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25 May 2010

Mr. Matt Rogers
Director
Development & Environment Services
Port Macquarie-Hastings Council
PO Box 84
PORT MACQUARIE NSW 2444

Dear Matt,

**Re: ST VINCENTS FOUNDATION
CONCEPT PLAN MP06-0085 – PROJECT APPLICATION MP07-0001
PROPOSED PLANNING AGREEMENT – OPEN SPACE CORRIDOR**

We refer to your letter dated 6 May 2010, regarding the draft Heads of Agreement and the Central Corridor Management Costing Report, and to our subsequent meeting with Council officers on 11 May 2010.

Generally we believe that there are no insurmountable issues raised with respect to the draft Heads of Agreement. The following responses follow the order of the numbered paragraphs in your letter of 6 May.

With respect to the Part 3A Applications and in particular the Project Application, the wetlands and their functionality are an integral component of the overall development, and have been the subject of an exhaustive process by St Vincents Foundation (SVF) and its consultants.

We have taken on board all comments from Council with respect to the wetlands, particularly the comments in your letter of 25 June 2009, as of the highest order of priority. The AECOM team engaged to complete the wetland functionality and design report ranks among the most pre-eminent and experienced in this field. Dr Tony Wong and Dr. Peter Breen were originators of the MUSIC suite of modelling programs and they are being assisted by Dr. Courtney Henderson from their Sydney office. The CV's of these three specialists have been forwarded to you in anticipation of the presentation to be made to senior Council officers on 1 June 2010.

The caution expressed by some sectors within Council relating to the wetlands and their sustainability should be allayed by the demonstration of the expertise being applied to the wetlands system's design and function. Importantly, the proposal that the owner commits to a 20 year maintenance and monitoring period for the wetlands, and other environmental lands within the Central Corridor following establishment, should leave Council with a high degree of confidence as to their efficacy and sustainability. It is our observation that issues Council may have experienced with respect to other wetland treatment devices within this LGA are principally related to poor design and a lack of planned maintenance and monitoring following construction.

We now turn to the draft Heads of Agreement (HOA), the comments in your letter of 6 May 2010 and our subsequent meeting on 11 May. We re-submit herewith a further draft of the HOA amended to reflect the comments and discussions. In relation to the draft HOA Version 2 we note:

1. Regional Playing Fields

The Regional Playing Fields are described in the Hastings Sec 94 Open Space Contributions Plan as the *Lake Cathie Bonny Hills Regional Sporting Complex*. The land for the playing fields will be dedicated or otherwise transferred to Council following construction and Council will be responsible for maintenance thereafter.

It must be made clear that the offer to enter into the VPA assumes that SVF will carry out construction of the playing fields to a base standard, namely filling, topsoiling and grassing the site, and integration of stormwater flows from the site into the overall stormwater treatment train for the SVF development, including the provision of drainage swales and other treatment devices at the perimeter of the playing fields. This is the extent of the scope of works for which approval is sought in Project Application MP 07_0001. The intention is that Council will have the carriage of completing the site to an operational condition after transfer. The "completion works" to be carried out by Council would include, but may not be limited to: obtaining additional development consents as required; irrigation and under-surface drainage of playing fields; establishment of the specialist grassed playing surface; amenities buildings; services; lighting and car parking facilities.

The VPA will provide that the value of the land and the amount of the works to be undertaken by SVF will be considered as "works-in-kind" and offset against future Sec 94 Open Space contributions payable in respect of the residential development.

With respect to Clause 3 *Public Access to District Sporting Fields*, we note Council has commenced the investigation of temporary vehicular access from Ocean Drive. Clause 3 has been left intact in the draft HOA Version 2, as it is seen as a fundamental requirement that public vehicular access is available to the District Sporting Fields at the time they become operational.

2. Community Park

We agree with the comments with respect to the Community Park and note again that the intention is to deliver "non-durable hard works" such as seats, other furniture and playground equipment as residential development proceeds and at a time when there is passive surveillance for these facilities to protect against vandalism. The timing of these elements can be simply dealt with at any development application stage for adjacent residential development. It is in the landowner's interest to provide these facilities as development occurs in order to provide attractive amenities for the new residents.

3. North Edge Managed Open Space

The application of the APZ in this area has been clarified with the bush fire consultants and it is confirmed that the APZ to protect the new urban development will be entirely within the urban footprint bounded by the perimeter road, pathway and housing set backs. The APZ will not extend into the Central Corridor in this area.

The AECOM Landscape Plan is being amended to clarify the extent of the APZ.

4. Management Timeframe

In-principle acceptance of the 20 year maintenance period by the land owner is noted.

5. Early Management Period Expiry Option

Noted and we believe that this can be dealt with simply in the proposed VPA.

6. Security

Noted and again we believe the issue of valuation and appropriate security can be structured in the VPA document.

7. Management Costs and Peer Review

The comments in Council's letter of 6 May in relation to Biodiversity Protection, Biodiversity Enrichment and Managed Parkland/Asset Protection are noted.

In respect of the requested monthly water quality monitoring for the range of parameters listed, we await Mr. Thor Aaso's advice of Council's laboratory testing costs for the requested parameters for our consideration. If found to be necessary, the monitoring budget included in the Cardno Costing Report can be adjusted.

With respect to the costings estimate for the aquatic features we have asked that AECOM undertake a check of the Cardno work as they have extensive experience in this field. The issue of lifecycle costings will be further addressed in the AECOM work being undertaken and will form part of the presentation and discussion to take place on the 1st of June.

Finally we thank you again for the detailed response. The Draft HOA Version 2 is attached.

We stated at our meeting on 11 May that we have a strong wish that the Heads of Agreement be agreed between Council and St Vincents Foundation, before being sent off to the lawyers for the creation of the final VPA document.

With the finalisation of both Part 3A Environmental Assessments (MP06-0085 and MP07-0001) expected in the next few weeks, there is a need for the agreed (i.e. between Council and SVF) Heads of Agreement to be submitted to the DoP with the EA's. We are still clarifying with the DoP as to whether the document to finally go on exhibition with the EA's can be the Heads of Agreement or whether it will need to be the final VPA document.

Yours Sincerely,



Tierney Property Services Pty Ltd
On behalf of St Vincents Foundation Pty Ltd

-- 25/5/2010.

Copy: Peter Cameron, Port Macquarie Hastings
Rob Corken, Port Macquarie Hastings Council

Definitions & Interpretation

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

Agreement includes any schedules, annexures and appendices to this agreement.

Alternative Funding means funding obtained by the Council for the ongoing management of the Management Land dedicated or otherwise transferred to the Council under this Agreement that does not rely on any monetary Development Contributions obtained by the Council under Division 6 of Part 4 of the Act (including, if applicable, under this Agreement).

Aquatic Features Contingency Fund means a fund administered by Council from which funds may be drawn down by Council to meet the cost of an Unforeseen Environmental Event within the existing and proposed water bodies ("aquatic features") within the Central Corridor during the Management Period and thereafter.

Central Corridor means that part of the Land as delineated in Figure 1, which is to be dedicated or otherwise transferred to the Council under this Agreement and which comprises the District Sporting Fields and the Management Land including the Community Park.

Charge Land means the land distinctively identified on the plan in Figure 3.

Community Park means that part of the Central Corridor comprising 0.77 ha as delineated in Figure 2, which is required to be dedicated or otherwise transferred to Council consistent with the terms of this agreement, and being the implementation of Local Park -1 in the "Lake Cathie-Bonny Hills Local Program" (page 35) in the Hastings Section 94 Open Space Contributions Plan.

Community Park Specification means Council's requirement for the construction of the Community Park by the Owner prior to dedication or transfer of the Central Corridor to Council, and is to be advised by Council prior to the issue of the Construction Certificate for the Development.

Construction Certificate means a certificate referred to in section 109(1)(b) of the Act.

Construction Period means the period ending when the last new planting has occurred in accordance with the Detailed Management Plan and within the Management Land.

Council means Port Macquarie Hastings Council, ABN 11 236 901 601.

Detailed Management Plan means a plan relating to the establishment and management of the Management Land within the Central Corridor. The Detailed Management Plan is to be approved by Council prior to the issue of a Construction Certificate for the Development in accordance with the Assessment for Major Projects Project Application MP 07-0001 and is to be consistent with the Open Space Management Strategy.

Developer means St Vincents Foundation Pty Limited, ABN 11 083 730 778.

Development means the development described in Major Projects Project Application MP 07-0001 on the Land.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards, a Public Purpose.

District Sporting Fields means that part of the Central Corridor comprising 7.7 ha as delineated in Figure 2, which is required to be dedicated or otherwise transferred to Council consistent with the terms of this agreement, and is the facility described as "Lake Cathie/Bonny Hills Regional Sporting Complex" in the schedule on page 26 of Hastings Section 94 Open Space Contribution Plan.

District Sporting Fields Specification means the works by the Owner in order to establish the District Sporting Fields, in accordance with the specification attached as Schedule 1, prior to dedication or transfer of the Central Corridor to Council.

Early Management Period Expiry Option means the option granted to the Developer under Clause 4.6 and which, if exercised, would cause the Management Period Expiry, but can only take effect on or after the fifteenth year of the Management Period.

Environmental Assessment means the form of application made by the Landowner under Division 2 of Part 3A – Major Infrastructure and Other Projects of the Act.

Establishment Obligation means the establishment of the Management Land in accordance with:

- (a) the relevant requirements of the Development Consent relating to Major Projects Project Application MP 07-0001, and
- (b) to the extent not inconsistent with such a Development Consent:
 - (i) the Open Space Management Strategy, and
 - (ii) any Detailed Management Plan approved by the Council prior to the issue of the Construction Certificate for the Development.

Establishment Period, relating to the Management Land, means the period, being not less than 12 months, commencing on the completion of the Construction Period for the Management Land.

Land means part of Lot 1232 DP //, Lot 5 DP 25886 and Closed Roads comprising a total of 177.4 ha, and is delineated in Figure 1.

Major Projects Concept Plan means the Environmental Assessment (MP 06-0085) completed by the Owner and as approved by the Minister.

Major Projects Project Application means the Environmental Assessment (MP 07-0001) completed by the Owner and as approved by the Minister.

Management Land means the balance of the land within the Central Corridor, including the Community Park land, but excluding the District Sporting Fields land.

Management Obligation means the management of the Management Land within the Central Corridor in accordance with:

- (a) the relevant requirements of the Development Consent relating to Major Projects Project Application MP 07-0001, and
- (b) to the extent not inconsistent with such a Development Consent:
 - (i) the Open Space Management Strategy, and

- (ii) any Detailed Management Plan approved by the Council prior to the issue of the Construction Certificate for the Development.

Management Period means the period commencing on the completion of the Establishment Period and is for 20 years, subject to the Early Management Period Expiry Option.

Management Period Expiry means the earliest of 20 years, or the date on which Council advises it has obtained Alternative Funding, or the date on which the Owner exercises the Early Management Period Expiry Option.

Management Work means work forming part of the Management Obligation.

Minister means the Minister of the Department of Planning for the State of New South Wales.

Open Space Corridor means the whole of the area of open space as defined by Major Projects Concept Plan MP 06-0085.

Open Space Management Strategy means the document under that title included in the Environmental Assessment for Major Projects Project Application MP 07-0001, and which relates to the Open Space Corridor described therein, of which the Central Corridor forms part.

Owner means St Vincents Foundation Pty Ltd, ABN 11 083 730 778, its successors and assigns.

Party means a party to this agreement, including their successors and assigns.

Planning Agreement means the provisions of this Agreement under which the Owner is required to make a Development Contribution in connection with the carrying out of the Development, and includes any provisions that are incidental or supplementary to those provisions.

Remainder Land means Lot 5 DP 25886 and that part of Lot 1232 DP ####, as delineated in Figure 3, which is not part of the Central Corridor and not part of the Charge Land.

Unforeseen Environmental Event means a significant environmental event, presently unforeseen, which may have a deleterious effect on the existing and proposed water bodies ('aquatic features') within the Central Corridor during the Management Period and thereafter, and includes the following possible environmental events:

- a major aquatic weed infestation of a weed type which is not currently present and recorded in the Environmental Assessment for Major Projects Project Application MP 07-0001;
- a major algal bloom in the water bodies; and
- damage to flood control structures and water bodies arising from a major and unusual flood event rated to equal or exceed a 1 in 30 year flood event

Heads of Agreement

1. General

- 1.1 The Central Corridor comprises the major component of the open space corridor running east-west through the Land. The Central Corridor is 75.2 hectares in area, and is delineated in Figure 1.
- 1.2 The Central Corridor comprises:
 - (i) District Sporting Fields, being 7.7 ha in area, and
 - (ii) Management Land, being 67.5 ha in area (i.e. the balance of the Central Corridor, including the Community Park land).
- 1.3 The proposed agreement takes effect when the land comprising the Central Corridor is dedicated or otherwise transferred into Council ownership in accordance with the agreement. In short, the ownership of the Central Corridor will pass to Council after completion by the Owner of the Establishment Obligation for the Works encompassed within Project Application MP 07_0001.

2. District Sporting Fields.

- 2.1 The Owner will construct the District Sporting Fields to the District Sporting Fields Specification.
- 2.2 On completion of the construction of the District Sporting Fields to the District Sporting Fields Specification, the Owner will dedicate or otherwise transfer the District Sporting Fields land to Council.
- 2.3 On dedication or transfer to it of the District Sporting Fields land, Council will assume all further responsibilities for further enhancement, including the playing surface, subsoil drainage, water and sewerage services, lighting, parking,

amenities and associated facilities within the District Sporting Fields land, and the long term management of the District Sporting Fields land.

- 2.4 The valuation of the District Sporting Fields land, current at that time, and the Owner's cost of carrying out the works to meet the District Sporting Fields specification, will be agreed between the Owner and Council prior to the issue of a Construction Certificate for the works.
- 2.5 The Owner will be reimbursed by Council for the agreed value of the District Sporting Fields land and the agreed cost of the works reimbursement will be by the offset against future Development Contributions levied pursuant to Hastings S94 Open Space Contributions Plan in respect of the ongoing subdivision development being undertaken on the Land as envisaged by the Major Projects Concept Plan Application MP 06_0085.

3. Public Access to District Sporting Fields

- 3.1 The objective is to ensure the District Sporting Fields are operational for use by the public as soon as practicably possible. Ultimately the public access to the District Sporting Fields will be via the future road marked A – B – C on Figure 2 which is to be provided by the Owner within the Owner's future development programme.
- 3.2 The District Sporting Fields land is separated on the west from Ocean Drive by a narrow strip of land (marked D – E in Figure 2) which has been identified in the Major Projects Environmental Assessments as Endangered Environmental Community (EEC) by reason of the vegetation associations therein. Subsequent to the approval by the consent authority to the works encompassed with Project Application MP 07_0001, investigations will be jointly carried out by Council and the Owner as to the practical provision of a temporary road access from Ocean Drive to the western boundary of the District Sporting Fields temporarily crossing the EEC, pending the Owner constructing and dedicating the permanent public access being the proposed road marked A – B – C in on Figure 2 in the Owner's future development programme.
- 3.3 In the event that the temporary road access from Ocean Drive is not achievable, the Owner will dedicate the future road marked A – B – C on Figure 2, and construct that road to an interim rural standard with a minimum 7m wide sealed carriageway PROVIDED that the Owner's obligation to construct extends only to

the south-east boundary of Ocean Drive at the point marked “A” on Figure 2, and does not include any works at the intersection which are to be funded from Sec 94 Arterial Roads funds.

- 3.4 The provision of public access to the District Sporting Fields is agreed as to principle in this Agreement, but the final details are to be negotiated between Council and the Owner prior to the issue of a Construction Certificate for the works, PROVIDED that the Council will not accept the dedication or transfer of the District Sporting Fields land until arrangements are made to its satisfaction that public access will be available at the time the District Sporting Fields become operational.

4. Central Corridor – Management Land

- 4.1 The Management Land, being 67.5 ha in area, comprises the balance of the lands within the Central Corridor, after taking out the District Sporting Fields. The Management Land includes the Community Park.
- 4.2 The Owner will complete the Establishment Obligation for the Management Land.
- 4.3 The owner will inform Council when it considers it has completed the Establishment Obligation. The Council may either give written notice to the Owner that it has completed the Establishment Obligation to Council's satisfaction, or alternatively Council may inform the Owner that certain items as specified in the notice are required to be carried out to complete the Establishment Obligation to Council's satisfaction.
- 4.4 The Council's written confirmation that the Owner has completed the Establishment Obligation will trigger the commencement of the Management Obligation for the duration of the Management Period. The parties agree that the actual dedication or transfer of the Central Corridor land to Council may be delayed for a time, depending on survey, legal or other circumstances that may be associated with the Owner's ongoing residential development of the Land.
- 4.5 The Owner will carry out the Management Obligation for the duration of the Management Period, subject to the Early Management Period Expiry Option.
- 4.6 Notwithstanding that the Management Period is for 20 years, it is agreed that in the event the Owner completes the development of the Remainder Land earlier than

20 years from the commencement of the Management Period, but not less than 15 years from commencement of the Management Period, the Owner may apply to Council for the Early Management Period Expiry Option to be effected, to the effect that the Owner is released from the remainder of the Management Obligation for the remainder of the Management Period, subject to funding for the Council's management for the remainder of the Management Period being provided by the Owner in accordance with this agreement.

5. Community Park

- 5.1 The Owner will construct the Community Park to the Community Park Specification.
- 5.2 For the purpose of this agreement, the Community Park land is considered to be part of the Management Land and clauses 4.1 to 4.6 apply.
- 5.3 The Community Park Specification will provide that certain non-durable hardworks, including seats and other furniture and playground equipment that may be a target for vandalism before residents move into the future residential precincts, are to be deferred until such time as a level of community surveillance can be provided from the residential precincts.
- 5.4 Deferred (non-durable) hardworks are not the subject of this agreement and shall be constructed and installed by the Owner in the future pursuant to conditions to be embodied in the individual development consents for adjacent stages of the residential subdivision.
- 5.5 The valuation of the Community Park land, current at that time, and the Owner's cost of carrying out the works to meet the Community Park Specification, will be agreed between the Owner and Council prior to the issue of a Construction Certificate for the works.
- 5.6 The Owner will be reimbursed by Council for the agreed value of the Community Park land and the agreed cost of the works, provided the reimbursement will be by the offset against future Development Contributions levied pursuant to Hastings S94 Open Space Contributions Plan in respect of the ongoing subdivision development being undertaken on the Land as envisaged by the Major Projects Concept Plan.

6 Alternative Funding

- 6.1 Council is to use reasonable endeavours to obtain Alternative Funding as soon as reasonably practical after the Agreement is entered into. In the event that Alternative Funding is obtained prior to the Owner completing the Management Obligation, the Parties will negotiate in good faith to modify or replace the Owner's obligations under the Agreement, in order to reflect the Alternative Funding arrangements.

7. Aquatic Features Contingency Fund

- 7.1 Prior to this agreement taking effect, the Owner will contribute the sum of \$200,000 to the Aquatic Features Contingency Fund administered by Council.
- 7.2 Council will invest the funds in a secure interest bearing deposit, and the interest income shall accrue to the Aquatic Features Contingency Fund.
- 7.3 Council at its discretion may draw down funds from the Aquatic Features Contingency Fund to meet the cost of rectifying Unforeseen Environmental Events arising in the aquatic features (the water bodies) within the Management Land during the Management Period and at any time thereafter.
- 7.4 Council at its discretion may reimburse the Owner from the Aquatic Features Contingency Fund for the Owner's reasonable cost of rectifying an Unforeseen Environmental Event during the Management Period, subject to the Owner notifying the Council that an Unforeseen Environmental Event has taken place as soon as same is evident with an assessment of the circumstances and an estimated cost of rectifying the Unforeseen Environmental Event.

8. Charge Land – Grant of Charge

- 8.1 The Owner acknowledges that any breach of the Agreement by the Owner will result in the Council incurring damages.
- 8.2 The Owner charges its right, title and interest in the Charge Land in favour of Council to secure:
- The proper and timely performance of its obligations under this agreement, and
 - any damages that may be payable to the Council in the event of a breach of this agreement by the Owner.

- 8.3 If the Charge Land is not on a separate title, or is not the subject of a registrable plan at the time of this agreement taking effect, the Owner may give the Council an instrument that charges a greater area of the Land but only if that greater area includes the Charge Land.
- 8.4 During the Management Period, in the event that the Charge Land is required by the Owner for the implementation of its development programme for the Land, the Owner may approach the Council with an offer of an alternative parcel of the Land to Council as “charge land” and provided the alternative parcel has a value equivalent to or exceeding the value of the Charge Land, then Council will accept the alternative parcel as the substitute “charge land”, and release the Charge Land to the Owner, whereupon the substitute “charge land” will become the Charge Land.
- 8.5 As the Owner progressively completes the Management Obligation during the Management Period the remainder cost of completing the Management Obligation reduces year by year. This is acknowledged by Council and is to be taken into account in any negotiations between the parties during the Management Period to amend the charge or substitute alternative land as Charge Land.

Annexures:

Figure 1 – Land, Central Corridor

Figure 2 – District Sporting Fields, Community Park

Figure 3 – Charge land, Remainder Land

SCHEDULE 1

District Sporting Fields Specification

The following works are to be undertaken by the Owner on the District Sporting Fields land to construct the District Sporting Fields to a base standard, consistent with the scope of works included in Part 3A Project Application MP 07_0001.

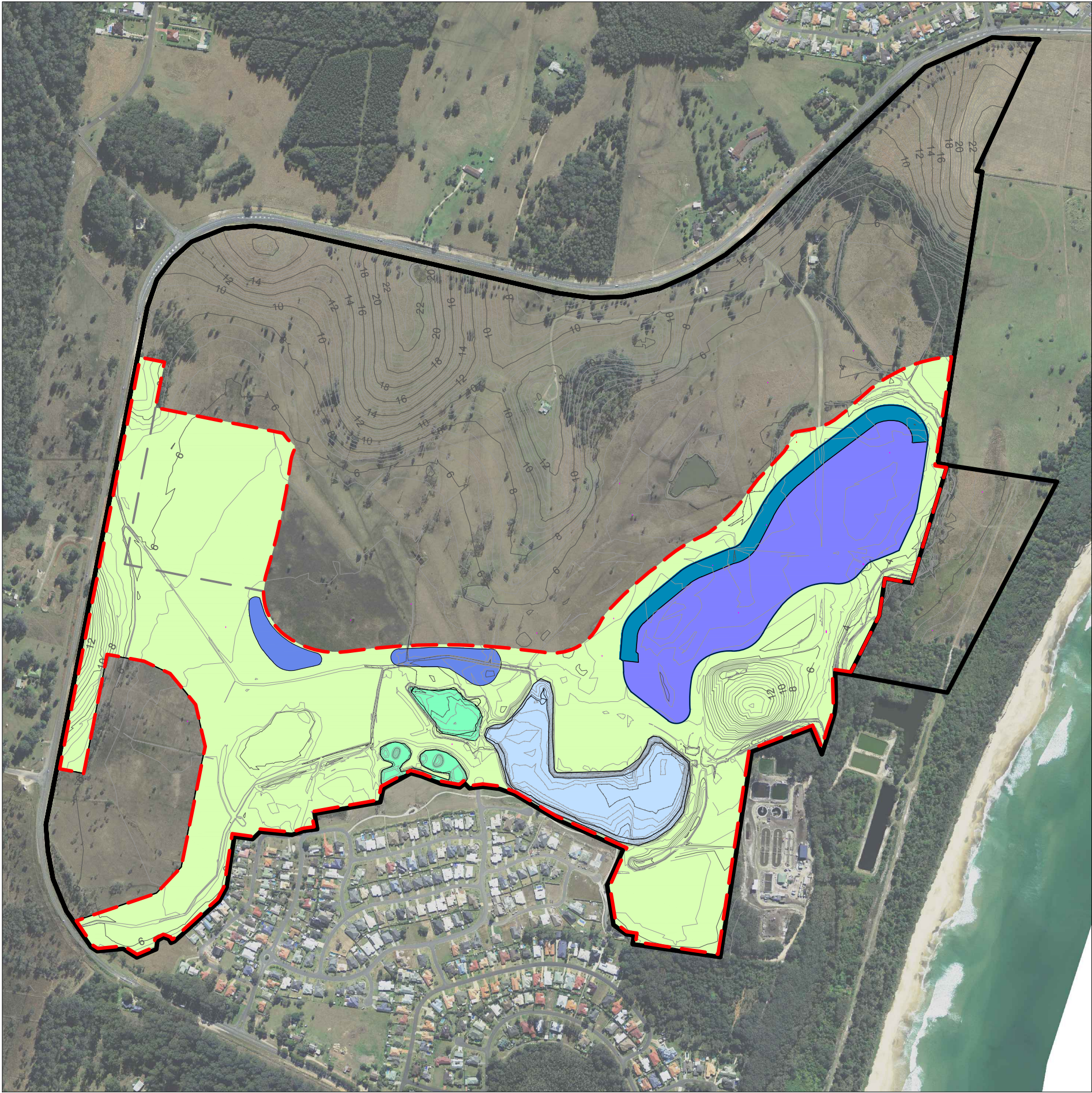
Works are to be consistent with works delineated in Part 3A Project Application MP 07_0001.

TBC

Draft

FIGURE 1

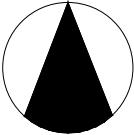
- LAND
- CENTRAL CORRIDOR



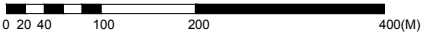
— SUBJECT LAND
- - - CENTRAL CORRIDOR

REVISIONS:
A: 17.02.09
B: 24.03.10 BBT

Rainbow Beach Estate
Property Management Plan Series
Job. No. 4509:ND Dwn: RM/BAC
Luke and Company Pty Ltd



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The stated scale of this drawing may be altered by copying.
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from this drawing



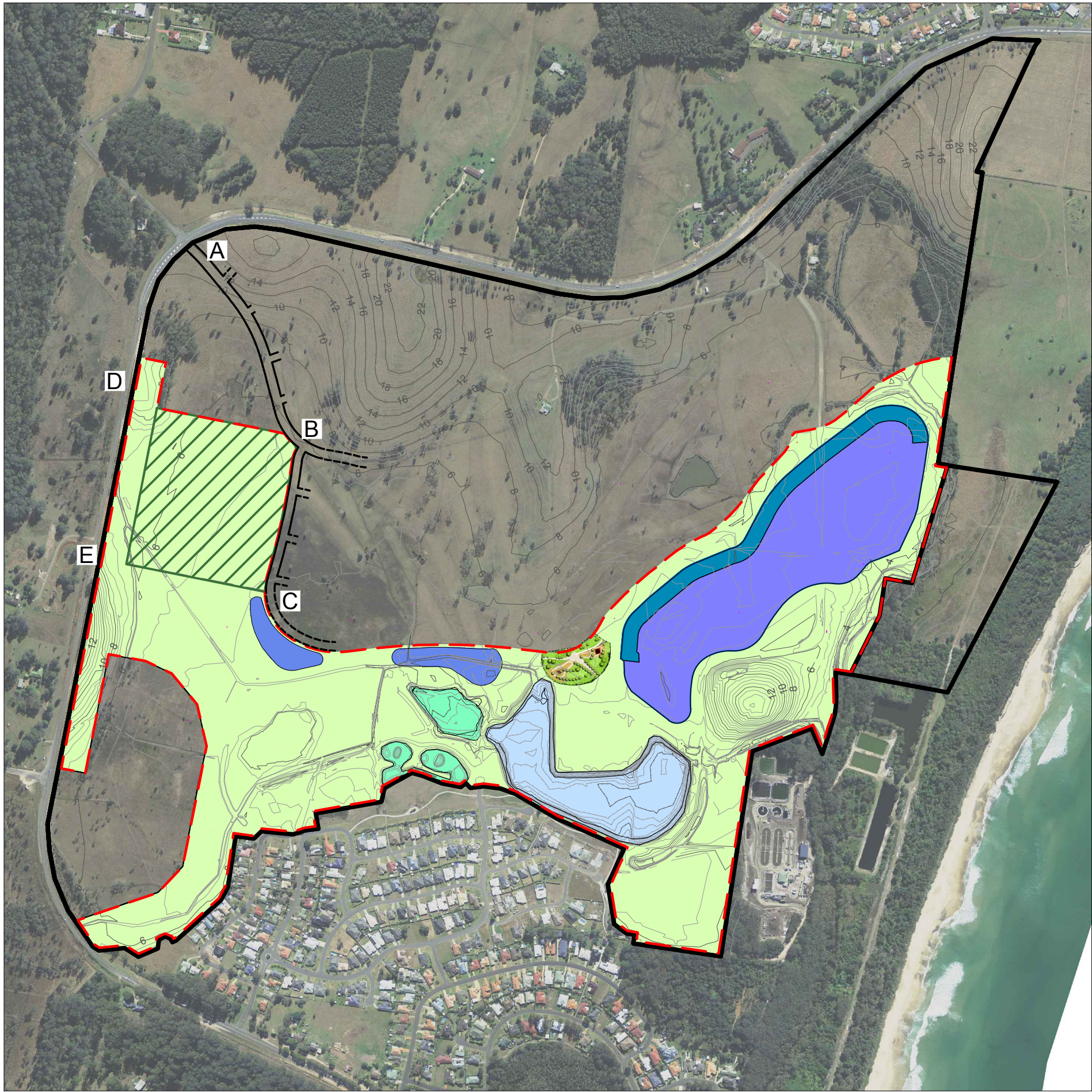
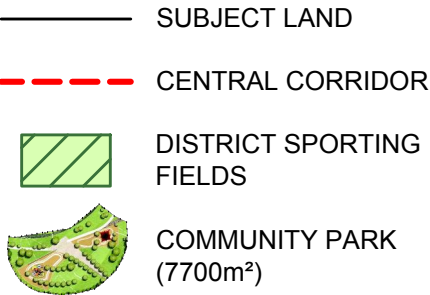


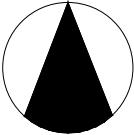
FIGURE 2

- DISTRICT SPORTING FIELDS
- COMMUNITY PARK



REVISIONS:
A: 17.02.09
B: 24.03.10 BBT

Rainbow Beach Estate
Property Management Plan Series
Job. No. 4509:ND Dwn: RM/BAC
Luke and Company Pty Ltd



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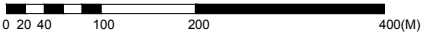
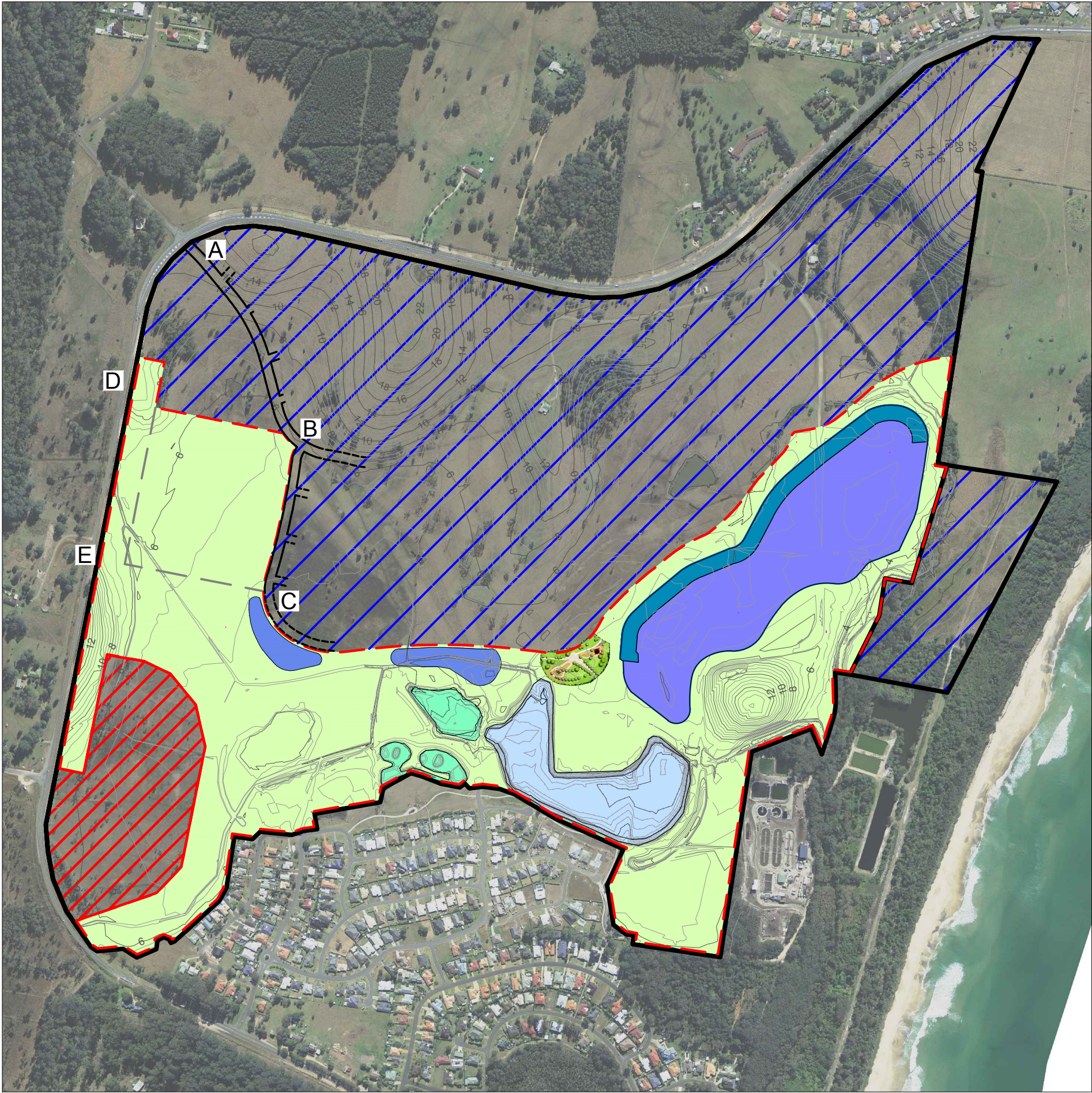


FIGURE 3

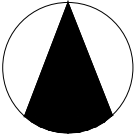
- CHARGE LAND
- REMAINDER LAND



- LAND
- - - CENTRAL CORRIDOR
- - - DISTRICT SPORTING FIELDS
-  COMMUNITY PARK (7700m²)
-  CHARGE LAND
-  REMAINDER LAND

REVISIONS:
A: 17.02.09
B: 24.03.10 BBT

Rainbow Beach Estate
Property Management Plan Series
Job. No. 4509:ND Dwn: RM/BAC
Luke and Company Pty Ltd



SCALE:
1:8000@A3 1:4000@A1
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