

**Draft Voluntary Planning Agreement:
702-704 Canterbury Road, Belmore**

**Citiline Unit Trust
ABN: 86 225 572 505**

and

Canterbury-Bankstown City Council

24 November 2016

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Voluntary Planning Agreement

| | |
|-----------------------|---|
| Execution Date | |
| Parties | <p>Citiline Unit Trust ABN 86 225 572 505 of 4 Torwood Street, Sans Souci NSW 2219</p> <p style="text-align: right;">(Developer)</p> <p>Canterbury-Bankstown Council ABN 55 150 306 339 of 137 Beamish Street, Campsie NSW 2194</p> <p style="text-align: right;">(Council)</p> |
| Background | <p>A. The Developer is the owner of the Land and the Developer intends to develop the Land pursuant to development consent DA/559/2013 or as modified from time to time.</p> <p>B. The land is within the Canterbury-Bankstown local government area and the Canterbury Local Environmental Plan 2012 applies to it.</p> <p>C. Development Consent DA 559/2013 was issued on 11 December 2014 by the Land and Environment Court. Schedule A, Condition 1 of the consent provides as follows:</p> <p><i>In accordance with the offer made by the Applicant, the Applicant is to enter into a Planning Agreement under Section 93F of the Environmental Planning and Assessment Act 1979 with Council for the dedication of the southernmost portion of the land known as Lot 8 DP 8851 measuring 6.095m by 6.095m for the future extension of Timothy Lane.</i></p> <p>D. The Developer and the Council have agreed to enter into the Voluntary Planning Agreement (the VPA) referred to above for the purposes of the Developer making contributions for public purposes under the Environmental Planning and Assessment Act 1979.</p> |

Agreement

1. Operation and Application of this Agreement

1.1 Application

- (a) This Agreement constitutes a planning agreement within the meaning of section 93F of the Environmental Planning and Assessment Act 1979.

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- (b) This Agreement applies to the Land and the Development and is binding on the parties to it and to their respective heirs, successors, transferees and assignees.
- (c) This Agreement takes effect from and binds the parties from the date of this Agreement and will remain in force and effect until the Developer and the Council have each complied with their respective obligations under this Agreement, or the earlier date that this Agreement is terminated.
- (d) This Agreement has effect as a deed.

1.2 Capacity

Each party warrants and represents to the other that this Agreement creates legally binding and valid obligations enforceable against the relevant party in accordance with its terms.

2. Works

The Developer must carry out the works and bring them to Practical Completion, and dedicate the Dedication Land before the issue of any Occupation Certificate for the Development in accordance with the requirements set out in the Schedule and as otherwise provided for in this Agreement.

3. Application of Sections 94, 94A and 94EF of the Act to the Development

This Agreement does not exclude the application of section 94, section 94A and section 94EF of the Act to the Development.

4. Enforcement

- 4.1 Without limiting any other provision of this Agreement, the parties may enforce this Agreement in any Court of competent jurisdiction.
- 4.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - (a) 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; or
 - (b) 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.

5. Registration

5.1 Ownership of the Land

The Developer represents and warrants to the Council that the Developer:

- (a) is the owner of the Land and subject to clause 8, will remain the owner of the Land until the Works are Practically Complete and the Dedication Land is dedicated to Council.
- (b) will obtain all approvals required to allow the Developer to comply with its obligations under clause 5.2.

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5.2 Registration

- (a) This Agreement must be registered on title of the Land so that it is binding on and enforceable against all owners of the Land from time to time as if each owner for the time being had entered into this Agreement.
- (b) The Developer must at its Cost within 6 months after the date of this Agreement take all practical steps reasonably necessary to and must procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the Real Property Act 1900 [NSW]; or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title; and
 - (iv) the lodgement and registration of this Agreement on the title to the Land.
- (c) Pending registration of this Agreement the Developer consents to the Council lodging a caveat on title to the Land to protect its interests under this Agreement.
- (d) On receipt of a proper tax invoice the Developer will pay the Council's reasonable Costs:
 - (i) to register any caveat pursuant to this clause;
 - (ii) of consenting to registration of any mortgage, lease, plan of consolidation or subdivision, any strata plan or other document; and
 - (iii) for any replacement VPA over the Land or a modification of this VPA arising as a result of a sale of the Land.

5.3 Release

The Council agrees:

- (a) that upon Practical Completion of the Works and dedication of the Dedication Land the Developer would have fully satisfied and discharged its obligations under this Agreement;
- (b) if so requested by the Developer, the Council will do all things reasonably required at its cost to secure the withdrawal or deletion of the registration of this Agreement from the title to the land; and
- (c) if so requested by the Developer, to provide to the Developer [or such other person authorised to act on its behalf] a letter prepared on Council's letterhead, confirming Council's assessment that the Developer has fully discharged its obligation under this Agreement.

6. Disputes

- (a) If a party claims a dispute has arisen under this Agreement (**Claimant**) it must give written notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).
- (b) Within 28 days after receiving a Claim Notice the respondent must notify the Claimant of its representative to negotiate the dispute.
- (c) The nominated representative must:
 - (i) meet to discuss the matter in good faith within 10 days after service by the Respondent of notice of its representative; and
 - (ii) use reasonable endeavours to resolve the dispute within 15 days after they have met.
- (d) If the dispute is not resolved within 15 days after the representatives have met, either party may give notice calling for determination of the dispute (**Dispute Notice**).
- (e) The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:
 - (i) the parties must agree to the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice. If there is no agreement, the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Charter) apply;
 - (ii) the Mediator will be agreed between the parties or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
 - (iii) the Mediator appointed pursuant to this clause 4(e) must:
 - (A) have reasonable qualifications and practical experience in the area of the dispute; and
 - (B) have no interest or duty which conflicts or may conflict with his function as mediator he being required to fully disclose any such interest or duty before his appointment.
 - (iv) the mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
 - (v) the parties must within five (5) business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
 - (vi) 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;
 - (vii) in relation to costs and expenses:
 - (A) each party will bear their own professional expert costs incurred in connection with the mediation;

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- (B) the costs of the mediator will be shared equally by the parties unless the mediator determines 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.
- (f) If the dispute is not finally resolved either party is at liberty to litigate the dispute.
- (g) Each party must continue to perform its obligations under this Agreement notwithstanding the existence of a dispute.

7. Notices

- (a) Any notice, consent, information, application or request that much or may be given or made to a party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (i) Delivered or posted to that party at its address set out below.
- (ii) Faxed to that party at its fax number set out below.

Council

Attention: The General Manager

Address: Administration Centre
137 Beamish Street
CAMPSIE NSW 2194

Fax Number: (02) 9789 1542

Email: council@canterbury.nsw.gov.au

Developer

Attention: Citiline Unit Trust- Mr Roger Nasr

Address: 4 Torwood Street
Sans Souci NSW 2219

Phone: 0416337722

Email: catiline@live.com.au

- (b) If a party gives the other party 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) If it is delivered, when it is left at the relevant address.
 - (ii) If it is sent by post, 2 business days after it is posted.

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- (iii) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- (iv) Emailed to that party at its email address set out above.
- (d) If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the party to whom it sent, it is to be treated as having been given or made at the beginning of the next business day.

8. Assignment and Dealings

Restriction on dealings

- (a) The Developer must not sell, transfer or dispose of the whole or any part of the Land or this Agreement unless:
 - (i) the rights of the Council under this Agreement are not diminished or fettered in any way;
 - (ii) the Developer has, at no cost to the Council, first procured the execution by the person to whom the land or part is to be sold, transferred, mortgaged or charged or the Developer's rights or obligations under this Agreement are to be assigned or novated, of a Deed in favour of the Council on terms reasonably satisfactory to the Council; and
 - (iii) the Council has given written consent to the Developer stating that it reasonably considers that the purchaser, transferee, mortgagee, chargee, assignee or novatee is reasonably capable of performing its obligations under this Agreement; and
 - (iv) the Developer is not in breach of this Agreement; and
 - (v) the Council otherwise consents to the transfer, mortgage, charge, assignment or novation such consent not to be unreasonably withheld; and
 - (vi) the Developer has paid the Council's reasonable Costs in relation to that assignment.
- (b) If the Developer sells, transfers or disposes of the whole or any part of the Land and fully satisfies the requirements of clause 6(a), the Developer will be released from its obligations under this Agreement with respect to the Land being sold, transferred or disposed of.
- (c) **Council's right to assign**

The Council may not assign its rights under this Agreement without the Developer's prior consent, such consent not to be unreasonably withheld.

9. Costs

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The Developer shall pay Council's reasonable costs capped at \$3,500 (excluding GST) in relation to preparation and execution of this Agreement and any stamp or other duty (including GST) which may be payable in respect of it. This is additional to payment of any Council costs that may be incurred through Clause 5.2(d).

10. Entire Agreement

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

11. Further Acts

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

12. Governing Law and Jurisdiction

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

13. Joint and Individual Liability and Benefits

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

14. No Fetter

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

15. Representations and Warranties

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

16. Severability

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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 is to be treated as removed from this Agreement but the rest of this Agreement is not affected.

17. Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

18. Waiver

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 or breach of obligation by another Party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

19. GST

(a) Consideration does not include GST

Any consideration expressed in this Agreement, is unless otherwise specified, GST exclusive and does not include any amount for, or on account of, GST

(b) GST Payable

If any supply under or in connection with this Agreement constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply (**GST Amount**).

The GST Amount is:

- (i) equal to the value of the supply calculated in accordance with the GST Act multiplied by the applicable GST rate; and
- (ii) payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the tax period to which the GST payable on the relevant taxable supply is attributable under the GST Act.

The supplier of a taxable supply made under or in connection with this Agreement must issue a tax invoice for the supply in accordance with the GST Act to the recipient of the supply.

(c) Reimbursement

Despite any other provision of this Agreement, any amount payable under or in connection with this Agreement, which is calculated by reference to a cost, expense or amount paid or incurred by a Party, will be reduced by an amount equal to any input tax credit to which that party, or the representative member of a GST Group of which the party is a member, is entitled in respect of that cost, expense or amount.

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(d) Defined GST Terms

Words and expressions used in this clause 17 have the meaning given to them in the GST Act.

20. Definitions and Interpretation

20.1 Definitions

The terms **Agreement and Deed** are used interchangeably herein in reference to this document.

In this Agreement, unless the context otherwise requires or permits:

Cost means a cost, charge, expense, outgoing, payment, fee or other expenditure of any kind.

Dedicated Land means the land edged in red in the plan of CD Architects, Job No. J16330, Drawing No. 911, Rev. A, a copy of which is attached hereto and marked 'A'. **Development** means the development of the Land pursuant to the Development Consent.

Development Consent means development consent DA 559/2013 as modified from time to time.

Land means the land known as 702-704 Canterbury Road, Belmore. Lots 7-8 DP 8851

Occupation Certificate means a final occupation certificate issued under section 109C(1)(c) of the Environmental Planning and Assessment Act 1979 in respect of the Development.

Practical Completion means when the Works are complete and reasonably capable of being used for their intended purpose hereunder.

Works means the works defined in the Schedule.

21. General Provisions

21.1 Interpretation

In this document, unless the context otherwise requires or permits:

- (a) references to legislation or legislative provisions will include modifying, consolidating or replacing legislation or legislative provisions;
- (b) references to dollars, '\$' or amounts of money mean that amount in Australian dollars (AUD\$);
- (c) the use of headings are only for convenience and do not affect interpretation and any headings are only included for ease of reference;
- (d) if the day on which any act, matter or thing is to be done under or pursuant to this document is not a business day, that act, matter or thing may be done on the next business day;

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- (e) references to a party will include as the context requires the respective executors, administrators, successors and permitted assigns of that party;
- (f) references to a person includes any other entity recognised by Law;
- (g) words denoting the singular number include the plural and vice versa;
- (h) words denoting one gender include each gender;
- (i) every covenant or term applying to or binding more than one person will bind them jointly and each of them severally;
- (j) a term of this document will not be construed against a party because that party was responsible for its drafting or insisted upon its inclusion in this document;
- (k) this document is governed by the law in force in New South Wales. The parties submit to the exclusive jurisdiction of the Courts of New South Wales and any Court that may hear appeals from those Courts in respect of any proceedings in connection with this document;
- (l) references to clauses, subclauses, paragraphs, annexures and schedules are references to clauses, subclauses, paragraphs, annexures and schedules in this document;
- (m) this document may be executed in one or more counterparts and together they will be construed as one document; and
- (n) if this document is a deed it is deemed to be signed sealed and delivered on the execution date.

Schedule

GENERALLY

The Developer shall construct a roadway on the Land in accordance with the standards set out hereunder and dedicate the Dedication Land to Council in fee simple for road purposes.

Works

(a) Design Standards

The works shall be designed to the satisfaction of Council.

The following Design Standards are to be used as the basis for the preparation of the engineering designs. It is preferred that options include Council's standard road cross fall 2-3% central pavement, 3-5% road shoulder.

- Canterbury City Council SD 627 – Standard Kerb & Gutter, Gutter Crossing and Dish Gutter Profiles
- Canterbury City Council SD 633 – Standard Concrete Footpath Paving
- Canterbury City Council SD 643 – Standard Kerb Ramp Details
- AUSTROADS Guide to Road Design
- AS 2890 Parking Facilities
- AS 1428 Design Rules for Access by the Disabled
- Australian Rainfall & Runoff - A Guide to Flood Estimation (1998).
- AS 3500.3:2003 Stormwater Drainage

Other works not covered by these specifications and standards are to be designed in accordance with industry best practice methods.

Council must approve the design prior to construction works taking place.

(b) Construction Standards

The roadway shall be constructed to the satisfaction of Council.

Construction is to be in accordance with, but not limited to, the following standards and specifications:

Council Specifications

- No 6 Concrete Works

Council Specifications – AUS-SPEC Complete

- 1352 Pipe Drainage
- 1171 Sub-Surface Drainage – General
- 1172 Subsoil and Foundation Drainage
- 1141 Flexible Pavements
- 245 Asphaltic Concrete
- 1144 Minor Concrete Works

Dedication of Land

- (a) The land is to be dedicated is that edged red in the plan in Annexure A (the plan of CD Architects, Job No. J16330, Drawing No. 911, Rev. A) .

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Signing Page

Executed as a deed

Signed sealed and delivered by Citiline)
Unit Trust ABN: 86 225 572 505)
in accordance with section 127 of the)
Corporations Act 2001:

.....
Signature of director

.....
Signature of director/secretary

.....
(Print) Full Name

Signed for and on behalf of)
Canterbury-Bankstown Council in the)
presence of:)

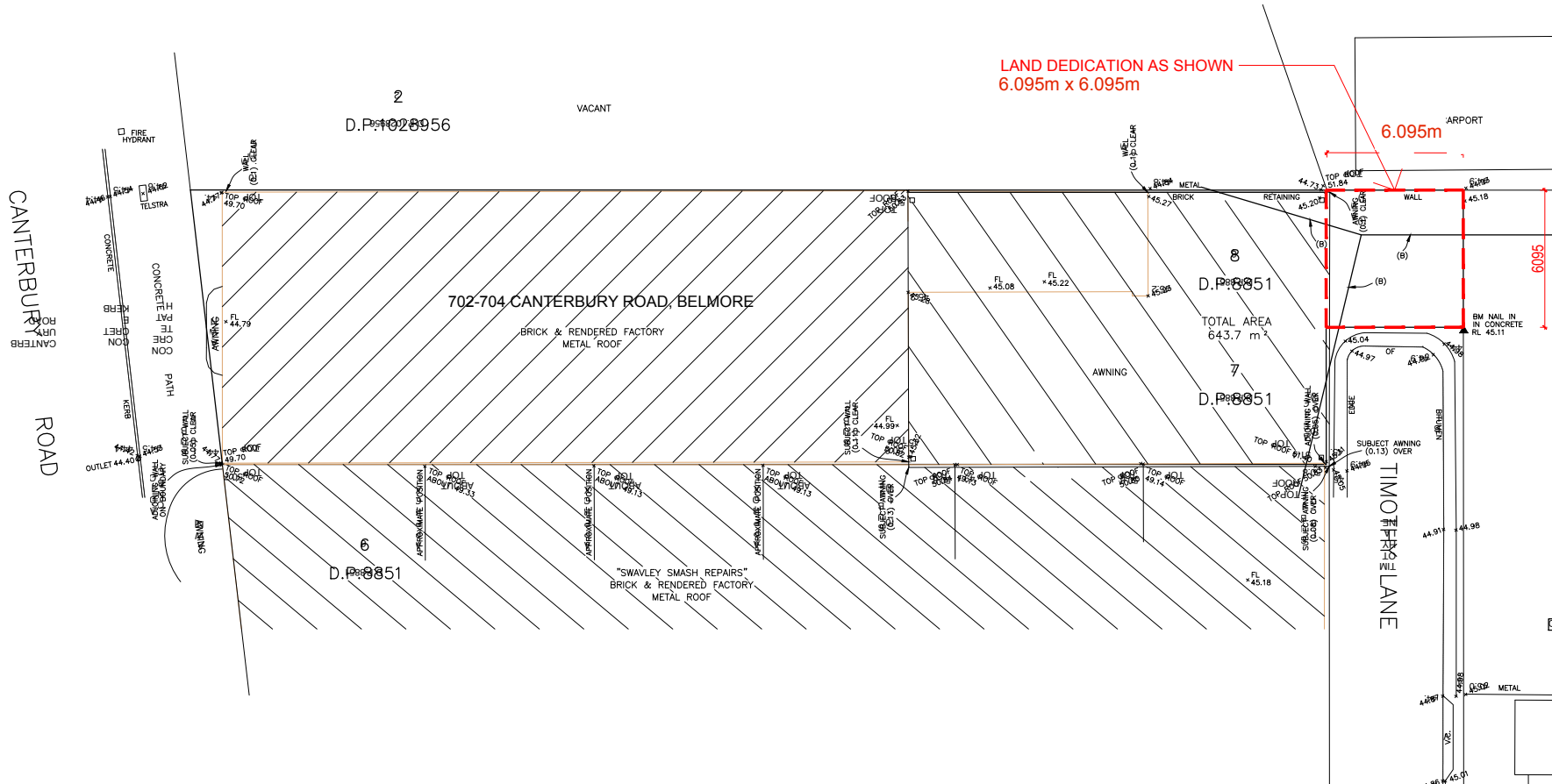
.....
Signature of witness

.....
Signature of General Manager

.....
(Print) Full Name

.....
(Print) Full Name

Annexure A



01 PLAN OF LAND DEDICATION
1:100@A3

REFERENCES

DRAWINGS TO BE READ IN CONJUNCTION WITH BUT NOT LIMITED TO ALL STRUCTURAL ENGINEERS, STORMWATER ENGINEERS, LANDSCAPE ARCHITECTS, AND OTHER ASSOCIATED PLANS & REPORTS

REFER TO THE BBOX REPORT FOR ADDITIONAL REQUIREMENTS TO THE ONES NOTED ON THE DRAWINGS.

NOTES

ALL DIMENSIONS AND SETOUTS ARE TO BE VERIFIED ON SITE AND ALL OMISSIONS OR ANY DISCREPANCIES TO BE NOTIFIED TO THE ARCHITECT.

FIGURED DIMENSIONS TO BE USED AT ALL TIME.

DO NOT SCALE MEASUREMENTS OFF DRAWINGS.

| | | |
|------|----------|----------------|
| A | 09.11.16 | S96 SUBMISSION |
| Rev. | Date | Description |
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |

Scale
m 1 2 3 4
0 1:200 at A3

Project Architect
CD ARCHITECTS
LEVEL 2, 60 PARK STREET
SYDNEY NSW 2000
P: 02 9267 2000
W: www.cdarchitects.com.au

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Nominated Architect: Jacob Yammine B295, ABN 79 087 830 754

Project
PROPOSED MIXED USE DEVELOPMENT

702 - 704 CANTERBURY ROAD,
BELMORE.
Drawing Title
PLAN OF LAND DEDICATION

| | | |
|------------|-------------|----------|
| SECTION 96 | | |
| Job no. | Drawing no. | Rev. |
| J16330 | 911 | A |
| Drawn by | Checked by | Date |
| HS | AV | MAR 2016 |