

Planning Agreement

“Dirty Janes” 391-397 Bong Bong Street, Bowral (Lots 1, 2 and 3 in DP 1091708)

Goldfish Black Pty Ltd (ABN 51 113 537 241), Tara Monique Elias, Craig John Elias and Sammy Criniti (**Developers**)

Wingecarribee Shire Council (ABN 49 546 344 354) (**Council**)

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Planning Agreement

“Dirty Janes” 391-397 Bong Bong Street, Bowral (Lots 1, 2 & 3 in DP1091708)

Parties

Developers	Name	Goldfish Black Pty Ltd
	Address	C/- Peter Lang & Associates Eastpoint Tower, Suite 610, 180 Ocean Street EDGECLIFF NSW 2027
	ABN	51 113 537 241
	Name	Tara Monique Elias
	Address	C/- Our Lawyers, 2 Queen Street MITTAGONG NSW 2575
	Name	Craig John Elias
	Address	C/- Our Lawyers, 2 Queen Street MITTAGONG NSW 2575
	Name	Sammy Criniti
	Address	C/- Our Lawyers, 2 Queen Street MITTAGONG NSW 2575
Council	Name	Wingecarribee Shire Council
	Address	Civic Centre Elizabeth Street MOSS VALE NSW 2577
	ABN	49 546 344 354

Background

- A** The Developers have obtained the Development Consent.
- B** The Development will require the provision of fifty two (52) car parking spaces. The Developers have offered to provide thirty eight (38) of those car parking spaces, leaving a deficit of fourteen (14) car parking spaces (**Remaining Car Parking Spaces**).
- C** The Developers have offered to provide the Contributions in lieu of the Remaining Car Parking Spaces in accordance with the terms set out in this agreement and Council acknowledges that

the Contributions to be made by the Developers herein are in full and final satisfaction of the Remaining Car Parking Spaces deficiency.

Operative Provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

2 Definitions and interpretation

2.1 Defined terms

In this agreement, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of Schedule 1 apply in the interpretation of this agreement.

3 Application and operation of this agreement

3.1 Planning agreement

This agreement is a planning agreement:

- (1) within the meaning set out in section 93F of the Act; and
- (2) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3.2 Application

This agreement applies to both the Land and the Development.

3.3 Operation

This agreement operates from the date it is executed by both parties.

4 Application of sections 94 and 94A

4.1 Application

This agreement does not exclude the application of section 94 or section 94A of the Act to the Development.

4.2 Consideration of benefits

Section 94(6) of the Act does not apply to the Contributions that are to be carried out or provided pursuant to this agreement.

5 Registration of this agreement

5.1 Registration

This agreement must be registered on the title of the Land pursuant to section 93H of the Act.

5.2 Obligations of the Developers

The Developers must:

- (1) do all things necessary to allow the registration of this agreement to occur under clause 5.1; and
- (2) pay any reasonable costs incurred by Council in undertaking that registration.

6 Dedication of Designated Land

- (1) The Developers must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in **Schedule 3**.
- (2) The Developers must meet all costs associated with the dedication of the Designated Land in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.

7 Provision of Works

7.1 Works

The Developers, at their cost, must:

- (1) obtain any form of consent required by a relevant Authority, for the conduct and use of the Works;
- (2) before commencing the Works:
 - (a) submit plans and specifications for the Works with Council for approval; and
 - (b) as may reasonably be required by Council, make any amendments to those plans and specifications in accordance with Council's directions;
- (3) carry out and complete the Works to the satisfaction of the Council by the time specified in Part 2 of **Schedule 3**;
- (4) carry out and complete the Works:
 - (a) in accordance with the specification and standards referred to in Part 2 of **Schedule 3** for the relevant item of Work and as further directed by Council under this clause is applicable;
 - (b) in accordance with the Development Consent;
 - (c) in accordance with any applicable requirements of, or consents issued by, any Authority;
 - (d) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and

- (e) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

7.2 Issue of Completion Notice

If the Developers consider that any particular item of the Works is complete then, within fourteen (14) days of completion of that item, they must serve a notice on Council which:

- (1) is in writing;
- (2) identifies the particular item of the Works to which it relates; and
- (3) specifies the date on which the Developer believes the relevant item of the Works was completed,

(Completion Notice).

7.3 Inspection by Council

- (1) Council must inspect the Works set out in a Completion Notice within fourteen (14) days of the receipt of that notice.
- (2) If Council fails to carry out an inspection required under paragraph (1), the Works referred to in the relevant Completion Notice will be deemed to be Complete.

7.4 Rectification Notice

- (1) Within fourteen (14) days of inspecting the Works set out in a Completion Notice Council must provide notice in writing to the Developers that the Works set out in the Completion Notice:
 - (a) have been Completed; or
 - (b) have not been Completed, in which case the notice must also detail:
 - (i) those aspects of the Works which have not been Completed; and
 - (ii) the work the Council requires the Developers to carry out in order to rectify the deficiencies in those Works,

(Rectification Notice).

- (2) If Council does not provide the Developers with a Rectification Notice in accordance with paragraph (1)(b), the Works set out in the Completion Notice will be deemed to have been Completed.
- (3) Where Council serves a Rectification Notice on the Developers, the Developers must rectify the Works in accordance with that notice within one (1) month from the date it is issued by the Council.
- (4) When the Developers rectify the Works in accordance with paragraph (3), it must serve upon the Council a new Completion Notice for the Works it has rectified.

8 Defects

8.1 Defects Notice

- (1) Where any part of the Works has been Completed but those Works contain a material defect which:

- (a) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
- (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect,

(Defect) then Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.

(2) A Defects Notice must contain the following information:

- (a) the nature and extent of the Defect;
- (b) the work Council requires the Developers to carry out in order to rectify the Defect; and
- (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than fourteen (14) days).

8.2 Developers to rectify Defects

- (1) The Developers must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developers must follow the procedure set out in clause 7 in respect of the satisfaction of the Defects Notice.

8.3 Right of Council to Step-In

Council may, at its absolute discretion, enter upon the Land for the purpose of satisfying the Defects Notice where the Developers have failed to comply with a Defects Notice but only after giving the Developers seven (7) days written notice of its intention to do so.

8.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 8.3 then:

- (1) Council may:
 - (a) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developers in accordance with the Defects Notice; and
 - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developers must not impede or interfere with Council in undertaking that work.

8.5 Costs of Council

Where Council exercises its step-in rights, Council may:

- (1) call upon the Defects Bank Guarantee provided by the Developers pursuant to clause 11; and
- (2) recover as a debt due in a court of competent jurisdiction any difference between the:
 - (a) amount of the Defects Bank Guarantee; and
 - (b) the costs incurred by the Council in rectifying the Defects.

9 Developers warranties

The Developers warrant to Council that:

- (1) it is legally and beneficially entitled to the Land;
- (2) it is able to fully comply with its obligations under this agreement;
- (3) it has full capacity to enter into this agreement; and
- (4) there is no legal impediment to it entering into this agreement, or performing the obligations imposed on it under this agreement.

10 Determination of this agreement

10.1 Determination

- (1) Subject to paragraph (2), this agreement will determine upon the Developers satisfying all of its obligations under this agreement (including any obligations under clause 8).
- (2) This agreement will determine immediately if the Development Consent:
 - (a) lapses;
 - (b) is surrendered; or
 - (c) becomes ineffective for any reason,under the Act.

10.2 Effect of determination

Upon the determination of this agreement Council will do all things necessary to allow the Developers to remove this agreement from the title of the whole or any part of the Land as soon as reasonably practicably.

11 Assignment and security

11.1 Prohibition

Neither party may Assign their rights under this agreement without the prior written consent of the other party.

11.2 Assignment of the Land

The Developers must not Assign its interest in the Land unless:

- (1) Council consents to the Assignment, acting reasonably;
- (2) the proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by the terms of this agreement; and
- (3) the Developers are not in breach of any terms of this agreement.

11.3 Compulsory acquisition of the Designated Land

- (1) The Developers consent to the compulsory acquisition of the Designated Land:

- (a) in accordance with *the Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Acquisition Act**); and
 - (b) on the terms set out in this clause 11.3.
- (2) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developers have committed an Event of Default with respect the dedication of that land under this agreement.
- (3) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
 - (a) the Developers agree that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
 - (b) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
- (4) The parties agree that the provisions of this clause 11.3 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.

11.4 Delivery to Council of Bank Guarantees

On the date of this agreement, the Developers must deliver to Council separate unconditional bank guarantees in a form acceptable to the Council for an amount equal to one hundred and fifty percent (150%) of the total Contribution Value for each item of the Works set out in **Schedule 3 (Bank Guarantees)**.

11.5 Council may call on Bank Guarantees

If the Developers fail to comply with any term of this agreement or does not pay any amount it is required to pay to Council by the time or times and in the manner set out in this agreement, Council may, without limiting any other avenues available to it, call on the Bank Guarantees without notice to the Developers to the extent necessary to meet that liability.

11.6 Return of Bank Guarantees and delivery to Council of Defects Bank Guarantees

Subject to the Developers providing Council with separate Bank Guarantees for an amount equivalent to ten (10%) of the Contribution Value for each item of the Works (**Defects Bank Guarantees**), Council must return the Bank Guarantee provided for an item of Works (if any) within one (1) month after:

- (1) the Developers have completed the relevant item of the Work for which the Bank Guarantee was provided; or
- (2) the determination of this agreement.

11.7 Return of Defects Bank Guarantee

Council must return the Defects Bank Guarantee provided for each item of Works to the Developers (if any) within one (1) month after the expiry of the Defects Liability Period for the relevant item of the Works.

12 Review and amendment

12.1 Negotiation of review

If either party requests a review of the whole or any part of this agreement then the parties must use their best endeavours, acting in good faith, to review this agreement in accordance with that request.

12.2 Amendment to be in writing

If the parties agree to amend this agreement as a result of a review conducted under clause 12.1 then any such amendment must be made:

- (1) in writing signed by both parties;
- (2) in accordance with the Act, or any Regulations in force under the Act.

13 Dispute resolution

13.1 Notice of Dispute

If a party believes that there is a dispute in respect of this agreement (Dispute) then:

- (1) that party must give notice (**Dispute Notice**) in writing to the other party stating that there is a Dispute; and
- (2) the Dispute Notice must outline:
 - (a) what the party believes the dispute to be;
 - (b) what the party wants to achieve;
 - (c) what the party believes will settle the Dispute; and
 - (d) who will be the party's representatives to negotiate the dispute.

13.2 Consultation between the Representatives

Within fifteen (15) Business Days of a notice served in accordance with clause 13.1(1) the representatives (**Representatives**) of each of the parties must meet in order to resolve the Dispute.

13.3 Exclusivity of dispute resolution procedure

- (1) Both parties must adhere to the dispute resolution procedure set out in this agreement.
- (2) The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this agreement.

13.4 Settlement of Dispute

If the parties cannot resolve the Dispute after adhering to the dispute resolution procedure set out in this agreement then either party may seek any other avenues available to it in order to resolve the Dispute.

14 Position of Council

14.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

14.2 Agreement does not fetter discretion

This agreement is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,

(Discretion).

14.3 Severance of provisions

- (1) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 14 is substantially satisfied;
 - (b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to the extent of this agreement is not to be taken to be inconsistent with the Law.

14.4 No obligations

Nothing in this agreement will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

15 Confidentiality

15.1 Agreement not Confidential

The terms of this agreement are not confidential and this agreement may be treated as a public document and exhibited or reported without restriction by any party.

15.2 Other Confidential Information

- (1) The parties acknowledge that:

- (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this agreement; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
 - (c) Subject to paragraphs (2) and (3), each party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this agreement to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
- (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

16 GST

16.1 Defined GST terms

Defined terms used in this clause 16 have the meaning ascribed to them in the GST Law.

16.2 GST to be added to amounts payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this agreement are exclusive of GST.

16.3 GST obligations to survive termination

This clause 16 will continue to apply after the expiration or earlier termination of this agreement.

17 Default in performance

17.1 Events of Default

The Developers commit an **Event of Default** if:

- (1) it breaches a term of this agreement; or

- (2) fails to comply with the terms and conditions of the Development Consent for the Development.

17.2 Consequences of Events of Default

Where the Developers commit an Event of Default, Council may serve a notice on the Developers requiring the relevant breach to be rectified within thirty (30) days of the date of that notice.

17.3 No restriction on rights

The rights vested in Council pursuant to clause 17.2 do not prevent Council from exercising any other rights that it may possess at law.

17.4 Termination

This agreement terminates in the event Council serves notice on the Developers terminating this agreement where the Developers have failed to comply with a notice issued in accordance with 17.2.

17.5 Consequence of termination

Upon termination of this agreement:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

18 Miscellaneous

18.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this agreement;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this agreement; and
- (4) be just and faithful in their activities and dealings with the other parties.

18.2 Legal costs

The Developers agree to:

- (1) pay or reimburse fifty percent (50%) of the reasonable legal costs and disbursements of Council of the negotiation, preparation and execution of this agreement but capped at \$2,500.00 (plus GST and disbursements);
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within fourteen (14) days of receipt of a tax invoice from Council; and
- (3) pay or reimburse fifty percent (50%) of the legal costs and disbursements of Council arising from the enforcement of this agreement including any breach or default by the Developers of its obligations under this agreement.

19 Administrative provisions

19.1 Notices

- (1) Any notice, consent or other communication under this agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile or other electronic means to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by facsimile or other electronic means to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this agreement or another address of which that person may from time to time give notice to each other person.

19.2 Entire agreement

This agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this agreement.

19.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

19.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this agreement and the rights and obligations of the parties under it.

19.5 Counterparts

This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

19.6 Amendment

This agreement may only be amended or supplemented in writing signed by the parties.

19.7 Unenforceability

Any provision of this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

19.8 Power of Attorney

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

19.9 Governing law

The law in force in the State of New South Wales governs this agreement. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this agreement; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

Schedule 1: Defined terms and interpretation

Part 1 – Definitions

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Assign or Assignment	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Complete or Completed	means completed in accordance with the requirements of this agreement.
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ol style="list-style-type: none">(1) is by its nature confidential;(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);(3) any party knows or ought to know is confidential; or(4) is information which may be reasonably considered to be of a confidential nature.
Contributions	means the contributions required to be provided to Council by the Developers in accordance with this agreement and as set out in Schedule 3 .
Contribution Value	means the amount specified in the columns headed "Contribution Value" for the Designated Land and the Works.
Encumbrances	means an interest or power: <ol style="list-style-type: none">(1) reserved in or over an interest in any asset; or(2) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other

encumbrance or security interest, trust or bill of sale; or

- (3) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

Encumber means to grant an Encumbrance.

Designated Land

means that part of the land contained in certificate of title folio identifiers:

(1) 1/1091708; and

(2) 2/1091708,

marked as 'Road Widening' in the plan attached as **Annexure 1**.

Defects Bank Guarantee

has the meaning ascribed to it in clause 11.6.

Defects Liability Period

means twelve (12) months after the an item of Works is Completed.

Development

means alterations and additions to the existing commercial premises erected on the Land and as more fully detailed in the Development Consent.

Development Consent

means the consent issued under the Act for the Development (development application LUA15/0535 dated 15 September 2015).

GST Law

means *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.

Index

means the Consumer Price Index (All Groups - Sydney) as published by the Australian Bureau of Statistics from time to time.

Land

means the land contained in certificate of title folio identifiers:

(1) 1/1091708;

(2) 2/1091708; and

(3) 3/1091708,

and known as 391-397 Bong Bong Street, Bowral.

Law

means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

Occupation Certificate

means the Occupation Certificate for the Development issued under section 109C(1)(c) of the Act.

Planning Legislation

means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

Works

means the works (if any) specified or described in Part 2 of **Schedule 3**.

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

**Schedule 2:
Requirements under section 93F of the Act**

Requirement under the Act	This Planning Agreement
<p>Planning instrument and/or development application – (Section 93F(1) of the Act)</p> <p>The Developers have:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
<p>Description of land to which this agreement applies – (Section 93F(3)(a) of the Act)</p>	<p>The land contained in certificate of title folio identifiers:</p> <p>(a) 1/1091708;</p> <p>(b) 2/1091708; and</p> <p>(c) 3/1091708,</p> <p>and known as 391-397 Bong Bong Street, Bowral.</p>
<p>Description of change to the environmental planning instrument to which this agreement applies – (Section 93F(3)(b) of the Act)</p>	<p>Not applicable.</p>
<p>Application of section 94 of the Act – (Section 93F(3)(d) of the Act)</p>	<p>Refer to clause 4 of the Planning Agreement.</p>
<p>Applicability of section 94A of the Act – (Section 93F(3)(d) of the Act)</p>	<p>Refer to clause 4 of the Planning Agreement.</p>
<p>Consideration of benefits under this agreement if section 94 applies – (Section 93F(3)(e) of the Act)</p>	<p>Refer to clause 4 of the Planning Agreement.</p>
<p>Mechanism for Dispute resolution – (Section 93F(3)(f) of the Act)</p>	<p>Refer to clause 13 of the Planning Agreement.</p>
<p>Enforcement of this agreement (Section 93F(3)(g))</p>	<p>Refer to clause 5 and 11 of the Planning Agreement.</p>
<p>No obligation to grant consent or exercise functions – (Section 93F(3)(9))</p>	<p>Refer to clause 14 of the Planning Agreement.</p>

Schedule 3: Contributions

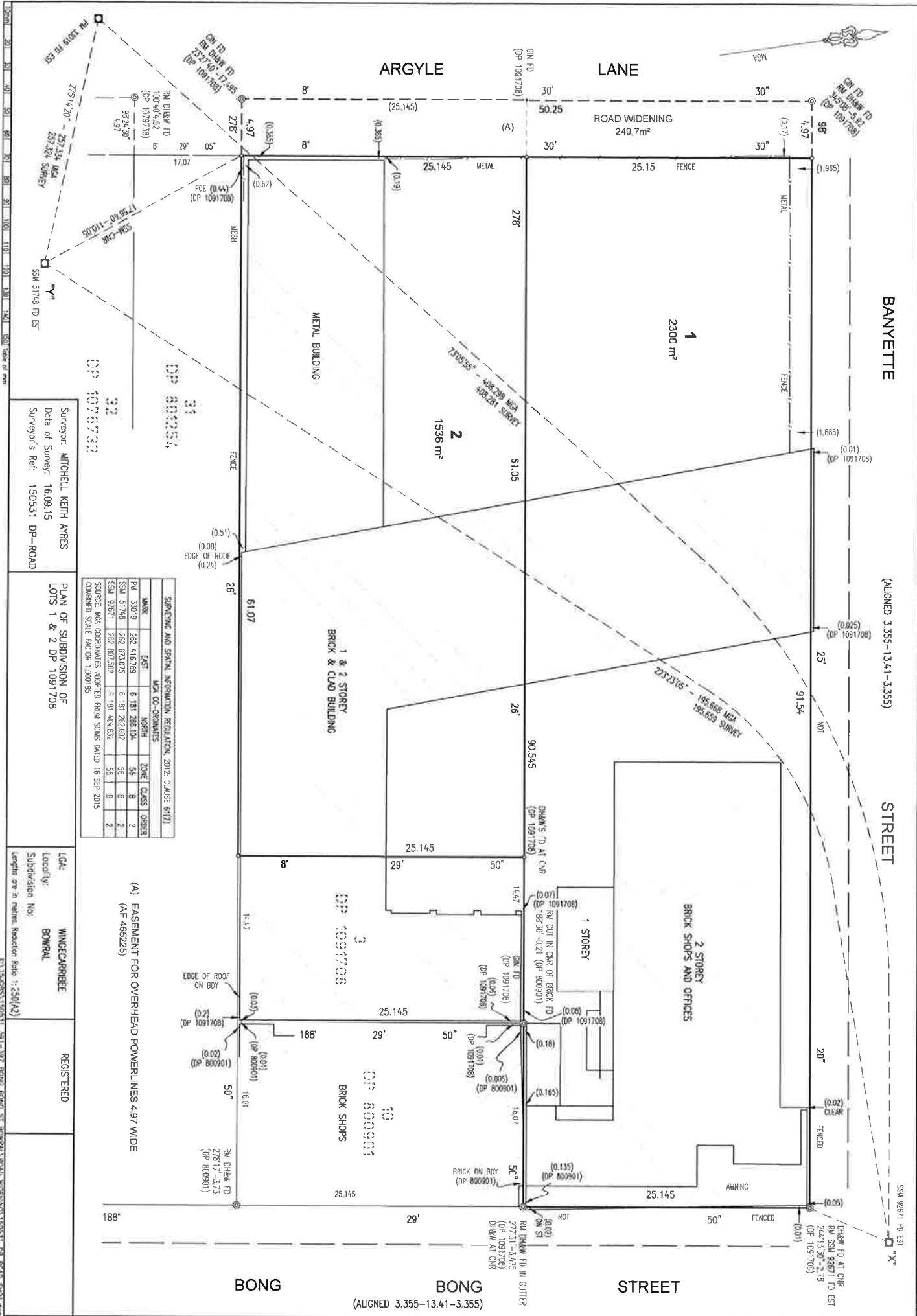
Part 1 : Dedication of Land

Item	Time for Completion
The whole of the Designated Land	Prior to the issue of an Occupation Certificate in respect of the Development

Part 2: Provision of Works

Item of Works	Specification standards	and	Time for Completion	Contribution Value
Construction of Kerb, Gutter and Footpath/Pavement on the new site boundary to Argyle Lane generally in the location shown in the plans attached as Annexure 2 .	As set out in the plans attached as Annexure 2 .		Prior to the issue of an Occupation Certificate in respect of the Development	\$73,773.48 (inclusive of GST).
Removal of the existing Colourbond fence fronting Banyette Street and Argyle Lane and replacement of that fence with a Boundary Fence generally in the location shown in the plans attached as Annexure 2 .	Double park rail, 150 mm by 100 mm posts, 100 mm by 100 mm rail, 75 mm by 50 mm rail, 90 netting, 3 wires fence height 1300, rails chamfered, stained.		Prior to the issue of an Occupation Certificate in respect of the Development	\$4,845 (inclusive of GST).
Planting of established trees generally in the location shown in the plan attached as Annexure 3 .	Platinus Acerifolia 5-7M height x 10.		Prior to the issue of an Occupation Certificate in respect of the Development.	\$29,524.00 (inclusive of GST).

Annexure 1
Plan of Designated Land



Surveyor: MITCHELL KEITH AYLES
 Date of Survey: 16.09.15
 Surveyor's Ref: 150531 DP-ROAD

DP 1074732
 DP 1074732
 DP 1074732

MARK	EAST	NORTH	ZONE	CLASS	ORDER
PM 33019	282.418789	6.181286104	56	8	2
SSM 51748	282.672075	6.181282802	56	8	2
SSM 92671	282.807502	6.181404832	56	8	2

SOURCE: MGA COORDINATES ADOPTED FROM SONGS DATED 16 SEP 2015
 COMBINED SCALE FACTOR: 1.000185

(A) EASEMENT FOR OVERHEAD POWERLINES 4.97 WIDE
 (AF 465225)

LGA: WINGECARRIBEE
 Locality: BOMRAL
 Subdivision No:
 Lengths are in metres. Reaction Ratio: 1:250(A2)

REGISTERED

Annexure 2
Plan of Works

WINGECARRIBEE SHIRE COUNCIL

INCOMING CORRESPONDENCE FORM

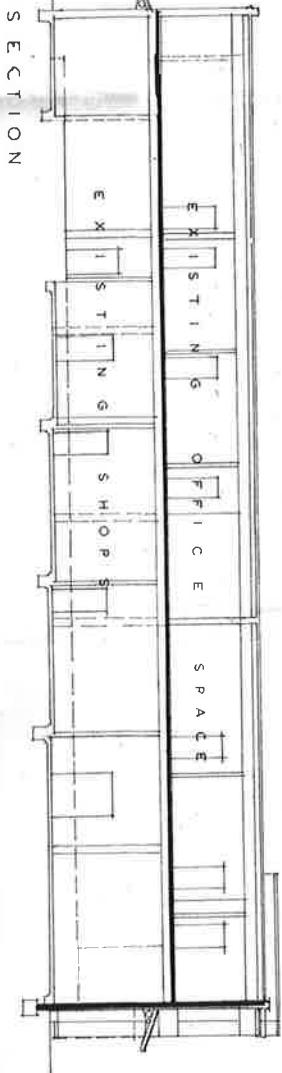
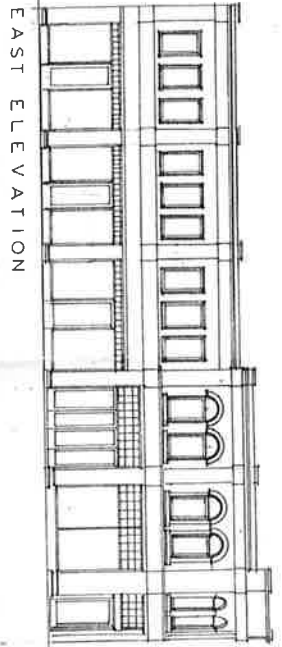
To be used when documents have been received without an accompanying letter.

CORRESPONDENT NAME/S	John Webb	
ADDRESS		
PHONE No.	43614570	
FAX No.		
Time	12/8/15	
Date	10.30am	
File Reference	WA 15/0535	
OFFICER TAKING RECEIPT	K. Woolf	
(Please sign legibly)		
Messages or comments	Amended plan car park + fence detail.	

RECORDS OFFICE:

SCANNING STAMP

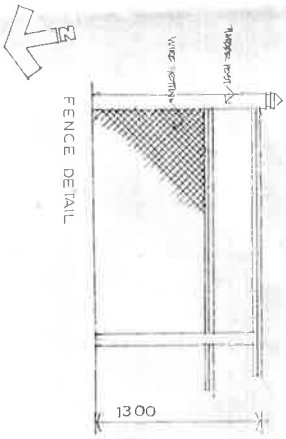
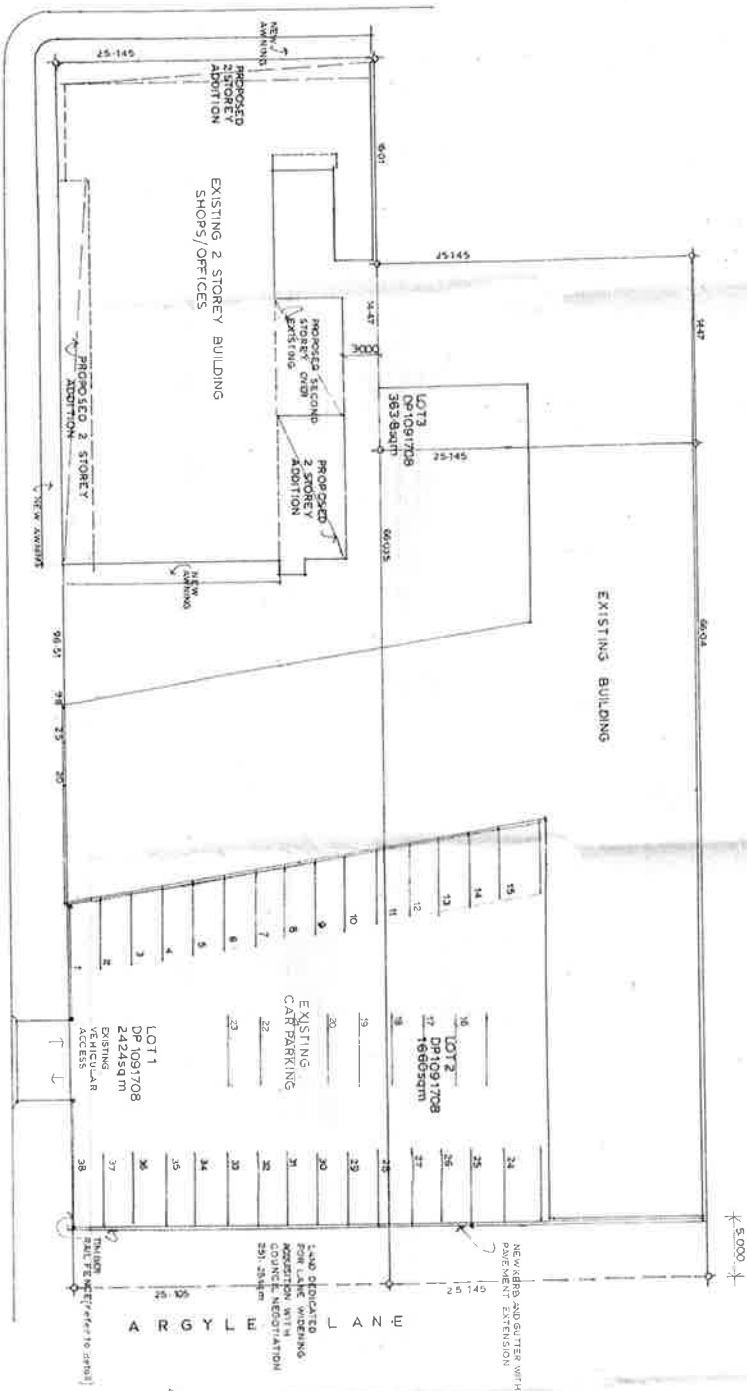
WINGECARRIBEE SHIRE COUNCIL		
Classification	CA/IN	
Doc. No.		
File No.	15/0535	
18 AUG 2015 PM		
OFFICER	ACTION	INFO
K. Woolf		



EAST ELEVATION

SECTION

B O N G B O N G S T R E E T



B A N Y E T T E S T R E E T
 SITE PLAN
 PROPOSED ALTERATIONS / ADDITIONS
 LOT 12,3
 BONG BONG / BANYETTE STS
 B O W R A L
 FOR
 MR & MRS ELIAS / MR & MRS CROWLEY

John I Webb and Associates
 design and drafting Pty Ltd
 357 - 359 Livingstone Street
 Adelaide SA 5006
 Tel: (08) 8412 1234
 Fax: (08) 8412 1235
 Email: john@jwebb.com.au

ARGYLE La.



CAUTION - Overhead Power Lines

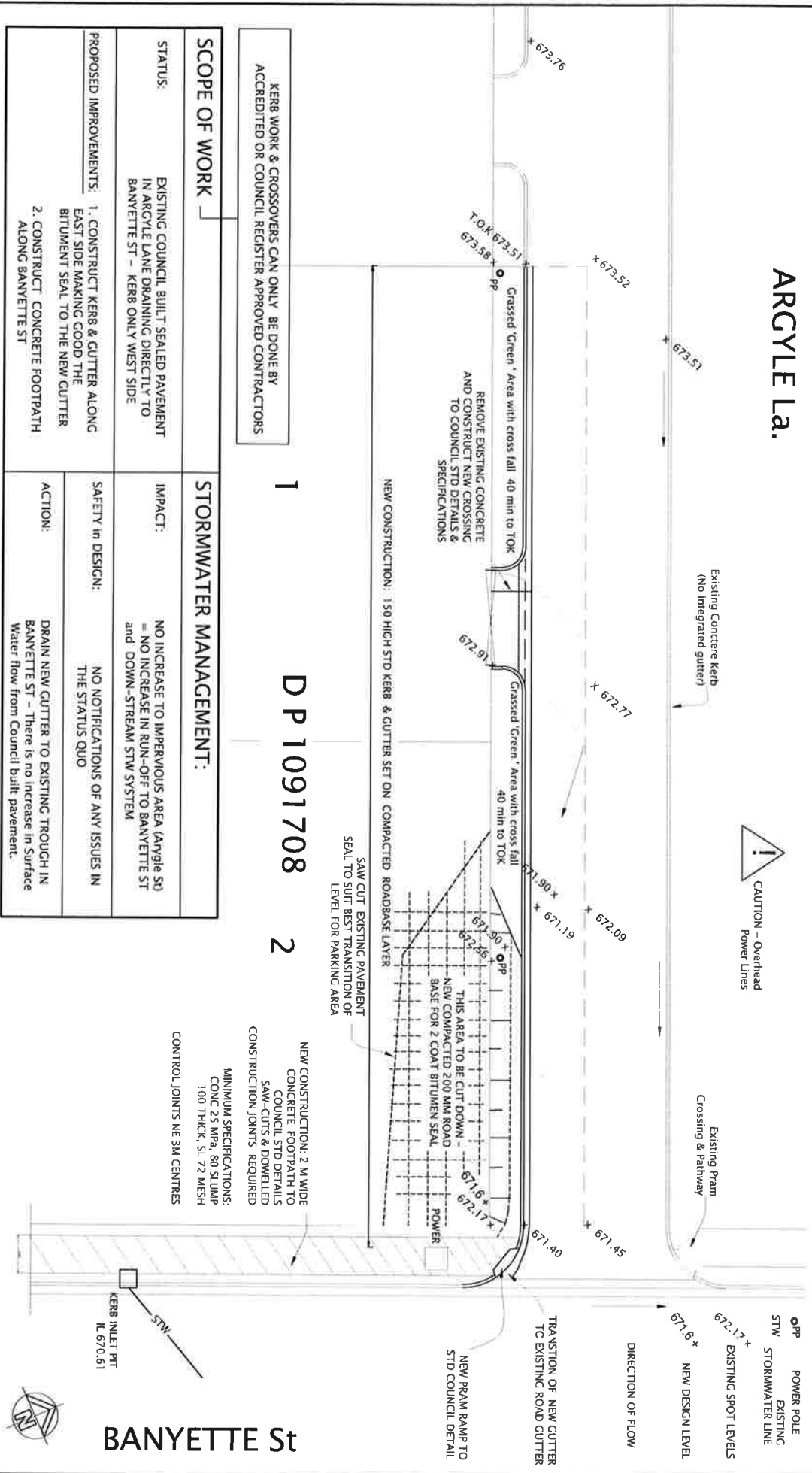
LEGEND

OP POWER POLE
 EXISTING
 STW STORMWATER LINE

EXISTING SPOT LEVELS

NEW DESIGN LEVEL

DIRECTION OF FLOW



KERB WORK & CROSSOVERS CAN ONLY BE DONE BY ACCREDITED OR COUNCIL REGISTER APPROVED CONTRACTORS.

1 D P 1091708 2

SCOPE OF WORK

STATUS: EXISTING COUNCIL BUILT SEALED PAVEMENT IN ARGYLE LANE DRAINING DIRECTLY TO BANYETTE ST - KERB ONLY WEST SIDE

IMPACT: NO INCREASE TO IMPERVIOUS AREA (Argyle St) = NO INCREASE IN RUN-OFF TO BANYETTE ST and DOWN-STREAM STW SYSTEM

STORMWATER MANAGEMENT:

PROPOSED IMPROVEMENTS:
 1. CONSTRUCT KERB & GUTTER ALONG EAST SIDE MAKING GOOD THE BITUMEN SEAL TO THE NEW GUTTER
 2. CONSTRUCT CONCRETE FOOTPATH ALONG BANYETTE ST

SAFETY in DESIGN: NO NOTIFICATIONS OF ANY ISSUES IN THE STATUS QUO
 ACTION: DRAIN NEW GUTTER TO EXISTING TROUGH IN BANYETTE ST - There is no increase in Surface Water flow from Council built pavement.

BANYETTE St



THOMAS MAYNE Pty. Ltd.
 Chartered Surveyors
 Professional Engineers
 & Program Coordinators
 ABRN 44 003 940 558
 Mob: 04 14 823 720

1035 Menzies Rd
 Moore Vale NSW 2577
 Tel: 02 4899 1601

127 Rosemeys Drive,
 Rosemeys, TAS 7277
 Tel: 03 6340 3058

REF: Survey by GARY ANTAW

IMPROVEMENTS to ARGYLE LANE, BOWRAL

SCALE: 1:200 AT A3

DATE PLOTTED

for PROPOSED CAR PARK DEVELOPMENT

DRAWN N.P.

DATE ISSUED

CNR ARGYLE LA & BANYETTE ST

DESIGNED D.L.T.

23.9.15

REVIEWED

DATE ISSUED

F.I.E. Aust NPER 218130, CC 53421

PROJECT No 1564

REV. -

C1 of 1

Annexure 3
Landscape Plan

Execution page

Executed as an agreement.

Dated: 4/12/15

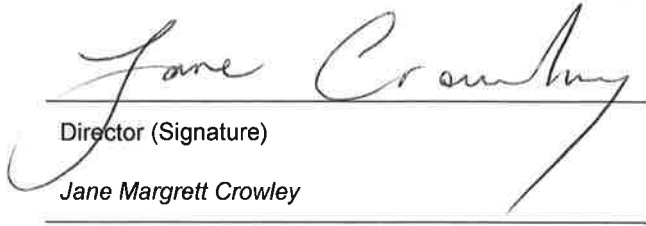
Executed by Goldfish Black Pty Limited in accordance with section 127(1) of the Corporations Act by authority of its directors.



Director/Secretary (Signature)

Robert Charles Crowley

Name of Director/ Secretary (Print Name)

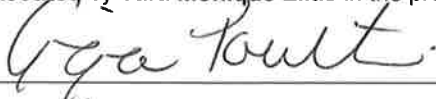


Director (Signature)

Jane Margrett Crowley

Name of Director (Print Name)

Executed by Tara Monique Elias in the presence of:



Witness (Signature)

GEORGINA POULTON.

Name of Witness (Print Name)



Tara Monique Elias (Signature)


Executed by Craig John Elias in the presence of:



Witness (Signature)

GEORGINA POULTON.

Name of Witness (Print Name)



Craig John Elias (Signature)

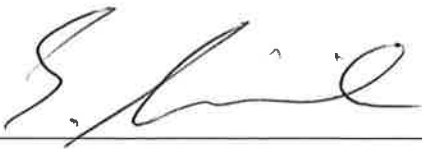
Executed by Sammy Criniti in the presence of:



Witness (Signature)

GEORGINA POULTON.

Name of Witness (Print Name)



Sammy Criniti (Signature)

Executed by Wingecarribee Shire Council by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated 14 OCTOBER 2015.

A Prendergast

General Manager (Signature)

Mayor (Signature)

ANN PRENDERGAST

Name of General Manager (Print Name)

Name of Mayor (Print Name)