



Government Gazette

of the State of

New South Wales

Number 390—Compulsory Acquisitions

Wednesday, 23 December 2020

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TRANSPORT ADMINISTRATION ACT 1988

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

Notice of Compulsory Acquisition of Interest in Land for the Purposes of the Transport Administration Act 1988

Sydney Metro by its delegate declares, with the approval of Her Excellency the Governor, that the construction lease described in Schedule 1 below is acquired by compulsory process under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* as authorised by section 38C and clause 11 of Schedule 1 of the *Transport Administration Act 1988* for the purposes of the *Transport Administration Act 1988*.

JON LAMONTE
Chief Executive
Sydney Metro

SCHEDULE 1

A construction lease on the terms set out in Schedule 2 over the land situated at Canterbury in the Local Government Area of Canterbury-Bankstown, Parish of Petersham and County of Cumberland, comprising Lot 1 in Deposited Plan 818683.

(Sydney Metro Document Number: SM-20-001718)

SCHEDULE 2

Terms of Construction Lease

Lease terms

Lease between Canterbury-Bankstown Council (ABN 45 985 891 846) as landlord and Sydney Metro (ABN 12 354 063 515) as tenant

PARTIES:

- (1) Canterbury-Bankstown Council ABN 45 985 891 846 (**Landlord**); and
- (2) Sydney Metro ABN 12 354 063 515 (**Sydney Metro**).

RECITALS

- (A) Sydney Metro requires access to the Premises for the Permitted Use for the purposes of the Project.
- (B) Sydney Metro has compulsorily acquired a lease on the terms of this document from the Landlord in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this lease:

Acquisition Notice means the acquisition notice effecting the acquisition of a lease on the terms of this document published in the Government Gazette.

Approval means any licence, permit, consent, approval, determination, exemption, certificate, memorandum of understanding, notification or permission from any Authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be) to carry out the Works.

Authority means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality; or
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the Works.

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales or 27, 28, 29, 30 or 31 December.

Claim includes any claim, demand, action, or proceeding for payment of money (including damages):

- (a) under, arising out of, or in any way in connection with, this lease; and
- (b) otherwise at law including:
 - (i) under or for breach of statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or

(iii) for restitution, including restitution based on unjust enrichment.

Commencing Date means the date of publication of the Acquisition Notice in the Government Gazette.

Contractor means the contractor or contractors, as the case may be, engaged by Sydney Metro from time to time to carry out the Works.

Government Gazette means the official journal published by the NSW Government containing proclamations and notifications, including land acquisition notices.

GST Law means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Landlord means Canterbury-Bankstown Council ABN 45 985 891 846, the owner of the Premises.

Law means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) any approvals (including any condition or requirement under them) in connection with the carrying out of the Works.

Permitted Use means investigation, design, construction, testing, commissioning, completion, use and access for the purpose of carrying out the Project.

Planning Approval means:

- (a) the Project Planning Approval (Sydenham to Bankstown); and
- (b) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Project Planning Approval (Sydenham to Bankstown) from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence, approval or determination may be modified from time to time.

Premises means the land contained in folio identifier 1/818683.

Project means the Sydney Metro City & Southwest project.

Project Planning Approval (Sydenham to Bankstown) means the approval granted by the Minister for Planning under section 5.19 of the *Environmental Planning and Assessment Act 1979* (NSW) dated 12 December 2018, including all conditions to such approval and all documents incorporated by reference, as modified from time to time.

Sydney Metro means Sydney Metro ABN 12 354 063 515.

Sydney Metro's Agents means:

- (a) Sydney Metro's employees, officers, consultants, agents, contractors and invitees or any of them;
- (b) the Contractor; and

- (c) the Contractor's employees, officers, consultants, agents, contractors and invitees or any of them.

Sydney Trains means Sydney Trains, the body corporate constituted by section 36 of the Transport Administration Act.

TAHE means Transport Asset Holding Entity of New South Wales, a corporation constituted by section 4(1) of the Transport Administration Act.

Term means the term of the lease granted pursuant to this document, beginning on the Commencing Date and ending on the earlier of:

- (a) the Terminating Date; and
- (b) such earlier date as determined in accordance with clause 8.

Terminating Date means 23 December 2024.

Transport Administration Act means the *Transport Administration Act 1988* (NSW).

Transport for NSW means Transport for NSW, a NSW government agency constituted by section 3C of the Transport Administration Act.

WHS Act means the *Work Health and Safety Act 2011* (NSW).

WHS Legislation means legislation relating to health and safety at work including:

- (a) the WHS Act; and
- (b) the WHS Regulation.

WHS Regulation means the *Work Health and Safety Regulation 2017* (NSW).

Works means any works carried out on the Premises by Sydney Metro or its Contractors.

1.2 Interpretation

In this lease:

- (a) headings are for convenience only and do not affect interpretation; and
- (b) the following rules apply in interpreting this lease unless the context makes clear a rule is not intended to apply:
 - (i) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
 - (ii) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (iii) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (iv) a reference to a document (including this lease) is to that document as varied, novated, ratified or replaced from time to time;

- (v) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (vi) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (vii) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this lease, and a reference to this lease includes all schedules, exhibits, attachments and annexures to it;
- (viii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (ix) **includes** in any form is not a word of limitation;
- (x) a reference to **\$** or **dollar** is to Australian currency;
- (xi) terms defined in the GST Law have the same meaning in this lease unless the context otherwise requires; and
- (xii) if a party is a member of a GST group, references to GST which the party must pay and to input tax credits which the party is entitled to claim include GST which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled.

1.3 **Business Day**

If the day on or by which anything is to be done under this lease is not a Business Day, that thing must be done no later than the next Business Day.

1.4 **Excluding liability**

Any provision of this lease which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by law.

1.5 **Exclusion of implied covenants and powers**

The covenants and powers implied by section 84, section 84A, section 85, section 86, section 132, section 133, section 133A and section 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

2. **SYDNEY METRO'S OBLIGATIONS**

2.1 **Permitted Use**

Sydney Metro must use the Premises only for the Permitted Use.

2.2 **Utilities and services**

Sydney Metro must pay all costs for the supply of any services consumed by it on the Premises during the Term.

2.3 Handover obligations

- (a) On or before the end of the Term, Sydney Metro will at its cost:
 - (i) vacate the Premises and remove from the Premises all its property, scaffolding, loose materials, waste and rubbish;
 - (ii) subject to clause 2.3(d), return the Premises to the Landlord:
 - (A) in a condition commensurate with the condition it was in at the Commencing Date or as otherwise agreed by the parties; and
 - (B) in a condition that satisfies the requirements of any consent or approval granted under the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the Works that apply to the Premises; and
 - (iii) subject to clause 2.3(c) and clause 2.3(d), ensure that any damage caused to the Premises by the carrying out of the Works is made good or repaired.
- (b) If the parties have entered into a further lease for the Premises which commences immediately after the end of the Term, then clause 2.3 will apply at the end of the term of the further lease.
- (c) The obligation in clause 2.3(a)(iii) does not apply to the extent of any damage caused by or contributed to by:
 - (i) any act of the Landlord or its employees, agents or contractors, or any negligence for which the Landlord is responsible; or
 - (ii) the act or omission of a third party, unless that third party is one of Sydney Metro's Agents.
- (d) On or before the end of the Term, Sydney Metro will, at its cost:
 - (i) demolish the clubhouse building on the Premises; and
 - (ii) re-turf the part of the Premises on which the clubhouse building stood.

3. COMPLIANCE WITH LEGISLATIVE AND WHS REQUIREMENTS

3.1 Compliance with Laws

- (a) Sydney Metro must, and must procure that the Contractor will, at all times fully comply with all Laws in any way affecting or applicable to the Works.
- (b) Without limiting clause 3.1(a), Sydney Metro must, and must procure that the Contractor will, at all times fully comply with the conditions of the Planning Approval relating to:
 - (i) lighting and security of the Premises (as set out in Condition E54 of the Planning Approval); and
 - (ii) hours of work at the Premises (as set out in Conditions E19 to E26 of the Planning Approval).
- (c) Sydney Metro will:

- (i) establish, or procure the establishment of, a Traffic and Transport Liaison Group which will consult with the Relevant Roads Authority (as those terms are defined in the Planning Approval) in accordance with Condition E46 of the Planning Approval; and
 - (ii) prepare, or procure the preparation of, a Construction Traffic Management Plan (as that term is defined in the Planning Approval) for the Premises that complies with Condition E47 of the Planning Approval before any Works commence on the Premises.
- (d) Sydney Metro will prepare, or procure the preparation of, a Construction Noise and Vibration Impact Statement (as that term is defined in the Planning Approval) for the Premises that complies with Condition E27 of the Planning Approval before any construction noise and vibration impacts commence on the Premises.

3.2 **Principal Contractor**

- (a) In this clause 3.2, the terms "construction work", "construction project", "principal contractor" and "workplace" have the same meanings given to those terms under the WHS Legislation.
- (b) Without limiting Sydney Metro's obligations under any other provision of this lease:
 - (i) to the extent that the work under this lease or any contract or subcontract relating to the Works includes construction work, Sydney Metro:
 - (A) is, for the purpose of Chapter 6 of the WHS Regulation, a person conducting a business or undertaking that has commissioned the construction project(s) that form the whole or part of the work under this lease, the contract or subcontract;
 - (B) will engage the Contractor (as notified to the Landlord by Sydney Metro) in accordance with clause 293(2) of the WHS Regulation as the principal contractor for the work under this lease, the contract or subcontract; and
 - (C) will authorise the Contractor to have management and control of each workplace at which the work under this lease, the contract or subcontract is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
 - (ii) Sydney Metro will procure that the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation,

and the Contractor's engagement and authorisation as a principal contractor will continue:

 - (iii) subject to clause 3.2(b)(iv), until completion of the works (unless sooner revoked by Sydney Metro); and
 - (iv) in respect of any rectification of defects that is construction work, during the period any such work is carried out.

3.3 **Work Health and Safety**

Sydney Metro must carry out the Works:

- (a) safely and in a manner that does not put the health and safety of persons at risk; and
- (b) in a manner that protects property.

3.4 **Tree protection**

Sydney Metro must, during the Term:

- (a) not damage; and
- (b) take all reasonable measures to protect,

the trees marked "T26", "T60", "T61" and "T62" in Annexure A (*Arboricultural Implications Plan*).

4. **QUIET ENJOYMENT AND RIGHTS OF INSPECTION**

Subject to Sydney Metro complying with its obligations under this lease, Sydney Metro may occupy the Premises during the Term without interference from the Landlord.

5. **RISK AND INDEMNITY**

- (a) Sydney Metro enters, occupies, uses and keeps the Premises, and Sydney Metro's Agents are permitted to access, occupy, use and keep the Premises, at the risk of Sydney Metro.
- (b) Sydney Metro must indemnify the Landlord against:
 - (i) the loss, destruction or damage of any of the Landlord's real or personal property; or
 - (ii) any Claim against the Landlord or liability the Landlord may have to third parties in respect of or arising out of or in connection with:
 - (A) any illness, personal injury to, or death of, any person; or
 - (B) the loss, destruction or damage of any real or personal property,to the extent caused by, arising out of, or in any way in connection with, the construction of the Works or any failure by Sydney Metro to comply with its obligations under this lease, except to the extent caused or contributed to by the act or omission of the Landlord or the Landlord's employees, agents, contractors or officers.
- (c) Sydney Metro has no liability, nor will the Landlord be entitled to make any Claim against Sydney Metro or Sydney Metro's Agents, in respect of:
 - (i) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect); or
 - (ii) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent incurred or sustained by the Landlord as a result of any act or omission of Sydney Metro or Sydney Metro's Agents (whether negligent or otherwise).

6. **GST**

6.1 **Payment of GST**

If GST is or will be payable on a supply made under or in connection with this lease, to the extent that the consideration otherwise provided for that supply under this lease is not stated to include an amount in respect of GST on the supply:

- (a) the consideration otherwise provided for that supply under this lease is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within seven days of receiving a written demand from the supplier.

6.2 **Tax invoice/adjustment note**

The right of the supplier to recover any amount in respect of GST under this lease on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient within the time period within which the recipient is otherwise entitled to the relevant input tax credits.

6.3 **Change in the GST Law**

If the GST Law changes (including without limitation as a result of a change in the GST rate) after the date of this lease, any consideration that expressly includes GST must be adjusted to reflect the change in the GST Law.

6.4 **Indemnities and reimbursement**

- (a) Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this lease must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.
- (b) The parties each indemnify the other against all GST, and losses, liabilities and expenses (including legal liabilities on a full indemnity basis) that the other incurs (directly or indirectly) as a result of a breach of a warranty or other provision in this lease relating to GST.

7. **FURTHER LEASE**

7.1 **Parties to negotiate**

If Sydney Metro gives the Landlord a notice before the Terminating Date that it requires a further lease over the Premises for the purposes of the Project, the parties will negotiate in good faith to agree the terms of that further lease.

7.2 **Holding over**

If the Landlord has not granted Sydney Metro a new lease of the Premises as contemplated under clause 7.1 and Sydney Metro continues to occupy the Premises after the Terminating

Date with the Landlord's written consent, Sydney Metro occupies the Premises under a monthly lease that:

- (a) either party may terminate on 1 months' notice ending on any day by giving notice in writing to the other; and
- (b) is on the same terms as this lease (with any changes appropriate to a monthly lease including the need for Sydney Metro to pay rent to the Landlord at the rate of \$29,000 (exclusive of GST) per month).

8. **TERMINATION**

- (a) Sydney Metro may terminate this lease at any time during the Term by giving the Landlord one month's prior written notice specifying the date that the lease will come to an end (the **Surrender Date**).
- (b) With effect from but not including the Surrender Date:
 - (i) Sydney Metro, as beneficial owner, surrenders Sydney Metro's interest in this lease and the Premises to the Landlord; and
 - (ii) the Landlord accepts that surrender.
- (c) On or before the Surrender Date, Sydney Metro must leave the Premises and return the Premises to the Landlord in the condition required by clause 2.3.
- (d) With effect from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date.

9. **GENERAL**

9.1 **Governing law**

This lease is governed by and must be construed according to the law applying in New South Wales.

9.2 **Sydney Metro and the Landlord as public authorities**

The Landlord and Sydney Metro acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of either of Sydney Metro or the Landlord (if applicable) to exercise any of its functions and powers pursuant to any legislation.

10. **TRANSFER OF FUNCTIONS**

- (a) The parties acknowledge that:
 - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this lease to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport

Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and

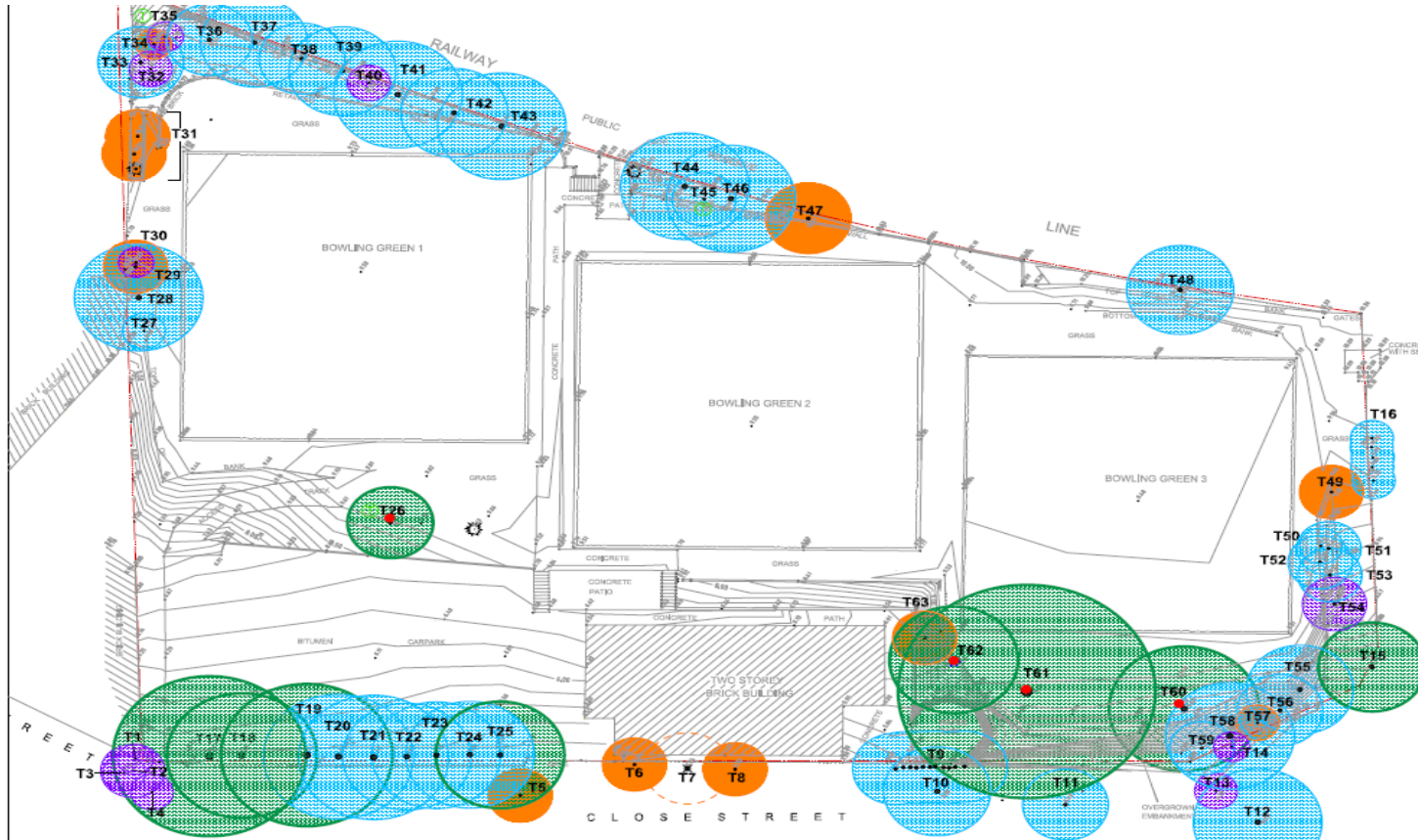
- (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales Government policy or directions) acquire, or dispose of, any property or assets.
- (b) The Landlord acknowledges and agrees that it must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this lease, or any replacement agreement or agreements for this lease to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Landlord will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by clause 10.

For the purposes of the above:

- (a) 'another entity' means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation; and
- (b) Public Transport Agency means Transport for NSW (and each of its divisions), TAHE, Sydney Metro, Sydney Trains and NSW Trains.

ANNEXURE A

Arboricultural Implications Plan



- Notes:**
1. This Arboricultural Implications Plan is equivalent to the Preliminary Tree Assessment Plan identified in Table 1, AS4970-2009 and has been developed to assist in locating the construction footprint to minimise tree loss. Refer to Masterplan proposal by Olsson & Associates Architects.
 2. As a guide for the development footprint, encroachment into TPZs by works associated with demolition and/or construction activities such as excavation or compacted fill should be restricted to less than 25% of TPZ area to enable tree retention. For encroachments greater than 25%, elevated or lightweight construction methods should be developed with arboricultural input and guidance.
 3. In relation to tree retention, Retention Value A trees should be given greatest priority to maintain existing landscape character and amenity. Retention Value B and C trees are of decreasing value. Some Retention Value D trees have been marked for removal irrespective of the proposed layout being assessed as dead, dying or dangerous.
 4. The extent of TPZ shown on this plan does not reflect any confinement of roots by existing structures, buildings, walls, topography, etc.
 5. This Arboricultural Implications Plan does not address impacts associated with bushfire planning, flora and fauna assessments and/or other relevant planning controls and policies.
 6. Further arboricultural assessment of finalised development plans is required to prepare an Arboricultural Impact Assessment and Tree Protection Plan to accompany Development Application submission.
 7. Verge trees 1 – 16 require additional consideration as they are Council owned (public) street trees.
 8. The species of T26 - *Dracaena draco* (Dragon Tree) has good transplant tolerance, and as the tree is a rare/unusual specimen, it is worthy of consideration for transplant. A Transplant Method Statement should be prepared.

TREE WISE MEN AUSTRALIA PTY LTD

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ARBORICULTURAL CONSULTANCY

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LEGEND

Site boundary: ———

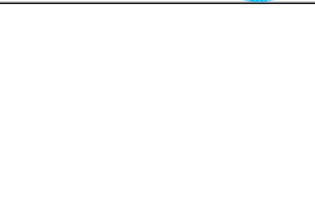
Tree number with trunk as plotted on Site Survey: T34

Retention Index:

- Retention Value A TPZ: (Green circle)
- Retention Value B TPZ: (Blue circle)
- Retention Value C TPZ: (Purple circle)
- Retention Value D TPZ: (Orange circle)

Transplantable tree/palm: (Green circle with 'T')

Dead, dying or dangerous trees or noxious weeds to be removed irrespective of proposed development: (Circle with 'X')



TITLE: @ARBORICULTURAL IMPLICATIONS PLAN

CLIENT: OLSSON & ASSOCIATES ARCHITECTS

PROJECT: 15 CLOSE STREET CANTERBURY

DRAWING NO: 2326AIP SH1 1 OF 1

DRAWN BY: JB

BASED ON: PLAN SHOWING DETAIL SURVEY OF LOT 1 IN DP818683, BOWDENS GROUP, dated 10.04.14

DATE: 09/05/2014

REV: 1:500@A3

SCALE: 1:500@A3