

# Voluntary Planning Agreement

Parties

**Ryde City Council (Council)**

ABN 81 621 292 610

and

**Remo West Ryde Pty Limited (Developer)**

ABN 72 119 722 128

## Planning Agreement dated

**Parties**      **City of Ryde ABN 81 621 292 610**  
of 1 Devlin Street, Ryde, NSW  
(Council)

**Remo West Ryde Pty Limited ABN 72 119 722 128**  
Of 10 Regatta Road Five Dock 2046  
(Developer)

## Background

- A. On 31 July 2007 the Developer made the Development Application to the Council seeking Development Consent to carry out the Development on the Land.
- B. The Development Application was accompanied by an offer by the Developer to enter into this Agreement to make various Contributions and provide public facilities and amenities if Development Consent in respect of the Development Application was granted and the Development Consent activated.

## Operative provisions

### 1 Definitions and Interpretation

1.1 In this Agreement the following definitions apply:

- (1) **Act** means the *Environmental Planning and Assessment Act 1979 (NSW)*.
- (2) **Commencement Date** means the day that Development Consent is granted for the Development.
- (3) **Community Facility** means the facility described in Schedule 4 that is designed, constructed and commissioned.
- (4) **Construction Certificate** means a construction certificate issued pursuant to the *Environmental Planning & Assessment Act* authorising construction works in respect of the Development Consent.
- (5) **Contribution Item** means any single item of the Contributions listed in Schedule 3.
- (6) **Contributions** means the combination of the money payable by the Developer to the Council pursuant to this Agreement to provide public amenities and facilities, the land to be dedicated by the Developer to the Council pursuant to this Agreement and the other material public benefits to be provided by the Developer pursuant to this Agreement, as listed in Table 2 in schedule 2.
- (7) **Dedicated Land** means the land set out at Item 4 of Schedule 1.
- (8) **Defects Liability Period** means 12 months from practical completion of all public infrastructure provided under this Plan of Agreement.
- (9) **Development** means the development described at Item 1 of Schedule 1.
- (10) **Development Application** means the Developer's application or applications, including subsequent applications (including applications for Section 96 Modifications), to Council that fall within the comprehensive development application No LDA 559/07 in respect of the Development.

- (11) **Development Consent** has the same meaning as in the Act.
- (12) **GST** has the same meaning as the GST Law.
- (13) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
- (14) **Implementation Terms** means the terms set out in schedule 7.
- (15) **Land** means the land on which the Development will be undertaken, as described in the Development Application.
- (16) **Licence Agreement** means the licence agreement to be entered into between the parties pursuant to clause 7.2.
- (17) **Management Statement** means a building management statement or strata management statement, which details the extent of the Council's liabilities in respect of the Community Facility to be registered by the Developer in respect of the building comprising the Development and regulating the use of, and sharing of costs for, shared facilities and services in the Building and related matters.
- (18) **Occupation Certificate** has the same meaning as in the Act.
- (19) **Party** means a party to this Agreement, including their successors and assigns.
- (20) **Public Domain Works** means any work on road reserves or dedicated lands as shown in Schedules 4 and 5.
- (21) **Regulations** mean the *Environmental Planning and Assessment Regulation 2000*.
- (22) **Section 96 Modification** means any modification pursuant to section 96 of the Act to the Development Consent granted in respect of the Development Application.
- (23) **Village Square** means those works as indicated in Schedule 5.

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

- (1) Headings are inserted for convenience only and do not affect the interpretation of this Agreement
- (2) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (3) 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.
- (4) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (5) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (6) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (7) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

- (8) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (9) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (10) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (11) References to the word 'include' or 'including' are to be construed without limitation.
- (12) A reference to this Agreement includes the agreement recorded in this Agreement.
- (13) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (14) Any schedules and attachments form part of this Agreement.

## **2 Planning Agreement under the Act**

- 2.1 The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

## **3 Application of this Agreement**

- 3.1 This Agreement is made in respect of the Development Application and applies to the Land.

## **4 Commencement**

- 4.1 This Agreement is effective on and from the Commencement Date.

## **5 Development Contributions to be made under this Agreement**

- 5.1 The Developer must provide the Contributions in accordance with clause 6.

## **6 Provision of the Contributions**

- 6.1 The Developer will carry out and deliver the Contributions by the time or times and in the manner set out in Schedule 3.

## **7 Application of s94 and s94A of the Act to the Development**

- 7.1 This Agreement excludes the operation of Section 94 and 94A of the Act to any Development Consent that is granted in respect of the Development Application.
- 7.2 Section 94(6) of the Act does not apply to the Contributions provided pursuant to this Agreement in respect of any other development for which Development Consent is sought by the Developer in relation to development not contemplated by the Development Application or the Development Consent.

## **8 Council fees and charges**

- 8.1 In recognition of the public benefits/ contributions, the Council will waive payment of the following construction related fees for works subject of the Development Consent granted to the Development Application:
  - (1) "Footpath Rental Fee (Anthony Road / Chatham Road)"

- (2) "Footpath Rental Fee (Anthony Road / Reserve Street)"
- (3) "Council Reserve Land Rental Fee (New Betts Street)"
- (4) "Footpath Hoarding Erection Permit – B Type Hoardings (Anthony Road / Chatham Road / New Betts Street)";
- (5) "Roadway Construction Parking Zone Permit Fee (Anthony Road)"

8.2 Both parties agree to negotiate the variations incurred with the Council's Community Building Gross Floor Area and the fitout costs associated with the same building. The Developer will table to Council a schedule of variation costs to be approved by the Council staff and Council will negotiate with the Developer a variation offset against the proposed fitout of the community building.

## **9 Review of this Agreement**

9.1 This Agreement may be varied or amended only by the express written approval of both parties and in compliance with the Act.

## **10 Dispute Resolution**

10.1 Dispute or difference

If a dispute or difference arises under this Agreement the Parties or a Party may refer it for determination by an Expert under this clause 10.

10.2 Notice of dispute

A Party which seeks to refer a dispute or difference for determination under this clause must do so by giving a notice to the other Parties (first referral notice) in which:

- (a) it states the name, address and occupation of the person it nominates to determine the dispute or difference (nominated expert);
- (b) it nominates one of the classes of expert specified in the left hand column of the schedule at the end of this clause 10 whose expertise must correspond to the matter in dispute or the difference; and
- (c) it states the matter or matters which constitute the dispute or difference it wishes to refer for determination.

10.3 Procedure

Within 5 business days of receipt of the first referral notice the other Party must give a notice (second referral notice) to the Party which gave the first referral notice in which it states:

- (a) that it accepts or rejects the nominated expert; and
- (b) that it accepts or rejects the nomination of the class of expert,

identified in the first referral notice.

10.4 No second referral notice given

If no second referral notice or an incomplete second referral notice is given the nominated expert must determine the dispute or difference under this clause 10.

10.5 Acceptance of nominated referral

If the second referral notice accepts the nominated expert that person must determine the dispute or difference under this clause 10.

#### 10.6 Acceptance of Expert

If the second referral notice rejects the nominated expert but accepts the nomination of class of expert, the nomination of an Expert may be referred by a Party to the person whose name appears in the right hand column of the schedule at the end of this clause 10 and the Expert nominated by that person must determine the dispute or difference under this clause 10.

#### 10.7 Rejection of Nominated Expert

If the second referral notice rejects the Nominated Expert and the nomination of the class of expert, the nomination of the class of expert may be referred at the request any Party to the President for the time being of the Law Society of New South Wales. When making this request the Party doing so must ask the President for the time being of the Law Society of New South Wales to request the principal officer of the body governing the relevant class of expert to nominate the person who is act as the Expert for the purposes of the particular dispute or difference that has been referred for determination under this clause 10.

#### 10.8 Reference to an Expert

When a dispute or difference is referred to an Expert for determination under this clause 10 each of the Parties must use its best endeavours to make available to the Expert details of all facts and circumstances which the Expert may need to know in order to determine the dispute or difference and must ensure that its employees, agents and consultants are available to appear at any hearing or enquiry called for by the Expert. The process of determination shall be at the discretion and direction of the Expert. If a Party makes a written submission to the Expert it must provide copies of the submission to the other Party at the same time as it provides the submission to the Expert.

#### 10.9 Time for determination

The determination of the Expert must be made and delivered to the parties within 15 business days from the date of submission of the dispute or difference for determination or within such other period as the Expert determines.

#### 10.10 Costs

The costs relating to the appointment and determination of the Expert will be borne equally between the Parties in dispute unless the Expert otherwise specifies in which case the cost must be borne as the Expert specifies.

#### 10.11 Expert not an arbitrator

Any Expert appointed under this clause must, in deciding any issue under this clause 10, decide as an expert and not an arbitrator and the parties agree that the Expert's decision will be final and binding on the Parties.

#### 10.12 Development to proceed

If any dispute or difference is referred for the decision by the Expert if it is reasonably practicable so to do the Development will proceed pending such decision.

#### 10.13 Reasonable endeavours to settle

If a dispute arises the parties undertake in good faith to use all reasonable endeavours to settle the dispute expeditiously.

#### Schedule setting out Classes of Experts

Architect: President for the time being of the Royal Australian Institute of Architects, New South Wales Division.

Accountant: President for the time being of the Institute of Chartered Accountants in Australia, New South Wales Division.

Quantity  
Surveyor: President for the time being of the Association of Consulting Surveyors of New South Wales Division.

### **11 Performance Bond**

11.1 Before transfer to the Developer of the Developer Lot (as defined in the Implementation Terms), the Developer must deliver to the Council a \$2 million Performance Bond. The Performance Bond will be dealt with in accordance to the Implementation Terms.

### **12 Registration on Title**

12.1 Prior to the issue of the first Construction Certificate for the Development, the Developer must register or procure registration of this Agreement on the relevant folios of the Torrens title register held by the New South Wales Office of Land and Property Information pertaining to the Land. The Developer shall be responsible for obtaining the consent of any mortgagee or other person with an interest in the Land to such registration.

12.2 Upon full satisfaction of the Developer's obligations under this Agreement the Council agrees to provide a release and discharge of this Agreement with respect to the Land or any lot, including a strata lot, created on subdivision of the Land, within 10 business days of receiving a request from the Developer and to do all things reasonably necessary, including execute any necessary document, to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by the New South Wales Office of Land and Property Information pertaining to the Land.

### **13 Termination**

13.1 This Agreement terminates on the happening of any of the following events:

- (1) the lapse of the Development Consent; or
- (2) a declaration by a Court of competent jurisdiction that the Development Consent is invalid.

### **14 Escalation**

14.1 Despite any other provision of this Agreement, Section 94 and 94A of the Act will apply to a Section 96 Modification or a subsequent Development Application in respect of the Development Consent granted in respect of the Development Application if:

- (1) the effect of the Section 96 Modification is that the net usable floor area of the Development exceeds the net usable floor area applied for in the Development Application or the number of apartments in the residential component of the Development exceeds the number applied for in the Development Application; and

- (2) where the total monetary value of the Contributions for the Development calculated in accordance with Council's Section 94 Contribution Plan exceeds \$1,917,360.

## **15 Notices**

- 15.1 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:

- (1) Delivered or posted to that Party at its address set out below.
- (2) Faxed to that Party at its fax number set out below.
- (3) Emailed to that Party at its email address set out below.

### **Council**

Attention: General Manager

Address: 1 Devlin Street, Ryde, NSW

Fax Number: 9952 8070

Email: mwhittaker@ryde.nsw.gov.au and copy to cityofryde@ryde.nsw.gov.au

### **Developer**

Attention: Craig Pickering

Address: 10 Regatta Road Five Dock 2046

Fax Number: 02 9747 4934

Email: craig@remogroup.com

- 15.2 If a Party gives the other Party 5 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.
- 15.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
  - (1) If it is delivered, when it is left at the relevant address.
  - (2) If it is sent by post, 2 business days after it is posted.
  - (3) 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.
- 15.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 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.

## **16 Approvals and consent**

- 16.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **17 Assignment and Dealings**



- 17.1 The Developer must not sell, transfer, assign or novate or similarly deal with (“**Dealing**”) its right, title or interest in the Land (if any) or its rights or obligations under this Agreement unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:
- (1) gives the Council no less than 10 business days notice in writing of the proposed Dealing; and
  - (2) procures that the transferee, assignee or novatee executes and delivers to the Council prior to any such Dealing taking effect, a deed in favour of the Council in form and substance acceptable to the Council (acting reasonably) whereby:
    - a. the transferee, assignee or novatee becomes contractually bound with the Council to perform all of the Developer's obligations (including obligations which may have arisen before the transfer, assignment or novation takes effect); and
    - b. the Developer is released from any obligations under or by virtue of this Agreement which at the time of any proposed assignment or novation contemplated by this clause are required to be performed or satisfied by the Developer at any time from or after the date on which that assignment or novation takes effect under this Agreement.

**18 Costs - delete**

**19 Entire agreement**

- 19.1 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, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

**20 Further acts**

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

**21 Governing law and jurisdiction**

- 21.1 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.

**22 Joint and individual liability and benefits**

- 22.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

**23 No fetter**

- 23.1 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.

**24 Representations and warranties**

- 24.1 The Parties represent and warrant that they have power to enter into this Agreement

and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

## **25 Severability**

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

## **26 Modification**

- 26.1 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.

## **27 Waiver**

- 27.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given it is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## **28 GST**

- 28.1 If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply.
- 28.2 Subject to clause 29.3, if the transfer of the Community Facility is a taxable supply, Council will be liable for the payment of GST on that supply.
- 28.3 Council cannot be required to pay GST to Remo earlier than 14 days before Remo must remit the GST to the ATO.

## **29 Force majeure**

- 29.1 If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under this deed (other than an obligation to transfer land or make a payment), it must:
- (1) give to the other Party prompt notice of the force majeure with reasonably full particulars; and
  - (2) suggest an alternative method, if any, of satisfying its obligation under this deed.
- 29.2 If a Party is unable to satisfy its obligations under this deed by an alternative method, the obligations of the Parties, and any time periods, 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.
- 29.3 The Party giving such notice under this clause must use all reasonable efforts and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- 29.4 The Parties agree that any costs associated in ameliorating a force majeure event will be apportioned, if necessary, in such manner as may be fair and reasonable.
- 29.5 The Parties agree that this force majeure provision does not apply to an obligation of a

Party to transfer land or to pay money.

- 29.6 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, and any time periods, are suspended during the continuance of the force majeure, that dispute must be referred for determination under clause 11.
- 29.7 The Parties agree that a force majeure includes the actual commencement of any legal proceedings by any person challenging the validity of the Development Consent or any provision of this Agreement.
- 29.8 If a force majeure event cannot be resolved to the mutual satisfaction of Council and the Developer and as a result of a force majeure event the Developer, in its sole discretion, determines that it is unable to undertake the Development, the Developer may terminate this agreement by notice to Council in which event neither Party will have any claim against the other under this Agreement.

### **30 Compliance with laws**

- 30.1 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 do something or pay an amount 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.

### **31 Confidentiality**

- 31.1 The parties agree that the terms of this planning agreement are not confidential and this planning agreement may be treated as a public document and exhibited or reported without restriction by any party.

### **32 Implementation Terms**

- 32.1 The Implementation Terms have effect.

### **33 Inconsistency**

- 33.1 Where the terms of this Deed and the terms of any other agreement between Council and the Developer deal expressly with the same subject matter and the terms of this Deed contradict those of the other agreement, the terms of this Deed prevail to the extent of the contradiction.

## Execution

**Dated:**

**Executed as an Agreement:**

Signed by Michael Whittaker as attorney for the City of Ryde ABN 81 621 292 610 under power of attorney registered Book No. in the presence of:

.....  
signature of witness

Michael Whittaker

.....  
Name of witness  
(BLOCK LETTERS)

Executed by Remo West Ryde Pty Ltd ABN 72 119 722 128 in accordance with Section 127 of the Corporations Act 2001:

.....  
Director/company secretary

Director

.....  
Name of director/company secretary  
(BLOCK LETTERS)

.....  
Name of director  
(BLOCK LETTERS)

## Schedule 1– Reference Schedule

Item	Name	Description
1.	Development	The development of the Land in accordance with the Development Consent granted pursuant to the Development Application, as modified or amended.
2.	Dedicated Land	As stratum lot, created on subdivision of the Land, comprising the Village Square and 134 Car Parking Spaces.
3.	Public Benefits	As described in Schedule 2

## Schedule 2 – Public Benefits Offer verses Section 94 Contributions

**Table 1 - Section 94 Contributions**

Table 1 identifies the Section 94 Contribution payable in respect of the proposed West Ryde Village development, calculated in accordance with the City of Ryde - Section 94 Contribution Plan No 1 - 2003 and identifies the construction fees payable in respect of the redevelopment of the West Ryde Village development

Proposed Spatial Type Area	Area (GFA)	S94 Parking	S94 Public Space	S94 Stormwater	S94 Administration	Project Total
<b>Mixed Use Facility</b>						
Commercial Office Space	5,383		\$30 x 5383 \$161,490	\$39 x 5383 \$209,937	\$3 x 5383 \$16,149	\$387,576
Retail	7,292		\$14 x 7292 \$102,088	\$17 x 7292 \$123,964	\$2 x 7292 \$14,584	\$240,636
Residential (no of apartments)	145		\$7,319 x 145 \$1,061,255	\$1,455 x 145 \$210,975	\$77 x 145 \$11,165	\$1,283,395
<b>Community Facility</b>						
Ground Floor – Retail	201		\$14 x 201 \$2,814	\$17 x 201 \$3,417	\$2 x 201 \$402	\$6,633
Ground Floor – Commercial / Civic Space (hall)	1077		\$30 x 1077 \$32,310	\$39 x 1077 \$42,003	\$3 x 1077 \$3,231	\$77,544
First Floor – Commercial	951		\$30 x 951 \$28,530	\$39 x 951 \$37,089	\$3 x 951 \$2,853	\$68,472
Second Floor – Commercial	745		\$30 x 745 \$22,350	\$39 x 745 \$29,055	\$3 x 745 \$2,235	\$53,640
Third Floor – Commercial	558		\$30 x 558 \$16,740	\$39 x 558 \$21,762	\$3 x 558 \$1,674	\$40,176
<b>Total Section 94 Contributions (A)</b>						<b>\$2,158,072</b>

<b>Construction Fees</b>	<b>Rate</b>	<b>Unit</b>	<b>Quantity</b>	<b>Months</b>	<b>Project Total</b>
Footpath Rental Fee (Anthony Road / Chatham Road)	\$40	sqm/mth	315	15	\$189,000
Footpath Rental Fee (Anthony Road / Reserve Street)	\$40	sqm/mth	150	10	\$60,000
Council Reserve Land Rental Fee (New Betts Street)	\$40	sqm/mth	165	10	\$66,000
Footpath Hoarding Erection Permit – B Type (Anthony Road / Chatham Road / New Betts Street)	\$35	m/mth	300	15	\$157,500
Roadway Construction Parking Zone Permit Fee (Anthony Road)	\$23	m/mth	70	18	\$28,980
<b>Total Construction Fees (B)</b>					<b>\$501,480</b>

<b>Total Estimated Contributions and Fees Payable [(C)=(A)+(B)]</b>	<b>2,659,552</b>
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**Table 2 – Voluntary Planning Agreement Offer – Public Benefits**

Table 2 identifies the public benefits offered under the Voluntary Planning Agreement between Remo West Ryde Pty Ltd and City of Ryde in lieu of monetary contributions otherwise payable under City of Ryde's Section 94 Contributions Plan and Construction Fees otherwise payable as outlined above.

<b>Public Benefits offered under the Voluntary Planning Agreement</b>	<b>Offer Value (exc GST)</b>
<b>Community Facility</b> Design, Construct and Commissioning to the Council of the stratum lot comprising of a 4-storey Community Facility Building, located on the corner of Anthony Road and reserve Street and a total GFA of approximately 3100 square metres.	\$17,544,720
<b>Village Square</b> Design, Construct and Commissioning of a 1,500 square metre village square to the Council, which will include an electronic vision board for broadcasts, natural landscaping and streetscaping	\$3,671,400
<b>Council Car Park</b> Design, Construct and Commissioning of the stratum lot of an additional 38 underground NRMA Security Compliant Car Parking Spaces	\$1,253,318
Community art and construction of a heritage wall along New Betts Street and Darvall Park	\$231,765
<b>Total Public Benefit under Voluntary Planning Agreement (D)</b>	<b>\$22,701,203</b>

<b>VPA Offer in Excess of Developer Obligations (Net Public Benefit of this Development) [E=(D)–(C)]</b>	<b>\$20,041,651</b>
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**Table 3 – Other Public Infrastructure provided as part of this Development but not included under this Planning Agreement**

<b><i>Other Public Infrastructure Provided as part of the Development</i></b>	
Drainage and overland flows including adjustments of existing sewers in and around Anthony Road / Reserve Street	\$566,035
Public domain works / public infrastructure including provision of a new substation, traffic management, cycle-ways and footpaths, raising Anthony Road, relocation of Betts Street	\$1,905,651
Design, Construct and Commissioning of the stratum lot of 134 underground NRMA Security Compliant Car Parking Spaces for the Council	\$4,070,800
<b>Total Other Public Infrastructure Benefits offered as part of the Development (F)</b>	<b>\$6,542,486</b>

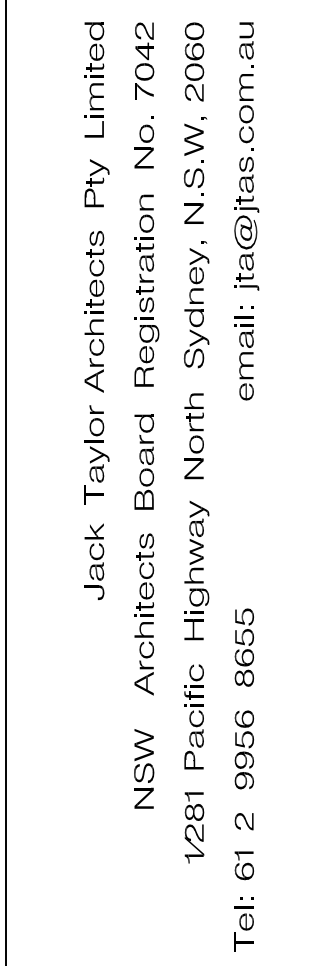
<b>Total Public Benefits offered as part of the Development [(G)=(D)+(F)]</b>	<b>\$29,243,689</b>
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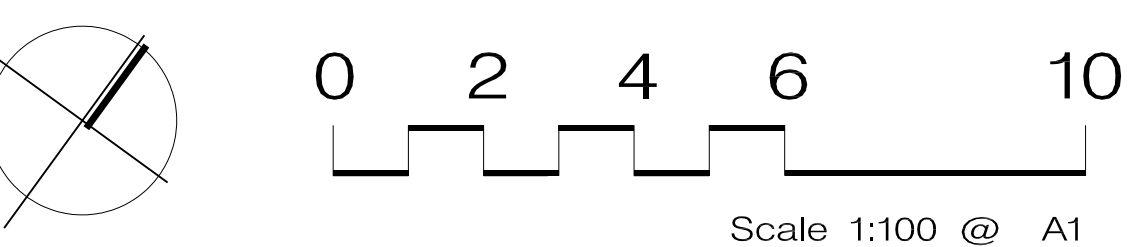


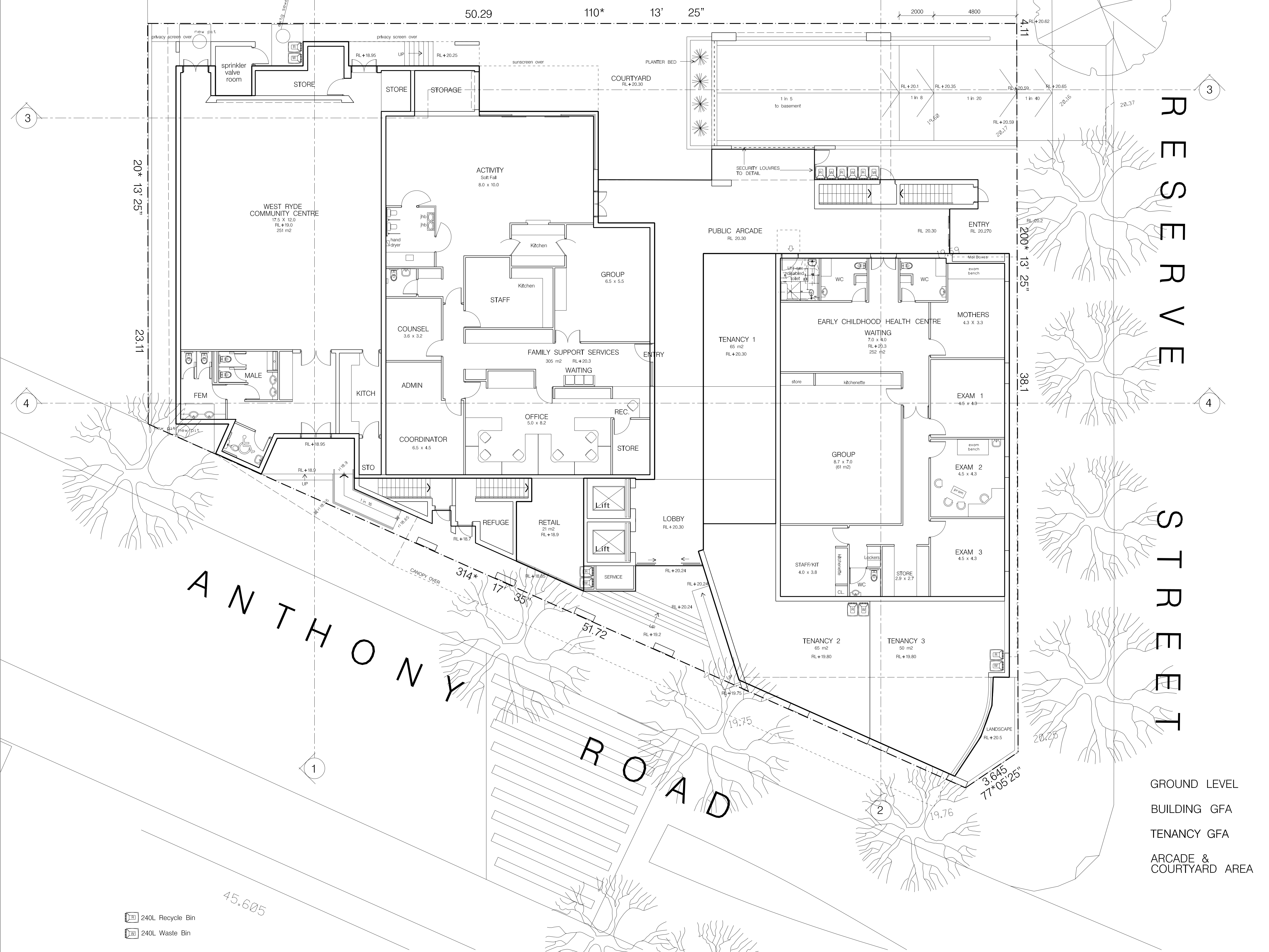
### Schedule 3– Developer’s Works

Development Stage	Item of Owner’s Work	Relevant Standards	Extent of Design Refinement	Relevant Occupation Certificate	Relevant Drawing Nos.
Stage 1 component of the development. Anticipated completion date as per Schedule 7.	Community Facility – Design, Construction & Commissioning of the Community Facility Building	Standards set out in the original council tender documents, schedule 7 and as otherwise agreed with the developer.	The applicant with owners consent may submit a further Development Application in order to reflect detailed design of these areas.	On issue of the final Occupation Certificate for Stage 1 component of the development.	101DA B 102DA B 103DA B 104DA B 105DA B 106DA B 107DA B 110DA B 111DA B
Stage 2 component of the development. Anticipated completion date as per Schedule 7.	Village Square: – Design and Construction of the Public Domain Enhancements.	Standards set out in the original council tender documents, schedule 7 and as otherwise agreed with the developer.	The applicant with owners consent may submit a further Development Application in order to reflect detailed design of these areas.	On issue of the final Occupation Certificate for Stage 2 component of the development.	210DA B
Stage 2 component of the development. Anticipated completion date as per Schedule 7.	Underground Car Park: – Design and Construction of the Underground Car Park, including the Council’s car parking spaces	Standards set out in the original council tender documents, schedule 7 and as otherwise agreed with the developer.	The applicant with owners consent may submit a further Development Application in order to reflect detailed design of these areas.	On issue of the final Occupation Certificate for Stage 2 component of the development.	210DA B 204DA B

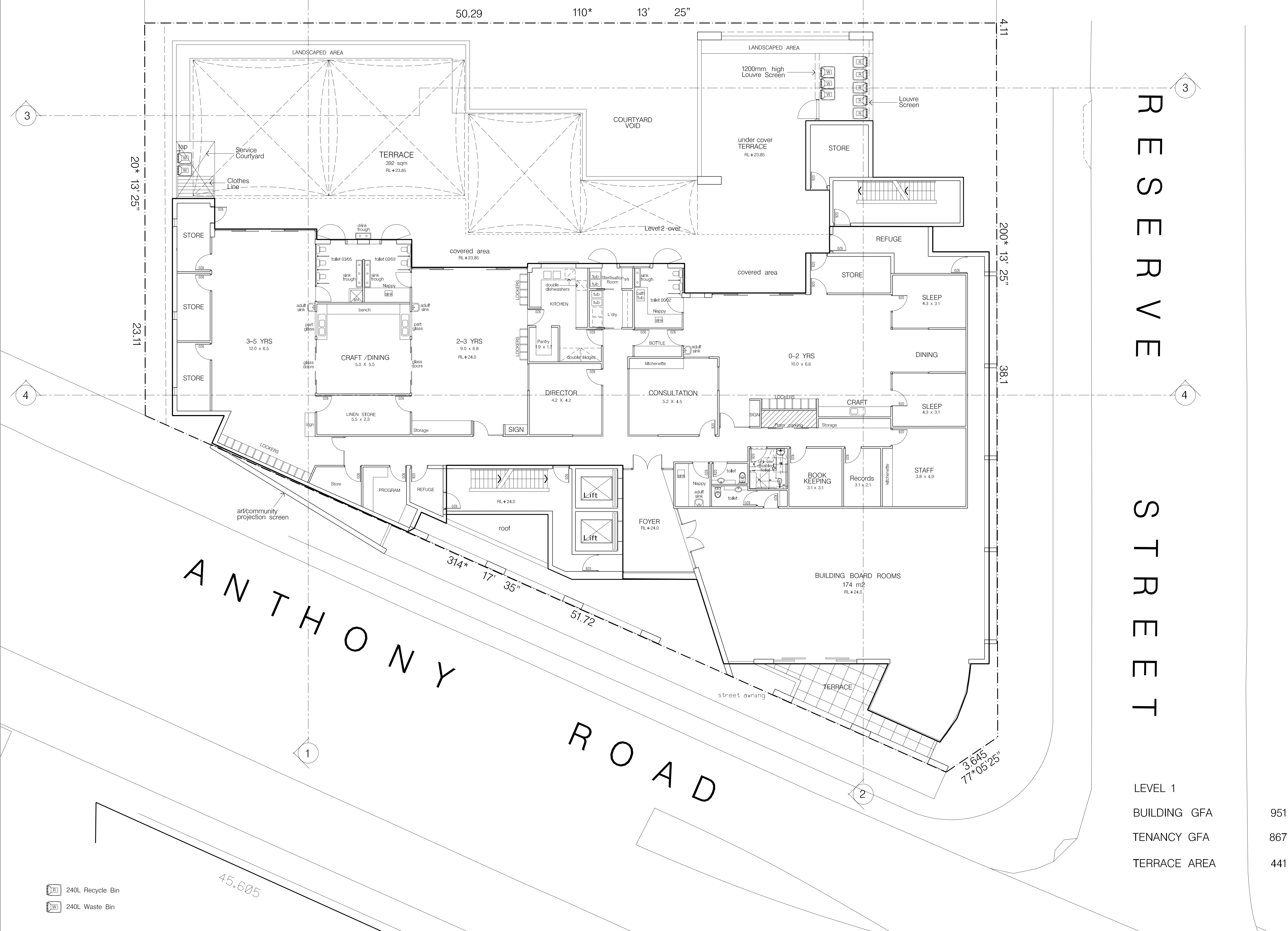
## **Schedule 4 – Community Facility Scope of Works**



102  
DA<sup>B</sup>



GROUND LEVEL	
BUILDING GFA	1278
TENANCY GFA	1083
ARCADE & COURTYARD AREA	250



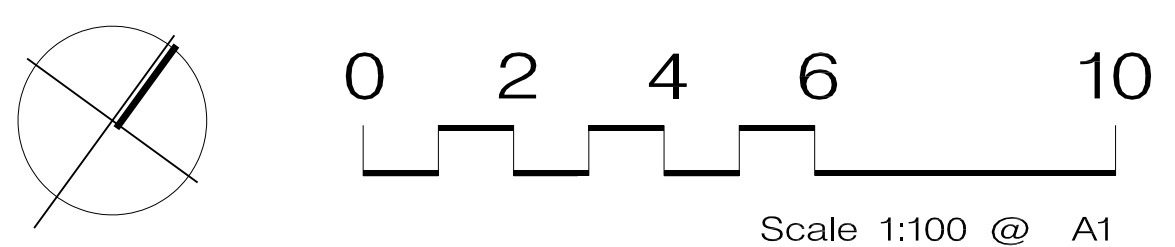
R E S E R V E  
S T R E E T

A N T H O N Y  
R O A D

West Ryde Village

LEVEL 1	
BUILDING GFA	951
TENANCY GFA	867
TERRACE AREA	441

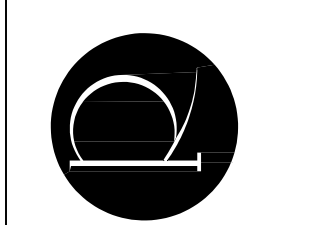
- 240L Recycle Bin
- 240L Waste Bin



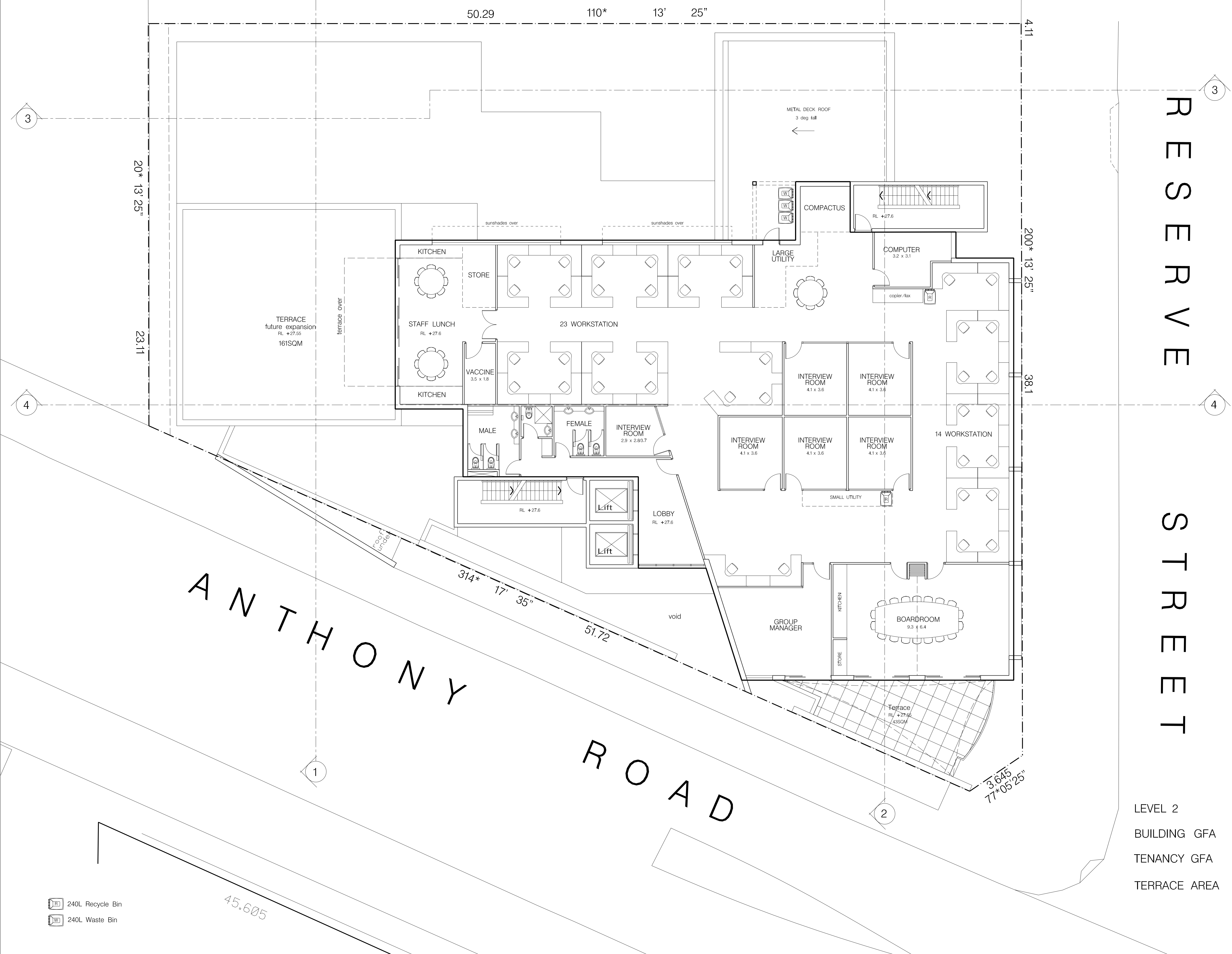
Jack Taylor Architects Pty Limited  
NSW Architects Board Registration No. 7042  
1281 Pacific Highway North Sydney, N.S.W. 2060  
Tel: 61 2 9956 8655 email: jta@jtas.com.au

**REMO** Properties

City of Ryde



60717  
LEVEL 1  
104  
DAB



LEVEL 2	SQM
BUILDING GFA	745
TENANCY GFA	700
TERRACE AREA	204

240L Recycle Bin

240L Waste Bin

024610

Scale 1:100 @ A1

West Ryde Village

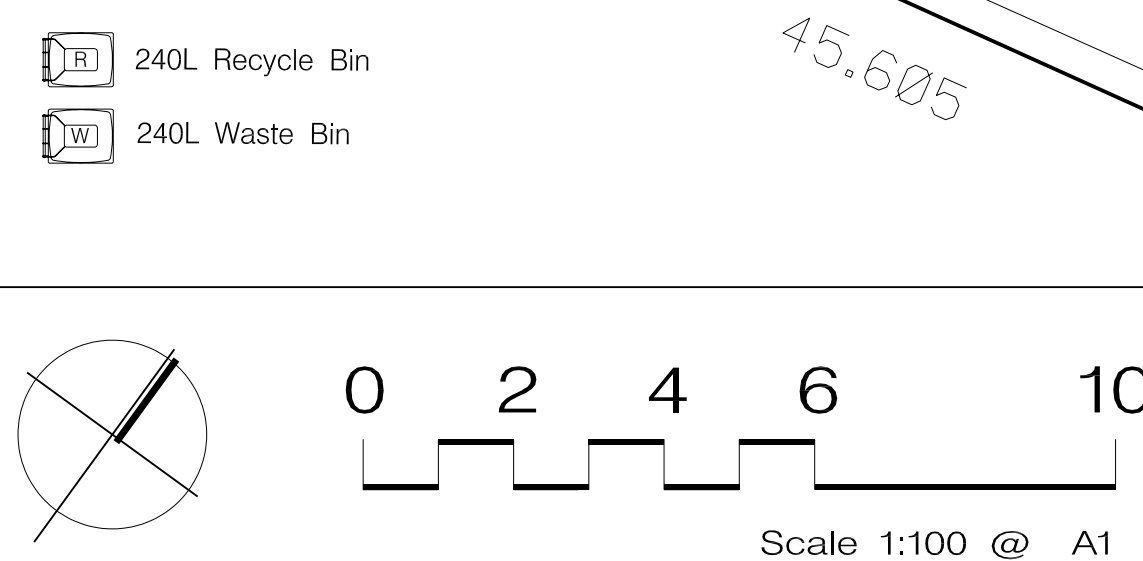
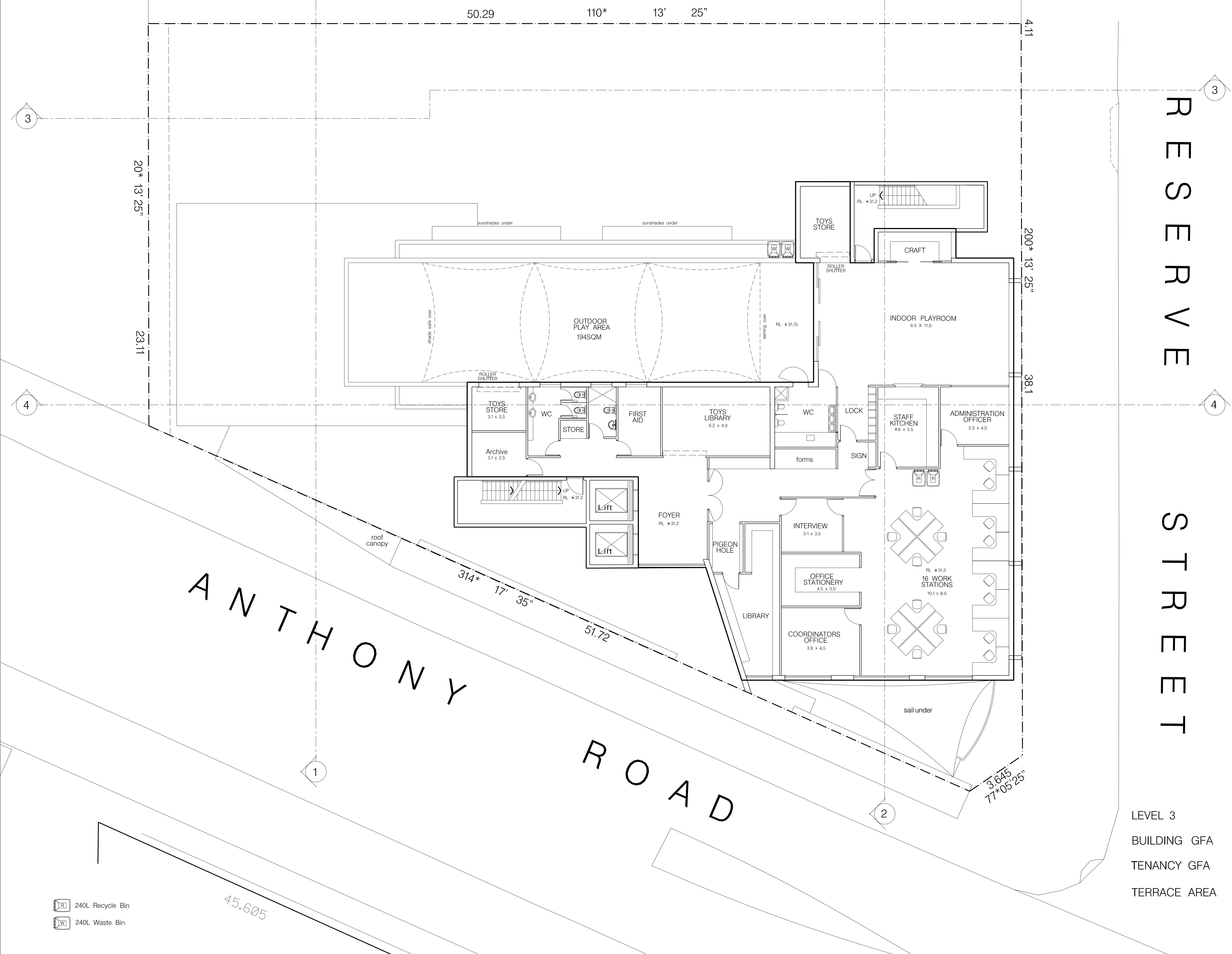
60717

LEVEL 2

105

DAB





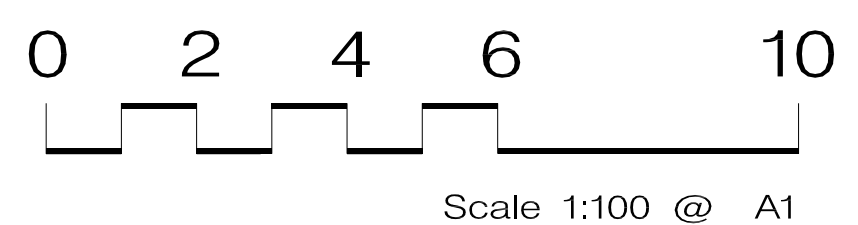
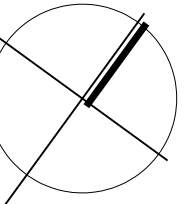
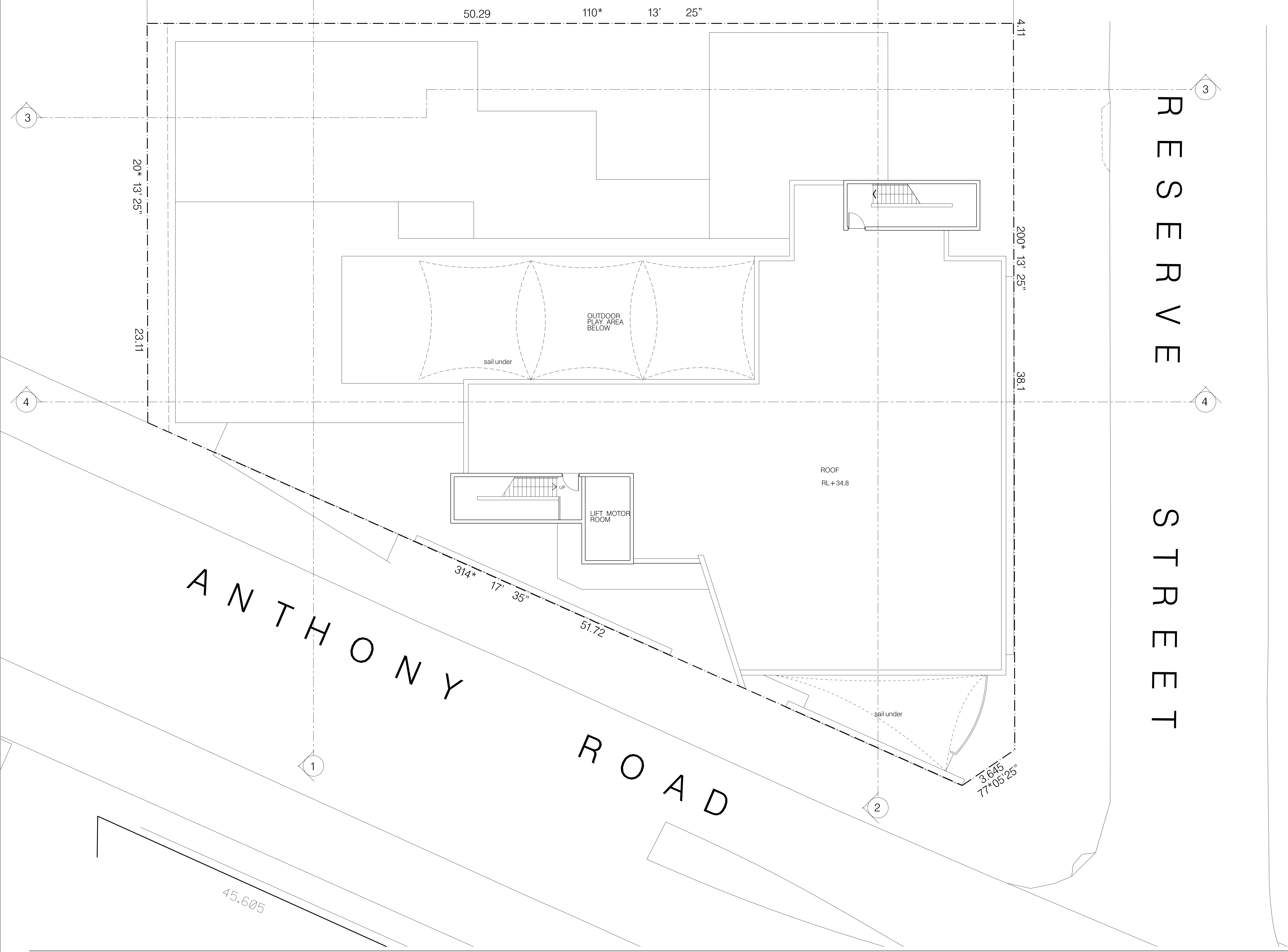
LEVEL 3	SQM
BUILDING GFA	558
TENANCY GFA	496
TERRACE AREA	194

West Ryde Village

60717  
LEVEL 3

106  
DAB

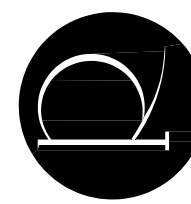




West Ryde Village

60717  
ROOF PLAN

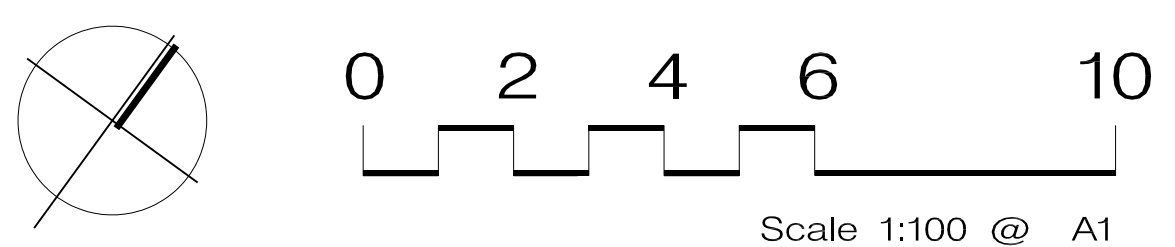
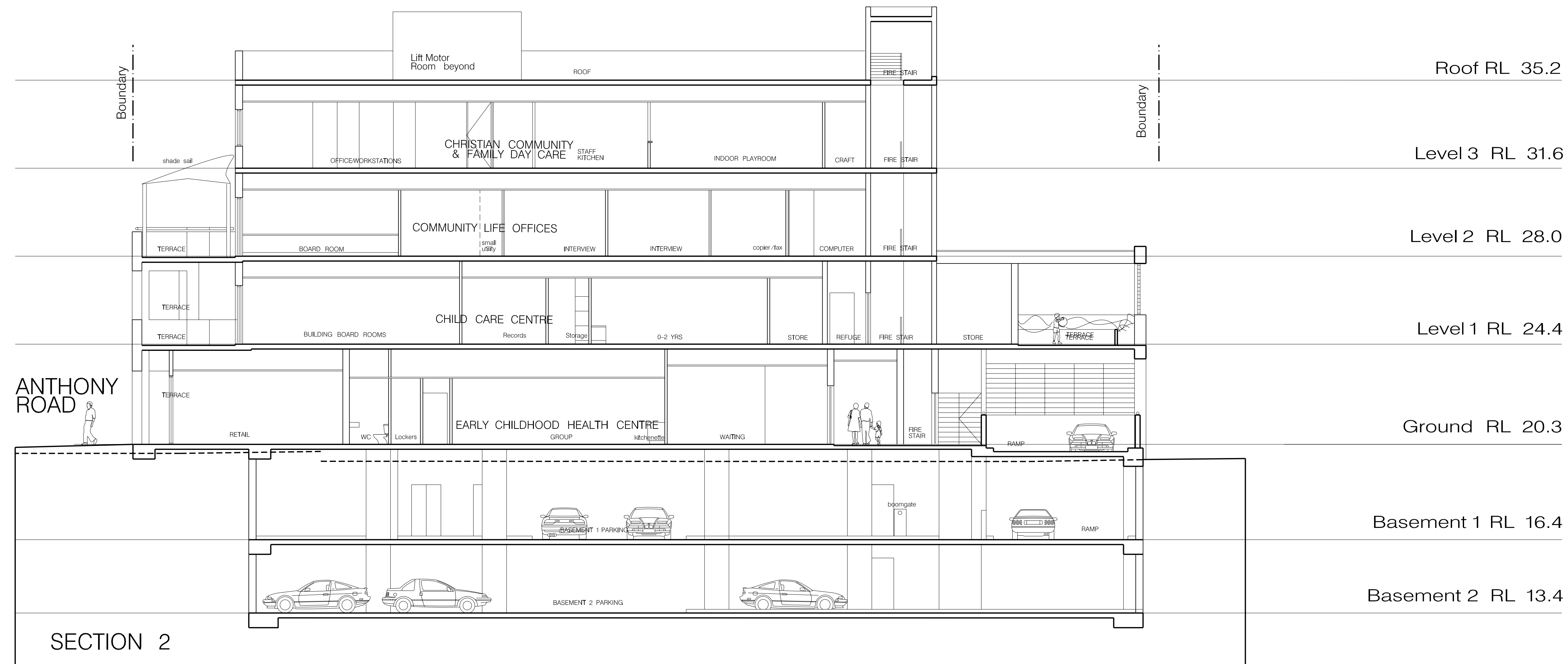
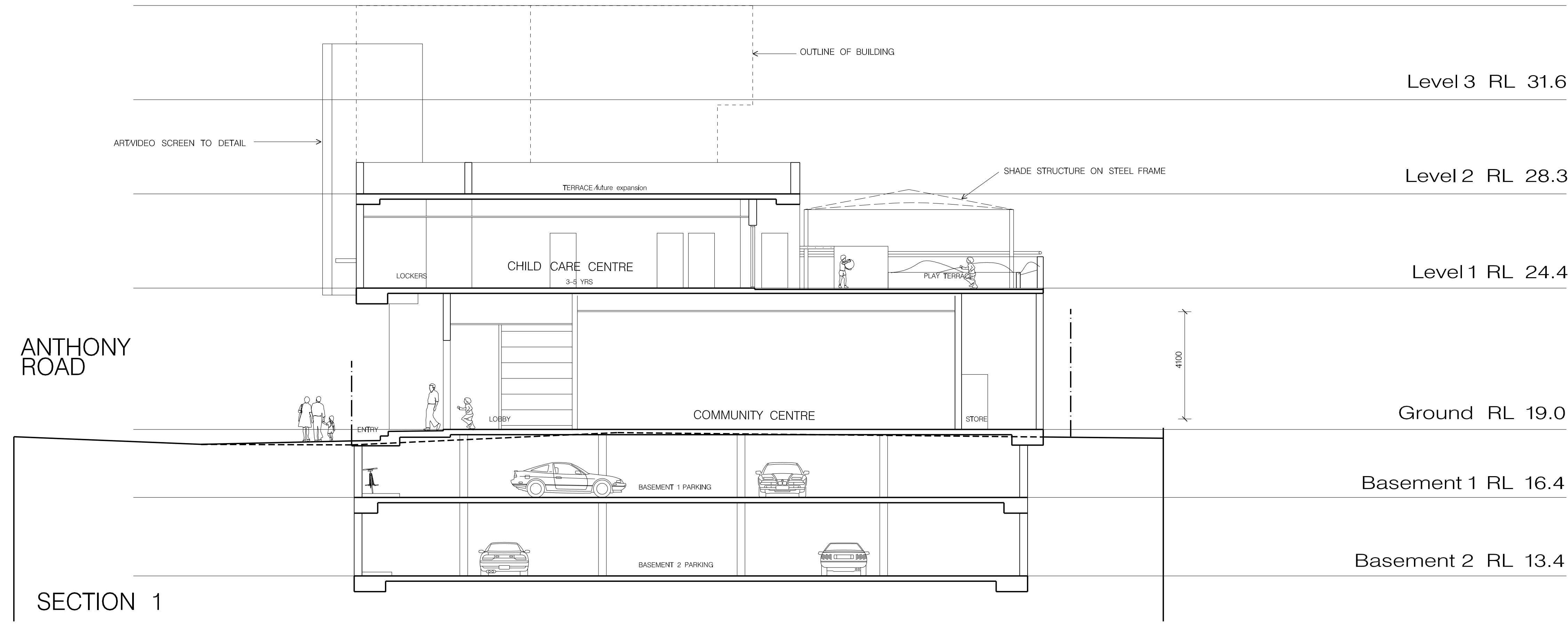
107  
DA<sup>B</sup>



City of Ryde



Jack Taylor Architects Pty Limited  
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1281 Pacific Highway North Sydney, N.S.W., 2060  
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# West Ryde Village

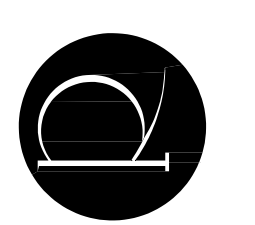
60717  
SECTIONS

110  
DAB

Jack Taylor Architects Pty Limited  
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1281 Pacific Highway North Sydney, N.S.W. 2060  
Tel: 61 2 9956 8655 email: jta@jtas.com.au

**REMO**  
Properties

City of Ryde



Level 3 RL 31.6

Level 2 RL 28.0

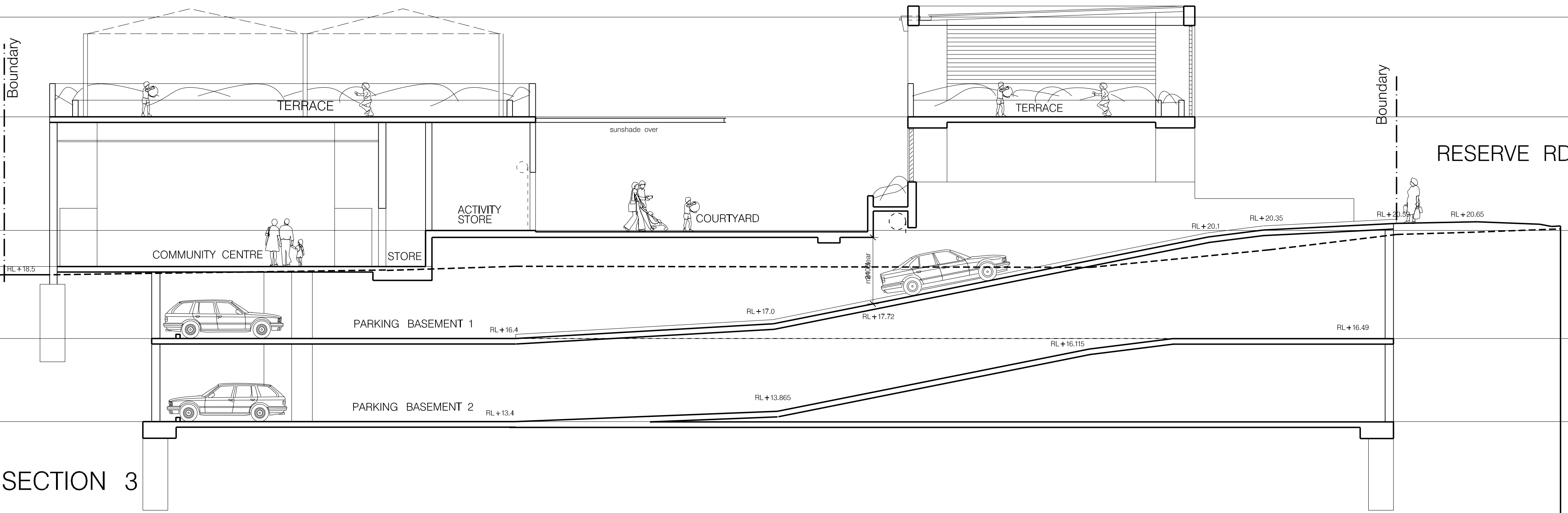
Level 1 RL 24.4

Ground RL 20.3

Basement 1 RL 16.4

Basement 2 RL 13.4

SECTION 3



Roof RL 35.2

Level 3 RL 31.6

Level 2 RL 28.0

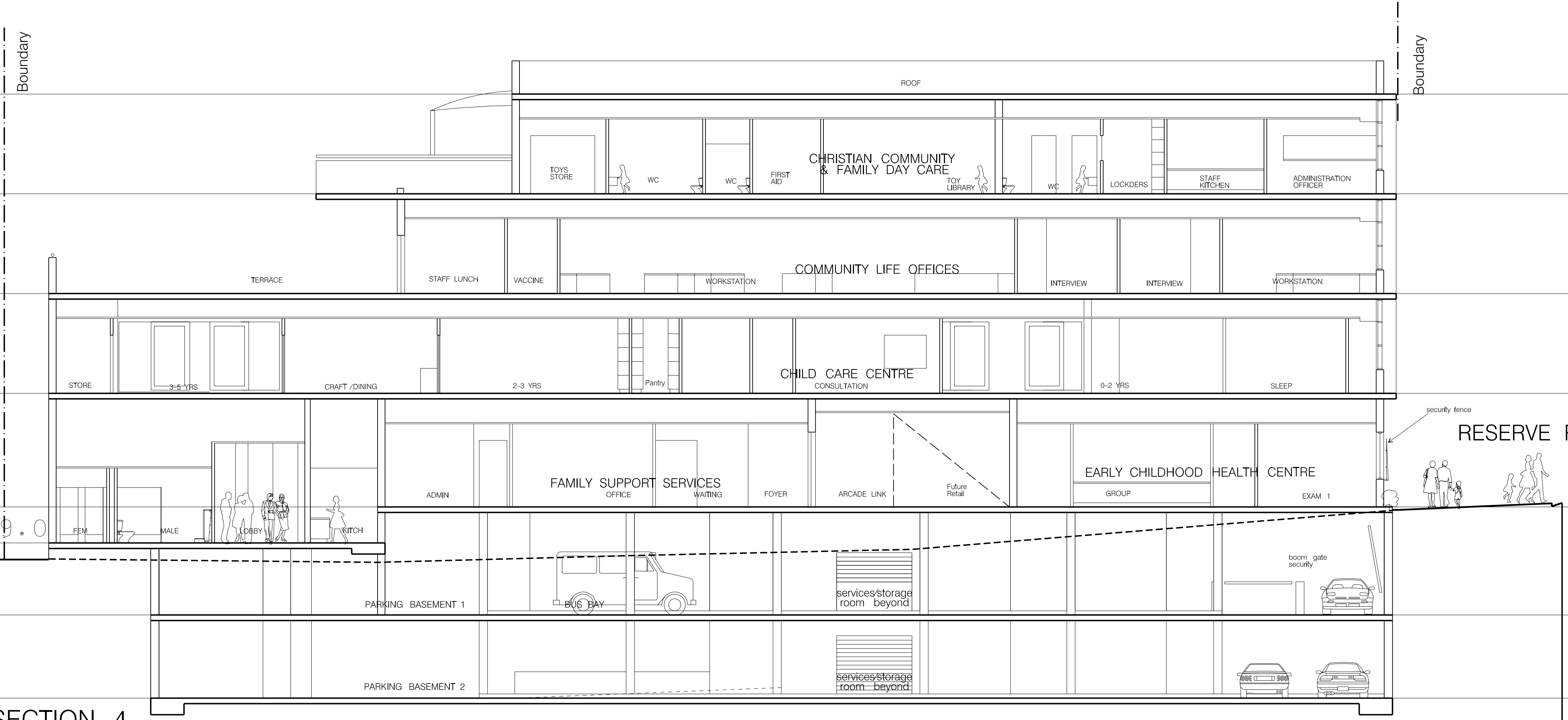
Level 1 RL 24.4

Ground RL 20.3

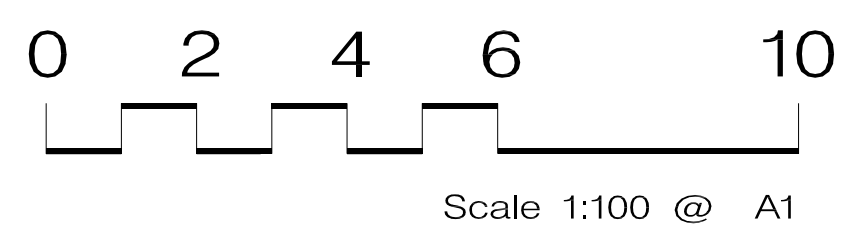
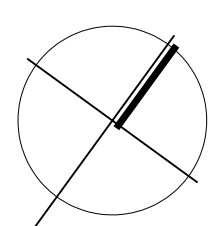
Basement 1 RL 16.4

Basement 2 RL 13.4

SECTION 4



Ground RL+19.0



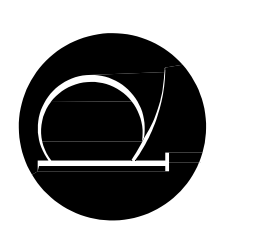
West Ryde Village

60717  
SECTIONS

111  
DAB

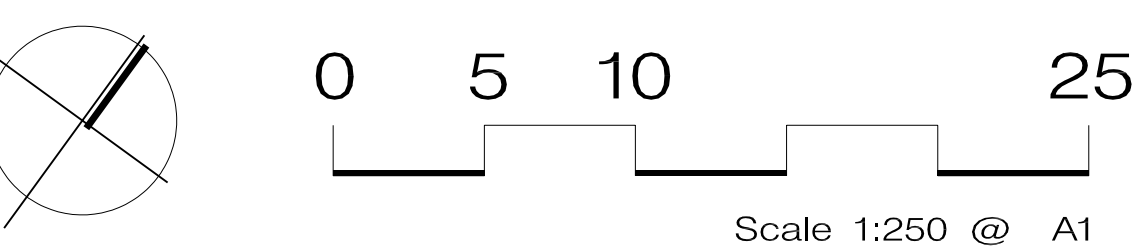
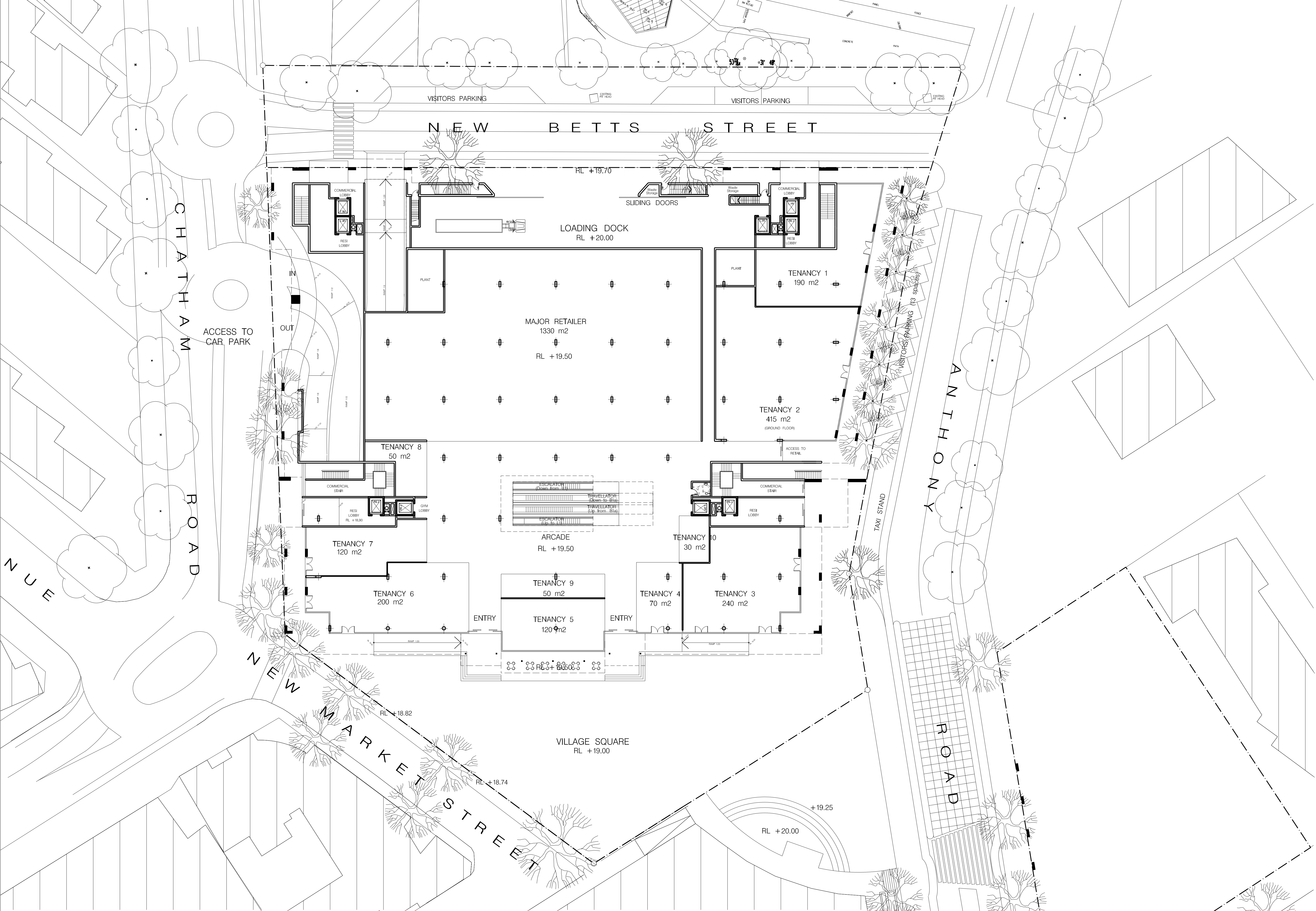
**REMO**  
Properties

City of Ryde



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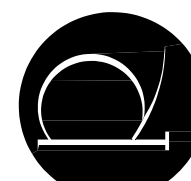
## **Schedule 5 – City of Ryde Village Square Scope of Works**



# West Ryde Village

60717  
GROUND FLOOR

210  
DA<sup>B</sup>



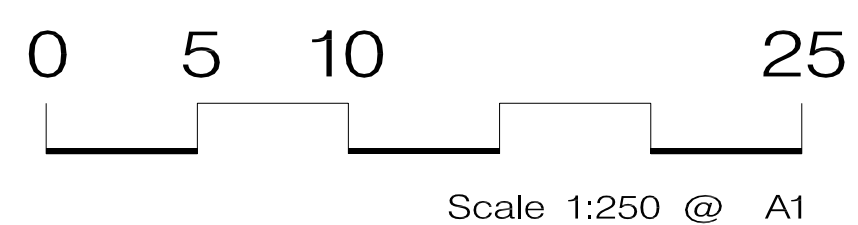
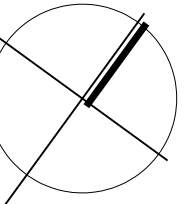
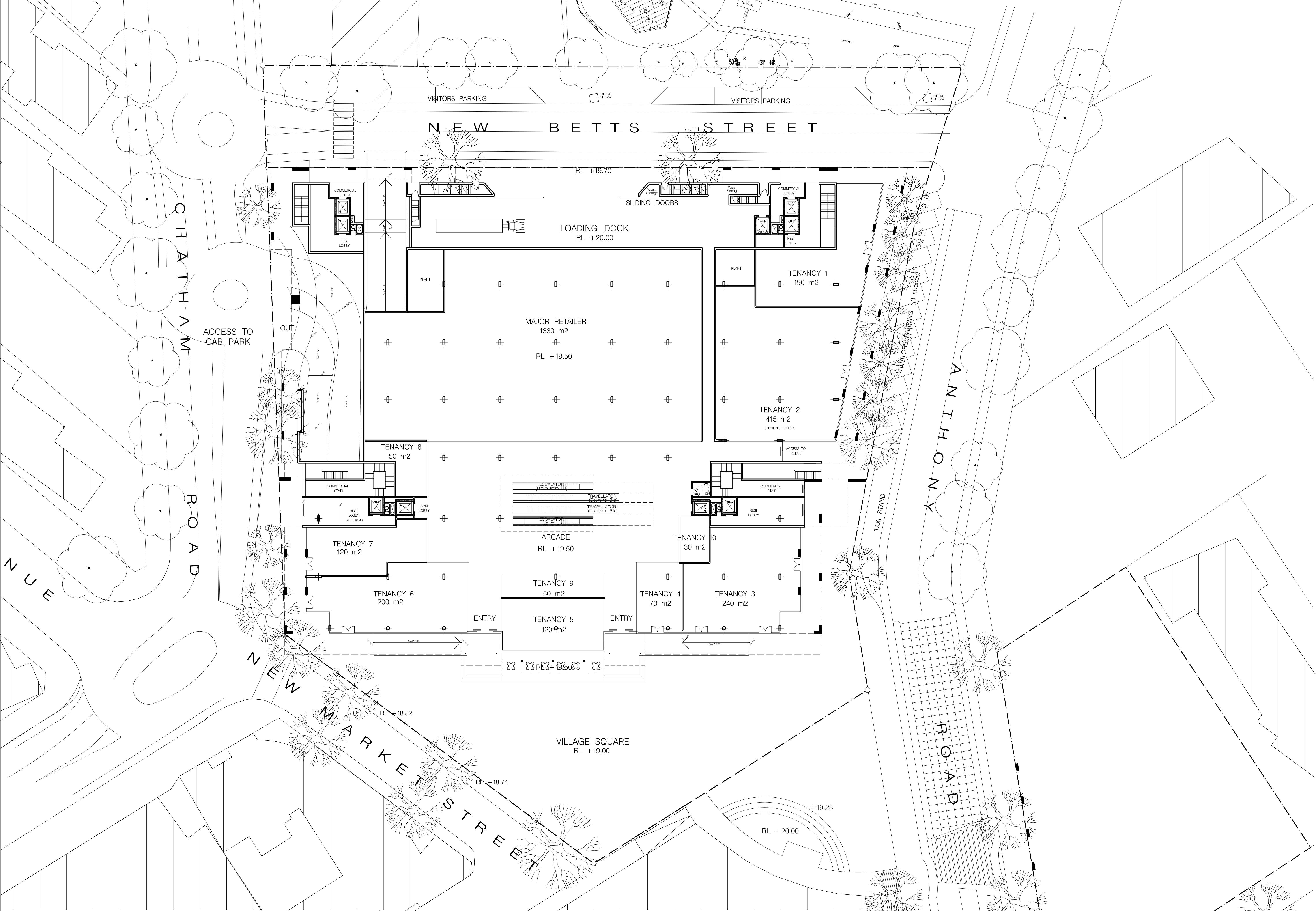
City of Ryde

**REMO**  
Properties

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## **Schedule 6 – City of Ryde Car Park Scope of Works**

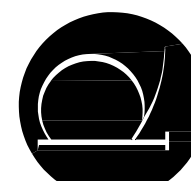




# West Ryde Village

60717  
GROUND FLOOR

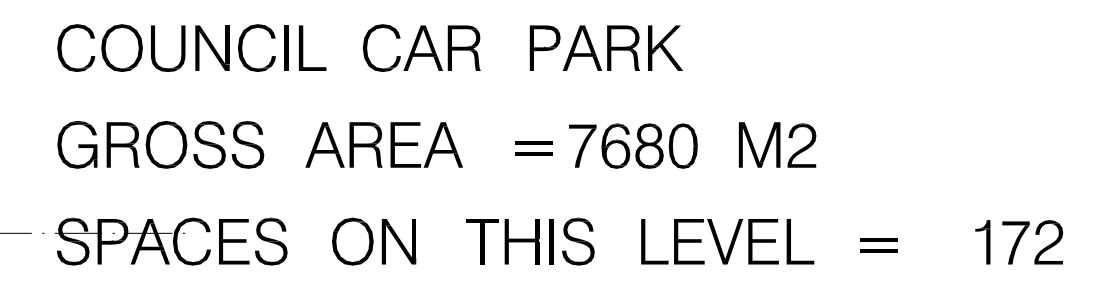
210  
DA<sup>B</sup>



City of Ryde

**REMO**  
Properties

Jack Taylor Architects Pty Limited  
NSW Architects Board Registration No. 7042  
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Tel: 61 2 9956 8655 email: jta@jtas.com.au





## Schedule 7 – Implementation Terms

### 1. DEFINITIONS

**Adjoining Land** means any land adjoining, adjacent to or in the vicinity of the Development Site.

**Anthony Road Site (ARS)** means the properties known as 3, 5 & 5A Anthony Road, West Ryde comprised of the following land parcels:

- (a) lots 1 and 2 deposited plan 590509; and
- (b) lot B deposited plan 414394.

**Anthony Road Site Works** means the building works required to carry out that part of the Project relating to the Anthony Road Site.

**ARS Works Completion Standard** means that stage in the execution of the Anthony Road Site Works when:

- (a) they (apart from minor omissions and defects):
  - (i) have been carried out in a proper and workmanlike manner and in accordance with good construction techniques using new and good quality or appropriate materials;
  - (ii) are fit for purpose and there is no legal or practical impediment to them being used but for any fit out that an occupier or user of the Anthony Road Site (or any part of it) may need to carry out;
  - (iii) are in accordance with the Satisfactory Development Consent, the Final Plans and Specifications and all Authorisations relating to the Anthony Road Site Works (including, without limitation, the Construction Certificate for those works); and
- (b) the Independent Certifier gives a certification that agreed qualitative standards for the Anthony Road Site Works have been met;
- (c) the Independent Certifier gives a certification that the qualitative standard of the Anthony Road Site Works is not less than the qualitative standard attributable to the West Ryde Library Building; and
- (d) a Compliance Certificate has been issued for the Anthony Road Site Works.

**Application** means each application for an Authorisation to be lodged with a governmental agency.

**Authorisation** means any authorisation, approval, consent, licence, permit, permission, filing, registration, resolution, direction, declaration or exemption relating to the Project.

**Compliance Certificate** means has the meaning given to that term in the EPAA.

**Construction Certificate** has the same meaning as in section 109C(1)(b) of the EPAA.

**Construction Works** means the Anthony Road Site Works and the Carpark Site Works.

**Carpark Site** means the properties located at Chatham Road, Anthony Road and Betts Street, West Ryde comprised of the following land parcels:

- (a) lots 1 and 2 deposited plan 1072082;
- (b) lots 149 – 154 (inclusive) deposited plan 11208; and
- (c) lots A and B deposited plan 398801.

**Carpark Site Works** means the Developer Lot Works and the Village Square Lot Works.

**Cost Apportionment Principles** means in order of priority:

- (a) if the shared facility is in the nature of a utility service and its consumption is capable of measurement; actual use of a shared facility measured by meter or sub-meter (which on the basis of capital cost for those shared facilities has regard to historical meter readings for a period of up to 3 years);
- (b) where practical, having regard to the proportion of benefit and use which a party through the ownership or occupation of its lot will derive from the shared facility;
- (c) with regard to the fact that the Public Car Park is for public use and benefit and by virtue of such public use and benefit any cost apportionment should impose minimal financial obligations on the public;
- (d) the proportion of the respective gross floor area of the lots or areas which have the benefit or use of a shared facility;
- (e) the public must not directly or indirectly provide a subsidy to private owners or users of lots or areas who enjoy the benefit of the shared facility;
- (f) the public must not directly or indirectly provide a subsidy to private owners or users of lots or areas in respect of shared costs.

**Defects Liability Period** means:

- (a) in respect of the Anthony Road Site Works, the period of 12 months after date on which those works reach the ARS Works Completion Standard; and
- (b) in respect of the Village Square Lot Works the period of 12 months after date of on which those works reach the VSL Works Completion Standard.

**Developer Lot (DL)** means land agreed to be transferred by Ryde to the Developer.

**Developer Lot Works** means the building works required to carry out that part of the Project relating to the Developer Lot.

**Development Application** means the application (or any amended application) lodged or to be lodged under the EPAA in respect of the Project by or on behalf of the Developer.

**Development Consent** means a development consent granted under the EPAA or a determination under the EPAA (as the case may be) from the Consent Authority in response to the Development Application.

**Development Sites** means each of the Anthony Road Site and the Carpark Site.

**Easement Instrument** means any instrument under section 88B of the Conveyancing Act 1919 containing easements, covenants and restrictions benefiting or burdening the Development Site.

**EOT Event** means each of the following extension of time events and circumstances which causes the Developer actual delay carrying out the Project being:

- (a) any civil commotion, combination of workmen strikes or lock-outs affecting the progress of the Construction Works or affecting the manufacture or supply of materials to be used in the Construction of the Works or any action by the community which adversely affects the progress of the Construction Works;
- (b) latent conditions;
- (c) any delay in obtaining any Authorisation from Ryde (in its capacity as a governmental agency) other than its determination of the Development Consent, being a delay caused solely by any act or omission by Ryde;
- (d) vandalism, accidental or unintended damage or destruction to the Construction Works.
- (e) wet or inclement weather conditions;
- (f) Court proceedings or orders that delay the conduct of the Project; and
- (g) force majeure event.

**EPAA** means the Environmental Planning & Assessment Act, 1979 (NSW).

**Final Plans and Specifications** means the means the Plans and Specifications together with all other relevant documents that are referred to in the Satisfactory Development Consent and any amendments to them agreed between the Ryde and the Developer from time to time or arising under any Authorisations that are required to implement the Satisfactory Development Consent.

**Independent Certifier** means Richmond Consulting Pty Limited or such other person appointed by Ryde from time to time.

**Material Variation** means any variation to the Final Plans and Specifications which is not a Minor Variation.

**Minor Variation** means a variation to the Final Plans and Specifications that:

- (a) does not in any way affect the Ryde's interest in the Development Sites; or
- (b) does not affect the quality, scope or integrity of the Project; or
- (c) does not change the areas, volumes, mix of uses or types of uses of the Project or any of the components or elements making up the Project; or
- (d) does not materially enhance the position of the Developer or the Developer financially; or
- (e) comprises an alteration which is within any one or more of the following criteria before the application of normal building tolerances:
  - does not change the position any external wall within the boundary of the Development Site;

- changes the position of any wall other than an external wall, including a wall dividing a stratum, by less than +/- 100 mm;
- changes the roof height by less than +/- 200 millimetres;
- changes to the building facades that continue to utilise the agreed materials included on sample boards. However it is acknowledged by both parties that particular materials may become unavailable at the time of construction. Replacement materials of equivalent quality in all respects and colour will be subject of agreement by the Parties;
- changes the appearance of building facades by altering the design treatment but in a manner that is of equivalent quality to that described in the Final Plans and Specifications (as the case may be);
- changes the appearance of public areas but utilises finishes, treatments, quality or extent of materials used of equivalent quality to that described in the Final Plans and Specifications (as the case may be); or
- substitutes one material for another of inferior quality (but recognising the need to find alternative products where a product is discontinued or not available).

**Performance Bond** means an unconditional and irrevocable bank guarantee(s) or an unconditional and irrevocable insurance bond(s) for the amount of \$2,000,000 issued by a financial institution with a credit or claims paying rating of A or better (determined by a recognised rating agency) approved by Ryde (acting reasonably).

**Plans and Specifications** means the drawings, specifications and other documents that describe the Project, the Project's design and construction in every iteration and includes (as the context requires) those referred to in or forming part of the Request for Tender, the Tender Proposal, the Development Application, all Applications, all Authorisations and the Satisfactory Development Consent.

**Project** means the development of the Development Sites.

**Public Car Park** means the public car park of consisting of no less than 134 car spaces that precise location and configuration of which will be determined under this Deed and the Satisfactory Development Consent.

**Request for Tender** means the request for tender CS – PD – 01 / 06 and supporting documents prepared and issued by Ryde for the West Ryde Precinct Project and includes each addenda in respect of the Request for Tender issued by Ryde.

**Satisfactory Development Consent (SDC)** means a Development Consent (including all terms and conditions that form part of it) which as a single document or set of documents comprises a development consent under the EPAA or a determination under the EPAA (as the case may be) from the Consent Authority for the Project, and agreed to be satisfactory.

**Stratum Plan** means a stratum plan of subdivision of the Developer Lot to be prepared by the Developer and which, if required by Ryde, must be completed and registered by the Developer.

**Strata Management Statement** means a strata management statement to be prepared by the Developer and which, if required by Ryde, must be completed and registered by the Developer.

**Tender Proposal** means the response to the Request for Tender prepared by the Developer and delivered to Ryde.

**Village Square Lot (VSL)** means that part of the Carpark Site identified as the Village Square Lot.

**Village Square Lot Works** means the building works required to carry out that part of the Project relating to the Village Square Lot (and includes construction of the Public Car Park).

**VSL Works Completion Standard** means that stage in the execution of the Village Square Lot Works when:

- (a) they (apart from minor omissions and defects):
  - (i) have been carried out in a proper and workmanlike manner and in accordance with good construction techniques using new and good quality or appropriate materials;
  - (ii) are fit for purpose (including the Public Car Park being ready to open for use) and there is no legal or practical impediment to them being used;
  - (iii) are in accordance with the Satisfactory Development Consent, the Final Plans and Specifications and all Authorisations relating to the Village Square Lot Works (including, without limitation, the Construction Certificate for those works); and
- (b) the Independent Certifier gives a certification that agreed qualitative standards for the Village Square Lot Works have been met; and
- (c) a Compliance Certificate has been issued for the Village Square Lot Works.

## **2. KEY DATES TIMETABLE**

<b>Description</b>	<b>Date</b>
SDC Date	The date on which the Developer and Ryde agree that the Development Consent is satisfactory.
ARS Works Commencement Date	No later than 4 months after the SDC Date
VSL Works Commencement Date	No later than 7 years after the SDC Date.
DL Works Commencement Date	No later than 7 years after the SDC Date
ARS Works Completion Date	19 months after the SDC Date
VSL Works Completion Date	36 months after the VSL Works Commencement Date

### **2.1 Developer to achieve**

- (a) The Developer must use its best endeavours to achieve key events described in the Key Dates Timetable no later than the dates stated, or within the period of time allowed for, in the Key Dates Timetable.
- (b) The Parties acknowledge that the Key Dates Timetable sets out the dates by which the Developer is aiming to achieve each key event described in the Key Dates Timetable.

## **2.2 Extensions of time**

- (a) The Developer may ask Ryde for an extension of time in respect of one or more Key Dates by which it must comply with its obligations under this Agreement if an EOT Event has occurred.
- (b) The Developer is not entitled to an extension of time for any causes of delay that are not an EOT Event.
- (c) Where more than one EOT Event causes concurrent delays, then to the extent that the delays are concurrent, the Developer is not entitled to an extension of time.
- (d) The Developer is not entitled to an extension of time for the DA Lodgement Date or the Estimated Date for DC otherwise than as permitted under this Agreement.

## **2.3 Duration of time extension**

- (a) The Developer must give Ryde a notice advising Ryde when an EOT Event occurs and it proposes to rely on that EOT Event in connection with a time extension claim.
- (b) After the conclusion of an EOT Event identified in a notice given by the Developer under paragraph (a) the Developer must give Ryde a notice setting out:
  - (i) reasonable details of the relevant EOT Event;
  - (ii) details of the duration of the time extension sought because of the relevant EOT Event; and
  - (iii) reasons why the relevant EOT Event justifies the time extension claim.
- (c) Ryde must consider the notice given by the Developer under paragraph (b) and provide a response no later 15 business days after receipt of the notice either approving the time extension claim, disapproving the time extension claim or requesting further information and material about the relevant time extension claim.
- (d) If Ryde approves a time extension claim the Key Dates Timetable is to be adjusted to reflect the approval of the relevant time extension claim.
- (e) Any dispute between the Parties regarding a time extension claim must be referred to dispute resolution.

## **3. CONSTRUCTION WORKS**

### **3.1 Dilapidation report**

Before commencing the Construction Works, the Developer must:

- (a) engage the services of an appropriately qualified person to undertake a comprehensive dilapidation report of the Development Sites and all Adjoining Land in accordance with the requirements of the Satisfactory Development Consent and/or any construction certificate relating to the Development Consent; and
- (b) deliver to Ryde the report referred to in paragraph (a).

### **3.2 Commencement**

The Developer must cause:

- (a) the Anthony Road Site Works to be substantially commenced no later than the ARS Works Commencement Date;
- (b) the Village Square Lot Works to be substantially commenced no later than the VSL Works Commencement Date;
- (c) the Developer Lot Works to be substantially commenced no later than the DL Works Commencement Date

### **3.3 Developer to conduct**

- (a) The Developer must (at its cost) cause the Construction Works:
  - (i) to be carried out:
    - (A) in a proper and workmanlike manner; and
    - (B) in accordance with the Final Plans and Specifications; and
    - (C) in accordance with all applicable laws and requirements of any relevant governmental agency; and
    - (D) in accordance with the Satisfactory Development Consent, the Construction Certificate in respect of the Construction Works and all Authorisations; and
  - with all due expedition;
  - (ii) in respect of the Anthony Road Site Works, to reach the ARS Works Completion Standard no later than the ARS Works Completion Date; and
  - (iii) in respect of the Village Square Lot Works, to reach the VSL Works Completion Standard no later than the VSL Works Completion Date.
- (b) Despite anything else stated in this Agreement, the Developer must use its best endeavours to cause the Anthony Road Site Works to reach the ARS Works Completion Standard no later than 30 June 2009. Ryde is not entitled to make any claim or exercise any entitlements under this Agreement in relation to the date on which the Anthony Road Site Works reach the ARS Works Completion Standard until after the ARS Works Completion Date.

### **3.4 Construction Works variations**

- (a) The parties agree that a critical element of the Project is for the Project to be carried out strictly in accordance with the Final Plans and Specifications.
- (b) The Developer must before making or implementing any Minor Variation provide Ryde with reasonable details of the proposed Minor Variation and have regard to any comments Ryde may furnish the Developer in respect of any such Minor Variation.

- (c) The Developer must not make any Material Variation without Ryde's prior approval. Subject to paragraph (d), Ryde's prior approval is not required to any Minor Variation.
- (d) The Developer acknowledges and agrees that any proposed departure or variation which by itself would constitute a Minor Variation (thereby not requiring the Ryde's prior approval under this Agreement) but when considered with any previous departure or variation becomes a Material Variation then that departure or variation will be taken to no longer be a Minor Variation and is to be treated as a Material Variation (requiring the prior approval of the Ryde).

### **3.5 Defects Liability Period**

The Developer must (at its own) cost promptly make good or cause to be made good any defects or other faults which appear in the Construction Works before the expiration of the Defects Liability Period.

### **3.6 Notification of defects and faults**

- (a) At any time during the conduct of the Construction Works and the Defects Liability Period, Ryde may notify the Developer of any defects, faults or other problems in respect of the Construction Works (if any) which in the opinion of Ryde are required to be made good. Any such defects, faults or other problems may include, without limitation, faults in design, workmanship, construction, materials or non-compliance with any Authorisations.
- (b) If the Developer disputes a notice given by Ryde under paragraph (a), it must within 10 business days of receipt of the notice refer the matter for dispute resolution, otherwise the Developer will be deemed to have accepted the contents of Ryde's notice.
- (c) The Developer must:
  - (i) promptly make good any defects and faults within a reasonable time of receipt of Ryde's notice given under paragraph (a) (which notice must state the time in which the defects and faults may reasonably be made good);
  - (ii) give notice to Ryde when, in the Developer's opinion, all defects and faults referred to in the Ryde's notice have been made good. Within 10 business days after the receipt of the Developer's notice under this paragraph (c), Ryde must give notice to the Developer of any defects or faults (if any) which in Ryde's opinion still remain to be made good, in respect of which the provisions of this clause 3.6 will reapply.

### **3.7 Ryde to make good**

- (a) Ryde may make good the defects and faults identified in the notice given by the Ryde under clause 3.6, if the Developer fails to make good those defects and faults to the reasonable satisfaction of Ryde within the period stated in Ryde notice.
- (b) All costs incurred by Ryde (including, without limitation, costs of Ryde's consultants in respect of identifying the need for the work to be performed as well as the actual performance of that work) will be recoverable from the Developer by Ryde as a debt and the Developer must pay Ryde the amount of the costs so incurred within 10 business days of demand from Ryde.

## **4. INSURANCE AND INDEMNITIES**

### **4.1 Insurance policies**



From the date of commencement of the Construction Works until the date on which the ARS Works Completion Standard and the VSL Works Completion Standard (respectively) have been reached the Developer must:

- (a) maintain with reputable insurers, public liability insurance in respect of the Development Sites for not less than \$20 million (or such higher amount as the Ryde may require, acting reasonably); and
- (b) maintain or procure the constructions contractor engaged by the Developer to maintain a contractors all risk policy or other form of contract works insurance reasonably acceptable to Ryde which must cover, including, without limitation:
  - (i) insurance in respect of the Construction Works for the full replacement value of the Construction Works from time to time against loss or damage by fire, lightning, storm, tempest, flood, riots, malicious damage, damage caused by aircraft or other aerial devices or other disabling cause and against any other loss or damage of any kind whatsoever including the cost of removal of all debris; and
  - (ii) other insurances in connection with the Construction Works which, in the reasonable opinion of Ryde, a prudent developer developing a property comparable to the Development Sites would take out; and
  - (iii) all associated temporary works (including material incorporated or to be incorporated into the Construction Works);
- (c) maintain, or procure any consultants or contractors engaged by the Developer to maintain, with insurers (who are respectable, reputable and financially sound) professional indemnity insurance policy with a total aggregate cover of not less than \$5,000,000 for each and every claim which extends to any liability the Developer may have to Ryde under this Agreement as a result of any failure by the Developer or any consultant or contractor engaged by the Developer to exercise due skill and care;
- (d) maintain, or procure that its contractors maintain, insurances which are required by law including insurance under any relevant legislation for the compensation of workers for an employer's full liability under law;
- (e) in respect of the insurances required by this clause 4:
  - (i) pay each premium on the due date and, when asked by Ryde, produce receipts for payments; and
  - (ii) immediately rectify anything which might prejudice any insurance and reinstate the insurance if it lapses; and
  - (iii) notify Ryde immediately when:
    - (A) an event occurs in respect of the Project which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
    - (B) any policy of insurance is cancelled and
  - (iv) at the request of Ryde, provide Ryde with certificates of currency (or such other evidence as the Ryde reasonably requires) in respect of the insurance required by this clause 4; and

- (v) cause the insurance to be in the joint names of the Developer and Ryde for their respective interests or note the interest of Ryde.

#### **4.2 Insurance during Defects Liability Period**

The Developer must during the Defects Liability Period maintain any insurances reasonably required by Ryde in respect of defect rectification.

#### **4.3 Releases**

The Developer may occupy and use the Anthony Road Site and the Village Square Lot (respectively) at the risk of the Developer and releases to the full extent permitted by law Ryde and its contractors and consultants from all claims and demands of every kind resulting from any accident, action, damage, death or injury however caused and whether to property or persons arising directly or indirectly from the use or occupation by the Developer and its officers, servants, agents or contractors except to the extent of any negligence by Ryde and persons under its control.

#### **4.4 Indemnities**

The Developer must indemnify and keep indemnified Ryde against all actions, claims, loss, expenses and demands of any nature which Ryde may suffer or incur or for which Ryde may become liable in respect of or arising out of:

- (a) any negligent act or omission or use or misuse by the Developer of or in respect of the Construction Works;
- (b) any accident or damage to property or injury or death suffered by any person caused or contributed to by the use or occupation of the Anthony Road Site and the Village Square Lot under the Construction Licence or the carrying out of the Construction Works arising wholly or in part by reason of any act or omission by the Developer its agents, employees or contractors; and
- (c) any design, construction or engineering default.

### **5. PROJECT COMPLETION**

#### **5.1 Independent Certifier appointment**

- (a) Ryde will engage and appoint the Independent Certifier. At any time, Ryde may terminate the appointment of the Independent Certifier. Ryde must consult with the Developer in connection with the appointment of an Independent Certifier.
- (b) The costs and expenses of the Independent Certifier are a Project Cost for the purposes of this Agreement and are payable by the Developer.

#### **5.2 Independent Certifier role**

The Parties agree that the primary functions of the Independent Certifier are:

- (a) to monitor the carrying out of the Project in order to determine when the ARS Works Completion Standard and the VSL Works Completion Standard are reached;
- (b) to certify that the ARS Works Completion Standard and the VSL Works Completion Standard have been reached;

- (c) to certify extensions of time.

### **5.3 Procedure to determine**

- (a) Ryde, the Developer and the Independent Certifier will carry out a joint inspection of the progress of the Project once in every month during the carrying out of the Construction Works.
- (b) The Developer must notify Ryde and the Independent Certifier no less than 20 business days prior to the anticipated date on which the Anthony Road Site Works and the Village Square Lot Works (respectively) will reach the ARS Works Completion Standard and the VSL Works Completion Standard..
- (c) The notification to be given under paragraph (b) must:
  - (i) include a schedule listing the works that are still to be carried out prior to the relevant completion standard being reached;
  - (ii) include an agreed time in each case within the following 5 business days from the date of the notice for the initial inspection to take place.
- (d) The Independent Certifier, a Ryde representative and a representative of the Developer must attend each of the inspections.
- (e) Within 5 business days of undertaking the initial inspection for the purposes of ascertaining whether the relevant completion standard has been reached, Ryde must issue the Independent Certifier and the Developer with a notice listing the works that Ryde considers are still to be carried out for the relevant completion standard to be reached.
- (f) Within 10 business days of the initial inspection referred to in paragraph (d), the Independent Certifier must consult with the Developer and Ryde about the works the Independent Certifier deems necessary to be carried out in order for the relevant completion standard to be reached.
- (g) Subsequent to the consultations referred to in paragraph (f), the Developer, Ryde and the Independent Certifier must cooperate in carrying out such further inspections and consultations as may be necessary to enable the Independent Certifier to certify that the relevant completion standard has been reached.
- (h) Once the Independent Certifier determines that the relevant completion standard has been reached, the Independent Certifier must, within 2 business days of such determination, issue to Ryde and the Developer a certificate stating that the relevant completion standard has been reached.

### **5.4 Developer to procure “as built” plans**

As soon as practicable but in any event within 40 business days after the date on which the relevant completion standard has been reached, the Developer must deliver to Ryde copies of “as built” drawings, specifications, relevant operation and service manuals and all necessary certificates, consents and approvals as required for the carrying out, construction of, occupancy of or use of the Construction Works.

## **6. SUBDIVISION**

### **6.1 Context**

This clause 6 applies if it is determined by Council in its discretion after consulting in good faith with the Developer that creation of the Public Car Park involves the stratum subdivision of the Developer Lot.

### **6.2 Draft plans and instruments**

Ryde and the Developer agree that, (acting in utmost good faith towards each other), they will as soon as possible agree on the form of:

- (a) the Stratum Plan;
- (b) the Strata Management Statement; and
- (c) the Easement Instrument.

### **6.3 Allocation of the cost of Shared Facilities under the Strata Management Statement**

- (a) The Developer and Ryde must in the future finalise the identification of shared facilities under any Strata Management Statement and appropriate proportions for the costs of the shared facilities to be allocated between the owners of the various lots in any Stratum Plan.
- (b) The Developer and Ryde agree to apply the Cost Apportionment Principles in finalising the appropriate proportions for the costs of the shared facilities, it being the intention of the Developer and Ryde that each party to the extent that it is appropriate will be responsible for the cost of the shared facilities according to their usage of those facilities.

### **6.4 Negotiation of instruments**

- (a) Ryde and the Developer will conduct negotiations in good faith in connection with the Stratum Plan, Strata Management Statement and / or the Easement Instrument. Any such negotiations must have regard to:
  - (i) the location of structures on the Car Park Site;
  - (ii) alterations required to reflect conditions imposed under any Authorisation;
  - (iii) any further design development in respect of the improvements to be erected on the Car Park Site;
  - (iv) what is reasonably required to give effect to the subdivision of the Developer Lot into different components consistently with this Agreement and the Satisfactory Development Consent and to grant all reasonable or necessary access, enjoyment, easements and rights to permit part of the Developer Lot to form part of the Public Car Park or provide access to the Public Car Park;
  - (v) all of the structure comprising the improvements (for the purposes of division 2B of the Strata Schemes (Freehold Development) Act 1973) must be comprised in a current plan lot in the LPI register including those structures within any public road (with the intent that the plan defining the current plan lot is required for identification purposes only and does not involve road closure) and the inclusion

of all of those structures (and the areas they enclose) as shared facilities under the Strata Management Statement;

- (vi) usual commercial practice adopted in the development of mixed use developments involving stratum and strata subdivision but recognising the public use of the Public Car Park and the public interest in use of it.
- (b) The Developer must for the purposes of registration in the future complete the Strata Management Statement, the Easement Instrument, the Stratum Plan and any other plans or instruments in accordance with this Agreement. The Developer agrees to forward updated forms of all such documents punctually to Ryde and to review and negotiate such concerns as Ryde may express.
- (c) The final form of the documents referred to in paragraph (b) must be approved by Ryde before the Developer takes any steps to procure their registration.
- (d) Prior to registration of the Stratum Plan, the Developer must serve on Ryde a copy of those plans and the documents which the Developer proposes to register with them containing the amendments proposed by the Developer. Ryde must inform the Developer within 20 business days after the service of the plan and documents if it accepts the amendments to them.
- (e) If Ryde disputes amendments proposed by the Developer under paragraph (d), and the Developer and Ryde cannot reach agreement in relation to the matters in dispute within 10 business days of Ryde informing the Developer of that dispute, then either Party may refer the matter to dispute resolution.

## **6.5 Executing documents**

The Parties agree to execute the Stratum Plan, the Easement Instrument and Strata Management Statement (and procure the execution of them by persons holding registered interest in their land) within 10 business days (or such longer period as the Parties may agree) after Village Square Lot Works have reached the VSL Works Completion Standard for the purpose of registering them at LPI (NSW) and to promptly produce at LPI (NSW) the certificates of title for their land to allow registration of those plans and documents.

## **6.6 Management arrangements before registration of Strata Management Statement**

If all or part of the Public Car Park is occupied by Ryde before registration of the Strata Management Statement, the Strata Management Statement will be deemed to operate as though Ryde were already registered in respect of the stratum lot to be transferred to Ryde.

## **6.7 Procure registration**

Ryde and the Developer must act co-operatively and do all things reasonably necessary to procure the registration of the Stratum Plan, the Strata Management Statement, the Easement Instrument and other documents, plans and instruments that are reasonably necessary to carry out the Development.

## **6.8 Registration costs**

The Developer must pay all costs and expenses in connection with the registration of title documents under this Agreement.

## **7. PROJECT CONTROL GROUP**

### **7.1 Project Control Group**

A Project Control Group must be formed. Each Party must nominate its representatives in writing to the other Parties within the 20 business day period and must notify each other thereafter in the event of any change in nominees from time to time.

### **7.2 Constitution of the Project Control Group**

- (a) The Project Control Group must consist of:
  - (i) 1 representative from the Developer; and
  - (ii) 1 representative from Ryde.
- (b) Any member of the Project Control Group may appoint a person to be that member's alternate for a meeting of the Project Control Group.
- (c) Each Party will bear the cost of attendance of its own representatives.
- (d) Members of the Project Control Group must be empowered by their respective appointing Parties to participate meaningfully and effectively to achieve the objectives and functions of the Project Control Group.
- (e) The Parties may from time to time agree to the appointment of additional participants to the Project Control Group.

### **7.3 Functions of the Project Control Group**

The functions of the Project Control Group will be to facilitate communications between the Developer and Ryde in relation to issues relating to the coordination of the Development with the carrying out of the Construction Works.

### **7.4 Project Control Group meetings**

- (a) The Project Control Group must meet at regular monthly intervals (and may meet more frequently if considered appropriate by the Ryde) or such other interval as may be agreed by the Parties acting reasonably.
- (b) The Developer will produce at each Project Control Group Meeting all relevant plans, specifications, approvals consents and reports pertaining to the business of that meeting and the Ryde can require the Developer to produce any other plans, other documentation or a report on specific issues whenever it reasonably considers appropriate to ensure it is fully informed on the progress of the Development.
- (c) Ryde may (acting reasonably) and on giving reasonable notice, require that the Developer's contractors, consultants or advisers attend any meeting of the Project Control Group.

- (d) Ryde and the Developer are each entitled, on giving prior reasonable notice, to have their respective consultants or advisers as it considers necessary to attend any meeting of the Project Control Group.

## **8. BOND**

### **8.1 Identity of Performance Bond provider**

The Developer must do all things reasonably necessary to obtain Ryde's approval to the identity of the provider of the Performance Bond before the Developer is obliged to deliver the Performance Bond to Ryde

### **8.2 Amount of Performance Bond**

The Developer must deliver to Ryde the Performance Bond no later than the date of actual completion of the title transfer to the Developer of the Village Square Lot.

### **8.3 Enforceable Performance Bond**

The Developer must at all times up to the expiry of the Defects Liability Period ensure that the Performance Bond is kept current and enforceable.

### **8.4 Demand under Performance Bond**

- (a) The rights of Ryde under this clause 8 do not derogate from other rights and remedies available to Ryde under this Agreement, at law and in equity in relation to any breach of any of the Developer's obligations.
- (b) If the Village Square Lot Works do not reach the VSL Works Completion Standard on or before the VSL Works Completion Date, Ryde may:
  - (i) take all steps reasonably necessary to cause the Village Square Lot Works to be completed (including, without limitation, taking possession of the Carpark Site for such purposes); and
  - (ii) at any time and from time to time, have recourse to the Performance Bond in order to reimburse Ryde for all costs and expenses it may incur in causing the Village Square Lot Works to reach the VSL Works Completion Standard.

## **9. DEVELOPER LOT CARPARKING**

### **9.1 Basement level 3 spaces**

Developer Lot basement level 3 is designed to include 172 spaces, all of which are owned by the Developer, 134 of which must be made available for public short term parking and 38 of which ("**38 spaces**") could, subject to development consent, be occupied as the Developer wished.

### **9.2 Lease to Ryde**

The Developer agrees to lease the 38 spaces to Ryde for a period of 20 years from practical completion of the building on the Developer Lot. Under this lease, the rent is \$1 per annum if demanded and the permitted use is short term parking for the public (including invitees of persons occupying the building on the Developer Lot).

### **9.3 Development consent condition**

Where the Developer is required as a condition of development consent to provide car spaces for short term visitor and/or public car parking, Ryde agrees that the 38 spaces are to be included in its calculation of the number of car spaces provided in satisfaction of that condition.

#### **9.4 Operation**

This clause 9 has no effect if Council determines under clause 6 that creation of the Public Car Park involves a stratum subdivision of the Developer Lot that includes the 38 spaces.