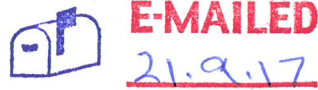


Our Ref: BSO:561134

21 September 2017



Mr Zubin Marolia

Cc: Paul Fraser

Email: Zubin.Marolia.woollahra.nsw.gov.au

Cc: Paul.Fraser.woollahra.nsw.gov.au

This document, including any attachments, may contain privileged and confidential information intended only for the addressee named above. If you are not the intended recipient please notify us. Any unauthorised use, distribution or reproduction of the content of this document is expressly forbidden.

Dear Zubin

Woollahra Municipal Council: Planning Agreement with The Presbyterian Church (NSW) Property Trust: Scottish Hospital Site, Dillon Street Reserve, Paddington

We refer to our prior correspondence in this matter.

We confirm that the Planning Agreement was exchanged today.

We **attach** a copy of the Agreement for your record. We confirm that under the Agreement:

1. The Agreement takes effect from 21 September 2017 (clause 4(a)).
2. As soon as practicable, the Developer must obtain registration of the Agreement on the title of the land (Lot 2 DP607572) (clause 11(a)).
3. The Developer must lodge at Council for approval, the Subdivision Plan (being a subdivision of the above land whereby the Dedicated Land is identified as a separate lot) and the Developer must use all reasonable endeavours to obtain such approval as soon as practicable (clause 6.1(a)(i)).
4. Following registration of the Subdivision Plan, the Developer must provide to us (as Stakeholder) the Certificate of Title and a signed Transfer for the Dedicated Land (which we will then hold in escrow (Clause 6.1(d)(ii)).
5. The Developer must promptly notify Council in writing if the staging of the Development (as provided in the Staging Plan attached to the Agreement) is varied by the Developer (clause 6.1(c)(i)); and

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Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

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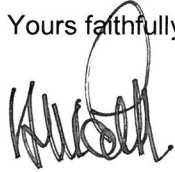
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6. Each party must pay their own legal costs in connection with the Agreement (clause 17.14).

We will follow up the Developer's Solicitor by say, 20 October 2017, to confirm the status of registration of the Agreement. We will advise you as soon as the Agreement is registered. We understand that Council will deal directly with the Developer regarding lodgement of the Subdivision Plan.

Please do not hesitate to contact us if you have any query in relation to the **attached** Agreement.

Yours faithfully


A handwritten signature in black ink, appearing to read 'Brian Olliver', written over a large, stylized circular flourish.

Brian Olliver
Partner
HWL Ebsworth Lawyers

+61 2 9334 8604
bolliver@hwle.com.au

Our Ref: TAN.EKW.1601757

**COLIN
BIGGERS
& PAISLEY**
LAWYERS



Planning Agreement

2 Cooper Street, Paddington NSW

Woollahra Municipal Council (Council)

ABN 32 218 483 245

and

The Presbyterian Church (New South Wales) Property Trust (Developer)

ABN 82 247 231 838

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BRISBANE MELBOURNE SYDNEY

Contents

1.	Definitions and Interpretation.....	4
2.	Planning Agreement under the Act.....	7
3.	Application of this Agreement.....	7
4.	Operation of this Agreement	7
5.	Development Contributions	7
6.	Dedicated Land	7
7.	External Works.....	9
8.	Completion of the External Works	9
9.	Defect Liability Period for External Works	10
10.	Application of the Act to the Development.....	10
11.	Registration.....	10
12.	Dealing with the Land.....	11
13.	GST	11
14.	Default.....	12
15.	Dispute Resolution	12
16.	Notices.....	14
17.	General	15
	Execution Page.....	18
	Schedule 1 Dedicated Land.....	19
	VPA Proposed Boundary - LA-P -1016	19
	Schedule 2 External Works	22
	Schedule 3 Explanatory Note	23
	Annexure "A" Staging Plan	26

Details

Date

21 September
March 2017

Parties

Name **Woollahra Municipal Council (Council)**
ABN ABN 32 218 483 245
Description **Council**
Notice details
Address 536 New South Head Road, Double Bay NSW
Fax 02 9391 7044
Attention The General Manager

Name **The Presbyterian Church (New South Wales) Property Trust (Developer)**
ABN ABN 82 247 231 838
Description **Developer**
Notice details
Address 168 Chalmers Street, Surry Hills NSW
Fax 02 9310 2148
Attention John Ishak

Background

- A The Developer is the registered proprietor of the Land.
- B On or about 12 November 2010, the Developer submitted a Major Project Application under the former Part 3A of the Act to the then Minister for Planning in respect of the redevelopment of the Land.
- C On or about 12 November 2010, the Developer submitted an Environmental Assessment in accordance with the Director-General's Requirements. The Developer's Environmental Assessment included an offer by the Developer to enter into a voluntary planning agreement with Council to dedicate part of the Land to Council for the purposes of additional public open space,
- D On or about 2 May 2012, the Minister for Planning & Infrastructure granted the Project Approval.
- E On or about 8 May 2015, a revised offer by the developer to enter into a voluntary planning agreement with Council was provided to Council.
- F On 25 May 2015, Council resolved to agree to amended proposed terms of the voluntary planning agreement. Those amended proposed terms have been incorporated into this Agreement.
- G Both parties acknowledge that the Developer is not required to make a contribution for public amenities or services in relation to the Project Approval in accordance with the exemption provided by the Minister for Planning on 13 September 2007 which was valid at the time of the grant of the Project Approval.

- H The Developer intends to undertake and complete the Development in the following stages:
- (a) Stage 1 by October 2017;
 - (b) Stage 1a by July 2018; and
 - (c) Stage 2 by April 2019.
- I The Developer anticipates that interim Occupation Certificates will be issued for all such Stages prior to practical completion of Stage 2.
- J The Developer anticipates that a Final Occupation Certificate will issue upon practical completion of Stage 2 and upon satisfaction of all requirements of the Project Approval.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

The following words have the corresponding meanings for the purposes of this Agreement:

Act means the *Environmental Planning and Assessment Act 1979* (NSW), as amended, and includes any regulations made under the Act.

Agreement means this voluntary planning agreement.

Approval means any approvals, consents, section 96 modifications, Part 4A certificates or approvals under the Act, certificates, construction certificates, occupation certificates, complying development certificates, permits, endorsements, licences, conditions or requirements (and any variation to them) which may be required by Law for the commencement and carrying out of the External Works.

Authority means any government, local government, statutory, public, ministerial, administrative, fiscal or other authority or body, and includes the Joint Regional Planning Panel or such other consent authority as may be lawfully appointed and authorised to grant an Approval, including an accredited certifier defined under the Act.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Certificate of Title means the original certificate of title issued by the LPI for the Dedicated Land.

Completion Notice means a written notice issued by Council to the Developer that any part of the External Works have been completed in accordance with the terms of this Agreement.

Dedicated Land means that part of the Land to be transferred to the Council in accordance with this Agreement as identified in **Schedule 1** as "Proposed VPA Boundary" in drawing LA-P-1016 and Lot 20 in draft plan of subdivision of lot 2 in DP1217547.

Defect Liability Period means the period of 12 months from the date on which the Council issues a Completion Notice to the Developer for the External Works

Developer Notice means a written notice issued by the Developer to Council that the Developer considers any part of the External Works to be completed in accordance with the terms of this Agreement.

Development means the development of the Land in accordance with the Project Approval.

Development Contributions means the Dedicated Land and the External Works.

Explanatory Note means the Explanatory Note set out in **Schedule 3** of this Agreement.

External Works means the works described in **Schedule 2** of this Agreement.

Final Occupation Certificate has the same meaning as in section 109H(1)(b) of the Act.

Force Majeure means any physical or material restraint beyond the reasonable control of the Party claiming force majeure.

GST has the meaning as in the GST Law.

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

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

LPI means Land and Property Information New South Wales.

Land means the whole of the Land described in the certificate of title Lot 2, DP607572, known as 2 Cooper Street, Paddington as shown in the draft plan of subdivision of Lot 2 in DP 1217547 in **Schedule 1**.

Law means:

- (a) the common law including principles of equity, and
- (b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority,

that presently apply or that may apply in the future.

Occupation Certificate has the same meaning as used in the Act.

Project Approval means the conditional project approval of Major Project Application MP10_0016 granted by the Minister for Planning & Infrastructure on or about 2 May 2012 for the construction of a seniors living development on the Land, including:

- (a) a 100 bed residential aged care facility, 79 independent living units and support services;
- (b) conservation and management of the "Scottish Hospital" heritage building, together with its adaptive re-use for independent living units;
- (c) a loading dock off Stephen Street;
- (d) 132 car parking spaces;
- (e) remediation; and
- (f) a community bus pick-up and drop-off area at the corner of Brown and Cooper Streets

as may be amended from time to time.

Stakeholder means HWL Ebsworth.

Stakeholder Authority means the Developer's irrevocable authority whereby the Stakeholder is authorised to lodge the Transfer and the Certificate of Title at the LPI in accordance with clause 6.1(c).

Stage 1 means the stage of the Development shown as Stage 1 on the Staging Plan.

Stage 1a means the stage of the Development shown as Stage 1a on the Staging Plan.

Stage 2 means the stage of the Development shown as Stage 2 on the Staging Plan.

Stages means Stage 1, Stage 1a and Stage 2.

Staging Plan means the plan attached to this Agreement marked "A".

Subdivision Plan means a plan of subdivision of the Land whereby the Dedicated Land is created as a separate lot.

Transfer means a transfer of the Dedicated Land from the Developer to the Council free from encumbrances.

1.2 Interpretation

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

- (a) headings are for convenience only and do not affect interpretation.
- (b) **"person"** includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.
- (c) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation.
- (d) a reference to a Party to the Agreement includes a reference to servants, representatives, agents, and contractors of the Party.
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified, supplemented or replaced from time to time.
- (f) a reference in this Agreement to any Law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender.
- (h) a reference to a Party, clause, schedule, exhibit, attachment or annexure is a reference to a Party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it.
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.
- (j) A reference to the word **"include"**, **"includes"** or **"including"** is to be interpreted without limitations.
- (k) the Explanatory Note set out in this Agreement is not to be used to assist in construing the Agreement.
- (l) a reference to **"\$"** or **"dollar"** is to Australian currency.

- (m) if the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.

1.3 Compliance with New Laws

If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the Developer is obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Agreement or which was not contemplated at the time of entering into this Agreement, then, to the extent that the relevant obligation is required under the New Law and the Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Agreement.

2. Planning Agreement under the Act

The Parties acknowledge and agree that this Agreement is a planning agreement within the meaning of section 93F of the Act and is governed by Part 4 of the Act.

3. Application of this Agreement

The Agreement applies to the Land and the Development.

4. Operation of this Agreement

- (a) This Agreement takes effect on and from the date this Agreement is executed by all Parties, subject to clause 4(b).
- (b) This Agreement will remain in force until:
 - (i) it is terminated by operation of Law; or
 - (ii) all obligations are performed or satisfied; or
 - (iii) it is otherwise discharged or terminated in accordance with the terms of this Agreement.

5. Development Contributions

5.1 Developer to provide Development Contributions

The Developer agrees to provide the Development Contributions in accordance with clauses 6 and 7, and otherwise in accordance with this Agreement.

6. Dedicated Land

6.1 Obligations to Transfer

- (a) The Parties acknowledge and agree that at the date of this Agreement, the Dedicated Land is not contained in a separate Lot to the Land, and cannot be transferred to the Council until the Land is subdivided to create the Dedicated Land as a separate legal Lot capable of transfer.
- (b) The Developer must at its expense:

- (i) promptly lodge the Subdivision Plan at the Council for approval and use all reasonable endeavours to obtain such approval as soon as practicable;
- (ii) following approval by the Council of the Subdivision Plan, promptly:
 - (A) lodge the approved Subdivision Plan at the LPI for registration;
 - (B) notify the Stakeholder in writing of such lodgement; and
 - (C) thereafter, use all reasonable endeavours to obtain registration of the Subdivision Plan at the LPI as soon as practicable; and
- (iii) within fourteen (14) days of registration of the Subdivision Plan at the LPI:
 - (A) notify the Stakeholder in writing of registration of the Subdivision Plan; and
 - (B) deliver to the Stakeholder, the Certificate of Title, the Transfer duly executed by the Developer and the Stakeholder Authority.
- (c) The Developer must promptly notify the Council in writing:
 - (i) if the staging of the Development (as provided in the Staging Plan) is varied by the Developer; and
 - (ii) of the issue of every Occupation Certificate for each Stage in the Development.
- (d) Subject to clauses 6.1(b) and 6.1(e):
 - (i) the Developer must transfer the Dedicated Land to the Council within three (3) months after issue of any Occupation Certificate for Stage 2;
 - (ii) the Stakeholder shall hold the Transfer and the Certificate of Title for the Dedicated Land in escrow pending issue of any Occupation Certificate for Stage 2; and
 - (iii) the Stakeholder may lodge the Transfer and the Certificate of Title for registration at the LPI upon issue of any Occupation Certificate issued for Stage 2.
- (e) Notwithstanding clause 6.1(d), if Stage 2 is not the last stage of the Development, then clause 6.1 (d) shall apply to the last Stage of the Development instead of Stage 2.
- (f) The Developer and the Council agree and warrant that they will do at the Developer's expense all things necessary and sign all documents required to facilitate the subdivision of the Land and the subsequent transfer of the Dedicated Land to Council.
- (g) Upon transfer of the Dedicated Land, Council assumes responsibility for the maintenance, liability and capital works on that land.

6.2 Acquisition of Land to be Dedicated

- (a) If the Developer does not transfer the land required to be dedicated in accordance with clause 6.1 of this Agreement, the Developer consents to the Council

compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

- (b) Clause 6.2(a) constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- (c) The Developer is to promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this clause 6.2 including (without limitation):
 - (i) signing any documents or forms;
 - (ii) producing certificates of title to the Registrar General under the Real Property Act 1900;
 - (iii) paying the Council's reasonable costs arising under this clause 6.3.

7. External Works

- (a) Prior to the issue of the Final Occupation Certificate for the Development, the Developer must complete the External Works at the Developer's expense.
- (b) Without limiting any other provision of this Agreement, the External Works are to be carried out:
 - (i) in a good and workmanlike manner;
 - (ii) in accordance with any Approval under the Act and in accordance with the requirements of any Authority;
 - (iii) in compliance with relevant standards, determined by Australian Standards Limited, the Building Code of Australia and any relevant manufacturer's standards;
 - (iv) by a person with the necessary expertise, competence and skill.
- (c) The parties agree that the External Works do not include or relate to any work associated with a footpath widening on the Dedicated Land. Any work associated with a footpath widening is the sole responsibility of Council. It is acknowledged by the parties that the Council is not able to commit to a timeframe to construct the new footpath infrastructure.

8. Completion of the External Works

- (a) When, in the opinion of the Developer, the External Works have been completed in accordance with this Agreement, the Developer must issue a Developer Notice to Council as soon as practicable after completion.
- (b) Following receipt of a Developer Notice pursuant to clause 8(a), Council's representatives must:
 - (i) inspect the External Works within 10 Business Days; and
 - (ii) acting reasonably, issue a Completion Notice to the Developer; or provide a written notice to the Developer which identifies with reasonable particularity what is required to occur to enable completion of the External Works and the issue of a Completion Notice.

- (c) If Council does not provide the Developer with a Completion Notice or a written notice within the time specified in clause 8(b) above, the External Works will be deemed to have been completed, and a Completion Notice issued on the date of the Developer Notice.
- (d) The Developer is required to maintain the External Works and make good any loss or damage to the External Works resulting from any act, neglect or default on the part of the Developer until the date of the Completion Notice.
- (e) Subject to Clause 9, Council assumes responsibility for the External Works from the date of the Completion Notice, save for any liability arising as a direct result of any negligent act or omission on the part of the Developer or any servant, agent or contractor of the Developer.

9. Defect Liability Period for External Works

- (a) If the Council notifies the Developer of a defect in the External Work's within the Defect Liability Period, then the Developer must at its expense remedy that defect to the reasonable satisfaction of the Council, within a reasonable period, having regard to the nature of the defect.
- (b) If the Developer does not rectify any defect in the External works as duly notified under clause 9(a) of this Agreement within the reasonable time specified in the notice, or as otherwise agreed between the parties in writing, then the Council may:
 - (i) rectify the defect in the External Works; and
 - (ii) recover the costs from the Developer as a debt due and owing.

10. Application of the Act to the Development

- (a) This Agreement does not exclude the application of:
 - (i) sections 94 and 94A of the Act; and
 - (ii) any other contributions otherwise payable under the Act;in connection with the Development.
- (b) The obligations of the Developer under this Agreement involve a contribution to or provision of public amenities and services over and above those which would otherwise be imposed under section 94 and section 94A of the Act ('the benefits'). The benefits are not to be taken into consideration by the Council in determining contributions under s94 and s94A of the Act.
- (c) Despite clause 10(a) of this Agreement the Developer is not required to make a contribution for public amenities or services in relation to the Project Approval in accordance with the exemption provided by the Minister for Planning on 14 September 2007 which was valid at the time of the grant of the Project Approval.

11. Registration

- (a) Upon commencement of this Agreement, the Developer will take all practical steps to enable the registration of this Agreement under the *Real Property Act* 1900 (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act.

12. Dealing with the Land

The Parties acknowledge and agree that nothing in this Agreement abrogates, fetters or in any way prevents the Developer from selling, transferring, assigning, subdividing, mortgaging, charging, encumbering or otherwise dealing with the Land (excluding, after transfer, the Dedicated Land).

13. GST

13.1 Interpretation

In this clause 13:

- (a) Words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.

13.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

13.3 Payment of GST - additional payment required

- (a) If GST is payable by an entity (**Supplier**) in respect of any supply made under this Agreement (**Relevant Supply**), then the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under clause 13.3(b).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money, the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate of GST for that Relevant Supply.
- (c) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, no additional amount shall be payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (d) The Recipient will pay the GST Amount referred to in this clause 13.3 in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

13.4 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under clause 13.3. The Recipient can withhold a payment of the GST Amount until the Supplier provides a tax invoice.

13.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the Recipient under clause 13.3 will be 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.

13.6 Reimbursements

Where a Party is required under this Agreement to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party, or to which the representative member for a GST group of which the other Party is a member, is entitled; and
- (b) any additional amount payable under clause 13.3 in respect of the reimbursement.

14. Default

14.1 Notice

In the event a Party considers another Party has failed to perform and fulfil an obligation under this Agreement, it may give written notice to that Party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time, not being less than 15 Business Days.

14.2 Reasonable Time

In determining a reasonable time, regard must be had to the nature of the default, the work or other action required to remedy it and whether or not the continuation of the default constitutes or causes a public nuisance or raises other circumstances of urgency or emergency.

14.3 Suspension of time-dispute

If a Party disputes the Default Notice it may refer that dispute to dispute resolution under clause 15.

15. Dispute Resolution

15.1 Notice of Dispute

If a Party claims that a dispute has arisen under this Agreement (**Claimant**), it must give written notice to the other Party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**). No Party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 15.

15.2 Response to Notice

Within 10 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

15.3 Negotiation

- (a) The nominated representative must:
 - (i) meet to discuss the matter in good faith within 5 Business Days after service by the Respondent of notice of its representative; and
 - (ii) use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

15.4 Further Notice if Not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**) by mediation under clause 15.5 or by expert determination under clause 15.6.

15.5 Mediation

- (a) If a Party gives a Dispute Notice calling for the dispute to be mediated:
 - (i) the parties must agree to the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
 - (ii) the Mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (b) the Mediator appointed pursuant to this clause 15.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (c) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (d) the Parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (e) the Parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement, or in the event the parties are unable to reach a mediation settlement;
- (f) each Party will bear their own professional and expert costs incurred in connection with the mediation.

15.6 Expert Determination

- (a) If the dispute is not resolved under clause 15.3 or 15.5, the dispute may, by agreement between the Parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:
 - (i) the dispute must be determined by an independent expert in the relevant field:
 - (A) agreed upon and appointed jointly by the Council and the Developer; or

- (B) in the event that no agreement is reached or appointment made within 30 Business Days, appointed on application of a Party by the then current President of the Law Society of New South Wales;
- (ii) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
- (iii) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (iv) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (v) each Party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- (vi) any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this Agreement by any Party, in which event the expert is deemed to be giving a non-binding appraisal and any Party may commence litigation in relation to the dispute if it has not been resolved within 20 Business Days of the expert giving his or her decision.

15.7 Litigation

If the dispute is not finally resolved in accordance with this clause 15, either Party is at liberty to litigate the dispute.

16. Notices

- (a) Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - (i) delivered or posted to that Party at its address set out on numbered page 2 of this Agreement; or
 - (ii) faxed to that Party at its fax number on numbered page 2 of this Agreement.
- (b) If a Party gives another Party 3 Business Days' notice of a change of its address, or fax number, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted, or faxed to the latest address or fax number.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 2 Business Days after it is posted;
 - (iii) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

- (d) If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, 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.

17. General

17.1 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, agent or employee of the Party, before this Agreement was executed, except as permitted by Law.

17.2 Further acts

Each Party must promptly sign and execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it, including giving an approval or consent.

17.3 Governing Law and Jurisdiction

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

17.4 Joint and individual liability and benefits

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

17.5 No fetter

Nothing in this Agreement is to be construed as requiring a Council to do, or refrain from doing, anything that would cause it to be in breach of any of its obligations at Law, and without limitation, nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

17.6 Representations and warranties

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

17.7 Severability

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

17.8 Release and Discharge

- (a) To the extent the Developer has:
 - (i) satisfied all its obligations under this Agreement; or
 - (ii) the Agreement no longer applies as a consequence of any event referred to in clause 4(b) of this Agreement;

the Council will provide a release and discharge of this Agreement with respect to any part of, or the whole of, the Land.

- (b) The Council will execute any form, and supply such other information, as is reasonably required to enable the removal of the Agreement from the title to the Land or part of the Land in accordance with this clause 17.8.

17.9 Modification, Review and Replacement

- (a) No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.
- (b) The Parties agree that this Agreement may be reviewed or modified in the circumstances using their best endeavours and acting in good faith, and in accordance with this clause 17.9.
- (c) Any review or modification will be conducted in the circumstances and in the matter determined by the Parties and in accordance with the provisions of the Act. For clarity, no such review or replacement shall have any force or effect unless and until formal documents are signed by the Parties in accordance with this clause 17.9.

17.10 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is required or entitled to do under this Agreement, does not amount to a waiver of any obligation by another Party.

17.11 Confidentiality

The Parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.

17.12 Assignment and Novation

- (a) This Agreement may be assigned or novated by the Developer in accordance with any dealings the Developer may have with respect to its interests in the Land or any part of the Land without requiring the Developer to obtain Council's approval in respect of either the dealing or the assignment or the novation of this Agreement.
- (b) Council agrees to execute any deeds of assignment or novation or other documents necessary to assign, novate or otherwise transfer all of the Developer's rights and obligations under the Agreement to a successor as contemplated by the Agreement.

17.13 Force Majeure

- (a) If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under the Agreement, it must give to the other Party prompt notice of the force majeure with reasonably full particulars.
- (b) The obligations of the Parties so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable effort and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- (d) If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties are suspended during the continuance of the force majeure, that dispute must be referred for determination under the Agreement.

17.14 Legal and associated costs

Each Party is responsible for the payment of its own legal costs and expenses in connection with the preparation, execution and enforcement of this Agreement, unless otherwise agreed between the Parties or as may be ordered by a Court of competent jurisdiction.

17.15 Counterparts

This Agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

Execution Page

Dated:

Executed as an Agreement

Signed on behalf of
**Woollahra Municipal
Council** in the
presence of:

sign (authorised person)

sign (witness)

General Manager

title (authorised person)

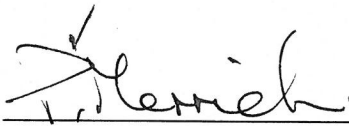
full name (witness)

Gary Leonard James

full name (authorised person)

address (witness)

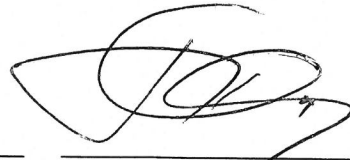
Signed for and behalf
of **The Presbyterian
Church (NSW)
Property Trust** by its
attorney, ~~Wayne
David Richards,~~
under Power of
Attorney dated 27
June 2005 registered
book 4462 number 51.
in the presence of



Witness

Peter Merrick

full name



Signature of Attorney

~~Wayne David Richards~~

THE PRESBYTERIAN CHURCH (NEW SOUTH WALES) PROPERTY TRUST by its duly appointed attorney GEOFFREY ROBERT FALLS pursuant to Power of Attorney dated 18 November 2015 registered book 4698 No 596.

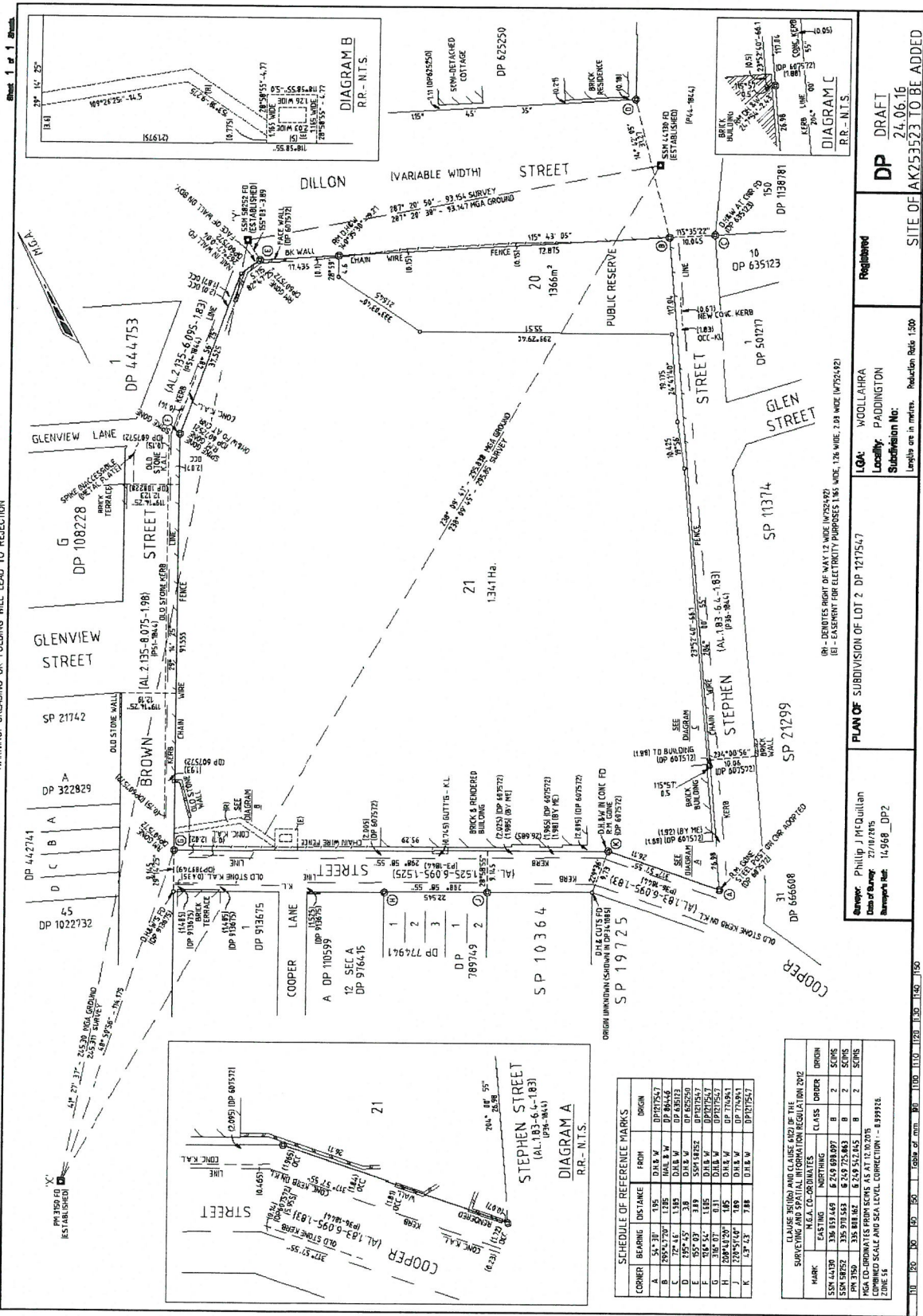
Schedule 1 Dedicated Land

VPA Proposed Boundary - LA-P -1016

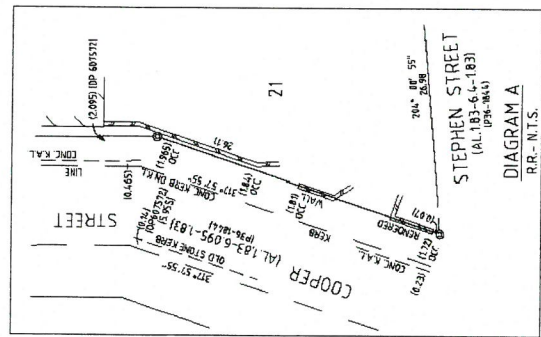
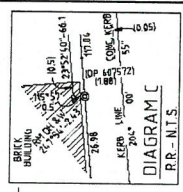
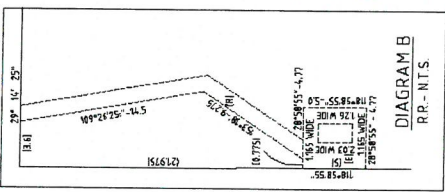
Draft Plan of Subdivision of Lot 2 in DPE1217547

PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION



Sheet 1 of 1 Shows



SCHEDULE OF REFERENCE MARKS

CORNER	BEARING	DISTANCE	FROM	ORIGIN
A	S 71° 31' 13" W	1.95	D18 W	DP17547
B	S 71° 31' 13" W	1.95	D18 W	DP17547
C	S 71° 31' 13" W	1.95	D18 W	DP17547
D	S 71° 31' 13" W	1.95	D18 W	DP17547
E	S 71° 31' 13" W	1.95	D18 W	DP17547
F	S 71° 31' 13" W	1.95	D18 W	DP17547
G	S 71° 31' 13" W	1.95	D18 W	DP17547
H	S 71° 31' 13" W	1.95	D18 W	DP17547
I	S 71° 31' 13" W	1.95	D18 W	DP17547
J	S 71° 31' 13" W	1.95	D18 W	DP17547
K	S 71° 31' 13" W	1.95	D18 W	DP17547

CLASSIFICATION AND CLASSES FOR THE SURVEYING AND SPATIAL INFORMATION REGULATION 2012

MARK	EASTING	NORTHING	CLASS	ORDER	ORIGIN
SEN 44239	336 453 449	6 249 888 897	B	2	SCIPS
SEN 38552	335 373 583	6 249 725 483	B	2	SCIPS
SEN 38552	335 373 583	6 249 725 483	B	2	SCIPS
SEN 38552	335 373 583	6 249 725 483	B	2	SCIPS

MEGA TO BROADBAND CONNECTIONS
COMBINED SCALE AND SEA LEVEL CORRECTION -- 0.99913
ZONE 54

PLAN OF SUBDIVISION OF LOT 2 DP 1217547

Registered

LGA: WOLLAHRA
Locality: WOLLAHRA
Subdivision No: 14968_DP2

DP DRAFT
24.06.16
SITE OF LK253523 TO BE ADDED

Lengths are in meters. Reduction Ratio 1:500

Schedule 2 External Works

1. Prior to issue of a Final Occupation Certificate, installation of a new perimeter fence along on the expanded boundary between the existing Dillon Reserve (which incorporates part of the Dedicated Land) and the residue Land as marked on Schedule 1
2. The location of the new perimeter fence as shown on plan LA-P-1016 and the final style of the fence must be agreed with Council in writing acting reasonably.
3. Prior to the issue of a Final Occupation Certificate, re-turf and mulch that part of the Dedicated Land to form part of the existing Dillon Reserve with buffalo turf or an alternative species nominated by the Council, acting reasonably, leaving the Dedicated Land in good condition, well maintained and suitable for public use.

Schedule 3 Explanatory Note

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979 (NSW)

1. Parties

The Presbyterian Church (NSW) Property Trust. ABN 82 247 231 838. 168 Chalmers Street, Surry Hills NSW (**Developer**).

Woollahra Municipal Council. ABN 32 218 483 245. 536 New South Head Road, Double Bay NSW (**Council**).

2. Description of Subject Land

The subject land means the whole of the Land described in the certificate of title Lot 2 in DP 607572, known as 2 Cooper Street, Paddington NSW.

3. Description of the Development

The Development is documented in:

- (a) Project approval MP10_0016 dated 2 May 2012, and
- (b) Modification approval MP10_0016 MOD 1 dated 19 March 2015.

4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement

4.1 Summary of Objectives

The objectives of the draft Planning Agreement are to:

- (a) dedicate land to Council for the purposes of extending the area of the public open space contained within Dillon Street Reserve
- (b) procure a range of external works associated with the upgrade of the land to form part of the extended Dillon Street Reserve
- (c) dedicate land to Council for the purposes of the future widening of the existing footpath along southern Stephen Street,

in order to provide a benefit for the public in terms of the increased area of public open space and the improvement of pedestrian access associated with Dillon Street Reserve.

4.2 Nature and Effect of the Draft Planning Agreement

The draft Planning Agreement requires the Developer to:

- (a) dedicate to Council approximately 1,366.10m² of land for the purposes of extending Dillon Street Reserve.
- (b) procure external works associated with the upgrade of the land to add to Dillon Street Reserve, including:
 - (i) returfing the additional land.
 - (ii) provide new perimeter fence along the boundary of the Subject Land and Dillon Street Reserve.
- (c) Under clause 6.1 of the Agreement, the External Works must be completed prior to issue of a Final Occupation Certificate.
- (d) Under clause 6.1 of the Agreement, creation of separate title for the Dedicated Land must occur as soon practicable and subject to clause 6.1(e), the Dedicated Land must be transferred to the Council within 3 months after issue of any Occupation Certificate for Stage 2 of the Development.

The obligations of the Developer - and the costs consequences for the Developer - are over and above those contributions that would otherwise be imposed under section 94 and section 94A of the *Environmental Planning and Assessment Act 1979* (NSW) in connection with the Development.

5. Assessment of the Merits of the Draft Planning Agreement

5.1 The Planning Purposes Served by the Draft Planning Agreement

In accordance with section 93F(2) of the *Environmental Planning and Assessment Act 1979* (NSW), the Planning Agreement promotes the following public purposes:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services.

5.2 How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979 (NSW)

The draft Planning Agreement promotes the following objects of the *Environmental Planning and Assessment Act 1979* (NSW):

- (a) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment (cl5(a)(i)).
- (b) the promotion and co-ordination of the orderly and economic use and development of land (cl5(a)(ii)).
- (c) the provision of land for public purposes (cl 5(a)(iv)).
- (d) the provision and co-ordination of community services and facilities (cl5(a)(v)).

The draft Planning Agreement provides for a reasonable means of achieving these objectives.

6. How the Draft Planning Agreement Promotes the Public Interest

6.1 How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The draft Planning Agreement promotes Council's Charter under section 8 of the *Local Government Act 1993 (NSW)* through the provision of adequate, equitable and appropriate services and facilities for the community in the form of providing land and embellishment works at no cost to Council.

6.2 Whether the draft Planning Agreement Conforms with the Council's Capital Works Program

The required Council works that form part of the draft Planning Agreement will be included in future Capital Works programs by the Council. The draft Planning Agreement conforms with Council's Capital Works Program to the extent that it will supplement the Program by providing land and works.

7. The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

The draft Planning Agreement impacts on the public by promoting the public interest as outlined above.

8. Other Matters

None.

Annexure "A" Staging Plan

