DAVID CRANE & ASSOCIATES
PTY. LIMITED. A.B.N.87818961246 A.C.N.069236871
Planning, Development & Building Consultants

Submission to Department of Planning

Proposed Kendall Bay Marina at Breakfast Point



Prepared on behalf of
Hunters Wharf SP75666 – Breakfast Point

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Suite 100/26-32 Pirrama Road, Pyrmont, N.S.W. 2009 Australia
(02) 9660 5356 Telephone ✦ 041 996 7746 Mobile ✦ (02) 9518 4545 Facsimile
davidcrane@swiftdsl.com.au **Email**



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1.0 INTRODUCTION

This report is submitted to the Department of Planning in response to the public exhibition of the proposed new commercial marina at Kendall Bay adjacent to the Breakfast Point residential area. It is understood the marina involves:

- construction and operation of a 172 berth marina and associated infrastructure including a kiosk, manager's office and 58 space car park;
- a fixed jetty and pontoon, and
- installation of a sediment protection system (geotextile blanket).

David Crane and Associates act on behalf of the owners of the Hunters Wharf (SP75666) - Breakfast Point.

The purpose of this submission is to outline a number of concerns with the proposed Marina. The key concerns involve the following main issues:

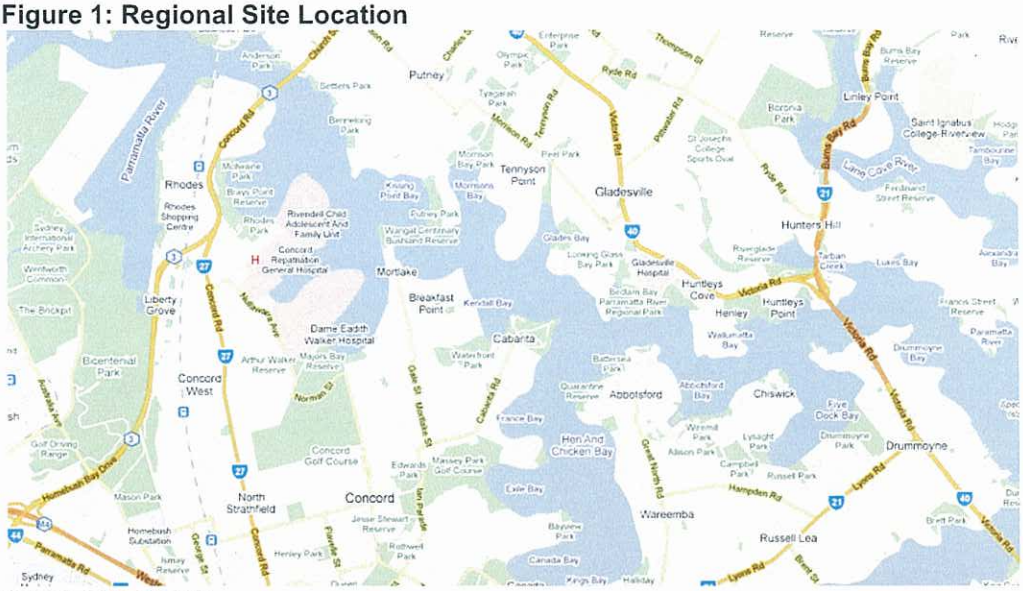
- Private vs Public Marina and Breakfast Point Community Expectations;
- Legal Issues Concerning Breakfast Point Community Land;
- Visual Impact;
- Traffic and Parking;
- Avian Fauna;
- Estuary Hydrodynamics and Physical Sedimentary Environment and Sediment Management;
- Marine Environment and Biodiversity;
- Acoustic Amenity;
- Construction Management;
- Waterway Management and Navigation;
- Boat Maintenance; and
- Planning Objective/Control Compliance.

2.0 SUBMISSION CONTEXT

2.1 Locational Context

The proposed commercial Marina site is within Kendall Bay on the Parramatta River. It is adjacent to, (and will rely on access through), the private Breakfast Point residential estate as shown on the following location and site plans.

Figure 1: Regional Site Location



Source: Google maps

Figure 2: Aerial image of subject site location



Source: Applicants EA Submitted to DOP

Figure 3: Subject Site



Source: Applicants EA Submitted to DOP

2.2 The Marina Proposal

The following extract from the Environmental Assessment submitted to the Department of Planning describes the key elements of the proposed new commercial marina at Kendall Bay adjacent to Breakfast Point as follows:

"The applicant proposes to construct a new 172 berth marina to be known as Inner West Marina, in Kendall Bay, to assist in satisfying the current and future demand for wet berths in Sydney, and in particular that part of Sydney west of the central business district. ....The marina is planned to be operated as a commercial marina with berths made available to the wider community and not as a residential marina where berths would be generally restricted to use by residents of dwellings within the adjacent residential estate. The project includes construction and operation of the following components:

1. Construction of a new low level jetty designed to incorporate a ferry stop, on the line of the original high level wharf;

2. Construction of a 172 berth floating marina structure (including 5

destination berths), with floating breakwater sections to reduce wave energy and wave heights at the moored vessels;

3. A kiosk with seating (indoor plus outdoor) for up to 50 people at the end of the new jetty providing facilities and access for marina users and the general public;

4. A manager's office, amenities and security gate;

5. Dedicated marina car parking for 58 car parking spaces;

6. Remediation of the contaminated sediments within the site, in the form of a Sediment Protection System (SPS) over the lease area of the bed of the bay (which includes a geotextile blanket secured by rock ballast)."

The vessel lengths which will be accommodated in the proposed development range from 8m in length up to 25m. The number and lengths of vessels in the proposed development are set out in the following table:

Maximum Vessel Length (m)	No. of Berths Proposed In Marina
8	12
10	30
12	46
14	40
16	28
18	7
20	7
Up to 25	2
Total:	**172**

The vessel profiles will range from yachts with low deck profiles to sports motor vessels with low profiles but higher than the yachts, up to motor vessels with fly bridges. The distribution of the vessel profiles has been assessed based on vessels currently berthed in nearby marinas.

Vessel Type	Profile	% of Total	No. of Vessels
Sailing Vessels	Low	12	21
Motor Vessels - Sports Cruisers	Low	57	98
Motor Vessels - Fly Bridge Cruisers	High	31	53
Total			**172**

Yachts would be in the berths at the eastern ends of the arms where the water depth is greater.

3.0 SUBMISSION ISSUES

3.1 Introduction

The following discussion addresses a number of key issues relating to the suitability of the subject site for the proposed marina.

It is considered that the issues raised are, in and of themselves, enough to warrant refusal of the application, however, (as was verbally agreed at the meeting in October 2010) additional specialist research and documentation will be submitted the DOP over the next few weeks to further address some of the issues raised in this preliminary submission.

The issues covered in this submission are as follows:

- Private vs Public Marina and Breakfast Point Community Expectations;
- Legal Issues Concerning Breakfast Point Community Land;
- Visual Impact;
- Traffic and Parking;
- Avian Fauna;
- Estuary Hydrodynamics and Physical Sedimentary Environment and Sediment Management;
- Marine Environment and Biodiversity;
- Acoustic Amenity;
- Construction Management;
- Waterway Management and Navigation;
- Boat Maintenance; and
- Planning Objective/Control Compliance.

3.2 Private vs Public Marina and Breakfast Point Resident Expectations

As discussed in section 2 the proposed commercial Marina site is within Kendall Bay on the Parramatta River. It is adjacent to, (and will rely on access through), the private Breakfast Point residential estate.

Although some of the residents of the Breakfast Point Estate were aware that a marina had been loosely mooted in both the 2002 and 2005 Masterplans it was noted as a **private** marina rather than a **public** marina.

Had the proposal been for a private marina (when it was still permissible under the former planning controls) the local residents most affected by it would have been fully involved in the development proposal and would have ensured that the design best suited the residents its served.

There are a number of important differences between a public and private marina in terms of its potential impacts on the local area and a few of these are outlined below. The key issues are summarized below:

- A private marina would be developed by and for the residents of the estate it serves. That means that that the residents would get to decide on size and location etc. The current scheme has largely been developed apart from the residents and they have not been in a position to veto or significantly influence a development outcome that will have major impacts on the residential amenity in their estate.

- A private marina would be for the use and occupation of the residents of the estate which is served by it as opposed to a public marina where members of the public outside of the estate will use it. Accordingly where additional vehicular traffic would have been negligible though the estate for a private marina the current proposal will result in substantial increases in traffic on private streets. It also means that members of the public will indiscriminately drive through the estate to access the facilities, which was never the intention, certainly at the scale at which it is likely to occur.

- Vehicular and pedestrian access is required to the marina via the Breakfast Point Estate. This estate is a privately owned and managed and has a number of legal documents governing the use of the private road and pathways within it. This would not be an issue for the development of the estate as a private marina however will be a legal issue for the development of a public marina, as discussed in more detail in point 3.3 below.

It is understood that no commercial marina within the Sydney Harbour area is accessed through a privately owned and maintained residential property and Kendall Bay/Breakfast Point should not set a precedent in this regard.

Assessment Implications and Recommendations

The early concept planning for the Breakfast Point Estate did not feature a clearly defined future marina proposal. Rather a private marina was only ever loosely mentioned (and never located or clearly defined) in the planning documentation as a possible/potential future use to serve the estate. Given the nature of the private estate the local community clearly had no expectation of a future public marina. Rather the assumption was that any future marina would be a small private one to service the estate residents only.

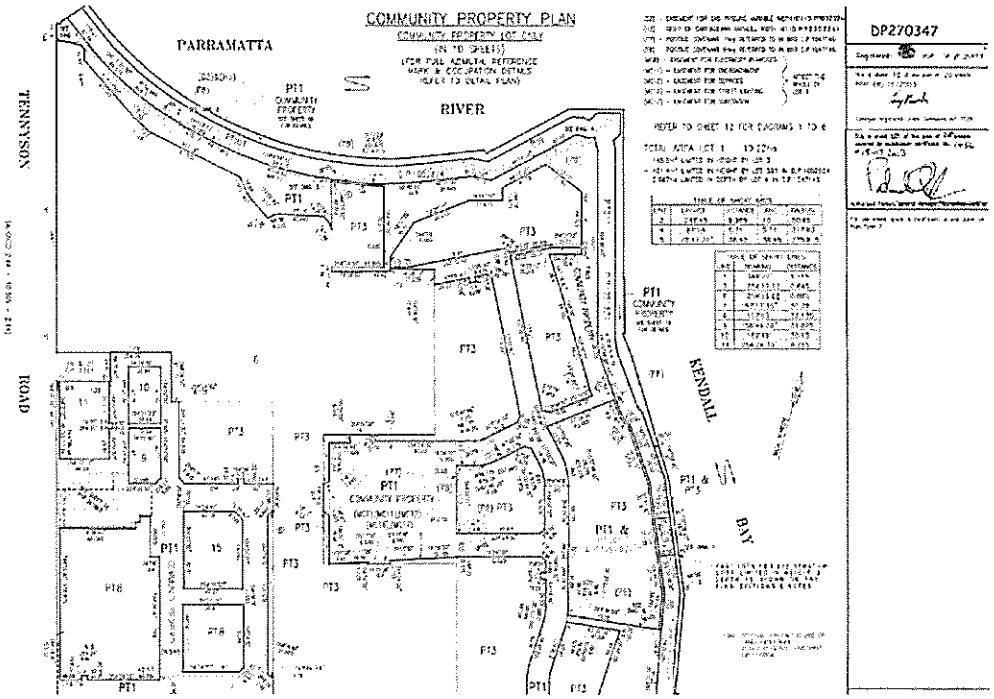
Whilst the current planning controls currently technically allow for commercial rather than private marinas in the waterway adjacent to the site, it is

suggested that if private marinas are not currently permitted adjacent to Breakfast Point then no marinas should be allowed due to the significantly greater impacts of a commercial marina, as discussed above and throughout this submission.

3.3 Legal Issues Concerning Breakfast Point Community Land

There are several key issues in relation to the legal matters concerning the ability to establish and operate the proposed commercial marina. Maddocks Lawyers are investigating these matters in more detail and will provide a more detailed submission within the next few weeks. A preliminary advice is presented in Appendix I to this report.

The Breakfast Point residential estate operates under the provisions of a strata plan, a Community Management Statement and an extensive 88B instrument (see Appendix C). The community property plan applicable to DP 270347 (see extract below) identifies a single lot (pt 1) which covers all of the common area of the site including the roads and pathways.



The proposed pedestrian and golf cart access to the marina will be via open accessways, being community property, at the northern and southern ends of Hunters Wharf. Refer Google map extract and photograph below.



Source: Google Maps

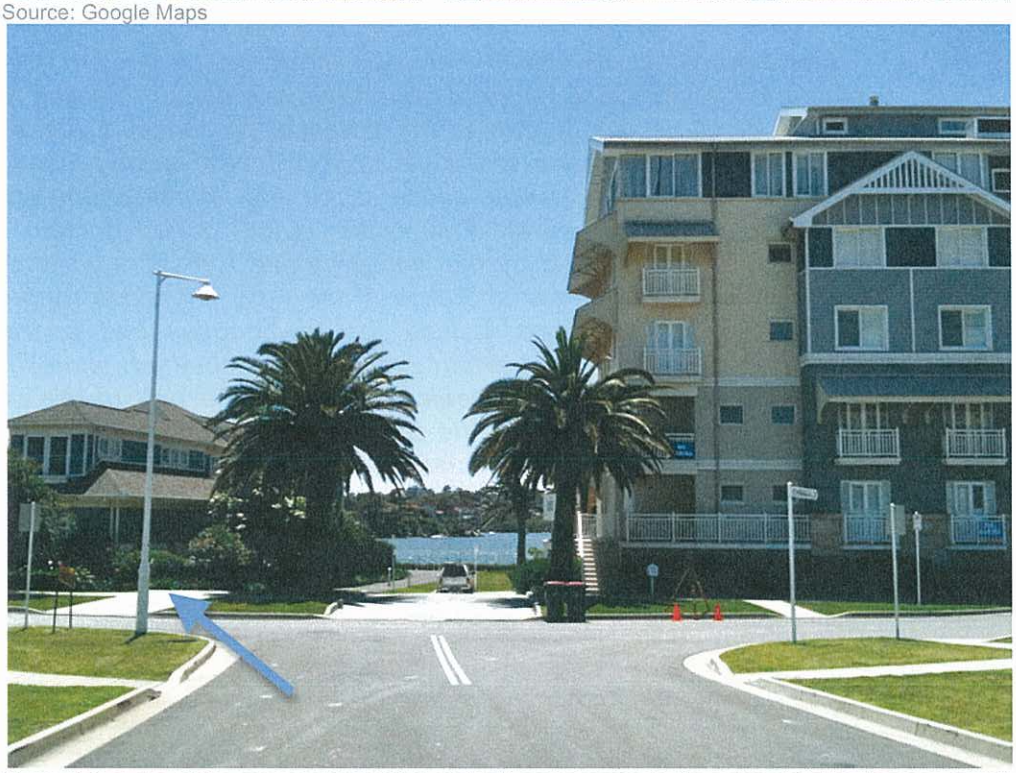


Photo above: one of the proposed pedestrian and golf cart accesses to the commercial marina (see arrow)

Assessment Implications and Recommendations

There are several key issues in relation to the legal matters concerning the ability to establish and operate the proposed commercial marina. Maddocks Lawyers are investigating these matters and a preliminary advice is presented

in Appendix I to this report. These issues should form reasons for refusal of the application.

3.4 Visual Impact

The visual impact will be significant and detrimental for the residents immediately adjoining the section of Kendall Bay where the public marina is proposed. The concentration of marina berths will obstruct public views of the bay from the adjoining dwellings and sections of the public walkway.

Two of the key planning documents governing development on Sydney Harbour and its tributaries are:

- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* (SHREP); and
- *Sydney Harbour Waterways and Foreshores Area Development Control Plan for SREP (Sydney Harbour Catchment) 2005* (SHDCP).

Both of the above documents seek to ensure that the waterways and foreshores of Sydney Harbour are recognized, protected and maintained as an outstanding natural asset. In particular it is noted that the SHDCP contains specific provisions for assessing the visual impacts of marina developments.

The visual assessment of the application prepared by Richard lamb and Associates concluded that:

> *"..that there would be visual impacts in the range of medium, medium to high and high for close range public and private domain viewing locations which would be mostly due to the potential presence of the proposed marina in the foreground of the views from these viewing locations and the resultant change it would cause to the view compositions and visual character of those views. The close range public domain viewing locations are constituted by the waterway and foreshore walkway along the western and southern shoreline of the Bay. The close range private domain viewing locations include the townhouses and apartment in Manors East Precinct and Wharf Precinct. The southern shoreline of the Bay is of relatively higher scenic quality and the part of the proposed marina close to this part of the Bay in particular Arm 8 would have a higher impact on this scenic quality. That impact is not considered to be such that the application ought to be refused."*

Despite this conclusion it is considered that the project proposal will in fact have an unreasonable visual impact, particularly from the adjoining dwellings and the publicly accessible foreshore walkway. A supplementary report will follow in the next few weeks to further document this matter however, the following preliminary comments are made at this stage:

- Volume 5 of the Project Application that deals with the Visual Assessment has no photomontages looking east from Hunters Wharf (SP75666) e.g. VP 19. The assessment has many photos, photomontages, and tables relating to viewing points considered to have relatively low relevance. This potentially downplays the significant visual impact from positions in close proximity to the

proposed marina such as the adjoining dwellings and public foreshore walkway;

- The general public currently have access to a wide pathway/cycleway around Kendall Bay with panoramic views of a clear open bay and the main body of the river. The marina will have a significant impact on the natural views of the bay and access around the walkway/cycleway; and

- The size of the marina is such that it takes up a significant portion of Kendall Bay, creating an overwhelming and unattractive footprint on the bay.

Assessment Implications and Recommendations

The visual impact of the proposal, particularly for the residents who will adjoin and overlook it, is considered to be substantial and unreasonable. Further detailed analysis will be undertaken over the next few weeks and submitted the DOP to further document this concern.

3.5 Traffic and Parking

Appendix 7 of Volume 4 of the Environmental Assessment for the proposed marina contains an assessment prepared by Colston Budd of the impact of the proposal in terms of traffic and parking.

Wayne Taylor, Civil Engineer was instructed by the Hunters Wharf (SP75666) - Breakfast Point to undertake a preliminary assessment of the impacts on the traffic and parking in the light of the findings of the above report and to compare these impacts with the Director-General's Requirements issued to the project applicant.

Mr Taylor's full report is contained in Appendix H to this submission. The assessment focuses on a review of the specialist report prepared by Colston Budd contained in volume 4 of the Environmental Assessment and identifies numerous points of non-compliance with the Director General's requirements. A further supplementary report will follow within the next few weeks which will further detail the traffic, parking and access issues. The key points raised in the preliminary report prepared by Mr Taylor can be summarised as follows:

1. ***"The proposed arrangements, for parking and traffic, are seriously deficient, in the following respects:***

   (a) Unacceptable impacts on public safety:

   Safety for pedestrians and cyclists:
   - *It is proposed to drive golf buggies and other vehicles on the existing pedestrian walkways and foreshore walk/cycleway, between the proposed carpark and marina – which is blatantly unsafe (and if it is planned to upgrade these, no information has been provided);*
   - *Pedestrian safety in the surrounding roads (Tennyson Road, Magnolia Drive and Rosewater Circuit) is already*

grossly inadequate, and will be made worse by the addition of marina traffic.

Safety for road users

- *Tennyson Road is of insufficient width (by at least 1.5 metres) to perform its current function, and will be made more unsafe by the addition of marina traffic*

(b) *Insufficient and poorly-designed parking – which will inevitably cause significant parking and traffic conflicts:*

Insufficient parking provided

- *less than half of the numbers required (a shortfall of at least 64 spaces, plus parking for the proposed ferry wharf and launching ramps)*

No parking provided, in the carpark, for many classes of vehicles

- *visitors, "golf buggies", the public accessing the proposed ferry wharf and launching ramps.*

The carpark is 250 metres away from the marina, with a residential building in the middle.

- *Serious parking conflicts, with existing residential visitor parking, are inevitable.*

The carpark entry and exit are restricted by boom gates, without provision for casual access, or stacking zones for waiting vehicles.

No parking provided at the marina for "golf buggies" or garbage removal vehicles.

(c) *The carpark design fails to provide essential facilities* *(in spite of claims to the contrary)*

- *Loading / unloading areas for large or small vehicles, including garbage trucks.*
- *Storage areas for garbage or trolleys*

(d) *The carpark location will result in unacceptable amenity impacts for surrounding residents* *(being surrounded on 4 sides by medium density residential development, with minimal screening)*

(e) *Traffic from the marina will cause unacceptable amenity impacts on several affected streets within Breakfast Point* *– affecting several hundred residents.*

2. ***The report and plan provided fail to address many of the Director General's requirements, the requirements of other authorities, and provide insufficient detail for assessment – in the following respects:***

   (a) Access between the carpark and marina is not adequately documented

(b) *Parking required for the proposed ferry wharf and small launching ramps is not calculated or provided.*

(c) *Estimates of final daily vehicle movements in affected streets and roads are not provided – no detailed traffic study has been undertaken.*

(d) *Assessment of traffic impacts – on safety, amenity, road capacity etc – are largely omitted. The scanty traffic numbers provided are completely unsubstantiated.*

(e) *The application is based on incorrect governing legislation – ie AS3962, rather than the specified RTA guidelines.*

(f) *The documents are riddled with inconsistencies – regarding the use of vehicles between the marina and carpark, proposed loading bay, garbage facilities, etc.*

(g) *No bicycle parking provided*

3. ***These deficiencies are so fundamental that they cannot be resolved by further traffic studies – at the least, a complete re-planning of the whole development is required."***

Assessment Implications and Recommendations

There are clearly a number of serious deficiencies in the proposed parking arrangements, which is unacceptable and contrary to the public access easement in the 88B instrument. It is also noted that the proposed parking area is not anticipated to be able to service the likely demand. The result will be a spilling over into the surrounding residential streets, which is unacceptable.

Further to this it is noted that the Breakfast Point Estate is still incomplete and further residential developments will add to existing traffic and parking demands. Adding a marina to this capacity situation is likely to create serious and unreasonable parking and traffic congestion within the estate, particularly at peak demand times.

It is also proposed to drive golf buggies and other vehicles on the existing pedestrian walkways and foreshore walk/cycleway, between the proposed carpark and marina – which is blatantly unsafe (and if it is planned to upgrade these, no information has been provided).

The matters raised in relation to traffic, parking and access deficiencies should form part of the reasons for refusal.

3.6 Avian Fauna

Volume 10 of the Environmental Assessment for the proposed marina contains an assessment of the impact on Avian Fauna carried out by Aquenal Pty Ltd.

Dr Ann Goeth was instructed by the the Hunters Wharf (SP75666) - Breakfast Point to undertake a preliminary assessment of the impacts on the avian fauna in Kendall Bay, in the light of the findings of the above report and to compare these impacts with the Director-General's Requirements issued to the project applicant.

Dr Goeth is an ecologist who has lived in Hunters Wharf, Breakfast Point, since 2005 and has thus gained extensive insights into the ecology and birdlife of Kendall Bay on an every-day basis. She also has a range of professional experience including:

- Two years as lecturer at Macquarie University, in subjects such as Conservation Biology and Biology of Australian Mammals;
- Honourary Research Associate at Macquarie University since 2005; Working as Senior Threatened Species Officer for the Department of Environment, Climate Change and Water (DECCW, Biodiversity Conservation Branch) since 2005;

- Her own consulting firm, providing Seven-Part-tests and environmental assessments for the company "Urban Tree Management";
- One year as ecological consultant for the United Nations in Geneva;
- Two years conducting an avian research project in the South Pacific;
- Two years as scientist in a Natural History Museum (Braunschweig, Germany);
- Several trips as lecturer on cruise ships in the South Pacific, focusing on marine and avian ecology; and;
- Explaining ecological facts to a wider audience in a range of articles, TV documentaries and her CSIRO published book on Australian moundbuilding birds; and
- A broad training in ecology at the University of Innsbruck, Austria (Masters), and Griffith University, Brisbane (PhD).

Dr Goeth's full report is contained in Appendix D to this submission. It is aimed at the key issues of flora and fauna, including an assessment of any impacts on critical habitats, threatened species, populations or ecological communities and their habitats in the region. The assessment focuses on the specialist report prepared by Aquenal Pty Ltdcontained in volume 10 of the Environmental Assessment and identifies numerous points of non-compliance with the Director General's requirements. These can be summarised as follows:

- ***"The desktop study by Aquenal did not result in the correct assemblage of bird species visiting the tidal mudflats in Kendall Bay.***

  The study is confusing as it is not clear why a birds' record for Kendall Bay is not proof enough for it's occurrence in the proposed development area. Also, a lack of survey results for Kendal Bay is no reason to argue that this area is not important for birds, and a proper fauna survey needs to be conducted. Additional bird data has been added to this submission, obtained by one specialist and Ann Goeth during random observations.

- ***Three bird species visiting the mudflats (listed in Appendix 1) are protected by Commonwealth legislation (EPBC Act) and this is not mentioned in the report.***

  The three species are Painted Snipe, Terek Sandpiper and Australian Painted Snipe. The report ignores the legislative status of the first and

second, and provides no discussion on the impact on the third species.

- ***Two bird species visiting the mudflats listed in Appendix 1) are protected by NSW legislation (TSC Act) but not mentioned in the report. Two others listed under the TSC Act are mentioned, but not discussed further***

  The report fails to list the Painted Snipe as Endangered and the Black-tailed Godwit as Vulnerable under the TSC Act. It does mention two other avian species listed under the TSC Act, the Pied Oystercatcher and Terek Sandpiper (both vulnerable), but provides no discussion whatsoever on the potential impacts on these listed species.

- ***The value of the mangrove area and adjacent mudflats as bird habitat is not valued in the application.***

  The figure included in Aquenal's report does not include these areas and there is no discussion of these areas being important feeding and roosting areas. They are likely to be inhabited by the Black Bittern, which is listed as vulnerable under the TSC Act. Volume 3 demonstrates that impacts on the mangroves from the proposed marina are likely.

- ***Eighteen of the bird species listed in Appendix 1 are protected by international agreements for the protection of migrating birds. These agreements receive no mentioning at all in the application.***

  This is a major omission as Australia has agreed to adhere to these agreements for the protection of migrant birds, especially shore birds.

- ***The proposal downplays, or even ignores, several impacts on birds visiting the tidal mudflats.***

  The discussion of impacts is kept very short and potential impacts are being rejected throughout the report. This section is unacceptable and more discussion needs to be provided.

- ***The proposal ignores several other bird species that visit the open waters of Kendall Bay for feeding.***

  These include cormorants, pelicans, terns, ducks, herons, spoonbill and gulls. No discussion on the impacts of these birds is provided.

- ***The survey effort for birds is insufficient, a desktop study is not enough.***

The data provided in the report is insufficient to discuss the potential impact on birds. A proper field survey by an expert consultant needs to be carried out.

- ***The cumulative impact of habitat destruction in several bays along the Parramatta river on migrating shorebirds has not been considered.***

  The estuary is already so built up that few bays with undisturbed tidal flats remain for feeding, and this is not being considered in the application.

- ***Choice of consultant questionable.***

  It has to be asked why the applicant chose to use Aquenal Pty Ltd as a consultant, given that this consultant is based in Tasmania, never seems to have visited the area and has no local knowledge of the area."

Assessment Implications and Recommendations

The review highlights serious concerns with the quality and scope of the Avian Fauna assessment done on behalf of the applicant for the marina application. In particular it appears that the conclusions drawn from the desktop analysis have potentially substantially understated the impacts of the proposed marina on the existing bird habitat.

It is recommended that a more comprehensive study be undertaken which includes appropriate avian habitat field survey work specific to the area and the proposed site. The results of this work should then be added to the overall assessment and, if the proposal cannot adequately manage the potential impacts, the results could well form a reason for refusal of the application.

3.7 Estuary Hydrodynamics and Physical Sedimentary Environment and Sediment Management

Volume 6 of the Environmental Assessment for the proposed marina contains an assessment of Estuary Hydrodynamics and Physical Sedimentary Environment Report Incorporating a Turbidity Investigation, prepared by GBA Coastal Pty Ltd, Consulting Engineers. This volume looks at the existing environment then it's interaction with the proposed marina development and the mitigation measures proposed.

Volume 9 of the Environmental Assessment for the proposed marina contains a Sediment Management Report prepared by AECOM Pty Ltd.

Laurie Ihnativ was instructed by the Hunters Wharf (SP75666) - Breakfast Point to undertake a preliminary review of both of the above reports and to compare the findings with the Director-General's Requirements issued to the project applicant.

Laurie is a Fellow of the Institution of Engineers, Australia and has over 30 years experience in geotechnical investigations and contamination assessments. His full report is contained in Appendix G to this submission. The assessment focuses on the specialist report prepared by GBA Coastal Pty Ltd, contained in volumes 6 and 9 of the Environmental Assessment and identifies numerous points of non-compliance with the Director General's requirements. These can be summarised as follows:

- *"The design of the SPS[1] does not satisfy the concerns raised by DECC.*
- *The design and construction fails to satisfy the requirements of the EPA Remediation Order issued in 2007.*
- *The provision of the SPS is a remediation project, not just a civil engineering project.*
- *The proponent has not followed international guidelines to design the SPS. The USEPA (2005) provides detailed guidelines*
- *A 50yr Ari applies to marina structures. A 200 yr ARI should be applied to remediation projects.*
- *The erosion threshold velocity for unconsolidated sediments is 0.15 m/sec lower than the 0.3 m/sec adopted*
- *There is no justification for accepting that only the top 100 mm of sediment will be disturbed during the SPS and marina construction.*
- *Because of uncertainties associated with low strength sediments and laying the SPS below water, the SPS thickness should be increased by 50% (USEPA).*
- *There are significant questions regarding the sediment and geotextile tests.*
- *The geotextile selected fails the retention and susceptibility to down slope migration tests – mitigation is required.*
- *The absence of measured sediment geotechnical properties means some guesswork has been used in the SPS design and performance.*
- *The SPS design is not consistent with acceptable practice as defined by USEPA.*
- *The bed slope in Kendall Bay is too steep for and SPS – it is not feasible.*

[1] The report further notes: *"In essence the proponent proposes to construct a marina and protect the contaminated sediment by using a rock layer underlain by a geotextile. …. Throughout this presentation the words cap and ISC which are widely used in the USA mean the same and are interchangeable. They are also the same and are interchangeable with SPS used in the DA document. The capping proposal is using a technique for isolating contaminated sediments and called Insitu Capping (ISC). ISC usually serves three main functions: (a) Physical isolation of the contaminated sediment from the benthic environment (b) Stabilizing the contaminated sediment preventing its re-suspension and movement to other areas, and (c) Reduction of the flux of dissolved contaminants."*

- *The proponent severely underestimates the amount of sediment disturbance after the marina operational phase*

- *The as designed SPS provided fails to mitigate the disturbance of the sediments – it is inadequate.*

- *The case studies presented by the proponent do not have a marina present.*

- *The SPS thickness of other projects mentioned vary between 0.8 and 1.52 metres, significantly thicker than the 0.3 metre thick blanket nominated for Kendall Bay."*

Assessment Implications and Recommendations

The review highlights significant weaknesses in the proposed design of the geotextile blanket solution. As discussed above, this matter alone could well form a reason for refusal of the application because the geotextile blanket proposal is a fundamental component of the project application and there are no alternate solutions likely to perform adequately in relation to the Remediation Order.

This major issue is considered to form part of a body of evidence that indicates that the marina is inappropriate for the area in which it is proposed

3.8 Marine Environment and Biodiversity

Volume 3 of the Environmental Assessment for the proposed marina contains an aquatic environmental assessment undertaken by Cardno Ecology Lab.

Dr Ann Goeth was instructed by the Hunters Wharf (SP75666) - Breakfast Point to undertake a preliminary assessment of the impacts on the marine environment and biodiversity in Kendall Bay, in the light of the findings of the above report and to compare these impacts with the Director-General's Requirements issued to the project applicant.

As discussed above, Dr Goeth is an ecologist who has lived in Hunters Wharf, Breakfast Point, since 2005 and has thus gained extensive insights into the ecology and birdlife of Kendall Bay on an every-day basis. She also has a range of relevant professional experience.

Dr Goeth's full report is contained in Appendix E to this submission. The assessment focuses on the specialist report prepared by Cardno Ecology Lab contained in volume 3 of the Environmental Assessment and identifies numerous points of non-compliance with the Director General's requirements. These can be summarised as follows:

- ***"It is misleading to state in the summary of project impacts that the fauna in Kendall Bay is not typical of the area and not considered of significant ecological value (p. 72, Vol 1).***

This is an incorrect interpretation of information provided by Cardno which indicates a diverse range of fauna.

- ***The geotextile blanket does not meet the requirements of the Remediation Order.***

  Contaminated fine sediment particles will still pass through fine holes in the blanket.

- ***High levels of contaminants and further increase of these levels:***

  Both the sediment and water in Kendall Bay are so polluted that any increase in pollution levels from boats will push the levels of various contaminants over acceptable thresholds.

- ***Release of Acid Sulphate Soils.***

  This issue is not dealt with sufficiently.

- ***Significant increase in copper contamination.***

  The copper concentration in Kendall Bay exceeded the ANZECC 95% trigger values at all sites measured by Cardno, and most boats will use copper-based anti fouling paints, which will push copper levels in the water beyond acceptable values.

- ***Pollution of bay water from the boats' sewage and bilge water.***

  This is highly likely, given the size of the proposed marina. No proper methods of enforcement of rules preventing such pollution are being suggested, and it is unclear whether a sufficiently neutral party would enforce such rules.

- ***Pollution of bay water via engine exhausts.***

  Boat engine exhausts will introduce hydrocarbon contaminants and heavy metals into Kendall Bay, and levels of these substances are already too high.

- ***Accidental spills of sewage and organic pollutants.***

  This is highly likely, given the high number of boats using the proposed marina. No proper methods of enforcement are being suggested.

- ***Introduction of non-indigenous fish and marine vegetation is listed as a Key Threatening Process (KTP) under the TSC Act.***

  Given the large size of the marina, it will be impossible to avoid the introduction of non-indigenous species in the long-term.

- ***Destruction of food chains***

  Destruction of food chains when organisms in the soft sediment will perish after laying of the geotextile blanket, and through resuspension

of sediment and increased turbidity. The reduction of pelagic and epibenthic flora will reduce the amount of food for fauna higher up the food chain.

- ***There are not enough areas elsewhere in the estuary to make up for the loss of habitat.***

  There are few bays left in the estuary that are not yet used for mooring boats.

- ***Impacts on mangroves and protected areas through changes in water circulation and sedimentation patterns.***

  The report suggests that such impacts are likely but does not discuss this in sufficient detail. No attention is paid to the impact of reduced dilution of stormwater entering the bay at the southern end, where stormwater and trash won't be removed as quickly as before.

- ***The provisioning of novel habitat in the form of new pillars, jetties etc should not be used as an argument in favour of the marina.***

  Cardno's admits that while these structures provide novel habitat, this will not offset the impacts on soft-bottom assemblages resulting from their introduction.

- ***The application does not consider the impacts on climate change.***

  Marine algae, which considerably reduce CO_2levels, will be destroyed or overshadowed, reducing their ability to photosynthesis. Also, methane will be released when organisms decay under the geotextile blanket.

- ***The proposed silt curtains propose a risk for free swimming fauna and won't completely stop contaminated matter leaving the area.***

  During daily openings of the curtains, contaminated material will also exit the enclosed area. Also, mobile organisms are likely to get caught in the net and die, or suffer considerably from the lack of food within the area they are trapped in.

- ***The application wrongly claims there would be no removal or destruction of marine vegetation*** *(p. 13, Vol. 3).*

  This is incorrect if marine algae are also considered marine vegetation.

- ***Insufficient survey effort.***

  The assessment was conducted during May 2009 and not repeated at other times. Seasonal changes of flora and fauna assemblage are not discussed. The Protected Matters Report has not been conducted for Ryde City LGA on the other side of Parramatta River."

Assessment Implications and Recommendations

The review highlights significant shortfalls and errors in the research undertaken and therefore casts serious doubt on the ability of the proposed marina development to adequately protect the existing marine environment. In particular it is noted that the proposed geotextile blanket does not meet the requirements of the Remediation Order made in 2007 and enforced by EPA. This matter alone could well form a reason for refusal of the application because the geotextile blanket proposal is a fundamental component of the project application and there are no alternate solutions likely to perform adequately in relation to the Remediation Order.

In addition to the unresolved issues concerning the geotextile blanket there are also a number of other concerns relating to unreasonable additional pollution of the bay water due to the proposed marina.

Together these issues are considered to form part of a body of evidence that indicates that the marina is inappropriate for the area in which it is proposed.

3.9 Acoustic Amenity

The proposed development will be located in close proximity to a large number of residences within the Breakfast Point private residential estate. As discussed in section 3.2 above a commercial marina adjoining this estate has never been mooted in any of the concept or masterplanning controls although a private marina was suggested in principle. Accordingly the proposed large commercial marina will result in a substantial detrimental change to the acoustic amenity for the adjoining residences. In this regard the following preliminary comments are made:

- Construction Noise

  In relation to construction noise, the noise assessment prepared by **Heggies Pty Ltd** revealed that *"Predicted noise levels at the nearest residences from construction activities are expected to exceed the daytime period noise design goal. Significant exceedances of the design goals by more than 33 dBA may occur as a result of impact piling" (page.95)*. It is also stipulated that once Construction Noise Mitigation strategies are employed, it is "expected" that compliance with the noise design goals during day time, evening and night time will be assumed. Residents of Breakfast Point would seek a far greater guarantee in this regard to ensure that the anticipated extent of noise generated will be acceptable; and

- Operational Noise

  Residents of these dwellings will be subjected to increased noise from numerous sources associated with the proposed marina such clicking and clanging of sail ropes on masts. The noise of clanging rigging from the berthed boats will occur when the wind is blowing and also every time a Rivercat passes (approx 50 times daily, from 6.13 am until 11.20 pm). There will also be increased noise levels from marina

users, vehicles and vessels generally disturbing the adjoining residential area during operational times.

Assessment Implications and Recommendations

There are numerous construction and operational impacts arising from the proposed commercial marina. Some of these impacts can be mitigated through management however a number are unavoidable given the location and scale of the development proposed. This matter, together with the others raised in this submission, should form part of the reasons for refusal.

3.10 Construction and Operational Management

Rod Jeffery (BE,MSC,DIC,FIE AUST) has reviewed the following documents that form part of the Environmental Assessment (EA):

- Volume 7, Appendix 10: Construction Environmental Management Plan (CEMP) prepared by AECOM;
- Volume 7, Appendix 10: Operational Environmental Management Plan (OEMP) prepared by AECOM;
- Volume 8, Appendix 11: A Marina Berth Demand Assessment prepared by Australian Marina Management Pty Ltd; and
- Volume 8, Appendix 12: Construction Management Plan prepared by TLB Engineers

The complete reviews are presented in Appendix F of this submission. The following comments provide a summary of some of the key points made in the review.

The following construction management issues are raised in relation to Volume 8, Appendix 12, Construction Management Plan (CMP) as submitted with the EA:

- *Drawing CMP01 shows a 70 m plus "Openable Sections of Silt Curtain"; It will be regularly opened to allow access of all construction vessels and materials.* ***This opening will promote escape of the water suspended containments which will be further exacerbated during outflowing tides.*** *(See BPRG comments clauses Dwg. CMP01)*
- *The CMP provides* ***no proof how the silt curtain will seal against the irregular SPS Basalt layer, or the sloping floor, or the bed deposits without disturbance****. (See BPRG comments clause 5)*
- ***The very limited success of silt curtains in containing sediments*** *or contaminants for the marina velocity of tidal/and propeller wash currents is frequently illustrated* ***in USA reference*** *"Silt Curtains as a Dredging Project Management Practice" (see separate BPRG quotation listing).*

- *CMP Dwg CMP01 shows* ***silt curtain fixed to Community seawall without authorisation of seawall owner*** *(nor any form of indemnity for damage) (see BPRG comment clause 5 and dwg CMP01).*

- ***The CMP fails to require meaningful Basalt durability tests with NATA endorsement*** *of such tests. (See BPRG comments clause 2.3).*

- ***Inadequate warrant or guarantee provided by CMP for SPS****. (See BPRG comment clause Appendix 12).*

- ***No CMP consideration of introducing contaminants into water column during temporary pile withdrawal****. (See BPRG comment clause 2.4).*

- *The CMP drawing CMP01 shows* ***the SPS fails to cover the critical high risk area of generally 20 to 20 metres out from Mean High Water Mark****. (See BPRG comment clause CMP01)"*

The following construction management issues are raised in relation to Volume 7, Appendix 10, Construction Environmental Management Plan (CEMP) as submitted with the EA:

- *"The report provides* ***no "STOP" or "HOLD" points when NON Compliances occur*** *(See BPRG comments clauses 2.3,3.3.2 etc).*

- ***"No contingency plans" for "Non Compliance" events****. (see BPRG comments clauses 2.3,3.2.1,3.3.2,7.1,1.8 Appendix C)*

- ***Proposal is only for monitoring and testing of "surface water"*** *yet whole water column especially near SPS demands regular testing. (See BPRG comments clause 2.3)*

- ***No independent auditor verification of AECM*** *(yet they are the consultant who allowed the omissions in the CEMP). Also* ***no independent audit of contractors monitoring or testing****. (See BPRG comments clause 1.7)*

- ***No explanation how the "Silt Curtain" will seal contaminate escape on irregular floor*** *(See BPRG comments clause 3.2.1)*

- *The CELM proposal includes* ***unauthorised fixing of ends of silt curtain to others (i.e. Community) land****. (See BPRG comments clause 3.1.2.1)*

- ***No proposal for independent NATA Basalt durability tests to confirm it is "fit for purpose"*** *(See BPRG comments clause 3.2.1)*

- ***No consideration of the lifting of contaminants and "suck out" effect when temporary piles are withdrawn****. (See BPRG comments clause 3.2.2.)*

- ***Failure to extend the SPS to Mean High Water Mark (MHWM)*** *to contain contaminates in highest risk area (See BPRG comments clause 1.8)"*

Assessment Implications and Recommendations

The review comments demonstrate there are a number of concerns in relation to construction management. In addition there are a range of operational management concerns that have been documented throughout this submission (including the appendices) relating to various operational safety concerns from the marina. These include matters such as: explosion, spillage, and bilge pump emissions etc.

These matters, together with the others raised in this submission, should form part of the reasons for refusal.

3.11 Waterway Management and Navigation

The SHREP and SHDCP contain controls regarding access to the waterway which will be assessed in detail in a subsequent submission to be submitted the DOP in the next few weeks assessing compliance with key planning controls. The following preliminary points are noted however in relation to waterway management and navigation:

- Overcrowding of the waterway is already evident. In this regard it is noted that the area is already used by school and adult rowers and the marina will increase the risk of accidents between watercraft including ferries, rivercats, rowers and dangerous boat drivers;

- The proposed marina is very close to the river cat accessway to and from Cabarita wharf. Accordingly the current sweeping path will need to be altered significantly.

- The north east corner of the 172 berth marina will funnel the river cat and all other motorised vessels into a relatively narrow stretch of the river which will increase safety concerns for rowers and kayakers.

- Boats approaching and departing the marina would cross the ferry path at right angles. This would be especially dangerous at night and ferries now run until 11:19pm.

It is also noted that part of the review prepared by Rod Jeffery (refer Appendix F to this submission) states the following: "*Dwg DA-01 and D10 show a wide strip from west edge of SPS (often in 20 – 25 m width range) and the MHWM with no SPS. This is a potentially high disturbance zone due to wave action. Also one can daily view Rivercat ferry induced waves roll down the foreshore from Breakfast Point, north of the proposed marina to well south of the marina; also high winds affect the area together with tidal variations and proposed use of area for Kayaks, small vessels etc. (with almost certain falls and foot movement on sediments). The D.A. Vol. 6 report by GBAC confirm very high current speeds due to propeller action where the water is shallower (.eg. table 5.7)Further the U.R.S. contamination report for Jemena and the AECOM "Sediment Manage Report", (e.g. figures F4, F5, F8 etc.)identified the "Hot Spots" or contaminant concentrations near the MHWM. Frequency remediation by removal were such as at the shore end of the non demolished wharf."* The high wind velocities from most directions will increase navigation difficulties.

Assessment Implications and Recommendations

The above comments demonstrate there are a number of concerns in relation to waterway management and navigation. These matters, together with the others raised in this submission, should form part of the reasons for refusal.

3.12 Boat Maintenance

In an extract from p 21 of EA it is noted:

4.4 Services

The following services will be provided to vessel owners:

- Vessel cleaning.
- Maintenance which is capable of being carried out on the vessels. There will be no specific maintenance berth.
- Sewage and waste water pump out.

There will be **no** provision for refuelling of vessels, and **no** slip facilities to remove boats from the water for repairs and maintenance.

There is little detail provided in the EA in relation to the necessary maintenance of boats. More detail is required to establish how it will occur, whether there will be trucks associated with the maintenance, whether there will be unreasonable noise, hours of operation, etc. The results of this further information will assist in determining the level of impact for adjoining residents.

Assessment Implications and Recommendations

The above comments demonstrate there is a lack of definitive information in relation boat maintenance. Depending on the outcome of further work, these matters, together with the others raised in this submission, could form part of the reasons for refusal.

3.13 Planning Objective/Control Compliance

The following plans are relevant to an assessment of the proposal.

- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- State Environmental Planning Policy No. 55 - Remediation of Land
- State Environmental Planning Policy No. 64 – Advertising and Signage
- Canada Bay Local Environmental Plan 2008
- Breakfast Point Concept Plan 2005
- Sydney Harbour Foreshores and Waterways Development Control Plan

A supplementary report will be submitted to the DOP within the next few weeks addressing the relevant controls in some detail. The following notes provide some preliminary comments.

State Environmental Planning Policy (Major Development) 2005	
Part 3A Classes of Development	Project falls within Schedule 1, Group 6

	Tourism and Recreational Facilities, Clause 14 Marina Facilities
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	
Clause 16-18 ***Zone No W1 Maritime Waters*** *The objectives of this zone are as follows:* *(a) to give preference to and protect waters required for the effective and efficient movement of commercial shipping, public water transport and maritime industrial operations generally,* *(b) to allow development only where it is demonstrated that it is compatible with, and will not adversely affect the effective and efficient movement of, commercial shipping, public water transport and maritime industry operations,* *(c) to promote equitable use of the waterway, including use by passive recreation craft.*	The EA states "on statutory planning grounds, the Project is consistent with the Objectives of the W1 Maritime Waters zone in that the Project has demonstrated that "*...it is compatible with, and will not adversely affect the effective and efficient movement of, commercial shipping, public water transport and maritime industry operations*" and allows for "*equitable use of the waterway, including use by passive recreation craft.*" This is disputed. Refer comments in section 3.11 of this submission. The EA states that the "proposed marina, kiosk, manager's office, amenities and associated facilities are defined as a "*commercial marina*" and the ferry wharf as a "*public water transport facility*" (Clause 18). Both a commercial marina and public water transport facility are permissible with consent in the W1 Maritime Waters zone." Whilst this is agreed it is also noted, as in section 3.2 of this submission that the early planning documents nominated a potential private marina rather than a public marina in the vicinity of that proposed. It is noted however that private marinas are now a prohibited development within the W1 zone.
Division 2 – Matters for consideration **Clause 21 Biodiversity, ecology and environment protection** The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows: (a) development should have a neutral or beneficial effect on the quality of water entering the waterways, (b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities), (c) development should promote	As discussed in sections3.7and 3.8 there is a likelihood of disturbing existing pollution as the waterway is a remediation site. Accordingly the proposal will not comply with the provisions of clause 21(a) and (f). As discussed in section 3.6, there is the likelihood of disturbing avian species which feed in the interdal mudflats, and some of these are protected by legislation. The proposal will thus not comply with the provisions of clause 21 (b). Section 3.8 outlines that the proposal is likely to considerably impact on aquatic species, via pollution, destruction of food chains, loss of habitat and creating physical barriers such as the silt curtain. This also demonstrates that the proposal does not comply with the provisions of clause 21 (b). Section 3.8. also outlines that the structures associated with the proposed marina will reduce turbidity and changes to stormwater flow at the southern end of Kendall Bay, and hence does not comply

ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities), (d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access, (e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation, (f) development should retain, rehabilitate and restore riparian land, (g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands, (h) the cumulative environmental impact of development, (i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance.	with the provisions of clause 21 (d). The intertidal mudflats in Kendall Bay, which are habitat to many species of birds (see Section 3.6.) would be affected by overshadowing, further pollution and disturbance. The proposal does thus not comply with the provisions of clause 21(e). The proposal does not sufficiently discuss the cumulative impact on fauna inhabiting Kendall Bay (see Sections 3.6 and 3.8), in particular the fact that most other bays in the estuary are already used for mooring boats, and that Kendall Bay is one of the last undisturbed bays. Hence, the proposal does not comply with the provisions of clause 21(h).
Clause 24 Interrelationship of waterway and foreshore uses (e) development should avoid conflict between the various uses in the waterways and along the foreshores	There will be potential conflicting land uses (58 space car park in the context of residential development) and importance of integration with Breakfast Point development. Refer comments in sections 3.4 and 3.5 above. It is also noted that the proposed marina will increase the potential for conflict with existing users of waterways such as rowers, ferries, recreational fishermen, etc. Accordingly the proposal will not comply with the provisions of clause 24.
Clause 25 Foreshore and waterways scenic quality The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows: (a) the scale, form, design and siting of	The scale of the development, that being the erection of a 172 berth marina alongside other ancillary facilities is considered to be excessive in the context of Kendall Bay. This raises concerns with its ability to *"maintain, protect and enhance the unique visual qualities of Sydney Harbour and its island, foreshores and tributaries"*. In addition to this, the cumulative impact of the extensive marina and kiosk facility holds the potential to give

any building should be based on an analysis of: (i) the land on which it is to be erected, and (ii) the adjoining land, and (iii) the likely future character of the locality, (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries, (c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.	rise to an adverse visual impact which would *"detract from the character of the waterways and adjoining foreshores".* Refer comments in section 3.4. Accordingly the proposal will not comply with the provisions of clause 25.
Clause 26 Maintenance, protection and enhancement of views The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows: (a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour, (b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items, (c) the cumulative impact of development on views should be minimised.	The proposed marina, having regard to its height, width, length and location in the waterway in relation to the existing residential development at Breakfast Point, would fail to *"maintain, protect and enhance views".* Visual impact Assessment (VIA) seems to focus on view loss impacts incurred from the public domain as opposed to the private domain which tends to dominate the locality in which the proposal is located. Refer comments in section 3.4 above. Accordingly the proposal is not considered to comply with the provisions of clause 26.
State Environmental Planning Policy No. 55 Remediation of Land	
A Remediation Order (Order Number 23022; Declaration Number 21055; Area 3335) under Section 23 of the *Contaminated Land Management Act* was issued to the Maritime Authority of NSW on 22 June 2007 and includes part of the site.	The preliminary specialist reports prepared and the comments in sections 3.7 and 3.8 indicate that the proposed blanket will result in the remediation order not being able to be satisfied.
State Environmental Planning Policy No. 64 – Advertising and Signage	
Clause 3 Aims, objectives etc (1) This Policy aims: (a) to ensure that signage (including advertising):	The EA notes: *"approval is sought for the following signage which will be visible from a public place: directional advisory signage; building designation signage; advisory signage (weather); advisory signage (marina rules); directional signage and services advisory signage (refer to*

(i) is compatible with the desired amenity and visual character of an area, and	*plan DA08-Sigange)."* There are potential concerns regarding the suitability of signage (particularly those viewable from residential locations) to be compatible and integrated into existing predominant residential setting. May be contrary to the *"desired amenity and visual character of an area".*
Clause 27 Advertisements within navigable waters (1) An advertisement within any navigable waters is prohibited, except an advertisement on a vessel that is ancillary to the dominant purpose of the vessel. (2) A person may, with the consent of the consent authority, display an advertisement on a vessel that is ancillary to the dominant purpose of the vessel. (3) In this clause, "vessel" means any ship, lighter, barge, boat, raft or craft, and any floating object or apparatus used wholly or in part for the conveyance of persons or things by water, of whatever description and however navigated, and includes amphibious vessels, seaplanes, hydroplanes, hydrofoils, hovercraft, sunken or stranded vessels, and the wreck or remains of any vessel.	Clause 27(1) suggests that an advertisement within any navigable waters is prohibited waters. Concerns are raised over the potential for the application of signage on the proposed kiosk which may be contrary to this requirement.
Canada Bay Local Environmental Plan 2008	
Zone R1 General Residential **1 Objectives of zone** ▪ To provide for the housing needs of the community. ▪ To provide for a variety of housing types and densities. ▪ To enable other land uses that provide facilities or services to meet the day to day needs of residents. **2 Permitted without consent** Home-based child care; Home occupations **3 Permitted with consent** Attached dwellings; Bed and breakfast accommodation; Boarding houses;	The proposed marina car parking area is land based development subject to the provisions contained within Canada Bay Local Environmental Plan 2008. The portion of land is within Zone R1 General Residential.

Boat launching ramps; Boat repair facilities; Boat sheds; Building identification signs; Business identification signs; Business premises (other than restricted premises and timber and building supplies); Car parks; Child care centres; Community facilities; Demolition; Drainage; Dual occupancies; Dwelling houses; Earthworks; Educational establishments; Entertainment facilities; Exhibition homes; Exhibition villages; Group homes; Home businesses; Home industries; Hospitals; Hostels; Hotel or motel accommodation; Information and education facilities; Jetties; Light industries; Marinas; Multi dwelling housing; Neighbourhood shops; Office premises; Places of public worship; Public administration buildings; Public utility undertakings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Residential care facilities; Residential flat buildings; Retail premises; Roads; Schools; Semi-detached dwellings; Seniors housing; Service stations; Serviced apartments; Shop top housing; Swimming pools; Telecommunications facilities; Vehicle repair stations; Water recycling facilities.	
Table 7.4 Canada Bay LEP 2008 - Schedule 6 Transitional provisions for certain sites **Precinct B2** generally comprises the northern part of Breakfast Point fronting the Parramatta River. Its objectives are: • to integrate future development with heritage items remaining in this precinct, and • to encourage development that takes advantage of views and view corridors to and from the Parramatta River, and • to provide supporting land uses around any ferry wharf, and • to integrate other development with the public access and landscaped open space provided along the foreshore.	A car park, although being a permissible form of development within this zone, is not considered to be in accordance with the dominant objectives of this zone which essentially revolve around providing housing needs and types for residents of the LGA. The proposed car parking development also gives rise to a series of other concerns such as: • Potential increased noise particularly given that access to the marina will be provided on a 24 hour basis. Impact on residential amenity. • Additional traffic throughout the vicinity. Impact on residential amenity. ▪ The proposed marina car parking is located within the area identified as being B2 on the Special

	Transitional Sites Map held by Canada Bay Council. ▪ The development of a car parking area is considered to be incongruent with the objective to *"to encourage development that takes advantage of views and view corridors to and from the Parramatta River".*
Sydney Harbour Foreshores and Waterways Area Development Control Plan	
The Sydney Harbour Foreshore and Waterways Development Control Plan provides detailed design guidelines for development and criteria for natural resource protection for the area identified as Foreshores and Waterways area. The site is located in the Foreshores and Waterways Area The DCP guidelines are required to be addressed in the relevant technical reports having regard, in particular, to: - Ecological Assessment - Landscape/Visual Assessment and - Design Guidelines	The EA notes that *"the DCP provides detailed design guidelines for development and criteria for natural resource protection for the area identified as Foreshores and Waterways area. Theses guidelines have been addressed in the relevant technical reports."* This is disputed. The detailed assessment to follow in the next few weeks will address this issue in more detail.
Breakfast Point Master Plan 2002	
	The EA notes: "the Breakfast Point Masterplan 2002 (D191/2002) was approved by the City of Canada Bay Council on 3 September 2002 and included approval of the "Silkstone Precinct", which proposed to accommodate a built element (of up to 5 storeys) and 100 public off- street car parking spaces associated with a *"future marina (subject to Waterways and Planning NSW Consent)."* The EA noted: "*Whilst water based uses were beyond the 2002 Masterplan area and subsequently the size and scale of any future marina was not detailed in the 2002 Masterplan, provision for the necessary land based support facilities was approved in the form of 100 car parking spaces, expressly set aside for future marina car parking."* The detailed assessment to follow in the next few weeks will address this issue in more detail.
Breakfast Point Concept Plan 2005	

	The EA notes: "*Whilst it is acknowledged that the strategic Masterplans and Concept Plan only applied to the redevelopment of the land at Breakfast Point, the documents contained provisions for a 100 space off-street car parking area to be associated with a future marina. Whilst the actual location, size and scale of the future marina is not detailed in any of the Masterplans/Concept Plan, the allowance for off street marina parking for 100 spaces was included in the strategic redevelopment and planning of the site.*" The EA noted: "*The proposed car parking area associated with the marina is subject to the Breakfast Point Concept Plan 2005. The proposed marina car parking use and its location, within the Silkstone Precinct is consistent with the Breakfast Point Concept Plan 2005.*" The detailed assessment to follow in the next few weeks will address this issue in more detail.

4.0 CONCLUSION

This report is submitted to Department of Planning in response to the public exhibition of the proposed new commercial marina at Kendall Bay adjacent to the Breakfast Point residential area.

It is considered that the issues raised are, in and of themselves, enough to warrant refusal of the application, however, (as was verbally agreed at the meeting in October 2010) additional specialist research and documentation will be submitted the DOP over the next few weeks to further address some of the issues raised in this preliminary submission. The key issues covered in this submission are as follows:

- **Private vs Public Marina and Breakfast Point Community Expectations**

  The early concept planning for the Breakfast Point Estate did not feature a clearly defined future marina proposal. Rather a private marina was only ever loosely mentioned (and never located or clearly defined) in the planning documentation as a possible/potential future use to serve the estate. Given the nature of the private estate the local community clearly had no expectation of a future public marina. Rather the assumption was that any future marina would be a small private one to service the estate residents only.

  Whilst the current planning controls currently technically allow for commercial rather than private marinas in the waterway adjacent to the site, it is suggested that if private marinas are not currently permitted adjacent to Breakfast Point then no marinas should be allowed due to the significantly greater impacts of a commercial marina, as discussed above and throughout this submission.

- **Legal Issues Concerning Breakfast Point Community Land**

  There are several key issues in relation to the legal matters concerning the ability to establish and operate the proposed commercial marina. Maddocks Lawyers are investigating these matters and a preliminary advice is presented in Appendix I to this report. These issues should form reasons for refusal of the application.

- **Visual Impact**

  The visual impact of the proposal, particularly for the residents who will adjoin and overlook it, is considered to be substantial and unreasonable. Further detailed analysis will be undertaken over the next few weeks and submitted the DOP to further document this concern.

- **Traffic and Parking**

  There are clearly a number of serious deficiencies in the proposed parking arrangements such that the proposed parking area is not anticipated to be able to service the likely demand. The result will be a spilling over into the surrounding residential streets, which is unacceptable. Further to this it is noted that the Breakfast Point Estate is still incomplete and further residential developments will add to existing traffic and parking demands. Adding a marina to this capacity situation is likely to create serious and unreasonable parking and traffic congestion within the estate, particularly at peak demand times.

  It is also proposed to drive golf buggies and other vehicles on the existing pedestrian walkways and foreshore walk/cycleway, between the proposed carpark and marina – which is blatantly unsafe (and if it is planned to upgrade these, no information has been provided).

  The matters raised in relation to traffic, parking and access deficiencies should form part of the reasons for refusal

- **Avian Fauna**

  The review highlights serious concerns with the quality and scope of the Avian Fauna assessment done on behalf of the applicant for the marina application. In particular it appears that the conclusions drawn from the desktop analysis have potentially substantially understated the impacts of the proposed marina on the existing bird habitat.

  It is recommended that a more comprehensive study be undertaken which includes appropriate avian habitat field survey work specific to the area and the proposed site. The results of this work should then be added to the overall assessment and, if the proposal cannot adequately manage the potential impacts, the results could well form a reason for refusal of the application.

- **Estuary Hydrodynamics and Physical Sedimentary Environment and Sediment Management**

  The review highlights significant weaknesses in the proposed design of the geotextile blanket solution. As discussed above, this matter alone could well form a reason for refusal of the application because the geotextile blanket proposal is a fundamental component of the project application and there are no alternate solutions likely to perform adequately in relation to the Remediation Order.

  This major issue is considered to form part of a body of evidence that indicates that the marina is inappropriate for the area in which it is proposed

- **Marine Environment and Biodiversity**

  The review highlights significant shortfalls and errors in the research undertaken and therefore casts serious doubt on the ability of the

proposed marina development to adequately protect the existing marine environment. In particular it is noted that the proposed geotextile blanket does not meet the requirements of the Remediation Order made in 2007 and enforced by EPA. This matter alone could well form a reason for refusal of the application because the geotextile blanket proposal is a fundamental component of the project application and there are no alternate solutions likely to perform adequately in relation to the Remediation Order.

In addition to the unresolved issues concerning the geotextile blanket there are also a number of other concerns relating to unreasonable additional pollution of the bay water due to the proposed marina.

Together these issues are considered to form part of a body of evidence that indicates that the marina is inappropriate for the area in which it is proposed

- **Acoustic Amenity**

  There are numerous construction and operational impacts arising from the proposed commercial marina. Some of these impacts can be mitigated through management however a number are unavoidable give the location and scale of the development proposed. This matter, together with the others raised in this submission, should form part of the reasons for refusal.

- **Construction and Operational Management**

  The review comments demonstrate there are a number of concerns in relation to construction management. In addition there are a range of operational management concerns that have been documented throughout this submission (including the appendices) relating to various operational safety concerns from the marina. These include matters such as: explosion, spillage, and bilge pump emissions etc.

  These matters, together with the others raised in this submission, should form part of the reasons for refusal.

- **Waterway Management and Navigation**

  The above comments demonstrate there are a number of concerns in relation to waterway management and navigation. In particular it is noted that the high wind velocities from most directions will increase navigation difficulties. These matters, together with the others raised in this submission, should form part of the reasons for refusal.

- **Boat Maintenance**

  There is a lack of definitive information in relation boat maintenance. Depending on the outcome of further work, these matters, together with the others raised in this submission, could form part of the reasons for refusal.

- **Planning Objective/Control Compliance**

  The preliminary assessment demonstrates that there are numerous areas of non compliance with relevant objectives and controls. A further detailed assessment will show more fully the wide ranging non compliances, further indicating that the proposal is not supportable on planning merit.

A number of these issues (particularly the legal ones), are considered to be strong enough to prevent approval of the proposal on their own, however it is clear that together, the composite of issues raised in this submission present a compelling case for refusal.

Accordingly, recommended that the Department of Planning refuse the application for a commercial marina at Kendall Bay adjacent to the Breakfast Point residential area.

Appendix A: Photos of Site and Surrounds





Photo 1



Photo 2



Photo 3



Photo 4



Photo 5



Photo 6



Photo 7



Photo 8



Photo 9



Photo 10



Photo 11



Photo 12



Photo 13



Photo 14



Photo 15



Photo 16



Photo 17



Photo 18



Photo 19



Photo 20



Photo 21



Photo 22



Photo 23



Photo 24



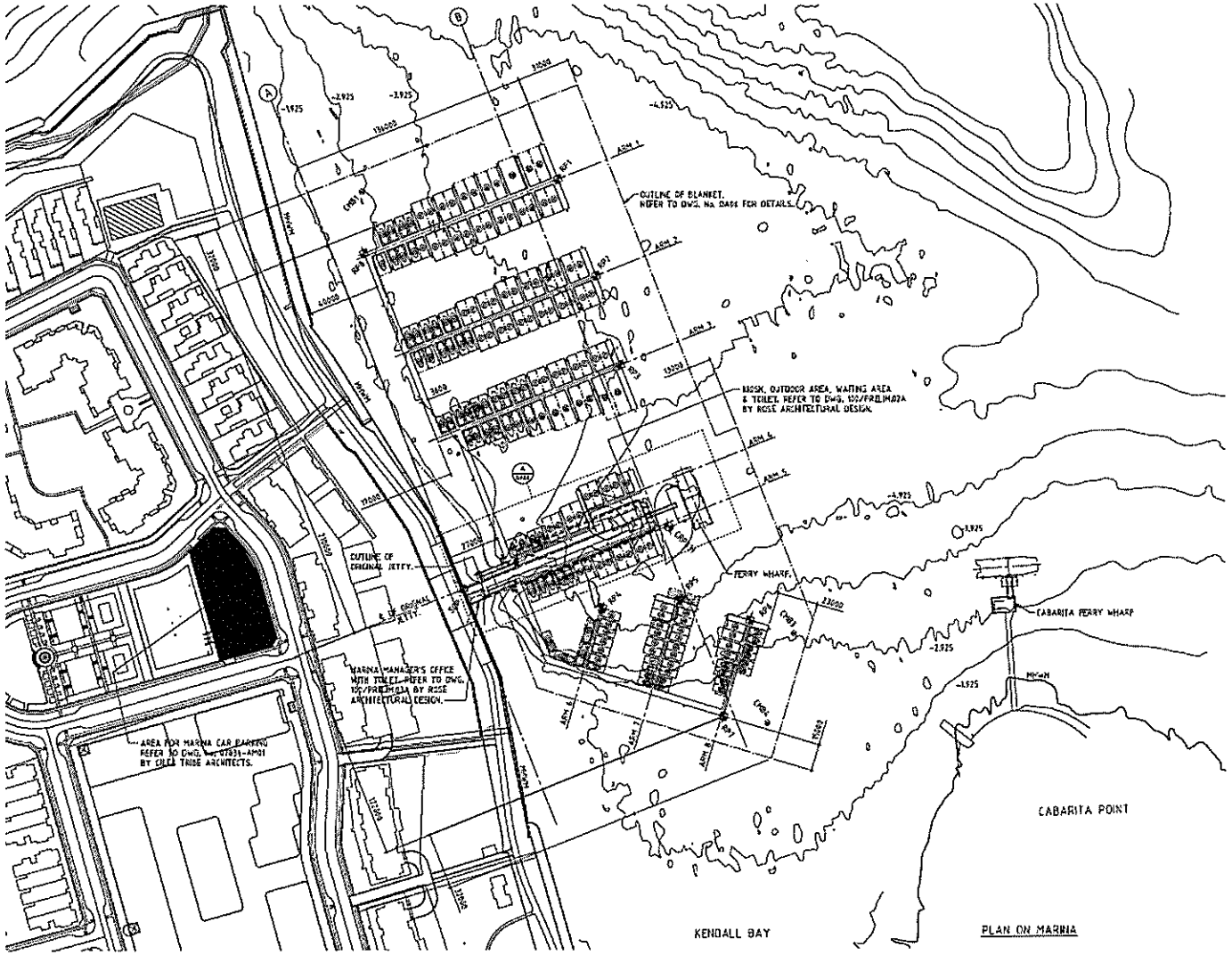
Photo 25



Photo 26

Appendix B: Plan Extracts from Environmental Assessment (EA)





LEGEND :

CMB1, 3 & 4	: CHANNEL MARKER BUOY.
CRPB31	: EXISTING MARKER BUOY.
SPC	: EXISTING CHANNEL MARKER PILE.
SOP	: SET OUT POINT.
18	: VESSEL LENGTH.
	: PEDESTRIAN PUBLIC ACCESS.
	: DESTINATION BOAT (RIPPER) BERTHS - CASUAL BERTHING.
REFERENCE POINTS	: REFER TO MGA94 (ZONE 56) CO-ORDINATES

MARK	MGA94 (ZONE 56) CO-ORDINATES (TO BE USED FOR FINAL SETOUT)	
	EASTING (m)	NORTHING (m)
CRPB31	325535.00	6253927.00
SPC	325300.00	6254230.00
SOP	325417.91	6253892.26
RP1	325471.70	6254124.19
RP2	325693.48	6254069.24
RP3	325507.36	6254019.82
RP4	325497.88	6253881.15
RP5	325545.54	6253865.30
RP6	325581.29	6253813.97
RP7	325565.99	6253859.58
RP8	325361.01	6254082.35
RP9	325280.63	6254224.47

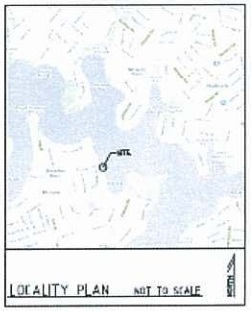
03 : PROJECT APPLICATION 07.10.09
02 : PROJECT APPLICATION 16.07.09
01 : PROJECT APPLICATION 09.07.09

Inner West Marina



LEGEND

- : AREA PROPOSED TO BE REMEDIATED BY JEMENA PTY. LTD.
- CMB1 – CMB4 : CHANNEL MARKER BUOY.
- CRPB3! : EXISTING MARKER BUOY TO BE REMOVED ON CONSTRUCTION OF MARINA.
- SBP : SET OUT POINT.
- SPE : EXISTING CHANNEL MARKER PILE.



LOCALITY PLAN NOT TO SCALE

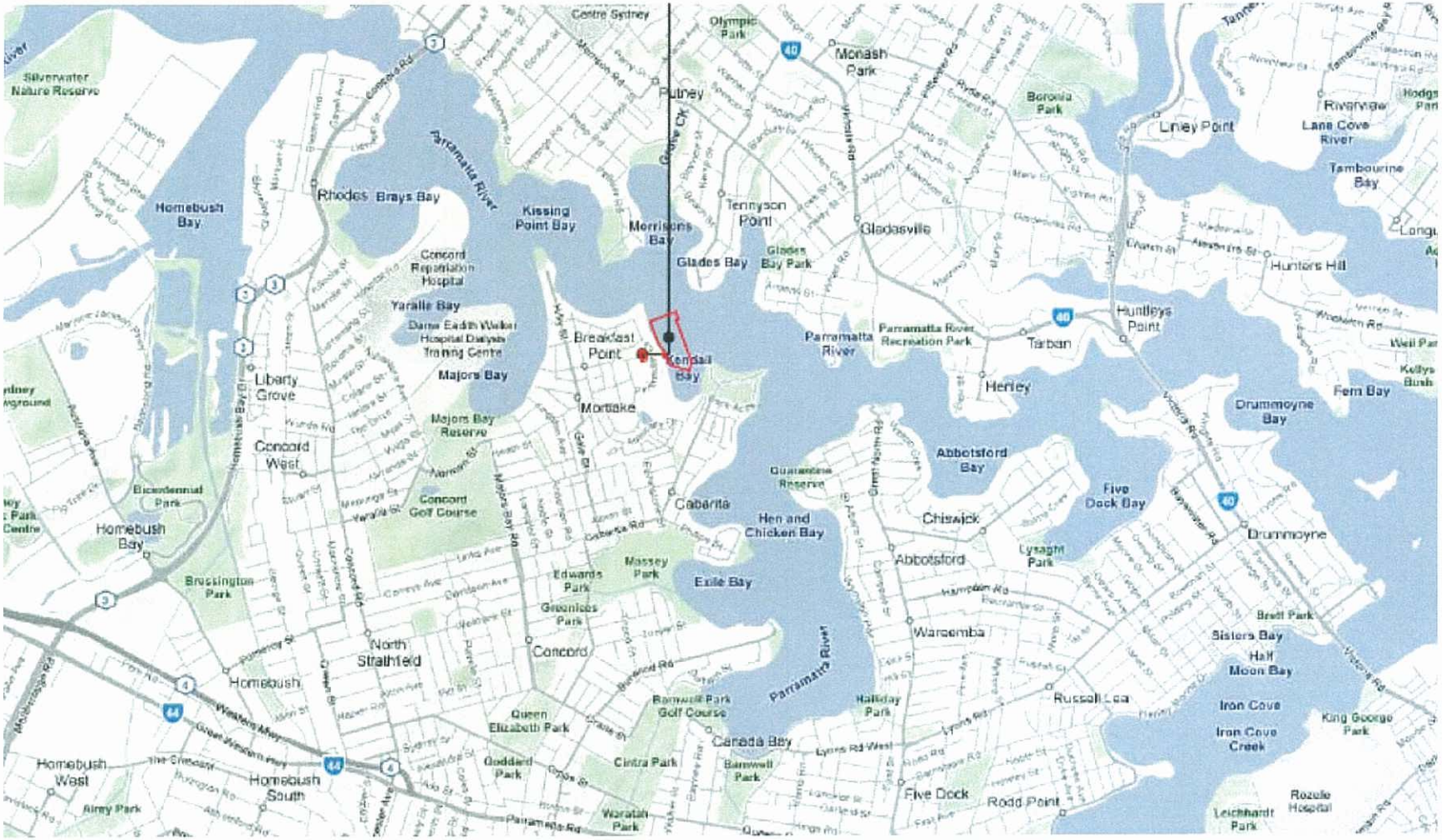
03 : PROJECT APPLICATION 09.12.09
02 : PROJECT APPLICATION 16.07.09
01 : PROJECT APPLICATION 09.07.09

Inner West Marina SYDNEY

SITE ANALYSIS

Design	N.D.	Scales	1:1000	Job No.	01013
Drawn	S.K.	Date	24.03.09	Dwg. No.	DA10
Appd.		Sheet Size	A1	Rev. No.	03

TLB ENGINEERS



Source: Google Maps 09
Issued: 23-7-09
209004\graphics\ds4g.cdr

0 1 km

Location Fig 1


1 DP 945166
53 DP270347
65 DP270347
42 DP270347
1 DP126394
Subject Site -
Inner West Marina
0
100 m

Site Fig 3


Kiosk, Outdoor / Waiting Area & Toilet
REFER TO DWG 130/PRELM02A BY ROSE ARCHITECTURAL DESIGN
OUTLINE OF ORIGINAL JETTY
Proposed Waterside Lease
Outline of Blanket
REFER TO DWG No DA36 FOR SETOUT
Area for Marina Car Park
REFER TO DWG No 07036-AM01
BY GILES TRIBE ARCHITECTS



Subject Site -
Inner West Marina

Source: Google 09.20.1.02
Issued: 23-7-09
208-1004 graphics fig.cdr

0 100 m

Aerial Photograph Fig 5



Appendix C: Breakfast Point Strata Plan, Community Management Statement, Foreshore Lease and 88B Instrument

PLAN FORM 3 — To be used in conjunction with Plan Form 2 — WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION — X:\BEANFARM2000\MOTHER COMMUNITY\MASTERCOMMUNITY.ASC\SHEET-3-8.DWG — * OFFICE USE ONLY

DETAIL PLAN

(IN 8 SHEETS)

MGA NORTH

TABLE OF SHORT LINES		
LINE	BEARING	DISTANCE
1	74°40'	3.36
2	96°29'	5.105
3	76°01'	8.47
4	151°49'20"	11.07

NOTE:
RMS NOTED RM 'A' TO RM 'Y' & RM '1A' TO RM '1G' ARE DEFERRED REFERENCE MARKS TO BE PLACED UPON COMPLETION OF THE ROAD NETWORK

DEFERRED REFERENCE MARKS PLACED SEE ADDITIONAL SH 22

(D3) – EASEMENT FOR GAS PIPELINE VARIABLE WIDTH (D) I.D.P.10302241
(H3) – RIGHT OF CARRIAGEWAY VARIABLE WIDTH (H) I.D.P.10302241
(P8) – POSITIVE COVENANT 6thly REFERRED TO IN THE 88B FOR D.P.1047145
(P6) – POSITIVE COVENANT 6thly REFERRED TO IN THE 88B FOR D.P.1047145
(4C) – RESTRICTION ON THE USE OF LAND 'C' (D.P.1047145)
(4D) – RESTRICTION ON THE USE OF LAND 'D' (D.P.1047145) AFFECTS THE WHOLE OF LOT 6
(MC20) – EASEMENT FOR RETENTION TANK
(MC25) – EASEMENT FOR ACCESS

(AA) BENEFITED BY EASEMENT FOR ACCESS AND SERVICE VARIABLE WIDTH (G) – DP1028884

KENDALL BAY

PARRAMATTA RIVER

PT1 COMMUNITY PROPERTY SEE D.P. 1052824 SHEET 8 FOR DETAIL

PT3 (7536m²) (4C) & (4D) (P6)&(P8) (AA) REMAINS VERY OLD BRICK STRUCTURE

PT3 (5246m²) (4C) & (4D) (N8) (AA)

(4C)(4D) TOTAL AREA LOT 3 7.141 ha (145.9m² IN STRATUM)

PT1 COMMUNITY PROPERTY (18.7 WIDE)

PT3 (8339m²) (4C)&(4D) (AA)

PT3 (4583m²) (4C)&(4D) (MC20) (P8) (AA) (20 WIDE)

PT3 (1.292Ha) (4C)&(4D) (AA) (P6)&(P8) (P6) (1.0 WIDE)

PT3 (3133m²) (P6) (4C) (4D) (MC20) SEE DIAG. 1 SHEET 3 (3.0 WIDE) (AA) OLD BRICK BUILDING

PT1 COMMUNITY PROPERTY (MC25)

6 (4D)

PT1

(N8) BENEFITED BY EASEMENT FOR ACCESS, MAINTENANCE & LANDSCAPING (MC21)
(N9) BENEFITED BY EASEMENT FOR ACCESS, MAINTENANCE & LANDSCAPING (MC22)

ADJOINS SHEET 3 — ADJOINS SHEET 5 — ADJOINS SHEET 6

Plan Drawing only to appear in this space

SURVEYOR'S REFERENCE: 990421 MASTER COMMUNITY

DP270347

Registered: 18.8.2003

This is sheet 4 of my plan in 20 sheets dated 06/06/2003

Surveyor registered under Surveyors Act 1929

This is sheet 4 of the plan of 40 sheets covered by subdivision certificate No. 1456 of 19-07-2003

Authorised Person/General Manager/Accredited Certifier

For use where space is insufficient in any panel on Plan Form 2.

Executed by Supertot 3 Pty Limited ACN 091 411 580 by Alan Sydney Osburg pursuant to registered power of Attorney Book 4393 No 48 dated 2.7.2003 in the presence of:

Alan Sydney Osburg

WITNESS - Nicholas Jackman

ALTERATIONS MADE IN RED (NOW) BY SURVEYOR'S REQUEST

Reduction Ratio 1: 800

Plot:R4289957 /Doc:DP 0270347 P /Rev:01-Sep-2010 /Sts:SC.OK /Prt:18-Nov-2010 11:49 /Pgs:ALL /Seq:4 of 74



PLAN FORM 3 — To be used in conjunction with Plan Form 2 — WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION — X:\BREAKFAST2000\MOTHER COMMUNITY\MASTERCOMMUNITYAG\SHEET--3--B.DWG — * OFFICE USE ONLY

NOTE 1 -PART LOTS 1 & 3 ARE STRATUM LOTS LIMITED IN HEIGHT & DEPTH AS SHOWN ON THE PLAN, SECTIONS & NOTES.

DETAIL PLAN
(IN 8 SHEETS)

(4C) – RESTRICTION ON THE USE OF LAND 'C' (D.P.1047145) ~~AFFECTS THE WHOLE OF LOT 3~~
(4D) – RESTRICTION ON THE USE OF LAND 'D' (D.P.1047145) ~~AFFECTS THE WHOLE OF LOTS 3 & 6~~
(P6) – POSITIVE COVENANT 6thly REFERRED TO IN THE 8B9 FOR D.P.1047145
(P8) – POSITIVE COVENANT 8thly REFERRED TO IN THE 8BR FOR D.P.1047145
(MC20) – EASEMENT FOR RETENTION TANK
(MC25) – EASEMENT FOR ACCESS

KENDALL — BAY — MGA NORTH — SEE SHEET 9 FOR SECTION — SEE NOTE 1 — SEE SHEET 9 FOR DETAIL — PT1 COMMUNITY PROPERTY & PT3 (145.9m²) — PT1 COMMUNITY PROPERTY — SEE SHEET 9 FOR DETAIL — ADJOINS SHEET 8 — ADJOINS SHEET 4 — PTS01 D.P.1052824 — PTS01 D.P.1052824 & PT1 COMMUNITY PROPERTY — PT1 COMMUNITY PROPERTY — PT3 (1.292Ha) (AA) (4C)&(4D) — PT3 (3127m²) (AA) (4C)&(4D) — PT3 (7246m²) (AA) (4C)&(4D) — PT3 (1.208Ha) (AA) (4C)&(4D) — PT3 (MC20) — SEE SHEET 4 FOR DETAILS (AA) — PT1 COMMUNITY PROPERTY — (4D) 6 — (MC25) — (MC25) — (20 WIDE) — (18.7 WIDE) — (15 WIDE)

NOTE:
RM'A' to RM'Y' ARE DEFERRED REFERENCE MARKS TO BE PLACED UPON COMPLETION OF THE ROAD NETWORK

DEFERRED REFERENCE MARKS PLACED SEE ADDITIONAL SH 22

(AA) BENEFITED BY EASEMENT FOR ACCESS AND SERVICES VARIABLE WIDTH (S) – DP1052824

SHEET 5 ADJOINS — SHEET 7 ADJOINS

DP270347

Registered: 18-8-2003

This is sheet 6 of my plan in 20 sheets dated 06/06/2003

Surveyor registered under Surveyors Act 1939

This is sheet 6 of the plan of 20 sheets covered by subdivision certificate No. 14-56 of 18-07-2003

Authorised Person/General Manager/Accredited Certifier

For use where space is insufficient in any panel on Plan Form 2.

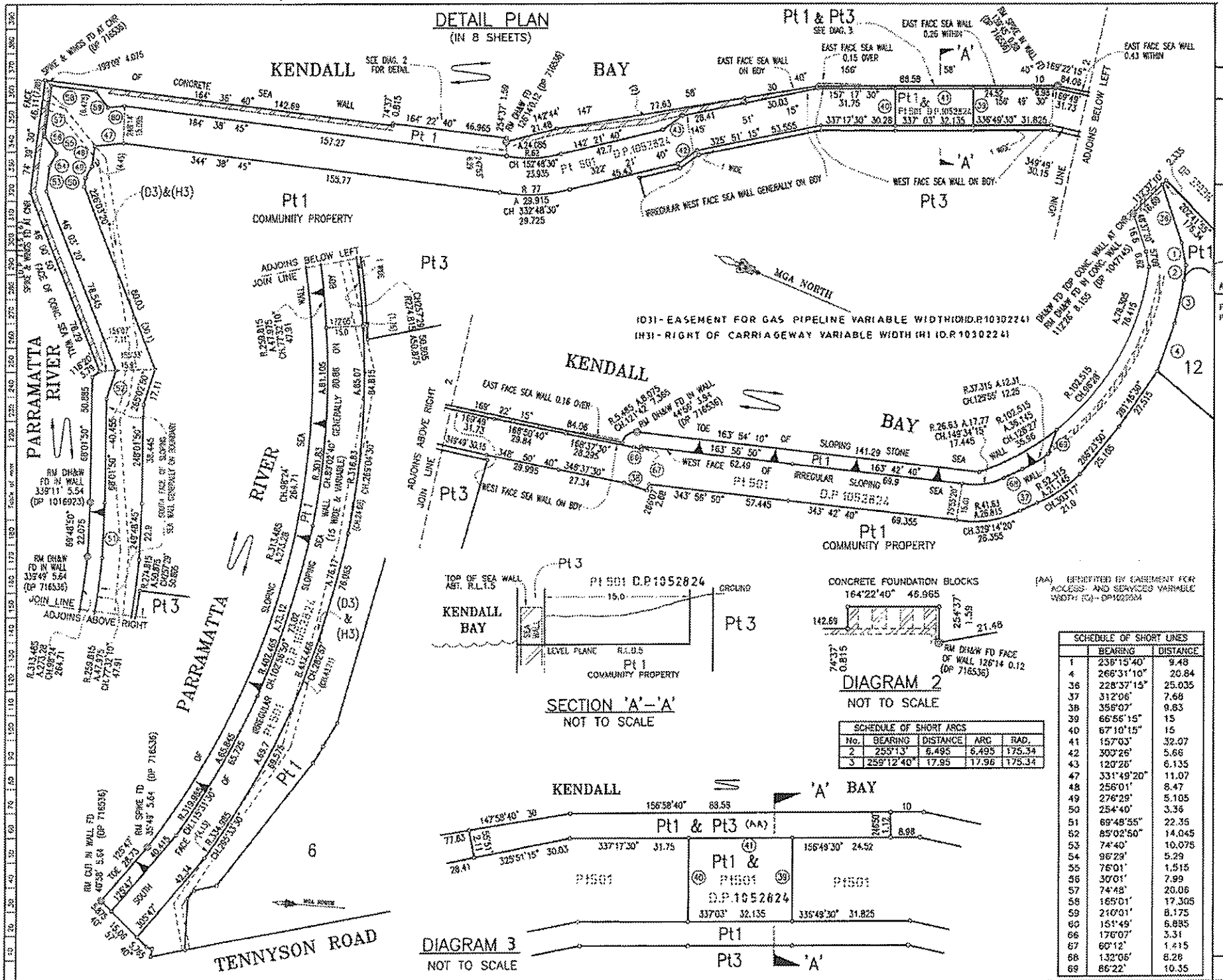
Reduction Ratio 1: 800

Plan Drawing only to appear in this space — SURVEYOR'S REFERENCE: 990491 MASTER COMMUNITY

eq:R428957 /Doc:DP 0270347 P /Rev:03-Sep-2010 /Sts:SC.OR /Prt:18-Nov-2010 11:49 /Pgs:ALL /Seq:6 of 74
of: /Src:X

PLAN FORM 3 — To be used in conjunction with Plan Form 2 — WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION — A GREAM AUSTRALIA (WOTHER COMMUNITY MASTERPLANNING AGL\SHEET\DRAWING) — OFFICE USE ONLY

DETAIL PLAN
(IN 8 SHEETS)



SECTION 'A'–'A'
NOT TO SCALE

DIAGRAM 2
NOT TO SCALE

DIAGRAM 3
NOT TO SCALE

SCHEDULE OF SHORT ARCS				
No.	BEARING	DISTANCE	ARC	RAD.
2	255°13'	6.495	6.495	175.34
3	259°12'40"	17.95	17.96	175.34

SCHEDULE OF SHORT LINES		
	BEARING	DISTANCE
1	238°15'40"	9.48
4	266°31'10"	20.84
36	228°37'15"	25.035
37	312°06'	7.66
38	356°07'	9.83
39	66°56'15"	15
40	67°10'15"	15
41	157°03'	32.07
42	300°26'	5.66
43	120°26'	6.135
47	331°49'20"	11.07
48	256°01'	8.47
49	276°29'	5.105
50	254°40'	3.36
51	69°48'55"	22.35
52	85°02'50"	14.045
53	74°40'	10.075
54	96°29'	5.29
55	76°01'	1.515
56	30°01'	7.99
57	74°48'	20.06
58	165°01'	17.305
59	210°01'	8.175
60	151°49'	6.885
66	176°07'	3.31
67	60°12'	1.415
68	132°05'	8.26
69	86°22'	10.35

DP270347

Registered: 18 8 2003

This is sheet 9 of my plan in 20 sheets dated 06/06/2003

Surveyor registered under Surveyors Act 1929

This is sheet 9 of the plan of 20 sheets covered by subdivision certificate No. 1456 of 18-07-2003

Authorised Person/Council Member/Accredited Certifier

For use where space is insufficient in any panel on Plan Form 2.

Reduction Ratio 1: 1000

Plan Drawing only to appear in this space

SURVEYOR'S REFERENCE: 990421 MASTER COMMUNITY

eq:R4428957 /Doc:DP 0270347 E /Rev:01-Sep-2010 /Sts:SC.OK /Prt:18-Nov-2010 11:49 /Fgs:ALL /Seq:9 of 74
af: /Src:X



PLAN FORM 3 — 19 Sheets in conjunction with Plan Form 2 — WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION — X:\BRIEN\PLT\DRG\MOTHER COMMUNITY\MASTERCOMMUNITY.DWG — 10-14.DWG — DP NUMBER USE ONLY

COMMUNITY PROPERTY PLAN

COMMUNITY PROPERTY LOT ONLY

(IN 10 SHEETS)

(FOR FULL AZIMUTH, REFERENCE MARK & OCCUPATION DETAILS REFER TO DETAIL PLAN)

PARRAMATTA

TENNYSON ROAD

(ALIGNED 2.44 - 10.365 - 2.44)

RIVER

KENDALL BAY

(D3) - EASEMENT FOR GAS PIPELINE VARIABLE WIDTH (T) I.D.P1030224
(H3) - RIGHT OF CARRIAGEWAY VARIABLE WIDTH (T) I.D.P1030224
(P7) - POSITIVE COVENANT 7thly REFERRED TO IN 88B D.P.1047145
(P8) - POSITIVE COVENANT 8thly REFERRED TO IN 88B D.P.1047145
(MC8) - EASEMENT FOR ELECTRICITY PURPOSES
(MC11) - EASEMENT FOR ENCROACHMENT
(MC12) - EASEMENT FOR SERVICES
(MC16) - EASEMENT FOR STREET LIGHTING
(MC17) - EASEMENT FOR SUBSTATION
} AFFECT THE WHOLE OF LOT 1

REFER TO SHEET 12 FOR DIAGRAMS 1 TO 6

TOTAL AREA LOT 1 — 19.22ha
- 145.9m² LIMITED IN HEIGHT BY LOT 3
- 481.4m² LIMITED IN HEIGHT BY LOT 501 IN D.P.1052824
- 2.667ha LIMITED IN DEPTH BY LOT 4 IN D.P.1047145

TABLE OF SHORT ARCS				
LINE	CHORD	DISTANCE	ARC	RADIUS
2	248°45'	9.985	10	50.65
4	81°54'	5.71	5.71	317.83
5	78°47'20"	38.42	38.45	275.815

TABLE OF SHORT LINES		
LINE	BEARING	DISTANCE
1	344°20'	1.715
3	254°17'10"	0.645
6	254°25'40"	0.885
7	157°17'30"	30.28
8	157°03'	32.135
9	156°49'30"	31.825
10	169°49'	30.15
11	254°24'30"	8.715

PART LOTS 1 & 3 ARE STRATUM LOTS LIMITED IN HEIGHT & DEPTH AS SHOWN ON THE PLAN, SECTIONS & NOTES

(R9A) - RESTRICTION ON THE USE OF LAND - DP1029054
(R9B)(C) POSITIVE COVENANT - DP1029054

SEE SHEET 11

DP270347

Registered: 18.8.2003

This is sheet 10 of my plan in 20 sheets dated 06/08/2003

Surveyor registered under Surveyors Act 1929

This is sheet 10 of the plan of 20 sheets covered by subdivision certificate No. 1456 of 18-07-2003

Authorised Person/General Manager/Accredited Certifier

For use where space is insufficient in any panel on Plan Form 2.

Reduction Ratio 1 1500

Plan Drawing only to appear in this space — SURVEYOR'S REFERENCE: 930421 MASTER COMMUNITY

Dbg:R428057 /Doc:DP 0270347 P /Rev:03-Sep-2010 /Sts:SC.OK /Prt:18-Nov-2010 11:49 /Pgs:ALL /Seq:10 of 20 /Fmt:4.00 /Src:M



Req:R431121 /Doc:SP 0075666 P /Rev:13-Sep-2005 /Sts:SC.OK /Prt:18-Nov-2010 15:04 /Pgs:ALL /Seq:1 of 23
Ref: /Src:X

STRATA PLAN FORM 1 — WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION — OFFICE USE ONLY

Strata Certificate

~~*Name of Council/*Accredited Certifier~~ DENNY LINKER being satisfied that the requirements of the *Strata Schemes (Freehold Development) Act 1973 ~~or *Strata Schemes (Leasehold Development) Act 1986~~ have been complied with, approves of the proposed:

*strata plan/~~*strata plan of subdivision~~

illustrated in the annexure to this certificate.

*the accredited certifier is satisfied that the plan is consistent with a relevant development consent in force, and that all conditions of the development consent that by its terms are required to be complied with before a strata certificate may be issued, have been complied with.

~~*The strata plan/strata plan of subdivision is part of a development~~ scheme. The *council/*accredited certifier is satisfied that the plan is consistent with any applicable conditions of any development consent and that the plan gives effect to the stage of the strata development contract to which it relates.

~~*The council does not object to the encroachment of the building beyond the alignment of .....~~

*The accredited certifier is satisfied that the the building complies with a relevant development consent in force that allows the encroachment.

~~*This approval is given on the condition that the use of lot(s) .....~~ (being utility lot/s designed to be used primarily for the storage or accommodation of boats, motor vehicles or goods and not for human occupation as a residence, office, shop or the like) is restricted to the proprietor or occupier of a lot or proposed lot (not being such a utility lot) the subject of the strata scheme concerned, as referred to in *section 39 of the Strata Schemes (Freehold Development) Act 1973 or *section 68 of the Strata Schemes (Leasehold Development) Act 1986

Date. 17th AUGUST 2005.

Subdivision No. 24/2005.

Accreditation No. PSOA 004.

Relevant Development Consent No. 674/2004.

Issued By. CANADA BAY COUNCIL.

*Authorised Person/*Council Member/*Accredited Certifier

*Complete or delete if applicable

Surveyors Certificate

I, TASY MORAITIS

of LEVEL 5, 17 RANDLE STREET SURRY HILLS NSW 2010

a surveyor registered under the Surveying Act, 2002, hereby certify that:

(1) each applicable requirement of
* Schedule 1A to the Strata Schemes (Freehold Development) Act, 1973
* ~~Schedule 1A to the Strata Schemes (Leasehold Development) Act, 1986~~
has been met

(2) *~~(a) the building encroaches on a public place~~
(b) the building encroaches on land (other than a public place) in respect of which encroachment an appropriate easement:
*has been created by registered +D.P.270347.
*~~is to be created under section 88B of the Conveyancing Act, 1919~~

(3) the survey information recorded in the accompanying location plan is accurate

Signature: .....

Date : 16/08/2005.

* Delete if inapplicable
+ State whether dealing or plan, and quote registered number

THIS IS SHEET 1 OF MY PLAN IN 23 SHEETS

~~*Model By-laws adopted for this scheme~~
~~Keeping of Animals : Option A/B/C~~
* Schedule of By-laws in 39 sheets filed with plan
* ~~No By-Laws apply~~
*Strike out whichever is inapplicable

PLAN OF SUBDIVISION OF LOT 54 IN D.P.270347

L.G.A.: CITY OF CANADA BAY

Suburb/Locality: BREAKFAST POINT

Parish: CONCORD

County: CUMBERLAND

SP75666

Registered : 13.9.2005

Purpose: STRATA PLAN

Ref. Map: U0952 - 71

Last Plan: DP270347

Name of, and address for service of notices on, the owners corporation (Address required on original strata plan only)

THE OWNERS
STRATA PLAN No.75666
"HUNTERS WHARF"
No.'s 51–79 PENINSULA DRIVE
BREAKFAST POINT 2137

FOR LOCATION PLAN SEE SHEET 2

Signatures, seals and statements of intention to create easements, restrictions on the use of land or positive covenants

Signed by Breakfast Point Pty Limited ACN 008 84 1203
by its attorney
Under power of attorney book 4456 No 804

EXECUTED BY CAPITAL FINANCE AUSTRALIA LIMITED ACN 069 663 136 BY ITS DULY APPOINTED ATTORNEYS

BRETT LENNANE

MARK COUGHLI

Full Names

Signature

Signature

PURSUANT TO POWER OF ATTORNEY OF WHICH THEY HAVE NO NOTICE OF REVOCATION IN THE PRESENCE OF:

Witness ANA PAJIC

Book 4288
No 968

SCHEDULE OF UNIT ENTITLEMENT

Lot No.	U.E.	Lot No.	U.E.	Lot No.	U.E.	Lot No.	U.E.
1	1300	24	1911	47	573	70	711
2	1261	25	1453	48	703	71	703
3	1338	26	1491	49	711	72	573
4	1300	27	1911	50	703	73	1147
5	1797	28	1989	51	573	74	573
6	1758	29	1070	52	1147	75	635
7	906	30	573	53	635	76	1147
8	879	31	612	54	635	77	696
9	994	32	573	55	1261	78	726
10	994	33	1147	56	726	79	1281
11	879	34	573	57	726	80	1323
12	906	35	669	58	1281	81	787
13	994	36	631	59	1323	82	787
14	1013	37	1223	60	787	83	1342
15	1261	38	764	61	787	84	1414
16	1300	39	1319	62	1342	85	1911
17	1720	40	1319	63	1414	86	1911
18	1758	41	826	64	2143	87	1433
19	1453	42	1395	65	2143		
20	1453	43	1911	66	1433	TOTAL	100000
21	1529	44	879	67	1032		
22	1529	45	1988	68	573		
23	1911	46	1147	69	642		

SURVEYOR'S REFERENCE : 990421 SP 5E

X:\BREAKFAST2000\SUPERLOT5\5E\STRATA\SHEET-1.dwg

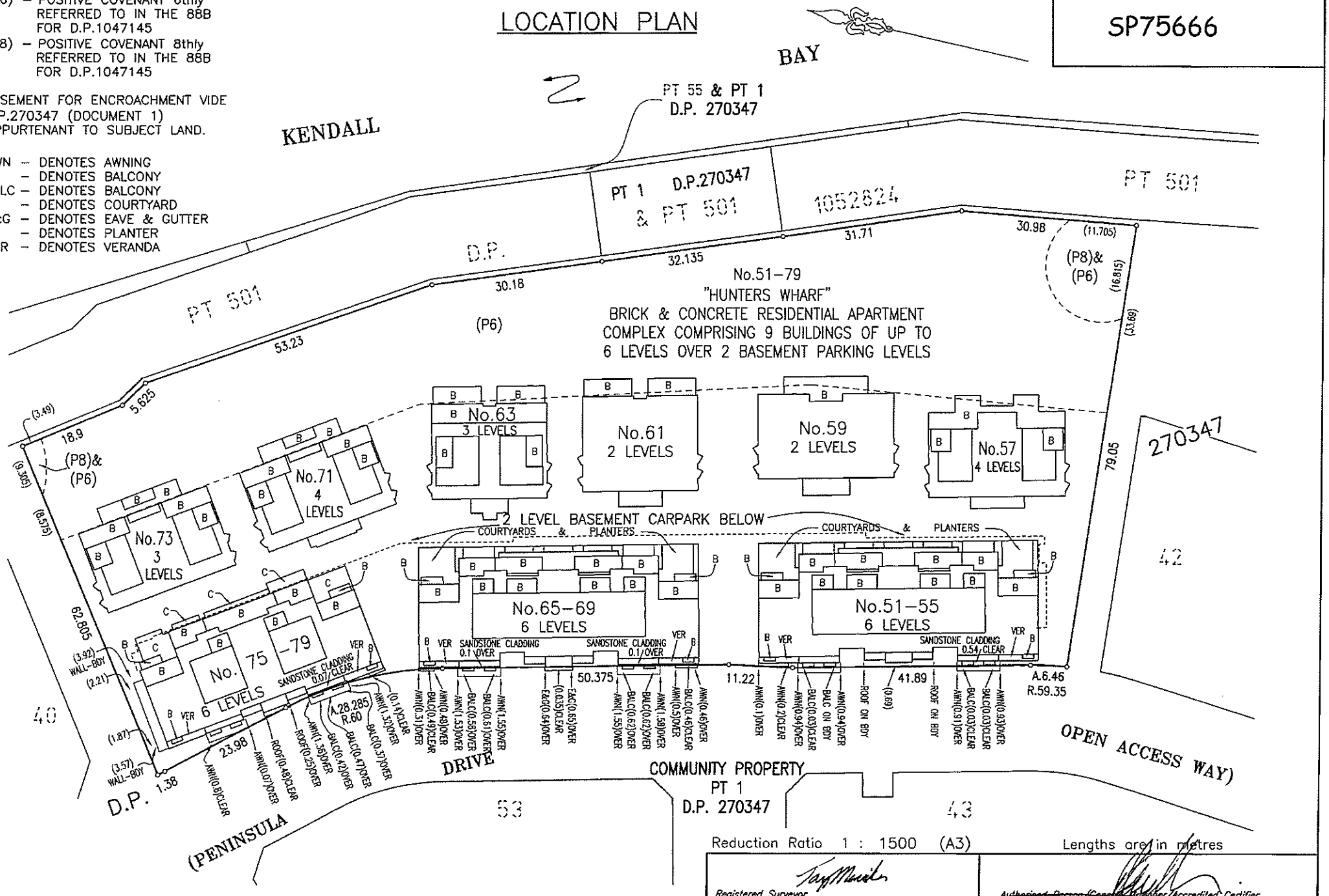
SP75666

(P6) – POSITIVE COVENANT 6thly REFERRED TO IN THE 88B FOR D.P.1047145
(P8) – POSITIVE COVENANT 8thly REFERRED TO IN THE 88B FOR D.P.1047145

EASEMENT FOR ENCROACHMENT VIDE D.P.270347 (DOCUMENT 1) APPURTENANT TO SUBJECT LAND.

AWN – DENOTES AWNING
B – DENOTES BALCONY
BALC – DENOTES BALCONY
C – DENOTES COURTYARD
E&G – DENOTES EAVE & GUTTER
P – DENOTES PLANTER
VER – DENOTES VERANDA

LOCATION PLAN



Reduction Ratio 1 : 1500 (A3) Lengths are in metres

Registered Surveyor

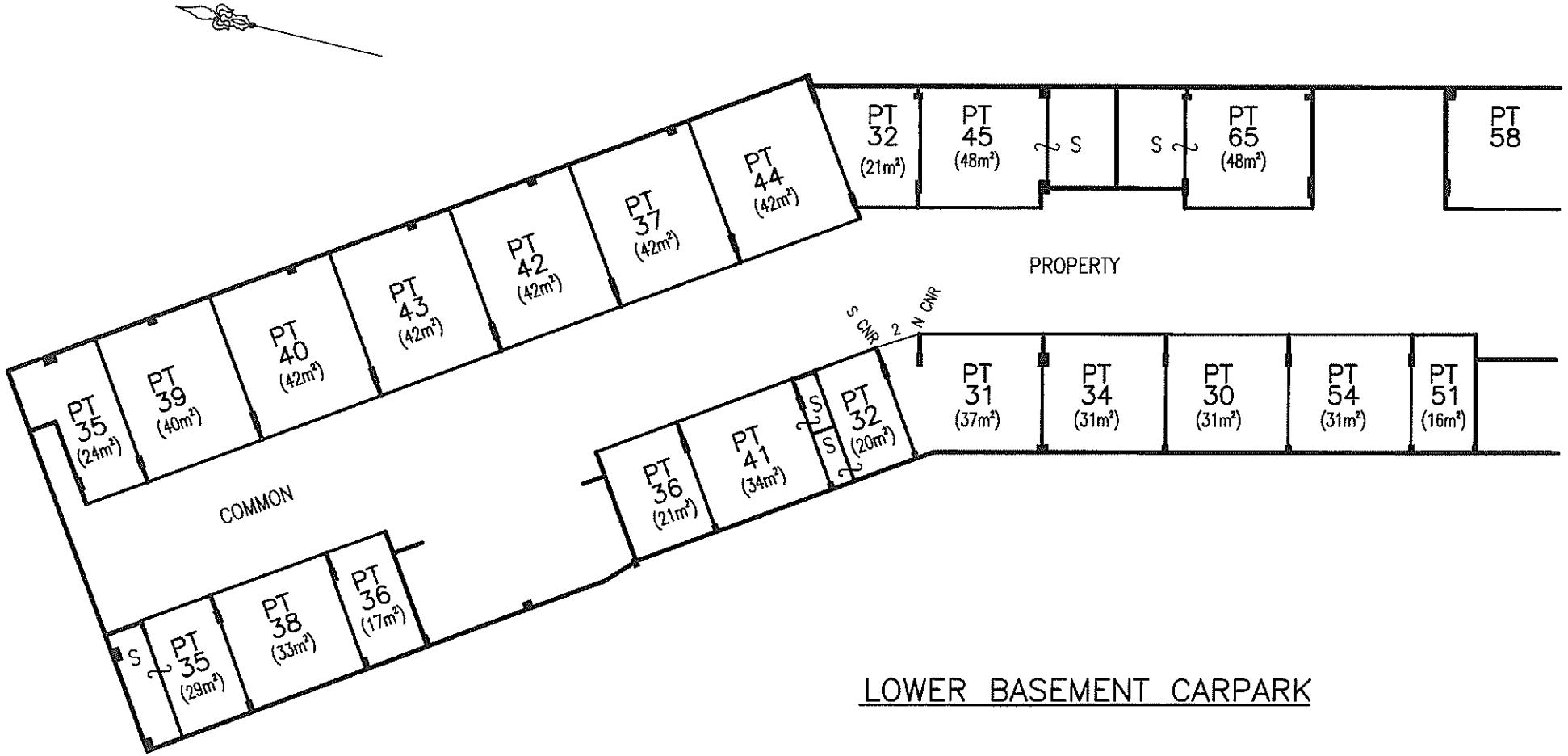
Authorised Person/General Manager/Accredited Certifier

G:R431121 /Doc:SP 0075666 P /Rev:13-Sep-2005 /Sts:SC.OK /Prt:18-Nov-2010 15:04 /Pgs:ALL /Seq:2 of 23
E: /Src:X
E:\BREAKFAST2000\SUPERLOT5\5E\STRATA\LOCATION.dwg
SURVEYOR'S REFERENCE 090421 SP 5E

STRATA PLAN FORM 2

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

SP75666



LOWER BASEMENT CARPARK

SHEET 4 ADJOINS

S – DENOTES STORAGE SPACE

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

Reduction Ratio 1 : 200 (A3)

Lengths are in metres

Registered Surveyor

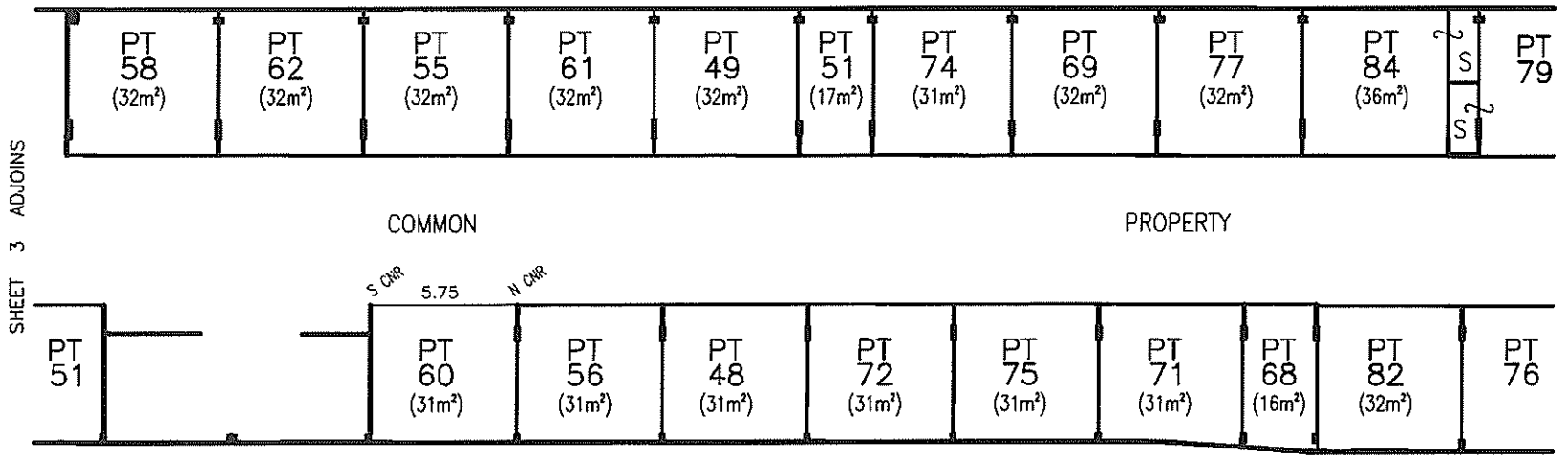
~~Authorised Person/General Manager~~/Accredited Certifier

SURVEYOR'S REFERENCE : 990421 SP 5E

Req:R431121 /Doc:SP 0075666 P /Rev:13-Sep-2005 /Sts:SC.OK /Prt:18-Nov-2010 15:04 /Pgs:ALL /Seq:3 of 23
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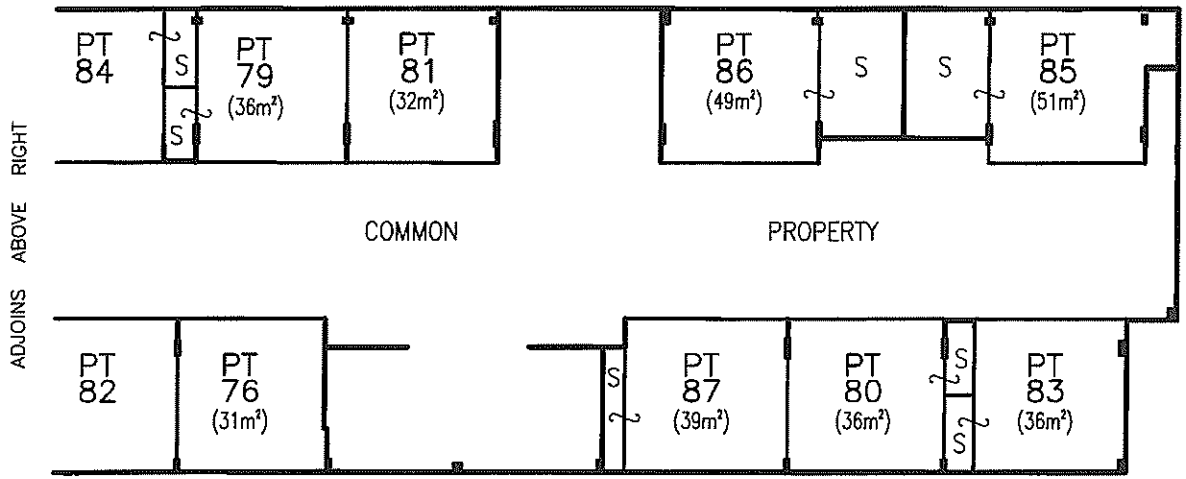
SP75666



LOWER BASEMENT CARPARK

S – DENOTES STORAGE SPACE

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN



Reduction Ratio 1 : 200 (A3)

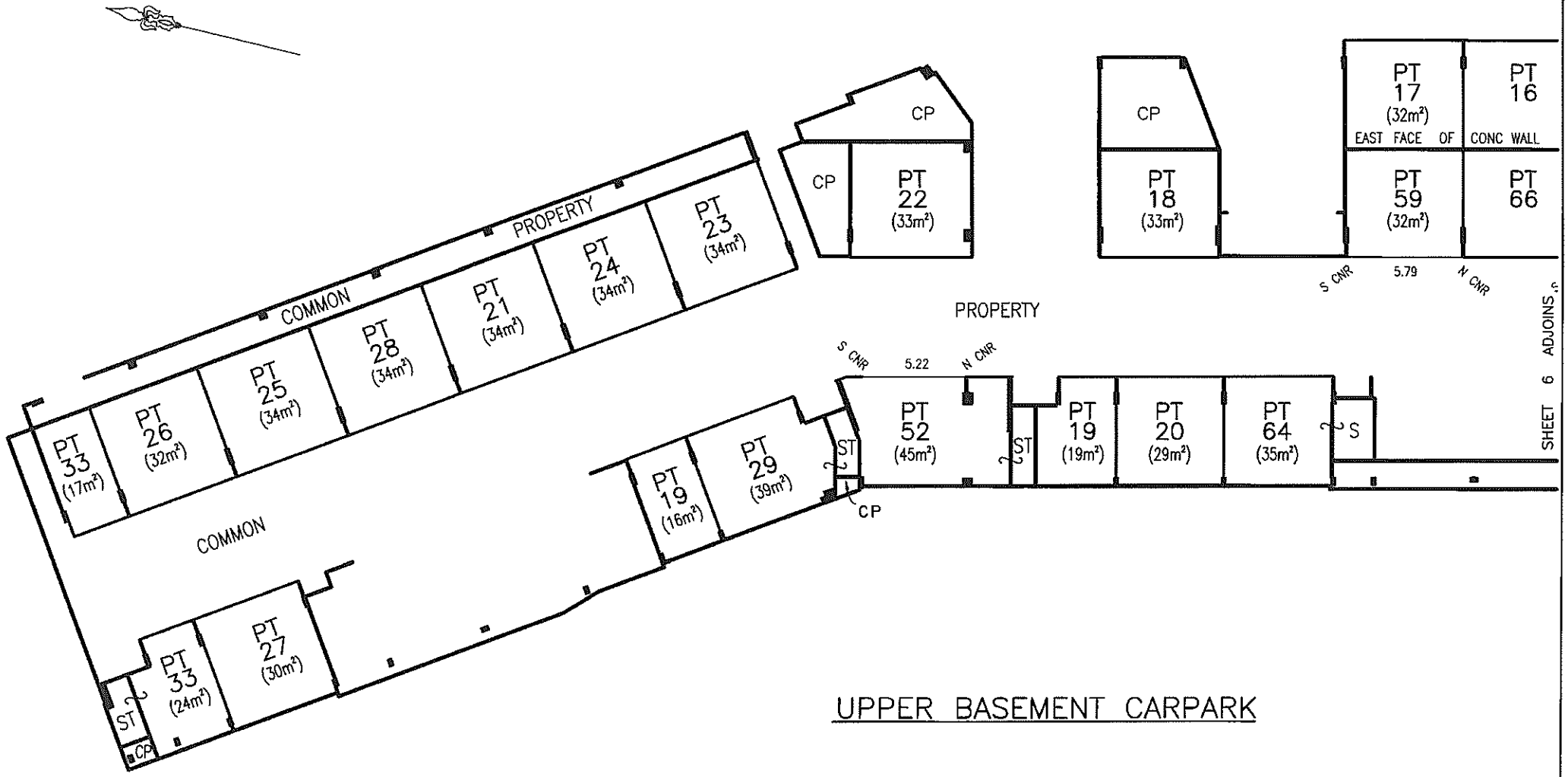
Lengths are in metres

Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

I:R431121 /Doc:SP 0075666 P /Rev:13-Sep-2005 /Sts:SC.OK /Prt:18-Nov-2010 15:04 /Pgs:ALL /Seq:4 of 23
F: /Src:X

SP75666



UPPER BASEMENT CARPARK

CP – DENOTES COMMON PROPERTY
S – DENOTES STORAGE SPACE
ST – DENOTES STAIRS

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

Reduction Ratio 1 : 200 (A3) Lengths are in metres

Registered Surveyor

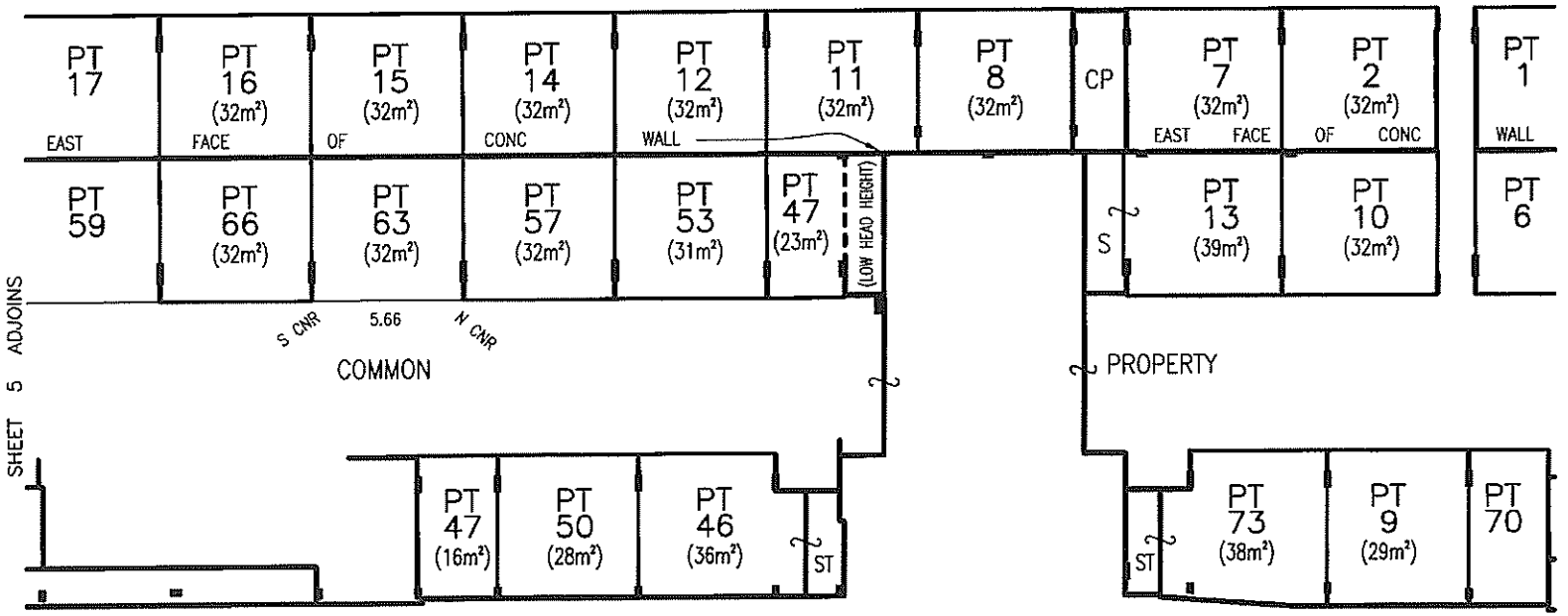
Authorised Person/General Manager/Accredited Certifier

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SURVEYOR'S REFERENCE : 990421 SP 5E

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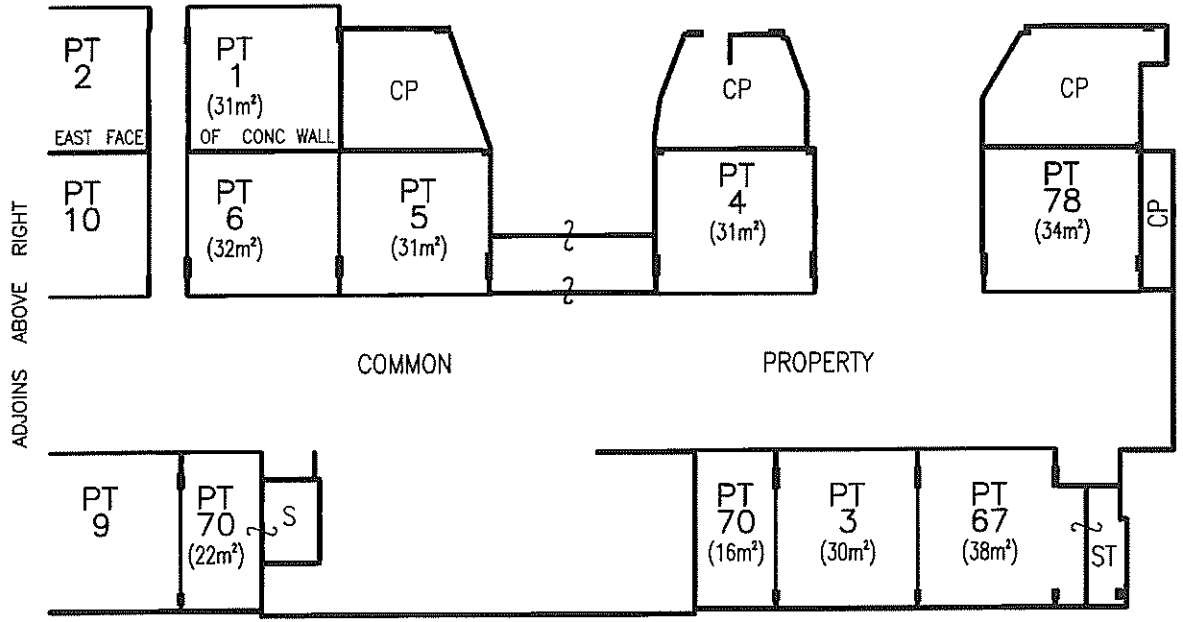
SP75666



UPPER BASEMENT CARPARK

CP – DENOTES COMMON PROPERTY
S – DENOTES STORAGE SPACE
ST – DENOTES STAIRS

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN



Reduction Ratio 1 : 200 (A3) Lengths are in metres

Registered Surveyor

Authorised Person/Geospatial Surveyor/Accredited Certifier

SURVEYOR'S REFERENCE : 990421 SP 5E

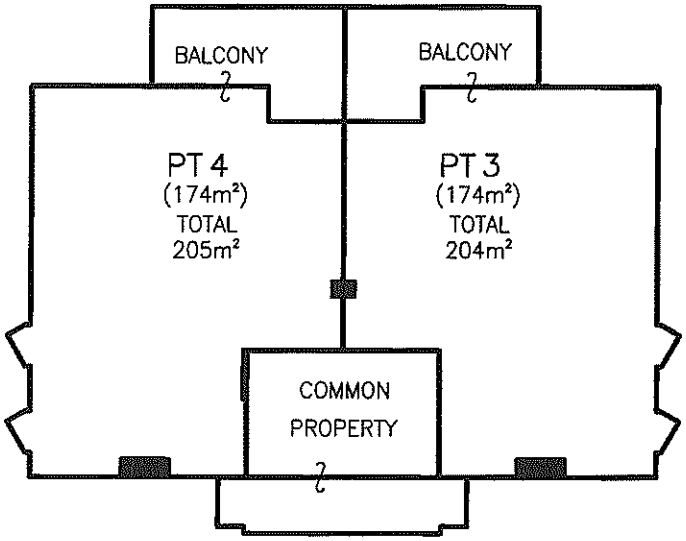
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SP75666

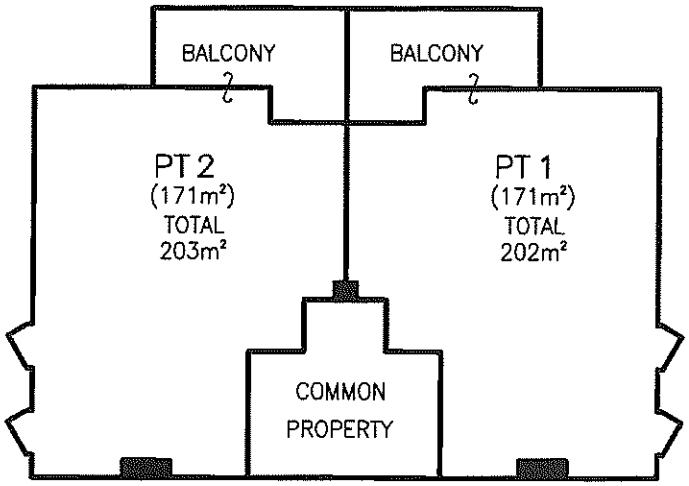
THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

No.57 PENINSULA DRIVE

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY



LEVEL 1



GROUND

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

Reduction Ratio 1 : 200 (A3) Lengths are in metres

Registered Surveyor

~~Authorised Person/Geotech. Manager/Accredited Certifier~~

:\BREAKFAST2000\SUPERLOTS\5E\STRATA\BRINDABELLA.dwg

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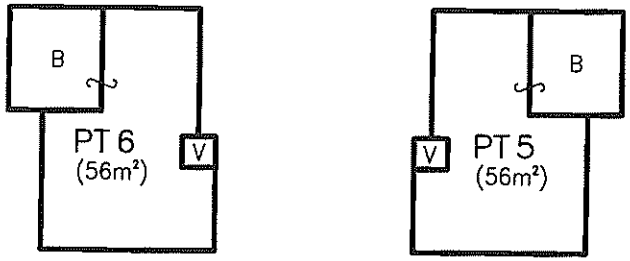
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Ref: /Src:X

SP75666

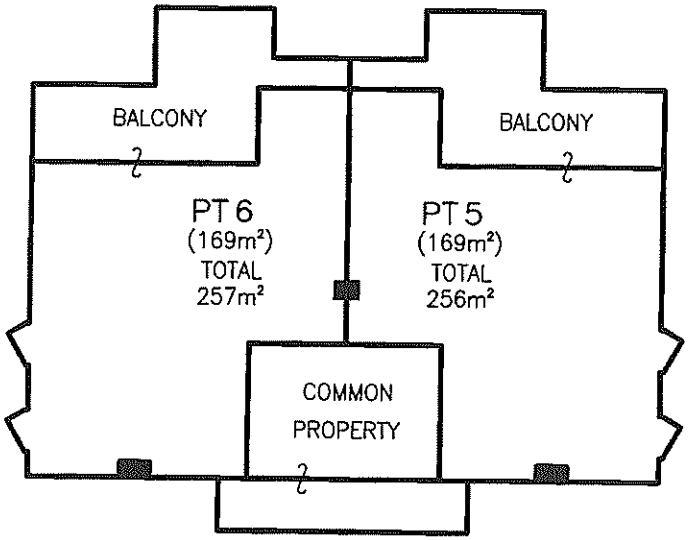
THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

No.57 PENINSULA DRIVE

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY



LEVEL 3



LEVEL 2

B – DENOTES BALCONY

V – DENOTES VOID TO LEVEL 2

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

Reduction Ratio 1 : 200 (A3)

Lengths are in metres

Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

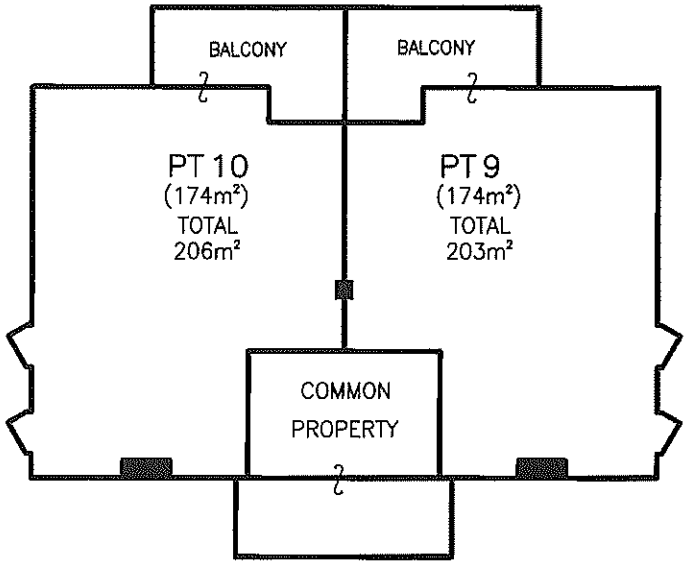
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F: /Src:X

SP75666

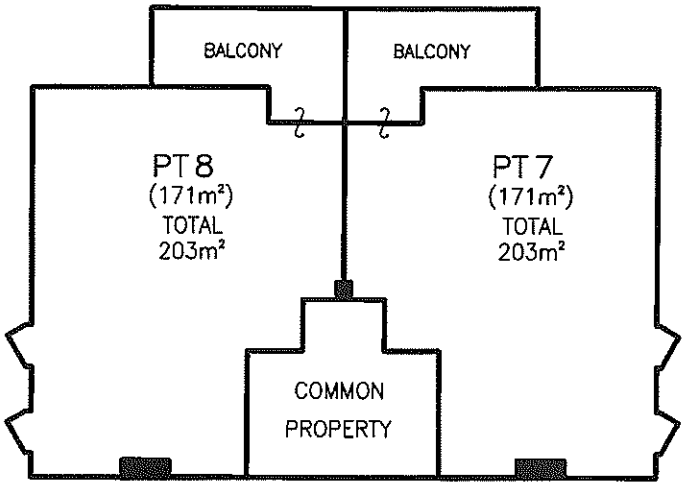
THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

No.59 PENINSULA DRIVE

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY



LEVEL 1



GROUND

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

Reduction Ratio 1 : 200 (A3) Lengths are in metres

Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE : 990421 SP 5E

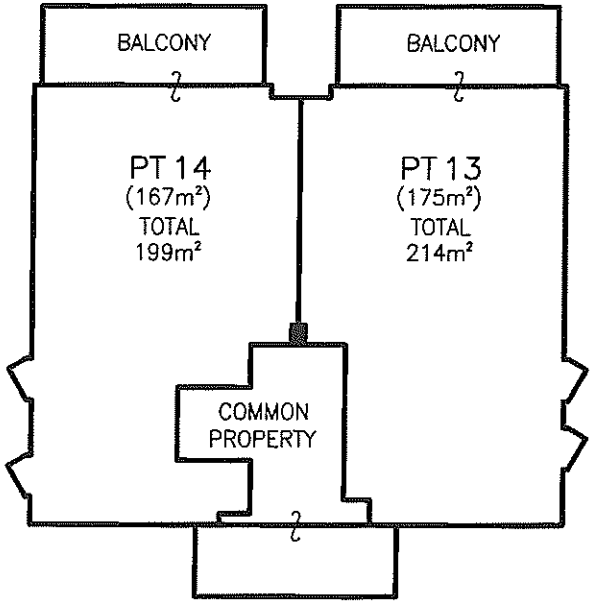
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Ref: /Src:X
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SP75666

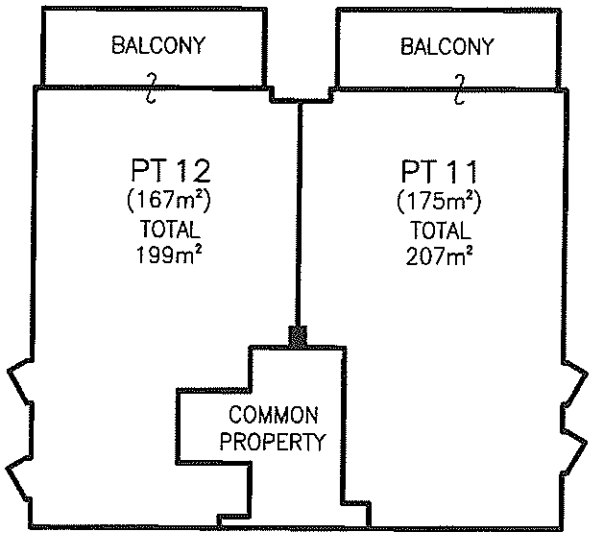
THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

No.61 PENINSULA DRIVE

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY



LEVEL 1



GROUND

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

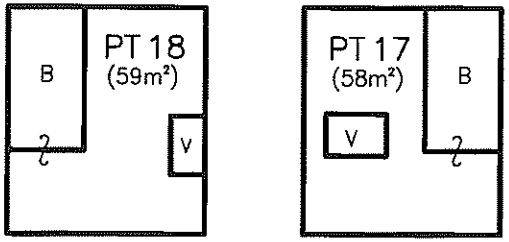
Reduction Ratio 1 : 200 (A3) Lengths are in metres

Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

I:R431121 /Doc:SP 0075666 P /Rev:13-Sep-2005 /Sts:SC.OK /Prt:18-Nov-2010 15:04 /Pgs:ALL /Seq:10 of 23
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SP75666



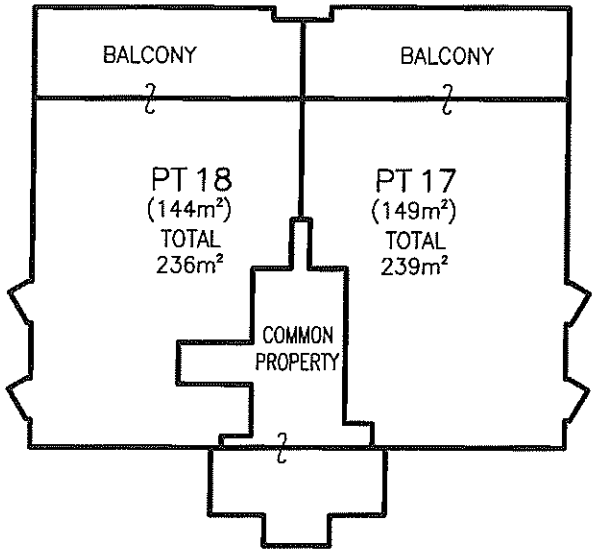
No.63 PENINSULA DRIVE

THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

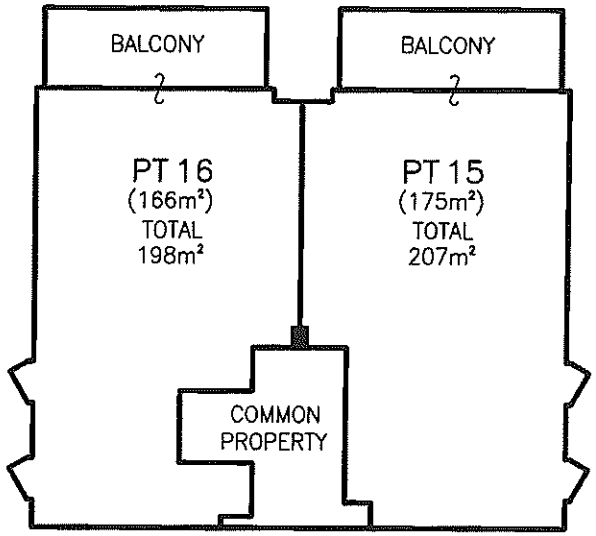
EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

LEVEL 2



LEVEL 1



GROUND

B – DENOTES BALCONY

V – DENOTES VOID TO LEVEL 1

Reduction Ratio 1 : 200 (A3) Lengths are in metres

Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE : 990421 SP 5E

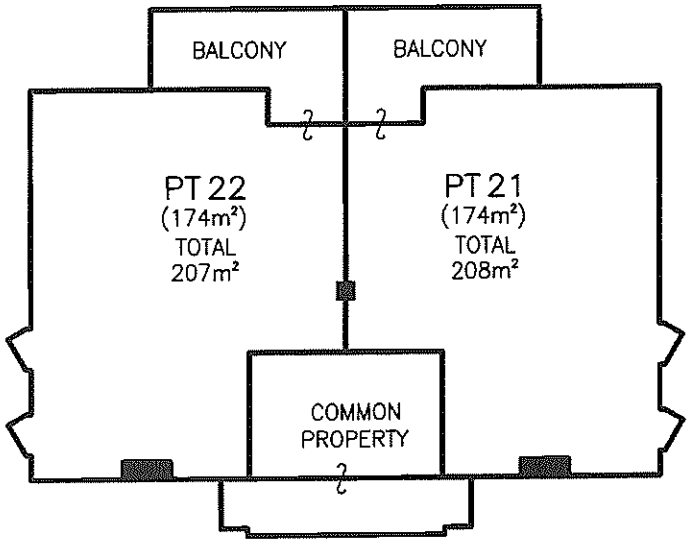
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Ref: /Src:X
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SP75666

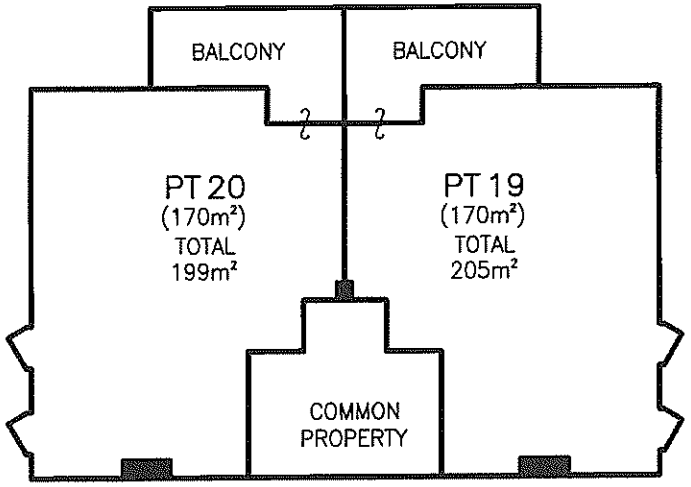
THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

No.71 PENINSULA DRIVE



LEVEL 1



GROUND

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

Reduction Ratio 1 : 200 (A3)

Lengths are in metres

Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE 202421 SP 5E

I:R431121 /Doc:SP 0075666 P /Rev:13-Sep-2005 /Sts:SC.OK /Prt:18-Nov-2010 15:04 /Pgs:ALL /Seq:12 of 23
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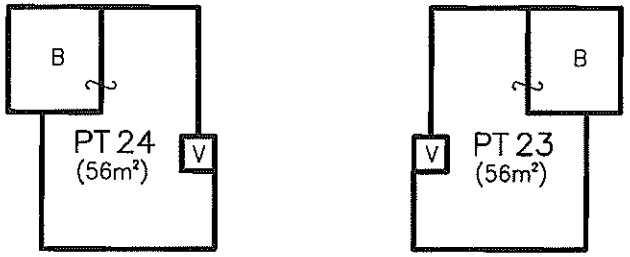
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SP75666

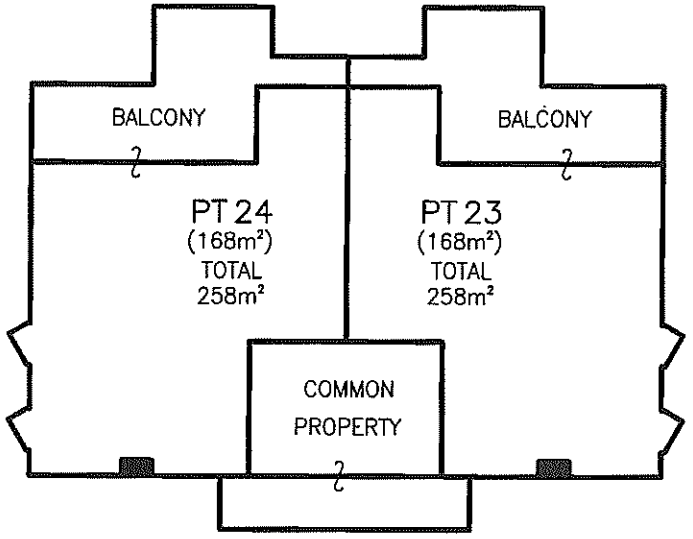
THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

No.71 PENINSULA DRIVE



LEVEL 3



LEVEL 2

B – DENOTES BALCONY

V – DENOTES VOID TO LEVEL 2

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

Reduction Ratio 1 : 200 (A3) Lengths are in metres

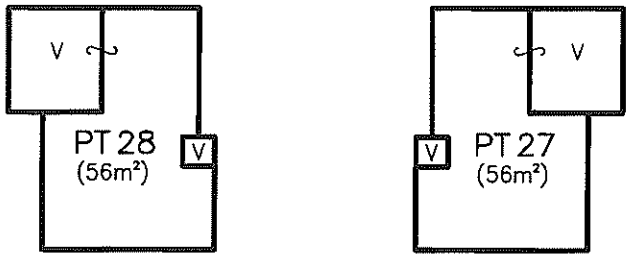
Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

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SP75666

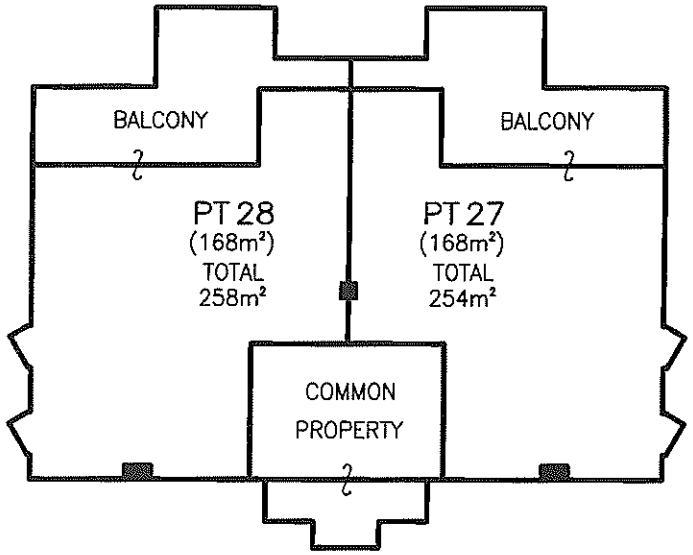


THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

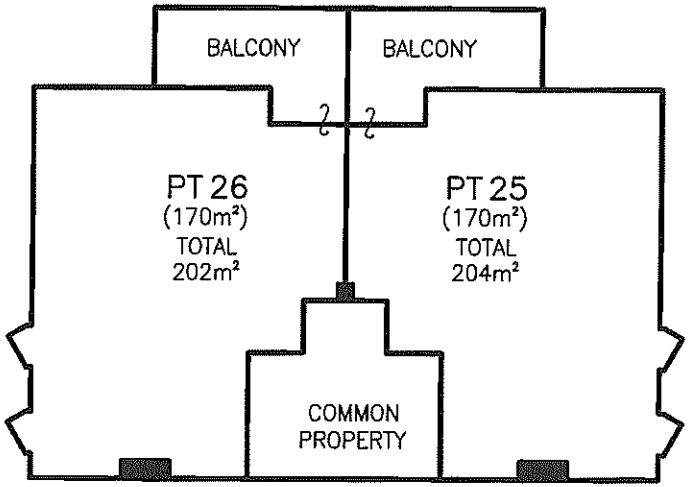
No.73 PENINSULA DRIVE

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

LEVEL 2



LEVEL 1



GROUND

B – DENOTES BALCONY

V – DENOTES VOID TO LEVEL 1

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

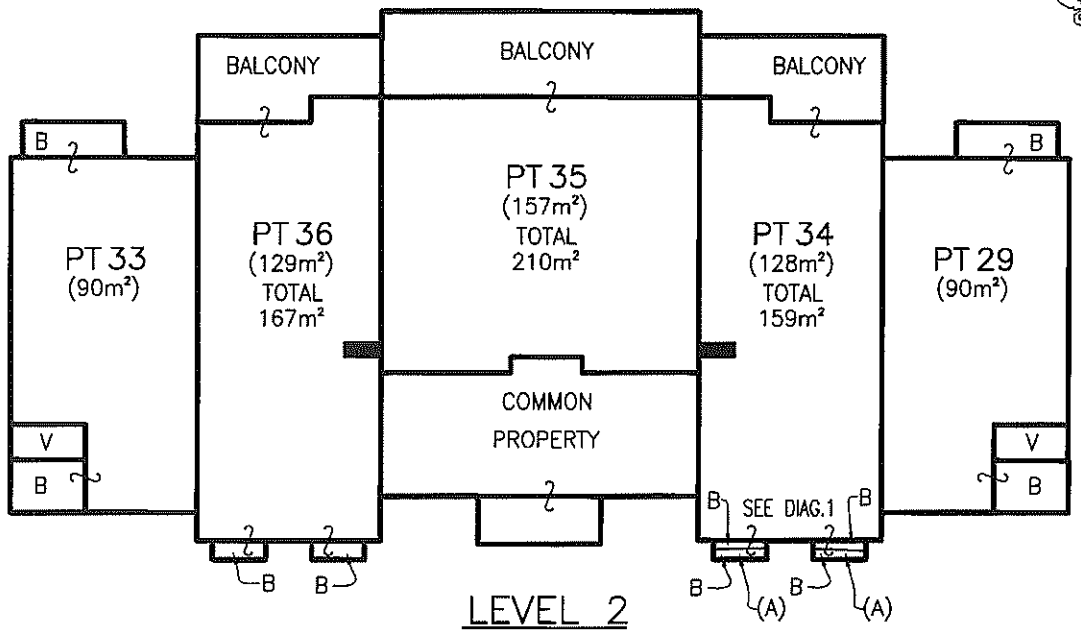
Reduction Ratio 1 : 200 (A3) Lengths are in metres

Registered Surveyor

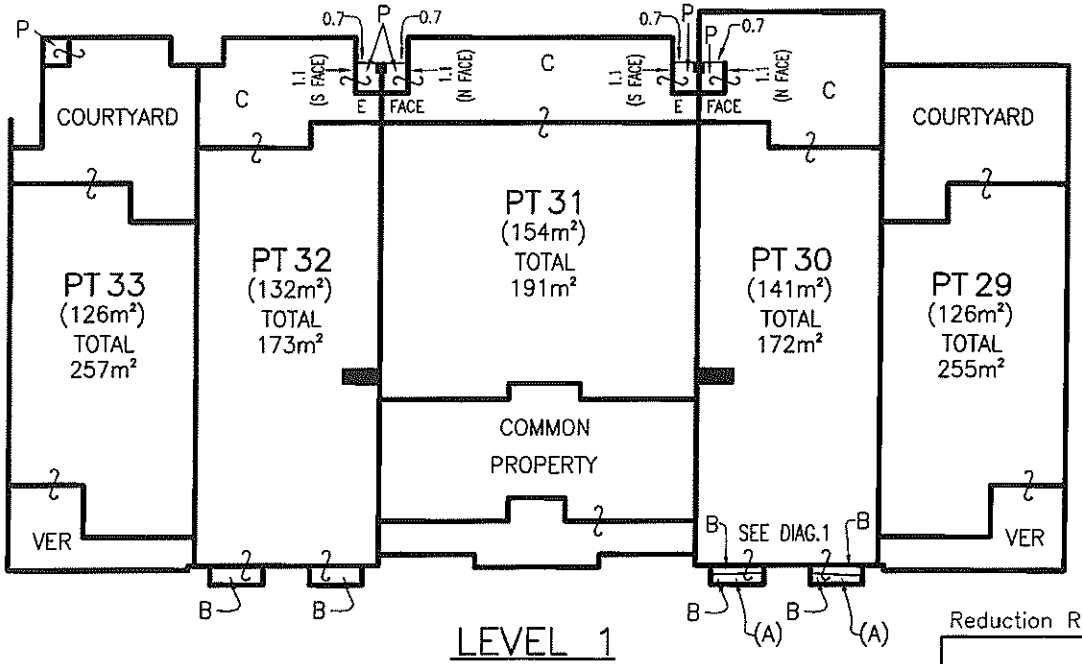
Authorised Person/General Manager/Accredited Certifier

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f: /Src:X
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EYOR'S NCE : 21 S

SP75666



LEVEL 2



LEVEL 1

No.75–79 PENINSULA DRIVE

THOSE PART OF THE BALCONIES MARKED (A) WHICH ENCROACHES OVER THE PARCEL BOUNDARY IS FOR THE EXCLUSIVE USE BY THE THE ADJOINING LOT. THE PROVISIONS OF THE ACT APPLY TO THIS AREA OTHER THAN THOSE RELATING TO OWNERSHIP AND CERTIFICATE OF TITLE.

THE STRATUM OF THE BALCONIES AND VERANDAS, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

THE STRATUM OF THE COURTYARDS AND PLANTERS, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THE FLOOR OF THE ADJOINING UNIT.

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

B – DENOTES BALCONY
C – DENOTES COURTYARD
CP – DENOTES COMMON PROPERTY
P – DENOTES PLANTER
V – DENOTES VOID TO LEVEL 1
VER – DENOTES VERANDA

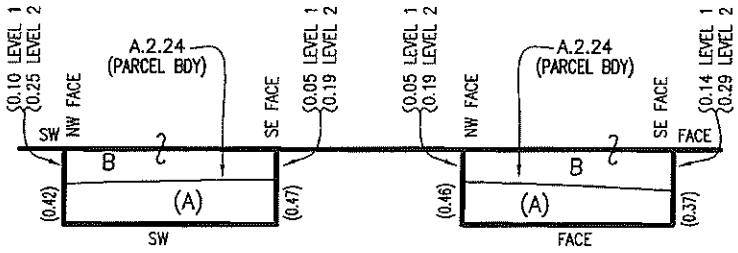


DIAGRAM 1
N.T.S.

Reduction Ratio 1 : 200 (A3) Lengths are in metres

Registered Surveyor

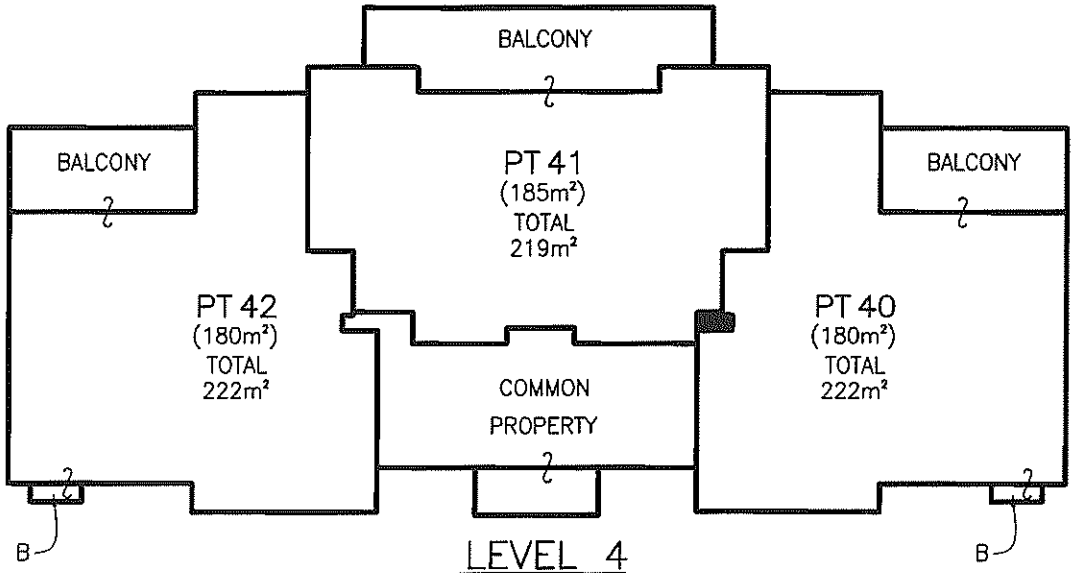
Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE : 990421 SP 5E

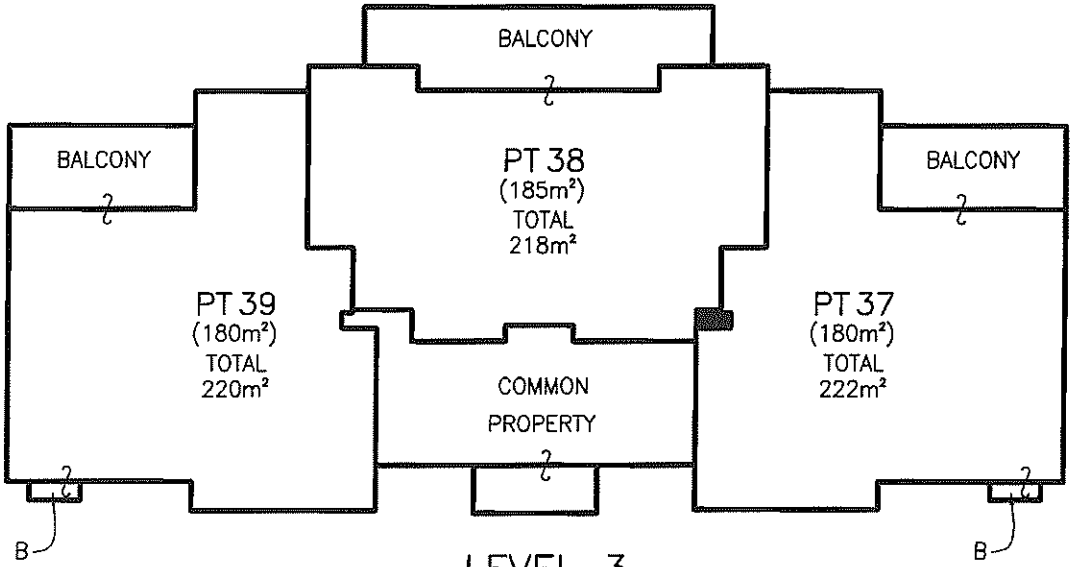
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Ref: /Src:X
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No.75–79 PENINSULA DRIVE

SP75666



LEVEL 4



LEVEL 3

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

B – DENOTES BALCONY

Reduction Ratio 1 : 200 (A3) Lengths are in metres

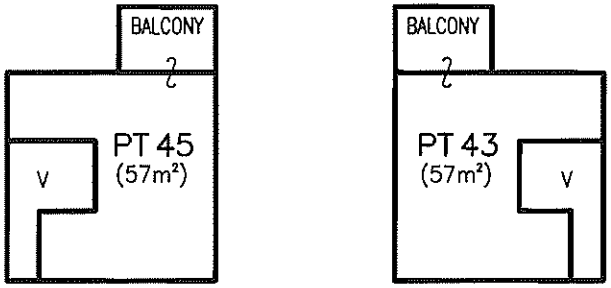
Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

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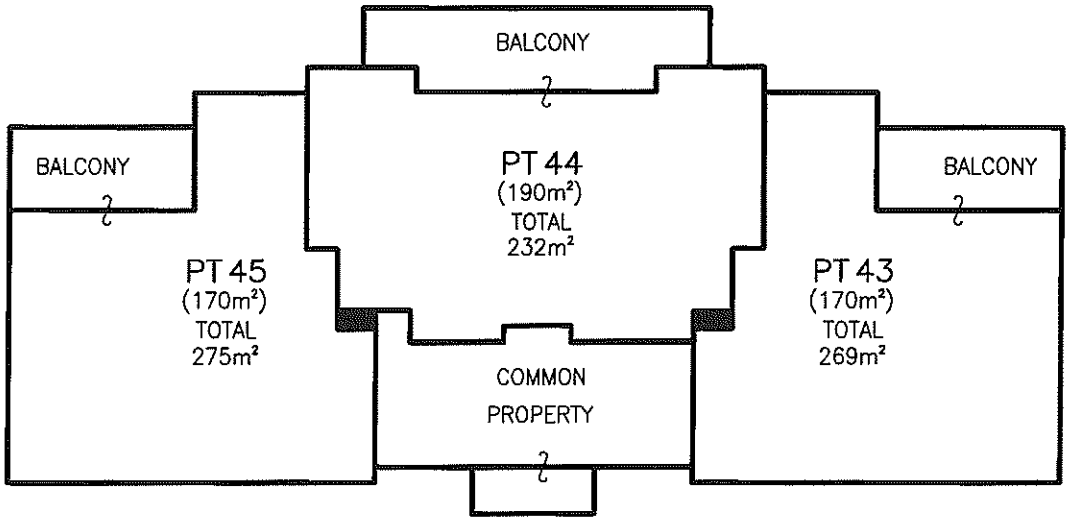
No.75–79 PENINSULA DRIVE

SP75666



EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

LEVEL 6



THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

V – DENOTES VOID TO LEVEL 5

LEVEL 5

Reduction Ratio 1 : 200 (A3)

Lengths are in metres

Registered Surveyor

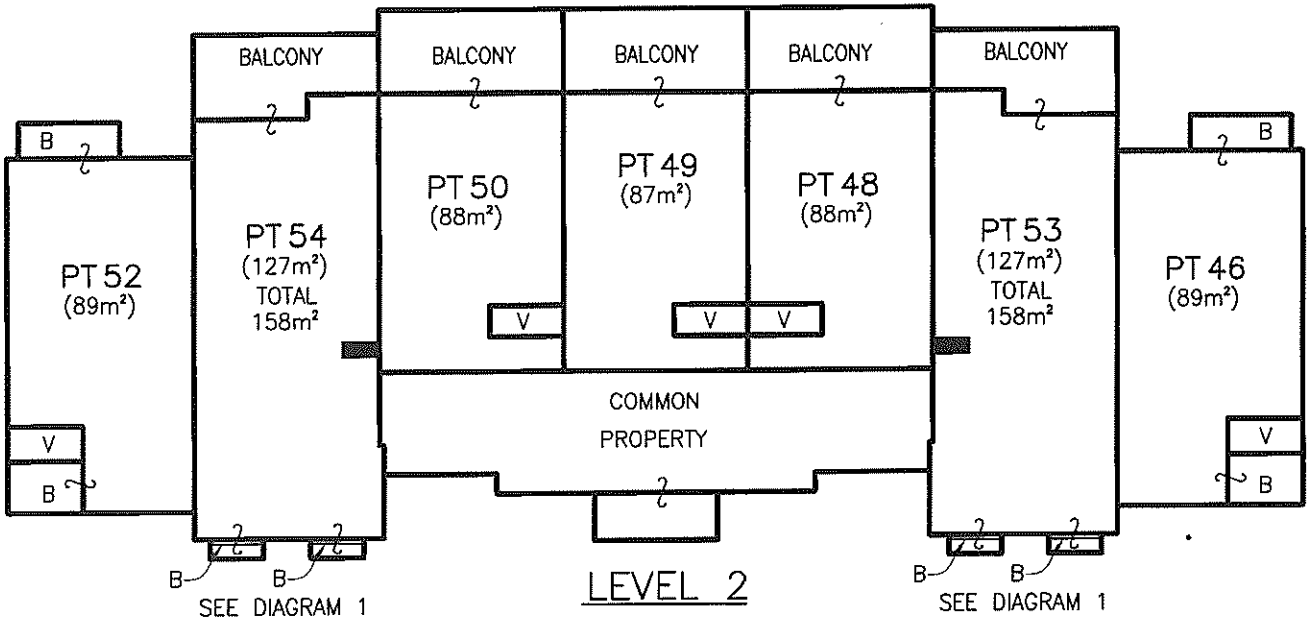
Authorised Person/General Manager/Accredited Certifier

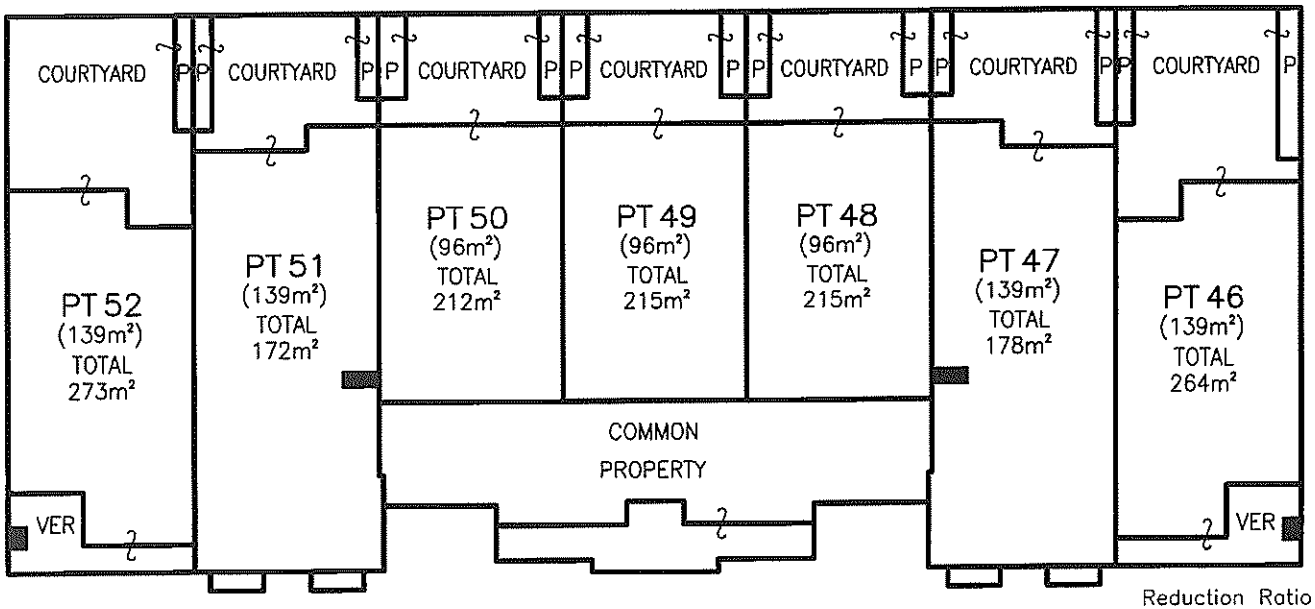
SURVEYOR'S REFERENCE : 990421 SP 5E

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No.65–69 PENINSULA DRIVE

SP75666





THOSE PART OF THE BALCONIES MARKED (A) WHICH ENCROACHES OVER THE PARCEL BOUNDARY IS FOR THE EXCLUSIVE USE BY THE ADJOINING LOT. THE PROVISIONS OF THE ACT APPLY TO THIS AREA OTHER THAN THOSE RELATING TO OWNERSHIP AND CERTIFICATE OF TITLE.

THE STRATUM OF THE BALCONIES AND VERANDAS, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

THE STRATUM OF THE COURTYARDS AND PLANTERS, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THE FLOOR OF THE ADJOINING UNIT.

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

B – DENOTES BALCONY
C – DENOTES COURTYARD
CP – DENOTES COMMON PROPERTY
P – DENOTES PLANTER
V – DENOTES VOID TO LEVEL 1
VER – DENOTES VERANDA

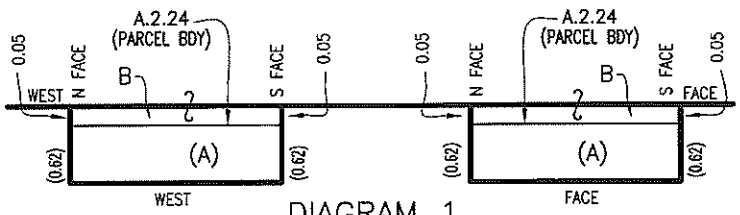


DIAGRAM 1
N.T.S.



DIAGRAM 2
N.T.S.

Reduction Ratio 1 : 200 (A3) Lengths are in metres

Registered Surveyor

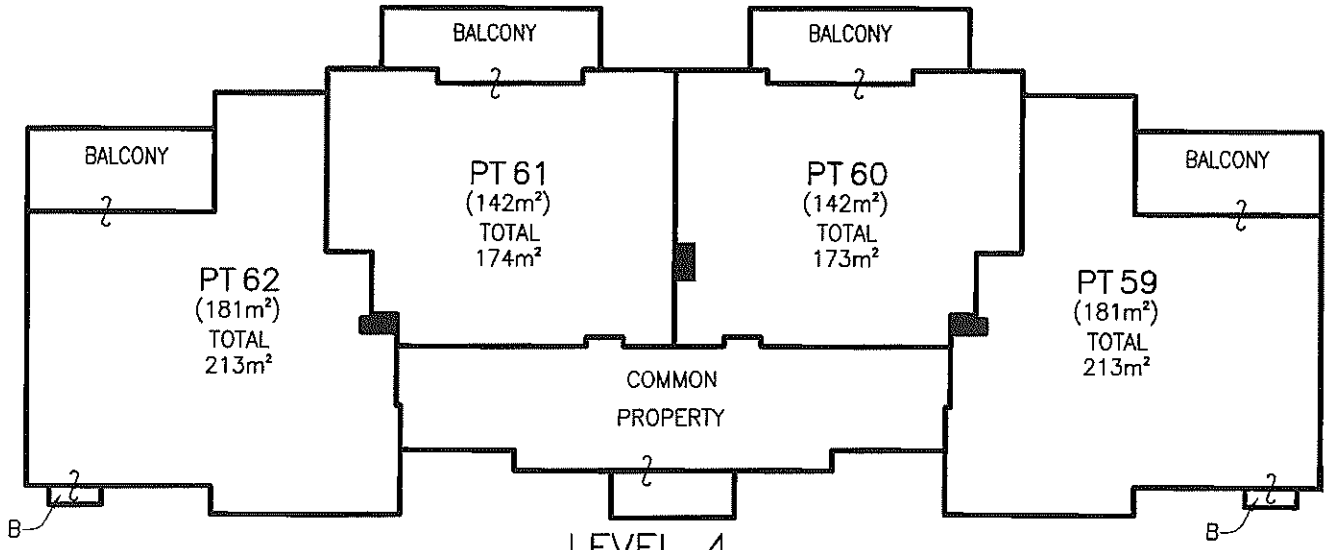
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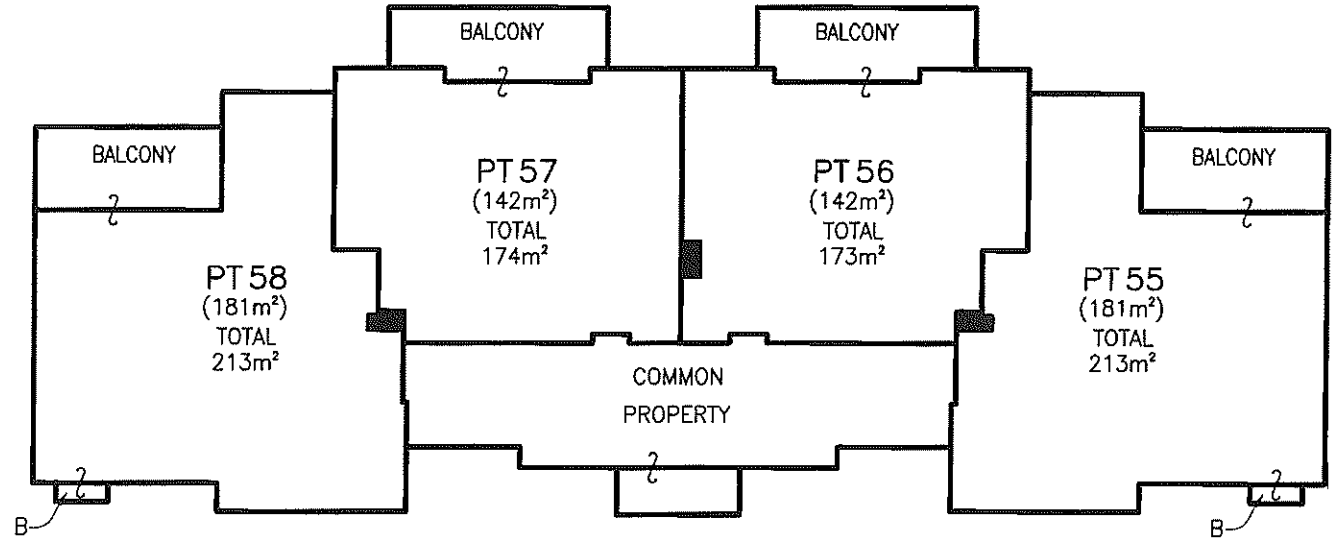
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No.65–69 PENINSULA DRIVE

SP75666



LEVEL 4



LEVEL 3

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

B – DENOTES BALCONY

Reduction Ratio 1 : 200 (A3)

Lengths are in metres

Registered Surveyor

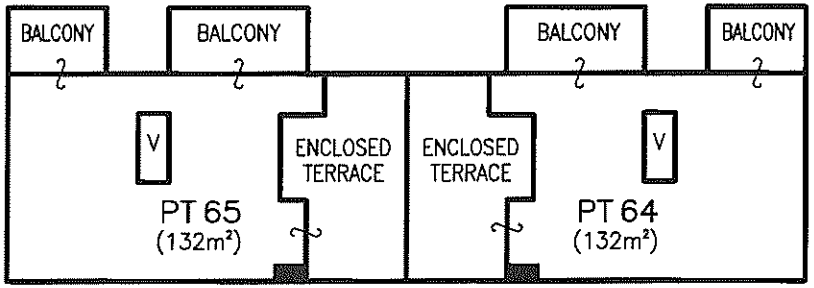
Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE : 990421 SP 5E

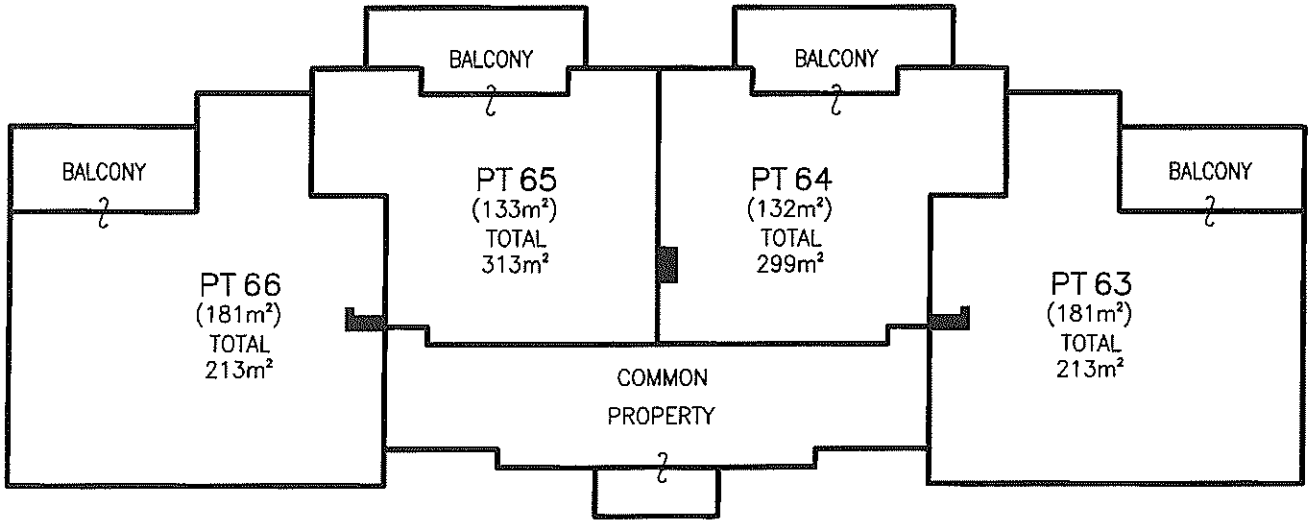
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Ref: /Src:X
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SP75666

No.65–69 PENINSULA DRIVE



LEVEL 6



LEVEL 5

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

V – DENOTES VOID TO LEVEL 5

Reduction Ratio 1 : 200 (A3) Lengths are in metres

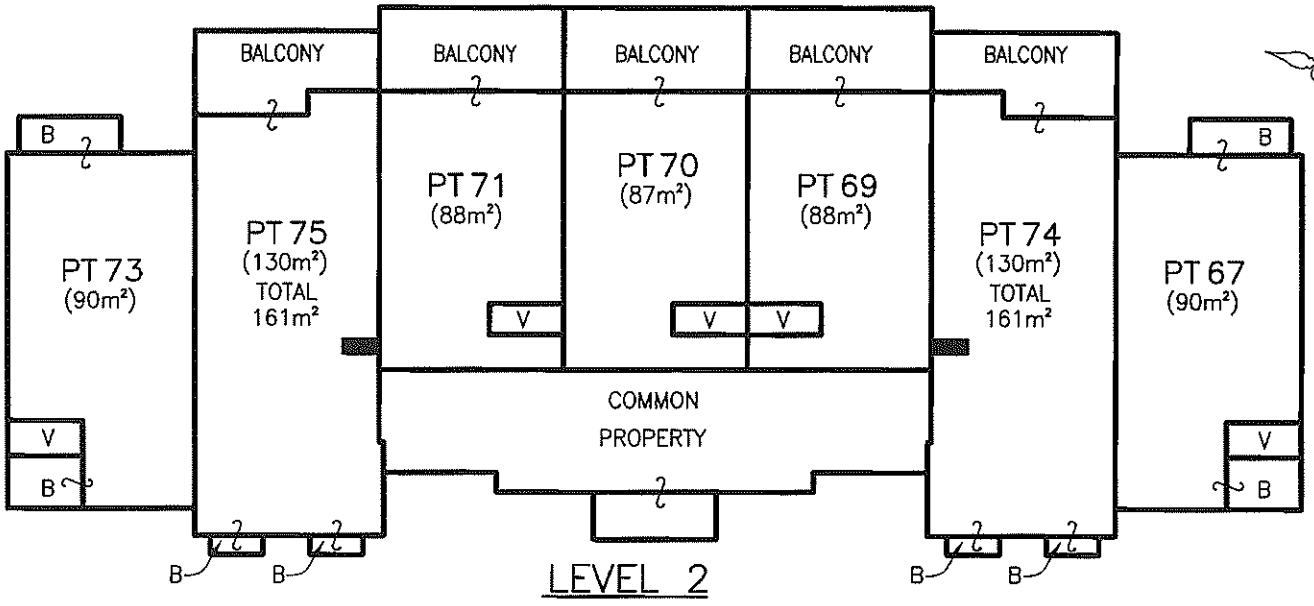
Registered Surveyor

~~Authorised Person/General Manager/Accredited Certifier~~

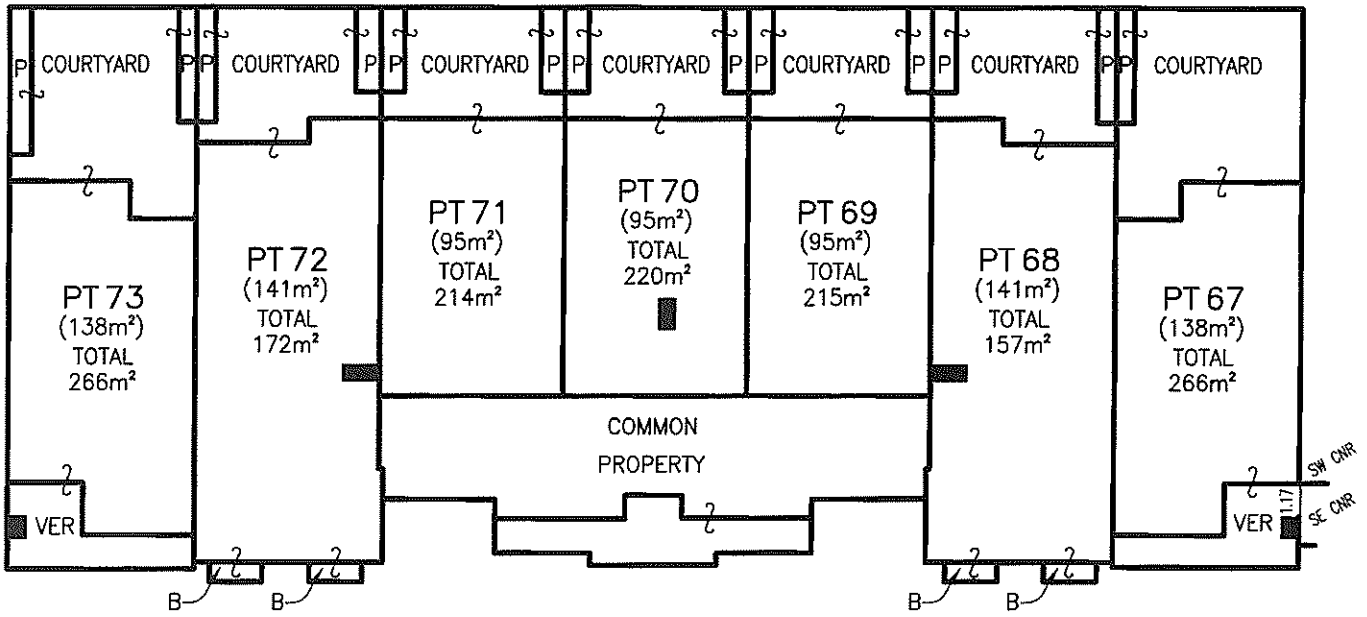
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SP75666

No.51–55 PENINSULA DRIVE



LEVEL 2



LEVEL 1

THE STRATUM OF THE BALCONIES AND VERANDAS, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

THE STRATUM OF THE COURTYARDS AND PLANTERS, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THE FLOOR OF THE ADJOINING UNIT.

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

B – DENOTES BALCONY
CP – DENOTES COMMON PROPERTY
V – DENOTES VOID TO LEVEL 1
VER – DENOTES VERANDA

Reduction Ratio 1 : 200 (A3) Lengths are in metres

Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

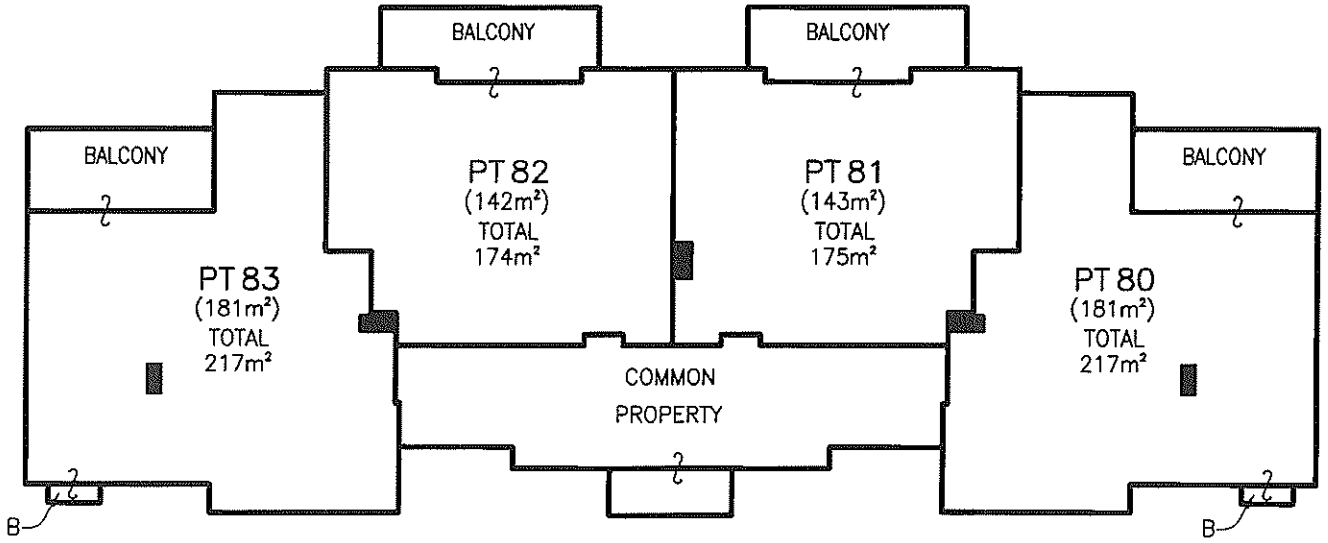
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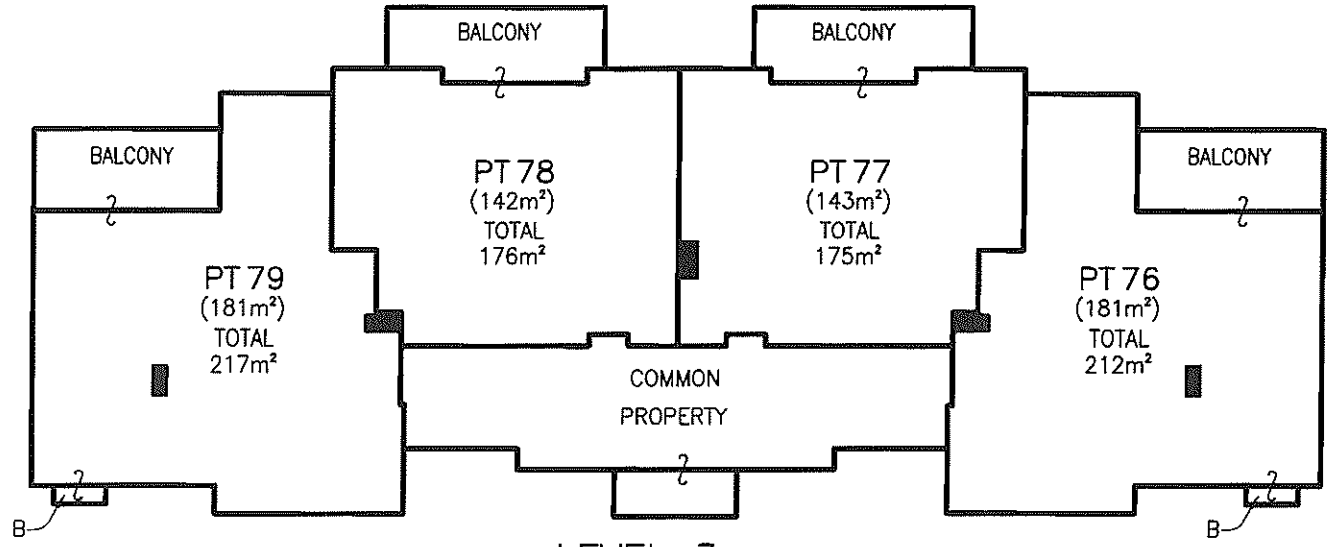
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No.51–55 PENINSULA DRIVE

SP75666



LEVEL 4



LEVEL 3

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

B – DENOTES BALCONY

Reduction Ratio 1 : 200 (A3)

Lengths are in metres

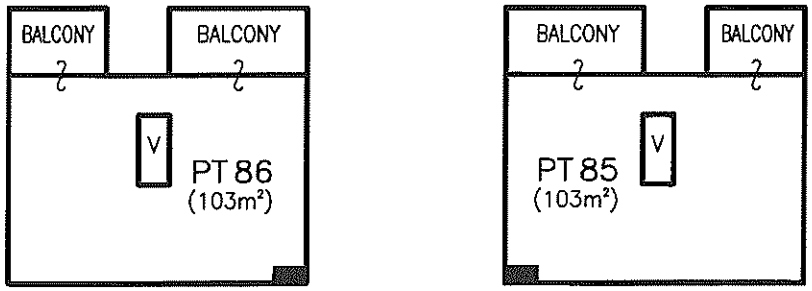
Registered Surveyor

Authorised Person/Body Corporate Manager/Accredited Certifier

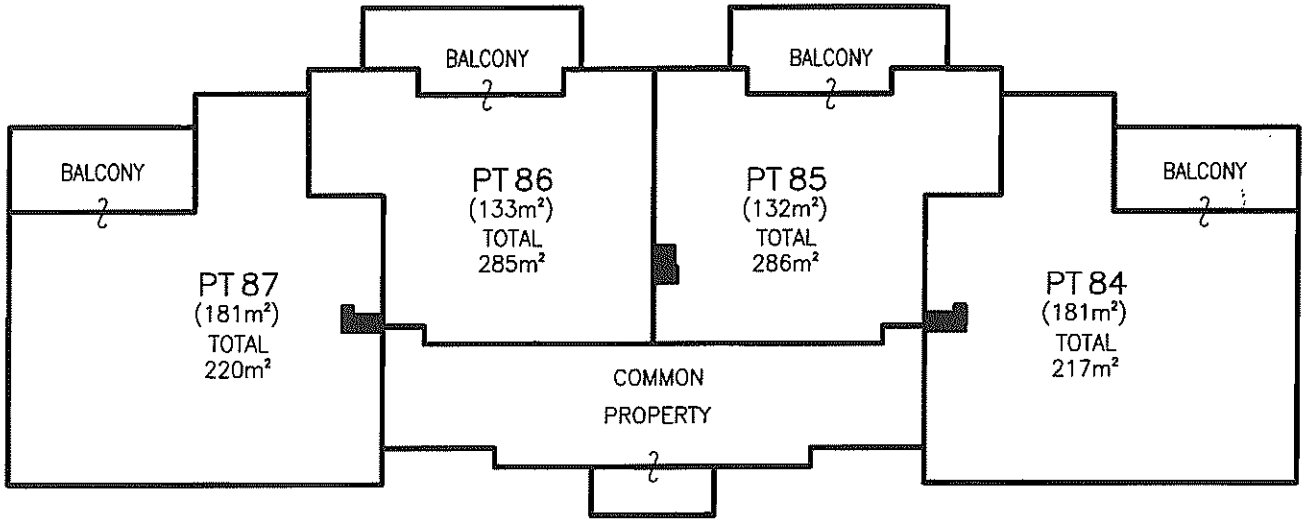
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SP75666

No.51–55 PENINSULA DRIVE



LEVEL 6



LEVEL 5

EXTERNAL STRUCTURES SUCH AS PERGOLAS, SUN SCREENING DEVICES AND AWNINGS ARE COMMON PROPERTY

THE STRATUM OF THE BALCONIES, WHERE NOT COVERED, IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE TILED FLOORS.

FOR CLARITY NOT ALL COMMON PROPERTY STRUCTURES DUCTS AND COLUMNS ARE SHOWN

V – DENOTES VOID TO LEVEL 5

Reduction Ratio 1 : 200 (A3) Lengths are in metres

Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE : 990421 SP 5E

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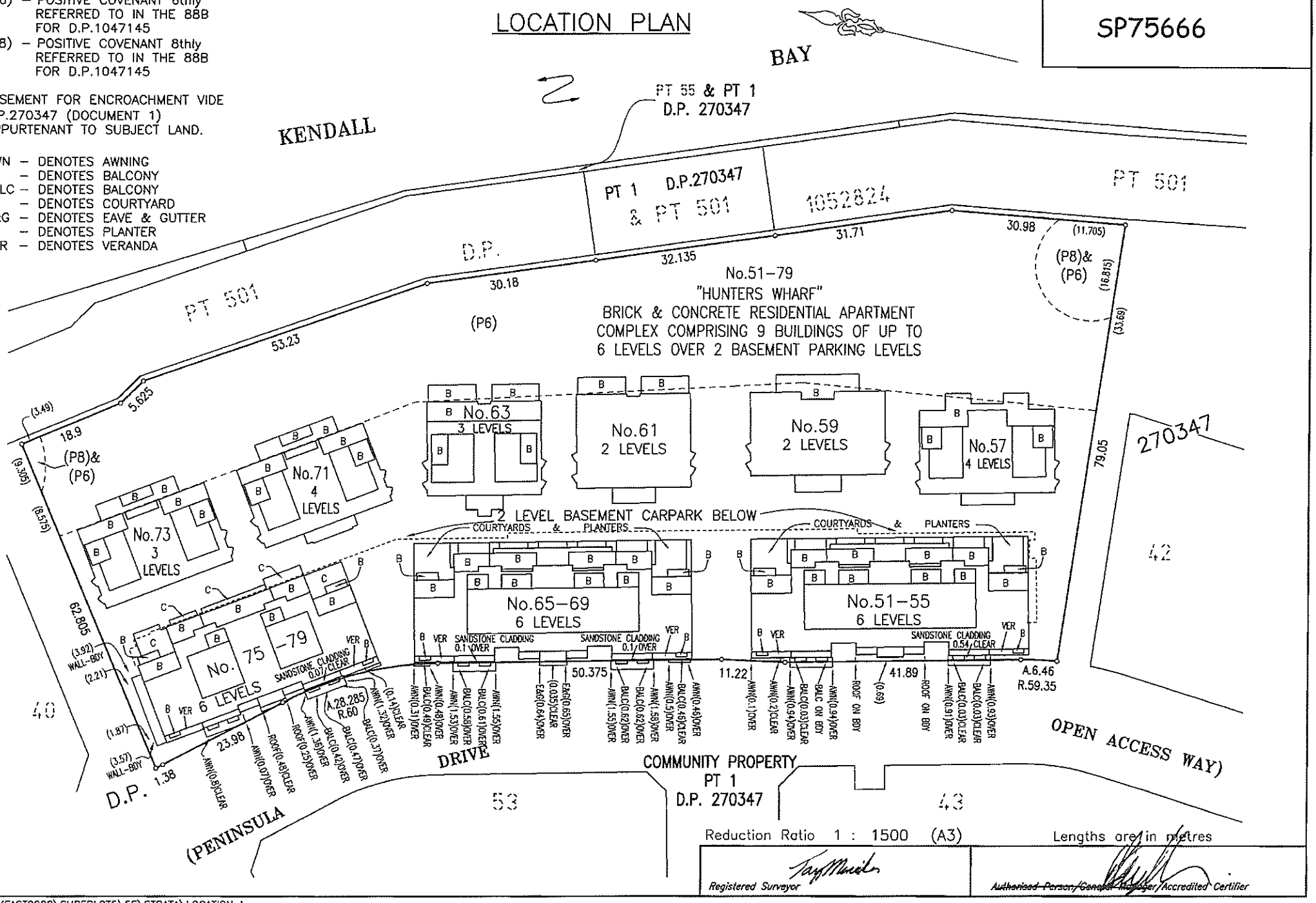
SP75666

(P6) – POSITIVE COVENANT 6thly REFERRED TO IN THE 88B FOR D.P.1047145
(P8) – POSITIVE COVENANT 8thly REFERRED TO IN THE 88B FOR D.P.1047145

EASEMENT FOR ENCROACHMENT VIDE D.P.270347 (DOCUMENT 1) APPURTENANT TO SUBJECT LAND.

AWN – DENOTES AWNING
B – DENOTES BALCONY
BALC – DENOTES BALCONY
C – DENOTES COURTYARD
E&G – DENOTES EAVE & GUTTER
P – DENOTES PLANTER
VER – DENOTES VERANDA

LOCATION PLAN



Reduction Ratio 1 : 1500 (A3) Lengths are in metres

Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE : 990421 SP 5E

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Ref:09/p0144 /Src:E

DP270347

COVER SHEET FOR SECTION 88B INSTRUMENT

****

ATTENTION

****

As a result of a Community Plan of Subdivision which also contained a Section 88B Instrument this instrument now comprises separate documents registered on different dates.

Particulars of each document are as follows:-

Document No.	Plan/Instrument Registration Date	No. of Sheets in Plan	No. Sheets in Section 88B Inst.
Document 1	18.8.2003	20	48
DOCUMENT 2	4.2.2004	2	6
DOCUMENT 3	31.01.2005	3	9
DOCUMENT 4	9.9.2005	4	2
DOCUMENT 5	9.11.2005	3	8
DOCUMENT 6	8.1.2007	4	9
DOCUMENT 7	23-5-2008	2	8

TOTAL NUMBER OF SHEETS OF SEC 88B FILMED
(INCLUDING COVER SHEET)

Doc. 1

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

(Sheet 1 of 48 Sheets)

Plan:

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18-7-2003

Full name and address of the registered proprietor of the land:

Breakfast Point Pty Limited, (ACN 088 841 203) of 51 Riley Street Woolloomooloo and the Secretary for the time being of Australian Gas Light Company ARBN 052 167 405 of 111 Pacific Highway North Sydney

Part 1

Number of item shown in the intention panel on the plan	Identity of easement, profit a prendre, restriction on the use of land or positive covenant to be created and referred to in the plan	Lot/s burdened	Lot/s benefited, Prescribed Authority benefited
1	Easement for Overhang 1.7 Wide	Lot 1	Lot 8
2	Easement for Landscaping & Building Works	Lot 1	Lot 4
3	Easement for Water Supply Purposes 2.5 Wide	Lot 1 Lot 13	Sydney Water Corporation
4	Easement for Water Supply Purposes 3 Wide	Lot 1 Lot 3 Lot 8	Sydney Water Corporation
5	Easement for Access & Drainage Purposes Variable Width	Lot 1 Lot 3 Lot 8 Lot 13	Sydney Water Corporation
6	Positive Covenant	Lot 1 Lot 3 (that part designated "(MC6)" in the plan) Lot 8 (that part	Sydney Water Corporation

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18-7-2003

Number of item shown in the intention panel on the plan	Identity of easement, profit a prendre, restriction on the use of land or positive covenant to be created and referred to in the plan	Lot/s burdened	Lot/s benefited, Prescribed Authority benefited
		designated "(MC6)" in the plan) Lot 13 (that part designated "(MC6)" in the plan)	
7	Positive Covenant	Lot 1	Sydney Water Corporation
8	Easement for Electricity Purposes	Lot 1	EnergyAustralia
9	Easement for Support & Attachment	Lot 1	Lot 3
10	Easement for Overland Flow Path	Lot 1	City of Canada Bay Council
11	Easement for Encroachment	Lot 1	Lots 2-12 (inclusive), Lots 14-20 (inclusive)
12	Easement for Services	Lot 1	Lots 2-12 (inclusive), Lots 14-20 (inclusive)
13	Easement for Fencing & Landscaping	Lot 1	Lots 45, 47-52 (inclusive) DP 270262
14	Easement for Letterbox	Lot 1	Lots ~~42-51~~ 42-45 (~~inclusive~~) 47-51 DP 270262
15	Easement for Public Access	Lot 1	City of Canada Bay Council

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18-7-2003

Number of item shown in the intention panel on the plan	Identity of easement, profit a prendre, restriction on the use of land or positive covenant to be created and referred to in the plan	Lot/s burdened	Lot/s benefited, Prescribed Authority benefited
16	Easement for Street Lighting	Lot 1	EnergyAustralia
17	Easement for Substation	Lot 1	EnergyAustralia
18	Right of Access	Lot 2	Lot 7
19	Easement for Services (2)	Lot 9 Lot 10 Lot 11	Lots 10, 11 Lots 1, 9, 11 Lots 1, 9, 10
20	Easement for Retention Tank	Lot 3	Lot 1
21	Easement for Access, Maintenance and Landscaping (MC21)	Lot 1	Lot 3 (that part designated "(N8)" in the plan)
22	Easement for Access, Maintenance and Landscaping (MC22)	Lot 1	Lot 3 (that part designated "(N9)" in the plan)
23	Easement for Access, Maintenance and Landscaping (MC23)	Lot 1	Lot 6 (that part designated "(N10)" in the plan)
24	Easement for Access, Maintenance and Landscaping (MC24)	Lot 1	Lot 6 (that part designated "(N11)" in the plan)
25	Easement for Access	Lot 6	Lot 3
26	Restriction on Use	Lot 6 (that part designated "(MC26)" in the plan	Lot 3

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18-7-2003

Part 1A

1.	Identity of easement to be released numbered 1 in the plan	Easement for Gas Pipeline (C) Variable Width (DP1030224)

Schedule of Lots etc affected

Lots burdened	Authority benefited
Pt 502/1052824 being Lots 1, 9 and 11 (those parts designated "(C3) – (TBR)" in the plan)	AGL Gas Networks Limited ACN 003 004 322

2.	Identity of easement to be released numbered 2 in the plan	Easement for Access and Services Variable Width (Q) (DP1029084)

Schedule of Lots etc affected

Lot burdened	Lots benefited
Pt 502/1052824 being Lot 8 (that part designated "(Q) – (TBR)" in the plan)	~~Lot 4 DP 1029084~~ Lots 496 DP1047145 Lots 500 & 502 DP ~~1047145~~ 1052824

Part 2

1. Terms of Easement for Overhang 1.7 wide ~~to be created~~ numbered 1 in the plan

1.1 The owner of the lot benefited:

(a) may insist that the roof, eaves and guttering (**Eaves and Guttering**) forming part of the structure on the lot benefited which, when this easement was created, overhung the lot burdened remain, but only to the extent they are within the site of this easement; and

(b) must keep the Eaves and Guttering in good repair and safe condition; and

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Doc.1

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18-7-2003

(c) may do anything reasonably necessary for those purposes, including:

(i) entering the lot burdened; and

(ii) taking anything onto the lot burdened; and

(iii) carrying out work.

1.2 In exercising those powers, the owner of the lot benefited must:

(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened; and

(c) restore the lot burdened as nearly as is practicable to its former condition; and

(d) make good any collateral damage.

1.3 The owner of the lot burdened may insist that this easement be extinguished when the structure on the lot benefited is removed.

1.4 The owner of the lot burdened must not do or allow anything to be done to damage or interfere with the Eaves and Guttering.

2. Terms of Easement for Landscaping & Building Works numbered 2 in the plan.

2.1 The owner of the lot benefited:

(a) may insist that any part of a building on that lot and any part of the landscaping on that lot which encroaches on the lot burdened (**Encroachment**) remains; and

(b) must keep the Encroachment in good repair and safe condition; and

(c) may do anything reasonably necessary for those purposes, including:

(i) entering the lot burdened; and

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KJ.

Doc. 1

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18-7-2003

(ii) taking anything onto the lot burdened; and

(iii) carrying out work.

2.2 In exercising those powers, the owner of the lot benefited must:

(a) ensure all work is done properly; and

(b) ensure that:

(i) the landscaping which encroaches on the lot burdened (**Landscaped Area**) is kept clean and tidy and free from rubbish; and

(ii) so far as is practicable all plants in the Landscaped Area are maintained in a healthy and vigorous condition; and

(iii) any plant in the Landscaped Area which is seriously damaged or diseased or dies is replaced with reasonable promptness, where practicable, with a plant of the same species and similar size; and

(c) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened; and

(d) restore the lot burdened as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

2.3 The owner of the lot burdened must not do or allow anything to be done to damage or interfere with the Encroachment.

2.4 For the purposes of this easement:

- **building** includes fencing.
- **landscaping** includes plants, paths, structures, lighting, outdoor furniture and other things forming part of the Landscaped Area.

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Doc. 1

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18-7-2003

3. Terms of Easement for Water Supply Purposes 2.5 Wide numbered 3 in the plan.

3.1 An Easement for Water Supply Purposes in the terms set out in Part 1 of Memorandum 5736755 filed in the offices of Land and Property Information NSW.

3.2 The terms of this easement are to be read in conjunction with the terms of the Easement for Access and Drainage Purposes numbered 5 and the Positive Covenant numbered 6 in the plan.

4. Terms of Easement for Water Supply Purposes 3 Wide numbered 4 in the plan.

4.1 An Easement for Water Supply Purposes in the terms set out in Part 1 of Memorandum 5736755 filed in the offices of Land and Property Information NSW.

4.2 The terms of this easement are to be read in conjunction with the terms of the Easement for Access and Drainage Purposes numbered 5 and the Positive Covenant numbered 6 in the plan.

5. Terms of Easement for Access & Drainage Purposes Variable Width numbered 5 in the plan.

5.1 An Easement for Access and Drainage Purposes in the terms set out in Part 2 of Memorandum 5736755 filed in the offices of Land and Property Information NSW.

5.2 The terms of this easement are to be read in conjunction with the terms of the Easement for Water Supply Purposes numbered 3, the Easement for Water Supply Purposes numbered 4 and the Positive Covenant numbered 6 in the plan.

6. Terms of Positive Covenant numbered 6 in the plan.

6.1 A Positive Covenant in the terms set out in Part 3 of Memorandum 5736755 filed in the offices of Land and Property Information NSW.

6.2 The terms of this positive covenant are to be read in conjunction with the terms of the Easement for Water Supply Purposes numbered 3, the Easement for Water Supply Purposes numbered 4 and the Easement for Access and Drainage Purposes numbered 5 in the plan.

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Doc.1

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18-7-2003

Name of Authority empowered to release, vary or modify the Positive Covenant numbered 6 in the plan.

Sydney Water Corporation

7. Terms of Positive Covenant numbered 7 in the plan.

7.1 The Registered Proprietor of the Lot burdened by this covenant ("the proprietor") which expression where herein used shall be deemed to include the successors and assigns of the proprietor) DOES HEREBY COVENANT with Sydney Water Corporation ("the Corporation") pursuant to Section 88E of the Conveyancing Act, 1919, as amended that where the Corporation agrees to extend water supply works within the Lot burdened ("the works') THE PROPRIETOR WILL, when directed by the Corporation, grant the Corporation such easements and associated covenants over the Lot burdened as required by the Corporation in relation to the works (including but not limited to an Easement for Water Supply Purposes and an Easement for Access and Drainage Purposes), all in the terms specified by the Corporation and without cost to the Corporation.

Name of Authority empowered to release, vary or modify the Positive Covenant numbered 7 in the plan.

Sydney Water Corporation

8. Terms of Easement for Electricity Purposes numbered 8 in the plan.

8.1 In the terms of this Easement for Electricity Purposes, unless the context otherwise requires:

"**the Act**" means the *Electricity Supply Act 1995* and any amendment to or Act replacing the *Electricity Supply Act 1995* and includes any regulations or orders made under the *Electricity Supply Act 1995* and the provisions of any other Act or regulation conferring functions on EnergyAustralia.

"**Association**" includes any community association, precinct association or neighbourhood association having rights or obligations with respect to the Plan.

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"**Community Scheme**" means the community scheme created by the Plan.

"**EnergyAustralia**" includes any person for the time being authorised by EnergyAustralia to perform any Function.

"**Function**" means any power, authority or duty specified in these terms or in the Act that EnergyAustralia may exercise or perform.

"**Land**" means the whole or any part of the Lot to which this easement relates.

"**Lot**" means the lot burdened by this Easement.

"**Owner**" includes:

(a) each person who, individually or jointly with any other person, whether at law or in equity, is entitled to any estate of freehold in possession in the Lot; and

(b) any executor, administrator, successor or assignee of any such person.

"**Plan**" means the community plan to which this Easement relates.

"**Registered Proprietor**" includes the registered proprietor of the Lot, the Association and the Owner.

"**Works**" means any works used for purposes of supplying electricity.

8.2 In the terms of this Easement, unless the context otherwise requires:

(a) a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form; and

(b) a reference to a word or expression in the plural form includes a reference to the word or expression in the singular form; and

(c) a reference to a natural person includes a reference to a corporation; and

(d) a reference to a corporation is not excluded merely because elsewhere in these terms there is a particular reference to a corporation.

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8.3 This Easement omits the expressions used in Schedule 4A of the *Conveyancing Act 1919.*

8.4 Nothing in these terms is to be construed as affecting any obligation, privilege, right, power, authority, duty, liability, immunity or remedy that the Registered Proprietor or EnergyAustralia may have under any Act, regulation or other statutory instrument.

8.5 EnergyAustralia may from time to time and at any hour of the day or night:

(a) enter, pass and repass over and return from the Land with or without vehicles and remain on or in the Land for so long as may be necessary or convenient to do any Works or to perform any Function; and

(b) bring, place and use on the Land and remove from the Land such plant, machinery, tools, implements, materials or things as may be necessary or convenient to do any Works or to perform any Function; and

(c) excavate and make shafts and cuttings in and through the Land as may be necessary or convenient to do any Works or to perform any Function; and

(d) place, erect, construct, examine, operate, maintain, alter, renew, replace and remove any Works and perform any Function in, on or over the Land; and

(e) use any Works and perform any Function in or on the Land; and

(f) transmit electricity of sufficient current in and through any Works upon or in the Land; and

(g) cut, trim or lop trees and tree roots or branches and other growths or foliage which at any time may overhang, encroach upon or be in or on the Land and which may interfere with any Works or the performance of any Function.

8.6 This clause relates to applications for relocation of any Works.

8.6.1 The Association may request in writing that EnergyAustralia relocate any Works to a location to which EnergyAustralia may reasonably agree.

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8.6.2 EnergyAustralia is not obliged to comply with any request made under clause 8.6.1 unless the Association first pays to EnergyAustralia the costs of the relocation.

8.6.3 The costs for the purposes of clause 8.6.2 are to be determined reasonably but EnergyAustralia has absolute discretion as to the method of determining such costs.

8.7 EnergyAustralia, when performing any Function on the Land:

(a) must exercise reasonable care and take away any debris relating to the performance of a Function; and

(b) must backfill and temporarily seal and make safe any opening made by EnergyAustralia; and

(c) is not obliged to reinstate any permanently finished surfaces which may have been damaged by EnergyAustralia; and

(d) is not obliged to rectify or renew any landscaping.

8.8 The Registered Proprietor must not:

(a) do or allow to be done anything whatever that may damage, interfere with or adversely affect any Works or the free flow of electricity through any Works placed or which may be placed in or on the Land; or

(b) use or allow to be used the Land for any purpose which may obstruct or prevent EnergyAustralia from having full and free access to the Land; or

(c) do or allow to be done anything whatever that may adversely affect support of the Land or of any Works placed or which may be placed in or on the Land; or

(d) place, erect or construct or allow to be placed, erected or constructed upon the Land, or upon any other land within one metre of any Works, any building or other structure whatever; or

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(e) make or allow to be made by any means whatever any alteration to the existing surface levels of the Land or of any other land within one metre of any Works; or

(f) do or allow to be done anything whatever that may adversely affect any stormwater or other drainage to or from the Land; or

(g) place or allow to be placed or to remain on the Land any timber, article of plant or any stores, filling, rubbish or other material whatever; or

(h) park or place or allow to be parked or placed or to remain on the Land any vehicle whatever; or

(i) plant or allow to be planted in or upon the Land any tree or shrub other than shrubs that may be removed and reinstated if necessary or convenient for purposes of the performance of any Function; or

(j) do or allow to be done any landscaping which would be contrary to the provisions of clauses 8.8(d) or 8.8(e); or

(k) place or allow to be placed in, upon or over the Land any services including without limitation electrical, telecommunication, gas, water, wastewater and stormwater services with or without pipes, conduits, cables or ducts within a radius of 300 millimetres of the centre line of any electricity cable or wires or other than in accordance with arrangements made between providers of such services including EnergyAustralia; or

(l) place or construct or allow to be placed or constructed or allow to remain on the Lot any thing which encroaches or which may encroach into the airspace over the Land.

8.9 The Registered Proprietor may apply in writing for the written approval of EnergyAustralia to do any one or more than one of the things specified in clauses 8.8(d) to 8.8(l) (inclusive).

8.10 EnergyAustralia must consider and respond in writing to any application made under clause 8.9 and may, acting reasonably in accordance with the proper exercise of its Functions, request further information, give an approval, refuse to give an approval or give an approval subject to conditions.

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8.11 If EnergyAustralia gives an approval under clause 8.10, the Registered Proprietor must not do anything the subject of the application made under subclause 8.9 other than strictly in accordance with the written approval and any conditions under which the approval was given.

8.12 EnergyAustralia is not liable to pay for any damage done by EnergyAustralia in the performance of any Function to any property of the Registered Proprietor arising from the failure of the Registered Proprietor to comply with these terms, unless such damage was caused by any negligent or wilful act or omission of EnergyAustralia.

8.13 If any damage is done to, or there has occurred any interference with or adverse affect on the free flow of electricity through, any Works placed or which may be placed in or upon the Land, the Registered Proprietor will pay to EnergyAustralia the cost, immediately it is notified by EnergyAustralia, of repairing and making good all such damage or restoring the free flow of electricity or both. The sum so notified may be added to any account to be rendered by EnergyAustralia to the Registered Proprietor for the supply of electricity or customer connection services or recovered as a debt in an action taken in a court of competent jurisdiction.

Name of Authority empowered to release, vary or modify Easement for Electricity Purposes numbered 8 in the Plan.

EnergyAustralia

9. Terms of Easement for Support & Attachment ~~to be created~~ numbered 9 in the plan

9.1 The owner of the lot benefited may insist that the lot benefited be supported by the part of the lot burdened within the site of this easement (**Easement Site**) to the extent that the lot benefited derives support from the Easement Site.

9.2 The owner of the lot burdened must, at all times, maintain the support provided by the Easement Site to the part of the lot benefited capable of deriving support from the Easement Site.

9.3 If the owner of the lot burdened does not maintain the support provided by the Easement Site to the lot benefited as required under clause 9.2, the owner of the lot benefited may do anything reasonably necessary for the purpose of maintaining that support, including:

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(a) entering the lot burdened; and

(b) taking anything onto the lot burdened; and

(c) carrying out work.

9.4 The owner of the lot benefited may, from time to time by all reasonable means:

(a) attach and maintain attached to the Easement Site all things that can reasonably be attached; and

(b) insist that the things so attached remain.

9.5 The owner of the lot benefited may do any thing reasonably necessary for the purpose of exercising its rights under clause 9.4, including:

(a) entering the lot burdened; and

(b) taking anything onto the lot burdened; and

(c) carrying out work.

9.6 In exercising its rights under this easement the owner of the lot benefited must:

(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened; and

(c) cause as little damage as is practicable to the lot burdened and any improvements on it; and

(d) restore the lot burdened and any improvements on it as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

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10. Terms of Easement for Overland Flow Path ~~to be created~~ numbered 10 in the plan

10.1 The City of Canada Bay Council (**Council**) may freely discharge and drain water across the site of this easement (**Easement Site**).

10.2 The owner of the lot burdened must not do, or allow to be done, any of the following:

(a) place any permanent structure on the Easement Site which will adversely affect the natural passage of water across the Easement Site; or

(b) make any alterations to the surface levels of the Easement Site without the consent of the owners of all lots benefited and the Council.

Name of Authority empowered to release, vary or modify the Easement for Overland Flow Path to be created numbered 10 in the plan

City of Canada Bay Council.

11. Terms of Easement for Encroachment ~~to be created~~ numbered 11 in the plan

11.1 The owner of any lot benefited:

(a) may insist that any part of a structure on that lot which encroaches on the lot burdened (**Encroachment**) remains but only as follows: to the extent the Encroachment does not encroach on the lot burdened by more than 1 metre unless the Encroachment is a set of stairs or is in the form of an overhanging roof, eave, gutter, hood, awning or balcony or is an architectural embellishment or feature and the structure and the Encroachment which forms part of it have been constructed in accordance with plans which have received all consents required by law and the community management statement registered with the plan; and

(b) must keep the Encroachment in good repair and safe condition; and

(c) may do anything reasonably necessary for those purposes, including:

(i) entering the lot burdened; and

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(ii) taking anything onto the lot burdened; and

(iii) carrying out work.

11.2 In exercising those powers, the owner of the lot benefited must:

(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened; and

(c) restore the lot burdened as nearly as is practicable to its former condition; and

(d) make good any collateral damage.

11.3 For the purposes of this easement **structure** includes letterboxes, fencing and plants and things forming part of landscaping.

12. Terms of Easement for Services ~~to be created~~ numbered 12 in the plan

12.1 The owner of a lot benefited has the right, consistent with the rights of other persons having the same or similar rights, to:

(a) the uninterrupted passage across and through the lot burdened of any Service to or from that lot benefited; and

(b) use any Service Line within the lot burdened through which passes a Service to or from that lot benefited.

12.2 The owner of the lot burdened may make reasonable rules about the use of the lot burdened for the purposes of this easement by the owners of the lots benefited.

12.3 The owner of a lot benefited may do anything reasonably necessary for the purpose of exercising its rights under this easement, including:

(a) entering the lot burdened; and

(b) taking anything onto the lot burdened; and

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(c) carrying out work including installing, inspecting, cleaning, maintaining, repairing and replacing Service Lines.

12.4 When they exercise their rights or perform their obligations under this easement, the owners of the lots benefited must:

(a) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened; and

(b) cause as little damage as is practicable to the lot burdened and any improvements on it; and

(c) if damage is caused, restore the lot burdened as nearly as practicable to the condition it was in before the damage occurred; and

(d) comply with rules made by the owner of the lot burdened under clause 12.2; and

(e) ensure that any person carrying out work on their behalf is qualified to do that work.

12.5 The owners of the lots benefited have a responsibility to maintain, repair and replace Service Lines that are used by them or in respect of which they have the benefit, even if the Service Lines were not installed by them.

12.6 The owner of the lot burdened may, in its absolute discretion, maintain, repair and replace any Service Line within the lot burdened that is broken, malfunctioning, not working or causing damage to the lot burdened or other property or which may, if not maintained, repaired or replaced, break, malfunction, not work or cause damage to the lot burdened or other property.

12.7 The owners of the lots benefited are responsible to the owner of the lot burdened for all damage, expense, loss or liability of any nature suffered or incurred by the owner of the lot burdened caused by the Services being broken, malfunctioning or not working or by reason of the owner of the lot burdened carrying out the maintenance, repairs or replacement works as contemplated under clause 12.6 including any:

(a) costs incurred by the owner of the lot burdened under clause 12.6; and

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(b) expense, loss or liability in respect of loss or damage to the property of the owner of the lot burdened; and

(c) expense, loss or liability in respect of loss or damage to any other property; and

(d) damage, expense, loss or liability in respect of personal injury, disease, illness or death.

12.8 The owner of the lot burdened is entitled in the exercise of its absolute discretion to allocate for payment between the owners of the lots benefited the moneys payable to the owner of the lot burdened under clause 12.7 and the owners of the lots benefited are bound by that allocation.

12.9 In this easement:

Service includes:

(a) water supply;

(b) gas supply;

(c) electricity supply;

(d) air conditioning;

(e) a telephone service;

(f) a computer data service;

(g) a digital transmission service;

(h) a radio service;

(i) a television service;

(j) any service received and dispersed by a Special Receiving Facility; and

(k) a system for removal of sewage;

(l) a stormwater drainage system;

(m) the Irrigation System;

(n) a ventilation system;

(o) a fire safety or control system;

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(p) a security system; and

(q) any other service, system or facility which contributes to the amenity, or enhances the enjoyment or safety, of the Lots.

Service Line includes the following in the Community Parcel: any pipe, conduit, wire, cable, duct, drain, gully, trap, pit, mast, pole, aerial or other means by or through which a Service is or is to be provided and any structure, tank, pump and other equipment that is associated with any of those means.

13. Terms of Easement for Fencing & Landscaping ~~to be created~~ numbered 13 in the plan

13.1 The owner of any lot benefited:

(a) may insist that any part of a fence intended to enclose that lot and any part of the landscaping on that lot which encroaches on the lot burdened (**Encroachment**) remains; and

(b) must keep the Encroachment in good repair and safe condition; and

(c) may do anything reasonably necessary for those purposes, including:

(i) entering the lot burdened; and

(ii) taking anything onto the lot burdened; and

(iii) carrying out work.

13.2 In exercising those powers, the owner of the lot benefited must:

(a) ensure all work is done properly; and

(b) ensure that:

(i) the landscaping which encroaches on the lot burdened (**Landscaped Area**) is kept clean and tidy and free from rubbish; and

(ii) so far as is practicable all plants in the Landscaped Area are maintained in a healthy and vigorous condition; and

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(iii) any plant in the Landscaped Area which is seriously damaged or diseased or dies is replaced with reasonable promptness, where practicable, with a plant of the same species and similar size; and

(c) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened; and

(d) restore the lot burdened as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

13.3 The owner of the lot burdened must not do or allow anything to be done to damage or interfere with the Encroachment.

13.4 For the purposes of this easement **landscaping** includes plants, paths, structures, lighting, outdoor furniture and other things forming part of the Landscaped Area.

14. Terms of Easement for Letterbox ~~to be created~~ numbered 14 in the plan

14.1 The owner of a lot benefited:

(a) may insist that a letterbox that is installed on the lot burdened immediately adjacent to the lot benefited (**Letterbox**) remains; and

(b) must keep the Letterbox in good repair and safe condition; and

(c) may do anything reasonably necessary for those purposes, including:

(i) entering the lot burdened; and

(ii) taking anything onto the lot burdened; and

(iii) carrying out work.

14.2 In exercising these powers, the owner of the lot benefited must:

(a) ensure all work is done properly; and

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(b) not replace the Letterbox unless the Letterbox is damaged or destroyed, in which case:

(i) the structure of the replacement letterbox must be in accordance with the architectural and landscape standards prescribed under the community management statement registered with the plan; and

(ii) the replacement letterbox must be located in the same position as the Letterbox; and

(c) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened; and

(d) restore the lot burdened as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

14.3 The owner of the lot burdened must not do or allow anything to be done to damage or interfere with the Letterbox.

15. Terms of Easement for Public Access ~~to be created~~ numbered 15 in the plan

15.1 The City of Canada Bay Council (**Council**) and Authorised Users have the right:

(a) to pass and repass over the site of this easement:

(i) on foot (and not using rollerblades, skateboards, scooters or similar items of equipment); and

(ii) with wheelchairs or other disabled access aids; and

(iii) without animals (except for guide dogs or hearing dogs for the visually or hearing impaired); and

(b) to remain for the purposes of recreation on those parts of the site of this easement that are intended to be and are capable of being used for the purposes of recreation.

15.2 The Council and Authorised Users must not:

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(a) park or stand a motor vehicle or trailer on the lot burdened, except where expressly permitted; or

(b) obstruct the use of the lot burdened.

15.3 The Council and Authorised Users must cause as little inconvenience as practicable to the owner and any occupier of the lot burdened when they exercise their rights under this easement.

15.4 The owner of the lot burdened may make rules about the use of the site of this easement in accordance with the community management statement registered with the plan (**Rules**).

15.5 The Council and Authorised Users must comply with any Rules.

15.6 For the purposes of this Easement **Authorised Users** means the Council's invitees and other persons authorised by it and members of the public.

16 Terms of Easement for Street Lighting ~~to be created~~ numbered 16 in the plan

16.1 In the terms of this Easement for Street Lighting, unless the context otherwise requires:

"**the Act**" means the *Electricity Supply Act 1995* and any amendment to or Act replacing the *Electricity Supply Act 1995* and includes any regulations or orders made under the *Electricity Supply Act 1995* and the provisions of any other Act or regulation conferring functions on EnergyAustralia.

"**Association**" includes any community association, precinct association or neighbourhood association having rights or obligations with respect to the Plan.

"**Community Scheme**" means the community scheme created by the Plan.

"**EnergyAustralia**" includes any person for the time being authorised by EnergyAustralia to perform any Function.

"**Function**" means any power, authority or duty specified in these terms or in the Act that EnergyAustralia may exercise or perform.

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"**Lamp**" means the light source within a street lighting structure and may be a high pressure sodium, mercury vapour, incandescent, fluorescent or other type of lamp.

"**Land**" means the whole or any part of the Lot to which this Easement relates.

"**Lot**" means the lot burdened by this Easement.

"**Luminaire**" includes any Lamp housing, Lamp, reflector and any other fitting that may be used in a Street Lighting Structure.

"**Owner**" includes:

(a) each person who, individually or jointly with any other person, whether at law or in equity, is entitled to any estate of freehold in possession in the Lot; and

(b) any executor, administrator, successor or assignee of any such person.

"**Plan**" means the community plan to which this Easement relates.

"**Registered Proprietor**" includes the registered proprietor of the Lot, the Association and the Owner.

"**Street Lighting Structure**" means any structure that is used for the purpose of street lighting and includes a Lamp, Luminaire, bracket, support (pole) and internal wiring and control gear.

"**Works**" means any works relating to, connected with or which are part of a Street Lighting Structure.

16.2 In the terms of this Easement, unless the context otherwise requires:

(a) a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form; and

(b) a reference to a word or expression in the plural form includes a reference to the word or expression in the singular form; and

(c) a reference to a natural person includes a reference to a corporation; and

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 14560 of 18.7.2003

(d) a reference to a corporation is not excluded merely because elsewhere in these terms there is a particular reference to a corporation.

16.3 This Easement omits the expressions used in Schedule 4A of the Conveyancing Act 1919.

16.4 Nothing in these terms is to be construed as affecting any obligation, privilege, right, power, authority, duty, liability, immunity or remedy that the Registered Proprietor or EnergyAustralia may have under any Act, regulation or other statutory instrument.

16.5 EnergyAustralia may from time to time and at any hour of the day or night:

(a) enter, pass and repass over and return from the Land with or without vehicles and remain on or in the Land for so long as may be necessary or convenient to do any Works or to perform any Function; and

(b) bring, place and use on the Land and remove from the Land such plant, machinery, tools, implements, materials or things as may be necessary or convenient to do any Works or to perform any Function; and

(c) excavate and make shafts and cuttings in and through the Land as may be necessary or convenient to do any Works or to perform any Function; and

(d) place, erect, construct, examine, operate, maintain, alter, renew, replace and remove any Works and perform any Function in, on or over the Land; and

(e) use any Works and perform any Function in or on the Land; and

(f) transmit electricity of sufficient current in and through any Works upon or in the Land for the purposes of street lighting; and

(g) cut, trim or lop trees and tree roots or branches and other growths or foliage which at any time may overhang, encroach upon or be in or on the Land and which may interfere with any Works or the performance of any Function.

16.6 This clause relates to the supply, erection, maintenance and repair of Street Lighting Structures.

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18.7.2003

16.6.1 EnergyAustralia is to supply and erect the initial Street Lighting Structures within the Lot at locations to which EnergyAustralia may reasonably agree. The Association shall pay the full cost of supply and erection of the initial Street Lighting Structures (refer to clause 16.6.6).

16.6.2 Upon erection of the Street Light Structures, EnergyAustralia is to light the Lamps by electricity (purchased from the Association's electricity retailer) for an agreed period from dusk to dawn to the extent that it may reasonably do so under the following terms.

16.6.3 EnergyAustralia is not liable to pay any costs, damages, claims, demands or expenses arising out of or relating to any failure of any Lamp whether or not any such failure is due to any action or omission or negligence of EnergyAustralia.

16.6.4 The Association may request in writing that EnergyAustralia relocate any Street Lighting Structure to a location to which EnergyAustralia may reasonably agree.

16.6.5 EnergyAustralia is not obliged to comply with any request made under clause 16.6.4 unless the Association first pays to EnergyAustralia the costs of the relocation.

16.6.6 The costs for purposes of clauses 16.6.1 and 16.6.5 are to be determined reasonably but EnergyAustralia has absolute discretion as to the method of determining such costs.

16.6.7 The Association is to pay its electricity retailer for the electricity supplied to light the Lamps and EnergyAustralia for the expenses of repairing and maintaining the Lamps in accordance with the applicable rates set and notified by EnergyAustralia or the Association's electricity retailer as applicable. All repair and maintenance work on the Street Lighting Structure, apart from Lamp replacement and periodic inspections of the pole supporting the Lamp is solely the responsibility of the Association.

16.6.8 The Street Lighting Structures and the Lamps remain the property of EnergyAustralia despite being installed on the Land.

16.7 EnergyAustralia, when performing any Function on the Land:

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DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18.7-2003

(a) must exercise reasonable care and take away any debris relating to the performance of a Function; and

(b) must backfill and temporarily seal and make safe any opening made by EnergyAustralia; and

(c) is not obliged to reinstate any permanently finished surfaces which may have been damaged by EnergyAustralia; and

(d) is not obliged to rectify or renew any landscaping.

16.8 The Registered Proprietor must not:

(a) do or allow to be done anything whatever that may damage, interfere with or adversely affect any Works or the free flow of electricity through any Works placed or which may be placed in or on the Land; or

(b) use or allow to be used the Land for any purpose which may obstruct or prevent EnergyAustralia from having full and free access to the Land; or

(c) do or allow to be done anything whatever that may adversely affect support of the Land or of any Works placed or which may be placed in or on the Land; or

(d) make or allow to be made by any means whatever any alteration to the existing surface levels of the Land; or

(e) do or allow to be done anything whatever that may adversely affect any stormwater or other drainage to or from the Land; or

(f) plant or allow to be planted in or upon the Land any tree or shrub other than shrubs that may be removed and reinstated if necessary or convenient for purposes of the performance of any Function; or

(g) do or allow to be done any landscaping which would be contrary to the provisions of clause 16.8(d).

16.9 The Registered Proprietor may apply in writing for the written approval of EnergyAustralia to do any one or more than one of the things specified in clauses 16.8(a) to 16.8(g) (inclusive).

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 14566 of 18-7-2003

16.10 EnergyAustralia must consider and respond in writing to any application made under clause 16.9 and may, acting reasonably in accordance with the proper exercise of its Functions, request further information, give an approval, refuse to give an approval or give an approval subject to conditions.

16.11 If EnergyAustralia gives an approval under clause 16.10, the Registered Proprietor must not do anything the subject of the application made under subclause 16.9 other than strictly in accordance with the written approval and any conditions under which the approval was given.

16.12 EnergyAustralia is not liable to pay for any damage done by EnergyAustralia in the performance of any Function to any property of the Registered Proprietor arising from the failure of the Registered Proprietor to comply with these terms, unless such damage was caused by any negligent or wilful act or omission of EnergyAustralia.

16.13 If any damage is done to, or there has occurred any interference with or adverse affect on the free flow of electricity to, any Works placed or which may be placed in or upon the Land, the Registered Proprietor will pay to EnergyAustralia the cost, immediately it is notified by EnergyAustralia, of repairing and making good all such damage or restoring the free flow of electricity or both. The sum so notified may be added to any account to be rendered by EnergyAustralia to the Association for the supply of electricity or customer connection services or recovered as a debt in an action taken in a court of competent jurisdiction.

Name of Authority empowered to release, vary or modify Easement for Street Lighting numbered 16 in the Plan.

EnergyAustralia

17 Terms of Easement for Substation to ~~be created~~ numbered 17 in the plan

17.1 In the terms of this Easement for Substation, unless the context otherwise requires:

"**the Act**" means the *Electricity Supply Act 1995* and any amendment to or Act replacing the *Electricity Supply Act 1995* and includes any regulations or orders made under the *Electricity Supply Act 1995* and the provisions of any other Act or regulation conferring functions of EnergyAustralia.

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18-7-2003

"**Association**" includes any community association, precinct association or neighbourhood association having rights or obligations with respect to the Plan.

"**Community Scheme**" means the community scheme created by the Plan.

"**EnergyAustralia**" includes any person for the time being authorised by EnergyAustralia to perform any Function.

"**Function**" means any power, authority or duty specified in these terms or in the Act that EnergyAustralia may exercise or perform.

"**Land**" means the whole or any part of the Lot to which this Easement relates.

"**Lot**" means the lot burdened by this Easement.

"**Owner**" includes:

(a) each person who, individually or jointly with any other person, whether at law or in equity, is entitled to any estate of freehold in possession in the Lot; and

(b) any executor, administrator, successor or assignee of any such person.

"**Plan**" means the community plan to which this Easement relates.

"**Registered Proprietor**" includes the registered proprietor of the Lot, the Association and the Owner.

"**Substation**" means any infrastructure works used for purposes of transmitting or storing electricity situated upon or below the surface of the Land and includes any plant, electricity conductors, wires, cables, transformers and other apparatus or things used for associated purposes.

"**Works**" means any works relating to, connecting with or which are part of a Substation.

17.2 In the terms of this Easement for Substation, unless the context otherwise requires:

(a) a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form; and

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DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 14560 18·7-2003

(b) a reference to a word or expression in the plural form includes a reference to the word or expression in the singular form; and

(c) a reference to a natural person includes a reference to a corporation; and

(d) a reference to a corporation is not excluded merely because elsewhere in these terms there is a particular reference to a corporation.

17.3 This Easement omits the expressions used in Schedule 4A of the *Conveyancing Act 1919.*

17.4 Nothing in these terms is to be construed as affecting any obligation, privilege, right, power, authority, duty, liability, immunity or remedy that the Registered Proprietor or EnergyAustralia may have under any Act, regulation or other statutory instrument.

17.5 EnergyAustralia may from time to time and at any hour of the day or night:

(a) enter, pass and repass over and return from the Land with or without vehicles and remain on or in the Land for so long as may be necessary or convenient to do any Works or to perform any Function; and

(b) bring, place and use on the Land and remove from the Land such plant, machinery, tools, implements, materials or things as may be necessary or convenient to do any Works or to perform any Function; and

(c) excavate and make shafts and cuttings in and through the Land as may be necessary or convenient to do any Works or to perform any Function; and

(d) place, erect, construct, examine, operate, maintain, alter, renew, replace and remove any Works and perform any Function in, on or over the Land; and

(e) use any Works and perform any Function in or on the Land; and

(f) transmit electricity of sufficient current in and through any Works upon or in the Land for purposes of supplying customers of EnergyAustralia; and

(g) cut, trim or lop trees and tree roots or branches and other growths or foliage which at any time may overhang, encroach upon or be in or on the Land and which may interfere with any Works or the performance of any Function.

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DP270347

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17.6 This clause relates to applications for distribution of additional electricity from a Substation:

17.6.1 EnergyAustralia must give priority to electricity required by lots within the Community Scheme.

17.6.2 The Association may request in writing that EnergyAustralia supply electricity from the Substation only to lots within the Community Scheme.

17.6.3 EnergyAustralia is not obliged to comply with any request made under clause 17.6.2 unless the Association first pays to EnergyAustralia the costs of making alternative supply arrangements for any other customers of EnergyAustralia which are being supplied or which have applied to be supplied with electricity from the Substation.

17.6.4 The costs for purposes of clause 17.6.3 are to be determined reasonably but EnergyAustralia has absolute discretion as to the method of determining such costs.

17.7 EnergyAustralia may remove from the Land and take away a Substation.

17.8 EnergyAustralia, when performing any Function on the Land:

(a) must exercise reasonable care and take away any debris relating to the performance of a Function; and

(b) must backfill and temporarily seal and make safe any opening made by EnergyAustralia; and

(c) is not obliged to reinstate any permanently finished surfaces which may have been damaged by EnergyAustralia; and

(d) is not obliged to rectify or renew any landscaping.

17.9 The Registered Proprietor must not:

(a) use or allow to be used the Land for any purpose which may obstruct or prevent EnergyAustralia from having full and free access to the Land; or

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DP270347

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Covered by Subdivision Certificate No: 1456 of 18-7-2003

(b) do or allow to be done anything whatever that may adversely affect support of the Land or any Works placed or which may be placed in or on the Land; or

(c) place, erect or construct or allow to be placed, erected or constructed upon the Land any building or other structure whatever; or

(d) make or allow to be made by any means whatever any alteration to the existing surface levels of the Land; or

(e) do or allow to be done anything whatever that may adversely affect any stormwater or other drainage to or from a Substation or the Land; or

(f) place or allow to be placed or to remain on the Land any timber, article of plant or any stores, filling, rubbish or other material whatever; or

(g) park or place or allow to be parked or placed or to remain on the Land any vehicle whatever; or

(h) plant or allow to be planted in or upon the Land any tree or shrub other than shrubs that may be removed and reinstated if necessary or convenient for purposes of the performance of any Function; or

(i) do or allow to be done any landscaping which would be contrary to the provisions of 17.9(c) or 17.9(d); or

(j) place or allow to be placed in, upon or over the Land any services including without limitation electrical, telecommunication, gas, water, wastewater and stormwater services with or without pipes, conduits, cables or ducts other than in accordance with arrangements made between providers of such services including EnergyAustralia; or

(k) place or construct or allow to be placed or constructed or allow to remain on the Lot any thing which encroaches or which may encroach into the airspace over the Land.

17.10 The Registered Proprietor may apply in writing for the written approval of EnergyAustralia to do any one or more than one of the things specified in clauses 17.9(f) to 17.9(k) (inclusive).

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DP270347

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Covered by Subdivision Certificate No: 1456 of 18-7-2003

17.11 EnergyAustralia must consider and respond in writing to any application made under clause 17.10 and may, acting reasonably in accordance with the proper exercise of tis Functions, request further information, give an approval, refuse to give an approval or give an approval subject to conditions.

17.12 If EnergyAustralia gives an approval under clause 17.11, the Registered Proprietor must not do anything the subject of the application made under clause 17.10 other than strictly in accordance with the written approval and any conditions under which the approval was given.

17.13 EnergyAustralia is not liable to pay for any damage done by EnergyAustralia in the performance of any Function to any property of the Registered Proprietor arising from the failure of the Registered Proprietor to comply with these terms, unless such damage was caused by any negligent or wilful act or omission of EnergyAustralia.

Name of Authority empowered to release, vary or modify Easement for Substation numbered 17 in the Plan.

EnergyAustralia

18 Terms of Easement for Services (2) ~~to be created~~ numbered 19 in the plan

18.1 The owner of a lot benefited has the right, consistent with the rights of other persons having the same or similar rights to:

(a) the uninterrupted passage across and through the lots burdened of any Service to or from that lot benefited; and

(b) use any Service Line within the lots burdened through which passes a Service to or from that lot benefited.

18.2 The owner of a lot burdened may make reasonable rules about the use of that lot burdened for the purposes of this easement by the owners of the lots benefited.

18.3 The owner of a lot benefited may do anything reasonably necessary for the purpose of exercising its rights under this easement, including:

(a) entering the lots burdened; and

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DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 44556 of 18-7-2003

(b) taking anything onto the lots burdened; and

(c) carrying out work including installing, inspecting, cleaning, maintaining, repairing and replacing Service Lines.

18.4 When they exercise their rights or perform their obligations under this easement, the owners of the lots benefited must:

(a) cause as little inconvenience as practicable to the owners and any occupiers of the lots burdened; and

(b) cause as little damage as is practicable to the lots burdened and any improvements on them; and

(c) if damage is caused, restore the lots burdened as nearly as practicable to the condition they were in before the damage occurred; and

(d) comply with rules made by the owners of the lots burdened under clause 18.2; and

(e) ensure that any person carrying out work on their behalf is qualified to do that work.

18.5 The owners of the lots benefited have a responsibility to maintain, repair and replace Service Lines that are used by them or in respect of which they have the benefit, even if the Service Lines were not installed by them.

18.6 The owner of a lot burdened may, in that owner's absolute discretion, maintain, repair and replace any Service Line within that lot burdened that is broken, malfunctioning, not working or causing damage to that lot burdened or other property or which may, if not maintained, repaired or replaced, break, malfunction, not work or cause damage to that lot burdened or other property.

18.7 The owners of the lots benefited are responsible to the owner of the lots burdened for all damage, expense, loss or liability of any nature suffered or incurred by the owners of the lots burdened caused by the Services being broken, malfunctioning or not working or by reason of the owners of the lots burdened carrying out the maintenance, repairs or replacement works as contemplated under clause 18.6 including any:

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DP270347

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(a) costs incurred by the owners of the lots burdened under clause 18.6; and

(b) expense, loss or liability in respect of loss or damage to the property of the owners of the lots burdened; and

(c) expense, loss or liability in respect of loss or damage to any other property; and

(d) damage, expense, loss or liability in respect of personal injury, disease, illness or death.

18.8 The owners of the lots burdened are entitled in the exercise of their absolute discretion to allocate for payment between the owners of the lots benefited the moneys payable to the owners of the lots burdened under clause 18.7 and the owners of the lots benefited are bound by that allocation.

18.9 In this easement:

Service includes:

(a) water supply;

(b) gas supply;

(c) electricity supply;

(d) air conditioning;

(e) a telephone service;

(f) a computer data service;

(g) a digital transmission service;

(h) a radio service;

(i) a television service;

(j) any service received and dispersed by a Special Receiving Facility; and

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(k) a system for removal of sewage;

(l) a stormwater drainage system;

(m) the Irrigation System;

(n) a ventilation system;

(o) a fire safety or control system;

(p) a security system; and

(q) any other service, system or facility which contributes to the amenity, or enhances the enjoyment or safety, of the Lots.

Service Line includes the following in the Community Parcel: any pipe, conduit, wire, cable, duct, drain, gully, trap, pit, mast, pole, aerial or other means by or through which a Service is or is to be provided and any structure, tank, pump and other equipment that is associated with any of those means.

19 Terms of Easement for Retention Tank ~~to be created~~ numbered 20 in the plan

19.1 The owner of the lot benefited:

(a) may insist that the Retention Tank remains on the lot burdened.

(b) must keep the Retention Tank in good repair and safe condition; and

(c) may do anything reasonably necessary for the purpose of exercising its rights under this easement, including:

(i) entering the lot burdened; and

(ii) taking anything onto the lot burdened; and

(iii) carrying out work.

19.2 When the owner of the lot benefited exercises its rights or performs its obligations under this easement, the owners of the lot benefited must:

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(a) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened; and

(b) cause as little damage as is practicable to the lot burdened and any improvements on it; and

(c) if damage is caused, restore the lot burdened as nearly as practicable to the condition it was in before the damage occurred; and

(d) ensure that any person carrying out work on its behalf is qualified to do that work.

19.3 The owner of the lot burdened may, in its absolute discretion, maintain, repair and replace the Retention Tank to the extent that it is broken, malfunctioning, not working or causing damage to the lot burdened or other property or which may, if not maintained, repaired or replaced, break, malfunction, not work or cause damage to the lot burdened or other property.

19.4 The owner of the lot benefited is responsible to the owner of the lot burdened for all damage, expense, loss or liability of any nature suffered or incurred by the owner of the lot burdened caused by the Retention Tank being broken, malfunctioning or not working or by reason of the owner of the lot burdened carrying out the maintenance, repairs or replacement works as contemplated under clause 19.3 including any:

(a) costs incurred by the owner of the lot burdened under clause 19.3; and

(b) expense, loss or liability in respect of loss or damage to the property of the owner of the lot burdened; and

(c) expense, loss or liability in respect of loss or damage to any other property; and

(d) damage, expense, loss or liability in respect of personal injury, disease, illness or death.

19.5 In this easement **Retention Tank** means the retention tank constructed and installed in the lot burdened together with all equipment and pipes, conduits and wires associated with that retention tank.

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20. Terms of Easement for Access, Maintenance and Landscaping ~~to be created~~ numbered 21 in the plan

20.1 The owner of the lot benefited:

(a) has the right at all times to:

(i) have unrestricted access to this easement site; and

(ii) use this easement site for recreation and all other lawful purposes; and

(iii) carry out building work on this easement site including erecting structures and installing landscaping; and

(b) must control, manage, maintain in good condition, repair and replace this easement site; and

(c) may do anything reasonably necessary for the purpose of exercising its rights under this easement including:

(i) entering the lot burdened; and

(ii) taking anything onto the lot burdened; and

(iii) carrying out work.

20.2 When the owner of the lot benefited exercises its rights and performs its obligations under this easement, the owner of the lot benefited must ensure that:

(a) all work is done properly; and

(b) the landscaping, including plants, paths, structures, lighting and outdoor furniture that forms part of the lot burdened is kept clean and tidy and free from rubbish.

20.3 The owner of the lot burdened must not do or allow anything to be done to interfere with the use of this easement site by the owner of the lot benefited.

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21. Terms of Easement for Access, Maintenance and Landscaping ~~to be created~~ numbered 22 in the plan

21.1 The owner of the lot benefited:

(a) has the right at all times to:

(i) have unrestricted access to this easement site; and

(ii) use this easement site for recreation and all other lawful purposes; and

(iii) carry out building work on this easement site including erecting structures and installing landscaping; and

(b) must control, manage, maintain in good condition, repair and replace this easement site; and

(c) may do anything reasonably necessary for the purpose of exercising its rights under this easement including:

(i) entering the lot burdened; and

(ii) taking anything onto the lot burdened; and

(iii) carrying out work.

21.2 When the owner of the lot benefited exercises its rights and performs its obligations under this easement, the owner of the lot benefited must ensure that:

(a) all work is done properly; and

(b) the landscaping, including plants, paths, structures, lighting and outdoor furniture that forms part of the lot burdened is kept clean and tidy and free from rubbish.

21.3 The owner of the lot burdened must not do or allow anything to be done to interfere with the use of this easement site by the owner of the lot benefited.

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18.7.2003

22. Terms of Easement for Access, Maintenance and Landscaping ~~to be created~~ numbered 23 in the plan

22.1 The owner of the lot benefited:

(a) has the right at all times to:

(i) have unrestricted access to this easement site; and

(ii) use this easement site for recreation and all other lawful purposes; and

(iii) carry out building work on this easement site including erecting structures and installing landscaping; and

(b) must control, manage, maintain in good condition, repair and replace this easement site; and

(c) may do anything reasonably necessary for the purpose of exercising its rights under this easement including:

(i) entering the lot burdened; and

(ii) taking anything onto the lot burdened; and

(iii) carrying out work.

22.2 When the owner of the lot benefited exercises its rights and performs its obligations under this easement, the owner of the lot benefited must ensure that:

(a) all work is done properly; and

(b) the landscaping, including plants, paths, structures, lighting and outdoor furniture that forms part of the lot burdened is kept clean and tidy and free from rubbish.

22.3 The owner of the lot burdened must not do or allow anything to be done to interfere with the use of this easement site by the owner of the lot benefited.

22.4 In this easement **AGL Party** means:

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18·7·2003

(a) the Secretary for the time being of The Australian Gas Light Company ARBN 052 167 405 or The Australian Gas Light Company ARBN 052 167 405 (**AGL**); and

(b) during the period of its ownership of any part of lot 6, any person in respect of which AGL has given notice to the owner of lot 1 to the effect that that person is to have the same rights as AGL has under by-law 28 of the community management statement registered with the plan.

22.5 This easement has no application to an AGL Party.

23. Terms of Easement for Access, Maintenance and Landscaping ~~to be created~~ numbered 24 in the plan

23.1 The owner of the lot benefited:

(a) has the right at all times to:

(i) have unrestricted access to this easement site; and

(ii) use this easement site for recreation and all other lawful purposes; and

(iii) carry out building work on this easement site including erecting structures and installing landscaping; and

(b) must control, manage, maintain in good condition, repair and replace this easement site; and

(c) may do anything reasonably necessary for the purpose of exercising its rights under this easement including:

(i) entering the lot burdened; and

(ii) taking anything onto the lot burdened; and

(iii) carrying out work.

23.2 When the owner of the lot benefited exercises its rights and performs its obligations under this easement, the owner of the lot benefited must ensure that:

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18.7.2003

(a) all work is done properly; and

(b) the landscaping, including plants, paths, structures, lighting and outdoor furniture that forms part of the lot burdened is kept clean and tidy and free from rubbish.

23.3 The owner of the lot burdened must not do or allow anything to be done to interfere with the use of this easement site by the owner of the lot benefited.

23.4 In this easement **AGL Party** means:

(a) the Secretary for the time being of The Australian Gas Light Company ARBN 052 167 405 or The Australian Gas Light Company ARBN 052 167 405 (**AGL**); and

(b) during the period of its ownership of any part of lot 6, any person in respect of which AGL has given notice to the owner of lot 1 to the effect that that person is to have the same rights as AGL has under by-law 28 of the community management statement registered with the plan.

23.5 This easement has no application to an AGL Party.

24. Terms of Easement for Access ~~to be created~~ numbered 25 in the plan

24.1 The owner of the lot benefited may:

(a) by any reasonable means pass across the lot burdened, but only within the site of this easement, to get to or from the lot benefited; and

(b) do anything reasonably necessary for that purpose, including:

(i) entering the lot burdened; and

(ii) taking anything on to the lot burdened; and

(iii) carrying out work within the site of this easement, such as constructing, placing, repairing or maintaining trafficable surfaces, driveways or structures.

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18.7.2003

24.2 In exercising those powers, the owner of the lot benefited must:

(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened; and

(c) cause as little damage as is practicable to the lot burdened and any improvement on it; and

(d) restore the lot burdened as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

24.3 In this easement the following expressions have the respective meanings ascribed to them in the community management statement registered with the plan:

Community Association

Community Property

Precinct Property

Restricted Use Rights

24.4 The rights created by this easement cease to operate in respect of any part of the lot burdened which becomes Community Property or Precinct Property in respect of which the Community Association has Restricted Use Rights.

25. Terms of Restriction on Use ~~to be created~~ numbered 26 in the plan

25.1 In this restriction on use:

BPPL means Breakfast Point Pty Limited (ACN 088 841 203).

Lot means a lot in the plan other than lot 1 (**Community Development Lot**), a lot in a precinct plan which subdivides a Community Development Lot, a lot in a neighbourhood plan which subdivides a Community Development Lot and a lot in a strata plan which subdivides a Community Development Lot.

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18.7-2003

25.2 The wall within the site of this restriction on use is a heritage item and no work may be carried out in connection with the wall other than work necessary to maintain it in a good condition and then only in accordance with a management plan prepared by an appropriate consultant and, while BPPL owns any Lot, only after receiving the written consent of BPPL.

SIGNED for **SYDNEY WATER CORPORATION** by its Attorneys)
WARREN FREDERICK WATKINS)
JEFFREY FRANCIS COLENSO)
who hereby state at the time of executing this agreement that they have no notice of revocation of the Power of Attorney Registered No. 687 Book 4291 under the Authority of which this Instrument has been executed)

Signature of Witness

Attorney

KENNETH JOHN WHITE
Name of Witness
C/- SYDNEY WATER
115-123 BATHURST STREET, SYDNEY
Address of Witness

Attorney

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Doc.1

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18-7-2003

SIGNED for **BREAKFAST POINT PTY LIMITED** by its attorney **NEVILLE ALLEN** appointed under power of attorney dated 15 May 2001 registered as Book 4309 No. 81 and the attorney has no knowledge of revocation of that power:

.....
Signature of Witness

NICHOLAS JACKMAN
Name of Witness

286 NELSON STREET ANNANDALE NSW 2038
Address of Witness

.....
Attorney

SIGNED for **THE AUSTRALIAN GAS LIGHT COMPANY** by Leslie James Fisk its secretary and duly constituted Attorney under Power of Attorney registered No ~~786~~ 661 Book ~~4262~~ 4267 in the presence of:

.....
Signature of Witness

DENNIS KAYE
Name of Witness
111 PACIFIC HWY
NORTH SYDNEY
Address of Witness

.....
Attorney

.....
Attorney

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18-7-2003

~~SIGNED for AGL GAS NETWORKS~~)
LIMITED by its)
secretary and duly constituted Attorney)
under Power of Attorney registered No)
Book in the presence of:)
)

.....
Signature of Witness

.....
Attorney

.....
Name of Witness

.....
~~Address of Witness~~

.....
~~Attorney~~

SIGNED for **ENERGYAUSTRALIA** by)
)
GRANT KENNETH GREENSMITH)
Its duly constituted Attorney pursuant to)
Power of Attorney registered Book ~~4200~~ 4368 No. 61
~~No. 806~~ under the Authority of which this)
Instrument has been executed)

.....
~~Signature of Witness~~

.....
Attorney

WARWICK WEEKLEY
Name of Witness

5/-570 GEORGE ST, SYDNEY
Address of Witness

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18.7.2003

SIGNED for **SUPERLOT 3 PTY LIMITED** by its Attorney ALAN SYDNEY OSBURG appointed under power of attorney dated 2/7/03 and registered as Book 4393 No 48 and the attorney has no knowledge of revocation of that power:

Signature of Witness

Attorney

NICHOLAS JACKMAN
Name of Witness

28 NELSON STREET
ANNANDALE NSW 2038
Address of Witness

SIGNED for **UNITED SUPER PTY LIMITED** by its Attorney **CAROLYN SUSAN CHUDLEIGH** appointed under power of attorney dated 21 May, 2003 and registered as Book 4388 No 768 and the attorney has no knowledge of revocation of that power:

21 05 03

Signature of Witness

Attorney

Tracey Cameron
Name of Witness

60 Castlereagh St, Sydney
Address of Witness

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18.7.2003

~~SIGNED for AGL GAS NETWORKS LIMITED~~ by Leslie Fisk its secretary and duly constituted Attorney under Power of Attorney registered No 661 Book 4267 in the presence of:

× .....
Signature of Witness

× .....
Name of Witness

× .....
Address of Witness

× .....
Attorney Leslie James Fisk

.....
Attorney

EXECUTED BY CAPITAL FINANCE AUSTRALIA LIMITED ACN 069 663 136 BY ITS DULY APPOINTED ATTORNEYS

BRETT LENMAN

MARK COLBELL

Full Names

Signature

Signature

PURSUANT TO POWER OF ATTORNEY OF WHICH THEY HAVE NO NOTICE OF REVOCATION IN THE PRESENCE OF:

Witness VEGMA MARCUA

No 968
Book 4268

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INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 50 in DP 1040487, Lot 6 in DP 1047145, Lot 31 in DP 1048035, Lot 21 in DP 1028070 and Lots 500 and 502 in DP 1052824
Covered by Subdivision Certificate No: 1456 of 18.7.2003.

~~SIGNED for ENERGYAUSTRALIA by~~)
)
.....)
Its duly constituted Attorney pursuant to)
Power of Attorney registered Book 4290)
No. 806 under the Authority of which this)
Instrument has been executed)

.....
Signature of Witness

.....
Name of Witness

.....
~~Address of Witness~~

.....
Attorney

THE COMMON SEAL OF AGL GAS NETWORKS LIMITED ACN 003 004 322 was duly AFFIXED TO THIS DOCUMENT AND WITNESSED BY :

AGL GAS NETWORKS LIMITED A.C.N. 003 004 322.

X .....
Signature

X L T Fisk
Name

X Secretary
Office

X .....
Signature

X G J W Martin
Name

X Director
Office

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REGISTERED 18.8.2003

DOC - 2

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

DP270347

Subdivision of Lot 21 DP 270347
Covered by Subdivision Certificate
No

Full name and address of
the registered proprietor of the land:

BREAKFAST POINT PTY
LIMITED ACN 088 841 203
of 51 Riley Street, Woolloomooloo
New South Wales, 2011

Part 1

1. **Identity of easement to be created firstly referred to in the plan.** — Right of footway

Schedule of Lots etc affected

Lot burdened	**Authority benefited**
Lot 24	City of Canada Bay Council

2. **Identity of easement to be created secondly referred to in the plan.** — Easement for support & shelter

Schedule of Lots etc affected

Lots burdened	**Lots benefited**
Lot 23	Lot 24
Lot 24	Lot 23

3. **Identity of easement to be created thirdly referred to in the plan.** — Easement for Roof Drainage (WHOLE OF LOT)

Schedule of Lots etc affected

Lots burdened	**Lots benefited**
Lot 23	Lot 24
Lot 24	Lot 23

DOC 2

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

Plan: DP

DP270347

Subdivision of Lot 21 DP 270347
Covered by Subdivision Certificate
No

4.	**Identity of restriction on the use of land to be created fourthly referred to in the plan.**	Restriction on the use of land

Schedule of Lots etc affected

Lot burdened	**Lot benefited**
Lot 24	Lot 1 in DP270347

Part 2

1. Terms of easement firstly referred to in the plan.

1. The City of Canada Bay Council (**Council**) and Authorised Users have the right to pass and repass over the site of this easement:

   (a) on foot (and not using rollerblades, skateboards, scooters or similar items of equipment); and

   (b) with wheelchairs or other disabled access aids; and

   (c) without animals (except for guide dogs or hearing dogs for the visually or hearing impaired).

2. The Council and Authorised Users must not:

   (a) park or stand a motor vehicle or trailer on the lot burdened; or

   (b) obstruct the use of the lot burdened.

3. The Council and Authorised Users must cause as little inconvenience as practicable to the owner and any occupier of the lot burdened when they exercise their rights under this easement.

4. For the purposes of this Easement, **Authorised Users** means the Council's invitees and other persons authorised by it and members of the public.

DOC 2

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

Plan: DI

DP270347

Subdivision of Lot 21 DP 270347
Covered by Subdivision Certificate
No

2. Terms of easement secondly referred to in the plan.

1. The owner of the lot benefited may insist that the lot benefited be supported by the part of the lot burdened within the site of this easement (**Easement Site**) to the extent that the lot benefited derives support from the Easement Site.

2. The owner of the lot burdened must, at all times, maintain the support provided by the Easement Site to the part of the lot benefited capable of deriving support from the Easement Site.

3. If the owner of the lot burdened does not maintain the support provided by the Easement Site to the lot benefited as required under point 1, the owner of the lot benefited may do anything reasonably necessary for the purpose of maintaining that support, including:

   (a) entering the lot burdened; and

   (b) taking anything onto the lot burdened; and

   (c) carrying out work.

4. The owner of the lot benefited may, from time to time by all reasonable means:

   (a) attach and maintain attached to the Easement Site all things that can reasonably be attached; and

   (b) insist that the things so attached remain.

5. The owner of the lot benefited may do anything reasonably necessary for the purpose of exercising its rights under point 4, including:

   (a) entering the lot burdened; and

   (b) taking anything onto the lot burdened; and

   (c) carrying out work.

DOC v 2

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

Plan: DP270347

Subdivision of Lot 21 DP 270347
Covered by Subdivision Certificate
No

6. In exercising its rights under this easement, the owner of the lot benefited must:

   (a) ensure all work is done properly; and

   (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened; and

   (c) cause as little damage as is practicable to the lot burdened and any improvements on it; and

   (d) restore the lot burdened and any improvements on it as nearly as is practicable to its former condition; and

   (e) make good any collateral damage.

7. In carrying out any work on or to that part of the Easement Site comprising the concrete ground floor structural slab (and ancillary structural devices) common to the lot burdened and the lot benefited as constructed as at the time of registration of this plan, the owner of the lot burdened must:

   (a) obtain the consent of the owner of the lot benefited to carry out such work; and

   (b) carry out such work in accordance with proper engineering design; and

   (c) obtain any necessary and applicable consents to the works.

3. Terms of easement thirdly referred to in the plan.

1. In this easement:

   Apparatus means the roof of the 2 storey semi detached dwelling and associated gutters, down pipes and stormwater pipes as constructed as at the time of registration of this plan and contained within the Easement Site.

   Council means City of Canada Bay Council.

   Easement Site means that part of each lot burdened shown as "Easement for Roof Drainage" in the plan.

   Owner means a person who is entitled to an estate or interest in possession in a lot.

DOC. 2

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

Plan: DP270347

Subdivision of Lot 21 DP 270347
Covered by Subdivision Certificate No

2. The Owner of a lot benefited may freely discharge and drain water across the Apparatus within the Easement Site and may freely use the Apparatus for this purpose.

3. The Owner of a lot burdened must not, and must not allow to be done, any of the following:

   (a) place any permanent structure on the Apparatus contained in the Easement Site which will adversely affect the natural passage of water across the Easement Site; and

   (b) make any alterations to the Apparatus without the consent of the Owner of the lot benefited and subject to all necessary and applicable approvals from the Council.

4. Subject to point 3(b), the Owner of a lot burdened must carry out any work to the lot burdened necessary to ensure the maintenance of the Apparatus.

4. Terms of restriction on the use of land fourthly referred to in the plan.

1. The stone wall, sign, lights, landscaping and other ancillary items forming part of the Breakfast Point entry feature from time to time (**Entry Wall Features**) being within the site of this restriction on use, must not be disturbed, changed or otherwise dealt with by the owner of the lot burdened.

2. The owner of the lot burdened must not carry out any work in connection with the Entry Wall Features and must keep the site of this restriction on use clear of any other building or structure.

3. The owner of the lot benefited agrees to maintain, repair and replace where necessary the Entry Wall Features and will ensure the Entry Wall Features remain, at all times, clean and tidy in keeping with a high professional standard.

Doc. 2

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS A PRENDRE RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

(Sheet 6 of 6 Sheets)

Plan:

DP270347

Subdivision of Lot 21 DP 270347
Covered by Subdivision Certificate
No

EXECUTED on behalf of **BREAKFAST POINT PTY LIMITED** by its attorney **NEVILLE ALLEN** appointed under power of attorney registered as Book **4309** No. **81** and the attorney has no knowledge of the revocation of that power:

AE N088841203.

Cameron
.....
Signature of Witness

.....
Signature of Neville Allen

Tracey Cameron
.....
Name of Witness

EXECUTED BY CAPITAL FINANCE AUSTRALIA LIMITED ACN 069 663 136 BY ITS DULY APPOINTED ATTORNEYS

BRETT LENNANE
PETER TINDALL
Full Names

Signature

Signature

PURSUANT TO POWER OF ATTORNEY OF WHICH THEY HAVE NO NOTICE OF REVOCATION IN THE PRESENCE OF:

Book 4288 No 968

Witness
VESNA TARM

REGISTERED 04-02-2004

(DOC. 3)

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.

DOCUMENT 3

(Sheet 1 of 9 sheets)

DP270347

Subdivision of Lot 8 in DP270347 covered by Subdivision Certificate No 1487

Full name and address of the owner of the land:

Breakfast Point Pty Limited
51 Riley Street
Woolloomooloo NSW 2011

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identify of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement for Support 0.14 Wide (A)	28	29
		29	30
		30	31
		31	32
		32	33
		35	34
		36	35
		37	36
		38	37
		39	38
2	Easement for Support 0.14 Wide (A1)	29	28
		30	29
		31	30
		32	31
		33	32
		34	35
		35	36

(Doc 3)

DP270347

Subdivision of Lot 8 in DP270347 covered by Subdivision Certificate No 1487 of 2004

Full name and address of the owner of the land:

Breakfast Point Pty Limited
C/- Rosecorp Pty Limited
51 Riley Street
Woolloomooloo NSW 2011

Number of item shown in the intention panel on the plan	Identify of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
		36	37
		37	38
		38	39
3	Right of Access 2.8 Wide (B)	33	Every other lot except lot 27
		34	Every other lot except lot 27
		32	Every other lot except lot 27
		35	Every other lot except lot 27
		31	28, 29, 30, 32, 35, 36, 37, 38, 39
		36	28, 29, 30, 31, 32, 35, 37, 38, 39
		30	28, 29, 31, 36, 37, 38, 39
		37	28, 29, 30, 31, 36, 38, 39
		29	28, 30, 37, 38, 39
		38	28, 29, 30, 37, 39
		28	29, 38, 39
		39	28, 29, 38

(Doc 3)
(Sheet 3 of 9 sheets)

DP270347

Subdivision of Lot 8 in DP270347 covered by Subdivision Certificate No 1487 of 2004

Full name and address of the owner of the land:

Breakfast Point Pty Limited
C/- Rosecorp Pty Limited
51 Riley Street
Woolloomooloo NSW 2011

Number of item shown in the intention panel on the plan	Identify of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
4	Right of Footway 2.8 Wide (C)	28	Every other lot except lot 27
		29	Every other lot except lot 27
		30	Every other lot except lot 27
		31	Every other lot except lot 27
		32	Every other lot except lot 27
		33	Every other lot except lot 27
		34	Every other lot except lot 27
		35	Every other lot except lot 27
		36	Every other lot except lot 27
		37	Every other lot except lot 27
		38	Every other lot except lot 27
		39	Every other lot except lot 27
5	Easement for Services 2.8 Wide and Variable (D)	28	Every other lot except lot 27
		29	Every other lot except lot 27
		30	Every other lot except lot 27
		31	Every other lot except lot 27
		32	Every other lot except lot 27
		33	Every other lot except lot 27

(Doc. 3)

(Sheet 4 of 9 sheets)

DP270347

Subdivision of Lot 8 in DP270347 covered by Subdivision Certificate No 1487 of 2004

Full name and address of the owner of the land:

Breakfast Point Pty Limited
C/- Rosecorp Pty Limited
51 Riley Street
Woolloomooloo NSW 2011

Number of item shown in the intention panel on the plan	Identify of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
		34	Every other lot except lot 27
		35	Every other lot except lot 27
		36	Every other lot except lot 27
		37	Every other lot except lot 27
		38	Every other lot except lot 27
		39	Every other lot except lot 27
6	Easement for Support (Whole of Lot) (J)	28	29
		29	28
		30	31
		31	30
		32	33
		33	32
		34	35
		35	34
		36	37
		37	36
		38	39
		39	38

(DOC 3)

DP270347

Subdivision of Lot 8 in DP270347 covered by Subdivision Certificate No 1487 of 2004

Full name and address of the owner of the land:

Breakfast Point Pty Limited
C/- Rosecorp Pty Limited
51 Riley Street
Woolloomooloo NSW 2011

Number of item shown in the intention panel on the plan	Identify of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
7	Easement for Drainage of Water over Existing Line of Pipes (E)	39	28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38
8	Easement for Drainage of Water 1.0 and 1.6 Wide (F)	29	28
		30	28, 29
		31	28, 29, 30
		32	28, 29, 30, 31
		33	28, 29, 30, 31, 32
9	Easement for Drainage of Water 1.3 Wide (G)	35	34
		36	34 , 35
		37	34, 35 , 36
		38	34, 35, 36, 37
		39	34, 35, 36, 37, 38
10	Easement for Drainage of Roof Water (H) (Whole of Lot)	28	29
		29	28, 30
		30	29, 31
		31	30, 32
		32	31, 33

(Doc 3)

DP270347

Subdivision of Lot 8 in DP270347 covered by Subdivision Certificate No 1487 of 2004

Full name and address of the owner of the land:

Breakfast Point Pty Limited
C/- Rosecorp Pty Limited
51 Riley Street
Woolloomooloo NSW 2011

Number of item shown in the intention panel on the plan	Identify of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
		33	32
		34	35
		35	34, 36
		36	35, 37
		37	36, 38
		38	37, 39
		39	38

Part 2 (Terms)

1. Terms of easement, profit á prendre, restriction or positive covenant numbered 1 and 2 in the plan.

1.1 The owner of the lot burdened grants to the owner of the lot benefited the right for the lot benefited to be supported by the structures constructed within the site of this easement to the extent that the lot benefited derives support from that wall.

1.2 This easement for support is for the support of bricks, brick veneer walls, metal shaft liners, concrete slabs, finished roofing materials and associated structures.

1.3 The owner of the lot burdened must keep and maintain the wall within the site of this easement in a state of good and serviceable repair.

2. Terms of easement, profit á prendre, restriction or positive covenant numbered 6 in the plan.

2.1 The owner of the lot burdened grants to the owner of the lot benefited the right for the lot benefited to be supported by the concrete floor slab or slabs within the lot

(DOC 3)

DP270347

Subdivision of Lot 8 in DP270347 covered by Subdivision Certificate No 1487 of 2004

Full name and address of the owner of the land:

Breakfast Point Pty Limited
C/- Rosecorp Pty Limited
51 Riley Street
Woolloomooloo NSW 2011

burdened.

2.2 The owner of the lot burdened must not do anything to the concrete floor slab it shares in common with the lot benefited which will detrimentally impact on the structural integrity of the floor slab of the lot benefited.

2.3 Prior to carrying out any work on the lot burdened which may impact the structural integrity of the concrete floor slab, the owner of the lot burdened must at its cost obtain a report from a qualified engineer which sets out the manner in which the work will be carried out so as not to detrimentally affect the support obtained by the lot benefited from the lot burdened.

2.4 The owner of the lot burdened must ensure that the work is carried out in accordance with the engineer's report and provide the owner of the lot benefited with a certificate from an engineer which certifies that the work has been carried out in accordance with the report referred to in clause 2.3.

3. Terms of easement, profit á prendre, restriction or positive covenant numbered 7 in the plan.

3.1 The owner of the lot benefited may:

(a) drain water from the lot benefited through the existing line of pipes within the easement site; and

(b) do anything reasonably necessary for that purpose, including:

(1) entering the lot burdened; and

(2) taking anything on to the lot burdened; and

(3) using any existing line of pipes; and

(4) carrying out work, such as repairing or maintaining pipes, channels, ditches or equipment.

(Doc. 3)

DP270347

Subdivision of Lot 8 in DP270347 covered by Subdivision Certificate No 1487 of 2009

Full name and address of the owner of the land:

Breakfast Point Pty Limited
C/- Rosecorp Pty Limited
51 Riley Street
Woolloomooloo NSW 2011

4. Terms of easement, profit á prendre, restriction or positive covenant numbered 10 in the plan.

4.1 The owner of the lot benefited may:

(a) drain water from the roof of the building erected on the lot benefited through the existing roof, gutters, downpipes and pipes which connect to the interallotment drainage system of the lot burdened but only within the site of this easement; and

(b) do anything reasonably necessary for that purpose, including:

(1) entering the lot burdened; and

(2) taking anything on to the lot burdened; and

(3) using any existing line of pipes; and

(4) carrying out work, such as repairing or maintaining pipes, channels, ditches or equipment.

4.2 In exercising those powers, the owner of the lot benefited must:

(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened; and

(c) cause as little damage as is practicable to the lot burdened and any improvement on it; and

(d) restore the lot burdened as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

DP270347

(DOC-3)

Executed by **Breakfast Point Pty Limited**)
by its Attorneys under a)
Power of Attorney dated 6 April 2004)
registered Book 4422 No 13)
in the presence of:)

.....
Signature of Attorney

Lexia Gai Wilson
.....
Name of Attorney

.....
Signature of Witness

JACQUALINE S. GOUGH
.....
Name of Witness

[illegible] BY CAPITAL FINANCE AUSTRALIA LIMITED A.C.N 059 663 136 BY ITS DULY APPOINTED ATTORNEYS

CH 20502 MOCHA

MARK COSGET

PURSUANT TO S.[illegible] ATTORNEY OF WHOM THEY HAVE NO NOTICE OF REVOCATION IN THE PRESENCE OF:

[illegible] LINDA CASSAR

Signature

Signature

BOOK 4288
NO 968

REGISTERED 02.02.2005

(Doc. 4)

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

(Sheet 1 of 2 Sheets)

DP270347

Plan of Subdivision of Community Development Lot 41,44 & 45 covered by Subdivision Certificate No.

Full name and address of the owner of the land:

Breakfast Point Pty Limited ACN 088 841 203
51 Riley Street
WOOLLOOMOOLOO

Part 1 (Creation)			
Number of item shown in the intention panel on the plan	**Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.**	**Burdened lot(s) or parcel(s)**	**Benefited lot(s), road(s), bodies or Prescribed Authorities**
1	Easement for Public Access ~~(A)~~ 3 WIDE (A)	56	City of Canada Bay Council

Part 2 (Terms)

1. Terms of easement numbered 1 in the plan.

1.1 City of Canada Bay Council ("Council") and Authorised Users have the right to pass and repass over the site of this easement:

(a) on foot (but not using rollerblades, skateboards, scooters or similar items of equipment); and

(b) with wheelchairs or other disabled access aids; and

(c) without animals (except for guide dogs or hearing dogs for the visually or hearing impaired).

1.2 The Council and Authorised Users must cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened when they exercise their rights under this easement.

1.3 For the purposes of this easement, Authorised Users means the Council's invitees and other persons authorised by it and members of the public.

(Doc.4)

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

DP270347

Plan of Subdivision of Community Development Lot 41,44 & 45 covered by Subdivision Certificate No.

Full name and address of the owner of the land:

Breakfast Point Pty Limited ACN 088 841 203
51 Riley Street
WOOLLOOMOOLOO

Executed by Breakfast Point Pty Limited ACN 088 841 203)
by its Attorney)
under a Power of Attorney Book 4456)
No. 804 dated 29 April 2005)
in the presence of:)

.....
Signature of Attorney

.....
Signature of Witness

Jacqualine Stephanie Gough

No. 103965
Full Name of Witness

EXECUTED by UNITED SUPER PTY LIMITED (ACN 006 261 623) by its Attorney Carolyn Chudleigh under Power of Attorney registered Book 4388 No. 768 in the presence of:

Signature of Witness

REBECCA LEIGH EBEL
Name of Witness

Signature of Carolyn Chudleigh

EXECUTED BY CAPITAL FINANCE AUSTRALIA LIMITED ACN 069 663 136 BY ITS DULY APPOINTED ATTORNEYS

BRETT LENNANE

MARK COSGROVE

Full Names

Signature

PURSUANT TO POWER OF ATTORNEY OF WHICH THEY HAVE NO NOTICE OF REVOCATION IN THE PRESENCE OF:

Witness ANNA PAGE

BOOK 4268
NO 968

REGISTERED 9.09.2005

(Doc. 5)

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

DP270347

(Sheet 1 of 8 Sheets)

Plan of Subdivision of Lot 27 in DP 270347

Full name and address of the owner of the land:

Breakfast Point Pty Limited ACN 088 841 203
51 Riley Street
WOOLLOOMOOLOO

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Right of Access Variable Width (A)	61 62	63 63
2	Easement for Support 5.405 Wide (B)	63	62
3	Easement for Overhang 1.5 Wide & Variable Width (C)	61 62	62 63
4	Easement for Light & Air 1.5 Wide & Variable Width (D) (Limited In Stratum)	61 62	62 63
5	Easement for Carparking Purposes Variable Width (E)	61	63
6	Easement for Access & Maintenance Variable Width (F)	62	63
7	Easement to Drain Water Over Existing Line of Pipes (G)	62 63 61 62	63 62 62,63 61
8	Easement to Drain Sewerage Over Existing Line of Pipes (H)	63	62

(Doc.5)

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

9	Easement for Sewer Rising Main Over Existing Line of Pipe (J)	63	61
10	Easement for Electricity Purposes Over Existing Line of Cables (K)	63	61
11	Easement for Public Access to Bus Shelter 3 Wide (L)	61	City of Canada Bay Council

Part 2 (Terms)

Definitions

The following are definitions in respect of defined words used in Part 2 of this instrument:

Act means the *Strata Schemes (Freehold Development) Act 1973 (NSW)*.

Authorised Users means every person authorised by the Grantee for the purposes of any easement created by this instrument (including, without limitation, the Grantee's tenants, employees, agents, contractors and licensees).

Council means City of Canada Bay Council.

Easement means the easement created in this instrument.

Grantee means:

(a) any person who is at any time the owner of the lot benefited; and

(b) any person taking an interest from the person referred to in paragraph (a).

Grantor means any person who is at any time the owner of the lot burdened.

Lot Benefited means the whole or any part of a lot having the benefit of an easement.

Lot Burdened means the whole or ant part of a lot having the burden of an easement.

Plan means the community plan of subdivision to which this instrument relates.

Strata Plan means a strata plan registered under the Act.

DP270347

(Doc. 5)

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

1. Terms of Easement for Support numbered 2 in the plan.

1.1 The Grantor grants to the Grantee the right for the Lot Benefited to be supported by the structures constructed within the site of this easement to the extent that the Lot Benefited derives support from those structures.

1.2 This Easement is for the support of columns and the concrete slab which supports the Lot Benefited.

2. Terms of Easement for Light & Air numbered 4 in the plan.

The Grantee has the full and free right to the uninterrupted flow, access, transmission and enjoyment of light and air across the site of the easement to the Lot Benefited.

3. Terms of Easement for Carparking Purposes numbered 5 in the plan.

3.1 The Grantor grants to the Grantee the right to allow Authorised Users to park motor vehicles in the 2 visitor carparking spaces within the site of this Easement during the hours of 7am to 6pm Mondays to Fridays.

3.2 This Easement is subject to the conditions that any person exercising the right must:

(a) exercise the right consistently with the rights of each person who has the same or similar rights; and

(b) comply with any by-laws, rules or regulations which regulate the Grantor

so long as the rights granted under clause 3.1 are not affected.

3.3 The Grantor must maintain, repair, replace and renew the site of this Easement where necessary.

3.4 If the Lot Benefited is subdivided by Strata Plan, then the benefit conferred under this Easement passes only to the owner of lot 25 in that Strata Plan and any persons authorised by that owner.

4. Terms of Easement for Access & Maintenance numbered 6 in the plan.

4.1 The Grantee and any Authorised Users may:

(a) by any means pass over and remain upon the Lot Burdened within the easement site for the purpose of carrying out renewal, maintenance and repair to the improvements on the Lot Benefited; and

(b) do anything upon the Lot Burdened within the easement site for the purpose of carrying out its rights under this easement including but not limited to:

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Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

(1) entering into the Lot Burdened and remaining there for a reasonable time; and

(2) taking anything onto the Lot Burdened; and

(3) carrying out work; and

(4) erecting or placing on the Lot Burdened any scaffolding, machinery or equipment.

4.2 In exercising the rights referred to in clause 4.1 the Grantee must:

(a) obtain all necessary consents from all relevant public authorities; and

(b) ensure all work is done properly; and

(c) cause as little damage as is practicable to the Lot Burdened and any improvements on it; and

(d) restore the Lot Burdened as nearly as is practicable to its condition prior to commencement of the works; and

(e) make good any collateral damage; and

(f) not do anything which will in any way detract from the stability of any structure contained within or placed upon the Lot Burdened; and

(g) ensure all work is done as expeditiously as possible.

4.3 The Grantee must:

(a) give the Grantor not less than 7 days' written notice before entering the Lot Burdened together with copies of all necessary approvals;

(b) co-ordinate access and all work within the Lot Burdened with the Grantor; and

(c) cause as little inconvenience to the Grantor and other users of the Lot Burdened as is practicable in the circumstances.

5. Terms of Easement to Drain Water numbered 7 in the plan.

5.1 The Grantee may:

(a) drain water from any natural source through the existing line of pipes; and

(b) do anything reasonably necessary for that purpose, including:

- entering the Lot Burdened; and
- taking anything onto the Lot Burdened; and

DP270347

(Doc. 5)

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

- using any existing line of pipes; and
- carrying out work such as constructing, placing, repairing or maintaining pipes, ditches, channels and equipment.

5.2 In exercising those powers the Grantee must:

(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the Lot Burdened; and

(c) cause as little damage as is practicable to the Lot Burdened and the improvements on it; and

(d) restore the Lot Burdened as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

5.3 The Grantee may only do a thing under this easement within the existing line of pipes.

6. Terms of Easement to Drain Sewerage numbered 8 in the plan.

6.1 The Grantee may:

(a) drain sewerage, sullage and other fluid wastes in and through the existing line of pipes; and

(b) do anything reasonably necessary for that purpose, including:

- entering the Lot Burdened; and
- taking anything onto the Lot Burdened; and
- using any existing line of pipes; and
- carrying out work such as constructing, placing, repairing or maintaining pipes, ditches, channels and equipment.

6.2 In exercising those powers the Grantee must:

(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the Lot Burdened; and

(c) cause as little damage as is practicable to the Lot Burdened and the improvements on it; and

(Doc. 5)

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

(d) restore the Lot Burdened as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

6.3 The Grantee may only do a thing under this easement within the existing line of pipes.

7. Terms of Easement for Sewer Rising Main numbered 9 in the plan.

7.1 The Grantee may:

(a) drain sewerage, sullage and other fluid wastes in and through the rising main within the existing line of pipes; and

(b) do anything reasonably necessary for that purpose, including:

- entering the Lot Burdened; and
- taking anything onto the Lot Burdened; and
- using any existing line of pipes; and
- carrying out work such as constructing, placing, repairing or maintaining pipes, pumps, ditches, channels and equipment.

7.2 In exercising those powers the Grantee must:

(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the Lot Burdened; and

(c) cause as little damage as is practicable to the Lot Burdened and the improvements on it; and

(d) restore the Lot Burdened as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

7.3 The Grantee may only do a thing under this easement within the existing line of pipes of the rising main.

8. Terms of Easement for Electricity Purposes numbered 10 in the plan.

8.1 The Grantee may:

(a) transmit electricity through the existing line of cables; and

(b) do anything reasonably necessary for that purpose, including:

DP270347

(Doc. 5)

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

- entering the Lot Burdened; and
- taking anything onto the Lot Burdened; and
- using any existing line of pipes; and
- carrying out work such as constructing, placing, repairing or maintaining cables, wires, conduits and equipment.

8.2 In exercising those powers the Grantee must:

(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the Lot Burdened; and

(c) cause as little damage as is practicable to the Lot Burdened and the improvements on it; and

(d) restore the Lot Burdened as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

8.3 The Grantee may only do a thing under this easement within the existing line of cables.

9. Terms of Easement for Public Access to Bus Shelter numbered 11 in the plan.

9.1 Council and Authorised Users have the right to use the bus shelter within the site of this easement for the purpose for which it was intended.

9.2 Council and Authorised Users may enter the easement site:

(a) on foot (but not using rollerblades, skateboards, scooters or similar items of equipment); and

(b) with wheelchairs or other disabled access aids; and

(c) without animals (except for guide dogs or hearing dogs for the visually or hearing impaired)

for the purpose of remaining within the bus shelter for a reasonable period of time.

9.3 The Council and Authorised Users must cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened when they exercise their rights under this easement.

9.4 For the purposes of this easement, Authorised Users means the Council's invitees and other persons authorised by it and members of the public.

(Doc. 5)

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

9.5 The Grantor must not remove the bus shelter and must keep and maintain the nus shelter in good and serviceable condition.

DP270347

Executed by Breakfast Point Pty Ltd (ACN 088 841 203))
by its Attorney JUSTIN SIMON BRADY)
under a Power of Attorney Book 4456)
No. 804 dated 29 April 2005)
n the presence of:)
)

.....
Signature of Attorney

.....
Signature of Witness

JOSEPH CARLO PASTOR DAVID
.....
Full Name of Witness

Level 36, 1 Farrer Place
Sydney

EXECUTED BY CAPITAL FINANCE
AUSTRALIA LIMITED ACN 069 663 136
BY ITS DULY APPOINTED ATTORNEYS

BRETT LENNANE
MARK CORBETT
Full Names

Signature
Signature

PURSUANT TO POWER OF
ATTORNEY OF WHICH THEY HAVE NO
NOTICE OF REVOCATION
IN THE PRESENCE OF:

3004 4288
NO 968

Witness ANNA PAJIC

REGISTERED 9.11.2005

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919.

(DOC. 6)

DP270347

Plan of Subdivision of Lots 25,43,48,49, 51 & 58 in DP 270347 & Easement within Lot 46 in DP270347 covered by Subdivision Certificate No. 1518

Full name and address of the owner of the land:

Breakfast Point Pty Limited (ACN 088 841 203) of 51 Riley Street Woolloomooloo

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement for Electricity Purposes (A) (Whole of Lot)	72	EnergyAustralia
2	Easement for Street Lighting (B) (Whole of Lot)	72	EnergyAustralia
3	Easement for Substation (C) Variable Width	72	EnergyAustralia
4	Easement for Encroachment (D)	72	67-73 (inclusive), 26, 60
5	Easement for Services (E) (Whole of Lot)	72	67-73 (inclusive), 26, 60
6	Easement for Public Access 3 Wide and Variable (F)	66,46,72	City of Canada Bay Council

Part 1A (Release)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be released and referred to in the plan	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement for Access MC25 (DP270347 – DOC 1)	* 25	42,43,46,47,48,49, 50,51,52,53,55,56, * 57, 58, ~~59~~ & 60

* DP270347.

Part 2 (Terms)

1.1 In this Instrument, unless the context otherwise requires:

"Authorised Users" means the Councils invitees and other persons authorised by it and members of the public.

'Community Management Statement" means the community management statement registered with the Community Plan.

"Community Plan" deposited plan DP 270347.

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919.

(DOC. 6)

DP270347

Plan of Subdivision of Lots 25,43,48,49, 51 & 58 in DP 270347 & Easement within Lot 46 in DP270347 covered by Subdivision Certificate No. 1518

Full name and address of the owner of the land:

Breakfast Point Pty Limited (ACN 088 841 203) of 51 Riley Street Woolloomooloo

---

"**Community Scheme**" means the community scheme created on registration of the Community Plan.

"**Council**" means the City of Canada Bay Council.

"**Easement**' includes any easement, covenant, positive covenant or restriction on use created in this Instrument.

"**Easement Site**" in relation to an Easement, means:

(a) the site of the Easement identified in this Plan; and

(b) all items within the site of an Easement identified in this Plan which are the subject of the Easement.

"**Electricity Act**" means the Electricity Supply Act 1995 and any amendment to or Act replacing the Electricity Supply Act 1995 and includes any regulations or orders made under the Electricity Supply Act 1995 and the provisions of any other Act or regulation conferring functions on EnergyAustralia.

"**EnergyAustralia**" includes any person for the time being authorised by EnergyAustralia to perform any functions under the Electricity Act.

"**Instrument**" means this section 88B instrument.

"**Lot Benefited**" means the whole or any part of a lot having the benefit of an Easement.

"**Lot Burdened**" means the whole or any part of a lot having the burden of an Easement.

"**Owner**" includes:

(a) each person who, individually or jointly with any other person, whether at law or in equity, is entitled to any estate of freehold in possession in the Lot; and

(b) any executor, administrator, successor or assignee of any such person.

"**Plan**" means the community plan of subdivision to which this Instrument relates.

"**Public Authority**" means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes the Council.

"**Service**" includes:

(c) water supply;

(d) gas supply;

(e) electricity supply;

(f) air conditioning;

(g) a telephone service;

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919.

(Doc. 6)

DP270347

Plan of Subdivision of Lots 25,43,48,49, 51 & 58 in DP 270347 & Easement within Lot 46 in DP270347 covered by Subdivision Certificate No. 1518

Full name and address of the owner of the land:

Breakfast Point Pty Limited (ACN 088 841 203) of 51 Riley Street Woolloomooloo

(h) a computer data service;

(i) a digital transmission service;

(j) a radio service;

(k) a television service;

(l) any service received and dispersed by a special receiving facility;

(m) a system for removal of sewage;

(n) a stormwater drainage system;

(o) a irrigation system;

(p) a ventilation system;

(q) a fire safety or control system;

(r) a security system; and

(s) any other service, system or facility which contributes to the amenity, or enhances the enjoyment or safety, of the lots within the Community Scheme.

"Service Line" includes any pipe, conduit, wire, cable, duct, drain, gully, trap, pit, mast, pole, aerial or other means by or through which a Service is or is to be provided and any structure, tank, pump and other equipment.

1.2 In this document, unless the context otherwise requires:

(a) a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form: and

(b) a reference to a word or expression in the plural form includes a reference to the word or expression in the singular form; and

(c) a reference to a natural person includes a reference to a corporation; and

(d) a reference to a corporation is not excluded merely because elsewhere in these terms there is a particular reference to a corporation.

2 Terms of Easement for Electricity Purposes (A) numbered 1 in the Plan

2.1 Full right leave liberty and licence for EnergyAustralia its agents servants and workmen to lay down erect construct and place repair renew inspect maintain and remove underground and overhead electric mains posts poles cables and other apparatus for the transmission of electric current and for purposes incidental thereto through over along and under that part of the Lot Burdened (herein referred to as the "said land") AND ALSO the free and uninterrupted passage of electricity and apparatus thereto appertaining through over along and under the said land and the said electric mains when constructed.

2.2 TOGETHER WITH power for EnergyAustralia its servants agents and workmen either with or without vehicles of all descriptions to enter into and upon the said land or any part thereof for

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919. (Doc. 6)

DP270347

Plan of Subdivision of Lots 25,43,48,49, 51 & 58 in DP 270347 & Easement within Lot 46 in DP270347 covered by Subdivision Certificate No. 1518

Full name and address of the owner of the land:

Breakfast Point Pty Limited (ACN 088 841 203) of 51 Riley Street Woolloomooloo

the purposes aforesaid or any of them and to make all necessary excavations for posts poles cables or other apparatus in the said land or any part thereof.

2.3 AND TOGETHER WITH full right leave liberty and licence to cut and trim tree roots branches or other growths and foliage which now or at any time hereafter may overhang or encroach on or are now growing or may grow in or on the said land.

2.4 PROVIDED THAT except where EnergyAustralia its agents servants and workmen in the course of exercising its rights hereunder removes damages breaks down or destroys any existing fence or fences on the said land EnergyAustralia shall not be under any obligation or in any way be bound to erect place or maintain any fence or fences on the boundaries or any other part or parts of the said land.

2.5 AND the Grantor covenants with EnergyAustralia that it will not do or knowingly suffer to be done any act or thing which may injure or damage the said posts poles cables and other apparatus or interfere with the free flow of electric current through over along and under the said land AND that if any such damage or injury be done or interference be made the Grantor will forthwith pay the cost to EnergyAustralia of properly and substantially repairing and making good all such injury or damage and restoring the free flow of electric current as aforesaid.

2.6 AND FURTHER the Grantor covenants with EnergyAustralia that it will not without the consent of EnergyAustralia alter or permit to be altered the existing levels of the said land nor will it without the like consent erect or permit to be erected any structure on above or below the said land.

3 Terms of Easement for Street Lighting (B) numbered 2 in the Plan

3.1 An Easement for Street Lighting on the terms contained in Part A & B of Memorandum 0915806.

4 Terms of Easement for Substation (C) numbered 3 in the Plan

4.1 Full right leave liberty and licence over that part of the Lot Burdened (hereinafter referred to as the "said land") for EnergyAustralia its agents servants and workmen to:

(a) erect construct and place repair inspect maintain and remove electricity substation premises; and

(b) lay down erect construct and place repair renew inspect maintain and remove underground/overhead electric mains cables and other apparatus for the transmission of electric current and for purposes incidental thereto through under or over the said land; and also

(c) the free and uninterrupted passage of electricity and apparatus thereto appertaining through under and over the said land and the said electricity substation and electric mains when constructed.

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919. (Doc. 6)

DP270347

Plan of Subdivision of Lots 25,43,48,49, 51 & 58 in DP 270347 & Easement within Lot 46 in DP270347 covered by Subdivision Certificate No. 1518

Full name and address of the owner of the land:

Breakfast Point Pty Limited (ACN 088 841 203) of 51 Riley Street Woolloomooloo

4.2 TOGETHER WITH power for EnergyAustralia its servants agents and workmen either with or without vehicles of all descriptions to enter into and upon the said land or any part thereof for the purposes aforesaid or any of them and to make all necessary excavations for cables or other apparatus in the said land or any part thereof.

4.3 AND TOGETHER WITH FULL right leave liberty and licence to cut and trim tree roots branches or other growths and foliage which now or at any time hereafter may overhang or encroach on or are now growing or may grow in or on the said land.

4.4 PROVIDED THAT except where EnergyAustralia in the course of exercising its rights hereunder removes damages breaks down or destroys any existing fence or fences on the said land EnergyAustralia shall not be under any obligation or in any way be bound to erect place or maintain any fence or fences on the boundaries or any other part or parts of the said land.

4.5 AND the Grantor covenants with EnergyAustralia that it will not do or knowingly suffer to be done any act or thing which may injure or damage the said electricity substation and cables and other apparatus or interfere with the free flow of electric current through under and over the said land AND that if any such damage or injury be done or interference be made the Grantor will forthwith pay the cost to EnergyAustralia of properly and substantially repairing and making good all such injury or damage and restoring the free flow of electric current as aforesaid.

4.6 AND FURTHER the Grantor covenants with EnergyAustralia that it will not without the consent of EnergyAustralia alter or permit to be altered the existing levels of the said land nor will it without the like consent erect or permit to be erected any structure on above or below the said land.

5 Terms of Easement for Encroachment (D) numbered 4 in the Plan

5.1 The Owner of any Lot Benefited:

(a) may insist that any part of a structure on that Lot which encroaches on the Lot Burdened (Encroachment) remains but only as follows: to the extent the Encroachment does not encroach on the Lot Burdened by more than 1 metre unless the Encroachment is a set of stairs or is in the form of an overhanging roof, eave, gutter, hood, awning or balcony or is an architectural embellishment or feature and the structure and the Encroachment which forms part of it have been constructed in accordance with plans which have received all consents required by law and the Community Management Statement registered; and

(b) must keep the Encroachment in good repair and safe condition; and

(c) may do anything reasonably necessary for those purposes, including:

(i) entering the Lot Burdened; and

(ii) taking anything onto the Lot Burdened; and

(iii) carrying out work.

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919. (DOC. 6)

DP270347

Plan of Subdivision of Lots 25,43,48,49, 51 & 58 in DP 270347 & Easement within Lot 46 in DP270347 covered by Subdivision Certificate No. 1518

Full name and address of the owner of the land:

Breakfast Point Pty Limited (ACN 088 841 203) of 51 Riley Street Woolloomooloo

5.2 In exercising those powers, the Owner of the Lot Benefited must:

(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the Owner and any occupier of the Lot Burdened; and

(c) restore the Lot Burdened as nearly as is practicable to its former condition; and

(d) make good any collateral damage.

5.3 For the purposes of this easement structure includes letterboxes, fencing and plants and things forming part of landscaping.

5.4 An Encroachment permitted under this Easement must not unreasonably interfere with the use of the Lot Burdened as a road or open accessway.

6 Terms of Easement for Services (E) numbered 5 in the Plan

6.1 The Owner of a Lot Benefited has the right, consistent with the rights of other persons having the same or similar rights to:

(a) the uninterrupted passage across and through the Lot Burdened of any Service to or from the Lot Benefited; and

(b) use any Service Line within the Lot Burdened through which passes a Service to or from the Lot Benefited.

6.2 The Owner of a Lot Benefited may do anything reasonably necessary for the purpose of exercising its rights under this easement, including:

(a) entering the Lot Burdened; and

(b) taking anything onto the Lots Burdened; and

(c) carrying out work including installing, inspecting, cleaning, maintaining, repairing and replacing Service Lines.

6.3 When they exercise their rights or perform their obligations under this Easement, the Owners of the Lots Benefited must:

(a) cause as little inconvenience as practicable to the Owners and any occupiers of the Lot Burdened; and

(b) cause as little damage as is practicable to the lots burdened and any improvements on them; and

(c) if damage is caused, restore the lots burdened as nearly as practicable to the condition they were in before the damage occurred; and

(d) ensure that any person carrying out work on their behalf is qualified to do that work.

6.4 The Owners of the Lots Benefited have a responsibility to maintain, repair and replace Service Lines that are used by them or in respect of which they have the benefit, even if the Service

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919. (Doc. 6)

DP270347

Plan of Subdivision of Lots 25,43,48,49, 51 & 58 in DP 270347 & Easement within Lot 46 in DP270347 covered by Subdivision Certificate No. 1518

Full name and address of the owner of the land: Breakfast Point Pty Limited (ACN 088 841 203) of 51 Riley Street Woolloomooloo

Lines were not installed by them unless the Service Line is the responsibility of a Public Authority.

6.5 The Owner of a Lot Burdened may, in that Owner's absolute discretion, maintain, repair and replace any Service Line within that Lot Burdened that is broken, malfunctioning, not working or causing damage to that Lot Burdened or other property or which may, if not maintained, repaired or replaced, break, malfunction, not work or cause damage to that Lot Burdened or other property.

6.6 The Owners of the Lots Benefited are responsible to the Owner of the Lots Burdened for all damage, expense, loss or liability of any nature suffered or incurred by the Owners of the Lots Burdened caused by the Services being broken, malfunctioning or not working or by reason of the Owners of the Lots Burdened carrying out the maintenance, repairs or replacement works as contemplated under clause 5.5 including any:

(a) costs incurred by the Owner of the Lot Burdened under clause 5.5; and

(b) expense, loss or liability in respect of loss or damage to the properly of the Owner of the Lot Burdened; and

(c) expense, loss or liability in respect of loss or damage to any other property; and

(d) damage, expense, loss or liability in respect of personal injury, disease, illness or death.

7 Terms of Easement for Public Access (F) numbered 6 in the Plan

7.1 The Council and Authorised Users have the right:

(a) to pass and repass over the Easement Site:

(i) on foot (and not using rollerblades, skateboards, scooters or similar items of equipment); and

(ii) with wheelchairs or other disabled access aids; and

(iii) without animals (except for guide dogs or hearing dogs for the visually or hearing impaired).

7.2 The Council and Authorised Users must not:

(a) park or stand a motor vehicle or trailer on the Lot Burdened, except where expressly permitted; or

(b) obstruct the use of the Lot Burdened.

7.3 The Council and Authorised Users must cause as little inconvenience as practicable to the Owner and any occupier of the Lot Burdened when they exercise their rights under this Easement.

7.4 The Owner of the Lot Burdened may make rules about the use of the Easement Site in accordance with the Community Management Statement (Rules).

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919.

(Doc. 6)

DP270347

Plan of Subdivision of Lots 25,43,48,49, 51 & 58 in DP 270347 & Easement within Lot 46 in DP270347 covered by Subdivision Certificate No. 1518

Full name and address of the owner of the land:

Breakfast Point Pty Limited (ACN 088 841 203) of 51 Riley Street Woolloomooloo

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7.5 The Council and Authorised Users must comply with any Rules.

Executed by **Breakfast Point Pty Ltd (ACN 088 841 203)** by its Attorney Peter Charles Calov under a Power of Attorney Book **4473** No. **508** dated 7 November 2005 in the presence of:

.....
Signature of Attorney

.....
Signature of Witness –
Add: Gov. Phillip Tower
Corrs Chambers Westgarth
1 FARRER PLACE SYDNEY NSW 2000
ANNABELLE EAKINS
.....
Full Name of Witness

Executed by **Energy Australia** by its Attorney CRAIG KENNEDY GREENG-SMITH under a Power of Attorney Book 4476 No. 983 dated in the presence of:

.....
Signature of Attorney

.....
Signature of Witness

LISA ANDERSON
.....
Full Name of Witness
Address: 570 George St
SYDNEY NSW 2000

Instrument setting out Terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land and Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919.

(DOC. 6)

DP270347

Plan of Subdivision of Lots 25,43,48,49, 51 & 58 in DP 270347 & Easement within Lot 46 in DP270347 covered by Subdivision Certificate No. 1518

Full name and address of the owner of the land:

Breakfast Point Pty Limited (ACN 088 841 203) of 51 Riley Street Woolloomooloo

~~**Executed by Capital Finance Australia Limited**~~
by its Attorney)
under a Power of Attorney Book)
No. dated)
in the presence of:)
) .....
~~Signature of Attorney~~

.....
Signature of Witness

.....ANNA PASIC.....
Full Name of Witness
Level 11, 50 Carrington St
SYDNEY NSW 2000

EXECUTED BY CAPITAL FINANCE AUSTRALIA LIMITED ACN 069 663 136 BY ITS DULY APPOINTED ATTORNEYS

PATRICIA HAYES

MARK COLBERT
Full Names

PURSUANT TO POWER OF ATTORNEY OF WHICH THEY HAVE NO NOTICE OF REVOCATION IN THE PRESENCE OF:

Signature

Signature

Book 4475
No 47.
~~Address:~~

Executed by United Super Pty Ltd
by its Attorney Peter Charles Calov)
under a Power of Attorney Book **4494**)
No. **851** dated 2 August 2006)
in the presence of:)
)

.....
Signature of Attorney

.....
Signature of Witness

REGISTERED 8.1.2007

Annabelle Eakins
Full Name of Witness
Add: Corrs Chambers Westgarth
Gov. Phillip Tower
1 Farrer Place
SYDNEY NSW 2000

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Instrument setting out terms of easements or profits à prendre intended to be created or released and of restrictions on the use of land or positive covenants intended to be created pursuant to section 88B of the *Conveyancing Act 1919*

(Sheet 1 of 8 sheets)

DP270347 B

Plan of subdivision of Lot 67 in DP 270347 and easement within Lot 72 in DP270347 covered by Subdivision Certificate No.

Full name and address of the owner of the land:

Breakfast Point Pty Limited ACN 088 841 203
51 Riley Street Limited
Woolloomooloo NSW 2011

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement for Access 4.96 and 5.97 wide (A)	81	82
		80	81 and 82
		79	80, 81 and 82
		78	79, 80, 81 and 82
		77	78, 79, 80, 81 and 82
		75	76, 77, 78, 79, 80, 81 and 82
2	Easement for Services 3, 4.96 and 5.97 wide (B)	75	76, 77, 78, 79, 80, 81, 82 and 83
		76	75, 77, 78, 79, 80, 81, 82 and 83
		77	75, 76, 78, 79, 80, 81, 82 and 83
		78	75, 76, 77, 79, 80, 81, 82 and 83
		79	75, 76, 77, 78, 80, 81, 82 and 83
		80	75, 76, 77, 78, 79, 81, 82 and 83
		81	75, 76, 77, 78, 79, 80, 82 and 83
		82	75, 76, 77, 78,

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Instrument setting out terms of easements or profits à prendre intended to be created or released and of restrictions on the use of land or positive covenants intended to be created pursuant to section 88B of the *Conveyancing Act 1919*

DP270347

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
			79, 80, 81, 83
3	Easement for Access by Foot 3, 4.96 and 5.97 wide (C)	75	Every other Lot
		77	Every other Lot
		78	Every other Lot
		79	Every other Lot
		80	Every other Lot
		81	Every other Lot
		82	Every other Lot
4	Easement for Overland Flow 4.96 and 5.97 variable (D)	82	83
		81	82 and 83
		80	81, 82 and 83
		79	80, 81, 82 and 83
		78	79, 80, 81, 82 and 83
		77	78, 79, 80, 81, 82 and 83
		76	75, 77, 78, 79, 80, 81, 82 and 83
		75	76, 77, 78, 79, 80, 81, 82 and 83
5	Easement for Roof Drainage & Overhang (whole of lot) (E)	76	77
		77	76 and 78
		78	77 and 79
		79	78 and 80
		80	79 and 81
		81	80 and 82
		82	81 and 83
		83	82
6	Restriction on the use of land	76	77 and 78

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Instrument setting out terms of easements or profits à prendre intended to be created or released and of restrictions on the use of land or positive covenants intended to be created pursuant to section 88B of the *Conveyancing Act 1919*

DP270347

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
		77	76, 78 and 79
		78	76, 77, 79, 80
		79	77, 78, 80 and 81
		80	78, 79, 81 and 82
		81	79, 80, 82 and 83
		82	80, 81 and 83
		83	81 and 82
7	Easement for Access variable width (G)	72/270347	74 to 83 inclusive

Part 2 (Terms)

1 Interpretation

In this Instrument, unless the contrary intention appears, the following terms have the following meanings:

Grantee means the owner of each of the Benefited Lots.

Grantor means the owner or mortgagee in possession of each of the Burdened Lots.

2 Terms of Easement for Access 4.96 and 5.97 wide (A) numbered 1 in the plan

2.1 The Grantor grants to the Grantee full and free right for every person who is at any time entitled to an estate or interest in possession in the Benefited Lot or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person, to go, pass and repass at all times and for all purposes with or without vehicles to and from the Benefited Lot or another Burdened Lot including for the purpose of gaining access to the Benefited Lot or any such part thereof.

2.2 The owner or occupier of the Benefited Lot may do anything reasonably necessary for the purpose of gaining access in accordance with clause 2.1 including:

(a) entering the Burdened Lot; and

(b) taking anything on to the Burdened Lot; and

(c) carrying out work within the site of the easement, such as constructing, placing, repairing or maintaining trafficable surfaces, driveways or structures.

2.3 In exercising the powers in clause 2.2, the owner of the Benefited Lot must:

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Instrument setting out terms of easements or profits à prendre intended to be created or released and of restrictions on the use of land or positive covenants intended to be created pursuant to section 88B of the *Conveyancing Act 1919*

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(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the Burdened Lot; and

(c) cause as little damage as is practicable to the lot burdened and any improvement on it; and

(d) restore the Burdened Lot as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

3 Terms of Easement for Services 3, 4.96 and 5.97 wide (B) numbered 2 in the plan

An easement for services in the terms set out in Part 11 of Schedule 8 of the Conveyancing Act 1919 (as amended) is created.

4 Terms of Easement for Access by Foot 3, 4.96 and 5.97 wide (C) numbered 3 in the plan

The Grantor grants to the Grantee full and free right for every person who is at any time entitled to an estate or interest in possession in the Benefited Lot or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person to go, pass and repass on foot at all times and for all purposes, to and from the Benefited Lot or any such part thereof.

5 Terms of Easement for Overland Flow 4.96 and 5.97 (D) numbered 4 in the plan

5.1 The Grantee may:

(a) run water in pipes, or take any other steps necessary to permit rain water run off through each Burdened Lot, but only within the site of this easement, and

(b) do anything reasonably necessary for that purpose including:

(A) entering the Burdened Lot, and

(B) taking anything on to the Burdened Lot, and

(C) carrying out work, such as constructing, placing, repairing or maintaining pipes and equipment.

5.2 In exercising those powers, the Grantee must:

(a) ensure all work is done properly, and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the Burdened Lot, and

(c) cause as little damage as is practicable to the Burdened Lot and any improvement on it, and

(d) restore the Burdened Lot as nearly as is practicable to its former condition, and

(e) make good any collateral damage.

6 Terms of Easement for Roof Drainage & Overhang (whole of lot) numbered 5 in the plan

6.1 The Grantee:

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(a) may insist that the roof, eaves, gutters and downpipes (overhanging structures) forming part or to form part of the Lot Benefited overhangs the Lot Burdened; and

(b) must keep the overhanging structures in good repair and safe condition;

(c) may do anything reasonably necessary for those purposes, including:

(A) entering the Burdened Lot, and

(B) taking anything onto the Burdened Lot; and

(C) carrying out work such as maintaining, repairing and replacing any of the overhanging structures.

6.2 In exercising those powers, the Grantee must:

(a) ensure all work is done properly, and

(b) cause as little inconvenience as is practicable to the Grantor and any occupier of the Lot Burdened, and

(c) cause as little damage as is practicable to the Lot Burdened Lot and any improvement on it, and

(d) restore the Lot Burdened as nearly as is practicable to its former condition, and

(e) make good any collateral damage; and

(f) comply with statute law pertaining to the use of the Lot Burdened for the permitted purpose under this easement.

6.3 Where downpipes and drainage pipes are installed in the site of the easement on the Burdened Lot servicing the Benefited Lot, the Grantee:

(a) may drain water from any gutters or pipes within the site of this easement; and

(b) do anything reasonably necessary for the purposes referred to in clause 6.3(a) including:

(A) entering the Burdened Lot, and

(B) taking anything onto the Burdened Lot;

(C) using any existing line of pipes; and

(D) carrying out work such as maintaining, repairing and replacing any of the downpipes, stormwater pipes or equipment.

6.4 In exercising those powers, the Grantee must:

(a) ensure all work is done properly, and

(b) cause as little inconvenience as is practicable to the Grantor and any occupier of the Lot Burdened, and

(c) cause as little damage as is practicable to the Lot Burdened Lot and any improvement on it, and

(d) restore the Lot Burdened as nearly as is practicable to its former condition, and

(e) make good any collateral damage; and

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(f) comply with statute law pertaining to the use of the Lot Burdened for the permitted purpose under this easement.

7 Terms of Restriction on the use of land numbered 6 in the plan

7.1 Subject to clauses 7.2 and 7.3, the Grantor must not remove, construct, alter, erect, remodel or rebuild the building erected on the Lot Burdened, including the roof and/or the ground floor concrete slab (**Building**) without the consent of the owner of the Benefited Lot (**Works**).

7.2 If the Grantor wishes to undertake Works to the Building, the Grantee must before commencement of any Works:

(a) cause an appropriately qualified Civil/Structural Engineer to prepare a report stating that:

(A) the Works to the Building will not destablise the adjoining buildings on the Benefited Lot; and

(B) where the Works are in relation to the roof of the Building, the works do not affect the roof structure of the adjoining buildings of the Benefited Lot;

(b) submit a copy of the report from the Civil/Structural Engineer to each owner of the Benefited Lot;

(c) if the owners of the Benefited Lot consents to the Works, obtain all consents and approvals required by law or by any authority to carry out the Works.

7.3 The owner of the Burdened Lot must:

(a) ensure all Work is done properly, and

(b) cause as little inconvenience as is practicable to the owner of the Benefited Lot and any occupier of the Benefited Lot, and

(c) cause as little damage as is practicable to the Benefited Lot and any improvement on it, and

(d) restore the Benefited Lot as nearly as is practicable to its former condition, and

(e) make good any collateral damage; and

(f) comply with statute law for the permitted purpose under this easement.

8 Terms of Easement for Access variable width numbered 7 in the plan

8.1 The Grantor grants to the Grantee full and free right for every person who is at any time entitled to an estate or interest in possession in the Benefited Lot or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person, to go, pass and repass at all times and for all purposes with or without vehicles to and from the Benefited Lot or another Burdened Lot including for the purpose of gaining access to the Benefited Lot or any such part thereof.

8.2 The owner or occupier of the Benefited Lot may do anything reasonably necessary for the purpose of gaining access in accordance with clause 7.1 including:

(a) entering the Burdened Lot; and

(b) taking anything on to the Burdened Lot; and

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Instrument setting out terms of easements or profits à prendre intended to be created or released and of restrictions on the use of land or positive covenants intended to be created pursuant to section 88B of the *Conveyancing Act 1919*

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(c) carrying out work within the site of the easement, such as constructing, placing, repairing or maintaining trafficable surfaces, driveways or structures.

8.3 In exercising the powers in clause 7.2, the owner of the Benefited Lot must:

(a) ensure all work is done properly; and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the Burdened Lot; and

(c) cause as little damage as is practicable to the lot burdened and any improvement on it; and

(d) restore the Burdened Lot as nearly as is practicable to its former condition; and

(e) make good any collateral damage.

Execution by the parties:

Executed by Breakfast Point Pty Limited)
ACN 088 841 203)
by its Attorneys)
under a Power of Attorney dated 4 November)
2005 registered Book 4473 No 508)
in the presence of:)

.....
Signature of Witness

Kathy Gray
Name of Witness

c/o - Corrs Chambers Westgarth, 1 Farrer Place, Sydney NSW 2000

.....
Signature of Witness

.....
Name of Witness

.....
Signature of Attorney

Peter Calo
Name of Attorney

.....
Signature of Attorney

.....
Name of Attorney

AB 23.5.2008

Doc. 7

Instrument setting out terms of easements or profits à prendre intended to be created or released and of restrictions on the use of land or positive covenants intended to be created pursuant to section 88B of the *Conveyancing Act 1919*

(Sheet 8 of 8 sheets)

DP270347

EXECUTED BY CAPITAL FINANCE AUSTRALIA LIMITED ACN 059 663 136 BY ITS DULY APPOINTED ATTORNEYS

BRETT LENNANE

MARK CORBETT

Full Names

Signature

Signature

PURSUANT TO POWER OF ATTORNEY OF WHICH THEY HAVE NO NOTICE OF REVOCATION IN THE PRESENCE OF:

Book 4475 no 47

M Calderwood

Witness MARTIN CALDERWOOD

REGISTERED 23.5.2008

Subsidiary Body, an Owner, an Occupier, the Developer and the Estate Manager, of parts of its Subsidiary Body Property.

49.2 Leases that a Subsidiary Body grants under this by-law 49 may include such terms as the Subsidiary Body determines, including terms about:

(a) payments under the lease; and

(b) the term of the lease; and

(c) the permitted use of the leased area; and

(d) the security of the leased area; and

(e) the maximum number of persons allowed in the leased area; and

(f) insurances the lessee must effect; and

(g) cleaning and maintaining the leased area.

49.3 A Subsidiary Body may exercise its power under this by-law 49 by ordinary resolution.

50. Licences to use Subsidiary Body Property

50.1 In addition to its powers under the Management Act or the Strata Management Act, as applicable, and elsewhere in this management statement, a Subsidiary Body has power under this by-law 50 to grant licences to persons, including the Community Association, another Subsidiary Body, an Owner, an Occupier, the Developer and the Estate Manager, to use parts of its Subsidiary Body Property.

50.2 Licences that a Subsidiary Body grants under this by-law 50 may include such terms as the Subsidiary Body determines, including terms about:

(a) payments under the licence; and

(b) the term of the licence; and

(c) the permitted use of the licensed area; and

(d) the security of the licensed area; and

(e) the maximum number of persons allowed in the licensed area; and

(f) insurances the licensee must effect; and

(g) cleaning and maintaining the licensed area.

50.3 A Subsidiary Body may exercise its power under this by-law 50 by ordinary resolution.

51. Agreements in connection with Community Facilities

51.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 51 to enter into an agreement of any kind, including a lease or licence, in connection with any Community Facility.

51.2 Any agreement entered into under this by-law 51 may confer significant rights, including the right to occupy, use, manage, caretake and carry on a business or trade activity, at the Community Facility, or not.

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51.3 The intention of this by-law 51 is to empower the Community Association to the maximum extent permitted by law and, in particular, so that it has a very wide discretion as to the nature and terms of any agreement entered into under this by-law 51.

51.4 It is possible an agreement will be entered into under this by-law 51 during the initial period.

51.5 If section 24 of the Management Act applies to an agreement entered into under this by-law 51, the effect of that agreement is disclosed in this by-law 51 for the purpose of that section.

51.6 The Community Association may exercise its power under this by-law 51 by ordinary resolution.

52. Agreement with AGL

52.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 52 to enter into a deed with AGL in a form to the reasonable satisfaction of and for the sole benefit of and enforceable by AGL under which the Community Association agrees to pay to AGL all Rates and Taxes in respect of the Lower Stratum Lot.

52.2 In this by-law 52 **Rates and Taxes** means:

(a) all rates, taxes, charges, assessments, duties, impositions and fees payable to any Authority:

(i) excluding:

A. income tax; and

B. charges imposed by reference to the measured quantity of usage of services by AGL; and

(ii) including:

A. land tax and any goods and services tax, value added tax or similar; and

B. all levies and other amounts payable to an association or owners corporation.

52.3 The Community Association may exercise its power under this by-law 52 by ordinary resolution.

53. Lease with Waterways Authority in connection with use of Boatshed

53.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 53 to enter into a lease with Waterways Authority in connection with the use of submerged land for purposes associated with the use of the Boatshed.

53.2 It is possible a lease will be granted under this by-law 53 during the initial period.

53.3 If section 24 of the Management Act applies to a lease granted under this by-law 53, the effect of that lease is disclosed in this by-law 53 for the purposes of that section.

53.4 The Community Association may exercise its power under this by-law 53 by ordinary resolution.

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54. Lease with AGL Gas Networks Pty Limited

54.1 In addition to its powers under the Management Act and elsewhere in this management statement the Community Association has power under this by-law 54 to:

(a) accept a surrender from AGL Gas Networks Pty Limited of registered lease 7924945; and

(b) enter into a lease with AGL Gas Networks Pty Limited that is generally in accordance with the following:

Term:	Approximately 99 years from the date of commencement of the lease
Rental:	$1 per annum
Premises:	Substantially similar to the premises in registered lease 7924945
Terms:	Substantially similar to those in registered lease 7924945.

54.2 The Community Association may exercise its power under this by-law 54 by ordinary resolution.

55. Wharf

55.1 Adjacent to the Community Parcel there is a wharf that is the subject of a lease from Waterways Authority (**Wharf**).

55.2 At the date of registration of the Community Plan no final decision has been made about the Wharf and, in particular, whether it is to be:

(a) altered and refurbished; or

(b) demolished and replaced with another structure; or

(c) demolished and not replaced with another structure.

55.3 If the Wharf is to be retained, it is possible that the lessee from Waterways Authority will wish to enter into arrangements with the Community Association in connection with the Wharf.

55.4 In addition to its powers under the Management Act and elsewhere in this management statement the Community Association has power under this by-law 55 to enter into the arrangements referred to in by-law 55.3.

55.5 It is possible arrangements will be entered into under this by-law 55 during the initial period.

55.6 If section 24 of the Management Act applies to arrangements entered into under this by-law 55, the effect of those arrangements is disclosed in this by-law 55 for the purposes of that section.

55.7 The Community Association may exercise its power under this by-law 55 by ordinary resolution.

56. Marina

56.1 The construction of a marina adjacent to the Community Parcel that will be the subject of a lease from Waterways Authority is being considered (**Marina**).

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56.2 At the date of registration of the Community Plan no final decision has been made about the Marina.

56.3 If the Marina is to be constructed, it is possible that the lessee from Waterways Authority will wish to enter into arrangements with the Community Association in connection with the Marina.

56.4 In addition to its powers under the Management Act and elsewhere in this management statement the Community Association has power under this by-law 56 to enter into the arrangements referred to in by-law 56.3.

56.5 It is possible arrangements will be entered into under this by-law 56 during the initial period.

56.6 If section 24 of the Management Act applies to arrangements entered into under this by-law 56, the effect of those arrangements is disclosed in this by-law 56 for the purposes of that section.

56.7 The Community Association may exercise its power under this by-law 56 by ordinary resolution.

57. Agreements by Community Association

57.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 57, on its own behalf and on behalf of a Subsidiary Body to enter into agreements of all kinds in connection with:

(a) the provision of:

(i) management, operational, maintenance, cleaning, security, caretaking and other services for Community Property and Subsidiary Body Property; and

(ii) services and amenities to Owners and Occupiers; and

(iii) services and amenities to Community Property and Subsidiary Body Property; and

(b) any other matter or thing which the Community Association believes to be in the interest and for the benefit of the Community Scheme and Owners and Occupiers or the general public or both.

57.2 It is possible an agreement will be entered into under this by-law 57 during the initial period.

57.3 If section 24 of the Management Act applies to an agreement entered into under this by-law 57, the effect of that agreement is disclosed in this by-law 57 for the purposes of that section.

57.4 The Community Association may exercise its power under this by-law 57 by ordinary resolution.

58. Agreement with Estate Manager

Initial period disclosure

58.1 The Community Association intends during the initial period to enter into an agreement with the Estate Manager (**Estate Management Agreement**) to provide management and operational services for the Community Scheme at a fee. The effect of the Estate Management Agreement, the lease referred to in by-law 58.7 and the agreement to occupy referred to in by-law 23.3 is disclosed in this by-law 58 for the purposes of section 24 of the Management Act.

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Power to enter into agreement

58.2 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 58:

(a) to appoint and enter into an agreement with a person to provide management and operational services for the Community Scheme at a fee; and

(b) to enter into the lease referred to in by-law 58.7.

Terms

58.3 The term of the Estate Management Agreement is 5 years with 4 options to renew the agreement each for a period of 5 years.

Fee

58.4 For the first year of the Estate Management Agreement the fee payable to the Estate Manager will be $40,000. During the subsequent years of the Estate Management Agreement, the fee payable to the Estate Manager will be an annual sum equivalent to 15% of the annual operational, management and maintenance costs of the Community Scheme.

58.5 In calculating the fee payable to the Estate Manager, there must be excluded from the amount calculated as the annual operational, management and maintenance costs of the Community Scheme, the fee payable to the Estate Manager and the fee and incidental costs payable to the Managing Agent.

58.6 The fee payable to the Estate Manager is exclusive of the costs to the Estate Manager of carrying out or procuring the carrying out of the duties of the Estate Manager set out in the Estate Management Agreement. Any costs incurred by the Estate Manager in carrying out or procuring the carrying out of the duties of the Estate Manager set out in the Estate Management Agreement are payable by the Community Association.

58.7 During the term of the Estate Management Agreement, including the period of any renewal of the agreement, the Estate Manager may, at no fee, have the exclusive use of the No. 1 Office and the Gatehouse. If the Community Association so requests, the Estate Manager must enter into a lease of the No. 1 Office and the Gatehouse at a rent of $1 per annum and otherwise on such terms as the Community Association reasonably requires.

Assignment

58.8 The Estate Management Agreement will provide that the Estate Manager may assign its rights under the Estate Management Agreement at any time to a respectable and responsible assignee.

Termination

58.9 The Estate Management Agreement will provide that the Community Association may terminate the Estate Management Agreement if the Estate Manager:

(a) assigns its interest in the Estate Management Agreement in breach of the assignment provisions; or

(b) fails or neglects to carry out duties of the Estate Manager as set out in the Estate Management Agreement after the Community Association gives it 30 days notice of the failure or neglect to do so; or

(c) is guilty of gross misconduct or gross negligence in the performance of duties of the Estate Manager as set out in the Estate Management Agreement; or

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(d) enters into liquidation.

58.10 The Estate Management Agreement will provide that the Estate Manager may terminate the Estate Management Agreement at any time by giving 3 months notice.

Duties of Estate Manager

58.11 The duties of the Estate Manager may include:

(a) the supervision of:

(i) the provision of caretaking, cleaning and security services for Community Property and Subsidiary Body Property; and

(ii) servicing Community Property and Subsidiary Body Property; and

(iii) the maintenance, renewal or replacement of Community Property and Subsidiary Body Property; and

(iv) providing services to the Community Association, Subsidiary Bodies, Owners and Occupiers; and

(v) the operation of Security Key systems for Community Property and Subsidiary Body Property, including the provision of Security Keys and the re-coding of Security Keys; and

(b) supervising, controlling and regulating employees and contractors of the Community Association and Subsidiary Bodies; and

(c) supervising the Community Parcel generally; and

(d) doing anything else the Community Association agrees is necessary or desirable for the operation and management of the Community Scheme.

58.12 The Community Association may exercise its power under this by-law 58 by ordinary resolution.

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Part 4

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Optional Matters

59. Behaviour of Owners, Occupiers and others

59.1 An Owner or Occupier must not:

(a) create any noise likely to interfere with the peaceful enjoyment of any part of the Community Parcel by another Owner or Occupier or a Permitted Person; or

(b) use language or behave in a way that might reasonably be expected to offend or embarrass another Owner or Occupier or a Permitted Person; or

(c) obstruct the legal use by any person of any part of the Community Parcel; or

(d) use equipment that interferes with equipment or appliances used by an Owner or Occupier; or

(e) do anything that might damage the good reputation of the Community Scheme; or

(f) do anything in the Community Parcel that is illegal.

59.2 An Owner or Occupier must have any lawn in their Lot cut at least once every 2 weeks in spring and summer and at least once every 4 weeks in autumn and winter.

59.3 Whilst on the Community Parcel, Owners, Occupiers, Permitted Persons and Authorised Persons must use reasonable endeavours to ensure that they do not by any act or omission cause the Community Association or any Subsidiary Body to be in breach of their obligations under the Occupational Health and Safety Act 2000 and the Occupational Health and Safety Regulation 2001.

60. Signs

Approval of Executive Committee

60.1 Subject to by-law 60.3, a person must obtain the approval of the Executive Committee before that person places in any part of the Community Parcel any marketing or advertising sign, placard, banner or notice.

Other approvals

60.2 In addition to the approval of the Executive Committee required under by-law 60.1, a person must obtain the approval of:

(a) any relevant Subsidiary Body; and

(b) while the Developer is carrying out Development Activities, the Developer; and

(c) any Authority whose approval is required by law.

Special situation of Developer

60.3 The Developer is permitted, without obtaining the approval of the Executive Committee or any Subsidiary Body, to place marketing and advertising signs, placards, banners and notices in any part of the Community Parcel while the Developer is carrying out Development Activities or conducting Selling and Leasing Activities or doing both.

Rules about *For Sale* and *For Lease* signs

60.4 The Community Association may make Rules regulating the shape and size of and written material on ***For Sale*** and ***For Lease*** signs.

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Non-compliance

60.5 The Community Association may, and if requested by the Developer, must give a notice to an Owner or Occupier requiring that Owner or Occupier to comply with the terms of this by-law 60.

60.6 If an Owner or Occupier does not comply with this by-law 60 then the Community Association may, and if requested by the Developer, must exercise its rights under by-law 76.

61. Responsibility of Owners and Occupiers for others

61.1 An Owner or Occupier must:

(a) use reasonable endeavours to ensure their visitors comply with this management statement, any applicable Subsidiary Body By-laws and any applicable Rules; and

(b) cause their visitors to leave the Community Parcel if they do not comply with this management statement, any applicable Subsidiary Body By-laws or any applicable Rules.

61.2 If an Owner or Occupier leases or licenses their Lot (or part of their Lot) the Owner or Occupier must:

(a) give their tenant or licensee a copy of this management statement and any applicable Subsidiary Body By-laws and any applicable Rules; and

(b) use reasonable endeavours to ensure their tenant or licensee and their tenant's or licensee's visitors comply with this management statement, any applicable Subsidiary Body By-laws and any applicable Rules; and

(c) take all action reasonably available to them, including action under the lease or licence agreement, to make the tenant or licensee comply with this management statement, any applicable Subsidiary Body By-laws and any applicable Rules or make the tenant or licensee leave the Community Parcel.

61.3 An Owner or Occupier must not allow another person to do anything they are not themselves entitled to do under this management statement, any applicable Subsidiary Body By-laws or any applicable Rules.

62. Maintenance

Maintenance of Lot

62.1 An Owner or Occupier must keep their Lot clean and tidy and in good repair and condition.

Exterior Maintenance

62.2 An Owner or Occupier of other than a Strata Lot must carry out all maintenance and repairs to the exterior of any building or other structure in the Lot:

(a) in a proper and workmanlike manner; and

(b) promptly; and

(c) to the reasonable satisfaction of the Community Association; and

(d) in compliance with the Architectural and Landscape Standards.

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62.3 An Owner or Occupier may only construct, install or keep in a Lot, Community Property or Subsidiary Body Property anything that can be seen from outside that Lot, Community Property or Subsidiary Body Property if that Owner or Occupier obtains the prior approval of the Community Association.

62.4 By-law 62.3 only applies if, in the opinion of the Community Association, reasonably held, the thing that can be seen from outside the Lot, Community Property or Subsidiary Body Property:

(a) is not in keeping with the building in or the landscaped areas of the Lot, Community Property or Subsidiary Body Property; and

(b) does not comply with the applicable Architectural and Landscape Standards.

Non compliance

62.5 The Community Association may give a notice to an Owner or Occupier requiring that Owner or Occupier to comply with the terms of this by-law 62.

62.6 If an Owner or Occupier does not comply with this by-law 62 then the Community Association may exercise its rights under by-law 76.

63. Compliance with laws

An Owner or Occupier must comply on time with all laws relating to:

(a) their Lot; and

(b) the use of their Lot; and

(c) the use of:

(i) Community Property; and

(ii) Subsidiary Body Property,

in respect of which they have a licence or a lease, or rights or privileges under a Restricted Community Property By-law or a Restricted Subsidiary Body Property By-law, as the case may be.

64. Obligations of Owners and Occupiers

Compliance with notices

64.1 An Owner or Occupier must comply on time with the terms of any notice displayed on Community Property by the Community Association, Service Provider or relevant Authority.

Instruction of agents, etc of Community Association

64.2 An Owner or Occupier must not directly or indirectly instruct agents, employees or contractors of the Community Association unless the Community Association authorises the Owner or Occupier to do so.

Things required to be done are at Owner's or Occupier's cost

64.3 Anything that an Owner or Occupier is required to do under this management statement must be done at the cost of that Owner or Occupier.

65. Cleaning Windows in a Lot

65.1 An Owner or Occupier must clean the glass in the windows and doors in or on the boundary of a Lot (even if they are part of Community Property or Subsidiary Body Property).

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65.2 An Owner or Occupier is not required to clean the glass in the windows or doors in or on the boundary of a Lot that cannot be accessed safely.

65.3 If the Community Association or a Subsidiary Body resolves to clean the glass in the windows and doors in or on the boundary of a Lot, the Owner or Occupier of that Lot is excused from obligations under this by-law 65 to clean that glass.

66. Drying Laundry

An Owner or Occupier must not hang any washing, towels, bedding, clothing or other similar article on:

(a) any part of their Lot if those articles are visible from outside their Lot; or

(b) on any part of Community Property or Subsidiary Body Property.

67. Keeping Animals

67.1 An Owner or Occupier may keep in the Community Parcel without the approval of the Community Association or any relevant Subsidiary Body:

(a) one dog; or

(b) one cat.

67.2 An Owner or Occupier must obtain the approval of any relevant Subsidiary Body before that Owner or Occupier keeps in the Community Parcel:

(a) any type of animal other than a dog or a cat; or

(b) more than one dog at the same time; or

(c) more than one cat at the same time; or

(d) a dog and a cat.

67.3 Despite this by-law 67, an Owner or Occupier may keep in the Community Parcel without the approval of the Community Association or any relevant Subsidiary Body:

(a) a small caged bird; and

(b) fish in a tank.

67.4 If an Owner or Occupier may under this by-law 67 keep an animal in the Community Parcel, then the Owner or Occupier:

(a) must ensure that the animal is at all times kept under control and usually in their Lot; and

(b) must ensure that the animal does not enter any part of the Community Parcel designated by the Executive Committee as an area in which animals may not enter and when the animal is in any part of the Community Parcel other than their Lot, that the animal is accompanied by the Owner or Occupier or other responsible person; and

(c) must, when the animal is in any part of the Community Parcel other than their Lot, keep the animal appropriately under control; and

(d) is liable to the Owners and Occupiers of other Lots and any other person lawfully in the Community Parcel for:

(i) any noise caused by the animal that is disturbing to an extent which is unreasonable; and

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(ii) damage to or loss of property or injury to any person caused by the animal; and

(e) is responsible for promptly cleaning up after the animal has disturbed or soiled any part of the Community Parcel; and

(f) must, if in the opinion of the Executive Committee (reasonably held) the Owner or Occupier is not complying with this by-law 67 and the Executive Committee so requests, remove the animal from the Community Parcel.

67.5 This by-law 67 does not prevent the keeping of a dog used as a guide or hearing dog.

68. Fire Control

68.1 An Owner or Occupier must comply with laws about fire control.

68.2 Subject to the requirements of Authorities an Owner or Occupier may keep flammable materials in their Lot if they:

(a) use the materials in connection with the lawful use of their Lot; and

(b) keep the materials in reasonable quantities according to the guidelines of any relevant Authority.

68.3 An Owner of Occupier must not:

(a) keep flammable materials in Community Property or Subsidiary Body Property; or

(b) interfere with safety equipment; or

(c) obstruct fire stairs or fire escapes.

69. Security in Community Parcel

Rights and obligations of Community Association

69.1 The Community Association must:

(a) take reasonable steps to prevent fires and other hazards in Community Property; and

(b) comply with laws about fire control.

69.2 In addition to its powers under the Management Act, the Community Association has the power to install and operate in Community Property audio and visual security services and other surveillance equipment for the security of the Community Parcel.

Rights and obligations of Subsidiary Bodies

69.3 A Subsidiary Body must:

(a) take reasonable steps to prevent fires and other hazards in its Subsidiary Body Property; and

(b) comply with laws about fire control.

69.4 In addition to its powers under the Management Act or Strata Management Act, as applicable, a Subsidiary Body has the power to install and operate in Subsidiary Body Property audio and visual security devices and other surveillance equipment for the security of its Subsidiary Parcel.

70. Security Obligations

70.1 An Owner or Occupier must take reasonable care to ensure that fire and security doors used by them are locked or closed when they are not being used.

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70.2 An Owner or Occupier must not:

(a) interfere with security cameras or surveillance equipment; or

(b) do anything that might prejudice the security or safety of the Community Parcel.

71. Security Keys

71.1 The Community Association may make Security Keys available to:

(a) Owners and Occupiers; and

(b) other persons authorised by the Community Association to hold Security Keys.

71.2 A person to whom a Security Key is made available must:

(a) not duplicate or copy the Security Key; and

(b) immediately notify the Community Association if the Security Key is lost, stolen or misplaced; and

(c) when requested by the Community Association, immediately return the Security Key to the Community Association; and

(d) take all reasonable steps to safeguard the Security Key against loss, damage or theft.

72. Parking

General restrictions

72.1 Subject to by-law 72.2, an Owner or Occupier must not park a Vehicle in the Community Parcel. Subject to by-law 72.3 a Permitted Person must not park a Vehicle in the Community Parcel.

72.2 An Owner or Occupier may only park a Vehicle:

(a) in a garage, carspace or driveway in that Owner's or Occupier's Lot; or

(b) in an area in the Community Parcel designated by the Community Association or a relevant Subsidiary Body as being an area where an Owner's or Occupier's Vehicle may be parked; or

(c) in an area in the Community Parcel designated by the Community Association or a relevant Subsidiary Body as being an area where a Permitted Person's Vehicle may be parked but for no longer than a 2 hour interval during any day.

Despite this by-law 72.2 no Vehicle other than a car may be parked by an Owner or Occupier on a driveway in that Owner's or Occupier's Lot or in an area referred to in paragraph (b) of this by-law 72.2.

72.3 A Permitted Person may only park a Vehicle:

(a) in a garage, carspace or driveway of the Lot of the Owner or Occupier with whose consent they are in the Community Parcel; or

(b) in a part of the Community Parcel designated by the Community Association or a relevant Subsidiary Body as being an area where a Permitted Person's Vehicle may be parked.

Despite this by-law 72.3 no Vehicle other than a car may be parked by a Permitted Person on a driveway of the Lot of the Owner or Occupier with whose consent they are in the Community Parcel or in an area referred to in paragraph (b) of this by-law 72.3.

72.4 Only a person who is an Owner or Occupier or a Permitted Person may park a Vehicle in the Community Parcel.

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Heavy Vehicles

72.5 Heavy vehicles may be parked in the Community Parcel only for the purpose of loading or unloading and then only for as short a period as is reasonably practicable.

Repairs

72.6 Repairs to Vehicles must not be undertaken in Community Property or Subsidiary Body Property.

73. Payments to be made

73.1 An Owner or Occupier must comply at their cost and on time with this management statement, any applicable Subsidiary Body By-laws and any applicable Rules.

73.2 An Owner or Occupier must pay the Community Association and any relevant Subsidiary Body interest from and including the day on which the payment is due until the day it is paid on any amount they owe under this management statement, any applicable Subsidiary Body By-laws or any applicable Rules that they do not pay on time.

73.3 The Community Association and any relevant Subsidiary Body must calculate interest under this by-law 73 at a rate of 10% simple interest per annum or the rate of interest for unpaid contributions under the Management Act or, where the Subsidiary Body is an Owners Corporation, under the Strata Management Act.

73.4 The Community Association may recover as a debt amounts payable to it under this management statement or any applicable Rules that are not paid.

73.5 A Subsidiary Body may recover as a debt amounts payable to it under this management statement or its Subsidiary Body By-laws or any applicable Rules that are not paid.

73.6 An Owner must pay:

(a) when they fall due, contributions levied under the Management Act and under the Strata Management Act, as applicable; and

(b) on demand, any costs, charges and expenses of the Community Association or any relevant Subsidiary Body incurred in connection with the contemplated or actual enforcement or preservation of any rights under this management statement, any applicable Subsidiary Body By-laws or any applicable Rules in relation to the Owner.

73.7 A certificate signed by the Community Association, its Managing Agent or the secretary of the Executive Committee or a Subsidiary Body, its managing agent or the secretary of its executive committee about a matter or a sum payable to the Community Association or relevant Subsidiary Body, as the case may be, is prima facie evidence of:

(a) the amount; and

(b) any other fact stated in it.

74. Rules

Purpose of Rules

74.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 74 to make and vary rules about the control, management, operation, use and enjoyment of the Community Parcel and, in particular, Community Property and any part of it, including Foreshore Lot any Community Facility (**Rules**).

74.2 In addition to its powers under the Management Act and the Strata Management Act, as applicable, and elsewhere in this management statement, a Subsidiary Body has power under this by-law 74 to make and vary rules about the

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control, management, operation, use and enjoyment of its Subsidiary Body Parcel and, in particular, its Subsidiary Body Property and any part of it (**Rules**).

Restriction on the power to make or vary Rules

74.3 Despite by-law 74.1, the Community Association may only make or vary Rules affecting Foreshore Lot or the Public Access Easement Site if it has the consent of the Council.

74.4 Despite by-law 74.1, the Community Association may only make or vary Rules affecting Restricted Community Property if it has the consent of the person with the benefit of the Restricted Use Rights.

74.5 Despite by-law 74.2, a Subsidiary Body may only make or vary Rules affecting Restricted Subsidiary Body Property if it has the consent of the person with the benefit of the Restricted Use Rights.

Inconsistencies between Rules and other requirements

74.6 If a Rule made by the Community Association is inconsistent with the Management Act, this management statement or any requirement of an Authority, the Management Act, this management statement and the requirement of the Authority prevail to the extent of the inconsistency.

74.7 If a Rule made by a Subsidiary Body is inconsistent with the Community Management Act or the Strata Management Act, as applicable, this management statement, any applicable Subsidiary Body By-laws or any requirement of an Authority, the Management Act, the Strata Management Act, as applicable, this management statement, the Subsidiary Body By-laws and the requirement of the Authority prevails to the extent of the inconsistency.

Persons bound by Rules

74.8 Rules bind an Owner, Occupier, Permitted Person, Authorised Person and each Subsidiary Body.

75. How approvals are given

Approvals by Community Association

75.1 Unless a by-law states otherwise, approval by the Community Association under this management statement may be given by:

(a) the Community Association at a general meeting; or

(b) the Executive Committee at a meeting of the Executive Committee.

75.2 The Community Association and the Executive Committee may impose conditions if they give an approval under this management statement.

Approvals by a Subsidiary Body

75.3 Unless a by-law states otherwise, approval by a Subsidiary Body under this management statement may be given by:

(a) the Subsidiary Body at a general meeting; or

(b) the executive committee of the Subsidiary Body at a meeting of that executive committee.

75.4 A Subsidiary Body and the executive committee of a Subsidiary Body may impose conditions if they give an approval under this management statement.

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76. Failure to comply with obligations

Powers of Community Association

76.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 76 to do anything in the Community Parcel that should have been done by an Owner or Occupier or Subsidiary Body under this management statement but has not been done or not done to the satisfaction of the Community Association.

76.2 The Community Association must give a notice to an Owner or Occupier or Subsidiary Body specifying when it proposes to enter their Lot or Subsidiary Body Property to do a thing it is entitled to do under by-law 76.1. The Owner or Occupier or Subsidiary Body must:

(a) give the Community Association and persons authorised by it access to the Lot or Subsidiary Body Property according to the notice; and

(b) pay the Community Association it's costs for doing the thing.

Powers of a Subsidiary Body

76.3 In addition to its powers under the Management Act and the Strata Management Act, as applicable, and elsewhere in this management statement, a Subsidiary Body has the power to do anything in a Lot in its Subsidiary Body Parcel that should have been done by the Owner or Occupier under this management statement but has not been done or not done to the satisfaction of the Subsidiary Body.

76.4 A Subsidiary Body must give a notice to an Owner or Occupier specifying when it proposes to enter their Lot to do a thing it is entitled to do under by-law 76.3. The Owner or Occupier must:

(a) give the Subsidiary Body and persons authorised by it access to their Lot according to the notice; and

(b) pay the Subsidiary Body it's costs for doing the thing.

77. Responsibility for damage

77.1 The Community Association is not liable for damage to or loss of property or injury to any person in or near the Community Parcel except if the Community Association or it's employees or agents are negligent.

77.2 A Subsidiary Body is not liable for damage to or loss of property or injury to any person in or near its Subsidiary Body Parcel except if the Subsidiary Body or it's employees or agents are negligent.

78. How to contact Community Association and a Subsidiary Body

78.1 Applications, requests, notices and complaints to the Community Association must be in writing and must be addressed to the secretary of the Community Association.

78.2 Applications, requests, notices and complaints to a Subsidiary Body must be in writing and must be addressed to the secretary of the Subsidiary Body.

79. Community Facilities

79.1 Subject to this management statement and any applicable Rules, the Community Facilities are available for use by Owners and Occupiers and Permitted Persons.

79.2 The Community Association is responsible for the control, management, operation, maintenance in good condition, repair and replacement of the Community Facilities.

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80. Controlling traffic in Community Property and Restricted Subsidiary Body Property

80.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has the power under this by-law 80 to:

(a) impose a speed limit for vehicular traffic in Community Property and Subsidiary Body Property; and

(b) impose restrictions on the parking of Vehicles in Community Property and Subsidiary Body Property; and

(c) install speed humps and other traffic control devices in Community Property and Subsidiary Body Property; and

(d) install signs to control traffic and regulate the parking of Vehicles in Community Property and Restricted Subsidiary Body Property.

80.2 A Vehicle may not be driven in the Community Parcel:

(a) at more than the speed limit determined by the Community Association; and

(b) unless the Vehicle is registered; and

(c) unless the driver has a licence to drive a Vehicle on a public road; and

(d) if the Vehicle is unreasonably noisy or produces an unreasonable quantity of fumes.

81. Rights of Community Association in respect of landscaped areas

81.1 If the Community Association determines that it should be responsible for the maintenance, cleaning and caretaking, including watering, of any landscaped area forming part of Subsidiary Body Property it may assume that responsibility by giving a notice to the relevant Subsidiary Body that specifies:

(a) the part of Subsidiary Body Property affected; and

(b) the date from which the assumption of responsibility is effective; and

(c) any aspects of the maintenance, cleaning and caretaking of the landscaped area for which the Community Association will not be responsible; and

(d) the method of calculation of the amount that is to be reimbursed to the Community Association for the costs it incurs in connection with discharging the responsibility it has assumed.

81.2 The Community Association may from time to time determine a minimum extent and frequency for the watering of landscaped areas in the Community Parcel. If the Community Association advises Owners and Occupiers and Subsidiary Bodies of that determination, Owners, Occupiers and Subsidiary Bodies must water their respective landscaped areas at least to the minimum extent and frequency.

81.3 For the purposes of watering landscaped areas forming part of Community Property that are adjacent to a Subsidiary Body Parcel, the Community Association may without payment to that Subsidiary Body, use water supplied to that Subsidiary Body Parcel.

82. Exercise of rights, powers and remedies by Community Association

82.1 The Community Association may exercise a right, power or remedy:

(a) at its discretion; and

(b) separately or concurrently with another right, power or remedy.

82.2 A single or partial exercise of a right, power or remedy by the Community Association does not prevent a further exercise of that or of any other right, power or remedy.

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82.3 Failure by the Community Association to exercise, or delay in exercising, a right, power or remedy does not prevent its exercise later.

83. Business or trading activity of Community Association

83.1 The Community Association may, for the purpose of exercising and performing its functions, carry on a business or trading activity.

83.2 If the Community Association carries on a business or trading activity, then the Community Association:

(a) must levy each member for a contribution to the sinking fund of the Community Association to meet expenses associated with the Community Association carrying on the business or trading activity; and

(b) must pay into the sinking fund of the Community Association income derived by the Community Association from carrying on the business or trading activity; and

(c) may distribute any net profit derived by the Community Association from carrying on the business or trading activity in accordance with clause 17 of schedule 1 to the Management Act.

83.3 If the Community Association incurs a net loss from carrying on a business or trading activity, then the Community Association must levy each member for a contribution to the sinking fund of the Community Association in order to meet the amount of the net loss.

84. Aerials and Solar Energy Devices

84.1 An Owner, Occupier or Subsidiary Body must not, except with the prior approval of the Community Association and in compliance with the requirements (if any) of Council, construct, install or attach to the outside of any building in a Lot or the outside of any building containing a Lot or any structure on a Lot:

(a) any aerial, antenna, dish, tower or other receiving or transmitting device for radio, television, telephone, satellite or other facility for communication; or

(b) any solar energy collection panels and associated equipment; or

(c) any energy conservation equipment; or

(d) a solar hot water system and associated equipment.

84.2 Despite this by-law 84, no aerial, antenna, dish, tower or other receiving or transmitting device, including any Special Receiving Facility, constructed, installed or attached by BPPL requires the prior consent of the Community Association.

85. Residue Land

85.1 Despite any other by-law, by-laws 7, 8, 22, 26, 46, 59, 61, 62 and 84 cannot apply in relation to Residue Land without the prior consent of the relevant AGL Party.

85.2 This by-law 85 cannot be varied without the prior consent of each AGL Party.

86. Consent of AGL Party

86.1 No Development Activities may be carried out by or on behalf of the Developer on Residue Land owned by an AGL Party without the prior consent of each AGL Party.

86.2 Despite any other by-law, the Community Association can only vary:

(a) by-laws 7, 8, 22, 26, 46, 59, 61, 62 and 84 so that those by-laws or any of them become applicable to the Residue Land; or

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(b) any by-law other than a by-law referred to in by-law 86.2(a) so that there is an Adverse Effect on an AGL Party; or

(c) vary this by-law 86,

with the prior consent of each AGL Party.

87. Acknowledgment of Section 88B Instrument and Requirement for Deed

87.1 The Community Association acknowledges that it is aware of the terms of the easements, positive covenants and restrictions on use created by the Section 88B Instrument and existing on the folio identifiers for the land comprising the Community Parcel as at the date of the Community Plan.

87.2 The Community Association acknowledges that, for the purpose of ensuring continuity of the intention of by-law 52, in the event the Community Scheme is terminated under the Community Schemes Legislation or by Court order or if the Community Association ceases to have any interest in the area above the Lower Stratum Lot, it will, on or before such time, take all steps necessary to bind its successor(s) or assignee(s) of the area above the Lower Stratum Lot for the benefit of AGL such that the successor(s) or assignee(s), as the case may be, agree to pay to AGL all Rates and Taxes, as defined in by-law 52, in respect of the Lower Stratum Lot.

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Part 5 By-Laws Required by Authorities

88. Council garbage removal

88.1 The Council and Council's garbage collection contractors, from time to time, are not liable for any normal wear and tear caused to the surface of the Open Access Ways, including any interlocking brick pavers and bollards, by the garbage collection trucks collecting Garbage from within the Community Parcel.

88.2 By-law 88.1 does not relieve the Council or Council's garbage collection contractors, from time to time, from responsibility for any damage caused to Community Property, including the surface of the Open Access Ways, as a result of negligence on the part of Council or Council's garbage collection contractors, from time to time.

88.3 This by-law 88 cannot be varied without the prior consent of Council.

89. Maintenance of stormwater drainage system

89.1 The Community Association is responsible for the stormwater drainage system in the Community Parcel.

89.2 The Community Association is responsible to maintain in good condition, repair and replace Service Lines, comprising the stormwater drainage system and, in particular, is responsible:

(a) at not less than 6 monthly intervals; and

(b) after significant rainfall events; and

(c) as required by Council,

to inspect and maintain in good condition, including clean, the Stormwater Quality Control Devices to ensure their efficient functioning.

89.3 This by-law 89 cannot be varied without the prior consent of Council.

90. Recycling Services

90.1 An Owner or Occupier must, if required by Council, comply with the lawful requirements of Council in relation to recycling of Garbage and the use of any recycling service implemented by Council.

90.2 This by-law 90 cannot be varied without the prior consent of Council.

91. Lease of Foreshore Lot

91.1 In addition to its powers under the Management Act and elsewhere in this management statement the Community Association has the power under this by-law 91 to and must enter into a long term lease for nominal rental with the Council or accept an assignment of a lease from the Council to BPPL of the Foreshore Lot on terms that are as agreed between the Council and the Community Association and generally to provide for the principal use of the Foreshore Lot as a foreshore park, recreation area, access trail and landscaped area for the use and enjoyment of the general public and for the general public to pass and repass on foot or by bicycle and containing the following principal obligations on the part of the lessee:

(a) to maintain the premises in a good condition to the reasonable satisfaction of the Council; and

(b) to insure against public risk; and

(c) to pay all rates and taxes in respect of the premises.

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91.2 This by-law 91 cannot be varied without the prior consent of Council.

92. Flagpole

92.1 The Community Association acknowledges that the flagpole installed on Community Property (**Flagpole**) is Community Property and is not the responsibility of Sydney Water.

92.2 The Flagpole must not be modified or moved without the prior written consent of Sydney Water.

92.3 Before carrying out any work which will affect the Flagpole the Community Association must consult with Sydney Water.

92.4 This by-law 92 cannot be varied without the prior consent of Sydney Water.

93. Sewer Vent

93.1 The Community Association acknowledges that a Sewer Vent installed in the Flagpole is Community Property and is not the maintenance responsibility of Sydney Water.

93.2 The Sewer Vent must be maintained by the Community Association at all times in a proper and efficient working order.

93.3 Before carrying out any work that will affect the Sewer Vent the Community Association must obtain prior written consent of Sydney Water and will comply with any direction given by Sydney Water in relation to the intended work.

93.4 The Community Association will not permit the Sewer Vent to be used for any other purpose.

93.5 The Community Association will permit Sydney Water unrestricted access for the purpose of maintaining the Sewer Vent if Sydney Water reasonably considers it necessary to do so in circumstances where the Community Association has failed to carry out such maintenance.

93.6 The Community Association will pay any costs of such maintenance by Sydney Water including any costs of removal or re-installation of all or part of the Flagpole.

93.7 This by-law 93 cannot be varied without the written consent of Sydney Water.

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Part 6

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Definitions and interpretation

93. Definitions and interpretation

Statutory definitions

93.1 In this management statement a word or expression has the meaning given to it by a definition in the Management Act if it is:

(a) defined in the Management Act; and

(b) used but not defined in this management statement.

Further definitions

93.2 In this management statement unless the context clearly indicates otherwise:

Adverse Effect means any of the following effects:

(a) reduction in the value of the Residue Land to an extent which is not insignificant; or

(b) change to an extent which is not minor in the proportionate value of the Residue Land; or

(c) imposition on an AGL Party of additional restrictions or requirements in relation to the Residue Land; or

(d) an AGL Party acting or being associated with activities or occurrences which could have a detrimental effect on its corporate reputation.

AGL means the Secretary for the time being of The Australian Gas Light Company ARBN 052 167 405 or The Australian Gas Light Company ARBN 052 167 405.

AGL Party means any of the following during the period of ownership of the Residue Land:

(a) AGL; and

(b) any person in respect of which AGL has given notice to the Community Association to the effect that that person is to have the same rights under by-law 28 as AGL has.

Architectural and Landscape Standards means the architectural and landscape standards prescribed under by-law 7 as varied under that by-law.

Authorised Part RCP 8 has the meaning given to it in by-law 18.

Authorised Part RCP 9 has the meaning given to it in by-law 19.

Authorised Part RCP 10 has the meaning given to it in by-law 20.

Authorised Part RCP 11 has the meaning given to it in by-law 21.

Authorised Persons means the Council's invitees, the public and other persons authorised by the Council for the purposes of the Public Access Easement.

Authority means a governmental or semi-governmental administrative, fiscal or judicial department or entity, a statutory agency or authority or the Council.

Balcony includes a terrace, verandah or courtyard.

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BPPL means Breakfast Point Pty Limited (ACN 088 841 203).

Common Property means the common property in a Strata Scheme.

Community Association means the community association constituted on registration of the Community Plan.

Community Development Lot means a lot in the Community Plan that is not:

(a) the Community Property, a public reserve or a drainage reserve; or

(b) land that has become part of a Subsidiary Scheme; or

(c) a lot that has been severed from the Community Scheme.

Community Facilities means the Boatshed, Meeting Place, BBQ Pavilion, Grandstand, and Community Recreation Facility referred to in the Concept Plan the respective exact locations of which are to be determined by BPPL.

Community Parcel means the land the subject of the Community Scheme.

Community Plan means the community plan with which this community management statement is registered.

Community Property means lot 1 in the Community Plan.

Community Scheme means the community scheme created on registration of the Community Plan.

Community Schemes Legislation means the Development Act and the Management Act and cognate legislation.

Concept Plan means the concept plan (in 3 sheets) attached to this management statement.

Council means City of Canada Bay Council.

Developer means any of the following:

(a) during the period of its ownership of any Lot, BPPL; and

(b) during the period of its ownership of any Community Development Lot, Precinct Development Lot or Neighbourhood Lot, any person in respect of which BPPL has given notice to the Community Association to the effect that that person is to have the same rights under by-law 28 as BPPL has.

Development Act means Community Land Development Act 1989.

Development Activities means anything to be done in connection with development in the Community Parcel as from time to time determined by the Developer, including:

(a) any form of demolition work, excavation work or landscaping work; and

(b) any form of building work or work ancillary to or associated with building work, including the installation of Services; and

(c) any form of work other than the forms of work referred to in paragraphs (a) and (b) of this definition; and

(d) the subdivision of land forming part of the Community Parcel; and

(e) the conversion of land forming part of the Community Parcel; and

(f) the dedication of land forming part of the Community Parcel.

Development Area means the part of Community Property identified as such in the Concept Plan.

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Estate Manager means Estate Managers Pty Limited (ACN 086 227 330), its successors and assigns.

Estate Management Agreement has the meaning given to it in by-law 58.1.

Executive Committee means the executive committee of the Community Association.

Expert Determinator has the meaning given to it in by-law 8.10.

Foreshore Lot m lot 501 in DP1052824.

Former Community Development Lot means a precinct parcel, neighbourhood parcel or strata parcel that, before it became subject to the precinct scheme, neighbourhood scheme or strata scheme, was a Community Development Lot.

Garbage means waste of all kinds, including waste which is capable of being recycled.

Gatehouse means the building identified as such on the Concept Plan.

General Meeting means an annual general meeting other than the first annual general meeting or a special general meeting of the Community Association.

Irrigation System means the system for the reticulation of stormwater retained in the Community Parcel for the purposes of watering certain landscaped areas of the Community Parcel.

Letterbox means a letterbox that has been placed in Community Property in a position determined by BPPL.

Lot means, as the context requires:

(a) a Community Development Lot; or

(b) a Precinct Development Lot; or

(c) a Neighbourhood Lot; or

(d) a Strata Lot.

Lower Stratum Lot means lot 4 in DP1047145.

Management Act means the Community Land Management Act 1989.

Managing Agent means the managing agent for the Community Association appointed under section 50 of the Management Act.

Marina has the meaning given to it in by-law 56.

Neighbourhood Association means the neighbourhood association constituted on registration of a Neighbourhood Plan.

Neighbourhood Lot means a lot in a Neighbourhood Plan that is not Neighbourhood Property, a public reserve or a drainage reserve.

Neighbourhood Management Statement means the neighbourhood management statement registered with a Neighbourhood Plan.

Neighbourhood Parcel means the land the subject of a Neighbourhood Scheme.

Neighbourhood Plan means a neighbourhood plan that subdivides a Community Development Lot or a Precinct Development Lot.

Neighbourhood Property means the lot shown in a Neighbourhood Plan as neighbourhood property.

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Neighbourhood Scheme means a neighbourhood scheme created when a Neighbourhood Plan is registered.

No. 1 Office means the building identified as such on the Concept Plan.

Occupier means the lessee, licensee or occupier of a Lot.

Open Access Ways means the open access ways shown on the Plan of Open Access Ways that forms part of this management statement set apart under section 41 of the Development Act and **Open Access Way** means a part of the Open Access Ways.

Owner means the owner or mortgagee in possession of a Lot.

Owners Corporation means the owners corporation constituted on registration of a Strata Plan.

Pedestrian/Cycle Shareway means the part of the Community Parcel identified as such on the Concept Plan.

Permitted Person means a person in the Community Parcel with the express or implied consent of an Owner or Occupier, the Community Association or a Subsidiary Body.

Plan of Open Access Ways means the plan of open access ways (in 2 sheets) attached to this management statement.

Precinct Association means the precinct association constituted on registration of a Precinct Plan.

Precinct Development Lot means a lot in a Precinct Plan that is not:

(a) Precinct Property, a public reserve or a drainage reserve; or

(b) land that has become part of a Subsidiary Scheme; or

(c) a lot that has been severed from the Precinct Scheme.

Precinct Management Statement means the precinct management statement registered with a Precinct Plan.

Precinct Parcel means the land the subject of a Precinct Scheme.

Precinct Plan means a precinct plan that subdivides a Community Development Lot.

Precinct Property means the lot shown in a Precinct Plan as precinct property.

Precinct Scheme means a precinct scheme created when a Precinct Plan is registered.

Private Service means a Service that is not provided by an Authority.

Public Access Easement means the Easement for Public Access numbered 15 in the Community Plan created by the registration of the Community Plan.

Public Access Easement Site means the part of Community Property identified as such on the Concept Plan.

Rates and Taxes has the meaning given to it in by-law 52.2

Relevant Letterbox has the meaning giving to it in by-law 10.

Relevant Letterbox Owner has the meaning given to it in by-law 10.

Residue Land means lot 6 in deposited plan 1047145 and any part of that land.

Restricted Community Property means a part of Community Property the use of which is restricted under a Restricted Community Property By-law, all of which parts are identified as such on the Concept Plan.

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Restricted Community Property By-law means a by-law the effect of which is that the use of a part of Community Property identified in the by-law is restricted to a Subsidiary Body and persons authorised by it, an Owner or the Developer.

Restricted Community Property 1 means the part of Community Property identified as A1 on the Concept Plan.

Restricted Community Property 2 means the part of Community Property identified as A2 on the Concept Plan.

Restricted Community Property 3 means the part of Community Property identified as A3 on the Concept Plan.

Restricted Community Property 4 means the part of Community Property identified as A4 on the Concept Plan.

Restricted Community Property 5 means the part of Community Property identified as A5 on the Concept Plan.

Restricted Community Property 6 means the part of Community Property identified as A6 on the Concept Plan.

Restricted Community Property 7 means the part of Community Property identified as A7 on the Concept Plan.

Restricted Community Property 8 means the part of Community Property identified as A8 on the Concept Plan.

Restricted Community Property 9 means the part of Community Property identified as A9 on the Concept Plan.

Restricted Community Property 10 means the part of Community Property identified as A10 on the Concept Plan.

Restricted Community Property 11 means the part of Community Property identified as A11 on the Concept Plan.

Restricted Community Property 8 Neighbourhood Association means the Neighbourhood Association constituted on registration of the Neighbourhood Plan that subdivides the part of Community Development Lot 3 identified as N8 on the Concept Plan.

Restricted Community Property 9 Neighbourhood Association means the Neighbourhood Association constituted on registration of the Neighbourhood Plan that subdivides the part of Community Development Lot 3 identified as N9 on the Concept Plan.

Restricted Community Property 10 Neighbourhood Association means the Neighbourhood Association constituted on registration of the Neighbourhood Plan that subdivides the part of Community Development Lot 6 identified as N10 on the Concept Plan.

Restricted Community Property 11 Neighbourhood Association means the Neighbourhood Association constituted on registration of the Neighbourhood Plan that subdivides the part of Community Development Lot 6 identified as N11 on the Concept Plan.

Restricted Community Property 8 Neighbourhood Scheme means the Neighbourhood Scheme constituted on registration of the Neighbourhood Plan that subdivides the part of Community Development Lot 3 identified as N8 on the Concept Plan.

Restricted Community Property 9 Neighbourhood Scheme means the Neighbourhood Scheme constituted on registration of the Neighbourhood Plan that subdivides the part of Community Development Lot 3 identified as N9 on the Concept Plan.

Restricted Community Property 10 Neighbourhood Scheme means the Neighbourhood Scheme constituted on registration of the Neighbourhood Plan that subdivides the part of Community Development Lot 6 identified as N10 on the Concept Plan.

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Restricted Community Property 11 Neighbourhood Scheme means the Neighbourhood Scheme constituted on registration of the Neighbourhood Plan that subdivides the part of Community Development Lot 6 identified as N11 on the Concept Plan.

Restricted Community Property 1 Owners Corporations means:

(a) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 9; and

(b) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 10; and

(c) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 11.

Restricted Community Property 2 Owners Corporations means:

(a) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 16; and

(b) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 17; and

(c) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 18; and

(d) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 19.

Restricted Community Property 3 Owners Corporation means the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 12.

Restricted Community Property 4 Owners Corporations means:

(a) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 14; and

(b) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 19; and

(c) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 20.

Restricted Community Property 5 Owners Corporations means:

(a) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 17; and

(b) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 19.

Restricted Community Property 6 Owners Corporations means:

(a) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 14; and

(b) the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 20.

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Restricted Community Property 7 Owners Corporation means the Owners Corporation constituted on registration of the Strata Plan that subdivides Community Development Lot 4.

Restricted Community Property 1 Strata Schemes means:

(a) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 9; and

(b) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 10; and

(c) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 11.

Restricted Community Property 2 Strata Schemes means:

(a) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 16; and

(b) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 17; and

(c) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 18; and

(d) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 19.

Restricted Community Property 3 Strata Scheme means the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 12.

Restricted Community Property 4 Strata Schemes means:

(a) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 14; and

(b) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 19; and

(c) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 20.

Restricted Community Property 5 Strata Schemes means:

(a) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 17; and

(b) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 19.

Restricted Community Property 6 Strata Schemes means:

(a) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 14; and

(b) the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 20.

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Restricted Community Property 7 Strata Scheme means the Strata Scheme constituted on registration of the Strata Plan that subdivides Community Development Lot 4.

Restricted Subsidiary Body Property means a part of Subsidiary Body Property the use of which is restricted under a Restricted Subsidiary Body Property By-law.

Restricted Subsidiary Body Property 1 has the meaning given to it in by-law 23.1.

Restricted Subsidiary Body Property 2 means the part of lot 6 in the Community Plan identified as B1 on the Concept Plan.

Restricted Subsidiary Body Property 3 means the part of lot 6 in the Community Plan identified as B2 on the Concept Plan.

Restricted Subsidiary Body Property By-law means a by-law the effect of which is that the use of a part of Subsidiary Body Property identified in the by-law is restricted to the use of the person named.

Restricted Use Rights in relation to Community Property or Subsidiary Body Property means the rights created by a Restricted Community Property By-law or a Restricted Subsidiary Body Property By-law, as the case may be.

Rules has the meaning given to it in by-laws 74.1 and 74.2.

Scheme Architect means:

(a) Giles Tribe Architects; or

(b) when BPPL owns any Lot, such architect as BPPL may nominate to act as the Scheme Architect; or

(c) when BPPL no longer owns any Lot, such architect as the Community Association may nominate to act as the Scheme Architect.

Section 88B Instrument means the instrument setting out terms of easements, profits a prendre, restrictions on use of land and positive covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919 which is registered with the Community Plan.

Security Key means a key, card, fob, proximity reader or other device used to:

(a) open and close doors, gates and other means of regulating access and egress into and out of Community Property; or

(b) operate alarms, security systems or communication systems.

Selling and Leasing Activities means activities relating to the sale, including sale by auction, and leasing of Lots, the promotion of the Community Scheme and all ancillary activities.

Service includes:

(a) water supply;

(b) gas supply;

(c) electricity supply;

(d) air conditioning;

(e) a telephone service;

(f) a computer data service;

(g) a digital transmission service;

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(h) a radio service;

(i) a television service;

(j) any service received and dispersed by a Special Receiving Facility; and

(k) a system for removal of sewage;

(l) a stormwater drainage system;

(m) the Irrigation System;

(n) a ventilation system;

(o) a fire safety or control system;

(p) a security system;

(q) any other service, system or facility which contributes to the amenity, or enhances the enjoyment or safety, of the Lots.

Service Line includes the following in the Community Parcel: any pipe, conduit, wire, cable, duct, drain, gully, trap, pit, mast, pole, aerial or other means by or through which a Service is or is to be provided and any structure, tank, pump and other equipment that is associated with any of those means.

Service Provider means a person that provides a Service.

Services Plan means the services plan (in 2 sheets) attached to this management statement.

Special Lot A means the part of lot 6 in the Community Plan identified as Special Lot A on the Concept Plan.

Special Lot B means the part of lot 6 in the Community Plan identified as Special Lot B on the Concept Plan.

Special Receiving Facility means a facility for receiving and dispersing signals in connection with free to air television, pay television and other forms of service and any associated equipment.

Special Restricted Community Property has the meaning given to in by-law 28.2.

Stormwater Quality Control Devices include stormwater pits and sumps, gross pollutant traps, Gabion structures, gullys, detention tanks and any necessary ancillary equipment, including pumps, in the Community Parcel.

Strata By-laws means the by-laws in force for a Strata Scheme under the Strata Management Act.

Strata Lot means a lot in a Strata Scheme.

Strata Management Act means the Strata Schemes Management Act 1996.

Strata Parcel means the land the subject of a Strata Scheme.

Strata Plan means a strata plan that subdivides a Community Development Lot or a Precinct Development Lot.

Strata Scheme means a strata scheme created when a Strata Plan is registered.

Subsidiary Body means a Precinct Association, a Neighbourhood Association or an Owners Corporation.

Subsidiary Body By-laws means a Precinct Management Statement, a Neighbourhood Management Statement or Strata By-laws.

Subsidiary Body Parcel means the land the subject of a Precinct Scheme, a Neighbourhood Scheme or a Strata Scheme.

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Subsidiary Body Property means Precinct Property, Neighbourhood Property or Common Property.

Subsidiary Body Scheme means a Precinct Scheme, a Neighbourhood Scheme or a Strata Scheme.

Subsidiary Plan means a Precinct Plan, a Neighbourhood Plan or a Strata Plan.

Vehicle includes a boat, trailer, caravan, car or any other towable item.

Wharf has the meaning given to it in by-law 55.1.

Works includes:

(a) the erection of a new structure; and

(b) changing the appearance of an existing structure, including changing the colour or materials used in the external surfaces of the structure; and

(c) the installation or attachment of fly screens, security devices, awnings, radio, television and other aerials and antennae, satellite dishes, any solar energy collection panels and equipment associated with them, any energy conservation equipment, any solar hot water system and equipment associated with it and any other item that is visible outside a Lot; and

(d) the addition of new landscaping; and

(e) changing existing landscaping

in the Community Parcel but excludes:

(f) Development Activities; and

(g) changing the interior of an existing building in a Lot.

Interpretation

93.3 In this management statement unless the context clearly indicates otherwise:

(a) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown, the Community Association, a Subsidiary Body and any other organisation or legal entity; and

(b) **including** and **includes** are not words of limitation; and

(c) the words **at any time** mean at any time and from time to time; and

(d) the word **vary** includes add to, delete from and cancel; and

(e) maintain in good condition includes keep clean and tidy; and

(f) a reference to a right or obligation of a person is a reference to a right or obligation of that person under this management statement; and

(g) a reference to a natural person includes their personal representatives, successors, and assigns; and

(h) a reference to a corporation includes its successors and assigns; and

(i) a reference to a document is a reference to a document of any kind, including a plan; and

(j) a reference to a body or Authority that ceases to exist is, unless otherwise prescribed by law, a reference to a body or Authority having substantially the same objects as the named body or Authority; and

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(k) a reference to legislation or a legislative provision includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision; and

(l) a reference to a time is to that time in Sydney; and

(m) if a period of time is specified to start from a certain day or the day of an act or event, the period is to be calculated exclusive of that day; and

(n) a requirement to do any thing includes a requirement to cause that thing to be done; and

(o) a word that is derived from a defined word has a corresponding meaning; and

(p) the singular includes the plural and vice-versa; and

(q) words importing one gender include all other genders.

93.4 Headings and Index

By-law headings and the Index are inserted for convenience and do not affect the interpretation of this management statement.

93.5 Notices

Any notice, demand, consent, approval, request or communication under this management statement must be in writing.

AMENDMENT TO MANAGEMENT STATEMENT
AC330682 NEW BY-LAW 94 ADDEDED SEE
ANNEXURE "A"

REGISTERED 13- 6- 2006

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Req:R923990 /Doc:DP 0270347 M /Rev:30-Jun-2006 /Sts:SC.OK /Prt:20-Feb-2008 16:23 /Pgs:ALL /Seq:81 of 97
Ref:CM/9049779 /Src:E

Part 7

Plans

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Req:R923990 /Doc:DP 0270347 M /Rev:30-Jun-2006 /Sts:SC.OK /Prt:20-Feb-2008 16:23 /Pgs:ALL /Seq:82 of 97
Ref:CM/9049779 /Src:E

DP270347

Plan of Open Access Ways

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PLAN FORM 5

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

THIS PLAN IL ..ATES THE OPEN ACCESS WAYS WHICH ARE COMMUNITY PROPERTY AND NOT A PUBLIC ROAD WITHIN THE MEANING OF THE ROADS ACT 1993.
(FOR SURVEY REFERENCE MARKS DEFINING THE OPEN ACCESS WAYS REFER TO THE DETAIL PLAN WITHIN THE DEPOSITED PLAN)

L. ..AGEMENT STATEMENT
SHEET 83 OF 94 SHEETS

PLAN OF OPEN ACCESS WAYS
IN 2 SHEETS

PARRAMATTA RIVER

TENNYSON ROAD

KENDALL BAY

MGA NORTH

PT1 PT3 6 10 11 9 15 PT8

WOODLANDS AVENUE MAGNOLIA DRIVE JUNIPER DRIVE ORCHARDS AVENUE

OPEN ACCESS WAYS WITHIN COMMUNITY PROPERTY LOT 1

SHEET 2 OF ACCESS WAY PLAN ADJOINS

DP270347
PLAN OF OPEN ACCESS WAYS FOR COMMUNITY AT BREAKFAST POINT

I TASY MORAITIS Surveyor
of LEVEL 5, 17 RANDLE STREET SURRY HILLS. NSW. 2010
certify that this is a plan of the ~~service works~~/access ways provided for the development shown in Community/ ~~Precinct/Neighbourhood~~ Plan No. .....

Signed .....

REGISTERED 18·8·2003

TABLE OF SHORT LINES		
LINE	BEARING	DISTANCE
1	344°20'	1.715
2	164°20'30"	3.185
3	344°24'	1.5
5	164°24	4.82
6	180°21'	6.295
8	146°57'	1.695
10	128°34'	5.675
11	164°24'	2.95
12	209°34'	4.935
13	323°25'	6
14	318°08'	1.38
15	164°24'30"	3.845
17	353°33'	6
19	164°24'30"	1.725
20	344°24'30"	2.755
21	74°25'40"	0.885
22	254°24'50"	1.79

TABLE OF SHORT ARCS				
LINE	ARC	RADIUS	CHORD	DISTANCE
4	10	50.65	248°45'	9.985
7	26.04	48.7	199°26'	25.73
9	43.45	48.65	120°22'	42.02
16	6.46	59.35	347°32'	6.46
18	6.425	59.35	359°33'	6.42

SURVEYOR'S REFERENCE: 990421 DMC

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Req:8973990 /Doc:DP 0270347 M /Rev:20-Jun-2006 /Sts:SC.OK /Prt:26-Feb-2008 16:33 /Pgs:ALL /Seq:83 of 97
Ref:CSV/9042919 /Src:E

PLAN FORM 5

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

THIS PLAN ILLUSTRATES THE OPEN ACCESS WAYS WHICH ARE COMMUNITY PROPERTY AND NOT A PUBLIC ROAD WITHIN THE MEANING OF THE ROADS ACT 1993.
(FOR SURVEY REFERENCE MARKS DEFINING THE OPEN ACCESS WAYS REFER TO THE DETAIL PLAN WITHIN THE DEPOSITED PLAN)

PLAN OF OPEN ACCESS WAYS MANAGEMENT STATEMENT

(IN 2 SHEETS)

SHEET 84 OF 94 SHEETS

SHEET 1 OF ACCESS WAY PLAN ADJOINS

DP270347

PLAN OF OPEN ACCESS WAYS FOR COMMUNITY AT BREAKFAST POINT

I TASY MORAITIS Surveyor
of LEVEL 5, 17 RANDLE STREET
SURRY HILLS. NSW. 2010
certify that this is a plan of the ~~service works~~/access ways provided for the development shown in Community/ ~~Precinct/Neighbourhood~~ Plan No. .....

Signed Tasy Moraitis

RE... 18·8·2003

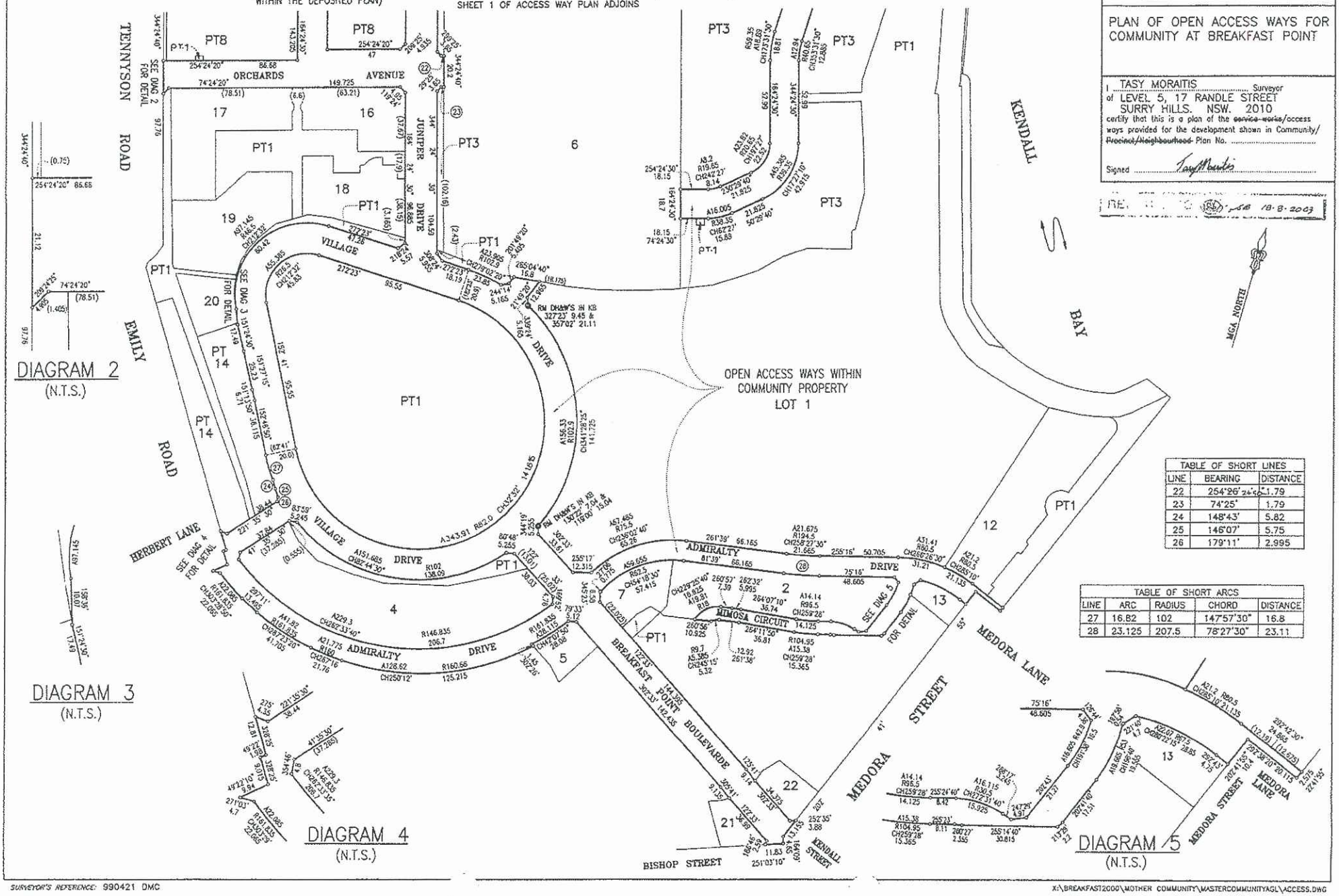


DIAGRAM 2
(N.T.S.)

DIAGRAM 3
(N.T.S.)

DIAGRAM 4
(N.T.S.)

DIAGRAM 5
(N.T.S.)

TABLE OF SHORT LINES

LINE	BEARING	DISTANCE
22	254°26'24"[illegible]	1.79
23	74°25'	1.79
24	148°43'	5.82
25	146°07'	5.75
26	179°11'	2.995

TABLE OF SHORT ARCS

LINE	ARC	RADIUS	CHORD	DISTANCE
27	16.82	102	147°57'30"	16.8
28	23.125	207.5	78°27'30"	23.11

SURVEYOR'S REFERENCE: 990421 DMC

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Reg:DP270347 Doc:DP 6210343 K /Rev:20-Jun-2006 /Sts:SC.OK /Prt:22-Feb-2008 16:23 /Pgs:ALL /Seq:84 of 97
Ref:(b)/3060179 /Src:E

Req:R923990 /Doc:DP 0270347 M /Rev:30-Jun-2006 /Sts:SC.OK /Prt:20-Feb-2008 16:23 /Pgs:ALL /Seq:85 of 97
Ref:CM/9049779 /Src:E

DP270347

Services Plan

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PLAN FORM 5

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

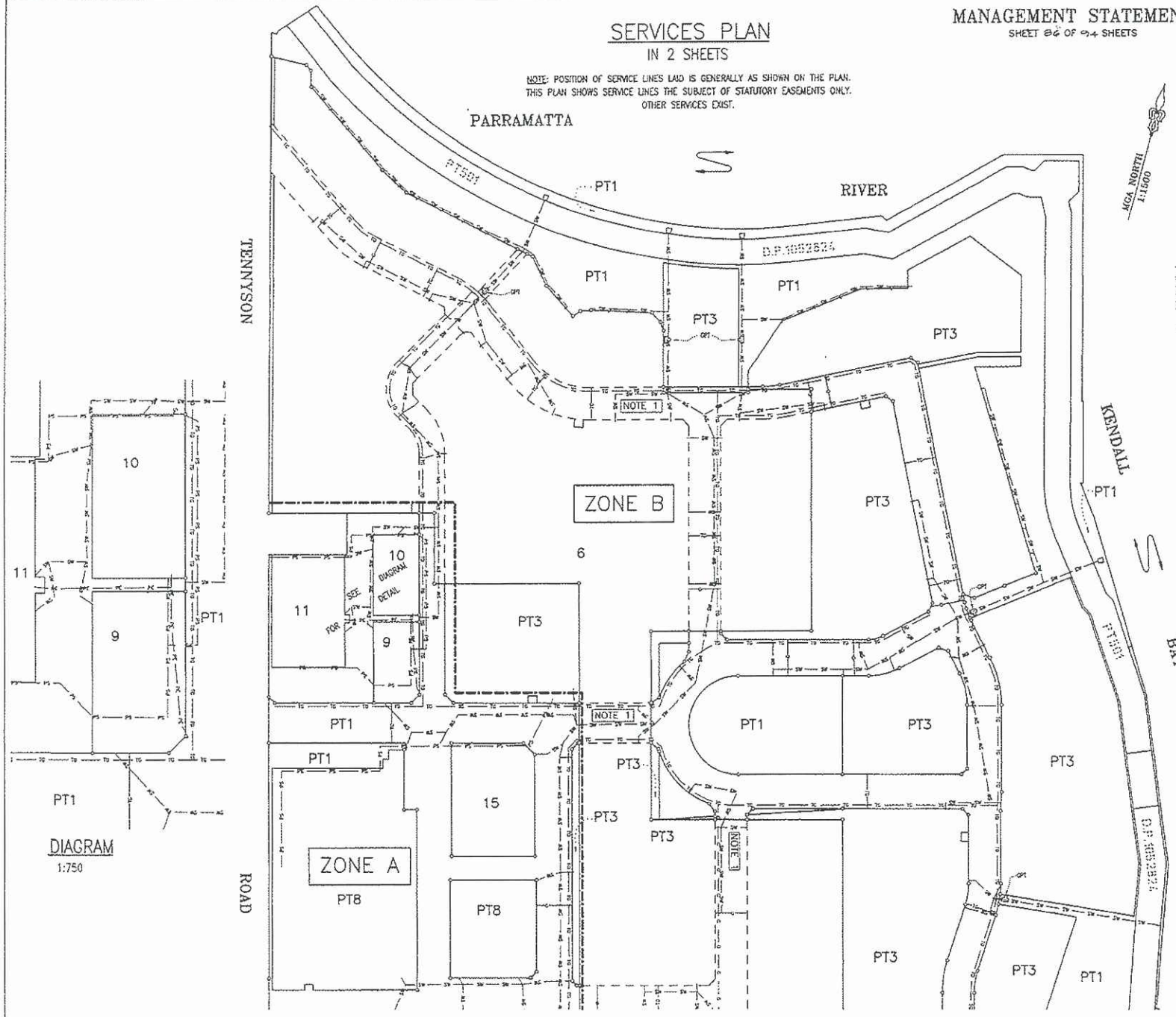
SERVICES PLAN

IN 2 SHEETS

MANAGEMENT STATEMENT

SHEET 84 OF 94 SHEETS

NOTE: POSITION OF SERVICE LINES LAID IS GENERALLY AS SHOWN ON THE PLAN. THIS PLAN SHOWS SERVICE LINES THE SUBJECT OF STATUTORY EASEMENTS ONLY. OTHER SERVICES EXIST.



DP270347

PLAN OF SERVICE LINES AS LAID & TO BE LAID FOR COMMUNITY AT BREAKFAST POINT.

I TASY MORAITIS Surveyor of LEVEL 5, 17 RANDLE STREET SURRY HILLS. NSW. 2010 certify that this is a plan of the service works/accessways provided for the development shown in Community/~~Precinct/Neighbourhood~~ Plan No. .....

Signed .....

SB 18-8-2003

ZONES

ZONE A: SERVICE LINES WITHIN ZONE A ARE SERVICES AS LAID

ZONE B: SERVICE LINES WITHIN ZONE B ARE SERVICES TO BE LAID

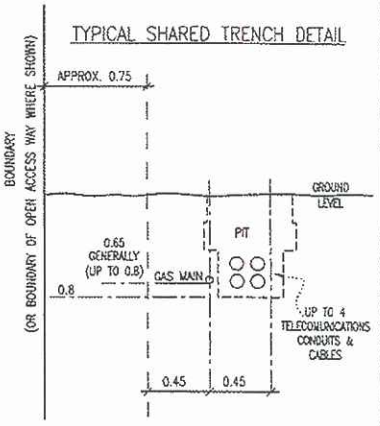
DENOTES ZONE BOUNDARY

LEGEND OF UNDERGROUND SERVICES

- G — GAS MAIN (AGL) – UP TO 0.8 DEEP
- PE — PRIVATE ELECTRICITY CABLES – UP TO 1.0 DEEP
- PS — PRIVATE SEWER MAIN INCLUSIVE OF PIPES, PITS, PUMPS & STRUCTURES UP TO 3 DEEP.
- SW — STORM WATER INCLUSIVE OF PIPES, PITS, GROSS POLLUTANT TRAPS & STRUCTURES. PIPE SIZES UP TO 1.5ø, UP TO 3 METRES IN DEPTH.
- TC — SHARED TRENCH COMPRISING– T – TELECOMMUNICATIONS CABLES & CONDUITS (TELSTRA) G – GAS MAINS (AGL)

NOTE 1 – DENOTES EXTENT OF EASEMENT FOR ACCESS (M25) WITHIN LOT 6. THESE PARTS TO BECOME FUTURE OPEN ACCESS WAYS.

TYPICAL SHARED TRENCH DETAIL



SURVEYOR'S REFERENCE: 990421 MASTER COMMUNITY

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Req:R603396 /Doc:DP 0270347 M /Rev:30-Jun-2005 /Sts:SC.OK /Prt:24-Feb-2006 16:02 /Pgs:ALL /Seq:16 of 23
Ref:(21/9049)16/ 15C12

PLAN FORM 5

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

NOTE: POSITION OF SERVICE LINES LAID IS GENERALLY AS SHOWN ON THE PLAN.
THIS PLAN SHOWS SERVICE LINES THE SUBJECT OF STATUTORY EASEMENTS ONLY.
OTHER SERVICES EXIST.

SERVICES PLAN

IN 2 SHEETS

MA. .GEMENT STATEMENT

SHEET 6 OF 14 SHEETS

DP270347

PLAN OF SERVICE LINES AS LAID & TO BE LAID FOR COMMUNITY AT BREAKFAST POINT.

I TASY MORAITIS Surveyor
of LEVEL 5, 17 RANDLE STREET SURRY HILLS. NSW. 2010
certify that this is a plan of the service works/access ways provided for the development shown in Community/Precinct/Neighbourhood Plan No. .....
Signed .....

LS 18.8.2003

TENNYSON ROAD

EMILY ROAD

HERBERT LANE

KENDALL BAY

MEDORA STREET

MEDORA LANE

KENDALL STREET

BISHOP STREET

ZONE A

ZONE B

LOT 1

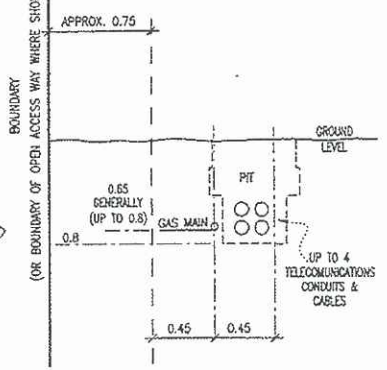
PT1 PT3 PT8 PT14

NOTE 1

GABION STRUCTURE WITH LOT 501

MGA NORTH 1:1500

TYPICAL SHARED TRENCH DETAIL



LEGEND OF UNDERGROUND SERVICES

- G — GAS MAIN (AGL) – UP TO 0.8 DEEP
- PE — PRIVATE ELECTRICITY CABLES – UP TO 1.0 DEEP
- PS — PRIVATE SEWER MAIN INCLUSIVE OF PIPES, PITS, PUMPS & STRUCTURES UP TO 3 DEEP.
- SW — STORM WATER INCLUSIVE OF PIPES, PITS, GROSS POLLUTANT TRAPS & STRUCTURES. PIPE SIZES UP TO 1.5ø, UP TO 3 METRES IN DEPTH.
- TG — SHARED TRENCH COMPRISING– T – TELECOMMUNICATIONS CABLES & CONDUITS (TELSTRA) G – GAS MAINS (AGL)

NOTE 1 – DENOTES EXTENT OF EASEMENT FOR ACCESS (W25) WITHIN LOT 6. THESE PARTS TO BECOME FUTURE OPEN ACCESS WAYS.

ZONES

ZONE A: SERVICE LINES WITHIN ZONE A ARE SERVICES AS LAID
ZONE B: SERVICE LINES WITHIN ZONE B ARE SERVICES TO BE LAID

DENOTES ZONE BOUNDARY

SURVEYOR'S REFERENCE: 980421 MASTER COMMUNITY

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Req:R492093 /Doc:DP 0270347 M /Rev:30-Jun-2006 /St:15C.OK /Prt:20-Feb-2008 16:23 /Pgs:ALL /Seq:3 of 9?
Req: GM/R492093 /Doc:E

DP270347

Concept Plan

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PLAN FORM 5

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

CONCEPT PLAN
(IN 3 SHEETS)

MAN. .MENT STATEMENT
SHEET 89 OF 94 SHEETS

DP270347

CONCEPT PLAN FOR COMMUNITY AT BREAKFAST POINT

REG SB 18.8.2003

LEGEND:
A1 – AREA 1 SHOWN HATCHED
A2 – AREA 2 SHOWN HATCHED
A3 – AREA 3 SHOWN HATCHED
A4 – AREA 4
A5 – AREA 5 SHOWN HATCHED
A6 – AREA 6 SHOWN HATCHED
A7 – AREA 7
A8 – AREA 8
A9 – AREA 9
A10 – AREA 10
A11 – AREA 11
NRA – DENOTES NON RESIDENTIAL AREA
DENOTES PEDESTRIAN/CYCLE SHAREWAY
– DENOTES B1
– DENOTES B2

COMMUNITY FACILITIES
– BOATSHED
– MEETING PLACE
– BBQ PAVILION
– GRANDSTAND
– COMMUNITY RECREATION FACILITY

MGA NORTH

KENDALL BAY

PARRAMATTA RIVER

CABARITA ROAD

MEDORA STREET

BISHOP STREET

EMILY STREET

HERBERT LANE

TENNYSON ROAD

EXISTING WHARF

SEA WALL WITHIN COMMUNITY PROPERTY

PROPOSED FORESHORE

LOT 501 D.P.1052824

LOT 501

LOT 501

PT1 PT501 D.P.1052824

PT1 COMMUNITY PROPERTY

WATERFRONT PARK

BOATSHED

COMMUNITY RECREATION FACILITY

PT3 (NRA)

PT3 (N8)

(A8)

(N9)

(N10)

(A10)

(N11)

(A11)

(A1)

(A2)

(A3)

(A4)

(A5)

(A6)

(A7)

PT3

PT1

PT8

PT14

6

7

2

4

5

10

9

11

15

16

17

18

19

20

12

13

21

22

ACCESS WAY

OPEN

SHAREWAY

FORESHORE

SPECIAL LOT 'A'

SPECIAL LOT 'B'

PEDESTRIAN/CYCLE WAY

CATEHOUSE

No.1 OFFICE

BBQ PAVILION

GRANDSTAND

MEETING PLACE

TENNYSON ROAD BRICK FENCE WITHIN COMMUNITY PROPERTY

SURVEYOR'S REFERENCE: 990421 MASTER COMMUNITY

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Req:R923999 /Doc:DP 0270347 M /Rev:30-Jun-2005 /Sts:SE.OK /Prt:26-Feb-2006 16:23 /Pgs:ALL /Seq:89 of 97
Ref:CAP/990421 /Src:E

PLAN FORM 5

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

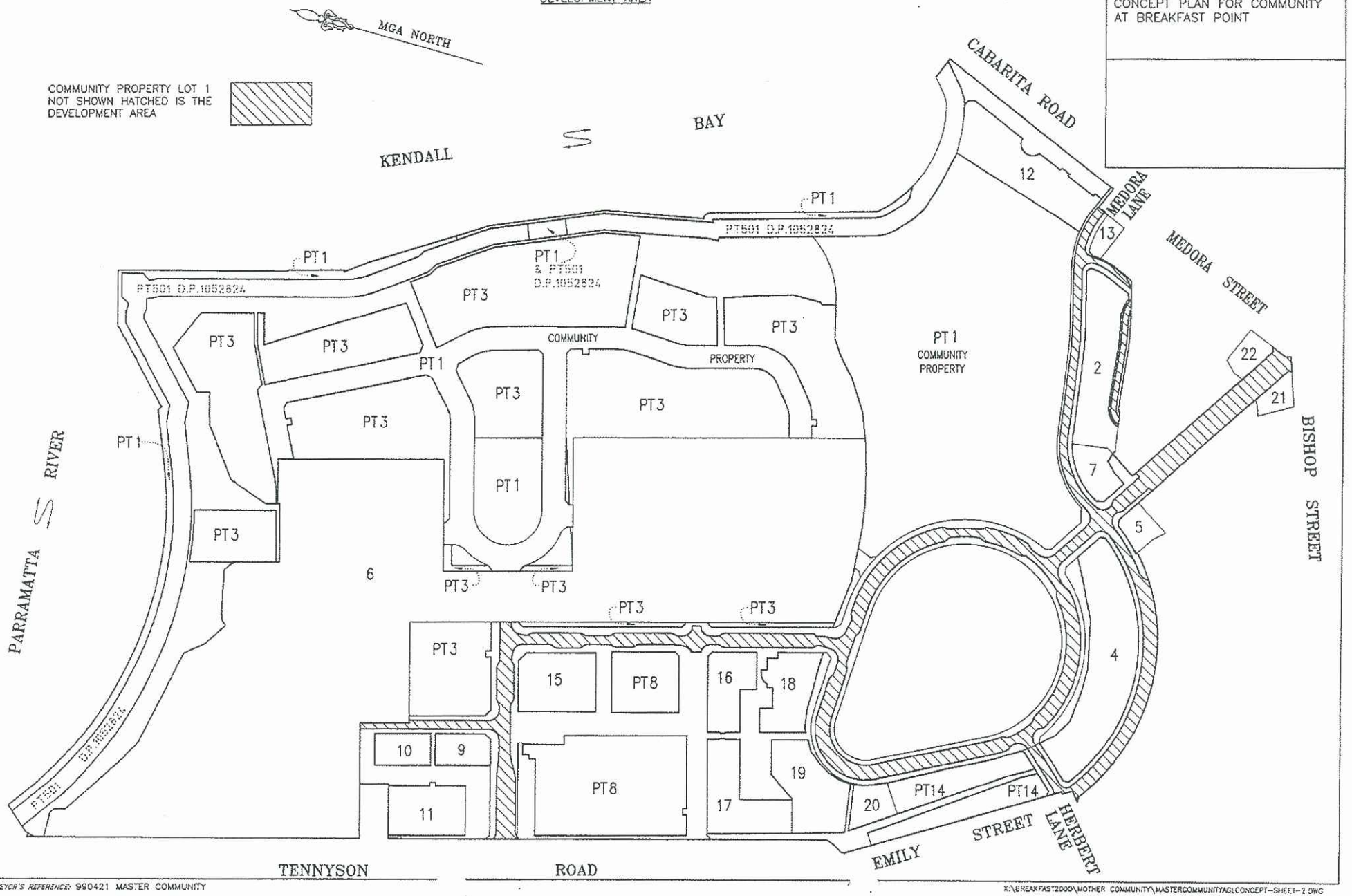
CONCEPT PLAN
(IN 3 SHEETS)
DEVELOPMENT AREA

MANAGEMENT STATEMENT
SHEET 90 OF 94 SHEETS

sb 18.8.2003

DP270347

CONCEPT PLAN FOR COMMUNITY AT BREAKFAST POINT



SURVEYOR'S REFERENCE: 990421 MASTER COMMUNITY

X:\BREAKFAST2000\MOTHER COMMUNITY\MASTERCOMMUNITYAGLCONCEPT-SHEET-2.DWG

PLAN FORM 5

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

DRAFT CONCEPT PLAN

(IN 3 SHEETS)

PLAN SHOWING EXTENT OF EASEMENT FOR PUBLIC ACCESS WITHIN COMMUNITY PROPERTY LOT 1 AND DEVELOPMENT LOT 6

MAN. EMENT STATEMENT

SHEET 91 OF 94 SHEETS

REGIST[illegible] SB 18.8.2003

DP270347

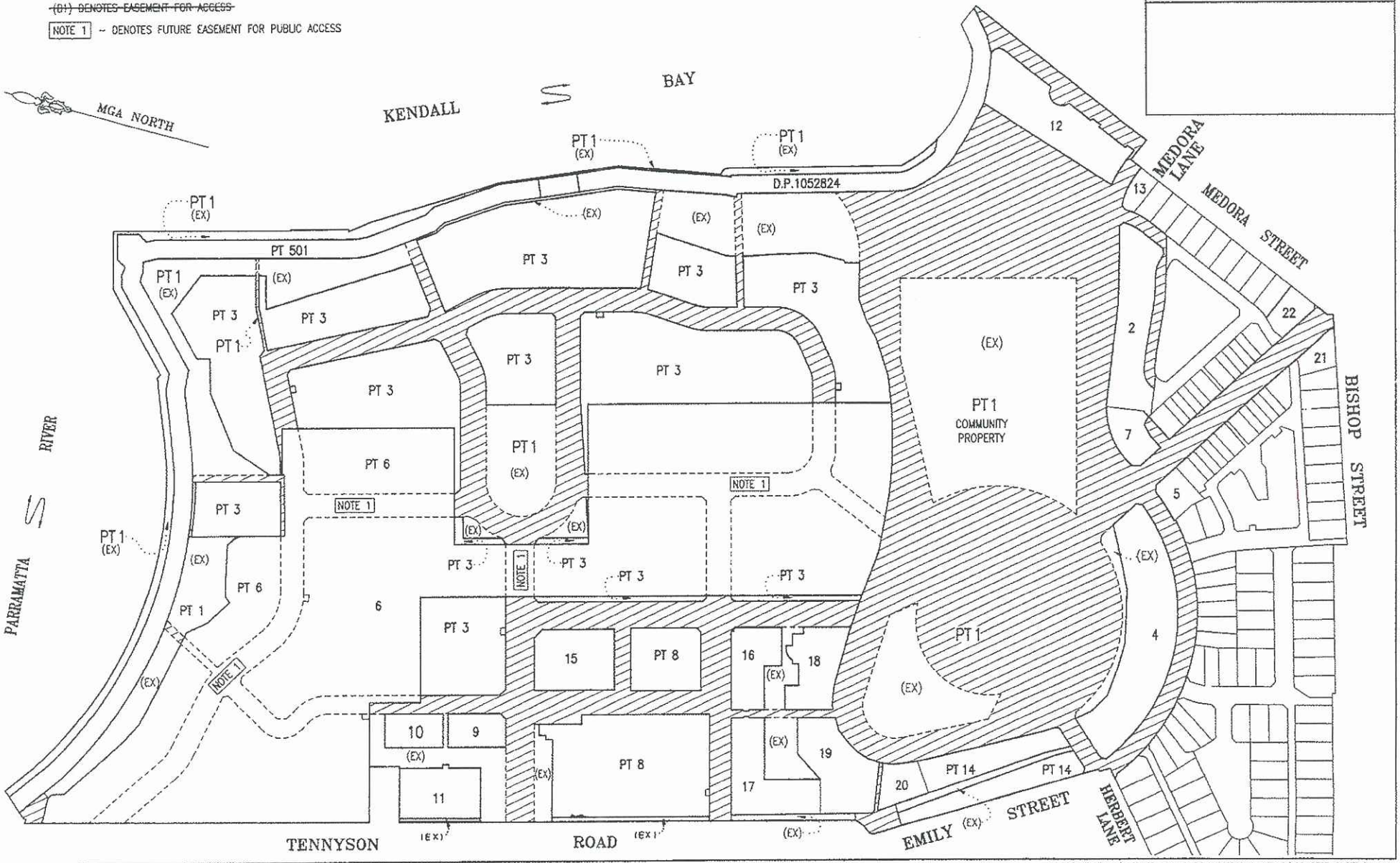
CONCEPT PLAN FOR COMMUNITY AT BREAKFAST POINT

AREA SHOWN HATCHED DENOTES THE EXTENT OF THE EASEMENT FOR PUBLIC ACCESS WITHIN COMMUNITY PROPERTY LOT 1

(EX) DENOTES THOSE PARTS OF COMMUNITY PROPERTY LOT 1 EXCLUDED FORM THE EASEMENT FOR PUBLIC ACCESS.

~~(B1) DENOTES EASEMENT FOR ACCESS~~

NOTE 1 – DENOTES FUTURE EASEMENT FOR PUBLIC ACCESS



SURVEYOR'S REFERENCE: 990421 MASTER COMMUNITY

X:\BREAKFAST2000\MOTHER COMMUNITY\MASTERCOMMUNITYAGL\CONCEPT-SHEET-3a.DWG

Execution Pages

DP270347

SIGNED for **BREAKFAST POINT PTY LIMITED** by its attorney **NEVILLE ALLEN** appointed under power of attorney dated 15 May 2001 registered as Book 4309 No. 81 and the attorney has no knowledge of revocation of that power:)

.....

Signature of Witness

NICHOLAS JACKMAN

Name of Witness

286 NELSON STREET
ANNANDALE NSW 2038

Address of Witness

.....

Attorney

SIGNED for **THE AUSTRALIAN GAS LIGHT COMPANY** by Leslie James Fisk its secretary and duly constituted Attorney under Power of Attorney registered No ~~756~~ 661 Book ~~4262~~ 4267 in the presence of:)

.....

Signature of Witness

HENNIS KAYE

Name of Witness

111 PACIFIC HWY
NORTH SYDNEY

Address of Witness

.....

Attorney

.....

Attorney

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DP270347

SIGNED for **SUPERLOT 3 PTY LIMITED** by its attorney ALAN SYDNEY OSBURG appointed under power of attorney dated 2/7/03 registered as Book 4393 No. 48 and the attorney has no knowledge of revocation of that power:

.....

Signature of Witness

NICHOLAS JACKMAN

Name of Witness

286 NELSON STREET
ANNANDALE NSW 2038

Address of Witness

.....

Attorney

SIGNED for **UNITED SUPER PTY LIMITED** by its Attorney **CAROLYN SUSAN CHUDLEIGH** appointed under power of attorney dated 21 May, 2003 and registered as Book 4388 No 768 and the attorney has no knowledge of revocation of that power:

.....

Signature of Witness

Tracey Cameron

Name of Witness

60 Castlereagh St, Sydney

Address of Witness

.....

Attorney

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DP270347

SIGNED for AGL GAS NETWORKS LIMITED by Leslie Fisk its secretary and duly constituted Attorney under Power of Attorney registered No 661 Book 4267 in the presence of:

× .....

Signature of Witness

× .....

Leslie James Fisk
Attorney

× STUART LOSE

Name of Witness

× SEC NEW SOUTH HEAD RD DOUBLE BAY NSW 2028

Address of Witness

.....

Attorney

EXECUTED BY CAPITAL FINANCE AUSTRALIA LIMITED ACN 069 663 136 BY ITS DULY APPOINTED ATTORNEYS

BRETT LENNARD

MARK COBBETT

Full Names

PURSUANT TO POWER OF ATTORNEY OF WHICH THEY HAVE NO NOTICE OF REVOCATION IN THE PRESENCE OF:

Signature

Signature

NO 968

1300 4288

Witness VESNA MANERA

TERRAS [illegible] CHECKED
[illegible] TITLES OFFICE

REGISTERED 18.8.2003

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Req:R923990 /Doc:DP 0270347 M /Rev:30-Jun-2006 /Sts:SC.OK /Prt:20-Feb-2008 16:23 /Pgs:ALL /Seq:95 of 97
Ref:CM/9049779 /Src:E

Form: 21CSM
Release: 2.0
www.lands.nsw.gov.au

AMENDMENT OF MANAGEMENT STATEMENT

New South Wales
Section 39
Community Land Development Act 1989

DP 270347
MANAGEMENT STATEMENT
ANNEXURE 'A'
Sh 1 of 3 Sh

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) TORRENS TITLE

Lot 1 in Deposited Plan 270347

(B) LODGED BY

Document Collection Box	Name, Address or DX and Telephone	CODE
898S	COURTS CHAMBERS WESTGARTH 1 FARRER PLACE SYDNEY NSW 2000 Tel (02) 9210 6500 LLPN: 123648F Reference: SFE/9025853	CS

(C) APPLICANT

Community Association	Deposited Plan No. 270347

(D) The applicant certifies that by a special resolution passed on 19 April 2006 and in accordance with section 14 of the Community Land Management Act 1989 it amended the management statement as follows: See Annexure "A".

(E) BY-LAWS

Repealed	Added
n/a	94 as fully set out below

(F) TEXT OF ADDED BY-LAW

94 Country Club

94.1 In this by-law, Country Club means the Community Recreation Facility indicatively shown on the Concept Plan. All terms which are used in this by-law and defined in the Community Management Statement have the same meaning in the Community Management Statement.
94.2 By-law 79 does not apply to the Country Club.
94.3 The Executive Committee can make Rules in relation to the Country Club.
94.4 Subject to the Country Club Rules and by-law 94.5, the Country Club is available for use by Owners.
94.5 An Owner may, in the Owner's discretion transfer the rights granted under by-law 94.4 to an Occupier and in doing so the Owner will relinquish their right to access the Country Club.
94.6 The Country Club Rules will determine the number of Permitted Persons who may accompany an Owner (or if applicable an Occupier) to the Country Club. These Rules may change from time to time.
94.7 Any Occupiers who have been granted access to the Country Club before the passing of this by-law, will continue to exercise these rights for the term of their tenancy.

TERMS OF INSTRUMENT NOT CHECKED IN LAND AND PROPERTY NSW

(G) The common seal of the Community association deposited plan 270347 was affixed hereto in the presence of a person authorised by section 8 of the Community Land Management Act 1989 to attest the affixing of the seal.

Rec'd 13-6-06

Signature of witness: M Louch

Name of witness: ms margaret louch

Date: 4/5/06

ASSOCIATION DP 270347 COMMUNITY SEAL

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.
0507

DEPARTMENT OF LANDS
LAND AND PROPERTY INFORMATION DIVISION

NCI

Req:R923990 /Doc:DP 0270347 M /Rev:30-Jun-2006 /Sts:SC.OK /Prt:20-Feb-2008 16:23 /Pgs:ALL /Seq:96 of 97
Ref:CM/9049779 /Src:E

DP 270347
MANAGEMENT STATEMENT
ANNEXURE 'A'
96 of 97

BCS Strata Management
ABN 86 010 633 351

Locked Bag 22, Haymarket, NSW 1238
DX 88820 Haymarket
bcs_sydney@bcssm.com.au
www.bcssm.com.au

Ph. 02 8216 0397
Fax. 02 9212 6269

bcs
Body Corporate Services

MINUTES OF A SPECIAL GENERAL MEETING
THE OWNERS – DEPOSITED PLAN NO. 270347

ADDRESS OF THE COMMUNITY ASSOCIATION: **BREAKFAST POINT**
6 MAGNOLIA DRIVE
BREAKFAST POINT, NSW 2137

DATE, PLACE & TIME OF MEETING: A Special General Meeting of The Owners - Deposited Plan No. 270347 was held on Wednesday, 19 April, 2006 in the Boardroom of the Country Club, Breakfast Point. The meeting commenced at 6:05pm.

PRESENT: SP – 70931, Rosewood (Lot 11) – Mr J Mobberley

Breakfast Point Pty Limited (Lots 14, 22, 25, 40, 42, 43, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62 & 64) – Mr C Walkerdene, Company Nominee

SP – 74968, Celeste (Lot 18) – Mr T Drover

SP – 74764, Carolina (Lot 19) – Mr K Brooks

SP – 75930, Aylsbury (Lot 63) – Ms J Sinclair

IN ATTENDANCE: Mr B Fergus, Ms R Platt, Mr M Domazetovski (BCS Strata Management Pty Limited)

CHAIRPERSON (ACTING): Mr M Domazetovski (BCS Strata Management Pty Limited)

The Agenda for the meeting was:

1. MINUTES: 'RESOLVED that the minutes of the last general meeting of the owners corporation be confirmed as a true account of the proceedings at that meeting.

2. ADDITIONAL BY-LAW, COUNTRY CLUB:

1. That the Community Association AMENDED AND SPECIALLY RESOLVED in accordance with section 14 of the Community Land Management Act 1989 to amend the Community Management Statement by adding By-Law 94 noted below to the Community Management Statement for land at Breakfast Point.

TERMS OF INSTRUMENT NOT CHECKED IN LAND AND PROPERTY NSW

Regd. 13-6-2006

Req:R923990 /Doc:DP 0270347 M /Rev:30-Jun-2006 /Sts:SC.OK /Prt:20-Feb-2008 16:23 /Pgs:ALL /Seq:97 of 97
Ref:CM/9049779 /Src:E

94 Country Club

94.1 In this by-law, **Country Club** means the Community Recreation Facility indicatively shown on the Concept Plan. All terms which are used in this by-law and defined in the Community Management Statement have the same meaning in the Community Management Statement.

94.2 By-law 79 does not apply to the Country Club.

94.3 The Executive Committee can make Rules in relation to the Country Club.

94.4 Subject to the Country Club Rules and by-law 94.5, the Country Club is available for use by Owners.

94.5 An Owner may, in the Owner's discretion transfer the rights granted under by-law 94.4 to an Occupier and in doing so the Owner will relinquish their right to access the Country Club.

94.6 The Country Club Rules will determine the number of Permitted Persons who may accompany an Owner (or if applicable an Occupier) to the Country Club. These Rules may change from time to time.

94.7 Any Occupiers who have been granted access to the Country Club before the passing of this by-law, will continue to exercise these rights for the term of their tenancy.

2. RESOLVED that Body Corporate Services be authorised to affix the common seal of the Community Association to give effect to the amendment referred to above.

3. RESOLVED that Body Corporate Services be authorised to produce certificate of title folio identifier 1/270347 at the Land and Property Information for the purpose of registering the amendment to the Community Management Statement.

4. RESOLVED that Body Corporate Services be authorised to do anything reasonably necessary to give effect to the amendment to the Community Management Statement.

CLOSURE: There being no further business, the chairperson declared the meeting closed at 6:20pm.

M. dom. 19/4/06

Chairperson: **Date:**

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Regd. 13-6-06

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AMENDMENT OF MANAGEMENT STATE

New South Wales
Section 39
Community Land Development Act 1989

DP 270347

Management Statement
Annexure 'B' Sheet 1 of 2

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) **TORRENS TITLE** 1/270347

(B) **LODGED BY**

Document Collection Box	Name, Address or DX and Telephone	CODE
16	DYNAMIC PROPERTY SERVICES PTY LTD DX 11643 SYDNEY DOWNTOWN Reference:	CS

(C) **APPLICANT**

Community Association	Deposited Plan No. 270347

(D) The applicant certifies that by a special resolution passed on 20 November 2007 and in accordance with section 14 of the Community Land Management Act 1989 it amended the management statement as follows:

(E) **BY-LAWS**

Repealed	Added
67.1	67.1 as fully set out below

(F) **TEXT OF ADDED BY-LAW**

See annexure

The Common Seal of the Community Association D.P. 270347was hereunto affixed on 28 November 2007 in the presence of Dynamic Property Services P/L being the person(s) authorised by Section 8 of the Community Land Management Act 1989, to attest the affixing of the seal.

SIGNED by DYNAMIC PROPERTY SERVICES PTY LTD (ACN 002 006 760) by its attorney LISA BRANSON duly appointed by Power of Attorney dated 4 May 2005 and who hereby states that she has not received any notice of the revocation of such Power of Attorney. (Registered Book 4457 Number 484)

Signature of witness:

Name(s): Mary McAviney, Suite 2 Level 5, 162 Goulburn St, Sydney

COMMUNITY ASSOCIATION DP No 270347 Common Seal

(G) The common seal of the Community association deposited plan 270347 was affixed hereto in the presence of a person authorised by section 8 of the Community Land Management Act 1989 to attest the affixing of the seal.

Signature of witness: MARY McAVINEY

Name of witness:

Date: 28 November 2007

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.
0507

DEPARTMENT OF LANDS
LAND AND PROPERTY INFORMATION DIVISION

REGISTERED 19-2-2008

DEPOSITED PLAN 270347

ANNEXURE

RESOLVED that by SPECIAL RESOLUTION By-Law 67.1 of the Community Management Statement be amended to read:

"By-Law 67 – Keeping of Animals
67.1 An Owner or Occupier may keep in the Community Parcel without the approval of the Community Association:

One dog; or
One cat

provided the Owner and Occupier has obtained the approval of the relevant Subsidiary Body."

The Common Seal of the Community Association D.P. 270347was hereunto affixed on 28 November 2007 in the presence of Dynamic Property Services P/L being the person(s) authorised by Section 8 of the Community Land Management Act 1989, to attest the affixing of the seal.

COMMUNITY ASSOCIATION DP No. 270347 ★ Common Seal

SIGNED by DYNAMIC PROPERTY SERVICES PTY LTD (ACN 002 006 760) by its attorney LISA BRANSON duly appointed by Power of Attorney dated 4 May 2005 and who hereby states that she has not received any notice of the revocation of such Power of Attorney. (Registered Book 4457 Number 484)

Signature of witness:

Name(s): Mary McAviney, Suite 2 Level 5, 162 Goulburn St, Sydney

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COMMUNITY MANAGEMENT STATEMENT

FOR LAND AT

BREAKFAST POINT

WARNING
The provisions of this community management statement are copyright. Copying them or part of them is illegal and may result in exposure to criminal and civil proceedings unless the copy made is for a bona fide dealing or activity concerning the land to which this community management statement relates.

Holding Redlich
Level 14
60 Castlereagh Street
SYDNEY NSW 2000
Telephone: (02) 9234 4444
Facsimile: (02) 9234 4400
DX 529 SYDNEY
Ref: Neville Allen

REGISTERED 18.8.2003

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Part 1

By-laws fixing details of development

This community management statement

1. Nature of a community management statement

A community management statement is a set of by-laws and plans that regulate the management and operation of a community scheme.

2. Entities with ownership and management responsibilities

This management statement identifies 4 entities in the Community Scheme that have ownership and management responsibilities. These are:

(a) Community Association; and

(b) Precinct Association; and

(c) Neighbourhood Association; and

(d) Owners Corporation.

3. Types of lot

This management statement identifies 4 types of lot in the Community Scheme. These are:

(a) Community Development Lot; and

(b) Precinct Development Lot; and

(c) Neighbourhood Lot; and

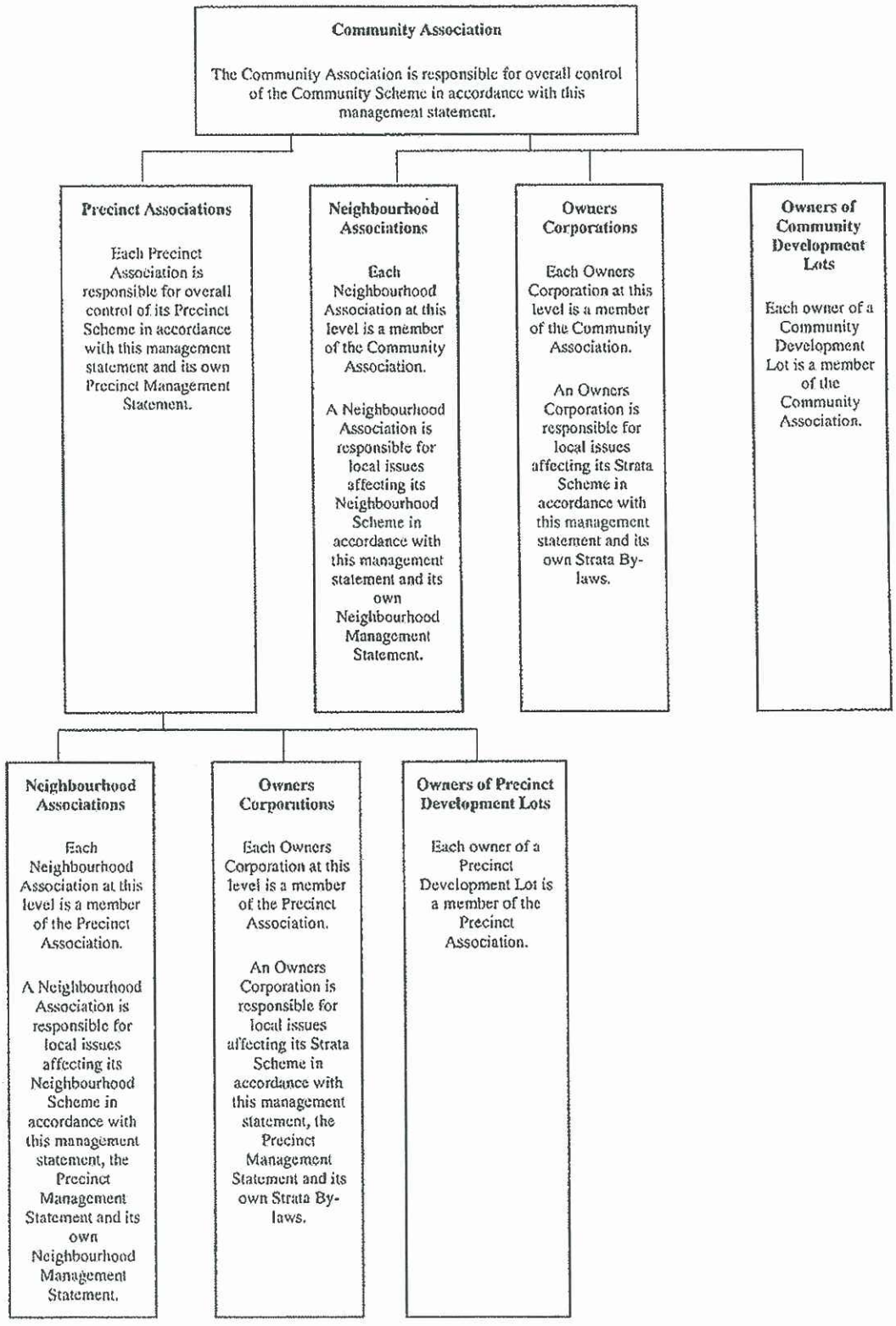
(d) Strata Lot.

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4. Management Structure

The management structure for the Community Scheme is as follows:



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5. Compliance with this management statement and Subsidiary Body By-laws

General requirements

5.1 The Community Association, each Subsidiary Body and each Owner or Occupier must comply with this management statement.

5.2 A Precinct Association and each Owner or Occupier of a Precinct Development Lot must comply with the applicable Precinct Management Statement.

5.3 A Neighbourhood Association and each Owner or Occupier of a Neighbourhood Lot must comply with an applicable Precinct Management Statement and the applicable Neighbourhood Management Statement.

5.4 An Owners Corporation and each Owner or Occupier of a Strata Lot must comply with an applicable Precinct Management Statement and the applicable Strata By-laws.

Special requirements for some Lots

5.5 To ensure that this management statement and any applicable Subsidiary Body By-laws provide appropriately for the rights and obligations of Owners and Occupiers of each type of Lot, some by-laws apply specifically to and must be complied with by those Owners and Occupiers.

5.6 By-laws that do not specifically apply to one or more than one type of Lot apply to all Lots and must be complied with by all Owners and Occupiers.

6. Structure of this management statement

This management statement has 7 parts:

Part 1	**This community management statement**	By-laws 1 to 6 are about the purpose of this management statement and how it works. The Community Association may vary these by-laws by special resolution.
	Architectural and Landscape Standards and Works	By-laws 7 and 8 are about how the Community Association will control and preserve architectural and landscape standards and the procedures to be followed before Works are carried out. The Community Association may vary these by-laws only by unanimous resolution.

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Part 2	**Restricted Community Property**	By-laws about Restricted Community Property and Restricted Subsidiary Body Property are in this part. The Community Association may vary by-laws in this part only by special resolution and only with the consent of the person entitled to the benefit of the by-law varied.
Part 3	**Mandatory matters**	By-laws about many matters including open access ways, Community Property, Subsidiary Body Property, fencing, garbage, services, insurance and the Executive Committee are in this part. The Community Association may vary by-laws in this part by special resolution.
Part 4	**Optional matters**	By-laws about many matters including obligations and requirements of the Community Association, Subsidiary Bodies, Owners and Occupiers, keeping animals, laundry, security, trading activity, parking, signs and agreements which may be entered into. The Community Association may vary by-laws in this part by special resolution.
Part 5	**By-laws required by Authorities**	By-laws required by Authorities. The Community Association may vary by-laws in this part by special resolution and only with the consent of the Authority that required them.
Part 6	**Definitions and interpretation**	This part explains what capitalised words and expressions mean. It also explains how to interpret this management statement. The Community Association may vary by-laws in this part by special resolution.

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Part 7	**Plans**	This part comprises the plans forming part of this management statement.

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Architectural and Landscape Standards and Works

7. Architectural and Landscape Standards

Standards

7.1 The Community Association may prescribe and vary architectural and landscape standards for the Community Parcel generally and for any Community Development Lot specifically, by unanimous resolution and, while BPPL owns any Lot, only after receiving the consent of BPPL.

7.2 A Subsidiary Body may prescribe architectural and landscape standards for a Subsidiary Body Parcel generally and if the Subsidiary Body Scheme is a Precinct Scheme or a Neighbourhood Scheme for any lot in the Subsidiary Plan specifically, by unanimous resolution within 6 months of registration of the Subsidiary Plan and, while BPPL owns any Lot, only after receiving the consent of BPPL.

7.3 BPPL may prescribe architectural and landscape standards for any Community Development Lot.

7.4 If a Subsidiary Body prescribes architectural and landscape standards under this by-law 7:

(a) the Subsidiary Body must promptly serve on the Community Association a copy of the architectural and landscape standards prescribed; and

(b) after receipt of that copy the Community Association is responsible for the administration of those architectural and landscape standards as though the Community Association had itself prescribed them.

7.5 If BPPL prescribes architectural and landscape standards under this by-law 7:

(a) BPPL must promptly serve on the Community Association a copy of the architectural and landscape standards prescribed; and

(b) after receipt of that copy the Community Association is responsible for the administration of those architectural and landscape standards as though the Community Association had itself prescribed them.

7.6 The parties bound by this management statement are bound by the Architectural and Landscape Standards.

Inconsistency

7.7 If there is inconsistency between the architectural and landscape standards prescribed by a Subsidiary Body and the architectural and landscape standards prescribed by the Community Association, the architectural and landscape standards prescribed by the Community Association prevail and the architectural and landscape standards prescribed by the Subsidiary Body are taken to be varied to the extent necessary to remove the inconsistency.

7.8 If there is inconsistency between the architectural and landscape standards prescribed by BPPL and the architectural and landscape standards prescribed by the Community Association, the architectural and landscape standards prescribed by the Community Association prevail and the architectural and landscape standards prescribed by BPPL are taken to be varied to the extent necessary to remove the inconsistency.

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7.9 If there is inconsistency between the architectural and landscape standards prescribed by BPPL and the architectural and landscape standards prescribed by a Subsidiary Body, the architectural and landscape standards prescribed by the Subsidiary Body prevail and the architectural and landscape standards prescribed by BPPL are taken to be varied to the extent necessary to remove the inconsistency.

Application to vary

7.10 A Subsidiary Body may request the Community Association to vary for its Subsidiary Body Parcel, the Architectural and Landscape Standards.

7.11 A Subsidiary Body may request the Community Association to vary for a Lot in its Subsidiary Plan, the Architectural and Landscape Standards.

7.12 An Owner or Occupier may request the Community Association to vary for their Lot, the Architectural and Landscape Standards.

7.13 A request referred to in by-law 7.10, by-law 7.11 or by-law 7.12 must contain sufficient details of the proposed variation to enable the Community Association to understand with reasonable certainty the nature and extent of the proposed variation.

7.14 A person requesting the Community Association to vary the Architectural and Landscape Standards must provide to the Community Association a letter from the Scheme Architect setting out the Scheme Architect's opinion as to the variation requested.

7.15 The Community Association may, in order to determine a request referred to in by-law 7.10, by-law 7.11 or by-law 7.12, require the provision of additional information, reports or documents.

Copy of Architectural and Landscape Standards to be provided

7.16 If the Community Association varies the Architectural and Landscape Standards, the Community Association must, within a reasonable time, provide a copy of the Architectural and Landscape Standards as varied to:

(a) each Subsidiary Body; and

(b) each Owner of a Community Development Lot.

7.17 If requested by a Subsidiary Body or an Owner or Occupier, the Community Association must provide, at a reasonable cost to that Subsidiary Body, Owner or Occupier, a current copy of the Architectural and Landscape Standards.

8. Works

Approvals

8.1 Subject to by-laws 8.16 and 8.17, no Works may be carried out or remain in the Community Parcel unless:

(a) the provisions of this by-law 8 have been complied with; and

(b) all necessary approvals have been obtained in accordance with this by-law 8; and

(c) any conditions imposed on those approvals have been complied with.

8.2 Subject to by-laws 8.16 and 8.17, a person must not carry out Works in any part of the Community Parcel unless that person first obtains the approval of the Executive Committee.

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8.3 Subject to by-laws 8.16 and 8.17, in addition to the approval of the Executive Committee under by-law 8.2:

(a) if the Works are to be carried out in part of a Subsidiary Body Parcel or in Community Property restricted to a Subsidiary Body, the approval of the relevant Subsidiary Body; and

(b) the approval of any relevant Authority whose approval is required by law,

must be obtained.

Plans and specifications

8.4 A person seeking approval to carry out Works must provide to the Executive Committee when making the application:

(a) plans and specifications for the approval of the Executive Committee; and

(b) a certificate from the Scheme Architect that the Works comply with the Architectural and Landscape Standards and that the Scheme Architect raises no objection to the change that will result from the Works.

Decision of Executive Committee

8.5 To assist the Executive Committee in exercising its powers under this by-law 8, the Executive Committee may:

(a) request the person seeking approval to submit:

(i) additional plans and specifications; and

(ii) details of changes to be made to the plans and specifications if an Authority requires those changes; and

(iii) any other relevant information or material, including reports; and

(b) at the cost of the person seeking approval, retain the services of an independent consultant with special skills and expertise in:

(i) architecture; or

(ii) landscaping; or

(iii) any other relevant discipline.

8.6 In making a decision as to whether to approve an application to carry out Works, the Executive Committee must only be concerned with whether the proposed Works comply with the Architectural and Landscape Standards.

8.7 If the Executive Committee does not make a decision within 3 months after it determines that it has received all the information it requires to enable it to make a decision, the Executive Committee is taken to have refused the application to carry out the Works.

8.8 If the Executive Committee approves the carrying out of Works, that approval does not prevent the Executive Committee from disapproving or approving, with conditions, future Works of the same or similar nature.

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Dispute Resolution

8.9 The Executive Committee and a person seeking approval to carry out Works must endeavour in good faith to resolve a dispute under this management statement before any action is taken under by-law 8.10.

8.10 If a person seeking approval to carry out Works disputes that the Executive Committee has properly applied the Architectural and Landscape Standards in making a decision under this by-law 8 or if the Executive Committee is taken to have refused the application to carry out Works under this by-law 8, the matter can be referred by that person or the Executive Committee to an expert determinator nominated by the Royal Australian Institute of Architects New South Wales Chapter at the request of that person or the Executive Committee (**Expert Determinator**).

8.11 A decision of the Expert Determinator appointed under by-law 8.10 is taken to be a decision of the Executive Committee and binds all parties. By-laws 8.9, 8.10 and this by-law 8.11 are not intended to and do not exclude access to the dispute resolution provisions of the Management Act.

8.12 The costs of a reference under by-law 8.10 are to be paid as the Expert Determinator decides but if the Expert Determinator does not make a decision about those costs, then they are to be paid by the party against whom the Expert Determinator's decision is made or if there is no such party, by the parties equally.

Conditions of approval and bond

8.13 The Executive Committee may:

(a) impose reasonable conditions when it gives its approval to carry out Works; and

(b) require the person seeking approval to provide a bond of such reasonable amount as the Executive Committee determines to be held on account of any damage that may be caused to Community Property or Subsidiary Body Property as a result of the Works.

8.14 Any bond lodged under this by-law 8 must be returned to the person seeking approval to carry out Works within 90 days after notification by that person of completion of the Works and a request for return of the bond, after a deduction (if any) for damage to Community Property or Subsidiary Body Property.

Carrying out Works

8.15 A person who has received approval to carry out Works must, during such carrying out:

(a) ensure that the Works are carried out in a proper and workmanlike manner; and

(b) ensure that the Works are carried out to the reasonable satisfaction of the Community Association, any relevant Subsidiary Body and any relevant Authority; and

(c) ensure there is no damage to Services or Service Lines in the Community Parcel; and

(d) repair any damage caused to any part of the Community Parcel as a result of the Works.

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Developer's Rights

8.16 The Developer has all rights necessary to enable and assist the Developer to carry out the Development Activities, including:

(a) the right to carry out the Development Activities in stages; and

(b) the right to use Special Restricted Community Property and any part of it in connection with the Development Activities.

8.17 Nothing in this by-law 8:

(a) affects the rights of the Developer to carry out Development Activities; or

(b) imposes an obligation on the Developer to obtain approval under this by-law 8 for the purposes of carrying out Development Activities.

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Part 2

Restricted Community Property

9. Restricted Community Property Generally

9.1 The purpose of this by-law 9 is to provide for the coming into existence of Restricted Community Property after the registration of the Community Plan.

9.2 In addition to its powers under the Management Act, but subject to section 23 of that Act, and elsewhere in this management statement, the Community Association has the power under this by-law 9 to make Restricted Community Property By-laws and must, if BPPL gives it a notice under by-law 9.3, do all acts, matters and things necessary for it to make a Restricted Community Property By-law in accordance with that notice.

9.3 If BPPL wants the Community Association to make a Restricted Community Property By-law it must give a notice in that regard to the Community Association.

9.4 If BPPL gives a notice referred to in by-law 9.3 it must include with that notice the following:

(a) details of all matters that must be included in a Restricted Community Property By-law in order for the by-law to comply with section 54 of the Management Act; and

(b) details of all other terms that BPPL believes should be included in the Restricted Community Property By-law; and

(c) a plan showing the part of Community Property in respect of which the Community Association is to make the Restricted Community Property By-law.

9.5 The Community Association can vary this by-law 9 only by special resolution and with the consent of BPPL.

9.6 Despite the effect of any other by-law the Community Association can agree from time to time with a person having Restricted Use Rights as to:

(a) the extent to which that person has the responsibility to control, manage, maintain in good condition, repair and replace the relevant Restricted Community Property; and

(b) the amount to be reimbursed to the Community Association for the costs it incurs in connection with the relevant Restricted Community Property.

9.7 The Community Association can only vary an existing by-law affecting Restricted Community Property by special resolution and with the consent of the person with the benefit of the Restricted Use Rights.

9.8 A Subsidiary Body can only make a new Subsidiary Body By-law or vary an existing Subsidiary Body By-law affecting Restricted Community Property by special resolution and with the consent of the person having the benefit of the Restricted Use Rights.

10. Letterboxes

10.1 This by-law 10 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of each Relevant Letterbox Owner.

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10.2 Use of a letterbox that is installed in Community Property immediately adjacent to a Community Development Lot **(Relevant Letterbox)** is restricted to the Owner or Occupier of that lot **(Relevant Letterbox Owner).**

10.3 Subject to this management statement and any applicable Rules a Relevant Letterbox Owner may have:

(a) access by all means and at all times to; and

(b) exclusive use of,

the Relevant Letterbox.

10.4 A Relevant Letterbox Owner must maintain in good condition, repair and replace the Relevant Letterbox at the Relevant Letterbox Owner's cost.

10.5 A Relevant Letterbox Owner must not replace the Relevant Letterbox unless the letterbox is damaged or destroyed, in which case:

(a) the structure of the replacement letterbox must be in accordance with the Architectural and Landscape Standards; and

(b) the replacement letterbox must be located in the same position as the Relevant Letterbox.

10.6 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 10 relating to the determination, imposition and collection of levies on Relevant Letterbox Owners.

11. Restricted Community Property 1

Restricted Community Property By-law

11.1 This by-law 11 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of each of the Restricted Community Property 1 Owners Corporations.

Use of Restricted Community Property 1

11.2 Use of Restricted Community Property 1 is restricted to the Restricted Community Property 1 Owners Corporations.

11.3 The Strata By-laws of the Restricted Community Property 1 Strata Schemes may authorise or, in the absence of that authorisation, the Restricted Community Property 1 Owners Corporations must authorise the Owners and Occupiers of Strata Lots in their respective Strata Schemes and persons authorised by them to use Restricted Community Property 1.

11.4 Subject to the Management Act, this management statement, the applicable Strata By-laws and any applicable Rules:

(a) the Restricted Community Property 1 Owners Corporations may lock or otherwise secure parts of Restricted Community Property 1 provided that the secretary of the Community Association is given a key or other means of access to the locked or secured parts; and

(b) persons authorised under by-law 11.3 may at all times:

(i) have unrestricted access to Restricted Community Property 1; and

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(ii) use Restricted Community Property 1 for recreation and all other lawful purposes.

Obligations of the Restricted Community Property 1 Owners Corporations

11.5 The Restricted Community Property 1 Owners Corporations must control, manage, maintain in good condition, repair and replace Restricted Community Property 1. To the extent legally possible this by-law 11.5 operates to waive the obligation of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Community Property 1.

11.6 The Restricted Community Property 1 Owners Corporations must reimburse the Community Association for any costs the Community Association incurs in connection with Restricted Community Property 1 in shares proportional to the respective unit entitlements of the Community Development Lots the subdivision of which by Strata Plans constitutes the Restricted Community Property 1 Owners Corporations.

Obligations of the Community Association

11.7 The Community Association must give the Restricted Community Property 1 Owners Corporations regular accounts for the amounts to be reimbursed under this by-law 11. The Community Association may:

(a) include those accounts in administrative fund notices for the Restricted Community Property 1 Owners Corporations; and

(b) require the Restricted Community Property 1 Owners Corporations to pay the amounts to be reimbursed under this by-law 11 in advance and quarterly or at other intervals reasonably determined by the Community Association.

11.8 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 11 relating to the determination, imposition and collection of levies on the Restricted Community Property 1 Owners Corporations.

12. Restricted Community Property 2

Restricted Community Property By-law

12.1 This by-law 12 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of each of the Restricted Community Property 2 Owners Corporations.

Use of Restricted Community Property 2

12.2 Use of Restricted Community Property 2 is restricted to the Restricted Community Property 2 Owners Corporations.

12.3 The Strata By-laws of the Restricted Community Property 2 Strata Schemes may authorise or, in the absence of that authorisation, the Restricted Community Property 2 Owners Corporations must authorise the Owners and Occupiers of Strata Lots in their respective Strata Schemes and persons authorised by them to use Restricted Community Property 2.

12.4 Subject to the Management Act, this management statement, the applicable Strata By-laws and any applicable Rules:

(a) the Restricted Community Property 2 Owners Corporations may lock or otherwise secure parts of Restricted Community Property 2 provided that the secretary of the Community Association is given a key or other means of access to the locked or secured parts; and

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(b) persons authorised under by-law 12.3 may at all times:

(i) have unrestricted access to Restricted Community Property 2; and

(ii) use Restricted Community Property 2 for recreation and all other lawful purposes.

Obligations of the Restricted Community Property 2 Owners Corporations

12.5 The Restricted Community Property 2 Owners Corporations must control, manage, maintain in good condition, repair and replace Restricted Community Property 2. To the extent legally possible this by-law 12.5 operates to waive the obligation of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Community Property 2.

12.6 The Restricted Community Property 2 Owners Corporations must reimburse the Community Association for any costs the Community Association incurs in connection with Restricted Community Property 2 in shares proportional to the respective unit entitlements of the Community Development Lots the subdivision of which by Strata Plans constitutes the Restricted Community Property 2 Owners Corporations.

Obligations of the Community Association

12.7 The Community Association must give the Restricted Community Property 2 Owners Corporations regular accounts for the amounts to be reimbursed under this by-law 12. The Community Association may:

(a) include those accounts in administrative fund notices for the Restricted Community Property 2 Owners Corporations; and

(b) require the Restricted Community Property 2 Owners Corporations to pay the amounts to be reimbursed under this by-law 12 in advance and quarterly or at other intervals reasonably determined by the Community Association.

12.8 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 12 relating to the determination, imposition and collection of levies on the Restricted Community Property 2 Owners Corporations.

13. Restricted Community Property 3

Restricted Community Property By-law

13.1 This by-law 13 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of the Restricted Community Property 3 Owners Corporation.

Use of Restricted Community Property 3

13.2 Use of Restricted Community Property 3 is restricted to the Restricted Community Property 3 Owners Corporation.

13.3 The Strata By-laws of the Restricted Community Property 3 Strata Schemes may authorise or, in the absence of that authorisation, the Restricted Community Property 3 Owners Corporation must authorise the Owners and Occupiers of Strata Lots in its Strata Scheme and persons authorised by them to use Restricted Community Property 3.

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13.4 Subject to the Management Act, this management statement, the applicable Strata By-laws and any applicable Rules:

(a) the Restricted Community Property 3 Owners Corporation may lock or otherwise secure parts of Restricted Community Property 3 but not so as to impede the passing and repassing on foot of Authorised Persons and provided that the secretary of the Community Association is given a key or other means of access to the locked or secured parts; and

(b) persons authorised under by-law 13.3 may at all times:

(i) have unrestricted access to Restricted Community Property 3; and

(ii) use Restricted Community Property 3 for all lawful purposes.

Obligations of the Restricted Community Property 3 Owners Corporation

13.5 The Restricted Community Property 3 Owners Corporation must control, manage, maintain in good condition, repair and replace Restricted Community Property 3. To the extent legally possible this by-law 13.5 operates to waive the obligation of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Community Property 3.

13.6 The Restricted Community Property 3 Owners Corporation must reimburse the Community Association for any costs the Community Association incurs in connection with Restricted Community Property 3.

Obligations of the Community Association

13.7 The Community Association must give the Restricted Community Property 3 Owners Corporation regular accounts for the amounts to be reimbursed under this by-law 13. The Community Association may:

(a) include those accounts in administrative fund notices for the Restricted Community Property 3 Owners Corporation; and

(b) require the Restricted Community Property 3 Owners Corporation to pay the amounts to be reimbursed under this by-law 13 in advance and quarterly or at other intervals reasonably determined by the Community Association.

13.8 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 13 relating to the determination, imposition and collection of levies on the Restricted Community Property 3 Owners Corporation.

14. Restricted Community Property 4

Restricted Community Property By-law

14.1 This by-law 14 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of each of the Restricted Community Property 4 Owners Corporations.

Use of Restricted Community Property 4

14.2 Use of Restricted Community Property 4 is restricted to the Restricted Community Property 4 Owners Corporations.

14.3 The Strata By-laws of the Restricted Community Property 4 Strata Schemes may authorise or, in the absence of that authorisation, the Restricted Community Property 4 Owners

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Corporations must authorise the Owners and Occupiers of Strata Lots in their respective Strata Schemes and persons authorised by them to use Restricted Community Property 4.

14.4 Subject to the Management Act, this management statement, the applicable Strata By-laws and any applicable Rules:

(a) the Restricted Community Property 4 Owners Corporation may lock or otherwise secure parts of Restricted Community Property 4 but not so as to impede the passing and repassing on foot of Authorised Persons and provided that the secretary of the Community Association is given a key or other means of access to the locked or secured parts; and

(b) persons authorised under by-law 14.3 may at all times:

(i) have unrestricted access to Restricted Community Property 4; and

(ii) use Restricted Community Property 4 for all lawful purposes.

Obligations of the Restricted Community Property 4 Owners Corporations

14.5 The Restricted Community Property 4 Owners Corporations must control, manage, maintain in good condition, repair and replace Restricted Community Property 4. To the extent legally possible this by-law 14.5 operates to waive the obligation of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Community Property 4.

14.6 The Restricted Community Property 4 Owners Corporations must reimburse the Community Association for any costs the Community Association incurs in connection with Restricted Community Property 4 in shares proportional to the respective unit entitlements of the Community Development Lots the subdivision of which by Strata Plans constitutes the Restricted Community Property 4 Owners Corporations.

Obligations of the Community Association

14.7 The Community Association must give the Restricted Community Property 4 Owners Corporations regular accounts for the amounts to be reimbursed under this by-law 14. The Community Association may:

(a) include those accounts in administrative fund notices for the Restricted Community Property 4 Owners Corporations; and

(b) require the Restricted Community Property 4 Owners Corporations to pay the amounts to be reimbursed under this by-law 14 in advance, quarterly or at other intervals reasonably determined by the Community Association.

14.8 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 14 relating to the determination, imposition and collection of levies on the Restricted Community Property 4 Owners Corporations.

15. Restricted Community Property 5

Restricted Community Property By-law

15.1 This by-law 15 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of each of the Restricted Community Property 5 Owners Corporations.

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Use of Restricted Community Property 5

15.2 Use of Restricted Community Property 5 is restricted to the Restricted Community Property 5 Owners Corporations.

15.3 The Strata by-laws of the Restricted Community Property 5 Strata Schemes may authorise or, in the absence of that authorisation, the Restricted Community Property 5 Owners Corporations must authorise the Owners and Occupiers of Strata Lots in their respective Strata Schemes and persons authorised by them to use Restricted Community Property 5.

15.4 Subject to the Management Act, this management statement, any applicable Strata By-laws and any applicable Rules:

(a) the Restricted Community Property 5 Owners Corporations may lock or otherwise secure parts of Restricted Community Property 5 provided that the secretary of the Community Association is given a key or other means of access to the locked or secured parts; and

(b) persons authorised under by-law 15.3 may at all times:

(i) have unrestricted access to Restricted Community Property 5; and

(ii) use Restricted Community Property 5 for recreation and all other lawful purposes.

Obligations of the Restricted Community Property 5 Owners Corporations

15.5 The Restricted Community Property 5 Owners Corporations must control, manage, maintain in good condition, repair and replace Restricted Community Property 5. To the extent legally possible this by-law 15.5 operates to waive the obligation of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Community Property 5.

15.6 The Restricted Community Property 5 Owners Corporations must reimburse the Community Association for any costs the Community Association incurs in connection with Restricted Community Property 5 in shares proportional to the respective unit entitlements of the Community Development Lots the subdivision of which by Strata Plans constitutes the Restricted Community Property 5 Owners Corporations.

Obligations of the Community Association

15.7 The Community Association must give the Restricted Community Property 5 Owners Corporations regular accounts for the amounts to be reimbursed under this by-law 15. The Community Association may:

(a) include those accounts in administrative fund notices for the Restricted Community Property 5 Owners Corporations; and

(b) require the Restricted Community Property 5 Owners Corporations to pay the amounts to be reimbursed under this by-law 15 in advance, quarterly or at other intervals reasonably determined by the Community Association.

15.8 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 15 relating to the determination, imposition and collection of levies on the Restricted Community Property 5 Owners Corporations.

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16. Restricted Community Property 6

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Restricted Community Property By-law

16.1 This by-law 16 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of each of the Restricted Community Property 6 Owners Corporations.

Use of Restricted Community Property 6

16.2 Use of Restricted Community Property 6 is restricted to the Restricted Community Property 6 Owners Corporations.

16.3 The Strata By-laws of the Restricted Community Property 6 Strata Schemes may authorise or, in the absence of that authorisation, the Restricted Community Property 6 Owners Corporations must authorise the Owners and Occupiers of Strata Lots in their respective Strata Schemes and persons authorised by them to use Restricted Community Property 6.

16.4 Subject to the Management Act, this management statement, any applicable Strata By-laws and any applicable Rules:

(a) the Restricted Community Property 6 Owners Corporations may lock or otherwise secure parts of Restricted Community Property 6 provided that the secretary of the Community Association is given a key or other means of access to the locked or secured parts; and

(b) persons authorised under by-law 16.3 may at all times:

(i) have unrestricted access to Restricted Community Property 6; and

(ii) use Restricted Community Property 6 for all lawful purposes.

Obligations of the Restricted Community Property 6 Owners Corporations

16.5 The Restricted Community Property 6 Owners Corporations must control, manage, maintain in good condition, repair and replace Restricted Community Property 6. To the extent legally possible this by-law 16.5 operates to waive the obligation of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Community Property 6.

16.6 The Restricted Community Property 6 Owners Corporations must reimburse the Community Association for any costs the Community Association incurs in connection with Restricted Community Property 6 in shares proportional to the respective unit entitlements of the Community Development Lots the subdivision of which by Strata Plans constitutes the Restricted Community Property 6 Owners Corporations.

Obligations of the Community Association

16.7 The Community Association must give the Restricted Community Property 6 Owners Corporations regular accounts for the amounts to be reimbursed under this by-law 16. The Community Association may:

(a) include those accounts in administrative fund notices for the Restricted Community Property 6 Owners Corporations; and

(b) require the Restricted Community Property 6 Owners Corporations to pay the amounts to be reimbursed under this by-law 16 in advance, quarterly or at other intervals reasonably determined by the Community Association.

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16.8 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 16 relating to the determination, imposition and collection of levies on the Restricted Community Property 6 Owners Corporations.

17. Restricted Community Property 7

Restricted Community Property By-law

17.1 This by-law 17 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of the Restricted Community Property 7 Owners Corporation.

Use of Restricted Community Property 7

17.2 Use of Restricted Community Property 7 is restricted to the Restricted Community Property 7 Owners Corporation.

17.3 The Strata By-laws of the Restricted Community Property 7 Strata Schemes may authorise or, in the absence of that authorisation, the Restricted Community Property 7 Owners Corporation must authorise the Owners and Occupiers of Strata Lots in its Strata Scheme and persons authorised by them to use Restricted Community Property 7.

17.4 Subject to the Management Act, this management statement, any applicable Strata By-laws and any applicable Rules:

(a) the Restricted Community Property 7 Owners Corporation may lock or otherwise secure parts of Restricted Community Property 7 provided that the secretary of the Community Association is given a key or other means of access to the locked or secured parts; and

(b) persons authorised under by-law 17.3 may at all times:

(i) have unrestricted access to Restricted Community Property 7; and

(ii) use Restricted Community Property 7 for recreation and all other lawful purposes.

Obligations of the Restricted Community Property 7 Owners Corporation

17.5 The Restricted Community Property 7 Owners Corporation must control, manage, maintain in good condition, repair and replace Restricted Community Property 7. To the extent legally possible, this by-law 17.5 operates to waive the obligation of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Community Property 7.

17.6 The Restricted Community Property 7 Owners Corporation must reimburse the Community Association for any costs the Community Association incurs in connection with Restricted Community Property 7.

Obligations of the Community Association

17.7 The Community Association must give the Restricted Community Property 7 Owners Corporation regular accounts for the amounts to be reimbursed under this by-law 17. The Community Association may:

(a) include those accounts in administrative fund notices for the Restricted Community Property 7 Owners Corporation; and

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(b) require the Restricted Community Property 7 Owners Corporation to pay the amounts to be reimbursed under this by-law 17 in advance, quarterly or at other intervals reasonably determined by the Community Association.

17.8 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 17 relating to the determination, imposition and collection of levies on the Restricted Community Property 7 Owners Corporation.

18. Restricted Community Property 8

Restricted Community Property By-law

18.1 This by-law 18 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of the Restricted Community Property 8 Neighbourhood Association.

Use of Restricted Community Property 8

18.2 Use of Restricted Community Property 8 is restricted to the Restricted Community Property 8 Neighbourhood Association.

18.3 The Neighbourhood Management Statement of the Restricted Community Property 8 Neighbourhood Scheme may authorise or, in the absence of that authorisation, the Restricted Community Property 8 Neighbourhood Association must authorise the Owners and Occupiers of Neighbourhood Lots in its Neighbourhood Scheme and persons authorised by them to use the parts of Restricted Community Property 8 that have been identified by the Developer as being appropriate for their respective exclusive use and notified.

18.4 Subject to the Management Act, this management statement and, in particular, by-laws 46.7 and 46.8, the applicable Neighbourhood Management Statement and any applicable Rules each of the persons authorised under by-law 18.3 may at all times:

(a) have unrestricted access to the part of Restricted Community Property 8 that they are authorised to use under by-law 18.3 (**Authorised Part RCP 8**); and

(b) use Authorised Part RCP 8 for recreation and all other lawful purposes; and

(c) carry out Works in Authorised Part RCP 8 in accordance with by-law 8.

Obligations of the Restricted Community Property 8 Neighbourhood Association

18.5 The Restricted Community Property 8 Neighbourhood Association must control, manage, maintain in good condition, repair and replace Restricted Community Property 8 but it may, by notice to an Owner who has been authorised to use a part of Restricted Community Property 8 under by-law 18.3, require that Owner to perform those obligations in respect of that part at the Owner's expense. To the extent legally possible this by-law 18.5 operates to waive the obligation of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Community Property 8.

18.6 The Restricted Community Property 8 Neighbourhood Association must reimburse the Community Association for any costs the Community Association incurs in connection with Restricted Community Property 8.

Obligations of the Community Association

18.7 The Community Association must give the Restricted Community Property 8 Neighbourhood Association regular accounts for the amounts to be reimbursed under this by-law 18. The Community Association may:

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(a) include those accounts in administrative fund notices for the Restricted Community Property 8 Neighbourhood Association; and

(b) require the Restricted Community Property 8 Neighbourhood Association to pay the amounts to be reimbursed under this by-law 18 in advance, quarterly or at other intervals reasonably determined by the Community Association.

18.8 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 18 relating to the determination, imposition and collection of levies on the Restricted Community Property 8 Neighbourhood Association.

19. Restricted Community Property 9

Restricted Community Property By-law

19.1 This by-law 19 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of the Restricted Community Property 9 Neighbourhood Association.

Use of Restricted Community Property 9

19.2 Use of Restricted Community Property 9 is restricted to the Restricted Community Property 9 Neighbourhood Association.

19.3 The Neighbourhood Management Statement of the Restricted Community Property 9 Neighbourhood Scheme may authorise or, in the absence of that authorisation, the Restricted Community Property 9 Neighbourhood Association must authorise the Owners and Occupiers of Neighbourhood Lots in its Neighbourhood Scheme and persons authorised by them to use the parts of Restricted Community Property 9 that have been identified by the Developer as being appropriate for their respective exclusive use and notified.

19.4 Subject to the Management Act, this management statement and, in particular, by-laws 46.7 and 46.8, the applicable Neighbourhood Management Statement and any applicable Rules each of the persons authorised under by-law 19.3 may at all times:

(a) have unrestricted access to the part of Restricted Community Property 9 that they are authorised to use under by-law 19.3 (**Authorised Part RCP 9**); and

(b) use Authorised Part RCP 9 for recreation and all other lawful purposes; and

(c) carry out Works in Authorised Part RCP 9 in accordance with by-law 8.

Obligations of the Restricted Community Property 9 Neighbourhood Association

19.5 The Restricted Community Property 9 Neighbourhood Association must control, manage, maintain in good condition, repair and replace Restricted Community Property 9 but it may, by notice to an Owner who has been authorised to use a part of Restricted Community Property 9 under by-law 19.3, require that Owner to perform those obligations in respect of that part at the Owner's expense. To the extent legally possible this by-law 19.5 operates to waive the obligation of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Community Property 9.

19.6 The Restricted Community Property 9 Neighbourhood Association must reimburse the Community Association for any costs the Community Association incurs in connection with Restricted Community Property 9.

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Obligations of the Community Association

19.7 The Community Association must give the Restricted Community Property 9 Neighbourhood Association regular accounts for the amounts to be reimbursed under this by-law 19. The Community Association may:

(a) include those accounts in administrative fund notices for the Restricted Community Property 9 Neighbourhood Association; and

(b) require the Restricted Community Property 9 Neighbourhood Association to pay the amounts to be reimbursed under this by-law 19 in advance, quarterly or at other intervals reasonably determined by the Community Association.

19.8 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 19 relating to the determination, imposition and collection of levies on the Restricted Community Property 9 Neighbourhood Association.

20. Restricted Community Property 10

Restricted Community Property By-law

20.1 This by-law 20 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of the Restricted Community Property 10 Neighbourhood Association.

Use of Restricted Community Property 10

20.2 Use of Restricted Community Property 10 is restricted to the Restricted Community Property 10 Neighbourhood Association.

20.3 The Neighbourhood Management Statement of the Restricted Community Property 10 Neighbourhood Scheme may authorise or, in the absence of that authorisation, the Restricted Community Property 10 Neighbourhood Association must authorise the Owners and Occupiers of Neighbourhood Lots in its Neighbourhood Scheme and persons authorised by them to use the parts of Restricted Community Property 10 that have been identified by the Developer as being appropriate for their respective exclusive use and notified.

20.4 Subject to the Management Act, this management statement and, in particular, by-laws 46.7 and 46.8, the applicable Neighbourhood Management Statement and any applicable Rules each of the persons authorised under by-law 20.3 may at all times:

(a) have unrestricted access to the part of Restricted Community Property 10 that they are authorised to use under by-law 20.3 (**Authorised Part RCP 10**); and

(b) use Authorised Part RCP 10 for recreation and all other lawful purposes; and

(c) carry out Works in Authorised Part RCP 10 in accordance with by-law 8.

Obligations of the Restricted Community Property 10 Neighbourhood Association

20.5 The Restricted Community Property 10 Neighbourhood Association must control, manage, maintain in good condition, repair and replace Restricted Community Property 10 but it may, by notice to an Owner who has been authorised to use a part of Restricted Community Property 10 under by-law 20.3, require that Owner to perform those obligations in respect of that part at the Owner's expense. To the extent legally possible this by-law 20.5 operates to waive the obligation of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Community Property 10.

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20.6 The Restricted Community Property 10 Neighbourhood Association must reimburse the Community Association for any costs the Community Association incurs in connection with Restricted Community Property 10.

Obligations of the Community Association

20.7 The Community Association must give the Restricted Community Property 10 Neighbourhood Association regular accounts for the amounts to be reimbursed under this by-law 20. The Community Association may:

(a) include those accounts in administrative fund notices for the Restricted Community Property 10 Neighbourhood Association; and

(b) require the Restricted Community Property 10 Neighbourhood Association to pay the amounts to be reimbursed under this by-law 20 in advance, quarterly or at other intervals reasonably determined by the Community Association.

20.8 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 20 relating to the determination, imposition and collection of levies on the Restricted Community Property 10 Neighbourhood Association.

21. Restricted Community Property 11

Restricted Community Property By-law

21.1 This by-law 21 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of the Restricted Community Property 11 Neighbourhood Association.

Use of Restricted Community Property 11

21.2 Use of Restricted Community Property 11 is restricted to the Restricted Community Property 11 Neighbourhood Association.

21.3 The Neighbourhood Management Statement of the Restricted Community Property 11 Neighbourhood Scheme may authorise or, in the absence of that authorisation, the Restricted Community Property 11 Neighbourhood Association must authorise the Owners and Occupiers of Neighbourhood Lots in its Neighbourhood Scheme and persons authorised by them to use the parts of Restricted Community Property 11 that have been identified by the Developer as being appropriate for their respective exclusive use and notified.

21.4 Subject to the Management Act, this management statement and, in particular, by-laws 46.7 and 46.8, the applicable Neighbourhood Management Statement and any applicable Rules each of the persons authorised under by-law 21.3 may at all times:

(a) have unrestricted access to the part of Restricted Community Property 11 that they are authorised to use under by-law 21.3 (**Authorised Part RCP 11**); and

(b) use Authorised Part RCP 11 for recreation and all other lawful purposes; and

(c) carry out Works in Authorised Part RCP 11 in accordance with by-law 8.

Obligations of the Restricted Community Property 11 Neighbourhood Association

21.5 The Restricted Community Property 11 Neighbourhood Association must control, manage, maintain in good condition, repair and replace Restricted Community Property 11 but it may, by notice to an Owner who has been authorised to use a part of Restricted Community Property 11 under by-law 21.3, require that Owner to perform those obligations in respect of that part at the Owner's expense. To the extent legally possible this by-law 21.5 operates to

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waive the obligation of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Community Property 11.

21.6 The Restricted Community Property 11 Neighbourhood Association must reimburse the Community Association for any costs the Community Association incurs in connection with Restricted Community Property 11.

Obligations of the Community Association

21.7 The Community Association must give the Restricted Community Property 11 Neighbourhood Association regular accounts for the amounts to be reimbursed under this by-law 21. The Community Association may:

(a) include those accounts in administrative fund notices for the Restricted Community Property 11 Neighbourhood Association; and

(b) require the Restricted Community Property 11 Neighbourhood Association to pay the amounts to be reimbursed under this by-law 21 in advance, quarterly or at other intervals reasonably determined by the Community Association.

21.8 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 21 relating to the determination, imposition and collection of levies on the Restricted Community Property 11 Neighbourhood Association.

22. Restricted Subsidiary Body Property

22.1 The purpose of this by-law 22 is:

(a) to provide for the coming into existence of Restricted Subsidiary Body Property; and

(b) to ensure that the Community Association has access to Restricted Subsidiary Body Property as it comes into existence.

The Community Association can vary this by-law 22 only by special resolution and with the consent of BPPL, while it is the owner of any Lot.

22.2 When a Community Development Lot or a Precinct Development Lot owned by a person other than BPPL is subdivided by a Subsidiary Plan, the owner of that Lot must ensure that a by-law is included in the applicable Subsidiary Body By-laws by which the Subsidiary Body grants Restricted Use Rights to the Community Association in such terms and in respect of such part of the Subsidiary Body Property as BPPL decides in its absolute discretion and identifies in a notice to the owner of that Lot.

22.3 When a Community Development Lot or a Precinct Development Lot owned by BPPL is subdivided by a Subsidiary Plan, BPPL may procure that a by-law is included in the applicable Subsidiary Body By-laws by which the Subsidiary Body grants Restricted Use Rights to the Community Association in such terms and in respect of such part of the Subsidiary Body Property as BPPL decides in its absolute discretion.

22.4 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has the power under this by-law 22 to accept and must do all acts, matters and things necessary for it to accept all grants of Restricted Use Rights in respect of Restricted Subsidiary Body Property unless the Community Association, having obtained the prior consent to the resolution of BPPL if it is then the owner of any Lot, resolves not to do so by special resolution and so notifies the Subsidiary Body within 3 months of the creation of the Subsidiary Body Scheme.

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22.5 If BPPL gives a notice referred to in by-law 22.2 it must include with that notice the following:

(a) details of all matters that must be included in the Restricted Subsidiary Body Property By-law in order for the by-law to comply with section 54 of the Management Act; and

(b) details of all other terms that BPPL decides in its absolute discretion should be included in the Restricted Subsidiary Body Property By-law, including terms allowing the Community Association to:

(i) make agreements with other persons, including the Estate Manager, to exercise the Community Association's rights or functions in connection with the Restricted Subsidiary Body Property; and

(ii) make Rules in relation to Restricted Subsidiary Body Property; and

(iii) install security devices in the Restricted Subsidiary Body Property as if it were Community Property; and

(iv) lock or secure the Restricted Subsidiary Body Property as if it were Community Property; and

(v) regulate traffic across the Restricted Subsidiary Body Property as if it were Community Property; and

(vi) licence use of any part of the Restricted Subsidiary Body Property as if it were Community Property; and

(c) a plan showing the part of the Subsidiary Body Property in respect of which the Subsidiary Body is to make the Restricted Subsidiary Body Property By-law.

22.6 The Community Association must levy its members in accordance with the Management Act for its costs in connection with Restricted Subsidiary Body Property.

23. Restricted Subsidiary Body Property 1

23.1 The use of an apartment forming part of the Common Property of the Strata Scheme created by the registration of the Strata Plan in respect of Community Development Lot 15 **(Restricted Subsidiary Body Property 1)** will be restricted to the Community Association by a by-law in the Strata By-laws of that scheme.

23.2 The Community Association must do all acts, matters and things necessary for it to accept the grant of Restricted Use Rights in respect of Restricted Subsidiary Body Property 1 when those rights are created.

23.3 During the term of the Estate Management Agreement, including the period of any renewal of the agreement, the Estate Manager may, at no fee, have the exclusive use of Restricted Subsidiary Body Property 1 as an apartment to house a person employed in connection with the management of the Community Scheme. If the Community Association so requests, the Estate Manager must enter into an agreement to occupy Restricted Subsidiary Body Property 1 at a rent of $1 per annum and otherwise on such terms as the Community Association reasonably requires.

23.4 The Community Association can vary this by-law 23 only by special resolution and with the consent of BPPL, while it is the owner of any Lot.

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24. Restricted Subsidiary Body Property 2 and Restricted Subsidiary Body Property 3

24.1 The Community Association can vary this by-law 24 only by special resolution and with the consent of BPPL, while it is the owner of any Lot.

Restricted Subsidiary Body Property 2

24.2 The use of Restricted Subsidiary Body Property 2 forming part of the Precinct Property created by the registration of the Precinct Plan in respect of Special Lot A will be restricted to the Community Association by a by-law in the Precinct Management Statement of that scheme.

24.3 The Community Association must do all acts, matters and things necessary for it to accept the grant of Restricted Use Rights in respect of Restricted Subsidiary Body Property 2 when those rights are created.

24.4 The by-law in the Precinct Management Statement granting Restricted Use Rights in respect of Restricted Subsidiary Body Property 2 will include various matters and terms, including the obligation on the part of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Subsidiary Body Property 2.

24.5 The Community Association must levy its members in accordance with the Management Act for its costs in connection with Restricted Subsidiary Body Property 2.

Restricted Subsidiary Body Property 3

24.6 The use of Restricted Subsidiary Body Property 3 forming part of the Precinct Property created by the registration of the Precinct Plan in respect of Special Lot B will be restricted to the Community Association by a by-law in the Precinct Management Statement of that scheme.

24.7 The Community Association must do all acts, matters and things necessary for it to accept the grant of Restricted Use Rights in respect of Restricted Subsidiary Body Property 3 when those rights are created.

24.8 The by-law in the Precinct Management Statement granting Restricted Use Rights in respect of Restricted Subsidiary Body Property 3 will include various matters and terms, including the obligation on the part of the Community Association to control, manage, maintain in good condition, repair and replace Restricted Subsidiary Body Property 3.

24.9 The Community Association must levy its members in accordance with the Management Act for its costs in connection with Restricted Subsidiary Body Property 3.

25. Further Restricted Subsidiary Body Property

25.1 The use of any Special Receiving Facility installed in Subsidiary Body Property may be restricted to the Community Association by a by-law in the applicable Subsidiary Body By-laws.

25.2 The Community Association must do all acts, matters and things necessary for it to accept the grant of Restricted Use Rights in respect of any such Special Receiving Facility when those rights are created.

25.3 The by-law in the applicable Subsidiary Body By-laws granting Restricted Use Rights in respect of any such Special Receiving Facility will include various matters and terms, including the obligation on the part of the Community Association to control, manage, maintain in good condition, repair and replace the Special Receiving Facility.

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25.4 The Community Association must levy its members in accordance with the Management Act for its costs in connection with any such Special Receiving Facility.

25.5 The Community Association can vary this by-law 25 only by special resolution and with the consent of BPPL, while it is the owner of any Lot.

26. Conversion of Community Development Lot to Community Property

26.1 If BPPL wishes to convert a Community Development Lot forming part of lot 6 in the Community Plan to Community Property it must give a notice in that regard to the Community Association.

26.2 If BPPL gives a notice referred to in by-law 26.1 and includes with that notice:

(a) the conversion instrument and the items referred to in clauses 1(1)(a) and 1(1)(b) of schedule 6 to the Development Act signed by the owner of the Community Development Lot to be converted; and

(b) the item referred to in clause 1(1)(c) of schedule 6 to the Development Act,

then, in addition to its powers under the Development Act and elsewhere in this management statement, the Community Association has the power under this by-law 26 to consent and must do all acts, matters and things necessary for it to consent to the conversion.

27. Rights of the Developer

The Developer is entitled to carry out Development Activities.

28. Special Restricted Community Property

Restricted Community Property By-law

28.1 This by-law 28 is a Restricted Community Property By-law. The Community Association can vary it only by special resolution and with the consent of each AGL Party and each Developer.

28.2 To enable and assist the Developer to carry out Development Activities, use of the Development Area and Service Lines associated with Private Services (**Special Restricted Community Property**) is restricted to the Developer on the terms set out in this by-law 28 and the Developer has the right at any time to:

(a) unrestricted access by all means and at all times to and over Special Restricted Community Property; and

(b) park Vehicles and leave equipment and building materials in Special Restricted Community Property; and

(c) place in or attach to Special Restricted Community Property temporary structures, including temporary offices and sheds; and

(d) install, alter and connect Services in Special Restricted Community Property; and

(e) place in or attach to Special Restricted Community Property marketing and advertising signs, placards, banners and notices; and

(f) conduct Selling and Leasing Activities, including the holding of auctions, in Special Restricted Community Property; and

(g) build and use a display facility in Special Restricted Community Property in connection with Selling and Leasing Activities; and

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(h) hold events and functions in Special Restricted Community Property in connection with Selling and Leasing Activities; and

(i) lock or secure parts of Special Restricted Community Property provided that the secretary of the Community Association is given a key for the locked or secured area.

28.3 Unless the rights of the Developer under this by-law 28 have ended for a part or the whole of Special Restricted Community Property no other person can have Restricted Use Rights in respect of that part or the whole of Special Restricted Community Property.

28.4 Nothing in this management statement binds the Developer so that the Developer may be hindered in or prevented from exercising its rights under this by-law 28.

Obligations of the Developer

28.5 The Developer must:

(a) repair any damage to Special Restricted Community Property caused by the exercise of the rights of the Developer under this by-law 28; and

(b) take reasonable steps to minimise disturbance to Owners and Occupiers as a result of the carrying out of the Development Activities in Special Restricted Community Property; and

(c) control, manage, maintain in good condition and repair Special Restricted Community Property while its use is restricted to the Developer; and

(d) leave Special Restricted Community Property clean and tidy after Development Activities are finished.

28.6 For the purposes of compliance with section 54 of the Management Act it is noted that there are no matters for inclusion in this by-law 28 relating to the determination, imposition and collection of levies on the Developer.

Obligations of the Community Association

28.7 Subject to the rights and obligations of the Developer under this by-law 28, the Community Association must control, manage, maintain in good condition and repair Special Restricted Community Property.

The end of the rights of the Developer under this by-law 28

28.8 The rights of the Developer under this by-law 28:

(a) for any part of Special Restricted Community Property, end when the Developer gives notice to the Community Association that the part is no longer required in connection with Development Activities; and

(b) for all Special Restricted Community Property, end when the Developer gives notice to the Community Association that no part is required any longer in connection with Development Activities.

Notice to Community Association

28.9 The rights of the Developer under this by-law 28 are available to any AGL Party as if the AGL Party was a person in respect of which BPPL has given notice to the Community Association to the effect that that person is to have the same rights under this by-law 28 as BPPL has.

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Additional rights of AGL Party

28.10 If Residue Land owned by an AGL Party is subdivided by a Subsidiary Plan, the relevant AGL Party may procure that a by-law is included in the applicable Subsidiary Body By-laws by which the Subsidiary Body grants Restricted Use Rights to the Community Association in such terms and in respect of such part of the Subsidiary Body Property as the relevant AGL Party decides in its absolute discretion.

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Part 3

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Mandatory Matters

29. Open Access Ways and the Pedestrian/Cycle Shareway

29.1 The Community Association must control, manage, maintain in good condition and repair and replace the Open Access Ways.

29.2 The Community Association must control, manage, maintain in good condition and repair and replace the Pedestrian/Cycle Shareway

29.3 The Community Association must control, manage, maintain in good condition and repair and replace any Subsidiary Body Property set apart as a means of open access under section 42 or section 43A of the Development Act.

29.4 No one may:

(a) ride a skateboard; or

(b) use roller skates or roller blades; or

(c) play games,

on any Open Access Way or any Subsidiary Body Property set aside as a means of open access under section 42 or section 43A of the Development Act.

29.5 A bicycle may be ridden in Community Property or Subsidiary Body Property only on the Pedestrian/Cycle Shareway.

30. Behaviour of Owners, Occupiers and others on Community Property or Subsidiary Body Property

30.1 An Owner or Occupier and a Permitted Person must be adequately clothed when in Community Property or Subsidiary Body Property.

30.2 Subject to this management statement, children in the care of an Owner or Occupier or Permitted Person must not be allowed by that Owner, Occupier or Permitted Person:

(a) to play in Community Property or Subsidiary Body Property other than:

(i) in areas that are not inside a building and are not dangerous to children; or

(ii) in areas that are intended to be used for recreational purposes; or

(b) unless an adult exercising effective control is with them, to be in Community Property or Subsidiary Body Property that may be dangerous to children (eg, a driveway or car parking area).

30.3 An Owner or Occupier must not use their Lot in a way that:

(a) adversely affects (or might adversely affect) another Lot, Community Property or Subsidiary Body Property; or

(b) interferes with the peaceful enjoyment of any part of the Community Parcel by another Owner or Occupier or a Permitted Person.

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31. Interference with and damage to property

31.1 Subject to this management statement, an Owner or Occupier must:

(a) not use Community Property or Subsidiary Body Property other than for their intended purposes; and

(b) immediately notify the Community Association or a relevant Subsidiary Body if they know about damage to or a defect in Community Property or Subsidiary Body Property; and

(c) compensate the Community Association or a relevant Subsidiary Body for any damage they or any Permitted Person for whom they are responsible cause in Community Property or Subsidiary Body Property.

31.2 Subject to the by-laws in part 2 of this management statement, an Owner or Occupier must have approval from the Community Association or from a Subsidiary Body to:

(a) interfere with or damage Community Property or relevant Subsidiary Body Property; or

(b) remove equipment or other articles from Community Property or relevant Subsidiary Body Property; or

(c) use or adjust equipment owned by the Community Association or relevant Subsidiary Body but subject to the rights to use that equipment under this management statement and any applicable Rules; or

(d) use Community Property or relevant Subsidiary Body Property as a garden.

31.3 An Owner or Occupier must not bring heavy items into the Community Parcel that may cause structural damage to a building in the Community Parcel.

32. Obligations in respect of Community Property and Subsidiary Body Property

Obligations in respect of Community Property

32.1 The Community Association must control, manage, maintain in good condition, repair and replace Community Property.

32.2 The Community Association must carry out all maintenance and repairs to Community Property:

(a) in a proper and workmanlike manner; and

(b) promptly, as the need arises; and

(c) in compliance with the applicable Architectural and Landscape Standards.

Obligations in respect of Subsidiary Body Property

32.3 Each Subsidiary Body must control, manage, maintain in good condition, repair and replace Subsidiary Body Property.

32.4 Each Subsidiary Body must carry out all maintenance and repairs to its Subsidiary Body Property:

(a) in a proper and workmanlike manner; and

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(b) promptly, as the need arises; and

(c) to the reasonable satisfaction of the Community Association; and

(d) in compliance with the applicable Architectural and Landscape Standards.

32.5 Each Subsidiary Body must have any lawn in its Subsidiary Property cut at least once every 2 weeks in spring and summer and at least once every 4 weeks in autumn and winter.

Changes to Subsidiary Body Property

32.6 A Subsidiary Body may only construct, install or keep in a Lot, Community Property or Subsidiary Body Property anything that can be seen from outside that Lot, Community Property or Subsidiary Body Property if that Subsidiary Body obtains the prior approval of the Community Association.

32.7 By-law 32.6 only applies if, in the opinion of the Community Association, reasonably held, the thing that can be seen from outside the Lot, Community Property or Subsidiary Body Property:

(a) is not in keeping with the building in or the landscaped areas of the Lot, Community Property or Subsidiary Body Property; and

(b) does not comply with the applicable Architectural and Landscape Standards.

Non compliance by Subsidiary Body

32.8 The Community Association may give a notice to a Subsidiary Body requiring that the Subsidiary Body comply with the terms of this by-law 32.

32.9 If a Subsidiary Body does not comply with this by-law 32 then the Community Association may exercise its rights under by-law 76.

Obligations of Subsidiary Body in respect of land subject to Restricted Use Rights

32.10 A Subsidiary Body has the same obligations under by-laws 32.3, 32.4 and 32.5 in connection with a part of the Community Parcel in respect of which it has Restricted Use Rights as it has in connection with its Subsidiary Body Property.

32.11 This by-law 32 does not operate to prevent performance of the obligations under by-laws 32.1, 32.2, 32.3, 32.4 and 32.10 being the responsibility of and to be performed by a person other than the Community Association or the Subsidiary Body, as the case may be.

Obligations of Owner or Occupier in respect of land subject to Restricted Use Rights

32.12 An Owner or Occupier have the same obligations under by-laws 30.3, 46.3, 62.1 and 62.2 in connection with a part of the Community Parcel in respect of which they have Restricted Use Rights as they have in connection with their Lot.

33. Restricting access to Community Property and Subsidiary Body Property

Rights of Community Association

33.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 33.1 but subject to by-laws 33.2 and 33.3 to:

(a) close off or restrict by fencing or the need to use a Security Key or otherwise, access to Community Property or a part of it; and

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(b) allow the Estate Manager and security personnel to use part of Community Property to the exclusion of others in connection with the security of the Community Parcel and the operation and maintenance of security equipment; and

(c) close off or restrict access to Community Facilities if doing so assists the efficient management of those facilities.

33.2 Despite by-law 33.1, the Community Association can only close off or restrict access to Community Property if it has the consent of the Council.

33.3 Despite by-law 33.1, the Community Association can only close off or restrict access to Restricted Community Property if it has the consent of the person with the benefit of the Restricted Use Rights or if it is permitted to do so under the terms of the by-law creating the Restricted Community Property.

Rights of a Subsidiary Body

33.4 In addition to its powers under the Management Act and the Strata Management Act, as applicable, and elsewhere in this management statement, a Subsidiary Body has power under this by-law 33.4 but subject to by-laws 33.5 and 33.6 to:

(a) close off or restrict by fencing or the need to use a Security Key or otherwise, access to its Subsidiary Body Property or a part of it; and

(b) allow the Estate Manager and security personnel to use part of its Subsidiary Body Property to the exclusion of others in connection with the security of the Subsidiary Parcel and the operation and maintenance of security equipment; and

(c) close off or restrict access to facilities in its Subsidiary Body Property if doing so assists the efficient management of those facilities.

33.5 Despite by-law 33.4 a Subsidiary Body can only close off or restrict access to its Subsidiary Body Property if it has the consent of the Council.

33.6 Despite by-law 33.4, a Subsidiary Body can only close off or restrict access to Restricted Subsidiary Body Property if it has the approval of the person with the benefit of the Restricted Use Rights or if it is permitted to do so under the terms of the by-law creating the Restricted Subsidiary Property.

34. Garbage Disposal Generally

34.1 The Community Association may make Rules about the storage and removal of Garbage from the Community Parcel. Subject to this management statement, a Subsidiary Body may make Rules about the storage and removal of Garbage from the Subsidiary Body Parcel for which it is responsible.

34.2 An Owner or Occupier must sort, store and make their Garbage available for collection according to this management statement, any applicable Subsidiary Body By-laws and any applicable Rules.

34.3 Subject to this management statement, any applicable Subsidiary Body By-laws and any applicable Rules, an Owner or Occupier must not deposit Garbage on:

(a) Community Property or Subsidiary Body Property; or

(b) any Lot other than their Lot; or

(c) their Lot other than in an appropriate receptacle or space.

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35. Services

35.1 Each Service Provider is responsible for and must maintain in good condition, repair and replace any Service and associated Service Lines in the Community Parcel that it provides or that are provided for its use.

35.2 If, in the opinion of the Community Association, reasonably held, a Service Provider is not maintaining or repairing and replacing, in a proper manner, a Service and associated Service Lines in the Community Parcel for which it is responsible, the Community Association may, to the extent it is able to do so without breaching any law or legal obligation, maintain in good condition, repair and replace that Service and associated Service Lines.

35.3 The Community Association is responsible for and must maintain in good condition, repair and replace any Service and associated Service Lines in the Community Parcel for which no Service Provider is responsible.

35.4 If any Service and associated Service Lines in the Community Parcel do not benefit all Community Development Lots and Former Community Development Lots, the Community Association may from time to time determine in its absolute discretion which Community Development Lots and Former Community Development Lots should be responsible for the cost of maintaining, repairing and replacing that Service and associated Service Lines and impose on and collect levies from the owners of those Lots on account of that cost.

35.5 If a later prescribed diagram is required under section 36(4) of the Development Act because a Service Line is installed in a different position from that shown in the prescribed diagram for the Service Line, the owner of any Lot (including the Community Association) that would be burdened by the statutory easement for the Service Line shown must do everything necessary to ensure that the later prescribed diagram is lodged and registered as an amendment of this management statement.

Irrigation System

35.6 The Community Association is responsible for the Irrigation System.

35.7 The Community Association is responsible to maintain in good condition, repair and replace Service Lines comprising the Irrigation System and, in particular, the in-ground retention tanks and associated equipment whether located in Community Property or in a Community Development Lot.

Special Receiving Facility

35.8 The Community Association is responsible for any Special Receiving Facility in the Community Parcel.

35.9 The Community Association is responsible to maintain in good condition, repair and replace any Special Receiving Facility and any associated Service Lines.

Provision of Private Services by Community Association

35.10 In addition to its powers under the Management Act and elsewhere in this management statement:

(a) the Community Association has the power under this by-law 35 to:

(i) provide a Private Service to an Owner, Occupier or Subsidiary Body; and

(ii) arrange for the installation and maintenance in good condition, repair and replacement of Service Lines for that Private Service; and

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(iii) contract with persons to manage all or some of the elements of providing that Private Service; and

(b) the Community Association has the power under this by-law 35 to contract with a person to:

(i) provide a Private Service to an Owner, Occupier or Subsidiary Body; and

(ii) install and maintain in good condition, repair and replace Service Lines for that Private Service.

No interference with Private Services

35.11 An Owner, Occupier or Subsidiary Body must not:

(a) unless they have the prior consent of the Community Association, carry out any works that interfere with Private Services; or

(b) obstruct or prevent access to, overload or damage Private Services.

35.12 If an Owner or Occupier becomes aware of damage to or the defective operation of a Private Service they must immediately notify the Community Association.

Power of entry of Community Association

35.13 The Community Association may enter a Lot or Subsidiary Body Property to inspect, install, maintain in good condition, repair, alter, add to, increase the capacity of or replace a Private Service.

35.14 For the purposes of this by-law 35:

(a) in an emergency, the Community Association may enter a Lot or Subsidiary Body Property at any time; and

(b) in a case that is not an emergency, the Community Association may enter a Lot or Subsidiary Body Property after giving reasonable notice.

35.15 It is possible the Community Association will exercise a power under this by-law 35 during the initial period.

35.16 If section 24 of the Management Act applies to the exercise of a power under this by-law 35, the effect of that exercise is described in this by-law 35 for the purpose of that section.

35.17 The Community Association may exercise a power under this by-law 35 by ordinary resolution.

36. Insurance Obligations

Affecting Community Association insurances

36.1 An Owner or Occupier must notify the Community Association if they use or change the use of their Lot in a way that might affect insurance premiums for the Community Scheme.

36.2 An Owner or Occupier must have approval from the Community Association to do anything that might invalidate, suspend or increase a premium for any Community Association insurance policy.

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36.3 If the Community Association gives an Owner or Occupier approval under this by-law 36 it may impose conditions, including a condition that the Owner or Occupier reimburse the Community Association for increased premiums.

Affecting Subsidiary Body insurances

36.4 An Owner or Occupier must notify any relevant Subsidiary Body if they use or change the use of their Lot in a way that might affect insurance premiums for the relevant Subsidiary Scheme.

36.5 An Owner or Occupier must have approval from a relevant Subsidiary Body to do anything that might invalidate, suspend or increase a premium for any Subsidiary Body insurance policy.

36.6 If a Subsidiary Body gives an Owner or Occupier approval under this by-law 36 it may impose conditions, including a condition that the Owner or Occupier reimburse the Subsidiary Body for increased premiums.

37. Reviewing insurance policies

Community Association insurances

37.1 Each year at its annual general meeting the Community Association must review:

(a) the insurance policies it has effected; and

(b) whether it needs to effect new policies.

37.2 Each year the secretary of the Community Association must include a motion on the agenda for the annual general meeting of the Community Association to decide if it should confirm or change its insurance policies.

37.3 The Community Association must immediately effect new insurance or adjust existing insurances if there is an increase in risk or a new risk to the Community Association or Community Property.

Insurance for Restricted Community Property

37.4 The Community Association must ensure that any person having Restricted Use Rights in respect of a part of Community Property is noted as an interested party on Community Association insurance policies, in particular, the policy covering legal liability, it effects.

37.5 Any person having Restricted Use Rights in respect of a part of Community Property must reimburse the Community Association for the part of the insurance premiums that relate to the Restricted Community Property, if the Community Association so requests.

Subsidiary Body insurances

37.6 Each year at its annual general meeting a Subsidiary Body must review:

(a) the insurance policies it has effected; and

(b) whether it needs to effect new policies.

37.7 Each year the secretary of a Subsidiary Body must include a motion on the agenda for the annual general meeting of the Subsidiary Body to decide if it should confirm or change its insurance policies.

37.8 A Subsidiary Body must immediately effect new insurance or adjust existing insurances if there is an increase in risk or a new risk to the Subsidiary Body or Subsidiary Body Property.

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Insurance for Restricted Subsidiary Body Property

37.9 Each Subsidiary Body must ensure that any person having Restricted Use Rights in respect of a part of its Subsidiary Body Property is noted as an interested party on Subsidiary Body insurance policies, in particular, the policy covering legal liability, it effects.

37.10 Any person having Restricted Use Rights in respect of a part of Subsidiary Body Property must reimburse the Subsidiary Body for the part of the insurance premiums that relate to the Restricted Subsidiary Body Property, if the Subsidiary Body so requests.

38. Valuations for insurance purposes

38.1 The Community Association must have Community Property valued for insurance purposes at least every 3 years.

38.2 Each Subsidiary Body must have its Subsidiary Body Property valued for insurance purposes at least every 3 years.

38.3 Valuations under this by-law 38 must be carried out by a qualified valuer or quantity surveyor who has:

(a) a minimum of 5 years experience as a valuer or quantity surveyor; and

(b) experience in valuing for insurance purposes the community property of community schemes.

39. The Executive Committee and its officers

Officers of the Executive Committee

39.1 The officers of the Executive Committee of the Community Association are the secretary, the treasurer and the chairperson.

Functions of the secretary

39.2 The functions of the secretary are to:

(a) convene, prepare agendas for and send notices for meetings of the Community Association and the Executive Committee; and

(b) prepare and distribute minutes of meetings of the Community Association and the Executive Committee; and

(c) give notices under this management statement and the Management Act on behalf of the Community Association and the Executive Committee; and

(d) supply certificates about contributions, insurance and matters referred to in clause 2 of schedule 4 of the Management Act; and

(e) answer communications sent to the Community Association and the Executive Committee; and

(f) perform administrative and secretarial functions for the Community Association and the Executive Committee; and

(g) keep records for the Community Association and the Executive Committee according to this management statement and the Management Act.

The secretary may be assisted in the discharge of the functions of the secretary.

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Functions of the treasurer

39.3 The functions of the treasurer are to:

(a) send notices of contributions to members of the Community Association; and

(b) collect contributions from members of the Community Association; and

(c) receive, acknowledge, bank and account for contributions and other money paid to the Community Association; and

(d) prepare certificates about contributions, insurance and matters referred to in clause 2 of schedule 4 of the Management Act; and

(e) keep accounting records for the Community Association according to the Management Act; and

(f) prepare financial statements according to the Management Act.

The treasurer may be assisted in the discharge of the functions of the treasurer.

Function of the chairperson

39.4 The chairperson is to preside at meetings of the Community Association and the Executive Committee at which the chairperson is present.

Protection from liability

39.5 A member of the Executive Committee is not liable for any loss or damage caused by their actions as a member of the Executive Committee unless they acted fraudulently or negligently.

Sub-committees

39.6 The Executive Committee may appoint sub-committees to assist in the management and operation of the Community Scheme.

39.7 A sub-committee may conduct investigations for the Executive Committee.

40. No Remuneration for members of Executive Committee

A member of the Executive Committee is:

(a) not entitled to any remuneration for the performance of their functions; and

(b) is entitled to reimbursement for reasonable out of pocket expenses incurred by them in the performance of their functions.

41. Meetings of Executive Committee

Convening meetings

41.1 Meetings of the Executive Committee must be convened by:

(a) the secretary of the Executive Committee, if the secretary is asked to convene a meeting by at least one-third of the members of the Executive Committee; or

(b) another member of the Executive Committee if, in the absence of the secretary, the member is asked to convene a meeting by at least one-third of the members of the Executive Committee.

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41.2 The secretary or the other member of the Executive Committee must convene the meeting:

(a) within the time asked for; or

(b) if no specific time was asked for, within 14 days of being asked.

Conducting meetings

41.3 Subject to the Management Act and this management statement, the Executive Committee may meet to conduct business, adjourn and otherwise regulate meetings as it thinks fit.

Attendance at meetings

41.4 An Owner or if the Owner is a corporation, the company nominee of an Owner, may:

(a) attend a meeting of the Executive Committee; and

(b) address a meeting of the Executive Committee but only if the Executive Committee agrees.

42. Notices for meetings of the Executive Committee

Giving the notice

42.1 The secretary or the member of the Executive Committee who convenes a meeting of the Executive Committee must give:

(a) each member of the Executive Committee; and

(b) each member of the Community Association,

notice at least 48 hours before the meeting. The notice must include:

(c) the time, date and venue of the meeting; and

(d) the agenda for the meeting.

42.2 Notices under this by-law 42 must be given to the member of the Executive Committee or the member of the Community Association:

(a) personally to the member of the Executive Committee or the member of the Community Association; or

(b) by post or hand delivery to the address shown for the member of the Executive Committee or the member of the Community Association shown in the Community Association's roll; or

(c) by facsimile to the facsimile number of the member, if a facsimile number has been provided by the member; or

(d) by e-mail to the e-mail address of the member, if an e-mail address has been provided by the member.

42.3 If the Community Association has placed a notice board in Community Property, then the Executive Committee complies with by-law 42.1 so far as it applies to members of the Community Association if it ensures that the notice of the meeting is placed on the notice board at least 48 hours before the meeting.

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Agenda for a meeting

42.4 The agenda for a meeting of the Executive Committee must include details of all the business the Executive Committee will deal with at the meeting. The Executive Committee cannot deal with business that is not on the agenda for the meeting.

43. Decisions made in writing by Executive Committee

The Executive Committee may vote on motions in writing if:

(a) notice of the Executive Committee meeting and an agenda have been given in accordance with by-law 42; and

(b) the secretary of the Executive Committee or the member of the Executive Committee who convenes the meeting has given each member of the Executive Committee a voting paper; and

(c) a majority of the members of the Executive Committee complete and return their voting paper to the secretary of the Executive Committee or the member of the Executive Committee who convenes the meeting before the meeting commences.

44. Minutes of meetings of the Executive Committee

44.1 The secretary or the member of the Executive Committee who convenes a meeting of the Executive Committee, including meetings where decisions are made in writing under by-law 43, must give a copy of the minutes of the meeting to:

(a) each member of the Executive Committee; and

(b) each member of the Community Association,

within 14 days after the meeting.

44.2 Minutes of a meeting of the Executive Committee must be given:

(a) personally to the member of the Executive Committee or the member of the Community Association; or

(b) by post or hand delivery to the address shown for the member of the Executive Committee or the member of the Community Association shown in the Community Association's roll; or

(c) by facsimile to the facsimile number of the member, if a facsimile number has been provided by the member; or

(d) by e-mail to the e-mail address of the member, if an e-mail address has been provided by the member.

44.3 If the Community Association has placed a notice board in Community Property, then the Executive Committee complies with by-law 44.2 if it ensures that the minutes of its meeting are placed on the notice board within 14 days after the meeting.

45. Books and records to be kept by Executive Committee

The Executive Committee must keep copies of agendas for and minutes of its meetings, including meetings where decisions are made in writing under by-law 43:

(a) with the books and records of the Community Association; and

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(b) for at least 7 years from the date of the meeting or for the period the Management Act requires the Community Association to keep its meeting records.

46. Responsibility for Fences

Restrictions on construction

46.1 Subject to this by-law 46 the Dividing Fences Act 1991 applies to the provision of, and payment for, any fence in the Community Parcel.

46.2 Unless it resolves to do so, the Community Association need not provide or pay for any fence in the Community Parcel.

46.3 An Owner, Occupier or Subsidiary Body may not:

(a) construct a fence on the front street alignment of any Lot or between the front street alignment of any Lot and the building line for that Lot as fixed by the Council; or

(b) replace any fence in a Lot or Subsidiary Body Property unless:

(i) the materials are of the same standard and quality as those of the fence as originally constructed; and

(ii) the location of the replacement fence is the same as the location of the fence as originally constructed; or

(c) construct any new fence in a Lot or Subsidiary Body Property without the prior consent of the Executive Committee.

Architectural and Landscape Standards

46.4 Any fence constructed in the Community Parcel must comply with the applicable Architectural and Landscape Standards.

Fences in Community Property and Subsidiary Body Property

46.5 The Community Association is responsible for the maintenance in good condition, repair and replacement of fences in Community Property and between Community Property and Subsidiary Body Property.

46.6 A Subsidiary Body is responsible for the maintenance in good condition, repair and replacement of fences in its Subsidiary Body Property.

46.7 No fence can be constructed in Restricted Community Property that adjoins the Foreshore Lot.

46.8 By-law 46.7 and this by-law 46.8 cannot be varied without the prior approval of Council.

47. Leases of Community Property and Restricted Subsidiary Property

47.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 47 to grant leases to persons, including a Subsidiary Body, an Owner, an Occupier, the Developer and the Estate Manager, of parts of Community Property and, in particular, any Community Facility and parts of Restricted Subsidiary Property.

47.2 Leases that the Community Association grants under this by-law 47 may include such terms as the Community Association determines, including terms about:

(a) payments under the lease; and

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(b) the term of the lease; and

(c) the permitted use of the leased area; and

(d) the security of the leased area; and

(e) the maximum number of persons allowed in the leased area; and

(f) insurances the lessee must effect; and

(g) cleaning and maintaining and repairing the leased area.

47.3 It is possible a lease will be granted under this by-law 47 during the initial period.

47.4 If section 24 of the Management Act applies to a lease granted under this by-law 47, the effect of that lease is disclosed in this by-law 47 for the purposes of that section.

47.5 The Community Association may exercise its power under this by-law 47 by ordinary resolution.

48. Licences to use Community Property and Restricted Subsidiary Body Property

48.1 In addition to its powers under the Management Act and elsewhere in this management statement, the Community Association has power under this by-law 48 to grant licences to persons, including a Subsidiary Body, an Owner, an Occupier, the Developer and the Estate Manager, to use parts of Community Property and, in particular, any Community Facility and parts of Restricted Subsidiary Body Property.

48.2 Licences that the Community Association grants under this by-law 48 may include such terms as the Community Association determines including terms about:

(a) payments under the licence; and

(b) the term of the licence; and

(c) the permitted use of the licensed area; and

(d) the security of the licensed area; and

(e) the maximum number of persons allowed in the licensed area; and

(f) insurances the licensee must effect; and

(g) cleaning and maintaining and repairing the licensed area.

48.3 It is possible a licence will be granted under this by-law 48 during the initial period.

48.4 If section 24 of the Management Act applies to a licence granted under this by-law 48, the effect of that licence is disclosed in this by-law 48 for the purposes of that section.

48.5 The Community Association may exercise its power under this by-law 48 by ordinary resolution.

49. Leases of Subsidiary Body Property

49.1 In addition to its powers under the Management Act or the Strata Management Act, as applicable, and elsewhere in this management statement, a Subsidiary Body has power under this by-law 49 to grant leases to persons, including the Community Association, another

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Form: 07L
Licence: 04-08-438
Licensee: Corrs Chambers Westgarth

STAMP DUTY

LEASE

New South Wales
Real Property Act 19

AC683430H

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

Office of State Revenue use only

NEW SOUTH WALES DUTY
29-09-2006 0003767743-001
$3
DUTY PAYABLE
NO DUTY PAYABLE
Section No:

NEW SOUTH WALES DUTY
29-09-2006 0003767743-002
SECTION 179-ORIGINAL
NO DUTY PAYABLE

(A) **TORRENS TITLE**

Property leased: if appropriate, specify the part or premises

501/1052824

(B) **LODGED BY**

Delivery Box	Name, Address or DX and Telephone	CODE
48T	LLPN : 123819E CITYLINK Reference (optional): 4090870/1 MADDOCKS: CC: CANADA BAY	L

(C) **LESSOR**

The City of Canada Bay Council

The lessor leases to the lessee the property referred to above.

(D) Encumbrances (if applicable) 1. 2. 3.

(E) **LESSEE**

Community Association DP 270347

(F) **TENANCY:**

(G) 1. **TERM: 299 years**

2. **COMMENCING DATE:** 9 OCTOBER 2006
3. **TERMINATING DATE:** 8 OCTOBER 2305
4. With an **OPTION TO RENEW** for a period of Not applicable set out in Not applicable
5. With an **OPTION TO PURCHASE** set out in Not applicable
6. Together with and reserving the **RIGHTS** set out in Not applicable
7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** A hereto.
8. Incorporates the provisions set out in **MEMORANDUM** filed/**LEASE** registered in the Department of Lands, Land and Property Information Division as No. Not applicable.
9. The **RENT** is set out in item/clause 3 of Annexure A

4113808/1All handwriting must be in block capitals

Total Pages (office use only).....

R294

DATE: 09/10/2006
dd mm yyyy

(H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: The City of Canada Bay Council
Authority:

Signature of authorised person: ..... Signature of authorised person: .....

Name of authorised person: ANGELO BRESNA Name of authorised person: GRAHAM SAWYER
Office held: MAYOR Office held: General Manager

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: Community Association DP 270347
Authority:

Signature of authorised person: ..... Signature of authorised person: .....

Name of authorised person: Craig Walkerden Name of authorised person: .....
Office held: Chairman/Secretary Office held: .....
4/9/06

(I) **STATUTORY DECLARATION ***

I solemnly and sincerely declare that–

1 The time for the exercise of the option to renew/option to purchase in expired lease No has ended;

2 The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at Sydney in the State of New South Wales on

in the presence of-

Signature of witness: Signature of lessor:

Name of witness:

Address of witness:

Qualification of witness:

* As the Department of Lands may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment of the form at Land and Property Information Division.

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THIS IS THE ANNEXURE A REFERRED TO IN LEASE BETWEEN CITY OF CANADA BAY COUNCIL (AS LESSOR) AND COMMUNITY ASSOCIATION DP 270347 (AS LESSEE)

1 DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Lease unless a contrary intention appears the following words have these meanings:

Annual Rent means $1.00 per annum

Authorised Officer means a director, secretary or an officer of the Lessor or Lessee (as the case may be) whose title contains the word "manager" or a person performing the functions of any of them or any other person appointed by the Lessor or Lessee (as the case may be) to act as an Authorised Officer for the purpose of this Lease.

Authority includes any government or semi government, statutory, public or other authority body having jurisdiction over the Premises or any matter or thing in relation to the Premises.

Improvements means any improvements or fixtures affixed to the Land by the Lessee.

Land means the whole of the land the subject of this Lease, being the land in the certificate of title described on the front page of this Lease, but does not include any fixtures affixed after the date of this Lease.

Lease means this document and all schedules and appendices to this document.

Lessee means the lessee named and described on the cover of this Lease its successors and assigns and where not repugnant to the context the employees agents and contractors of the Lessee.

Lessor means the lessor named and described on the cover of this Lease its successor and assigns or being a person that person's executors administrators and assigns and where not repugnant to the context the employees, agents and contractors of the Lessor.

Persons under its Control means any person claiming through or under the Lease other than:

(a) merely as a member of the general public with an entitlement pursuant to clause 2.1(a) or 2.2; or

(b) the Lessor and its invitees.

Premises means the Land and Improvements.

Services means pipes, wires, cables, drains, wells, ducts, conduits and other equipment and things (no part of which protrudes above the surface of the Land) for the transmission, disposal, treatment, monitoring and supply of water,

gas, electricity, telephone, data and communications of any kind, sewerage, sullage and other substances of any kind.

Term means the term of this lease.

1.2 Interpretation

In this Lease unless the contrary intention appears:

(a) Any provision to be observed or performed by two or more persons binds those persons jointly and severally.

(b) The headings have been inserted for convenience only and in no way limit or govern the construction of the terms of this Lease.

(c) Any reference to any statute includes all regulations and other instruments under it and all consolidations amendments re-enactments and replacements of it.

(d) Any reference to a "month" or "monthly" means respectively calendar month and calendar monthly.

(e) Any reference to a body or authority that has ceased to exist, is to be read as a reference to the body or authority which then serves substantially the same objects as that body or authority and any reference to the President of a body or authority is, in the absence of a President, to be read as a reference to the senior officer for the time being of the body or authority.

(f) A reference to any thing (including any amount) is a reference to the whole and each part of it.

(g) Where the Lessor's consent or approval is required pursuant to any provision of this Lease:

  (i) the Lessee must obtain such consent or approval from the Lessor in writing; and

  (ii) the Lessor may not unreasonably withhold its consent or approval.

(h) Words importing the singular number are to be read as including the plural and vice versa and a reference to any particular gender is to be read as including all genders and words importing persons are to be read as including corporations.

(i) A reference to "provisions" includes covenants terms and conditions.

(j) A reference to a right includes an interest, power, remedy, privilege and a cause of action.

(k) A reference to a person includes a firm, corporation, body corporate, unincorporated association, the Crown or any governmental or other authority.

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1.3 Exclusion of Statutory Provision & Severance

(a) The covenants powers and provisions implied in leases by virtue of Sections 84, 85(1)(d) 86 and 133B of the Conveyancing Act 1919 do not apply to this Lease and are expressly negatived.

(b) Any provision of this lease which is or shall be or become in breach of the Trade Practices Act 1974 or any other Act whether State or Federal and in consequence of such breach is void voidable unenforceable or invalid is in any such case severable from this Lease and this Lease is to be read as though such provision did not form part of the same at any time.

2 USE OF PREMISES

2.1 Use by Lessee

The Lessee must not use or, so far as is reasonably practicable, otherwise permit to be used by Persons under its Control, the Land for any purpose other than:

(a) as a foreshore park, recreation area, access trail and landscaped area for the use and enjoyment of the general public, for the general public to pass and repass on foot or by bicycle and only remain there for such periods of time and only for such purposes and conditions and at such times as shall be approved by City of Canada Bay Council;

(b) performing or exercising the Lessee's obligations or rights under this Lease or complying with any statutory obligations;

(c) with the consent of the Lessor in circumstances where use for the purposes referred to in 2.1(a) may be adversely affected, which consent shall not be unreasonably withheld, and without the need for consent (unless otherwise required by law) in all other circumstances constructing, installing, placing, inspecting, monitoring, repairing, maintaining, operating, removing or replacing:

  (i) Services or anything reasonably required in connection with Services or their use; and

  (ii) anything on either side of the Land, to the extent use of or access across the Land is temporarily reasonably required;

(d) access across the Land to and from any development or other thing on the river side of the Land, for all lawful purposes with or without vehicles; and

(e) any other use (if any) to which the applicable consent authority grants consent.

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2.2 Reserved Rights by Lessor

The Lessor reserves the rights:

(a) for the Lessor and its invitees to go, pass and repass at all times for any of the purposes referred to in clause 2.1(a) on foot or by bicycle over the Land subject to Public Access; and

(b) for the Lessor subject to clause 5.2 of this Lease and with the consent of the Lessee (such consent not to be unreasonably withheld), to construct minor improvements which facilitate use of the Land for any of the uses referred to in clause 2.1(a).

(c) for the Lessor, its employees, agents and contractor and persons authorised by it with or without vehicles, equipment and materials to enter and remain on the Land for access across the Land to and from any development or other thing on the river side of the Land.

2.3 Public access

The Lessee must allow members of the public unrestricted access to the Premises to pass and repass on foot or by bicycle and remain on the Premises to use the Premises as a foreshore park, recreation area, access trail and landscaped area during such periods of time and subject to such rules as may be approved by the City of Canada Bay Council (**Public Access**).

2.4 Prohibition of Signs and Obstruction

The Lessee must not place or allow to remain on the Premises or any land adjacent to or nearby the Premises any sign or obstruction that may derogate from or limit Public Access.

3 RENT AND RATES AND TAXES

3.1 Rent

The Lessee must during the Term pay to the Lessor the Annual Rent on the first day of each year of the Term. The Lessee may at its discretion pay all or some of the Annual Rent in advance.

3.2 Rates and Taxes

(a) The Lessee must pay all council rates (payable under the Local Government Act 1993), water, sewerage and drainage rates and land tax payable in respect of the Land and any energy supply charges in connection with the Improvement.

(b) In the case of land tax, the parties acknowledge and agree that the Lessee is deemed the owner of the Land by virtue of and for the purposes of Section 21 C of the Land Management Act 1956 and as such the Lessee is solely liable for land tax levied on the Premises.

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4 ASSIGNMENT

4.1 Restriction

The Lessee must not assign or transfer this Lease without the consent of the Lessor. The Lessor must not unreasonably withhold its consent.

4.2 There is no clause 4.2.

4.3 Release

On any assignment or transfer of this Lease, neither the assignor/transferor nor the Lessor will have any further liability to the other under this Lease, except in respect of any prior breach.

4.4 Replacement Lease Alternative

As an alternative to assignment or transfer of this Lease to an assignee or transferee (**Incoming Lessee**), the Lessee, in circumstances where the Lessor has consented or is obliged to consent to an assignment or transfer to the Incoming Lessee, may instead elect to contemporaneously surrender this Lease and have a new lease (**New Lease**) granted to the Incoming Lessee. The New Lease must be on the same terms and conditions (including as to rent) as this Lease except that the term of the New Lease is to be for the remainder of the term of this Lease and any rent or other moneys overpaid under this Lease shall be credited towards rent and other moneys payable under the New Lease. The Lessee must pay the reasonable costs of the Lessor associated with and all stamp duty on the surrender of this Lease and the New Lease.

5 LESSOR'S COVENANTS

5.1 Right of Quiet Enjoyment

The Lessee performing its obligations under this Lease may peaceably possess and enjoy the Premises during the Term without any undue interruption or disturbance from the Lessor or anyone claiming through or under the Lessor having regard to the use of the Premises referred to in clause 2 under this Lease.

5.2 Development Potential

The parties specifically agree that the Lessor must not erect any dwelling or other building on the Land which would be taken into account for the purposes of clause 41 H of Concord Local Environmental Plan No. 91. The Lessor must execute such documents (if any) as are reasonably requested by the Lessee in this regard. The parties agree that the intent of this clause is that the Land the subject of this Lease remain as part of the "Land" (as defined in Concord Local Environmental Plan No. 91) for the purposes of clause 41 H, but that the remainder of the land formerly in certificate of title folio identifier 1/716536

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(excluding the Land the subject of this Lease) have the full benefit of the whole of the development potential for the whole of the land formerly in certificate of title folio identifier.

5.3 Lessor's Improvements

In addition to **clause 2.2** , the Lessor reserves the rights:

(a) to erect on the Land such public furniture (such as benches and bins but excluding shade structures, barbeques, playground equipment, and fencing) public art and historical artefacts as are convenient and relevant to provide amenity to the people accessing the Land pursuant to **clause 2.3**; and

(b) for the Lessor, its employees, agents, contractors and persons authorised by it either with or without vehicles, equipment and materials to enter and remain on the Land to erect the public furniture, public art and historical artefacts pursuant to **clause 5.3(a)**,

provided that the Lessor consults with the Lessee and obtains the Lessee's prior approval (not to be unreasonably withheld). Where the Lessee fails or refuses to give its approval within 30 days of receipt of a written request from the Lessor to erect the improvements on the Land (**Approval Period**), either party may refer the matter to the President of the Law Society of New South Wales who shall nominate an expert (independent of both parties) to act as an umpire (**Umpire**). The Umpire must be engaged by the party requesting the nomination and must be instructed to make his or her determination within 30 days after the expiration of the Approval Period. The Umpire will, after taking into consideration any written submissions by the parties as to their assessment of the improvements and any other matters they consider relevant, determine the dispute. An Umpire appointed pursuant to this clause must:

(i) give a written determination with reasons;

(ii) be a member of not less than 10 years standing of the Law Society of New South Wales and holder of a licence to practice as a solicitor with experience in property law; and

(iii) notify all parties of their appointment within 2 days of being engaged, so all parties may make written submissions regarding the dispute.

The determination of the Umpire will be final and binding on the parties except in the case of manifest error. The parties must bear the costs of the Umpire equally.

5.4 Maintenance and Responsibility

Any public furniture, public art and historical artefacts erected on the Land pursuant to **clause 5.3** will be the sole risk and responsibility of the Lessor and the Lessor:

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(a) must at its sole costs and expense repair and maintain all such furniture, public art and historical artefacts: and

(b) indemnifies the Lessee against all claims, demands, actions, liabilities, losses , damages, costs, charges and expenses of any nature which the Lessee may suffer or incur or for which the Lessee may become liable in relation to all furniture, public art and historical artefacts erected on the Land pursuant to **clause 5.3**.

6 LANDSCAPING, MAINTENANCE AND INSURANCE

6.1 Landscaping

Deleted

6.2 Maintenance

The Lessee must:

(a) subject to clause 5.4(a), keep the Premises in good repair and condition to ensure that the Public Access may be safely exercised at all times, to the reasonable satisfaction of the Lessor; and

(b) indemnify the Lessor and keep the Lessor indemnified against all claims, demands, actions, liabilities, losses , damages, costs, charges and expenses of any nature which the Lessor may suffer or incur or for which the Lessor may become liable arising out of any failure of the Lessee to comply with its obligations in clause 6.2(a).

6.3 Insurance

The Lessee must keep current at all times during the Term a policy of public risk insurance applicable to the Premises in the name of the Lessee but noting the interest of the Lessor for an amount not less than $10,000,000 for any single claim or such greater amount as reasonably required by the Lessor. The Lessee must if so requested by the Lessor provide the Lessor with evidence of the currency of the policies.

7 MONTHLY HOLDING OVER

7.1 Holding Over

The Lessee may continue to occupy the Premises from the date of expiry of the Term on the same conditions as those contained in this Lease so far as applicable:

(a) as a monthly tenant at a rent payable monthly in advance equal to one-twelfth of the Annual Rent, and

(b) the tenancy so created may be determined by either party upon one calendar months written notice to the other given at any time.

8 DEFAULT

8.1 Default by Lessee

If at any time during the Term:

(a) any rent or other money payable by the Lessee is in arrears for the space of sixty (60) days following a written demand by the Lessor to pay such rent or other money; or

(b) default is made by the Lessee in respect of any obligation on the part of the Lessee arising out of any of the provisions of this Lease and the default is continued for thirty (30) days or such longer period as may be reasonable following a written demand by the Lessor to rectify such default,

then notwithstanding any prior waiver or failure to take action by the Lessor or indulgence granted by the Lessor to the Lessee in respect of any such matter or default whether past or continuing:

(c) it is lawful for the Lessor or any other person authorised by it to re-enter into and on the Premises or any part of the Premises in the name of the whole and by doing so determine the estate of the Lessee; and

(d) regardless of any other provision in this Lease but without prejudice to any right which the Lessor has or might or otherwise could have for arrears of rent or breach of covenant or for damages as a result of any such event and thereupon the Lessor is released from any action suit claim or demand by or obligation to the Lessee under or by virtue of this Lease.

8.2 Lessor may rectify

The Lessor may remedy at any time, without notice, any breach of this Lease by the Lessee as the agent of the Lessee and at the risk of the Lessee. The Lessee must pay all reasonable costs incurred by the Lessor in remedying a breach of this Lease.

9 MISCELLANEOUS

9.1 Lessee to Pay

In addition to the rent and other moneys reserved by this Lease the Lessee must pay all stamp duly and registration fees payable in respect of this Lease.

9.2 Service of Notices

(a) Any notice or other document required to be served or given under this Lease on or to the Lessee may be served or given:

(i) by delivery personally;

(ii) by leaving it at the registered office of the person to be served marked to the attention of the Property Manager or as otherwise directed in writing from time to time by the Lessee; or

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(iii) by sending it by certified post or security post or an equivalent addressed to any of the places referred to it in clause 9.2(a)(2).

(b) Any notice or other document required to be served or given under the Lease on or to the Lessor may be served or given:

(i) by leaving it at the last known place of business of or (where the Lessor is a corporation) at the registered office of the Lessor or

(ii) by sending it by certified post or security post or any equivalent addressed to any of the places referred to in sub-clause 9.2(b)(1).

(c) Any notice or other document when given or served by any of the methods in clause 9.2(a)(3) or 9.2(b)(2) is taken to have been given or served and received the second business day following the date of posting.

(d) Any notice approval certificate consent or other communication in connection with this Lease may be given by the relevant party or an Authorised Officer of the relevant party.

10 Statutory Authority

The position of the Lessor as a statutory body and regulatory authority under various laws including the *Local Government Act* 2003 (NSW) and the *Environmental Planning and Assessment Act* 1979 (NSW) override the provisions of this Lease and in particular:

(a) this Lease does not reduce or affect the powers of the Lessor or any officer or employee of the Lessor; and

(b) this Lease or any approval or consent under this Lease cannot be taken as a consent by the Lessor as a statutory body or fetter the discretion and obligations of the Lessor as a regulatory authority.

11 GST

11.1 Construction

In this **clause 11**:

(a) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law; and

(b) **GST Law** has the same meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999.

11.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.

11.3 Payment of GST

If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under this document, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

11.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 11.3** in addition to and at the same time that the consideration for the supply is to be provided under this document.

11.5 Tax invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 11.3**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

11.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this document, the amount payable by the recipient under **clause 11.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

11.7 Reimbursements

Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

(a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and

(b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

Executed as a deed

Executed by **City of Canada Bay Council** by its duly appointed officer in the presence of:)
)
)

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)

Executed by **Community Association DP 270347** by its duly appointed officer in the presence of:)
)
)

.....
Witness

RACHEL PLATT
.....
Name of Witness (print)

.....
Officer

Craig Walkerdene
.....
Name of Officer (print)

COMMUNITY ASSOCIATION DP No. 270347 ★ Common Seal

The Common seal of **City of Canada Bay Council** was hereunto affixed on the eleventh day of October 2006 pursuant to a resolution made on the first day of August 2006.

.....
Signature of Mayor

ANGELO TSIRekas
Name of Mayor

.....
Signature of General Manager

PETER SAWYER
Name of General Manager's

THE CITY OF CANADA BAY COUNCIL ★ Common Seal

City of Canada Bay Council
Signing on behalf of

CW

Appendix D: Avian Fauna Review

Response to Inner West Marina Project Application

Review of Impacts on Avian Fauna (Volume 10 of the application)

By Ann Goeth, November 2010

I. EXECUTIVE SUMMARY

1) The desktop study by Aquenal did not result in the correct assemblage of bird species visiting the tidal mudflats in Kendall Bay. The study is confusing as it is not clear why a birds' record for Kendall Bay is not proof enough for it's occurrence in the proposed development area. Also, a lack of survey results for Kendal Bay is no reason to argue that this area is not important for birds, and a proper fauna survey needs to be conducted. Additional bird data has been added to this submission, obtained by one specialist and Ann Goeth during random observations.

2) Three bird species visiting the mudflats listed in Appendix 1) are protected by Commonwealth legislation (EPBC Act) and this is not mentioned in the report.
The three species are Painted Snipe, Terek Sandpiper and Australian Painted Snipe. The report ignores the legislative status of the first and second, and provides no discussion on the impact on the third species.

3) Two bird species visiting the mudflats listed in Appendix 1) are protected by NSW legislation (TSC Act) but not mentioned in the report. Two others listed under the TSC Act are mentioned, but not discussed further
The report fails to list the Painted Snipe as Endangered and the Black-tailed Godwit as Vulnerable under the TSC Act. It does mention two other avian species listed under the TSC Act, the Pied Oystercatcher and Terek Sandpiper (both vulnerable), but provides no discussion whatsoever on the potential impacts on these listed species.

4) The value of the mangrove area and adjacent mudflats as bird habitat is not valued in the application. The figure included in Aquenal's report does not include these areas and there is no discussion of these areas being important feeding and roosting areas. They are likely to be inhabited by the Black Bittern, which is listed as vulnerable under the TSC Act. Volume 3 demonstrates that impacts on the mangroves from the proposed marina are likely.

5) Eighteen of the bird species listed in Appendix 1 are protected by international agreements for the protection of migrating birds. These agreements receive no mentioning at all in the application. This is a major omission as Australia has agreed to adhere to these agreements for the protection of migrant birds, especially shore birds.

6) The proposal downplays, or even ignores, several impacts on birds visiting the tidal mudflats. The discussion of impacts is kept very short and potential impacts are being rejected throughout the report. This section is unacceptable and more discussion needs to be provided.

7) The proposal ignores several other bird species that visit the open waters of Kendall Bay for feeding. These include cormorants, pelicans, terns, ducks, herons, spoonbill and gulls. No discussion on the impacts of these birds is provided.

8) The survey effort for birds is insufficient, a desktop study is not enough. The data provided in the report is insufficient to discuss the potential impact on birds. A proper field survey by an expert consultant needs to be carried out.

9) The cumulative impact of habitat destruction in several bays along the Parramatta river on migrating shorebirds has not been considered. The estuary is already so built up that few bays with undisturbed tidal flats remain for feeding, and this is not being considered in the application.

10) Choice of consultant questionable. It has to be asked why the applicant chose to use Aquenal Pty Ltd as a consultant, given that this consultant is based in Tasmania, never seems to have visited the area and has no local knowledge of the area.

II. DETAILS

The purpose of this review is to assess the impacts on the avian fauna in Kendall Bay, and to compare these impacts with the following Director-General's Requirement:
To conduct an Environmental Assessment that includes

- a detailed assessment of the environmental impacts of the proposal, taking into consideration any issues raised during consultation;
- a detailed assessment of the key issues specified below and any other significant issues identified in the general overview of the environmental impacts of the proposal, which includes:
    - a description of the existing environment
    - an assessment of the potential impact of the project, including any cumulative impacts from construction activities and from all water related craft that would utilise the marina;
    - a description of the measures that would be implemented to avoid, minimise, mitigate, offset, manage, and/or monitor the impacts of the project.

This review is aimed at the key issues of Flora and Fauna, including an assessment of any impacts on critical habitats, threatened species, populations or ecological communities and their habitats in the region. It identifies numerous points of non-compliance with the DG's requirements above, as follows:

1) The desktop study by Aquenal did not result in the correct assemblage of bird species visiting the tidal mudflats in Kendall Bay.

Aquenal did consult the correct sources for identifying birds that are likely to use tidal mudflat habitat in Canada Bay LGA and Kendall Bay (see page 9, Vol. 10). This search resulted in 15 such bird species (p.10/11, Vol. 10). Aquenal then downplayed the importance of this result by stating that "*the more specific search of survey location (Birds Australia 2005-2007) showed that none had been recorded within 1km of the proposed development site and that the closest recorded location for most of them was Homebush Bay*". This argument is questionable for the following reasons:

a) It is unclear why proof of a record for Kendall Bay (as provided in the report) is not enough proof for a record at the proposed development site, given the relatively small size of Kendall Bay. How can birds that occur within Kendall Bay not occur within a 1 km circle around the proposed development site? This is especially questionable given that the proposed marina would be very close to the tidal mudflats at the southern end of the bay, where many birds are found.

b) The small number of bird records in the Birds Australia database for the mudflats in Kendall Bay does not mean that the area is not deemed of high importance for birds (p. 15, Vol. 10). The lack of surveys could alternatively be explained by the fact that there are larger bays with larger mudflats nearby and that the few people conducting surveys focused on these areas. More importantly, the site was long used as an industrial site with limited access for the public, including birdwatchers. The applicant should have engaged an ecological consultant to make up for the lack of bird data for this area, rather than conducting a desktop study only!

c) The application ignores the fact that even if Aquenal could not obtain specific bird lists from Breakfast Point or Kendall Bay, good survey results exists for nearby tidal mudflats in the estuary, especially for Hen and Chicken Bay and the Olympic Park. All species listed in **Appendix 1** visit these areas for feeding. Kendall Bay lies in-between these two areas and is thus an important corridor for these species.

d) The author of this submission (A. Goeth) obtained additional bird records for the tidal mudflats at the southern end of Kendall Bay since 2005. Additional bird data was also obtained from Phil Straw, specialist on shorebirds and owner of Avifauna Research, a consulting firm. He regularly counts shorebirds in nearby Hen and Chicken Bay and Olympic Park and stated that several species seen in these nearby bays are also likely to visit Kendall Bay for feeding.

Appendix 1 gives a list of birds that visit the tidal mudflats in Kendal Bay for feeding, resulting from the discussion under points a-d) above.
Given the incomplete list of birds visiting Kendall Bay, the proposal does not meet the DG's requirement to assess the environmental impacts of the proposal.

2) Two bird species visiting the mudflats listed in Appendix 1) are protected by Commonwealth legislation (EPBC Act) and this is not mentioned in the report.

The report mentions that the Terek Sandpiper is listed as Vulnerable under the TSC Act but fails to mention that it is also listed as vulnerable under the EPBC Act.
The report lists the Painted Snipe *Rostratula benghalensis s. lat.*in a table, but fails to mention that it is listed as Vulnerable under the EPBC Act.
The only species shown as being listed is the Australian Painted Snipe (Vulnerable).
There is no discussion provided on the impact of the proposed development on these three species, rather than the incorrect statement "*The proposal will not have a significant impact on matters of national `environmental significance as listed in the EPBC Act or a significant environmental impact on Commonwealth land and, accordingly, a referral is not required to the Commonwealth Minister for the Environment.* (p. 60, V.1)."
Given these points, the proposal does not meet the DG's requirement of an assessment of any impacts on threatened species and their habitats in the region.

3) Two bird species visiting the mudflats listed in Appendix 1) are protected by NSW legislation (TSC Act) but not mentioned in the report. Two others listed under the TSC Act are mentioned, but not discussed further.

The report contains a major mistake because two species listed in the reports' table (p. 10-11, Vol. 10) are not mentioned as being listed under the TSC Act (in Section 2.2.2. of Vol. 10): The Painted Snipe is listed as Endangered, the Black-tailed Godwit as Vulnerable under the TSC Act.
The report does mention two other avian species listed under the TSC Act, the Pied Oystercatcher and Terek Sandpiper, both listed as Vulnerable. Strangely, these two species are not listed in Table 1 (Bird species potentially occurring in Kendall Bay), even though one of these (Terek Sandpiper) is even listed on the EPBC Act List.
The report contains no discussion whatsoever on the impacts on these listed species.
Given these points, the proposal does not meet the DG's requirement of an assessment of any impacts on threatened species and their habitats in the region.

4) The value of the mangrove area and adjacent mudflats as bird habitat is not valued in the application.

This is already evident from Figure1, in which Aquenal chose a site map for the proposed marina that does not even show these areas! Both areas are close to the proposed marina and would be under the influence of noise, pollution, disturbance ect. from the marina (see Point 6. below). Volume 3 of the application also states that impacts on mangrove through changes in water circulation and sedimentation patterns are likely (p. 3, Vol. 3). The mangroves as bird habitat are not at all mentioned in the report, including the bird species likely to occur there (e.g Black Bittern, listed as vulnerable under the TSC Act) and the potential impacts of noise, pollution, disturbance etc on these birds. Similarly, there is little mention of the

mudflats and the fact that during low tide, they do provide substantial feeding areas for shorebirds. Instead, the report concludes for each species listed that there "*is unlikely to be suitable foraging habitat at the proposed development site*", even though the species descriptions demonstrate that the majority of species feed on mudflats (p. 12-14, Vol. 10). ***Hence, the proposal does not meet the DG's requirement of an assessment of any impacts on threatened species and their habitats in the region, as there is no discussion on the impacts on their habitat, especially the tidal mudflats.***

5) **Eighteen of the bird species listed in Appendix 1 are protected by international agreements for the protection of migrating birds. These agreements receive no mentioning at all in the application.**

Australia has signed these agreements and has an obligation to contribute to the protection of these birds and their habitat. The mudflats in Kendall Bay do provide important feeding habitat for these birds, especially during low tide and in autumn/spring, when these birds migrate through the area.
Hence, the proposal does not meet the DG's requirement to take into account relevant State government technical and policy guidelines.

6) **The proposal downplays, or even ignores, several impacts on birds visiting the tidal mudflats.**

Aquenal describes the following potential impacts on birds in Kendall Bay:

a) Loss of habitat: Aquenal concludes that the structures associated with the marina will not cause any loss of habitat to birds using the proposed development area. This is incorrect, for the following reasons, all not mentioned in the proposal:
   - A large area of the bay would be covered by structures and boats, and these areas can thus not be used by the many birds who hunt for fish in open water (e.g. white-bellied sea-eagles, pelicans, terns, cormorants, etc, see Appendix 1).
   - Mudflats need mud, and the geotextile blanket would stop the release of mud from the bay to the mudflat areas, thus considerably changing both the quantity and quality of the mud substrate the birds could feed in.
   - At the southern end, the marina would be very close to the tidal mudflats. The proponent has to demonstrate that the southernmost jetty would not destroy mudflat habitat at low tide.

b) Change of habitat through wave action: Aquenal concludes that the existing Rivercat ferry waves affect the whole bay and that the proposed development will not significantly impact any avian habitats through changes in wave action. This is incorrect as the boat traffic to the area would increase considerably and there is no evidence to state that because there already is some wave impact from ferries, more wave impact would not matter. Also, the boats accessing the southernmost part of the proposed marina would get much closer to the tidal mudflats than the existing rivercats now do.

c) Increase in vessel movements and noise: Aquenal concludes that there would be no significant increase in impacts on the local avian fauna because there already exists a smaller marina on the eastern side of Cabarita Park, and because the area is currently extensively used by pleasure craft and commuter ferries. These arguments can be rejected as follows:
   - The existing marina (Westport Marina) is geographically well separated from Kendall Bay and sticks out into a broad area of water, avoiding tidal mudflats and

mangroves (in contrast to the proposed marina). It has no impacts on the birds visiting Kendall Bay for feeding.

- The number of boats, and the frequency with which they would visit Kendall Bay, would be much higher than what is currently observed, and it can be anticipated that both the higher number and frequency would have a significant impact on birds.
- The increase in noise, both at day and night, would be considerable and the report does not discuss the cumulative effect of many boats accessing the bay at the same time, especially during weekends and other "peak hours". Many shorebirds are known to be very sensitive to boat engine noise. The increase of noise after dark, in particular, would be significant, and many shorebirds visit mudflats after dark. Surveys at the Olympic Park have shown that some birds are easily disturbed by low level activity after dark, even if they tolerate moderate amount of boat traffic during the day.
- The report contains no discussion of construction noise on birds, which may be significant given the long period of construction and blanket laying proposed.
- There would also be a considerable increase in light disturbance, e.g. more lights on the water and shore. The report omits to discuss this impact on birds.

d) Increased risk of collisions: Aquenal concludes that this risk is low because the area has a substantial amount of existing development and there is a large amount of existing boat traffic in Kendall Bay. However:
   - The existing development is on shore, and many of the boats, especially larger boats with tall masts, will be new structures on water, often far from existing buildings as backdrop. Birds flying over water for hunting could collide with these masts, especially if there are so many of them.
   - The amount of existing traffic is far less than what is proposed for the new development.

e) Reduction in the quality of foraging habitat: Aquenal covers this important topic in just one paragraph stating that Kendall Bay does not appear to have any significant habitat for birds. This is incorrect, as outlined above, and the proponent thus needs to provide a better assessment of the reduction of habitat quality. Such an assessment also needs to consider the change in mud quantity reaching the mudflats, the changes in invertebrate assemblage (e.g .food for birds), the pollution of the bay through engine exhausts and other pollutants coming from boats, and the stirring up of toxic sediments and how these can find their way into the foodchain and thus birds in the long term.

f) Increased risk of sewerage and/or fuel contamination: Aquenal stats that the mitigation measures proposed (management prescriptions and action plan) will minimise any potential impacts to avian species from such an event. There is no mentioning of the much higher chance of such contamination to occur given the high number of boats frequenting the proposed marina.
   The report also omits to discuss the increased chance of rubbish dumping, as it is known that seabirds die when getting caught in rubbish and fishing line.

In summary, the proposal does not meet the DG's requirement of an assessment of any impacts on threatened species and their habitats in the region.

7) **The proposal ignores several other bird species that visit the open waters of Kendall Bay for feeding.**

The proposal also does not consider other species of native birds which visit Kendall Bay for feeding, that is birds which are not listed under TSC Act, EPBC Act or International Agreements. The populations of some of these birds may have to be considered of local significance, due to the rarity of these species in the wider area. A proper fauna survey and species impact assessment could establish whether this is the case. Table 3 shows a number of such species which Ann Goeth, resident biologist, observed between 2005 and 2010.

Table 1
List of other bird species visiting Kendall Bay for feeding

Species	Latin name
Grey Teal	*Anas gracilis*
Chestnut Teal	*Anas castanea*
Pacific Black Duck	*Anas superciliosa*
Darter	*Anhinga melanogaster*
Pied Cormorant	*Phalacrocorax varius*
Little Pied Cormorant	*Phalacrocorax melanoleuco*
Great Cormorant	*Phalacrocorax carbo*
Little Black cormorant	*Phalacrocorax sulcirostris*
Australian Pelican	*Pelecanus conspicillatus*
White-faced Heron	*Ardea novaehollandiae*
Striated Heron	*Butorides striatus*
Royal Spoonbill	*Platalea regia*
White Ibis	*Threskiornis molucca*
Black-fronted Dotterel	*Elseyornis melanops*
Silver Gull	*Larus novaehollandiae*
Crested Tern	*Sterna bergii*

8) **The survey effort for birds is insufficient, a desktop study is not enough.** Points 1-5 above show that the desktop study did not identify the correct assemblage of birds visiting Kendall Bay. A field survey by an independent consultant should be conducted to confirm the presence of these bird species at different times of the year, and especially during low tide. Why did the applicant choose to obtain quantitative field data for aquatic organisms, such as infauna, epibenthic fauna and mobile fish (p.16, Vol. 1) but not for birds, which would equally be affected by the proposed marina?

9) **The cumulative impact of habitat destruction in several bays along the Parramatta river on migrating shorebirds has not been considered** (eg under point 11.17, Vol 1). It is not acceptable to state that if the mudflats in Kendall Bay are rendered unsuitable as feeding grounds for birds, these birds can go elsewhere along the river. First, there are very few undisturbed bays of this sort left along the river, and second, these other areas will already be occupied by other individuals of these species. Hence inter-specific competition will often make it impossible for further individuals to feed in these other areas.

10) **Choice of consultant questionable.** It has to be asked why the applicant chose to use Aquenal Pty Ltd as a consultant, given that this consultant is based in Tasmania, never seems to have visited the area and has no local knowledge of the area. While any

qualified consultant can carry out a desktop study, local knowledge, or at least a field visit, is important to determine the radius within which a search of data on avifauna should be conducted, and to assess the importance of Kendall Bay as habitat and corridor in relation to surrounding areas containing mudflats or mangroves in the estuary.

III. QUALIFICATIONS

This report was prepared by Dr. Ann Goeth (PhD), an ecologist with a range of experience, including:

- Two years as lecturer at Macquarie University, in subjects such as Conservation Biology and Biology of Australian Mammals;
- Honourary Research Associate at Macquarie University since 2005; Working as Senior Threatened Species Officer for the Department of Environment, Climate Change and Water (DECCW, Biodiversity Conservation Branch) since 2005;
- Her own consulting firm, providing Seven-Part-tests and environmental assessments for the company "Urban Tree Management";
- One year as ecological consultant for the United Nations in Geneva;
- Two years conducting an avian research project in the South Pacific;
- Two years as scientist in a Natural History Museum (Braunschweig, Germany);
- Several trips as lecturer on cruise ships in the South Pacific, focusing on marine and avian ecology; and;
- Explaining ecological facts to a wider audience in a range of articles, TV documentaries and her CSIRO published book on Australian moundbuilding birds; and
- A broad training in ecology at the University of Innsbruck, Austria (Masters), and Griffith University, Brisbane (PhD).

She has lived in Hunters Wharf, Breakfast Point, since 2005 and has thus gained extensive insights into the ecology and birdlife of Kendall Bay on an every-day basis.

Appendix 1. Bird species that are known to visit the tidal mudflats in Kendall Bay for feeding or roosting, detailing the type of proof of evidence as well as their listing under either the *NSW Threatened Species Conservation Act* 1995, the *Environmental Protection and Biodiversity Conservation Act* 1999 (EPBC Act) or one of the following four international agreements:

1) CAMBA: China-Australia Migratory Bird Agreement
2) JAMBA: Japan-Australia Migratory Bird Agreement text (JAMBA)
3) ROKAMBA: Republic of Korea - Australia Migratory Bird Agreement
4) BONN: Convention on the Conservation of Migratory Species of Wild Animals

Details for these international agreements can be found on the following webpage: http://www.cms.int/, details for listings under http://www.environment.gov.au/cgi-bin/sprat/public/publicshowmigratory.pl

Common name	Scientific name	Proof of record provided by the applicant (Aquenal) for : a = Kendall Bay b=Kendall Bay & Bird Atlas1998-2007	Other proof of record: Personal observation A. Goeth at tidal mudflats in Kendall Bay	Likely occurrence based on records from nearby Hen and Chicken bay and Olympic Park, provided by P. Straw	TSC Act listing	EPBC Act List	Listed under International Agreements
Great Egret	*Ardea alba*	a	Yes		No	Migratory, Marine	JAMBA CAMBA
Cattle Egret	*Ardea ibis*	b	Yes		No	Migratory, Marine	JAMBA CAMBA
White-bellied Sea Eagle[1]	*Haliaeethus leucogaster*	b	Yes		No	Migratory, Marine	CAMBA
Painted Snipe	*Rostratula benghalensis s. lat.*	a			**Endangered**	**Vulnerable** Migratory, Marine	CAMBA
Australian Painted Snipe	*Rostratula australis*	b			No	**Vulnerable** Migratory, Marine	No
Black-winged Stilt	*Himantopus himantopus*	b	Yes		No	Marine	No
Red-necked Avocet	*Recurvirostra novaehollandiae*	b			No	Marine	No
Pacific Golden Plover	*Pluvialis fulva*	b			no	Migratory, Marine	BONN JAMBA CAMBA ROKAMBA
Red-capped Plover	*Charadrius ruficapillus*	b			No	Marine	BONN JAMBA CAMBA ROKAMBA

Common name	Scientific name	Proof of record provided by the applicant (Aquenal) for : a = Kendall Bay only b=Kendall Bay and Bird Atlas1998-2007	Other proof of record: Personal observation A. Goeth at tidal mudflats in Kendall Bay	Likely occurrence based on records from nearby Hen and Chicken bay and Olympic Park, provided by P. Straw and A. Silcocks	TSC Act listing	EPBC Act List	Listed under International Agreements
Latham's Snipe	*Gallinago hardwickii*	b			No	Migratory, Marine	CAMBA, JAMBA, ROKAMBA, BONN
Black-tailed Godwit	*Limosa limosa*	a			**Vulnerable**	Migratory, Marine	CAMBA, JAMBA, ROKAMBA, BONN
Common Greenshank	*Tringa nebularia*	b	Yes		No	Migratory, Marine	CAMBA, JAMBA, ROKAMBA, BONN
Asian Dowitcher	*Limnodromus semiplamatus*	a			No	Marine	No
Pectoral Sandpiper	*Limicola falcinellus*	b			no	Marine	CAMBA, JAMBA, ROKAMBA, BONN
Terek Sandpipler	*Xenus cinereus*	b			**Vulnerable**	**Vulnerable,** Migratory, Marine	CAMBA, JAMBA, ROKAMBA, BONN
Pied Oystercatcher	*Haematopus longirostris*	b			**Vulnerable**	Migratory, Marine	No
Ruff	*Philomachus pugnax*	a			no	Marine	CAMBA, JAMBA, ROKAMBA, BONN
Bar-tailed Godwit [2]	*Limosa lapponica*		Yes	Yes	no	Migratory, Marine	CAMBA,

							JAMBA, ROKAMBA, BONN
Common name	Scientific name	Proof of record provided by the applicant (Aquenal) for : a = Kendall Bay only b=Kendall Bay and Bird Atlas1998-2007	Other proof of record: Personal observation A. Goeth at tidal mudflats in Kendall Bay	Likely occurrence based on records from nearby Hen and Chicken bay and Olympic Park, provided by P. Straw and A. Silcocks	TSC Act listing	EPBC Act List	Listed under International Agreements
Red Knot	*Calidris canutus*			Yes	no	Migratory, Marine	CAMBA, JAMBA, ROKAMBA, BONN
Curlew Sandpiper	*Calidris ferruginea*		Yes	Yes	no	Migratory, Marine	CAMBA, JAMBA, ROKAMBA, BONN
Sharp-tailed Sandpiper	*Calidris acuminata*		Yes	Yes	no	Migratory, Marine	CAMBA, JAMBA, ROKAMBA, BONN
Common Tern[3]	*Sterna hirundo*		Yes	Yes	no	Migratory, Marine	JAMBA, ROKAMBA, BONN
White-winged Black Tern[3]	*Chlidonias leucopterus*		Yes	Yes	no	Migratory, Marine	CAMBA, JAMBA, ROKAMBA,
Black Bittern[4]	*Ixobrychus flavicollis*			Yes	**Vulnerable**	Not listed	No

[1] White-bellied Sea eagles breed in the Homebush Olympic Park and are frequently observed flying over Kendall Bay. A. Goeth has observed these hunting for fish in Kendall Bay and surroundings

[2] Recent counts, conducted for Canada Bay Council, revealed that up to 350 Bar-tailed Godwits visit Kendall bay and surrounding bays during summer, which makes it the largest known population in Sydney.

[3] Both species of tern do not visit the mudflats, but hunt for fish in Kendall Bay

[4] Black Bitterns are likely to visit the mangroves at the southern end of Kendall Bay (P. Straw, personal communication).

Appendix E: Marine Ecology Review

Response to Inner West Marina Project Application:

Review of Impacts on Marine Environment and Biodiversity (Volume 3 of the application)

By Dr. Ann Goeth, November 2010

I. EXECUTIVE SUMMARY

1) It is misleading to state in the summary of project impacts that the fauna in Kendall Bay is not typical of the area and not considered of significant ecological value (p. 72, Vol 1). This is an incorrect interpretation of information provided by Cardno which indicates a diverse range of fauna.

2) The geotextile blanket does not meet the requirements of the Remediation Order. Contaminated fine sediment particles will still pass through fine holes in the blanket.

3) High levels of contaminants and further increase of these levels: Both the sediment and water in Kendall Bay are so polluted that any increase in pollution levels from boats will push the levels of various contaminants over acceptable thresholds.

4) Release of Acid Sulphate Soils. This issue is not dealt with sufficiently.

5) Significant increase in copper contamination. The copper concentration in Kendall Bay exceeded the ANZECC 95% trigger values at all sites measured by Cardno, and most boats will use copper-based anti fouling paints, which will push copper levels in the water beyond acceptable values.

6) Pollution of bay water from the boats' sewage and bilge water. This is highly likely, given the size of the proposed marina. No proper methods of enforcement of rules preventing such pollution are being suggested, and it is unclear whether a sufficiently neutral party would enforce such rules.

7) Pollution of bay water via engine exhausts. Boat engine exhausts will introduce hydrocarbon contaminants and heavy metals into Kendall Bay, and levels of these substances are already too high.

8) Accidental spills of sewage and organic pollutants. This is highly likely, given the high number of boats using the proposed marina. No proper methods of enforcement are being suggested.

9) Introduction of non-indigenous fish and marine vegetation is listed as a Key Threatening Process (KTP) under the *TSC Act*. Given the large size of the marina, it will be impossible to avoid the introduction of non-indigenous species in the long-term.

10) Destruction of food chains, when organisms in the soft sediment will perish after laying of the geotextile blanket, and through resuspension of sediment and increased turbidity. The reduction of pelagic and epibenthic flora will reduce the amount of food for fauna higher up the food chain.

11) There are not enough areas elsewhere in the estuary to make up for the loss of habitat. There are few bays left in the estuary that are not yet used for mooring boats.

12) Impacts on mangroves and protected areas through changes in water circulation and sedimentation patterns. The report suggests that such impacts are likely but does not discuss this in sufficient detail. No attention is paid to the impact of reduced dilution of stormwater entering the bay at the southern end, where stormwater and trash won't be removed as quickly as before.

13) The provisioning of novel habitat in the form of new pillars, jetties etc should not be used as an argument in favour of the marina. Cardno's admits that while these structures provide novel habitat, this will not offset the impacts on soft-bottom assemblages resulting from their introduction.

14) The application does not consider the impacts on climate change. Marine algae, which considerably reduce CO_2 levels, will be destroyed or overshadowed, reducing their ability to photosynthesis. Also, methane will be released when organisms decay under the geotextile blanket.

15) The proposed silt curtains propose a risk for free swimming fauna and won't completely stop contaminated matter leaving the area. During daily openings of the curtains, contaminated material will also exit the enclosed area. Also, mobile organisms are likely to get caught in the net and die, or suffer considerably from the lack of food within the area they are trapped in.

16) The application wrongly claims there would be no removal or destruction of marine vegetation (p. 13, Vol. 3). This is incorrect if marine algae are also considered marine vegetation.

17) Insufficient survey effort. The assessment was conducted during May 2009 and not repeated at other times. Seasonal changes of flora and fauna assemblage are not discussed. The Protected Matters Report has not been conducted for Ryde City LGA on the other side of Parramatta River.

In summary, this report identifies numerous points of non-compliance with the DG's requirements and the Remediation Order.

II. DETAILS

The purpose of this review is to assess the impacts on the marine environment and biodiversity in Kendall Bay, and to compare these impacts with A) the relevant Director-General's Requirement; and B) the Remediation Order issued by the EPA in June 2006.

The relevant DG's requirement is: "To conduct an Environmental Assessment that includes

- a detailed assessment of the environmental impacts of the proposal, taking into consideration any issues raised during consultation;
- a detailed assessment of the key issues specified below and any other significant issues identified in the general overview of the environmental impacts of the proposal, which includes:
    - a description of the existing environment
    - an assessment of the potential impact of the project, including any cumulative impacts from construction activities and from all water related craft that would utilise the marina;
    - a description of the measures that would be implemented to avoid, minimise, mitigate, offset, manage, and/or monitor the impacts of the project."

This review is aimed at the two key issues of a) Soils, Sediments and Water, and b) Flora and Fauna. It identifies numerous points of non-compliance with the DG's requirements above, detailed below.

Details in brackets refer to the respective section of the Project Application (eg page number = p, and Volume Number = V). Sections in italics are sections taken from the Project Application

A) IMPACTS ON ACQUATIC BIODIVERSITY (Vol. 3)

1) **It is misleading to state in the summary of project impacts that "*given that the organisms found by Cardno were generally not typical of the area and that there are extensive areas of these habitats elsewhere in the estuary, these were not considered of significant ecological value" (p. 72, Vol 1).*** This summary is a false interpretation of the detailed information provided by Cardno, which is as follows:
    - Kendall Bay does have a diverse range of infauna, despite the contamination of the sediment (see p.iii, Vol 3).
    - The epibenthic fauna found was similar to that of two reference points elsewhere in the estuary and thus appears typical of that region (p. iii, Vol 3).
    - The mean number of taxa found within the bay is similar to that in reference location.
    - The Infauna was different to two reference locations, but no results for tests of significance were given to see how significant this is. Also, this needs to be interpreted in terms of the different microhabitats and biotic as well as abiotic factors impacting on the infauna at these different locations, which was not done. A difference in assemblage at such a small number of sample points does not mean that the infauna at Kendall Bay is not typical for this area of the estuary!
    - Mobile fish and invertebrate assemblage did not appear to be typical for the area, but again, cardno compares this with a reference point that is positioned in an area of the estuary that is exposed to different biotic and abiotic factors.
    - Cardno admits that some differences in sampling intensity can explain the difference in the number of taxa at different locations (p 7, Vol. 3). Hence, how reliable is the comparison with the reference points in terms of sampling intensity?
    - Four different species of fish protected under the *FM Act* could occur in the area (p. 10, Vol. 3). There has been insufficient survey to confirm the presence or absence of

these fish in Kendall Bay. Also, a protected fish (Harry Pipefish) was found here in 1988, but not during surveys in 1996 and 2009. This may, however, be explained by lack of survey efforts or surveys being conducted during the wrong time of year or day.

Also, the statement above ignores the fact that there are protected wetlands at the southern end of Kendall Bay and around Cabarita Wharf and Cabarita Point as well as a patch of protected seagrass *Halophita ovalis* (p. IV, Vol.3). There is too little discussion on the potential impacts on these biodiversity assets.

2) **The geotextile blanket does not meet the requirements of the Remediation Order.** This blanket will not completely cover the area and thus remediate the area, as per the Remediation Order, as fine sediment particles will still pass through the blanket (p.v, Vol. 3). The application downplays the significance of this and compares it with the existing situation (p.v, Vol 3), e.g this is better than what we have now. It also ignores the fact that now, we do not have 172 motor boats coming and going in and out of the bay. Instead, it should be compared with a proper remediation of the bay!

3) **High levels of contaminants and further increase of these levels:** Kendall Bay is contaminated with measureable levels of Total Petroleum Hydrocarbons (TPH) and Polycyclic Aromatic Hydrocarbons (PAH), and the PAH concentrations exceed the Interim Sediment Quality Guidelines (ISQG). Also, the levels of Arsenic, Chromium and Copper are in excess of the lower, but not their higher ISQG values. Most importantly, the levels of Zinc, Mercury and Lead are above their higher ISQG values (p. iii, Vol 3).
   - More such contaminants would be released into the surrounding sediment and water by pile driving (including for support structures during construction), laying the geotextile blanket (over at least 30 weeks) and resuspension of sediments after laying the blanket. This would push the levels of these contaminants even more closer to, or above, the higher ISQB values. The application downplays the impact of this increase on biodiversity considerably.
   - More such contaminants would also be released from oxidation of deeper sediments and decomposition of organic matter trapped under the blanket (p. VI, Vol. 3).
   - Cardno recommends that elutriate tests be done to determine the concentration that might be released during all of the above these processes. This type of testing also needs to be done long after the construction phase, as oxidation of deeper sediments will continue for a prolonged period of time. This has been omitted in the report.
   - Even if elutriate tests are being conducted, what will be the threshold at which construction works will be put on hold? Will this ever be the case, given the amount of money involved? Who will determine when and if construction will be put on hold?

4) **Release of Acid Sulphate Soils**: Kendall Bay contains Acid Sulphate Soils at depths of 0.2-0.4 m in the subsurface sediment (p. iii, Vol. 4). The project application says this is of no significance as these will not be excavated. Clearly such soils will be released to the surface during pile driving, including for the support piles during construction? This needs to be investigated by an engineer.

Point 2-4 above clearly demonstrate that the application fails to meet the requirements of the Remediation Order! The Remediaton Order requires that prior to commencing any works or activities that would result in the disturbance, or further disturbance, of the bed sediment of Kendall Bay, the person proposing to conduct the works or activities must prepare and submit for the EPA's approval a written plan with specific measures directed at minimising the disturbance and migration of the contaminants in the bed sediment of the site. The geotextile blanket will not minimise the

disturbance and migration of contaminants, and it will not stop contaminants from entering the water during pile driving.

During the consultation phase, DECCW raised concerns about the type of remediation proposed, in particular the release of contaminants during placement of the blanket and piles, the potential impacts on the environment as well as estuary hydrodynamics and water levels. In addition, DECCW raised concerns about the ongoing maintenance of the blanket. These concerns still stand now, as the application fails to provide evidence that any of these concerns are not justified, especially if Points 2-4 above are considered.

5) **Significant increase in copper contamination**. The copper concentration in the waters of Kendall Bay exceeded the ANZECC 95% trigger values at all sites measured by Cardno (in 2009). The majority of boats will be treated with copper-based antifouling paints and the inevitable release of these paints into the water would push the copper concentration even higher. The only mitigation proposed is an education of boat owners to not use these type of paints. This is unrealistic, especially given that the boats attracted to this marina will be very expensive and boat owners would want to only use the best paint available. Copper-based paints are regarded as the best paints.

6) **Pollution of bay water from the boats' sewage and bilge water**. The report confirms that such pollution is likely (p vii, Vol. 3) but claims that boat owners should be prohibited to discharge sewage and bilge water. Who will control this and what would be the fines? Again, it is an unrealistic assumption that this can be prevented.

7) **Pollution of bay water via engine exhausts.** The report confirms that boat engine exhausts will introduce hydrocarbon contaminants and heavy metals into the water of Kendall Bay (p3, Vol. 3). Levels of these substances are already too high (see above) and such an increase should be avoided at all costs.

8) **Accidental spills of sewage and organic pollutants.** With such a high number of boats frequenting the proposed marina, there would be a high chance of accidental spills of sewage or organic pollutants, such as fuel, motor or other oils (p. 3, Vol. 3).

9) **Introduction of non-indigenous fish and marine vegetation is listed as a Key Threatening Process (KTP) under the *TSC Act*.** The application acknowledges the considerable danger of such introduction and the only mitigation measure proposed is the education of boat owners. It will be impossible to avoid the introduction of such non-indigenous species in the long-term, especially with the high number of boats proposed to use this area. Also, there seems to have been no study on which non-indigenous species occur in the bay at present, the report only recommends that such a study takes place before the marina starts its operation (p.viii, Vol. 3). Such a study should have been part of the project application!

10) **Destruction of food chain**: Most organisms within or on the surface of the soft sediment would perish shortly after the geotextile blanket will be laid (p V, Vol 3). The resuspension of sediment and increased turbidity during laying of the geotextile blanket would likely have adverse effects on the pelagic and epibenthic flora. Such combined loss of this habitat and associated biota would significantly reduce the amount of food for epibenthic and pelagic organisms, as well as the fauna higher in the food chain, such as shorebirds and sea eagles.
There is not enough data to predict if, and when, the basalt rock above the geotextile blanket would ever be colonised by organisms similar to those occurring in the sediment today.

11) **There are not enough areas elsewhere in the estuary to make up for the loss of habitat.** The application downplays the impacts on organisms under 5) above by stating that there are extensive areas of these habitats elsewhere in the estuary. This ignores the fact that the laying of the geotextile blanket will disturb a very large (57000 square metre) area of bed sediment over a prolonged period (30 weeks), and that there are very few bays left within the estuary that are not yet used for mooring boats. The applicant has to demonstrate which other areas he refers to.

12) **Impacts on mangroves and protected areas through changes in water circulation and sedimentation patterns.** The report suggests that such impacts are likely (p3, Vol. 3) but does not discuss this any further. With the large size of the marina, and one jetty being close to, and parallel to, the southern end of Kendall Bay, where the mangroves are found, such impacts will be even more severe. A proper assessment of the environmental impacts needs to discuss this in more detail. Discussions should also focus on the reduced dilution of stormwater entering the bay at the southern end, as reduced water circulation means that stormwater won't be removed from this area as quickly as before. This, in turn, will mean increased accumulation of pollutants and trash entering the bay through the several stormwater pipes found in this area.

13) **The provisioning of novel habitat in the form of new pillars, jetties etc should not be used as an argument in favour of the marina.** Cardno's review states clearly that while these structures will provide novel habitat, this will not offset the impacts on soft-bottom assemblages resulting from their introduction (p. V, Vol. 3 and p. 14, Vol. 3).

14) **The application does not consider the impacts on climate change**. It has been acknowledged that photosynthesis of marine algae and other organisms considerably reduces the amount of CO_2 in the atmosphere. The proposed marina would reduce the amount of algae and thus photosynthesis in Kendall bay. The geotextile blanket will completely destroy all benthic algae, of which several different species occur in the bay (see p. 7, Vol. 3). Also, the various structures will shade floating algae and foliose algae (p. 9, Vol. 3), also reducing their photosynthetic activity. In addition, substantial amount of methane (a greenhouse gas) will be produced when organisms decay under the geotextile blanket.

15) **The proposed silt curtains propose a risk for free swimming fauna and won't completely stop contaminated matter leaving the area.** The applicant proposes a row of two silt curtains (inner and outer) to stop the spread of sediment and turbidity into nearby protected wetlands and other areas of Kendall Bay and the estuary. These will be present for the duration of construction, e.g. at least 30 weeks. Daily opening of panels in the curtains are supposed to allow movement of boats and mobile organisms. During such openings, contaminated material will also exit the enclosed area. In addition, mobile organisms are unlikely to wait for the daily opening. Instead, they are likely to get caught in the net and die, or suffer considerably from the lack of food within the area they are trapped in. In addition, the applicant needs to prove that such types of silt curtains will be efficient in stopping the spread of sediment and turbidity, and whether this has been applied elsewhere before.

16) **The application wrongly claims there would be no removal or destruction of marine vegetation** (p. 13, Vol. 3). This is incorrect if marine algae are also considered marine vegetation. There will be significant impact on marine algae and reduction of the number of species present.

17) **Insufficient survey efforts**. The acquatic assessment by Cardno was conducted during May 2009 and not repeated at any other month of the year. This survey effort is insufficient, given the gravity of impacts on the aquatic ecology of the region. No discussion is provided on the seasonal change of flora and fauna assemblage, given that May is close to the colder months of the year and this assemblage may change during the warmer months. Some comparisons are

made with two earlier studies but no discussion is provided on how similar in methodology these other studies were and thus how comparable they are.
In addition, the Protected Matters Report has only been conducted for Canada Bay LGA, not for Ryde City LGA on the other side of Parramatta River. Some species are likely to swim or migrate across the river into Kendall Bay, and this LGA should thus also have been included.

III. QUALIFICATIONS

This report was prepared by Dr. Ann Goeth (PhD), an ecologist with a range of experience, including:

- Two years as lecturer at Macquarie University, in subjects such as Conservation Biology and Biology of Australian Mammals;
- Honourary Research Associate at Macquarie University since 2005; Working as Senior Threatened Species Officer for the Department of Environment, Climate Change and Water (DECCW, Biodiversity Conservation Branch) since 2005;
- Her own consulting firm, providing Seven-Part-tests and environmental assessments for the company "Urban Tree Management";
- One year as ecological consultant for the United Nations in Geneva;
- Two years conducting an avian research project in the South Pacific;
- Two years as scientist in a Natural History Museum (Braunschweig, Germany);
- Several trips as lecturer on cruise ships in the South Pacific, focusing on marine and avian ecology; and;
- Explaining ecological facts to a wider audience in a range of articles, TV documentaries and her CSIRO published book on Australian moundbuilding birds; and
- A broad training in ecology at the University of Innsbruck, Austria (Masters), and Griffith University, Brisbane (PhD).

She has lived in Hunters Wharf, Breakfast Point, since 2005 and has thus gained extensive insights into the ecology and birdlife of Kendall Bay on an every-day basis.

Appendix F: Construction Management Comments

QUOTATIONS FROM THE USA DREGDING OPERATIONS AND ENVIRONMENTAL RESEARCH PAPER ERDC TN – DOEC – E21

OF SEPTEMBER 2005

"Silt Curtains as a Dredging Project Management Practice"

Note: Ref. 4.5 means 50% down page 4

Comments by "the writer" refers to Mr. R. P. JEFFERY (BE, MSC, DIC, FIE Aust)

Reference 1.0

"**INTRODUCTION:** One of the most frequently cited reasons for establishing an environmental window is impacts from turbidity and suspended sediments (Reine, Dickerson, and Clarke 1998).
...Silt or turbidity curtains have been designated a "best management practice (BMP)" by the Corps of Engineers...
...**Effectiveness of silt curtains under different circumstances are poorly understood by dredging project regulators and the public alike**. Dredging contractors attest to the fact that, in their experience, **silt curtains do not work under many of the site conditions encountered in navigation and environmental dredging projects**."

TYPICAL QUESTIONS ON SELECTION AND USE OF SILT CURTAINS

"**What are the Components of Silt Curtains?** Typically fabricated of flexible, polyester-reinforced thermoplastic (vinyl) fabric, the curtain is maintained in a vertical position by flotation material at the top and a ballast chain along the bottom. (Figure 1)"
"**Curtains are generally deployed to extend to 1-2 ft above the bottom to allow mudflow to pass beneath them**."

"**What Are the Functions of Silt Curtains? Silt curtains are designed to contain or deflect suspended sediments or turbidity in the water column.** Sediment containment within a limited area is intended to provide residence time to allow soil particles to settle out of suspension and reduce flow to other areas where negative impacts could occur."

Page 4.5

"What Processes Affect Silt Curtains? While the curtain provides an enclosure where some of the fine-grained material may flocculate and/or settle, **most of this fine-grained suspended material in the water column escapes with the flow of Water and fluid mud under the curtain**."

"Whereas properly deployed and maintained silt curtains can effectively control the distribution of turbid water, **they are not designed to contain or control fluid mud."**

Page 5.6

"**How are Silt Curtains Deployed?** The maze configuration ("A," Figure 3) has been used on rivers where boat traffic is present, but **appears to be relatively ineffective due to direct flow through the aperture between the curtain sections**."

[*The writer advises that **the proposed regular opening of the silt curtain to allow regular construction and materials supply to the IWM is a similar circumstance to the illustrated maze configuration at page 5.6.]***

Page 6.8

"What is Known about the Effectiveness of Silt Curtains? Summarizing the JBF Scientific Corporation study, silt curtains effectiveness depends on many factors such as:

- Nature of the operation
- Quantity and type of material in suspension within or upstream of the curtain
- Characteristics, construction, and condition of the curtain as well as the area and configuration of the barrier enclosure
- Method of deployment.
- **Hydrodynamic conditions (e.g strong currents, high winds [especially with long fetch areas,] fluctuating water levels [i.e., tides],"**

["*The writer notes that the last mentioned **undesirable bullet point criteria for silt curtains exists at the Kendall Bay i.e. strong currents (greater than 1.5 m/sec) tidal fluctuations and high winds assisted by long fetch exposures**"]*

Page 9.2

"**Where anchoring is inadequate and particularly at sites where tidal currents dominate the hydrodynamic regime** and probably cause resuspension of the fluid mud as the curtain sweeps back and forth over the fluid mud with changes in the direction of the tidal currents, **the turbidity levels outside the curtain can be higher (as much as 10 times) than the levels inside the curtain."**

[The writer notes that for the IWM there is no proposed silt curtains anchoring and hence this risk is exacerbated in strong currants.]

Page 9.3 "**With respect to overall effectiveness and deployment considerations a current velocity of approximately 1 knot appears to be a practical limiting condition for silt curtain use." (*BPRG note that 1 knot equals only about 0.5 m/sec)"**

Page 9.7 "The lack of flow through the curtain is probably attributable to the **water taking the path of least resistance (ie. Under the piers or around the ends)**. Clogging of the curtain with suspended solids (either background or caused by dredging) would only aggravate this situation."

Page 9.8 "Notably, a concern arose that enclosing the dredge with a silt curtain would create a settling basin for solids that could promote the concentration and release of oxygen-consuming suspended contaminants in violation of water quality standards. **The exchange of water inside the curtain became a design topic and relief panels (flaps) were considered to allow a 25-percent exchange of basin volume over a 12 hour period."**

Page 9.9 "In 1994, the USEPA published a remediation guidance document as part of the Assessment and Remediation of Contaminated Sediments (ARCS) Program (USEPA 1994). **They concluded, "As a generalization, silt curtains and screens are most effective in relatively shallow quiescent water. As the water depth increases and turbulence caused by currents and waves increases, it becomes increasingly difficult to effectively isolate the dredging operation from the ambient water. The St. Lawrence Centre (1993) advises against the use of silt curtains** in water deeper than 6.5m or **in currents greater than 50cm/sec (USEPA 1994."**

Page 15.9 "In applications **where the curtain will be extended to the bottom of the waterway in tidal or moving water conditions, a heavy woven permeable filter fabric or tide flaps should be designed into the curtain to relieve pressure on the curtain wall." [The writer advises that the case of tide flaps contravenes the objective of containment of contaminants within the curtain.]**

Page 15.9 "**Silt curtains should be used on slow to moderate currents**."

Page 16.2 "**In high currents where sediment plumes disperse rapidly, silt curtains are very difficult to maintain properly and can easily become dysfunctional**."[***The writer advises that according to page 9.9 a high current would be greater than 0.5m/sec. The D.A. Vol. 6 (i.e the GBAC report) frequently predicts current speed greater than 0.5m/sec (e.g. see Vol 6, Table 5.7 which lists speeds of 1.2 to 11.2 m/sec in 2 m of water or Table 5.12 which indicated design axial velocity at top of blanket at 1.6 or 2.2 m/sec) .Hence the silt curtains are almost certain to be ineffective in containing the contaminants."]***

Page 16.3 "**In all but the slowest current flows, curtains will "billow out" in the downstream direction, allowing water to pass beneath the curtain, thereby reducing the effective skirt depth." [*The writer again advises this is a failure to contain the contaminants.]***

Page 16.5 "High winds can lift large curtains out of the water like a sail.
Curtains can sink due to excessive biological fouling on the fabric."

Page 16.6 "**In tidal situations, where currents move in both directions, it is important to attach anchors on both sides of the curtain to hold the curtain in place and to not allow it to overrun the anchors** and pull them out when the tide reverses. [***The writer comments no anchors proposed for IWM due to likely damage to SPS hence this restricts the effectiveness of the containment by the silt curtains.]***

Page 16.7 "Care should be taken during removal of silt curtains to avoid or minimize resuspension of settled solids."

Page 16.9 "**SILT CURTAINS CAN BE EFFECTIVE IN CONTAINING FLOATING DEBRIS, BUT NOT ALWAYS IN CONTAINING CONTAMINATION. Soluble Contaminants, particularly heavy metals, can flow through, around, or under the curtain."**

Page 17.4 "Unfortunately, **few comprehensive studies are published on the actual performance of silt curtains** under varying project conditions".

[The writer notes that at page 10.4 and 17.4 the authors of the ERDC – TN – DOER – E21 September 2005 report advice that a qualification on their document is "A notable exception is monitoring of the curtain performance". We also note the IWM D.A. is silent as to the need for regular daily?? weekly?? monitoring of the proposed Silt Curtain.]

RE; INNER WEST MARINA – VOL 7 – REVIEWS BY ROD JEFFERY (BE,MSC,DIC,FIE AUST)

Appendix 10: Construction Environmental Management Plan (CEMP)
Author: AECOM. Final Report Dated 30/9/09
Note: Reference Column provides clause No. from report and approximate monitor screen page location e.g. page 10.6 = 60% down page 10
FIR, FRM = Further information required for meaningful response
C of C = Suggested "Condition of Consent" if Marina were approved
CDGR = Contravenes Director General's Requirements (see attached numbered CDGR for quick reference)
Note: The Author strongly believes the Marina D.A. should be rejected on numerous grounds submitted in the Breakfast Point Residents' Group (BPRG) submission. This critique is provided to give further support to that submission and in no way should be interpreted as a conditional acceptance of the D.A.

DETAILED REVIEW

CLAUSE ETC REFERENCE	REPORT STATEMENT	COMMENT	QUESTION OR ACTION LIST
1.2.: page 1.5	"Previous testing . ..including the site... heavy oils, elevated levels of polycyclic aromatic hydrocarbons (PAH's) and heavy metals above the Interim Quality Guidelines (ANZECL & ARMCAN2 2000)"	Proponents own submission highlights the need to fully remediate the Bay. "Covering the problem with the SPS does not eliminate the problem and does not permanently remediate the site.	**A Basic question is why locate an intensive boat movement Marina above such an environmentally sensitive area.**
1.2.1. Page 1.9	"Some of the identified PAH's are classified as human carcinogens.	See Above	**As above**
1.2.1: Page 2.1	"It is likely that further development of the area would increase the risk of harm" and Disturbance of the containments would	See Above	**As above**

	mobilise containments and hence increase the risk of harm"		
1.3 Page 2.9	"A Managers office and small amenity area"	No definition of scale etc.	**CDGR (1.2) FIR,FMR Request copies of office & Kiosk drawings. Further details are required for meaningful review (FDR, FMR)**
1.7 Page4.1	Project Managers for CEMP = TLB Engineers P/L "Ensure all contractors comply with statutory and licence requirements" "Oversee Construction works and overall implementation of the CEMP" "Undertake monitoring and inspections of the site as required."	**TLB must be on site during all construction activities to ensure compliance of CEMP, minimise risk, "stop" or "hold" work as necessary and act as a communication conduit with residents.**	**CDGR (1.7) FIR,FMR Request TLB full time presence on site and accessible to Community as a "condition of consent" if Marina were approved**
1.7; Page 4.1 to 4.9	Roles and Responsibilities	No independent auditing of AECOM role. **Because of numerous CEMP omissions in AECOM CEMP this demands independent frequent auditing.** Many examples of such omissions listed in following pages.	**CDGR (1.7) C of C to include progressive independent auditing**
1.8 Page 6.1	"This CEMP applies to the following:- • The Site • Management of the contaminated sediments within the footprint of the proposed Marina"	Obviously ,contrary to the AECOM defined area limits, "**Management of the containment sediments must be beyond the footprint of the Marina and include the whole lease area (i.e. 57,000 v's 20,0000 m2) and adjacent potentially affected areas**.(e.g. **Impractical as current proposal of around 20m unprotected Bay floor deposits extending from seawall face)**	**C of C CDGR (1.7) (Omission in proposed ECMP)**
1.10;Page 6.9	"This CEMP may be reviewed as necessary. Therefore it is the responsibility of the	As major stakeholders on the impacts of non-compliance it follows that the **Breakfast Point Residents Group and the**	**C of C**

	reader of this document to ensure they have the current version of the CEMP".	**BP Community Association should be promptly issued with revised CEMP's with any changes highlighted**.	
2.3; Page 8.6	"Surface water monitoring results will be compared to ANZECC (2000) guide lines for fresh and marine quality water"	**1) Monitoring of deeper water than "surface water" is necessary (e.g. especially just above Basalt layer").** **2) No conventional Quality Assurance (QA) "Stop" or "Hold" points are given for non compliant results (incredibly no "STOP" or "HOLD" points appear anywhere in the CEMP or OMP or CMP)** 3) **There is no reference to mandatory testing by a National Association of Testing Authorities (NATA)** laboratory nor sampling to follow NATA certified practices	**C of C CDGR (1.7) Major creditability question regarding AECOM**
3.1.1; page 11.1	"Monitoring of baseline conditions of the water will be undertaken over period of 2 months (on a weekly basis)" "Additional monitoring of surface waters ..."	**Independent auditor "hands on" review is essential to ensure representative baseline data is recorded**. Auditor must have authority to request/nominate further baseline testing. **Additional monitoring also essential for below surface waters.**	**C of C CDGR (1.7)**
3.1.2; page 11.5	Frequent reference to dual silt curtains are schematic in figure F3	**Neither the AECOM words nor Figure F3 define that the silt curtains must extend to the Bay floor and seal at the floor level to be functional for their intended "containment" objective. No detailed section drawing or specification for this critical element is given.** See attached extracts from USA paper "Silt Curtains as a Dredging Project Management Practice". This paper highlights the limitations of silt curtains. Note also that AECOM are silent as to the environmental protection need to regularly inspect the silt curtains below water including confirmation of an effective floor seal.	**CDGR (1.2) Further Details are Required for Meaningful Review of Proposal (FDR, FMR)**
3.1.2. page 11.9	See Table 3	Motor cruiser size is not defined by surely must be at least 25m. Also no reference to commercial ferries and charter boats or the very large harbour jet cat pleasure boats which	**FDR, FMR** **C of C**

		are seen in the Bay now and then doing "doughnuts"	
3.1.2.1. page 12.1	"The floating boom/silt curtain schematic is presented on drawings CMPO1,02 and 03 in Appendix A" and at p12.2 "The floating booms will be anchored to temporary piles."	Drawing CMP03 (and others) show the outer and inner boom/silt curtain not only fixed to temporary piles but also **apparently to the existing Community Association seawall with notation "Fixing Point Above MHWM".** See attached extracts from USA paper "Silt Curtains as a Dredging Project Management Practice". This paper highlights the limitations of silt curtains. Note also that AECOM are silent as to the environmental protection need to regularly inspect the silt curtains below water including confirmation of an effective floor seal.	**FDR, FMR Unacceptable to BPRG and presumably CA " Unauthorised use of others land and improvements"**
3.2.1. page 13.2	Regarding the "Placement and Installation of Sediment Protection System" (SPS) it states "Rock armour:- 300mm of grade Basalt rock"	Both here and later in the CEMP there is **not definition of the quality and grading of the Basalt rock.** The longevity of the Basalt in this marine environment surely must be proven to be well in excess of 100 years. It is **essential that rock/Basalt quality and durability tests are defined and then proven to comply by a NATA registered laboratory and further control testing be done progressively during construction. Independent or audit testing to that by quarry should be mandatory. A "HOLD" on all related activities should occur if a non-compliance is revealed.**	**FDR, FMR CDGR (1.2)**
3.2.1; Page 13.6	"The sheets will be laid continuously etc"	There is **no reference to prior cleaning of the Bay floor to remove all obstructive and sharp objects which of course could damage the SPS.** No investigation for this likely possibility and no contingency plan is documented by AECOM	**FDR, FMR CDGR (1.2)**
3.2.1;page 13.7	"The geotextile will be secured by placing Basalt rock gravel on top"	There is **no specification of the minimum insitu density of the Basalt, how it will be tested and how layer thickness will be tested.**	**FDR, FMR CDGR (1.2)**
3.2.1; page 14.1	.."the inner boom/silt curtain will be progressively moved south over the SPS.."	**An ineffective floor seal will be created with an irregular Basalt layer which has only been dumped by the excavator. Furthermore the inner curtain will be dragged across the**	**FDR, FMR CDGR (1.2)**

		unprotected floor sediments and undoubtedly stir/release them into the water.	
3.2.2.; page 14.4	"Piling for Marina Construction"	**No reference** is given in 3.2.2 or elsewhere as **to the methodology of withdrawing at least 13 temporary piles. Their removal will withdraw/suck up the contaminated sediments**. A critical element or consideration of the CEMP has been omitted by AECOM	**CDGR (1.7) No consideration and/or no suitable solution for exposure and water distribution of the contaminants**
3.2.3; page 14.9	.."Barge moorings.." "four temporary piles will be installed" also figure CMP01 shows 9 outer silt fence/boom temporary piles.	See item above	**See item above**
3.3.2; Page 15.1	"Monitoring prior to removal of Boom/Silt Curtains"	Again **no "STOP" or "HOLD" QA demand for non-compliance** (typical omission throughout the AECOM report)	**FDR, FMR CDGR (1.7)**
4.0; Page 17.1	ENVIORMENTAL MONITORING – throughout e.g @ page 17.7 "Any breaches or release of contaminant during the inspection will be reported to the Project Manager at the NSW Maritime Authority"	No immediate non compliance action. **No contingency plan**	**FDR, FMR CDGR (1.7)**
4.2; Page 18.1	WATER QUALITY MONITORING 4.2.1. Baseline Sampling 4.2.2. Ongoing Monitoring 4.2.3. Testing Requirements	**Again no "STOP" or "Hold" points for non compliance. No contingency plan.** **Again no requirement for sampling to NATA endorsed procedures and testing in a NATA laboratory** **Also no consideration of a CEMP plan for potential fresh water concentration in Kendall Bay south of Marina curtain due to two major stormwater pipe outlets to there and partial damming due to Marina silt curtain**.(e.g. silt curtain can block with silt deposits.) NO consideration of this issue or monitoring of it's potentially damaging effects to environment	**CDGR (1.7)** **CELM total omission**

5.3; Page 23.2	NOISE CONTROL PLAN • For a period of 4 weeks and under ... construction works must not exceed 75dB(A) and • For a period of 4 weeks and 26 weeks under ... construction works must not exceed 65 d B(A)	We read these **CEMP noise limits as exceeding those specified in the Heggies Report 10-5800-R1 dated 23 July 2009**	**FDR, FMR CDGR (1.7)**
5.3;Page 23.3	All construction vehicles involved with the works will enter and leave the Breakfast Point property in accordance with any site entry requirements.	Regarding "site entry requirements" The report is silent as to "what are" or "who will define" those requirements.	**FDR, FMR CDGR (1.2)**
Table 5; Page 25	"Work and Management Requirements"	No reference is given to land based deliveries or materials or work etc. This is an obvious Environmental Consideration and is omitted. **A dilapidation report of all potentially affected Community Infrastructure is essential before works commence. (e.g. all trafficked roads, waterfront walkway, seawall, etc, etc).**	**FDR, FMR CDGR (1.7)** **Dilapidation Report for Community used infrastructure omitted but is essential**
6.0; Page 27.1 7.1; Page 29.1	"Site inspections"- Appendix B presents the Site Inspection Report 7.1 No.	No specific reference is made to environmental impacts on the adjacent residential areas except for dust and noise. **No reference to traffic impacts, hindrance to public access areas, O.H.& S etc. No direct link/action plan/response times regarding residents complaints. No issuing action reports to residents for relevant complaints.**	**FDR, FMR CDGR (1.7)**
7.1; Page 29.1	Non Conformance and corrective Action Reports	**No critical "STOP" or "HOLD" points for major environmental non compliances or catastrophes**. TLB as Project Manager should be on site full time to immediately react to non-conformances.	**FDR, FMR CDGR (1.7)**
7.3; Page 30.2	"All records should be retained ---- minimum of 3 years	Detention period of 3 years far too low for a project of substantial environmental risks. This may offer an offender an escape from legal liability given the slow speed of	**CDGR (1.7) C of C**

		litigation. **Dismisses possible future litigation essentials.**	
8.0; Page 31.1	CEMP Audit and Review "The Contractor or a representative of the Contractor shall conduct an audit of the CEMP---"	**Any audit of creditability should be done by a party of independent to the Contractor** (e.g. at least by AECOM but desirably by another party given the many omissions in the CELM)	**C of C CDGR (1.7)**
10.1; Page 35.2	"An exclusion zone shall be enforced around the work site to assist in the safety of both on site personnel and the public"	**The exclusion zone needs precise defining**. It should not include any Community owned or managed land. The site is on/above water and the **exclusion zone should be limited to the water area only.**	**C of C CDGR (1.2)**
10.4; Page 36.7	"PROHIBITED ACTIVITIES" …."shall only be permitted in designated areas"	**The specification of "designated area" is required**.	**C of C CDGR (1.2)**
10.4; Page 40.4	"Site Traffic" --- "Site Traffic shall be diverted or the area barricaded prior to the commencement of the works"	**Definition of "barricaded area" location is necessary**. It cannot be on Community owned land without the necessary (but unlikely) approval. No discussion regarding such approval for any land based activity (other than car parking) is referenced in the AECOM report. Activities related to the Marina site have no given right to use community land except where directly owned such as the proposed Car Park lot.	**C of C CDGR (1.2)**
12.6;Page 47.2	Table 9, Item 4 reads "Excavation pits and trenches (related shore work)" "Shoring all deep excavations. No entry into excavations deeper than 1.5 metres".	**This implies proposed works on Community Association land without any disclosure of what works, without notification whatsoever all without any Community approval**. It is others private land in Community ownership that is involved.	**FDR, FMR CDGR (1.2)**
13.8; Page 52.6	"Noise and Vibrations" "Should noise complaints arise, periodic testing of equipment used on the site will be undertaken to verify compliance with maximum permissible noise levels".	If a resident complaint occurs then (unless there is a track record of unfounded complaint from the individual) **same day noise monitoring should be completed** by an independent party [e.g. HEGGIES] and an **immediate "Stop that noise source" occur if there is a non compliance**.	**FDR, FMR CDGR (1.7)**
13.10; Page 53.3	Excessive Rain	There is no recognition of mangrove or ecological damage to water life if an excessively fresh water environment is created by the 3 major storm water discharges to the south	**FDR, FMR CDGR (1.7)**

		end of Kendall Bay where the Marina silt curtain may create a salt/fresh water separation environment.	
Dwg CMPOO; Page 65	TLB drawing CMPOO (and other drawings) reference "Kiosk, outdoor area, waiting area and toilet. Ref to Dwg 0911 DA200C by Rose Structural Design" and "Marina Managers office with toilet. Refer to Dwg DA 100C by Rose Architectural Design."	**Neither of the reference drawings is included in any of the reports in Volume 7 and 8. The building layout etc. is essential to assess and consider environmental impacts especially for the operation of the Marina. The building drawings and proposed staff levels are essential to assess the minimum car park requirements**	**FDR, FMR CDGR (1.7)**
Dwg CMP02; Page67	The outline of the SPS is shown in red and is well clear of the foreshore and MHWM whereas the Remediation Order area (in yellow)abuts the MHWM. Many other drawings show the same detail with edge of SPS often around 20 to 30 metres from MHWM.	**The SPS needs to extend to MHWM as reported by AECOM** (reference 1.3.1 of Volume 7) **The most critical zone for containments protection is omitted from the SPS design. This is a major environmental issue.** The near shore zone is impacted by tidal variations, wave action, undoubtedly man movement (kayaks, small sailing vessels etc will use that area etc.) and disturbance of floor bed is highly likely yet no protection provided. **The URS environmental/contamination report to Jemena for Kendall Bay Remediation of "hot spots"(e.g. Dwg DA10) particularly highlight areas around the shore line** (e.g. at end of old wharf)and elsewhere and hence the shoreline and close by is a very high risk area. **AECOM have not recognised this as a hazard.**	**MAJOR ENVIRONMENTAL PROTECTION OMISSION** **FDR, FMR CDGR (1.7)**
Appendix C	Appendix C: "Non-Conformance and Corrective Action Reports".	**Again no reference to a "STOP WORK" or "HOLD" reaction if a non conformance occurs.**	**CDGR (1.7)**

VOLUME 7: REVIEWS BY ROD JEFFERY (BE,MSC,DIC,FIE AUST)

APPENDIX 10 ' OPERATIONAL ENVIROMENTAL MANAGEMENT PLAN (OEMP) AUTHOR: AECOM DATED 30TH SEPTEMBER 2009

FIR,FRM = Further information required for meaningful response

C of C = Suggested "Condition of Consent" if Marina were approved

CDGR = Contravenes Director General's Requirements (see attached number CDGR for quick reference)

Note: The Author strongly believes the Marina D.A. should be rejected on numerous grounds submitted in the Breakfast Point Residents' Group (BPRG) submission. This critique is provided to give further support to that submission and in no way should be interpreted as a conditional acceptance of the D.A.

1.3.1; Page 2	SEDIMENT PROTECTION SYSTEM "**The SPS covers ----- and areas of potential sediment disturbance in shallow water between the floating pontoons and the mean high water mark.** The extent of the SPS is presented in drawings DA1 and DA10 in Appendix A."	**Dwg DA-01 and D10 show a wide strip from west edge of SPS (often in 20 – 25 m width range) and the MHWM with no SPS. This is a potentially high disturbance zone due to wave action**. Also one can daily view **Rivercat ferry induced waves roll down the foreshore** from Breakfast Point, north of the proposed marina to well south of the marina; **also high winds** affect the area together with **tidal variations and proposed use of area for Kayaks, small vessels etc**. (with almost certain falls and **foot movement on sediments**). The D.A. Vol. 6 report by GBAC confirm very high current speeds due to propeller action where the water is shallower (.eg. table 5.7)Further the **U.R.S. contamination report** for Jemena and the AECOM "Sediment Manage Report", (e.g. figures F4, F5, F8 etc.)identified the **"Hot Spots" or**	**CDGR (1.7)** **The SPS extent fails the AECOM stated criteria. This is a MAJOR ENVIRONMENT PROTECTION OMISSION**

		contaminant concentrations near the MHWM. Frequency remediation by removal were such as at the shore end of the non demolished wharf	
1.3.1.; Page 2		Drawing DA01 refers to kiosk etc Dwg 100/ Prelim 02A and Managers Office etc Dwg 160/Prelim 03A (both by Rose Architectural Design	**CDGR (1.2) Neither drawing included in AECOM report yet critical for OEMP.**
1.3.1; Page 2.1	"Geotextile: Elcomax 1200R polyester staple fibre geotextile, with a design life of greater than 100 years ....."	**The design life** referred to is for the geotextile itself (i.e. in isolation) **as advised by the Manufacturer or it's agent.** It **is not a guarantee or warranty that the SPS** (i.e. Sediment Protection System) of Elcomax 1200R overlaid by 300/400 mm Basalt **will fulfil its function of 100% containment of the floor contaminants. Such a guarantee needs** to be endorsed by an **unqualified guarantee by the designer of the SPS system and with the assurance of adequate Professional Indemnity** which specifically covers this SPS application. The P.I. cover must be $50 million? $100 M? $200 M? to cover the catastrophe of a failure of the SPS to contain the contaminants. Further given the critical role of the SPS it would seem that possibly the underwritten guarantee or warrant for the SPS should possibly be 150 or 200 years or more – we defer to legal and other experts for consideration of this issue. (In this context the Community Association lease, the responsibility for the Waterfront Walkway is 299 years.)	**FIR,FMR CDGR (1.7)**
1.3.1; Page 2.1	"Rock armour, consisting of 300 mm of graded basalt rock."	As discussed in our comments in the CEMP **the long term (100 year? 200 year? Or more) durability of the Basalt needs proving by comprehensive NATA endorsed testing**. For those who do no know, the Sydney Prospect Quarries which were the major hard stone/ blue stone/ quarry stone provider for Sydney's development throughout the 20th	**FIR,FMR CDGR (1.7)**

		Century used "Dolerite" which is a comparable rock to "Basalt". The quarries ran out of appropriate rock due to similar looking but very much marginal quality Dolerite which rapidly broke down/degraded (i.e. within a few years) when used for engineering applications. Visual inspection by suitable experts could not necessarily identify the poor quality rock, **it required a suite of chemical and other durability tests yet no such tests are proposed or defined nor considered for the Basalt Armour Layer**. Also the section 1.3.1 wording says "graded basalt rock". No specification of the grading (i.e. particle size distribution is given.) **From a civil or geotechnical engineering aspect the definition of the necessary grading is essential.**	
	All soil, rock water etc testing related to Marina construction	The above discussed testing requirements are most conventional in civil and geotechnical engineering. For example an extensive and rigid set of tests is required by all competent road authorities (e.g. Councils, RTA etc) for road pavement layer materials. Such requirements also specify that **all testing must be by independent NATA registered laboratories.**	**FIR,FMR** **C of C**
1.5; Page 2.9	Scope of OEMP • "Outline operational measures that will mitigate sediment disturbance and adverse effects on the environment and human health".	We agree with the quoted objective but claim **the AECOM OEMP** fails this objective In a number of ways. For example in Table 1 (page 4.2) of the OEMP they define responsibility of a Vessel Owner (Marina User) but **do not include a total ban on the use of anchors**. Note the CEMP demands no anchors to be used by vessels during construction. This requirement is logical as anchors potentially destroy the functioning of the SPS. Apart from **the OEMP omission of an operational demand that the marina users must never use anchors within the marina lease and the larger nominated contaminated area such a demand is impractical** as :	**FIR,FMR** **CDGR (1.7)**

		• **The boat crew may not know of the requirement.** • **Visiting boats certainly would not know of the demand.** • **It cannot be realistically enforced /policed.** • **If vessel motors fail or in high winds or if vessels are congested (e.g. waiting for entry/exit) there is an almost certainty that anchors would be used.** • **To eliminate the use of anchors in critical circumstances raises major OH&S risks.** • **In reality anchors will be used and the SPS integrity put at serious risk on such occasions.**	
1.6; Page 3.5 Table 1	Marina Owner/Operator – 10th bullet point • "Undertake regular monitoring of the SPS integrity".	The **use of the wording "regular monitoring" here and for many other issues is open to misinterpretation and/or abuse**. An OEMP must specify that the maximum intervals that regular monitoring for as long as the marina is in operation.(100 years - 200 years??) and specify how it must be done. In the case of the SPS it would have to include diver inspections amongst other methods. A rigid inspection protocol must be defined. **It is irresponsible to leave the decision to the builder or the proponent or the operator.**	**FIR,FMR** **CDGR (1.7)**
1.7; Page 4.9	"The guideline and requirements presented in this OEMP are specific to the operation of the Marina and the associated SPS in the context of protecting the immediate environment."	**The OEMP clearly fails this criterion especially with the lack of recognition of potential damage to the SPS by anchors plus the SPS not extending to the MHWM.**	**CDGR (1.7)**
3.6; Page 11.5	"Land Pollution"	The AECOM wording only refers to boat maintenance/repair aspects. It neglects to consider or address the risk of land pollution due to numerous persons and golf buggies transiting from the car park, on community land and along the public waterfront walkway. "In addition to the issue of alienation of public land". **In addition to the issue of**	**FIR,FMR** **CDGR (1.7)**

		alienation of public land the risk of land pollution is obvious yet no control or regular clean up measures are considered or specified in the OEMP.	
3.7; Page 12.1	"If hazardous liquids, such as paints and solvents are to be stored for use at the Marina, they will be stored in a properly maintained and operated bunded area with a roof that excludes rain".	The wording indicates **the storage of such pollutants is acceptable (we submit this should be banned by the OEMP)**. In the alternative if they must be stored then **there is no marina drawing showing the "bunded area with a roof"** in the DA application.	**FIR,FMR CDGR (1.7) CDGR (1.2)**
3.8; Page 12.9	"...hazardous substances, fish waste, waste oil, oily mixture...."	Obviously such types of waste have been considered and expected. **These types of waste bins and indeed waste bins for boat usage should be placed on the marina arms and not the public access main wharf**. Indeed **all such bins should be say 20 or 30 m minimum from the seawall to prevent/limit improper use by land based persons and particularly to have waste storage with related dumping noise, smell etc .etc. well away from the Hunters Wharf residences**	**FIR,FMR CDDR (1.2)**
3.8; Page 12.9	"Solid waste bins (domestic waste and recyclable waste) will be placed at the street entrance to the property for pick-up on a weekly basis."	**Specific definition of location of bins is required**. The seawall alignment is unacceptable as the Waterfront Walkway is dedicated for pedestrians and cycles. "Pick up on a weekly basis" means **bins will be moved across Walkway regularly (OH & S risks!!)** plus the pick up point (not defined!) will cause **excessive noise concentration very close to residences**, without any OEMP consideration of this environmental issue. Also due to bins containing fish, food waste etc. it is necessary to remove waste almost daily to minimise smell, vermin and health problems. **The regular waste bin movement for over 200m along public walkways is a major and alienation of public space.**	**FIR,FMR CDGR (1.4)**
3.9; Page 13.5	Offensive Noise ..."Should noise complaints arise, periodic testing of equipment used at the Marina will be undertaken to verify	Any resident currently has 24 hour access to the Police and /or Council Ranger for "Offensive Noise". **The Marina operator should provide the same rapid noise complaint**	**FIR,FMR CDGR (1.7)**

	compliance with maximum permissible noise levels."	**response as it is a 24 hour facility** with almost certain offensive noise impacts (e.g. Boat revellers e.g. often moored boats are used for night parties!) and public can use the wharf 24 hours per day. Currently there is offensive night noise on occasions from Cabarita Wharf and close by areas which are around 200/300m away and impact Kendall Inlet and Admiralty Strata residents. Individual statements as to such offensive noise can be provided if required. Note there is no noise baffle between the marina and close by residences.	
3.10; Page 13.7	Vessel Access and Navigation ..."enter through the 50 m predetermined area to north east.." and .."egress through the navigational markers .."	This proposal **enforces concentration of Marina vessel movement with obvious queuing/waiting because of numbers and resultant obstruction to adjacent Rivercat ferry regular pathway (OH&S, risks, delays to public passengers, disruption of Sydney Ferry timetables etc**.) Also the proposal causes extreme concentration of vessel movement to local SPS cross over point with **no addition SPS design consideration for potential erosion of edge sediments etc. etc.**	**CDGR (1.7)** **GDGR (3.2)**
3.11.1; Page 14.1	Vessel Cleaning and Maintenance at the Marina.	The allowance of cleaning and maintenance will inevitably result in related materials entering the water. This is unacceptable as a general statement but in this environment much of the containments and refuse will almost certainly be transported to the Mangroves and beach end of Kendall Bay. Regular cleaning of flotsam and jetsam from the Mangroves is currently necessary and completed by "Waterways" and local residents, but a further source of such materials is unacceptable. **Hence boat cleaning and most forms of boat maintenance at the Marina should be banned**. In the alternative if they were to be approved then a Condition of Consent should be that the **Marina Operator cleans up the Mangrove and southern bay Beach etc area**	**FIR,FMR** **CDGR (1.7)** **C of C**

		on a 1 or 2 weekly basis or as more frequently required by monitoring (by others than the Marina Operator) and with adjacent residents having an input as to acceptable frequency of cleanups.	

3.12; Page 14.9	"Marine Deck and Building Maintenance"	The guidelines are sensible but who will clean up or enforce guidelines. **A minimum requirement should be that a dedicated cleaner employed by the Marina Operator cleans all rubble, refuse, water etc etc. each morning and evening.** The cleaning should also include the section of Waterfront Walkway fronting the Marina lease extent and other marina user generated refuse (which may extend around the residences etc.etc).	**FDR, FMR CDGR (1.7)**
3.13; Page 15.3	"Damage to SPS"	The OEMP for the first time makes some reference to the use of anchors etc. However **no discussion or solution is given to the anchor risks we have raised in 1.5, page 2.19 discussions above.**	**FDR, FMR CDGR (1.7)**
3.14; Page 15.6	"Resource Efficiency"	Some motherhood or "wish list" issues are itemised in first three bullet points but description of how to meet these "wish lists" items is not given. AECOM fail to recognise that the **OEMP is a "PLAN" not a wish list** of items that may or may not be considered and implemented by undefined means.	**FDR, FMR**
3.15; Page 15.9	"Marina Decommissioning"	The OEMP is absolutely correct in considering the possible need to decommission. If its decommissioning is due to financial failure of the venture or the need to remediate the sediment below the Marina there is no proposed cost security safeguard to the Breakfast Point residents, the tax payers of NSW or the NSW Government. The only prudent **means of minimising this risk would be a monetary bond or security placed by the Proponent/Marina Operator with**	**C of C CDGR (1.7)**

		the NSW Government. The amount is for others to decide but obviously **must be many $ millions**. Possibly a review of the need for the continued monetary security could occur if excellent performance of the SPS was confirmed by regular monitory over say a decade or more.	
4.1; Page 17.1	4.0 General Inspection	OEMP criteria inspections are without doubt required but the proposal of "Quarterly inspections" is very slack or unrealistic. Surely for many operational OEMP criteria there should be daily inspections while others such as the SPS condition could be more widespread. The **OEMP "Plan" should schedule the frequency for all environmental or other monitoring inspections rather than leave it to "trust the undefined third party".**	**FDR, FMR** **C of C** **CDGR (1.7)**
4.2; Page 17.8	"Monitoring of SPS Condition".	**The SPS is to the writer's knowledge an unproven/untested below water contamination containment method for the condition of shallow water tidal variations and the concentration of boats above**. **The proponent has been unable to example one similar contamination containment SPS where a marina boat concentration occurs above it**. **The SPS failure would be catastrophic** in the context of continuing the operation of the Marina and worse regarding the environment. The proposed yearly inspections for the first five years are inadequate and irresponsible in the writer's opinion: **at least 3 or 4 monthly inspections up till Marina is fully operational for a minimum of 12 months or so would be prudent.** Possibly some adjustment could be made by progressive review if excellent performance was always confirmed. Regarding the AECOM proposed yearly SPS inspections if say progressive deterioration at higher risk locations had commenced at 1 month into any yearly inspection gap then it would be negligent and irrational to wait a further 11 months to discover that problem.	**FDR,FMR** **CDGR (1.7)**

		A diver's inspection is only a visual inspection but as the Elcomax 1200R is advised as allowing sediment to migrate through its "pore" or "opening" size there is no OEMP monitoring method to assess this defect. Note the contaminants are not necessarily visible to a diver so another means of regular monitoring is essential.	
6.2; Page 21.3	"Emergency Response Equipment and Personnel".	The OEMP is void of detail regarding this section, e.g. it says "Fire fighting equipment to be appropriately placed within the Marina." **The obvious deficiencies are what equipment? At what locations or centres? What training? What regular validation?** Without this basic information it is impossible to complete even a preliminary assessment of adequacy of the "Fire Fighting equipment and related response to events". The writers investigation of guidance as to Marina Fire Fighting Equipment found the NSW Fire Brigades do not have a detailed guideline document while the AS give little guidance. However **the Queensland Fire and Rescue Service have a detailed "Guideline for Fire Safety Systems in Marinas" and the BPRG proposes that this should be the minimum standard for the proposed Marina.** The Queensland proposals indicate the **likely need for closely land based improvements and facilities which would be an alienation of the public space of the foreshore walkway.** A similar lack of detail exists for "spill kits to be appropriate for the Operation."	**FDR, FMR CDGR (1.2 & 1.7)**
6.3.1; Page 22.3`	"Spills and Leaks" – "Construction of retention basin, diversion drains, if the spill/leak occurs on land."	The wording implies that "hydraulic fluids, lubricants or fuel" may be transported across the land. This is unacceptable as **such supplies possibly should be available at the Marina but delivered only to it by water transport. This is a major OH & S and "alienation of public space" issue** that should be clarified and defined to allow the Breakfast Point	**FDR, FMR C of C CDGR (1.7)**

		residents to assess and respond. **It is evident that volatile fluids are expected by AECOM to be regularly transported through the close by community area (sometimes within 4 m)**	
6.4; Page 22.1	"Damage to SPS" – "Damage to SPS will be repaired immediately. The damaged area will be initially inspected by the diver ..."	**This claim of "repaired immediately" is in total conflict with Clause 4.2 which proposes only yearly inspections**. It is obvious that from above water level it would be most difficult and probably impossible to know if damage to SPS occurred. Even diver inspection would be difficult due to the geotextile overlay of Basalt on sediment (which may occur after the damage event); the diver would have to be specifically trained and satisfy an independent auditor as to his competency. If say the damage was due to a large vessel anchor drag it may not be seen or known by the Marina Operator so he is unaware of the "hot spot" or risk area and hence **the OEMP claim of "Damage to SPS will be repaired immediately" is nonsense (unless virtually weekly inspections occur).**	**FDR, FMR CDGR (1.7) Major OEMP omission**
7.2; Page 25.3	"Complaints and Incident Reports". "The Marina operator will maintain a register of complaints from local residents, and other parties –" "Copies of incident and complaint reports will be provided to the NSW Maritime Authority"	**The weak link** in the proposed system is that many or all of the complaints or non compliances will be directed at the Marina Operator. Hence he has a **conflict of interest** and a possible incentive not to record or to inaccurately record issues. A means to reduce this risk is **for the register to be a public accessible document in the Marina Managers office (and on a web site)so that any party reporting a complaint or non compliance can check its correct recording together with the accuracy of reporting as to remedial action. If the public are not satisfied then they should have a direct access to the overall responsible person in the NSW Maritime**. (How else can NSW Maritime know of unrecorded or favourably recorded issues???). Further as the marina will be a privately owned facility on public water	**FDR, FMR** **CDGR (1.7)**

		this further reinforces the need to rapidly communicate to NSW Maritime as to any form of non compliance.	
8.0; Page 27.1	"OEMP audit and review"	The words in this section clearly indicate that the AECOM, OEMP (as contained in Volume 7 of the DA Application) is the proposed final OEMP document but later audits during the marina operation may lead to modification of the OEMP. Hence the many critical comments in this review especially related to the **common OEMP "ABSENCE OF PRECISE CONTINGENCY PLANS" is not even considered by AECOM**. Hence where we have notated "FDR, FMR" i.e. "FURTHER DETAILS REQUIRED FOR MEANING FULL RESPONSE or CDGR – Conflict with Director Generals Requirements" is most justified.	**FDR, FMR CDGR (1.7)**
Pages 142 – 144;	"Inner West Environmental Policy" "3....Please pay particular attention to dust and paint chips"	This policy clearly allows sanding, scraping etc in preparation for painting. It is certain paint and dust flakes will enter the water. The concentration of 172 berths ensures substantial contamination from this cause. We propose such **maintenance work should be BANNED at the Marina** (e.g. go to River Quays maintenance area 600m away.) Also the **policy is inadequate and reckless in NOT BANNING THE USE OF ANCHORS IN THE MARINA LEASE AREA OR INDEED WITHIN THE WHOLE AREA DEFINED BY THE REMEDIATION ORDER**	**FDR, FMR CDGR (1.7)**
Appendix C;	Site Inspection Report "Are all fuels and chemicals stored correctly in appropriate bunded areas?"	**The OEMP drawings show no provided Bunded areas**. One would expect these say 20 or 30 m along all arms to encourage use rather than risk fuel and chemicals stored on boats!!	**C of C CDGR (1.7) (Ask Ian Hope)**
Appendix E:	Complaints and Environmental Incidences Register	**This Register should be a public accessible document 24 hours per day as the facility is open 24 hours per day.** Otherwise there is no Quality Assurance/Management Plan	**C OF C**

		that a lodged complaint has been recorded/acted. The only parties who can meaningfully audit the Register is each of the complainant parties (if they so wish.) **If The Marina Operator wishes to act in good faith he would embrace this public access**, but of course it should be the OEMP which demands it.	

RE: INNER WEST MARINA – VOL 8 – REVIEW BY ROD JEFFERY (BE,MSC,DIC,FIE AUST)
Appendix 11: "A Marina Berth Demand Assessment "
Author: Australian Marina Management Pty Ltd. Dated July 2009
FIR,FMR = Further Information Required for Meaningful Response
C of C = Suggested "Condition of Consent" if marina were approved.
CDGR= Contravenes Director General's Requirements.

Note: The Author strongly believes the Marina D.A. should be rejected on numerous grounds submitted in the Breakfast Point Residents' Group (BPRG) submission. This critique is provided to give further support to that submission and in no way should be interpreted as a conditional acceptance of the D.A.

CLAUSE ETC REFERENCE	REPORT STATEMENT	COMMENT	QUESTION OR ACTION LIST
Table C: Page 8.4	Table C "Commercial Marinas – West of Sydney Harbour Bridge" (June 2009)	**Table C confirms that at June 2009 there was NO LATENT DEMAND as 5.8% of the 584 available berths (i.e. 34 berths) were unused**. An identical vacancy percentage of 5.8% existed at the close by d'Albora Marina at Cabarita. In these tables there is no reference to the many dormant berths (holding "For Sale" vessels) which further indicate a lack of need/demand of further berths (they indicate the reverse).	**CDGR (1.2)**
Table D; Page 6	Table D "Residential/Private Marinas – West of Sydney Harbour Bridge"	Table D confirms that **at June 2009 there was NO LATENT DEMAND AS 41.0% or 152 Berths were not being utilised**.	**CDGR (1.2)**
Appendix 5	"Commercial Boatsheds – West of Sydney Harbour Bridge:	For the 10 reported boatsheds there is a **vacancy rate of 17.2% which again confirms on ABSENCE OF LATENT DEMAND**	**CDGR (1.2)**
Appendix 7 Last Drawing	"Sydney Harbour Mooring Areas"- NSW Maritime Mooring Map.	This map illustrates **the unlikely lack of high demand for berths at the proposed Inner West Marina because** 1. The map shows the "High Rate Area" is east of Sydney Harbour Bridge. While the IWM would be	

		towards the west extreme of the "Medium Rate Area". 2. About 80% of the moorings west of the Harbour Bridge are closer to the Harbour Bridge and hence more desirable as they have superior access to the Harbour and the ocean. 3. The approximate "dead time" of travel from IWM to the Harbour Bridge will be about ½ hour for moderate speed vessels given delays in exiting the Marina and giving way to Rivercat Ferries at the egress point etc.	

RE: INNER WEST MARINA D.A. VOL 8
Appendix 12
Construction Management Plan (CMP)
Author: TLB Engineers
Dated 23 October 2009
Review by Rod Jeffery (BE, MSC, DIC, FIE Aust, Licensed Builder No. 41597)
FIR,FMR = further Information required for meaningful response
C of C = Suggested "Condition of Consent" if marina were approved.
CDGR= Contravenes Director General's Requirements

Note: The Author strongly believes the Marina D.A. should be rejected on numerous grounds submitted in the Breakfast Point Residents' Group (BPRG) submission. This critique is provided to give further support to that submission and in no way should be interpreted as a conditional acceptance of the D.A.

CLAUSE ETC REFERENCE	REPORT STATEMENT	COMMENT	QUESTION OR ACTION LIST
2.3; Page 3.5	"Structures" 2. Blanket – "The basalt would be tested for suitability before being approved for delivery to site. The blanket has a design life of greater than 100 years..."	It is irresponsible for the critical quality (i.e the testing) of the Basalt to be determined by the Developer, Marina Builder or quarry supplier. The conflicts of interest are obvious. Conventional civil engineering has the designer specify **the necessary rock quality and durability tests, the frequency of tests and the need that testing be done by an independent NATA laboratory. The CMP fails to address any of these aspects**.	**FIR, FMR** **CDGR (1.7)**
Appendix 12:	Geotextile Information	The **A. Mathur** et al paper is old (1993) which is unusual as we suspect Elcomax 1200R possibly did not exist at that date. However the paper quotes "The blanket... designs life of 100 years..." It is also correct that Geofabrics Australia in Appendix 12 claim "a design life of greater than 100 years when	**FIR, FMR** **CDGR (3.2)**

		submerged in saline water below a rock cover. Polyester is resistant to biological and hydrocarbon attack". However **the first question is whether 100 years is adequate**; does the State Government or it's agenciesthen accept it will accept the responsibility/bill for remediation after 100 years?? **There is no warranty by Geofabrics Australia that the SPS will fully contain the contaminants for 100 years** (Contaminants can pass through the void or pore size of Elcomax 1200R!)!! Note the comments on polyester resistance appear to neglect the conclusions of the technical paper in Appendix 12. At page 1.9 it states "...whereas polyester geotextiles show limited resistance to strong acids and alkalies" also "In contrast to polyester, polypropylene fibres are made up of non-polar hydrocarbon chains which are relatively inert to chemical attack." We also note that most of the Mathur et al testing are for 26 weeks duration maximum which is well short (much less than 1%) of the required design life of Elcomax 1200R as part of the SPS. We are not making any claim as to the life of Elcomax 1200R or the SPS system, but we say from the provided technical papers there is reason for doubt. Most particularly **the guarantee or warranty should not be given or accepted from the product vendor (i.e. Geofabrics Australia) but should be provided by an established independent expert with appropriate PI insurance cover. The Guarantee should be for the longevity of the whole SPS design.** The writers' note the second Appendix 12 paper by G W Davis is dated 1986 which is again questioned in terms of current knowledge and the first date of Elcomax 1200R production. Again we hold that **the guarantee/warranty must be by a current independent geotextile expert**. Note the Davis paper	**RPJ to check**

		under "Alkaline Resistance" states "In contrast to excellent acid resistance, polyester has somewhat limited resistance to alkalines as shown in Table 6". The writer notes that in a recent (Nov 2010) advertisement by Geofabrics they publish the results of "a recent study carried out by Parsons Brickenoff" on "Published data for Geotextiles Commercially Available in Australia." The results advise for "BIDIM" brand supplied by Geofabrics Australia "46% of results 0 – 25%below published typical Data" (document reference: 10-0073-03-2104089A by Parsons Brickerhoff). There was no specific reference to Elcomax 1200R but the results for Geofabrics (and more so, other suppliers who were tested) clearly indicate considerable doubts as to Vendor Published Information.	
2.3; Page 3.6	"All materials and equipment for the construction of the waterside works would be bought to site by barge."	The writers fully endorse this proposal but there is a distinct risk the statement CMP may not be followed. We recommend that it be **spelt out as a Condition of Consent and large signs quoting the same words be fixed in the proposed marina car park and at front of the Marina site when first entered from the land. This is a paramount issue regarding the protection of the environment OH & S** of the public (pedestrians and cyclists) who regularly traffic the Waterfront Walkway. **Access to the fixed wharf frontage should be secured and materials or equipment etc be prevented access by full time vetting.** There should be **a documented meaningful penalty for non compliance regarding this issue.**	**FDR, FMR** **CDGR (1.7)** **C of C**
2.4; Page 3.7	Work Method – Car Park	There is a major omission of no reference to construction of stormwater pipes, and outlets/pit connections to Community stormwater drains. These are obviously required!	**CDGR (1.2)**
2.4; Page 4.3	"...the basalt, rock would be placed on the geotextile using the excavator with GPS controlled bucket."	This methodology has the risk that along the edges of the Elcomax 1200R (i.e with unprotected sediment adjacent) it is **likely that there will be disturbance of the sediment such as by overspill or a local bearing capacity failure due to the load**	**FDR, FMR** **CDGR (1.7)**

		concentration. This is possible as the sediments are described in reports as "very soft" etc however there is the **omission of no objective Geotechnical insitu strength testing.** If a bucket full of basalt were dumped on the edge of the mat it is **highly likely a local bearing capacity failure would occur in the unprotected sediment contaminants thrust into the water and migrate away.**	
2.4; Page 4.8	"Piles"	There is **no CMP reference to or consideration of the most environmentally critical piling aspect which is the withdrawal of at least 13 proposed temporary piles.** (i.e. 4 proposed for barge mooring and 9 for boom/silt curtain fixing). **The withdrawal will lift sediment into the water above by both adhesion to the withdrawn pile and by suction. This unacceptable environmental impact also was not considered in the ECMP. It is a major omission and a major environmental risk and causes serious questions as to the competency of the ECMP or CMP.**	**FIR, FMR** **CDGR (1.7)** **Creditability of CMP thoroughness in question.**
2.4; Page 5.8	"Mooring of Barges" "3. Contractor personnel vehicles would temporarily park on the street near the site until such time as the car park is completed."	The contractor vehicles need not park on the Community Streets at any time. The current proponent (Breakfast Point Pty Ltd) parking provision for numerous buildings constructed in the past 7 years were to nominate and use their undeveloped sites for construction vehicle car parks. There are still many such sites available and this method should be adopted.	**FIR, FMR** **C of C**
3.1`Page 6.9	"Car Park Works"	**Again no consideration of the need to construct stormwater pipes etc in Community land.**	**FIR,FMR** **CDGR (1.7)**
5: Page 10.8	"Sedimentation and Erosion Control" "Two floating silt curtains and booms will be placed around each stage of the waterside works, including the areas of the blanket".	The effective functioning of the two silt curtains demands that they have **an effective cut off down to the SPS and hence they must seal at the variable and irregular floor level. The CMP and ECMP both provide no detail or section or description as to how this critical seal is achieved**. To leave that decision to the contractor (and without any definitive guidelines) is most	**FIR, FMR** **CDGR (1.7)** **Credibility of CMF thoroughness in question.**

		remiss and raises creditability questions. See attached extracts from USA paper "Silt Curtains as a Dredging Project Management Practice". **This paper highlights the limitations of silt curtains.** Note also that AECOM are silent as to the environmental protection need to regularly inspect the silt curtains below water including confirmation of an effective floor seal.	
Appendix 12	Drawing CMP01	The top left corner of the drawing shows a large (about 70m) "Openable Section of Silt Curtain" and "Access Path for Barges, Construction vessels and Floating Structures." This **proposed opening of the silt curtain to allow vessel access compromises or negates the objective of the curtain which is to contain the contaminated silt and sediment and prevent it passing through the curtain**. There would be numerous openings of the curtain for vessel access as all materials and equipment are to arrive and depart by water. Furthermore for **around half of each day there is an outrunning tide and hence water flow (and suspended silt and sediment and potentially contaminants) will flow into the open River. Hence at the very least no opening of the silt curtain should be permitted during an out flowing tide**. Due to the frequent construction and materials supply vessel movement, wind etc one cannot logically see the open curtain functioning as a "containment curtain". **In essence it will essentially act as an escape mechanism especially during outflowing tide.**	**FIR, FMR** CDGR **(1.7)** **Credibility of CMF thoroughness in question.**
	Drawing CMP01	Drawing CMP01 shows 9 numbered "TP" which refers to "Temporary Piles" which together with the 4 minimum Temporary mooring piles for the Barge will require **extraction/withdrawal with the pull out adherence and suction of the contaminant sediment. The CMP and ECMP is silent regarding this major environmental hazard**.	**FIR, FMR** **CDGR (1.7)**
	Drawing CMP01	The north west and south west ends of the silt curtain are	**FIR, FMR**

		shown as "Fixing Point Above MHWM". This would require fixing to land owned by and the responsibility of others (being the Breakfast Point Community Association). Their permission has not been sought to the writers' knowledge. Further even **if it were approved a substantial security deposit for potential damage** due to damage by the fixing or other causes should be **provided to the Community Association**. Such details should be embedded in a CMP.	**CDGR (1.7)** **This proposal is contrary to the Conveyancing Act 1919 clause 177.**
	Drawing CMP01	Drawing CMP01 (and many others) show the western **limit of the SPS as often 10 to 20 metres or more from the MHWM. This is a major omission in the SPS design as it does not protect/contain the contaminated sediment in one of the most critical zones because:** **1.** The Jemena proposed remediation (see drawing DA10) is substantially concentrated within the first 10 to 20 metres on the waterside of the MHWM. This essential **highlights that this area is a likely "hot spot area".** 2. There is **continuous tidal variation** in this area. 3. There is common **Rivercat ferry (and other) wash** which runs down the seawall water line from Breakfast Point to the south **many times each day**. (i.e. wash disturbance of sediments.) 4. **It is inevitable that during construction there will be vessels and equipment in this area (**e.g. fixing silt curtains, for wharf construction etc.) **5.** This strip is the proposed for completed Marina access and usage of kayaks, small sailing vessels etc, etc and hence has an **increased risk of humans walking in the near shore shallow water (due to**	**FIR, FMR** **CDGR (1.7)** **Credibility of CMP thoroughness in question.**

		spills, training juniors etc.) 6. **It is inevitable that Marina boats or their small tenders, dinghies etc will use this area (e.g.** safe area for children to operate small power boats.) In the writers' opinion (and as stated in the ECMP by AECOM)the SPS should extend to the MHWM. This would require major consideration of issues such as :- a) Removal of the substantial debris visible (at low tide) in the area. b) Potential change to the line of the MHWM due to the SPS thickness. c) Damage to the toe of the seawall due to construction activities. None of the above issues have been considered in the CMP.	
	Drawing CMP02	Additional silt curtain "Fixing Point above MHWM" shown and refer to comments above. Also **drawing CMP03 shows additional fixing points for inner silt curtain**.	Same comments above for drawing CMP01
Appendix 12	Geotextile Information	The Ameratunha et al paper is interesting from a Geotechnical aspect and a valid and functional application was tested. However the critical point is that **this Brisbane application had no relationship to the containment of sediments, it was for an engineering foundation strengthening purpose. Also they used a "stitched" joining of the geotextile rather than an overlap as proposed for the IWM.**	

CDGR INDEX OF REFERENCE NUMBERS

NSW PLANNING DEPARTMENT
DIRECTOR GENERAL'S RFEQUIREMENTS
KENDALL BAY MARINA

1. The Environmental Assessment (EA) must include

1.1 an executive summary:

1.2 a detailed written and graphical description, including engineering and/or architectural plans, of the project including the:

- need for the project;
- alternatives considered; and
- various components and stages of the project;

1.3 consideration of any relevant statutory provisions including the consistency of the project with the objects of the *Environmental Planning and Assessment Act 1979*;

1.4 a general overview of the environmental impacts of the proposal, taking into consideration any issues raised during consultation;

1.5 a detailed assessment of the key issues specified below and any other significant issues identified in the general overview of the environmental impacts of the proposal (see above), which includes:

a) a description of the existing environment;

b) an assessment of the potential impacts of the project, including any

1.6 cumulative impacts from construction activities and from all water related craft that would utilise the marina;

c) a description of the measures that would be implemented to avoid,

1.7 minimise, mitigate, offset, manage, and/or monitor the impacts of the project;

1.8 a draft Statement of Commitments, outlining environmental management, mitigation and monitoring measures;

1.9 a conclusion justifying the project, taking into consideration the environmental impacts of the proposal, the suitability of the site, and the costs and benefits of the proposal; and

1.10 a signed statement from the author of the EA certifying that the information contained in the report is neither false nor misleading.

Key Issues

2. **Strategic Planning -** an assessment of the proposal in the context of the strategic direction of the locality and region with consideration of the *Breakfast Point Master Plan 2002,* the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*, and the *Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005*. Any inconsistencies between the proposal and these plans must be justified;

3. **Contamination** – including:
   - 3.1 a detailed assessment of the potential impacts on the disturbance of contaminated marine sediments. This shall take into account information from any previous investigations as well as any additional investigations as necessary and will need to include a thorough description of the methodology used in the assessment, and justification for the methodology used and predications made;
   - 3.2 details of any proposed remediation works required and justification for why the proposed remediation measures will succeed;
   - 3.3 a site audit statement and a site audit report by an auditor accredited under the *Contaminated Land Management Act* 1997.
   - 3.4 with the assessment and recommendations of the investigations;
   - 3.5 consideration of the impact of the proposed marina operations on possible future remediation actions;
   - 3.6 details of compliance with any order issued under the *Contaminated Land Management Act 1997.*

4. **Visual Amenity** - *including*
   - 4.1 an assessment of the visual impact of the proposal (height, scale and lighting) on the local and regional area, particularly on:
   - 4.2 any adjoining land owners and land owners along the foreshore areas of Putney, Tennyson Point, Gladesville and Cabarita;
   - 4.3 water uses of Parramatta River; and significant vantage points in the public domain;

5. **Navigation and safety** – including:
   - 5.1 details of commuter ferry routes and an assessment of the impact
   - 5.2 of the construction and operation of the marina on these services;

5.3 and
5.4 an assessment of the impacts on water based traffic
5.5 and the existing users of the Parramatta River in the vicinity of the marina;

6. **Public Access:**

7. **Soils, Sediments and Water** – including
7.1 an assessment of surface water impacts on Kendall Bay and the Parramatta River. The assessment must include details of
7.2 proposed erosion and sediment controls (during construction),
7.3 the proposed stormwater management system (during operations) and
7.4 management measures for the containment of pollutants (e.g. fuel
7.5 and sewage); and
7.6 an assessment of acid sulfate soils, including management measures and disposal strategies.

8. **Traffic** – including:
8.1 details of the traffic volumes likely to be generated during construction and operation, and an assessment of the predicted impacts of this traffic on the safety and capacity of the surrounding road network.
8.2 Details on site access, internal roadways and parking must also be provided;

9. **Noise** – including:-
9.1 construction, operation and traffic noise; and

10. **Flora and Fauna** – including:
10.1 an assessment of any impacts on critical habitats, threatened species, populations or ecological communities and their habitats in the region.

References

The environmental Assessment must take into account relevant State government technical and policy guidelines. While not exhaustive, guidelines which may be relevant to the project are included in the attached list.

11. Consultation

During the preparation of the Environmental Assessment, you should consult with the relevant local, State or Commonwealth government authorities, service providers, community groups or affected landowners.

In particular you should consult with:

- City of Canada Bay Council:
- Department of Environment and Climate Change;
- Roads and Traffic Authority;
- NSW Maritime Authority; and
- Sydney Ferries Corporation.

The consultation process and the issues raised should be described in the EA.

EXECUTIVE SUMMARY BY BPRG of KEY ISSUES

In D.A. VOL 8

"CONSTRUCTION MANAGEMENT PLAN" (CMP)

1. Drawing CMP01 shows a 70 m plus "Openable Sections of Silt Curtain"; It will be regularly opened to allow access of all construction vessels and materials. **This opening will promote escape of the water suspended containments which will be further exacerbated during outflowing tides.** (See BPRG comments clauses Dwg. CMP01)

2. The CMP provides **no proof how the silt curtain will seal against the irregular SPS Basalt layer, or the sloping floor, or the bed deposits without disturbance**. (See BPRG comments clause 5)

3. **The very limited success of silt curtains in containing sediments** or contaminants for the marina velocity of tidal/and propeller wash currents is frequently illustrated **in USA reference** "Silt Curtains as a Dredging Project Management Practice" (see separate BPRG quotation listing).

4. CMP Dwg CMP01 shows **silt curtain fixed to Community seawall without authorisation of seawall owner** (nor any form of indemnity for damage) (see BPRG comment clause 5 and dwg CMP01).

5. **The CMP fails to require meaningful Basalt durability tests with NATA endorsement** of such tests. (See BPRG comments clause 2.3).

6. **Inadequate warrant or guarantee provided by CMP for SPS**. (See BPRG comment clause Appendix 12).

7. **No CMP consideration of introducing contaminants into water column during temporary pile withdrawal**. (See BPRG comment clause 2.4).

8. The CMP drawing CMP01 shows **the SPS fails to cover the critical high risk area of generally 20 to 20 metres out from Mean High Water Mark**. (See BPRG comment clause CMP01).

EXECUTIVE SUMMARY BY BPRG OF KEY ISSUES IN DA VOL 7

"CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN"

(CEMP)

1. The report provides **no "STOP" or "HOLD" points when NON Compliances occur** (See BPRG comments clauses 2.3,3.3.2 etc).

2. **"No contingency plans" for "Non Compliance" events**. (see BPRG comments clauses 2.3,3.2.1,3.3.2,7.1,1.8 Appendix C)

3. **Proposal is only for monitoring and testing of "surface water"** yet whole water column especially near SPS demands regular testing. (See BPRG comments clause 2.3)

4. **No independent auditor verification of AECM** (yet they are the consultant who allowed the omissions in the CEMP). Also **no independent audit of contractors monitoring or testing**. (See BPRG comments clause 1.7)

5. **No explanation how the "Silt Curtain" will seal contaminate escape on irregular floor** (See BPRG comments clause 3.2.1)

6. The CELM proposal includes **unauthorised fixing of ends of silt curtain to others (i.e. Community) land**. (See BPRG comments clause 3.1.2.1)

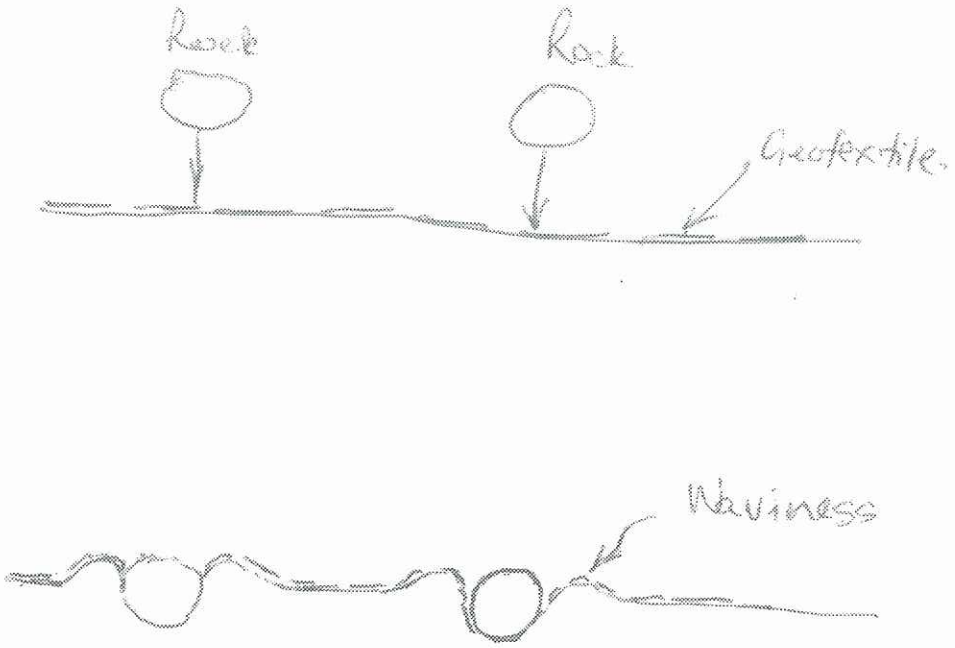
7. **No proposal for independent NATA Basalt durability tests to confirm it is "fit for purpose"** (See BPRG comments clause 3.2.1)

8. **No consideration of the lifting of contaminants and "suck out" effect when temporary piles are withdrawn**. (See BPRG comments clause 3.2.2.)

9. **Failure to extend the SPS to Mean High Water Mark (MHWM)** to contain contaminates in highest risk area (See BPRG comments clause 1.8)

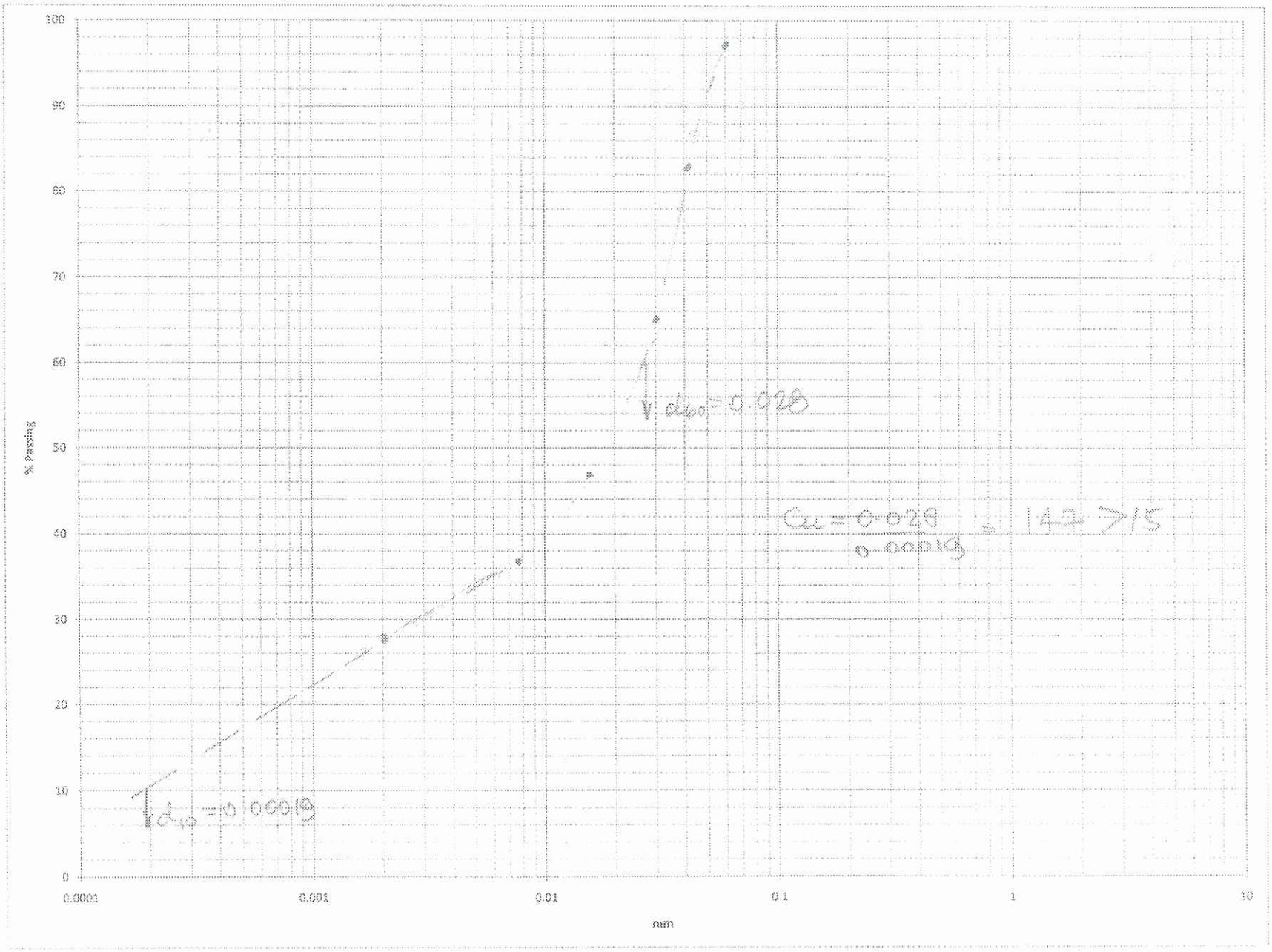
Appendix G: Estuary Hydrodynamics and Sedimentary Review

FIGURE A



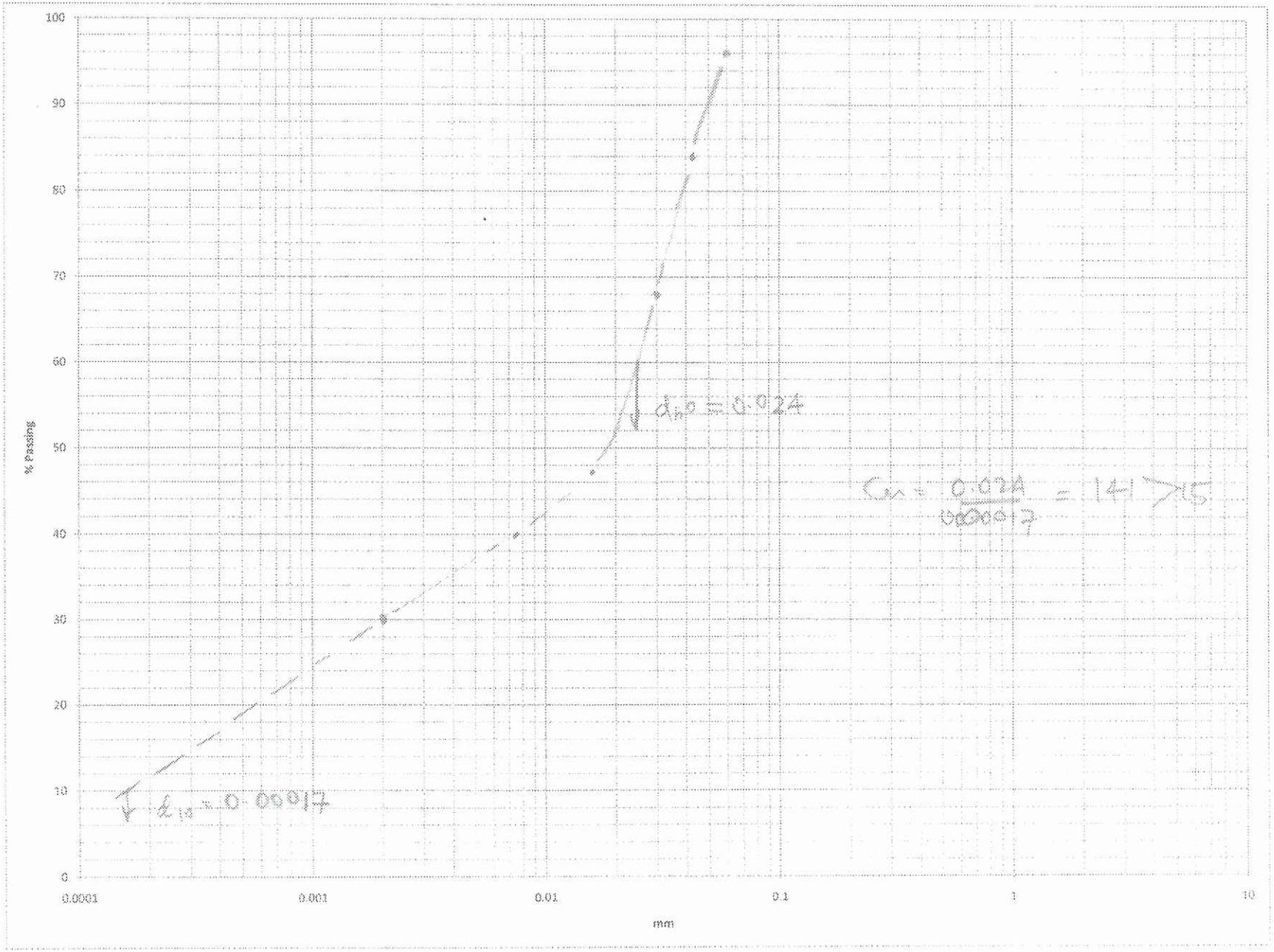
PC 1

Figure B


100
90
80
70
60
50
40
30
20
10
0
% passing
0.0001
0.001
0.01
0.1
1
10
mm
$d_{60} = 0.028$
$d_{10} = 0.0019$
$C_u = \frac{0.028}{0.0019} = 14.7 > 15$

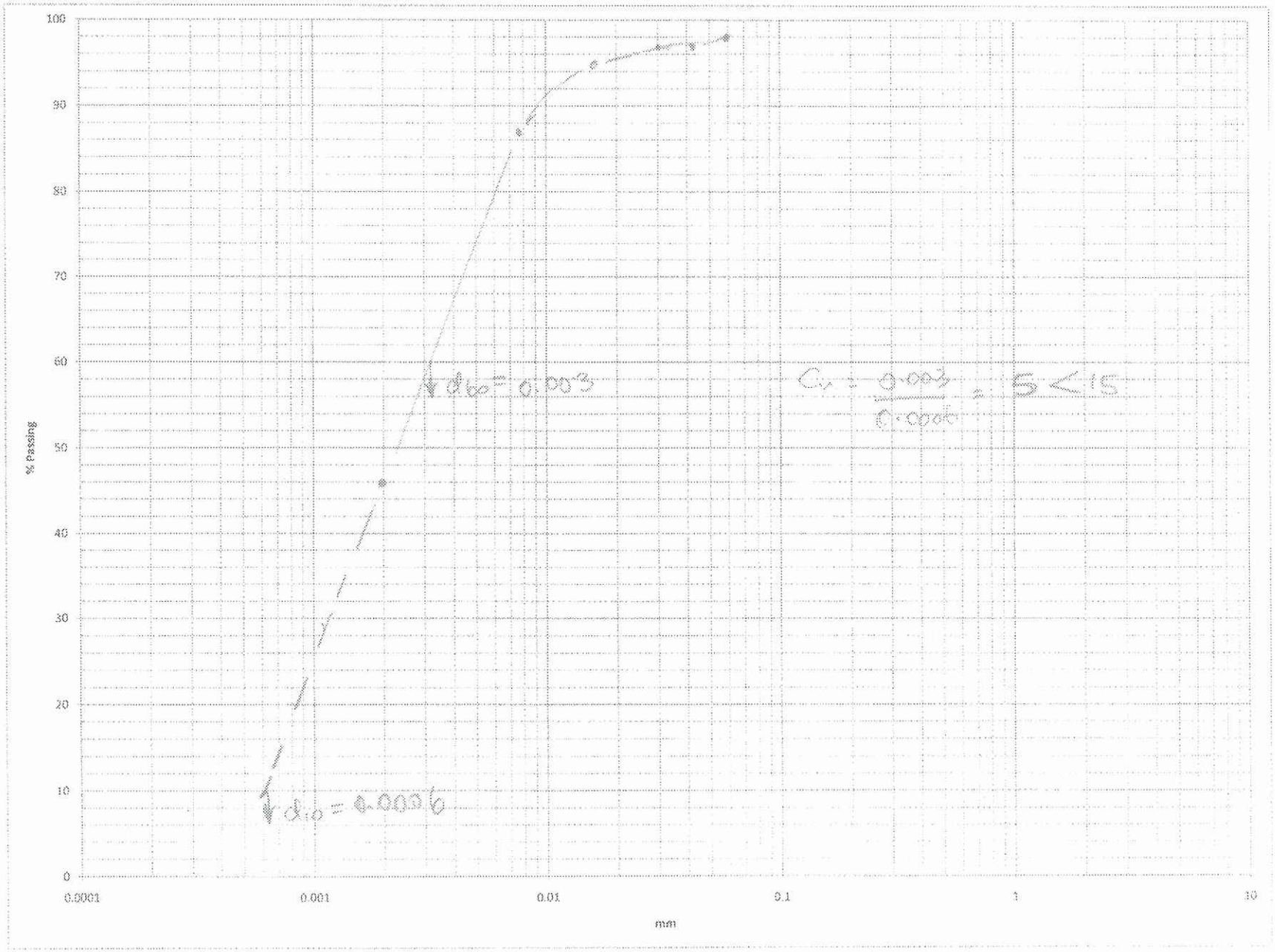
PG 2

FIGURE C


100
90
80
70
60
50
40
30
20
10
0
% Passing
0.0001
0.001
0.01
0.1
1
10
mm
$d_{60} = 0.024$
$d_{10} = 0.0017$
$C_u = \frac{0.024}{0.0017} = 14 > 6$

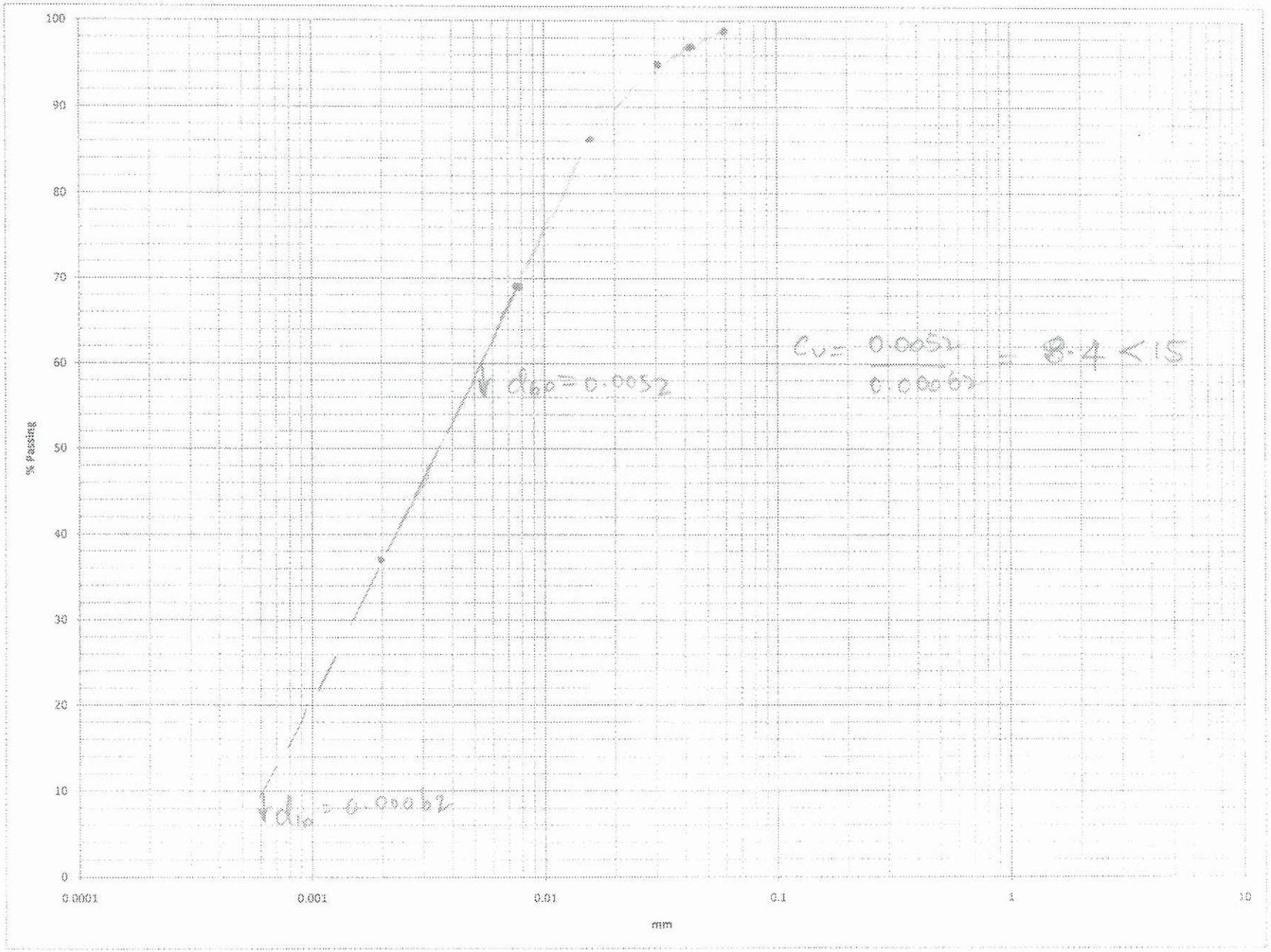
PCh

figure 3


100
90
80
70
60
50
40
30
20
10
0
% Passing
0.0001
0.001
0.01
0.1
1
10
mm
$d_{60} = 0.003$
$d_{10} = 0.0006$
$C_u = \frac{0.003}{0.0006} = 5 < 15$

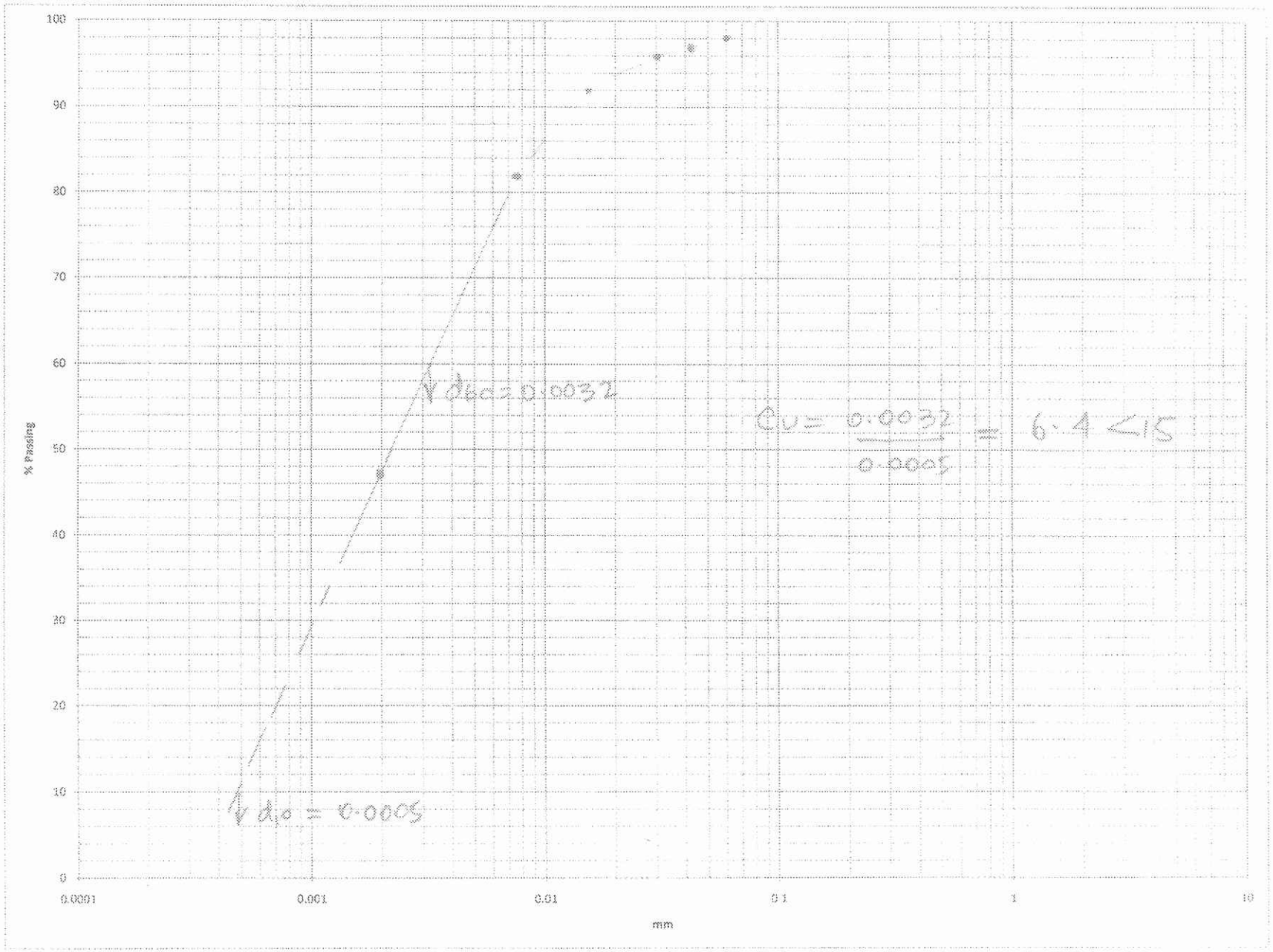
PC 9

FIGURE E


100
90
80
70
60
50
40
30
20
10
0
% passing
0.0001
0.001
0.01
0.1
1
10
mm
$d_{60} = 0.0052$
$d_{10} = 0.0062$
$C_u = \frac{0.0052}{0.0062} = 8.4 < 15$

PC10

FIGURE P



PC-29

Figure 9

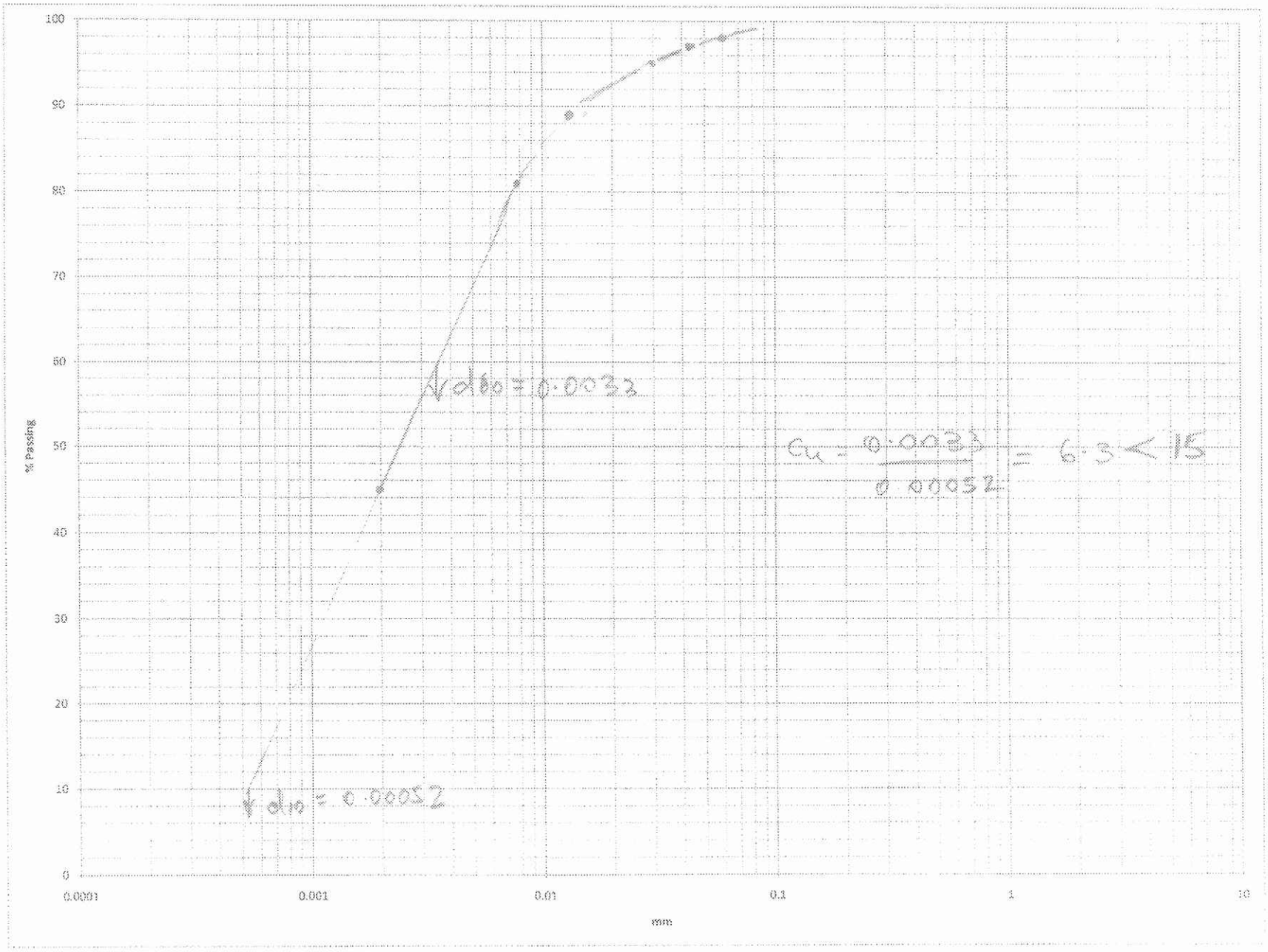


FIGURE H

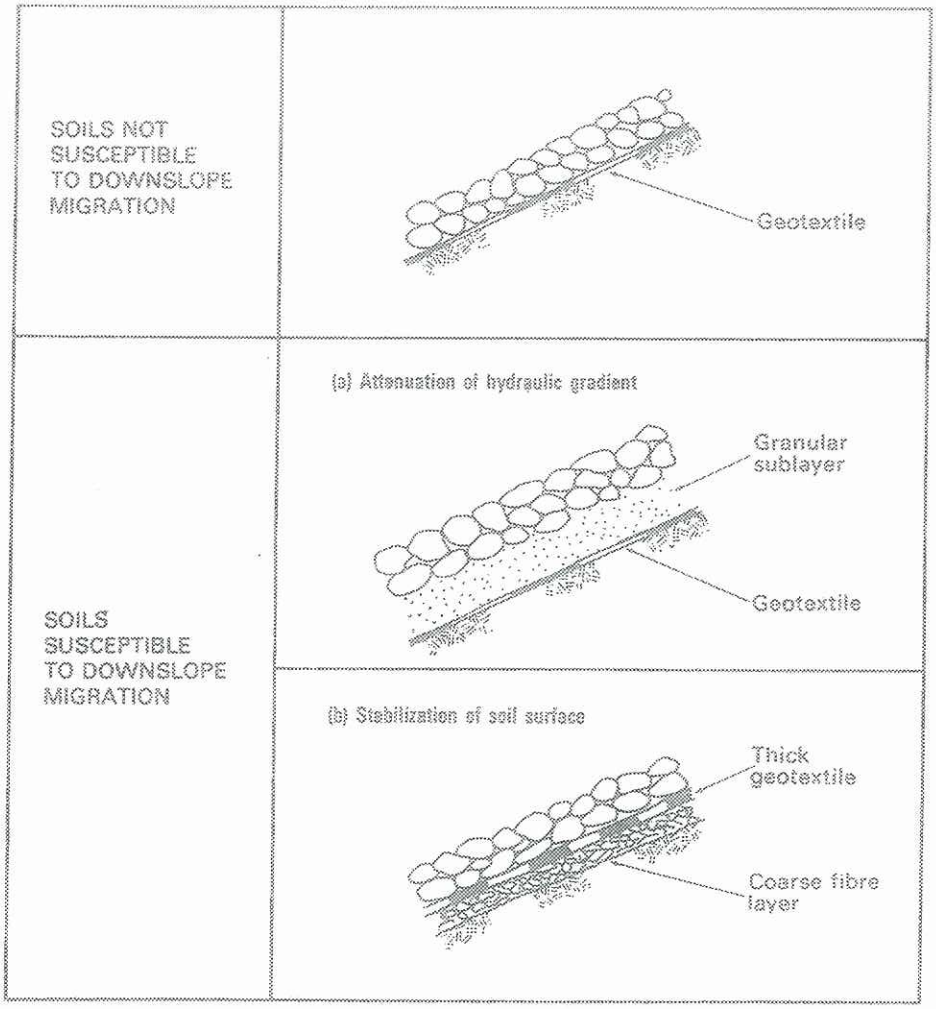


FIG. b4 : Recommended filter systems

PIANC (1987)

FIGURE H

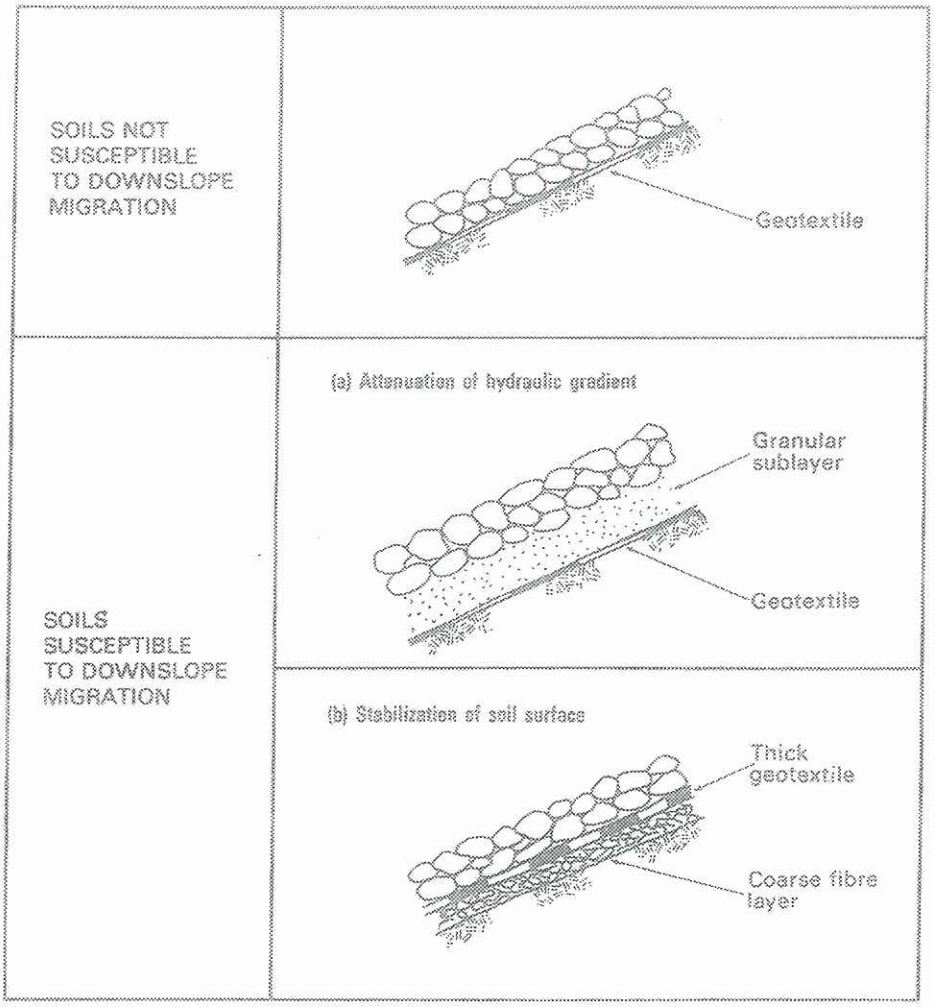


FIG. b4 : Recommended filter systems

PIANC (1987)

FIGURE I

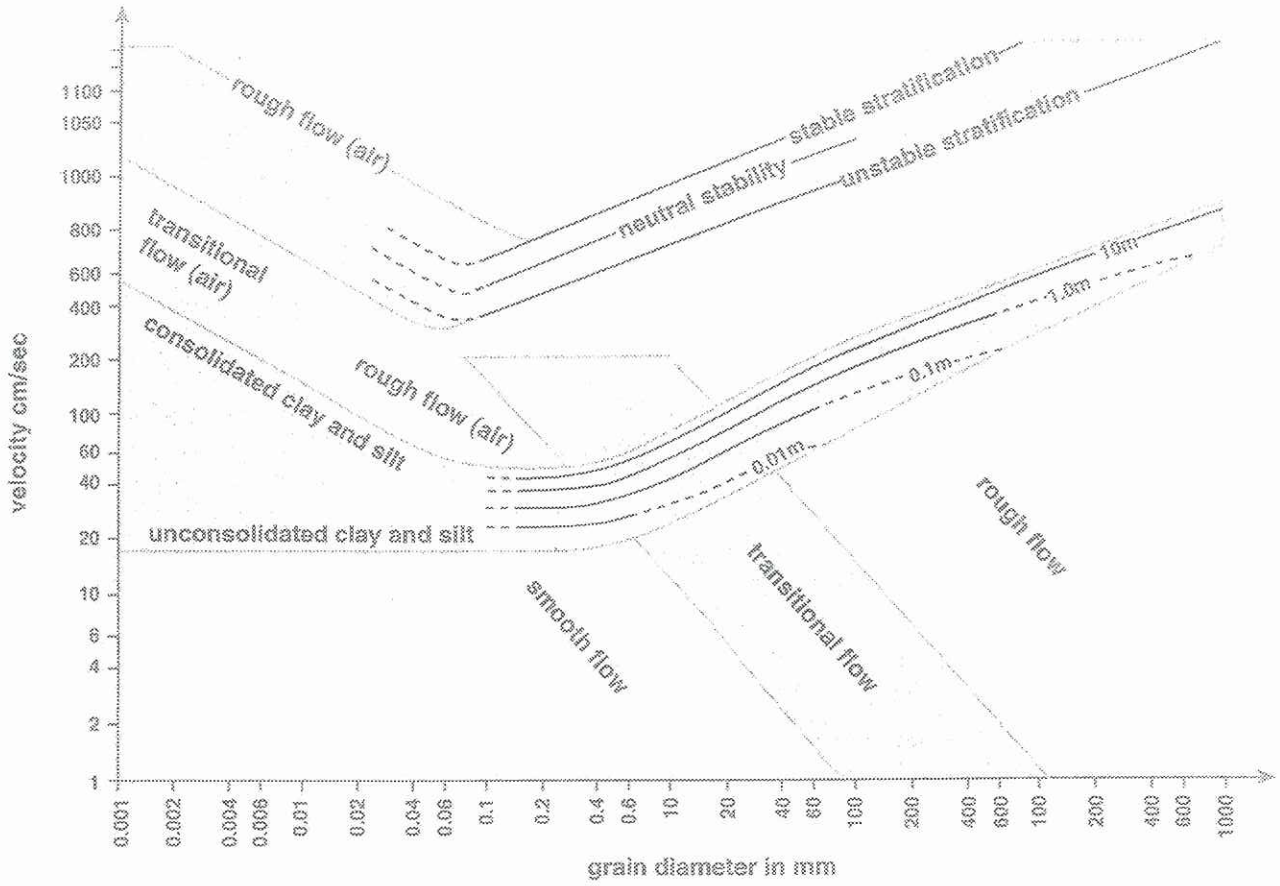


Figure 9-13. Sundborg's modification of the Hjulström diagram. (After Sundborg, 1956.)

This assessment has been prepared by Laurie Ihnativ, BE (Civil), MEngSc (Geotechnical), MBA. Laurie is a Fellow of the Institution of Engineers, Australia and has over 30 years experience in geotechnical investigations and contamination assessments.

EXECUTIVE SUMMARY – CHAPTERS 6 AND 9

- The design of the SPS does not comply with the requirements of the NSW Planning Departments Director General's requirements.
- The design of the SPS does not satisfy the concerns raised by DECC.
- The design and construction fails to satisfy the requirements of the EPA Remediation Order issued in 2007.
- The provision of the SPS is a remediation project, not just a civil engineering project.
- The proponent has not followed international guidelines to design the SPS. The USEPA (2005) provides detailed guidelines.
- A 50yr Ari applies to marina structures. A 200 yr ARI should be applied to remediation projects.
- The erosion threshold velocity for unconsolidated sediments is 0.15 m/sec lower than the 0.3 m/sec adopted
- There is no justification for accepting that only the top 100 mm of sediment will be disturbed during the SPS and marina construction.
- Because of uncertainties associated with low strength sediments and laying the SPS below water, the SPS thickness should be increased by 50% (USEPA).
- There are significant questions regarding the sediment and geotextile tests.
- The geotextile selected fails the retention and susceptibility to down slope migration tests – mitigation is required.
- The absence of measured sediment geotechnical properties means some guesswork has been used in the SPS design and performance.
- The SPS design is not consistent with acceptable practice as defined by USEPA.
- The bed slope in Kendall Bay is too steep for and SPS – it is not feasible.
- The proponent severely underestimates the amount of sediment disturbance after the marina operational phase
- The as designed SPS provided fails to mitigate the disturbance of the sediments – it is inadequate.
- The case studies presented by the proponent do not have a marina present.

- The SPS thickness of other projects mentioned vary between 0.8 and 1.52 metres, significantly thicker than the 0.3 metre thick blanket nominated for Kendall Bay.

This section of the assessment critically reviews Volume 6 "Estuary Hydrodynamics and Physical Sedimentary Environment Report Incorporating Turbidity Investigation". This volume looks at the existing environment then it's interaction with the proposed marina development and the mitigation measures proposed.

1. Prior to undertaking, the review, some introductory comments are considered appropriate. In essence the proponent proposes to construct a marina and protect the contaminated sediment by using a rock layer underlain by a geotextile. Placing the geotextile and rock armour over the contaminated sediment is a site remediation process being undertaken prior to making a change in the site use. **Despite an exhaustive literature search not one single example can be found where subsequent to protecting the contaminated sediment construction of any kind has taken place that potentially impairs the functionality of the cap.** The two cases presented; Sheboygan and Eitrheim Bay do not have a recreational or other facility built over the top. Throughout this presentation the words cap and ISC which are widely used in the USA mean the same and are interchangeable. They are also the same and are interchangeable with SPS used in the DA document.

2. The capping proposal is using a technique for isolating contaminated sediments and called Insitu Capping (ISC). ISC usually serves three main functions:
    a) Physical isolation of the contaminated sediment from the benthic environment
    b) Stabilizing the contaminated sediment preventing its re-suspension and movement to other areas, and
    c) Reduction of the flux of dissolved contaminants.

3. In order to achieve these functions, an ISC must be treated as an engineering project that carefully considers design, construction and monitoring. Detailed guidelines covering these aspects of the remediation have been developed by the U.S Environmental Protection Agency (USEPA), 2005. The major activities associated with an ISC project are discussed in a later section.

4. Bathymetry (depth to bed), VOL 6 pg 15 (throughout the document this means the DA volume 5 page 15). The assessment relies on dated information provided by others. The information was collected for purposes other than on ISC exercise and

is too broad. The successful laying of an ISC relies heavily on a level bottom. No data has been presented to confirm there is no debris or obstructions present that will cause damage to the geotextile or problems during the laying of the geotextile and rock armour. For example a large protrusion such as a car body, will pose significant problems. It will also be necessary to consider the disturbance to the contaminated sediment when removing any such debris. Side scan sonar or similar technique should be used to identify protrusions that may present and provide an accurate representation of the bathymetry.

5. Wave climate VOL 6pg 19. The wind waves have been calculated using a 50 year Average Reoccurrence Interval (ARI) as defined by Australian Standard AS 3962 for the design of marinas. This Standard provides no guidance on the design of an ISC. Given the consequences of the failure of the ISC it is considered more appropriate to assess the wave climate using at least a 100 year ARI or even a 200 year ARI would be appropriate (USEPA, 2005). Given the likely extremely low strengths of the sediments the effects of earthquakes causing liquefaction should also be examined (USEPA, 2005).

6. Physical Bed Sediment Characteristics VOL 6 pg 32. The bed sediment is discussed in terms of its physical nature and transport behavior. The particle size distribution of the sediment is an important component of ISC design. URS performed washed gradings only and AECOM full gradings including hydrometer tests. During the washed grading test the sample is washed over a 75 micron sieve and cannot distinguish between silt and clay. When hydrometer tests are carried out it is possible to distinguish between the amount of silt and clay. It is well known in soil testing that the presence of organic matter in the soils can affect the washed grading and hydrometer results. Bottom sediments like Kendall Bay contain organic matter. Since none of the test reports have been included in the report, it is not possible to verify that the correct test procedures have been followed or whether a NATA accredited testing facility was used to undertake the testing. The failure of presenting details of the test results is poor practice.

7. No discussion is given to the geotechnical nature of the sediments. It is the geotechnical nature of the sediments that will dictate the engineering solutions that are applicable. The contaminated sediment in Kendall Bay is what is described as normally consolidated clay or even underconsolidated clay. Normally consolidated clays are typically very soft. Normally consolidated soils can become underconsolidated by the activity of the benthic organisms and their interaction with the physical environment. Burrowing constructions processes and maintenance and bioirrigation of sediments during feeding and respiration lead to a decrease in strength of the normally consolidated clays because of the presence of voids and gases produced. In simple geotechnical terms, normally consolidated

sediments/clays are of very low strength and more often than not cause engineering problems.

8. As noted by the report (VOL 6 pg 33) the sediment is made up of sands, silts, and clays. Using the Hjulstrom (pg 34) curve to select an erosion threshold velocity of 0.3 m/sec for the under consolidated sediment is erroneous. This is because the curve was developed for consolidated sediments. Sunborg (1956) modified Hjustroms curve to include unconsolidated sediments such as those present in Kendall Bay. A copy of this modified curve is attached as Figure I. **The Sunborg curve shows clearly that a threshold erosion velocity as low as 0.15m/sec applies.**

9. The proponent concedes (VOL 6 pg 35) the marina development potentially disturbs the contaminated sediments. The report considers this disturbance during constructions, post construction and marina operation. To mitigate the disturbance of the contaminated bed sediments it is proposed to use a geotextile and rock protection blanket. It is stated (VOL 6 pg 36) that the "upper 100 mm of very soft sediment would probably be disturbed" when the geotextile and rock blanket are laid. This estimated of 100mm is based on a report by Douglas Partners (DP). The DP report provides no basis or justification for this "estimate". The "estimate" appears to be based on the fact that the soil behaves as a highly viscous fluid. It is unclear why this would apply to a depth of 100mm only. The bioturbation of organisms will likely penetrate several hundred millimeters below the surface. Vol 3 pg 5, shows that bivalve shells are present below 1.5 metres. As consequence, it could equally be estimated that the disturbance depth will significantly exceed the 100mm. A value of 400 to 500mm is considered more likely.

10. The construction and long term performance of the blanket has clear geotechnical implications, yet no geotechnical in-situ or other factual data has been collected. The lack of factual geotechnical data at this stage is considered to be a serious omission. Because of its underconsolidated nature, the very soft contaminated sediments will experience significant displacement through localized bearing capacity failure when the rocks are placed. This will occur when the armour store is placed on the geotextile and it sinks and in the process move some of the material laterally after which the displaced sediment moves up vertically a short distance from the rock placed. This will result in a wavy surface not a horizontal surface as depicted on Diagram 3 of Figure 8 (Vol 6). The effect is illustrated on Figure A. This waviness could be up to several hundred millimeters USEPA (1998) recommends increasing the blanket thickness by 50% to overcome the uncertainties with this type of construction when carried out under water. Therefore, to obtain an effective rock armour cover of 300mm, a minimum of 450 mm would be required. The proponent has failed to demonstrate that the proposal

will not result in significant uncontrolled disturbance of the sediment during rock placement.

11. The proponent may argue that geotextiles are used as a reinforcing member in civil engineering projects to overcome the effects of low strength soils. This is correct, however, when using a geotextile for reinforcing purposes a woven fabric is usually used, not a non woven fabric as proposed at Kendall Bay. Woven fabrics have distinct fibres that act like the steel in reinforcing mesh. Woven fabrics are usually a very poor separator that is why the proponent is using a needle punched spun bound geotextile (Elcomax 1200 R). This type of geotextile has fibres that run in random directions and need to stretch a significant amount to take up load. Therefore they are not suitable to be used as a reinforcing element.

12. The proponent also concedes (Vol 6 pg 36) that "once the geotextile is laid and fixed in position by the overlying rock, further migration of fine sediment through the geotextile could be expected". Testing was carried out by Geotechnical Testing Services (GTS) in order to model the Kendall Bay situation. It is stated that "during the construction phase it would seem reasonable to consider that the static immersion test a more representative of the hydraulic loading environment than the hydrodynamic test. No justification is provided to substantiate this ascertion. The static test (an in house test method of the laboratory) models nothing that resembles the conditions that will prevail in Kendall Bay. The actual situation will be dynamic due to continuous variation of the water levels due to tidal effects.

13. When reviewing the (GTS) test reports, the following comments can be made:
    - Two test methods were used; hydrodynamic test (Method NFG 38-017) (modified) and Static Immersion Test (in house test method)
    - NFG 38-017 has been replaced by ISO 12956. It is unclear why this more up to date test method was not used. RTA QA Specification R63, Geotextiles (separation and filtration) replaced NFG 38-017 with ISO 12956 in 2002.
    - It is unclear what, if anything, the static test is meant to measure. If the test was to measure the effect of 100mm of sand (a load) on the sediment, it achieved that only. How this can be extrapolated to 300mm of rock armour has not been explained. The sediment is a fine grained material which takes time to settle and consolidate. It is highly likely the sample had not concluded settling or consolidating in the 48 hours of the test.
    - The hydrodynamic test is at least a test method, even though it has also been replaced by other test methods.
    - GTS is not NATA (National Association of Testing Laboratories Australia) accredited for either of the test methods.

- Virtually all government departments demand testing be completed by a NATA accredited laboratory.
- With reference to NFG 38-017 the test reports provide the following comments.
  - Two test specimens instead of six were used
  - The samples were filtered removing some of the very fine particles.
  - The test was approximated to have a 29% error.
- With reference to the static immersion test the test reports provide the following information:
  - 100mm of sand cover is used
  - The test was carried out for 48 hrs
  - The samples were filtered removing some of the very fine particles
  - The test was approximated to have a 29% error.
- It is noted the very fine material was removed from both tests which means they do not simulate in-situ conditions.
- Any laboratory test should attempt to simulate the in-situ conditions. Both tests used modified soil types and are therefore not typical of Kendall Bay. The 100 mm of sand does not simulate the 300/400 mm of proposed basalt. The test times were miniscule compared to the actual life of the marina.

14. Two fabrics were tested, the Elcomax 1200R (the proposed geotextile) and TTF 750. Only the test results for the 1200 R geotextile are summarized below.

Lab Sample ID	Percent passing (%) 1200R Geotextile	
	Hydrodynamic Test	Static Test
2467-1A	5.78	0.51
2467-1B	36.26	0.36
2467-2A	31.90	1.31
2467-2B	39.00	0.72
2467-3A	32.83	0.86
2467-3B	38.45	0.33
2467-4A	6.32	0.21
2467-4B	7.70	0.20

It was not possible to correlate the sample ID's to their location in the field, however, it is worth noting that the Cardno Ecology Lab (CAL) have noted that the near shore samples are coarser that the offshore samples (Vol 3). Samples 1A, 4A and 4B are likely to be near shore samples and not representative of the majority of the area to be remediated. Therefore, it could be concluded that between 31.9% and 39.0% of the sediment could pass through the geotextile under hydrodynamic conditions in Kendall Bay

(although the test results could be worse for the conditions previously discussed). The results of the hydrodynamic test have been discounted as being non representative. The proponent overlooks the fact that there are two changes of tide daily, i.e. 73,000 in 100 yrs, and each one represents a hydraulic load across the geotextile. Therefore, the 2335 cycles in the hydrodynamic test is not necessarily conservative. In the static head test there are no changes in hydraulic gradient across the geotextile. Therefore, this test does not model anything like reality in Kendall Bay. Between the northern most 2 arms of the marina there are 34 berths, assumed 0.3 of these are used daily (based on car parking usage), and this represents 20.4 boat passes per day or 744,600 in 100 yrs. If each pass creates a hydraulic gradient across the blanket, it can easily be deduced the hydrodynamic test models reality more than the static test.

15. The CAL results show that most of the samples tested have in excess of 80% their particles finer than 75 microns. The effective opening size of the fiber is about 75 microns. Therefore, to suggest 1mm of material will penetrate the fabric during construction can not be substantiated. It could easily be argued that the very soft sediment is 1.5 metres thick and that 30% could pass through the geotextile. This represents 450mm of sediment. It is not suggested that this will happen, however, it is possible. The real number is probably in between, but certainly significantly higher than 10mm.

16. The geotextile should be considered as only one part of a filter to reduce but not eliminate the ingress of contaminated sediment through the ISC.

17. A comparison to the current fast ferry traffic and the construction bed disturbance is made (Vol 6 pg 36). What the comparison fails to discuss is that even though the blanket covers some of the contaminated sediment, the reality is that there are large parts of the contaminated sediment that will remain unprotected after the construction of the blanket and this is the likely area of ferry traffic. Further more, the document implies that contaminated sediment miraculously stop at 200 metres from the shoreline. The contaminated sediment extends beyond this line. Therefore, the fast ferries will continue to disturb sediment in a similar quantity to that which currently takes place. To suggest that by placing the blanket some 2,200kg (this figure is in fact incorrect – discussed later) of PAH per year is no longer released from the sediment, is incorrect. The fast ferries will continue to run and continue to disturb similar amounts of contaminated sediments. Whilst the water over part of the route is deeper a significant amount of the disturbance would be similar. When the sediment disturbed by the additional marina traffic is added to that disturbed by the ferry traffic, the supposed reduction in sediment disturbance becomes illusionary.

18. Vol 6 pg 43 states "Having discussed the feasibility of blanket placement and construction tolerance with an experienced contractor, GBAC proposes a blanket concept design which generally comprises a 300mm thick rock profile, but is locally thickened to 400mm in critical zones". Despite our best efforts we have been unable to find one example of where this type of blanket has been placed over contaminated sediment in Australia. Therefore, it is difficult to accept that there are contractors experienced in this type of construction where very soft underconsolidated sediments are present. Placing the rocks under water where tides etc will want to move the blanket around is a difficult exercise (USEPA, 1998).

19. Vol 6 pg 43 notes "Geotextile is therefore required to separate the blanket rock from the underlying bed sediments". The Elcomax 1200R has been selected. This is a non woven fabric. PIANC (1987) has three main requirements with respect to geotextiles under rock armour. These are; retention, permeability and down slope migration. It is agreed that the assessment of the geotextile in accordance with Appendix B of PIANC showed non compliance. The proponent suggests this could be due to test methods. It is disagreed that the assessment of the geotextile is in some way related to various testing methods. The method in Appendix B applies to dynamic load conditions such as turbulent flow and wave action. **Therefore, the geotextile fails the retention test.** This in itself does not mean it should not be used, what it means is that the geotextile must be used as part of filter which will need to incorporate at least a sand layer. It is agreed that the geotextile meets the permeability requirements.

20. Vol 6 pg 47 states "It would appear that down slope migration is a potential issue for sloped revetments protecting muddy riverbanks. Because of the very flat bed gradients encountered under the blanket, this issue is avoided at the site". The proponent fails to define what "very flat" means. PIANC (1987) indicates that the distinction between soils susceptible to down slope migration and those not, is a function of grain size. Firstly, some of the particles must be smaller than 0.06mm. In order to assist with this part of the assessment, the particle size distribution (PSD) of the samples given in Table T3 of VOL 9, have been plotted on graphs. These are attached as figures B to G, inclusive. All the samples have in excess of 90% of the sample finer than 0.06mm. Therefore, this condition is satisfied. Additionally, there are three other rules. The requirement is that one of these rules is satisfied. The first is that the coefficient of uniformity (CU) is less than 15. Where d60 represents the particle size which 60% of the sample is finer. Similarly with d10. The d60, and d10 sizes for each of the samples is determined from the PSD. The values are shown on the graphs, figures B to G, and summarized below and CU is defined as:

$$CU = d60/d10.$$

Sample ID	Size (millimeters)		CU
	d10	d60	
PC1	0.00019	0.028	142
PC2	0.00017	0.024	141
PC6	0.0006	0.003	5.0
PC9	0.0062	0.0052	8.4
PC10	0.0005	0.0032	6.4
PC29	0.00052	0.0033	6.3

It should be noted that in order to obtain the d10 size the graph was extrapolated beyond the test data due to the absence of relevant test data. The above shows that four of the six samples are susceptible to down slope migration. The second rule that applies is 50% or more of the particles be in the range of 0.02mm< d <0.1mm. These values for each sample are summarized below.

Sample ID	Percent 0.02mm< d <0.1mm
PC1	47
PC2	48
PC6	5
PC9	10
PC10	6
PC29	8

PC1 and PC2 are very close to the criterion which makes them marginally susceptible to down slope migration.

21. Using these above rules it is concluded that all the samples tested exhibit a susceptibility to down slope migration. Therefore, in its current state, the blanket design is inadequate. PIANC (1987) suggests that in order to overcome the deficiencies it would be necessary to provide a sub layer of 100 to 500mm of sand between the geotextile and rock armour. A thickness of 300mm is not uncommon. Figure H illustrates this requirement and was taken from PIANC.

22. Having stated (Vol 6, pg47) the bed gradients are very flat, no actual definition is provided. The bed slope in the marina area ranges between 1 (H) to 5 (V) around the proposed jetty area and southern extremities to 1 in 100 for a small section of

the northern part. About half of the total area of the blanket area exceeds a slope of 1 in 60 (i.e. about 2%).

23. The matter of bathymetry is considered to be important for an ISC (USEPA 2005). It is stated that the flatter the bottom slope the better. This is to reduce the spreading of the capping material during placement. It is also stated that it is difficult to estimate the effects of slope alone, since bottom roughness plays an equally important role in the mechanics of the spreading process. Given the normally and underconsolidated nature of the contaminated sediments, the bottom slope in Kendall Bay is considered to be a very important factor in the selection of the correct method of remediation. Palermo et al (2000) offers some insight into the issue of bottom slope. In this publication the issue of level bottom capping (LBC) is discussed with reference to dredged material capping. This is where dredged contaminated sediments require capping to mitigate the potential for toxicity or bioaccumulation in benthic organisms. These dredged sediments would be very soft similar to those in Kendall Bay. The following is from the **document "... LBC projects ...have been executed at sites with slopes up to 1 to 60 ..."Placement of material on steep bottom slopes (steeper than 1v on 100h) should generally be avoided for a capping project... because of the potential for a slope adjustment ...". Using these criteria it can be concluded that the bottom slope at Kendall Bay is far too steep for the proposed ISC.**

24. Vol 6 pg 47 notes "the feasibility of the scour blanket has been discussed with contractors". There is no indication that these discussions included methods to overcome the effects of the underconsolidated clays and steep bed slope. The proposed construction methodology also takes no account of any obstructions that may be present on the bed. There is little point in discussing a proposal with a contractor if they have never undertaken similar work in a similar environment in the past.

25. Vol 6 pg 47 discusses an alternative of a grout filled mattress. It is agreed that this option has the difficulties noted. One problem not mentioned is that the grout would be many more times stiffer than the underlying contaminated sediments and any differential settlement that occurs would result in significant cracking to the point where if could lose its functionality.

26. Vol 6 pg 48 discusses far field dispersion of disturbed bed sediment. It is stated that there is "10mm of disturbance to the surface bed sediments which occur over the constructions, post-construction and marina operation phases would amount to some 560m^3 of material". On pg 36 Vol 6, it is stated that "it is estimated that the upper 10mm of sediment has been used as the basis of the calculations. If one accepts the 100mm figure, the disturbance amounts to 5600m^3 (56,000 m^2 x 0.1

m) not 560m^3. Therefore the volume is 1,000% higher. The argument used makes several assumptions without any justification. These assumptions are:

- 50% of disturbed sediment moves to the south
- Of the sediment that moves to the south only 15% moves into the 40,000m^2 of mangrove shallows.

Using their assumptions it was calculated that 1mm of sediment settles on the mangrove area. The calculation is as follows.

56000 x 0.01 x 0.15 / 40,000 = 1mm, (40m^3). If we substitute 100mm of disturbance instead of 10mm, the calculation becomes

56000 x 0.10 x 0.15 / 40,000 = 10mm, (400m^3)

If the disturbed depth is 300mm, the calculation becomes

56000 x 0.30 x 0.15 / 40,000 = 30mm, (1200m^3)

If the disturbed depth is 500mm, the calculation becomes

56000 x 0.50 x 0.15 / 40,000 = 50mm, (2000m^3)

27. The conclusion drawn is that 40m^3 of disturbed settlement in the mangrove area is considered to be "reasonable" by the proponent. Based on the above calculations, the amount deposited could be between 400 and 2000m^3. Even 40m^3 of sediment will result in 10.7kg of PAHs being deposited. This has been calculated using 22.3 mg/kg of PAH (Vol 9 pg 3). Using more realistic disturbance depths (ie 100 to 500 mm) between 107 and 535 kg of PAH may be deposited in the mangroves above the high water mark an issue not addressed is that some of the soils in Kendall Bay are Acid Sulfate Soils (ASS). Some of these sediments could be ASS which could have a negative impact on the flora and fauna when deposited above the higher water mark. If the Jemena remediation does not take place this quantity of PAH will be additional to that which is currently present. If the Jemena remediation is carried out prior to construction of the marina, then the remediated area will be re-contaminated by the disturbed sediments.

28. It is interesting that the proponent has considered that effects of the marina construction on far field dispersion, yet has ignored the effect of continued river traffic outside the blanket having the same effect on the blanketed area itself. It is naïve to believe that there will be no disturbance of sediment outside the blanketed area by river traffic. Unlike the mangrove area, 100% of this disturbed sediment will settle below the high water mark, some on the blanket itself. The river traffic effect continues 365 days a year or 36,500 days over 100yrs. No attempt has been made to estimate the effect of this disturbance of the blanket.

29. Using the proponents own estimates, the fast ferries disturb 18,600 tonnes (Vol 9 pg 4) of sediment. If the marina is built the ferries will travel a slightly different route over deeper water. For the sake of making an estimate, lets assume the changed route reduces the sediment disturbed to 10,000 tonnes (8333m^3 assuming a density of 1.2 tonnes/m^3) some of this material moves over the blanket area.

During marina operations, this material will in turn be disturbed and part deposited on the mangrove area, day after day.

30. Another far field effect ignored by the proponent is the recontamination of the blanket from the disturbance of the area between the blanket and the Breakfast Point seawall. This area will be unprotected and will continue to be disturbed by waves whether generated by wind, ferries or pleasure boats outside the blanket. The effect of these waves is magnified by the reflection from the wall. Part of the disturbed sediment will settle on the blanket. During marina operations, this sediment will in turn be disturbed and deposited on the mangrove area. Other disturbances to this SPS unprotected foreshore area will be related to tides, wind, construction work and subsequent use of the area by small boats and kayaks (including foot traffic when someone (eg learners) fall out.

31. Conceptual model of Disturbances and Protection. Vol6 pg48 presents this model. The proponent's model and comments are given.

1	Existing conditions	Near-bed wave-induced currents due to fast ferries disturb large areas within Kendall Bay including the proposed marina footprint area.	The number of ferry journeys does not reduce when the marina is in place, the route taken simply changes. The sediment disturbed is less however, the increased traffic from the marina probably equals the difference. Therefore the same amount of contaminated sediment will still be disturbed, just in a different location.
2	Commencement of construction	Geotextile forming part of the blanket is lowered onto the bed.	This will not be straight forward. This geotextile is spun bound and 5.7mm thick. A significant amount of air is trapped within the geotextile which will mean it will want to float. It will not simply fall onto the bed. Current velocities will make handling difficult. There is no evidence presented to show there are no obstructions on the bed and how they will be

			dealt with and the resulting sediment disturbance.
3	Geotextile located onto bed	The geotextile comes to rest on the bed and ballast is placed to temporarily secure the geotextile placement. In the process of coming into contact with the bed and being located to its correct position, disturbance of surface sediments commences. Upper 100 mm of bed sediments probably affected during construction of the blanket *(Douglas Partners, 2009).* Small proportion of the disturbed sediment passes through the geotextile *(<10% of upper 100 mm over the duration of blanket construction)*	Because the sediment is normally consolidated and underconsolidated in nature, the temporary ballast will cause local bearing capacity failures and disruption to the blanket. There has been no justification of the 100mm of disturbance; it is likely to be significantly greater. The hydrodynamic testing shows significantly greater amounts of sediment passes through the geotextile than the assumed 10%. There has been no justification of the 10mm used.
4	Construction completed	300 – 400 mm thick layer of rocks comprising the upper blanket is placed. Disturbance of surface sediments is complete when construction of the blanket is completed. Up to 10 mm of fine surface sediments now occupies the base interstices of the blanket.	Because of the very soft nature of the contaminated sediments, placing the rocks without causing significant localised displacement of the sediment will be very difficult. As a result the effective depth of the blanket in places could be as little as 100mm. See comments in 1 above regarding the sediment in the base of interstices of the blanket.
5	Post construction (up to 12 months)	Ambient currents, including the controlling wave-induced currents due to fast ferries, are insufficient to remobilise most of the 10 mm of fine sediments within the rock blanket.	Some of the sediments will be remobilised because there will be more than the 100mm present (see comments to 1 above). Because there will not be an effective cover of 300 to 400mm the wave reduced currents will disturb the sediments.
6	Marina operation phase commences (at 12 months)	Once vessels take up their berths within the marina, their propeller action is predicted to remobilise all of the 10 mm of fine sediments located within the rock blanket.	It is agreed that the vessels will remobilise all the sediment located in the rock blanket. Therefore, a significant larger amount of

		This material is suspended into the water column, and dispersed elsewhere within Kendall Bay and beyond, under the action of ambient currents. Tidal flows and wind induced currents would be expected to dominate the dispersion process. The blanket geotextile itself reduces the penetration of ambient currents to the underlying bed sediments such that the velocities under the geotextile are insufficient to mobilize these sediments.	sediment will be redistributed elsewhere in Kendall Bay than calculated by the proponent as explained above. Because the effective thickness of the blanket may sometimes be less than the design thickness the ambient currents in the underlying bed sediments will be sufficient to mobilize the sediments.
7	Marina operation phase	During operation, minor disturbance of blanket rocks is predicted due to propeller action of vessels located within the marina. Based on the adopted blanket design methods, it is predicted that 0 – 5% of the rocks within the blanket may move over the life of the facility. This disturbance of the blanket rocks is readily addressed by routine maintenance. Any minor mobilisation of the blanket rocks during marina operation and any required maintenance would not be expected to disturb the bed of Kendall Bay under the blanket such that further sediment loss up through the blanket could occur.	Recontamination of the blanket from the far field disturbance has been ignored. Significant amounts of sediment will settle on the blanket which in turn will be remobilised by the vessels using the marina. In turn these will be remobilised to other parts of Kendall Bay. When this continued sediment disturbance is added to the continued disturbance by the fast ferries (and probably increased ferry numbers due to the Sydney Ferries identification of Cabarita wharf demand) and the increased pleasure craft, the total disturbance to sediment will remain unchanged to that which currently occurs.

32. Design Reliability (Vol 6 pg 51). This section presents a position regarding conventional design practice for coastal and maritime engineering structures. The problem with designing for the "average" conditions is that the blanket, while an engineering structure, is also a remediation process. **Designing for average**

conditions is not suitable for a remediation project. USEPA 2005, suggests, using extreme conditions. A 200yr ARI and seismic conditions are noted.

33. It is noted that the sizing of the rock blanket has been designed using USACE 1970 and PIANC 1997 yet the design completely ignores the requirements of USEPA, 2005 and USEPA, 1998. **Both of these documents provide details of the design requirements for a capping layer as a remediation process. The proponent has chosen to ignore this facet of the design requirements of a capping layer. By ignoring the remediation requirements of the blanket, the design is potentially severely compromised.**

This part of the assessment comments on the contents of Volume 9, "Sediment Management Report".

34. Current conditions (Vol 9 pg 3). It is agreed that the sediment within Kendall Bay is mostly material with a particle size less that 75 microns. AECOM state "the 95% upper confidence limit (UCL) on the mean of the PAH concentrations, the driving contaminant was 22.3 mg/kg.

35. It is stated it is reasonable to adopt a disturbance (erosion) threshold velocity of 0.3 m/sec. This may be valid for consolidated clays and silts, however, for unconsolidated clay and silts the value could be 0.15 m/sec. This is from the work of Sundborg in 1956. Refer to paragraph 8.

36. The following scenario is presented (pg 4 Vol 9)
    - Each fast ferry disturbs 0.62 m^3 of sediment
    - 25000 ferries each year disturb 18,600 tonnes of sediment per year.
    - **The 95% UCL on the mean for PAH is 120.5 mg/kg (yet this has been previously stated as 22.3 mg/kg – see 34 above)**
    - The ferries disturb 2,200 kg of PAH annually (if 22.3 mg/kg is used instead of 120.5mg/kg, the value per year is 407 kg not 2,200 kg)

37. It was concluded that without the implementation of appropriate sediment protection, the proposed marine development would cause additional disturbance of bed sediments. This is agreed.

38. Proposed management (Vol 9 pg 7). In order to mitigate the effects of turbulence caused by the proposed marina boat movements etc, a Sediment Protection System (SPS) is to be placed over the full area of the marina.

39. The SPS comprises a geotextile blanket stabilized with 300-400 of basalt rock armour. The installation and management of the SPS is to be controlled by a construction environment management plan (CEMP) and an operational environmental management plan (OEMP). Details on the limitations and omissions of these plans are contained in separate Breakfast Point Residents Group documents.

40. Adequacy of SPS Design (Vol 9, pg 9) Design development of the SPS considered the following:
    i. Boat movement zones and controlling bed levels
    ii. Design water level in Kendall Bay
    iii. Screw race modeling and design bed velocities
    iv. Protective rock requirements, rock size, blanket thickness and footprint
    v. Geotextile filter
    vi. Construction aspects

41. It is reported that the level of confidence attached to the design would be equivalent to that which generally applies in engineering practice. A 50 yr ARI has been used. The SPS is a remediation process and as such should be designed for extreme events with at least a 100 or 200 yr ARI. The benchmark could be that the Breakfast Point Community Association has a lease and responsibility for the waterfront walkway of 299 years. Seismic effects should also be considered (USEPA, 2005). See paragraph 5.

42. The first element of the SPS is a geotextile. It is postulated that the geotextile serve as a foundation load distributor for the rock armour. Because of the under consolidated nature of sediments there will be considerable displacement of the sediments due to localized bearing capacity failures. This will result in a very wavy geotextile profile very different to the conceptual model given in Figure 8 (Vol 6). Therefore, in order to obtain the effective cover of 300 and 400mm at all locations, a thicker rock layer will be required. Up to 450 and 600mm of rock will be required (USEPA,1998).

43. Along the edges of the SPS the basalt will be 500mm thick with a slope of 2(H) to 1 (V). This design is guesswork because no stability assessment has been carried

out. Without a comprehensive geotechnical assessment of the underconsolidated sediment any such calculations would be based on speculation. The amount the basalt will consolidate in the long term is also speculation without comprehensive geotechnical assessment of the sediments. In addition using the argument above, this layer should be 750 mm thick.

44. Yet again the down slope migration of the geotextile is not considered relevant because of relatively flat bed gradients. This statement, as before, is made without any technical justification. Based on the PIANC (1987) assessment criteria the samples tested exhibited susceptibility for down slope migration. To mitigate against this susceptibility a granular sub layer between the geotextile and rock armour will be required. The sub layer required could be up to 500mm thick. Palermo (2000) suggests a steep slope is defined as 1(V) to 100(H), ie 1% gradient. In Kendall Bay parts of bed are as steep as 1 to 6, ie about 17% with about 50% of the marina area being steeper than 1 to 60. These bed slopes indicate the proposed SPS is not suitable for Kendall Bay.

45. Two previous projects are cited (Vol 9, pg 10) as this type of design in similar applications and environments. These are Sheboygan Falls, Wisconsin, USA and Eitrheim Bay in Norway. At Sheboygan, there were two geotextile layers. The first was placed on the sediment, then there was a granular layer, another geotextile and finally the cobbles. This is considerably different to the proposed SPS. The Eitrheim Bay project has one similarity to Kendall Bay, it used a geotextile. Other examples found during a literature survey are Convair Lagoon, California and Manistique, Ml, USA (USEPA, 1997). Convair comprises 12 inches of gravel and 24 inches of sand over a geogrid. Manistique comprises 20 inches of sand over a geotextile. 12 inches of graded armour stone overlies the sand. These combined protection layers are 0.8 mm (32 inches) and 0.9 mm(36 inches) thick respectively, somewhat thicker and at least double the SPS thickness proposed for Kendall Bay.

46. Geotextile degradation, durability and chemical impact (Vol 9 pg 11). It is stated that the geotextile has a design life of greater than 100 yrs. Geotextiles have been available on the market for 30 to 40 years. Therefore, their long term (eg 100 year) durability is untested. It is noted that polyester geotextiles undergo degradation at high and low pH conditions. Since there are acid sulfate soils present in the Kendall Bay low pH conditions can not be discounted as being a possibility.

47. Geotextile Permeability and Sediment Retention (Vol 9, pg 11). This aspect is comprehensively discussed in paragraphs 18 and 19. **The geotextile does not have the required retention capacity. The susceptibility to down slope**

migration is conveniently not discussed in this section despite its critical importance in the successful performance of the SPS (ISC). Paragraphs 20 to 22 provide a detailed discussion why the SPS option is unsuitable for the site. The notion that up to only 10 mm of sediment will pass through the geotextile has been shown to be incorrect as has the threshold velocity for erosion of the sediment. **It has been shown that the threshold velocity of the underconsolidated sediment is as low as 0.15 m/sec half of the 0.3 mm/sec value adopted by the proponent.** Despite the fact that the fabric, through its "filtration" designs, will account for the hydraulic gradients set up. There has been no justification of this statement.

48. Disturbance during construction (Vol 9 pg 13). The use of a boom and silt curtain to trap disturbed sediment is discussed. Vol 3 provides a very general discussion of the use of boom and silt curtain. The information provided is a general nature and lacks the necessary detail to ensure that it will prevent disturbed material escaping the construction area itself. A detailed discussion on silt curtains is given in Francingues, N.R and Palermo, M.R. (2005). The following is taken from the summary of this document.

> "The term "silt curtain" is used to describe devices deployed in water to control suspected solids or turbidity.....Almost every silt curtain application has unique features that require site specific adaptations.....For cost considerations, logistical constraints, and performance expectations, **prevailing current velocities of 1 to 1 ½ knots effectively limit deployments.....Silt curtains should not be considered a "one solution fits all" type of best management practice.** They are highly specialized, temporary use devices that should be selected only after careful evaluation of the intended function and designed based on a detailed knowledge of the site where they will be used".
>
> A limiting current velocity of 1 to 1 ½ knots is equivalent 0.5 to 0.8 m/sec. The ebb tides produce current velocities of 0.7 m/sec (Vol 6 pg 28). The above document suggests using curtains where currents are greater than these values are problematic. There are many site specific design details that should be considered at this time because the performance of the silt curtain goes to whether remediation can be carried out without an increase to the sediment disturbance and distribution over a wider area. **Silt curtains are not designed to sit on the bed. No discussion is presented as to how sediment disturbance will be prevented from passing under the curtain and redistributing contaminated sediment over a wider area,** The depth of sediment disturbance during construction will be more than 100mm as discussed in paragraph 9. More than between 1 to 20mm of sediment can be expected to penetrate through the geotextile as

discussed in paragraph 13. Therefore, the sediment that will be settled in the rock armour could be in excess of ten times the 560 m^3 guessed by the proponent.

49. The approach to the installation of the SPS is discussed (Vol 9 pg 13). A generalized discussion is presented regarding the manner in which it will be constructed. No discussion is given on how a blanket that is full of trapped air is to be placed when battling currents and wind. **No discussion is provided on how the silt curtain will perform during windy periods and tidal currents in excess of 0.5 m/sec. No discussion is given to how bed obstructions that may be present are to be either investigated or handled. No discussion is given about how the waviness of the bed sediments will be allowed for when the rocks are placed. The amount of clay particles in the sediment ranges between 12 to 47% with an average of 28.7% (Table 13 Vol 9). If the near shore samples are ignored the average amount of clay present is 38.8%.** Clay particles are colloidal in nature and therefore subject to Stokes law with respect to settlement after disturbance. The suggestion that the colloidal clay particles will settle rapidly is highly questionable. No discussion is offered on colloidal particles passing under the silt curtain.

50. After completion of the SPS piles will be installed. (Vol9 pg 14). This will be done by removing the rock armour and holes will be cut on the geotextile. It is intended to fit a collar to the piles and to attach the geotextile to the collar. No details of the collar are provided nor the fixing mechanism. **Despite an exhaustive search of the literature on contaminated sediments no examples could be found where after the remediation by capping, neither on shore nor particularly below water level, where the integrity of the remediation is compromised by construction activity. The introduction of the piles through the capping introduces a significant risk to its long term performances as an isolation layer.**

51. Bed disturbance during marina operation (Vol 9 pg15). There is a discussion regarding bed disturbance during the first 12 months post construction. **The calculations are based on erroneous assumptions and calculation.** These are:

    - 10mm of sediment passes through the geotextile. Paragraph 15 shows this is incorrect.
    - 560m^3 of sediment in the rock armour. Paragraph 27 shows the amount would be higher
    - 15kg of PAH will be mobilised in the water columns. This figure depends on the two bullet points above being correct. If the amount of sediment that passes through the geotextile is 100mm, the amount of PAH increases to 150kg.

The amount is compared to the fast ferry disturbance of 2,200kg/year. Paragraph 37 shows this figure is incorrect and should be 407kg. The comparison also fails to take into account the far field effect of sediment settling in the rock armour. Paragraphs 29 and 30 discuss this issue. **This far field effect will continue every day of the year. When this is added to the correct amount of disturbance of sediment through the geotextiles it is doubtful that the impact of marina on water quality will be less than predicted and will not have a significant contribution to its improvement.**

52. Post construction subsequent to the first 12 months as discussed (Vol 9 pg15). It is noted that following placement of the SPC the greatest potential to generate turbidity and disturb bed sediments will be due to increased propeller action. The following points are made.
    - It has not been shown that the SPS current bed velocities are 0.1 to 0.2 m/sec.
    - The threshold value for unconsolidated sediment is 0.15 m/sec, half of the nominated value of 0.3 m/sec. See paragraph 8.

    Therefore, it has not been demonstrated that the SPS mitigates erosion. Therefore, sediment will continue to be mobilised from below the blanket. In order ensure the threshold velocity is not exceeded a sand layer will be required between the geotextile and the armour. In any case the sand layer is required to mitigate down slope migration as discussed in paragraph 21. The collar connecting the geotextile to the piles is addressed and it is considered "unlikely" that there will be any migration of particle matter through the annulus around the piles. **The disturbed material due to repeated action of the piles moving (mainly laterally) is likely to be the colloidal particles which are smaller than 2 microns (the clay). Therefore, it is not possible to ensure that disturbance is "unlikely". It is more probably "likely".** The reported additional sediment from far field disturbance has not been considered in the discussion. As noted in the previous point the effect would not be insignificant.

53. It was been concluded (Vol 9 pg15) by the proponent that marina operations would not result in "further disturbance of the bed sediments and any disturbance of the bed sediments would be negligible when compared to present levels." As noted above, the mitigating affects of the capping layer are overstated because the design is deficient and the far field effects of sediment disturbance are ignored.

54. Management Controls During Operation are discussed, Vol9 pg 17. Protection of the SPS is to be via key management procedures.

    - Marina users will not necessarily use the nominated access and egress routes to and from the marina, particularly after hours when the marina management staff has left for the day. In any case there is no daytime

proposal to have staff located at access egress points to ensure compliance.

- Training of staff about the location and purpose of the SPS will not prevent accidental damage by anchors dropped during a squall and deep hulled vessels.
- It is unclear how deep hulled vessels will be restricted from shallow water after hours.
- The management plan provides for no inspections of the SPS beyond 5 years. Should this disastrous SPS proposal proceed, the inspections should be yearly for ever. No management procedure has been presented to ensure who will monitor that the inspections have been carried out. No penalties have been proposed if the management procedure is not followed. Also it is unclear who would have the authority to impose the penalties.
- The OEMP would be implemented by the marina owner/operation (Vol 9 pg 17). It is incredulous to think that such an onerous task could be self administered.

55. Future remediation (Vol 9 pg 19). The "easy" removal of the marina and SPS if future remediation is required are discussed. It is stated that the "design" allows for this "easy" removal. The proponents own consultant Douglas Partners (Vol 6 App. I) state that the estuarine sediment behaves like a high viscosity fluid. Just how the SPS can be separated from this type of material without causing major disturbance to the contaminated sediment is unclear as are numerous other technical details of this project.

56. The Vol 9 conclusions. (pg 21) are discussed. Despite the statements made it has been shown that:

- **During construction there will be significantly more disturbance of the sediment than purported.**
- During marina operation because of the underestimate of the various factors discussed. **The mitigating effect of the as designed SPS is overstated. The statement that the SPS is a significant improvement on the current conditions has been overstated on technical and arithmetic grounds.**
- **Following 12 months it is stated that there will be no disturbance of the sediment from marina operations. For the as designed SPS, this has been shown to be incorrect. This conclusion also conveniently ignores far field contamination from the river traffic.**

The conclusion of Vol 9 presupposes that an SPS (ISC) is a suitable remediation procedure for Kendall Bay. As shown in the previous sections, the SPS is technically unsuitable.

57. **Interim Audit Advice has been provided by GHD Pty Ltd (Vol 9 last page). Only the first page has been provided.** Therefore, an informed discussion is not possible on the adequacy of the audit by the EPA Accredited Auditor. It should be noted **the Auditor stated at a public meeting on October 20 , 2010 that he is not a geotechnical engineer and is unable to verify the geotechnical aspect of the project. Therefore, it is safe to assume there is no independent verification/sign off on the design and makeup of the SPS. Given the critical nature of the SPS in its role to remediate the marine site, this is considered a significant oversight by the proponent and totally unacceptable.**

58. SPS (ISC) Design. As noted above, the proponent has provided a design which is a normal civil engineering project. **Scant regard has been given to the fact that the project is a remediation project as well. From an exhaustive literature search it has not been possible to identify where a similar project has been carried out in Australia.** When designing these types of projects there appears to be no guidelines available from an Australian source, however international guidelines are available. Specifically, there is a specific guideline provided by USEPA (1998). Guidance for In situ subaqueous Contaminated Sediment, Great Lakes National Program Report. In addition there several other publications which are referred at the end of this submission. There is no excuse for the proponent not to consider the information available. Detailed guidance is given in USEPA (1998) and outlined below.

    1) **Clean up objective.**
    2) Characterise the contaminated sediment site. This includes:
        - Waterway features (bathymetry, currents, waves)
        - Waterway use
        - **Geotechnical conditions (stratification of layers, depth to rock, physical properties of foundation soils, potential groundwater inflow)**
        - **advective processes present and the ability of the cap to control advective contaminant losses.**
    3) Characterise the contaminated sediment. This includes physical, chemical and biological characteristics of the sediments.
    4) **Make a preliminary determination of the feasibility of the SPS. If not feasible other options must be considered.**
    5) Identify the capping material.
    6) Design the cap composition and thickness. **The cap design must consider the need for effective short and long term chemical isolation of contaminants, bioturbation, consolidation, erosion and other pertinent processes.**
    7) Select appropriate equipment and placement techniques.

8) **Develop an appropriate monitoring and management program both during and after construction. A site management plan should be provided.**
9) Develop cost estimates for the project including construction, monitoring and maintenance.

It is clear when reading the Environmental Assessment, the proponent has addressed many of the issues listed above, some very poorly, yet has not referenced the USEPA (1998) publication. This may be because as discussed above and highlighted below, the proposed SPS does not meet the necessary requirements. The different issues noted above are discussed in more detail below.

1) Clean up objectives. **Since this project has not been approached as a remediation project a clear clean up objective has not been stated.** The clean up objective has come about by way of the need to satisfy the EPA Remediation Order requirements.

2) Characterise the site.
- "The site conditions more than any other consideration will dictate the feasibility on in situ capping…Only some limitations in site conditions can be accommodated in the ISC design. A thorough examination of site conditions should generally determine if further consideration of ISC is appropriate…**Because in-situ caps are intended to function for extended periods of time, if not in perpetuity, it is not sufficient to just examine the existing conditions**…The evaluator must also consider future conditions that might significantly alter cap integrity or function…" .
- The feasibility of the SPS depends not only on bathymetry; **the proponent has not considered the effect of bed slope and obstructions see paragraph 4, 22, 23 and 24.**
- Water column currents and more importantly tidal currents could cause re-suspension of the sediment. Paragraphs 5 and 8 note deficiencies in this area because **an appropriate AR1 and a threshold erosion velocity have not been chosen.**
- **No consideration is given to decrease in depth and bottom geometry on current patterns and velocities after installation of the SPS.** Modeling studies may be required to assess such changes. **The geotechnical conditions at the site must be assessed. This information is needed to evaluate the potential for consolidation after cap placement. Geotechnical drilling and testing is also essential to ensure that the proposed piles are feasible 9eg is bedrock shallow?). The evaluation is also required to evaluate sediment behaviour during and after cap placement. The proponent has provided no site specific**

geotechnical information. The guesstimates by Douglas Partners are not sufficient when deciding on the feasibility of a significant remediation project such as that proposed for Kendall Bay. Their description of the soil behaving like a viscous fluid should have been a warning as the need to gather specific data. **This data must be available for the DA determination rather than construction certificate stage because it goes to the very feasibility of the project. SEPP55 notes that DA approval by a consent authority should not be given unless the remediation measures have been identified.**

- The physical characteristics of the contaminated sediment are important in developing the cap design, selecting appropriate equipment for cap placement, modeling and monitoring cap design. Testing should include; visual classification, water content, plasticity index, organic content, grains size distribution.
- The descriptions of the sediments by AECOM personnel (Vol (9) is in error. The grained size distribution data given Table T3 shows the sediments are clayey silts rather than silts and sandy silts. If the contaminated sediment or the underlying layers are compressible, consolidations will occur due to cap placement. This time dependent settlement is best determined by piezocone readings carried out in the field or laboratory testing on undisturbed samples from the sediment. **The shear strength of the sediment needs to be evaluated to ensure bearing capacity failures or slope instability does not occur.** Paragraph 43 shows the problems that will be faced.
- The waterway use plays a role. **"The ability to enforce use restrictions necessary to protect the integrity of an in-situ cap (eg vessel size limits, bans on anchors, etc) is an area with little or no operating experience. Voluntary restrictions on uses of public land and waters are often ineffective.** Compliance, enforcement, and the effectiveness of these measures as well as consequences of non compliance on ISC should be considered". **The proponent has failed to show how the proposed restrictions will be enforced.** Paragraph 55 provides some insight.

4) Make a preliminary determination of the feasibility of the SPS. **Because of the issue of bed slope, the SPS is not considered feasible for Kendall Bay.** See paragraph 19, 27, 23, 24 and 26.

5) Basalt rocks are proposed to provide armour protection.

6) Insitu Cap Design. "At present, the design of caps is based on a combination of laboratory tests and models of the various processes involved: advective/diffusive contaminant flux, bioturbation,

consolidation and erosion) field experience and monitoring data. Since the number of carefully designed, constructed and monitored capping projects is limited, the design approach is based on the conservative premise that the cap components are additive. No dual function performed by cap components is considered… "

The general steps for in-situ cap design include:

1. Identify candidate capping materials and compatibility with contaminated sediment at the site.
2. Assess the bioturbation potential of indigenous benthos and design a cap component to physically isolate sediment contaminants from the benthic environment.
3. Evaluate potential erosion at the capping site due to currents, waves, propeller wash, and **design a cap component to stabilize the contaminated sediments** and other cap components.
4. Evaluate the potential flux of sediment contaminants and design a cap component to reduce the flux of dissolved contaminants into the water column.
5. Evaluate potential interactions and compatibility among cap components, including consolidation of compressible materials.
6. Evaluate operational considerations and determine restrictions or additional protective measures (eg, institutional controls) needed to assure cap integrity."

- Basalt armour and geotextile are proposed as the cap. The physical and chemical characteristics of materials to be used in the cap should be determined. **There is no information regarding the characteristics of basalt.**
- **The poor ability of the geotextile for physical isolation of the contaminated sediments was demonstrated in paragraph 19. When its susceptibility to down slope migration is considered (paragraph 20 and 21) the cap design is deficient** and needs a sub layer of sand to make it functional.
- When considering the isolation function of a cap the reduction of contamination flux will be required. Consolidation of the sediments when loaded by the cap will likely result in advection of pore water upwards into the cap. This is a process in evaluating potential advective flux of contaminants. **An evaluation of the advective flux requires a consolidation evaluation. This important assessment has not been carried out as part of the cap design at Kendall Bay.**
- On the one hand the cap is intended to stabilize the contaminated sediments and to prevent them from being eroded and

transported off site. The other function is to make the cap itself resistant to erosion. **The design of cap must consider the ability of the sediments to move vertically. At Kendall Bay the chosen geotextile fails the retention tests (Refer to paragraphs 12, 13, 14 and 15).** The provision of a sand sub layer as noted in paragraph 21 will also assist with preventing the vertical migration of the sediment. The hydrodynamic conditions that may cause erosion include bottom velocity forces due to tides, wave induced currents and propeller induced current velocities. **Paragraph 8 demonstrates that the incorrect erosion threshold velocity has been selected. Therefore, the as designed cap does not mitigate the erosion potential.**

- If a cap has a properly designed physical isolation component, contaminant migration associated with the movement of sediment particulates should be controlled. PAHs tend to remain bound to sediment particles. However, the movement of contaminants by advection (movement of pore water) can occur while movement by molecular diffusion over a long period is inevitable. Advection occurs as a result of consolidation of the sediments. **As the sediment consolidates pore water is expelled and moves upwards displacing the pore water in the cap. The cap should be designed to ensure that all the pore water from the sediment remains within the cap. The proponent has failed to show the SPS allows for this phenomenon. In fact, because of the extremely porous nature of the rock blanket, the contaminated pore water will be dispersed by the marina users, tidal effects, currents etc.** Diffusion is the process where by contaminants in areas of high concentration is transported by random molecular motion to areas of low concentration. This process is slow. As the pore water moves into the coarse rock blanket, it will be dispersed by marina users. **Since the desired function of the cap is to chemically isolate the contaminants in the log term or reduce long term flux of contaminants to ensure water quality is not diminished, both advective and diffusive processes need consideration when designing for isolation. The proponent has failed to do so and as such can not demonstrate that the proposed SPS will not lead to diminished water quality.** The USEPA has developed a model for predicting long term movements of contaminants into the cap due to advection and diffusion processes.
- The in-situ contaminated sediments to be capped at Kendall Bay are predominantly clayey silts of low shear strength. These types of material are compressible and will easily be displaced or re-suspended when disturbed during the cap placement. **The cap stability (displacement or sliding) and settlement due to**

consolidation have not been addressed by the proponent. Refer to paragraph 10. The shear strength of the sediments influence their resistance to localized bearing capacity or sliding failures which can cause localized mixing of the capping and contaminated sediment.

- Liquefaction is a phenomenon in which a deposit of saturated sediment develops high pore pressure as a result of disturbance and progressively loses a large part of its shear strength and flows like a frictional liquid. **Liquefaction may be triggered by seismic activity, wave action or propeller washes from vessels. This has not been considered by the proponent.**

7. Equipment and Placement Technologies. The major consideration in selection of equipment and placement of the cap is the need for controlled accurate placement. The use of equipment or placement rates, which result in capping material mixing or displacing the contaminated material, must be avoided. **Because of the uncertainties associated with underwater placement of stone, USEPA recommend the erosion component i.e. the rock should increased by 50% . Accordingly, the armour stone thickness at Kendall Bay should be increased to 450 and 600 mm.** (on the erroneous assumption that the proponent's design of 300 and 400 mm of cap is accepted as correct) Refer to Paragraph 10.

8. Monitoring. A monitoring program should be required as a part of any capping project design. The main objectives of monitoring for ISC would normally be to insure that the cap is placed as intended and that the cap is performing the basic functions (physical isolation, sediment stabilization and chemical isolation) as required to meet the remedial objectives. Specific items or processes that may be monitored include cap integrity, thickness and consolidation, the need for cap nourishment, benthic recolonization and chemical migration potential. **Intensive monitoring is necessary at capping sites during and immediately after construction followed by long-term monitoring at less frequent intervals.** In all cases, the objectives of the monitoring effort and any management or additional remedial actions to be considered as a result of the monitoring should be clearly defined as a part of the overall project design.

59. Director Generals Requirements (DGR). The proposal is considered in terms of the DGR. The DGR that the proponent has failed to satisfy are noted below.

- description of the existing environment – fails to satisfy as noted below.

- bathymetry, especially bed slope
- wave climate, inadequate ARI
- absence of measured geotechnical data, including that specified in AS3962
- Threshold erosion velocity overstated

- potential impacts of project
  - Considerable disturbance of sediment of contaminated sediment during
    geotextile and rock armour
  - ongoing disturbance of sediment below the geotextile
  - continued recontamination of the blanket from far field disturbance and marina operations redistributing this sediment onto the mangroves
  - some of the redistributed sediments may be acid sulfate soil which have not been properly assessed
- minimize, mitigate, offset, manage and/or monitor impacts
  - the geotextile fails retention and down slope migration criteria tests
  - the SPS is too thin to mitigate erosion under the geotextile
  - the SPS is too thin to mitigate against accidental damage by anchors and deep hulled vessels
  - the bed slope is too steep for the proposed SPS
- the site is unsuitable for the proposed SPS
- remediation works required and justification for why the proposed remedial
  measures will work
  - the SPS is too thin and the blanket susceptible to down slope migration unless a sand sub layer about 300 mm thick is used
  - the bed slope is too steep for a SPS and a SPS will be required to protect the contaminated sediment
  - because of the potential impacts of anchors, the bed thickness should be at least 600 mm thick
  - because of the uncertainties when placing geotextiles and rocks over very soft sediments underwater, the design thickness should be increased by 50% which means that where 600mm thickness is provided for anchor safety, the thickness should be increased to 900mm
- site audit statement and site audit report by an Auditor accredited under the
  Contaminated Land Management Act 1997
  - at the public meeting on 20 October 2010, the Auditor stated he was not a geotechnical engineer meaning that he does not have the skills to determine the geotechnical issues related to the design of the SPS
- assessment of acid sulfate soils (ASS)
  - the proponent acknowledges some sediment will be redistributed in the mangrove area above the high water mark during marina

operations, yet no management strategies are provided to mitigate the impact of the ASS on flora and fauna

61 DECC Requirements. The requirements of DECCW given in their letter dated 25 August 2009 are addressed with reference to the information supplied in the report

- geotextile life
  - the manufacturer claims the life exceeds 100 years. Even though there is some literature supporting this claim, the geotextile will be in place for ever. Therefore, the geotextile should only form a construction platform and not part of the SPS. A sand layer must be used as a filter. In this manner if the geotextile loses its integrity, it does not compromise the remediation function of the SPS.
- placement of blanket and piles
  - it is disagreed that only the top 100 mm of sediment will be disturbed. Because of the underconsolidated nature of the sediments, the disturbance depth will be significantly deeper than 100mm, potentially 400 to 500mm.
  - the hydrodynamic testing carried out on the geotextile shows up to 39% of the very soft sediment could pass through the geotextile
  - a sand layer could mitigate the sediment penetration of the geotextile
  - the incorrect erosion threshold velocity has been adopted to determine the required SPS thickness, a value of 0.15 m/sec should have been adopted instead of 0.3 m/sec.
  - since the propeller velocity creates a erosion velocity of 0.3 m/sec a thicker armour layer will be required
  - there are some doubts about the grain size analyses provide
- concern is expressed regarding laying of the geotextile
  - because there is no geotechnical information no assessment can be made regarding differential settlements, bearing capacity failures and slope instability
  - tidal velocities make placing the geotextile and armour difficult
- boating activities in the area
  - the proponent acknowledges that any sediment that passes through the geotextile will be disturbed by the propeller wash when the marina is operational, some of which will be deposited on the mangroves
  - it is logical that sediment disturbed by the ferries and other vessels will drift onto the SPS and in turn be disturbed by marina traffic and part will also end up on the mangroves, this will occur day after day
- environmental protection measures and monitoring

- not only does the proponent fail to address the dissolved phase contamination during construction works, the proponent does not consider their release by advection and diffusion during and after consolidation of the sediment and their dispersion into the water column by boat propellers during marina operation

- additional information
  - the USEPA notes that to mitigate against accidental damage, the protective layer should be a minimum of 600 mm thick
  - based on an assessment of the site features, the proposed SPS is not feasible mainly because the bed slope is too steep
  - the SPS that is placed over the contaminated sediment needs to be at least 900 mm thick
- case studies
  - the proponent has offered instances where an SPS approach has been used
  - it is acknowledged that geotextiles have been used in an SPS in the past, however the case studies mentioned are situations different to that which prevails at Kendall Bay
  - San Diego Bay
    - Prior to installation of the geotextile layer the contractor removed materials including debris rocks etc that could cause damage to the geotextile. At Kendall Bay no effort has even been made to determine the presence of these types of materials nor has this been considered for the construction stage.
    - The geotextile was a woven fabric not spun bound. It was reported that it took a long time for the fabric to sink. The non woven fabric to be used at Kendall Bay is full of trapped air which will make it more difficult to place especially during ebb tides.
    - The underlying sediment is sand, whereas at Kendall Bay the sediment is very soft clayey silt. This means sediment disturbance was a significantly lesser issue at San Diego
    - The engineered cap comprised laying 2 ft (0.61 m) of sand over the geotextile for isolation of the contaminated sediments, 1 ft (0.3 m) of well graded gravel aggregate to act as filter and provided protection against bioturbation. The final layer comprised 2 ft (0.61 m) or armour stone for erosion protection. The cap is 5 ft (1.52 m) thick compared to 0.30 m at Kendall Bay
  - Port of Brisbane
    - The project was for the construction of a sea wall not a remediation project. Therefore, to use it as an example is misleading.

- The bed sediment consisted of 0.5 to 2.0 m of sand underlain by very soft sediments not the very soft underconsolidated sediments at Kendall Bay. As a result contaminated sediment disturbance would not have been an issue as at Kendall Bay.

- Convair Lagoon (USA) used a 0.9 m thick cap, paragraph 45
- Manistique (USA) used a 0.8 m thick cap, paragraph 45
- The above remediation projects have SPSs 1.52, 0.9, and 0.8 m thick
- NONE of the remediation projects have a marina or any other facility over the top of the SPS.

62 EPA Remediation Order (RO)

The proponent has failed to meet with the requirements of the RO as outlined below.

- The RO ordered Maritime NSW to "refrain from carrying out ... permitting another person to carry out works or activities ... that would result in the disturbance or further disturbance, of the bed sediments in Kendall Bay.... Examples of the type of activities that may come within the scope of this Order include: construction and maintenance works such as ... boating facilities ... marinas..." The proposed marina construction is contrary to the RO.
- "Prior to commencing any such works or activities ... the person proposing to conduct the works or activities must prepare ... a written plan with specific measures directed at minimizing the disturbance and migration of the contaminants ..." Because the bed slope is too steep, the proposed SPS is not feasible. The "as designed" SPS is also too thin to mitigate ongoing sediment disturbance. The far field sediment disturbance by river traffic will result in sediment drifting onto the blanket. Marina traffic will in turn disturb this sediment and cause it migrate into the mangrove areas.
- "The person proposing to conduct the works or activities must have the plan audited by an accredited site auditor ..." At a public meeting the site auditor stated he was not a geotechnical engineer. This means he does not have the skills to determine the veracity of the SPS.
- "The EPA may approve the plan as submitted or approve the plan subject to a requirement that additional mitigation measures be implemented ..." The EPA should not approve the proposed works on the basis that in their current format, they will not mitigate the disturbance of contaminated sediments during and after construction of the marina. The design put forward by the proponent does not properly assess the existing sediment nor does it provide a proper design that allows mitigation. A search of

similar remediation projects (ie ones that incorporate a geotextile) around the world show that the SPSs were 2.7 to 5 times thicker than the one proposed for Kendall Bay. Furthermore, they are all multilayered systems using sands, gravels and armour rock, far more complex than the simplistic approach being proposed at Kendall Bay. None of the examples provided by the proponent had a marina constructed on top of the SPS after completion of remediation.

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Appendix H: Traffic and Parking Report

1 December 2010

REVIEW OF TRAFFIC AND PARKING ISSUES

FOR THE PROPOSED INNER WEST MARINA

SYNOPSIS

The adequacy of proposed parking and traffic arrangements in the application has been assessed against relevant legislation and requirements. It has been determined that:

1. **The proposed arrangements, for parking and traffic, are seriously deficient, in the following respects:**

a) **Unacceptable impacts on public safety:**
   a. Safety for pedestrians and cyclists:
      i. It is proposed to drive golf buggies and other vehicles on the existing pedestrian walkways and foreshore walk/cycleway, between the proposed carpark and marina – which is blatantly unsafe (and if it is planned to upgrade these, no information has been provided)
      ii. Pedestrian safety in the surrounding roads (Tennyson Road, Magnolia Drive and Rosewater Circuit) is already grossly inadequate, and will be made worse by the addition of marina traffic.
   b. Safety for road users – Tennyson Road is of insufficient width (by at least 1.5 metres) to perform its current function, and will be made more unsafe by the addition of marina traffic

b) **Insufficient and poorly-designed parking – which will inevitably cause significant parking and traffic conflicts:**
   a. Insufficient parking provided – less than half of the numbers required (a shortfall of at least 64 spaces, plus parking for the proposed ferry wharf and launching ramps)
   b. No parking provided, in the carpark, for many classes of vehicles – visitors, "golf buggies", the public accessing the proposed ferry wharf and launching ramps.
   c. The carpark is 250 metres away from the marina, with a residential building in the middle. Serious parking conflicts, with existing residential visitor parking, are inevitable.
   d. The carpark entry and exit are restricted by boom gates, without provision for casual access, or stacking zones for waiting vehicles.
   e. No parking provided at the marina for "golf buggies" or garbage removal vehicles.

c) **The carpark design fails to provide essential facilities** (in spite of claims to the contrary)
   a. Loading / unloading areas for large or small vehicles, including garbage trucks.
   b. Storage areas for garbage or trolleys

d) **The carpark location will result in unacceptable amenity impacts for surrounding residents** (being surrounded on 4 sides by medium density residential development, with minimal screening)

e) **Traffic from the marina will cause unacceptable amenity impacts on several affected streets within Breakfast Point** – affecting several hundred residents.

2. **The report and plan provided fail to address many of the Director General's requirements, the requirements of other authorities, and provide insufficient detail for assessment – in the following respects:**

a) Access between the carpark and marina is not adequately documented
b) Parking required for the proposed ferry wharf and small launching ramps is not calculated or provided.
c) Estimates of final daily vehicle movements in affected streets and roads are not provided – no detailed traffic study has been undertaken.
d) Assessment of traffic impacts – on safety, amenity, road capacity etc – are largely omitted. The scanty traffic numbers provided are completely unsubstantiated.
e) The application is based on incorrect governing legislation – ie AS3962, rather than the specified RTA guidelines.
f) The documents are riddled with inconsistencies – regarding the use of vehicles between the marina and carpark, proposed loading bay, garbage facilities, etc.
g) No bicycle parking provided

3. **These deficiencies are so fundamental that they cannot be resolved by further traffic studies – at the least, a complete re-planning of the whole development is required.**

INTRODUCTION

The purpose of this review is to assess the traffic and parking arrangements and design in the application – and specifically to identify any areas of non-compliance of the proposal, with:

- The stated "Requirements of the Director General"
- State Government Legislation
- Other relevant legislation
- Usual good practice

In view of the location of the marina within a public space, the primary focus of this review is public safety and amenity. The secondary focus is safety and amenity for residents and visitors to Breakfast Point.

This has involved a detailed review of the "Traffic and Parking Report..." by Colston, Budd et al, which is included as Appendix 7, Volume 4, of the proposal (hereinafter referred to as "the Report"), as well as a general review of all matters relating to traffic and parking throughout the whole proposal. I have concentrated primarily on the operational phase, but there is some reference to obvious omissions from the construction phase.

I note that there are concerns regarding whether certain vehicles connected with the marina have legal access to Breakfast Point roads (which are private roads), or access pathways to the foreshore, or to the foreshore walkway itself. Obviously these issues should be resolved first. This review is written assuming that access is permitted. However, if certain classes of vehicle are not permitted, the traffic and parking impacts relating to those vehicles may be ignored, and the remainder of this review will still apply.

DIRECTOR-GENERAL'S REQUIREMENTS

The proposal blatantly fails to address many of the Director-General's requirements, as follows:

DG Requirement	Omission	Discussion
"details of the traffic volumes likely to be generated during construction and operation"	Movements from carpark to marina not mentioned (believed to be "golf buggies", and some other unspecified vehicles to transfer garbage.) Movements for ferry station and launching ramps not mentioned. Estimate of "20 vehicles per hour" (page 9) is not substantiated, and no daily totals provided	See further discussion below
"an assessment of the predicted impacts of this traffic on the safety and capacity of the surrounding road network"	Impact of traffic from carpark to marina not mentioned in report– ie what route is to be taken, clash of vehicles with pedestrians and bicycles etc Impacts on safety only briefly considered – with no mention of pedestrian safety.	See further discussion below.
"Details on site access, internal roadways... must also be provided"	No details of "site access" or "internal roadways" between the carpark and marina in the report, or anywhere in the proposal – except for two green arrows, barely visible, on drawing number DA01 (Volume 2, page 5) – denoted "pedestrian public access".	The only current access between the proposed carpark and marina sites is via pedestrian walkways – refer discussion below.
"Details on ... parking must also be provided"	Parking has been omitted for the following classes of vehicles: • Patrons using the proposed ferry wharf and ramps • Vehicles to transfer goods and people between carpark and marina – at either the carpark or the marina	Parking for other classes is also inadequate – see further discussion below.
"The environmental assessment must take into account relevant State government technical and policy guidelines. While not exhaustive, guidelines which may be relevant to the project are included in the attached list." The list includes: "Traffic and Transport: • Guide to traffic	There has been no assessment against either of these guides – or any reference to them in the Report.	The parking and traffic arrangements also fail to comply with requirements of these documents – see below.

generating development (RTA 2002) • Road design guide (RTA 1996)"		

COMPLIANCE WITH RELEVANT LEGISLATION

The proposal fails to comply with many aspects of the relevant legislation, and requirements of relevant authorities. These are summarised as follows:

Requirement and Legislation	Non-compliance	Discussion
RTA "Guide to Traffic Generating Development"		
Car Parking numbers: 0.6 per wet berth x 172 = 103 0.5 per employee x say 4 = 2 Kiosk – 1/3 x 50 seats = 17 Proposed ferry terminal and ramps - ?? (needs to be determined by study) Total – 122 spaces, plus those for ferry terminal and launching ramps.	Only 58 spaces provided – less than half of those required	Parking for launching ramps should also allow for trailers – for canoes, kayaks, small sailboats etc. See further discussion below.
Unloading bays must be provided.	None provided	
Parking for all vehicles - including"golf buggies" – presumably at both the marina and the carpark	None provided	
Daily traffic numbers – peak and average – should be estimated. Impacts on safety and amenity – including noise – should be considered	No assessment of these numbers included, and no assessment of the impact of these movements on the safety or amenity of existing roads.	Numbers and impacts are believed to be excessive on several streets - see further discussion below.
RTA Letter of 2 June 2009 (appendix to Traffic Report)		
"consideration should be given to providing bus, pedestrian and bicycle facilities"	No bus facilities provided. No bicycle parking provided. Pedestrian routes not shown.	The current ferry station at Cabarita operates in conjunction with a bus stop. Hence, it is obvious that if the new wharf is to incorporate a ferry station, a bus stop is desirable. However, bus access within Breakfast Point has recently been prevented. These inconsistencies need to be resolved and explained.

"the proposed means of vehicular access to/from the site ... should be provided"	Access between carpark and marina not mentioned	Refer further discussion below
"facilities for heavy vehicle loading/unloading should be provided"	No facilities provided – indeed no mention of trucks at all in the parking plan, or traffic report	Refer further discussion below

Governing Legislation

Further to the summary above, I note that the applicant's calculation of required parking numbers, as expressed in the Colston Budd report, is based on Australian Standard AS3962-2001: Guidelines for Design of Marinas". However, it is clear that the RTA guides mentioned above should take precedence over this standard, because the RTA guidelines are referred-to by the Director-General, and for two other reasons, as follows:

1. AS3962 states the following:
   "1.1 SCOPE
   "....NOTES:
      1. This document is intended for use as a guideline and should not be used as a design specification.
      2. The environmental impact of marinas should be assessed according to the requirements of the relevant authority."

In this case, the "relevant authority" is without doubt the RTA.

2. The RTA guides (with many pages relating to parking, vehicles and traffic at marinas) are much more detailed than AS3962 (with 1.5 pages total)

With regard to parking for the kiosk:

- ,AS3962 states:
  "S8.2.1(b) Car parking for activities ancillary to marina activities (eg ... restaurants... or other uses) should comply with the existing planning codes or standards of the relevant authority"
- In this case the "relevant code" and "authority" is the RTA Guide
- The kiosk clearly falls under the definition of "Restaurant" given in the RTA Guide – and guidance on parking numbers is provided therein.

Hence the RTA guide should clearly be used to calculate parking requirements for the kiosk.

Both AS3962 and the RTA Traffic Guide encourage the use of specific studies to determine expected vehicle numbers. In the absence of any such study, the RTA Traffic Guide should have been used.

GOOD PRACTICE AND METHODOLOGY

The proposal fails to comply with good practice in the following respects:

Issue	Deficiency	Discussion
Extent of the traffic study		
A project of this size and complexity should have been the subject of a more detailed traffic study.	No detailed study undertaken	I have studied several other recent and current marina applications, accessible on the internet, which have included such studies.

Inconsistencies of the report with other sections of the application **Other sections of the document refer to the following:**		
"dedicated loading spaces" (Vol 1, s4.6, ...)	No loading spaces provided on plan	
"The (garbage) bins ... moved by small vehicle to a location at the carpark, for collection by the waste removal contractor" (Vol 1, s4.5)	No description of what this vehicle is. No garbage storage space, or access for a garbage truck provided.	
"small trolleys will be provided at the carpark for the transfer of goods to and from the marina"	No trolley storage space provided	There is also no adequate explanation of how this could work. For example – if the trolleys are unsecured, they might be stolen, but if secured, how will a casual delivery driver have access to them?
"Golf buggies" used to transfer goods and people between the carpark and marina.	No parking provided, or discussion of routes, numbers, etc.	See discussion below.
Separation of Carpark and Marina not adequately addressed		
It is a critical feature of the proposal, that the proposed carpark is remote from the marina – separated by a distance of approximately 250 metres - with a residential apartment block (Hunters Wharf), and a public foreshore walk, right in the middle.	This fact gives rise to all sorts of problems, which have not been adequately addressed – including traffic conflicts, parking conflicts, amenity, etc.	See discussion below.
Control of access by boom gate		
Parking and loading facilities should be provided for drivers without boom gate keys, eg: • Deliveries • Garbage trucks • Maintenance vehicles • Visitors, guests, staff on larger boats • The public – utilising the ferry wharf and launching ramps (including trailers for canoes or rowboats).	No access provided for these classes of vehicles – presumably they will all have to park on the street?	

Close proximity of boom gate to road	Is too close to road: • Vehicles unable to enter will have to reverse onto the road – causing a safety hazard • Delays will cause stacking onto roads	A longer and wider entry and exit are required – similar, for example, to the nearby entry and exit to the Hunters Wharf development.
Assessment of traffic numbers		
Traffic numbers should be based on the completed development of Breakfast Point	Have been based on numbers surveyed on an unspecified Sunday, prior to August 2009. Breakfast Point is still under development – perhaps only 50-60% of total relevant residences were occupied at that time.	Final traffic numbers may well be double or triple those measured. (Even by the time that the marina might be complete, several more buildings in the vicinity would be complete).
Impacts of the parking / loading / garbage area on amenity of surrounding residential buildings		
Impacts should have been considered – noise, visual, odours etc. (If the proposal goes ahead, the parking / loading / garbage area will be closely overlooked on 4 sides by multi-storey residential buildings.)	There will obviously be substantial, negative, impacts – that have been ignored. At the least, more significant screening and separation should have been provided. (A small amount of landscaping has been referred-to, but no landscape plan has been provided)	This would establish an ugly precedent. Currently, there are two open, non-residential carparks in Breakfast Point – behind the supermarket, and at the Country Club. Both of these have significant screening, and setbacks from residences.
Parking controls and conflicts		
How will it be ensured that vehicles accessing the marina will park in the carpark (which is 250m from the marina), and not in a closer position on the street, in front of other buildings (eg Hunters Wharf), or in the entry and exit driveways to Hunters Wharf?	No controls provided – and no discussion of how this might work.	Parking conflicts are unavoidable – see discussion below.
Miscellaneous		
Signage plan shows no safety signage around carpark, and no directions from carpark to marina.	Should obviously have been included.	

FURTHER DISCUSSION OF KEY OMISSIONS

Access between Carpark and Marina

The only current access between the proposed carpark and marina sites is via pedestrian walkways – one on private land (property of "Hunters Wharf"), two (to the east and west of the Hunters Wharf building) on Community Association land, and partly on the public foreshore walkway (the latter also being a cycleway). These walkways are regularly used by families with children in prams and on bikes, etc.

The walkway through Hunters Wharf is a completely private route, with no easements or rights of way – so it is assumed that access would be denied to marina patrons. Hence, this walkway is not discussed further.

These walkways have obviously not been designed or constructed to carry regular traffic – golf buggies or anything else. They are not of adequate width, not structurally adequate, have no traffic control devices, and have no separation between traffic, pedestrians and bicycles. Furthermore, the walkway to the east of Hunters Wharf is already unsafe – as the walkway stops prematurely at the end of the entry driveway to Hunters Wharf, rather than continuing on to meet the footpath on Peninsula Drive. It thus leads pedestrians directly into the path of vehicles.

It is clearly not safe or appropriate to regularly drive vehicles on these walkways – but no alternative has been included in the proposal. It is also not clear whether vehicles have any right to drive in these locations (as mentioned earlier).

I do not believe that it would be possible to upgrade these walkways to carry marina traffic, pedestrians and cyclists, all in a safe manner – given the following difficulties:

- The complicated crossing of routes
- The main wharf of the marina is of insufficient width to turn vehicles – they would need to reverse off the wharf, onto the foreshore walk – which is obviously unsafe
- The requirements of the different user groups – ie vehicles, pedestrians and cyclists, and a mixture of public, local residents, and the proposed commercial usage
- The restricted space available
- The need to minimise amenity impacts on the waterside precinct and adjoining residences.

However, if this is being proposed, the proposal should include, at the least, a detailed study of the proposed access routes, including:

- Plans showing proposed vehicle and pedestrian routes – including trolleys etc
- Detailed road / path design – widening, structural improvements, one-way or two-way traffic, final widths etc
- Substantiated forecasts of traffic, cyclist and pedestrian numbers
- Safety measures to be implemented – eg pedestrian crossings, separation of vehicles from pedestrians, etc
- Disabled access

Traffic volumes and impacts on safety and amenity

Referring to the RTA Guide, daily traffic numbers (vehicles per day, or vpd) for the marina, can be estimated as follows:

- Restaurant (p3-11) 60/100sq.m x 170 = 102
- Marina 2.7/berth x 172=464
- Ferry wharf and launching ramps – study required
- Total – 566 plus requirements for wharf and ramps.

Based on this, when the numbers are determined for the ferry wharf and launching ramps, the total vpd for the marina may be somewhere between 800 and 1200. This needs to be added to the vehicle movements arising from the completed current residential development, to assess the traffic volumes in each street.

By my calculations, approximate total vpd for some affected streets are:

- Magnolia Drive – between 4300 and 4700
- Rosewater Circuit (northern arm) – between 2100 and 2500

This should be compared to the RTA Guide target (section 7.3) of 1500vpd for streets fronting a minimum 85% of homes in new developments (like Rosewater Circuit), and a suggested maximum of 2000vpd for internal collector roads (like Magnolia Drive). **On this basis, I believe that traffic from the marina will cause unacceptable amenity impacts on several affected streets**.

All of the assessment of traffic impacts, in the Budd-Colston report, is based on an estimated peak of 20 vehicles per hour – which has not been explained or substantiated. This can easily be shown to be an under-estimate, by a simple approximate calculation, as follows:

- Using the 566 vpd above (leaving off the ferry wharf and launching ramps for the moment)
- 50% would be arrivals, and say 70% of these would occur during about 3 hours in each morning – total 198 movements / 3 hours = 66 vehicles per hour
- 50% would be departures, and say only 10% would occur in those three hours in the morning – total 28 movements / 3 hours = 9 vehicles per hour
- Adding these together – 75 vehicles per hour
- When the ferry wharfs and launching ramps are factored in, the numbers will be higher – perhaps 50 to 100% greater.

Hence, on a vehicles per hour basis, estimated traffic movements are likely to be at least three times, and possibly up to six times, greater than the estimate of 20 per hour in the report. This means that all of the conclusions regarding traffic volumes, drawn in the Budd Colston report, must be considered to be unsubstantiated.

There has been no discussion of Tennyson Road in the report – which will be the main access road, outside Breakfast Point, for traffic to and from the marina. This road is inadequate – and unsafe - to serve its present function – as a collector road. The major deficiencies are:

- **Insufficient width – at least 1.5 metres narrower than it should be**:

    - Measured width 9.9 metres (between kerbs), in the straight sections
    - RTA requirement – for 2 traffic lanes, plus two parking lanes, incorporating a bus route, on an existing road:
        - Minimum 11.4 metres, and wider on curves
        - Desirable – 13.5 metres
- Inadequate sight distances – partly a result of the narrow carriageway, compounded by buildings, walls and trees close to the road edges.
- Inadequate pedestrian crossings (see below).

I believe that these deficiencies may already have contributed to several accidents in recent years. Traffic from the marina will make this situation worse.

Pedestrian Safety

As noted above, pedestrian safety, on affected roads, is a crucial issue that has been largely overlooked. The marina will generate a lot of additional traffic on the surrounding streets. Some of these streets are busy pedestrian thoroughfares – to shops, restaurants, transport, the bay, parks etc – for both the general public, and Breakfast Point residents. However, no provision has been made for appropriate safety measures – eg pedestrian crossings, signs, traffic calming devices, pedestrian refuges, etc.

Again – the existing arrangements on many of these roads are not adequate. I summarise some key points:

- Tennyson Road has no pedestrian crossings in the vicinity of bus stops, a hotel, the supermarket or the shopping precinct at the edge of Breakfast Point
- Magnolia Drive has no pedestrian crossings leading towards the supermarket and shopping precinct, or the commercial building near the corner of Tennyson Road
- Rosewater Circuit has no pedestrian crossings leading to Silkstone Park (a popular place for families, young children, weddings etc) or towards the foreshore pathway, or the ferry stop at Cabarita
- All of these roads are experiencing a great deal of construction traffic – which is likely to continue for some years.

The proposed marina traffic will further increase the hazards at these locations – particularly because the peak times for marina traffic (Saturdays, Sundays and holidays) will often coincide with peak pedestrian use for shopping and leisure activities.

Heavy vehicles / loading etc

In the report, the whole issue of heavy vehicles and unloading facilities has been glossed-over with the statement on p9 "The development is expected to generate a small number of service vehicles. These would primarily be vans, utilities, and courier style vehicles which will be able to use the on-site parking area." However, it is completely unrealistic to think that all deliveries to a large kiosk and to the marina will all be made by small vehicles (what about crates of soft drinks, bags of ice, deliveries direct to boats, etc?). And there is no mention of garbage trucks to remove the large volumes of garbage that would be generated by a large marina and 50 seat kiosk.

There is also no explanation of how carpark users contact marina staff for assistance, and the amenity impacts of this. For example, will there be an intercom or bell – with obvious noise implications?

Car Parking Numbers – Further Discussion

Observations at the nearby Cabarita ferry stop reveal that a substantial number of ferry travellers park in the adjoining carpark, or are picked-up by car. This proposed wharf may be worse than Cabarita wharf, because it may provide a stop for both ferries and commercial cruise boats (the latter not being permitted at Cabarita). Hence, the demand for parking may be greater than for the current Cabarita Wharf. As noted above, these numbers need to be determined by a detailed study.

With regard to required parking numbers for marinas – I note that there has been considerable discussion in various studies. Those studies that I have read indicate that the ratio of parking spaces to berths fluctuates approximately between the figures referred-to in AS3962 – ie 0.3 to 0.6 spaces per berth. Parking numbers have been shown to vary depending on many factors – type of boats (power vs sail), size of boats, formation of a sailing or boating club, location of the marina (proximity to public transport etc), proximity of the homes of boat owners, etc.

I believe that, even if further studies are done, the parking ratio selected for this marina should be 0.6 spaces per berth, for the following reasons:

- It is the legislated requirement from RTA guidelines – as explained above.
- The factors affecting parking, including those mentioned above, can all vary over time – so even if a current study pointed to (say) 0.4 as the correct factor, that could still change to 0.6 over time.
- If the factor selected is too low, and there is a net shortage of parking for the marina, there will be no way to make up that shortage, and it will inevitably cause parking conflicts. As explained above, there is no reserve capacity in the nearby streets (the street parking is mostly taken up with allocated residential visitor parking), and there will be no spare land to construct further parking facilities.

Parking Conflicts

There is a systemic fault in the design of Breakfast Point – the allocation of most on-street parking as allocated visitor parking, for most unit blocks. While this might seem to comply with relevant standards, it results in there being very little spare or overflow parking along roadways (for social occasions, building works etc), and prevents the placing or enforcing of parking restrictions on most of the streets. (And I do not believe that it complies with the intent of the RTA Guidelines, which refer to "off street visitor parking") This problem is becoming obvious in many developed areas of Breakfast Point – where it can be seen that most of these visitor parks are occupied most of the time, and there is little or no overflow parking available.

The Hunters Wharf building is a good example:

- Required visitor parking – RTA Guidelines – 1/5 units x 87 = 18
- Off-street visitor parking provided - nil
- Available on street (adjacent to Hunters Wharf) – 14
- The shortfall of 4 must be made up across the road – ie adjacent to the new carpark, where there are:
    - 8 spaces on Peninsula Drive
    - 2 on the southern arm of Rosewater Circuit
- Thus there might be 10-4 = 6 spaces available for marina or other carparking, on a typical day.

This agrees quite well with my site observations in recent times.

This is of special significance for the marina. Because the marina carpark is remote from the marina, many marina users will prefer to park on the street, closer to the marina, if they are not prevented from doing so. In fact, with the current carpark design – with access restricted by boomgate – many users will have no option but to park on the street. This would mean that the marina users would occupy visitor spaces for adjoining buildings – specifically Hunters Wharf and the proposed new buildings under construction on either side.

For deliveries and drop-offs, it would be a similar story. The entry and exit driveways to Hunters Wharf are much closer to the marina than the carpark is – around half the distance. These would be very attractive places to pull-up, and it is inevitable that they would be utilised.

Can marina users be prevented from parking on the street? Considering different classes of users and vehicles:

- Those regular users, contractually involved – ie berth owners, regular delivery drivers, marina and kiosk staff:
    - It may be possible to guide or educate the majority of these, if the management of the marina makes an effort to do so.
    - However, it is likely that there will always be some new or uncooperative users who do not comply.
- Less regular users, with no contractual connection – ie visitors to boats, kiosk patrons, ferry wharf patrons, casual delivery drivers, launching ramp users (perhaps with trailers):
    - It will be impossible to guide or educate the majority of these people.
    - Many could be expected to obey official parking restrictions – for example "1 hour parking, residents vehicles excepted." Many could also be deterred by installing parking meters on the streets (exempting residents).
    - However, such parking restrictions cannot be applied or enforced, because visitors to the units are entitled to park in these spaces, and the different vehicles / users cannot be identified.
    - The strongest message that could be used on signs would be something like: "Hunters Wharf Visitor Parking Only" – but that would be unlikely to deter many people.
    - Furthermore, as noted above, most of these users will not have access to the carpark boomgate – so will be prevented from entering the carpark anyway.
    - Hence, many of the irregular users could be expected to park on nearby streets.

Clearly, the outcome of this will be that, on days when the marina is busy, many marina users will occupy on-street parking spaces as a first preference, until the adjoining streets are full – and only then will the carpark tend to be fully utilised. Using the parking numbers calculated above – this could easily be 50 to 100 vehicles attempting to park on the street – compared to the 6 street carparks available in Peninsula Drive.

A similar problem is being experienced at the recent development at Rhodes, where shopping centre users regularly park in adjoining residential streets – presumably because it is often more convenient than parking in the centre carpark.

CONCLUSION

It is thus concluded that:

1. **The proposed arrangements, for parking and traffic, are seriously deficient, in the following respects:**

a) **Unacceptable impacts on public safety:**
   a. Safety for pedestrians and cyclists:
      i. It is proposed to drive golf buggies and other vehicles on the existing pedestrian walkways and foreshore walk/cycleway, between the proposed carpark and marina – which is blatantly unsafe (and if it is planned to upgrade these, no information has been provided)
      ii. Pedestrian safety in the surrounding roads (Tennyson Road, Magnolia Drive and Rosewater Circuit) is already grossly inadequate, and will be made worse by the addition of marina traffic.
   b. Safety for road users – Tennyson Road is of insufficient width (by at least 1.5 metres) to perform its current function, and will be made more unsafe by the addition of marina traffic

b) **Insufficient and poorly-designed parking – which will inevitably cause significant parking and traffic conflicts:**
   a. Insufficient parking provided – less than half of the numbers required (a shortfall of at least 64 spaces, plus parking for the proposed ferry wharf and launching ramps)
   b. No parking provided, in the carpark, for many classes of vehicles – visitors, "golf buggies", the public accessing the proposed ferry wharf and launching ramps.
   c. The carpark is 250 metres away from the marina, with a residential building in the middle. Serious parking conflicts, with existing residential visitor parking, are inevitable.
   d. The carpark entry and exit are restricted by boom gates, without provision for casual access, or stacking zones for waiting vehicles.
   e. No parking provided at the marina for "golf buggies" or garbage removal vehicles.

c) **The carpark design fails to provide essential facilities** (in spite of claims to the contrary)
   a. Loading / unloading areas for large or small vehicles, including garbage trucks.
   b. Storage areas for garbage or trolleys

d) **The carpark location will result in unacceptable amenity impacts for surrounding residents** (being surrounded on 4 sides by medium density residential development, with minimal screening)

e) **Traffic from the marina will cause unacceptable amenity impacts on several affected streets within Breakfast Point** – affecting several hundred residents.

2. **The report and plan provided fail to address many of the Director General's requirements, the requirements of other authorities, and provide insufficient detail for assessment – in the following respects:**

h) Access between the carpark and marina is not adequately documented

i) Parking required for the proposed ferry wharf and small launching ramps is not calculated or provided.

j) Estimates of final daily vehicle movements in affected streets and roads are not provided – no detailed traffic study has been undertaken.

k) Assessment of traffic impacts – on safety, amenity, road capacity etc – are largely omitted. The scanty traffic numbers provided are completely unsubstantiated.

l) The application is based on incorrect governing legislation – ie AS3962, rather than the specified RTA guidelines.
m) The documents are riddled with inconsistencies – regarding the use of vehicles between the marina and carpark, proposed loading bay, garbage facilities, etc.
n) No bicycle parking provided

3. **These deficiencies are so fundamental that they cannot be resolved by further traffic studies – at the least, a complete re-planning of the whole development is required.**

By: Wayne Taylor BE (Hons.I) MBA CPEng
Director

APPENDIX

REFERENCES

Australian Standards – AS2890.1, AS3962
RTA NSW:
- Guide to Traffic Generating Developments
- Road Design Guide

BACKGROUND OF THE AUTHOR, AND TAYLOR CIVIL & STRUCTURAL

Wayne Taylor

- A Chartered Professional Civil Engineer, with 25 years experience
- Qualifications – BE (Hons.I) – University of Sydney, MBA – University of NSW, CPEng
- Registrations held:
  - Both Civil and Structural Engineering:
    - The National Professional Engineers Register
    - The NSW Building Professionals Board as an Accredited Certifier
    - The Victorian Builders Practitioners Board
    - The Queensland Board of Engineers
    - The Tasmanian Building Professionals Board
  - Geotechnical Engineering
    - The NSW Building Professionals Board, as an Accredited Certifier
- Director and Principal Engineer of Taylor Civil and Structural for 20 years.
- Experience with numerous relevant projects throughout Australia, including:
  - Design of hundreds of commercial and industrial carparks
  - Design of roadworks associated with numerous developments – commercial, residential and industrial
  - Design of traffic management and toll collection systems and structures at numerous sites (including Sydney Airport, Cross City Tunnel, Sydney Harbour Bridge, Sydney Harbour Tunnel)

Taylor Civil & Structural

- Consulting Engineers – Civil and Structural

- Operating for 20 years (initially as Ramakers & Taylor Pty Ltd)

Appendix I: Preliminary Legal Opinion

Maddocks

Lawyers
Level 21, Angel Place
123 Pitt Street
Sydney New South Wales 2000 Australia

GPO Box 1692
Sydney New South Wales 2001

Telephone 61 2 8223 4100
Facsimile 61 2 9221 0872

info@maddocks.com.au
www.maddocks.com.au

DX 10284 Sydney Stock Exchange

Contact Nadia Price
Direct 02 9225 6240
Email nadia.price@maddocks.com.au
Partner Stan Kondilios
Our Ref SXK:NMP:5753448

30/11/2010

David Crane & Associates
Suite 100
26-32 Pirrama Road
PYRMONT NSW 2009

Attention: David Crane

Dear David

Submissions to Minister for Planning
Part 3A Project Application 07_0006 – construction of a floating marina for 172 berths, fixed jetty and pontoon, kiosk, small managers office and car park for 58 spaces
Property: Kendall Bay Commercial Marina, 19-21 Tennyson Road, Breakfast Point

We refer to the Major Projects Application 07_0006 lodged on 3 May 2007 by Breakfast Point Pty Ltd (**the Developer**) pursuant to Part 3A of the Environmental Planning and Assessment Act 1979 (**EP & A Act**) for the following development:

- the construction of a floating marina structure to provide 172 berths (including 5 destination berths for the general boating public);
- a fixed jetty and pontoon;
- a kiosk with seating for 50 people;
- installation of a sediment protection system;
- a manager's office; and
- a 58 space car park located on Peninsula Drive (**the Major Project Application**).

We note that the original proposed development also included a new timber skid (located to the south of the floating marina) for access to the waterway for kayaks, small sailing vessels and other small watercraft. This skid has not been included in the Major Project Application.

We have been instructed to provide a preliminary advice in relation to the Major Project Application. Specifically, the following issues arise:

- Access to the marina through a residential estate;
- Foreshore lease; and
- Liability for maintenance etc within estate affected by access.

Issue 1 – Access to the marina through a residential estate

The marina adjoins the residential estate known as Breakfast Point which includes medium to high density residential development. The Breakfast Point residential development operates under a

detailed and complex Community Plan with corresponding section 88B instrument, strata plans and community management statement.

The concept plan for Breakfast Point included in the Community Management Scheme identifies an easement for access within community property Lot 1. In the section 88B instrument, community property Lot 1 is burdened by an easement that authorises Council and members of the public the right to pass and repass over the site:

- on foot (not using rollerblades, skateboards, scooters or similar items of equipment;
- with wheelchairs or other disabled aids; and
- without animals (except for guide or hearing dogs).

The Council and the public must not park or stand any motor vehicles or obstruct the use of community property Lot 1.

The Open Access Way (now Peninsula Drive and Rosewater Circuit) referred to the Community Management Scheme also have similar restrictions (see clause 29.4) in that no one may ride a skateboard, use roller blades or play games in any Open Access Way.

Finally Lot 501 on DP1052824 **(Lot 501)** which is owned by The City of Canada Bay Council (**Council**) and leased to the Community Association and runs around Breakfast Point, between the Community Plan and Kendall Bay, is also restricted in its use to foot or bicycle pursuant to clause 2.1.

The combined effect of all of these restrictions is that while the public are entitled to pass and repass over the community property Lot 1, they are restricted to using it by foot or bicycle and must not remain there or obstruct its use.

The Major Project Application proposes that Lot 53 will be used as a car park for the marina. This means that people intending to use the marina will be limited in transporting such things as food, alcohol etc by foot only from the car park to their boat moored at the marina.

There will be a propensity for people to try to park closer to the marina on community property to unload items (and then possibly park later) and in doing so obstruct or impeded other vehicles or members of the Community Scheme. People utilising the marina may also disregard the restrictions imposed on Lot 501 and the Community Lot by pushing trolleys or some other type of wheeled device to transport items to their boat.

The use proposed by the marina lends itself to a use of the burdened lots in a manner not permitted.

There is also a real risk that those members of the public using the marina will try to "short-cut" through private lots in the Community Land to get to the marina quicker, particularly if they are carrying large or heavy items for use on their boat.

The Developer has failed to address this issue in their Environmental Assessment, particularly in relation to noise and traffic impacts arising from the public traversing Breakfast Point (potentially a number of times in one visit) to get to and from the marina.

This type of use is clearly not envisaged for Breakfast Point or Lot 501 which is designed to be a recreation area/foreshore park and not a loading dock/bay for the marina. There will also be adverse amenity noise impacts, particularly on those owners of Lot 54 (across from the car park), and potential traffic impacts.

Issue 2 – Foreshore lease

As discussed above, Council have leased Lot 501 to the Community Association.

Pursuant to clause 2.3, the public are entitled to use Lot 501 but are restricted to using it by way of foot or bicycle only. The public are resticted from remaining on Lot 501 for a lengthened period of time.

Lot 501 is intended for use as a foreshore park, recreation area, access trail and landscaped area for the general public to pass over by foot or bicycle. Not a car park or public loading area for people to load items onto boats moored at the marina to be used for a private or public marina.

Issue 3 – Liability

The Community Association is required to maintain all community property including the shared pedestrian/cycleway within Breakfast Point. Pursuant to the clauses of the lease, the Community Association also indemnifies the Council against any claim made, and is responsible for maintenance and repair of Lot 501.

It is an unreasonable imposition upon the Community Association to have to maintain and repair those areas of community property which are being used by the public as a result of accessing the marina.

There is also an increased risk of personal injury or harm to members of the public, particularly if they are not using the community property lawfully and as is intended (as a park or foreshore area), which the Community Association may become liable for. Again this is an unreasonable imposition to be placed upon the Community Association.

It would seem that the lack of unimpeded public land to the foreshore line to access the marina as might reasonably be expected is significant concern on merit to warrant the refusal of the Major Project Application.

Should you have any queries or further questions, please contact Stan Kondilios on **8223 4102** or Nadia Price on **9225 6228**.

Yours faithfully

Stan Kondilios/Nadia Price
Partner/Associate
Public Law, Planning and Environment

enc