



DEED

DATED 17TH OCTOBER 1997

PARTIES:

**CARDWELL PROPERTIES PTY LTD ACN 058 737 643 of
Suite 5, Fishermans Wharf, 94 Seaworld Drive, Main Beach
in the State of Queensland**

("the Company")

**COUNCIL OF THE SHIRE OF CARDWELL of Bryant
Street, Tully in the State of Queensland**

("the Council")

WHEREAS:

- A. The Company is the registered proprietor of certain land referred to in a Deed dated 22 August 1996 between the Company, the Council, the State of Queensland and the Commonwealth of Australia ("the Land").
- B. The Company proposes to develop the Land into a resort.
- C. The Council is a local government constituted under the Local Government Act 1993.
- D. The Council requires and the Company desires to allow, public access to a boat ramp and car park ("the Boat Ramp") situated in the proposed resort and hatched in red on the plan contained in Schedule One, such access to be a certain private road outlined in blue on the plan contained in Schedule One located within the proposed resort ("the Access Road").
- E. The Company wishes the Council to have free and uninhibited access to all roads located within the proposed resort for the purpose of reading Council water, gas, electricity and other meters.
- F. The Company wishes the Council and the general public to have free access to the Boat Ramp.

WHEREBY IT IS AGREED as follows:-

Definitions

- 1. "Council Officers" means any officer, employee or agent of the Council.

2. "non-registered vehicle" means any motorised vehicle (including golf buggies and vehicles in the nature of a golf buggy) which is not registered to travel on a public road.
3. "Public" means the general public, including police officers or any other person undertaking an official duty or exercising a statutory power other than the Council Officers.

Company's Obligations

4. The Company agrees to execute a grant of easement in registrable form ("the Easement") to allow Council Officers and the Public general access to the Boat Ramp by use only of the Access Road, subject to the provisions of this Deed.
5. The Company agrees and if necessary the Easement will provide:-
 - 5.1 That Council Officers and the Public, will have a free right to pass and re-pass over the Access Road in order to use the Boat Ramp.
 - 5.2 That the Council will maintain and repair the Boat Ramp at its own expense.
 - 5.3 That the Company or any subsequent owner of the land will maintain and repair the Access Road, and will comply with any reasonable direction of the Council regarding the maintenance and repair of the Access Road.
 - 5.4 That the Access Road is always kept in a safe and trafficable condition by the Company.
 - 5.5 That the Access Road will not be used by any person travelling in a non-registered vehicle and reasonable measures (including the placement of appropriate signage on the Access Road) will be taken to deter all persons from using a non-registered vehicle to pass or re-pass over the Access Road.
 - 5.6 That, without the Council's written consent, no barricade of any kind will be constructed or located on the Access road or in any other location which would prevent or hinder access by Council Officers or the Public between the boat ramp and the Council controlled road system.
 - 5.7 That no fee or other charge will be imposed on the Council, Council Officers or the Public for using the Access Road or in accessing the Boat Ramp.
 - 5.8 That should the Company sell, assign or in any way dispose of its interest in that part of the Land which constitutes the Access Road, it will ensure that the proposed purchaser or assignee of the same will covenant with the Council to abide by the terms of the Easement.
6. 6.1 The Easement will be registered over the title to the land.
7. 7.1 The Company will effect and maintain at all times during which public access along the Access Road takes place, a public liability insurance policy for not less

than TEN MILLION DOLLARS (\$10,000,000.00) in respect of personal injury and property damage claims by persons who may be upon the Access Road.

- 7.2 The Company will ensure that the Council is at all times named on the insurance policy as an insured party and a copy of the policy, any certificate of insurance and any renewal of the policy will be provided by the Company to the Council.
8. 8.1 The Company may use or provide for any arrangement or mechanism to enforce the conditions placed upon the Public as users of the Easement but only where the arrangements or mechanisms comply with the law and have received the prior written approval of the Council.
- 8.2 The rights granted to the Public in the Easement are subject to the following conditions ("the Conditions of Use"):-
- 8.2.1 That there will be no loitering by any person or persons on or about the Access Road.
- 8.2.2 That no person will to use offensive language or offensive gestures.
- 8.3 If any member of the public contravenes any of the Conditions of Use, then the Company may, to the extent permitted by law evict such person or persons from the Land and refer the contravention to the Council for its consideration as to whether the Council can and should take prosecution action.
- 8.4 The Company agrees that it will, to the extent permitted by law:-
- 8.4.1 Ensure that traffic speed indication signs are erected on the Access Road limiting the speed of motor vehicles to 40 kilometres per hour.
- 8.4.2 Erect at its discretion any speed minimisation or traffic calming devices which have received the prior written approval of the Council.
- 8.5 Should the Company not be permitted by law to impose or do any of the foregoing, then the Council agrees to consider taking any lawful or available prosecution action against any person who contravenes the standards relating to loitering, littering or exceeding the speed limit.
- 8.6 The Company will not itself or by directing or allowing any other person, put in place any sign or other device which might reasonably have the effect of deterring or turning back the Public from accessing the Boat Ramp along the Access Road.

Reservation of Rights

9. 9.1 Subject always to the terms of this Deed and the Easement, the Company reserves the right to lawfully evict any person from the Land.

9.2 The Company will not evict from any part of the Land on which the Access Road is constructed any person who is:-

9.2.1 acting in accordance with the standards imposed by this Deed or the Easement; and

9.2.2 otherwise complying with the law.

Preservation of Council Powers

10. Nothing in this Deed or in the Easement will limit or restrict the powers or entitlements of the Council (including its power to access land) under any Act or Regulation of the Commonwealth or the State or under any Local Law of the Council.

Similar Covenant from Purchaser or Assignee

11. Where any part of the land on which the Access Road is located is to be transferred by the Company to another person ("the Transferee"), the Company will not effect the transfer until such time as the Transferee has entered into a legally binding Deed with the Council which:-

11.1 imposes the same obligations on the Transferee as are imposed upon the Company under the terms of this Deed; and

11.2 requires the Transferee to abide by the terms of the Easement.

12. For the purposes of this clause, the term "transfer" includes any sale, assignment, lease, license or other transaction whereby the Company disposes, extends, transfers or grants its interest in that part of the land on which the Access Road is constructed or is intended to be located to another party.

13. Where the Company fails to comply with this clause, the Council may, without limiting any of its other rights or remedies:-

13.1 register a Caveat over the land prior to any instrument affecting the transfer being registered and any such Caveat will be deemed to have been lodged with the consent of the Company; and

13.2 resume that part of the land on which the Access Road is constructed or intended to be located for the purpose of ensuring that the Access Road remains open to access by the general public, the Company and persons requiring access to any resort or other facility on the land, and:-

13.2.1 where the Company is still the owner of that part of the land at the time of the resumption - the Council will not be obliged to pay any compensation, costs, interest or other moneys to the Company in respect of the resumption and will be entitled to recover all of its costs of the resumption from the Company as a debt due and owing; or

13.2.2 where the Company is not the owner of that part of the land at the time of the resumption - recover the costs of any compensation payable by the Council to the owner of the land together with all of its other costs of the resumption from the Company, as a debt due and owing.

Indemnity

14. 14.1 The Company will indemnify and keep indemnified the Council at all times during which the Access Road is open to public use, from, against and in respect of any loss or damage which the Council may sustain by reason of or in connection with:-
- 14.1.1 the design or construction of the Access Road;
 - 14.1.2 the maintenance or repair of the Access Road;
 - 14.1.3 the placement of speed minimisation or traffic calming devices upon the Access Road;
 - 14.1.4 any accident which occurs on the Access Road including accidents which result in injury or death to any person or damage to any property.
- 14.2 For the purposes of this clause, the term "loss and damage" includes any claim, action, suit, demand or entitlement to damages, compensation, costs, fines, penalties, expenses or monetary payments of any kind and also includes any payments made or expenses incurred by the Council in effecting any repairs or undertaking any works to the Access Road.
- 14.3 The indemnity contained in Clause 13.1 will not extend to loss or damage sustained by the Council which is caused by any negligent act or omission on the part of the Council.

Alternative Access

15. 15.1 Nothing in this Deed will prevent the parties, if both parties agree:-
- 15.1.1 amending the terms of this Deed; or
 - 15.1.2 terminating (without penalty to either party) this Deed and substituting it for a new Deed,
- so as to provide (on terms acceptable to both parties) for the location of an access road to the Boat Ramp which is an alternative to the Access Road ("the alternative access route").
- 15.2 The alternative access route will at all times be available for public use and, in particular, for public access to the Boat Ramp.

- 15.3 If the parties reach agreement in relation to the alternative access route the Easement will be surrendered upon a similar easement, or other arrangements acceptable to the Council, being registered or otherwise concluded in respect of the alternative access.
- 15.4 Any costs (including legal costs) incurred by the Council for the purpose of negotiating, concluding and registering any agreement, easement or other instrument or dealing in relation to the alternative access route, will be borne by the Company.
16. 16.1 If, for any reason, the public are prevented or otherwise unable to access the Boat Ramp along the Access Road, the Company will expeditiously construct a public access road to the Boat Ramp at its own cost, in accordance with the Company's obligations under a Deed of Agreement (and associated variations) entered into between the State of Queensland, the Company, the Council and the Commonwealth of Australia and dated August 22, 1996 (called "the Project Deed").
- 16.2 Nothing in this agreement varies or amends the obligations of the parties under the Project Deed except that the Company (as between it and the Council) will not be required to construct the public access road to the Boat Ramp required under the Project Deed unless and until the public are prevented or otherwise unable to access the Boat Ramp along the Access Road.

Interpretation

17. In this Deed unless the contrary intention appears, a reference to:-
- 17.1 a clause or schedule is to a clause or schedule in this Deed;
- 17.2 the singular includes the plural and vice versa;
- 17.3 any gender indicates all other genders; and
- 17.4 a person includes a corporation and an association whether incorporated or not and vice versa.

Headings

18. The clause headings in this Deed are inserted for convenience of reference and shall not affect the construction of this Deed.

Governing Law

19. Notwithstanding the residence or domicile of any party to this Deed, this Deed shall be governed by and construed in all respects in accordance with the law of Queensland.

Costs

20. 20.1 The Company will pay the Council's costs (including legal costs) incurred in the negotiation, preparation, drafting and registration of this Deed and the Easement and any costs which the Council may incur in enforcing the terms of this Deed or the Easement.
- 20.2 The Company will pay for all stamp duty assessed on this Deed or the Easement together with any registration or other fees payable to the Department of Natural resources or any other office.

Counterparts

21. This Deed may be executed in any number of counterparts and by different persons on separate counterparts. All such counterparts shall together constitute once and the same instrument.

Amendment

22. This Deed may only be varied or replaced by a Deed duly executed by the parties.

Further Assurance

23. Each party shall promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Deed.

Severability

24. If any term or condition of this Deed or its application to any persons or circumstances is or becomes invalid or unenforceable the remaining terms and conditions shall not be affected thereby and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

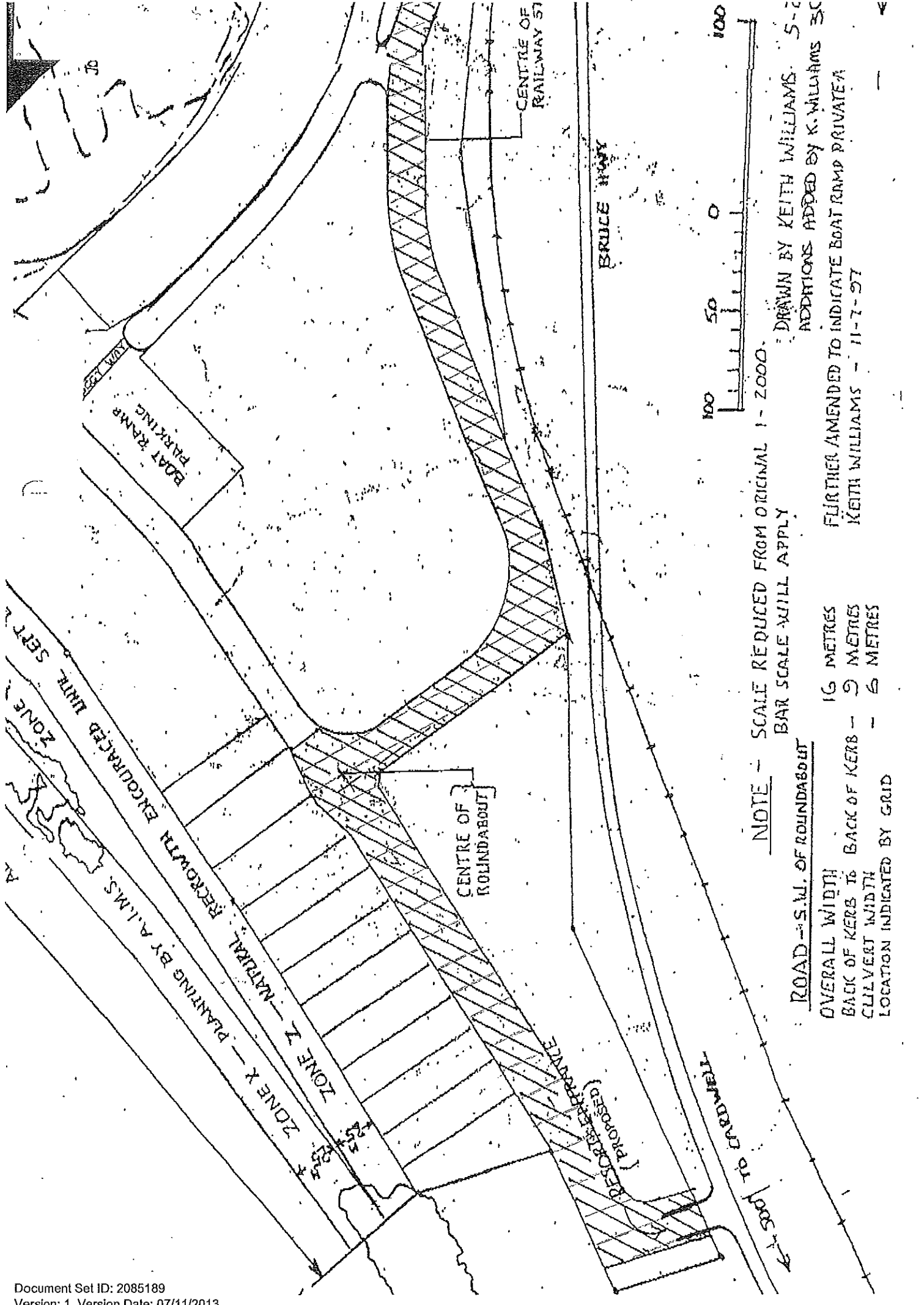
Assignment

25. A party shall not dispose of or encumber any right under this Deed without the prior written consent of the other parties to this Deed.

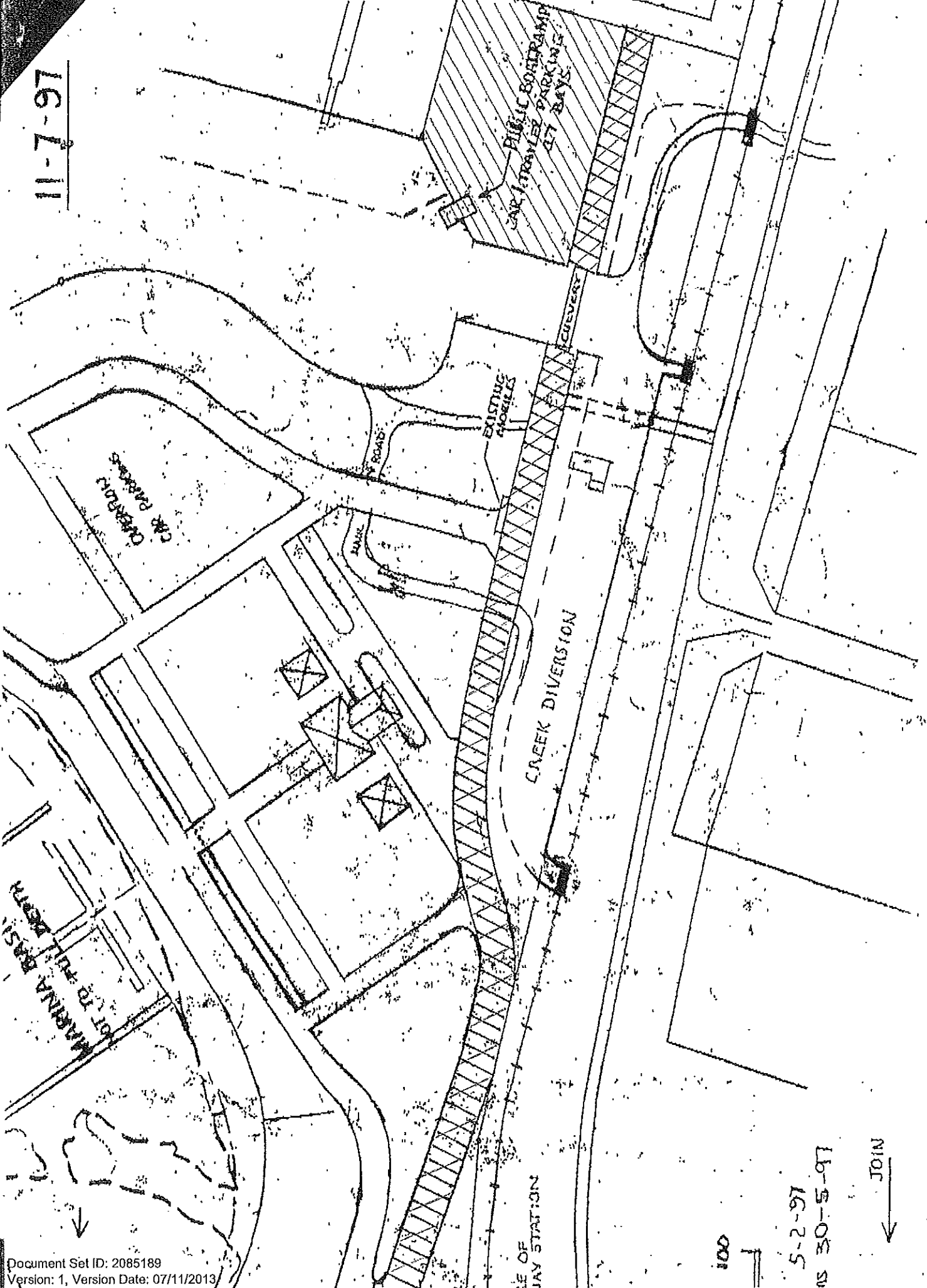
SCHEDULE ONE**The Plan****EXECUTED AS A DEED.**

SCHEDULE 1

The Plan



16-7-11



100

16-5-05 SD
16-2-5
16-5-97

JOIN

EXECUTED AS A DEED

CARDWELL PROPERTIES PTY LTD
(ACN 058 737 643) by its ^{SOLE DIRECTOR} ~~duly-constituted~~
~~Attorney~~ Keith Williams ~~under-registered~~
~~Power of Attorney N^o L9429451~~ and in the
presence of:



V. R. G. Spier
.....
Witness

GIVEN under the Corporate Seal of the
Council of the Shire of Cardwell pursuant
to the Council's local laws and in the
presence of ~~R. D. FITZGERALD~~ and
G.T. KING, the Mayor and Chief Executive
of the Council respectively who have
hereunto subscribed their names:

R. D. Fitzgerald
.....
Mayor

G.T. King
.....
Chief Executive

J.P. (Quar)
.....
Witness
5/1/15

