

~~(D. D. E. S)~~

*CURRENT COPY (Rec'd 26/11/98)
(SCHEDULES UPDATED: 29/5/00)

DEED (Conformed Copy)
*(incorporating Deed, Deed of Variation dated 20 August 1996 and
Further Deed of Variation dated 6 November 1998)✓*

THE STATE OF QUEENSLAND

and

CARDWELL PROPERTIES PTY LTD
A.C.N. 058 737 643

and

COUNCIL OF THE SHIRE OF CARDWELL

and

THE COMMONWEALTH OF AUSTRALIA

NOTE:

- * Text deleted by Deeds of Variation shown as struck-out
- * Text added by Deeds of Variation shown as underlined
- * Some alterations have been made to Recitals and Schedule numbering to avoid confusion
- * In some cases, text has been altered to grammatically deal with incorporating the Deeds of Variation into the Deed - in these cases, the omitted text is included, but bracketed
- * As the Deeds of Variation may, in some areas, by implication have retrospective effect, it will be necessary to examine the original documents and correspondence between the parties to form a concluded view on rights, obligations and liabilities for the period between the parties for the period between 29 September 1994 and 6 November 1998.

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Lawyers
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

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Telephone (07) 3226 6333
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RPL 9400824



**State
Development**

Legal Docs

WITH COMPLIMENTS

1202

please find attached a confirmed copy of the Deed.

RECEIVED

26 NOV 1998

Thanks **CARDWELL SHIRE COUNCIL**
Brendan Long

FILE	03
PROPERTY	Ma
CEO	
DCCS	
MOF	
DP	
DCTS	
EPIC	
DATE	27.11.98

DDES

1/12/98

Bond

Please file

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DEED

THIS DEED is made the

day of

1996.

PARTIES:

1. **THE STATE OF QUEENSLAND**
Address: 100 George Street, Brisbane
Phone: (07) 3224 5458
Fax: (07) 3225 8914-229 7348

2. **CARDWELL PROPERTIES PTY LTD, (ACN 058 737 643)**
Address: Suite 5, Fisherman's Wharf, 94 Sea World Drive, Main Beach
Phone: (07) 5591 2020
Fax: (07) 5591 2616

3. **THE COUNCIL OF THE SHIRE OF CARDWELL**
Address: Bryant Street, Tully
Phone: (070) 681 033
Fax: (070) 681 772

4. **THE COMMONWEALTH OF AUSTRALIA**
represented by the Department of the Environment, Sport and Territories
Address: NCC House, Moore Street, Canberra
Phone: (06) 274 1570
Fax: (06) 274 1940

RECITALS:

- A. On 1 November 1986 The Resort Village Cardwell Pty Ltd was granted a Special Lease of Lot 53 on Plan CWL 3372 subject to conditions.

- B. By notification in the Government Gazette of 14th May 1988 the land described as Lot 1 on Registered Plan 2064, Lots 1 and 2 on Registered Plan 2065; Lots 2 and 3 on Plan C104.3, Lot 53 on Plan Cwl 3372 and Portion 3A, Parish of Ellerbeck County of Cardwell was excluded from the Rural General Farming and Public Open Space Zone and included in the Special Facilities (multiple dwelling, duplex dwelling, dwelling, hotel, motel, indoor entertainment, outdoor entertainment, recreation centre, camping ground, service station, tavern, shop, shopping centre, information centre, marina and associated facilities; markets, laundry, mini brewery, hot bread shop, refreshment service, group housing showrooms, commercial premises, health centre and licensed club, generally in accordance with the attached plan prepared by Cummings & Burns, Architects dated August 1987) Zone.

- C. By letter dated 31 August 1988 the Land Administration Commission wrote to Tekin Australia Limited advising it would recommend the permanent closure of a road subject to conditions.

- D. Pending the permanent road closure the Land Administration Commission issued to The Resort Village Cardwell Pty Ltd a permit to occupy subject to conditions.

- E. The Company purchased the Land.
- F. Approvals pursuant to Section 86 of the Harbours Act 1955 were granted in 1988 for the excavation of a marina basin and associated bund walls, and in 1989 for plans for construction of revetment walls, boardwalks and a boatramp. The Department of Primary Industries also approved removal of mangroves from the proposed marina basin by the granting of a Section 71 Permit under the Fisheries Act 1976.
- G. The State and the Council have considered further requests and applications by the Company for the purpose of the development.
- H. The State and the Council require as a condition of the granting of the said further permits and approvals that the Company comply with certain requirements of the Co-ordinator General, the Department and the Council for the protection of the environment, for the proper planning of the development and to satisfy the statutory duties of the State and the Council in relation to the further permits and approvals.

OPERATIVE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

“Access Channel” means the channel, more particularly described in Schedule 15, which when constructed will provide access to the Marina.

“Adequate Particulars” means:

- (a) in relation to any Proposed Assignee:
 - (i) the full name and address; and
 - (ii) if an individual, a character reference; and
 - (iii) two business references; and
 - (iv) a summary of assets and liabilities prepared, and signed by a public accountant; and
 - (v) information and authorities necessary to obtain a bank reference and credit report; and
 - (vi) if a corporation, a copy, including each amendment, if any, of the current Memorandum and Articles of Association, and the Certificate of Incorporation; and
 - (vii) if a trustee, a stamped copy, including each amendment, if any, of the trust deed under which it is appointed trustee; and
- (b) in relation to any proposed guarantor of a Proposed Assignee:

- (i) the full name and address; and
 - (ii) a character reference; and
 - (iii) a business reference; and
 - (iv) a summary of assets and liabilities prepared and signed by a public accountant; and
 - (v) information and authorities necessary to obtain a bank reference and credit report; and
 - (vi) if a corporation, a copy, including each amendment, if any, of the current Memorandum and Articles of Association, and the Certificate of Incorporation; and
 - (vii) if a trustee, a stamped copy, including each amendment, if any, of the trust deed under which it is appointed trustee; and
- (c) such other particulars that the State may reasonably require.

“bank” means any of National Australia Bank, Westpac Banking Corporation, Commonwealth Bank of Australia, ANZ Bank or Advance Bank.

“Beach and Foreshore Management Plan” means that plan forming Schedule 16 (3).

“Boat Ramp Site” means the area of land so marked on the plan forming Schedule 14 (1).

“Breakwater” means the breakwater described in Schedule 1.

“Business Day” means any day on which banks are open for business in Brisbane, other than a Saturday, Sunday or public holidays.

“Canal” means the canal described in Schedule 15.

“Chief Executive” means the Chief Executive of the Department of Environment and Heritage.

“Commonwealth” means the Commonwealth of Australia, represented by the Department of the Environment, Sport and Territories.

“Commonwealth Representative” means the Secretary for the time being of the Department of the Environment, Sport and Territories or a person nominated so to be by the Secretary.

“Company” means Cardwell Properties Pty Ltd (ACN 058 737 643).

“Control Date” means the latest of:

- (a) the date of this Deed; and

- (b) the date, if any, on which the State last consented to an assignment of this Deed; and
- (c) the date, if any, on which the State last consented to a change in control of a Prescribed Right.

"Co-ordinator General" means the Department of State Development.

"Court" means any court of competent jurisdiction to deal with a dispute or difference as to any matter concerning or arising out of this Deed.

"Council" means the Council of the Shire of Cardwell a local government constituted under the Local Government Act 1993.

"Deed" means the deed between the parties dated 29 September 1994 and governing the development of the Development Site, this Deed.

"Deed of Variation" means the deed so called between the parties dated the 20 August 1996.

"Department" means the Department of Environment and Heritage.

"development" means development which is permitted development in the zone or zones in which the Development Site is included.

"Development Site" means:

- Lot 1 on Registered Plan No. 702064
- Lot 1 on Registered Plan No. 702065
- Lots 12 and 13 on Plan No. C1043
- Lot 3 on Plan No. C10410
- Lot 53 on Crown Plan No. 800801

in the County of Cardwell Parish of Ellerbeck and includes any part of the land so described that is, or is at any time covered by water and an area of vacant crown land abutting part of the eastern boundary of Lot 3 on Plan C10413, in the County of Cardwell Parish of Ellerbeck.

"DOT" means the Department of Transport.

"DPI" means the Department of Primary Industries.

"Environment" includes:

- (a) ecosystems and their constituent parts including people and communities;
- (b) all natural and physical resources;
- (c) those qualities and characteristics of locations, places and areas, however large or small, which contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community;

- (d) the social, economic, aesthetic and cultural conditions which affect the matters referred to in paragraphs (a), (b) and (c) or which are affected by those matters.

“Environmental Management Plan” means the plan so described in clause 18.1.

“Environmental Impact” includes direct, indirect and cumulative as well as immediate impact to or upon the Environment.

“Environmental Monitoring Program” means the program set out in Schedule 2.

“Environmental Site Supervisor” means a person appointed in accordance with clause 5.

“Foreshore” means all of the foreshore (as that term is defined in the Coastal Protection and Management Act (Old) 1995) between the northern most boundary of the Company’s property and Stony Creek.

“Head” means the Director General of the Department of State Development.

“Independent Monitor” means any person appointed under clause 5.1 to carry out the Environmental Monitoring Program.

“Land” means:

Lot 1 on Registered Plan No. 702064
 Lot 1 on Registered Plan No. 702065
Lot 1 on Registered Plan No. 739120
 Lots 12 & 13 on Plan No. C1043
 Lot 3 on Plan No. C10410
 Lot 3 on Plan No. C10413
 Lot 1 on Registered Plan No. 739120
 Lot 2 on Registered Plan No. 739120
 Lot 17 on Registered Plan No. 732868
 Lot 53 on Crown Plan No. 800801
 Lot 2 on Plan No. C10425

and the land described in the Permit to Occupy, and the land cross hatched in black on the plan in Schedule 1

all in the County of Cardwell, Parish of Ellerbeck and includes any part of the land so described that is, or is at any time, covered by water.

“Listed Company” means:

- (a) a company in which the shares are listed on a member exchange of the Australian Associated Stock Exchanges; or
- (b) a foreign corporation in which the securities are quoted for trading on a stock exchange, or other market for public trading in securities.

“Marina” means the marina described in Schedule 1.

“**Marine Park**” means the Townsville/Whitsunday Marine Park established by the Marine Parks Act 1982 and Marine Park Regulations 1990.

“**Minister**” means the Minister for the time being for the Environment, Sport and Territories.

“**Mitigate**” means abate adverse Environmental Impacts and any other aspect of restoring the quality of the Environment.

“**Operational Plan**” means the plan so called in clause 4.

“**Permit to Occupy**” means the permit to occupy to be issued on the terms and conditions included in Schedule 3 .

“**Prescribed Right**” means:

- (a) a voting right; or
- (b) an income participation right; or
- (c) a capital participation right; or
- (d) any combination of these rights

in the Company or the ultimate right to control any or all of the above.

“**Proclaimed Areas**” means those areas in the Hinchinbrook Channel below the low water mark described in the proclamation referred to in Recital J.

“**Proposed Assignee**” means any person:

- (a) to whom the Company proposes to assign, mortgage, charge or otherwise deal (including hold on trust) with any right or interest under this Deed; or
- (b) to whom a person presently entitled to a Prescribed Right in the Company proposes to assign, mortgage, charge or otherwise deal with (including hold on trust) that Prescribed Right; or
- (c) to whom the Company proposes to:
 - (i) sell, mortgage, or otherwise deal with the Development Site (or any part of it), other than in the course of retail sales of developed lots, developed strata title lots (which includes, without limitation, lots in a group titles plan), developed marina berths; or
 - (ii) lease or licence for business purposes, any of the same on normal commercial terms.

“**Regional Director**” means the Regional Director (Northern) of the Department.

“**Rehabilitate**” means rebuild, reshape, re-plant, replace and/or transplant marine or terrestrial organisms or natural structures so as to restore the natural appearance and function of an area to the reasonable satisfaction of the Department.

“**Rezoning Conditions**” means the conditions set out in Schedule 4.

~~“**Site A**” means the area of land so described on the Plan in Schedule 8.~~

~~“**Site B**” means the area of land so described on the Plan in Schedule 8.~~

“**Site Population**” means the equivalent site population of the Development Site from time to time calculated in accordance with the formula set out in Schedule 5.

“**Special Lease No 26/29175**” means the special lease (as may be amended from time to time) a present copy of which is included in Schedule 6.

“**Special Lease No 26/48321**” means the special lease (as may be amended from time to time) a present copy of which is included in Schedule 7.

“**Special Leases**” means Special Lease No 26/29175 and Special Lease No 26/48321.

“**State**” means the State of Queensland.

“**Turbidity Control Plan**” means the plan so described in clause 7.

“**Works**” means the carrying out of any construction, erection, dredging, spoil disposal, excavation, reclamation, installation, landscaping, maintenance and activities of any kind on or in the vicinity of the Land and, without limitation, includes any supervision or monitoring of any such activity but does not include:

- (a) clearing of mangroves as generally outlined in Schedule 9 of the Deed; or
- (b) baseline monitoring works as generally outlined in Schedule 2 of the Deed; or
- (c) the establishment of temporary construction staff facilities; or
- (d) such other matters as the parties may agree.

“**WHPC Act**” means the *World Heritage Properties Conservation Act 1983*.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa;

- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, part, clause, schedule, annexure or exhibit is to a recital, part, clause, schedule, annexure, exhibit of this Deed;
- (f) a reference to any deed or document is to that deed or document (and, where applicable, any of its provisions) including any schedule annexure or exhibit to it and as amended, novated, supplemented or replaced from time to time;
- (g) a reference to any party or to a party to any other document or arrangement, includes that party or party's executors, administrators, substitutes, successors and permitted assigns;
- (h) an expression defined in any part of this Deed has that meaning throughout;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) a reference to "dollars" or "\$" is to an amount in Australian currency;
- (k) a reference to a month is to a calendar month;
- (l) Headings to clauses are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions in this Deed; and
- (m) If there is an inconsistency between a clause in the body of the Deed and a schedule, the provisions of the clause will prevail to the extent of the inconsistency.

1.3 Commencement of Works

Notwithstanding the definition of the "Works" in the Deed and the fact that the Company had commenced to carry out certain of the Works prior to 20 August 1996 (being the date of the Deed of Variation), the parties agree that as and from 20 August 1996, the date of commencement of the Works for the purposes of the Deed will be the day subsequent to the execution of the (the) Deed of Variation upon which the Company commences to carry out Works as that term is defined in the Deed.

PART I - ADMINISTRATION

2. LIAISON AND REVIEW

2.1 Appointment of Representatives

- (a) As soon as practicable after the execution of this Deed, the Company and the Council must each appoint one representative and the State must appoint two representatives (one representing the Co-ordinator General and one representing the Department) for the purpose of who, together with the Commonwealth

Representative, will be responsible for liaison and review in respect of the operation of this Deed.

- (b) Any party may terminate the appointment of its representative at any time by notice in writing given to the other parties. If a party terminates the appointment of a representative, the party so terminating must appoint another representative forthwith.

2.2 Notice of Appointments

Each party must give notice in writing to the other parties of any appointments made by it under clause 2.1.

2.3 Meetings

- (a) The Head will convene meetings of the representatives from time to time appointed under clause 2.1 at the request of any party to this Deed.
- (b) The Head may convene such other meetings as he thinks fit.
- (c) Meetings will be convened at such time and place as the Head directs, but the Head must take reasonable notice of the location and availability of the other parties in convening meetings.
- (d) The Head may direct that any meeting be conducted by telephone conference.

3. STATE AGENTS

3.1 Agents of the State

The Head, the Chief Executive, the Co-Ordinator General, and the Department are agents of the State for the purposes set out in this Deed.

3.2 State May Appoint Other Agents

The State may at any time and from time to time by notice in writing given to the other parties appoint another agent or agents in place of or in addition to the agents nominated in this Deed.

PART II - CONSTRUCTION PHASE

4. PROJECT MANAGEMENT

4.1 Approval of Operational Plan

- (a) Prior to commencement of any of the Works (except minor or insignificant works), the Company must prepare and provide to the Head and the Chief Executive, a draft operational plan for the Works.

- (b) The draft plan, when approved by the Head and the Chief Executive will become the Operational Plan.
- (c) The Company must carry out the Works in accordance with the Operational Plan, updated from time to time in accordance with clause 4.3.

4.2 Contents of Operational Plan

The Operational Plan must comply with the following conditions:

- (a) It shall show all significant activities required for the completion of the Works including, without limitation and where possible, interaction with the Environmental Management Plan including the lead times for those activities.
- (b) It must include a time related bar chart which shall indicate start and finish dates for each of those activities.
- (c) It must indicate the estimated duration of each activity of work and relationship between those activities. No activity on the program shall have an activity duration exceeding 12 weeks and all contingency allowances shall be shown as separate activities.
- (d) To facilitate program analysis the Operational Plan must show:
 - (i) the relationship between program activities and calendar days taking account of Saturdays, Sundays, Public Holidays and rostered days off.
 - (ii) the sequence of activities which constitute the critical path.

4.3 Updating Operational Plan

At least monthly intervals throughout the duration of the Works, the Company must consult with the Regional Director in relation to changes to the Operational Plan. The Company must produce an updated Operational Plan incorporating any necessary logic changes at reasonable intervals, and provide a copy of this updated plan to the Head and to the Chief Executive. The update shall be presented in the form of a listing showing all uncompleted activities, their current early and late start and finish dates. The activity listing shall also be accompanied by a short term time related bar chart extracted from the update network analysis indicating the work for the ensuing two months.

At the request of the Chief Executive, the Company must provide to the Department reasonable details of the construction procedures the Company proposes to utilise in effecting the Works.

4.4 Best Engineering Practice

In preparing or implementing any of the various plans under this Deed, the Company will adopt current best engineering practice.

4.5A Land Act Applications

The Company must expeditiously:

- (a) apply for the issue of a Permit to Occupy over the Foreshore mangrove area;
- (b) request closure of road in Permit to Occupy 5545 subject to the construction of the boat ramp and donation of land to the Council;
- (c) apply for permanent road closure of the road adjoining the railway line;
- (d) apply for the renewal of Special Lease 26/29175. If a replacement Special Lease is issued, all references to Special Lease 26/29175 in the Deed shall become references to the replacement Special Lease.

4.5B Canals Act Applications

The Company must expeditiously make application to the Department to amend the existing approvals for the Canal to reflect the changes to the Canal which will arise as a consequence of the changes occasioned by the (this) Deed of Variation.

4.6A Reporting

Wherever the Company is obliged to report to the Commonwealth, the Commonwealth agrees that the Company will discharge its obligations by reporting to the State, who is then authorised by the Company to forward the report to the Commonwealth.

4.6B Consultation

Whenever the Company is obliged to obtain the consent or the approval of the State under the Deed, the Company authorises the State to consult with the Commonwealth (and to copy to the Commonwealth applications and supporting documentation) and the State agrees to consult with the Commonwealth before granting any such consent or approval.

5. ENVIRONMENTAL SUPERVISION AND MONITORING

5.1 Independent Monitor

- (a) The Head must consult with the Company, the Commonwealth Representative and the Chief Executive and then appoint an Independent Monitor prior to the commencement of the Works.
- (b) The Independent Monitor must implement the Environmental Monitoring Program.
- (c) The Department must supervise the performance of the Independent Monitor in implementing the Environmental Monitoring Program and consult with the Commonwealth Representative in relation to the results of the Environmental Monitoring Program.

5.2 Appointment of Environmental Site Supervisor

The Department must consult with the Company and the Head in relation to the selection of a person to act as Environmental Site Supervisor and take account of any reasonable objections the Company may have to any particular individual. If there is a dispute as to the appointment of a particular individual, the decision of the Head will be final.

The Department must:

- (a) appoint the person agreed or decided to act as Environmental Site Supervisor;
- (b) advise the Company of the appointment;
- (c) provide the appointee with a copy of the Operational Plan; and
- (d) provide the appointee with the resources necessary to carry out the appointee's tasks under this Deed,

forthwith.

If the Chief Executive is dissatisfied with the performance of the Environmental Site Supervisor, the Chief Executive may terminate the appointment of the Environmental Site Supervisor and must then appoint a new Environmental Site Supervisor in accordance with the provisions of this clause.

After the Company provides a copy of the Operational Plan (or any update of it) and details of proposed construction procedures to the Chief Executive, the Chief Executive must promptly advise the Company (with reasons) of what parts, if any, of the activities referred to in clause 5.3(a)(i), (iv) and (v) will require supervision by the Environmental Site Supervisor (to be funded out of the security provided under clause 5.6).

5.3 Company to Provide Assistance to Environmental Site Supervisor

The Company must:

- (a) allow the Environmental Site Supervisor access to the Development Site at all times during:
 - (i) Marina dewatering;
 - (ii) dredging and spoil disposal;
 - (iii) Breakwater construction (including haul road construction);
 - (iv) foreshore mangrove removal; and
 - (v) Marina and Canal excavation;
- (b) provide the Environmental Site Supervisor with copies of monthly updates of the Operational Plan;

- (c) ensure that any contract it enters into for effecting the Works (or any part of them) recognises the role and powers of the Environmental Site Supervisor;
- (d) notify the Environmental Site Supervisor of details of the Company's Site Manager (including name, telephone no. and location) from time to time;
- (e) provide the Environmental Site Supervisor with any rules or regulations properly pertaining to the Development Site and conduct of the Works; and
- (f) provide the Environmental Site Supervisor facilities including:
 - (i) a work station with a desk and chair and protection from the elements;
 - (ii) a secure locker for equipment storage;
 - (iii) access to a convenient on-site telephone, 240V power supply and refrigeration.

5.4 Obligations of Environmental Site Supervisor

The Environmental Site Supervisor must:

- (a) report upon arrival at the Development Site to the Company's site manager;
- (b) comply with rules or regulations properly pertaining to the Development Site and conduct of the Works;
- (c) not interfere with the progress of the Works other than in accordance with clause 5.5;
- (d) provide reasonable assistance to the Company in the preparation of the Environmental Management Plan and its various component parts; and
- (e) give directions under clause 5.5 to the Company's site manager and to no other person, unless the site manager is not able to be contacted, in which case a direction may be given in the first instance to the next most senior employee of the Company at the Development Site, with a copy to be given to the Site Manager as soon as practicable after the Site Manager becomes available.

When giving directions, the Environmental Site Supervisor, where practicable, must give those directions in writing, and if an oral direction is given, it must be confirmed in writing as soon as possible. The written direction must clearly identify:

- (f) the direction;
- (g) the date and time it is given;
- (h) the person to whom it is given;
- (i) the person giving it; and

- (j) the problem being caused by adherence to the construction system or methodology in use at the time.

5.5 Powers of Environmental Site Supervisor

In undertaking the Works, the Company must comply and ensure its contractors comply with any reasonable and lawful direction of the Environmental Site Supervisor or Regional Director to:

- (a) cease or modify the Works to Mitigate or eliminate adverse Environmental Impacts;
- (b) cease or modify the Works to protect archaeological artefacts;
- (c) undertake specified monitoring procedures in consultation with the Independent Monitor to assess the level of any risk to the Environment and the effectiveness of measures taken to Mitigate that risk.

5.6 Cost of Implementing the Environmental Monitoring Program and of Environmental Site Supervision

The Company must either lodge security or a cash deposit in the amount of \$150,000.00 as a contribution to the cost of the Environmental Monitoring Program and of Environmental Site supervision under this section.

Any security (other than cash) the Company provides under this clause 5 must be offered by an institution and in a form approved by the Head.

The Company must provide the security in instalments of:

- ◆ \$50,000.00 upon execution of this deed;
- ◆ \$50,000.00 before commencing any dredging ~~on the Development Site of the~~ Access Channel; and
- ◆ \$50,000.00 six months after commencing dredging ~~on the Development Site of~~ the Access Channel.

Should the Company post a cash bond with the Co-ordinator General, the Co-ordinator General must invest it in an interest bearing deposit with a bank on the following basis:

- (a) the deposit is at the risk of the Company; and
- (b) interest earned on the deposit belongs to the Company.

At the time of lodging a cash deposit, the Company must supply its tax file number to the entity receiving the security.

The Co-ordinator General may draw against the security to meet the cost of the Environmental Monitoring Program or of the Environmental Site Supervision.

The Co-ordinator General must furnish the Company on the 14th day of each month with a statement showing expenditure incurred and interest earned (if any) during the previous month.

If more than \$50,000.00 is spent, the Chief Executive will review the monitoring and supervision in consultation with the Head, and the Chief Executive will then make a decision (subject to review under clause 30) as to whether further monitoring or supervision is required. The Chief Executive must promptly give the Company written notice of the decision, setting out the reasons for it. This process must be repeated if and when total expenditure reaches \$75,000.00, \$100,000.00 and \$125,000.00.

On the first anniversary of practical completion of dredging of the Access Channel, the Co-ordinator General must return to the Company so much of the security (and interest earned thereon, if any) as has not been used or paid under this clause.

5.7 Inspection by Other Persons

The DPI may nominate an officer to inspect mangrove removal on the Development Site from time to time. Provided the DPI gives the Company reasonable notice and inspection takes place at reasonable times, the Company must provide the nominated officer access to the Development Site for the purposes of such inspections.

6. STORMWATER DISCHARGE

- 6.1 The Works and the physical structures and changes to the Land produced by the Works must not cause storm water to bank up and or reduce the capacity of existing bridges and culverts under the highway and rail line to handle storm water.

7. MANAGEMENT OF SITE WORKS TURBID RUNOFF AND OPERATION OF DREDGE SPOIL PONDS

7.1 Turbidity Control Plan

(a) The Company must prepare plans dealing with:

- (i) marina dewatering;
- (ii) operation of spoil ponds;
- (iii) stabilisation of Development Site; and
- (iv) management of stormwater; and
- (v) channel dredging;

and submit them to the Chief Executive and the Council for approval.

(b) The plans must:

- (i) ensure that marina basin dewatering involves the discharge of water that does not exceed, within reasonable parameters, the natural turbidity of the water in adjacent areas of Hinchinbrook Channel at the time of discharge and complies with any conditions of the Clean Waters Act 1971 or any licences granted pursuant to the provisions of that Act;
 - (ii) detail the location and operation of the spoil ponds to manage both construction and maintenance dredge spoil including site stabilisation and rehabilitation of areas used for spoil disposal and the use of any natural channels to return water to the Hinchinbrook Channel and comply with any conditions of the Clean Waters Act 1971;
 - (iii) detail measures to be used to stabilise the Development Site after earthworks in order to minimise turbid run off from the areas disturbed by the earthworks;
 - (iv) detail proposed management of stormwater for the Development Site at the time of preparation of the plan (including proposed outfall locations and measures proposed to manage water quality and stop litter from entering the Marina, Access Channels or Channel), and must be updated from time to time to take into account proposed and as constructed Works; and
 - (v) detail proposals for the management of acid sulphate soils.
- (c) The plan, as approved by the Chief Executive and the Council from time to time, will be known as the Turbidity Control Plan.
- (d) The Company must control and manage the Development Site in accordance with the Turbidity Control Plan to the satisfaction of the Head, the Chief Executive and the Council and the Commonwealth Representative. The Environmental Monitoring Program will provide the monitoring details necessary to evaluate compliance with the Turbidity Control Plan.
- (e) The Company shall ensure that water flowing from the Land as a result of the Company's construction activities (which includes maintenance dredging) affecting the Receiving Water is:
- (i) so far as turbidity is concerned, of a quality (as measured on the outgoing tide at reference point (7)) at least equal to the Receiving Water based on the long term baseline measurements from reference point (8) on Drawing No. ASMP/1 as set out in Schedule 18 to this deed; and
 - (ii) so far as pH is concerned, within the range of 6 to 9 (inclusive);

For the purposes of this clause, "Receiving Water" means the tidal water of that part of the foreshore (excluding the Canal and the Marina) immediately adjacent to the boundary of the Land and seaward of reference point (7) on Drawing No. ASMP/1 as set out in Schedule 18 to this deed.

7.2 Consent to Operate Dredge Spoil Ponds

The Company must apply:

- (a) to the Council for such consents and approval as shall be necessary for the use of the Land for the operation of the dredge spoil ponds;
- (b) to the Department for such approvals as may be required under the Clean Waters Act for discharge of water from the dredge spoil ponds;
- (c) to the State for permission to discharge water from the dredge spoil ponds over adjacent vacant crown land;

and use its best endeavours to obtain such consents, permissions and approvals.

7.3 Plan a Precondition to Dredging

The Company must not commence dredging operations until the Chief Executive, the Commonwealth Representative and the Council approve the Turbidity Control Plan.

The Chief Executive, the Commonwealth Representative and the Council must expeditiously consider the draft plans lodged by the Company, and if either of them is dissatisfied with any part of the plans, promptly issue to the Company a statement setting out the areas of dissatisfaction.

Should either the Chief Executive, the Commonwealth Representative or the Council issue such a statement to the Company, the Chief Executive, the Commonwealth Representative, the Council and the Company must meet in conference as soon as possible thereafter with a view to resolving the areas of dissatisfaction.

7.4 Operation of Dredge Spoil Ponds

The Company must operate and maintain the dredge spoil ponds at its cost in accordance with the Turbidity Control Plan to the satisfaction of the Head, the Chief Executive and the Council.

7.5 Disposal of Treated Spoil

The Company must:

- (a) obtain any necessary approvals;
- (b) comply with the provisions of those approvals; and
- (c) dispose of the treated spoil from the dredge spoil ponds in accordance with the Turbidity Control Plan.

7.6 Transfer of Permanent Pond

On completion of construction of the Marina and the Access Channel, the Company must:

- (a) subdivide the Land to include within a separate certificate of title the dredge spoil pond used to deal with maintenance dredging, together with reasonable access to it; and
- (b) transfer the land contained in that separate certificate of title to the Council at no cost to the Council.

7.7 Lease Back

Upon transfer to it of the land referred to in clause 7.6, the Council must grant to the Company a lease of that land for a term of 99 years at an annual rental (payable in arrears) equal to the rates the Council would otherwise have been entitled to levy against that land in each year.

Should the Council and the Company agree on some alternate method of dealing with the dredge spoil which does not require the use of the land so leased, the Company and the Council will terminate the lease and the Council must then retransfer the land to the Company at no charge to the Company and at no cost to the Council.

7.8 Default

If the Company defaults in implementing the Turbidity Control Plan, the Council or the State or the Commonwealth may enter the Land (without being obliged so to do) and remedy any default at the cost of the Company.

8. CONTRIBUTION RE MANGROVES

8.1 Payment of Contribution

For the removal of those mangroves described in the plan forming Schedule 9, the Company will contribute the sum of ~~\$100,000~~ \$20,000 in total to the Co-ordinator General, ~~to the Co-ordinator General as follows:~~

- ~~(a) 7 days before removal of any of the mangroves pursuant to the permit; or~~
- ~~(b) the issue of the last of the permits (excluding building approvals) required to commence the Works; and~~
- ~~(c) four annual payments of \$20,000 on each of the first four anniversaries of the date of the initial payment.~~

8.2 Use of Contribution

The Co-Ordinator General must pay one half of the sum referred to in clause 8.1 to the DPI and one half to the Department. Such monies shall be applied towards the cost to the departments of implementing a strategic plan for the future management of all uses (including research) of the Hinchinbrook Channel and associated mangrove areas. The Co-ordinator General will prepare such strategic plan in conjunction with the departments.

9. PUBLIC BOAT RAMP

9.1 ~~Temporary Boat Ramp~~

~~The Company must provide and maintain a temporary concrete one-lane boat ramp on Site B (or such other site as the Company, the Council, the Department and the DOT may agree) and access to that boat ramp for the free use by the public within 6 months of commencement of the Works, (to the satisfaction of the DOT, the Department and the Council).~~

9.2 ~~Choice of Boat Ramp Site~~

~~On or before 31 December 1996 (or such later date as the Company, the Council, the DOT and the Department may agree), the Company must notify the Council, the DOT and the Department upon which of Site A or Site B the Company proposes to construct the permanent public boat ramp referred to in clause 9.4.~~

~~If the Company does not notify the Council, the DOT and the Department by 1 January 1997 on which of Site A or Site B the Company proposes to construct the public boat ramp, then the Company must construct the public boat ramp on Site B.~~

9.1 Boat Ramp Zoning

~~Upon the earlier of:~~

~~(a) the Company giving the notification referred to in clause 9.2; or~~

~~(b) 1 January 1997;~~

On or before 1997, the Council must make application under Section 2.18 of the Local Government (Planning & Environment) Act 1990 to rezone ~~that part of the Land referred to in the notification, or Site B if no notification is given~~ the Boat Ramp Site, for the purpose of public boat ramp, car parking and access at no cost to the Company. The Company must consent to that application.

9.2 Construction of Boat Ramp and Associated Facilities

Upon the approval by the Governor in Council of the application referred to in clause ~~9.2~~ 9.1, the Company must expeditiously design and construct on the land so rezoned by no later than 31 December 1997 (or such later date as the Company, the Council, the DOT and the Department may agree), a two-lane, all-weather, ~~all-tide~~ and to the best of Company's efforts, all-tide permanent public boat ramp with adjacent parking for 45 car trailer units, Access Channel and access road to the requirements and satisfaction of the Council and the DOT.

9.3 Transfer to Council and Road Dedication for Access

~~Upon notification in the Gazette of the approval by the Governor in Council of the rezoning, the Company must transfer (or cause to be transferred) freehold title to the land so rezoned to the Council, free of all encumbrances and at no cost to the Council. Contemporaneously, the Company must dedicate as public road the access to the public boat ramp.~~

The Company must grant an easement in registrable form (as outlined in the plan contained in Schedule 19 to this deed) in order to provide access for the Council and the public to the public boat ramp by use of the access road. If, however, in the reasonable opinion of the State, the easement arrangement agreed to is not satisfactory to the State then the State may require the Company to convey that part of the Land, the subject of the Easement, to the State for nil consideration for use as a public road to the boat ramp and the Council will contemporaneously surrender its interests in the Easement.

9.4 First Right of Refusal

The Council must not license, lease sell or otherwise dispose of an interest in the land transferred to it under clause ~~9.5~~ 9.3 unless:

- (a) the Council has first offered to license, lease sell or otherwise dispose of its interest in the land to the Company; and
- (b) the offer is in writing setting out all relevant terms and conditions required by the Council; and
- (c) the Company has not accepted the offer within 30 days of receiving the offer.

If the Council complies with (a) and (b) above and the Company does not accept in accordance with (c) above, then the Council may licence lease or otherwise dispose of the interest in land referred to in the offer on terms and conditions no more favourable than those set out in (b) above.

10. SEWAGE

10.1 Sewage Management Plan

- (a) The Company must develop a management plan for dealing with the disposal of sewage (including, without limitation, effluent from any source) and must submit the plan to the Chief Executive and the Council for approval. The Chief Executive and the Council may approve the plan as submitted or subject to such amendment as either may reasonably require.
- (b) The Company must comply with the approved management plan.
- (c) The Company must not commence any part of the Works which will lead to or result in the production of sewage on the Development Site until a management plan is approved for the treatment and disposal of that sewage.

10.2 Septic System

The Company may treat sewage on site in a septic system so long as the Site Population for each septic system does not exceed 100 persons. Each septic system must be designed and operated in accordance with the requirements of the Sewerage and Water Supply Act 1981. The Company must make written application to the Council for approval to use any septic system at least 3 months before the Company intends to use the system.

Unless the Company ensures that its contractors provide alternate sewerage facilities for construction workers on the Development Site to the reasonable satisfaction of the Department, the number of construction workers employed on the Development Site shall be added to and form part of the Site Population for this clause 10 on the basis that each construction worker adds 0.25 to the Site Population.

10.3 Package Treatment Plant

- (a) Prior to the Site Population exceeding 200 persons, or such other number in excess of 200 as the Council and the Department may approve, the Company will construct a package treatment plant for the treatment of all sewage on the Development Site or on other suitably zoned land owned by the Company and in the vicinity of the Development Site.
- (b) The package treatment plant must be designed and operated in accordance with the requirements of the Sewerage and Water Supply Act 1981 and the Clean Waters Act 1971 and must treat sewage to the standard required by the regulations to those acts.

10.4 Connection with Council Sewerage Plant

- (a) The Company must operate and maintain either its septic system or the package treatment plant until:
 - (i) the Council has commissioned a sewage treatment plant for Cardwell township; and
 - (ii) the Company has constructed external works to a distance of 500m from the appropriate boundary of the Development Site and the Council has constructed such further external works (if any) as are necessary to connect the reticulated sewage on the Development Site with the sewerage treatment plant for Cardwell township.
- (b) Subject to the Council commissioning a sewerage treatment plant pursuant to clause 10.4(a)(i), the Company must commence construction of the external works it is to construct under clause 10.4(a)(ii) on the earlier of:
 - (i) when the Site Population exceeds 350 - in which case the Company must complete those works before the Site Population exceeds 500; or
 - (ii) 2 years after the Council has commissioned a sewage treatment plant for the township of Cardwell - in which case the Company must complete those works within 3 years of the Council commissioning its sewage treatment plant.
- (c) The Company must pay Council for any works otherwise required specifically for township reticulation increased in capacity solely because of the use of that reticulation by the Development Site.

10.5 Company to Maintain and Provide Records

The Company must maintain and provide to the Department and the Council monthly records of sewage treatment by any package treatment plant operated pursuant to clause 10.3, which records will include-

- (a) daily volume of effluent generated in that month;
- (b) daily volume of effluent discharged through any outfall;
- (c) daily volume of effluent discharged onto land or through land irrigation schemes;
- (d) an effluent analysis undertaken in that month by a NATA registered laboratory for the following:
 - total nitrogen;
 - total phosphorous;
 - suspended solids;
 - 5 day Biochemical Oxygen Demand;
- (e) an analysis measured on site in that month by a suitably qualified person, for example, a sewerage treatment plant operator, of the following:
 - dissolved oxygen;
 - pH value;
 - residual chlorine.

10.6 Sewerage Headworks Contributions

The Company must pay contributions for sewerage headworks to the Council as provided for in Schedule 10 and at such times as directed by the Council.

10.7 Use of Treated Effluent for Irrigation

The Company may use effluent arising from the treatment of sewage by any package treatment plant operated pursuant to clause 10.3 to irrigate such parts of the Land or other land as the Council and the Department may from time to time permit provided that the treated effluent satisfies the standards from time to time specified by the Department and the Council.

10.8 Council Effluent

The Council may make effluent available to the Company on such terms and conditions as the Council and the Company may agree.

10.9 Works External

The Company must either:

- (a) pay for; or
- (b) construct,

works external to the Development Site necessary to connect the development to the Council sewerage treatment plant and any holding ponds to store effluent to be used for the irrigation of the Development Site.

11. WATER SUPPLY

11.1 Feasibility Study

Within 12 months of commencing the Works (or such other time as the Company, Council and the DPI may agree), the Company must complete in consultation with and to the satisfaction of, the DPI and the Council, a full engineering feasibility study to determine the water supply requirements for the development, including, without limitation, the likely usage per person per day and the source of supply.

11.2 External Works

- (a) The Council must notify the Company of the external works which it requires the Company on behalf of the Council to construct so that the Council may provide a potable fresh water supply service to the boundary of the Development Site.
- (b) The Company must then submit to Council appropriate design drawings of the external works for Council approval.
- (c) If the Company wishes to avail itself of Council supplied water, or when the Site Population exceeds 200, then the Company must construct the external works reasonably required to provide a potable fresh water supply service to the boundary of the Development Site at its cost and may construct any further works notified to it by the Council, but the cost of construction of any such further works will be borne by the Council.
- (d) The Council reserves the right to increase the diameter of a section of the main (forming part of such external works) and provide a connection to the reticulation to augment the supply of potable fresh water to the southern end of Cardwell. If the Council does this, it must pay the cost of the connection together with the additional cost of supplying the larger main.

11.3 Council to Supply Potable Water

When the external works have been constructed by the Company to the satisfaction of the Council and the Company has agreed an appropriate figure to secure payment of headworks charges and lodged a bond acceptable to Council for that figure with Council, the Council must supply potable water to the Development Site provided that the Council is not obliged to supply potable water in excess of the permitted maximum daily consumption calculated pursuant to clause 11.4(b) of this Deed.

11.4 Consumption of Potable Water

- (a) The Developer has advised Council that the Developer estimates the daily consumption of potable water to be 500 litres per person although Council headworks charges are ordinarily based on an estimated daily consumption of potable water of 900 litres per person.

- (b) The permitted maximum daily consumption from time to time will be the lesser of 500 litres multiplied by the Site Population, or 750,000 litres.
- (c) The Council at its discretion may supply potable water to the Development Site in excess of the permitted maximum daily consumption calculated pursuant to clause 11.4(b), but will be entitled to charge an additional amount on the basis set out in sub-clause(e).
- (d) The quantity of potable water supplied by the Council to the Development Site shall be monitored at the cost of the Company in such manner as the Council requires.
- (e) The Council may recover the additional cost of headworks utilised by the Company but not previously paid for, in accordance with the following formula:

$$\text{Additional Headworks Cost (in \$)} = (Y/9 - 5/9) \times \text{cost per e.d.c./2.5}$$

Where: Cost per e.d.c. = such amount as the Council may adopt by policy for the Shire of Cardwell from time to time, or prior to the Council adopting a policy, \$3600.00

Y = 7 where the daily consumption per unit of Site Population averaged over a 6 month period is greater than 500 litres/day and does not exceed 700 litres/day

Y = 9 where the daily consumption per unit of Site Population averaged over a 6 month period is greater than 700 litres/day and does not exceed 900 litres/day.

Where e.d.c. means equivalent domestic connection.

When the daily consumption per unit of Site Population averaged over a 6 month period exceeds 500 litres/day, the Council may issue an invoice for the first instalment of the Additional Headwork Cost, accompanied by the relevant calculation; and the Company must pay it within 30 days of receipt. When the daily consumption per unit of Site Population averaged over a 6 month period exceeds 700 litres/day, the Council may issue an invoice for the second instalment of the Additional Headwork Cost, accompanied by the relevant calculation; and the Company must pay it within 30 days of receipt.

- (f) The Company must pay for consumption of potable water in excess of 900 litres/day/unit of Site Population, averaged over a 6 month period on the basis of the Council's then prevailing excess water rates.

11.5 Water Supply Headworks

The Company must pay contributions for water supply headworks to the Council as provided for in Schedule 11 calculated on the basis that the maximum daily permitted consumption of potable water for the Development Site is 750,000 litres.

11.6 Potable Water Not to be Used for Irrigation

The Company must not permit potable water supplied by the Council to the Development Site to be used for irrigation without the prior written approval of the Council.

12. GARBAGE DISPOSAL

12.1 Refuse Transfer Facility

The Company must construct and operate a refuse transfer station on the Development Site (or on other land owned by the Company, appropriately zoned and in close proximity to the Development Site) to the satisfaction of the Council.

12.2 Disposal of Refuse

- (a) If the Council so determines, the Company shall deliver refuse to the refuse transfer station on the Development Site (or the other land referred to in clause 12.1) for collection by the Council. The Company must pay to the Council such sums as the Council shall from time to time require for the provision of such service.
- (b) In the alternative should the Council so determine, the Company will transport refuse from the Development Site to such location as the Council shall direct. The Company must pay to the Council such reasonable sums as the Council shall from time to time require as a condition of the Council accepting such refuse from the Company.

12.3 Company to Obtain Approvals

The Company must obtain all necessary approvals for the disposal of construction waste prior to the construction of the waste transfer station.

13. PERFORMANCE BONDS

13.1 Security for Construction of the Breakwater and Access Channel and Performance of Foreshore Management Obligations

- (a) The Company must construct and maintain on behalf of the Council the ~~Breakwater and the Access Channel~~ to the satisfaction of the Chief Executive and the Head.
- (b) ~~The Company must lodge with the Co-ordinator General on behalf of the State as security for the construction and maintenance of the Breakwater and the Access Channel required for the purposes of the development, a cash bond of \$500,000 (or an unconditional bank guarantee in that amount in a form acceptable to the Head) within 7 days of execution of this Deed.~~

The Company must lodge with the Co-Ordinator General contemporaneously with the execution of this Deed :

- (i) a cash bond of \$200,000 as security for the continued construction and maintenance of the Access Channel (which the Company has commenced dredging) required for the purposes of the development; and
- (ii) a cash bond of \$100,000 as security for the performance of the Company's obligations under clause 17.4 which the Co-Ordinator General may retain until the Company has complied with those obligations;

or an unconditional bank guarantee in the amount of \$300,000 in a form acceptable to the Head.

- (c) ~~Upon completion of construction of the Breakwater and the Access Channel to the satisfaction of the Chief Executive and the Head, the Co-ordinator General must refund any unutilised portion of the security it still retains, save for an amount of 20% of the original face value of the security which the Co-ordinator General may for a further period of 12 months as a maintenance guarantee. At the end of that period, the Co-ordinator General must then refund any unutilised portion of the balance of the security.~~

Within 7 days of completion of construction of the Access Channel to the satisfaction of the Chief Executive and the Head, the Co-Ordinator General must refund any unutilised portion of the security it retains with respect to the construction of the Access Channel, save for an amount of 20% of the original face value of the security which the Co-Ordinator General may retain for a further period of 12 months as a maintenance guarantee. At the end of that period the Co-Ordinator General must then refund any unutilised portion of the balance of the security.

After the fourth anniversary of the date that the Company commences the Works and within 7 days after the representatives of the State, the Commonwealth and the Company, acting expeditiously, agree that the Company's strategies have been successful in preventing soil erosion of the foreshore, the Co-Ordinator General must refund any unutilised portion of the security it retains with respect to the Company's foreshore management obligations under clause 17 (being the security referred to in clause 13(1)(b)(ii).

Any security (other than cash) provided under this clause 13.1 must be offered by an institution and in a form approved by the Head.

13.2 ~~Default re Breakwater and Access Channel~~

- (a) If the Company fails to construct or maintain the ~~Breakwater~~ or the Access Channel to the satisfaction of and in the manner and time required by the Head, the Co-ordinator General may call upon the security provided for in clause 13.1 and the Co-ordinator General may rely upon the provisions of clause 24 to the extent of any deficiency in that security.
- (b) The Co-ordinator General must apply any monies received under this clause towards the cost of completing the construction of the ~~Breakwater~~ or the

Access Channel (as the case may be) or maintaining ~~the Breakwater or the~~ Access Channel or taking such other action as maybe required.

13.3 Progressive Release of ~~Breakwater and~~ Access Channel Security

Subject to clause 13.1(c), the Co-ordinator General must progressively release the security held for the performance of the Works described in clause 13.1(a) when the following conditions are fulfilled:

- (a) the amount of security to be released is a whole number multiple of \$10,000.00;
- (b) the Company has made a written request to the Head for the release of part of the security;
- (c) the Company has provided to the Head a certificate by an independent quantity surveyor as to the cost to the Company of completing its obligations under clause 13.1(a); and
- (d) the amount of security which the Co-ordinator General would continue to hold after releasing the portion requested would not be less than the aggregate of \$100,000.00 and the amount in the certificate referred to in sub-clause (c).

13.4 Council Security

- (a) The Company must carry out and maintain those works described in Schedule 13 to the satisfaction of the Council.
- (b) To secure to the Council the due performance and fulfilment by the Company of its obligations under this Deed with respect to the things required to be carried out executed and provided by the Company the Company must deliver, contemporaneously with the delivery of this Deed to the Council or as provided for by Schedule 13, security in the form of:
 - (c) cash; or
 - (d) a bank guarantee in an amount of \$200,000.00, calculated on the basis set out in Schedule 13.

Any security (other than cash) provided under clause 13.4 must be offered by an institution and in a form approved by the Chief Executive Officer of the Council.

13.5 Progressive Release of Council Security

Subject to clause 13.6(a), the Council must progressively release any security it holds for the performance of the Works described in Schedule 13 when the following conditions are fulfilled:

- (a) the amount of security to be released is a whole number multiple of \$10,000.00;

- (b) the Company has made a written request to the Council for the release of part of the security;
- (c) the Company has provided to the Council a certificate by an independent quantity surveyor as to the cost of completing its obligations under items described in Schedule 13; and
- (d) the amount of security which the Council would continue to hold after releasing the portion requested would be not less than the aggregate of \$40,000.00 and the amount in the certificate referred to in sub-clause (c).

13.6 Release of Council Security

- (a) When it has completed any of the works referred to in Schedule 13, the Company may apply to the Council for release of the security provided under clause 13.4 in accordance with clause 13.5. If those works are completed to the Council's reasonable satisfaction, the Council must release so much of the security it still retains save for an amount of 20% of the original face value of the security, which the Council may retain for a further period of 12 months as a maintenance guarantee. At the end of that further period, the Council must then refund any unutilised portion of the balance of the security.
- (b) Upon payment by the Company of its contribution to water supply or sewerage headworks, the Council must release so much of any security as relates to those items.

13.7 Default re Council Matters

- (a) If the Company defaults in any of its obligations to the Council, the Council may call upon the security provided under clause 13.4 and the Council may rely upon the provisions of clause 24 to the extent of any deficiency in that security.
- (b) The Council must apply any monies received under this clause towards remedying the Company's default.

13.8 Road Access

The Company must construct and maintain any road access from the highway to the Development Site and the public boat ramp site to the standards required by and to the satisfaction of the DOT and the Council.

13.9 DOT Security

To secure to the DOT the Developers obligation to construct and maintain road access from the highway to the Development Site, the Company must deliver, contemporaneously with the delivery of this Deed to the DOT at least 7 days prior to commencing Works associated with or requiring road access from the highway to the Development Site, security in the form of:

- (a) cash; or

- (b) a bank guarantee in an amount of \$100,000.

Any security (other than cash) provided under clause 13.9 must be offered by an institution and in a form approved by the DOT.

13.10 Progressive Release of DOT Security

Subject to clause 13.11, the DOT must progressively release any security it holds for the performance of Works under clause 13.9 provided that the following conditions are satisfied:

- (a) the amount of security to be released is a whole number multiple of \$10,000.00;
- (b) the Company has made a written request to the DOT for the release of part of the security;
- (c) the Company has provided to the DOT a certificate by an independent quantity surveyor as to the cost of completing its obligations under clause 13.8; and
- (d) the amount of security which the DOT would continue to hold after releasing the portion requested would be not less than the aggregate of \$20,000.00 and the amount in the certificate referred to in sub-clause (c).

13.11 Release of DOT Security

When it has completed any of the works referred to in clause 13.8, the Company may apply to the DOT for release of the security provided under clause 13.9 in accordance with clause 13.10. If those works are completed to the DOT's reasonable satisfaction, the DOT must release so much of the security it still retains save for an amount of 20% of the original face value of the security, which the DOT may retain for a further period of 12 months as a maintenance guarantee. At the end of that further period, the DOT must then refund any unutilised portion of the balance of the security.

13.12 Default re DOT Security

- (a) If the Company defaults in any of its obligations to the DOT, the DOT may call upon the security provided under clause 13.9 and the DOT may rely upon the provisions of clause 24 to the extent of any deficiency in that security.
- (b) The DOT will apply any monies received under this clause towards remediating the Company's default.

13.13 Meaning of Maintain

In clause 13, maintain means the rectification of any defects in works as constructed, and maintenance has a corresponding meaning.

13.14 Treatment of Cash Security

Should the Company post a cash bond with the Co-ordinator General, the Council or the DOT, the entity receiving the security must invest it in an interest bearing deposit with a bank on the following basis:

- (a) the deposit is at the risk of the Company; and
- (b) interest earned on the deposit belongs to the Company.

At the time of lodging a cash deposit, the Company must supply its tax file number to the entity receiving the security.

14. WORKS IN MARINE PARK

14.1 Company to Obtain Permit

The Company must obtain a permit from the Department before it carries out any Works in the Marine Park.

14.2 Permit may be Subject to Conditions

The Department may issue the permit subject to lawful conditions, including, without limitation that the Company enter a deed containing (among other things) an obligation on the Company to effect insurance to cover and be limited to:

- (a) legal liability for personal injury and property damage; and
- (b) costs to Rehabilitate that part of the Marine Park,

arising out of any accidental occurrence during the Works or out of a failure to comply with the provisions of the permit.

14.3 Company to Comply with Conditions

When effecting any Works in the Marine Park, the Company must comply with the provisions of any permit or deed granted or entered into under this clause.

PART III - OPERATIONAL PHASE

15. OPERATION OF THE MARINA, CANAL AND ACCESS CHANNEL

15.1 Code of Practice

- (a) The Company must prepare a Code of Practice for the operation of the Marina, Canal and Access Channel and ~~on or before 1 April 1995~~ within 90 days of completion of the works associated with the construction of the Access Channel submit such Code of Practice to the Chief Executive for his approval.

Such Code of Practice must be in accordance with Environmental Guidelines for marinas in the Great Barrier Reef Marine Park, published 1994 and the publication by the Australian Standards described as AS3962 of 1991 titled "Guidelines for Design of Marinas" and must include details of operations for boat maintenance, fuel management (including fuel spill contingency plans), bilge and toilet pump out, transfer operations, garbage disposal, noise, boat speeds and ongoing monitoring of water quality within the Marina.

- (b) The Chief Executive may approve the Code of Practice as submitted by the Company or may approve the Code of Practice subject to such amendments as are required and provided that it complies in all appropriate or relevant respects with the Environmental Guidelines for Marinas in the Great Barrier Reef Marine Park, as published by GRMPA in 1994.

15.2 Compliance with Code of Practice

The Company must operate the Marina, the Canal and the Access Channel in accordance with the approved Code of Practice.

15.3 Provision of Shore Based Facilities

The Company must provide shore-based facilities for marina users (toilets, ablutions, etc) connected to the sewage treatment works to the reasonable satisfaction of the Regional Director. The pump-out facilities in the marina must also be connected to the treatment works and of a design which prevents petroleum products being pumped to the treatment works.

15.4 Maintenance of Marina Basin Canals and Access Channel

The Company must preserve maintain and keep clean at its expense:

- (a) for and on behalf of and to the satisfaction of the Council, any Canal and Access Channel (whether or not part of the Marina basin) administered by the Council under the Canals Act; and
- (b) to the satisfaction of the Chief Executive and the Council that part of the Marina basin which is not part of a canal under the provisions of the Canals Act,

and must obtain such approvals and permits as necessary for the Company to carry out such works.

15.5 Depth Check of Access Channel

The Company and the Department within 6 calendar months after the date of completion of construction of the Access Channel must conduct jointly a depth check of the Access Channel using a calibrated echo sounder.

The Company must provide at its expense the boat and equipment necessary for this depth check.

15.6 Profile Survey of Access Channel

- (a) If the depth check shows that the depth of the Access Channel has decreased by more than 500 millimetres at any point in it, the Company will conduct forthwith at its expense, a profile survey of the Access Channel to the satisfaction of the Chief Executive.
- (b) In any case, the Company must conduct at its expense a profile survey of the Access Channel to the satisfaction of the Chief Executive within 12 calendar months after completion of construction of the Access Channel.

16. INSECT MANAGEMENT PLAN

16.1 Development of Insect Management Plan

Prior to lodging any application with the Council for approval to build any accommodation on the Development Site, the Company must produce, in consultation with and to the satisfaction of the DPI, the Department and the Council, an insect management plan for the Land. The insect management plan will be based on the use of control agents which will not affect the marine Environment.

16.2 Implementation of Insect Management Plan

- (a) The Company must implement the insect management plan.
- (b) The Company must not take any action likely to reduce the insect population in areas adjacent to the Land except in accordance with the insect management plan referred to in clause 16.1.

17. BEACH AND FORESHORE MANAGEMENT

17.1 Monitor Sand Loss

The Company must monitor and report to the Chief Executive and the DPI on the volume and impact of sand loss on the beach seaward of the Development Site.

17.2 Beach Nourishment

The Company must conduct a program of beach nourishment to the satisfaction of the Chief Executive if in the opinion of the Chief Executive such beach nourishment program is required and the distance from the seaward toe of the frontal dune to the seaward boundary of the Land is less than 20m, in which case, the nourishment sand will be added from outside the active beach system.

The Company must maintain an undeveloped property width of not less than 20m, and if in the opinion of the Chief Executive, the addition of additional sand is not sufficient to protect properties adjoining the beachfront, the Company must construct a buried wall designed in consultation with the Department.

17.3 Beach Management Strategy

Within 12 months of commencing the Works, the Company must prepare in consultation with the Chief Executive and the DPI a strategy for beach nourishment which must include designated sources of sand and methodology of beach nourishment.

17.4 Foreshore Management

The Company must implement the Beach and Foreshore Management Plan. After commencing the Works, the Company must develop a monitoring methodology based on those principles set out at Schedule 17, and implement that monitoring methodology and report to the State and to the Commonwealth (through the Commonwealth Representative) annually for 4 years in or about November of each year.

The Company must establish as part of that monitoring and at its own cost, several test sites, using sand, geo-fabric or other measure the Company believes has the potential to stabilise the Foreshore should the strategy proposed in the Beach and Foreshore Management Plan prove to be inadequate.

On the fourth anniversary of the date that the Company commences the Works, representatives of the State, the Commonwealth and the Company must meet to objectively consider the monitoring data collected by the Company (together with any other available evidence) for the purposes of deciding whether or not implementation of the Company's strategy has stabilised the Foreshore.

If the parties decide that the implementation of the Company's strategy has stabilised the Foreshore, the Co-ordinator General must return to the Company so much of the bond lodged by the Company under clause 13.1 and still retained by the Co-ordinator General to secure the performance of the Company's obligations under this clause.

Should either the State or the Commonwealth at any time before the fourth anniversary of the date that the Company commences the Works, be able to demonstrate that implementation of the Company's strategy has failed, or is failing to prevent erosion of the Foreshore which in the reasonable opinion of the State or the Commonwealth is likely to adversely affect world heritage property, then, the State or the Commonwealth may require the Company to submit proposals for further stabilisation works which, when approved by the Commonwealth and the State, must be undertaken by the Company at its expense.

If the Company fails to implement an approved Foreshore stabilisation program in accordance with its terms, the Commonwealth may call upon the Co-ordinator General to release any security he holds under clause 13.1 to secure the Company's obligations under this clause, and the Commonwealth may rely upon the provisions of clause 24 to the extent of any deficiency in that security.

The Commonwealth must apply any moneys received under this clause towards the cost of stabilising the Foreshore, but in so doing, the Commonwealth must not adopt a stabilisation methodology which would have the result of allowing vegetation or structures to extend for more than 4 metres above the average seabed level at the outer (seaward) edge of Zone X in Schedule 16.

The Company shall be entitled to coppice any mangroves in Zone Z in Schedule 16 at a minimum height of 4 metres above the average seabed level at the outer (seaward) edge of Zone X in Schedule 16.

If, after the fourth anniversary of the date that the Company commences the Works, representatives of the State, the Commonwealth and the Company agree that the Company's strategies have been successful in preventing erosion of the Foreshore, then the Company shall be entitled to clear to seabed level the mangroves in Zone Z of the Beach and Foreshore Management Plan.'

18. ENVIRONMENTAL MANAGEMENT PLAN

18.1 Production of Plan

The Co-ordinator General must progressively assemble in consultation with the Company and the Department, an environmental management plan comprised of the various plans referred to in clause 18.2.

18.2 Contents of Plan

The Environmental Management Plan must comprehensively address in one document:

- (a) disposal of sewage, incorporating the plan developed under clause 10.1;
- (b) disposal of refuse in accordance with clause 12;
- (c) disposal of stormwater in accordance with clause 7;
- (d) Marina Code of Practice developed under clause 15;
- (e) Insect management, incorporating the plan developed under clause 16;
- (f) Beach management incorporating the beach nourishment strategy developed under clause 17; and
- (g) maintenance dredging and treatment of dredge spoil; and
- (h) Foreshore stabilisation.

19. USE OF ADJACENT NATIONAL AND MARINE PARKS AND NATURAL AND CULTURAL SITES

19.1 Company to Comply

~~The Company must comply with all laws and regulations with respect to the conduct of commercial activities in National and Marine Parks adjacent to the Development Site:~~

The Company must comply with all applicable laws, regulations, management plans and draft management plans with respect to the conduct of commercial activities in regional, national and marine parks adjacent to the Development Site.

19.2 Proposals by Company

- ~~(a) Any of the Company's proposed activities in regional, national or marine parks must comply with any management plan or draft management plan prepared by the Department and notified to the Company. Where the Company's proposed activities may result in new or significantly increased commercial activities in regional national or marine parks, or in increased visitation to sites listed on any statutory register of heritage places, the Company and the Department will consider these proposals within the context of jointly developed cultural and environmental resource management programs for these activities and sites.~~
- ~~(b) The Company must not carry out any of the activities referred to in the second sentence of clause 19.2(a) other than in accordance with a program developed under clause 19.2(a) and the Company must bear the reasonable costs of the development of such resource management programs.~~
- ~~(c) The Company must implement such resource management programs at its cost but to the satisfaction of the Department, provided always that should:~~
- ~~(i) the implementation of such programs involve the construction of capital works; and~~
- ~~(ii) other persons use those capital works for commercial purposes;~~
- ~~then those other persons must make an equitable contribution to the cost of construction of those capital works and the development of such resource management programs.~~

Any of the Company's proposed activities in regional, national or marine parks which may result in new or significantly increased impact or visitations, without limitation, must be consistent with the conservation, protection and presentation of world heritage property, and any management plan or draft management plan prepared by the Department and notified to the Company.

20. BUILDING

20.1 Population

The parties acknowledge that the zoning of the Development Site permits provision of accommodation for a maximum Site Population of 1500 people.

20.2 Accommodation Building Heights

The Company must not construct any accommodation buildings on the Development Site with more than 2 levels of accommodation and one level of car park.

20.3 Maximum Building Base Height

The highest building base must not be higher than 6 metres above the highest astronomical tide.

20.4 Measure of Height

All heights for buildings must be measured from the building base and must not exceed 9 metres to the top plate and 13 metres to the top of the roof, except with the specific prior approval of the Council.

20.5 Special Purpose Building Heights

Notwithstanding the provisions of clause 20.4, the Company may construct special purpose buildings such as clock towers, covered tennis courts and a convention centre and a reception building to a maximum building height of 15 metres measured to the top plate of any such building.

20.6 Restrictions

The Company may construct buildings up to 40m 20m from the seaward boundary of the Development Site.

20.7 Subdivision to Comply with Harbours Act

The Developer must not apply to subdivide any of the Land in contravention of Section 86(5)(a) of the Harbours Act.

21. OPERATION OF VESSELS

21.1 Speed Limits

Subject to clauses 19.1 and 19.2, the Company agrees that any displacement vessels over 25 metres which it operates for sightseeing activities will not exceed a maximum speed of 12 knots (or such other speed as the Regional Harbour Master may reasonably direct) in that part of Hinchinbrook Channel south of Oyster Point.

22. COMPLIANCE WITH CONDITIONS OF SPECIAL LEASE, PERMIT TO OCCUPY AND REZONING

22.1 Conditions of Special Leases, Permit to Occupy and Rezoning Conditions

The Company must comply with:

- (a) the conditions of the Special Leases.
- (b) the conditions of the Permit to Occupy.
- (c) the Rezoning Conditions.

23. ROAD CLOSURE

23.1 Conditions

The Company acknowledges that permanent closure of the area of road which it occupies under the Permit to Occupy may be permitted only ~~following dedication of a road for public use to provide access to the future public boat ramp to be constructed by the Company under this Deed~~ if the Company complies with its obligations contained in clause 9.3 of the deed.

PART IV GENERAL PROVISIONS

24. DEFAULT BY COMPANY

24.1 Notification and Opportunity to Remedy

If the State or the Council or the Commonwealth decide that the Company is in default under this Deed, then the State or the Council or the Commonwealth (as the case may be) before taking action in relation to the default (except in the case of emergency, where this clause does not apply) must give the Company:

- (a) reasonable notice in writing of the default setting out details of the default and, where possible suggested remedial action; and
- (b) a reasonable opportunity to remedy the default.

If the Company does not remedy the default, the State or the Council or the Commonwealth (as the case may be and without obligation) may proceed to remedy default at the cost and expense of the Company.

Should the State or the Council or the Commonwealth give a notice to the Company under this clause, the State or the Council or the Commonwealth (as the case may be) must provide a copy of that notice to the State or the Council or the Commonwealth (as the case may be) as soon as possible.

Should the State and the Council or the Commonwealth consent to the Company mortgaging the Land (or part of it) the State or the Council or the Commonwealth (as the case may be) must provide a copy of any notice given to the Company under this clause to the mortgagee as soon as possible.

24.2 Liquidated Debt

If the Company fails to duly perform and fulfil its obligations under this Deed the Council or the State or the Commonwealth may recover from the Company as a liquidated debt the following amounts:

- (a) the amount of any payment or contribution (if any) not paid by the Company; and

- (b) the cost of carrying out such work as is necessary to return the Development Site to its condition as at the date of this Deed and/or the cost of Mitigating any adverse Environmental consequences of improperly or partly completed works.

24.3 Application of Funds

The Council or the State or the Commonwealth may apply any sum recovered or received by it pursuant to this clause 24 as far as the sum may extend to or towards all or any one or more of the following:

- (a) reduction or discharge of the payments or contributions payable by the Company hereunder;
- (b) carrying out and completing or Mitigating any adverse Environmental consequences of the Works not duly performed or completed by the Company;
- (c) altering or amending any improperly or partly completed works carried out or undertaken by the Company;
- (d) carrying out such other work or development (including any addition or extension to the Works) whether within or outside or partly within and partly outside the Land as the Council or the State or the Commonwealth may consider necessary to Mitigate the effects of any uncompleted or improperly completed or partly completed works or to make any such uncompleted, improperly completed or partly completed works in the opinion of the Council or the State or the Commonwealth more effective or useful; and
- (e) reimbursing itself for any damages suffered by it and recoverable by it at law from the Company apart from this Deed.

24.4 Obligation on Council and State

If the sum recovered or received by the Council or the State or the Commonwealth is insufficient to complete the carrying out, altering or amending of the Works, the Council or the State or the Commonwealth may at its election:

- (a) carry out, alter or amend the Works at its discretion so far as the money is received or recovered by it will in the opinion of the Council or the State or the Commonwealth reasonably allow; or
- (b) complete the carrying out or altering or amending of the Works in accordance with the obligations of the Company under this Deed and recover from the Company as a liquidated debt the difference between the costs actually incurred by it and the sum recovered or received under clause 24.2.

25. ASSIGNMENT

25.1 No Assignment etc. Under Deed Without Consent

The Company must not assign, mortgage, charge, encumber, otherwise deal with (including hold on trust) any right or interest under this Deed without the prior written consent of the State and the Council and the Commonwealth.

25.2 No Change in Control Without Consent

While the Company is not a listed company, the Company must obtain the prior written consent of the State and the Council and the Commonwealth before a change occurs in the beneficial holding or control of a Prescribed Right in the Company when compared to the circumstances prevailing at the Control Date.

25.3 No Assignment etc. of Land Without Consent

Other than in the course of:

- (a) retail sales of developed residential lots, or of developed strata title lots (including, without limitation, lots under a group titles plan), developed marina berths; or
- (b) leases or licences for business purposes on normal commercial terms of the same,

the Company must not sell, mortgage or otherwise deal with the Development Site or any part of it without the prior written consent of the State and the Council and the Commonwealth.

25.4 Information to be Supplied

To obtain the consent of the State and the Council and the Commonwealth, under this clause, the Company must:

- (a) give the State and the Council and the Commonwealth at least 30 days prior written notice of the proposed assignment, sale, mortgage, charge, encumbrance, dealing or the proposed change in beneficial holding or control of the Prescribed Right; and
- (b) when giving this notice, not be in default in observing any covenant of the Company under this Deed; and
- (c) provide the State and the Council and the Commonwealth with adequate particulars in relation to the Proposed Assignee and full details of the proposed assignment, sale, mortgage, charge, encumbrance, dealing or the proposed change in beneficial holding or control of the Prescribed Right;

25.5 Requirements for Consent

If each Assignee agrees to enter into a deed with the State and the Council and the Commonwealth containing:

- (a) a covenant to observe each of the Company's obligations in the Deed; and
- (b) a power of attorney; and
- (c) any other covenant the State or the Council or the Commonwealth may reasonably require; and
- (d) a guarantee and indemnity from the directors and/or shareholders of the Proposed Assignee of the Proposed Assignee's obligations under the Deed,

then the State and the Council and the Commonwealth may consent to the proposed assignment, sale, mortgage, charge, encumbrance, dealing or the proposed change in beneficial holding or control of the Prescribed Right..

25.6 Mandatory Consent

The State and the Council and the Commonwealth must consent to a mortgage over the Land (or part of it) where the mortgagee enters into a covenant with the State and the Council and the Commonwealth containing the following conditions:

- (a) an acknowledgment by the mortgagee of the existence of this Deed; and
- (b) an agreement by the mortgagee that should it (or any person empowered by the mortgage including without limitation a receiver, an agent, an attorney or an administrator) exercise a power of sale over any of the Development Site, then the various approvals, permissions, permits, consents and obligations from the State and the Council and the Commonwealth under this Deed may be rendered null and void unless the purchaser covenants with the State and the Council to observe each of the Company's obligations under this Deed - and where the purchaser is a company and is not listed on the ASX, the directors and principals of the purchaser give a guarantee and indemnity in respect of the purchaser's obligations under that covenant.

26. POWER OF ENTRY

26.1 Permission to Enter

The Company must permit the Council and the State and the Commonwealth and their respective members, officers, agents, servants, employees, contractors and sub-contractors and other persons authorised by the Council and the State and the Commonwealth at all times during the operation of this Deed to enter into and upon the said Land with all necessary vehicles, plant and equipment for the following purposes:

- (a) examining and inspecting the state and condition of the Land and the extent of the Works;

- (b) ascertaining whether the obligations of the Company have been duly performed and fulfilled,
- (c) making good at the cost and expense of the Company any breach of obligations or any defect in Works;
- (d) performing any works which the Council or the State or the Commonwealth has agreed to perform;
- (e) exercising the rights of the Council or the State or the Commonwealth under this Deed;
- (f) conducting additional monitoring to determine whether erosion of the Foreshore is occurring and whether the quality of the water flowing from the Land complies with the requirements of the Deed.

26.2 Reasonable Notice

Except in the case of emergency, the State or the Council or the Commonwealth (as the case may be) must give reasonable notice of an intention to enter upon the Land under this clause, and in exercising the right of entry under this clause must use reasonable endeavours not to disrupt the Company's lawful activities.

27. WAIVER

No waiver by the Council or the State or the Commonwealth of any breach by the Company of any of the provisions of this Deed shall be implied against the Council or the State or the Commonwealth or be otherwise effective unless the same shall be in writing under the hand of the Council or the State or the Commonwealth and no laches or delays by the Council or the State or the Commonwealth at any time or times in enforcing any of its rights, powers and the like under this Deed shall prejudice or affect those rights or powers.

28. SERVICE

- (a) A party may give a notice required under this Deed by delivering the notice to an address of another party provided under this Deed by hand or post or by telex or facsimile transmission.
- (b) If, before 4.00 p.m. local time in the place of delivery, a party delivers a notice:
 - (i) by hand;
 - (ii) by telex and the sending party receives the answerback of the other party at the end of the transmission; or
 - (iii) by facsimile and the sending party completes the transmission,

the notice shall be taken as given on the day of delivery or transmission, and in any other case, on the next day.

- (c) If a party gives a notice by post the notice shall be taken as given on the second business day in the place of delivery after the notice is posted.
- (d) Subject to sub-clause (f) if a party gives notice by telex or facsimile transmission and the transmission is not fully intelligible, or if the sending party, at the time of transmission, has reason to believe that the facsimile transmission is not fully intelligible, the party may not rely upon this clause to prove the giving of the notice.
- (e) The receiving party shall not object to a telex or facsimile transmission as not being fully intelligible unless the receiving party requests retransmission within 2 hours.
- (f) If a telex or facsimile transmission is completed after 4.00 p.m. on a day and is unintelligible, the receiving party has until 10.00 a.m. on the next business day to request the retransmission.
- (g) The party giving the notice or its agent authorised in writing or its solicitors shall sign the notice. The appearance of the name of the person signing at the end of a telex or facsimile transmission is sufficient evidence of signing.
- (h) The parties may give notice of another address, telex or facsimile number (within Australia) to the other party and the new address shall be the address for service of the party for the purpose of this clause.

29. TIME

29.1 Time of the Essence

Time shall in all cases be of the essence of this Deed.

29.2 Reckoning

- (a) Where time is to be reckoned from a day or event, such day or the day of such event shall be excluded.
- (b) If any time period specified in this document expires on a day which is not a business day, such period shall be deemed to expire at the end of the first business day thereafter.

30. DISPUTE RESOLUTION

30.1 Executive Negotiations

If a dispute or difference arises between any or all of the parties as to any matter concerning or arising out of this Deed, any party who feels aggrieved by the dispute or difference, as a condition precedent to any other action in relation to the dispute or

difference, must give notice in writing to the other party or parties adequately identifying the matters the subject of the dispute or difference together with detailed particulars of the dispute or differences whereupon each party will procure, the persons described in Schedule 12 in respect of each of them (being senior executives of each of the parties) or any replacements duly notified, shall use their best endeavours to:

- (a) resolve the dispute or difference, and for this purpose they shall undertake such investigations, hold such meetings and conduct such informal hearings as is thought necessary; or
- (b) if the dispute or difference cannot be resolved, to agree upon a process for resolving the whole or part of the dispute or difference by means other than litigation or arbitration.

30.2 Head's Discretion

Should the parties neither resolve the dispute or difference nor be able to agree upon a process for resolving the dispute or difference, then the parties agree that the Head in his absolute discretion may refer the dispute or difference to expert adjudication under clause 30.4 or arbitration under clause 30.3, in which case the parties agree to participate in the expert adjudication or arbitration (as the case may be) as a condition precedent to instituting proceedings in the Courts.

30.3 Arbitration Agreement

- (a) The Head shall identify the dispute or difference together with detailed particulars in a notice in writing incorporating the particulars in the notice served under clause 30.1 upon the other parties. This notice shall be given after the expiration of 30 days from the giving of the notice under clause 30.1. The parties agree that they may each be represented by a legal practitioner in any arbitration proceedings conducted pursuant to this clause 30.3.

- (b) Identity of Arbitrator or Arbitrators

Any arbitration under this clause shall be effected:

- (i) by either a single arbitrator or by two arbitrators agreed upon in writing between the Company, the State and the Council and the Commonwealth; or
- (ii) failing such agreement within 10 days after receipt by the other parties of the notices in writing given under sub-clause (a) by the one party, then by an arbitrator, to be selected by the President or acting President for the time being of the Institute of Arbitrators Australia (the "President"); or
- (iii) if the President fails to select an arbitrator then an arbitrator shall be appointed pursuant to the laws of the State.

- (c) Arbitrator's Powers

The Arbitrator shall have the power from time to time:

- (i) to make any order in regard to the provision of further security for the costs of the arbitration proceedings;
 - (ii) to direct in what manner any security for costs of the arbitration proceedings shall be applied;
 - (iii) to allow any party at any stage of the proceedings to raise by way of further claim, set-off, defence or cross-claim and subject to any condition as to costs or otherwise that may be imposed by the Arbitrator, any dispute or difference whatever relating to the construction of this Deed or as to any fact, matter or thing of whatsoever nature arising out of or in connection with this Deed.
- (d) Arbitration Costs

The costs of a submission, reference and award under this clause and the apportionment thereof shall be at the discretion of the Arbitrator.

30.4 Expert Adjudication

- (a) The dispute or difference shall be identified together with detailed particulars in a notice in writing served by the party who served the notice under clause 30.1 upon the other parties. This notice shall be given after the expiration of 30 days from the giving of the notice under clause 30.1. The parties agree that they may each be represented by a legal practitioner in any expert adjudication proceedings conducted pursuant to this clause 30.4.
- (b) Any expert adjudication under this clause shall be effected:
 - (i) by either a single Adjudicator or by two Adjudicators agreed upon in writing between the Company, the State and the Council and the Commonwealth; or
 - (ii) failing such agreement within 10 days after receipt by the other parties of the notices in writing given under sub-clause (a) by the one party, then by an Adjudicator, to be selected by the President or; or
 - (iii) if the President fails to select an Adjudicator then an Adjudicator shall be appointed by the State.
- (c) Adjudicator's Powers

The Adjudicator shall afford each party a chance to be heard.

The Adjudicator shall have power to award costs of the adjudication.

In making his decision, the Adjudicator shall function as an expert and not as an arbitrator, and the decision made shall be final and binding upon the parties.

30.5 Continuation

Notwithstanding the existence of a dispute or difference the Company must continue to comply with its obligations under this Deed.

31. COSTS

31.1 Each party to this agreement shall bear its own costs of the preparation of this Deed.

32. GOVERNING LAW

32.1 This Deed shall be governed and construed according to the laws of the State of Queensland.

33. NO WAIVER OF DISCRETION

33.1 The Company acknowledges that neither the State nor the Council nor the Commonwealth by entering into this Deed are waiving their obligations or entitlements to properly exercise their respective discretions on any matter expressly or implicitly dealt with in this Deed as and when they or either of them may lawfully be obliged so to do, whether or not the exercise of such a discretion may adversely affect the development.

34. SEVERANCE

34.1 If any provision of this Deed shall be determined to be invalid and not enforceable in accordance with its terms, that provision shall be severed and all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with their terms.

34A. EFFECT (Limited to Deed of Variation)

34A.1 This Deed shall take effect according to its terms. Other rights or actions of any kind whatsoever that may vest in or be available to the Company up to the date of this Deed are expressly reserved.

SCHEDULE 1
DESCRIPTION OF BREAKWATER, ACCESS CHANNEL, MARINA AND CANAL

See Plan Attached

Superseded

SCHEDULE 2 ENVIRONMENTAL MONITORING PROGRAM

1. Baseline Monitoring Program

1.1 Seagrass Reconnaissance

Seagrass may be affected either directly from deposition of sediments onto the seagrass beds and consequent smothering, or indirectly from reduction of light levels due to increased water turbidity, or from other major water quality changes.

The Independent Monitor shall:

- ◆ carry out a reconnaissance survey of an approximately 6 km length of shore line centred on the Access Channel to establish the approximate location and extent of the seagrass beds prior to any dredging activity. This will take the form of a survey during a low spring tide of intertidal areas, and will include a large number of spot checks at regular spacings not more than 50 m along referenced transects at right angles to the shore positioned about 200 m apart and continued out to depths of 5 m on low water datum.
- ◆ record at each spot check site the species of seagrass present, and make an application of approximate density ranking to each species, to enable the position and species composition of any seagrass beds in the area to be established;
- ◆ compile the results of this survey in a report (including recommendations) for consideration by the State as to whether the seagrass beds represent a significant resource and whether a seagrass monitoring program should be initiated.

1.2 Baseline Turbidity

This program will involve the measurement of turbidity levels in Hinchinbrook Channel waters adjacent to the Land using an array of turbidity loggers (nephelometers), to establish the normal range of turbidity in the area from which any dredging induced changes can be measured.

The Independent Monitor shall:

- ◆ measure baseline turbidity levels at the potential dredging site, and at adjacent sites up to at least three kilometres each side of the dredging site, for at least four weeks prior to the start of dredging operations (ie over a spring tide to neap tide cycle) using an array of six nephelometers. Loggers will be downloaded at least twice over the baseline period to ensure that they are operating normally. The Department and the Independent Monitor will decide appropriate locations for the nephelometers.
- ◆ install a logging current meter and waverider buoy immediately off-shore from the proposed dredging site to measure velocity and direction of current flows and wave frequency and height during the baseline turbidity measurement period. This will allow the correlation of natural turbidity generation variables with the measured level of turbidity.

- ◆ prepare a report (including recommendations) on the results of the baseline survey and its implications in the design and implementation of the on-going monitoring program. This report will be provided to the State prior to the commencement by the Company of "capital" dredging.

1.3 Baseline Water Quality

The Independent Monitor must:

- ◆ carry out a pilot study in the vicinity of the Development Site prior to dredging activity to determine the existing water quality and its spatial and temporal variability, targeted specifically at heavy metal suites, petroleum hydrocarbons and nutrients, and to measure levels of these parameters in sediments in the vicinity. The Independent Monitor must base site selection for this program on a preliminary site investigation and descriptions of predicted tidal circulation. The pilot study can be carried out in the dry season but will not describe seasonal variability.
- ◆ include two parts in the pilot study being:
 - (i) a survey of 8 sites during neap tide conditions to assess water quality in the surrounding near-shore environment; and
 - (ii) selection of 2 sites (1 inshore and 1 offshore) and survey these sites during a high spring tide every 3 hours in triplicate over an 18 hour period, with additional samples taken along transects parallel to the shore at each site.

These 2 components should provide an indication of both spatial and short-term temporal variability within an area close to the Development Site.

- ◆ measure pH, salinity, dissolved oxygen and turbidity in the field and take water samples in several depth strata to be analysed for total nitrogen and phosphorus, oxidised nitrogen, ammonia, orthophosphate, chlorophyll alphaeophytin and total suspended solids, with biochemical oxygen demand, total organic carbon, trace metals and total petroleum hydrocarbon/BTEX to be analysed on composite samples, and representative samples from sediment grab samples to be analysed for organic carbon, total nitrogen and phosphorus and trace metals.
- ◆ prepare a report summarising the results of the pilot study and assessing the significance of water quality to ecosystems in the area. This report will, if appropriate, make recommendations to the State for a cost effective design of an on-going water quality monitoring program within the Marina and near-shore area adjacent to the Development Site, including selecting target parameters, replication and number of sites and requirements for depth samples.

1.4 On-Going Monitoring Program

On completion of each of the baseline monitoring projections identified in clause 1 of this schedule, the Independent Monitor must present the reports to the Co-ordinator General, the Department and the DPI, who will consult on the recommendations contained in those reports.

After this consultation, the Chief Executive will develop an "ongoing" monitoring program, subject to peer review, compliance with laws, taking into account the necessity to protect World Heritage values of the areas in the vicinity of the Development Site, and the necessity for reactive assessment of the program to control the impact of the development and regulate the pace and nature of the Works to avoid unacceptable Environmental Impacts.

**SCHEDULE 3
PERMIT TO OCCUPY**

See Attached

YOUR REF: -
OUR REF: INN/1234

29 June 1994

The Director
Cardwell Properties Pty Ltd
Suite 27 "Mariners Cove"
60-70 Seaworld Drive
MAIN BEACH QLD 4217

FAR NORTH
REGION

Dear Sir

RE: PROPOSED PERMIT TO OCCUPY OVER ROAD AREA
PARISH OF ELLERBECK

N a t i o n a l
MUTUAL Tower
15 Lake Street
CAIRNS Q 4870

Reference is made to this Department's letter of 9 June 1994 whereby your company was made an offer for a Permit to Occupy over area referred to as Lot 1 on PER 5545 as shown on Drawing CNS 03/416.

Please find enclosed a copy of the amended conditions pertaining to the subject Permit to Occupy offer.

It should be noted condition H62 has been removed completely and condition D133 has been altered and is now renumbered to D136.

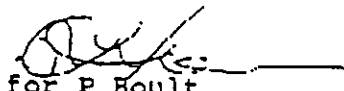
Upon receipt of your compliance of the requirements of offer as set out in our letter of 9 June 1994, in accordance with the new terms and conditions attached hereto, action will be taken to issue the Permit to Occupy.

Yours faithfully

CONTACT:
DESLEY LUXTON

PHONE NO.:
(070) 523 433

FAX NO.:
(070) 510 851


for P. Boulton
Senior Land Officer
LAND USE

Conditions Report

29/06/1994

- A19 The permittee shall use the permit area for the purpose of business in conjunction with Special Lease No. 26/48321 and for no other purpose whatsoever.
- B7 The rent shall be paid yearly in advance and shall be at the rate of \$250.00 per annum.
- B29 The Minister administering the Land Act 1962 reserves the right to review and amend the rent of this permit to occupy at any time.
- C6 Except as hereinafter provided the permittee shall not interfere with any forest products or remove any quarry material (including any stone, gravel, sand, earth, soil, rock, guano or clay which is not a mineral within the meaning of the Mineral Resources Act 1989) or other material upon the permit area without the permission of the Minister administering the Land Act 1962 except under the authority of and in compliance in every respect with the requirements of a permit, license, agreement or contract granted or made under the Forestry Act 1959.
- C18 In the event of the permittee ceasing to use the land for the express purpose for which the permit is issued, the permit shall be terminated.
- C20 No compensation whatsoever shall be payable by the Crown on termination of the permit, but the permittee shall remove any improvements within three (3) months from the date of termination of the permit.
- C81 The permittee shall not under any circumstances, enter into any arrangements to sublet, dispose of, or transfer the occupancy.
- C109 The permit shall be terminable at any time at the discretion of the Minister administering the Land Act 1962 on notice in writing by the Department of Lands.
- C213 Should the permit be terminated for failure to comply with any of the conditions hereof, the permittee shall, if called upon by the Minister administering the Land Act 1962, restore the road area to public use.
- D134 At the appropriate time, the permittee shall provide a two lane, all weather, all tide public boat ramp with adjacent parking for 45 car trailer units to the satisfaction of and at a location suitable to the Queensland Department of Transport.
- D136 The permittee shall when requested during the development of the resort marina, provide and maintain a boat ramp to the satisfaction of the Queensland Department of Transport and the Council of the Shire of Cardwell and access thereto to the satisfaction of the Council of the Shire of Cardwell for the free use by the public.
- 19 The permittee shall indemnify and keep indemnified and save harmless the Minister administering the Land Act 1962, the Crown in right of Queensland and all and every instrumentality of the Government of Queensland and the Council of the Shire of Cardwell from and against all losses, damages, claims, demands, actions, suits, proceedings, costs and expenses which may be brought against or made upon it or any of them or which it or any of them may pay, suffer, sustain or be put to by reason of in consequence of or in connection with the grant and/or existence of this permit and by reason of, in consequence of or in connection with the use or attempted use of the area the subject of this permit.

Continued on Next Page ...

- K1 The permittee shall maintain the permit area free from noxious plants.
- M6 The permittee shall, within a period of two (2) weeks from the commencement of the permit, deliver to the Minister administering the Land Act 1962, a Performance Guarantee Bond issued by an authorised Trading Bank approved of by the said Minister for the sum of \$200,000.00 in a form approved by the said Minister, unconditionally guaranteeing to pay the said sum to the said Minister on demand as surety for the completion and removal as may occur or be required by the terms and conditions hereof.
- M220 The permittee shall not destroy any standing timber on the permit area without the prior permission in writing from the Department of Lands.
- Z24 The permittee shall keep the land in a clean, orderly and sanitary condition.

**SCHEDULE 4
REZONING CONDITIONS**

1. Future developments are generally in accordance with the proposal plan submitted with the application.
2. Deleted.
3. Any development to have approvals from all appropriate Government Departments and other bodies including Harbours and Marine Department.
4. The Company to maintain the Marina and Access Channel at its cost and to the satisfaction of the Council.
5. Provision of sewerage reticulation and treatment works to be made on the Development Site until provision is made by Council for connection to a sewerage scheme for Cardwell.
6. The following water supply works be carried out as "external" works:
 - (a) For Stage 1 of Project:
 - (i) cross connection of 100mm water supply main at the southern end of Cardwell as required;
 - (ii) provision of a 150mm main to connect the development to the existing main in Victoria Street;
 - (b) For Future Stages:
 - (i) provision of booster pumping, larger mains, etc. as may be required to adequately service the development.
7. Payment of water headworks as development proceeds in accordance with Council Policy.

(As extracted from the Council decision of 30 June 1987, subject to the deletion of condition 2 and amendment to clauses 4 and 5, to reflect this Deed).

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7. Payment of water headworks as development proceeds in accordance with Council Policy.

(As extracted from the Council decision of 30 June 1987, subject to the deletion of condition 2 and amendment to clauses 4 and 5, to reflect this Deed).

**SCHEDULE 5
FORMULA FOR CALCULATING SITE POPULATION**

The Site Population shall be calculated on the basis of 2 persons per bedroom and 3 persons per caravan site, and where applicable, is deemed to be established when the Council grants approval of a building application.

**SCHEDULE 6
SPECIAL LEASE NO. 26/29175**

See Attached

52



QUEENSLAND

Lease for Special Purposes, under Section 198(a) of "The Land Acts, 1962 to 1964"

Elizabeth the Second, by the Grace of God, of the United Kingdom, Australia, and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith: -

To All to whom these Presents shall come, Greeting:

Whereas JOHN HARVEY BECKER

has made application for a lease under the provisions of Section 198(a) of "The Land Acts, 1962 to 1964" (hereinafter referred to as "the said Acts") of the Land hereinafter described: AND WHEREAS the Governor of Our State of Queensland, with the advice of the Executive Council thereof, has granted such application, and has agreed to issue a Lease of the said Land in Our name for the term, at the rent, and upon and subject to the conditions hereinafter mentioned: NOW KNOW YE that in consideration of the premises, and of the rent, reservations, and conditions hereinafter reserved and contained, WE, in pursuance of the said Acts,

DO HEREBY for Us, Our Heirs and Successors, Demise and Lease unto the said

JOHN HARVEY BECKER

(hereinafter with his Successors in title designated "the Lessee"), and his lawful Assigns, for Manufacturing, Industrial, Residential or Business Purposes.

ALL that parcel of Land particularly described in the First Schedule endorsed on these Presents TO HOLD the same unto the Lessee and his lawful Assigns for and during the term of Thirty years, to be computed from the twenty-fourth day of February, One thousand nine hundred and sixty-five

with, under, and subject to the terms, conditions, provisions, exceptions, reservations, provisoes, penalties, and forfeitures hereinafter particularly mentioned or referred to, or contained in or prescribed by the said Acts, and to the conditions, reservations, and provisoes in "The Mining on Private Land Acts, 1909 to 1956," and "The Petroleum Acts, 1923 to 1962," or any Regulations made of which may hereafter be made under the aforesaid Acts, or any of them: YIELDING AND PAYING unto Us, Our Heirs and Successors, subject to the provisions of the said Acts during the said term the yearly rent of Six Pounds.

such rent to be paid at the Office in Brisbane of the Department of Lands, or at any District Land Office, in Our said State, or at such other place as may from time to time be appointed by the Governor of Our said State in Council, on or before the First day of January in each and every year of the said term: AND IT IS HEREBY EXPRESSLY DECLARED AND AGREED that the Lessee shall not in any way assign or sublet the said Land, or any part thereof, or grant to any person the right of occupation or tenancy to, over, or upon the said land, or any part thereof, or of any structure or building erected thereon, without the consent in writing of the Minister for Lands for the time being of Our said State first had and obtained: AND IT IS ALSO DECLARED AND AGREED and these Presents are upon the express condition, that the Lease hereby granted shall be subject to the conditions set forth in the Second Schedule endorsed hereon: AND that if the Lessee make default in payment of the rent hereby reserved, or any part thereof, at the times and in the manner herein prescribed, or fail to observe and perform the terms, stipulations, agreements, and conditions herein and in the Second Schedule contained or referred to, or any of them, then, and in such case, this Lease shall be liable to be forfeited. AND IT IS FURTHER DECLARED AND AGREED that the term hereby created may at any time be determined upon six months' previous notice in writing being given by or on behalf of the said Minister for Lands to the Lessee, or his lawful Assigns, and that in such case the Lessee shall be entitled to receive the value of any permanent improvements made

DUTY STAMP

Handwritten initials

APR 23 65 69514 OISE • 26 • E DEPLST 84E***. 2.6

Queensland State Lands Commissioner

upon the said Land by him AND WE DO HEREBY RESERVE unto Us, Our Heirs and Successors, all such parts and so much of the said Land as may hereafter be required for making Public Ways, Canals, or Railroads in, over, and through the same: AND ALSO the full and free right to take and remove any Indigenous Timber growing thereon, and all other Materials being the natural products of the said Land, or being within, upon, or under, the same, which may at any time hereafter be required for the construction or repair of any Public Works: AND ALSO, the right of full and free ingress, egress, and regress, into, upon, over, and out of the said Land for the several purposes aforesaid: PROVIDED ALWAYS AND WE DO HEREBY RESERVE unto us, Our Heirs and Successors, all Gold and Minerals (the term "Minerals" to have the same meaning as in "The Mining on Private Land Acts, 1909 to 1956") on and below the surface of the said Land, and all Mines of Gold and Minerals on and below the surface of the said Land: AND WE DO HEREBY ALSO RESERVE unto Us, Our Heirs and Successors, and to such persons as shall from time to time be duly authorised by Us in that behalf, during the term of the said Lease, the free right and privilege of access, including ingress, egress, and regress, into, upon, over, and out of the said Land, for the purpose of searching for or working Gold and Minerals, or any of them, or Mines of Gold and Minerals, or any of them, in any part of the said Land: AND WE DO HEREBY ALSO RESERVE unto Us, Our Heirs and Successors, all Petroleum (the term "Petroleum" to have the same meaning as in "The Petroleum Acts, 1923 to 1962"), on or below the surface of the said Land: AND ALSO all rights of access for the purpose of searching for and for the operations of obtaining Petroleum in any part of the said Land: AND ALSO all rights of way for access and for pipe lines and other purposes requisite for obtaining and conveying Petroleum in the event of Petroleum being obtained in any part of the said Land: AND WE DO HEREBY ALSO RESERVE unto Us, Our Heirs and Successors, all Helium found in association with Petroleum in any part of the said Land: AND WE DO FURTHER RESERVE the right of any person duly authorised in that behalf by the Governor of Our said State in Council at all times to go upon the said Land, or any part thereof, for any purpose whatsoever, or to make any survey, inspection, or examination of the same.

IN TESTIMONY WHEREOF, We have caused this Our Lease to be Sealed with the Seal of Our said State.

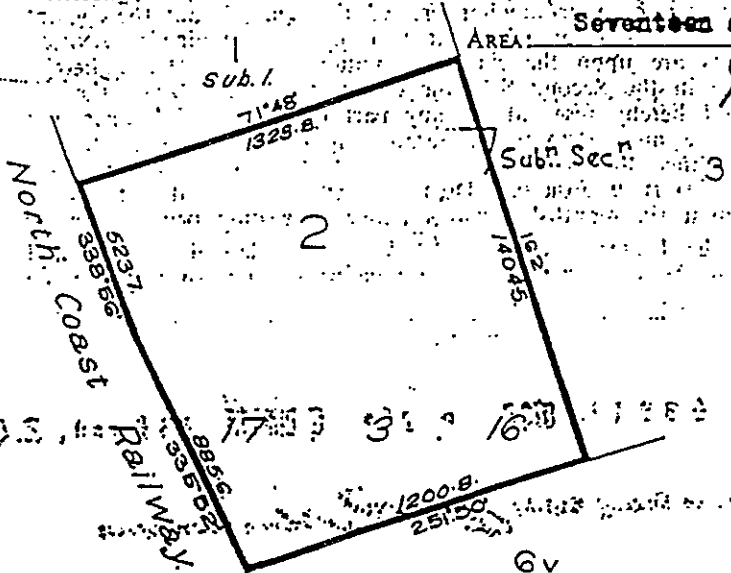
WITNESS Our Trusty and Well-beloved SIR HENRY ABEL SMITH, Colonel on the Retired List of the Corps of Household Cavalry, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Royal Victorian Order, Companion of Our Distinguished Service Order, Governor in and over Our State of Queensland and its Dependencies, in the Commonwealth of Australia, at Government House, Brisbane, in Queensland aforesaid, this fifteenth day of April in the fourteenth year of Our Reign and in the year of Our Lord One thousand nine hundred and sixty-five.

Henry Abel Smith

FIRST SCHEDULE

SPECIAL LEASE NO. 26/29175 DISTRICT: Innisfail
 COUNTY: Cardwell PARISH: Ellerbeck
 PORTION: Allotment, two of Suburban Section seven, Town of Cardwell

AREA: Seventeen acres three roods sixteen perches.



Plot 2 on Plan C/24/25

Scale 6" = 1 Chain to an Inch

(Conditions)

The right of resuming the whole or any part of the leased land at any time, on giving six months' notice and compensating for improvements only, shall be reserved to the Crown.

No compensation for improvements or developmental works shall be payable by the Crown at the expiration of the term of the lease, but the Lessee shall have the right to remove moveable improvements within a period of three months, provided all moneys due by the Lessee to the Crown on any account whatsoever have been paid.

The Lessee shall not at any time destroy any tree upon the leased land without the prior permit in writing of the Land Commissioner or contrary to any of the terms and conditions of such permit.

The Lessee shall not interfere with any forest products or remove any quarry material (including any stone, gravel, sand, earth, soil, rock, guano or clay which is not a mineral within the meaning of "The Mining Acts, 1898 to 1955") or other material upon the leased land without the permission of the Minister except under the authority of and in compliance in every respect with the requirements of a permit, license, agreement or contract granted or made under "The Forestry Acts, 1959 to 1964".

The Lessee shall allow any person authorised under "The Forestry Acts, 1959 to 1964" access to the leased land for the purpose of cutting and removing timber or removing other forest products, or quarry material, or other material from the leased land.

The lessee shall maintain the leased land free from noxious plants.

The lessee shall pay the cost of any required survey.

No further access to the leased land will be provided by the Crown.

JWR

Registered:

28 SEP 1966

For Secretary, Land Administration Commission

Handwritten signature

IN terms of Regulation 11A(1) of the Land Regulation Act 1964 the Land comprised in the within lease is amended to lot 2 on plan C10425

Handwritten signature
Registrar of Dealings

Stop April

CARDWELL PROPERTIES
PTY LTD
now the registered lessees of the within described holding.
TRANSFER BY MORTGAGEE No. L672801F
PRODUCED 7 OCT 1993
REGISTERED 27 JAN 1994
Handwritten signature
REGISTRAR OF TITLES

In terms of Metric Conversion Act 1972 the area of the within-described holding is converted to 7.224 ha

Handwritten signature
Registrar of Dealings

TRANSFER of the Lessee's Interest in the within-described holding to

THE RESORT VILLAGE CARDWELL PTY LTD

Registered: 1 MAR 1988 Registrar of Dealings

Mortgage No. 220070 to FARROW MORTGAGE SERVICES PTY LTD.

SEC. 171(1) of the Land Act 1964 as therein set forth.

Registered 24 AUG 1989

Handwritten signature
Registrar of Dealings

Mortgage No. 220071 to FARROW MORTGAGE SERVICES PTY LTD.

SEC. 171(1) of the Land Act 1964 as therein set forth.

Registered 24 AUG 1989

Handwritten signature
Registrar of Dealings

EXTINGUISHED BY
TRANSFER No. L672801F

THE PRODUCTION OF DUPLICATE MORTGAGE No 220070

has been dispensed with for the purpose of registering MORTGAGE No. L672801F pursuant to Request No. L672721L PRODUCED 7 OCT 1993

ENTERED

27 JAN 1994

Handwritten signature
REGISTRAR OF TITLES

**SCHEDULE 7
SPECIAL LEASE NO. 26/48321**

See Attached



DUPLICATE

7573/81

VOL. ~~7573~~ FOL. 81

QUEENSLAND Special Lease

under the Land Act 1962-1986 AND
THE HARBOURS ACT 1955-1982

Elizabeth the Second, by the Grace of God, Queen of Australia, and Her other Realms and Territories, Head of the Commonwealth:—

To All to whom these Presents shall come, Greeting:

We, with the advice of the Executive Council of Our State of Queensland, and in pursuance of the provisions of section 205 of the Land Act 1962-1986, and Section 80 of the Harbours Act 1955-1982 do hereby demise and lease as Special Lease unto the person described in Schedule III hereto and for the purpose set forth in Schedule I hereto.

ALL that Parcel of Land in Our said State, described in Schedule I hereto and delineated on plan registered in the Department of Mapping and Surveying and having Catalogue Number as stated in such Schedule I,

For a term of years as set forth in Schedule II hereto,

PAYING unto Us on or before the first day of January in each year, the yearly rent payable in accordance with the Land Act 1962-1986, such payment to be made at the office in Brisbane of the Department of Lands, or at any District Land Office, in Our said State,

SUBJECT TO the Reservations hereinafter specified and to the Conditions specified in Schedule IV hereto and such other Reservations and Conditions as may be contained in and declared by the Land Act 1962-1986 and the other Laws of Our said State.

Specified Reservations:—

1. (a) All minerals (as defined by the Mining Act 1968-1983) on or below the surface of the land; and
(b) The right of access for the purpose of searching for and working any mines (as defined by the Mining Act 1968-1983) in any part of the land.
2. (a) All petroleum (as defined by the Petroleum Act 1923-1986) on and below the surface of the land; and
(b) All rights of access for the purpose of searching for and for the operations of obtaining petroleum in any part of the land, and all rights of way for access and for pipe-lines and other purposes requisite for obtaining and conveying petroleum in the event of petroleum being obtained in any part of the said land.

IN TESTIMONY WHEREOF, We have caused this Our Lease to be Sealed with the Seal of Our said State.

WITNESS Our Trusty and Well-beloved His Excellency the Honourable Sir WALTER BENJAMIN CAMPBELL, one of Her Majesty's Counsel learned in the law, Governor in and over the State of Queensland and its Dependencies in the Commonwealth of Australia, at Government House, Brisbane, in Queensland aforesaid, this eighteenth day of December, in the thirty-fifth year of Our Reign and in the year of Our Lord One thousand nine hundred and eighty-six.

SCHEDULE I—DESCRIPTION OF LAND AND PURPOSE

W.B. Campbell

S.L. No: 26/48321 L.A.D. Innisfail
Lot 53 on Plan CWL3372

County Cardwell Parish Ellerbeck Town Cardwell
Area About 25.2 hectares

Purpose for which granted Reclamation and Business

SCHEDULE II—TERM OF LEASE

Term: 10 years commencing on 1st November, 1986

SCHEDULE III—LESSEE

THE RESORT VILLAGE CARDWELL PTY. LTD.

SCHEDULE IV—SPECIFIED CONDITIONS

~~The right of resuming the whole or any part of the leased land at any time on giving six months' notice and compensating for improvements only, shall be reserved to the Crown.~~

No compensation for improvements or developmental works shall be payable by the Crown at the expiration of the term of the lease, but the Lessee shall have the right to remove movable improvements within a period of three months, provided all moneys due by the Lessee to the Crown on any account whatsoever have been paid. However should the leased land revert to the Crown and be again made available for lease or purchase the former Lessee shall be entitled to receive payment for the value of his improvements or developmental work in accordance with the principles set out in the said Act.

The Lessee shall not at any time destroy any tree upon the leased land without the prior permit in writing of the Land Commissioner or contrary to any terms and conditions of such permit.

The Lessee shall not interfere with any forest products or remove any quarry material (including any stone, gravel, sand, earth, soil, rock, guano or clay which is not a mineral within the meaning of the Mining Act 1963-1983) or other material upon the leased land without the permission of the Minister except under the authority of and in compliance in every respect with the requirements of a permit, license, agreement or contract granted or made under the Forestry Act 1959-1984.

The Lessee shall allow any person authorised under the Forestry Act 1959-1984 access to the leased land for the purpose of cutting and removing timber or removing other forest products, or quarry material, or other material from the leased land.

The Lessee shall maintain the leased land free from noxious plants.

The Lessee shall pay the cost of any required survey of the leased land.

1. The Lessee shall reclaim all of the leased land lying below high water mark, except any part of said land on which works described in Clause (9) or Clause (10) hereof are approved, and shall:-

(i) Commence the reclamation within two (2) years from the commencement of the term of the lease; and

(ii) Complete the reclamation with the ten (10) year term of the lease.

2. The leased land shall be reclaimed to a minimum level set by the Council of the Shire of Cardwell and so as to render it fit for residential, commercial and recreational purposes in a manner satisfactory to the Minister for Water Resources and Maritime Services, the Minister for Lands, Forestry, Mapping and Surveying and the Council of the Shire of Cardwell.

3. (i) All rock, stone, gravel, sand and other material used in the reclamation shall be suitable for the purpose having regard to the location of the leased land and to the proposed use of the land after reclamation. If so required by the Assistant Director, Harbours and Marine Works Division, Department of Harbours and Marine (hereinafter called "the Assistant Director") the Lessee shall, before commencing the reclamation submit to the Assistant Director full particulars of the source, quantity and type of material to be used in the reclamation.

(ii) All unsuitable rock, stone, gravel, sand or other material shall be removed from the reclamation area by the Lessee and duly replaced with suitable material.

(iii) All rock, stone, gravel, sand or other material that has slipped or been deposited outside the leased area so as to cause any obstruction in the waterway shall be removed and duly disposed of by the Lessee.

4. The leased land shall be protected from erosion by means of suitable retaining walls or revetments and also shall be provided with stormwater drainage and any other works necessary to ensure the fitness of the subject land for its proposed use after reclamation. The Lessee shall, before commencing the reclamation, submit plans of all such walls or revetments and other works to the Marine Board of Queensland and obtain the approval of the Governor in Council under the Harbours Act 1955-1982.

5. Upon completion of the reclamation and the construction of the retaining walls or revetments and other works, the Lessee shall cause a survey to be carried out by a licensed surveyor to determine accurately the final boundaries of the reclaimed land. Such survey shall be carried out after first ascertaining the requirements of the Surveyor-General. The original plan of survey and field notes shall be lodged at the office of the Surveyor-General.

6. Upon completion of the reclamation and the construction of the retaining walls, revetments and other works, the Lessee shall cause a survey to be carried out to determine the levels of the reclaimed land at points spaced not greater than twenty-five (25) metres from the nearest neighbouring point and located at the changes in grade and otherwise at the intersections of a right angled grid. The Datum for the levels shall be Australian Height Datum. Two copies of the plan of survey shall be forwarded for approval to the Assistant Director upon completion of the survey.

7. The reclamation and all works performed by the Lessee for or in connection with the reclamation:-

- (i) Shall be subject to inspection from time to time by the Assistant Director or an engineer nominated by him;
- (ii) Shall be performed, carried out, and completed in accordance with good engineering practice to the satisfaction of the Assistant Director, having regard to the location of the land and to the proposed use of the land after reclamation.

8. If it is proposed to obtain material for reclamation from Crown Land below high water mark, the Lessee shall before commencing removal of any material, obtain an authority in writing from the Marine Board of Queensland as required by the Queensland Marine Act.

9. If the Lessee proposes to construct a canal as defined by the Canals Act within the boundaries of the leased land, he shall, before commencement of construction, apply for and obtain the provisional approval and subject to obtaining that provisional approval, the final approval prescribed by the Canals Act and the Lessee shall not be entitled to purchase the fee simple until such time as the Certificate of the Marine Board in terms of Section 8(1) of the Act has been notified in the Queensland Government Gazette.

10. If the Lessee proposes to construct a marina basin, harbour works or other works which comprise or include an artificial channel or lake or portion of an artificial channel or lake that is:-

- (i) Connected or intended to be connected with tidal water; and
- (ii) Intended to be used solely or mainly for the purpose of providing a harbour for vessels.

The Lessee shall before commencing the works submit plans of all such works to the Marine Board of Queensland and obtain the approval of the Governor in Council under the Harbours Act 1955-1982.

11. The Lessee shall during the term of the lease enter into an Agreement with the Harbours Corporation of Queensland in respect of the use and development at the expiration of the lease (or sooner surrender following performance of conditions) of the area of land below high water mark to be used for the marina basin.

12. The Lessee shall before commencing development of the leased land obtain a permit under the Fisheries Act to allow removal and destruction of marina plants from the project site.

13. In respect of the balance of the leased land (not lying below high water mark) and the balance of adjoining Reserve for Camping (R.627) the Lessee shall fill and grade such land to the satisfaction of the Council of the Shire of Cardwell.

14. The Lessee shall construct access from the Bruce Highway to the leased land to the satisfaction of the Department of Main Roads.

15. The Lessee shall extend town services to the leased land to the satisfaction of the Council of the Shire of Cardwell.

16. The Lessee shall obtain all relevant Council and other Authority approvals to the proposed development of "the development area" for the purposes set out in the Deed of Agreement dated 13th April, 1984 and made between the Lessee and the Council of the Shire of Cardwell.

17. Upon satisfactory performance of and compliance with all conditions of lease, the Lessee shall be entitled to purchase the fee simple of the leased land (excluding the area of land below high water mark to be used for the marina basin as mentioned in Clause (11) hereof) at a purchasing price of \$2000.00 per hectare plus a percentage increase in accordance with Consumer Price Index increases for each completed year of the term of the lease

18. No person or Corporation other than the registered proprietor of the adjoining freehold land (portion 3A; subdivision 1 of allotment 1 of section 1, allotment 2 and subdivision 1 of allotment 1 of section 2 and allotments 2 and 3 of section 1) shall be entitled to hold an interest in the leased land. No transfer of the lease will be allowed other than in conjunction with such freehold land and then only with the prior approval of the Governor in Council.

Mortgage No. 220071
 FARROW MORTGAGE SERVICES PTY LTD
 No. 7 OCT 1993
 REGISTERED
 Securing advance as the Registrar of Titles set forth.
 Registered 24 AUG 1989

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 FARROW MORTGAGE SERVICES PTY LTD
 No. 7 OCT 1993
 REGISTERED
 Securing advance as the Registrar of Titles set forth.
 Registered 24 AUG 1989

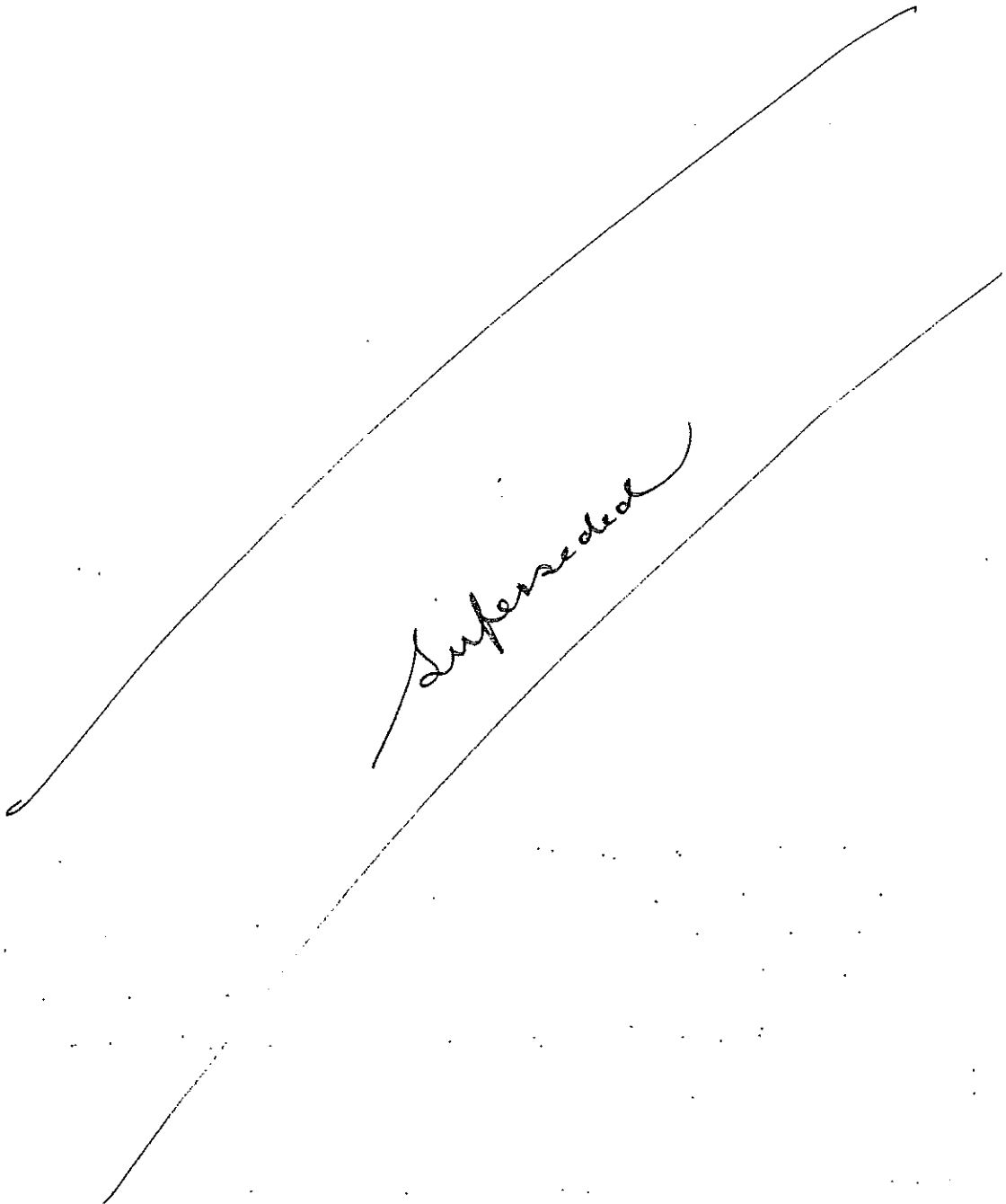
EXTINGUISHED BY
 TRANSFER No. L672801F

THE PRODUCTION OF DUPLICATE MORTGAGE
NO. 220070 has been
 dispensed with for the purpose of registering RELEASE OF
MORTGAGE NO. L672799 M pursuant to Request
 No. L672791 L PRODUCED 7 OCT 1993
 ENTERED 27 JAN 1994
 REGISTRAR OF TITLES

CARDWELL PROPERTIES PTY LTD
 LTD
 IS now the registered lessees of
 the within described holding.
 TRANSFER BY MORTGAGEE No. L672801F
 PRODUCED 7 OCT 1993
 REGISTERED 27 JAN 1994
 REGISTRAR OF TITLES

**SCHEDULE 8
PLAN OF ALTERNATE BOAT RAMP SITE**

See Attached Plan



**SCHEDULE 9
PLAN FOR MANGROVE REMOVAL**

See Plan Attached

**SCHEDULE 10
COMPANY'S CONTRIBUTIONS FOR SEWERAGE HEADWORKS**

An amount equal to that specified in the Council's policy at the time of payment of the headworks amount.

**SCHEDULE 11
COMPANY'S CONTRIBUTIONS FOR WATER SUPPLY HEADWORKS**

An amount equal to that specified in the Council's policy at the time of payment of the headworks amount, and if there is no policy in existence at the time of payment, an amount calculated as follows:

Amount = \$800 x Population Increase.

Where Population Increase = Site Population at the time of the calculation minus Site Population at the time the last application for building approval was lodged by the Developer for the Development Site, or if no such application has been lodged, minus zero.

The Headworks Contribution is to be paid in stages, with each stage being calculated and paid by the Developer each time it lodges an application for a building approval for the Development Site.

The Amount of \$800 is calculated:

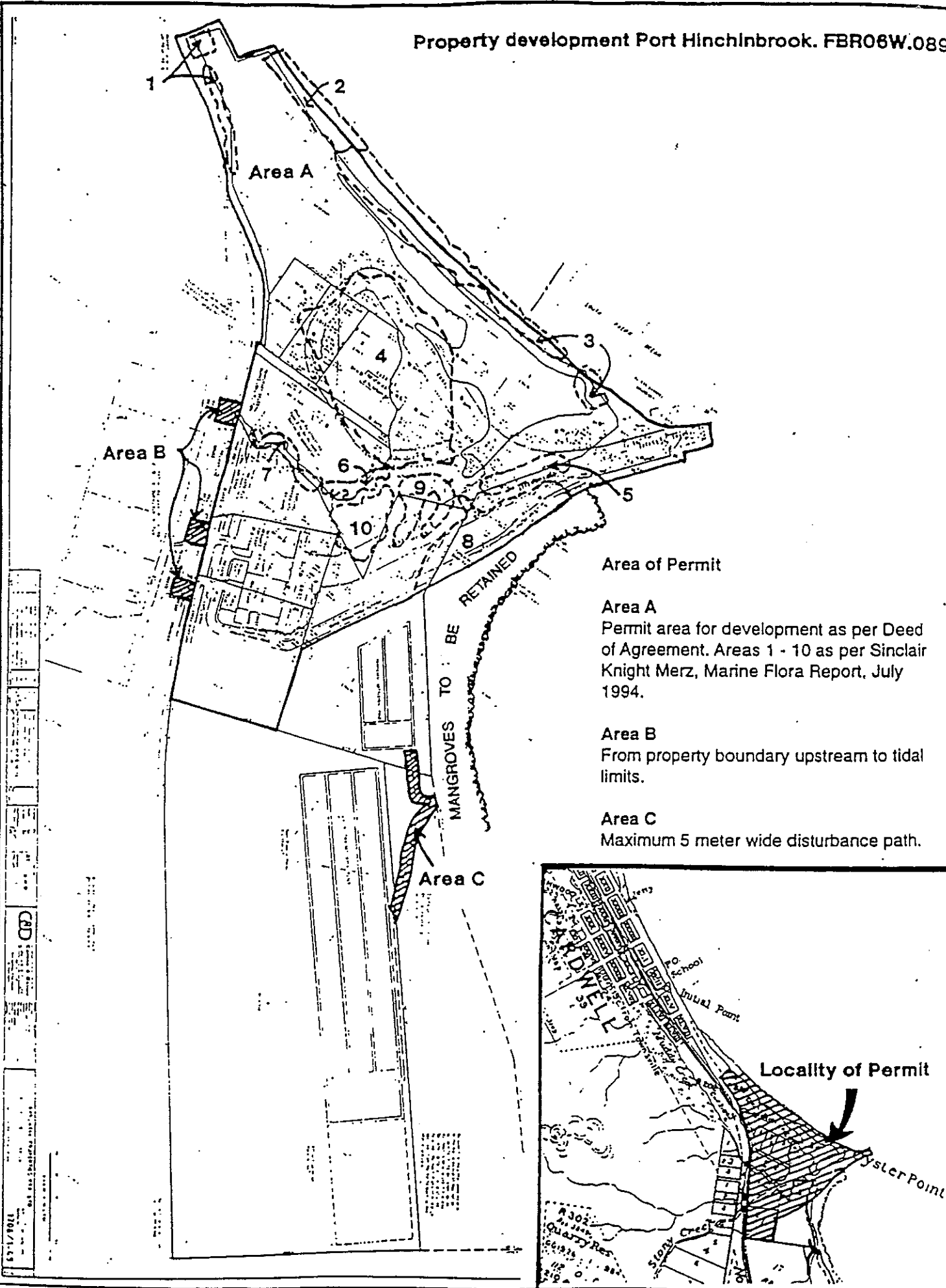
$$\text{as } \frac{500}{900} \times \frac{\$3600}{2.5}$$

SCHEDULE 12
NOMINATED PERSONS FOR EXECUTIVE NEGOTIATIONS
(Clause 30)

Company's Nominee:	Mr Keith Williams Alternate - Mr Carl Benjamin Williams
Council's Nominee:	The Mayor
State's Nominee:	The Head
DEH's Nominee:	Director General or Executive Director Conservation
<u>Commonwealth's Nominee:</u>	<u>Dr Ian McPhail</u> <u>Chairperson</u> <u>Great Barrier Reef Marine Park Authority</u>

**SCHEDULE 13
CALCULATION FOR COUNCIL BONDING**

1.	Public Boat Ramp	
	(i) 2 Lane Boat Ramp	\$ 85,000.00
	(ii) 45 Bay Sealed Car Park	\$ 70,000.00
	(iii) Access Road	\$ 10,000.00
		\$165,000.00
	\$165,000.00	
2.	Railway Crossing	\$ 35,000.00



Area of Permit

Area A
Permit area for development as per Deed of Agreement. Areas 1 - 10 as per Sinclair Knight Merz, Marine Flora Report, July 1994.

Area B
From property boundary upstream to tidal limits.

Area C
Maximum 5 meter wide disturbance path.

Locality of Permit

SCHEDULE 14
BOAT RAMP

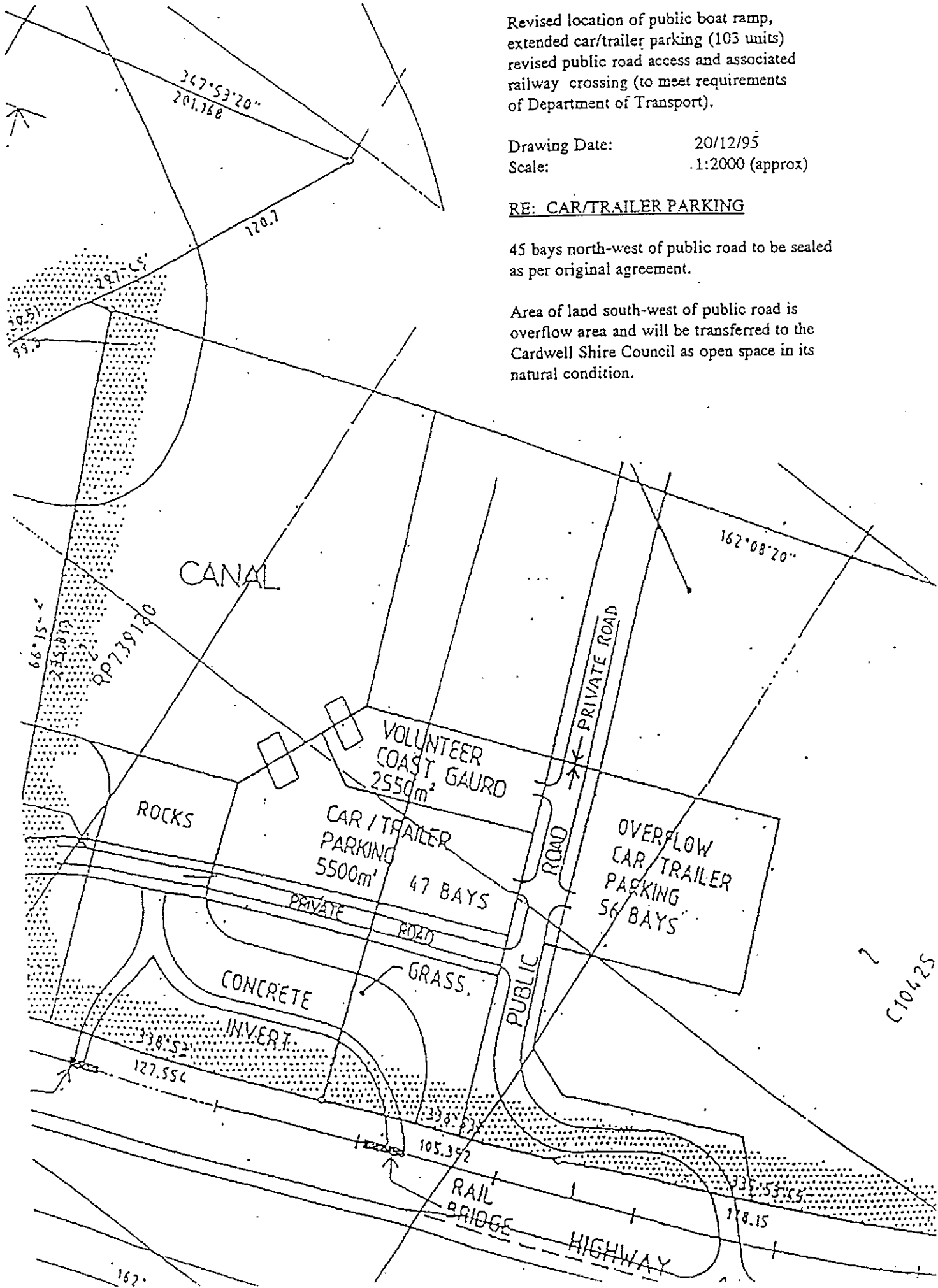
Revised location of public boat ramp,
extended car/trailer parking (103 units)
revised public road access and associated
railway crossing (to meet requirements
of Department of Transport).

Drawing Date: 20/12/95
Scale: 1:2000 (approx)

RE: CAR/TRAILER PARKING

45 bays north-west of public road to be sealed
as per original agreement.

Area of land south-west of public road is
overflow area and will be transferred to the
Cardwell Shire Council as open space in its
natural condition.







C10425

SCHEDULE 15 CANAL AND ACCESS CHANNEL

LEGEND

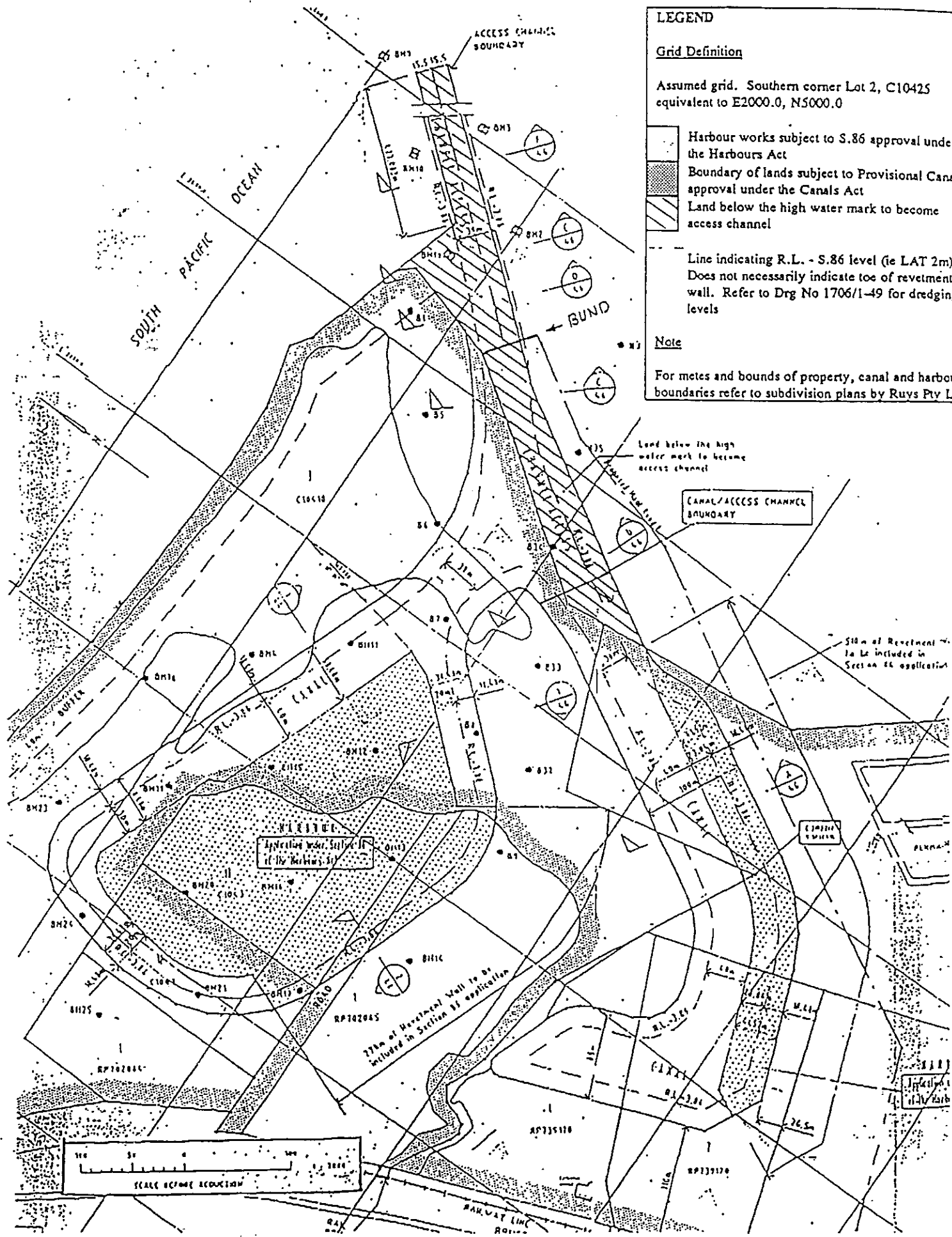
Grid Definition

Assumed grid. Southern corner Lot 2, C10425 equivalent to E2000.0, N5000.0

-  Harbour works subject to S.86 approval under the Harbours Act
-  Boundary of lands subject to Provisional Canal approval under the Canals Act
-  Land below the high water mark to become access channel
-  Line indicating R.L. - S.86 level (ie LAT 2m)
Does not necessarily indicate toe of revetment wall. Refer to Drg No 1706/1-49 for dredging levels

Note

For metes and bounds of property, canal and harbor boundaries refer to subdivision plans by Ruys Pty L

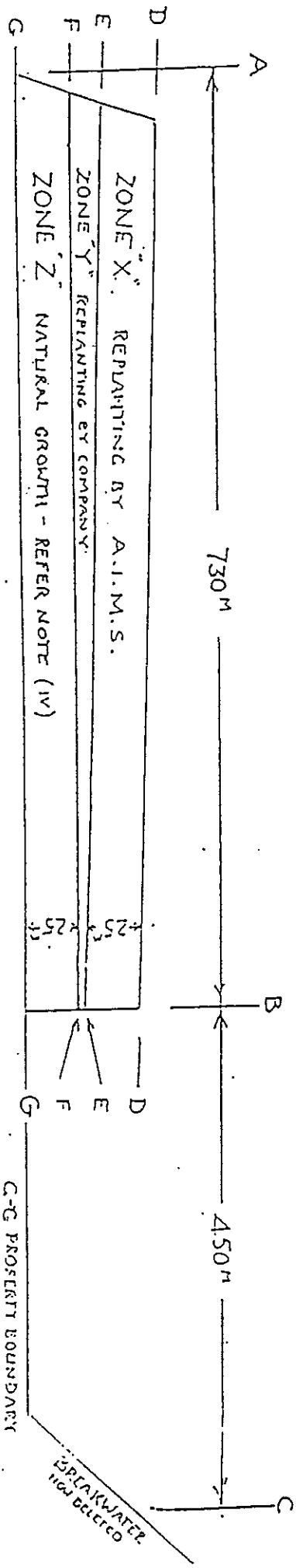


SCHEDULE 16
BEACH AND FORESHORE MANAGEMENT PLAN

In order to comply with best engineering practice, the following methods will be applied to ensure minimisation or elimination of the possibility of adjacent seagrass beds being subjected to significant negative impact resulting from clearing of fallen mangroves. A reference to Zone X, Y and Z or "B - C" is a reference to that area so marked on the schematic drawing.

- A. Using the baseline data established by A.I.M.S the Company will continue to conduct annual topographic surveys to verify the adequacy of the stabilisation measures to be put in place and/or tested, eg. experimental sand covering.
- B. In the case of extreme events such as periods of exceptionally heavy rain or cyclones, a survey of the foreshore will be undertaken by a surveyor acceptable to the State, the Commonwealth and the Company, at the expense of the Company.
- C. If the Commonwealth Government or the State Government has reason to require foreshore surveys at periods more frequent than twelve (12) months, the Company will allow access to the foreshore area via its freehold land but the cost of such additional surveys will be met by whichever Government requires such surveys.
- D. In removing the fallen mangroves in Zones X, Y and Z, the Company will use a light weight (D3, D4 or similar) wide track excavator in accordance with agreement confirmed by the Commonwealth Government (Mr Phillip Toyne 18/07/96) and the State Government (Mr Chris Pattearson 17/07/96). Mangrove removal shall be discussed on site with the Environmental Site Supervisor to ensure that substrate damage is minimised.
- E. In all instances where the root structures of fallen mangroves remain firmly established in the substrata the Company will use a chainsaw or other suitable instruments to remove any damaged trunks which remain above the seabed level. Depending on the size of the trunk sections removed these will be placed on land above high water mark either manually or by the abovementioned excavator.
- F.
 - i) While equipment is engaged in clearing fallen mangroves, the Company may also coppice mangroves in the existing outer fringe in the Zone X, to the agreed height of four metres above the average level of the seabed along the length of the outer edge of the existing and proposed hedge in Zone X taking all reasonable care to avoid damage to new mangrove plantings;
 - ii) In coppicing the mangroves in Zone X, the Company also wishes to clear dead mangroves trunks in that Zone by chainsawing to seabed level but leaving the root structure in the substrata;
 - iii) Trunks of dead mangroves will be identified to the Environmental Site Supervisor on an individual basis prior to felling and removal.

- iv) With respect to coppicing and removing of dead trunks every care will be taken to minimise damage to undergrowth and small trees. This issue can be determined by the Environmental Site Supervisor in consultation with the Company's representative and if considered to be preferable, the Company is prepared to clear dead trees or coppice during high tide periods by the use of a barge.
- G. All dead mangrove segments will be burnt in suitable locations above high water.
- H. As soon as practicable after the fallen and coppiced mangroves have been cleared, the Company will embark on a systematic program of planting mangroves of suitable and selected species in Zone Y.
- I. To assist further in stabilising the Foreshore, the Company will allow mangrove seedlings and small trees which exist in Zone Z to grow for a period of four years and be dealt with in accordance with clause 17.4 of the Deed.
- J. After bringing the land adjacent to the foreshore to the required level along the length of Foreshore property boundary the Company will shape the beach and foreshore to the contours and levels in accordance with approvals under the *Canals Act*.
- K. During development of the resort area, stormwater will be directed away from the foreshore and toward the marina (in accordance with a stormwater drainage plan approved by the State and the Council in September 1994). Such procedure will reduce the flow of stormwater across the beach and foreshore thus minimising the possibility of water channelling with consequent temporary erosion.
- L. At the expiry of four (4) years from the signing of the Deed of Variation, the Company agrees to the review as detailed in 17.4 of the Deed.
- M. The Company is permitted to keep the area "B - C" clear except for currently surviving mature mangroves in the area (as evidenced by existing aerial photographs) which the Company agrees not to clear or cause or permit to be cleared.



Beach and Foreshore Management Plan - Schematic Drawing

Notes:

- (i) all fallen mangroves in zones X, Y and Z will be cleared in accordance with the conditions "D" to "F" of the Beach and Foreshore Management Plan;
- (ii) at the time of preparing this document, the only fixed boundaries are "G-G" (the property boundary of SL 48321) and "A-G" (the boundary of SL 48321 and Reserve 627) therefore, the location of "B" shall be determined by measuring 730 metres south along the boundary shown as "G-G" in the Schematic Drawing; and
- (iii) an on site survey may indicate that boundaries "E-E" and "F-F" intersect particularly at the southern extremity. If this is the case, then boundary "F-F" will remain parallel to G-G" and the distance between "F-F" and "G-G" will remain a constant 25 metres throughout the entire length of the area between boundaries "A" and "B"; and
- (iv) Zone X is measured from the outer boundary of the mangrove hedge and is a constant width of 25 metres.

SCHEDULE 17
FORESHORE MONITORING PRINCIPLES

PREAMBLE

This schedule is framed within a four year timeframe that should not be seen to preclude further monitoring if this is deemed necessary after consideration of the success of the replanting programs.

MONITORING METHODS

- Use established transects prepared by AUSLIG topographic survey dated March 1996.
- Establish at least two control transect/sites so that causal factors with regard to any changes that take place to the foreshore can be better identified.
- In the case of extreme events such as periods of heavy rain or the passing of a cyclone, monitoring of the foreshore profile should take place within an agreed period of time not exceeding one month.
- Transects to be monitored each year after the mangroves are planted with the proviso that if monitoring takes place as a result of extreme events, then this monitoring will replace that of the survey closest in time to the extreme event survey (see above).
- The Independent Monitor will oversee the monitoring of the Foreshore Stabilisation Plan.

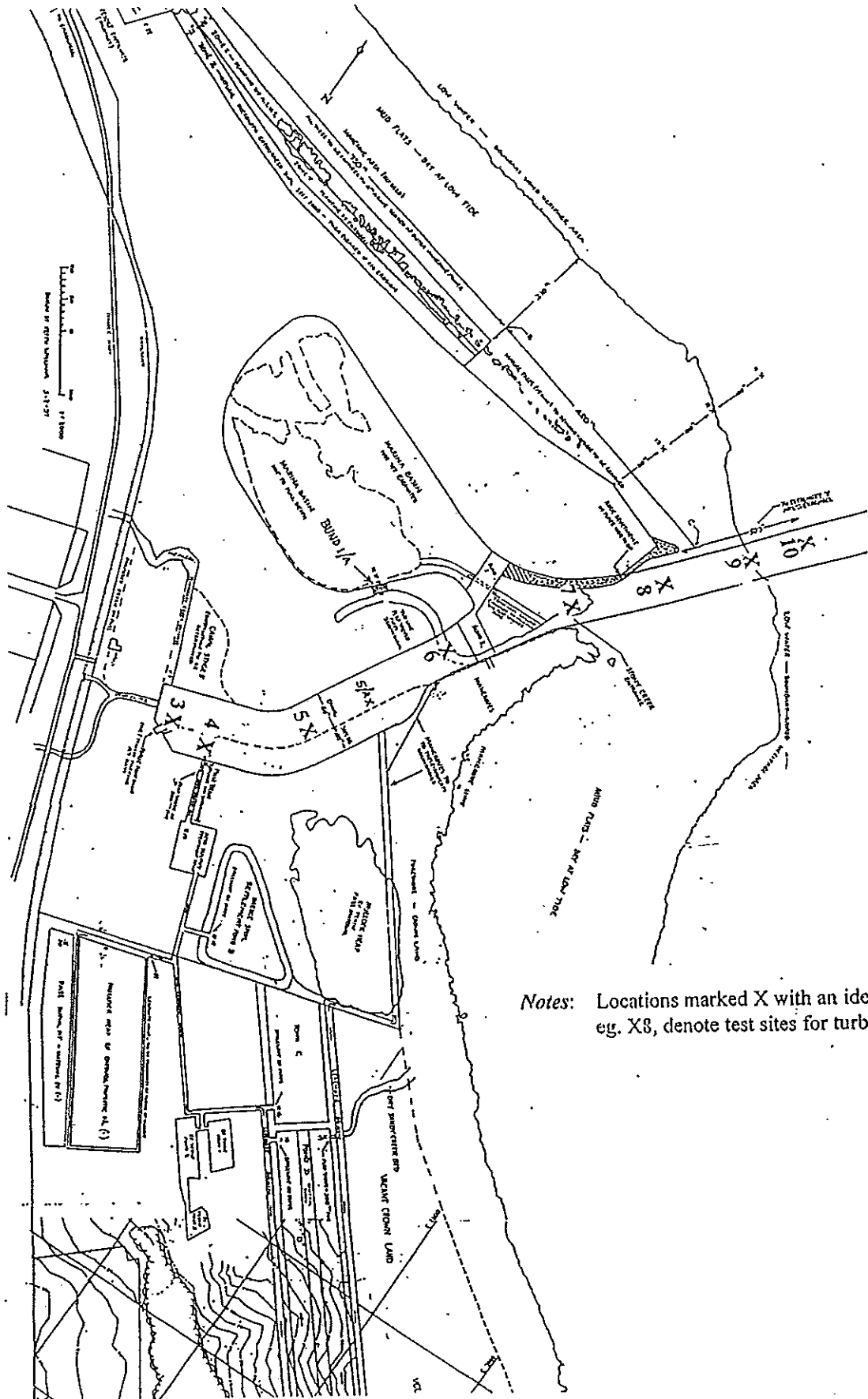
SCHEDULE 18
DRAWING NO. ASMP/1

See OVER →

SCHEDULE 19
PLAN OF EASEMENT TO PUBLIC BOAT RAMP

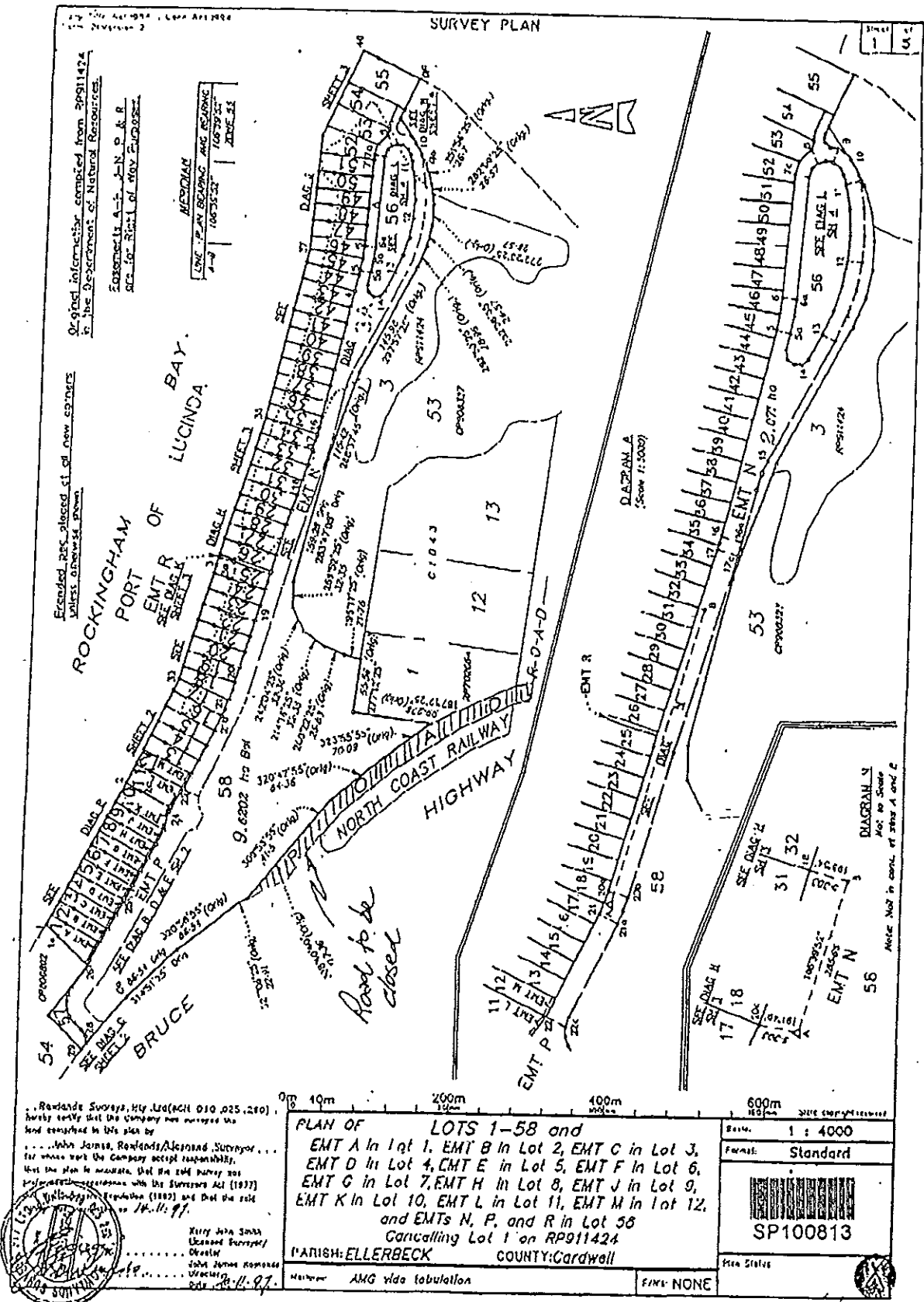
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18
SCHEDULE X - DRAWING NO. ASMP/1

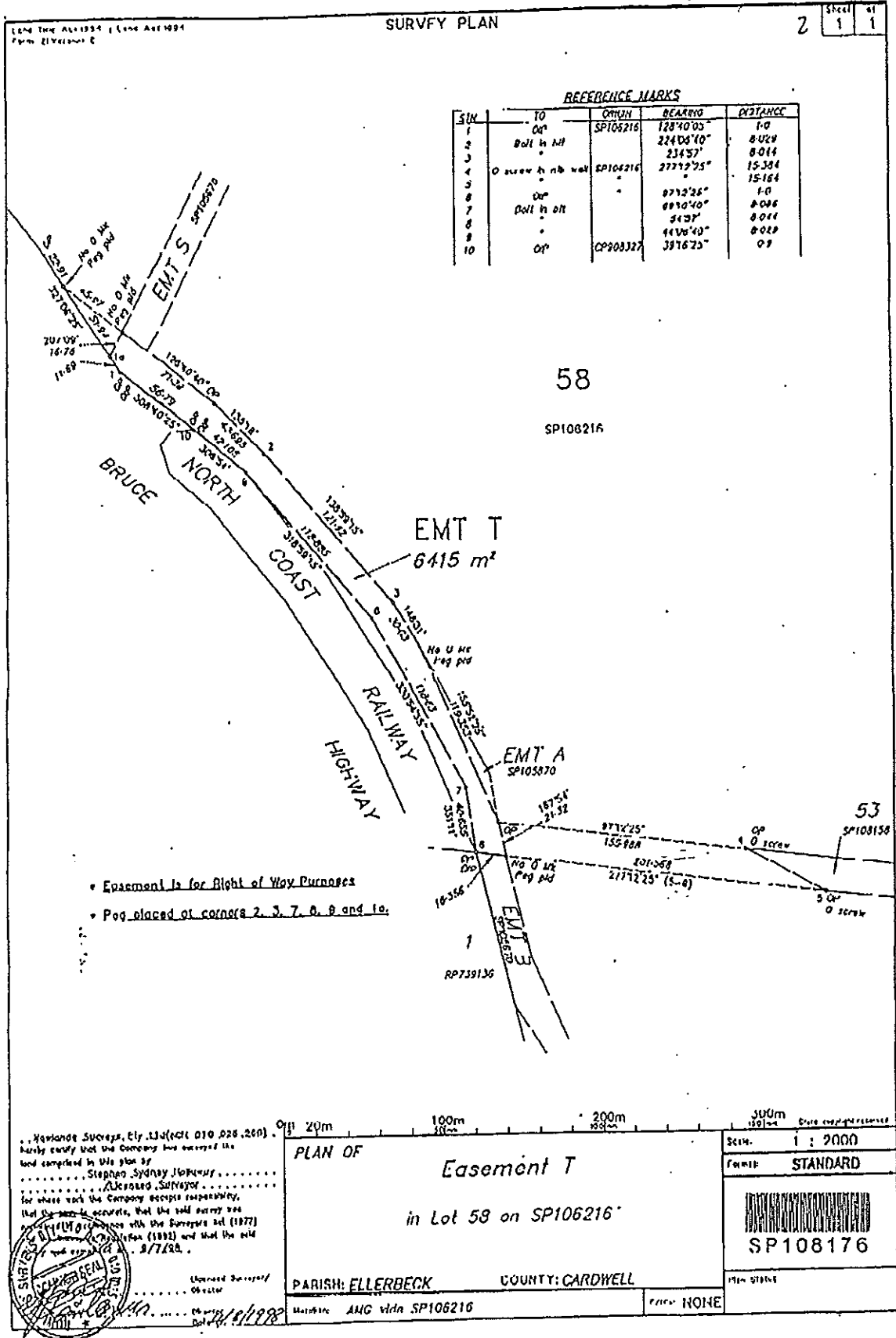


Notes: Locations marked X with an identifying number, eg. X8, denote test sites for turbidity and pH tests

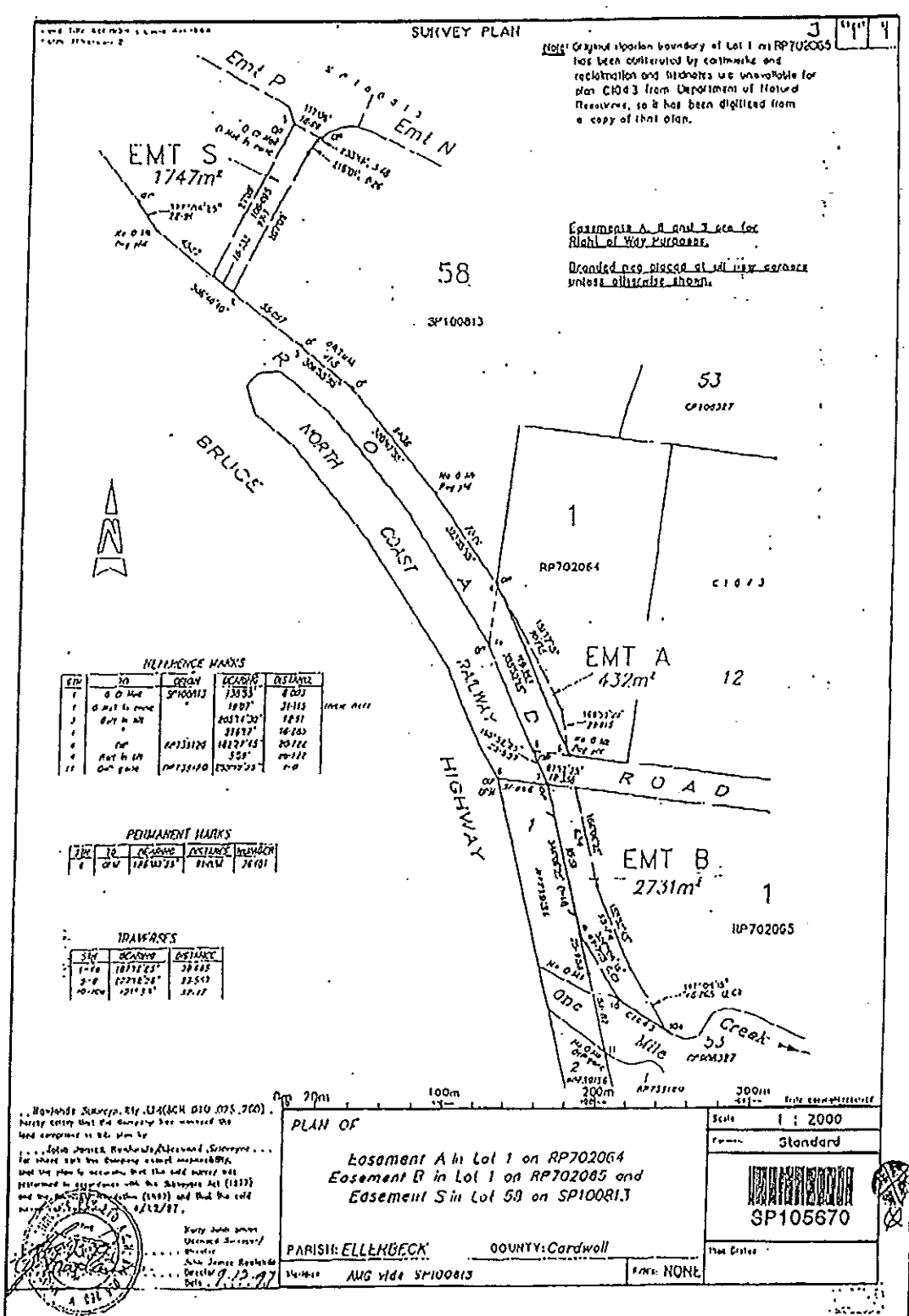
SCHEDULE 7 - PLAN OF EASEMENT TO PUBLIC BOAT RAMP



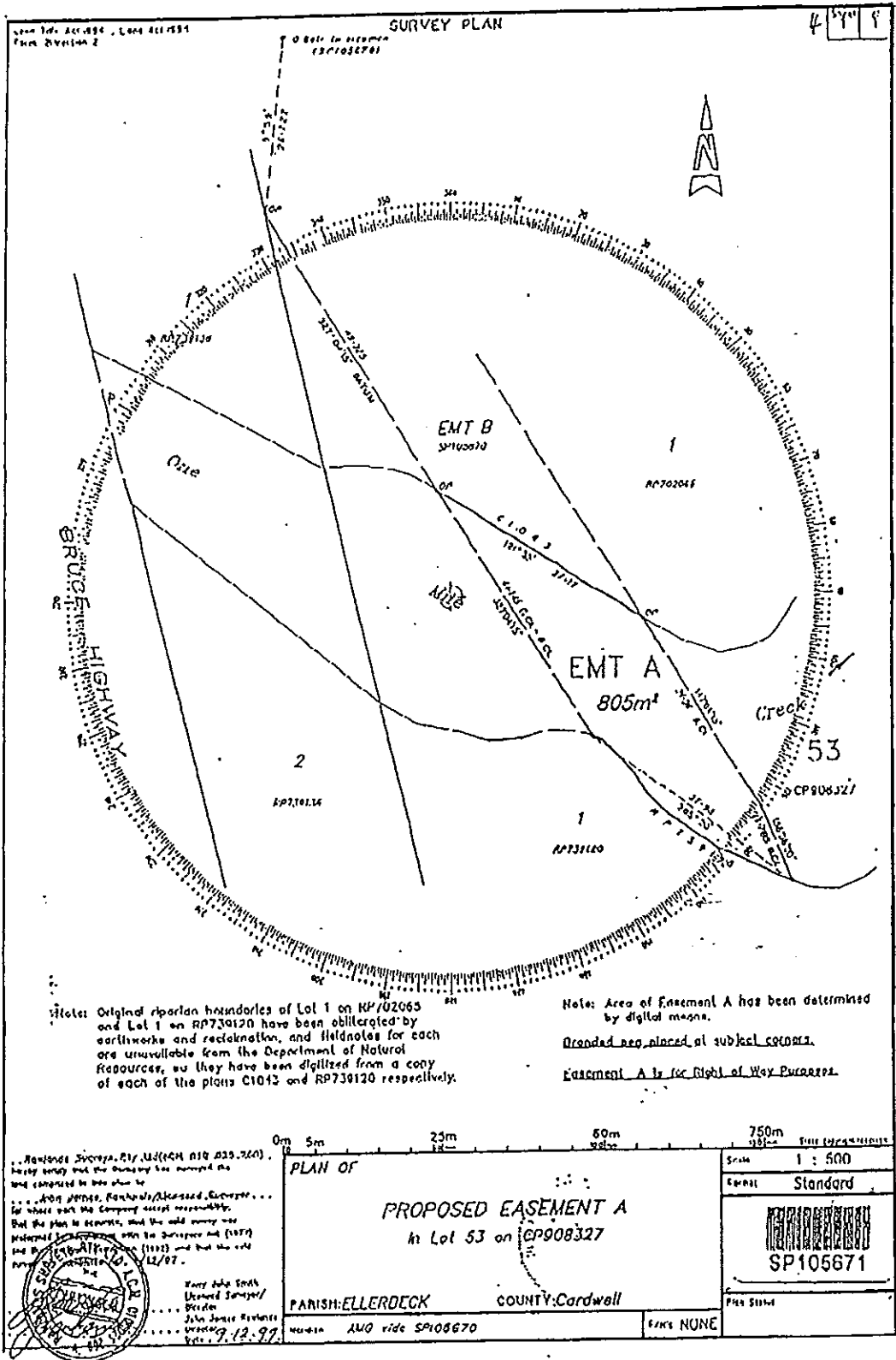
SCHEDULE 2 - PLAN OF EASEMENT TO PUBLIC BOAT RAMP



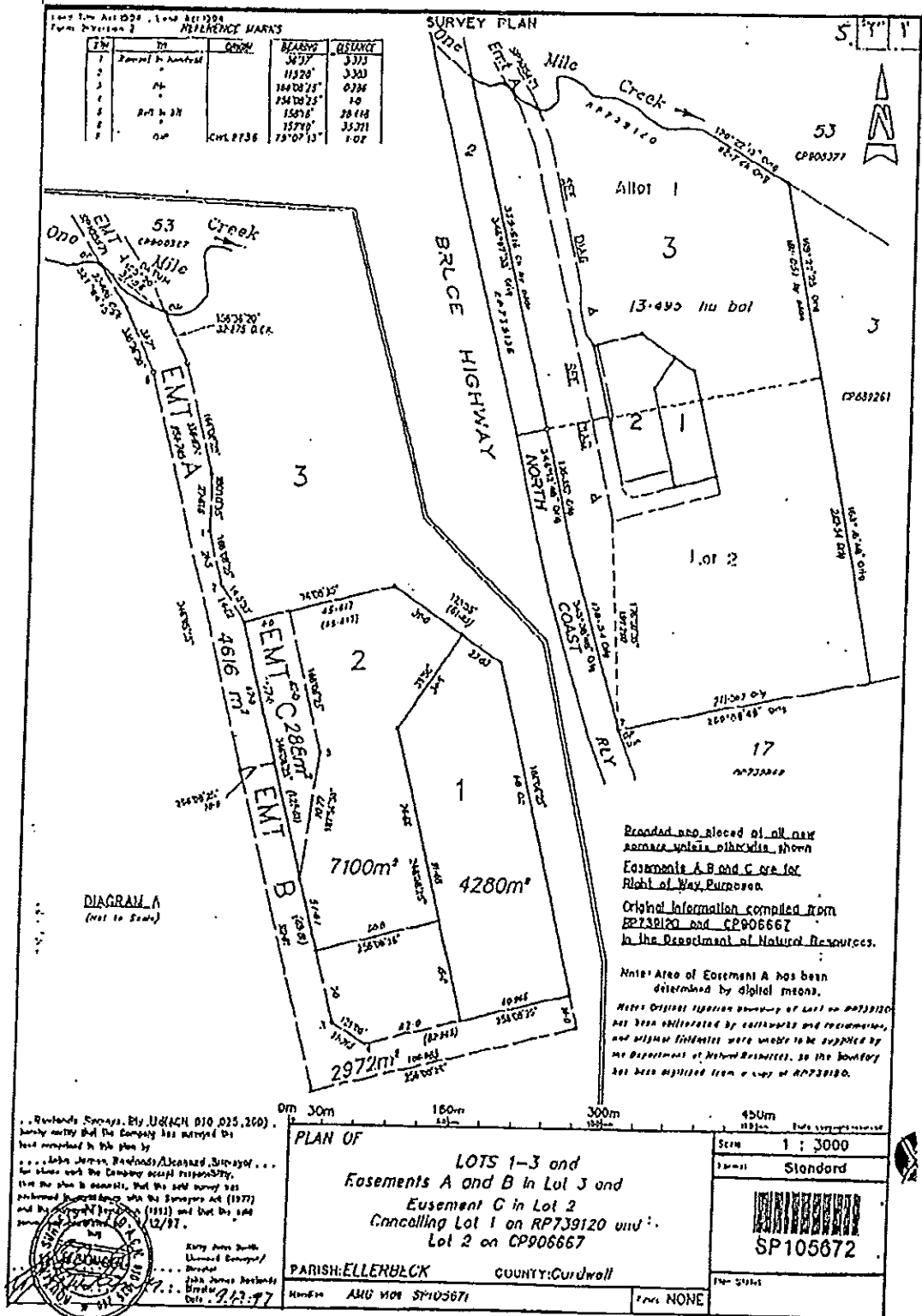
19
SCHEDULE 7 - PLAN OF EASEMENT TO PUBLIC BOAT RAMP



SCHEDULE Z - PLAN OF EASEMENT TO PUBLIC BOAT RAMP



SCHEDULE Z - PLAN OF EASEMENT TO PUBLIC BOAT RAMP



**** NOT TO SCALE ****



IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first herein before written.

CARDWELL PROPERTIES PTY LTD)
(ACN 058 737 643) by its duly constituted)
Attorney KEITH WILLIAMS under)
registered Power of Attorney No. L942945L,)
and in presence of:)

CARDWELL PROPERTIES PTY LTD
by its duly constituted Attorney

.....
Keith Williams

.....
Independent Witness

~~THE COMPANY SEAL of CARDWELL~~)
~~PROPERTIES PTY LTD~~)
~~(ACN 058 737 643) was hereunto affixed by~~)
~~authority of a resolution of the Board of~~)
~~Directors in the presence of a Director and a~~)
~~Director/Secretary~~)

.....
Director

.....
Director/Secretary

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)
)
and)
the Mayor and Chief Executive of the)
Council respectively who have hereunto)
subscribed their names)

.....
Mayor

.....
Chief Executive

EXECUTED for and on behalf of THE)
STATE OF QUEENSLAND, by the)
Minister for Economic Development and)
Trade, in the presence of:)

.....
The Honourable Douglas Slack MLA

.....
Independent Witness

EXECUTED for an on behalf of THE)
COMMONWEALTH OF AUSTRALIA)
by the Minister for the Environment, Sport)
and Territories in the presence of:)

.....
Senator Robert Hill

.....
Independent Witness