sparke HELMORE LAWYERS

Voluntary Planning Agreement

3 November 2022

Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle

ABN 62 089 182 027

City of Newcastle

ABN 25 242 068 129

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Agreement

Date

Parties

First party

Name	Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle (**Developer**)
ABN	62 089 182 027
Contact	Ray Bowen
Email	Ray.Bowen@mm.catholic.org.au
Telephone	4979 1122

Second party

Name	City of Newcastle (**Council**)
ABN	25 242 068 129
Contact	Michelle Bisson
Email	mbisson@ncc.nsw.gov.au
Telephone	4974 2793

Background

A. On 30 August 2019, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.

B. The Development Application for the Development is accompanied by an offer by the Developer to enter into this agreement to make contributions for public purposes if Development Consent is granted

Operative part

1 Definitions

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

Act means the *Environmental Planning and Assessment Act 1979* (NSW);

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

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person, agency or entity and includes a certifier accredited under the *Building and Development Certifiers Act 2018* (NSW);

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

Certificate of Practical Completion means the written certificate confirming the Works, or part of the Works, have been completed to the Council's satisfaction issued under clause 8.1(d) of Schedule 2;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

Construction Terms means the terms set out in Schedule 2;

Contributions Plan has the same meaning as under the Act;

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Dedication Land means that part of the Land to be dedicated to Council in accordance with this agreement, as shown on the plan at Annexure B;

Development means the alterations and additions to an existing education establishment, a new childcare centre, community title subdivision and road works as proposed in the Development Application DA2019/00966 submitted by the Developer on 30 August 2019 and any Modification Applications;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

GST has the same meaning as in the GST Law;

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 of or administration of the GST;

Land means Lots 12 and 131, DP 560852 and 262057, known as 30 and 31 Vista Parade, Kotara;

Landowner means Trustees for the Roman Catholic Church of the Diocese of Maitland-Newcastle;

Law means:

(a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;

(b) any Approval, including any condition or requirement under it; and

(c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Modification Application means any application to modify the Development Consent under section 4.55 of the Act;

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act.

Road Works Approval means any approval issued under section 138 of the Roads Act 1993 by an appropriate road authority.

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

Regulation means the *Environmental Planning and Assessment Regulation 2000*;

Works means the work set out in Schedule 1.

2 Interpretation

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

(a) (**documents**) a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;

(b) (**references**) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;

(c) (**headings**) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;

(d) (**person**) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

(e) (**party**) a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;

(f) (**president, CEO or managing director**) the president, CEO or managing director of a body or Authority means any person acting in that capacity;

(g) (**requirements**) a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;

(h) (**including**) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;

(i) (**corresponding meanings**) a word that is derived from a defined word has a corresponding meaning;

(j) (**singular**) the singular includes the plural and vice-versa;

(k) (**gender**) words importing one gender include all other genders;

(l) (**parts**) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;

(m) (**rules of construction**) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;

(n) (**legislation**) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;

(o) (**time and date**) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in New South Wales, Australia, even if the obligation is to be performed elsewhere;

(p) (**joint and several**) an agreement, representation, covenant, right or obligation:

(i) in favour of two or more persons is for the benefit of them jointly and severally; and

(ii) on the part of two or more persons binds them jointly and severally;

(q) (**writing**) a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;

(r) (**replacement bodies**) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;

(s) (**Australian currency**) a reference to dollars or $ is to Australian currency;

(t) (**month**) a reference to a month is a reference to a calendar month; and

(u) (**year**) a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

(a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.

(b) Schedule 3 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

(a) the Development, and

(b) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 Works

(a) The Developer will carry out the Works in accordance with this agreement, including the Construction Terms and any Development Consent granted for the Works.

(b) The Works or any part of the Works required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works.

(c) A Certificate of Practical Completion for the Works must be obtained prior to the issue of an Occupation Certificate for the Development or any part of the Development.

(d) The parties agree and acknowledge that the Works serve the following public purpose:

(i) the widening of Vista Parade and the construction of a roundabout on Vista Parade and Princeton Avenue to improve the function and amenity of the local public road network.

6.2 Dedication of Land

(a) The Developer must dedicate or cause to be transferred to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax.

(b) The obligation to dedicate the Dedication Land will be taken to have been satisfied when the Dedication Land is dedicated to Council as a public road by operation of the registration of a plan of subdivision in accordance with section 9 of the *Roads Act 1993* (NSW).

(c) The Dedication Land must be dedicated or transferred to Council prior to the issue of any Road Works Approval.

(d) The parties agree and acknowledge that the embellishment and dedication of the Dedication Land serve the public purpose of improving the function and amenity of the local public road network.

6.3 Access to Council owned land

(a) The Council agrees to permit the Developer, upon receiving at least 10 Business Days' prior notice, to enter, pass through or occupy any Council owned or controlled land in order to enable the Developer to properly perform their obligations under this agreement. Nothing in this clause creates or gives the Developer any estate or interest in any part of the Council owned or controlled land.

(b) The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the entry or access by the Developer to, or any presence of the Developer on, Council owned or controlled land for the purposes of performing its obligations under this agreement, except to the extent such Claim arises either directly or indirectly as a

result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

7 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

(a) This agreement excludes the application of section 7.11 of the Act to the Development.

(b) This agreement excludes the application of section 7.12 of the Act to the Development.

(c) This agreement excludes the application of section 7.24 of the Act to the Development.

8 Review of this agreement

(a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.

(b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

(c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

9 Dispute Resolution

9.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

9.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other party of:

(a) The nature of the dispute,

(b) The alleged basis of the dispute, and

(c) The position which the party issuing the Notice of Dispute believes is correct.

9.3 Representatives of Parties to Meet

(a) The representatives of the parties must promptly (and in any event within seven Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.

(b) The parties may, without limitation:

  (i) resolve the dispute during the course of that meeting,

  (ii) agree that further material or expert determination in accordance with clause 9.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or

(iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

9.4 Further Notice if Not Settled

If the dispute is not resolved within seven Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 9.5 or by expert determination under clause 9.6.

9.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

(a) The parties must agree to the terms of reference of the mediation within five Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;

(b) The mediator will be agreed between the parties, or failing agreement within three Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

(c) The mediator appointed pursuant to this clause 9.5 must:

(i) Have reasonable qualifications and practical experience in the area of the dispute; and

(ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;

(d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;

(e) The parties must within five Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within fourteen Business Days of the resolution);

(f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and

(g) In relation to costs and expenses:

(i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and

(ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

9.6 Expert determination

If the dispute is not resolved under clause 9.3 or clause 9.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

(a) The dispute must be determined by an independent expert in the relevant field:

(i) Agreed upon and appointed jointly by the parties; and

(ii) In the event that no agreement is reached or no appointment is made within five days Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;

(b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;

(c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;

(d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;

(e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and

(f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:

(i) Within ten Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or

(ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

9.7 Litigation

If the dispute is not *finally* resolved in accordance with this clause 9, then either party is at liberty to litigate the dispute.

9.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 9.1, the referral to or undertaking of a dispute resolution process under this clause 9 does not suspend the parties' obligations under this agreement.

10 Enforcement

10.1 Default

(a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

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

(c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 9 of this agreement.

10.2 General Enforcement

(a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.

(b) Nothing in this agreement prevents:

(i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and

(ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

11 Assignment and Dealings

11.1 Assignment

(a) A party must not assign or deal with any right under this agreement without the prior written consent of the other party.

(b) Any purported dealing in breach of this clause is of no effect.

11.2 Transfer of Land

(a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:

(i) The Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer obligations under this agreement;

(ii) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;

(iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;

(iv) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and

(v) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

12 Approvals and consents

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 obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

13 No fetter

13.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

13.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of 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 a 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 is substantially satisfied,

(b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of 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 to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

14 Notices

14.1 Notices

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

(a) must be in writing and signed by a person duly authorised by the sender;

(b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address, or at the address last notified by the intended recipient to the sender after the date of this agreement:

(i)	to Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle :	PO Box 756 Newcastle NSW 2300 Email: Ray.Bowen@mn.catholic.org.au Attention: Ray Bowen
(ii)	to City of Newcastle:	Po Box 489 Email: mbisson@ncc.nsw.gov.au Attention: Michelle Bisson

(c) is taken to be given or made:

(i) in the case of hand delivery, when delivered; and

(ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country).

(d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

14.2 Notices sent by email:

(a) A party may serve a Notice by email if the Notice:

(i) includes a signature block specifying:

(A) the name of the person sending the Notice; and

(B) the sender's position within the relevant party;

(ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;

(iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;

(iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:

(A)	to Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle :	Attention: Ray Bowen Ray.Bowen@mn.catholic.org.au
(B)	to City of Newcastle:	Attention: Michelle Bisson mbisson@ncc.nsw.gov.au

(b) The recipient of a Notice served under this clause 14.2 must:

(i) promptly acknowledge receipt of the Notice; and

(ii) keep an electronic copy of the Notice,

(c) Failure to comply with clause 14.2 does not invalidate service of a Notice under this clause.

14.3 Receipt of Notices sent by email

(a) A Notice sent under clause 14.2 is taken to be given or made:

(i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;

(ii) when the Notice enters an information system controlled by the recipient; or

(iii) when the Notice is first opened or read by the recipient,

whichever occurs first.

(b) If under clause 14.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

15 General

15.1 Relationship between parties

(a) Nothing in this agreement:

(i) constitutes a partnership between the parties; or

(ii) except as expressly provided, makes a party an agent of another party for any purpose.

(b) A party cannot in any way or for any purpose:

(i) bind another party; or

(ii) contract in the name of another party.

(c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

15.2 Time for doing acts

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

(b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

15.3 Further assurances

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

15.4 Variation

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

15.5 No assignment

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

15.6 Counterparts

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

15.7 Legal expenses and stamp duty

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

15.8 Entire agreement

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

15.9 Representations and warranties

The parties represent and warrant that they have the power and authority 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.

15.10 Severability

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.

15.11 Invalidity

(a) A word or provision must be read down if:

(i) this agreement is void, voidable, or unenforceable if it is not read down;

(ii) this agreement will not be void, voidable or unenforceable if it is read down; and

(iii) the provision is capable of being read down.

(b) A word or provision must be severed if:

(i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and

(ii) this agreement will be void, voidable or unenforceable if it is not severed.

(c) The remainder of this agreement has full effect even if clause 15.11(b) applies.

15.12 Waiver

(a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

(b) 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 wavier of any other obligation or breach or as an implied wavier of that obligation or breach in relation to any other occasion.

15.13 GST

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

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

(c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

15.14 Governing law and jurisdiction

(a) The laws applicable in New South Wales govern this agreement.

(b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

Schedule 1 Scope of works

1 **Scope of Works**

(a) The Works are:

(i) The road widening of Vista Parade and the associated road works as shown on the Road Widening and Right Turn Bay on Vista PDE, General Arrangement Plan, Option 1, Figure SKE-0101, Revision 07-13.10.2022, prepared by BTE Consulting;

(ii) The roundabout and intersection upgrade work as shown on the Intersection of Princeton AVE and Vista PDE, General Arrangement Plan, Sheets 1 and 2, Figures SKE-0001 and SKE-0002, Revisions 03 -23.09.22 (Sheet 1) and 06-23.09.22 (Sheet 2), prepared by BTE Consulting; and

(iii) The relocation and reinstatement of bus stops as indicated on the Intersection of Princeton AVE and Vista PDE, General Arrangement Plan, Sheet 2, Figure SKE-002, Revision 06-23.09.22, prepared by BTE Consulting to Council and bus operator requirements

being the plans forming Annexure C of this agreement.

(b) The Works under clause 1(a) of Schedule 1 are subject to the approved detailed design under Schedule 2, 5.2 of this agreement.

Schedule 2 Construction terms

1 Interpretation

For the purposes of this Schedule 2, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply and, unless context indicates a contrary intention:

Builder means any entity contracted under the Construction Contract to carry out the Works.

Construction Contract means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

Defects Liability Period means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Works.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development.

Standard Requirement means a requirement in order to comply with the Building Code of Australia, any applicable Australian Standard, any requirement, standard or specification applied by an Authority, any applicable public domain manual or guidelines issued by Council, applicable planning controls and any other engineering requirement to ensure a work is functional and suitable for its intended purpose.

Superintendent means the Superintendent appointed under any Construction Contract.

2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

(a) any requirements or conditions of any Development Consent;

(b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.

2.3 The Developer must ensure that the Works carried out under this agreement are carried out:

(a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and

(b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

3 Costs of Works

All costs of the Works must be borne by the Developer.

4 Project Management and Contractor Engagement

4.1 The Developer will be responsible for managing the Works.

4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to carry out the Developer's obligations in these Construction Terms as part of any Construction Contract.

5 Design Development and Approvals

5.1 Concept Design

Council and the Developer have worked in consultation with each other to prepare and agree the concept plans for the Works at Annexure C.

5.2 Detailed Design

(a) Prior to obtaining a Road Works Approval for the Works, or commencement of the Works, the Developer must provide construction drawings for the relevant item of Works to Council.

(b) Council must provide a response to the Developer within 30 Business Days of the Developer providing the construction drawings, and

(i) Council may, by notice in writing and acting reasonably, approve, vary or direct a variation to the construction drawings to reflect a Standard Requirement; and

(ii) the Developer must comply with any direction given by Council under clause 5.2(b)(i) of this Schedule.

(c) The Developer acknowledges and agrees that:

(i) Council may, but is not obliged to critically analyse the plans and specifications for the Works;

(ii) Council is not responsible for any errors, omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to the plans and specifications for the Works;

(iii) Council is not liable for any Claim or Damage incurred by the Developer because of any defect in the design or construction of any part of the Works, other than a defect caused by Council; and

(iv) no comment, review or information supplied to the Developer by Council alters or alleviates the Developer's obligation to construct and complete the Works in accordance with this agreement.

(d) For the avoidance of doubt:

(i) any approval of the construction drawings provided by Council under this agreement does not constitute the grant of any Construction Certificate or other building certification under the EPA Act; and

(ii) Council is not responsible for the costs of any variation in accordance with this clause.

5.3 **Good faith**

The parties must act promptly and in good faith to consult in relation to the Detailed Design.

6 Carrying out of Works

6.1 Standard of Works

(a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.

(b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:

(i) Any relevant Australian Standard;

(ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.

(c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 6.1(b)(ii) of this Schedule 2 from Council if the Council fails to deliver them to the Developer.

(d) The Developer may but is not obliged to reinstate any Works where damage or destruction is as a result of:

(i) Any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this agreement; or

(ii) The use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

7 Inspection

(a) The Council may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:

(i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);

(ii) giving reasonable notice to the Developer;

(iii) complying with all reasonable directions of the Developer; and

(iv) being accompanied by the Developer or a nominee, or as otherwise agreed.

(b) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection under clause 7(a) of this Schedule 2, notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work

to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:

(i) removal of defective or non-complying material;

(ii) demolishing defective or non-complying work;

(iii) reconstructing, replacing or correcting any defective or non-complying work; and

(iv) not delivering any defective or non-complying material to the site of the Works.

(c) If the Developer is issued a direction to carry out further work under clause 7(b) of this Schedule 2, the Developer must, at their cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.

(d) If the Developer fails to comply with a direction to carry out work given under clause 7(b) of this Schedule 2, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.

(e) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under 7(b) of this Schedule 2 does not constitute:

(i) acceptance by the Council that the Works comply with all Approvals and Laws; or

(ii) an Approval by the Council in respect of the Works; or

(iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

8 Completion

8.1 Practical Completion

(a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.

(b) Within 10 Business Days of receipt of the notice under clause 8.1(a) of this Schedule 2, the Council will carry out an inspection of the Works and will, acting reasonably, either:

(i) provide written certification to the Developer that the Works have been completed; or

(ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.

(c) If the Developer is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule 2, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 8.1(a) of this Schedule 2 for written certification that the Works have been completed.

(d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

8.2 Delivery of documents

(a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of:

(i) all "as built" full-sized drawings, specifications and relevant operation and service manuals;

(ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and

(iii) copies of all Approvals required for use of the land subject to the Works.

(b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

8.3 Assignment of Warranties and Causes of Action

(a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.

(b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

8.4 Defects Liability Period

(a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:

(i) action required to be undertaken by the Developer to rectify that defect (Rectification Works); and

(ii) the date on which the defect must be rectified (**Rectification Date**).

(b) The Developer must comply with the Rectification Notice by:

(i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;

(ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and

(iii) carrying out the Rectification Works.

(c) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.

(d) When the Developer considers that the Rectification Works are complete, either the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.

(e) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from either the Developer under clause 8.1(d) of this Schedule 2 and, acting reasonably:

(i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or

(ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.

(f) The Developer must meet all costs of and incidental to rectification of defects under this clause 8.4.

(g) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any costs incurred by the Council in carrying out Rectification Works.

(h) The Developer must request that Council inspect the Works 28 days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Developer and before to the end of the Defects Liability Period.

(i) If, prior to the end of the Defects Liability Period:

(i) the Developer fails to request the inspection, or

(ii) the Council does not carry out the inspection,

the Council may extend the Defects Liability Period so that the inspection may be carried out.

9 Risk

The Developer undertakes the Works entirely at its own risk.

10 Insurance

(a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):

(i) construction works insurance for the value of the Works;

(ii) public risk insurance for at least $20 million;

(iii) workers compensation insurance as required by Law.

(b) The Developer must provide evidence of currency of insurance required by clause 10(a) of this Schedule 2 upon request by the Council, acting reasonably, throughout the term of this agreement.

11 Indemnities

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

12 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer have or receive intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

13 Risk of contamination

The Developer acknowledges and agrees:

(a) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;

(b) it will attend to any necessary remediation at their own costs; and

(c) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.

14 Plans

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:

(a) matters affecting Works not capable of identification on or before the date of this agreement; or

(b) by agreement between the parties.

Schedule 3 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application – Section 7.4(1) The Landowners have:	
(a) Sought a change to an environmental planning instrument	☐ Yes ☒ No
(b) Made, or propose to make a Development Application	☒ Yes ☐ No
(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies	☒ Yes ☐ No
Description of the land to which the planning Agreement applies – Section 7.4(3)(a)	Refer to Clause 1 and Annexure A
The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(b)	Refer to Clause 6
Applicability of section 7.11 of the Act – Section 7.4(3)(d)	Refer to Clause 7
Applicability of section 7.12 of the Act – Section 7.4(3)(d)	Refer to Clause 7
Applicability of section 7.24 of the Act – Section 7.4(3)(d)	Refer to Clause 7
Mechanism for dispute resolution – Section 7.4(3)(f)	Refer to Clause 9
Enforcement of the Planning Agreement – Section 7.4(3)(g)	Refer to Clause 10
Registration of the Planning Agreement – Section 7.4(3)(g)	Not required due to ownership structure of the Trustee
No obligation to grant consent or exercise functions – Section 7.4(9)	See clause 13 (no fetter)

Executed as an agreement

Signed by **Sean Scanlon** as authorised representative for **Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle** ABN 62 089 182 027 who warrants that they are duly authorised to execute this document on behalf of **Trustees for the Roman Catholic Church for the Diocese of Maitland-Newcastle** in the presence of:

.....

Signature of Witness

.....

Signature of Authorised Representative

.....

Print name of Witness

.....

.....

Address of Witness

Signed by **Michelle Bisson** as authorised representative for **City of Newcastle** ABN 25 242 068 129 who warrants that they are duly authorised to execute this document on behalf of **City of Newcastle** in the presence of:

.....

Signature of Witness

.....

Signature of Authorised Representative

.....

Print name of Witness

.....

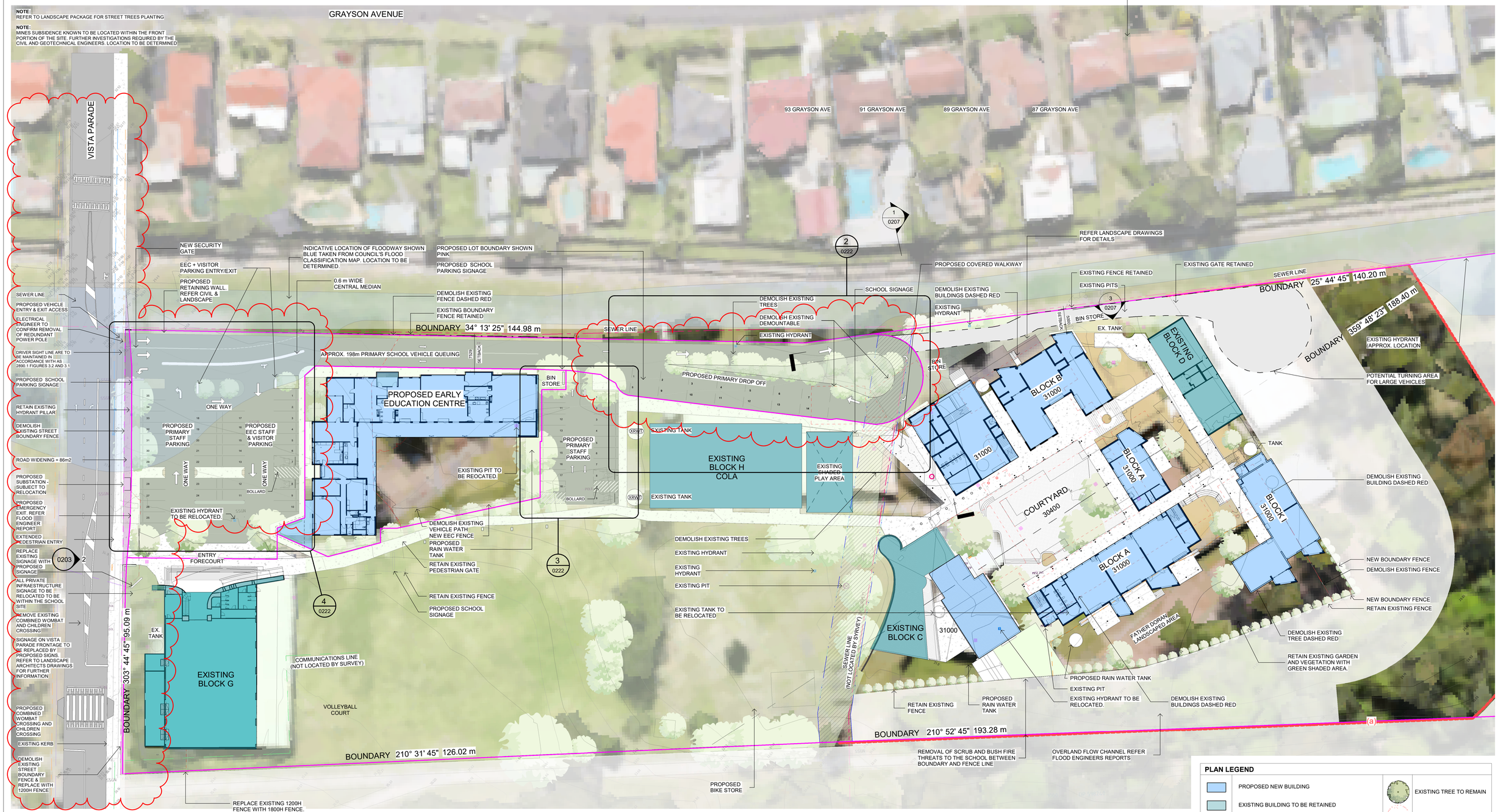
.....

Address of Witness

Annexure A Plan showing Land

NOTE:
REFER TO LANDSCAPE PACKAGE FOR STREET TREES PLANTING

NOTE:
MINES SUBSIDENCE KNOWN TO BE LOCATED WITHIN THE FRONT PORTION OF THE SITE. FURTHER INVESTIGATIONS REQUIRED BY THE CIVIL AND GEOTECHNICAL ENGINEERS. LOCATION TO BE DETERMINED



1 SITE PLAN
SCALE1 : 400

PLAN LEGEND

- PROPOSED NEW BUILDING
- EXISTING BUILDING TO BE RETAINED
- PROPOSED VEHICLE PAVEMENT
- EXISTING PAVEMENT EO BE RETAINED
- PROPOSED PEDESTRIAN PAVEMENT
- EXISTING STRUCTURE TO BE DEMOLISHED
- PROPOSED AWNING
- EXISTING TREE TO REMAIN
- REMOVED TREE
- PROPOSED TREE
- PROPOSED LANDSCAPING
- INDICATIVE FLOODWAY LOCATION
- EXISTING SEWER EASEMENT

REV	DATE	DESCRIPTION	BY	CHK
CC	10.08.2022	FOR CLIENT REVIEW	VM	
DD	12.08.2022	FOR CLIENT REVIEW	VM	
EE	30.08.2022	FOR CLIENT REVIEW	VM	
FF	30.09.2022	FOR CONSULTANT COORDINATION	VM	
GG	05.10.2022	FOR CLIENT REVIEW	VM	
HH	17.10.2022	FOR COUNCIL REVIEW	VM	
II	19.10.2022	FOR COUNCIL REVIEW	VM	

Catholic Schools Office DIOCESE OF MAITLAND-NEWCASTLE

St Nicholas Early Education

webber

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newcastle@webberarchitects.com

Suite 206, 8 Clarke Street Crows Nest NSW 2065
sydney@webberarchitects.com

Nominated Architect: Jon Webber AIA NSW ARB No 6826 | ABN 83 140 652 188

ISSUED
FOR DA APPROVAL
NOT FOR CONSTRUCTION

SITE PLAN
ST JAMES PRIMARY SCHOOL
CATHOLIC DIOCESE OF MAITLAND - NEWCASTLE
VISTA PARADE, KOTARA SOUTH

COMMENCEMENT DATE : NOV. 2018

SHEET NUMBER : **2656 / 0201 / II**

0 4 8 12 16 20 m
SCALE 1:400 @ A1

TRUE NORTH

BUILDER TO CONFIRM ALL DETAILS, SETOUTS (TILE, ETC.), FALLS & CONNECTIONS ON SITE BEFORE CONSTRUCTION

PRINT DATE: 19/10/2022 9:00:24 AM **FILE PATH:** C:\Users\VictoriaMuller\Documents\2656_St James Kotara_victoriaK7Y9D.rvt

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Annexure B Plan showing Dedication Land

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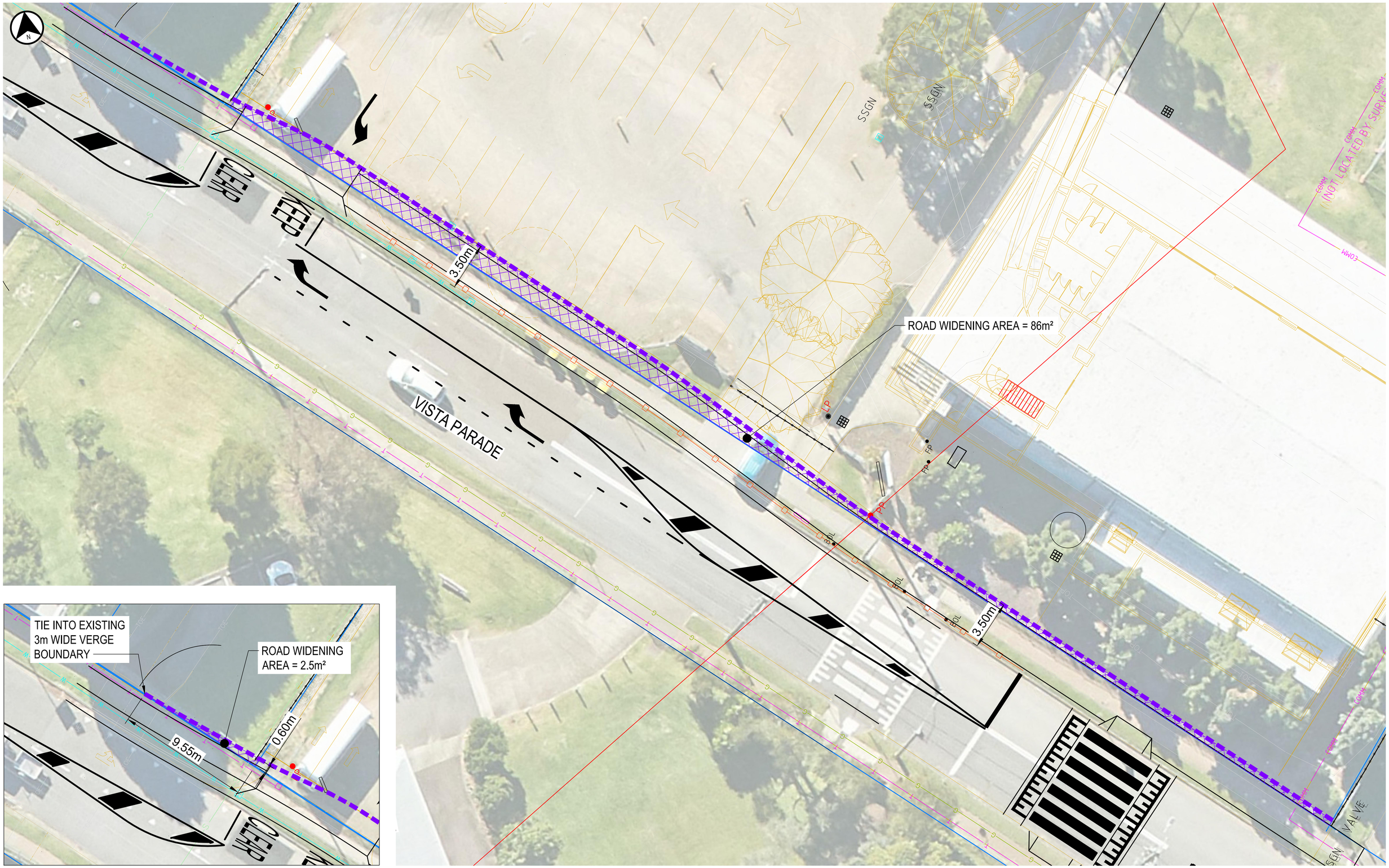

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KOTARA SOUTH
ST JAMES' PRIMARY SCHOOL
STAGE 1 - CBGA 2019

CLIENT

Catholic Schools Office
DIOCESE OF MAITLAND-NEWCASTLE

CONSULTANT

BTE CONSULTING

BTE CONSULTING PTY LTD
ABN 48 641 009 681 ACN 641 009 681

SCALES

2.5 0 2.5 5 7.5m
1 : 500 FULL SIZE A3

PROJECT NO	BTE-210080		
REVISION	07 - 13.10.2022		
STATUS	STRATEGIC DESIGN		
SCALE	1:500		
DESIGNED	TB	DRAWN	TB

ST JAMES PRIMARY SCHOOL

ROAD WIDENING AND RIGHT TURN BAY ON VISTA PDE
ROAD WIDENING PLAN
OPTION 1

FIGURE NO
SKE-0111

Annexure C Plans showing Works

CAD REF:P:\BTE-210080\41 - DRAWINGS\02-SKETCH\BTE-210080-SKE-0101.DWG

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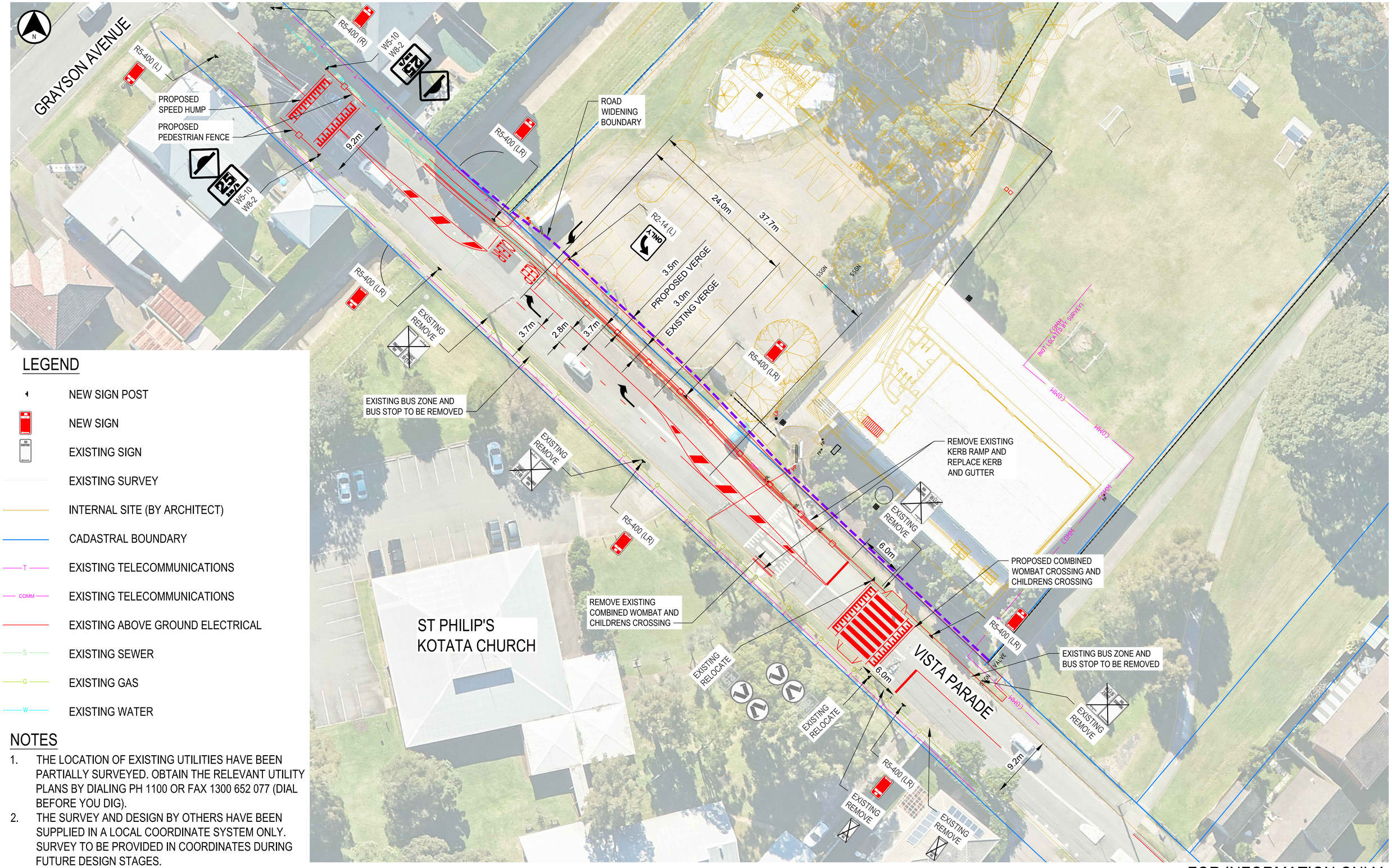

LEGEND

- NEW SIGN POST
- NEW SIGN
- EXISTING SIGN
- EXISTING SURVEY
- INTERNAL SITE (BY ARCHITECT)
- CADASTRAL BOUNDARY
- T — EXISTING TELECOMMUNICATIONS
- COMM — EXISTING TELECOMMUNICATIONS
- EXISTING ABOVE GROUND ELECTRICAL
- S — EXISTING SEWER
- G — EXISTING GAS
- W — EXISTING WATER

NOTES

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CONSULTANT: BTE CONSULTING
BTE CONSULTING PTY LTD
ABN 48 641 009 681 ACN 641 009 681

SCALES: 2.5 0 2.5 5 7.5m — 1 : 500 — FULL SIZE A3

PROJECT NO	BTE-210080		
REVISION	07 - 13.10.2022		
STATUS	STRATEGIC DESIGN		
SCALE	1:500		
DESIGNED	TB	DRAWN	TB

ST JAMES PRIMARY SCHOOL

ROAD WIDENING AND RIGHT TURN BAY ON VISTA PDE
GENERAL ARRANGEMENT PLAN
OPTION 1

FIGURE NO
SKE-0101

CAD REF:P:\BTE-210080\41 - DRAWINGS\02-SKETCH\BTE-210080-SKE-0001.DWG

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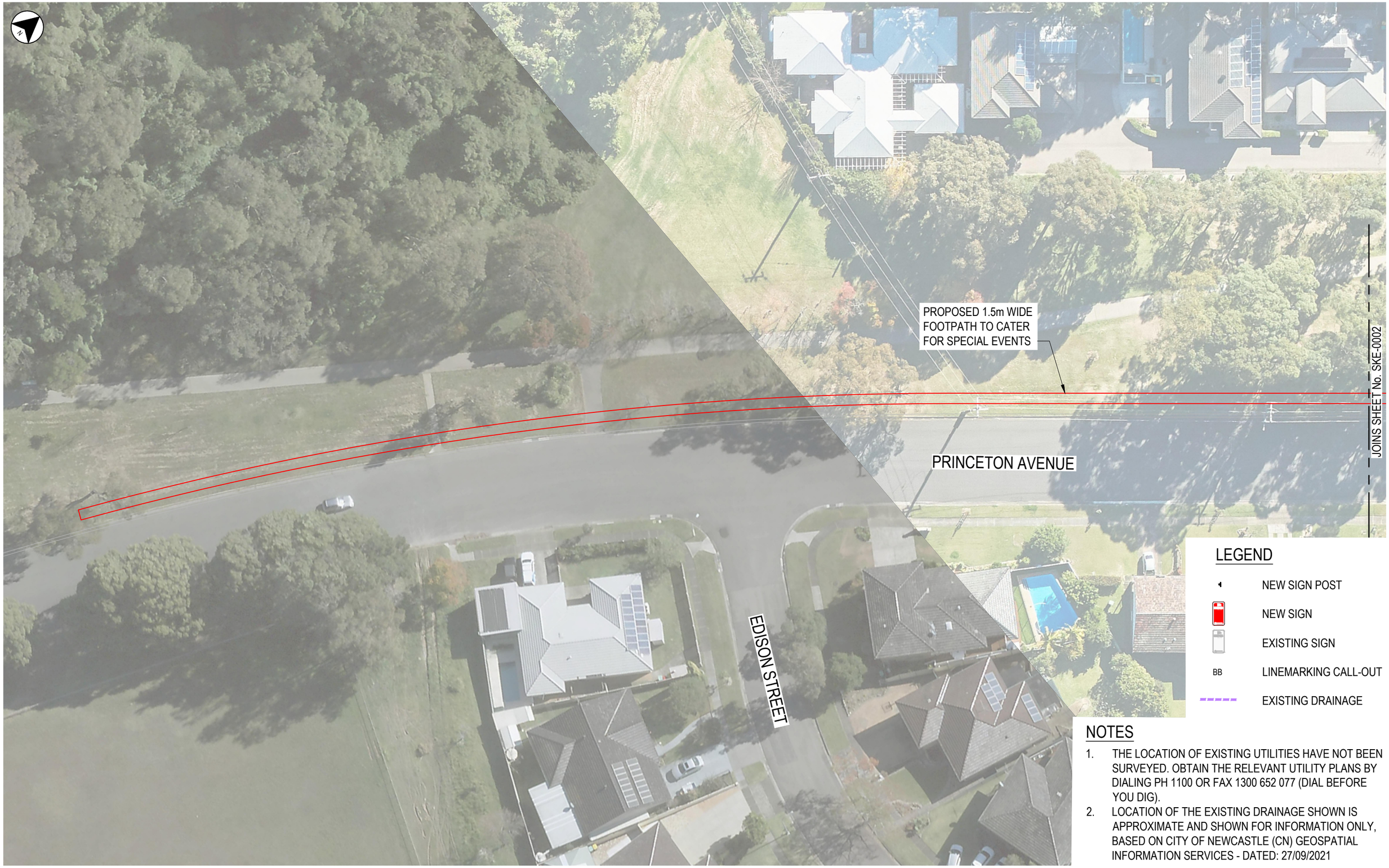

LEGEND

- NEW SIGN POST
- NEW SIGN
- EXISTING SIGN
- BB — LINEMARKING CALL-OUT
- EXISTING DRAINAGE

NOTES

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SCALES: 2.5 0 2.5 5 7.5m — 1 : 500 — FULL SIZE A3

PROJECT NO	BTE-210080		
REVISION	03 - 23.09.2022		
STATUS	STRATEGIC DESIGN		
SCALE	1:500		
DESIGNED	TB	DRAWN	TB

ST JAMES PRIMARY SCHOOL - STAGE 1

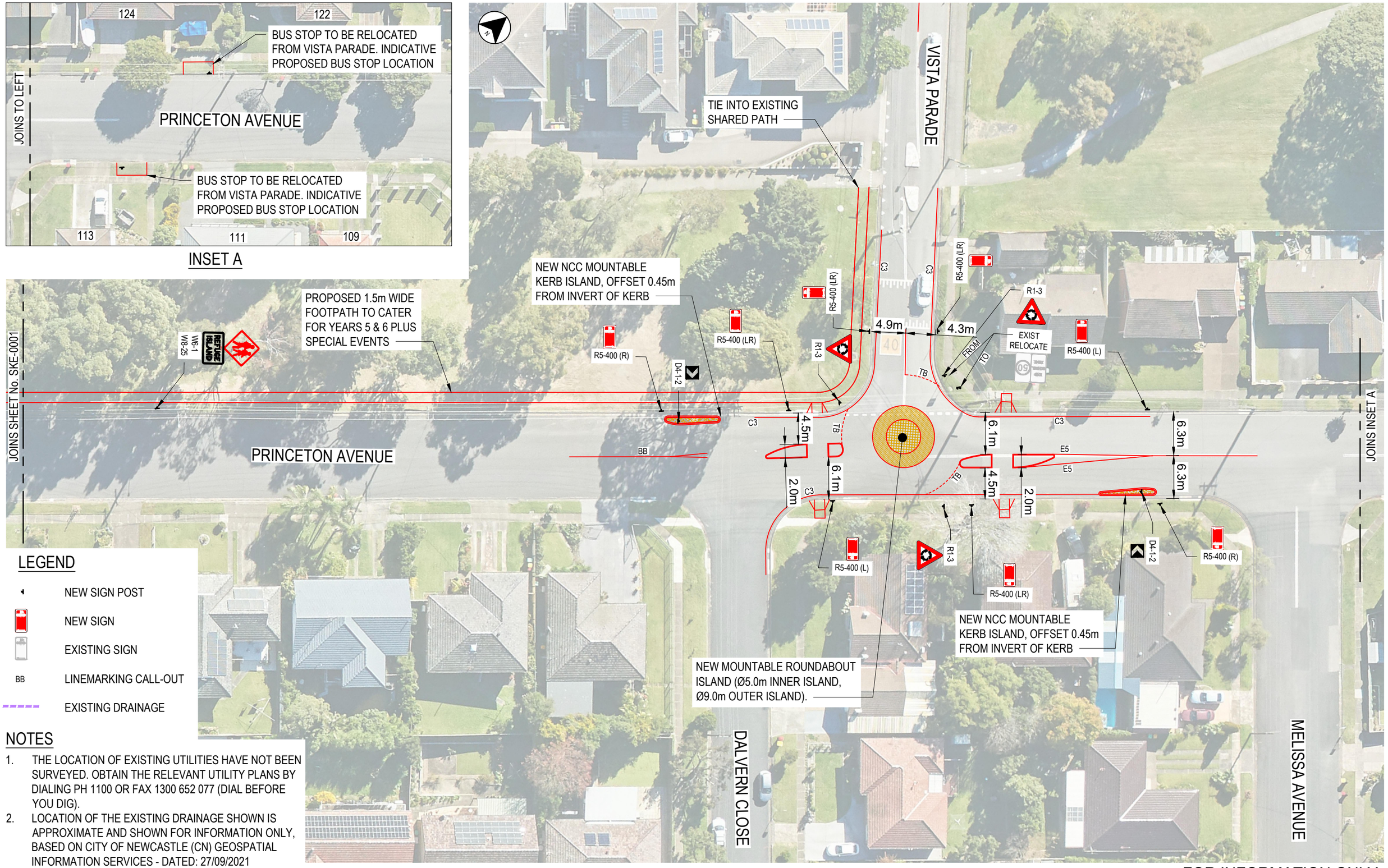
INTERSECTION OF PRINCETON AVE AND VISTA PDE
GENERAL ARRANGEMENT PLAN
SHEET 1 OF 2

FIGURE NO
SKE-0001

CAD REF P:\BTE-210080\41 - DRAWING\SK02-SKETCH\BTE-210080-SKE-0002.DWG

LAST MODIFIED 9/23/2022 4:44 PM

INSET A



LEGEND

- NEW SIGN POST
- NEW SIGN
- EXISTING SIGN
- BB — LINEMARKING CALL-OUT
- EXISTING DRAINAGE

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CLIENT: Catholic Schools Office, Diocese of Maitland-Newcastle

CONSULTANT: BTE CONSULTING
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SCALES: 2.5 0 2.5 5 7.5m — 1 : 500 — FULL SIZE A3

PROJECT NO	BTE-210080		
REVISION	06 - 23.09.2022		
STATUS	STRATEGIC DESIGN		
SCALE	1:500		
DESIGNED	TB	DRAWN	TB

ST JAMES PRIMARY SCHOOL - STAGE 1
INTERSECTION OF PRINCETON AVE AND VISTA PDE
GENERAL ARRANGEMENT PLAN
SHEET 2 OF 2

FIGURE NO SKE-0002