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**Timber Town Estate
Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Port Macquarie Hastings Council
Tebran Pty Limited**

Dated:
16 February 2010

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Timber Town Estate Planning Agreement

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Timber Town Estate Planning Agreement

Summary Sheet

Council:

Name: Port Macquarie-Hastings Council

Address: Corner Lord and Burrawan Streets, Port Macquarie, New South Wales,
2444

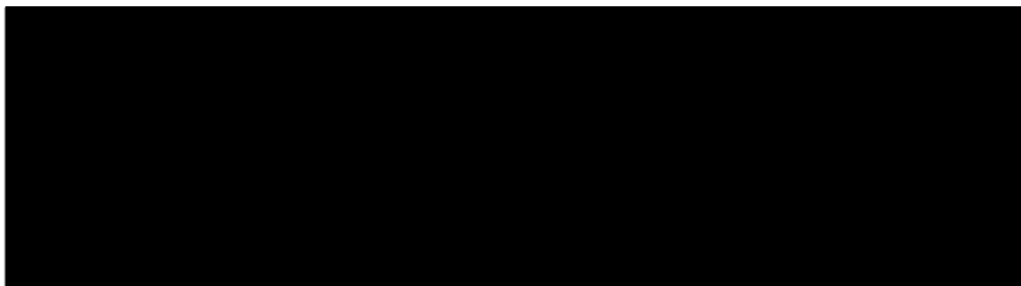
Telephone: (02) 6581 8111

Facsimile: (02) 6581 8123

Email: council@pmhc.nsw.gov.au

Representative: Tim Molloy

Developer:



Representative: Michael Mowle, Hopkins Consultants Pty Limited, PO Box 1556,
Port Macquarie NSW 2444: Telephone (02) 6583 6722

Land

See clause 1.1.

Development

See clause 1.1.

Development Contributions



Monetary contributions, the carrying out of Work and the dedication of land free of cost. See clauses 7-9, 12-14, 19, 25 and 26.

Application of s94, s94A and s94EF of the Act

Section 94 excluded in part. Section 94A and 94EF not excluded. See clause 5.

Security

Yes. See clauses 23 and 28.

Registration

The Agreement is not to be registered. See clause 30.

Restriction on dealings

Yes. See clause 31.

Dispute Resolution

Expert determination and mediation. See clauses 32 and 33.



Timber Town Estate Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Port Macquarie Hastings Council ABN 11 236 901 601 of Corner Lord and
Burrawan Streets, Port Macquarie, New South Wales, 2444 (**Council**)

and



Background

- A The Developer is the owner of the Land.
- B The Developer has lodged with the Council a Development Application relating to the Development.
- C The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.
- D Until the Planning Agreement operates, this Agreement constitutes the offer by the Developer to make Development Contributions in connection with the Development on the terms and conditions set out in this Agreement.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

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

Adjoining Owner means the owner of Lot 2 DP 1036844.

Adjoining Road means the road adjoining the Southern Section as shown on sheet 1 of the Map.

Administration Levy Contribution means a monetary Development Contribution calculated as follows:

$$ALC = CR \times SC$$

Where:





ALC is the Administration Levy Contribution,

CR is the contribution rate applicable from time to time under *Hastings s94 Administration Levy Contributions Plan 2005* or any Contributions Plan that replaces that document, and

SC is the sum of the amounts of the Local Park Contribution and the Local Roads Contribution, not discounted in accordance with clause 8.

Agreement includes any schedules, annexures and appendices to this Agreement.

Alternative Funding means funding obtained by the Council for the ongoing management of Open Space Land dedicated to the Council under this Agreement that does not rely on Development Contributions obtained by the Council under Division 6 of Part 4 of the Act (including under this Agreement).

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank Limited,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions satisfactory to the Council.

Collector Road Link means the collector road shown on sheet 1 of the Map

Collector Road Link Land means the land on which the Collector Road Link is to be located.

Construction Certificate has the same meaning as in the Act.

Contributions Plan has the same meaning as in the Act.

Defects Liability Period, in relation to a Work, means the period commencing on the date on which the work is taken to have been completed under this Agreement and ending 12 months after that date.

Detailed Management Plan means a plan relating to the establishment and maintenance of the Open Space Land in accordance with the provisions of the Development Consent for the Development.

Development means development for residential purposes on the Land.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards, a public purpose.

Development Servicing Plan – Water Supply means the document of the Council entitled *Port Macquarie-Hastings Water Supply Development*



Servicing Plans for the Hastings District, Comboyne, Telegraph Point & Long Flat Water Supply Schemes 2006, a copy of which is available from the Council, or any document that replaces that document.

Enlarged Water Supply Trunk Main means the Water Supply Trunk Main, but with a larger diameter as required by Council, as shown on sheet 5 of the Map.

Establishment Obligation means the establishment of Open Space Land in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent:
 - (i) any Detailed Management Plan approved by the Council, and
 - (ii) otherwise to the satisfaction of the Council.

Establishment Period means the period commencing when the Development is commenced (within the meaning of the Act) or such other period or periods commencing at such other time or times as the Parties agree and ending when the Establishment Obligation is completed to the satisfaction of the Council.

Equivalent Tenement (ET) has the same meaning as in *Port Macquarie Hastings Council's Development Contribution Assessment Policy 2007*, a copy of which is available from the Council, or any document that relevantly replaces that document.

Footpath and Cycleway means a concrete footpath and cycleway to a design and specification approved by Council in the location shown on sheet 2 of the Map.

Footpath and Cycleway Land means the land on which the Footpath and Cycleway is constructed.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means Lot 21 DP 245751, Part Lot 328 and Lots 329 and 330 DP 1120104, and Lot 319 DP 1065651.

Local Park Contribution means a monetary Development Contribution per ET created in the Development, being the greater of:

- (a) \$4,404.00 per ET, or
- (b) the amount of the monetary open space s94 contribution authorised by the document of the Council entitled *Port Macquarie Hastings Open Space Development Contributions Plan 2004* in force on the date this Agreement is entered into or that amount as amended by the first relevant amendment to or substitution of that Plan that takes effect after that date,

indexed in accordance with the *Port Macquarie Hastings Open Space Development Contributions Plan 2004*

Local Park Contribution Reduction means \$127,588.00.

Local Park Land means the land identified as such on sheet 1 of the Map.

Local Roads Contribution means a monetary Development Contribution per ET created in the Development, being the greater of:

- (a) \$5,604.00 per ET, or
- (b) the amount of the monetary roads s94 contribution authorised by the document of the Council entitled *Port Macquarie-Hastings Major Roads Contributions Plan 2004* in force on the date this Agreement is entered into or that amount as amended by the first relevant amendment to or substitution of that Plan that takes effect after that date,

indexed in accordance with *Port Macquarie-Hastings Major Roads Contributions Plan 2004*.

Local Roads Contribution Reduction means \$127,588.00.

Management Contribution means a monetary contribution of \$26,746.00, indexed quarterly from 1 July 2009 until the time of payment in accordance with the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

Management Obligation means the management of such of the Open Space Land as is shown in sheet 4 of the Map in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent:
 - (i) any Detailed Management Plan approved by the Council, and
 - (ii) otherwise to the satisfaction of the Council.

Management Period means the period of three years commencing immediately at the end of the Establishment Period, or such other period or periods commencing at such other time or times as the Parties agree.

Management Work means Work forming part of the Establishment Obligation or the Management Obligation.

Map means the map contained in Appendix 1.

Northern Section means the part of the Footpath and Cycleway shown as such on sheet 2 of the Map.

Occupation Certificate has the same meaning as in the Act.

Open Space Land means any part of the Land as identified on Sheet 3 of the Map or any other part of the Land agreed between the Parties to be Open Space Land for the purposes of this Agreement before such land is required to be dedicated to the Council under this Agreement.

OSL Security means the security to be provided in relation to the Open Space Land under clause 23.1 in a form determined in accordance with clause 23.2 and clause 28.

Part 4A Certificate means a compliance certificate, construction certificate, occupation certificate or subdivision certificate within the meaning of the Act.

Party means a Party to this agreement, including their successors and assigns.

Planning Agreement means the provisions of this Agreement under which the Developer is required to make Development Contributions in connection



with the carrying out of the Development, and includes any provisions that are incidental or supplementary to those provisions.

Provision means the Developer's provision under this Agreement.

Public Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

Public Purpose means any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in s93F(2) of the Act.

Rectification Notice means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.

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

Secondary Road Link means the secondary road shown on sheet 1 of the Map.

Secondary Road Link Land means the land on which the Secondary Road Link is to be located.

Southern Section means the part of the Footpath and Cycleway shown as such on sheet 2 of the Map.

Stage means a stage in the Development.

Subdivision Certificate has the same meaning as in the Act.

Water Supply Contribution means a monetary Development Contribution payable under the Development Servicing Plan – Water Supply.

Water Supply Contribution Reduction means the difference between the cost of constructing the Enlarged Water Supply Trunk Main and the cost of constructing the Water Supply Trunk Main, as agreed between the parties.

Water Supply Trunk Main means the trunk mains shown on sheet 6 of the Map.

Water Supply Work has the same meaning as in the *Water Management Act 2000*.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Developer under this Agreement.

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - 1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.



- 1.2.5 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.6 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.12 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.13 A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- 1.2.14 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.15 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Application of this Agreement

- 2.1 This Agreement applies to the Development.

3 Status of this Agreement

- 3.1 The Developer irrevocably offers to enter into the Planning Agreement if Development Consent is granted to the Development.
- 3.2 However, the Planning Agreement operates only if Development Consent is granted to the carrying out of the Development subject to a condition requiring the Planning Agreement to be entered into or performed.
- 3.3 The Developer consents to a condition of the kind referred to in clause 3.2.
- 3.4 The provisions of this Agreement other than the Planning Agreement operate with full force and effect on and from the date this Agreement is entered into by all of the Parties.



Note: The provisions that operate on and from the date this Agreement is entered into include (but are not limited to) those relating to the sale of the Land or the assignment of a Party's interest under this Agreement. This note forms part of the agreement between the Parties.

- 3.5 This Agreement ceases to have effect if the Council refuses Development Consent to the Development and the first of one of the following circumstances applies:
- 3.5.1 the period in which the Developer may bring an appeal to the Land and Environment Court under the Act in relation to the Council's refusal has expired and the Developer has not brought such an appeal,
 - 3.5.2 the Land and Environment Court, on appeal, has upheld the Council's refusal to grant Development Consent to the Development.

4 Further Agreements Relating to this Agreement

- 4.1 The Developer is to enter into such further agreements with the Council as are expressly required to be entered by this Agreement.
- 4.2 The Developer may, at any time, enter into such other agreements with the Council relating to the subject-matter of this Agreement as the Council considers necessary or desirable in order to give effect to this Agreement.
- 4.3 An agreement referred to in clause 4.1 or 4.2 is not to be inconsistent with this Agreement.
- 4.4 Without limiting clause 4.1 or 4.2, an agreement may relate to:
 - 4.4.1 the particulars of any Public Facility required by this Agreement to be made available for a Public Purpose,
 - 4.4.2 the location at which a Public Facility is to be provided and the time at which and the manner in which it will be made available,
 - 4.4.3 the particulars of any work required by this Agreement to be undertaken by the Developer, and
 - 4.4.4 the time at which and the manner in which a Work is to be handed over to the Council.

5 Application of s94, s94A and 94EF of the Act to the Development

- 5.1 Except as provided by clause 5.2 and 5.3, this Agreement does not exclude the application of s94 or s94A of the Act to the Development.
- 5.2 Section 94 of the Act does not apply to the Development to the extent that a condition may be imposed under that section for the same purpose as the Administration Levy Contribution, the Local Park Contribution or the Local Roads Contribution.
- 5.3 Section 94 of the Act does not apply to the creation of the first two (2) lots in the Development which are intended to be developed for residential purposes, and are not intended to be further subdivided.



- 5.4 This Agreement permits the Council to take into consideration, to the extent relevant, the benefits under this Agreement in determining a Development Contribution under s94 of the Act in relation to the Development.
- 5.5 This Agreement does not exclude the application of s94EF of the Act to the Development.

6 Application of Development Contributions by the Council

- 6.1 Subject to this Agreement, the Council is to apply a Development Contribution made by the Developer under this Agreement towards the Public Purpose for which it is made, and otherwise in accordance with this Agreement.
- 6.2 The Council may apply a Development Contribution made under this Agreement towards a Public Purpose that is not provided for in this Agreement if the Council considers that the public interest would be better served by applying the Development Contribution towards that purpose.

Part 2 – Monetary Development Contributions

7 Requirement to Pay Monetary Development Contributions

- 7.1 The Developer is to pay the Administration Levy Contribution, the Local Park Contribution and the Local Roads Contribution to the Council in accordance with the requirements of the applicable Contributions Plan.
- 7.2 The Developer is to pay the Water Supply Contribution to the Council in accordance with the requirements of the Development Servicing Plan – Water Supply.
- 7.3 The Council is to hold and apply:
 - 7.3.1 the Administration Levy Contribution, the Local Park Contribution and the Local Roads Contribution for the same Public Purposes for which the Contributions would have been held and applied if the money had been required to be paid under the Contributions Plan referred to in clause 7.1,
 - 7.3.2 the Water Supply Contribution for the same Public Purpose for which the Contribution would have been held and applied if the money had been required to be paid under the Development Servicing Plan – Water Supply.

8 Offset against Local Park Contribution and Local Roads Contribution

- 8.1 Despite clause 7.1, the Developer is not required to pay:



- 8.1.1. the Local Park Contribution to the extent that it is equal to or less than the amount of the Local Park Contribution Reduction,
- 8.1.2. the Local Roads Contribution to the extent that it is equal to or less than the amount of the Local Roads Contribution Reduction.

9 Offset against Water Supply Contribution

- 9.1 The Developer is not required to pay the Water Supply Contribution to the extent that it is equal to or less than the amount of the Water Supply Contribution Reduction.
- 9.2 This clause only applies once the Enlarged Water Supply Trunk Main has been constructed.

10 Management Contribution

- 10.1 The Developer is to pay the Management Contribution to Council at the time it is required to dedicate the Open Space Land in accordance with clause 25.
- 10.2 The Council shall hold and apply the Management Contribution for the management of the Open Space Land.

11 Procedures relating to payment of monetary Development Contributions

- 11.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the Contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council..
- 11.2 The Developer is to give the Council not less than 2 business days written notice of:
 - 11.2.1 its intention to pay a monetary Development Contribution,
 - 11.2.2 the Public Purpose to which the monetary Development Contribution relates, and
 - 11.2.3 the amount proposed to be paid.
- 11.3 The Developer is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 11.2, has given to the Developer a tax invoice for the amount of the contribution that the Developer intends to pay.
- 11.4 The Developer is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.

Part 3 - Construction of Work



12 Water Supply Trunk Main Construction

- 12.1 The Parties acknowledge that the Development cannot be carried out unless the Water Supply Trunk Main is constructed.
- 12.2 The Developer is to carry out and complete the construction of the Water Supply Trunk Main prior to the issuing of the first Subdivision Certificate relating to the Development.
- 12.3 The Parties agree that the Council may, in its absolute discretion, require construction of the Enlarged Water Supply Trunk Main, in which case clause 9 of this agreement applies

13 Construction of Road on the Secondary Road Link Land

- 13.1 The Developer is to carry out and complete the construction of the Secondary Road Link prior to the issuing of a Subdivision Certificate relating to:
 - 13.1.1 a stage of the Development containing a lot adjoining the Secondary Road Link, or
 - 13.1.2 the final ten (10) lots in the Development, whichever occurs sooner.
- 13.2 The Developer is to dedicate the Secondary Road Link Land to Council free of cost and in accordance with clause 27, at the same time as the Secondary Road Link is handed-over to Council in accordance with clause 16.
- 13.3 Despite clauses 13.1 and 13.2, the Developer is not required to construct the Secondary Road Link, if the Developer enters into an agreement with the Adjoining Owner, on terms satisfactory to the Council, that requires that Adjoining Owner to construct the Secondary Road Link, and to dedicate the Secondary Road Link Land to Council.

14 Construction of Footpath and Cycleway

- 14.1 The Developer is to carry out and complete the construction of the Footpath and Cycleway as follows:
 - 14.1.1 the Northern Section is to be completed prior to the issue of the first Subdivision Certificate relating to the Development; and
 - 14.1.2 the Southern Section is to be completed at the same time as the construction and dedication of the Adjoining Road, as required under any Development Consent for the Development.
- 14.2 The Developer is to dedicate the Footpath and Cycleway Land to Council free of cost and in accordance with clause 27, and is to dedicate the land on which the Northern Section is located at the same time as the Northern Section handed-over to Council in accordance with clause 16, and is to dedicate the land on which the Southern Section is located at the same time as the Southern Section is handed-over to Council in accordance with clause 16..

15 Performance of Work by Council



- 15.1 If the Developer enters into a contract with the Council for the Council to carry out Work on behalf of the Developer that the Developer is required to carry out under this Agreement:
- 15.1.1 Council is to carry out the Work to the agreed standard in accordance with approved Construction Certificate drawings,
- 15.1.2 the Developer is to pay the contract amount for the carrying out of the Work in two instalments as follows:
- (a) fifty (50)% of the contract amount will be payable at the time of issue of the first Subdivision Certificate for the Development, and
 - (b) fifty (50)% of the contract amount will be payable prior to the commencement of the Work,
- 15.1.3 clause 17 of this Agreement do not apply in relation to Work carried out under clause 15.1.1 by the Council, and
- 15.1.4 the Work is taken to have been handed over to Council on completion of the Work.

16 Procedures relating to the carrying out & hand-over of Work

- 16.1 Any Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with any design or specification specified by the Council, any relevant development consent and any other applicable law, and otherwise to the satisfaction of the Council.
- 16.2 The Developer is not to make, or procure the making of an application to the Council under s96 of the Act to modify any relevant development consent relating to a Work referred to in clause 16.1 unless the Council is of the opinion that the development consent as proposed to be modified is consistent with the design or specification referred to in clause 16.1.
- 16.3 A Development Contribution comprising the carrying out of a Work is made for the purposes of this Agreement when the Council accepts the hand-over of the Work in accordance with this clause.
- 16.4 Subject to this Agreement, when the Developer considers that a Work required to be carried out by the Developer under this Agreement is complete, the Developer is to give to the Council a notice in writing to that effect.
- 16.5 The Council is taken to have accepted the hand-over by the Developer of a Work that is the subject of a notice referred to in clause 16.4:
- 16.5.1 where the Council has not given the Developer a Rectification Notice under clause 17.1 – at the expiration of the Defects Liability Period, or
 - 16.5.2 where the Council has given the Developer a Rectification Notice under clause 17.1 – on the date on which the Council gives the Developer a written notice stating that the defect the subject of the Rectification Notice has been rectified to the Council's satisfaction.
- 16.6 On hand-over of the Work, the Council accepts responsibility for the Work.

17 Procedures relating to the rectification of defects



- 17.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 17.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.
- 17.3 If the Developer breaches clause 17.2, the Council may have the relevant defect rectified and may recover its costs of so doing as a debt due in a court of competent jurisdiction.

Part 4 – Establishment & Management of Open Space Land

18 Approval of Detailed Management Plan

- 18.1 The Developer is not to establish or maintain the Open Space Land except in accordance with:
 - 18.1.1 a Detailed Management Plan that has been approved by the Council, and
 - 18.1.2 the terms of any such approval as modified from time to time.
- 18.2 The Detailed Management Plan must be approved by Council prior to the issue of the first Subdivision Certificate for the Development and prior to the carrying out of any Work on the Open Space Land.

19 Establishment and Management of Open Space Land by the Developer

- 19.1 The Developer, at its own cost, is to perform:
 - 19.1.1 the Establishment Obligation during the Establishment Period, and
 - 19.1.2 the Management Obligation during the Management Period.
- 19.2 The Developer is to perform its obligations under clause 19.1 in accordance with:
 - 19.2.1 this Agreement, and
 - 19.2.2 any further agreement that is entered into by the Parties under clause 4, and
 - 19.2.3 any requirements and directions notified in writing by the Council to the Developer at any time before the Management Work is taken to have been completed in accordance with this Agreement that are not inconsistent with:
 - (a) this Agreement, or
 - (b) any agreement referred to in clause 4, or
 - (c) any Development Consent relating to the Development.
- 19.3 The Establishment Obligation and the Management Obligation are not to be varied by the Developer, unless:
 - 19.3.1 the Parties agree in writing to the variation, and



- 19.3.2 any consent or approval required under the Act or any other law to the variation is first obtained.
- 19.4 The Developer, by written notice, is to inform the Council when it considers it has completed the Establishment Obligation and, again, when it considers it has completed the Management Obligation.
- 19.5 Not later than 14 days after receipt of a notice under clause 19.4, the Council may, by written notice, direct the Developer to do the things specified in the notice in order to complete the Establishment Obligation or the Management Obligation to its satisfaction.
- 19.6 The Developer, at its own cost, is to comply with a direction referred to in clause 19.5 according to its terms.
- 19.7 For the purposes of this Agreement, the Establishment Obligation and the Management Obligation are taken to have been completed:
- 19.7.1 if the Developer was not given a notice under clause 19.5 – at the end of the period specified in that clause, or
- 19.7.2 if the Developer was given a notice under clause 19.5 – when the Council, by written notice, informs the Developer that the Developer has complied with that notice to the satisfaction of the Council.

20 Failure to Perform the Establishment Obligation or the Management Obligation

- 20.1 If the Council considers that the Developer is in breach of the Establishment Obligation or the Management Obligation, the Council may give the Developer a written notice requiring the breach to be rectified to the satisfaction of the Council.
- 20.2 A notice given under clause 20.1 is to allow the Developer a period of not less than 28 days or such other period as the Council considers appropriate in the circumstances of the case to rectify the breach.
- 20.3 The Developer is to comply with a notice under clause 20.1 strictly according to its terms.
- 20.4 Clauses 32 and 33 do not apply to a notice given by the Council to the Developer under clause 20.1, or the circumstances relating to the giving of that notice.

21 Inspection of the Open Space Land by Council

- 21.1 Before the Open Space Land is dedicated to the Council in accordance with this Agreement, the Developer is to permit the Council, its officers, employees, agents and contractors, to enter that land at any time, upon giving reasonable prior notice, to inspect, examine or test that land.
- 21.2 After the Open Space Land is dedicated to the Council, the Developer is to permit the Council, its officers, employees, agents and contractors to pass through land owned, occupied or otherwise controlled by the Developer to enable the Council to obtain access to the Open Space Land.



22 Damage and Repairs to Management Work

- 22.1 The Developer, at its own cost, is to repair and make good, to the satisfaction of the Council, any loss or damage to any Management Work, from any cause whatsoever, occurring prior to the commencement of the Management Period, other than damage caused by Council.

23 Provision of Security for Open Space Land

- 23.1 The Developer is to provide the OSL Security to the Council prior to dedication of the Open Space Land to Council.
- 23.2 The amount of the OSL Security will be calculated with reference to the estimated cost to the Developer of performing the Management Obligation in accordance with this Agreement.
- 23.3 The Council is not to call upon the OSL Security unless the Council considers that the Developer has failed to comply with a notice referred to in clause 20.1.
- 23.4 The Council may apply the OSL Security in satisfaction of:
- 23.4.1 the Developer's obligations under this Agreement to carry out the Establishment Obligation or the Management Obligation, and
 - 23.4.2 any liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to carry out the Establishment Obligation or the Management Obligation.
- 23.5 The Council:
- 23.5.1 will, on each anniversary of the date of provision of the OSL Security, and
 - 23.5.2 may otherwise, in its absolute discretion, progressively release and return the OSL Security to the Developer as and when the Developer complies with its obligations under this Agreement to the satisfaction of the Council but only if the remaining amount of the OSL Security held by the Council is not less than the Council's estimate of the cost to the Developer of carrying out of the remainder of the Management Obligation.
- 23.6 The Council is to release and return the OSL Security or any remaining part of it to the Developer within 14 days of the date on which both the Establishment Obligation and the Management Obligation are completed in accordance with clause 19.7 but only if the Developer is not in breach of this Agreement at that time.
- 23.7 If the Council calls on the OSL Security in accordance with this Agreement, the Council may, by notice in writing to the Developer, require the Developer to provide a further OSL Security in an amount which, together with any unused portion of any existing OSL Security, does not exceed the amount specified in clause 23.2.
- 23.8 Any difference between the amount of the OSL Security called upon by the Council and the costs incurred by the Council in completing the Establishment Obligation or the Management Obligation or both may be recovered by the Council from the Developer as a debt due in a court of competent jurisdiction.



24 Alternative Funding

- 24.1 The Council is to use its reasonable endeavours to obtain the Alternative Funding as soon as reasonably practicable after this Agreement is entered into.
- 24.2 The Developer is not to raise any requisition or objection in respect of anything done by the Council under clause 24.1.
- 24.3 If the Council obtains the Alternative Funding, then the Council will return the OSL Security and any unspent Management Contribution to the Developer, and the Developer will be under no further obligation to perform the Management Obligation.

Part 5 – Dedication of Land

25 Dedication of Open Space Land to the Council

- 25.1 The Developer is to dedicate the Open Space Land to the Council free of cost in accordance with the timing set out in the Detailed Management Plan.
- 25.2 The Open Space Land is to be made publicly accessible by the Council, and is to be held by the Council for the purposes of open space, and the conservation and enhancement of the natural environment.

26 Dedication of Collector Road Link Land and Local Park Land

- 26.1 The Developer is to dedicate the Collector Road Link Land and Local Park Land to the Council free of cost contemporaneously with the issuing of the first Subdivision Certificate for any part of the Development.

27 Procedures relating to the dedication of land

- 27.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer title to the land to the Council when registered, free from all encumbrances (other than encumbrances that benefit the Council or a public authority or are otherwise agreed to by the Council in writing).
- 27.2 To allow for the registration of an instrument of transfer referred to in clause 27.1, the Developer is:
 - 27.2.1 to produce to the Land Titles Office the certificate of title to land to be dedicated under this Agreement or a direction allowing the certificate of title to be used for that purpose, and
 - 27.2.2 to give to the Council an irrevocable undertaking to deliver to the Council the certificate of title if that certificate is released to the Developer by the Land Titles Office.



Part 6 – Other Provisions

28 Security relating to the carrying out of Work

- 28.1 The Developer is not to carry out a Work required to be carried out by this Agreement unless the requirements of this clause have been complied with.
- 28.2 Prior to the commencement of the carrying out of a Work to which this clause applies, the Developer is to provide the Council with security in a form, on terms and for an amount agreed between the Parties.
- 28.3 For the purposes of clause 28.2, the Parties are to have regard to any policy or practice of the Council, current at the time, relating to the provision of security to the Council for the construction of public infrastructure by developers.
- 28.4 Clauses 32 and 33 do not apply to a dispute arising under or in relation to this clause.

29 Enforcement

- 29.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by the Parties in any court of competent jurisdiction.
- 29.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 29.2.1 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
 - 29.2.2 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.

30 No Registration of this Agreement

- 30.1 The Parties agree not to register this Agreement under s93H of the Act.

31 Assignment, sale of the Land, etc

- 31.1 Unless the matters specified in clause 31.2 are satisfied, the Developer is not to:
 - 31.1.1 transfer the Land or any part of it to any person, or
 - 31.1.2 assign or novate to any person this Agreement or any of the Developer's rights or obligations under this Agreement.
- 31.2 The matters required to be satisfied for the purposes of clause 31.1 are as follows:
 - 31.2.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or any part of it is to be



transferred or this Agreement or any of the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms which are not inconsistent with this Agreement, and

31.2.2 the Council, by notice in writing to the Developer, has stated that evidence satisfactory to the Council has been produced to show that the transferee, assignee or novatee, is reasonably capable of performing its obligations under the Agreement, and

31.2.3 the Developer is not in breach of this Agreement.

32 Dispute Resolution – expert determination

- 32.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert unless expressly provided to the contrary by this Agreement.
- 32.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 32.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 32.4 If a notice is given under clause 32.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 32.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 32.6 The Expert Determination is binding on the Parties except in the case of fraud or misfeasance by the Expert.
- 32.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.

33 Dispute Resolution - mediation

- 33.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 32 applies.
- 33.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 33.3 If a notice is given under 33.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 33.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 33.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal



rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

34 Notices

- 34.1 Any notice, consent, information, application or request that must 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:
 - 34.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 34.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 34.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 34.2 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.
- 34.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 34.3.1 delivered, when it is left at the relevant address.
 - 34.3.2 sent by post, 2 business days after it is posted.
 - 34.3.3 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.
- 34.4 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 is sent, it is to be treated as having been given or made at the beginning of the next business day.

35 Approvals and Consent

- 35.1 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.
- 35.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

36 Costs

- 36.1 The Developer is to pay to the Council its costs of preparing, negotiating and executing this Agreement up to a maximum of \$12,000.00 (excluding GST) within 28 days of a written demand by the Council for that payment.

37 Entire Agreement



- 37.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 37.2 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.

38 Further Acts

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

39 Governing Law and Jurisdiction

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

40 Joint and Individual Liability and Benefits

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

41 No Fetter

- 41.1 Nothing in this Agreement shall be construed as requiring 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.

42 Representations and Warranties

- 42.1 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.

43 Severability



- 43.1 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.
- 43.2 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.

44 Modification

- 44.1 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.

45 Waiver

- 45.1 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.
- 45.2 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.
- 45.3 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.

46 GST

- 46.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 46.2 Subject to clause 46.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 46.3 Clause 46.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.



- 46.4 No additional amount shall be payable by the Council under clause 46.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 46.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 46.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies, and
- 46.5.2 that any amounts payable by the Parties in accordance with clause 46.2 (as limited by clause 46.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 46.6 No payment of any amount pursuant to this clause 46, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 46.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- 46.8 This clause continues to apply after expiration or termination of this Agreement.

47 Explanatory Note Relating to this Agreement

- 47.1 Appendix 2 contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 47.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in Appendix 2 is not to be used to assist in construing this Planning Agreement.



Execution

Executed as an Agreement

Dated: 16 February 2010

Executed by the Council:

[Redacted signature]

Andrew Roach, General Manager

[Redacted signature]

Witness/Name/Position:

Executed by the Developer in accordance with s127 of the Corporations Act 2001 (Cth):

[Redacted signature]

Director/Name:

[Redacted signature]

Company Secretary/Name

[Redacted signature]





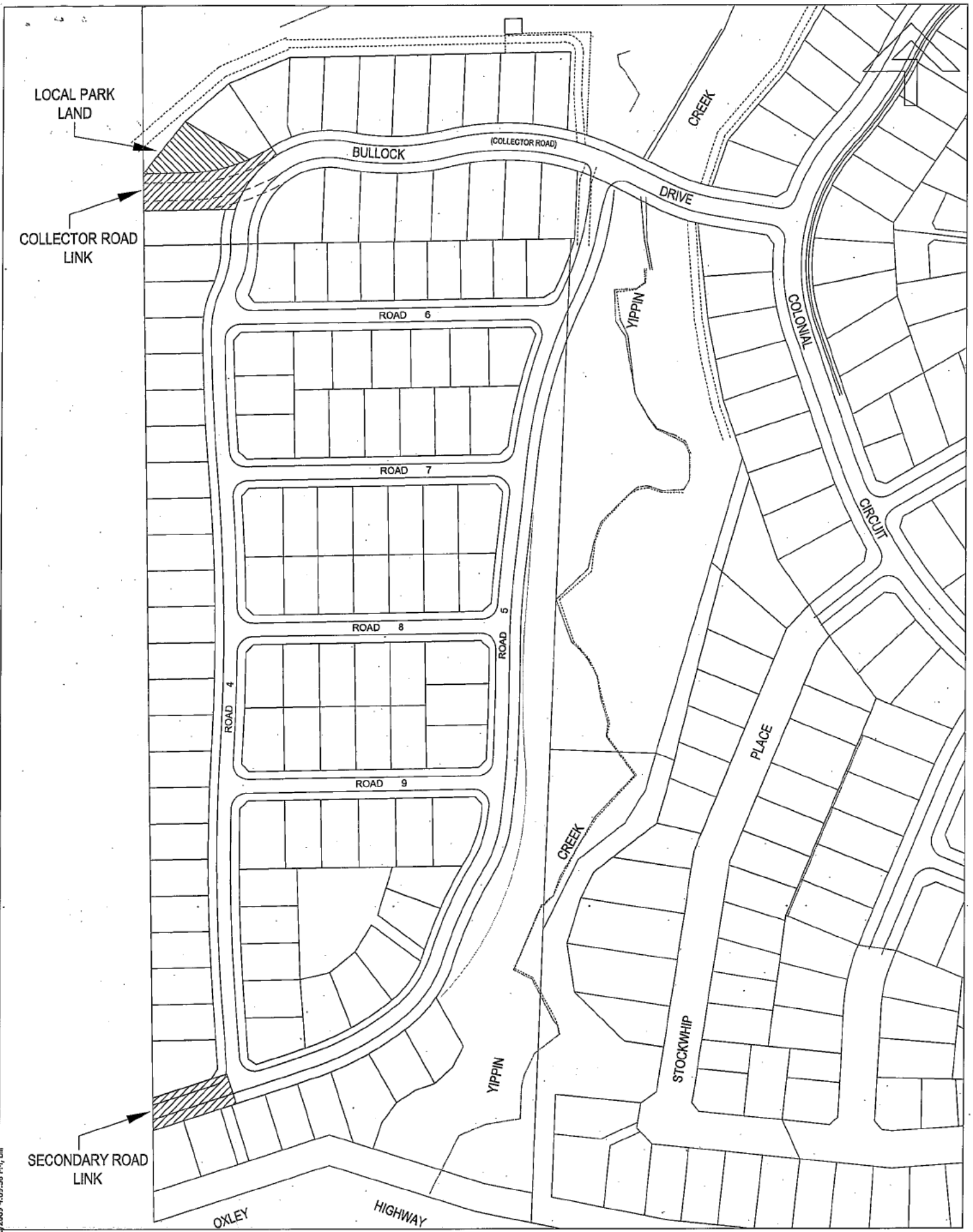
Appendix 1

(Clause 1.1)

Map

[The Map is on the next and following pages]

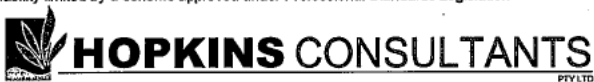




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DEVELOPMENT MANAGERS • SURVEYORS • ENGINEERS • PLANNERS

TIMBERTOWN ESTATE
STAGE 8
ROAD LAYOUT PLAN

Ref. No.
5334/8
 Dwgs 5334/8/5334-9b.Dwg
 Map Sheet

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FOOTPATH & CYCLEWAY
2.5m WIDE

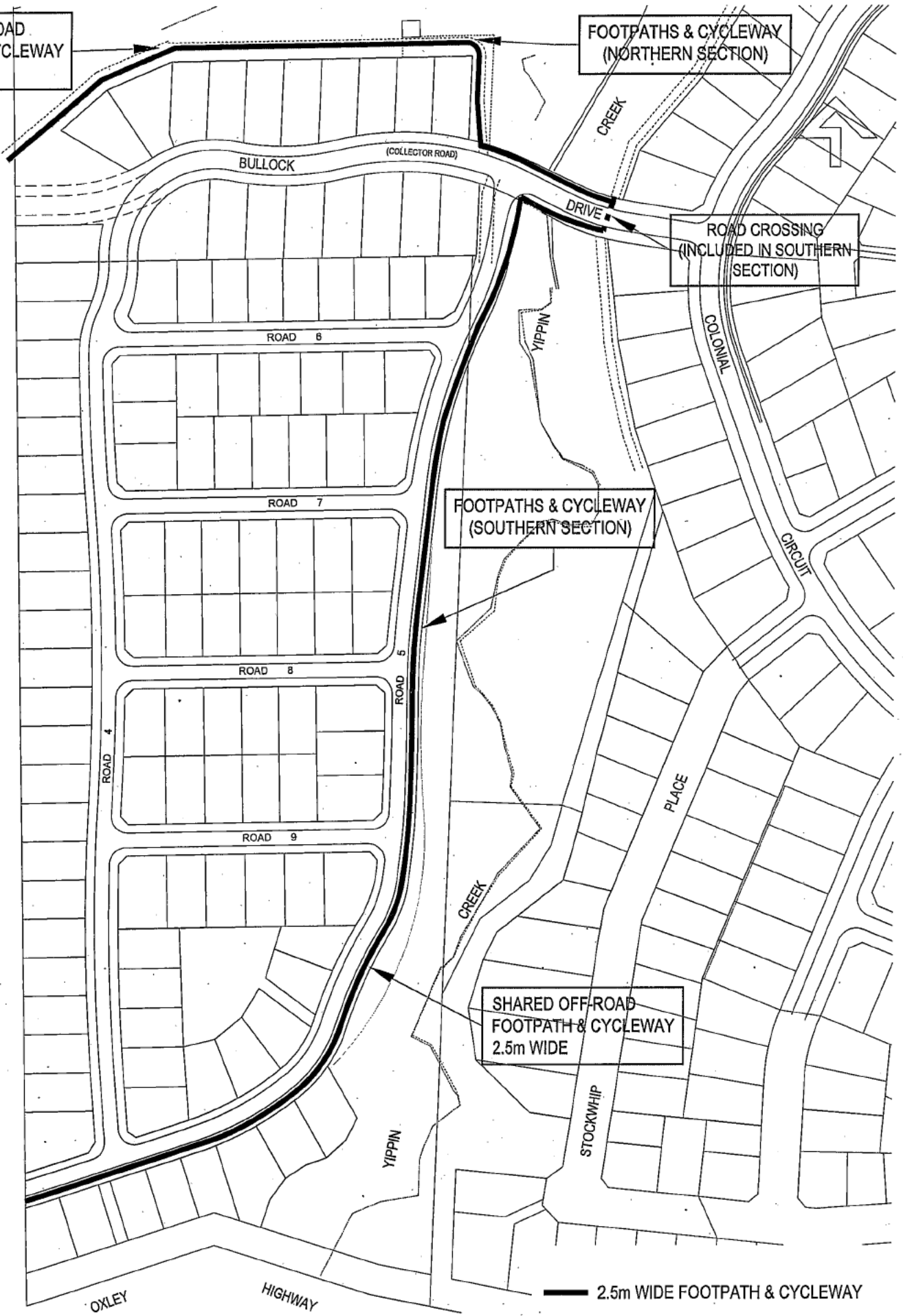
FOOTPATHS & CYCLEWAY
(NORTHERN SECTION)

ROAD CROSSING
(INCLUDED IN SOUTHERN
SECTION)

FOOTPATHS & CYCLEWAY
(SOUTHERN SECTION)

SHARED OFF-ROAD
FOOTPATH & CYCLEWAY
2.5m WIDE

— 2.5m WIDE FOOTPATH & CYCLEWAY



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STAGE 8

FOOTPATH & CYCLEWAY PLAN

Ref. No.
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Map Sheet

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OPEN SPACE TO BE DEDICATED TO PORT MACQUARIE HASTINGS COUNCIL

LOT 319
DP 1065651

LOT 342
DP 1120104



OPEN SPACE LAND

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TIMBERTOWN ESTATE

STAGE 8

OPEN SPACE PLAN

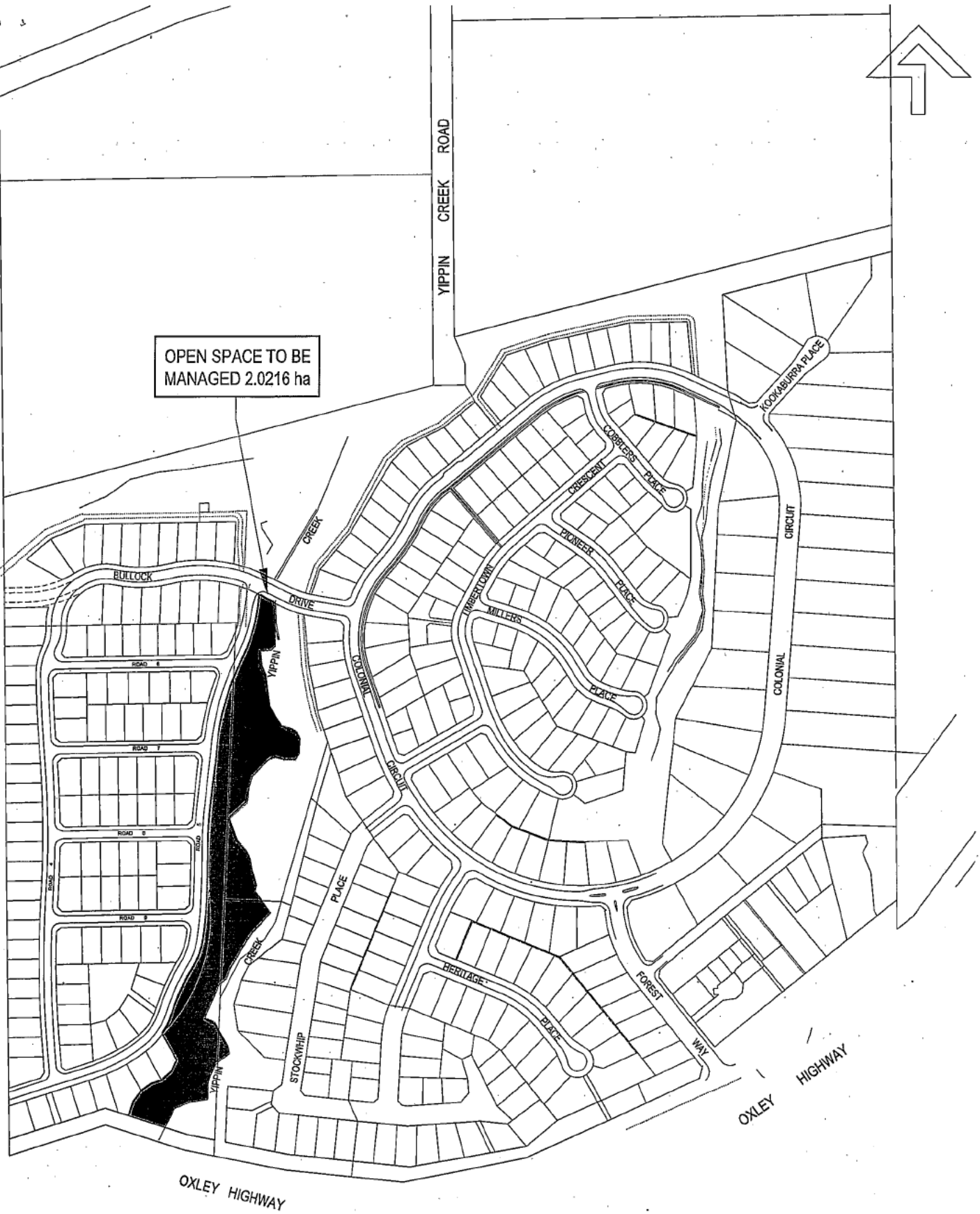
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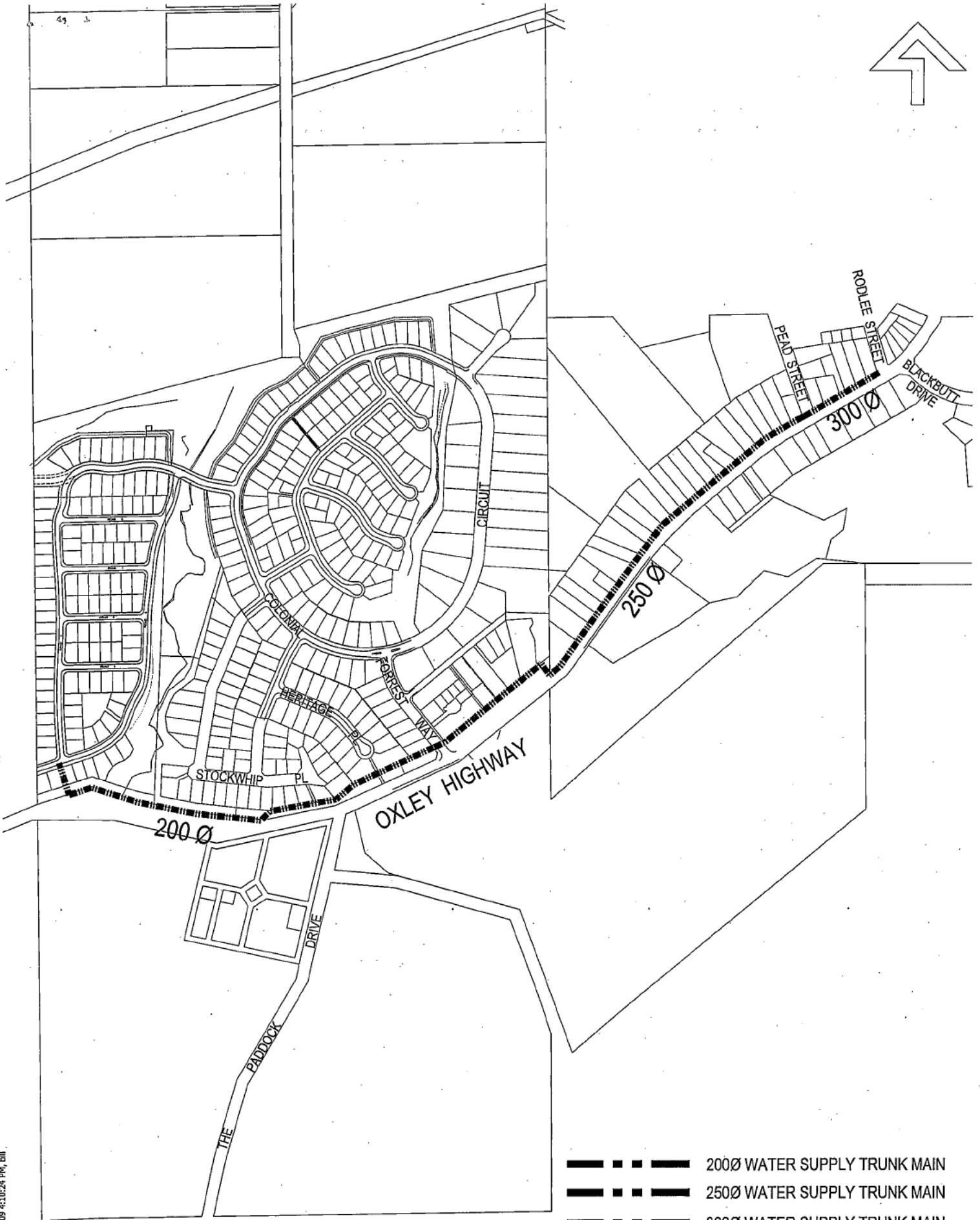
TIMBERTOWN ESTATE

STAGE 8

OPEN SPACE PLAN

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Map Sheet

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- 250Ø WATER SUPPLY TRUNK MAIN
- 300Ø WATER SUPPLY TRUNK MAIN

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TIMBERTOWN ESTATE
STAGE 8
WATERMAIN RETICULATION
ULTIMATE DESIGN

Ref. No.

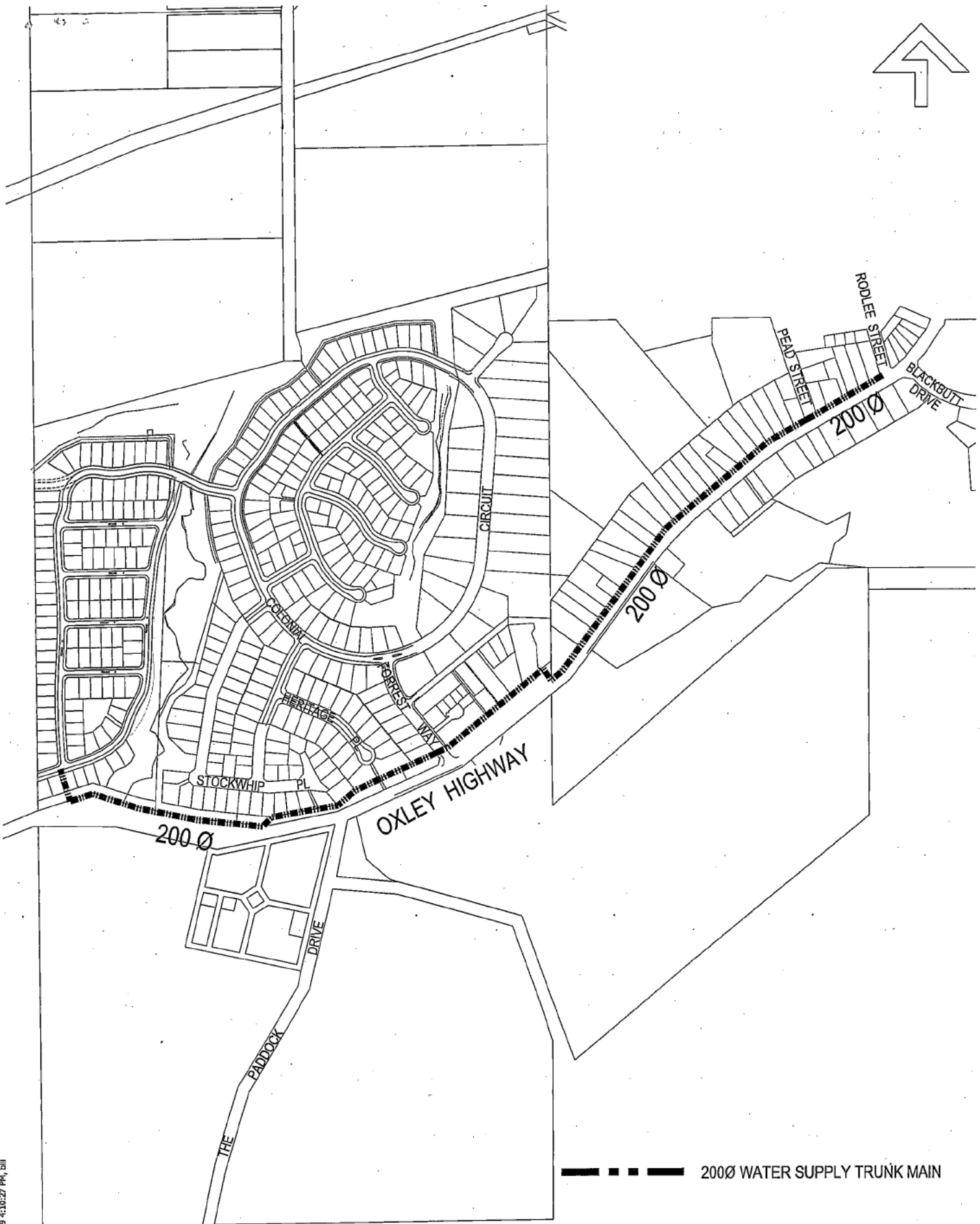
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TIMBERTOWN ESTATE
 STAGE 8

Watermain To Service Timbertown
 Estate Stage 8 Only

Ref. No.

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Map Sheet

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of 6

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Appendix 2

(Clause 45)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

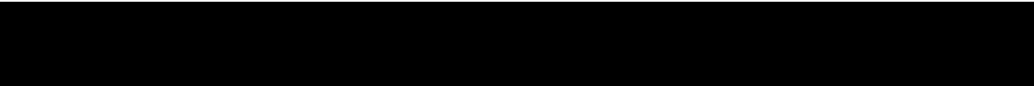
Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

Parties

Port Macquarie Hastings Council ABN 11 236 901 601 of Corner Lord and
Burrawan Streets, Port Macquarie, New South Wales, 2444 (**Council**)

and



Description of the Land to which the Draft Planning Agreement Applies

Lot 21 DP 245751, Part Lot 328 and Lots 329 and 330 DP 1120104, and Lot 319 DP 1065651.

Description of Proposed Development

Development for residential purposes on the Land

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide suitable funding for the provision of infrastructure, facilities and services to meet the Development on the Land.

Nature of Draft Planning Agreement





The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. It is an agreement between the Council and the Developer. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes.

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development on the Land,
- does not exclude the application of ss94, 94A and 94EF of the Act to the Development,
- requires monetary Development Contributions of a specified minimum for local parks, open space, local roads and administration,
- requires the carrying out of specified Works by the Developer for the purposes of providing open space, roads and other public purposes,
- requires the dedication of specified land to the Council by the Developer on which some Works will be situated,
- allows offsets of a specified percentage against specified monetary Development Contributions, in consideration of the benefits provided to the Council by the Developer under the Agreement,
- requires the Council to apply monetary Development Contributions made under the agreement towards the specified purpose for which they were made and at the location, in the manner and to the standard (if any) specified in the agreement,
- imposes obligations on the Developer in relation to the carrying out of specified Works, the handing over of those Works to the Council and the rectification of defects in those Works.
- requires the Developer to provide the Council with security relating to the satisfactory completion of specified Works required to be carried out by the Developer under the Agreement,
- is not to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:



- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- provides land for public purposes in connection with the Development,
- provides and co-ordinates community services and facilities in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii)-(v) and s5(c) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing services and facilities for the community,
- ensuring that public facilities provided by the Developer and Owners under the agreement are transferred to and managed by the Council or are otherwise subject to the Council's control,
- by providing a means for the private funding of public facilities for the benefit of the Development and the wider community, and
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

The Draft Planning Agreement requires specified Work to be carried out by the Developer for the purposes of providing open space, roads and for other public purposes.

These works are not included in the Council's relevant current capital Work program. However, the Council's Management Plan identifies these types of works in the relevant capital works program.

Accordingly, the provision of this Work under the agreement is consistent and conforms to the capital works envisioned by the Council's Management Plan.