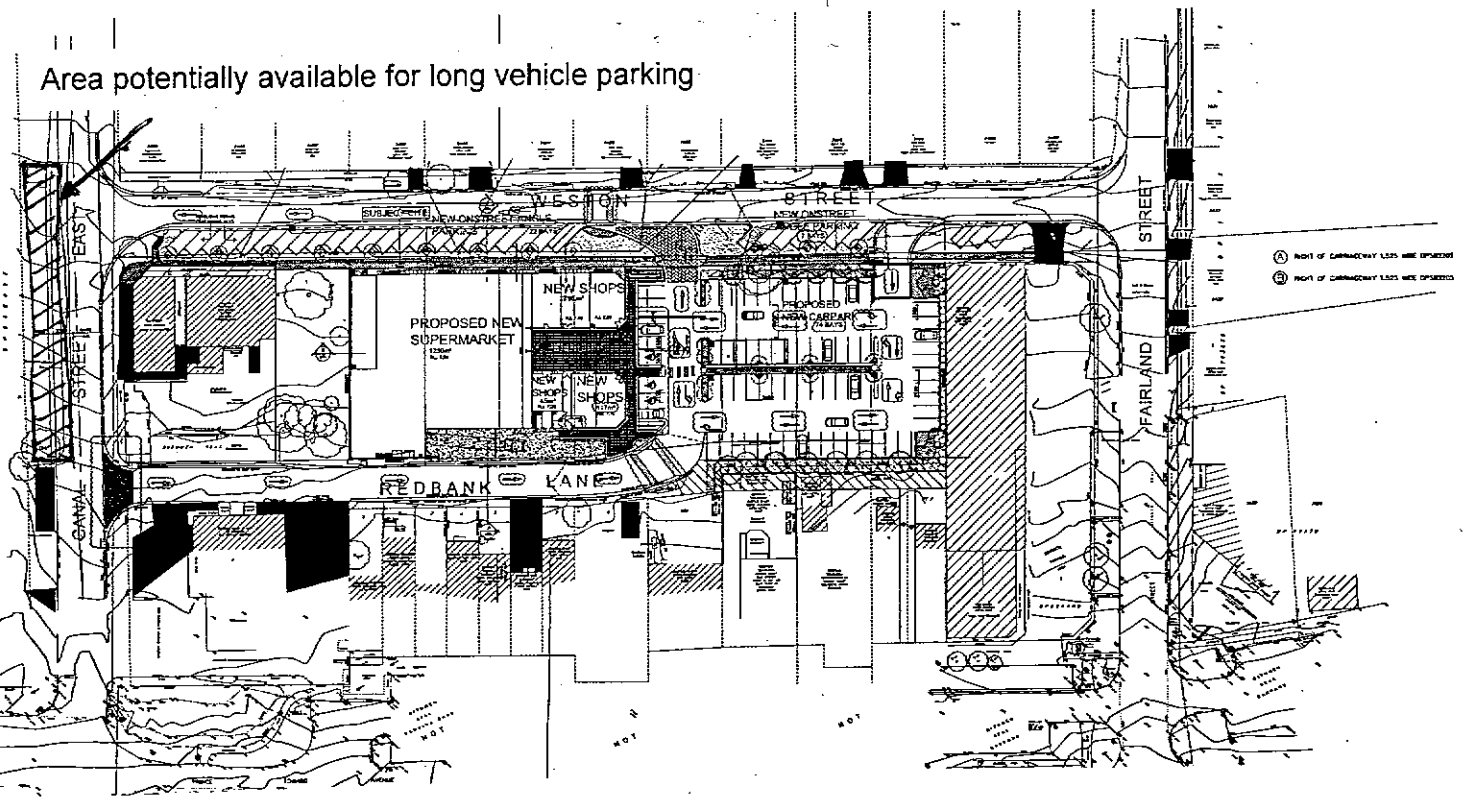
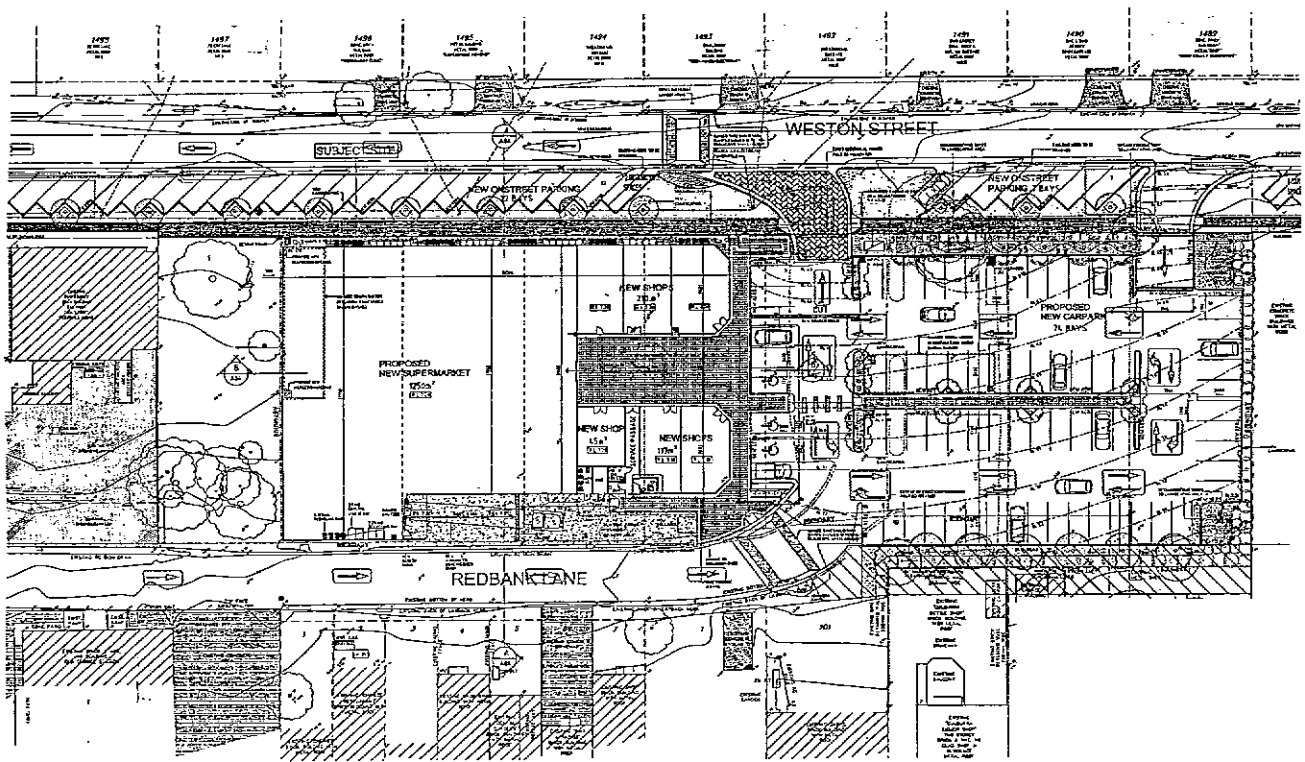


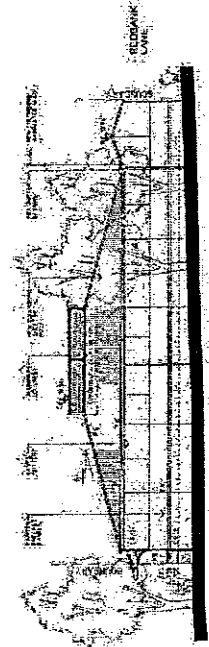
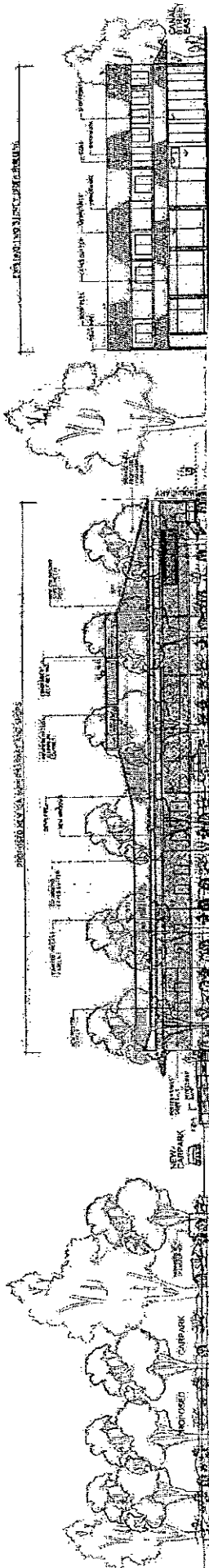
Area potentially available for long vehicle parking



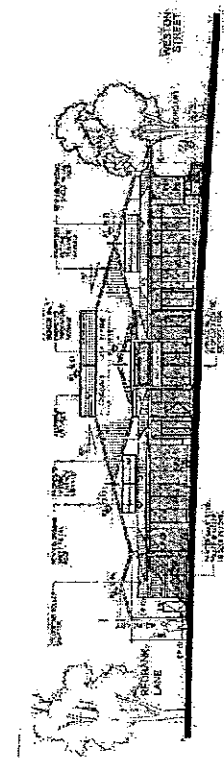
Proposed Site Plan



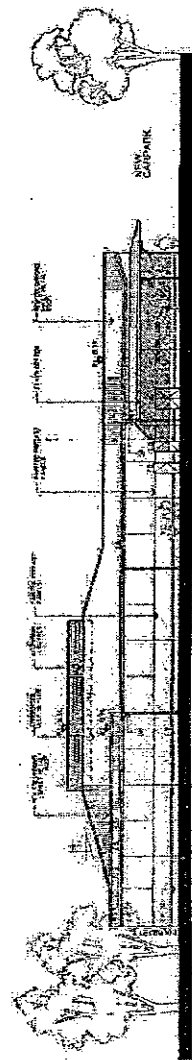
Proposed Floor Plan



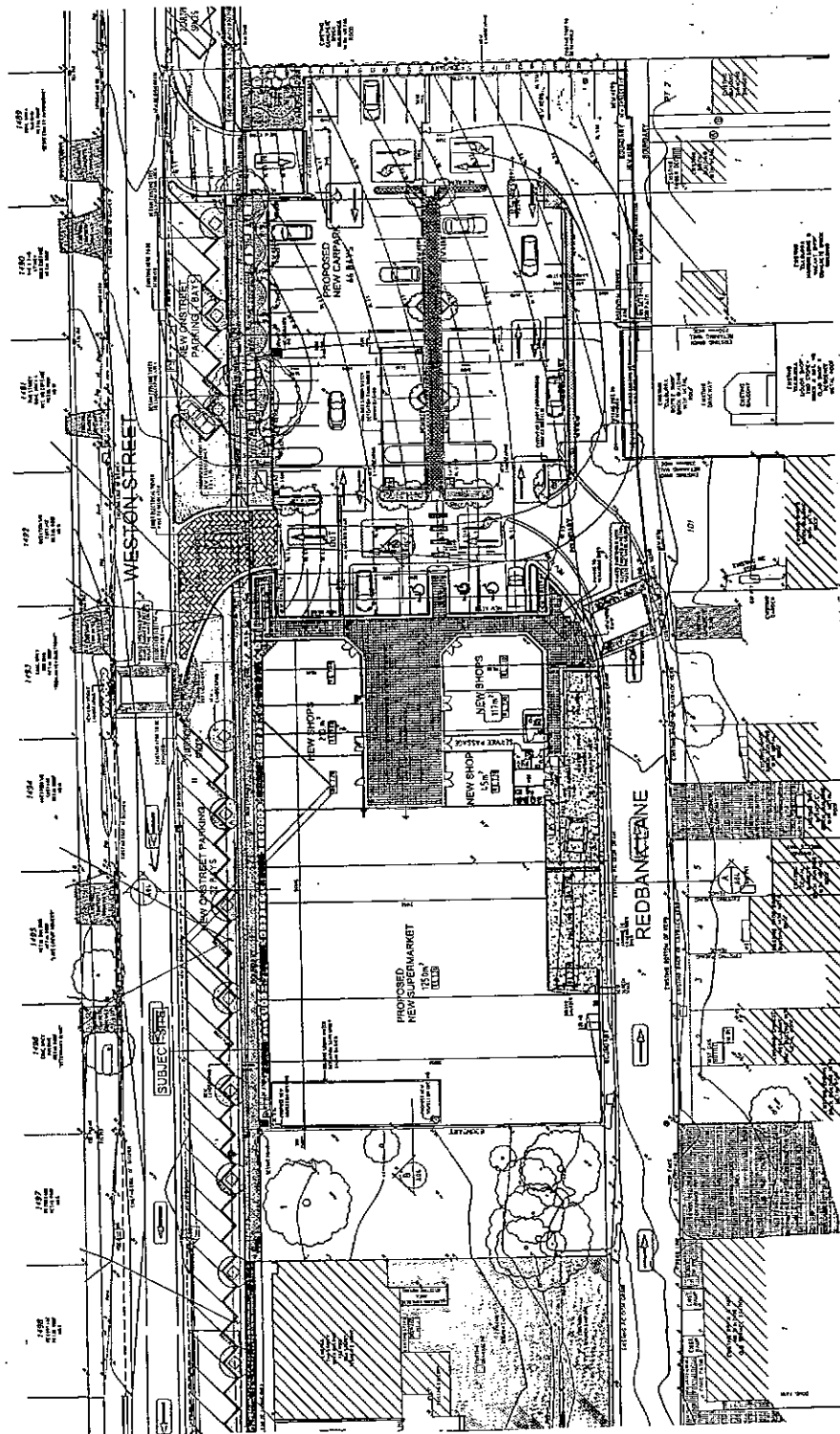
WEST ELEVATION



EAST ELEVATION



REDBANK LANE (SOUTH ELEVATION)



Car parking – Option 1 (with provision of service lane)



Voluntary Planning Agreement

(Section 93F Environmental Planning & Assessment Act)

**The Council of the City of Shoalhaven &
Siblow Pty Ltd**

**8-22 Weston Street
Culburra Beach
DA 09/1144**

The Council of the City of Shoalhaven
Council Administrative Centre
Bridge Road
NOWRA NSW 2541

Reference: LS13
Final: 15 September, 2009

Parties

1. **The Council of the City of Shoalhaven** of Council Administrative Centre, Bridge Road, Nowra, NSW 2541 (**Council**).
2. **Siblow Pty Ltd** (ACN 003 602 417) – c/ of Pritchard & Associates Pty Ltd, Level 6, 225 Clarence Street, Sydney NSW 2000 (**the Developer**).

Background

- A. The Developer owns the Site.
- B. On 11 February 2009, the Developer lodged a Development Application with Council to carry out the Development on the Site and Council's Land.
- C. As part of the Development Application, the Developer has offered to enter into a voluntary planning agreement to provide the Public Benefits.
- D. Council wishes to accept the Developer's offer subject to the terms in this Agreement.

Agreed Terms

Part A – Condition Precedents

1. Operation of Agreement

This Agreement takes effect on the date the Development Consent becomes effective and operational in accordance with the Act.

Part B – Provision of Public Benefits

2. Car Park Land

2.1 Transfer of Land

The Developer must, at no cost to Council, transfer the Car Park Land to the Council within 21 days of the issue of the first Construction Certificate for the Development Consent.

2.2 Default by Developer

If the Developer fails to transfer the Car Park Land to the Council in accordance with **clause 2.1**:

- (a) the Developer agrees the Council has the right to buy the Car Park Land for the consideration of \$1.00 (one dollar); and
- (b) for the purpose of effecting the transfer of the Car Park Land to the Council only, the Developer hereby irrevocably appoints the Council to be an attorney with authority to execute such documents as are necessary to give effect to the transfer of the Car Park Land to the Council; and

- (c) the Developer must comply with any directions by the Council in respect of the transfer of the Car Park Land to the Council.

2.3 Caveat

- (a) Subject to 2.3(c), the Council may lodge a caveat on the Car Park Land to record its interest in the Car Park Land under **clause 2.1**.
- (b) The Developer agrees not to object to the lodgment of a caveat by the Council on the Car Park Land.
- (c) If the Council and Developer enter into a novation deed under **clause 12.2**, the Council must, at the time of execution of the novation deed, provide a withdrawal of caveat to allow the transfer of the Car Park Land and, following completion of the transfer by the Developer, the Council may lodge a further caveat on the Car Park Land to record its interest in the Car Park Land under **clause 2.1**.

2.4 Lapsing of Consent

If the Developer does not implement the Development Consent and the Development Consent lapses in accordance with the Act or the Development Consent is declared invalid, then the Developer's obligation to transfer the Car Park Land to Council will cease.

3. Scope & Value of Developer Works

3.1 First Guarantee

- (a) The Developer must provide the First Guarantee within 5 business days of this Agreement taking effect under **clause 1**.
- (b) If the First Guarantee is provided by way of Security Deposit, Council must hold the First Guarantee in an interest bearing account on behalf of the Developer. Any interest earned by the Developer on the Security Deposit forms part of the First Guarantee.
- (c) Unless the Council is entitled to exercise the Council's rights under **clause 3.4 or 3.6**, Council must return the First Guarantee (and if applicable, together with any interest earned on the Security Deposit less any charges payable to the Bank) to the Developer within 10 business days after satisfaction of the obligations under this **clause 3**.

3.2 Scope of Works

The parties agree the works described in **Schedule 2** comprise the Developer Works for the purposes of this Agreement. The parties further agree that, prior to submission of the construction drawings in accordance with **clause 3.4**, the Developer must prepare detailed designs for the Developer Works and must consult with the Council in respect of the detailed design of the Developer Works, having regard to the following:

- (a) the extent to which the design of any part of the Developer Works has been completed to the reasonable satisfaction of Council (in its capacity as a party to this Agreement and not as a consent authority);

- (b) circumstances affecting the Developer Works which were not reasonably capable of identification on or before the date of this Agreement;
- (c) the extent of any design refinement identified in **Schedule 2**; and
- (d) any modification to the Development Consent to be made and approved under section 96 of the Act or any other development consent granted in respect to the Developer Works.

3.3 Notice of Plans

- (a) The Council must within 14 days of receiving the detailed designs for the Developer works submitted under clause 3.1 give the Developer written notice whether or not the designs are satisfactory in the Council's view (acting reasonably).
- (b) If the Council gives notice that the detailed design is not satisfactory, Council will identify the further information or modifications (as the case may be) required, acting reasonably.
- (c) Subject to any dispute in relation to the Council's request for further information or modifications, in which case **clause 13** applies, the Developer must promptly amend the proposed design to take into account the requirements of Council under this **clause 3.3**.

3.4 Developer Does Not Prepare Design

If the Developer:

- (a) does not prepare the detailed design drawings in accordance with **clause 3.2**; or
- (b) does not within three months of the issue of any requirements under **clause 3.3**, amend the drawings to take into account the comments made by Council,

then, unless there is an unresolved dispute under **clause 13** in respect of **clauses 3.2 or 3.3**, the Council may call on an appropriate sum from the First Guarantee for the purposes of completing the detailed designs in accordance with this Agreement.

3.5 Construction Drawings

- (a) Subject to **clause 3.4**, the Developer must, prior to the issue of the first Construction Certificate for the Development, prepare the construction drawings for the Developer Works and submit them to Council's Representative for approval, such approval is not to be delayed nor unreasonably withheld.
- (b) Within 21 days of receiving the construction drawings to be submitted under clause 3.4(a), the Council may by written notice to the Developer:
 - (i) approve the construction drawings for the Developer Works; or
 - (ii) direct the Developer to vary the construction drawings for the Developer Works so as to reflect the documents or standards (as the case may be) set out in **Schedule 3**.

- (c) An approval by the Council for the purpose of this **clause 3.5** means an approval solely for the purpose of acknowledging that the Developer has provided construction drawings that comply with the terms of this Agreement and does not constitute the issue of a construction certificate, the grant of development consent or any other approval under the Act.
- (d) The Developer must comply with any reasonable direction given by the Council under **clause 3.5(b)(ii)** in respect of the design and implementation of the Developer Works, unless there is an unresolved dispute under **clause 13**.

3.6 Developer Does Not Prepare Construction Drawings

If the Developer:

- (a) does not prepare the construction drawings in accordance with **clause 3.5(a)**; or
- (b) does not, within three months of the issue of any direction under **clause 3.5(b)(ii)**, comply with that direction,

then, unless there is unresolved dispute under **clause 13** in respect of **clause 3.54**, the Council may call on an appropriate sum from the First Guarantee for the purposes of completing the construction drawings in accordance with this clause 3.

3.7 Value of Works

- (a) The value attributed to the Developer Works is set out in **Schedule 2**.
- (b) The Developer expressly acknowledges and agrees that:
 - (i) the costs of the work set out in **Schedule 2** are estimates only; and
 - (ii) the Developer is not entitled to change or reduce the Developer Works by reason only that the costs actually incurred are greater than those anticipated and evidenced in **Schedule 2**.

4. Construction of Developer Works

4.1 Access to Council's Land

The Council will allow the Developer access to Council's Land for the purpose of carrying out the Developer Works:

- (a) without payment of rent, licence fee or other occupation payment by the Developer; and
- (b) on execution of an occupation licence which may contain provisions which are reasonably required by Council in the circumstances, including reasonable provisions about work hours, lighting, insurance, occupational health and safety matters, term and indemnities.

4.2 Approvals and Consents

The Developer must (at its cost):

- (a) obtain all relevant approvals and consents for the Developer Works whether from the Council or any other relevant Authority; and
- (b) before commencing the Developer Works, give to the Council copies of all Authority approvals and consents for the Developer Works, including copies of any construction certificate issued for the Development, except those granted by the Council.

4.3 Construction of Work

The Developer must (at its cost):

- (a) carry out the Developer Works in accordance with the detailed design drawings prepared under **clause 3.1** or **3.3** and the construction drawings prepared under **clause 3.4** or **3.5**.
- (b) carry out the Developer Works in accordance with all Authority approvals and consents relating to the Developer Works; and
- (c) ensure that the Developer Works are constructed in a good and workmanlike manner so that they are structurally sound and reasonably fit for their purpose and suitable for their intended use; and
- (d) comply with all reasonable directions from the Council in respect of the construction of the Developer Works.

4.4 Inspections of Works

- (a) The Council as a party to this Agreement and not as a consent authority may (but is not obliged) at reasonable times and on reasonable notice inspect the Developer Works during the course of construction.
- (b) The Council will promptly in good faith inform the Developer, in writing, of any material or significant defect, error, or omissions relating to the construction or installation of the Developer Works identified during or as the result of such inspection.
- (c) The parties agree that any failure to identify a defect, error and omission, will not be construed as amounting to an acceptance by Council of that defect, error or omission.

4.5 Completion of Works

When, in the opinion of the Developer, the Developer Works have reached a state of Completion, so that Council could issue a notice under **clause 4.6(a)(i)**, the Developer must notify the Council's Representative in writing and must include in that notice:

- (a) a statement from the person with direct responsibility for carriage and supervision of that work that in their opinion the Developer Works have reached Completion;
- (b) copies of any warranties, guarantees, maintenance information or other material reasonably required for the ongoing maintenance or management of the work; and

- (c) at least three sets of the “as built” drawings of the Developer Works, including one set in electronic format.

4.6 Final Inspection by Council

- (a) Within 10 business days of receipt of a notice under **clause 4.5**, Council’s Representative will inspect the Developer Works and must by written notice to the Developer:
 - (i) agree that Completion has been achieved; or
 - (ii) disagree that Completion has been achieved and identify the errors or omissions and which in the opinion of Council’s Representatives prevent Completion.
- (b) Nothing in this **clause 4.6**, or in any notice issued under this **clause 4.6**, will be construed to reduce or waive in any manner the Developer’s responsibilities to correct minor defects or minor omissions, whether or not these are identified by Council.
- (c) If a notice is given by the Council under **clause 4.6(a)(ii)**, the Developer must carry out any and all work necessary to correct errors or omissions and issue a further notice to the Council under **clause 4.5** once the Developer is of the view that the further work has reached a state of completion.

4.7 Date of Completion of Developer Works

The Developer must ensure that the Developer Works reach Completion on or before the earlier of:

- (a) the date on which an Occupation Certificate is issued in respect of any part of the buildings the subject of the Development Consent; and
- (b) two years after the date of the issue of the first Construction Certificate for the Development Consent.

4.8 Insurance

The Developer must:

- (a) maintain public liability insurance, with an insurer approved by Council, with Council nominated as an interested party, for an amount not less than the amount stated in **Item 7 of Schedule 1** covering all aspects and staging of the Developer Works;
- (b) submit a copy of the certificate of insurance to Council before the commencement of the construction of the Developer Works and when otherwise required by the Council;
- (c) maintain all other necessary insurance policies in respect of the Developer Works including, but not limited to, insurance of the Developer Works and insurance against death or injury to persons employed in relation to the undertaking of the Developer Works, and any other insurances required at law; and

- (d) maintain the insurances in **clauses 4.8(a) and 4.8(c)** until the expiration of the Defects Liability Period.

4.9 Indemnity by the Developer

Except to the extent that the Council has, by act or omission contributed to its loss, the Developer indemnifies and releases the Council against all damage, expense, loss or liability of any nature suffered or incurred by the Council arising from any act or omission by the Developer (or any person engaged by it) in connection with carrying out the Developer Works.

5. Defects Liability Period

5.1 Defects in the Developer Works

If the Council notifies the Developer of a defect in the Developer Works within the Defects Liability Period, the Developer must remedy that defect to the reasonable satisfaction of the Council's Representative, within a reasonable period.

5.2 No Limitation

Clause 5.1 does not limit any other right, power or privilege of the Council whether arising under this Agreement, any other document or otherwise at law.

5.3 Security for Defects Liability Period

- (a) Until the expiration of the Defects Liability Period, the Council may retain from the Second Guarantee an amount equal to 10% of the Construction Costs (which the Developer may provide either as part of the existing Second Guarantee or under a new guarantee in the amount equal to 10% of the Construction Costs) as security for the performance by the Developer of its obligations under this **clause 5**.
- (b) If the Developer does not rectify any defect in the Developer Works within the period specified in any notice issued under **clause 5.1**, the Council may:
 - (i) rectify the defect in the Developer Works; and
 - (ii) make an appropriation from the Second Guarantee to reimburse itself for all costs and expenses the Council has reasonably incurred in rectifying the defect.

6. Extensions of Time

6.1 Developer to Notify & Request Extension

When it becomes evident to the Developer that anything, including:

- (a) an act or omission of the Council;
- (b) delay or disruption caused by the Council, or a breach of this Agreement by the Council;
- (c) an event of Force Majeure; or

- (d) a change in Legislative Requirements,

may delay the performance of any obligation under this Agreement, the Developer may within 20 business days of becoming aware of the event notify the Council in writing with details of the possible delay and the cause and request an extension of time to perform the relevant obligation.

6.2 Contents of Notice

A notice under **clause 6.1** must:

- (a) set out the facts and include all supporting documentation on which the claim is based;
- (b) state a fair and reasonable time by which, in the Developer's opinion, the date for performance of the relevant obligation should be extended, including all supporting documentation and evidence that supports that date.

6.3 Entitlement to Extension

If the Developer is delayed by any of the causes referred to in **clause 6.1** and such cause:

- (a) could not be reasonably avoided; and
- (b) affects an activity critical for completion or performance of the relevant obligation,

the Developer will be entitled to an extension of time under **clause 6.4** for the relevant obligation if the Developer has given a notice under **clause 6.1** in accordance with **clause 6.2**.

6.4 Length of Extension

- (a) If the Developer is entitled to an extension of time, the Council must, within 30 business days of receipt of the notice under **clause 6.1**, grant a reasonable extension of time.
- (b) If the Council does not grant the full extension of time claimed, the Council must give the Developer notice in writing of the reason and must act reasonably in specifying an alternative period for the length of the extension of time.
- (c) In the event of a dispute under this clause, **clause 13** will apply.

6.5 Delay by Council

If the Council fails to grant the requested extension of time claimed or to grant any extension of time within 30 business days, the Developer may invoke **clause 13**.

7. Security

7.1 Provision of Security

Within 10 business days of the issue of the first Construction Certification for the Development Consent, the Developer must provide the Second Guarantee to the Council.

7.2 Rights and Remedies of the Council

- (a) The Council may demand on or call on the Second Guarantee if the Developer fails to remedy any default in the performance of the Developer's obligations under this Agreement (other than clause 3) within such reasonable period of time (being not less than 30 business days) as is specified in a written rectification notice given to the Developer by Council.
- (b) The amount appropriated by the Council under **clause 7.2(a)** must be applied towards:
 - (i) the reasonable costs and expenses incurred by the Council rectifying any default by the Developer under this Agreement (other than clause 3); or
 - (ii) carrying out the Developer Works; or
 - (iii) carrying out any other works in connection with the Site which are reasonably necessary for public health or safety on Council's Land.

7.3 Right to Claim Not Affected

The Developer acknowledges and agrees that:

- (a) where the Council is entitled under this Agreement to call on the Second Guarantee, the Council may claim, and the bank will be entitled to make, payment under the Second Guarantee without reference to the Developer and despite any objection, claim or direction by the Developer to the contrary; and
- (b) the rights of the Council under this Agreement are without derogation from the other rights and remedies available to the Council under this Agreement, at law and in equity in relation to any default of the Developer.

7.4 Adjustment of Guarantee Amount

- (a) On each anniversary of the date of this Agreement (the **Adjustment Date**) the Second Guarantee Amount must be adjusted in accordance with the indexation formula set out below:

$$CRc = CRp \times IPDc \div IPDp$$

where

CRc = contribution rate for the current year

CRp = contribution rate for the previous financial year

IPDc = Implicit Price Deflator Index for current year

IPDp = Implicit Price Deflator Index for previous financial year

That formula is consistent with the Council's current s94 contributions plan.

- (b) The Council must give the Developer written notice of the revised Second Guarantee Amount to apply from the relevant Adjustment Date.

- (c) The Developer must give the Council a replacement or further Second Guarantee so that the Council holds Guarantees for an amount equal to the revised Second Guarantee Amount no later than 10 business days after receipt of a notice given under **clause 7.4(b)**.

7.5 Partial Release of Guarantee

- (a) The Developer may by written notice to the Council, upon completion of any distinct stage of the construction of the Developer Works, request a partial release of the Second Guarantee. Any such request must be in writing.
- (b) The Council may by written notice to the Developer request that the Developer provide a Quantity Surveyor Assessment of the Developer Works and the Construction Cost before considering any request made by the Developer under **clause 7.5(a)**.
- (c) The Council must act reasonably in response to a request under **clause 7.5(a)** and may by written notice to the Developer consent to a partial release of the Second Guarantee upon receiving:
 - (i) a request under **clause 7.5(a)**; and
 - (ii) a Quantity Surveyor Assessment (if requested) under **clause 7.5(b)**.

If a request is refused, the Council must, on request, provide its reasons in writing.

7.6 Release of Guarantee

The Council will release the Second Guarantee, apart from any amount retained in accordance with **clause 5.3**, within 10 business days of the date it provides written notice that completion has been achieved under **clause 4.6(a)(i)**.

7.7 Release of Security for Defects Liability Period

If upon the expiration of the Defects Liability Period:

- (a) Council holds any amount of money as a result of calling on the Second Guarantee or holds any security under **clause 5.3** which has not been expended, or accounted for or referred for the purposes of **clause 5.3** or **clause 7.21**; and
- (b) the Council's Representative (acting reasonably) is satisfied that there are no actual or contingent liabilities of the Council arising as a result of the performance of any Developer Works,

then the Council will promptly pay that amount of money or return any Guarantee to the Developer or as the Developer directs.

8. Expenditure by Council

8.1 Expenditure by the Council

If the Council carries out the Developer Works, then the Council:

- (a) is not required to expend more money than is secured by the Second Guarantee. The Council may in its discretion elect not to carry out items of Developer Works to ensure that the Developer Works can be achieved for an amount equal to, or less than, the amount secured by the Second Guarantee at that time; and
- (b) may expend more money than is secured by the Second Guarantee but will use all reasonable endeavours to ensure that the Developer Works are undertaken after consultation with the Developer, with the intention of ensuring that the Developer Works may be completed without unreasonable or unnecessary expenditure.

8.2 Debt due and owing to the Council

If, under **clause 8.1(b)**, the Council expends more money than is recovered or recoverable in respect of the Second Guarantee in carrying out the Developer Works, the amount in excess of the Second Guarantee will be a debt immediately due and owing to the Council by the Developer.

Part C – General

9. Planning Agreement under the Act

The parties agree that, until the Development Consent is granted, this Agreement remains an irrevocable offer to enter into a voluntary planning agreement under 93F of the Act and is governed by Subdivision 2 of Division 6 of Part 4 of the Act.

10. Scope and Application of Agreement

- (a) This Agreement binds the parties and applies to the Site on which the Developer will carry out the Development.
- (b) This Agreement partially excludes the application of section 94 of the Act to the Development, only to the extent that it would require the Developer to pay monetary contributions relating to car parking.
- (c) This Agreement does not exclude the application of section 94A of the Act to the Development, but may be considered by a consent authority when imposing a requirement to pay section 94A contributions but only to the extent that those contributions consist of a contribution towards car parking.

11. Registration of this Agreement

11.1 Registration

The Developer must promptly:

- (a) obtain such consents to the registration of this Agreement on the titles to the land comprising the Site as are necessary for the registration of this Agreement under section 93H of the Act;
- (b) lodge the Agreement for registration with the Land & Property Information Office and take all steps to procure registration of the Agreement on the titles to the land comprising the Site under section 93H of the Act;

- (c) produce to the Council within 35 days of execution of this Agreement details of lodgment of the Agreement with the Land & Property Information Office; and
- (d) following registration of the Agreement, notify the Council of registration by enclosing a title search of the Site confirming the registration.

11.2 Removal of Registration

- (a) The Developer may only remove this Agreement from the titles to the land comprising the Site, or any of them, at the Developer's cost, with the written consent of the Council.
- (b) The Council must, within 10 business days, provide its consent under **clause 11.2(a)** in any of the following events:
 - (i) this Agreement is terminated for any reason; or
 - (ii) all of the Developer's obligations under this Agreement have been performed; or
 - (iii) the Development Consent lapses in accordance with the Act or the Development Consent is declared invalid.

12. Assignments & Dealings

12.1 Future Owners

This Agreement is intended by the parties to bind successors in title to the Site.

12.2 Dealings with Land

The Developer must not have any Dealings with the Site unless the Developer:

- (a) first informs the proposed assignee, purchaser or other party (the **Incoming Party**) of this Agreement;
- (b) provides the Incoming Party with a copy of this Agreement;
- (c) enters into a novation deed with the Incoming Party and the Council, whereby the Incoming Party agrees to perform the obligations of the Developer under this Agreement;
- (d) remedies any default by the Developer, unless such default has been waived by the Council; and
- (e) pays the Council's reasonable costs in relation to the assignment and novation.

12.3 Substitution of Security

As soon as is practicable after the Developer has any Dealings with the Site and the Incoming Party executes the novation deed referred to in **clause 12.2(c)** and provides a Guarantee for the amount of the estimated costs of the unperformed work (verified by an independent quantity surveyor) in terms acceptable to the Council, the Council will, if so directed by the Developer, release the First and Second Guarantee held at that time.

12.4 Claim if No Substitution

If the Developer fails to comply with its obligations under this clause, then the Council may make an appropriation from the First and Second Guarantee in such amount as is reasonably required to complete the Developer's outstanding obligations to complete the Developer Works.

13. Dispute Resolution

13.1 Reference to Dispute

If a dispute arises between the parties in relation to this Agreement, then either party may seek to resolve that dispute in accordance with this **clause 13**.

13.2 Notice of Dispute

The party wishing to commence dispute resolution processes must notify the other in writing of:

- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this **clause 13**;
- (b) the intent to invoke this **clause 13**;
- (c) (if practicable) the outcomes which the notifying party wishes to achieve; and
- (d) any material impact which the dispute has upon the completion of the Developer Works.

The contents of a notice issued under **clause 13.2** is deemed to be confidential.

13.3 Representatives of Parties to Meet

The representatives of the parties must promptly (and in any event within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve the dispute during the course of that meeting;
- (b) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the parties will in good faith agree to a timetable for resolution);
- (c) agree that the parties are unlikely to resolve the dispute and in good faith agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

13.4 Neither Party May Constrain

If:

- (a) at least one meeting has been held in accordance with **clause 13.3**; and
- (b) the parties have been unable to reach an outcome identified in **clauses 13.3(a) to (c)**; and

- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 13.3**,

then that party may, by 14 days written notice to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of the Agreement.

14. Notices

14.1 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:

- (a) delivered or posted to that party at its address set out in **Item 8 of Schedule 1**.
(b) faxed to that Party at its fax number set out in **Item 8 of Schedule 1**.

14.2 If a party gives the other party three 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.

14.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
(b) If it is sent by post, two business days after it is posted.
(c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

14.4 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.

15. Review

15.1 The parties agree to review their respective obligations under this Agreement annually on each anniversary of the date of the Development Consent until such time as all obligations have been fulfilled.

15.2 The parties agree to:

- (a) meet at a suitable location and time;
(b) appoint a representative who is duly authorised to attend the meeting to review the Agreement;
(c) participate in the review in good faith;
(d) minute all matters discussed at the meeting.

16. General

16.1 Approvals & Consents

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this Agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

16.2 Legal and Administrative Costs

The Developer must pay all reasonable legal and administrative costs and expenses in relation to:

- (a) the negotiation, preparation and execution of this Agreement; and
- (b) enforcing this Agreement.

16.3 Stamp Duty

The Developer is liable for and must pay all stamp duty (including any fine or penalty except where it arises from default by any other party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

16.4 Entire Agreement

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

16.5 Further Acts

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

16.6 Governing Law & Jurisdiction

This Agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

16.7 Joint & Several Liability

An obligation on two or more persons binds them separately and together.

16.8 No Fetter

Nothing in this Agreement will 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 will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

16.9 Representations & Warranties

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

16.10 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

16.11 Modification

This Agreement may only be varied or replaced by a document in writing, which is signed by the parties.

16.12 Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

16.13 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

16.14 Counterparts

This Agreement may be signed in counterparts.

16.15 GST

- (a) In this **clause 16.15**:
 - (i) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law;
 - (ii) “**GST Law**” has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*; and
 - (iii) any reference to GST payable or an entitlement to an input tax credit includes a reference, as appropriate, to GST payable by, or an input tax credit entitlement of, the representative member of a GST group.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under, or in connection with, this Agreement are exclusive of GST.

- (c) If GST is payable in respect of any supply made by a supplier under, or in connection with, this Agreement, then to the extent that the consideration (or part thereof) payable by the recipient is:
- (i) a monetary payment; or
 - (ii) a non-monetary payment which is not a taxable supply by the recipient, the recipient will pay to the supplier an additional amount equal to the GST payable by the supplier in respect of the supply (**GST Amount**).
- (d) Subject to paragraph (g), the recipient will pay the GST Amount referred to in **clause 16.15(c)** in addition to and at the same time the consideration for the supply is to be provided under this Agreement.
- (e) If GST is payable in respect of any supply made by a supplier under, or in connection with, this Agreement, then to the extent that the consideration (or part thereof) payable by the recipient is a non-monetary payment which is also a taxable supply by the recipient:
- (i) at or before the time of payment of any relevant consideration by either party, the parties agree that they will each exchange tax invoices; and
 - (ii) if the parties exchange non-monetary consideration of unequal GST-inclusive market value:
 - (A) in respect of the exchange, one party (**the First Party**) will have a GST liability on its supply (**First Party Supply**) that exceeds its entitlement to an input tax credit on its acquisition in exchange for that supply (**First Party Acquisition**);
 - (B) the other party (**Second Party**) must make a monetary payment to the First Party equal to the positive difference between the GST payable on the First Party Supply and a full input tax credit in respect of the First Party Acquisition plus any GST payable in respect of that payment (**Payment**); and
 - (C) the Payment referred to in paragraph (B) above will be made by the Second Party at the time the Second Party receives a tax invoice for the First Party Supply.
- (f) The parties will agree upon the market value of any non-monetary consideration which the recipient is required to provide under **clauses 16.15(e)**. If agreement cannot be reached prior to the time that a party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The parties will each pay one half of the costs of referral and determination by the independent expert.
- (g) The supplier must deliver a tax invoice to the recipient before the supplier is entitled to payment of the GST Amount under **clause 16.15(c)**. The recipient can withhold payment of the GST Amount until the supplier provides a tax invoice.
- (h) If an adjustment event arises in respect of a taxable supply made by a supplier under, or in connection with, this Agreement;

- (i) any amount payable by the recipient under **clause 16.15(c)** will be recalculated to reflect the adjustment event, taking into account any previous adjustments under this clause, and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires and the supplier will issue an adjustment note to the recipient; or
 - (ii) in respect of an exchange of supplies that falls within **clause 16.15(e)**, the principle in that clause will be applied, taking into account the adjustment event and any previous adjustments under this clause **16.15(h)**, tax invoices or adjustment notes will be exchanged, and a further monetary payment made as required or appropriate.
- (i) Where a party is required under, or in connection with, this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled.

17. Interpretation

17.1 Definitions

In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under that Act.

Authority means a Commonwealth, State or local government department, a Minister, body, instrumentality, trust or public authority in the exercise of a governmental regulatory function.

Car Park Land means the land specified in **Item 4 of Schedule 1** to be transferred to the Council free of cost in accordance with this Agreement.

Completion means the stage in the construction of the Developer Works when, in the discretion of the Council's Representative acting reasonably, Council gives notice under **clause 4.6** that the Developer Works are complete except for minor omissions and minor defects which are non-essential and:

- (a) which do not prevent the Developer Works from being reasonably capable of being used for their intended purposes;
- (b) which the Council determines the Developer has reasonable grounds for not promptly rectifying; and
- (c) the rectification of which will not prejudice the convenient use of the Developer Works.

Construction Certificate has the same meaning as in the Act.

Construction Costs means the construction cost of the Developer Works determined by the Council.

Council's Representative means the person specified in **Item 9 of Schedule 1** who is duly authorised to give approval under this Agreement.

Council's Land means the land specified in **Item 2(b) of Schedule 1**, being the land upon which the Developer Works will be carried out.

Dealing means selling, transferring, assigning, mortgaging, charging or encumbering the Site.

Defects Liability Period means the period of 12 months from the date on which the Developer Works reach Completion.

Developer Works means the works described in **Schedule 2**.

Development means the proposal of the general nature set out in **Item 3 of Schedule 1** to be completed by the Developer in accordance with the Development Consent.

Development Application means the development application identified in **Item 3 of Schedule 1** (including all amendments under clause 55 of the Environmental Planning and Assessment Regulation 2000) and includes plans, reports models, photomontages, material boards (as amended or supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means the consent granted by the Council to the Development Application for the Development including all modifications made under section 96 of the Act.

First Guarantee means either:

- (a) a Security Deposit for the First Guarantee Amount; or
- (b) an unconditional bank guarantee, unlimited in time, issued by a bank licensed to carry on business in Australia that is:
 - (i) in favour of the Council;
 - (ii) for the First Guarantee Amount; and
 - (iii) on such other terms and conditions the Council may approve from time to time.

First Guarantee Amount means the amount specified in **Item 6(a) of Schedule 1**.

Force Majeure means an act of God, inclement weather, a strike, lockout, civil commotion, war (whether declared or undeclared), riot, blockade or insurrection, fire (including bush fire), flood, storm or tempest, smoke, earthquake, epidemic, explosion, an act or restraint of any government or semi-governmental or other public or statutory authority or any other event beyond the reasonable control of the Developer or Council.

Implicit Price Deflator Index means the Implicit Price Deflator Index published from time to time in the Australian Statistician's Summary of Australian Statistics.

Legislative Requirements means includes:

- (a) an Act, ordinance, regulation, instrument, by-law, award and proclamation of the Commonwealth and the State of New South Wales including the Act and associated instruments;

- (b) any authorisation, licence or permit and the like, issued by an Authority and includes any Development Consent.

Occupation Certificate has the same meaning as in the Act.

Public Benefits means the public benefits identified in **Item 5 of Schedule 1** which are to be provided as a result of the Developer Works.

Quantity Surveyor Assessment means an assessment of the Construction Cost by an independent quantity surveyor who has at least five years experience in the assessment of building material and construction costs.

Second Guarantee means an unconditional bank guarantee, unlimited in time, issued by a bank licensed to carry on business in Australia that is:

- (a) in favour of the Council;
- (b) for the Second Guarantee Amount; and
- (c) on such other terms and conditions the Council may approve from time to time.

Second Guarantee Amount means the amount specified in **Item 6(b) of Schedule 1** as varied from time to time in accordance with this Agreement.

Security Deposit means the deposit by cash or unendorsed bank cheque with the Council.

Site means the land identified in **Item 2(a) of Schedule 1**, comprising part of the land the subject of the Development Application.

17.2 Construction

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) 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 the Shoalhaven local government area.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) 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.
- (e) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (f) 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.

- (g) References to the word 'include' or 'including' are to be construed without limitation.
- (h) 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.
- (i) Any schedules and attachments form part of this Agreement.
- (j) The Explanatory Note for this Voluntary Planning Agreement is not to be used to assist in construing this Agreement.

Executed by the parties as an Agreement:

Signed for and on behalf of the COUNCIL)
OF THE CITY OF SHOALHAVEN by its)
duly authorised officer in the presence of:)

Witness:

Signature:

Name (printed):

General Manager:

SIGNED by **SIBLOW PTY LTD**, ACN 003
602 417, in accordance with its Constitution
Section 127 of the Corporations Act 2001:

Director:

Director/Secretary:

Name (printed):

Name (printed):

	Fax Number	(02) 9210 6611
9	Council's Representative	General Manager

Schedule 2 Developer Works

Section 1 Description of Works

1. Construction of a public car park for 75 spaces on Council's Land and the Car Park Land in accordance with the plans set out in section 3 below.
2. Construction of angled parking spaces for 30 cars and 4 motorcycles along the Weston Street frontage of the Development and the frontage of the public car park within the road reserve in accordance with the plans set out in section 3 below.

Section 2 Estimated Costs

\$3,300,000

Section 3 Relevant Plans

See attached plans.

Section 4 Design Refinement

Not applicable

Schedule 3 Standards

Note: These standards are intended to act as a “base point” or minimum standard if there is an incomplete design or if the design (as submitted) is likely to evolve. The standards should be reviewed. Any current manuals, practices, policies etc which may impact on the Developer Works to be included here

The priority should be to identify the most likely Council documents and then – if there are non applicable – the more generic Australia Standards.

Section 1 General

- (a) The standards referred to in this Schedule 3 are included for information purposes only and as a guide to the relevant standards for the general nature of the work of the identified as the Developers Works in this Agreement.
- (b) The Council makes no representation or warranty whatsoever as to the currency of the standards identified, or their application to the final design of any particular element.
- (c) If any standard is replaced or supplemented, then a reference will be deemed to include any other standards as may replace or supplement that standard.

Section 2 Conflict

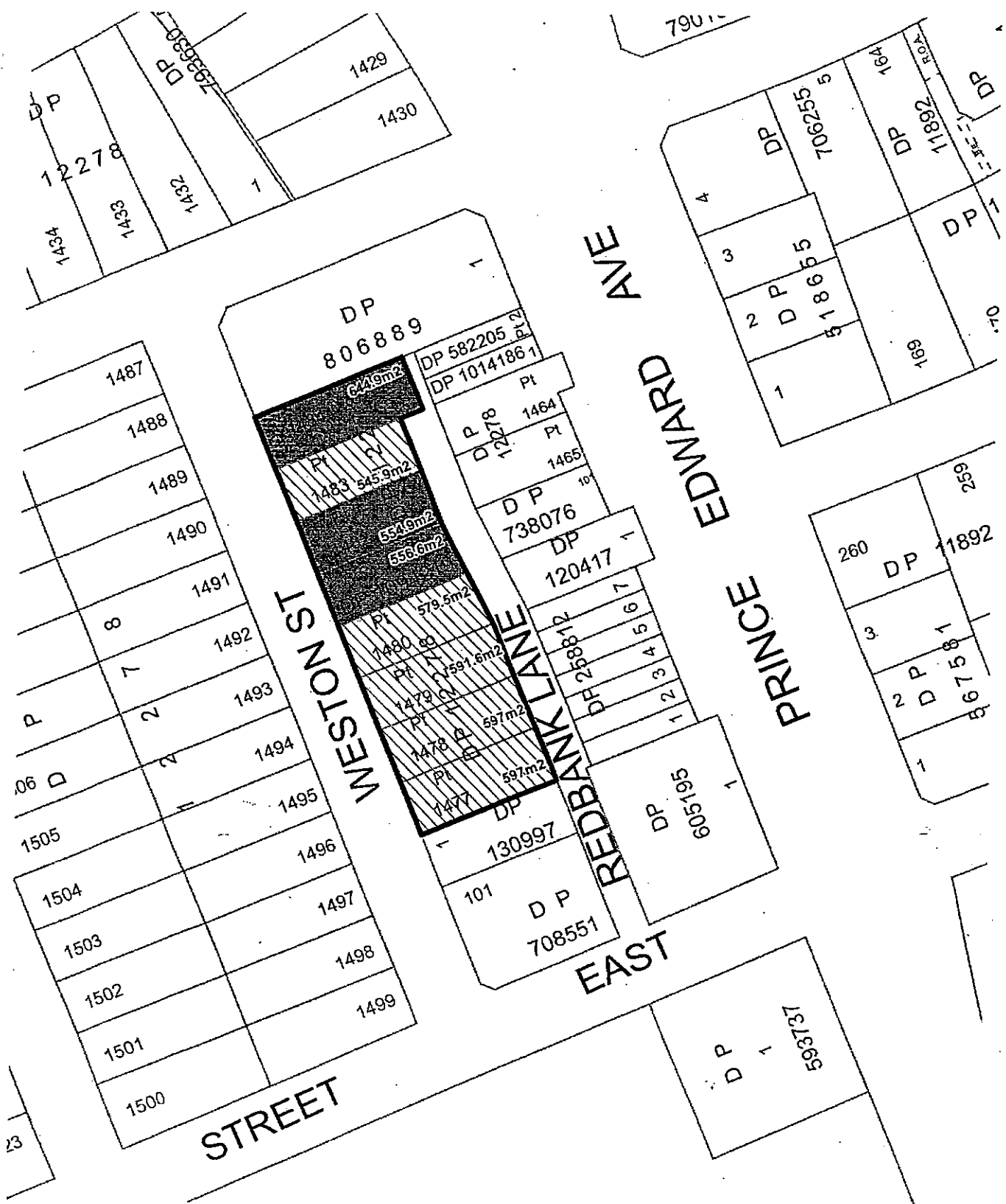
- (a) If any Australian Standard prescribes or describes a different level of material, finish, work or workmanship, than those contained in any Council standard, then the higher of the two standards apply.
- (b) If any one or more Council standards conflicts with another Council standard, then the Council must nominate the correct and applicable standard. The Council’s decision as to the applicable standard if there is conflict is final.

Section 3 Council Standards

Shoalhaven LEP 1985 (as amended)
DCP 18 - Car Parking Code
DCP 30 – Culburra Commercial Area
DCP 100 - Subdivision Code

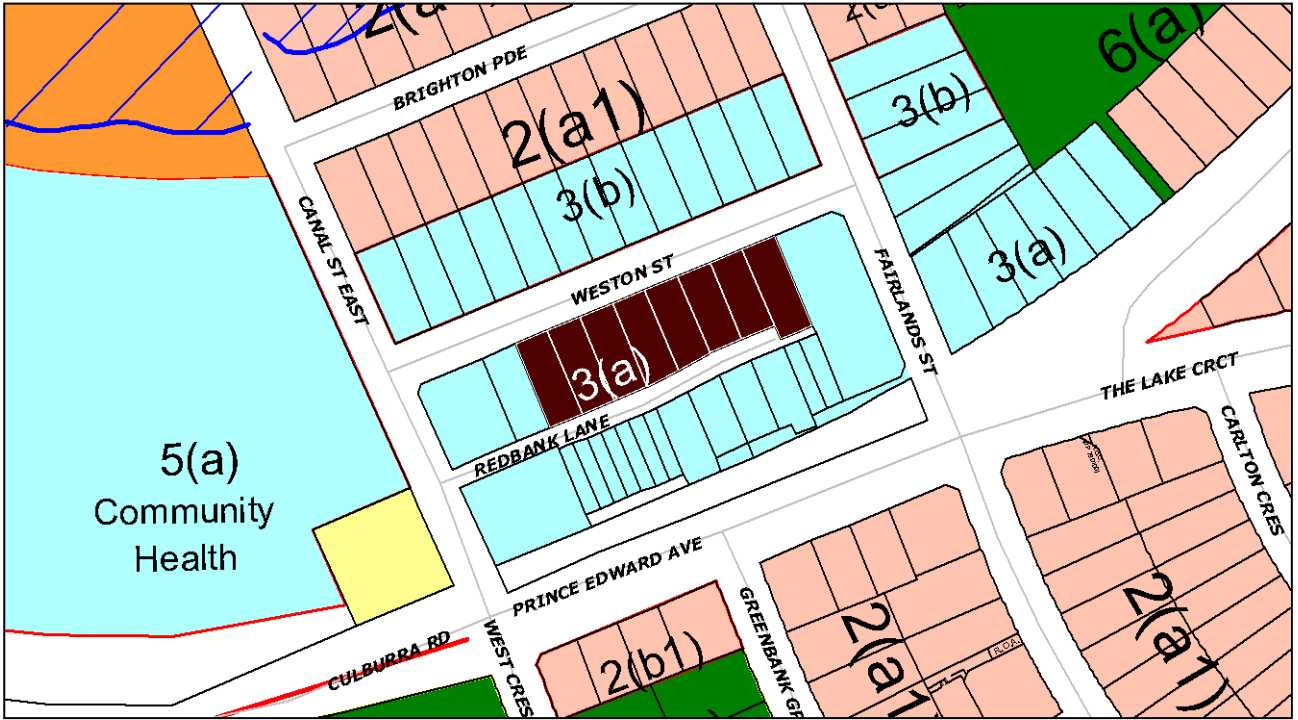
Section 4 Australian Standards

AUSTROADS Guide to Traffic Engineering Practice
AS1158 – Lighting for Roads and Public Spaces
AS2890 = Parking Facilities – where relevant
AS1428 = Design for Access & Mobility – where relevant
AS1742 = Manual of uniform traffic control devices – where relevant



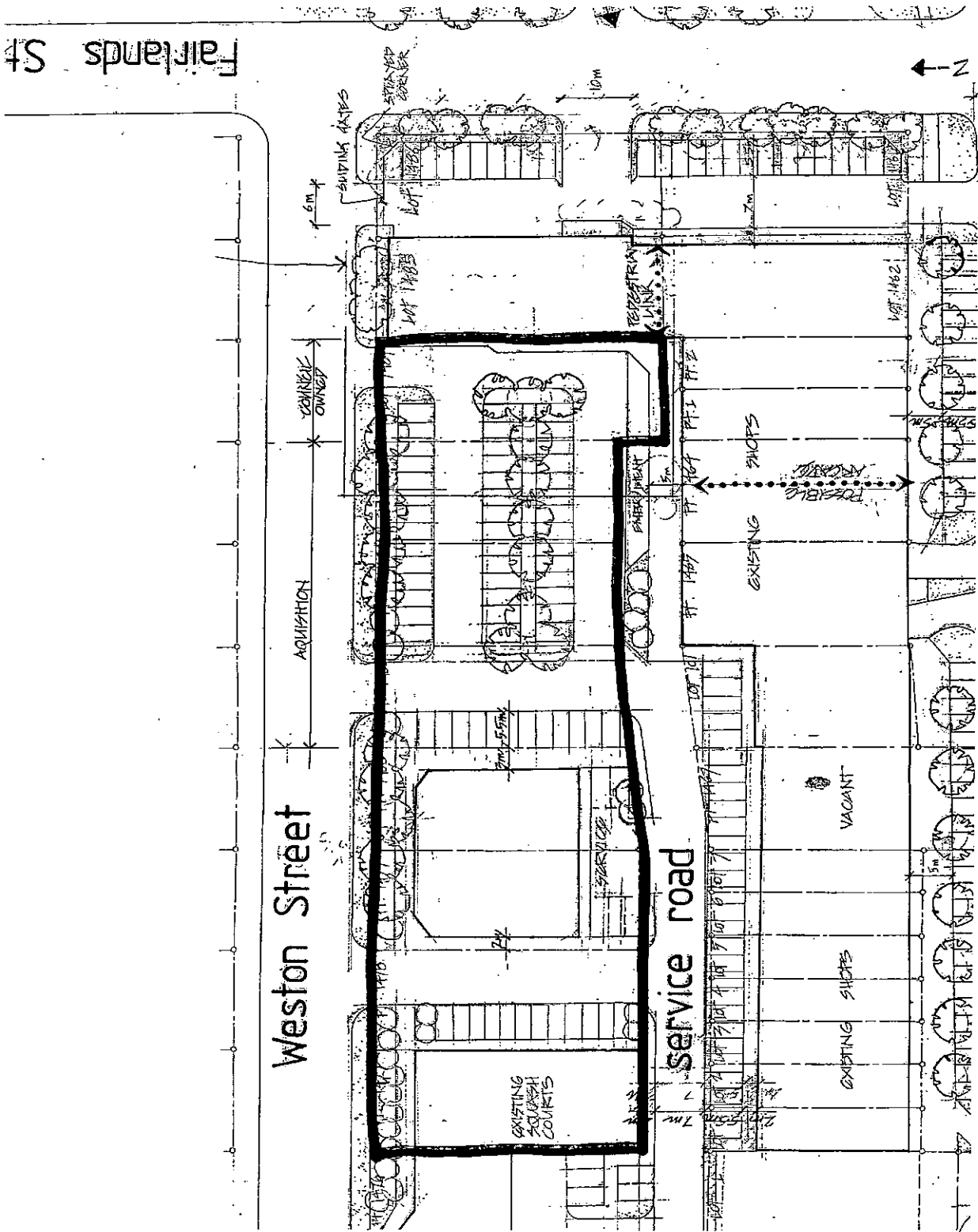
Legend
 [Shaded Box] SUBJECT LAND
 [Hatched Box] SHOALHAVEN CITY COUNCIL
 [Dotted Box] SIBLOW PTY LIMITED

Locality : Culburra Beach
 Scale: Not to scale



■ Subject Land

<i>Issues Raised in Public Submissions</i>	<i>Council Comment</i>
In adequate public toilet facilities provided.	The closest public toilet to the proposed development is within the public reserve to the rear of the existing shopping centre at the eastern end of the Culburra CBD. These toilets being approximately 400m from the subject land. The toilets that have be provided are for staff within the development and the numbers comply with Building Code of Australia (BCA) requirements. In accordance with BCA requirements there is no obligation on the proponent to provide public toilets. The proponent however has advised that they will provide an additional unisex disabled toilet within the development that will be made available to the public during the developments operating hours.
Concerns with garbage management.	The proposed development is providing enclosed garbage storage areas for both the supermarket and retail stores. As such garbage storage will not be visible to the public. Assessment indicating that the areas provided are of a sufficient size to cater for the waste that is anticipated to be generated.
Concerns with the developments drainage and impact on Weston Street.	A concept stormwater drainage plan has been submitted with the application. In summary, the applicant is proposing to provide on-site detention that will accommodate storms up to the 1 in 100 year ARI without overflows external to the site. In addition some stormwater discharge from the roof of the development will be collected in a rainwater re-use storage tank for use on site. A gross pollutant trap is also proposed to be provided so as to ensure water leaving the site from the off-street car parking area is reasonably screened.
No provision for parking of trailers, boats and caravans.	Parking for longer vehicles can be accommodated within the site as detailed in the alternative option for car parking provided by the applicant. This however will result in a decrease in the number of off-street parking spaces. In addition opportunity exists to provide longer vehicle parking within Canal Street East (refer to Attachment 'A').
Electricity provision needs to be able to cope with additional loads.	A new electrical substation is proposed to be constructed as part of the development. Integral energy has been informed of the proposed development and expressed no concerns.
Local contractors need to be used.	The proponent has advised that consideration will be given to local contractors and businesses when awarding tenders for the construction and ongoing management of the development.
Changes to existing signage.	The proponent will be responsible for the supply and installation of all regulatory signage associated with the proposed development. The proponent has also advised that they are prepared to relocate existing directional signs erected by the veterinary clinic and advertise in the local press when traffic movement changes are to occur so as to alert the local community to the changes.
Traffic impact statement submitted underestimates the seasonal traffic flows.	The submitted traffic impact statement includes a survey undertaken during the ANZAC day long weekend. Council's Traffic and Transport Unit have reviewed the information and have advised that they have no concerns with the survey information that has been provided.



Plan that Supports Development Control Plan No. 30 – Culburra Commercial Area
(Extract Only)

█ Development Site

Action	Benefit to Council/ Community	Cost to Council	Benefit to Siblow	Cost to Sublow
Council Land	-	Loss of at grade development opportunity \$ Note (1)	Provision of at grade land value for 69 parking spaces (on 3 lots) generated by development @ say \$350/m ² - \$571,550	
Sealing of off street car parking	75 spaces @ \$4000 per space \$3000,000	Future Maintenance	Not future maintenance	75 spaces @4,000 per space \$300,000
Dedication of Siblow Lot 1483 to Council as public car park	Additional land in Council ownership \$210 (385/m ²) - \$240,000 (440/m ²)			Loss of land \$210 - \$240,000
Weston Street angle parking 30 + 4 spaces	34 angled spaces			Construction of 34 spaces - \$204,000

Note (1): Air space value is currently minimal in Culburra Beach commercial area. Longer term, viability and opportunity will increase

**Proposed Medium Density Development Lot 337 Sullivan Street Worrigeec.
For Chris Robson Property Developments PTY LTD
13/07/2009**

The subject proposal has been designed having regard to Shoalhaven DCP 71 and the objectives and performance criteria contained therein.

The allotment is located in Sullivan Street Worrigeec with two side streets on the corner of River Oak road and Almond Bark Road.
The allotment is bounded by residential 2C land.

Currently, the lot is vacant.

Site Analysis.

Aspects of the site analysis have been included on the site plan. The site slopes from the South west to the north east and storm water could flow to the road. There is approx 3.5 m of cross fall over the site. With a maximum of 800mm fall across any individual building envelope.

Buildings have been sited to maximize resident amenity having regard to adjoining development, recreational areas, solar access, prevailing breezes and vehicle movements. No constraints exist in regard to flooding or drainage issues.

Site Density.

The proposal is to erect nine medium dwellings, as per Councils DCP. The existing site area is approximately 2567.42 m² which is 227.42m² more than the site area nominated in DCP i.e. 2340.00m².

Streetscape.

The streetscape in Sullivan Street is made up of a variety of housing types all built in the last 4 years.

The majority of existing structures in the locality are single storey. The proposed development is of 9 single storey units constructed with hipped roofs, the scale and design of which is in keeping with other developments in the area.

Front building setbacks within this area vary. My company as a standard landscaper from the front boundary to the buildings. DCP71 requires 870m² of landscaping we have provided 1261.9m² which is 391.9m² more.

Building Sitting and Design.

The proposal is for 9 single storey dwellings, the sitting of which will not impact on solar access or privacy from/to adjoining properties. The allotment has only two adjoining neighbors, which are single residencies.

A maximum of 400mm cut/fill will be utilized providing a natural graduation of the proposal in keeping with the existing landform/contours and adjoining development.

The building has a high degree of articulation on all elevations which assist the proposal to relate to the local context as well as enhancing the amenity of adjoining properties.

Sitting and design of structures has been done to ensure living areas and outdoor recreation areas have maximum solar access. Particular care has been taken to provide usable separation between dwellings, which, along with the absence of any facing windows, promotes privacy between dwellings. The height of each dwelling has been restricted to ensure a relationship with existing development. The proposal complies with building envelope requirements.

Setbacks to the northern, eastern, western and southern boundaries are minimum nominated in the acceptable solutions and the ratios comply with those set out in the DCP. Generous turning circles have been achieved over the project. One interesting feature is that the project has been designed with 8 of the 9 units having road frontage therefore blending into the streetscape. It will have a similar appearance of the medium density project of 6 units to the north where 4 of the 6 units have road frontage and direct driveway access.

Views, Visual and Acoustic Privacy.

A principle concern in regard to this development is the provision of visual and acoustic privacy.

All main bedrooms or bedrooms that could act as main bedrooms are located looking into backyards. For view, privacy and acoustic privacy.

Internal visual privacy has been maintained via the elimination of overlooking of main internal living areas. Building layout and sitting of windows has provided privacy to open spaces in that windows do not overlook such spaces and screen fencing has also been provided between outdoor areas. Main areas of private open space have been located distant from each other to enhance amenity.

Usable Open Space.

Open space has been clearly defined so that it may serve as an extension of the living areas of the dwelling whilst maintaining as far as possible a Northerly aspect for solar access. The amount of private open space provided exceeds DCP requirements for each unit as does the minimum dimension of each area.

Car Parking.

19 spaces have been provided on site, which is 4.5 spaces above the numerical standard for car spaces required. The dimensions and geometry of each car parking space satisfies the requirements of relevant standards.

In addition there are opportunities for stack parking and an overflow area along Sullivan Street, Almond Bark Road and River Oak Road if the need arises.

Landscaping.

Approximately 1261.9m² of landscaped area is proposed for this development. This figure is 391.9m² more than the numerical requirement contained in the DCP. Being 870m².

Landscaping has been placed to blend the entire proposal into the streetscape. The maximum amount of landscaping has been provided at the front of the development and along the vehicular entry point. This has been done to maximize the impact of the landscaping from the street elevation. The performance criteria of DCP 71 have been met in that:

- Minimal site disturbance will be carried out and natural contours will be maintained wherever possible.
- No significant vegetation or natural features exist.
- Landscaping to the front of the proposal utilizes small native trees and shrubs, which are aimed at integrating the proposal with the existing streetscape. It should be noted that landscaping to the streetscape is not a dominant feature in this general area and the landscaping proposed is considered substantial.

- The blend of small trees, shrubs and ground cover compliment the functions of the various parts of the site whilst having regard to aspects of solar access and privacy.

Energy Conservation.

Dwellings have been designed and sited to maximize as far as possible solar access to living areas and private open space areas. A Basix sustainability assessment is provided to demonstrate compliance with statutory requirements.

Stormwater.

The disposal of roof and surface water from this proposal will be to Council piped system in the road.

Security, Site Facilities and Services.

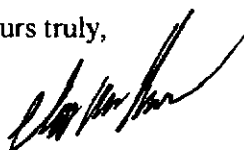
Screened bin and general outdoor storage has been provided to each dwelling with access from common areas.

Outdoor clothes drying areas have been provided to each dwelling and are adequately screened from common areas. Public utilities will be provided to each dwelling.

Summary.

This proposal has been designed having regard to the esthetics of the development and the amenity/comfort of residents. The objectives of DCP 71 has been carefully followed and the overall development has satisfied the objectives and performance criteria. The development as proposed at least represents a comparable standard to other medium density developments in this area.

Yours truly,



Christopher Robson



SUMMER BREEZE

RIVERDAK ROAD

KEY



LANDSCAPING SCHEDULE

UNIT 1 UNIT 2 UNIT 3 UNIT 4 UNIT 5 UNIT 6 UNIT 7 UNIT 8 UNIT 9

TYPE AREA: UNIT 1 UNIT 2 UNIT 3 UNIT 4 UNIT 5 UNIT 6 UNIT 7 UNIT 8 UNIT 9

LANDSCAPING SCHEDULE: UNIT 1 UNIT 2 UNIT 3 UNIT 4 UNIT 5 UNIT 6 UNIT 7 UNIT 8 UNIT 9

CALCULATIONS

UNIT 1 UNIT 2 UNIT 3 UNIT 4 UNIT 5 UNIT 6 UNIT 7 UNIT 8 UNIT 9

AREA: UNIT 1 UNIT 2 UNIT 3 UNIT 4 UNIT 5 UNIT 6 UNIT 7 UNIT 8 UNIT 9

PERIMETER: UNIT 1 UNIT 2 UNIT 3 UNIT 4 UNIT 5 UNIT 6 UNIT 7 UNIT 8 UNIT 9

SEWER: UNIT 1 UNIT 2 UNIT 3 UNIT 4 UNIT 5 UNIT 6 UNIT 7 UNIT 8 UNIT 9

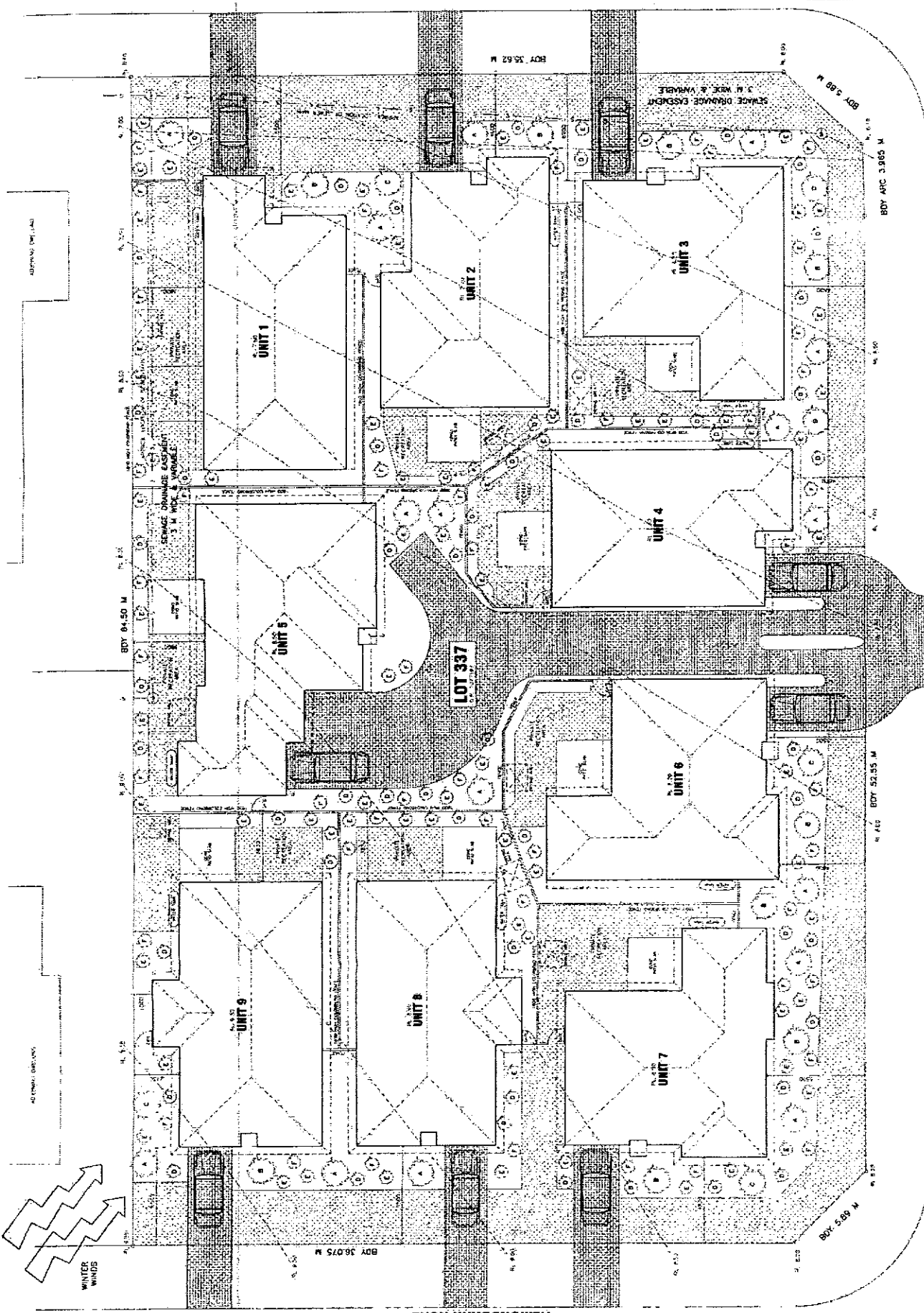
WATER: UNIT 1 UNIT 2 UNIT 3 UNIT 4 UNIT 5 UNIT 6 UNIT 7 UNIT 8 UNIT 9

STORMWATER: UNIT 1 UNIT 2 UNIT 3 UNIT 4 UNIT 5 UNIT 6 UNIT 7 UNIT 8 UNIT 9

PROPOSED MEDIUM DENSITY DEVELOPMENT LOT 337 SULLIVAN STREET WOODBREE

PREPARED BY: CRAIG WHITE BUILDING DESIGN

DATE: 2009/08/28



800M TO BOWLING CLUB
1.2 KILM TO SHOPPING CENTRE

SULLIVAN STREET

SCALE: 1:500
SITE & LANDSCAPING PLAN

NOTES: 1. THIS PLAN IS TO BE USED IN CONJUNCTION WITH THE DEVELOPMENT APPLICATION AND THE LANDSCAPING SCHEDULE. 2. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE SPECIFIED. 3. THE CLIENT ACCEPTS RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE DESIGNER. 4. THE DESIGNER ACCEPTS RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE CLIENT.

DESIGNER: CRAIG WHITE BUILDING DESIGN
10/100 WOODBREE ROAD, WOODBREE, VIC 3009
TEL: 03 9451 1111
WWW.CRAIGWHITEDESIGN.COM.AU

DATE: 2009/08/28
DRAWN BY: [Name]
CHECKED BY: [Name]



craig white building design

10/100 WOODBREE ROAD
WOODBREE, VIC 3009
TEL: 03 9451 1111
WWW.CRAIGWHITEDESIGN.COM.AU

ATTACHMENT 'B'**Chris Robson**

1413 Naval college rd
 Vincentia
 NSW 2540
 Ph: 0412429588
 Fx: (02)44438831
 Licence No 48732c
 A.B.N. 17060526212
 29/07/2009

Property Developments Pty Ltd Council

Received

30 JUL 2009

Re: Lot 337 DA 091893

File No. DA 09/1893Referred to JTB

To Whom It May Concern:

In reply to your letter dated 21 July 2009:

1. Site density. Tim Fletcher agrees in a site ratio and for many years a site ratio for density has been applied to my projects. Most of the 5 units in lot 337 Sullivan Street are between 85 and 90m² of living area, which is just over the 85 metres required. For example unit 1 is 86.9m² of living area there for by adding 1.9 metres of living space the land required goes from 240m² to 330m² an increase of 90 m². It is possible to reduce the hallway of unit 1 by 1.9 metres there for reducing the units living back to 85m² there for complying with an excess of 47m² of land. Refer to Tim Fletcher.
2. All unit sites vary greatly and in this case lot 337 has 3 frontages which is unusual. To blend with the street scape and market requirements it was decided to build detached houses with road frontage.

The completed project will have the same characteristics of many houses in the immediate area and will have separate private parking in front of the dwelling which is no different to other houses built in the area. Just because it is a medium density site doesn't mean you cannot have stack parking. It would have been possible to subdivide the lot into 4 x 641m² lots and build 8 attached duplexes under DCP57 this would be fine.

I could have also lodged the project under integrated housing and again no problem.

I believe DCP71 is performance based and stack parking has been allowed many times in the past eg directly across the road Lot 318 Sullivan Street corner River Oak Road 4 units out of 6 on 2 on 2 street frontages has stack parking. Lister Court Hyams Beach on 2 frontages, Argyle Street Vincentia, 122 Duncan Street Vincentia etc.

River oak and Almond Bark road are quiet roads and Sullivan Street has excellent visibility if a resident cannot leave the site safely in this quite area serious concerns should be raised about their driving ability.

A usual unit site would have one entrance and the other 3 boundaries fenced. In this case fencing River Oak road and Almond Bark road would not suit the street scape; it would also reduce visual surveillance. Already many standard corner blocks have the long boundary fenced. A recent inspection with Robert Russel in the immediate area concluded that this was not a good result. I believe by taking advantage of the unusual site, direct access reduces fencing to front boundaries to a minimum, increases visual surveillance and blend to the street scape to a point you wouldn't know they were units (see example completed on corner River Oak road and Sullivan Street). This design reduces conflict of noise and privacy within

the project and also disperses car parking to all street frontages. The market would prefer separate driveways as it reduces again potential conflict over car parking. If the project was built on a traditional single entry drive way it would have say 9x1.5 car parks as a requirement on site (13.5), 10 garaged spaces are provided which leave only 4 visitor spaces to be provided. One resident could have 2 vehicles on a day not park in the garage leaving both vehicles outside in the visitor spaces, and could have 1 visitor only. This now leaves 1 visitor car park space for 8 units, now we assume that all the occupants park in the garage 1 space is left before cars are forced onto the street which reduces convenience and security. In the proposed project 10 spaces have been provided under roof and further 10 spaces as stack parking which is larger number than what is prescribed in DCP71 of 13.5. if one occupant in the proposed project has 2 or more visitors over, they would not impact on other residents in the project, other residents can still access their garages and stack park and even park out the front of their road frontage house increasing security and convenience and reducing conflict.

All DCP71 projects should be accessed on their merits and all projects are different. Taking advantage of 3 road frontages is what the public wants. I believe residents in the surrounding area would prefer a project that looks and functions more like residential housing than units.

Note: I have used the example of 9 medium units which is based upon approximately 770.99m² of total living /9 = 85.665m².

3. In designing and locating the buildings it is possible that 3.5metres could have been chosen across one boundary. I decided a more softer approach in all units 5.5 metres has been achieved to the front garages and this is mostly the majority if not all of the frontages. I chose 4.6 and 4.8 metres set back for units 2, 3 and 6 which leaves 4.0 metres for unit 4 and this is only for 4.5 metres in length. A lot of give and take in locating buildings increase visual interest and are articulated to suit the street scape.

Note: state wide exempt and complying development code states a 4m setback for single story homes in new developments.

4. This window could be moved to the front elevation (south elevation) however it is a secondary window as there is already a window to the north and the western window would allow north western sun in. Please advise if relocating a secondary window is necessary.
5. This could be conditioned in the DA.

Yours truly,



Chris Robson

REVISED

18 AUG 2009

Chris Robson

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13/08/2009

RE: Lot 337 Sullivan Street Worrigea DA 091893

Revised on 17/08/2009

In reply to your letter dated 21st July 2009

Firstly I would like to draw to your attention the wording of DCP71 page 1 1.4 which states the aim is to:

A1 Encourage high quality urban design and residential amenity in medium density housing development;

A2 To promote wider housing choice and more **affordable** housing in Shoalhaven;

A3 To set appropriate environmental criteria for energy efficiency, **privacy, noise, vehicular access, parking** and open space;

A4 To ensure that impact of medium density housing proposals on the **amenity of adjoining properties** is a prime and initial consideration of applicants when preparing their development proposals;

A5 To provide a comprehensive design oriented approach to medium density housing in Shoalhaven a single document;

A6 To provide a user friendly document with **flexible** performance – based criteria to guide development.

Page 2 2.2 Paragraph 4, the objective of each design element are **general** statements of the overall intent of the particular design element. The performance criteria are general statements of the means of the **achieving the objective**. Acceptable solutions are provided as examples of what is considered acceptable to enable the performance criteria to be achieved. They are simply examples and do not **exclude other solutions** which achieve the desired performance criteria.

Page 3 2.4

Objectives are general statements of the overall intention of applying a design element. In complying with the objective of an element, an applicant can either use the performance criteria or the acceptable solutions or a combination of both.

Performance criteria are general statements of the means of achieving the objective. They are not meant to be overly limiting in nature. Instead they provide designers and developers an opportunity to work through a variety of design criteria. **Not all performance criteria will be applicable to every development.**

Acceptable solutions are provided as examples of what is considered acceptable to enable the performance criteria to be achieved, but should not be interpreted as an alternative prescriptive form of regulation. They are **examples** of what is considered

acceptable, but they **do not preclude other solutions** which achieve the desired performance.

Criteria considered for design.

Lot 337 Sullivan Street is a rather unusual development site in that it has 3 large road frontages.

A more traditional development site would have a 20 to 40 metres street frontage with a fence to both sides and rear to secure the back yards for privacy, security recreation and the like.

To implement a traditional style development having one entry point to say Sullivan Street was considered problematic as fencing would be required to the 2 sides on River oak Road and Almond bark Road. This would also mean the garages would be inward facing with the rear of the house showing bathroom, kitchen, and laundry windows to the River oak Road and Almond bark Road frontages.

This would not be in keeping with streetscape. It was decided that to blend with the streetscape detached single story dwellings with their own single garage street access would achieve the design criteria stated on page 11 3.2 which states it will secure community acceptance and makes a positive contribution to the character of the street. Also by having separate driveways and detached dwellings, aids acoustic privacy as stated on page 20 PS saying site layout and building design protect internal living and sleeping areas from uncontrollable high level of external noise and minimise transmission of sound through the building structure.

I believe that the chosen design ensures these requirements are met as a traditional project with a shared driveway can be problematic in the noise generated by vehicular and foot traffic.

Site setbacks

1. Page 11 3.2 of DCP71 states secondary boundaries of 3 metres and 5.5 for a front boundary. In designing and locating the buildings it is possible that 3.0 metres could have been chosen across one boundary. I decided a more softer approach in all units 5.5 metres has been achieved to the front garages and this is mostly the majority if not all of the frontages. I chose 4.6 and 4.8 metres set back for units 2, 3 and 6 which leaves 4.0 metres for unit 4 and this is only for 4.5 metres in length. A lot of give and take in locating buildings increase visual interest and are articulated to suit the street scape.

Note: state wide exempt and complying development code states a 4m setback for single story homes in new developments.

If Sullivan Street is adopted as a 3 metre frontage then unit 3 at 4.6m, unit 4 at 4.0m, unit 6 at 4.8m and unit 7 at 5.5m all fall well behind the prescribed 3.0m setback. On the two 5.5m side streets, all these houses achieve 5.5m to the garage it is only unit 2 at 4.6m, unit 3 at 5.2m and unit 7 at 4.8m which encroach beyond this point. Total squarage over the prescribed 5.5m is approximately 7.92m². This is on extremely small squarage considering the squarage which could have been gained on the Sullivan Street frontage. A lot of consideration was given to the location of all buildings to blend with the street scape.

I therefore conclude I satisfy all the requirements of 3.2 and draw to your attention P8 stating the frontage of buildings and their entries address the street.

Car parking 3.34

Due to the unusual nature of the block with 3 road frontages, DCP71 would never have envisaged such a scenario. In creating a project to blend with the streetscape I am requesting a departure of the performance criteria P3 stack parking and exiting in a forward direction. I believe that every other DCP allows stack parking and in the immediate area all other completed homes have stack parking, in fact it is a common place to have stack parking to road frontage homes all over Australia.

The objective 3.3.4 01 states to provide convenient accessible and safe parking to meet the needs of residents and visitors. The residents of the proposed project undoubtedly will have the same needs and requirements as anybody else in the immediate area. Just because a project is dealt with under DCP71 doesn't mean there will be a different requirement for the residents.

The market would prefer road frontage where possible, not having to share a driveway where possible, and having 1.8 metres separation of buildings where possible.

Therefore if stack parking is allowed then 10 car parking spaces are provided under roof, 10 car parking spaces are provided as stack parking and 9 opportunities are provided to park 1 car per dwelling out the front of the dwelling, this increase security and visual surveillance not to mention convenience.

This is a total of 20 on site spaces and 9 of site, a total of 29 convenient car parking spaces.

An example of a minimum standard on a traditional project with a single driveway would be required 9x1.5 spaces, 10 provided under roof. Therefore only 4 spaces would be required externally. One resident could have 2 cars parked outside and then receive a visitor which leaves 1 space to service 8 of the remaining residents. This now is certainly not convenient as additional cars will have to park some distance away from the dwellings creating security concerns coming home late at night, convenience concerns dropping home for a short time or coming home with shopping, safety concerns for elderly visitors having to walk some distance and also families with young children and disabled.

The proposed plans addresses all the needs of the occupants and addresses street surveillance as these residents will have a view of the car parked in their driveway, possibly a visitor and also a possible car parked in the street out front of their dwelling. They can also keep a watchful eye on their neighbour's property as well.

Not only has the amount of convenient car parks increased, safety has been addressed, security and streetscape. Therefore in this case stack parking has many merits and should be allowed to keep in line with adjoining residence. If the project was rebadged to DCP57 stack park would be permissible, the same goes for integrated housing. Even small lot subdivisions as with the Stockland Bayswood project in Vincentia lots of 300+m2 on Torrens title can have stack parking with single car garages with very small road frontage of approximately 10 to 12 metres. This is allowable only by its title.

The proposed project has 136.0 lineal metres of road frontage with 8 dwellings fronting, this is an average of 17 metres per dwelling which is on average with any standard residential subdivision.

I understand the concern of DCP71 encouraging cars leaving in a forward direction and this would be based on the traditional type development with 1 access road with

say 6 units per side. It would be rather dangerous for residents if vehicles reverse from a rear unit possibly some 80 metres back to the road. However with single access driveways all the danger of damage and injury has been eliminated and the single access driveways proposed are on low volume strait streets with rather good long range vision.

I therefore believe this project has achieved a satisfactory solution and is now in the same category for safety and use as all DCP57 projects integrated housing and all residential housing all over Australia.

Site density.

In designing units some squarage is waisted on hallways etc which can increase a unit some 3 to 4 metres however this will not change the use of the dwelling and the same amount of occupants will use the squarage inside. The hallway could be decreased by increasing the veranda which would cut say 2 metres of each of these units.

Unit 1 - 86.34m²

Unit 2 - 85.92m²

Unit 3 - 85.34m²

Unit 4 - 80.31m²

Unit 5 - 84.72m²

Unit 6 - 85.54m²

Unit 7 - 86.76m²

Unit 8 - 90.28m²

Unit 9 - 90.28m²

Total - 775.49m²/9 = 86.16m² average - 85.00m² = 1.165m² x 9 = 10.489m²

Therefore the project has 10.489m² over the prescribed 9 x 85m².

Keep in mind DCP71 3.1.3 is relating to site density. I believe the project satisfies the performance criteria and the project on a ratio is for less than the prescribed guideline tables.

Example: If a unit is 1m² over the 85m² living space then the land required steps from 240m² to 330m² that's an increase of 90m² of land for 1m² of building.

Therefore if density is to be addressed 9 units could be designed at exactly 85m² of living area this would require 9 x 240m² = 2160m² of land.

So 10 units of 85m² - 850m² living area would require 2400m² of land. The site in question is 2567.42m², which is 167.42m² in reserve.

Therefore all units should be viewed as medium size as I meet requirements in relation to the table A1 and also the objective O1.

If a site is over developed a sure sign is recreational areas are reduced. In 3.3.3 useable open space a requirement of 35m² per dwelling is specified. Below is a table of recreational areas.

Unit 1 - 63.46m²

Unit 2 - 35.5m²

Unit 3 - 37m²

Unit 4 - 36m²

Unit 5 - 55.84m²

Unit 6 - 40.7m²

Unit 7 - 38m²

Unit 8 - 37.5m²

Unit 9 - 42.513m²

I believe that there are no issues with 3.3.3 usable open space and satisfy all requirements.

Summary:

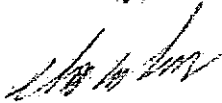
All the requirements of the DCP71 have been met and the proposed project offers far more in security, convenience and privacy to the future occupants and blends in with streetscape. If somehow there are issues of compliance with DCP71, it is possible to rebadge the project to DCP57 or integrated housing. This would then increase the project's cost by approximately \$10,000.00 per unit as all services need to be delivered to each boundary.

DCP71 has stated a requirement of wider housing choice and affordable housing. And market forces dictate the type of projects required. My company for many years has proved this over and over by constantly supplying detached well designed affordable housing.

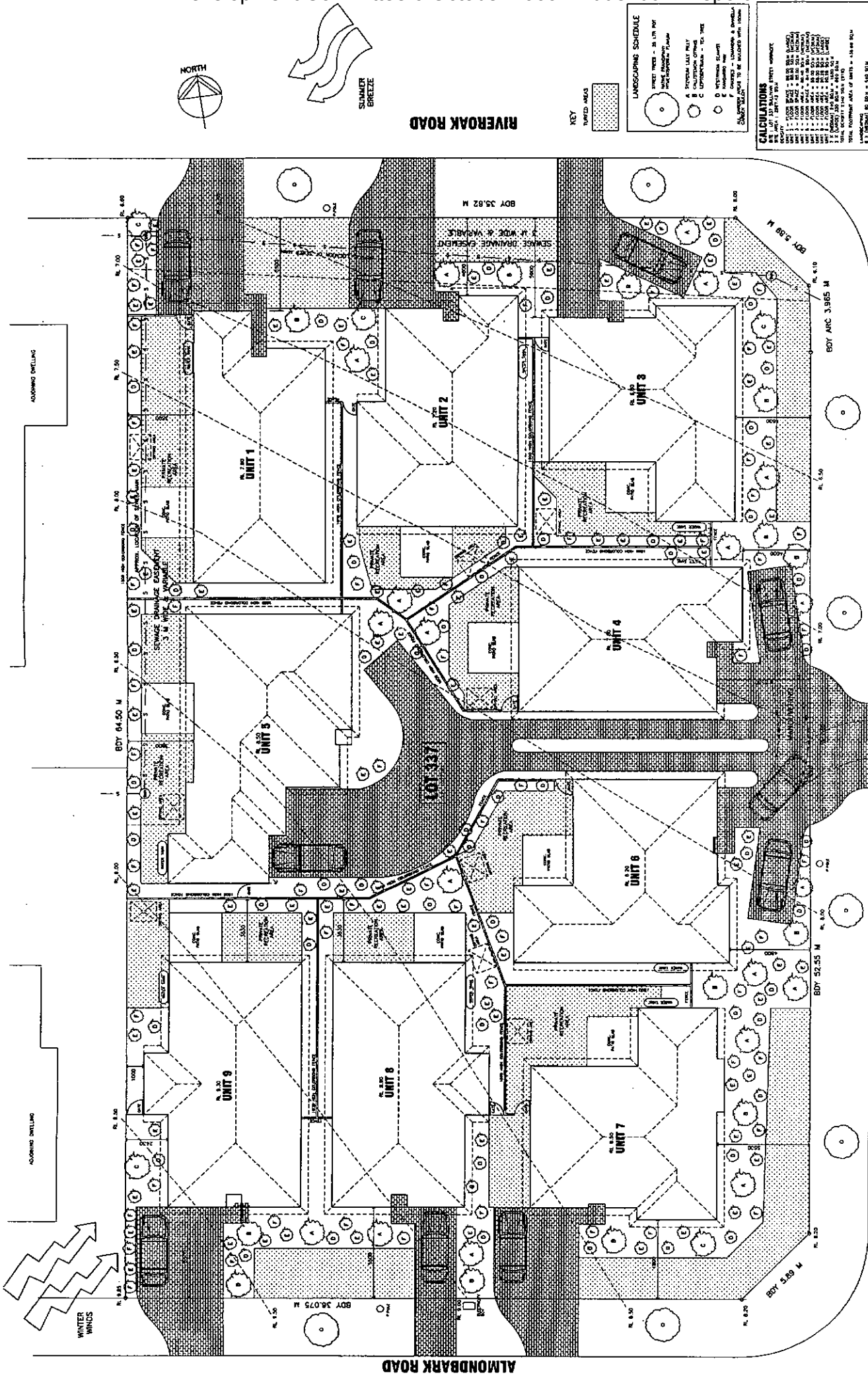
P.S projects with direct road frontage.

Lister Court project in Hyams Beach 7 units with 7 road frontages (HIH winner small lot housing project NSW 2000), Sophia Road Worrigea 5 units with 2 road frontages, Lot 318 Sullivan Street Worrigea 6 units with 4 road frontages, 122 Duncan Street Vincentia 3 units with 1 road frontage, 63 Argyle Street Vincentia 3 units with 1 road frontage, 76 Currumbine Street Huskisson 3 units with 1 road frontage, 26 Excellent Street Vincentia 4 units with 1 road frontage, 50 Excellent Street Vincentia 3 units with 1 road frontage.

Yours truly,



Chris Robson



REVISED
2.8.03

ROOM TO BOWLING CLUB
1.2 KLM TO SHOPPING CENTRE

SULLIVAN STREET

SCALE 1:100
SITE & LANDSCAPING PLAN

PROPOSED MEDIUM DENSITY DEVELOPMENT
 LOT 307 SULLIVAN STREET
 WORTLEIGH
 MR. C. ROSSON
 10/01/2009

craig white building design
 10/01/2009

MEMORANDUM
 COMMENTS AND ADDITIONAL LANDSCAPING NOTES.
 THESE ARE WHITE VALUE REVISED FOR UNIT 8 & 9.

NOTES:
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