

Deed of Amendment of Voluntary Planning Agreement

The Council of the City of Ryde
ABN 81 621 292 610

Pro-invest Australian Hospitality Opportunity (ST) Pty Ltd
atf Pro-invest Australian Hospitality Opportunity Trust 1
ABN 88 163 479 221

Tin Seal



Newcastle

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Deed

Date

Parties

First party

Name The Council of the City of Ryde (**Council**)
ACN 81 621 292 610
Contact The General Manager

Second party

Name Pro-invest Australian Hospitality Opportunity (ST)
Pty Ltd atf Pro-invest Australian Hospitality
Opportunity Trust 1 (**Developer**)
ACN 88 163 479 221
Contact Mr Tim Sherlock

Background

- A. On or about 13 November 2014, Council and the Developer entered into the VPA.
- B. The Developer now proposes to modify the Development Consent under section 96 of the Act.
- C. The Developer and Council have agreed to amend the VPA in connection with the Modification.

Operative part

1 Definitions

In this Deed, unless the context indicates a contrary intention:

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

Address means a party's address set out in the Notices clause of this Deed;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Development means the development of the Land in accordance with the Development Consent;

Development Consent means development consent number LDA2013/522 for the "demolition of existing buildings and construction and use of a 9 storey building as a hotel. The development will contain 192 rooms, 66 car parking spaces, a restaurant associated with the hotel and signage";

Developer's Works has the same meaning as under the VPA;

Fax Number means a party's facsimile number set out in the Notices clause of this Deed;

Land means Lot 31 DP 567569;

Modification means the proposed modification of the Development Consent under section 96 of the Act, involving a change of design to the Developer's Works required under the VPA;

Register means the Torrens Title register maintained under the *Real Property Act 1900* (NSW);

VPA means the planning agreement dated 13 November 2014 between the Developer and Council applicable to the Land entered into in connection with the Development Consent.

2 Interpretation

In this Deed, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this Deed or another document includes any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Deed;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Deed;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(requirements)** 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;
- (g) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (h) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (i) **(singular)** the singular includes the plural and vice-versa;
- (j) **(gender)** words importing one gender include all other genders;
- (k) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (l) **(rules of construction)** neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;

- (m) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (n) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (o) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (p) **(writing)** a reference to a notice, consent, request, approval or other communication under this Deed or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (q) **(replacement bodies)** a reference to a body (including an institute, association or authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (r) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (s) **(month)** a reference to a month is a reference to a calendar month;
- (t) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Variation to VPA

The Parties agree that the VPA is amended as follows:

- (a) In clause 4.1(b) replace "Schedule 9" with "Schedule 8".
- (b) Replace the plans at Schedule 6 of the VPA with the plans at Schedule 1 of this Deed.
- (c) In Schedule 7, Part E "Scope of Works", of the VPA:
 - (i) insert after "development" in the first paragraph, "and the plans at Schedule 6 of this deed";
 - (ii) delete the remainder of Part E from "The scope of works ..." to "... allow construction of retaining walls"; and
 - (iii) insert the following at the end of Part E:

The Developer's Works are to be designed and constructed generally in accordance with the plans at Schedule 6 of this deed, however matters of detail including but not limited to:

- (a) culvert inlet structures,
- (b) bollards,
- (c) surface inlet grates,
- (d) light posts,
- (e) stormwater pit connections,

- (f) concrete slab specifications,
- (g) culvert design, and
- (h) finishes to the pathway

are to be determined and approved by Council, as part of the detailed design approval process under clauses 7 and 8 of this deed.

4 Registration

- (a) The Developer represents and warrants that it is the registered proprietor of the Land.
- (b) Council and the Developer agree to promptly do all things that are necessary for Council to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the Act and in accordance with this clause 4.
- (c) The Developer will obtain all consents to the registration of this Deed on the title to the Land as required by Land and Property Information.
- (d) The Developer must, within 20 Business Days of execution of this Deed, produce to Council:
 - (i) any letters of consent necessary for the registration of this Deed and any other documents that may be required by the Registrar-General;
 - (ii) a copy of the production slip number as evidence that the certificate of title has been produced to Land and Property Information for the purpose of the registration of this Deed; and
 - (iii) a bank cheque for the registration fees payable in relation to the registration of this Deed on the title to the Land.
- (e) Council and the Developer must promptly comply with any requisition that may be raised with regard to registration of this Deed from Land and Property Information. If Land and Property Information will not accept this deed for registration, then Council must, at the Developer's cost, prepare a restated VPA compliant with this deed incorporating the amendments to the VPA in clause 3 in a form acceptable to Land and Property Information.
- (f) Subject to clauses 4(c) and (d), the Council will, at the Developer's cost, register this Deed against the title to the Land.
- (g) The Council must promptly, at the Developer's cost, do all things reasonably required by the Developer to remove the notation of this Deed from the Register upon a release and discharge of the VPA in accordance with clause 6.2 of the VPA.

5 Notices

5.1 Notices

Any notice given under or in connection with this Deed (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by fax at the address or fax number below, or at the address or

fax number last notified by the intended recipient to the sender after the date of this Deed:

- (i) to Council: 1 Devlin Street, Ryde NSW 2000
Fax: 02 9952 8070
Attention: The General Manager;
- (ii) to the Developer: SE 3 09, 56 Delhi Road, North Ryde NSW 2000
Fax: 02 9247 1875
Attention: Mr Tim Sherlock;

- (c) is taken to be given and made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under paragraph (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

6 General

6.1 *Relationship between parties*

- (a) Nothing in this Deed:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

6.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this Deed expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

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

6.3 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Deed.

6.4 Variation

A provision of this Deed can only be varied by a later written document executed by or on behalf of all parties.

6.5 No assignment

A party cannot assign or otherwise transfer its rights under this Deed without the prior written consent of the other party.

6.6 Counterparts

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

6.7 Legal expenses and stamp duty

The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.

6.8 Entire agreement

The contents of this Deed constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Deed, whether orally or in writing.

6.9 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Deed is void, voidable, or unenforceable if it is not read down;
 - (ii) this Deed will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of paragraph (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Deed will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Deed has full effect even if clause 6.9(b)(i) or (ii) applies.

6.10 Waiver

A right or remedy created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does 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.

6.11 *Governing law and jurisdiction*

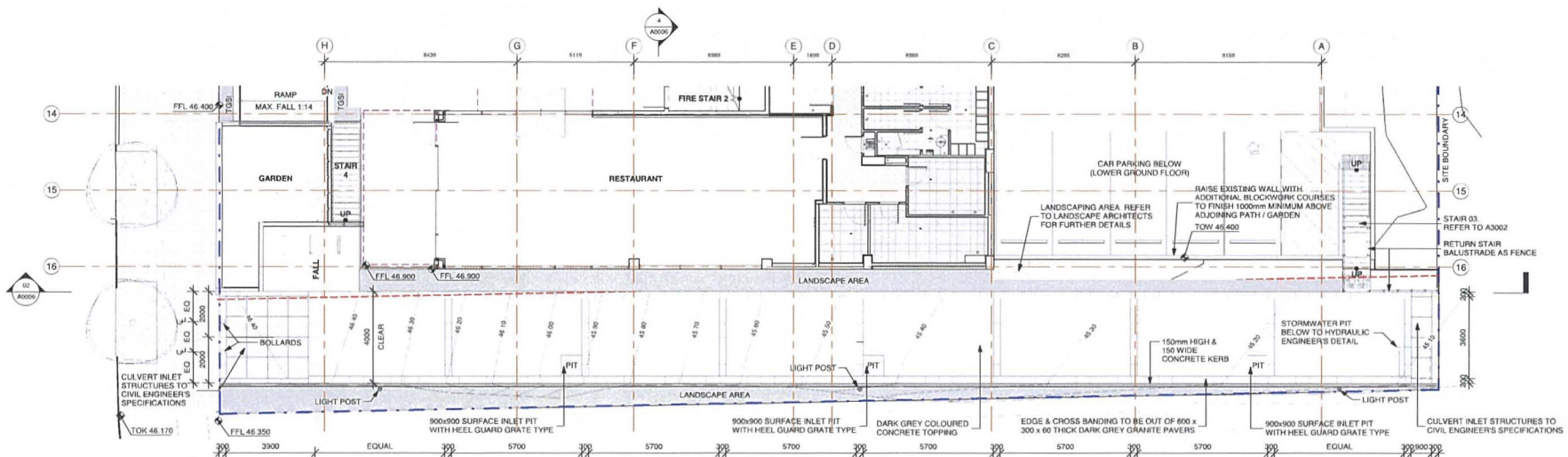
- (a) The laws applicable in New South Wales govern this Deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

List of schedules

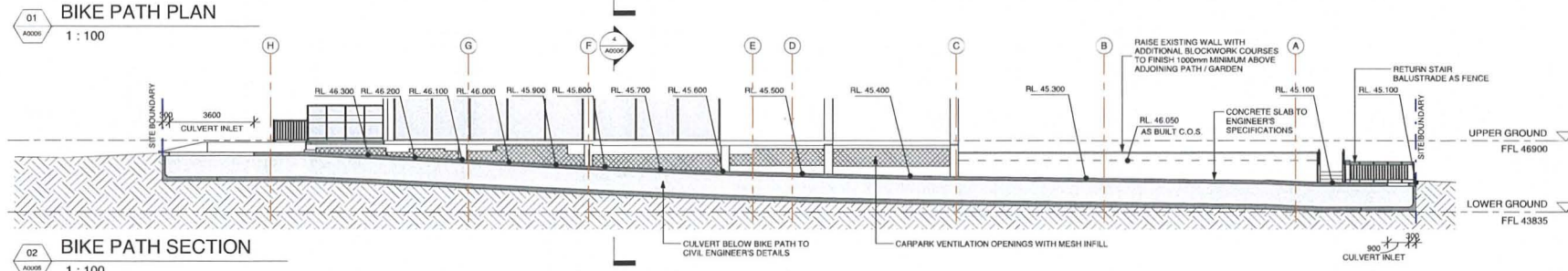
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Schedule 1	Plans for Schedule 6 of the VPA	3(b)

Schedule 1

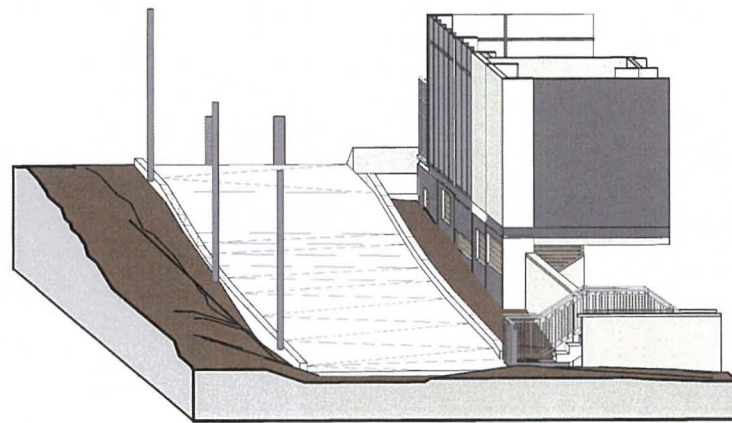
Plans for Schedule 6 of the VPA



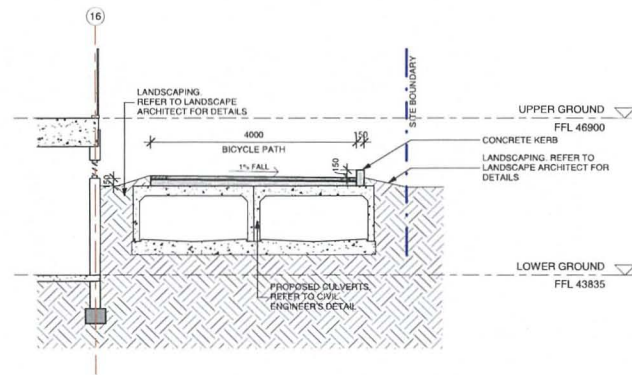
01 BIKE PATH PLAN
1:100



02 BIKE PATH SECTION
1:100



03 BIKE PATH 3D



04 BIKE PATH SECTION
1:50

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Next Client Approval Issue			
Client Manager Approval Issue			
Issue	Author	Date	By
1	Suburb Site Plan	15/03/2011	TR

Project Title
HOLIDAY INN EXPRESS



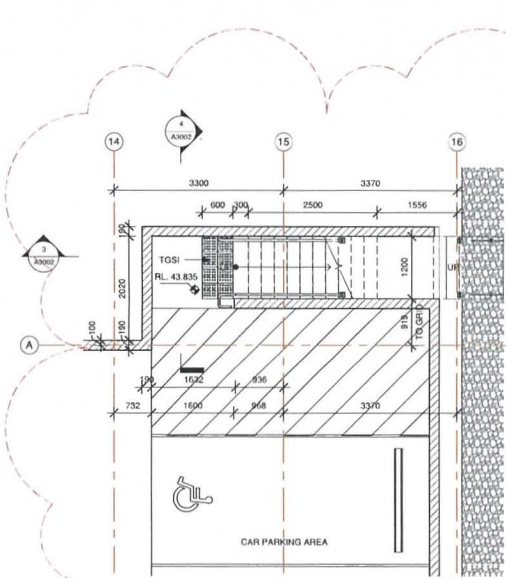
Project Manager
TACTICAL

Author
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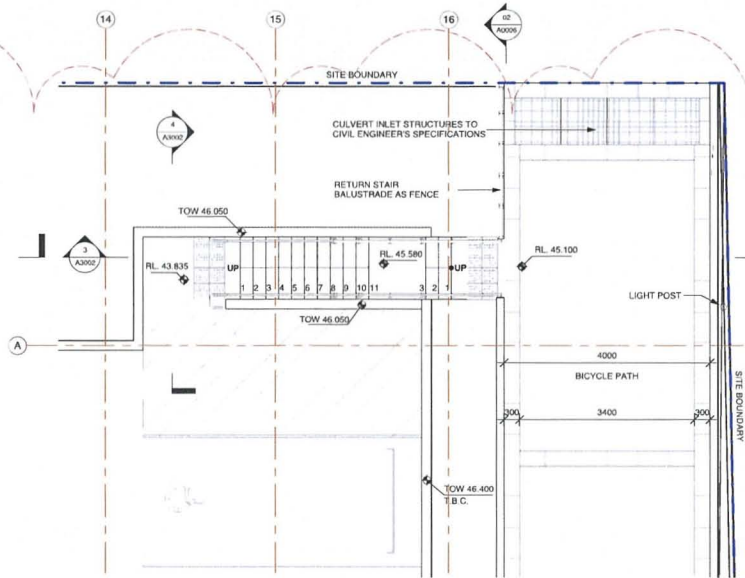
Project Address
**10 BYFIELD STREET,
MACQUARIE PARK -
2113 NSW**

Drawing Title
BIKE PATH SETOUT

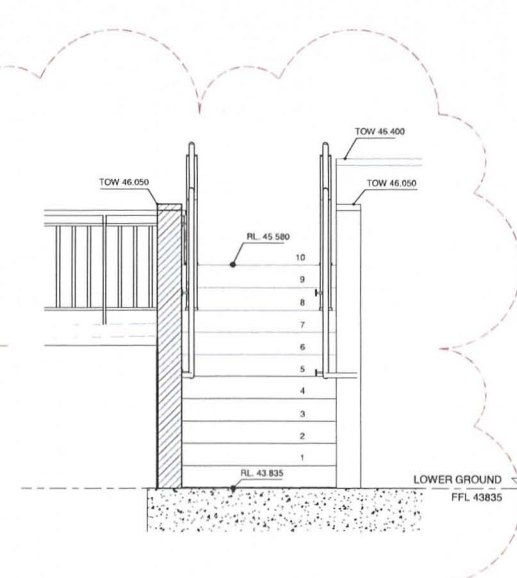
Issue # 41 As indicated
Drawing Number
A0006 1



2
A3002
STAIR 3 - LOWER GROUND
1 : 50



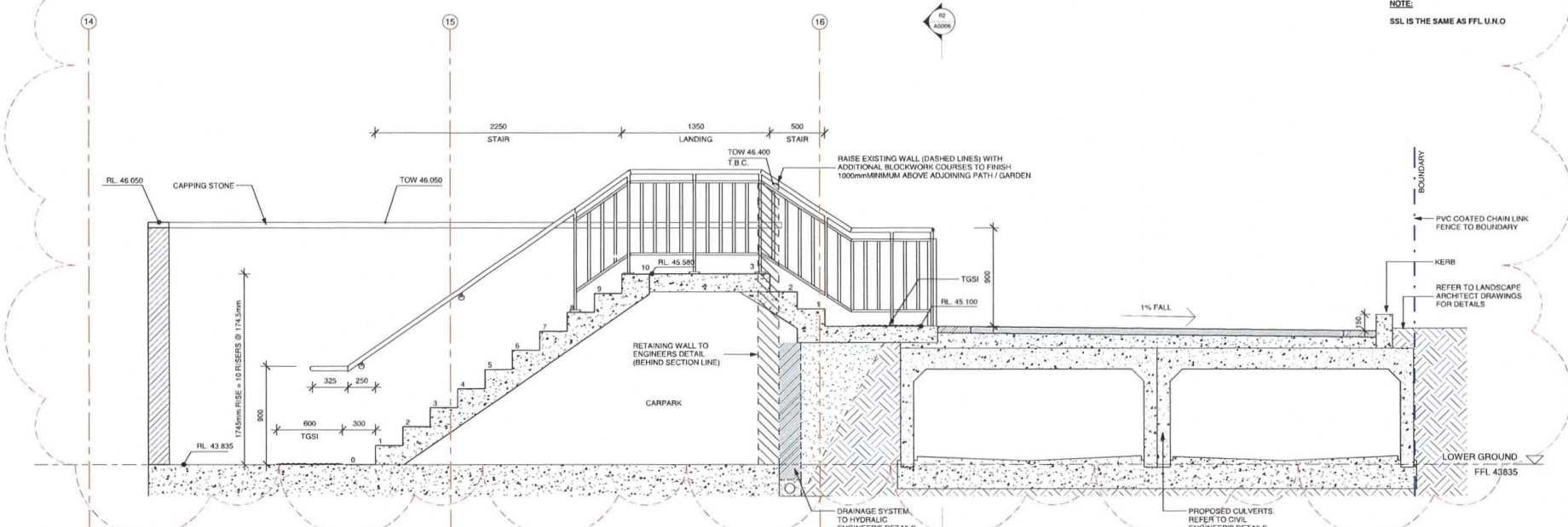
1
A3002
STAIR 3 - UPPER GROUND LEVEL
1 : 50



4
A3002
SECTION 3 EXTERNAL STAIR 3
1 : 20

NOTE: ALL STAIRS, STAIR RAMPINGS, RAMPS, HANDRAILS, GUIDERAILS AND TACTILE GROUND SURFACE INDICATORS TO COMPLY WITH ALL RELEVANT STANDARDS AND REGULATIONS, IN PARTICULAR AS 1428.1 AND AS 1418.4 AND PARTS OF D3.3 AND D3.8 OF THE NCC AND THE DDA ACCESS CODE.

NOTE:
SSL IS THE SAME AS FFL U.O.



3
A3002
SECTION 2 EXTERNAL STAIR 3
1 : 20

Field	Revised	Date	By	Checked
Field				
Revised				
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Revised				
Date				
By				
Checked				

Project Name
HOLIDAY INN EXPRESS



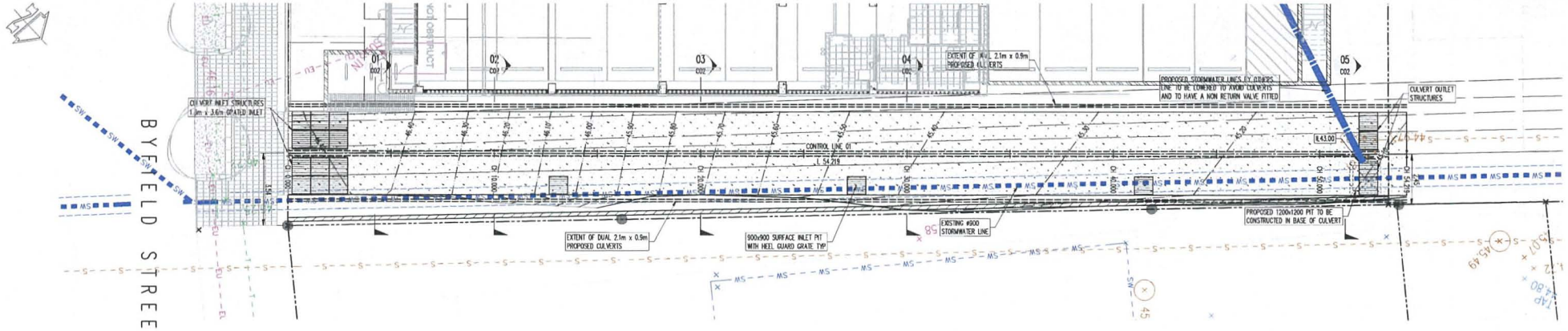
Project Manager
TACTICAL

Author
REID CAMPBELL
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Fax: 61 02 9554 4367 Web: www.reidcampbell.com

Project Address
**10 BYFIELD STREET,
MACQUARIE PARK -
2113 NSW**

Sheet Title
**VERTICAL
CIRCULATION STAIR
3**

Scale: 1:1
Drawing Number: **A3002**
As indicated
5



PLAN
SCALE 1:100

STORMWATER CRITERIA: 1 in 100 ARI

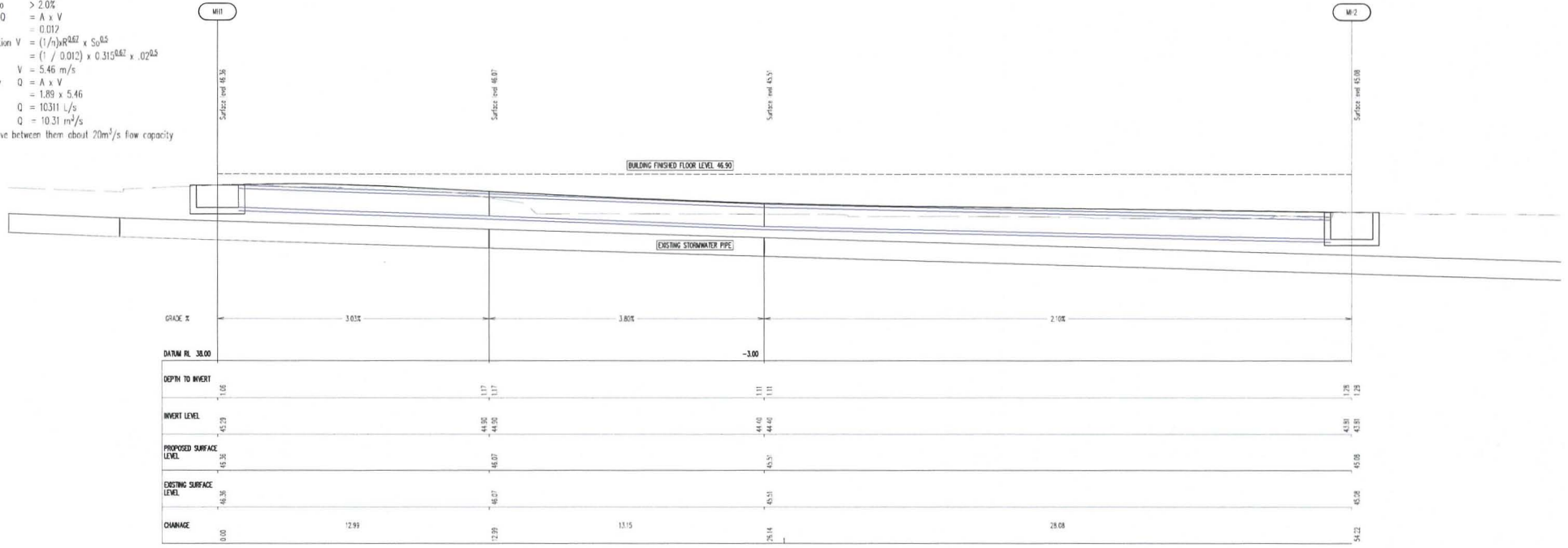
Overtownd flow rate = 3.6m³/s
 Flow depth = 0.7m
 Flow velocity = 0.44m/s

Drainage Culvert Area = 2.1x0.90
 Arca A = 1.89m²
 Wetted Perimeter P = 2.1x2 + 0.9x2 = 6m
 Hydraulic Radius R = A / P = 1.89 / 6 = 0.315

Culvert grade S₀ > 2.0%
 Flow in culvert Q = A x V
 Mannings n = 0.012
 Manning's Equation V = (1/n)R^{2/3} x S₀^{0.5}
 = (1 / 0.012) x 0.315^{2/3} x 0.02^{0.5}
 V = 5.46 m/s

Culvert capacity Q = A x V = 1.89 x 5.46 = 10.311 L/s
 Q = 10.31 m³/s

Two culverts have between them about 20m³/s flow capacity



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Rev	Description	Eng	Draft	Date
P5	FOR INFORMATION	KL	PK	28/07/15
P4	FOR INFORMATION	KL	PK	12/08/15
P3	FOR INFORMATION	KL	PK	31/05/15
P2	FOR COORDINATION	KL	PK	15/05/15
P1	PRELIMINARY	KL	PK	14/05/15

Client
TAYLOR
 Consulting Engineers
 Level 13 157 Walker Street North Sydney NSW 2060

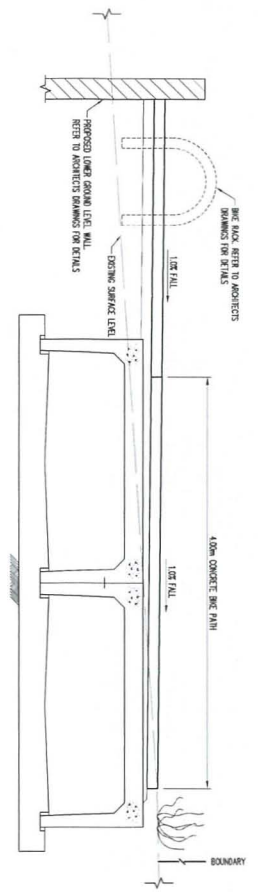
TW TaylorThomsonWhitting
 Consulting Engineers
 48 Charles Street 20 Leppington NSW 2050
 T: 61 2 9439 2288 F: 61 2 9439 2146 tw@taylorthomsonwhitting.com.au
 TaylorThomsonWhitting AU/NSW/QLD A/C No. 113 629 227

Project
 10 BYFIELD STREET
 MACQUARIE PARK.

Sheet Subject
 SITESWORKS PLAN

Scale	A1	Drawn	Authorised
1:100 U.N.O.	PK		
Job No	151282	Drawing No	C01
Revision			P5
Plot File Created Jul 28, 2015 - 12:17pm			

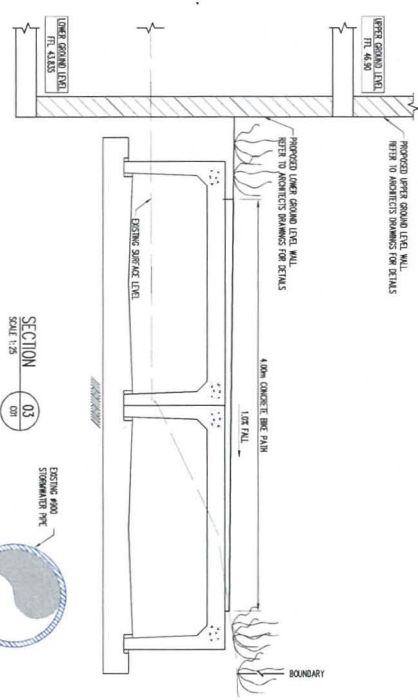
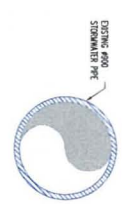
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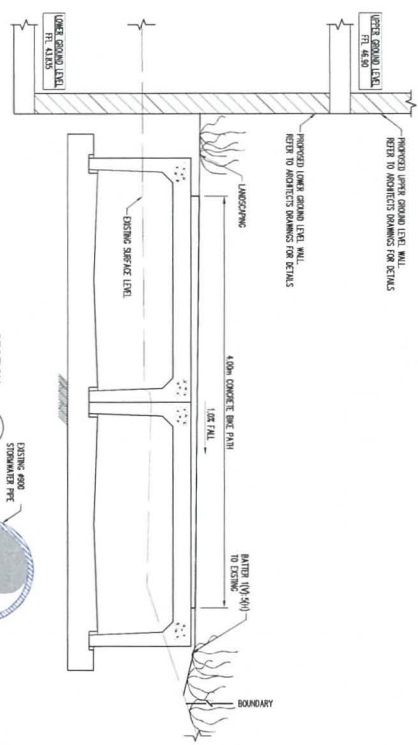
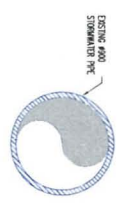
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SCALE 1:20



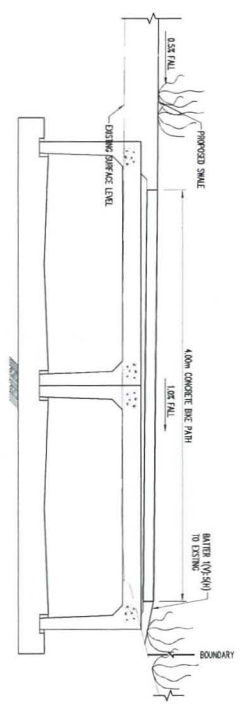
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SCALE 1:20



SECTION 03
SCALE 1:20



SECTION 04
SCALE 1:20



SECTION 05
SCALE 1:20



72	135 U/LAND	01	135 U/LAND	01	135 U/LAND	01	135 U/LAND	01	135 U/LAND
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76	135 U/LAND	05	135 U/LAND	05	135 U/LAND	05	135 U/LAND	05	135 U/LAND

TAYLOR
Level 13 137 Market Street North Sydney NSW 2060

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Consulting Engineers
44-45 SYDNEY STREET SYDNEY NSW 2000
TEL: (02) 9550 8888 FAX: (02) 9550 8889
WWW: www.taylor-thomsonwhitting.com.au

Project
**10 BYFIELD STREET
MACQUARIE PARK.**

Sheet: A1
135 U/LAND
PK
Scale: 1:1
Drawing No: 151282
C02
P2

Executed as a Deed

Signed for and on behalf of **The Council of the City of Ryde** ABN 81 621 292 610 by its authorised delegate pursuant to a resolution of the Council dated in the presence of:

Signature of Witness

Signature of Authorised Representative

Cathy Vickery

Print name of Witness

Executed by **Pro-invest Australian Hospitality Opportunity (ST) Pty Ltd** ACN 163 479 221 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/~~Secretary~~

Tim Sherlock

Print name of Director

Ronald Stephen Barrett.

Print name of Director/~~Secretary~~