

SUPPLEMENTARY AGENDA

Notice is hereby given that an Ordinary Meeting of Council will be held at the Civic Centre, Dee Why on

Tuesday 26 April 2016

Beginning at 6:00pm for the purpose of considering and determining matters included in this agenda.



Rik Hart
General Manager

Issued: 21/04/2016

**Supplementary Agenda for an Ordinary Meeting of Council
to be held on Tuesday 26 April 2016
at the Civic Centre, Dee Why
Commencing at 6:00pm**

7.0	COMMUNITY DIVISION REPORTS	
7.2	Agreement Terms for the Establishment of Car Parking for the Northern Beaches Bus Rapid Transport	1

ITEM 7.2	AGREEMENT TERMS FOR THE ESTABLISHMENT OF CAR PARKING FOR THE NORTHERN BEACHES BUS RAPID TRANSPORT
REPORTING MANAGER	GROUP MANAGER BUILDINGS, PROPERTY AND SPATIAL INFORMATION
TRIM FILE REF	2016/068951
ATTACHMENTS	1 Heads of Agreement TfNSW Commuter Car Spaces PCYC Car Park Building - 20 April 16 - Dee Why

EXECUTIVE SUMMARY

PURPOSE

To consider the proposal by Transport for NSW to establish a commuter car park for the proposed B-Line (Bus Rapid Transport) on Council's land in Dee Why.

SUMMARY

Transport for NSW (TfNSW) has proposed to lease the bottom level of the new Dee Why car park (known as the PCYC car park), totalling 120 car parks, for 50 years for commuter car parking for the new B Line Bus Rapid Transport.

The proposal is documented in the attached Heads of Agreement that has been worked on collaboratively by both parties, and sees TfNSW contributing to the cost of constructing these car parks in exchange for the lease, as well as paying for the direct ongoing operational and maintenance costs.

This proposal aligns with the proposed use of the PCYC car park and is recommended to proceed.

FINANCIAL IMPACT

The impact to Council's budget will be positive due to the capital contribution proposed by TfNSW for the long term lease of the car park, and the ongoing income for maintenance and operational expenses relating to the leased area.

POLICY IMPACT

Nil

RECOMMENDATION OF DEPUTY GENERAL MANAGER COMMUNITY

That Council:

- A. Endorse the Heads of Agreement for B Line Bus Rapid Transport commuter car parking in the new Dee Why car park under construction.
 - B. Delegate to the General Manager the authority to execute all necessary documentation to give effect to this resolution.
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REPORT

BACKGROUND

Transport for NSW (TfNSW) is delivering the new B Line Bus Rapid Transport (B Line) for the NSW Government, a section of which will be constructed, operated and maintained within the Warringah Council LGA.

As part of this project TfNSW needs to ensure the provision of off-road infrastructure to Northern Beaches public transport commuters who will use bus services which travel along the B Line route, including car parking spaces specifically for B Line commuters in suitable locations.

As Dee Why is a key commuter pick up location for the B Line, TfNSW has been working with Warringah Council to identify suitable car parking locations that can be allocated as part of this project.

After looking at many options including developer sites, the Warringah Council Library car park and other options, it has been proposed that TfNSW lease for 50 years an entire level of car parking (120 car parking spaces in total) in the new Dee Why car park (known as the PCYC car park) currently being constructed at the corner of Kingsway and Civic Drive, Dee Why. This car park is a significant way through its construction and is expected to be completed within the 2016 calendar year.

As part of the Plan of Management process for the PCYC car park, it was determined that commuter car parking is one of the desired community uses for this car park, and as such the inclusion of a dedicated commuter car park is in line with the Plan of Management intent.

Additionally, as there is a need for disabled access (DDA) car parks, it is also proposed that 5 car parking spaces be allocated in the Warringah Council Library car park at the corner of Pittwater Road & St. David Avenue, Dee Why in the closest practical location possible to the bus stop.

CONSULTATION

TfNSW have a community consultation approach in place for the development of the B Line service to the Northern Beaches.

FINANCIAL IMPACT

It has been proposed that TfNSW reimburse Council for the capital cost of constructing the 120 car parks, as well as pay an annual fee for any operations and maintenance costs for the B Line proportion of the car park.

The impact to Council's budget will be positive due to the capital contribution proposed by TfNSW for the long term lease of the car park. At this stage, the capital contribution for the 50 year lease is estimated to be order of \$4.18m. The timing of these contributions will be finalised in the completion of the leased document.

POLICY IMPACT

Nil

CONCLUSION

This proposal, as documented in the attached Heads of Agreement, has been worked on collaboratively by both parties for a number of months and sees TfNSW contributing to the cost of constructing these car parking spaces in exchange for the lease, as well as paying for the direct ongoing operational and maintenance costs.

The location of the PCYC car park is suitable for commuters catching the B Line in Dee Why, aligns with the proposed use of the PCYC car park, will deliver a benefit to users of the B Line system, and is recommended to proceed.



Deedsite: 4963432_3

HEADS OF AGREEMENT

Parties:



Transport for NSW ABN 18 804 239 602 of Level 5, Tower A Zenith Centre 821 Pacific Highway NSW 2067 ("TfNSW")

And

Warringah Council ABN 31 565 068 406 of 725 Pittwater Road, Dee Why NSW 2099 ("Council")

Subject Matter: Northern Beaches B Line Program ("B Line")
Commuter Car Spaces at the PCYC Car Park Building, and
Warringah Council Library Car Park.

Term	Particulars
Background:	<p>A. TfNSW is a NSW Government agency established pursuant to the Transport Administration Act 1988.</p> <p>B. TfNSW is delivering the B Line for the NSW Government.</p> <p>C. The B Line will be partly constructed, operated and maintained within the local government area administered by Council.</p> <p>D. A particular focus of TfNSW is to ensure the provision of off - road Infrastructure to Northern Beaches public transport commuters who will use bus services which travel along the B Line route.</p> <p>E. Part of such off-road infrastructure comprises car parking spaces to be allocated to B Line commuters and provision of attendant transport systems at or in the vicinity of such public car parks.</p> <p>F. Council owns two (2) parcels of land relevant to this agreement in Dee-Why being:</p> <ul style="list-style-type: none"> • the "PCYC Car Park Building Site" located at the corner of Kingsway and Civic Drive, Dee Why, and • the "Warringah Council Library Car Park Site" located at the corner of Pittwater Road & St. David Avenue, Dee Why. <p>G. Council is currently constructing a multistorey car park on the PCYC Car Park Building Site (the "PCYC Car Park Building") and operates the "Warringah Council Library Car Park".</p> <p>H. Council has agreed to Lease TfNSW 120 car spaces on Level 3 of the PCYC Car Park Building, and grant TfNSW the right to use five</p>

 Transport for NSW	
Term	Particulars
	(5) DDA car spaces located at the Warringah Council Library Car Park.
B Line Car Spaces:	<p>B Line Car Spaces to be Leased to TfNSW by Council:</p> <ul style="list-style-type: none"> • An allocation of 120 car spaces on Level 3 of the PCYC Car Park Building, and • The right to use five (5) DDA car spaces in the Warringah Council Library Car Park. <p>Note: Should the Warringah Council Library Car Park Site undergo redevelopment, Council will have the right to relocate the five (5) DDA car spaces to another location, but subject to TfNSW's prior agreement (which shall not be unreasonably withheld).</p> <p>Should Council need to relocate the five (5) DDA car spaces, Council shall be cognisant of the new location in respect of their close vicinity to the B-Line bus stops.</p>
Land:	<p>Land on which the B Line Car Spaces are situated:</p> <ul style="list-style-type: none"> • PCYC Car Park Building Site: Lot 1 in Deposited Plan 1193308. A map of the Land is provided at Attachment A. • Warringah Council Library Car Park Site: Lot 100 in Deposited Plan 1041823. A map of the Land is provided at Attachment B.
Land Access & Occupation Arrangements:	<p>The provisions of the Land Acquisition (Just Terms Compensation) Act 1991 allow occupation pursuant to Section 30 ("Compulsory acquisition with consent of owners"). TfNSW will acquire a fifty (50) year Lease over Level 3 in the PCYC Car Park Building ("Lease Area") along with the right to use (Licence) five (5) DDA car spaces located in the Warringah Council Library Car Park Site.</p> <p>The proposed Lease Area is shown as level 3 on the drawings provided at Attachment C.</p> <p>The proposed Licenced Area (indicative) is shown on the map provided at Attachment D.</p>
Lease Term:	<p>Fifty (50) years.</p> <p>Subject to Council completing the construction of the PCYC Car Park Building, the Lease Term will commence on the day a Notice of Compulsory Acquisition is published by TfNSW in the New South Government Gazette declaring that the Lease is acquired by compulsory process pursuant to the Land Acquisition (Just Terms Compensation) Act 1991.</p>
Options:	Not Applicable.
Permitted Use:	Public Car Park
Compensation PCYC Car Park Building:	<p>1. TfNSW will pay Council the "TfNSW Capital Contribution" based on a pro-rata basis for each allocated B Line Car Space. The</p>

Term	Particulars
	<p>TfNSW Capital Contribution covers the cost incurred by Council for the design, authority costs, project management and construction of the PCYC Car Park Building (on a pro-rata basis per B Line Car Space). The TfNSW Capital Contribution will be determined using an "open book" approach. It is agreed that the Parties will engage a qualified independent Quantity Surveyor (with at least 10 years active work experience) to determine the pro rata TfNSW Capital Contribution. The cost of engaging the qualified independent Quantity Surveyor will be borne by both Parties equally.</p> <p>Payment Timing</p> <ul style="list-style-type: none"> • payment of the contribution to the construction costs by will be in two (2) payments: • (a) 10% of the value of the capital contribution on execution of the agreement (exchange), • (b) 90% of the value of the capital contribution upon TfNSW occupancy, or within 3 months of notification of building completion by Council • both payment will be made within 30 days of receipt of Council's invoice <p>2. Rent is not payable for the Lease Term.</p>
<p>Compensation Warringah Council Library Car Park:</p>	<ul style="list-style-type: none"> • Rent is not payable for the Lease Term. • TfNSW will pay for the initial line marking and way finding signage in relation to the five (5) DDA car spaces.
<p>Ownership, Operation & Maintenance:</p>	<ol style="list-style-type: none"> 1. Council will be responsible for the Ownership, Operation and Maintenance ("OO&M") of the PCYC Car Park Building and the Warringah Council Library Car Park. 2. TfNSW will be responsible for its share of the "OO&M Costs" billed by Council on a pro-rata basis (per B Line Car Space) that are incurred by or benefit the Lease Area and Licenced Area. 3. TfNSW will reimburse Council the OO&M Costs (based on actual costs) on an annual basis (in arrears), within 30 days of receipt of Council's valid tax invoice and supporting documentation. <p>OO&M Costs include, but are not limited to:</p> <ol style="list-style-type: none"> 4. The cost of electricity supply and any other Utility Charges as separately metered or apportioned by Council on a pro-rata basis (per B Line Car Space) to the Lease Area and Licenced Area.

Term	Particulars
	<p>5. Statutory charges applicable to the Lease Area and Licenced Area on a pro-rata basis (per B Line Car Space).</p> <p>6. The cost of insurances for the PCYC Car Park Building and the Warringah Council Library Car Park apportioned by Council on a pro-rata basis (per B Line Car Space) to the Lease Area and Licenced Area.</p> <p>Note: Utility Charges generally cover charges for:</p> <ul style="list-style-type: none"> a) water; b) electricity; c) telecommunications; and d) gas.
Insurance:	<p>Council shall take out insurance including TfNSW's interests, with a reputable insurance company, for:</p> <ul style="list-style-type: none"> • public liability insurance of at least \$20 million for any one occurrence and in the aggregate or such other amount as required by the Council from time to time, acting reasonably; and • damage to or loss of the PCYC Car Park Building and the Warringah Council Library Car Park for its full replacement value.
TfNSW Rights & Obligations:	<ol style="list-style-type: none"> 1. TfNSW may at any time during the Lease Term install "TfNSW Systems" which may include electronic screens containing real time timetable information, opal card readers, way finding fixtures and electronically activated boom gates within the B Line section of the PCYC Car Park Building; 2. Should TfNSW install the TfNSW Systems, the cost of the operation and maintenance of the TfNSW Systems shall be at TfNSW cost; 3. Construction of an access ramp for the five (5) DDA car spaces in the Warringah Council Library Car Park; 4. Signage which designates that the five (5) DDA car spaces in the Warringah Council Library Car Park are for commuters who utilise the B Line, and 5. Provision to Council of B Line branding graphics for incorporation into Council signage.
Council Rights & Obligations:	<ol style="list-style-type: none"> 1. Construction of the PCYC Car Park Building; 2. Operate and maintain both the PCYC Car Park Building and the Warringah Council Library Car Park to a commercially acceptable

Term	Particulars
	<p>standard for the duration of the Lease Term;</p> <p>3. Carry out capital works improvements to modernise or replace components of the PCYC Car Park Building and the Warringah Council Library Car Park that require modernisation or replacement during the Lease Term;</p> <p>4. Warringah Council Library Car Park: maintain the five (5) DDA car spaces for the duration of the Lease Term (and Licence), including the maintenance of the accessible access ramp, line marking and way finding signage;</p> <p>5. In the event that Council proceeds with the development of the new town centre, it must replace the five (5) DDA car spaces for the remainder of the Lease Term (and Licence), and</p> <p>6. Incorporate the B Line branding way finding within the PCYC Car Park Building and the Warringah Council Library Car Park.</p>
Security, safety & emergency:	<p>Council must institute and maintain security, safety and emergency measures and procedures for the PCYC Car Park Building Site and the Warringah Council Library Car Park Site.</p> <p>Council must comply with any Law about fire safety or fire prevention for the PCYC Car Park Building, including obtaining an annual fire safety statement for the building or other certificate as a car park building owner would be required to obtain in keeping with legislative compliance requirements.</p>
Assignment/Transfer:	<p>TfNSW may Assign, Sublease or Transfer its Lease to another State or Local Government Agency) during the Lease Term.</p> <p>Note: The Council acknowledges that TfNSW may vest the assets, liabilities and obligations that pertain to this Agreement to another State Government Agency.</p>
Termination of access and occupation to B Line Car Spaces:	<p>In the event that:</p> <p>a) TfNSW commits a material breach of the terms of the arrangement; and</p> <p>b) Council has provided 60 Business Day's prior written notice to TfNSW requiring the breach be rectified, with such notice advising that failure to rectify will be followed by Council re-entering the B Line Car Spaces and taking possession thereof; and</p> <p>c) such breach is not remedied by TfNSW within the 60 Business Day period following its receipt of written notice to TfNSW detailing the breach, or such extended period of notice as is reasonable in the circumstances; then</p> <p>d) Council may re-enter the B Line Car Spaces and take possession of</p>

Term	Particulars
	the B Line Car Spaces whereupon this arrangement will terminate.
Release & Indemnity PCYC Car Park Building Site (Construction phase):	<p>Council as the party responsible for constructing the PCYC Car Park Building and its authorised persons will conduct any construction works or ancillary works and to the extent permitted by law releases the other party from all claims arising out of any damage to or loss of property and injury to or death of persons occurring in connection with or as a result of those PCYC Car Park Building construction works or ancillary activities.</p> <p>The constructing party will indemnify TfNSW and permitted B Line commuter occupants against all claims arising out of any damage to or loss of property and injury to or death of persons occurring in connection with or as a result of any PCYC Car Park Building construction works or related activities of Council as the constructing party and its authorised contractor.</p> <p>The risks, releases and indemnities will not apply to the extent that the damage to or loss of property or injury to or death of persons arose as a consequence of the defaults, negligence or actions of TfNSW (as the non - constructing party) or its agents, contractors or advisers.</p>
Release & Indemnity by TfNSW (Lease Term):	<p>TfNSW agrees to allow B Line commuters to occupy and use the B Line car spaces at its own risk and releases and indemnifies Council in respect of injury or death to persons or any damage to or loss of any property (collectively "Loss") of or in the possession of TfNSW or B Line commuters (who use/occupy the B Line Car Spaces) or any part claiming through TfNSW and contained in or about the B Line Car Spaces including but not limited to Loss:</p> <p>a) which is due to:</p> <ul style="list-style-type: none"> • water, heat, fire, electricity, vermin, explosion, tempest or bursting pipes; • escape of harmful agents including the overflow, leakage or escape of water, fire, gas or electricity or any other agent from any source whatsoever in or from the B Line Car Spaces; or • the operation of fire equipment; or <p>b) for any loss of profits by TfNSW or B Line commuters (it has permitted to occupy the B Line Car Spaces) that result from those items above</p> <p>except to the extent that such Loss is caused or contributed by deliberate or negligent acts or omissions of Council or its agents or contractors and except to the extent that such Loss occurs in conjunction with a part of the PCYC Car Park Building or the Warringah Council Library Car Park that does not form part of the B Line Car Spaces.</p>
TfNSW Representative:	<p>Mr. Lee Price B Line Project Director: Ph: 02 9422 7397 Email: lee.price@transport.nsw.gov.au</p>
Council	Mr. Rik Hart



Transport
for NSW



WARRINGAH
COUNCIL

Term	Particulars
Representative:	General Manager, Warringah Council Ph: 9942 2327 Email: Rik.Hart@warringah.nsw.gov.au
Instructions to Lawyers/Legal Fees:	The parties confirm that this Heads of Agreement will form the basis of instructions to TfNSW's lawyers to draft a Deed of Agreement, Settlement and Release ("Deed") and the Lease (including Licence) to cover the subject matter set out herein. Each Party will bear its own legal costs for drafting and negotiating the Deed and the Lease (including Licence).

Name: Rik Hart
Position: General Manager
For and on behalf of
Warringah Council

Date:

Name: James White
Position: Technical Director
Project Property Services
For and on behalf of
Transport for NSW

Date:

ATTACHMENT A

PCYC Car Park Building Site



ATTACHMENT B

Warringah Council Library Car Park Site

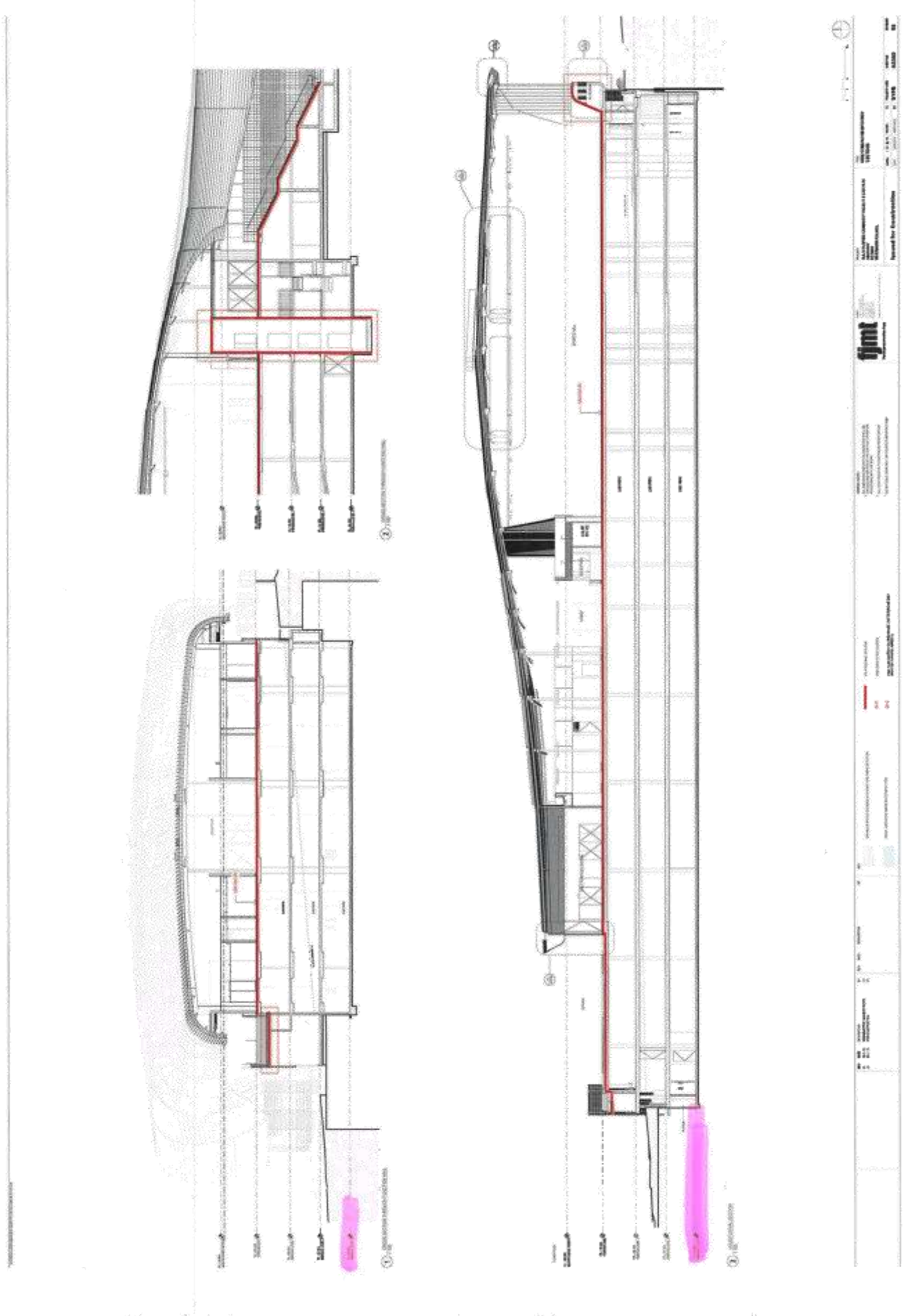


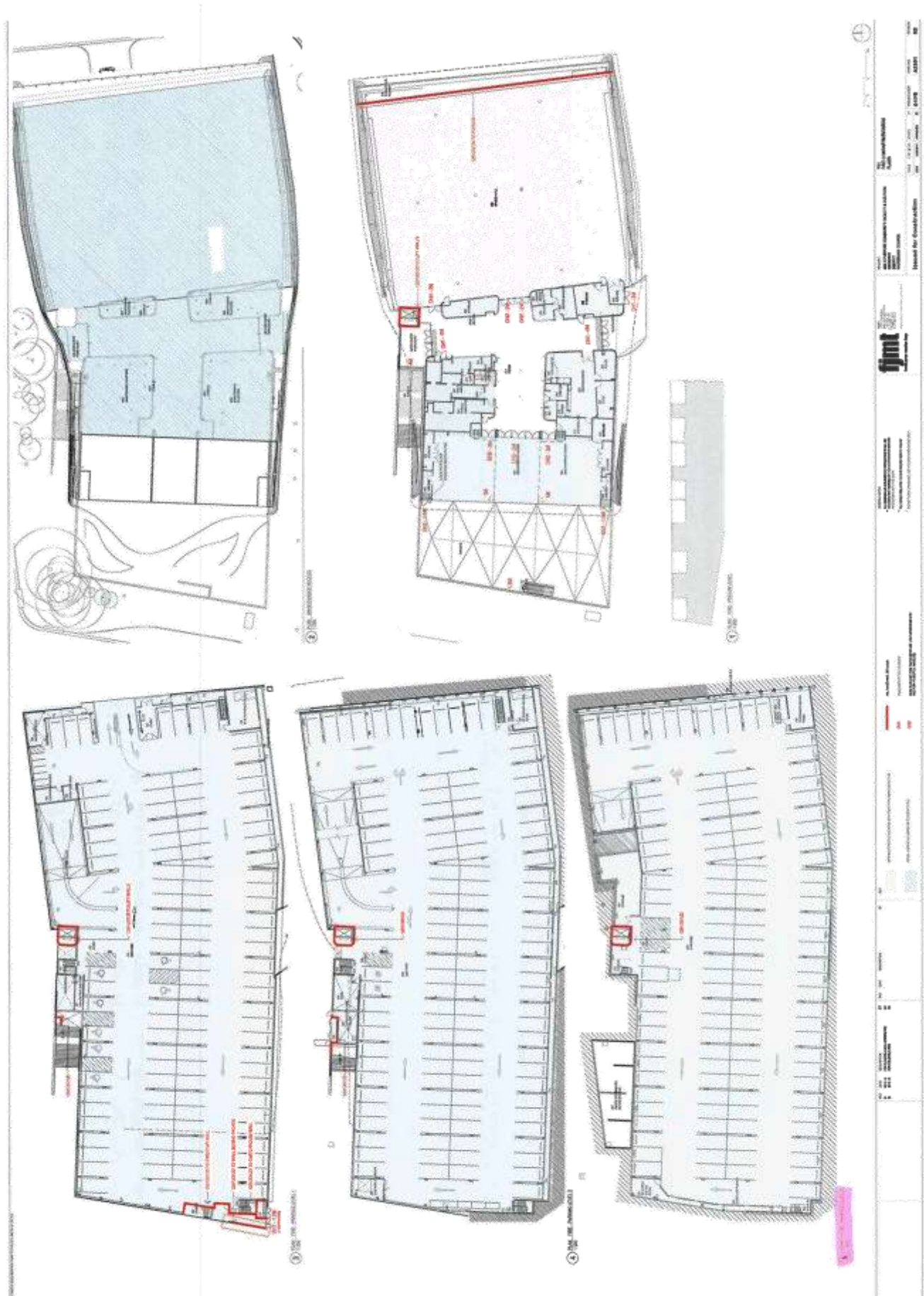


ATTACHMENT C

LEASE AREA –

LABELLED (PARKING LEVEL 3)







ATTACHMENT D
LICENCED AREA (INDICATIVE)



