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SECTION 96 MODIFICATION TO DEVELOPMENT CONSENT (DA188-8-2004)

**Lot 24, DP1150518
Angels Beach Drive,
East Ballina**

Prepared for:

North Angels Beach Development (Ballina) Pty Ltd
PO Box 65,
Lennox Head NSW 2478

Prepared by:

GSA PLANNING
Urban Design, Environmental & Traffic Planners
(A.B.N 18 003 667 963)

JOB NO.10031APP
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CONTENTS

1.0	INTRODUCTION	1
2.0	SITE ANALYSIS	2
3.0	BACKGROUND TO THE PROPOSAL.....	3
3.1	Background to the consent	3
3.2	Background of contributions made by the applicant.....	3
4.0	PROPOSED MODIFICATION.....	4
4.1	Requested modifications to development consent.....	4
4.2	Rationale for the modification.....	4
4.3	Justification for modifications	4
5.0	PLANNING ASSESSMENT	5
5.1	Statutory and Policy Considerations	5
6.0	CONCLUSION.....	9

ANNEXURES

- A. Park Embellishment Photographs
- B. Construction Plans for Parks
- C. Roundabout Plans

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1.0 INTRODUCTION

This Section 96 (1A) modification submission has been prepared for North Angels Beach Development (Ballina) Pty Ltd by Gary Shields & Associates Pty Ltd – (hereafter referred to as GSA Planning). GSA Planning has expertise in Urban Design, Environmental & Traffic Planning.

This submission is to support the modification to development application (DA188-8-2004) to delete condition E5 of that consent. The proposed modifications result in a development that is substantially the same as the approved development, and will not result in any additional impacts on the environment.

This submission will demonstrate that the applicant paid the equivalent Section 94 contributions, either monetary or 'works in kind' to the amount being sought by Council. This submission will provide compelling evidence that the monetary contributions required by Condition E5 of the consent are unreasonable and unnecessary in light of the works undertaken by the Applicant. In this regard, the following information is provided to justify the modification in accordance with the Environmental Planning and Assessment Regulation 2000:

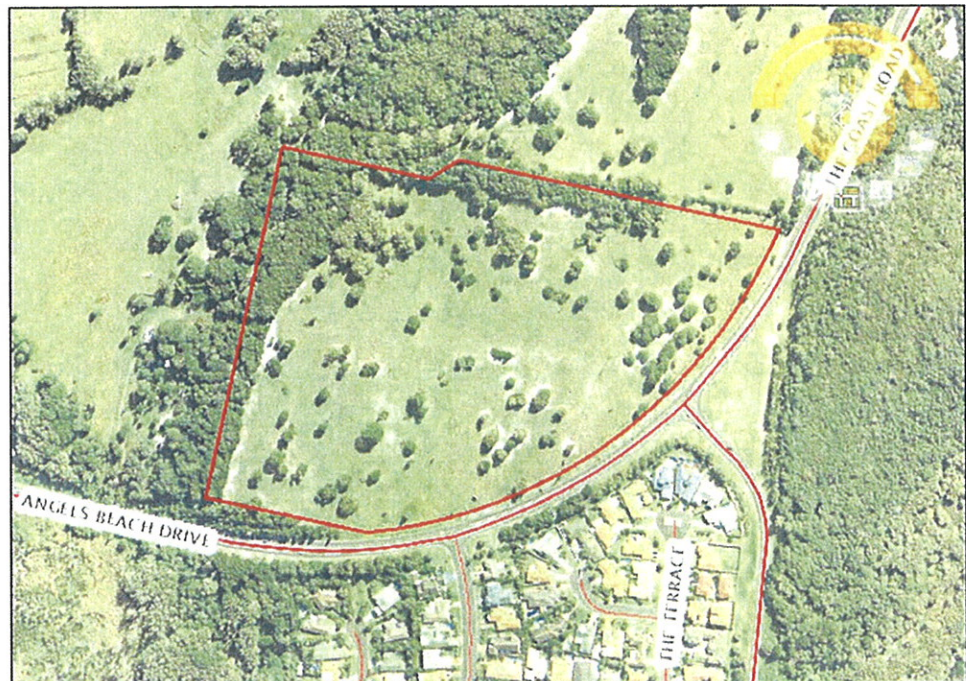
Regulation requirement	Details
(a) <i>Name and address of the applicant</i>	Mr Chris Condon North Angels Beach Development (Ballina) Pty Ltd PO Box 65, Lennox Head, NSW, 2478
(b) <i>A description of the development to be carried out under the consent</i>	DA188-8-2004 - 67 Lot subdivision and associated roads, open space, conservation areas and infrastructure.
(c) <i>The address, and formal particulars of title of the land on which the development is to be carried out.</i>	Angels Beach Drive and The Coast Road, East Ballina, NSW, 2478 Lot 24, DP 1150518
(d) <i>A description of the proposed modification to the development consent.</i>	Deletion of Condition E5 relating to the requirement to pay monetary contributions.
(e) <i>A statement of the effect of the modification.</i>	The modification is intended to remove Condition E5 for the requirement to pay monetary contributions as it is considered to be unreasonable and unnecessary as the applicant has undertaken works above and beyond the requirement of the respective section 94 contributions plans.
(f) <i>A description of the expected impacts of the modification.</i>	There will be minimal environmental impact as a result of the modification to remove Condition E5 of the consent as the works undertaken on the subject site are in excess of the Council's intended provision of facilities.
(g) <i>An undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved.</i>	The proposed modification has no significant bearing on the approved development of the site, as originally approved. The proposal will result in a development which is substantially the same as was intended by DA188-8-2004.
(h) <i>If the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner.</i>	A statement by the owner of the land has been provided to allow for the applicant to lodge this application (submitted separately).

This submission is divided into six (6) sections. The remaining sections include a site analysis; a background to the proposal, details of the proposed modifications and rational; a planning assessment; and, a conclusion.

2.0 SITE ANALYSIS

The subject site is located on the north western side of Angels Beach Drive and The Coast Road, East Ballina and is known as Lot 24 in DP 1150518. The site is generally irregular in shape with a total area of 10.52 hectares. The site is currently subdivided and has infrastructure such as roads, services and open space, known as 'Angels Beach North Estate'.

Development in the surrounding area comprises vacant land and recently constructed residential release areas. To the north is vacant land. To the east is the Coast Road. Further to the east is land part of the Flat Rock camping area and the beach. To the south is a residential land release on the opposite side of Angels Beach Road. To the west is vacant land.



Source: LPMA Six Viewer, 2010.

gsa

**Figure 1:
Location Plan**

3.0 BACKGROUND TO THE PROPOSAL

3.1 Background to the consent

On 5 August 2004, a Development Application (DA No.188-8-2004) was lodged with the Department of Planning (DoP) for a 67 lot subdivision and associated roads, open space, conservation areas and infrastructure works. The approval was state significant development, as part of a Major Project Assessment made to the Minister for Planning.

On 8 January 2008, The Minister for Planning granted consent to DA188-8-2004, subject to a number of conditions contained in Schedule 2.

3.2 Background of contributions made by the applicant

The applicant has made the following in kind or monetary contributions:

- Provision of a cycleway along the southern side of Angels Beach Road, connecting to the existing cycleway.
- Dedication of Lot 22, Lot 25 and Lot 26 with a combined total area of 11,370m² of open space to Ballina Shire Council.
- Embellishment of Lot 22, Lot 25 and Lot 26 comprising landscaping, environmental works, footpaths, picnic shelters, furniture and playground.
- Dedication of Lot 23, comprising 6,032m² as open space to Ballina Shire Council.
- Embellishment of Lot 23, including the provision of cultural interpretation, landscaping and 'aboriginal keeping place'.
- Construction of a two lane roundabout at the intersection of Coast Road and Angels Beach Drive.

4.0 PROPOSED MODIFICATION

4.1 Requested modifications to development consent

This submission requests the deletion of Condition E5 of the development consent (DA188-8-2004), for the requirement to pay monetary contributions. Condition E5 states inter alia:

Existing Condition

"E5 Monetary Contributions

In accordance with Division 6 of Part 4 of the Act, the Applicant shall pay the following monetary contributions:

(1) Amount of Contribution

Category	Rate	Amount
Community facilities	\$1078 per additional lot	\$66,836
Open space	\$675 per additional lot	\$41,850 Less \$18,832 credit for direct provision \$23,018
Road infrastructure	\$2572 per additional lot	\$159,464
TOTAL		\$249,319

4.2 Rationale for the modification

It is considered that Condition E5 of development consent (DA188-8-2004) is unreasonable and unnecessary as the applicant has made the following 'in kind' contributions:

Category	Applicants 'in kind' contribution	Estimated cost
Community facilities	Cycleway	\$150,000
	Dedication of Lot 23 for an Aboriginal Keeping Place	\$3,200,000
	Cultural Interpretation and associated works to Lot 23	\$100,000
Open space	Dedication of Lot 22, 25 & 26	\$6,058,930
	Embellishment of Lots 22, 25 & 26.	\$352,000
Road infrastructure	Dual lane roundabout	\$620,000
TOTAL		\$10,480,930

4.3 Justification for modifications

Justification to the deletion of Condition E5 is on the basis that we consider that our client has provided substantially more 'in kind' contributions than the amount required by Council under Section 94 of the EP&A Act. Further details of the contributions are provided in the following Section 5.0 – Planning Assessment.

5.0 PLANNING ASSESSMENT

5.1 Statutory and Policy Considerations

This section deals with the requirements by Council's relevant provisions, and the applicant's contributions. This is concluded with a planning comment for each requirement.

5.1.1 Ballina Section 94 Contribution Plan: Community Facilities

Ballina Community Facilities Contribution Plan was adopted on 6 May 1993, sets levies for community facilities which have been or will be provided by Council, to meet the increased demand for public services and amenities arising from new development.

Council's requirements

Clause 1.5 details the application of the plan, being precincts where Council already provides or resolves to provide community facilities.

Clause 2.2 relates to works to be undertaken by Council to provide community facilities. A schedule of community facilities attached to this plan as Appendix A relate to a range of facilities. When these facilities have been provided, Council will make commitment to new initiatives.

Clauses 2.3-2.4 of the plan relate to the calculation of contributions. The requirement of \$1078 per additional lot is included in the Conditions of Consent (DA188-8-2004), requiring a total contribution of \$66,836 for community facilities.

Applicant's contributions

As indicated, the applicant is currently providing a cycleway along the southern side of Angels Beach Road, connecting to the existing cycle network. These works are estimated to be valued at \$150,000 by the applicant.

In addition, the applicant has dedicated Lots 23 with an area of 6,032m² as an Aboriginal Keeping Place to preserve Aboriginal archaeology. The applicant has advised that this land has an estimated value of \$3,200,000. In addition, the applicant has also provided cultural interpretation, landscaping and associated works to the estimated value of \$100,000.

When compared to the \$66,836 monetary contribution required by Council for community facilities in Condition E5 of the development consent (DA188-8-2004), the applicant has provided above and beyond the amount of contribution through the provision of works in kind and dedication of land to the value of \$3,350,000 and cultural interpretation works to the value of \$100,000. On this basis, it is unreasonable and unnecessary to impose Condition E5 of the consent relating to community facilities.

Planning comment

In light of the above-mentioned 'works in kind' for the purposes of the 'material public benefit' provisions of section 94(5)(b) of the EP&A Act, the applicants contributions are considered to adequately meet the requirement for community facilities. Accordingly, no further conditions should apply in the circumstances of the case.

Further, Angels Beach North Estate is a precinct where Council has not provided facilities in the past, nor made a Council resolution to provide them in the future. In addition, Council has not prepared a Community Facilities Plan or updated the 'Current Initiatives of Council' section of the Contributions Plan. On this basis, no nexus has been established to the subject site and no contributions plan applies to the site, as there are no nominated works or resolution to do so in the Angels Beach North Estate.

5.1.2 Ballina Section 94 Contribution Plan: Public Garden & Recreation Space Enhancement

Ballina Public Garden and Recreation Space Enhancement Contribution Plan was adopted on **6 May 1993**, sets levies for public garden and recreation space enhancement works which have been or will be provided by Council, to meet the increased demand for public services and amenities arising from new development.

Council requirements

Clause 2.1 of the plan indicates that the dedication of land (with only basic land forming and no improvements) are sought at subdivision and that cash contributions are used to embellish open space.

Council has based the provision of open space on 2.83 hectares per 1,000 people, on an occupancy rate of 2.72 person per dwelling, resulting in an indicative price of \$300,000 per hectare. As the proposal will comprise 62 residential allotments, based on an occupancy rate of 2.72 people per lot, 165 people are estimated. Accordingly, the requirement for the proposed development would be 0.47 hectares.

In Council's calculations, the open space contributions have been based on the dedication of the northern park areas as a local park, which is 2.1 hectares in area which provides 45% of the requirement as a credit. Council have excluded the southern park area discounting it due to drainage purposes, which reduces the overall monetary contribution to \$21,654.

Applicant's contribution

The applicant has dedicated Lot 22, Lot 25 and Lot 26 with a combined total area of 11,370m² of open space to Ballina Shire Council. The estimated value of the land dedication is valued at \$6,058,930. Despite a portion of the Lots being used for drainage purposes, it is maintained that open space area may be utilised for dual purposes.

In addition, these Lots have been embellished substantially, comprising landscaping, environmental works, footpaths, picnic shelters, furniture and playground. This value of this work is estimated at \$352,000. Some photographs of the work and construction plans are included in Annexure A and B, subsequently.

When compared the Council's monetary contribution requirement of \$23,018 in Condition E5 of the development consent (DA188-8-2004), the applicant has provided well in excess of this amount.

Planning comment

Council have not made any allowance for the dedication of three parcels of land for the purpose of open space. It is sound town planning practice for open space to be used for the dual purpose of drainage. In our opinion, this is unreasonable.

The applicant has dedicated land for the purpose of open space and embellished this land in excess to the monetary requirement for contributions in development consent (DA188-8-2004). In addition, the 'works in kind' have been provided in excess to Council's requirements. Therefore, the requirement to provide a monetary contribution is considered to be unnecessary and unreasonable.

5.1.3 Ballina Road Contribution Plan

The Ballina Road Contribution Plan was adopted on **24 October 2002**, applies to the whole of the Ballina Local Government Area (LGA) and sets levies for all traffic generating developments. Clause 1.2 of the Plan states that "the plan is based on the principle that a development should contribute in proportion to the extent to which it uses capacity in the existing or future transport system."

Council's requirements

The Plan uses a 'differential pricing system', which is based on the likely usage of road space (and thus cost) by the development, to assess required contributions (see Clause 3). The Plan also divides the Ballina LGA into nine (9) sectors, and the subject site is in the East Ballina and Skennars Head sector.

Clause 5.1 details the new construction works proposed by the Plan in response to the growth needs of the Shire. The works comprise 14 items, estimated to cost around \$43M (see Table 5.1 of the Contribution Plan).

Clause 5.2 states that contributions in the Plan are calculated to include an allowance for the unit capacity of the existing road network that will be consumed by future development. The replacement value of the significant portions of the existing road network is assessed at about \$48,000,000.

Clause 6.1 states that contributions are calculated using 'trip ends' which is a basic measure of traffic generation. The estimated value of road capacity consumed by the East Ballina & Skennars Head Sector is \$4,502,675 which is roughly a result of multiplying the estimated trip ends generated by that sector (13,675) and the \$ Standard Trip End cost of \$329 (see Table 6.1 of the Ballina Contribution Plan).

Clause 7 states that traffic generating developments are required to contribute to the development of Ballina Council's road network and contributions will be calculated in accordance with Sections 7.1 and 7.2.

Applicant's contribution

The applicant has provided a roundabout at the intersection of the Coast Road and Angels Beach Drive, which has not been listed as works to be undertaken in accordance with the section 94 plan.

In accordance with Condition B5(1) of the development consent (DA188-8-2004), the applicant was required to provide a single lane roundabout. However, at construction certificate stage, Council insisted that this be upgraded to a two lane roundabout (see Attachment C). This is estimated to have cost \$620,000, which is in excess of that required as a monetary contribution.

Planning comment

The applicant has provided an additional lane on the roundabout, which is considered to be a material public benefit. The roundabout is a significant improvement to the local road network and in the circumstances of the case, the requirement for a further monetary contribution as part of Condition E5 is considered to be unnecessary and unreasonable.

6.0 CONCLUSION

Condition E5 of the development consent (DA188-8-2004) required a monetary contribution of \$249,319. This includes a contribution of \$66,836 to community facilities, \$23,018 towards open space and \$159,464 towards road infrastructure.

Council have not made any allowance for the dedication of three parcels of land for the purpose of open space. It is sound town planning practice for open space to be used for the dual purpose of drainage. In our opinion, this is unreasonable.

The applicant has not only dedicated land to community facilities and open space, but embellished and made improvements to this land. This is estimated to be in the order of \$9,860,930 worth of 'in kind' contributions. The applicant has also undertaken improvements to road infrastructure, including the provision of dual lane roundabout, which has contributed to the locality and also the wider community. This work is estimated to have cost \$620,000.

The works undertaken by the applicant are in excess of Council's Section 94 plan provisions and also requirements in Condition E5 of the development consent (DA188-8-2004) with an estimated total value of \$10,480,930. The imposition of the monetary contributions in Condition E5 is therefore considered to be unnecessary and unreasonable. In our opinion, it is considered that the proposed modification to DA188-8-2004 is appropriate in the circumstances of this particular application.

Regards,



Gary A Shiels
MANAGING DIRECTOR

LOT 25



LOT 26

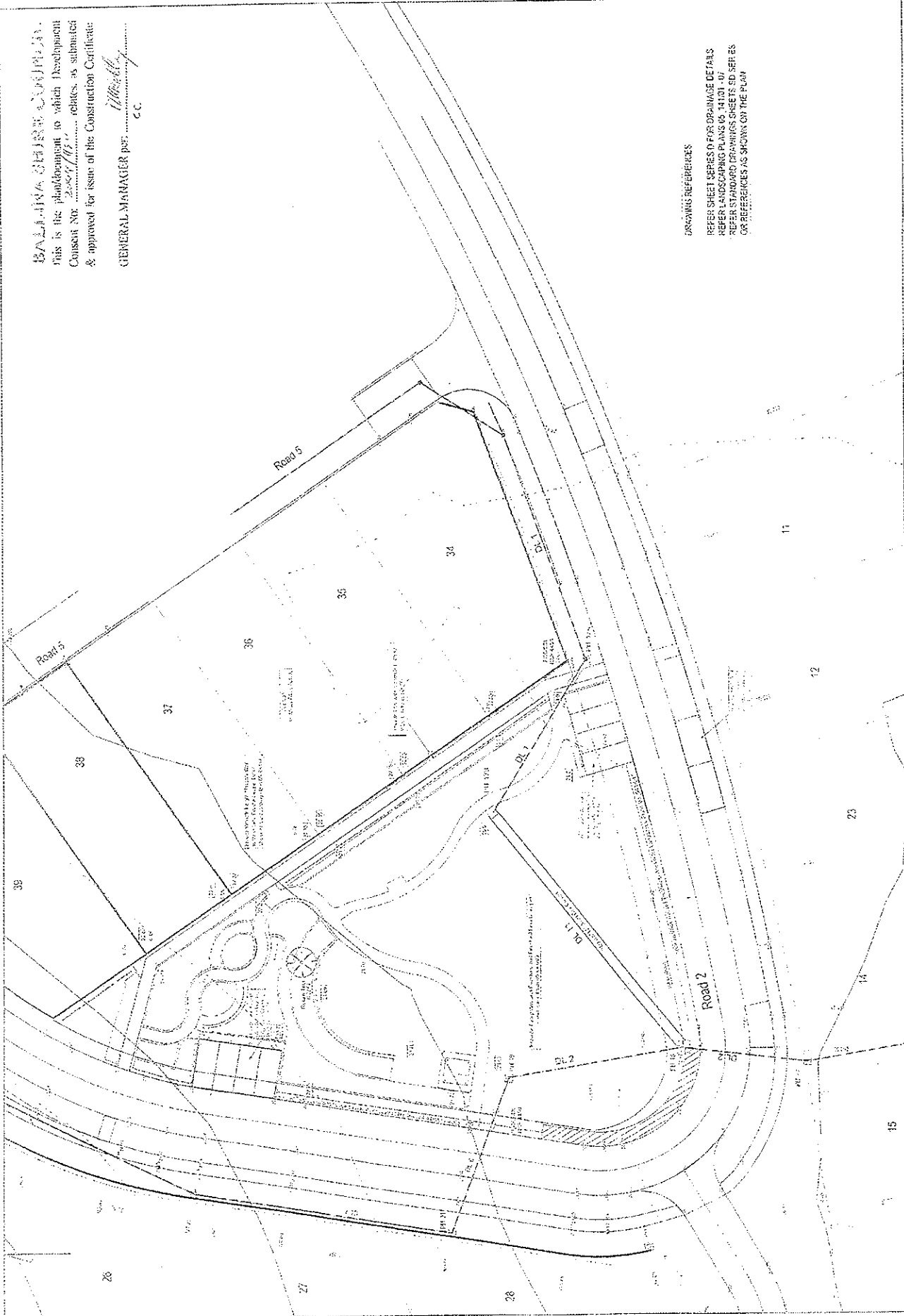


LOT 26



B.A. LARSEN & SONS CONSULTANTS
 This is the plan/document to which Development
 Consent No. 25007/03 relates, as submitted
 & approved for issue of the Construction Certificate
 GENERAL MANAGER per: *[Signature]* C.C.

DRAWING REFERENCES
 REFER SHEET SERIES D FOR DRAINAGE DETAILS
 REFER LANDSCAPING PLANS D5, D101-D10
 REFER STANDARD DRAINAGE SHEETS SD SHEETS
 OR REFERENCES AS SHOWN ON THE PLAN



Scale: 1:1000 Date: 18/08/2004	North Angels Beach Development P/L DA 1888/2004	North Angels Beach Development P/L DA 1888/2004	North Angels Beach Development P/L DA 1888/2004	North Angels Beach Development P/L DA 1888/2004	North Angels Beach Development P/L DA 1888/2004	North Angels Beach Development P/L DA 1888/2004
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