

DEVELOPER DEED

LIVERPOOL CITY COUNCIL

and

BORAL BRICKS PTY. LTD (ABN 66 082 448 342)

Container 2005/1976
Assignee
Document Number

DEVELOPER DEED

PARTIES

1. **LIVERPOOL CITY COUNCIL** of 1 Hoxton Park Road, Liverpool in the State of New South Wales.
2. **BORAL BRICKS PTY. LTD (ABN 66 082 448 342)** of C/- **Boral Limited, Level 39 AMP Centre, 50 Bridge Street, Sydney** in the State of New South Wales.

BACKGROUND

- A. Boral and Moorebank JV are the registered proprietors of the Boral Land.
 - B. Boral Recycling, on behalf of Boral, and Moorebank JV are proposing to subdivide and develop the Boral Land in various stages for residential purposes.
 - C. The Boral Land is subject to the LEP. The Council is the consent authority under the LEP in respect of the Boral Land.
 - D. Clause 45C of the LEP provides that the Council must not grant consent to development on the Boral Land unless, among other things, arrangements have been made, to the satisfaction of the Council, for the provision of appropriate infrastructure.
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- E. The Council has prepared and approved the DCP to guide development of the Boral Land.
 - F. The parties acknowledge that the development of the Boral Land for residential purposes will result in a demand for provision of various public amenities, works and facilities which Boral has agreed to provide.

OPERATIVE PROVISIONS

1. DEFINITIONS

1.1 Interpretation of Deed

Unless the context otherwise requires:

Bank Guarantees means the Road Guarantee and the Works Guarantee.

Basins mean drainage basins constructed on the Boral Land (or any part of it) in accordance with the requirements of the DCP.

Boral means Boral Bricks Pty. Ltd. of c/- Boral Limited, Level 39 AMP Centre, 50 Bridge Street, Sydney in the State of New South Wales.

Boral Land means:



- (1) collectively Folio Identifiers Lot 101 DP 1070029, Lot 104 DP 1070029 and Lot 105 DP 1070029 (the registered proprietor of which is Boral) and Lot 106 DP 1070029 (the registered proprietor of which is Moorebank JV); and
- (2) any subdivided portion of the land referred to in paragraph (1).

Boral Representatives means Boral's representatives as notified to the Council in accordance with 9.1.

Boral Recycling means Boral Recycling Pty Limited (ABN 42 000 061 843).

City Wide Facilities has the meaning given to it in the Contributions Plan.

Claim against any person means any claim, action, demand, proceeding, judgment, damage, loss, cost, expense or liability howsoever incurred or suffered by or brought or made or recovered against that person and howsoever arising (whether or not presently ascertained, immediate, future or contingent).

Completion Notice means a notice which complies with 5.6, such notice:

- (1) certifying that Boral has completed all or part of the Works;
 - (2) certifying that the Works the subject of the notice have been completed in accordance with 5.4; and
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- (3) attaching inspection reports from an Independent Engineer confirming the matters in (1) and (2).

Consent means any:

- (1) consent issued by the Council as a consent authority or other authority under the Local Government Act or the Planning Act for the carrying out of the Development; and
- (2) any other consent or authorization from any governmental, semi-governmental, statutory or other authority necessary for the carrying out of the Development.

Contributions means the contributions for City Wide Facilities and Established Areas District Facilities payable by Boral to the Council under the terms of the Contributions Plan and pursuant to conditions of Consent imposed under section 94 of the Planning Act, as contemplated in clause 7 of this Deed.

Contributions Plan means the Liverpool Contributions Plan 2001 (as amended or replaced from time to time).

Costs and Claims means any:

- (a) duty, liability or obligation to any person;



- (b) cost or expense (including legal costs on an indemnity basis)
- (c) loss or damage; and
- (d) claim, proceeding, demand, notice, order or other requirement.

Council means Liverpool City Council of 1 Hoxton Park Road, Liverpool in the State of New South Wales.

Council Representatives means the nominee of the General Manager of Council as notified to Boral in accordance with 9.1.

Covenant means the covenant made by Boral not to sell the Boral Land except on the terms set out in 4.2.

Day means a calendar day.

DCP means Liverpool City Council Development Control Plan No 50 entitled "Boral Moorebank Land" and any amendment, variation or replacement of that planning document.

Dedicated Land means collectively the Open Space, Environmental Land, Internal Roads and the Link Road Site.

Development means the development of the Boral Land by Boral and Moorebank JV in accordance with the Masterplan, DCP and the terms of this Deed.

Dispose means to transfer, sell, assign or otherwise dispose of an interest in the Boral Land. Without limiting the generality of the preceding sentence the term 'Dispose' also includes a change in control (as defined in s50AA of the Corporations Act 2001) in Boral. **Disposition** has the same meaning as Dispose. The parties acknowledge that a change in control in Boral Limited will not of itself constitute a change in control in Boral.

Dispute means a dispute regarding the terms or operation of this Deed.

Drainage Works means the construction of Basins on any part of the Boral Land which is identified in the Masterplan as having Basins erected on it.

Environmental Land means that portion of the Boral Land zoned 7(c) Environment Protection - Bushland in the LEP.

Established Areas District Facilities has the meaning given to it in the Contributions Plan.

Final Completion means the date upon which Council certifies to Boral in accordance with clause 5.5(3)(a) that the works performed by Boral are reasonably satisfactory to Council.

Force Majeure Event means anything outside the reasonable control of a party including but not limited to acts of god, fire, storm, flood, earthquake,



explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic and/or quarantine restriction

Independent Engineer means an appropriately qualified and experienced civil engineer who is a member of the Institute of Engineers Australia (now known as ENGINEERS AUSTRALIA) or the Association of Professional Engineers, Scientists and Managers, Australia that is approved by Council (which approval must not be unreasonably withheld) prior to engagement by Boral.

Insolvency Event means the happening of any of these events:

- (1) Application which is not withdrawn or dismissed within 14 days is made to a court for an order or an order is made that a body corporate be wound up; or
- (2) An application which is not withdrawn or dismissed within 14 days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order; or
- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or

- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved; or
- (5) A body corporate is or states that it is insolvent; or
- (6) As a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand; or
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event;
- (10) A receiver, manager or receiver and manager is appointed to the Company;



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- (11) A body corporate becomes an externally administered body corporate within the meaning of the Corporations Act;
- (12) A claim is filed in a court against a person that is not defended, released or otherwise settled within 28 days of the date of its filing at the court; or
- (13) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Internal Road Works means all:

- (1) internal roads and streets to be constructed on the Boral Land pursuant to any Consent; and
- (2) all pathways, footpaths, cycleways and other walkways to be constructed on the Boral Land pursuant to any Consent.

Internal Roads means all public roads, footpaths and cycleways to be dedicated by Boral to the Council in accordance with any Consent.

LEP means the Liverpool Local Environmental Plan 1997 (Amendment No.75).

Link Road means the link road from Newbridge Road to Nuwarra Road as shown in the DCP. *and approved by Council*

Link Road Site means the land which comprises the site for the proposed Link Road.

Link Road Variation means the widening of the Link Road site by the dedication of additional land by Boral, such land to be dedicated from the land that is:

- (1) adjacent to the Link Road; and
- (2) not Environmental Land.

Local Government Act means the *Local Government Act* 1993 (NSW).

Masterplan means the document attached at **Annexure 2**.

Moorebank JV means Moorebank (Urbex) Investments Pty Ltd ACN 107 817 710) and CPG Moorebank Pty Ltd ACN 107 832 913 (jointly and severally).

Open Space means approximately 4 hectares of open space within that portion of the Boral Land zoned Residential 2(a) in the LEP, such area being selected in accordance with the DCP and the Masterplan.

Open Space Works means embellishment of Open Space generally in accordance with any Consent, the DCP and the Masterplan.

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

Practical Completion means the relevant Works have been completed in accordance with 5.4 except for minor defects:

- (1) which do not prevent the relevant Works from being reasonably used:
 - (a) for their intended purpose; and
 - (b) in the manner which such works are ordinarily used; and
- (2) rectification of which will not prejudice the convenient use of the Works.

Rehabilitation Works means the rehabilitation of the Environmental Land to a maximum aggregate value of \$330,000 generally in accordance with Council's requirements, being the works defined in **Annexure 4** and entitled "Vegetation Management Plan".

Representatives means collectively the Boral Representatives and the Council Representatives.

Road Defects Guarantee means the bank guarantee or guarantees of one million dollars (\$1,000,000) which are provided by a reputable financial institution to secure Boral's obligation to:

- (1) ensure that any parts of the Stage 1 Road Works and/or Stage 2 Road Works which are Practically Completed are completed in accordance with this Deed and the Consent; and
- (2) rectify any defects in the Stage 1 Road Works and/or Stage 2 Road Works.

Road Guarantee means the bank guarantees in the amount of ten million dollars (\$10,000,000) provided by a reputable financial institution to secure Boral's obligation to:

- (1) construct the Stage 1 Road Works; and
- (2) construct and dedicate the Stage 2 Road Works,

in accordance with this Deed.

Sale Lot means a lot resulting from the subdivision and/or development of the Boral Land or any part of the Boral Land that creates a lot for residential purposes.

Shelter means a bus shelter complying with the terms of the DCP.

Shelter Works means the construction of a Shelter on any part of the Boral Land which is identified in the Masterplan as having a Shelter erected on it.



Stage means a stage of the Development consisting of a discrete parcel of Sale Lots, such stages being substantially in accordance with the Masterplan.

Stage 1 Road Works means the:

- (1) construction of an upgraded road approach from the Boral Land to the intersection of Maddecks Avenue and Nuwarra Road; and
- (2) construction and installation of traffic signals at the intersection of Maddecks Avenue and Nuwarra Road so as to accommodate anticipated additional traffic generated by the Development.

Stage 2 Road Works means the:

- (1) construction of the Link Road generally in accordance with the terms of the DCP; and
- (2) upgrade and reconfiguration of the intersection of New Brighton Golf Course and Nuwarra Road so as to accommodate anticipated additional traffic generated by the Development such works to include (without limitation) the construction, installation and phasing of traffic signals at the intersection,

all such works being generally in accordance with the plans and specifications attached at **Annexure 3**.

Subdivision Certificate means a certificate issued by Council authorizing the registration of a plan of subdivision as defined in accordance with section 109C(1)(d) of the Planning Act.

Works means collectively all works set out in Item 1 of the Works Schedule and is limited to that schedule.

Works Guarantee means the bank guarantee or bank guarantees in the amount of three hundred and thirty thousand dollars (\$330,000) provided by a reputable financial institution to secure Boral's obligation to perform the Rehabilitation Works.

Works Schedule means the table of works set out in **Annexure 1**.

1.2 Interpretation of Deed

Unless the context otherwise requires:

- (1) the plural number includes the singular number and vice versa;
- (2) words importing one gender extends to and includes the other gender;
- (3) a reference to any Deed, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time;



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- (4) a reference to a person includes a reference to a company, the person's executors, administrators, successors, permitted assigns and substitutes;
- (5) headings form part of this Deed and it is permissible to use headings as an aid in interpreting the provisions of this Deed;
- (6) every covenant or Deed expressed or implied into this Deed which affects more than one person to this Deed binds each party jointly and severally;
- (7) a reference to 'days' means calendar days and not business days (being any day that is a day on which banks are generally open in the city of Sydney and which is not a Saturday, Sunday or public holiday);
- (8) the word "includes" in any form is not a form of limitation;
- (9) where an obligation must be performed within a required period of time from receipt of a notice the period within which that obligation must be performed does not include the day upon which the notice is received; and
- (10) a reference to "\$" or "dollars" is to be construed as a reference to Australian dollars.

2. IMPACT OF DEED ON COUNCIL POWERS

2.1 Consent authority

The parties acknowledge that the Council is a local government authority and consent authority with statutory rights and obligations pursuant to the terms of the Local Government Act and the Planning Act.

2.2 Construction of Deed to fetter powers

No term of this Deed is to be construed, or to operate, so as to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a consent authority or other authority.

2.3 Reading down of provisions

If any provision of this Deed would, or could likely, operate so as to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a consent authority or other authority then that provision is, to the extent necessary for it not to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a consent authority:

- (1) be read down, if possible; or
- (2) severed from this Deed.

3. GENERAL PRINCIPLES

3.1 Relationship between the parties

- (1) No term of this Deed or any aspect of the operation of this Deed is to be construed so as to create any of the following relationships between the parties:
 - (a) joint venturers;
 - (b) partners;
 - (c) trustee and beneficiary;
 - (d) principal and agent; or
 - (e) employer and employee.
- (2) Each party must not:
 - (a) represent, or otherwise foster the understanding, that the relationship between the parties is one of the relationships set out in paragraph (1); and
 - (b) represent or otherwise hold themselves out as representing or having the ability to bind the other party.

3.2 Purpose of this Deed

- (1) The purpose of this Deed is to:
 - (a) identify the facilities, works, services, contributions, land and infrastructure required to support the Development;
 - (b) identify the facilities, works, services, contributions, land and infrastructure that are to be provided by Boral to support the Development;
 - (c) identify when facilities, services, contributions, land and infrastructure will be required, and the obligations of Boral in relation to providing them; and
 - (d) secure the obligations of Boral in relation to the Works.
- (2) The parties must, at all times, act in a manner consistent with the attainment of the objects set out in paragraph (1).

4. SECURITY

4.1 Provision of security by Boral



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To secure the proper and timely performance of its obligations under this Deed Boral agrees to provide to the Council:

- (1) the Covenant as set out in 4.2; and
- (2) the bank guarantees as set out in 4.3.

4.2 Covenant

- (1) Boral covenants with the Council that it will not, except in the course of selling any Sale Lots, Dispose of any part of its interest in the Boral Land without the consent of the Council (which will not be unreasonably withheld). This clause shall not apply to:
 - (a) any lots which are required for the purposes of roads, infrastructure, land acquisitions/dedications; or
 - (b) any other lot which is otherwise agreed in writing by Boral and Council to be excluded from the term "Sale Lot".
- (2) Council may only withhold its consent to the Disposition of Boral's interest in the Boral Land where the proposed disponee, in the reasonable opinion of Council:
 - (a) is not a reputable entity with expertise in residential land development; and
 - (b) does not have adequate financial resources to conduct and finalise the Development.
- (3) The parties acknowledge and agree that:
 - (a) except in relation to the circumstances in paragraph (b), Boral's rights and obligations under this Deed will continue notwithstanding the Disposition of its interest in any part of the Boral Land; and
 - (b) prior to entering into any arrangements to Dispose of its entire interest in the Boral Land, Boral will ensure that the proposed disponee enters into a deed with the Council agreeing to be bound by the terms of this Deed as if a reference to Boral were a reference to the disponee and Boral will thereafter be released from its obligations under this Deed.

4.3 Bank guarantees

- (1) Boral must, on the date of this Deed, provide to Council:
 - (a) the Road Guarantee; and
 - (b) the Works Guarantee.


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- (2) Provided that Boral or Boral's nominee has provided the Road Defects Guarantee the Bank Guarantees are to be promptly returned to Boral by the Council:
 - (a) in the case of the Road Guarantee – upon Practical Completion of the Stage 1 Road Works and Practical Completion and dedication to Council of the Stage 2 Road Works; and
 - (b) in the case of the Works Guarantee - upon Practical Completion of the Rehabilitation Works.
- (3) The Bank Guarantees must be unconditional and in a form acceptable to the Council acting reasonably.
- (4) The Road Defects Guarantee is to be returned to Boral by the Council upon the later to occur of:
 - (a) Final Completion; or
 - (b) 12 months from the date of Practical Completion;of the Stage 1 Road Works and Stage 2 Road Works.

5. WORKS

5.1 Obligation to perform the Works

Boral must perform the Works as set out in Item 1 of the Works Schedule.

5.2 Time for completion of the Works

The Works must be completed within the time set out in Item 2 of the Works Schedule.

5.3 Costs of the Works

All costs incurred by Boral in performing the Works are to be borne solely by Boral.

5.4 Standard of the Works

Boral must construct and complete the Works in accordance with the following and in the event of an inconsistency in the following order of priority:

- (1) in accordance with all relevant Consents;
- (2) in accordance with Australian Standards applicable to works of the same nature as each aspect of the Works; and
- (3) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.



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5.5 Rectification by Boral of defective Works

- (1) Boral must provide a Completion Notice to the Council within 14 days of completing any aspect of the Works as set out in Item 1 of the Works Schedule.
- (2) The Council must inspect the Works set out in a Completion Notice within 14 days of the receipt of that notice and the Council will be deemed to have inspected those Works within this 14 day period.
- (3) Within 14 days of inspecting the Works set out in a Completion Notice the Council must provide notice in writing to Boral that the Works set out in the Completion Notice:
 - (a) have been completed satisfactorily; or
 - (b) have not been completed satisfactorily, in which case the notice must also detail those aspects of the Works which have not been completed satisfactorily,

and if Boral does not receive a notice from the Council within this 14 day period the Works set out in the Completion Notice will be deemed to have been completed satisfactorily.

- (4) Where the Council serves notice on Boral pursuant to paragraph (3)(b) Boral must:

- (a) rectify the Works set out in the Completion Notice within 3 months from the date of the Council notice issued in accordance with paragraph (3)(b); or
- (b) serve a notice on the Council that it disputes the Council's assessment that the Works the subject of the Completion Notice have not been completed satisfactorily.

- (5) Where Boral:

- (a) serves notice on the Council in accordance with paragraph (4)(b) the dispute resolution provisions of this Deed apply; or
- (b) rectifies the Works in accordance with paragraph (4)(a) it must serve upon the Council a new Completion Notice for the Works the subject of the Completion Notice issued in accordance with paragraph (1).

- (6) The provisions of paragraphs (2) – (5) apply to any new Completion Notice issued by Boral in accordance with paragraph (5)(b).

- (7) Where the Works set out in the Completion Notice have attained Practical Completion but:

- (a) have not been completed in accordance with the Consent; or



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- (b) contain a material defect which:
 - (i) adversely affects the ordinary use and/or enjoyment of the relevant works; or
 - (ii) will require maintenance or rectification works to be performed on the works at some time in the future directly as a result of the existence of the defect;

Council may:

- (c) serve notice on Boral in accordance with paragraph (3)(b); and
- (d) upon service of the notice the provisions of paragraph (4) apply except that the reference to "3 months" in paragraph (4)(a) is to be deemed to refer to "6 months".

5.6 Requirements for a Completion Notice

A Completion Notice must:

- (1) be in writing;
- (2) be issued by an Independent Engineer; and
- (3) contain an acknowledgment from the Independent Engineer that:
 - (e) it is recognized that Council relies upon the certification provided by the engineer; and
 - (f) as a consequence of paragraph (a) the engineer owes a duty of care to Council, the breach of such duty entitling Council to make a claim in negligence against the engineer.

5.7 The Council acknowledges that Boral will subcontract some of the Works to its development partner Moorebank JV who in turn will use contractors to assist with the Works. Any such subcontracting shall not relieve Boral of any liability to Council under this Deed.

6. DEDICATED LAND

6.1 Dedication of the Dedicated Land

Boral must dedicate, or procure Moorebank JV to dedicate, to the Council:

- (1) the land designated as Dedicated Land in item 1 of the table set out in 6.2; and
- (2) the Dedicated Land within the time period set out in item 2 of the table set out in 6.2.

6.2 Schedule of dedication

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The Dedicated Land must be provided to the Council by Boral or MJV in accordance with the following table:

Item 1: Dedicated Land	Item 2: Time for dedication
Open Space	At the time of release of a Subdivision Certificate where any road fronting the Open Space is to be dedicated to Council
Environmental Land	Prior to the release by the Council of any plan of subdivision that would result in greater than 480 lots being created from the subdivision of the Boral Land.
Internal Roads	At the time of release of a Subdivision Certificate where Sale Lots front the Internal Roads to be dedicated to Council
Link Road Site	Prior to the release by the Council of any plan of subdivision that would result in greater than 100 lots being created from the subdivision of the Boral Land.

6.3 Costs of dedication

Boral is to dedicate the Dedicated Land to the Council in accordance with the terms of this Deed at no cost to the Council.

6.4 Licence over dedicated land


- (1) Where Boral:
- (a) is required to dedicate the Environmental Land or the Link Road Site; and
 - (b) has not had the opportunity to perform any works that it must perform on that land;

then Council must grant a licence over the Environmental Land and/or the Link Road Site (as appropriate) in accordance with the terms of paragraph (2).

- (2) Council grants to Boral a licence over the Environmental Land and/or the Link Road Site (as appropriate) in accordance with the following terms:
- (a) the licence is to be at no cost to Boral;

- (b) the permitted use is to be the performance of such works on the licensed land which are to be performed by Boral in accordance with the terms of this Deed;
- (c) Boral is to occupy the relevant licensed land at its own risk;
- (d) Boral must:
 - (i) effect policies of insurance reasonably requested by Council including (without limitation):
 - A. public liability insurance in the amount of \$20,000,000. The insurance must cover all Claims in respect of damage to real and personal property and injury to, or death of persons, arising out of or in connection with the operation, use, repair or maintenance of the licensed land; and
 - B. a policy of insurance for the full amount of its legal liability under the Workers Compensation Act 1987 (NSW) in respect of each person employed by it in the activities conducted in and from the licensed land
 - (ii) ensure that the policies of insurance referred to in paragraph (d) above:
 - A. are effected with a reputable insurer reasonably approved by Council;
 - B. (in the case of the public liability insurance policy) include a cross liability clause and note the interest of Council; and
 - C. are kept in force during the term of this Deed and certificates of currency evidencing the currency of the policies are provided to Council within 7 days of the policy being effected or renewed (as applicable).
- (e) Boral is to indemnify Council against any Claim made in respect of personal injury or death or damage to property arising from Boral's use and occupation of the licensed land; and
- (f) Boral must, at its own cost, maintain and keep in good and clean condition the licensed land until it has completed all works that it must perform on that land.

6.5 Dedication of the Link Road Site and construction of Stage 2 Road Works

- (1) The Link Road Site is to be dedicated and the Stage 2 Road Works are to be constructed generally in accordance with the DCP and the plans and specifications set out in **Annexure 3**. *(see Council approval)* 
- (2) Notwithstanding the terms of paragraph (1) the parties expressly acknowledge and agree that it is in their contemplation at the date of this Deed that the construction of the Link Road may need to be varied by the Link Road Variation.
- (3) Council may, acting reasonably, provide notice in writing to Boral that the Link Road Variation is required. Where Council gives notice to Boral in accordance with the preceding sentence the parties agree that:
 - (a) the reference to the term "Link Road" in the "Stage 2 Road Works" definition and the "Link Road Site" definition is deemed to refer to the Link Road as varied by the Link Road Variation;
 - (b) Boral is, at its own cost, to do all such acts and things as are necessary to acquire (if applicable) and subsequently dedicate to Council any additional land required for the Link Road Variation; and
 - (c) Boral may make no Claim, of any nature, against Council in respect of the necessity to perform the works related to the Link Road Variation.
- (4) Any notice provided by Council to Boral in accordance with paragraph (3) must specifically identify:
 - (a) the areas of the link road that are to be widened; and
 - (b) the dimensions of any variation to the width of the link road.
- (5) Council may only issue the notice in clause 6.5(3) prior to issue by Council of the construction certificate for the Link Road works.

7. CONTRIBUTIONS

7.1 Contributions

Boral acknowledges that the Development will give rise to the need to pay the Contributions for the provision and augmentation of public amenities and public services.

7.2 Payment of the Contributions

Boral must pay the Contributions prior to the release by Council of a plan of subdivision for a Stage.

7.3 Calculation of the Contributions

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The amount to be paid by Boral in accordance with 7.2 is to be determined in accordance with the Contributions Plan, as it applies at the time of consent. In the event of a significant change in the Contributions Plan applied to the Boral Land, the calculation of the amount payable by Boral shall take into account the value of works and land provided by Boral as set out in **Annexure 1**.

8. STEP-IN RIGHTS

8.1 Rights on default

- (1) Subject to paragraph (2) below the Council may, at its absolute discretion, enter upon the Boral Land for the purpose of performing the Works where:
 - (a) any Works the subject of a Completion Notice are defective and the defects remain unrectified; or
 - (b) Boral has failed to complete the Works (or any part of the Works) within the time period set out in item 2 of the Works Schedule and no extension of time has been notified.

For the avoidance of doubt, the Council is not entitled to exercise any step-in rights if Boral has served notice on the Council in accordance with 5.5(4)(b) and the dispute resolution provisions of this Deed continue to apply.

- (2) Council may only exercise the step-in rights conferred pursuant to paragraph (1) above where:
 - (c) Council has provided 45 days notice in writing to Boral that it intends to exercise the step-in rights; and
 - (d) Boral has not rectified the matter which confers upon Council the right to exercise the step-in rights.
- (3) Boral may have a period greater than 45 days to rectify the matter giving rise to Council's ability to exercise its step-in rights where:
 - (a) Boral and Council reach agreement in writing for such an extension; or
 - (b) a mediator recommends that a period greater than 45 days be granted, such mediation occurring in accordance with the terms of clause 10.

8.2 Consequence of step in

If the Council elects to exercise the step-in rights granted to it in accordance with 8.1 then:

- (1) the Council may:


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- (i) enter upon any part of the Boral Land that it requires access to in order to perform the relevant obligations of Boral; and
 - (ii) perform the obligations of Boral in relation to the relevant aspect of the Works
- (2) Boral's right to perform or rectify those Works which are the subject of Council's exercise of step-in rights is suspended.

8.3 Deemed licence to access the Boral Land

Where the Council exercises its step-in rights Boral:

- (1) grants to the Council an irrevocable, fee free licence to enter upon those parts of the Boral Land as are reasonably required by the Council for the purpose of exercising the step-in rights granted in this clause 8; and
- (2) must ensure that the Council's access to the Boral Land is not prevented or otherwise interrupted by Boral or any person claiming through Boral.

8.4 Costs of the Council performing the Works

Where the Council exercises its step-in rights all costs incurred by the Council in performing and/or rectifying the Works:

- (1) must, in relation to the Stage 1 Road Works, Stage 2 Road Works and Rehabilitation Works, first be recovered by the Council seeking application of the Road Guarantee and/or Works Guarantee; and
- (2) in all other circumstances (including where the Road Guarantee and/or Works Guarantee are not sufficient to discharge the costs of Council) must be paid by Boral to the Council within 30 days of the Council providing to Boral an invoice detailing the costs incurred by the Council in performing and/or rectifying the Works.
- (3) The Council may, at its discretion invoice:
 - (a) at the completion of the Works; or
 - (b) progressively during the performance of the Works at intervals not less than calendar monthly.

8.5 Indemnity from the Council to Boral

The Council indemnifies Boral against any Costs and Claims arising from or in respect of any negligent act or omission or statutory breach by the Council or any person under its control in connection with the exercise by the Council of its step-in rights pursuant to this clause 8 including relating to property damage, personal injury or death.

8.6 Standard of the Works

If the Council elects to exercise its step-in rights pursuant to this clause 8, 5.4 applies to the Council as if a reference in that clause to Boral is a reference to the Council.

8.7 Force Majeure Event

Notwithstanding any other provision of this Deed where Boral is unable to perform any Works in accordance with this Deed (including the works secured by the Road Guarantee and/or the Bank Guarantee) as a result of the occurrence of a Force Majeure Event Boral will not be in breach of this Deed provided it uses its reasonable endeavours to comply with its obligations under this Deed.

9. REPRESENTATIVES

9.1 Appointment

On the date of this Deed:

- (1) Boral must appoint the Boral Representatives;
- (2) the Council must appoint the Council Representatives; and
- (3) each party must notify the other of the Representatives it has appointed.

9.2 Contact between the parties

The parties agree that all communication regarding the Development will be initiated between the Representatives.

9.3 Meeting of the Representatives

- (1) The Representatives must meet at least once each month during the operation of this Deed to discuss any matters arising in respect of the Development.
- (2) The parties may from time to time, by agreement in writing, alter the frequency of meetings between the Representatives.
- (3) Minutes of meeting are to be taken at each meeting of the Representatives. The minutes are to be distributed to each party within 14 days of the date of the meeting between the Representatives.

9.4 Changing the Representatives

- (1) Each party may remove and/or replace any of the Representatives that have been appointed by them.
- (2) Upon changing the Representatives appointed by them Boral or the Council (as applicable) must notify the other party as to:
 - (a) the identity of the Representative removed; and



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- (b) the identity and contact details of the replacement Representative (if any).

10. DISPUTE RESOLUTION

10.1 Notice of Dispute

If a party believes that there is a Dispute then:

- (1) that party must give notice in writing to the other party stating that there is a Dispute; and
- (2) the notice referred to in paragraph (1) must outline:
 - (a) what the party believes the dispute to be;
 - (b) what the party wants to achieve;
 - (c) what the party believes will settle the Dispute.

10.2 Consultation between the Representatives

Within 14 days of a notice served in accordance with 10.1 the Representatives must meet:

- (1) in order to resolve the Dispute; and
- (2) if they are unable to resolve the Dispute, to select a method of dispute resolution that will provide an effective and economical means of resolving the Dispute without prejudicing the relationship between the parties.

10.3 Progression to formal dispute resolution

Where the Representatives are unable to resolve the Dispute within the time period set out in 10.2 then:

- (1) where the Representatives agreed upon a form of dispute resolution in accordance with 10.2(2), the Dispute is to be submitted for resolution in accordance with that procedure; or
- (2) where the Representatives are unable to agree upon a form of dispute resolution in accordance with 10.2(2) then the Dispute is to be resolved by:
 - (a) submission of the Dispute to expert determination where the Dispute relates to a technical matter regarding the Works. The Dispute is to be:
 - (i) submitted to expert determination within 28 days of the notification of a Dispute pursuant to 10.1; and
 - (ii) conducted in accordance with 10.4; or

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- (b) in all other instances, by such other legal means as the parties deem fit, including, without limitation litigation in any court of competent jurisdiction.

10.4 Expert determination

Where a Dispute is referred to expert determination in accordance with the terms of 10.3 the parties agree that:

- (1) the President of the Australian Institute of Arbitrators is to appoint an expert with experience in the technical matters that are the subject of the Dispute;
- (2) the expert appointed in accordance with paragraph (1) is to act as an expert and not as an arbitrator;
- (3) the expert must resolve the Dispute within 28 days of the date that the parties refer the Dispute to him/her;
- (4) the costs of the expert determination are to be borne by the parties equally or as otherwise directed by the expert; and
- (5) the determination of the expert is final and binding on the parties.

11. DEFAULT IN PERFORMANCE

11.1 Events of default

Subject to clause 8.7, Boral commits an "event of default" if it breaches a term of this Deed.

11.2 Events of default

Where Boral commits an event of default the Council may:

- (1) serve a notice on Boral requiring the breach of this Deed to be rectified within a reasonable period from the date of the notice. If Boral fails to comply with the notice served in accordance with this paragraph then Council may exercise the step-in rights set out in clause 8; or
- (2) claim damages for breach of contract from Boral.

11.3 No restriction on rights

The rights vested in the Council pursuant to 11.2 do not prevent the Council from exercising any other rights that it may possess at law.

12. TERMINATION

12.1 Termination

This Deed terminates in the following events:



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- (1) the parties agree in writing to terminate the operation of this Deed at any time;
- (2) an Insolvency Event affects a party;
- (3) the Council, acting reasonably, serves notice on Boral terminating this Deed where Boral has failed to comply with a notice issued in accordance with 11.2(1); and
- (4) Boral completes the Development in accordance with the terms of this Deed and the Consents.

12.2 Consequence of termination

Upon termination of this Deed:

- (1) all future rights and obligations of the parties under this Deed are discharged; and
- (2) all pre-existing rights and obligations of the parties under this Deed continue to subsist.

12.3 Legal costs and expenses

Where this Deed is terminated by the Council in consequence of Boral committing an event of default Boral must pay to the Council:

- (1) the amount of any damages suffered by the Council; and
- (2) any enforcement costs incurred by the Council in enforcing its rights under this Deed including, without limitation, legal costs (on a solicitor-own client basis) and court costs.

12.4 Legal Challenge

- (1) Despite any other provision of this Deed or the termination of this Deed, if the Court declares any Consent invalid, the Council must promptly return to Boral any contributions, land or works that Boral has paid or dedicated to the Council.
- (2) If there is a legal challenge to the validity of the whole or any part of the LEP, this Deed or any Consent:
 - (a) the Council must in relation to proceedings to which it is a party:
 - (i) promptly provide to Boral a copy of any initiating document filed in the proceedings;
 - (ii) support any application by Boral to be made a party to the proceedings.



13. MISCELLANEOUS

13.1 Legal costs

- (1) Boral must pay all reasonable legal costs incurred by the Council up to an aggregate maximum amount of \$20,000 in relation to the preparation of this Deed.
- (2) Boral will have no obligation to pay any legal costs incurred by the Council unless the Council first provides to Boral:
 - (a) a full itemisation of those costs; and
 - (b) a tax invoice addressed to Boral in respect of those costs.

13.2 Taxes

- (1) If any tax, duty, fee or charge ('levy') is payable in respect of this Deed then such levy is to be paid by Boral.
- (2) In the event that the levy is claimed directly from the Council, Boral agrees that it will reimburse the Council any amount paid to satisfy the levy. Boral must reimburse the Council the amount of the levy within 7 days of the Council notifying Boral that it has paid a levy.
- (3) The Council must provide Boral with a tax invoice or other required documentation upon payment or reimbursement of the levy by Boral.

13.3 Set-off and deduction

All amounts to be paid by Boral in accordance with the terms of this Deed must be paid without set-off or counterclaim of any nature.

13.4 Representation and warranties

Each party represents and warrants that:

- (1) it has power to enter into this Deed and comply with its obligations under the Deed;
- (2) this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
- (3) it has in full force and effect the authorisations necessary for it to enter into this Deed to which it is a party, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
- (4) its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;

- (5) it is solvent;
- (6) it does not enter into this Deed as a trustee; and
- (7) it does not have immunity from the jurisdiction of a court of from legal process.

14. ADMINISTRATIVE PROVISIONS

14.1 Notices

Any notice, consent or other communication under this Deed shall be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (1) delivered to that person's address;
- (2) sent by pre-paid mail to that person's address; or
- (3) transmitted by facsimile to that person's address.

A notice given to a person in accordance with this clause is treated as having been given and received:

- (4) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (5) if sent by pre-paid mail, on the third Business Day after posting; and
- (6) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.

For the purpose of this clause the address of a person is the address set out in this Deed or another address of which that person may from time to time give notice to each other person.

14.2 Entire Deed

This Deed is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Deed.

14.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

14.4 Cooperation


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Each party must sign, execute and deliver all deeds, documents, instruments and act reasonably and effectively to carry out and give full effect to this Deed and the rights and obligations of the parties under it.

14.5 Counterparts

This Deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

14.6 Amendment

This Deed may only be amended or supplemented in writing signed by the parties.

14.7 Unenforceability

Any provision of this Deed, which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this Deed or affecting the validity or enforceability of that provision in any other jurisdiction.

14.8 Power of Attorney

Each attorney who executes this Deed on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

14.9 Joint parties

If two or more parties are defined to be the same entity in this Deed:

- (1) a liability of those parties under this Deed is a joint liability of all of them and a several liability of each of them;
- (2) a right given to those parties under this Deed is a right given severally to each of them; and
- (3) a representation, warranty or undertaking made by those parties is made by each of them.

14.10 Governing law

The law in force in the State of New South Wales governs this Deed. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this Deed.


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EXECUTION

EXECUTED AS A DEED.

Dated:

Whereupon the Common Seal of
Liverpool City Council was
hereunto affixed by the authority
of the Council in accordance
with a resolution passed at a
meeting of Council held on



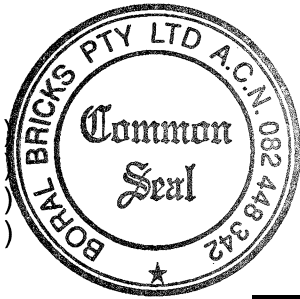
[Redacted signature]

Administrator

[Redacted signature]

General Manager

Whereupon the Company Seal
of **Boral Bricks Pty. Ltd** was
hereunto affixed by the
authority of the Board of
Directors.



[Redacted signature]

Director/Secretary

[Redacted signature]

Director

[Redacted signature]

Graham B. Faber
Secretary

Annexure 1

Works Schedule

Works to be performed

Item 1: Nature of Works	Item 2: Time for completion of the Works
Stage 1 Road Works	Prior to release by the Council of the first subdivision for the Boral Land that creates residential lots.
Stage 2 Road Works	Prior to the release by the Council of any plan of subdivision that would result in greater than 480 lots being created from the subdivision of the Boral Land.
Drainage Works	Prior to the release of a plan of subdivision containing land which drains to the Basins.
Shelter Works	Prior to the release of a plan of subdivision containing land upon which a Shelter is to be erected.
Internal Road Works	Prior to the release of a plan of subdivision containing land in respect of which the Internal Road Works are required.
Rehabilitation Works	Prior to the release by the Council of any plan of subdivision for the fourth Stage of the Development.
Open Space Works	Prior to the release of a plan of subdivision containing land in respect of which the Open Space Works are required.



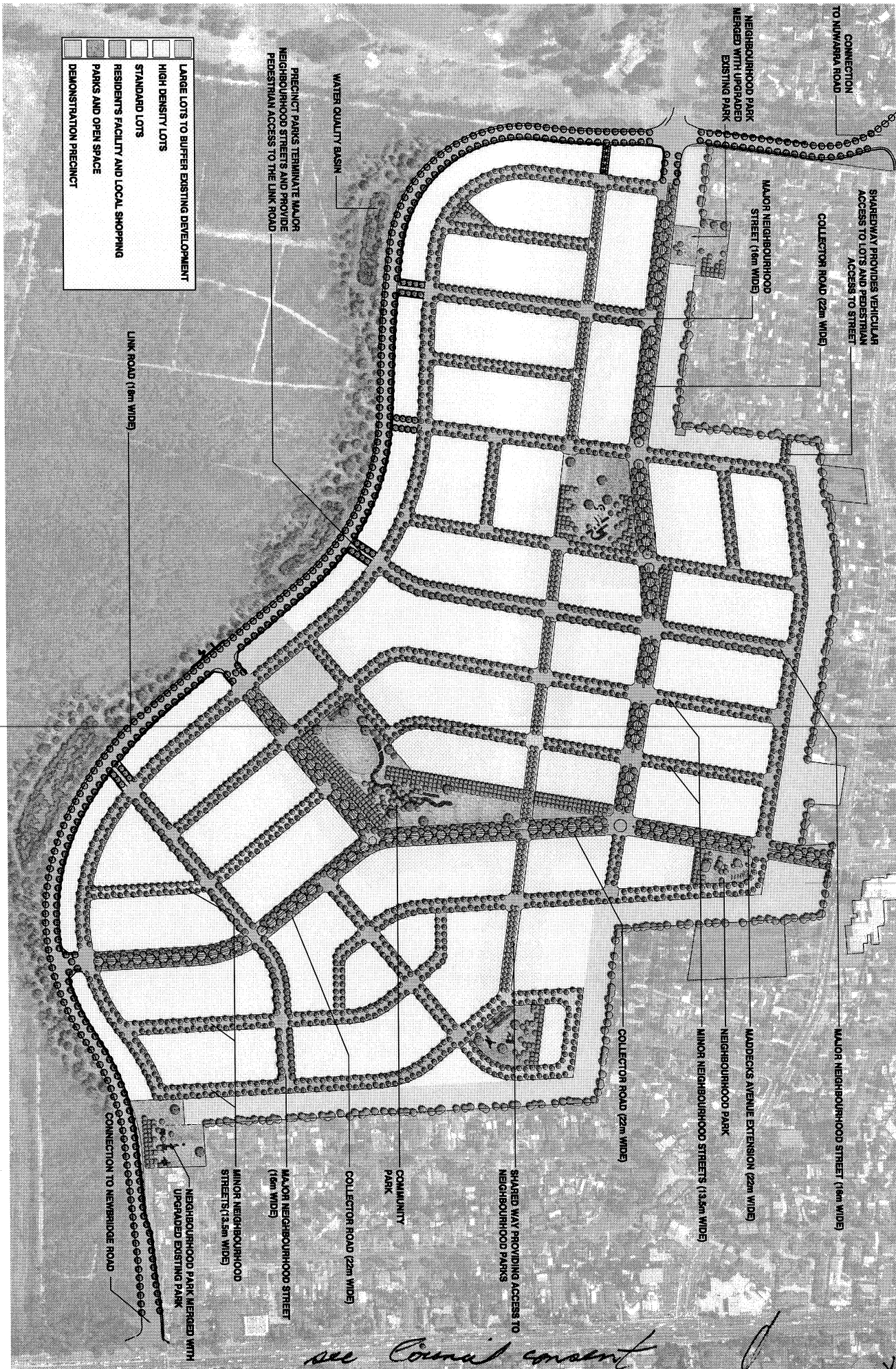
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Annexure 2

Masterplan

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- LARGE LOTS TO BUFFER EXISTING DEVELOPMENT
- HIGH DENSITY LOTS
- STANDARD LOTS
- RESIDENTS FACILITY AND LOCAL SHOPPING
- PARKS AND OPEN SPACE
- DEMONSTRATION PRECINCT

see Council consent

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Master Plan
1:2000 @ A1

Client:
Urbex Pty Ltd.

Project Manager and
Services Consultant:
BMD



MOOREBANK MASTERPLAN

Master Plan
3 September 2004

Urban Design:
URBEX

Planning Consultant:
JBA

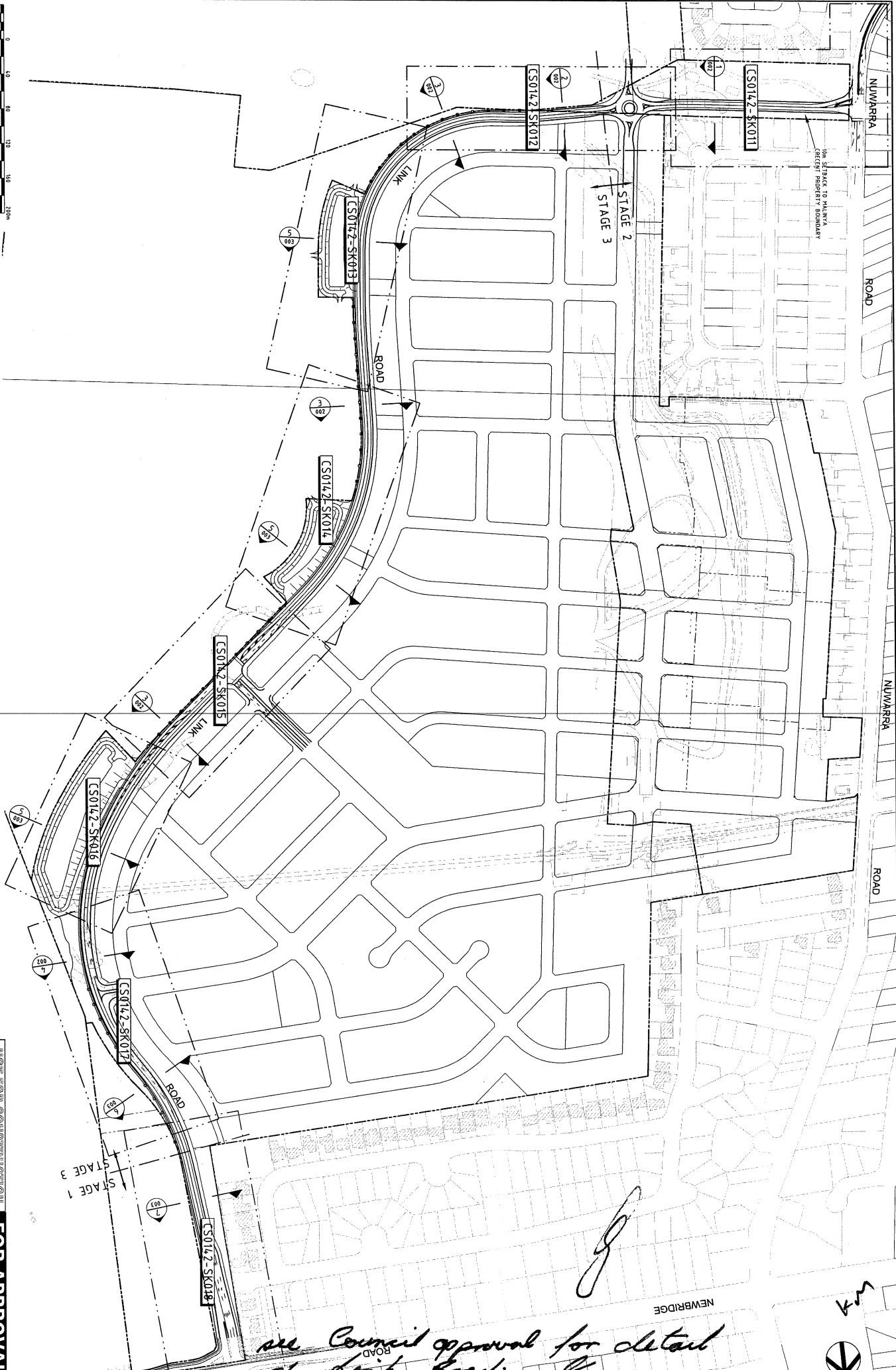
Landscape Architecture:
OCLLUS

Annexure 3

Stage 2 Road Works

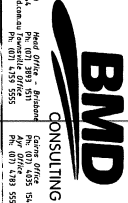
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No.	Amendments	By	App'd	Date	No.	Amendments	By	App'd	Date
1	ISSUED FOR APPROVAL	JW	CS	03/29/05					

Civil & Structural Engineers
 Building Designers
 & Project Managers
 10/11 Stirling St
 Stirling NSW 2777
 Ph: (02) 9888 5555
 Fax: (02) 9888 5554
 Email: info@bmd.com.au

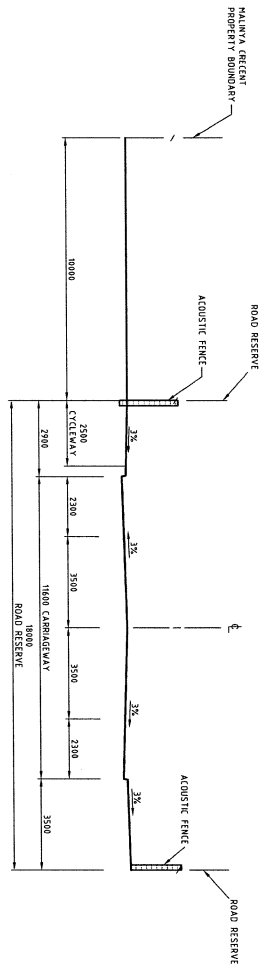


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J. Williams	C. Birchall	A.H.O.	

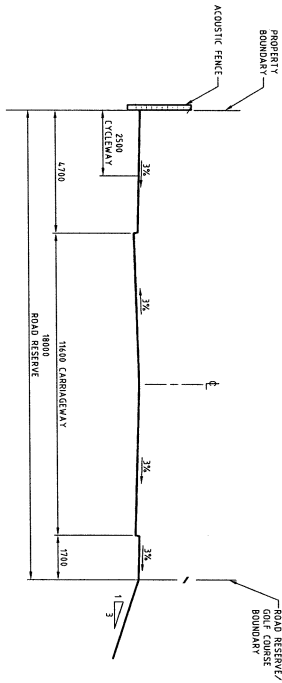
Client: Moorebank Joint Venture
 Project: Link Road - Georges Fair

NOT FOR CONSTRUCTION FOR APPROVAL
 Drawing No. CS0142 SK001
 Rev P1

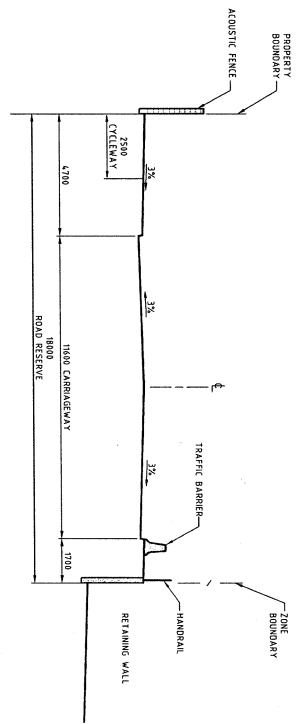
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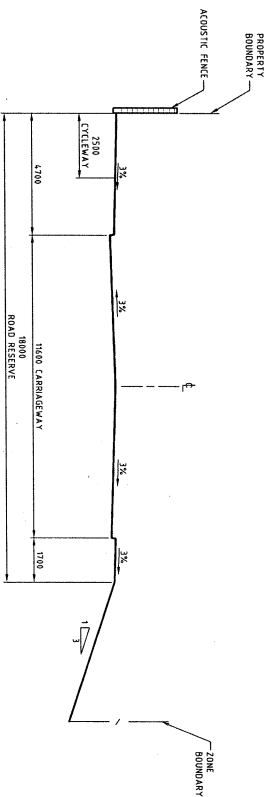
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(CH00.000 - CH 310.000)



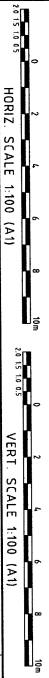
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(CH310.000 - CH 475.000)



TYPICAL SECTION 3
(CH475.000 - CH488.000)
(CH800.000 - CH102.3000)
(CH189.000 - CH124.3000)



TYPICAL SECTION 4
(CH630.000 - CH 1710.000)



NOTES:
* TRAFFIC LANE VARIES BETWEEN 3.5m TO 3.9m WHERE WIDENING IS REQUIRED ON HORIZONTAL CURVES
** BREAK DOWN LANE VARIES BETWEEN 1.9m TO 2.3m WHERE WIDENING IS REQUIRED ON HORIZONTAL CURVES

NOT FOR CONSTRUCTION FOR APPROVAL

No.	Amendment	By	App'd	Date	No.	Amendment	By	App'd	Date
P2	REVISED FOR D.A. APPROVAL	CHC	CS	03/29/05					
P1	ISSUED FOR INDICATION	JW	CS	03/12/05					

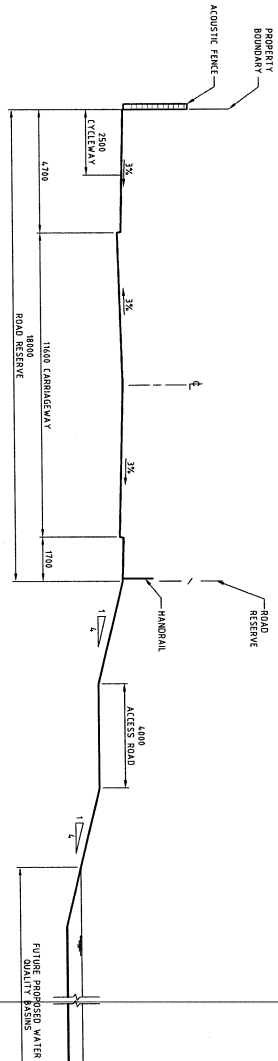
Civil & Structural Engineers
Building Designers
Engineers
10/50 James Street
Adm. 2/00 742 465
Ph: (02) 8888 5410
Fax: (02) 8888 5410
www.bmdconsulting.com.au

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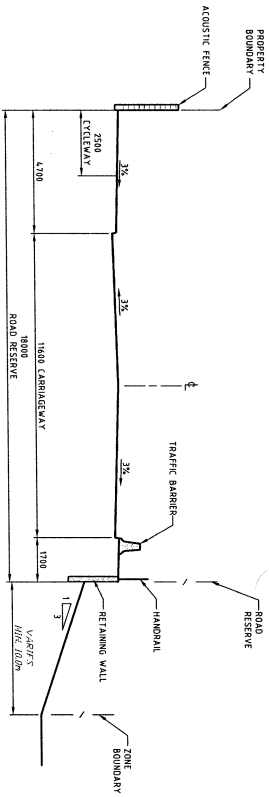
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1/ Woodward	1/ Woodward	1/ Woodward	1/ Woodward

MOOREBANK JOINT VENTURE
LINK ROAD - GEORGES FAIR
TYPICAL CROSS SECTIONS
SHEET 1 OF 2

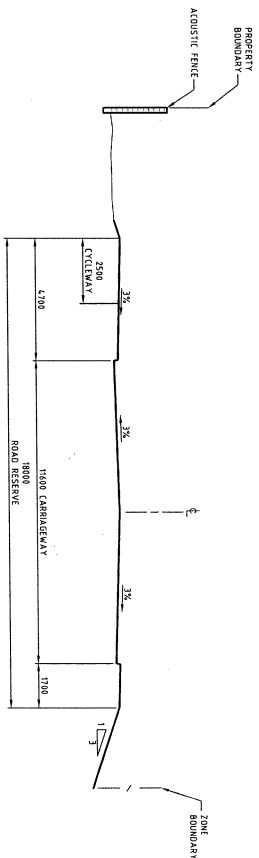
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Title: **TYPICAL CROSS SECTIONS**
Drawing No.: **CS0142-SK002**
Rev: **P2**



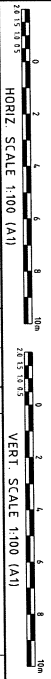
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(CH1043.000 - CH1189.000)
(CH1443.000 - CH1630.000)



TYPICAL SECTION 6
(CH1710.000 - CH1925.000)



TYPICAL SECTION 7
(CH1925.000 - CH2000.000)



No.	Issued For Approval	Amendments	By	Date	No.	Amendments	By	Date	
P1	ISSUED FOR APPROVAL		JW	08	10	12	CB	10	12

Civil & Structural Engineers & Project Managers
 4/117 Stirling St
 Stirling, VIC 3023
 Ph: (03) 9498 5444
 Fax: (03) 9498 5444
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BMD CONSULTING
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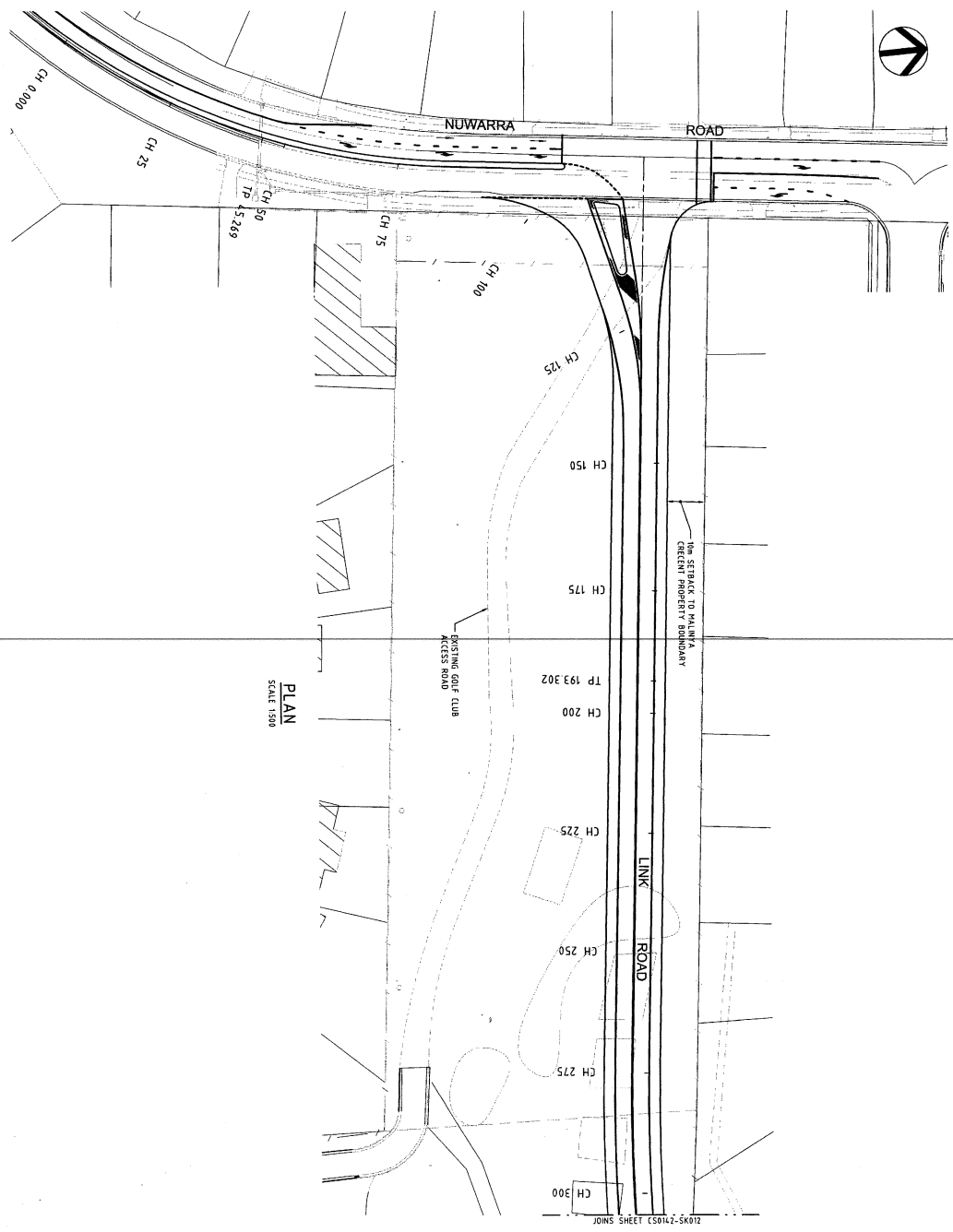
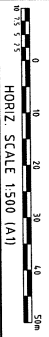
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M. Woodward	C. Gantwell		

Client	Project	Title	Drawing No.	Rev
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NOT FOR CONSTRUCTION FOR APPROVAL

NOTES:
 * TRAFFIC LANE VARIES BETWEEN 3.5m TO 3.9m WHERE WORKING IS REQUIRED ON HORIZONTAL CURVES
 ** BREAK DOWN LANE VARIES BETWEEN 1.5m TO 2.3m WHERE WORKING IS REQUIRED ON HORIZONTAL CURVES

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 1/27



PLAN
SCALE 1:500

JOINS SHEET CS0142-SK012

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No.	Amendment	By	Date	Amendment
P2	REVISED FOR DA APPROVAL	DMC	09/08/25	
P1	ISSUED FOR INFORMATION	JW	10/11/24	

Civil & Structural Engineers
Planning Engineers & Project Managers
 4th Fl, 7/55 Pitt St, Sydney NSW 2000
 Ph: (02) 9238 5434
 Fax: (02) 9238 5544
 Email: info@bmdconsulting.com.au
 Website: www.bmdconsulting.com.au

Design	Checked	Approved	Date
A. Moorhead	C. Mitchell		

Client	Project	Title
MOOREBANK JOINT VENTURE	LINK ROAD - GEORGES FAIR	DETAIL PLAN

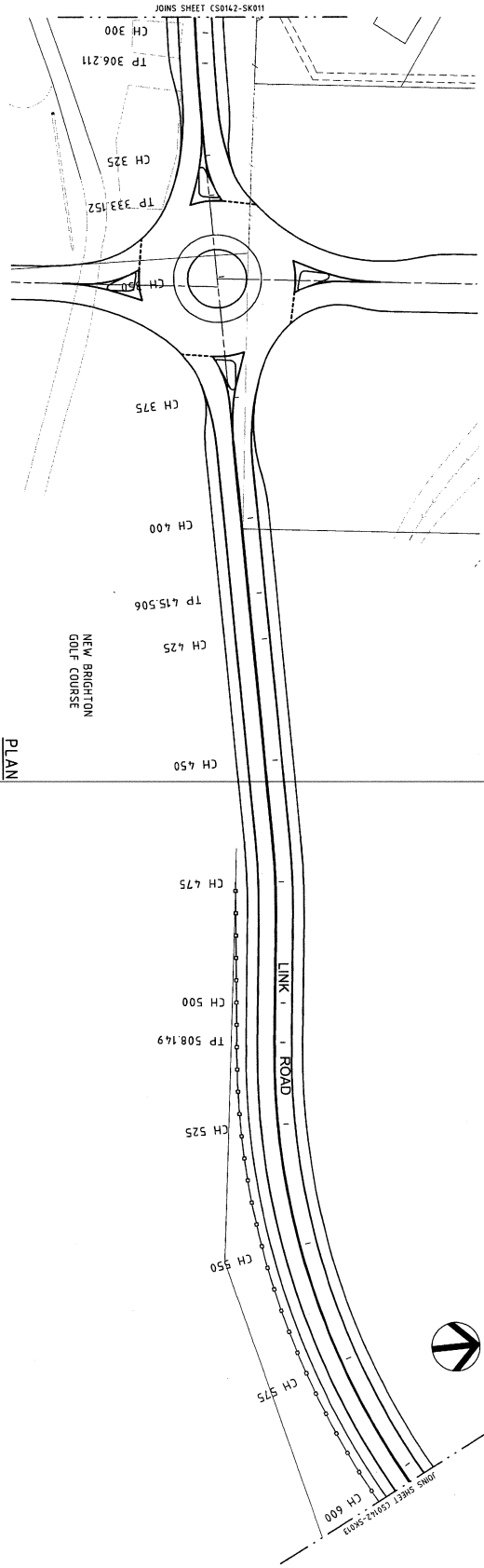
NOT FOR CONSTRUCTION FOR APPROVAL

MOOREBANK JOINT VENTURE
LINK ROAD - GEORGES FAIR

DETAIL PLAN
SHEET 1 OF 8

Drawing No. **CS0142-SK011**

Rev **P2**



LEGEND
 PROPOSED RETAINING WALL



No.	Issued For Approval	By	Appd.	Date	Amendments
P1	ISSUED FOR APPROVAL	JW	CB	02/03/05	

Civil & Structural Engineers & Project Managers
 6/175, Link Road, New Brighton, Auckland, New Zealand
 Ph: 021 888 5442 Fax: 021 428 5544
 Email: info@bmdconsulting.co.nz
 Website: www.bmdconsulting.co.nz

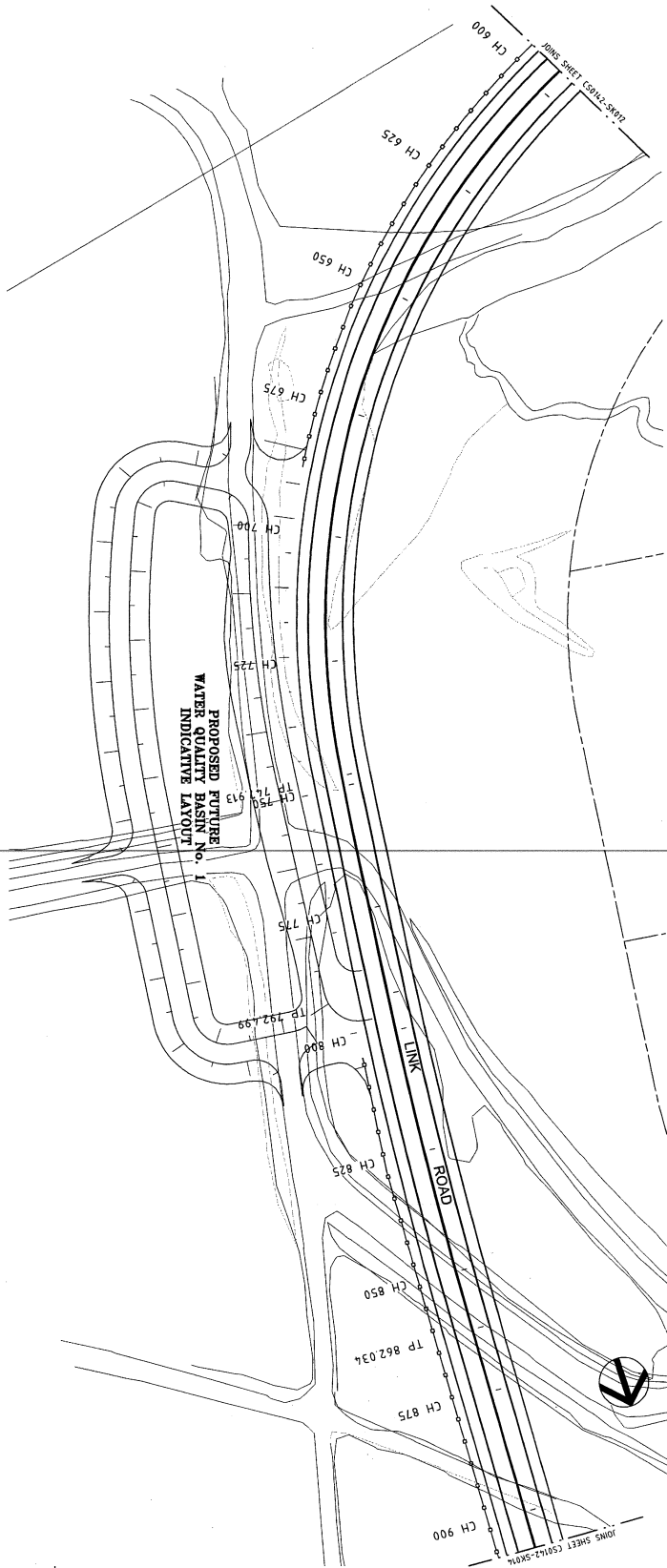


Design	Material
Drawn	Checked
Checked	Approved
Approved	Approved
Date	Date
A.M.D.	

Client	Project	Title	Drawing No.	Rev
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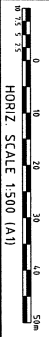
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KM



PLAN
SCALE 500

LEGEND
—○— PROPOSED RETAINING WALL



No.	Amendments	By	Appl	Date	No.	Amendments	By	Appl	Date
1	ISSUED FOR APPROVAL	JW	GD	03.03.05					

**Civil & Structural Engineers
Building Designers
& Project Managers**

BMD CONSULTING

10/11, 10/12, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/01, 11/02, 11/03, 11/04, 11/05, 11/06, 11/07, 11/08, 11/09, 11/10, 11/11, 11/12, 11/13, 11/14, 11/15, 11/16, 11/17, 11/18, 11/19, 11/20, 11/21, 11/22, 11/23, 11/24, 11/25, 11/26, 11/27, 11/28, 11/29, 11/30, 12/01, 12/02, 12/03, 12/04, 12/05, 12/06, 12/07, 12/08, 12/09, 12/10, 12/11, 12/12, 12/13, 12/14, 12/15, 12/16, 12/17, 12/18, 12/19, 12/20, 12/21, 12/22, 12/23, 12/24, 12/25, 12/26, 12/27, 12/28, 12/29, 12/30, 12/31

Design	Checked	Approved	Drawn	Checked	Approved
J.Woodward	C.Berball	A.H.O.	J.Woodward	C.Berball	A.H.O.

NOT FOR CONSTRUCTION FOR APPROVAL

MOOREBANK JOINT VENTURE

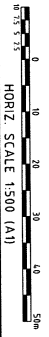
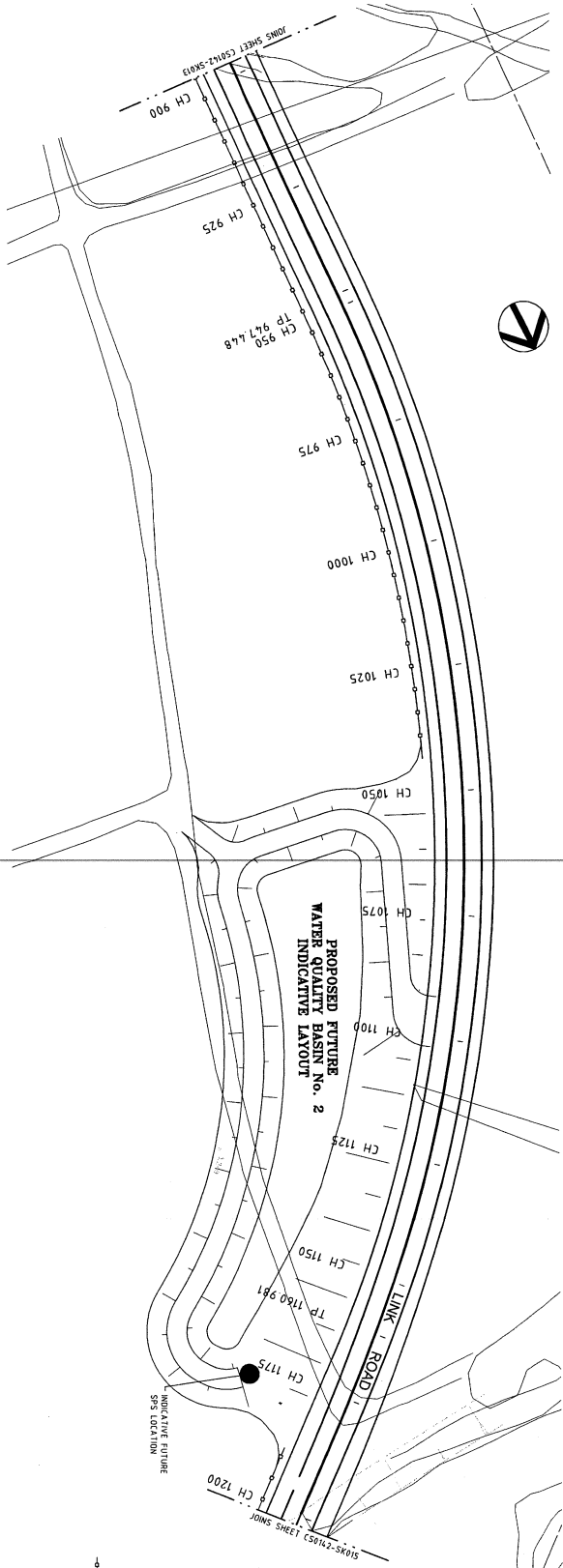
LINK ROAD - GEORGES FAIR

DETAIL PLAN

SHEET 3 OF 8

Drawing No. **CS0142-SK013**

Rev **P1**



No.	Issued For Approval	By	Appd	Date	No.	Amendments	By	Appd	Date
P1	ISSUED FOR APPROVAL	JW	CS	09/09/05					
	Amendments								

Civil & Structural Engineers
Building Designers
of Project Managers

Survey Office
 4/175, Avenue Road, 2nd
 Floor, Suite 8,
 4th Fl, Level 11, 4/175

Head Office - Brisbane
 4/175, Avenue Road, 2nd
 Floor, Suite 8,
 4th Fl, Level 11, 4/175

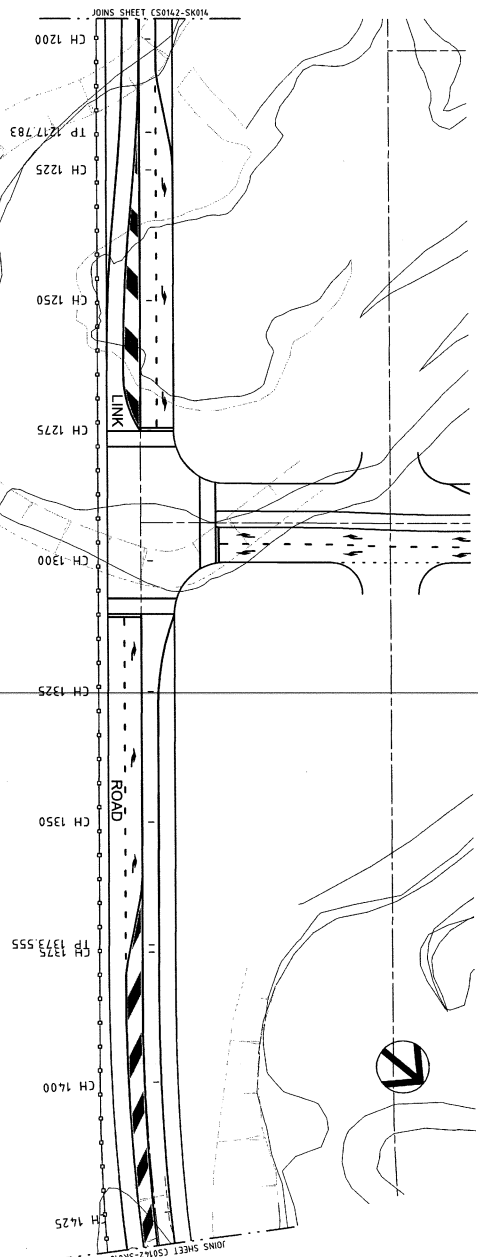
Head Office - Sydney
 4/175, Avenue Road, 2nd
 Floor, Suite 8,
 4th Fl, Level 11, 4/175

Drawn	Checked	Approved	Date	Drawn	Checked	Approved	Date

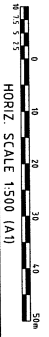
Client	Project	Title	Drawing No.	Rev
MOOREBANK JOINT VENTURE	LINK ROAD - GEORGES FAIR	DETAIL PLAN	CS0142-SK014	P1

NOT FOR CONSTRUCTION FOR APPROVAL

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LEGEND
 PROPOSED RETAINING WALL



No.	Amendments	By	Appd	Date
P1	ISSUED FOR APPROVAL	JW	CS	01/01/05

Civil & Structural Engineers
Building Designers
and Project Managers

Survey Office
 4/175, James Rigg, Dr
 4th Fl, 175, James Rigg, Dr
 St Leonards, NSW 2239

Head Office - Brisbane
 1/175, James Rigg, Dr
 4th Fl, 175, James Rigg, Dr
 St Leonards, NSW 2239



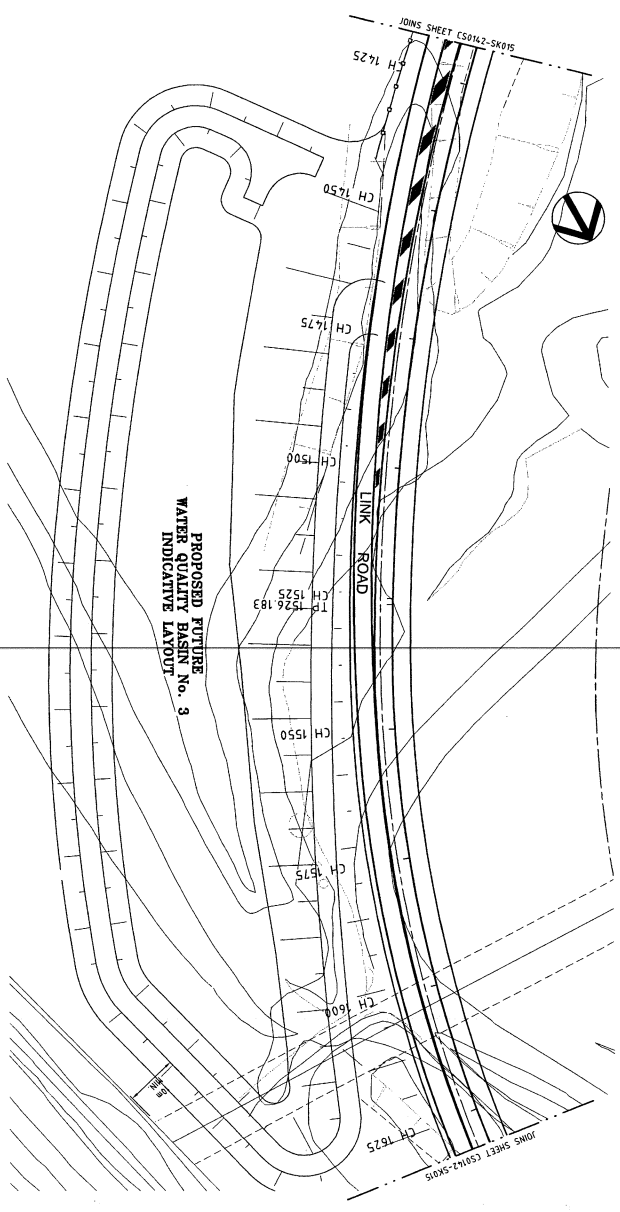
Drawn	Checked	Approved	Date
J.Woodward	C.Cornhill		

Client	Project	Title
MOOREBANK JOINT VENTURE	LINK ROAD - GEORGES FAIR	DETAIL PLAN

Rev	Drawing No.
P1	CS0142-SK015

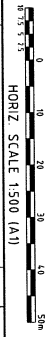
NOT FOR CONSTRUCTION FOR APPROVAL

KW



PLAN
SCALE 1:500

LEGEND
 PROPOSED RETAINING WALL



No.	Issued For Approval	Amendment	By	App'd	Date	No.	Amendment	By	App'd	Date
P1	ISSUED FOR APPROVAL		JW	CB	07/07/05					

**Civil & Structural Engineers
& Project Managers**
 6/175 Adams Road
 North Ryde NSW 1585
 Ph: (02) 9388 5148
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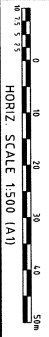
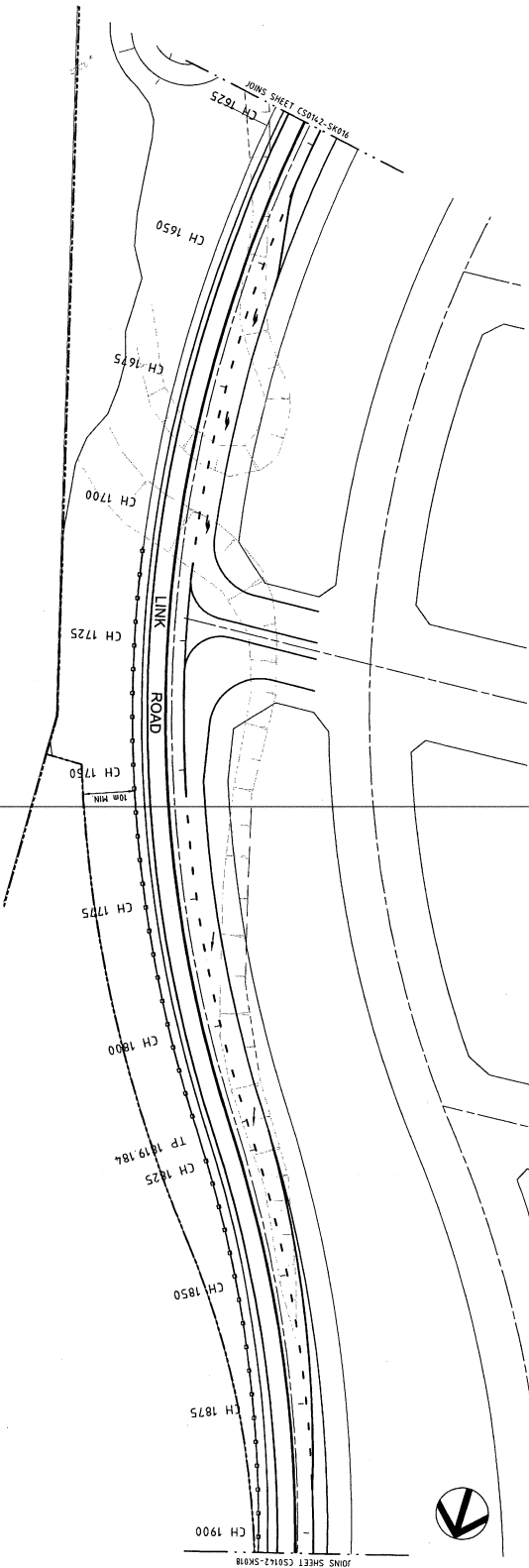
Design	Material	Client
Drawn	A Woodward	MOOREBANK JOINT VENTURE
Checked	J Crookall	LINK ROAD - GEORGES FAIR
Approved		DETAIL PLAN
By		SHEET 6 OF 8
Date		

NOT FOR CONSTRUCTION FOR APPROVAL

Design	Material	Client	Project	Title	Drawing No.	Rev
Drawn	A Woodward	MOOREBANK JOINT VENTURE	LINK ROAD - GEORGES FAIR	DETAIL PLAN	CS0142-SK016	P1
Checked	J Crookall					
Approved						
By						
Date						

KW

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No.	Amendments	By	Appd	Date	No.	Amendments	By	Appd	Date
P1	ISSUED FOR APPROVAL	JW	CB	09/09/25					

Civil & Structural Engineers
Building Designers
& Project Managers

Senior Office
 6/175, Albert Road, St
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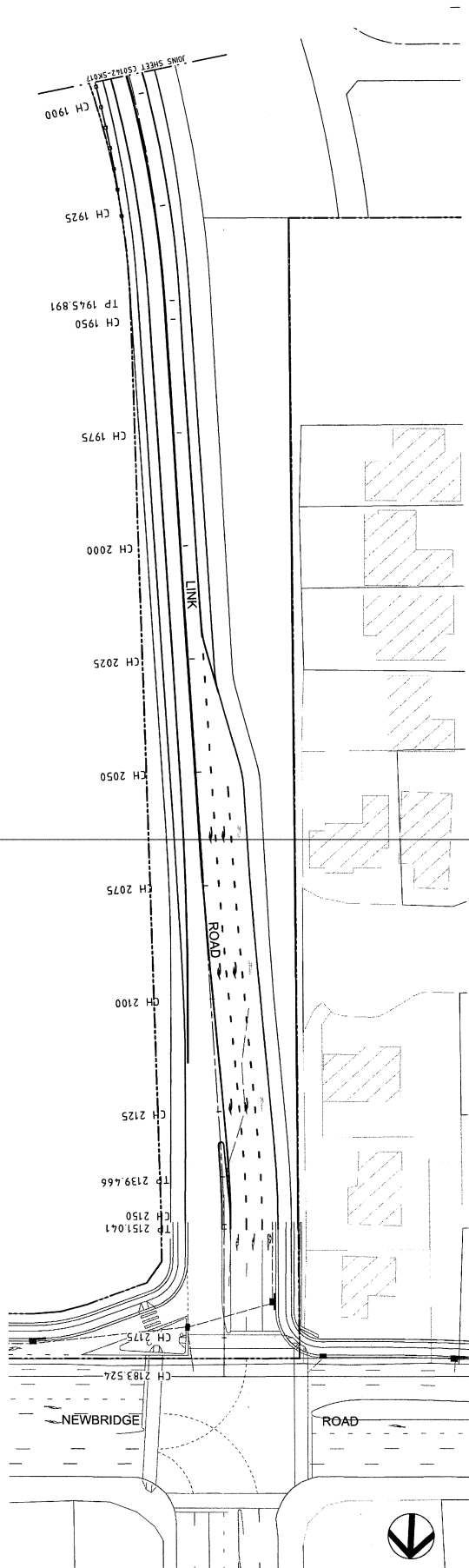
Design	Material	Client
Drawn	A. Woodward	MOOREBANK JOINT VENTURE
Checked	C. Bonnell	LINK ROAD - GEORGES FAIR
Approved		DETAIL PLAN
APPR No.		SHEET 7 OF 8
Date		
Drawn	A.H.D.	

NOT FOR CONSTRUCTION FOR APPROVAL

MOOREBANK JOINT VENTURE
LINK ROAD - GEORGES FAIR
DETAIL PLAN
SHEET 7 OF 8

Drawing No. **CS0142-SK017** Rev **P1**

Km



PLAN
SCALE 1:500

LEGEND
--- PROPOSED RETAINING WALL



No.	Issued For Approval	Amendments	By	App'd	Date	No.	Amendments	By	App'd	Date
01	ISSUED FOR APPROVAL		JM	CB	19.08.25					

Civil & Structural Engineers
BMD CONSULTING
 6/175, Main Rd, St. Leonards, NSW 2238
 Ph: 02 8898 5424
 Fax: 02 8898 5424
 Email: bmd@bmdconsulting.com.au
 Web: www.bmdconsulting.com.au

Design	Checked	Approved	Date
J. Woodward	C. Howell		

Client: MOOREBANK JOINT VENTURE
Project: LINK ROAD - GEORGES FAIR

NOT FOR CONSTRUCTION FOR APPROVAL

Rev	Drawing No.
P1	CS0142-SK018

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Annexure 4

Rehabilitation Works – Vegetation Management Plan

Boral shall cause a Vegetation Management Plan (VMP) to be prepared for the site to the satisfaction of Council prior to works commencing. The focus of the plan will be the ongoing rehabilitation and maintenance of the Environmental Land. The VMP shall be prepared and its implementation supervised by a person suitably qualified in native vegetation management and restoration.

The VMP is to address management of the site for a period of 10 years.

The VMP shall address the following issues as a minimum requirement and will include any other issues as required by other government agencies.

1. A clear set of objectives for the rehabilitation and maintenance of the conservation area.
2. Development of a set of indicators that can be monitored and reported that can demonstrate achievement of the objectives.
3. Methodology for the ongoing monitoring to ensure the objectives of the plan are being met.
4. Reporting methodology. A pro-forma for reporting should be appended to the VMP. Reporting should take place at suitable intervals but no longer than 6 monthly.
5. All works must include details of staging, timing and resourcing
6. Restoration Methodology

The restoration methodology should include:

- Identification and Mapping of proposed works
- Weeding techniques
- Revegetation techniques including natural regeneration, species, replanting, local provenance seed collection, and propagation
- Ongoing care and maintenance including watering and mulching
- Management of sediment runoff, erosion control and nutrient runoff

7. Access Plan



The access plan should include:

- Appropriate fencing
- Access to bushland including identification of appropriate locations for access, techniques for formalisation / closure of existing tracks. Access needs to consider both public access, access for maintenance work and Bushfire management.
- Signage including Interpretive/educational/Hazard awareness (Signage may include: Awareness raising and education of local residents moving into the area of issues relating to the site including but not limited to local flora and fauna, weeds, nutrients, dumping of rubbish, grass clippings and prunings, nutrient run-off and appropriate use of fertilisers, snakes, fire and collection of firewood, trampling of bushland, bushfire, Aboriginal heritage)

8. Ongoing maintenance

Ongoing maintenance of the conservation area should include

- Maintenance of restoration areas, access areas, general bushland management, Bushfire management



**SUMMARY OF REPORTS
ORDINARY MEETING- 5 SEPTEMBER 2005
CITY DEVELOPMENT REPORT**

The following matters are submitted to Council for consideration and/or determination:

ITEM NO.	SUBJECT	PAGE NO
CDE 01	DEVELOPER AGREEMENT FOR BORAL MOOREBANK PRECINCT	1

LIVERPOOL CITY COUNCIL

CITY DEVELOPMENT REPORT

ORDINARY MEETING

05/09/2005

ITEM NO:	CDE 01	FILE NO:	J15/02
SUBJECT:	DEVELOPER AGREEMENT FOR BORAL MOOREBANK PRECINCT		
AUTHOR:	BARRY MILLWOOD - STRATEGIC PLANNING CO-ORDINATOR DEVELOPER CONTRIBUTIONS		

EXECUTIVE SUMMARY:

In conjunction with the development of the former Boral quarry (Boral Moorebank Precinct) a developer agreement has been negotiated with the developer to provide various infrastructure works. Such an agreement has been noted in previous reports to Council and has been allowed for in the amendment to the Liverpool LEP 1997, which rezoned the site to allow residential development. The agreement is possible, as there is only one owner (who is also seeking to develop) to negotiate with.

The agreement will operate concurrently with Liverpool Contributions Plan 2001 in that the developer will still contribute to the relevant infrastructure under the plan with the exception of embellishment of local open space. This is because the developer will provide additional local open space and its embellishment under the developer agreement.

There will be Bank Guarantees under the agreement to ensure that specific infrastructure and land will be provided at no direct cost to Council.

DETAILED REPORT:

Background

Council at its meeting of 25 February 2002 adopted the Boral Moorebank Structure Plan and resolved to prepare and exhibit amendments to the Liverpool Local Environmental Plan 1997 in accordance with the adopted Structure Plan. A draft Local Environmental Plan (LEP) and Development Control Plan (DCP) were exhibited for the portion of the Structure Plan that is occupied by the former Boral quarry (Boral Moorebank Precinct) from 12 March to 16 April 2003.

Council at its meeting of 22 September 2003 considered a report on submissions received following this exhibition and resolved to proceed with the making of the LEP & DCP. The LEP amendment for the Boral Moorebank Precinct was gazetted on 9 July 2004 and the DCP came into force shortly after this date. The provision of certain works by a Developer Agreement was noted in this report.

The development of the Boral Moorebank Precinct includes the provision of a new link road from the intersection of Newbridge Road and Governor Macquarie Drive to Nuwarra

Road near the entrance to the New Brighton Golf Course (see a Locality Map at Attachment 1). This link will remove through traffic from the majority of Nuwarra Road. The cost of the new road link is to be fully funded by the developer of the Boral Moorebank Precinct. It is proposed that it be funded by way of a Developer Agreement. Council at its meeting of 15 August 2005 approved a development application for the link road.

Description of the Developer Agreement

The Developer Agreement is a commercial agreement between Council and Boral whereby Boral undertakes to carry out certain public infrastructure works and dedicate these free of charge to Council in conjunction with the development of residential land. Council has security for obtaining the public infrastructure works as it will hold a bank guarantee to the value of certain works or can withhold the release of residential lots until works are completed. The agreement is outside the scope of the Environmental Planning and Assessment Act 1979.

There are changes proposed to the Act, which will recognise such agreements. The agreement between Boral and Council will however come into being before these changes take place and will not be recognised under the Act. It will be binding on both parties under common law.

In summary the Developer Agreement will achieve the following:

- identify the land and infrastructure that are provided by Boral to support the development, and
- identify when land and infrastructure will be required, and the obligations of Boral in relation to providing them, and
- secure the obligations of Boral in relation to the land and infrastructure, and
- define the rights of Council in the event that Boral do not meet their obligations.

Scope of infrastructure proposed

The works to be provided by Boral under the Developer Agreement are as follows:

- Nuwarra Road / Maddecks Avenue intersection reconstruction
- Construction of a Link Road from Newbridge Road at Governor Macquarie Drive to Nuwarra Road near the entrance to New Brighton Golf Course
- Drainage basins
- Bus shelters
- Internal road works
- Rehabilitation of 33 ha bushland east of Link road
- Dedication and embellishment of about 4 ha of open space

How the Developer Agreement will operate

The methods that Council has to ensure that Boral will do the works to Council's satisfaction are as follows:

- Boral will pay cash to a bank guarantee generally to the value of the construction cost of the link road to ensure that there is sufficient money to ensure its provision if Boral did not proceed with the development.
- There will also be a bank guarantee to cover any road defects.
- Boral will give Council the land on which the link road is located before any more than 100 residential lots are created. (The agreement allows Boral to then use this land, prior to it becoming a public road.)
- Certain works must be provided before Council can release the subdivisions for sale.
- Step in rights for Council if Boral doesn't carry out the works to Council's satisfaction.
- A dispute resolution mechanism.
- The scope of works for the link road is defined by detailed plans.

Once both parties have signed the agreement, Boral will lodge Bank Guarantees in favour of Council to the value stated in the agreement and will dedicate certain lands to Council. Council will meet on a regular basis with Boral to ensure that the development of the site takes place smoothly. It is expected that Boral will commence work on the public infrastructure identified in the agreement in order to meet the deadlines specified in the agreement. Once the works are completed satisfactorily, Council will be able to release the bank guarantees.

Timing of provision of infrastructure

Under the agreement the timing of provision of public infrastructure is as follows:

Nuwarra Road / Maddecks Avenue intersection reconstruction	Prior to release of the first subdivision plan that creates residential lots. Also covered in part by a \$10 M bank guarantee for road works and a \$1 M bank guarantee against road defects.
Construction of a Link Road from Newbridge Road at Governor Macquarie Drive to Nuwarra Road near the entrance to New Brighton Golf Course	Prior to the release of any subdivision plan that would result in more than 480 lots being created in total. Also covered in part by a \$10 M bank guarantee for road works and a \$1 M bank guarantee against road defects.
Drainage basins	Prior to the release of a subdivision plan containing land, which drains to a basin.
Bus shelters	Prior to the release of a subdivision plan containing land upon which a shelter is to be erected.
Internal road works	Prior to the release of a subdivision plan of land containing internal road works.
Dedication of bushland east of Link road	Prior to the release of any subdivision plan that would result in more than 480 lots being created in total.

Rehabilitation of bushland east of Link road	Prior to the release of the final subdivision plan. Also covered in part by a \$0.33 M bank guarantee.
Dedication and embellishment of open space	Prior to the release of a subdivision plan containing land identified as open space.

Relationship to Liverpool Contributions Plan 2001

The Developer Agreement will operate concurrently with the Liverpool Contributions Plan 2001. The site is within the Established Areas sub-catchment under the contributions plan and as such development in that area is subject to contributions for:

- City Wide - Community Facilities
- City Wide - Recreation Facilities
- Established Areas - District Community Facilities
- Established Areas - District Recreation Facilities
- Established Areas - Local Recreation Facilities

The Contributions Plan envisaged that most additional development in Moorebank area would be scattered "in-fill" development and that additional open space would not be necessary. However as the site is a substantial concentration of new residential development the provision of additional open space was considered reasonable when the planning for the site was being undertaken. Accordingly the Development Agreement requires the developer to construct (to Council approval) and dedicate additional local open space.

As the developer will dedicate and embellish additional local open space, it is considered reasonable that the developer not be required to contribute to the Established Areas - Local Recreation Facilities. The developer will still be required to contribute to all of the other categories listed above.

This does not create an undesirable precedent as the development is providing local recreation facilities that are acceptable to Council in lieu of making a monetary payment.

Relationship to Liverpool Local Environmental Plan 1997

The Liverpool Local Environmental Plan 1997, which was amended to permit residential development on the Boral Moorebank Precinct, included a provision that Council must not approve residential development unless:

- (a) arrangements have been made, to the satisfaction of the RTA, for the level of contribution for the provision of appropriate regional traffic improvements, (*upgrade intersection of Newbridge Road and Governor Macquarie Drive*) and
- (b) there is a master plan that is satisfactory to the Council for the land, and
- (c) arrangements have been made to the satisfaction of the Council for the provision of appropriate infrastructure, including:
 - (i) provision of a road from Nuwarra Road at New Brighton Golf Course to Newbridge Road at Governor Macquarie Drive, and
 - (ii) provision of open space, and
 - (iii) provision of local drainage and water cycle facilities.

The arrangements referred to above in (c) constitute the development agreement.

Submissions

The scope of works for the development of the Boral Moorebank Precinct has been determined in the Development Control Plan and Masterplan. Both of these documents were publicly exhibited for comment. Discussions on the cost and implementation of works have taken place with Boral over the past 12 months.

By comparison, the "discussion" of the scope, cost and implementation of works in a Contributions Plan is the exhibition period, where the development industry can comment on the merits of the proposed contributions.

Contents of Developer Agreement

A copy of the Developer Agreement is shown in Attachment 2. A summary of the contents of the agreement is as follows:

Title	Called a Deed.
Parties to deed	Between Council and Boral.
Purpose	Outlines the purposes of the deed.
Definitions	Contains definitions of terms used in the deed so as to avoid any misunderstanding between the parties.
Impact on Council's powers	Council remains the consent authority. The deed does not fetter Council's powers, including its discretion to assess development applications under the Environmental Planning and Assessment Act 1979.
Security	Provides a security that the works will be provided by way of a bank guarantee to the value of the works proposed. It also identifies how and under what circumstances the bank guarantee will be released.
Works	Provides details on the standard of works and requirements for completion.
Dedicated Land	Provides that the land required for the provision of the link road and the environmental land will be dedicated up front to Council (at no cost to Council) and that Council then grants a licence to Boral that it may occupy the land to carry out works. It should be noted that the land will need to be classified as "Operational" under the Local Government Act 1993 in order for Council to allow Boral to occupy Council land. The deed also provides that land will be dedicated (at no capital cost to Council) as public open space and for internal streets as public roads in conjunction with any subdivision plan that creates a residential lot for sale.
Contributions	Provides that Boral will pay contributions under the Liverpool Contributions Plan 2001 as it applies on the date of consent. The contributions are to be paid prior to release of a plan of subdivision, as is the case with other developments. It should be noted that Boral will not be required to pay contributions for local recreation facilities under the plan as additional land and works will be provided on site for local recreation facilities.

Step in rights	Provides details on circumstances where Council has the right to step in and construct the works (funded by the bank guarantee).
Representatives	Provides for regular meetings between Council and Boral and the appointment of representatives to those meetings.
Dispute Resolution	Provides a procedure for resolving disputes between the parties should this arise.
Default in performance	Provides procedures if Boral breaches the Deed.
Termination	Identifies the circumstances in which the Deed is terminated. This includes when the development and works are completed.
Miscellaneous	Provides that Boral will pay for all costs associated with preparing the Deed.
Administrative Provisions	Provides details on how the parties should communicate, that the Deed may only be amended by agreement between the parties and that the law of New South Wales governs the deed.
Annexures	<ul style="list-style-type: none"> • Schedule of works to be provided by Boral and the timing of provision • Masterplan • Link Road specifications • Environmental Land Rehabilitation Works - Vegetation Management Plan • Land for the link road

BUDGET IMPACT:

There should be no impact on Council's budget as the developer funds the cost of works associated with the development. Council's financial position is protected by a number of bank guarantees. The values of the guarantees are as follows:

- \$10 M for road works Nuwarra Road / Maddecks Avenue intersection reconstruction and construction of the Link Road.
- \$1 M against road defects.
- \$330,000 for rehabilitation of bushland east of Link road

RECOMMENDATION:

That:

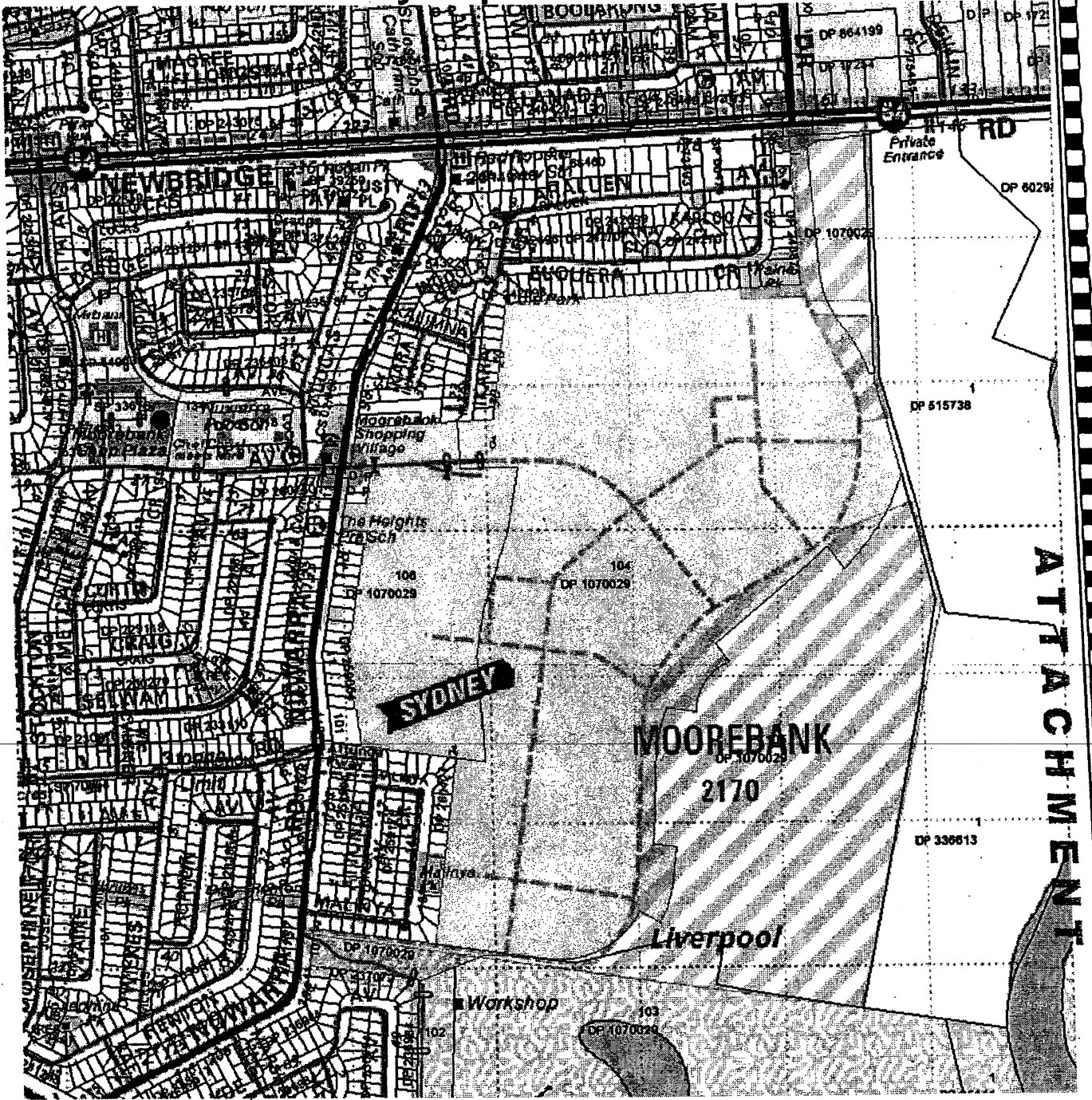
1. Council authorise the adoption of the developer agreement for the Boral Moorebank Precinct, and
2. Council affix the Council Seal to the Development Agreement.
3. All "dedicated land" under the deed be classified as "Operational" under the Local Government Act 1993.

SIGNED BY:

Phil Tolhurst
Corporate Manager
City Planning

Wayne Cooper
Corporate Manager
Assets and Infrastructure

Attachment 1 – Locality Map



ATTACHMENT

Attachment 2 – Developer Agreement

DEVELOPER DEED

PARTIES

1. LIVERPOOL CITY COUNCIL of 1 Hoxton Park Road, Liverpool in the State of New South Wales.
2. BORAL BRICKS PTY. LTD (ABN 66 082 448 342) of C/- Boral Limited, Level 39 AMP Centre, 50 Bridge Street, Sydney in the State of New South Wales.

BACKGROUND

- A. Boral and Moorebank JV are the registered proprietors of the Boral Land.
- B. Boral Recycling, on behalf of Boral, and Moorebank JV are proposing to subdivide and develop the Boral Land in various stages for residential purposes.
- C. The Boral Land is subject to the LEP. The Council is the consent authority under the LEP in respect of the Boral Land.
- D. Clause 45C of the LEP provides that the Council must not grant consent to development on the Boral Land unless, among other things, arrangements have been made, to the satisfaction of the Council, for the provision of appropriate infrastructure.
- E. The Council has prepared and approved the DCP to guide development of the Boral Land.
- F. The parties acknowledge that the development of the Boral Land for residential purposes will result in a demand for provision of various public amenities, works and facilities which Boral has agreed to provide.

OPERATIVE PROVISIONS

1. DEFINITIONS

1.1 Interpretation of Deed

Unless the context otherwise requires:

Bank Guarantees means the Road Guarantee and the Works Guarantee.

Basins mean drainage basins constructed on the Boral Land (or any part of it) in accordance with the requirements of the DCP.

Boral means Boral Bricks Pty. Ltd. of c/- Boral Limited, Level 39 AMP Centre, 50 Bridge Street, Sydney in the State of New South Wales.

Boral Land means:

- (1) collectively Folio Identifiers Lot 101 DP 1070029, Lot 104 DP 1070029 and Lot 105 DP 1070029 (the registered proprietor of which is Boral) and Lot 106 DP 1070029 (the registered proprietor of which is Moorebank JV); and
- (2) any subdivided portion of the land referred to in paragraph (1).

Boral Representatives means Boral's representatives as notified to the Council in accordance with 9.1.

Boral Recycling means Boral Recycling Pty Limited (ABN 42 000 061 843).

City Wide Facilities has the meaning given to it in the Contributions Plan.

Claim against any person means any claim, action, demand, proceeding, judgment, damage, loss, cost, expense or liability howsoever incurred or suffered by or brought or made or recovered against that person and howsoever arising (whether or not presently ascertained, immediate, future or contingent).

Completion Notice means a notice, which complies with 5.6, such notice:

- (1) certifying that Boral has completed all or part of the Works;
- (2) certifying that the Works the subject of the notice have been completed in accordance with 5.4; and
- (3) attaching inspection reports from an Independent Engineer confirming the matters in (1) and (2).

Consent means any:

- (1) consent issued by the Council as a consent authority or other authority under the Local Government Act or the Planning Act for the carrying out of the Development; and
- (2) any other consent or authorization from any governmental, semi-governmental, statutory or other authority necessary for the carrying out of the Development.

Contributions means the contributions for City Wide Facilities and Established Areas District Facilities payable by Boral to the Council under the terms of the Contributions Plan and pursuant to conditions of Consent imposed under section 94 of the Planning Act, as contemplated in clause 7 of this Deed.

Contributions Plan means the Liverpool Contributions Plan 2001 (as amended or replaced from time to time).

Costs and Claims means any:

- (a) duty, liability or obligation to any person;
- (b) cost or expense (including legal costs on an indemnity basis)
- (c) loss or damage; and
- (d) claim, proceeding, demand, notice, order or other requirement.

Council means Liverpool City Council of 1 Hoxton Park Road, Liverpool in the State of New South Wales.

Council Representatives means the nominee of the General Manager of Council as notified to Boral in accordance with 9.1.

Covenant means the covenant made by Boral not to sell the Boral Land except on the terms set out in 4.2.

Day means a calendar day.

DCP means Liverpool City Council Development Control Plan No 50 entitled "Boral Moorebank Land" and any amendment, variation or replacement of that planning document.

Dedicated Land means collectively the Open Space, Environmental Land, Internal Roads and the Link Road Site.

Development means the development of the Boral Land by Boral and Moorebank JV in accordance with the Masterplan, DCP and the terms of this Deed.

Dispose means to transfer, sell, assign or otherwise dispose of an interest in the Boral Land. Without limiting the generality of the preceding sentence the term 'Dispose' also includes a change in control (as defined in s50AA of the Corporations Act 2001) in Boral. **Disposition** has the same meaning as Dispose. The parties acknowledge that a change in control in Boral Limited will not of itself constitute a change in control in Boral.

Dispute means a dispute regarding the terms or operation of this Deed.

Drainage Works means the construction of Basins on any part of the Boral Land which is identified in the Masterplan as having Basins erected on it.

Environmental Land means that portion of the Boral Land zoned 7(c) Environment Protection - Bushland in the LEP.

Established Areas District Facilities has the meaning given to it in the Contributions Plan.

Final Completion means the date upon which Council certifies to Boral in accordance with clause 5.5(3)(a) that the works performed by Boral are reasonably satisfactory to Council.

Force Majeure Event means anything outside the reasonable control of a party including but not limited to acts of god, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic and/or quarantine restriction

Independent Engineer means an appropriately qualified and experienced civil engineer who is a member of the Institute of Engineers Australia (now known as ENGINEERS AUSTRALIA) or the Association of Professional Engineers, Scientists and Managers, Australia that is approved by Council (which approval must not be unreasonably withheld) prior to engagement by Boral.

Insolvency Event means the happening of any of these events:

1. Application which is not withdrawn or dismissed within 14 days is made to a court for an order or an order is made that a body corporate be wound up; or
2. An application which is not withdrawn or dismissed within 14 days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order; or
3. Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or

4. A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved; or
5. A body corporate is or states that it is insolvent; or
6. As a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand; or
7. A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or
8. A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
9. A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event;
10. A receiver, manager or receiver and manager is appointed to the Company;
11. A body corporate becomes an externally administered body corporate within the meaning of the Corporations Act;
12. A claim is filed in a court against a person that is not defended, released or otherwise settled within 28 days of the date of its filing at the court; or
13. Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Internal Road Works means all:

1. internal roads and streets to be constructed on the Boral Land pursuant to any Consent; and
2. all pathways, footpaths, cycleways and other walkways to be constructed on the Boral Land pursuant to any Consent.

Internal Roads means all public roads, footpaths and cycleways to be dedicated by Boral to the Council in accordance with any Consent.

LEP means the Liverpool Local Environmental Plan 1997 (Amendment No.75).

Link Road means the link road from Newbridge Road to Nuwarra Road as shown in the DCP.

Link Road Site means the land which comprises the site for the proposed Link Road.

Link Road Variation means the widening of the Link Road site by the dedication of additional land by Boral, such land to be dedicated from the land that is:

- (1) adjacent to the Link Road; and
- (2) not Environmental Land.

Local Government Act means the *Local Government Act* 1993 (NSW).

Masterplan means the document attached at **Annexure 2**.

Moorebank JV means Moorebank (Urbex) Investments Pty Ltd ACN 107 817 710) and CPG Moorebank Pty Ltd ACN 107 832 913 (jointly and severally).

Open Space means approximately 4 hectares of open space within that portion of the Boral Land zoned Residential 2(a) in the LEP, such area being selected in accordance with the DCP and the Masterplan.

Open Space Works means embellishment of Open Space generally in accordance with any Consent, the DCP and the Masterplan.

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

Practical Completion means the relevant Works have been completed in accordance with 5.4 except for minor defects:

(1) which do not prevent the relevant Works from being reasonably used:

for their intended purpose; and
in the manner which such works are ordinarily used; and

(2) rectification of which will not prejudice the convenient use of the Works.

Rehabilitation Works means the rehabilitation of the Environmental Land to a maximum aggregate value of \$330,000 generally in accordance with Council's requirements, being the works defined in **Annexure 4** and entitled "Vegetation Management Plan".

Representatives means collectively the Boral Representatives and the Council Representatives.

Road Defects Guarantee means the bank guarantee or guarantees of one million dollars (\$1,000,000) which are provided by a reputable financial institution to secure Boral's obligation to:

(1) ensure that any parts of the Stage 1 Road Works and/or Stage 2 Road Works which are Practically Completed are completed in accordance with this Deed and the Consent; and

(2) rectify any defects in the Stage 1 Road Works and/or Stage 2 Road Works.

Road Guarantee means the bank guarantees in the amount of ten million dollars (\$10,000,000) provided by a reputable financial institution to secure Boral's obligation to:

(1) construct the Stage 1 Road Works; and

(2) construct and dedicate the Stage 2 Road Works,

in accordance with this Deed.

Sale Lot means a lot resulting from the subdivision and/or development of the Boral Land or any part of the Boral Land that creates a lot for residential purposes.

Shelter means a bus shelter complying with the terms of the DCP.

Shelter Works means the construction of a Shelter on any part of the Boral Land which is identified in the Masterplan as having a Shelter erected on it.

Stage means a stage of the Development consisting of a discrete parcel of Sale Lots, such stages being substantially in accordance with the Masterplan.

Stage 1 Road Works means the:

- (1) construction of an upgraded road approach from the Boral Land to the intersection of Maddecks Avenue and Nuwarra Road; and
- (2) construction and installation of traffic signals at the intersection of Maddecks Avenue and Nuwarra Road so as to accommodate anticipated additional traffic generated by the Development.

Stage 2 Road Works means the:

- (1) construction of the Link Road generally in accordance with the terms of the DCP; and
- (2) upgrade and reconfiguration of the intersection of New Brighton Golf Course and Nuwarra Road so as to accommodate anticipated additional traffic generated by the Development such works to include (without limitation) the construction, installation and phasing of traffic signals at the intersection,

all such works being generally in accordance with the plans and specifications attached at **Annexure 3**.

Subdivision Certificate means a certificate issued by Council authorizing the registration of a plan of subdivision as defined in accordance with section 109C(1)(d) of the Planning Act.

Works means collectively all works set out in Item 1 of the Works Schedule and is limited to that schedule.

Works Guarantee means the bank guarantee or bank guarantees in the amount of three hundred thousand dollars (\$330,000) provided by a reputable financial institution to secure Boral's obligation to perform the Rehabilitation Works.

Works Schedule means the table of works set out in **Annexure 1**.

1.2 Interpretation of Deed

Unless the context otherwise requires:

- (1) the plural number includes the singular number and vice versa;
- (2) words importing one gender extends to and includes the other gender;
- (3) a reference to any Deed, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time;
- (4) a reference to a person includes a reference to a company, the person's executors, administrators, successors, permitted assigns and substitutes;
- (5) headings form part of this Deed and it is permissible to use headings as an aid in interpreting the provisions of this Deed;
- (6) every covenant or Deed expressed or implied into this Deed which affects more than one person to this Deed binds each party jointly and severally;

- (7) a reference to 'days' means calendar days and not business days (being any day that is a day on which banks are generally open in the city of Sydney and which is not a Saturday, Sunday or public holiday);
- (8) the word "includes" in any form is not a form of limitation;
- (9) where an obligation must be performed within a required period of time from receipt of a notice the period within which that obligation must be performed does not include the day upon which the notice is received; and
- (10) a reference to "\$" or "dollars" is to be construed as a reference to Australian dollars.

2. IMPACT OF DEED ON COUNCIL POWERS

2.1 Consent authority

The parties acknowledge that the Council is a local government authority and consent authority with statutory rights and obligations pursuant to the terms of the Local Government Act and the Planning Act.

2.2 Construction of Deed to fetter powers

No term of this Deed is to be construed, or to operate, so as to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a consent authority or other authority.

2.3 Reading down of provisions

If any provision of this Deed would, or could likely, operate so as to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a consent authority or other authority then that provision is, to the extent necessary for it not to fetter, restrict or otherwise interfere with the exercise of the Council's powers as a consent authority:

- (1) be read down, if possible; or
- (2) severed from this Deed.

3. GENERAL PRINCIPLES

3.1 Relationship between the parties

- (1) No term of this Deed or any aspect of the operation of this Deed is to be construed so as to create any of the following relationships between the parties:
 - (a) joint venturers;
 - (b) partners;
 - (c) trustee and beneficiary;
 - (d) principal and agent; or
 - (e) employer and employee.
- (2) Each party must not:
 - (a) represent, or otherwise foster the understanding, that the relationship between the parties is one of the relationships set out in paragraph (1); and

- (b) represent or otherwise hold themselves out as representing or having the ability to bind the other party.

3.2 Purpose of this Deed

- (1) The purpose of this Deed is to:
- (a) identify the facilities, works, services, contributions, land and infrastructure required to support the Development;
 - (b) identify the facilities, works, services, contributions, land and infrastructure that are to be provided by Boral to support the Development;
 - (c) identify when facilities, services, contributions, land and infrastructure will be required, and the obligations of Boral in relation to providing them; and
 - (d) secure the obligations of Boral in relation to the Works.
- (2) The parties must, at all times, act in a manner consistent with the attainment of the objects set out in paragraph (1).

4. SECURITY

4.1 Provision of security by Boral

To secure the proper and timely performance of its obligations under this Deed Boral agrees to provide to the Council:

- (1) the Covenant as set out in 4.2; and
- (2) the bank guarantees as set out in 4.3.

4.2 Covenant

- (1) Boral covenants with the Council that it will not, except in the course of selling any Sale Lots, Dispose of any part of its interest in the Boral Land without the consent of the Council (which will not be unreasonably withheld). This clause shall not apply to:
- (a) any lots which are required for the purposes of roads, infrastructure, land acquisitions/dedications; or
 - (b) any other lot which is otherwise agreed in writing by Boral and Council to be excluded from the term "Sale Lot".
- (2) Council may only withhold its consent to the Disposition of Boral's interest in the Boral Land where the proposed disponent, in the reasonable opinion of Council:
- (a) is not a reputable entity with expertise in residential land development; and
 - (b) does not have adequate financial resources to conduct and finalise the Development.
- (3) The parties acknowledge and agree that:
- (a) except in relation to the circumstances in paragraph (b), Boral's rights and obligations under this Deed will continue notwithstanding the Disposition of its interest in any part of the Boral Land; and

- (b) prior to entering into any arrangements to Dispose of its entire interest in the Boral Land, Boral will ensure that the proposed disponent enters into a deed with the Council agreeing to be bound by the terms of this Deed as if a reference to Boral were a reference to the disponent and Boral will thereafter be released from its obligations under this Deed.

4.3 Bank guarantees

- (1) Boral must, on the date of this Deed, provide to Council:
- (a) the Road Guarantee; and
 - (b) the Works Guarantee.
- (2) Provided that Boral or Boral's nominee has provided the Road Defects Guarantee the Bank Guarantees are to be promptly returned to Boral by the Council:
- (a) in the case of the Road Guarantee – upon Practical Completion of the Stage 1 Road Works and Practical Completion and dedication to Council of the Stage 2 Road Works; and
 - (b) in the case of the Works Guarantee - upon Practical Completion of the Rehabilitation Works.
- (3) The Bank Guarantees must be unconditional and in a form acceptable to the Council acting reasonably.
- (4) The Road Defects Guarantee is to be returned to Boral by the Council upon the later to occur of:
- (a) Final Completion; or
 - (b) 12 months from the date of Practical Completion;
- of the Stage 1 Road Works and Stage 2 Road Works.

5 WORKS

5.1 Obligation to perform the Works

Boral must perform the Works as set out in Item 1 of the Works Schedule.

5.2 Time for completion of the Works

The Works must be completed within the time set out in Item 2 of the Works Schedule.

5.3 Costs of the Works

All costs incurred by Boral in performing the Works are to be borne solely by Boral.

5.4 Standard of the Works

Boral must construct and complete the Works in accordance with the following and in the event of an inconsistency in the following order of priority:

- (1) in accordance with all relevant Consents;

- (2) in accordance with Australian Standards applicable to works of the same nature as each aspect of the Works; and
- (3) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

5.5 Rectification by Boral of defective Works

- (1) Boral must provide a Completion Notice to the Council within 14 days of completing any aspect of the Works as set out in Item 1 of the Works Schedule.
- (2) The Council must inspect the Works set out in a Completion Notice within 14 days of the receipt of that notice and the Council will be deemed to have inspected those Works within this 14 day period.
- (3) Within 14 days of inspecting the Works set out in a Completion Notice the Council must provide notice in writing to Boral that the Works set out in the Completion Notice:
 - (a) have been completed satisfactorily; or
 - (b) have not been completed satisfactorily, in which case the notice must also detail those aspects of the Works which have not be completed satisfactorily,

and if Boral does not receive a notice from the Council within this 14 day period the Works set out in the Completion Notice will be deemed to have been completed satisfactorily.

- (4) Where the Council serves notice on Boral pursuant to paragraph (3)(b) Boral must:
 - (a) rectify the Works set out in the Completion Notice within 3 months from the date of the Council notice issued in accordance with paragraph (3)(b); or
 - (b) serve a notice on the Council that it disputes the Council's assessment that the Works the subject of the Completion Notice have not been completed satisfactorily.
- (5) Where Boral:
 - (a) serves notice on the Council in accordance with paragraph (4)(b) the dispute resolution provisions of this Deed apply; or
 - (b) rectifies the Works in accordance with paragraph (4)(a) it must serve upon the Council a new Completion Notice for the Works the subject of the Completion Notice issued in accordance with paragraph (1).
- (6) The provisions of paragraphs (2) – (5) apply to any new Completion Notice issued by Boral in accordance with paragraph (5)(b).
- (7) Where the Works set out in the Completion Notice have attained Practical Completion but:
 - (a) have not been completed in accordance with the Consent; or
 - (b) contain a material defect which:

- (i) adversely affects the ordinary use and/or enjoyment of the relevant works; or
- (ii) will require maintenance or rectification works to be performed on the works at some time in the future directly as a result of the existence of the defect;

Council may:

- (c) serve notice on Boral in accordance with paragraph (3)(b); and
- (d) upon service of the notice the provisions of paragraph (4) apply except that the reference to "3 months" in paragraph (4)(a) is to be deemed to refer to "6 months".

5.6 Requirements for a Completion Notice

A Completion Notice must:

- (1) be in writing;
- (2) be issued by an Independent Engineer; and
- (3) contain an acknowledgment from the Independent Engineer that:
 - (a) it is recognized that Council relies upon the certification provided by the engineer; and
 - (b) as a consequence of paragraph (a) the engineer owes a duty of care to Council, the breach of such duty entitling Council to make a claim in negligence against the engineer.

5.7 The Council acknowledges that Boral will subcontract some of the Works to its development partner Moorebank JV who in turn will use contractors to assist with the Works. Any such subcontracting shall not relieve Boral of any liability to Council under this Deed.

6 DEDICATED LAND

6.1 Dedication of the Dedicated Land

Boral must dedicate, or procure Moorebank JV to dedicate, to the Council:

- (1) the land designated as Dedicated Land in item 1 of the table set out in 6.2; and
- (2) the Dedicated Land within the time period set out in item 2 of the table set out in 6.2.

6.2

Schedule of dedication

The Dedicated Land must be provided to the Council by Boral or MJV in accordance with the following table:

Item 1: Dedicated Land	Item 2: Time for dedication
Open Space	At the time of release of a Subdivision Certificate where any road fronting the Open Space is to be dedicated to Council
Environmental Land	Prior to the release by the Council of any plan of subdivision that would result in greater than 480 lots being created from the subdivision of the Boral Land.
Internal Roads	At the time of release of a Subdivision Certificate where Sale Lots front the Internal Roads to be dedicated to Council
Link Road Site	Prior to the release by the Council of any plan of subdivision that would result in greater than 100 lots being created from the subdivision of the Boral Land.

6.3 Costs of dedication

Boral is to dedicate the Dedicated Land to the Council in accordance with the terms of this Deed at no cost to the Council.

6.4 Licence over dedicated land

(1) Where Boral:

- (a) is required to dedicate the Environmental Land or the Link Road Site; and
- (b) has not had the opportunity to perform any works that it must perform on that land;

then Council must grant a licence over the Environmental Land and/or the Link Road Site (as appropriate) in accordance with the terms of paragraph (2).

(2) Council grants to Boral a licence over the Environmental Land and/or the Link Road Site (as appropriate) in accordance with the following terms:

- (a) the licence is to be at no cost to Boral;
- (b) the permitted use is to be the performance of such works on the licensed land which are to be performed by Boral in accordance with the terms of this Deed;
- (c) Boral is to occupy the relevant licensed land at its own risk;
- (d) Boral must:

- (i) effect policies of insurance reasonably requested by Council including (without limitation):
 - A. public liability insurance in the amount of \$20,000,000. The insurance must cover all Claims in respect of damage to real and personal property and injury to, or death of persons, arising out of or in connection with the operation, use, repair or maintenance of the licensed land; and
 - B. a policy of insurance for the full amount of its legal liability under the Workers Compensation Act 1987 (NSW) in respect of each person employed by it in the activities conducted in and from the licensed land
- (ii) ensure that the policies of insurance referred to in paragraph (d) above:
 - A. are effected with a reputable insurer reasonably approved by Council;
 - B. (in the case of the public liability insurance policy) include a cross liability clause and note the interest of Council; and
 - C. are kept in force during the term of this Deed and certificates of currency evidencing the currency of the policies are provided to Council within 7 days of the policy being effected or renewed (as applicable).
- (e) Boral is to indemnify Council against any Claim made in respect of personal injury or death or damage to property arising from Boral's use and occupation of the licensed land; and
- (f) Boral must, at its own cost, maintain and keep in good and clean condition the licensed land until it has completed all works that it must perform on that land.

6.5 Dedication of the Link Road Site and construction of Stage 2 Road Works

- (1) The Link Road Site is to be dedicated and the Stage 2 Road Works are to be constructed generally in accordance with the DCP and the plans and specifications set out in **Annexure 3**.
- (2) Notwithstanding the terms of paragraph (1) the parties expressly acknowledge and agree that it is in their contemplation at the date of this Deed that the construction of the Link Road may need to be varied by the Link Road Variation.
- (3) Council may, acting reasonably, provide notice in writing to Boral that the Link Road Variation is required. Where Council gives notice to Boral in accordance with the preceding sentence the parties agree that:
 - (a) the reference to the term "Link Road" in the "Stage 2 Road Works" definition and the "Link Road Site" definition is deemed to refer to the Link Road as varied by the Link Road Variation;
 - (b) Boral is, at its own cost, to do all such acts and things as are necessary to acquire (if applicable) and subsequently dedicate to Council any additional land required for the Link Road Variation; and

- (c) Boral may make no Claim, of any nature, against Council in respect of the necessity to perform the works related to the Link Road Variation.
- (4) Any notice provided by Council to Boral in accordance with paragraph (3) must specifically identify:
 - (a) the areas of the link road that are to be widened; and
 - (b) the dimensions of any variation to the width of the link road.
- (5) Council may only issue the notice in clause 6.5(3) prior to issue by Council of the construction certificate for the Link Road works.

7 CONTRIBUTIONS

7.1 Contributions

Boral acknowledges that the Development will give rise to the need to pay the Contributions for the provision and augmentation of public amenities and public services.

7.2 Payment of the Contributions

Boral must pay the Contributions prior to the release by Council of a plan of subdivision for a Stage.

7.3 Calculation of the Contributions

The amount to be paid by Boral in accordance with 7.2 is to be determined in accordance with the Contributions Plan, as it applies at the time of consent. In the event of a significant change in the Contributions Plan applied to the Boral Land, the calculation of the amount payable by Boral shall take into account the value of works and land provided by Boral as set out in Annexure 1.

8 STEP-IN RIGHTS

8.1 Rights on default

- (1) Subject to paragraph (2) below the Council may, at its absolute discretion, enter upon the Boral Land for the purpose of performing the Works where:
 - (a) any Works the subject of a Completion Notice are defective and the defects remain unrectified; or
 - (b) Boral has failed to complete the Works (or any part of the Works) within the time period set out in item 2 of the Works Schedule and no extension of time has been notified.

For the avoidance of doubt, the Council is not entitled to exercise any step-in rights if Boral has served notice on the Council in accordance with 5.5(4)(b) and the dispute resolution provisions of this Deed continue to apply.

- (2) Council may only exercise the step-in rights conferred pursuant to paragraph (1) above where:
 - a) Council has provided 45 days notice in writing to Boral that it intends to exercise the step-in rights; and

- b) Boral has not rectified the matter which confers upon Council the right to exercise the step-in rights.
- c) Boral may have a period greater than 45 days to rectify the matter giving rise to Council's ability to exercise its step-in rights where:

Boral and Council reach agreement in writing for such an extension; or a mediator recommends that a period greater than 45 days be granted, such mediation occurring in accordance with the terms of clause 10.

8.2 Consequence of step in

If the Council elects to exercise the step-in rights granted to it in accordance with 8.1 then:

- (1) the Council may:
 - (i) enter upon any part of the Boral Land that it requires access to in order to perform the relevant obligations of Boral; and
 - (ii) perform the obligations of Boral in relation to the relevant aspect of the Works
- (2) Boral's right to perform or rectify those Works which are the subject of Council's exercise of step-in rights is suspended.

8.3 Deemed licence to access the Boral Land

Where the Council exercises its step-in rights Boral:

- (1) grants to the Council an irrevocable, fee free licence to enter upon those parts of the Boral Land as are reasonably required by the Council for the purpose of exercising the step-in rights granted in this clause 8; and
- (2) must ensure that the Council's access to the Boral Land is not prevented or otherwise interrupted by Boral or any person claiming through Boral.

8.4 Costs of the Council performing the Works

Where the Council exercises its step-in rights all costs incurred by the Council in performing and/or rectifying the Works:

- (1) must, in relation to the Stage 1 Road Works, Stage 2 Road Works and Rehabilitation Works, first be recovered by the Council seeking application of the Road Guarantee and/or Works Guarantee; and
- (2) in all other circumstances (including where the Road Guarantee and/or Works Guarantee are not sufficient to discharge the costs of Council) must be paid by Boral to the Council within 30 days of the Council providing to Boral an invoice detailing the costs incurred by the Council in performing and/or rectifying the Works.
- (3) The Council may, at its discretion invoice:
 - (a) at the completion of the Works; or
 - (b) progressively during the performance of the Works at intervals not less than calendar monthly.

8.5 Indemnity from the Council to Boral

The Council indemnifies Boral against any Costs and Claims arising from or in respect of any negligent act or omission or statutory breach by the Council or any person under its control in connection with the exercise by the Council of its step-in rights pursuant to this clause 8 including relating to property damage, personal injury or death.

8.6 Standard of the Works

If the Council elects to exercise its step-in rights pursuant to this clause 8, 5.4 applies to the Council as if a reference in that clause to Boral is a reference to the Council.

8.7 Force Majeure Event

Notwithstanding any other provision of this Deed where Boral is unable to perform any Works in accordance with this Deed (including the works secured by the Road Guarantee and/or the Bank Guarantee) as a result of the occurrence of a Force Majeure Event Boral will not be in breach of this Deed provided it uses its reasonable endeavours to comply with its obligations under this Deed.

9 REPRESENTATIVES

9.1 Appointment

On the date of this Deed:

- (1) Boral must appoint the Boral Representatives;
- (2) the Council must appoint the Council Representatives; and
- (3) each party must notify the other of the Representatives it has appointed.

9.2 Contact between the parties

The parties agree that all communication regarding the Development will be initiated between the Representatives.

9.3 Meeting of the Representatives

- (1) The Representatives must meet at least once each month during the operation of this Deed to discuss any matters arising in respect of the Development.
- (2) The parties may from time to time, by agreement in writing, alter the frequency of meetings between the Representatives.
- (3) Minutes of meeting are to be taken at each meeting of the Representatives. The minutes are to be distributed to each party within 14 days of the date of the meeting between the Representatives.

9.4 Changing the Representatives

- (1) Each party may remove and/or replace any of the Representatives that have been appointed by them.
- (2) Upon changing the Representatives appointed by them Boral or the Council (as applicable) must notify the other party as to:
 - (a) the identity of the Representative removed; and

- (b) the identity and contact details of the replacement Representative (if any).

10. DISPUTE RESOLUTION

10.1 Notice of Dispute

If a party believes that there is a Dispute then:

- (1) that party must give notice in writing to the other party stating that there is a Dispute; and
- (2) the notice referred to in paragraph (1) must outline:
 - (a) what the party believes the dispute to be;
 - (b) what the party wants to achieve;
 - (c) what the party believes will settle the Dispute.

10.2 Consultation between the Representatives

Within 14 days of a notice served in accordance with 10.1 the Representatives must meet:

- (1) in order to resolve the Dispute; and
- (2) if they are unable to resolve the Dispute, to select a method of dispute resolution that will provide an effective and economical means of resolving the Dispute without prejudicing the relationship between the parties.

10.3 Progression to formal dispute resolution

Where the Representatives are unable to resolve the Dispute within the time period set out in 10.2 then:

- (1) where the Representatives agreed upon a form of dispute resolution in accordance with 10.2(2), the Dispute is to be submitted for resolution in accordance with that procedure; or
- (2) where the Representatives are unable to agree upon a form of dispute resolution in accordance with 10.2(2) then the Dispute is to be resolved by:
 - (a) submission of the Dispute to expert determination where the Dispute relates to a technical matter regarding the Works. The Dispute is to be:
 - (i) submitted to expert determination within 28 days of the notification of a Dispute pursuant to 10.1; and
 - (ii) conducted in accordance with 10.4; or
 - (b) in all other instances, by such other legal means as the parties deem fit, including, without limitation litigation in any court of competent jurisdiction.

10.4 Expert determination

Where a Dispute is referred to expert determination in accordance with the terms of 10.3 the parties agree that:

- (1) the President of the Australian Institute of Arbitrators is to appoint an expert with experience in the technical matters that are the subject of the Dispute;
- (2) the expert appointed in accordance with paragraph (1) is to act as an expert and not as an arbitrator;
- (3) the expert must resolve the Dispute within 28 days of the date that the parties refer the Dispute to him/her;
- (4) the costs of the expert determination are to be borne by the parties equally or as otherwise directed by the expert; and
- (5) the determination of the expert is final and binding on the parties.

11. DEFAULT IN PERFORMANCE

11.1 Events of default

Subject to clause 8.7, Boral commits an "event of default" if it breaches a term of this Deed.

11.2 Events of default

Where Boral commits an event of default the Council may:

- (1) serve a notice on Boral requiring the breach of this Deed to be rectified within a reasonable period from the date of the notice. If Boral fails to comply with the notice served in accordance with this paragraph then Council may exercise the step-in rights set out in clause 8; or
- (2) claim damages for breach of contract from Boral.

11.3 No restriction on rights

The rights vested in the Council pursuant to 11.2 do not prevent the Council from exercising any other rights that it may possess at law.

12. TERMINATION

12.1 Termination

This Deed terminates in the following events:

- (1) the parties agree in writing to terminate the operation of this Deed at any time;
- (2) an Insolvency Event affects a party;
- (3) the Council, acting reasonably, serves notice on Boral terminating this Deed where Boral has failed to comply with a notice issued in accordance with 11.2(1); and
- (4) Boral completes the Development in accordance with the terms of this Deed and the Consents.

12.2 Consequence of termination

Upon termination of this Deed:

- (1) all future rights and obligations of the parties under this Deed are discharged; and

- (2) all pre-existing rights and obligations of the parties under this Deed continue to subsist.

12.3 Legal costs and expenses

Where this Deed is terminated by the Council in consequence of Boral committing an event of default Boral must pay to the Council:

- (1) the amount of any damages suffered by the Council; and
- (2) any enforcement costs incurred by the Council in enforcing its rights under this Deed including, without limitation, legal costs (on a solicitor-own client basis) and court costs.

12.4 Legal Challenge

- (1) Despite any other provision of this Deed or the termination of this Deed, if the Court declares any Consent invalid, the Council must promptly return to Boral any contributions, land or works that Boral has paid or dedicated to the Council.
- (2) If there is a legal challenge to the validity of the whole or any part of the LEP, this Deed or any Consent:
 - (a) the Council must in relation to proceedings to which it is a party:
 - (i) promptly provide to Boral a copy of any initiating document filed in the proceedings;
 - (ii) support any application by Boral to be made a party to the proceedings.

13 MISCELLANEOUS

13.1 Legal costs

- (1) Boral must pay all reasonable legal costs incurred by the Council up to an aggregate maximum amount of \$20,000 in relation to the preparation of this Deed.
- (2) Boral will have no obligation to pay any legal costs incurred by the Council unless the Council first provides to Boral:
 - (a) a full itemisation of those costs; and
 - (b) a tax invoice addressed to Boral in respect of those costs.

13.2 Taxes

- (1) If any tax, duty, fee or charge ('levy') is payable in respect of this Deed then such levy is to be paid by Boral.
- (2) In the event that the levy is claimed directly from the Council, Boral agrees that it will reimburse the Council any amount paid to satisfy the levy. Boral must reimburse the Council the amount of the levy within 7 days of the Council notifying Boral that it has paid a levy.
- (3) The Council must provide Boral with a tax invoice or other required documentation upon payment or reimbursement of the levy by Boral.

13.3 Set-off and deduction

All amounts to be paid by Boral in accordance with the terms of this Deed must be paid without set-off or counterclaim of any nature.

13.4 Representation and warranties

Each party represents and warrants that:

- (1) it has power to enter into this Deed and comply with its obligations under the Deed;
- (2) this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
- (3) it has in full force and effect the authorisations necessary for it to enter into this Deed to which it is a party, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
- (4) its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
- (5) it is solvent;
- (6) it does not enter into this Deed as a trustee; and
- (7) it does not have immunity from the jurisdiction of a court of from legal process.

4. ADMINISTRATIVE PROVISIONS

14.1 Notices

Any notice, consent or other communication under this Deed shall be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (1) delivered to that person's address;
- (2) sent by pre-paid mail to that person's address; or
- (3) transmitted by facsimile to that person's address.

A notice given to a person in accordance with this clause is treated as having been given and received:

- (4) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (5) if sent by pre-paid mail, on the third Business Day after posting; and
- (6) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.

For the purpose of this clause the address of a person is the address set out in this Deed or another address of which that person may from time to time give notice to each other person.

14.2 Entire Deed

This Deed is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Deed.

14.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

14.4 Cooperation

Each party must sign, execute and deliver all deeds, documents, instruments and act reasonably and effectively to carry out and give full effect to this Deed and the rights and obligations of the parties under it.

14.5 Counterparts

This Deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

14.6 Amendment

This Deed may only be amended or supplemented in writing signed by the parties.

14.7 Unenforceability

Any provision of this Deed, which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this Deed or affecting the validity or enforceability of that provision in any other jurisdiction.

14.8 Power of Attorney

Each attorney who executes this Deed on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

14.9 Joint parties

If two or more parties are defined to be the same entity in this Deed:

- (1) a liability of those parties under this Deed is a joint liability of all of them and a several liability of each of them;
- (2) a right given to those parties under this Deed is a right given severally to each of them;
and
- (3) a representation, warranty or undertaking made by those parties is made by each of them.

14.10 Governing law

The law in force in the State of New South Wales governs this Deed. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this Deed.

ATTACHMENT

EXECUTION

EXECUTED AS A DEED.

Dated:

Whereupon the Common Seal)
of **Liverpool City Council** was)
hereunto affixed by the)
authority of the Council in)
accordance with resolution)
passed at a general meeting of)
Council on)
)
)

Administrator

General Manager

Whereupon the Company Seal)
of **Boral Bricks Pty. Ltd** was)
hereunto affixed by the)
authority of the Board of)
Directors.)

Director/Secretary

Director

ATTACHMENT

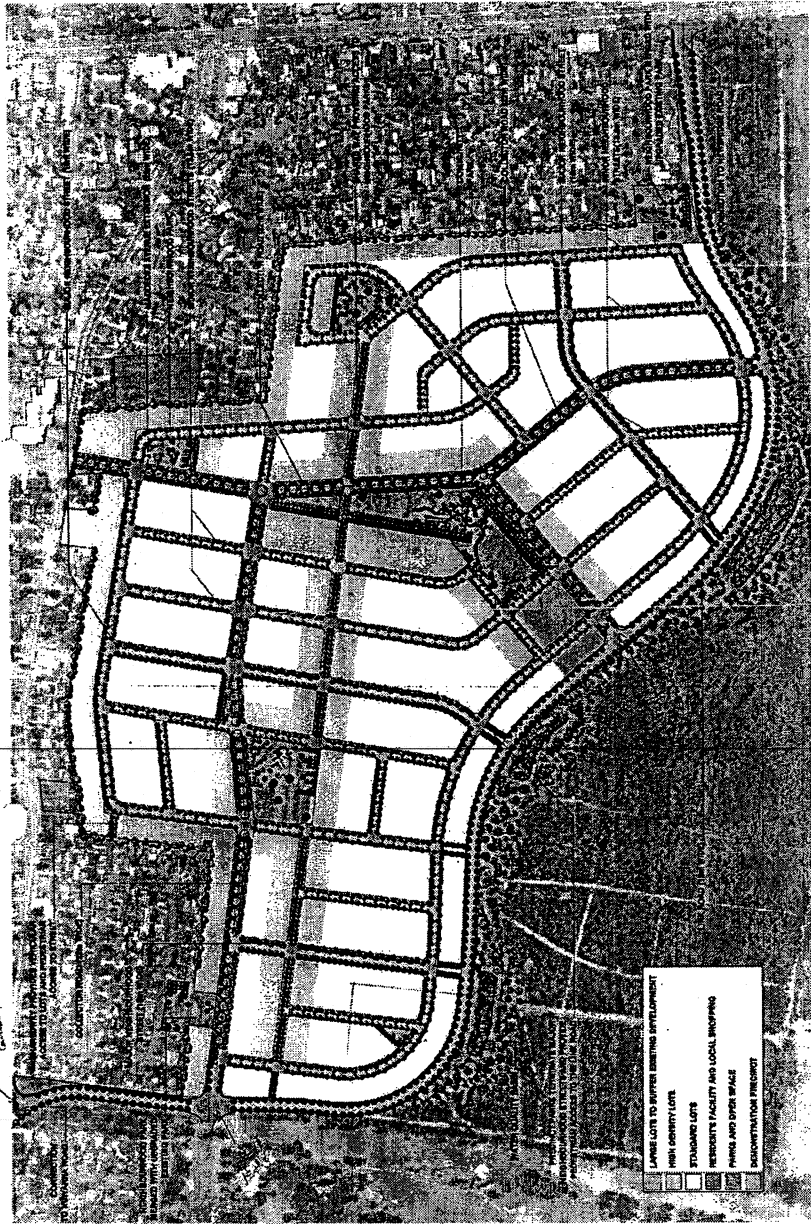
**Annexure 1
Works Schedule**

Works to be performed

Item 1: Nature of Works	Item 2: Time for completion of the Works
Stage 1 Road Works	Prior to release by the Council of the first plan of subdivision for the Boral Land that creates residential lots.
Stage 2 Road Works	Prior to the release by the Council of any plan of subdivision that would result in greater than 480 lots being created from the subdivision of the Boral Land.
Drainage Works	Prior to the release of a plan of subdivision containing land, which drains to the Basins.
Shelter Works	Prior to the release of a plan of subdivision containing land upon which a Shelter is to be erected.
Internal Road Works	Prior to the release of a plan of subdivision containing land in respect of which the Internal Road Works are required.
Rehabilitation Works	Prior to the release by the Council of any plan of subdivision for the final Stage of the Development.
Open Space Works	Prior to the release of a plan of subdivision containing land in respect of which the Open Space Works are required.

ATTACHMENT

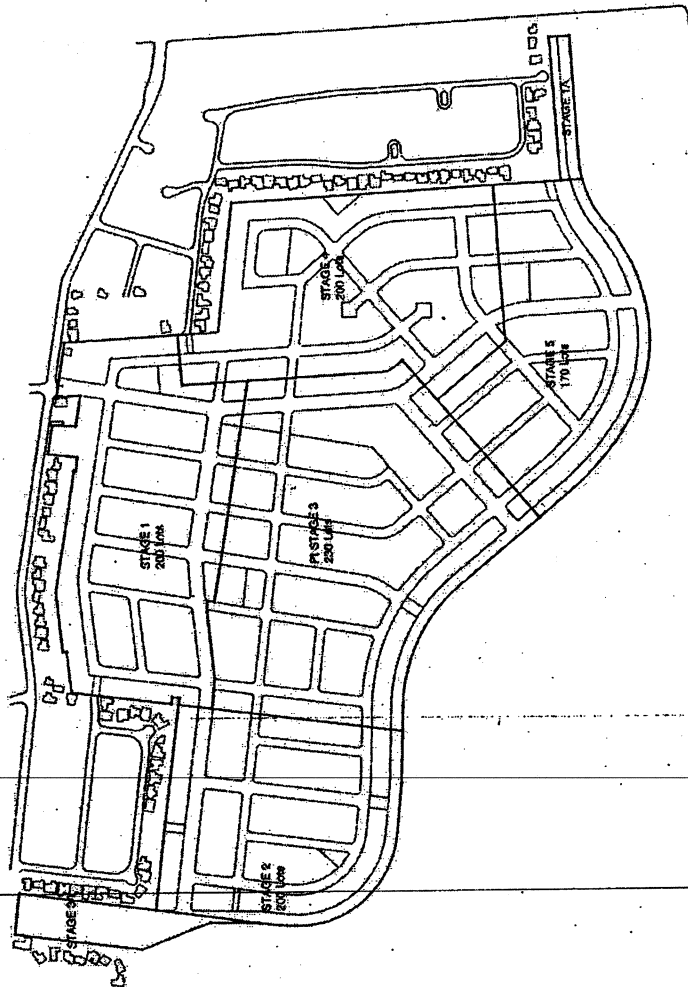
Annexure 2
Masterplan



Moorebank Masterplan
Moorebank Station
Moorebank, NSW
Site Design
JRM
Approved by Council
JRM
Landscape Architecture
OCELOP
Moorebank Station
Moorebank, NSW
Site Design
JRM
Approved by Council
JRM
Landscape Architecture
OCELOP

ATTACHMENT

ATTACHMENT



MOOREBANK MASTERPLAN

APPLICABLE REGULATIONS PLAN
 1/2000 & 2/1

DATE:
 1/2000 (as amended)

Site Plan

Urban Engineer

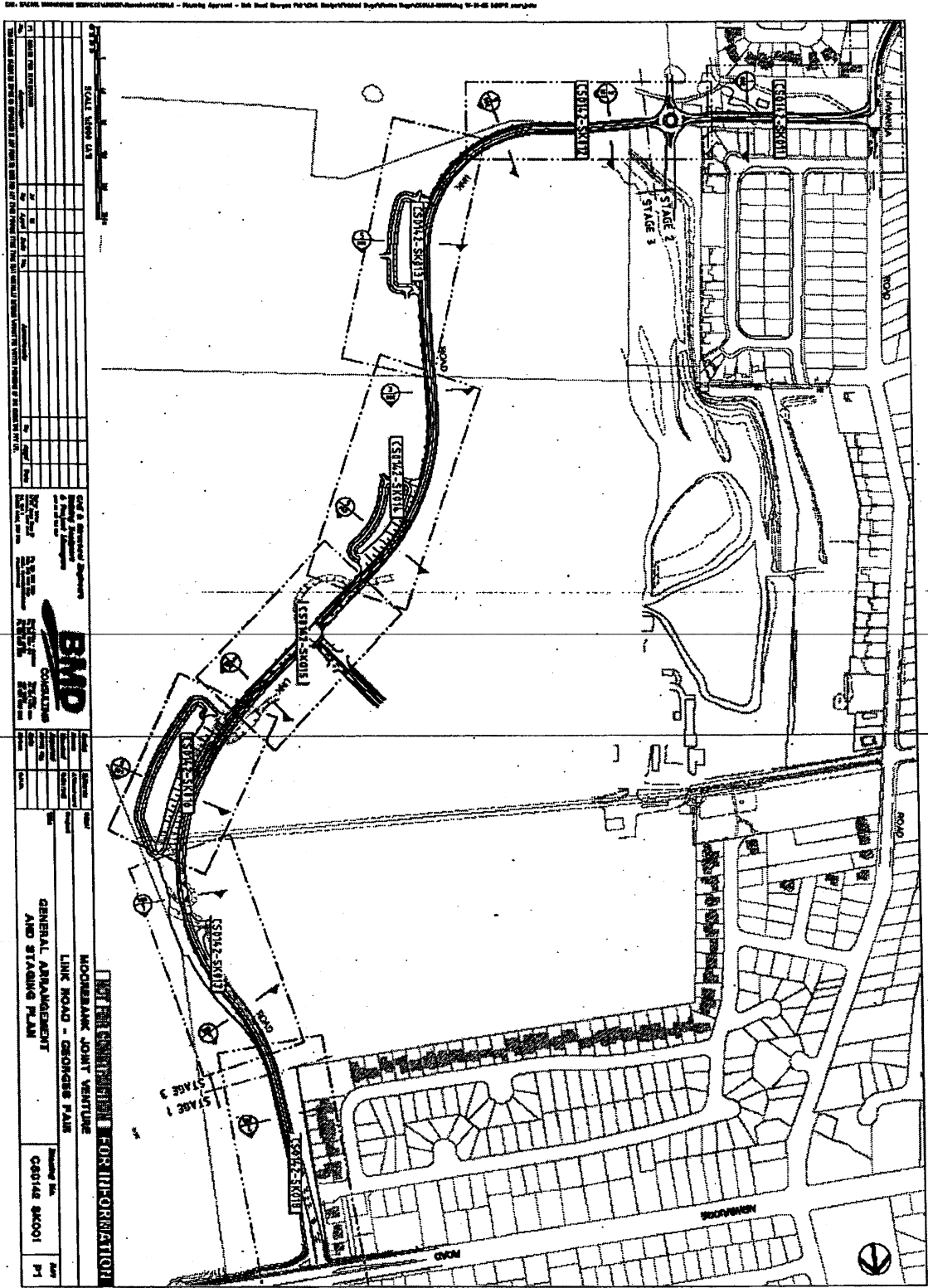
Project Manager and
 Senior Engineer

Planning Consultant

Developer/Client

ATTACHMENT

Annexure 3
Stage 2 Road Works

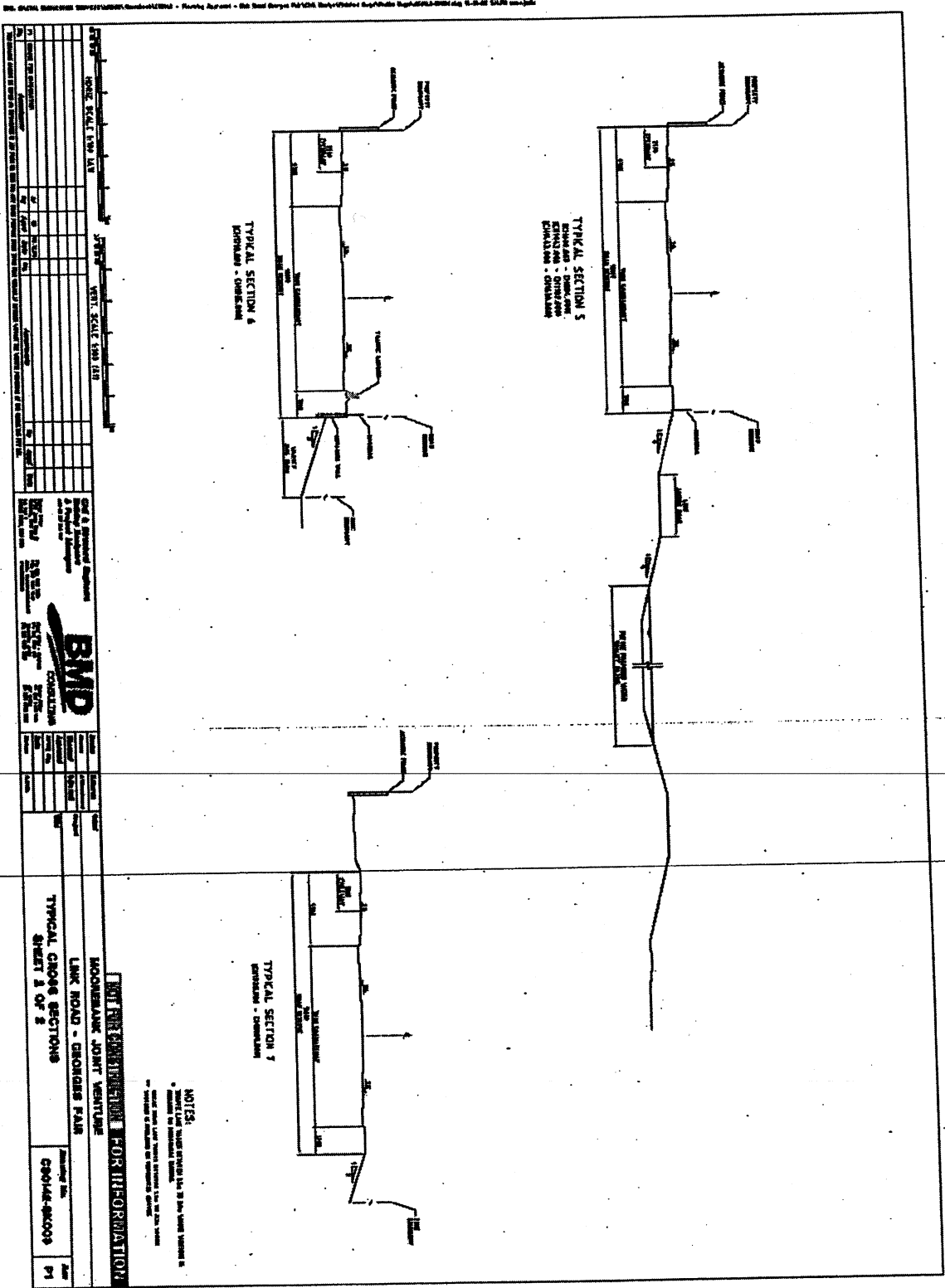


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CHECKED BY: [Name]	
APPROVED BY: [Name]	
PROJECT NO: [Number]	
SHEET NO: [Number]	
SHEET TOTAL: [Number]	
DRAWING TITLE: LINK ROAD - GEORGE'S PASS	
DRAWING TYPE: GENERAL ARRANGEMENT AND STAGING PLAN	
CLIENT: MOOREBANK JOINT VENTURE	
CONSULTANT: BMD CONSULTING	
DRAWING NO: C07148 BK001	
SHEET NO: 11	

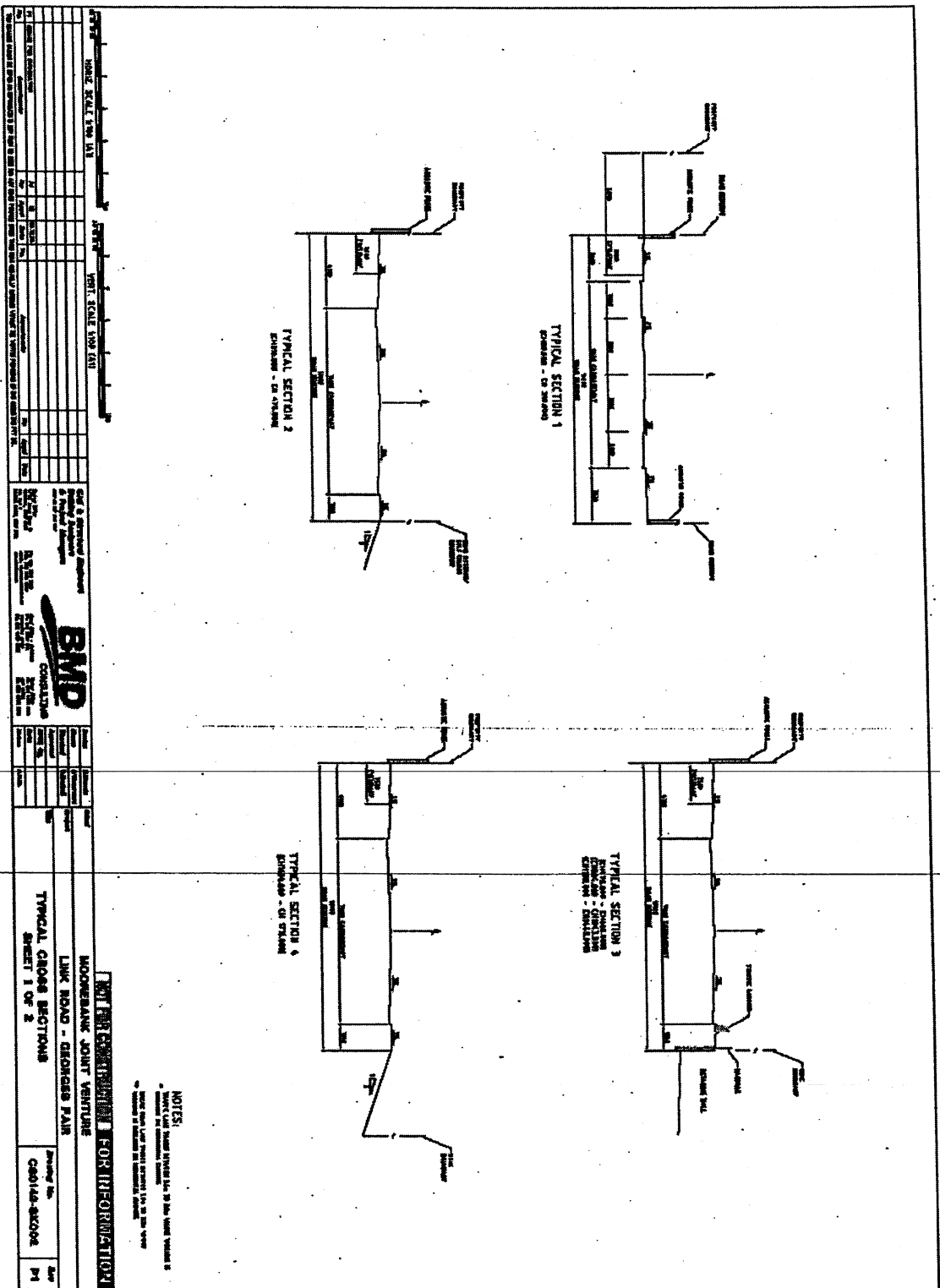
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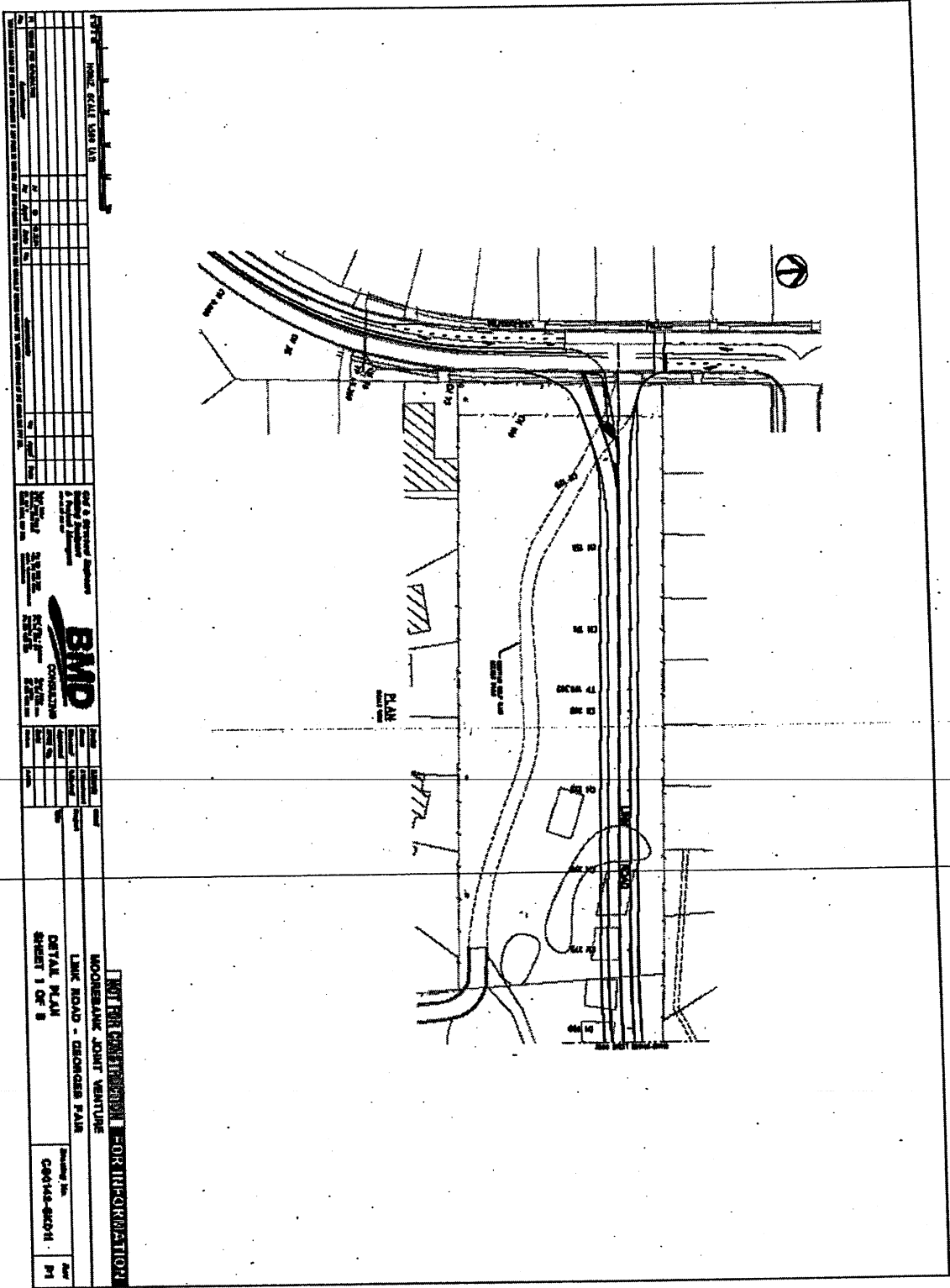
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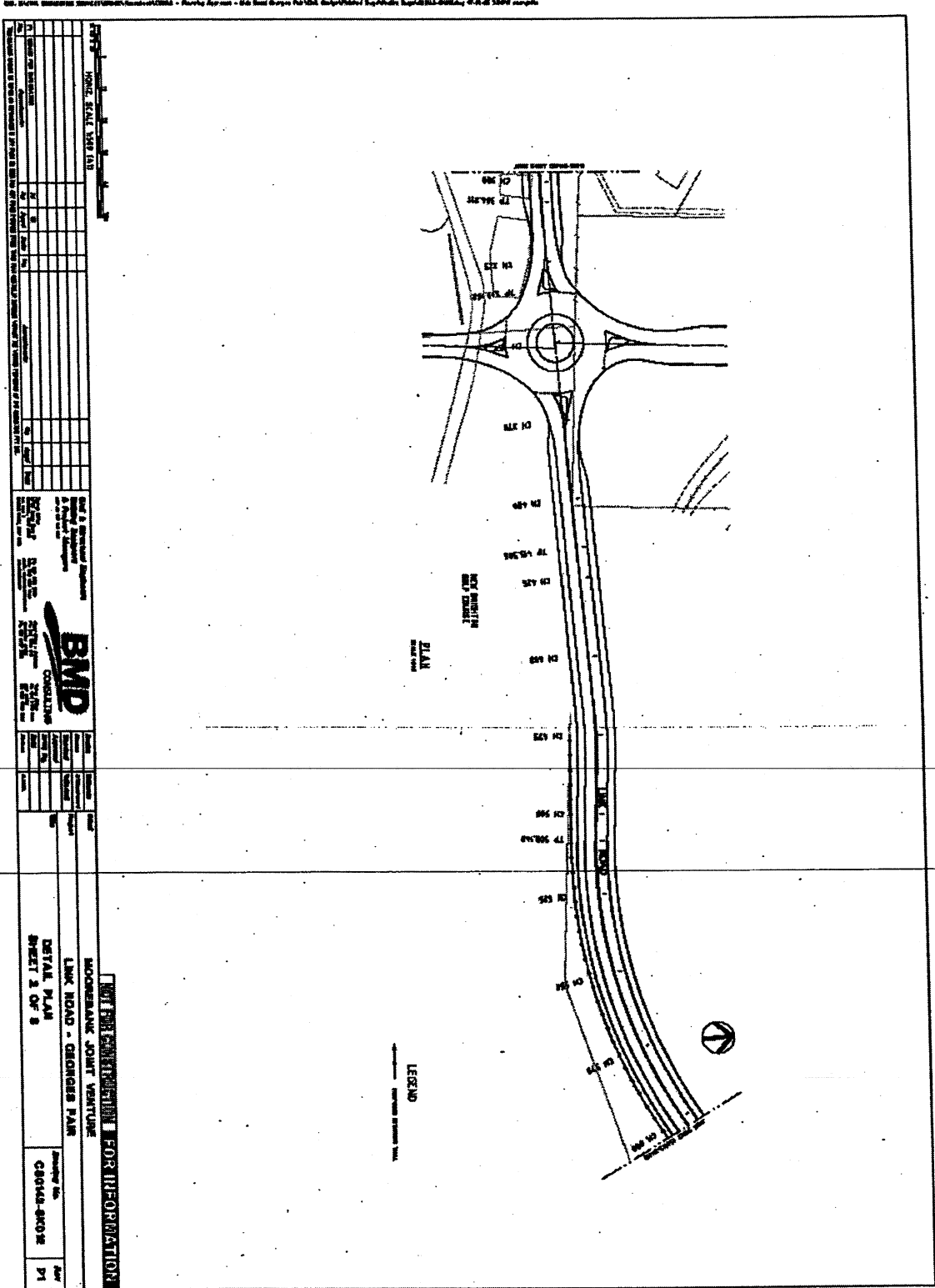


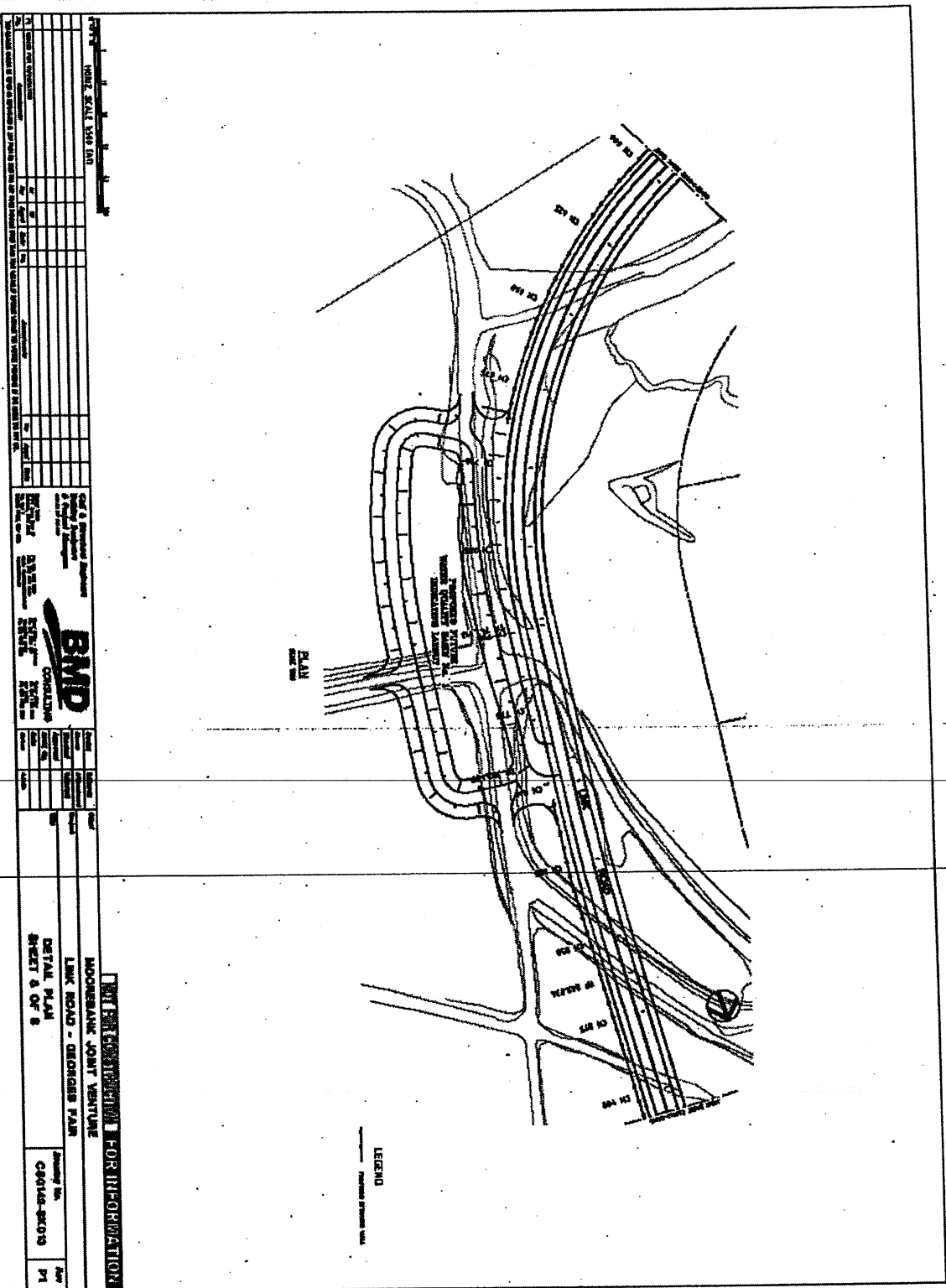


PROJECT: LINK ROAD SHEET: 1 OF 8		DATE: 08/11/04 SCALE: 1"=40'	
CLIENT: MOOREHEAD JOINT VENTURE PROJECT: LINK ROAD - GEORGES FAIR		DESIGNER: BMD CONSULTANTS PROJECT: LINK ROAD - GEORGES FAIR	
DRAWN BY: CADVALE-ROTH CHECKED BY:		DATE: 08/11/04 SCALE: 1"=40'	
PROJECT NO: 050905-OMC-CDE-01561-DEVELOPER AGREEMENT FOR B.doc/MillwoodB		SHEET NO: 1 OF 8	

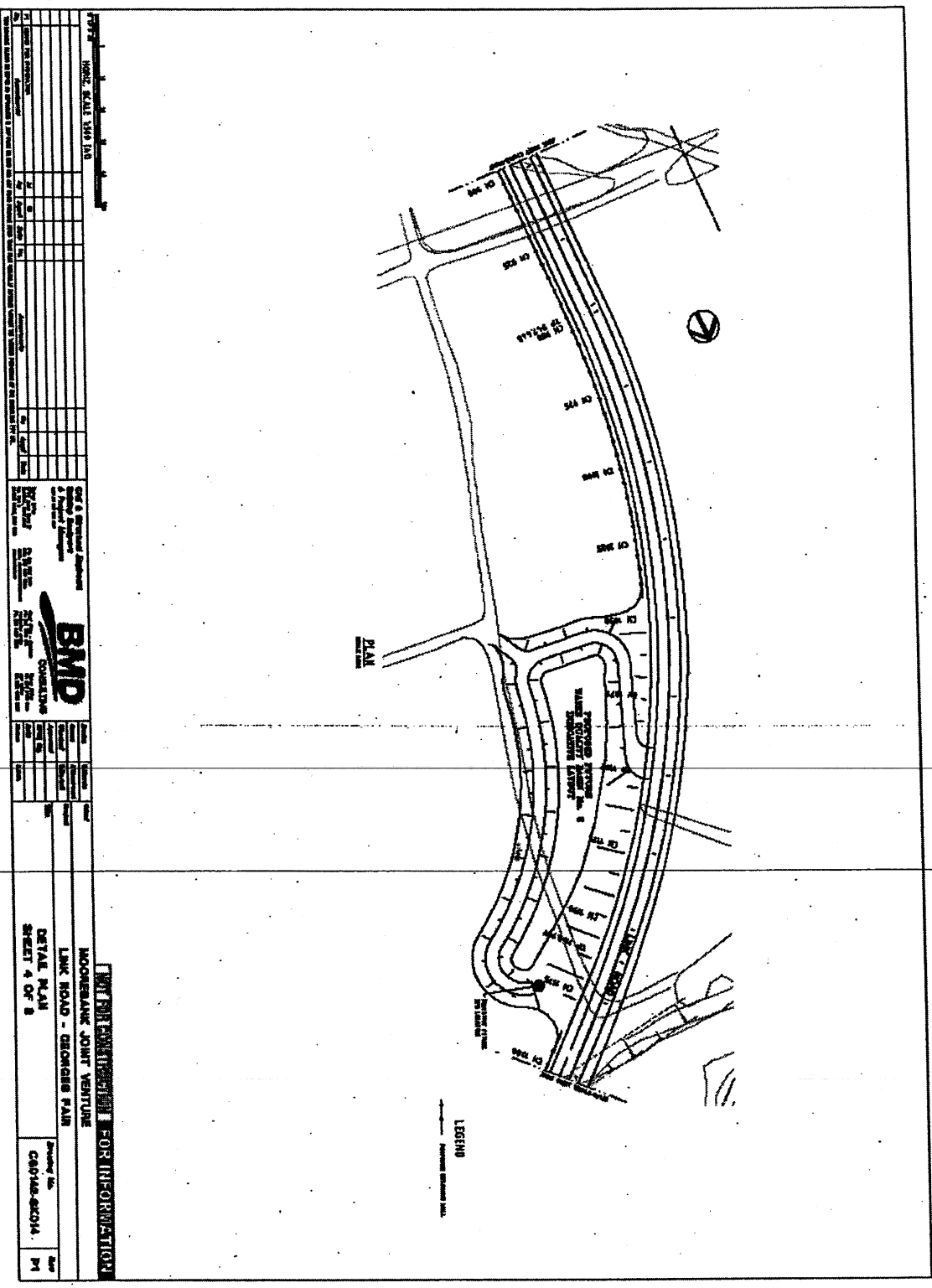
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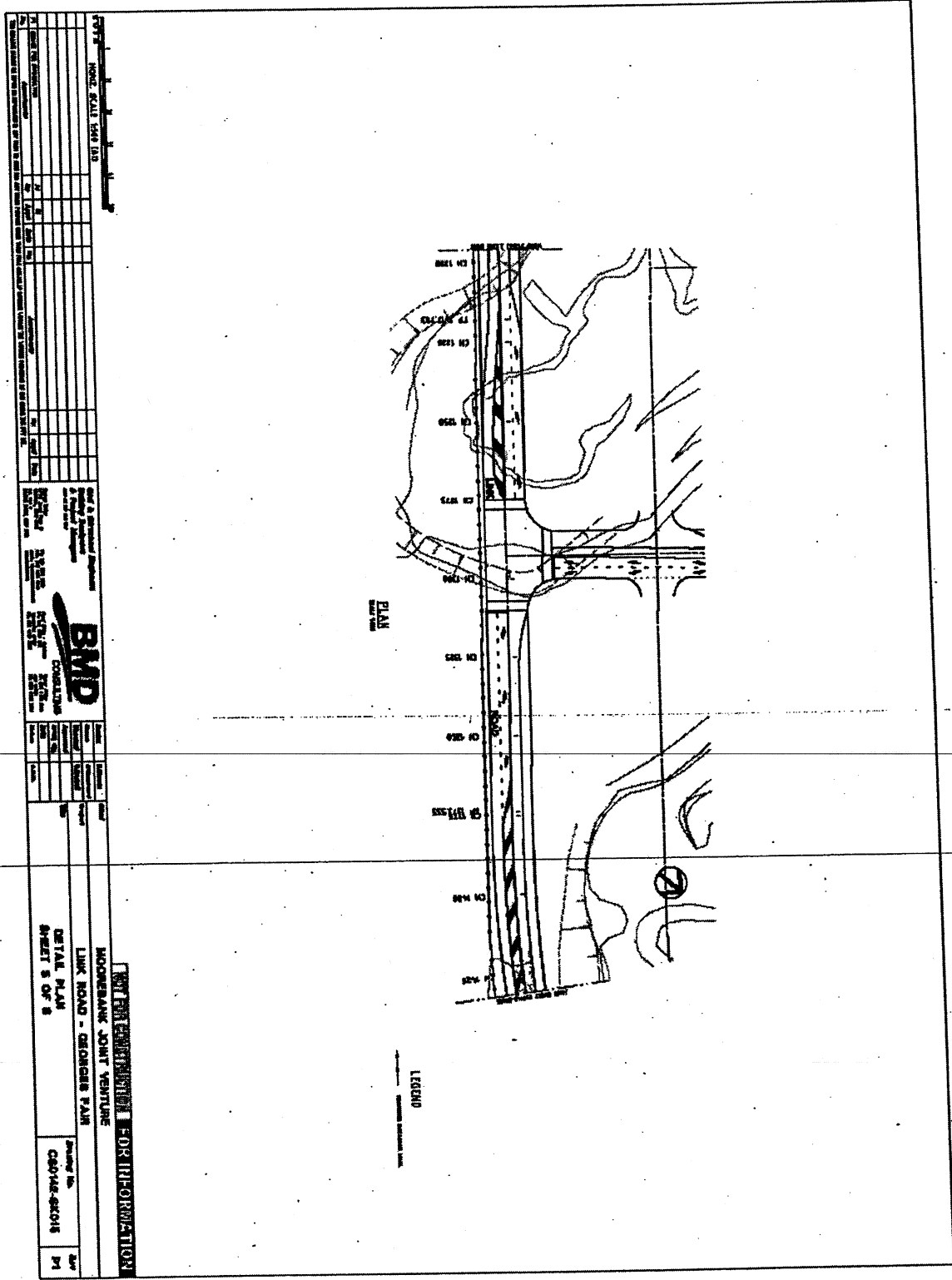




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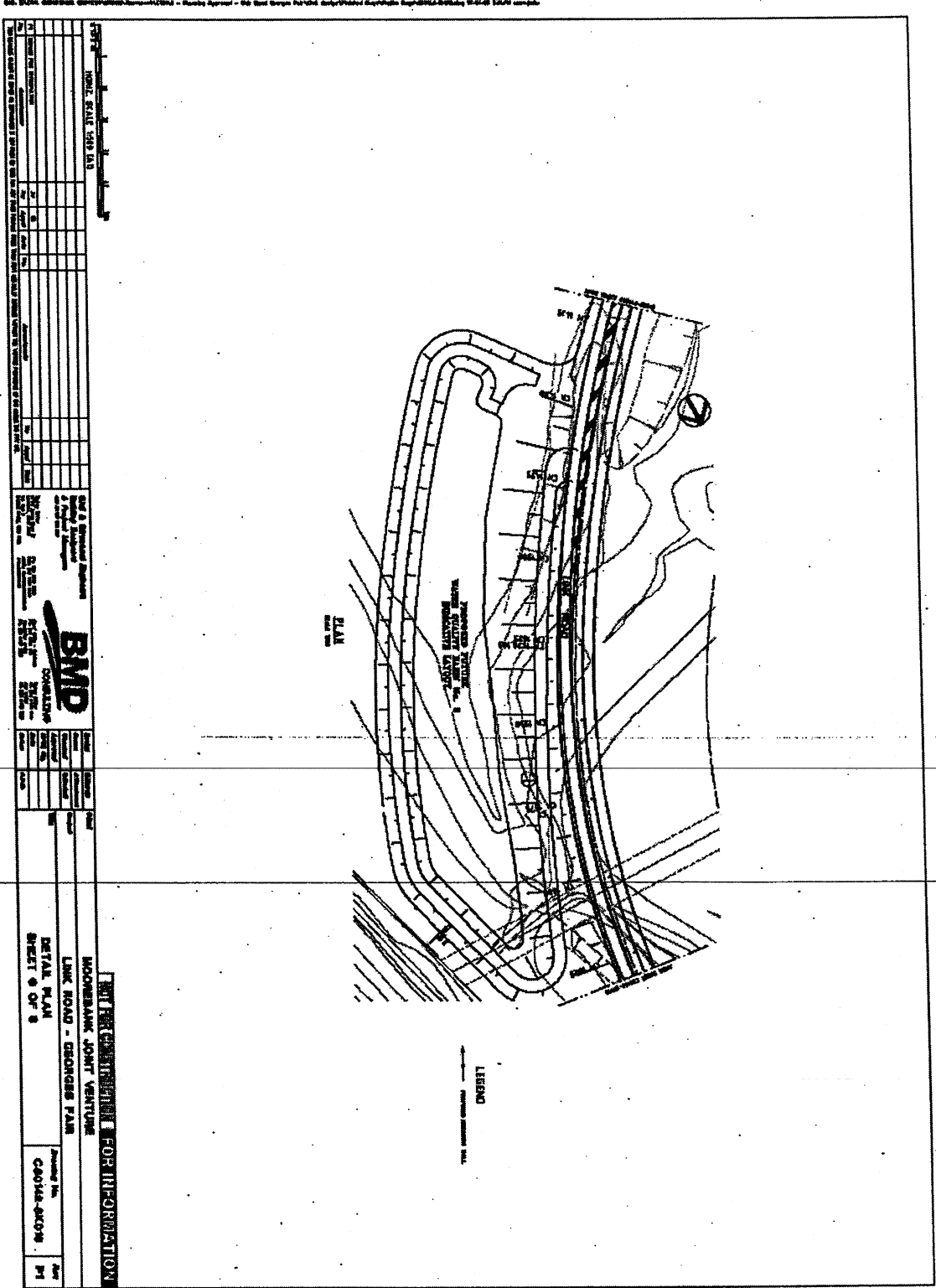


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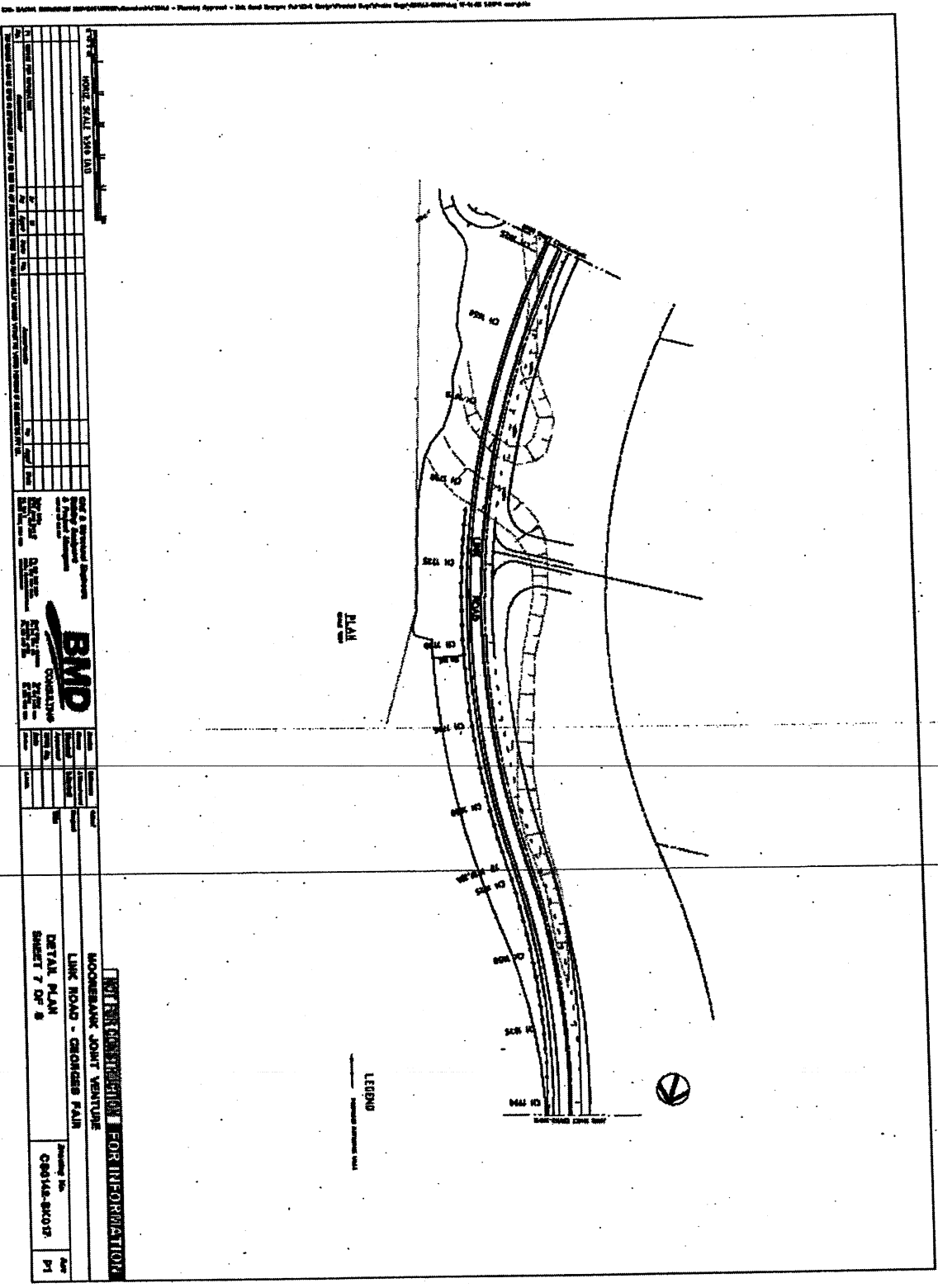
ATTACHMENT

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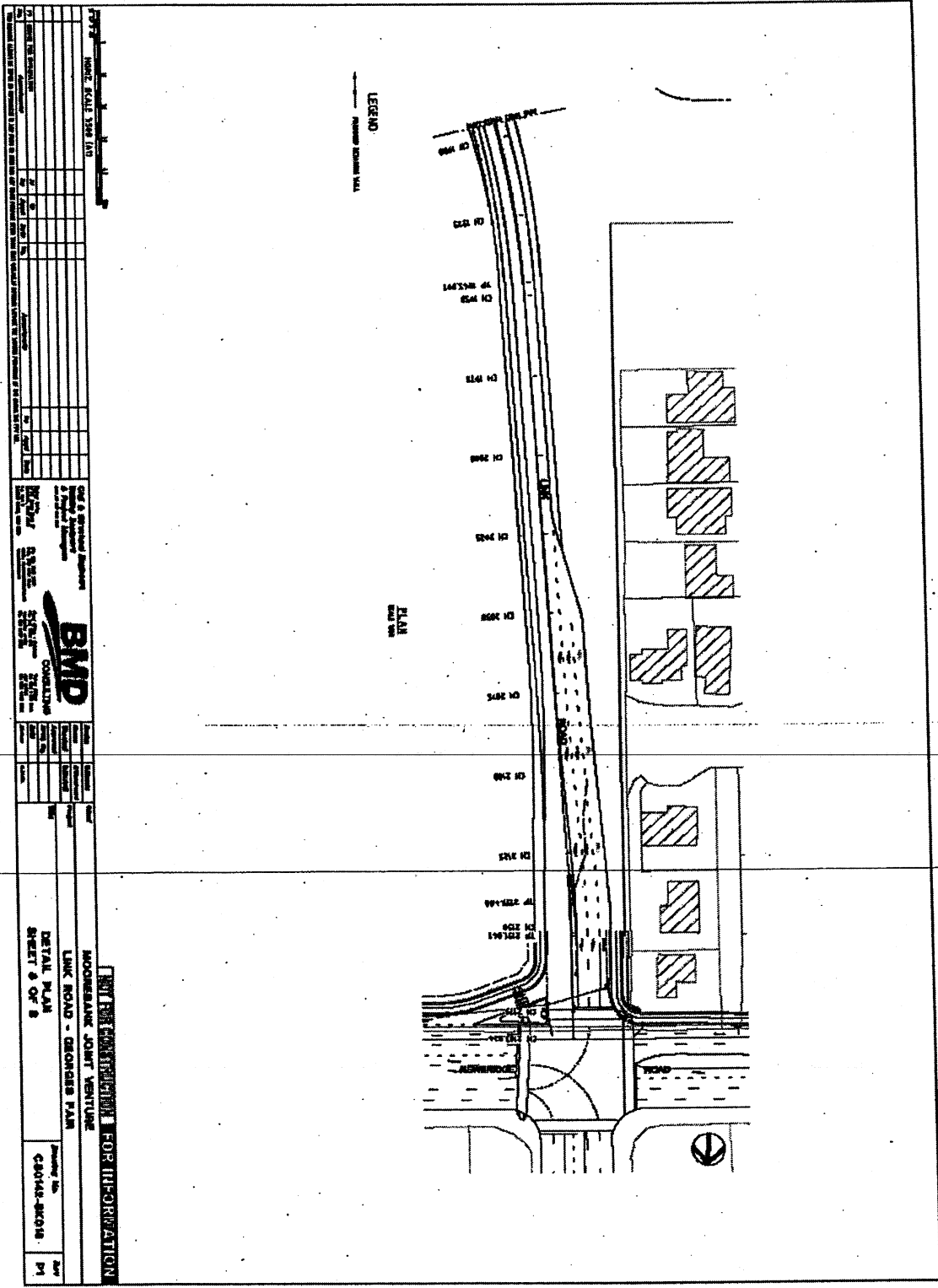
<p>NOT FOR CONSTRUCTION FOR INFORMATION</p> <p>MOOREBANK JOINT VENTURE</p> <p>LINK ROAD - BRIDGE PAV</p>		<p>Project No.</p> <p>CA016-AR08</p> <p>Sheet</p> <p>21</p>
<p>DETAIL PLAN</p> <p>SHEET 2 OF 8</p>		
<p>BMD CONSULTING</p> <p>10000 150th Street, Suite 100, Richmond, BC V6V 2G9</p> <p>Phone: (604) 273-8888 Fax: (604) 273-8889</p> <p>www.bmdconsulting.com</p>		
<p>DATE: 2018-08-15</p> <p>SCALE: 1" = 100'</p>		
<p>PROJECT: LINK ROAD - BRIDGE PAV</p> <p>LOCATION: MOOREBANK JOINT VENTURE</p> <p>CLIENT: MOOREBANK JOINT VENTURE</p> <p>DESIGNER: BMD CONSULTING</p> <p>CHECKER: [Name]</p> <p>APPROVER: [Name]</p>		

ATTACHMENT



<p>DATE: 05/14/2009 10:00:00 AM PROJECT: 050905-OMC-CDE-01561-DEVELOPER AGREEMENT FOR B.doc/MillwoodB SHEET: 7 OF 8</p>		<p>FOR INFORMATION</p>	
<p>LINK ROAD - CHONGS FAH</p>		<p>050905-OMC-CDE-01561-DEVELOPER AGREEMENT FOR B.doc/MillwoodB</p>	
<p>DETAIL PLAN</p>		<p>050905-OMC-CDE-01561-DEVELOPER AGREEMENT FOR B.doc/MillwoodB</p>	
<p>SHEET 7 OF 8</p>		<p>050905-OMC-CDE-01561-DEVELOPER AGREEMENT FOR B.doc/MillwoodB</p>	

ATTACHMENT



ATTACHMENT

ATTACHMENT

Rehabilitation Works – Vegetation Management Plan

Boral shall cause a Vegetation Management Plan (VMP) to be prepared for the site to the satisfaction of Council prior to works commencing. The focus of the plan will be the ongoing rehabilitation and maintenance of the Environmental Land. The VMP shall be prepared and its implementation supervised by a person suitably qualified in native vegetation management and restoration.

The VMP is to address management of the site for a period of 10 years.

The VMP shall address the following issues as a minimum requirement and will include any other issues as required by other government agencies.

1. A clear set of objectives for the rehabilitation and maintenance of the conservation area.
2. Development of a set of indicators that can be monitored and reported that can demonstrate achievement of the objectives.
3. Methodology for the ongoing monitoring to ensure the objectives of the plan are being met.
4. Reporting methodology. A pro-forma for reporting should be appended to the VMP. Reporting should take place at suitable intervals but no longer than 6 monthly.
5. All works must include details of staging, timing and resourcing
6. Restoration Methodology

The restoration methodology should include:

- Identification and Mapping of proposed works
- Weeding techniques
- Revegetation techniques including natural regeneration, species, replanting, local provenance seed collection, and propagation
- Ongoing care and maintenance including watering and mulching
- Management of sediment runoff, erosion control and nutrient runoff

7. Access Plan

The access plan should include:

- Appropriate fencing
- Access to bushland including identification of appropriate locations for access, techniques for formalisation / closure of existing tracks. Access needs to consider both public access, access for maintenance work and Bushfire management.
- Signage including Interpretive/educational/Hazard awareness (Signage may include: Awareness raising and education of local residents moving into the area of issues relating to the site including but not limited to local flora and

fauna, weeds, nutrients, dumping of rubbish, grass clippings and prunings, nutrient run-off and appropriate use of fertilisers, snakes, fire and collection of firewood, trampling of bushland, bushfire, Aboriginal heritage)

8. Ongoing maintenance

Ongoing maintenance of the conservation area should include

- Maintenance of restoration areas, access areas, general bushland management, Bushfire management

ATTACHMENT

Annexure 5

Lot 106

PLAN FORM 2

REFERENCE AND SCALE ONLY

Surveyor's Declaration
I, the undersigned, being a duly qualified and licensed Surveyor, do hereby certify that the above is a true and correct copy of the original plan as shown to me by the owner thereof, and that the same has been prepared in accordance with the provisions of the Survey Act, 1915, and the regulations thereunder.

Surveyor's Name: [Signature]
Surveyor's License No.: [Number]

Client's Name: [Name]
Client's Address: [Address]

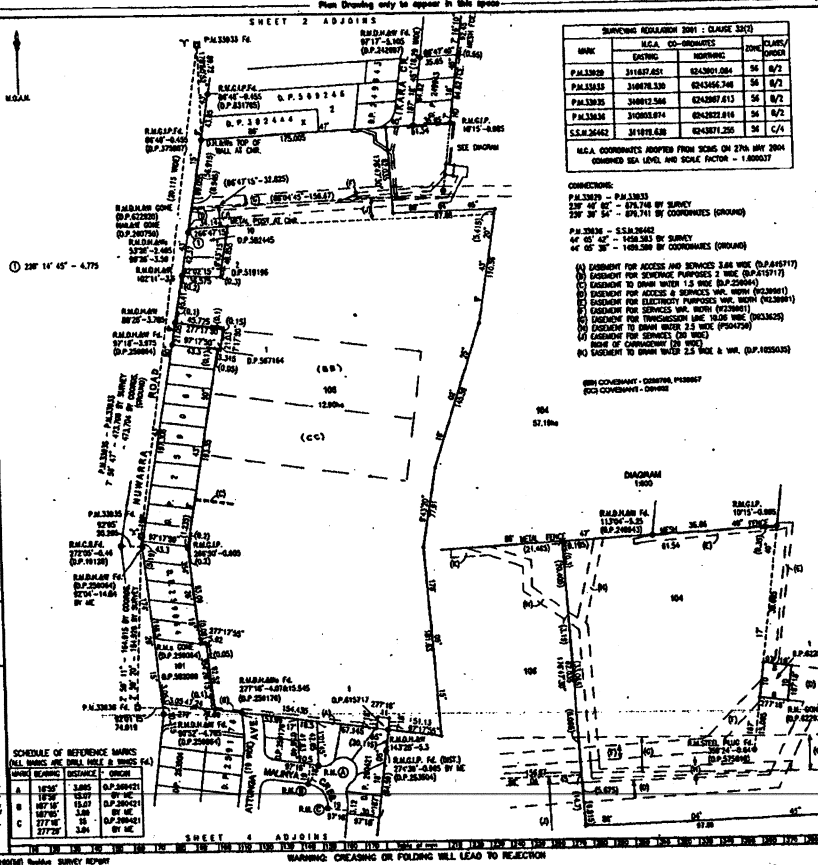
Project Name: [Name]

Scale: [Scale]

North Arrow: [North Arrow]

Surveyor's Signature: [Signature]

Surveyor's Stamp: [Stamp]



DP1070029
Reference # 18-10-2006

C.A. SEE CERTIFICATE
This System: TORRENS
Project: SHOROVICH

Ref Map: 18157-22-24-61
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ATTACHMENT

Barry Millwood

From: GEAC
Sent: Thursday, 8 September 2005 11:53 AM
To: Barry Millwood
Subject: Allocated: Request 119880 Priority 3: All Administrator's Messages.



Pathway.pth

You have a New Request For Action - Please check the Customer Service System.

Please do not reply to this email. Contact the relevant person.

08-Sep-2005 11:52:40 - Laura Lal
COUNCIL RESOLUTION FOR 5 SEPTEMBER 2005

ITEM NO: CDE 01
FILE NO: J15/02
SUBJECT: DEVELOPER AGREEMENT FOR BORAL MOOREBANK PRECINCT

RECOMMENDATION

That:

1. Council authorise the adoption of the Developer Agreement for the Boral Moorebank Precinct, and
2. Council affix the Council Seal to the Developer Agreement.
3. All "dedicated land" under the deed be classified as "Operational" under the Local Government Act 1993.

COUNCIL DECISION

That the recommendation be adopted.