any person.

IN WITNESS WHEREOF the parties have set their hands and seals on the day first hereinbefore written.

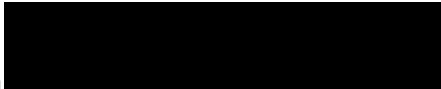
EXECUTED ON BEHALF of the **CITY OF BOTANY BAY COUNCIL** pursuant to Section 683 of the Local Government Act 1993.

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)
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.....

General Manager



Witness

EXECUTED by
JKN RHODES STREET PTY LTD
(A.C.N. 163 565 204) pursuant to
 Section 127 of the
 Corporations Act 2001

)
)
)



.....
 Company Secretary/Director

.....
SOLE Director

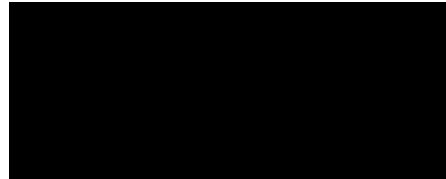
.....
 Name of Company Secretary/Director
 (print)

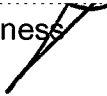
.....
JEAN NASSIF

.....
 Name of Director (print)

SIGNED SEALED & DELIVERED
 by the said **JEAN NASSIF**
 in the presence of:

)
)
)



Witness  Mark Fitzpatrick, Solicitor
 53 Boronga Avenue
 West Pymble NSW

Jean Nassif

“A”

Letter from 28 January 2015 attaching Plan



retail commercial residential infrastructure industrial interiors masterplanning

krikis tayler architects

28 January 2015

Botany Bay City Council
141 Coward Street
Mascot NSW 2020

Attention: Ms Heather Warton

Dear Ms Warton,

**Proposed Residential Development
39 Rhodes Street, Hillsdale
Development Application 13/279
Letter of Offer of Works for Public Benefit – Voluntary Planning Agreement**

On behalf of JKN Rhodes Street Pty Ltd, we advise that JKN Rhodes Street Pty Ltd are willing to enter into a Voluntary Planning Agreement with Botany Bay City Council and offer for public benefit upgrade works to Grace Campbell Reserve generally as shown on the attached drawing 96.15(14)/034'A' prepared by iScape Landscape Architecture and dated January 2015. The proposed soft and hard landscape upgrade works include:

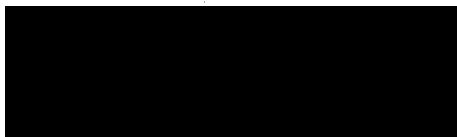
1. Removal of existing pathways as necessary and construction of new 1.8 metre wide pathways.
2. Upgrade of landscaping including the supply and installation of new trees, bushes, and ground cover.

The works to be undertaken by JKN Rhodes Street Pty Ltd do not include any decontamination or remediation of Grace Campbell Reserve whether this is necessary or not for the intended use of the reserve as a public park.

All works are to be completed prior to the issue of the Occupancy Certificate for the proposed residential use development.

The works to be undertaken under this Letter of Offer / Voluntary Planning Agreement will be done so as to be at no cost to Botany Bay City Council and no offset or draw will be made on the Section 94 contributions that would otherwise be payable in respect to the proposed residential use development.

Yours sincerely,
KRIKIS TAYLER ARCHITECTS PTY LIMITED



NICK KRIKIS
Encl



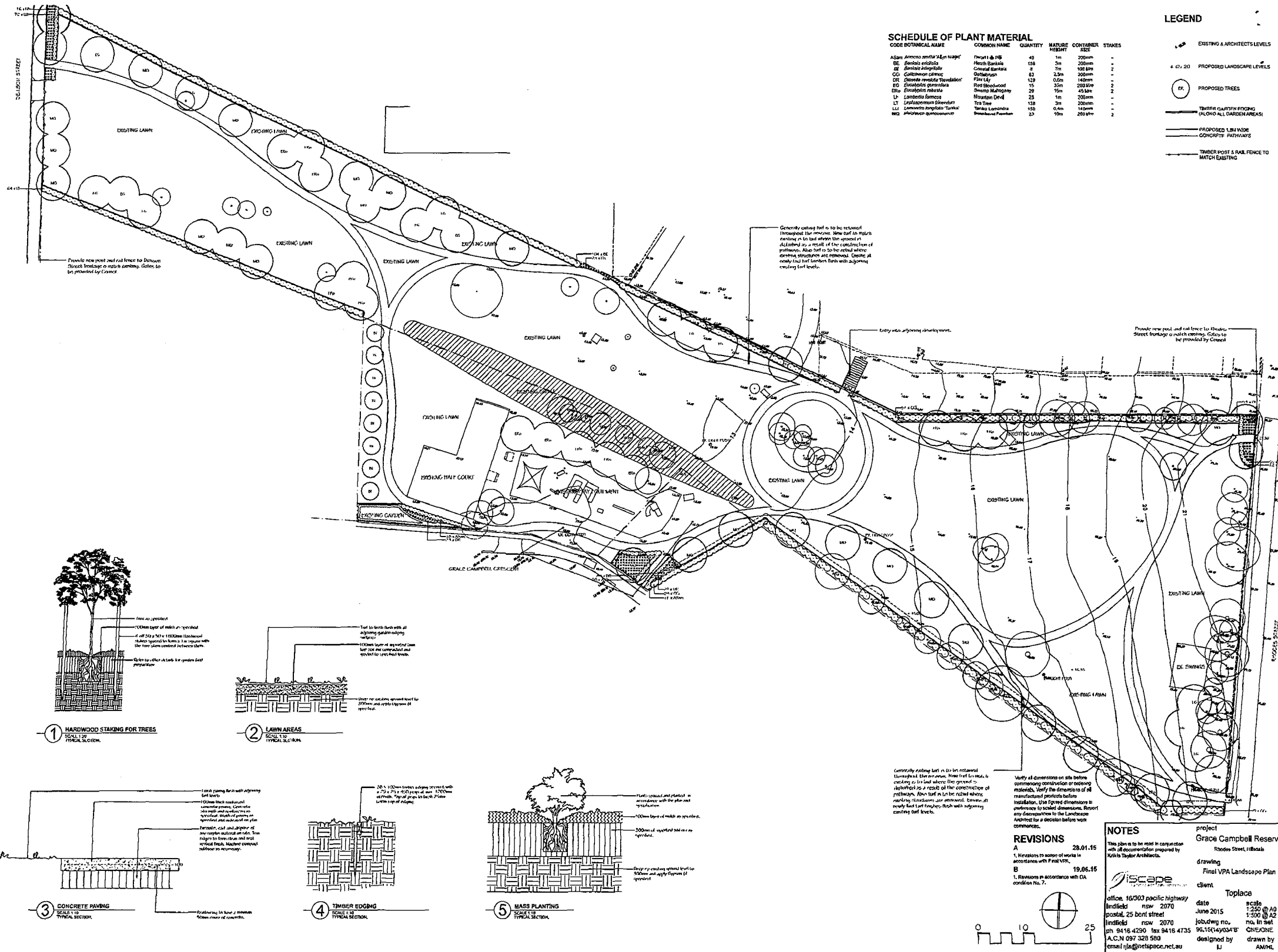
Signed for an on behalf of JKN Rhodes Street Pty Ltd
Jean Nassif - Director



krikis tayler architects pty limited abn 87 074 121 609

“B”

Amended Plan dated 19 June 2015



SCHEDULE OF PLANT MATERIAL

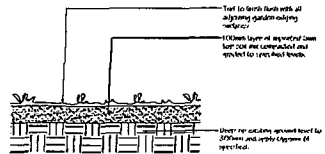
CODE	BOTANICAL NAME	COMMON NAME	QUANTITY	MATURE HEIGHT	CONTAINER SIZE	STAKES
AQ	<i>Adiantum species</i>	Thicket Fern	45	1m	200mm	-
BE	<i>Banksia integrifolia</i>	Heath Banksia	158	3m	200mm	-
GE	<i>Grevillea integrifolia</i>	General Banksia	8	1m	100 mm	2
CO	<i>Callistemon citrinus</i>	Callistemon	83	2.5m	200mm	-
FL	<i>Flax Lily</i>	Flax Lily	129	0.5m	140mm	-
ED	<i>Erica verticillata</i>	Red heath	15	3m	200 mm	2
ER	<i>Erica verticillata</i>	Swampy Mahogany	20	1m	45 mm	2
LI	<i>Lambertia formosa</i>	Mountain Devil	23	1m	200mm	-
LT	<i>Lonicera saxatilis</i>	Tree Heath	138	3m	200mm	-
LL	<i>Lambertia formosa</i>	Tree Heath	150	0.4m	140mm	-
MD	<i>Myrtus laevis</i>	Shrubland	20	10m	200 mm	2

LEGEND

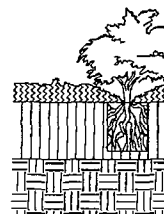
- EXISTING & ARCHITECTS LEVELS
- PROPOSED LANDSCAPE LEVELS
- PROPOSED TREES
- TIMBER CLIPPING FENCING (ALONG ALL GARDEN AREAS)
- PROPOSED 1.5M WIDE CONCRETE PATHWAYS
- TIMBER POST & RAIL FENCE TO MATCH EXISTING



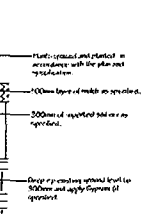
1 HARDWOOD STAKING FOR TREES



2 LAWN AREAS



3 CONCRETE PAVING



4 TIMBER EDGING



5 MASS PLANTING

Verify all dimensions on site before commencing construction or reworking materials. Verify the dimensions of all manufactured products before installation. Use spread dimensions in preference to scaled dimensions. Report any discrepancies to the Landscape Architect for a decision before work commences.

REVISIONS

- A 28.01.15
- 1. Revisions to scope of works in accordance with Final VPA.
- B 19.06.15
- 1. Revisions in accordance with CIA condition No. 7.

NOTES

This plan is to be read in conjunction with all documentation prepared by Kish & Taylor Architects.

project
Grace Campbell Reserve
Riddell Street, Riddell

drawing
Final VPA Landscape Plan

client
Toplace

office 16/203 Pacific Highway
lindfield NSW 2070
postal 25 bent street
lindfield NSW 2070
ph 9416 4290 fax 9416 4735
A.C.N 097 328 580
email nja@netspec.net.au

date
June 2015
1:200 @ A2
no. in set
ONE/ONE
designed by
drawn by
AMHL