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Matter 81413169

5 August 2008

Department of Planning
Major Development Assessment
GPO Box 39
SYDNEY NSW 2001

Attention: Ms Ann-Maree Carruthers

Dear Ms Carruthers

**RE: REDLAKE ENTERPRISES PTY LTD (REDLAKE) - TOMAGO ROAD, TOMAGO
MAJOR PROJECT 07-0086**

Reference is made to letter dated 11 June 2008 from the Department of Environment and Climate Change NSW (DECC), and our 8 July 2008 interim response.

On behalf of Redlake we make this further response:

Preliminary

We note that DECC supports the stage 1 WesTrac development but not stages 2 and 3 of the proposed staged subdivision on environmental and aboriginal heritage grounds.

In relation to the query as to whether Redlake would be prepared to have stage 1 of its application determined independently of stages 2 and 3, we understand that stages 2 and 3 of industrial subdivision are both integral and critical to the viability of the development of stage 1 of the site (ie the establishment of the WesTrac facility).

Accordingly, we refer to Redlake's attached letter dated 5th August 2008, in which Redlake explains WesTrac's position and confirms why Redlake seeks approval for the entire development as proposed.

We note advice received that the proposed development is not a Scheduled Development Works under the Protection of the Environment Operations Act 1997.

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1 IN RELATION TO THE DECC COMMENTS CONTAINED IN ATTACHMENT 1 TO THE LETTER WE PROVIDE THE FOLLOWING RESPONSES:

Threatened Species and Biodiversity

1.1 Adequacy of Threatened Species Assessment

We note that DECC is satisfied that the ecological assessment was conducted in accordance with the guidelines for Threatened Species Assessment.

We strongly disagree with the comments that the proponent has not adequately addressed measures to mitigate potential direct and indirect impacts on threatened species, including those on endangered ecological communities and the adjoining national park estate for stages 2 and 3 of the proposed development.

We do not support DECC's recommendation that stages 2 and 3 of the industrial subdivision be reviewed to exclude the area of Coastal Saltmarsh and that this area be left as a buffer.

The Coastal Saltmarsh is addressed on pages 66 and 67 of the report prepared by Ecobiological and attached at Appendix J to the EAR.

The report identifies that approximately 22ha in the southern part of the site comprises Saltmarsh Endangered Ecological Community (**EEC**) and notes that the quality of this saltmarsh has diminished over time, predominantly due to the effects of altered drainage and rural activities.

The EEC on site represents some 7.1% of an estimated 300ha area mapped by Ecobiological within the locality. The proposed development will remove approximately 15.5ha reducing the total EEC within the locality by approximately 5.0%.

The report also identifies that some 241.3ha of land, previously zoned rural, has been offset for conservation. This area contains approximately 45.9ha of saltmarsh which is approximately triple the amount of saltmarsh to be removed from the subject site and should now be protected from activities permitted by its former rural zoning.

Ecobiological conclude in their report that "The proposed development is not likely to have a significant impact on this Endangered Ecological Community in the locality or the region".

1.2 Provision for Compensatory Habitat (Offsets)

It would appear from the DECC letter that no acknowledgement has been given to the area of land that has been offset from rural zone to conservation.

As the Department of Planning (DOP) would be aware the Lower Hunter Regional Strategy was completed in 2006. As part of the planning objectives to provide for employment outcomes, the subject site, then under the ownership of RLMC (now HDC) was identified as "employment lands".

As part of the process of establishing the subject site as employment lands a Memorandum of Understanding (**MOU**) was signed on 16 October 2006 by the Minister for the Environment, The Minister for Planning and the then owner of the subject land RLMC.

The MOU identified the site as being suitable for employment lands and other lands in the amount of 241.3ha being identified as conservation lands. The employment lands are known as Schedule 1 lands and the conservation lands are known as Schedule 2 lands in the MOU. This is shown in the figure below:

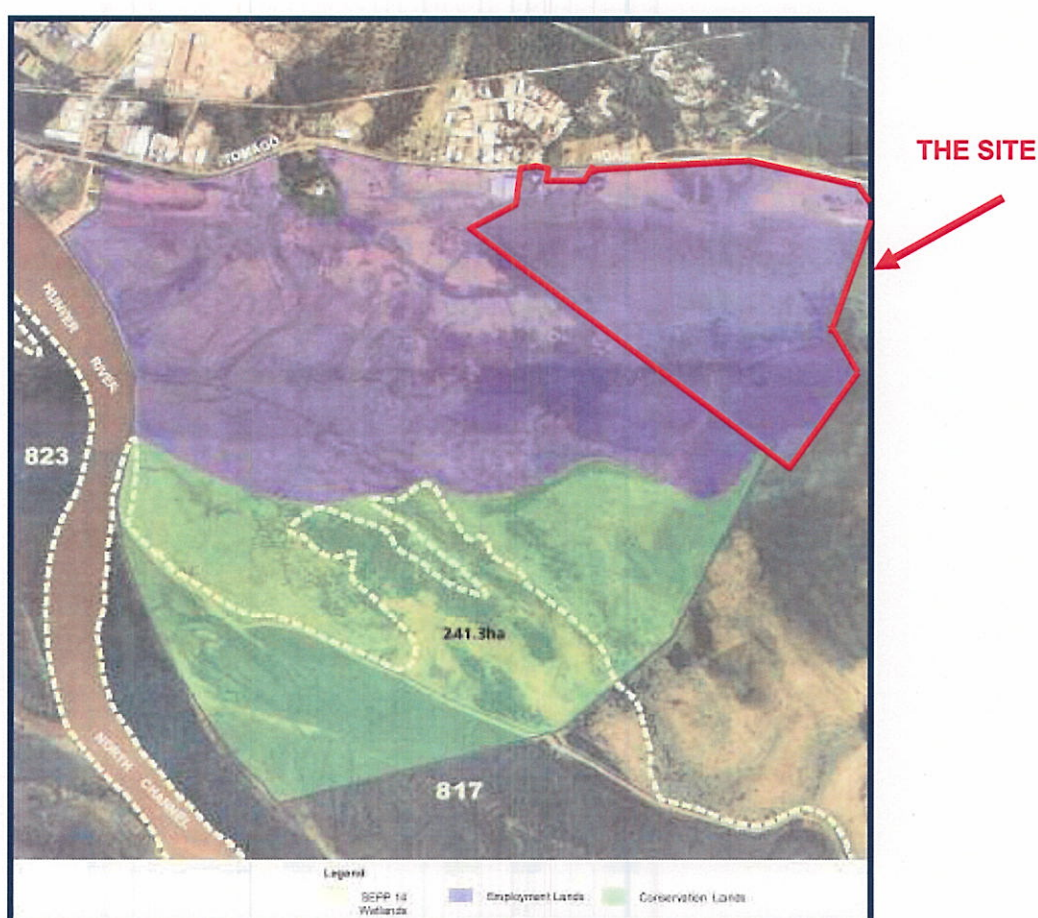


Figure 1 – Schedule of Lands

In examining the MOU we note the following key elements:

The aims of the Scheme are to:

- (a) increase public ownership of certain land in the Lower Hunter region for dedication as a conservation reserve; and

- (b) recognise the development potential of certain other land in the Lower Hunter region.

The Land Manager (RLMC) was to develop the Schedule 1 lands by preparing a Rezoning Application within 5 years that is consistent with the development potential of Schedule 1 land.

Upon rezoning of the Schedule 1 land, the Schedule 2 lands would be transferred to the Minister for the Environment as part of the National Park Estate.

The MOU noted that if the development potential of the Schedule 1 land (in relation to the number of dwellings or lots to be achieved) is reduced, a proportional reduction will occur in the amount of Schedule 2 land to be transferred to the Minister for the Environment.

The rezoning of the subject land along with other lands for employment was carried out presumably on the basis that it was consistent with the development potential of Schedule 1 land.

Given the stringent rezoning process in NSW it is not unreasonable for a purchaser to assume that when land is owned and/or managed by a Government body and the subject of an instrument such as the MOU and subsequently rezoned for industrial development in accordance with that instrument, it could develop the whole of the site identified and rezoned for this purpose especially given that other lands were offset.

If the bottom half of the site (southern area as suggested by DECC) could never be developed it makes no sense for it to be recently rezoned for industrial development. This is particularly the case in light of the fact that if there was to be a reduction in developable land there would be a corresponding reduction in the conservation land to be transferred to the Minister for the Environment, which does not appear to be happening.

The rezoning of the land is recognition that the lands to be transferred for offsets would not be reduced (i.e. it is the final step in the process that defines the line between conservation and employment lands in accordance with the MOU).

As further confirmation that the appropriate balance between environmental and conservation lands appears to have been reached, we note that the boundary line between the conservation lands and employment lands has now been created by registered plan of subdivision and we attach a copy of the relevant Deposited Plan showing the conservation lands as lot 1002 in DP 1127780.

Creation of the conversation land lot (which we note is marginally larger than originally identified in the MOU) to be handed to the Minister for the Environment clearly shows that a determination has been made that an appropriate offset for the development of the employment lands has been achieved.

Recent contact with the Hunter Development Corporation confirms it is intended that lot 1002 is to be transferred to the Minister for the Environment in accordance with the MOU.

Returning to DECC's comments we note DECC states that it is policy that proponents be required to first avoid impact, secondly mitigate impact and only where impacts are unavoidable, provide compensatory habitat.

Avoiding impacting on the saltmarsh is not possible in order to facilitate an appropriate development outcome for the site.

Based on the consultant's report we note that the loss of saltmarsh will not have a significant adverse environmental impact and in any event is offset by the protection of some 45.9ha of saltmarsh within the offset lands.

We note that the proposed layout plan provided with the Preliminary Environmental Assessment (Layout plan at Appendix B) shows the same extent of development as that lodged with the final EAR. We also note that the Director General Requirements were based on that layout plan. Whilst we are aware that the purpose of the Director General Requirements is simply to advise of the matters to be addressed, it is not unreasonable for a purchaser (ie Redlake) to have expected that DECC, in their letter to the Department on 3 September 2007 advising of the Director General Requirements, would have indicated that they objected to the development of the southern portion of the site so a prospective purchaser was not misled into believing the rezoned area was available for its newly identified use.

In summary it is considered that the objectives of the Regional Strategy to provide for employment is at risk of being significantly eroded where, in addition to lands already offset, further lands are then taken from development opportunity.

This is of particular concern to Redlake having purchased the land after the rezoning of the land had occurred.

1.3 Potential Impacts on Adjoining DECC Estate and Ramsar-listed Wetlands – Adequacy of Proposed Buffer

We do not agree with DECC's interpretation of the report that the proposed development will have a detrimental impact on the adjoining Ramsar-listed wetlands.

Page 93 of the report prepared by Ecobiological says *"While it has been determined that an impact on the Ramsar Wetland adjoining the site is likely if not properly managed....."*

It is our view that impacts on the Ramsar-listed wetlands are being properly managed.

We note that DECC support the proposed 100m setback from the Ramsar Wetland with the qualification that the width of the buffer may vary according to the height of buildings.

We have not taken the opportunity at this point to test the applicability of the study that DECC refer to in determining building height given that that study relates to shorebirds and to a specific example in Queensland. Having said this we see no problem at this time with future development complying with the suggested height to setback ratio proposed.

The letter from DECC implies there is a possibility of noise, lighting and visual obstruction impact on the wetlands and that if the saltmarsh was retained there would be an adequate buffer between the proposed industrial development and the wetlands.

We consider the EAR establishes that the buffer distances in the project application submission are appropriate.

In addition we note that future development on proposed development lots in the south of the site would be subject to future applications for approval and would be subject to assessment of these issues. These potential impacts can be readily managed.

Hydrological Impacts

1.4 Water Quality

DECC's key issue of concern is quality of stormwater leaving the proposed development site.

Stormwater treatment measures achieve the objective of 'no impact' for stormwater discharge from the site, exceeding DECC guidelines. This is demonstrated by MUSIC modelling for compliance.

The security of chemical storage areas and waste disposal areas is also noted. These areas will be subject to Australian Standard requirements for chemical handling and storage and Redlake has no objection to conditions of consent being imposed in this regard.

DECC has noted there is 'minimal detail provided for Stages 2 and 3 of the industrial subdivision'. The detail provided is that a stormwater treatment train of rainwater tanks, gross pollutant traps, swale drainage and large constructed wetlands are shown for Stages 2 and 3.

It is demonstrated by MUSIC modelling that the nominated stormwater treatment train achieves compliance with objectives of no impact.

Limitations of site imperviousness have also been nominated.

There are a large range of uses permissible on the lots of the industrial subdivision and each lot of the industrial subdivision will be subject to development application at which time comparison can be made between proposed development and the assumptions made in the Stormwater Management Report for Stages 2 and 3.

If the proposed development on a particular lot exceeds the assumptions, then additional on site lot controls will be required to ensure compliance with no impact objectives is maintained. Additional detail of the treatment train will also be documented with the Construction Certificate documentation.

In relation to educational signage Redlake acknowledges that educational signage will be provided.

In relation to security measures Redlake acknowledges that appropriate security measures, in accordance with Australian Standards, will be adopted.

1.5 Water Velocity

There is no need to upgrade the existing drain since there is no velocity increase or scour issues as a result of the proposed development.

The ground surface level is approximately 2.5mAHD. For the WesTrac site (Stage 1), piped drainage will be installed, conveying stormwater to the perimeter swales. The perimeter swales are at an elevation of approximately 1.4-0.7mAHD. The swales are at flat grades of 1% or less and will convey the stormwater to the constructed wetland. Discharge from the constructed wetland will be through a water level control structure at the outlet of the basin.

As a result, there is no potential for increased velocity along any part of the system, scour or any need to upgrade any of the existing drainage.

Similarly, the drainage from Stages 2 and 3 will pass through constructed wetlands and water level control structures at low elevations close to natural levels prior to discharge from the site.

Standard outlet protection will be detailed in the Construction Certificate documentation.

In relation to climate change/flood gates we make the following comments:

- (a) The stormwater management requirements for the proposed development have been matched to the existing flow regime of stormwater from the site prior to development. This is to ensure that water quality, quantity and volume of stormwater leaving the site remains unchanged post development.
- (b) The existing flow regime also makes use of the existing flood gates and therefore the issue raised that future changes to the regime as a result of climate change may impact on the most appropriate flood gate configuration is the case for the site, irrespective of whether the site is developed or remains as existing.
- (c) At the detailed design stage, there is opportunity to provide design elements to the water level control structure at the outlets of the constructed wetlands for simplified modification if the modified objectives as a result of climate change can be identified.

It is acknowledged that ongoing monitoring of stormwater water quality will be undertaken. This was an outcome of the iterative design process with the flora and fauna consultants.

2 NOISE

Please see the attached facsimile from Spectrum Acoustics responding to the issues raised in relation to noise.

We note Spectrum Acoustics acknowledges DECC's observations and explains how it has considered (more fully than raised by DECC) noise ratings and issues regarding the site and proposed development.

3 ABORIGINAL CULTURAL HERITAGE

In the first instance it is not clear why DECC are supportive of the WesTrac Facility, but not the stages 2 and 3 industrial subdivision on aboriginal heritage grounds.

The approach DECC has adopted between stage 1 and stages 2 and 3 is not consistent.

3.1 Applicability of National Parks and Wildlife Act 1974

We note that permits are not required under this legislation.

3.2 Aboriginal Community Consultation

The attached letter from Indigenous Outcomes dated 21 July 2008 (**the Indigenous Outcomes letter**) fully addresses the comments made by DECC concerning the level and amount of consultation that occurred. Indigenous Outcomes letter evidences the extensive consultation process undertaken of all relevant groups and individuals as required and clearly satisfies DECC's concerns.

3.3 Artefact Collections

Annexure B to the Indigenous Outcomes letter (being letter dated 14 July 2008 to DECC) clearly explains the relevant issues surrounding the location of the artefacts.

3.4 Management recommendations

Given that Indigenous Outcomes confirms (and lists) in its letter that appropriate Aboriginal consultation has occurred, further consultation is not necessary.

3.5 Significance Assessment

The Indigenous Outcomes letter addresses and explains DECC's misunderstanding as to whether there is any discussion in the reports by Indigenous Outcomes or in the EA (regarding the archaeological significance or determination of the cultural significance of the surface and subsurface finds).

Indigenous Outcomes highlights the following quotation from its report:

"The extremely low density of artefacts, generally disturbed nature of the ground surface and absence of any diagnostic artefacts or definite cultural features limits the potential of the sites to contribute to the archaeological knowledge of the local area"

Having regard to this statement Indigenous Outcomes is clearly of the view that given the low level and significance of artefacts a Cultural Heritage Management Plan is not necessary or appropriate in this case.

4 IN RELATION TO THE ATTACHMENT 2 DECC RECOMMENDED CONDITIONS OF APPROVAL WE MAKE THE FOLLOWING COMMENTS:

4.1 Threatened Species

As detailed above we are of the view that the proposed industrial subdivision is appropriate for approval as well as the proposed WesTrac facility. On this basis we request that the relevant conditions of approval be determined.

4.2 Aboriginal Cultural Heritage

Given that:

- (a) adequate Aboriginal consultation has clearly occurred;
- (b) the findings of Indigenous Outcomes are that there is no evidence to support a view that the site is of cultural significance;
- (c) the Worimi LALC has provided a letter accepting the findings in the Indigenous Outcomes report;

The proposed conditions of consent should be prepared to reflect these facts and findings.

5 CONCLUSION

Redlake appreciates the objectives of DECC to protect the environment. However their objective must be balanced with the overall objectives of not only an environmental outcome but one that delivers employment as identified in the Lower Hunter Regional Strategy.

It is our view that the Strategy, the MOU and the rezoning processes have clearly established that the balance between employment and environmental outcomes has been clearly determined. We believe a boundary between the two has been established by planning strategy, by intention and in physical terms. The current efforts by DECC to protect the saltmarsh on the subject site whilst part of their charter appears to be operating independently to the overall process that has been undertaken for the whole of the lands.

It is the view of Indigenous Outcomes that adequate Aboriginal consultation has occurred and that the reported findings clearly state that the site is not of significant cultural heritage. It is clear to us that Worimi LALC is of the same view.

Accordingly, we do not believe there are any outstanding issues with regard to Aboriginal Cultural Heritage that would prevent the application from being approved on terms in conformity with Indigenous Outcomes findings and recommendations.

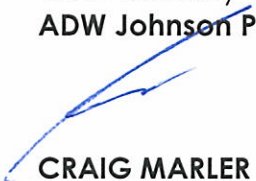
Redlake wishes to seek approval for the whole of the development and we are instructed to stress that the subdivision is integral to the large WesTrac facility. Accordingly Redlake do not wish to separate these two components at this approval stage.

We understand that WesTrac looks forward to locating itself on the subject site as the headquarters for NSW and ACT as soon as possible.

Redlake hopes for an approval shortly to allow this to occur and looks forward to working with the Department of Planning in this regard.

Yours faithfully

ADW Johnson Pty Ltd – (Hunter Office)

A handwritten signature in blue ink, appearing to read 'Craig Marler', is written over the printed name.

CRAIG MARLER

SENIOR PLANNER/PROJECT MANAGER

REDLAKE ENTERPRISES Pty Ltd
ACN 068 121 317

5th August 2008

The Department of Planning
Major Development Assessment
GPO Box 38
SYDNEY NSW 2001

Attention: Ms Ann-Marie Carruthers

Dear Ms Carruthers

**Redlake Enterprises Pty Ltd (Redlake) - Tomago Road - Tomago Major
Project 07-0086**

Redlake is the landowner and applicant for the Part 3A development consent to Major Project Application 07-0086 at Tomago Road, Tomago (the **Redlake Development Application**).

The Redlake Development Application is for a 3 stage development with the first stage proposed to include the substantial new WesTrac Pty Limited (Caterpillar) head office facility and WesTrac Institute.

Enclosed is a letter dated 5th August 2006 from ADW Johnson, Planning Consultants, addressed to the Department of Planning, responding to issues raised by the Department of Environment and Climate Change (DECC) regarding the Redlake Development Application.

As you are aware, DECC supports stage 1, but has reservations regarding stages 2 and 3.

Redlake understands the Department of Planning has inquired as to whether there is any interest in stage 1 being approved independently of stages 2 and 3.

The purpose of this letter is to clarify that Redlake wishes the proposal to be approved in its entirety and why Redlake is not, at this stage, prepared to proceed with stage 1 alone.

Redlake is a trustee of the Tiberius Trust and owes a fiduciary duty to its beneficiaries.

WesTrac is an independent organisation and is not a beneficiary of the Tiberius Trust and has no control over Redlake's decision making process.

Similarly to relevant elements of the NSW Government, Redlake identified the Tomago land as an area suitable for industrial development and employment. Accordingly, Redlake purchased the Tomago land upon it being rezoned for industrial purposes and commenced negotiations with a number of potential long term occupants for that land to be developed.

WesTrac is one such entity approached.

Redlake understands WesTrac has a goal and timetable to establish a, state of the art New South Wales head office development including WesTrac Institute.

Whilst WesTrac has determined it would like its head office facility to be at Redlake's proposed Tomago development and would like to proceed as soon as practicable to meet its timetable, it is not WesTrac's decision as to whether the Redlake development proceeds.

WesTrac's only decision is whether to proceed with the Tomago location or one of its alternate proposed locations if the Redlake proposal does not proceed at all or does not proceed within the timeframe available to meet WesTrac's timetable for the establishment for its New South Wales head office facility.

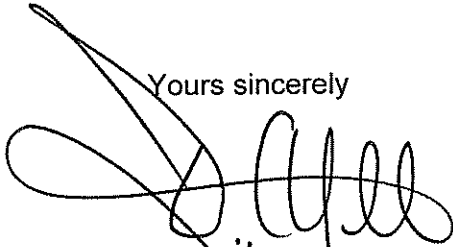
Currently, Redlake does not believe it can proceed with the Tomago development based on stage 1 alone.

Whilst Redlake would like to develop a prestigious development such as the WesTrac New South Wales head office facility and WesTrac Institute at Tomago, Redlake does not believe it can proceed with stage 1 of the Tomago development in the current economic climate of uncertainty with the site issues and development costs associated with the development without stages 2 and 3 being simultaneously approved.

We therefore request your urgent attention to the matter.

I am available to meet in relation to any outstanding issues that require to be addressed to enable our Development Application to be dealt with in an expedient manner.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Aspinall', written over the 'Yours sincerely' text.

David Aspinall

For and on behalf of Redlake Enterprises Pty Ltd



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FAX

To Company:	Asquith & deWitt	Fax:	4978 5199
Attention:	Craig Marler	Date:	7/7/08
From:	Neil Pennington	Ref:	07359/2673
Copies to:		Pages:	2

☐ Urgent	☐ Please Reply	☐ For your file	☐ No action required
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Subject: Tomago Industrial Subdivision

Dear Craig,

Thanks you for forwarding the DECC comment on sleep disturbance criteria relating to the Tomago EA. DECC is correct that the sleep disturbance criterion from the ENCM is an $L_{A1(1minute)}$ of "background + 15 dB" which is equal to 45 dB(A), $L_{1(1minute)}$. However, the issue of sleep disturbance has been further considered by DECC and others in recent years and it is widely acknowledged that the ENCM criterion is only a starting point, not the final word, in assessing potential sleep disturbance.

An application note on sleep disturbance posted on the DECC website admits to a general lack of knowledge about sleep disturbance and that the "background + 15 dB" criterion is "not ideal". The application note directs readers to a research review presented in the appendices to the Environmental Criteria for Road Traffic Noise (ECRTN) and goes on to advise:

Other factors that may be important in assessing the extent of impacts on sleep include:

- *How often high noise events will occur*
- *Time of day (normally between 10pm and 7am)*
- *Whether there are times of day when there is a clear change in the noise environment (such as during early morning shoulder periods).*

Appendix B5 of the ECRTN shows several graphs from laboratory and field studies aimed at determining the likelihood of sleep disturbance as a function of maximum noise levels. Of the graphs that directly plot maximum levels, one suggests a zero probability of awakening reactions to internal noise levels less than 55 dB(A). Another graph, which summarises 11 studies between 1978 and 1990, suggests no awakenings below 45 dB(A), L_{max} .



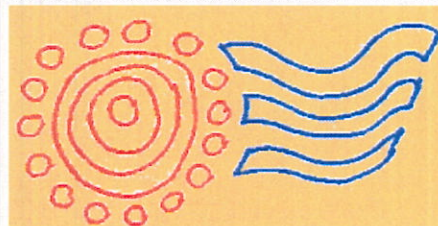
It is widely accepted that indoor noise levels with a window partially open are 10 dB below the external noise level. An internal noise level of 50 dB(A) therefore corresponds to an external noise level of 60 dB(A). This level is significantly higher than the ENCM criterion of 45 dB(A) but is supported by research as a level unlikely to disturb sleep.

In my evidence in the Land and Environment Court of NSW and the Department of Planning's Independent Hearing and Assessment Panel (IHAP) process, I routinely defer to the scientifically supported assessment of sleep disturbance in the ACRTN Appendix B when the 'non-ideal' ENCM criterion is exceeded. Both L&EC and IHAP have concurred with this approach, as have senior DECC personnel in their Noise Policy Branch in Sydney. The above approach was adopted in the assessment of sleep disturbance for the Tomago project and is adequately detailed in the report.

Please give me a call on 4954 2276 or 0406 670677 if you require further advice on this or any other noise issue.

A handwritten signature in black ink, appearing to read 'Neil Pennington'.

Neil Pennington
Principal/Director



21st July, 2008

Department of Planning
Major Development Assessment
GPO Box 39
SYDNEY NSW 2001

Attention Ann-Maree Carruthers

**RE: REDLAKE ENTERPRISES MIXED USE DEVELOPMENT – TOMAGO ROAD,
TOMAGO: MAJOR PROJECT 07_0086.**

I refer to the letter from DECC dated 11 June 2008 and provide the following response in relation to those matters of Aboriginal cultural heritage raised in section 3 of that letter.

I adopt the headings and numbering as referred to in the letter from DECC.

3.1 Applicability of National Parks and Wildlife Act 1974

I agree that cultural heritage permits under Part 6 of the NPW Act are not required for this project to proceed.

I strongly disagree that the EA has not addressed the key issues raised in DECC's review dated 16 January 2008 and the requirements of the following guidelines have not been met:

- *Draft guidelines for Aboriginal Cultural Heritage Assessment and Community Consultation* (DOP, 2007); or
- DECC's *Interim Community Consultation Requirements for Applicants* (DECC 2005).

The following documents that accompany or otherwise comprise the EA clearly evidence compliance with the above guidelines:

- Archaeological Aboriginal Heritage Assessment March 2006 (See Sections 1.2 and 1.4 and recommendations at Appendix 1).
- Subsurface Archaeological Investigations October 2006 (See Sections 1.4.1 and 1.4.3 and recommendations expressing the views and wishes of the Aboriginal community at Section 8).

- Letter dated 4th February, 2008 responding to DECC's letter dated 16 January 2008 is attached at Annexure A.

Other evidence regarding compliance is also referenced below.

In my opinion the consultation processes adopted with respect to the project were above and beyond the requirements of the above guidelines.

3.2 Aboriginal community Consultation

I disagree with DECC's concern that the proponent has not undertaken broad based Aboriginal community consultation for the reasons set out above in 3.1 and the matters raised further below.

The proponent has actively sought to identify Aboriginal parties that can speak on behalf of Country, as well as the Local Aboriginal Land Council representatives, who wished to be consulted about the proposed project. This is evidenced by:

1. Indigenous Outcomes Pty Ltd sought out Mr. Len Anderson who is a known Worimi Traditional Owner who has an interest in the cultural heritage values in the Worimi region. A number of phone calls were undertaken by Cheryl Kitchener to Len Anderson advising him on the Tomago project. Mr. Anderson's response was that I should notify the Worimi LALC as he was busy with other projects in the Upper Hunter valley at that time.
2. Please note that the Worimi LALC memberships are mostly traditional owners. The Worimi people both from Port Stephens and Karuah were consulted on this project.
3. Worimi LALC members that were consulted also have membership or otherwise represent other Aboriginal community organisations e.g. 'Aunty' Val Merritt, 'Aunty' Gwen Russell, Jamie Tarrott, and Andrew Smith to name a few.

It is not correct to say that a large portion of the Aboriginal community were not involved in the field assessment process, as numerous representatives of the LALC were involved in the field assessment process. The members of the Aboriginal community involved in the field assessment process included the following Aboriginal persons:

- Brendan Lily
- Debbie Dates
- Felicity Towers
- Jamie Merrick

All of these people are Worimi LALC sites officers and also Worimi Traditional Owners.

The proponent has already demonstrated how input by affected Aboriginal communities has been thoroughly considered, including during the reporting phase of the reports. This is evidenced by:

- assessment of impacts found in each of the archaeological reports;

- mitigation strategies recommended in the original archaeological report;
- final recommendations in both reports.

Evidence of the discussions between the Aboriginal organizations and the proponent referenced in the October 2006 report as requested by DECC can be summarized as follows:

- An advertisement was lodged in the local paper (please see advertisement in October 2006 report)
- IO made phone call to Worimi LALC and spoke with 'Aunty' Val Merritt who at the time was the acting CEO.
- IO contact Karuah LALC and spoke with Bev Manton former CEO, and Worimi Traditional Owner
- IO contacted Mr. Len Anderson on several occasions to discuss the project
- IO contacted Mr. Andrew Smith current CEO and Jamie Tarrott current Chairperson and TO
- IO contacted the Board of the Worimi LALC all of which are Traditional Owners.

Indigenous Outcomes is well aware of the Aboriginal parties who have an association with Country as evidenced above. All relevant Aboriginal parties have been appropriately consulted in relation to the proposed development.

3.3 Artefact Collections

The issues raised in this section are addressed in detail in my correspondence to DECC dated 14 July 2008 a copy of which is found at Annexure B to this letter.

3.4 Management Recommendation

As stated above, in my view the proponent has more than adequately demonstrated compliance with DECC's consultation guidelines.

In my view it is neither necessary nor appropriate to conduct any further consultation or Aboriginal community workshop as suggested. The reasons for this can be summarized as follows:

- All necessary steps were taken to identify Worimi people who were interested in this land and the cultural heritage on the land.
- Phone calls were made to Worimi LALC and Karuah LALC as well as other individuals that were known to have interest in cultural heritage values, this includes Mr. Len Anderson.

I am of the view that it has already been demonstrated that the Aboriginal community's decision and/or recommendations have been based on informed opinions regarding the significance of finds from the project area.

The consultation processes described above have already identified opportunities with the Aboriginal community regarding any impacts to Aboriginal objects and place.

I note that an acknowledgment has been made by the Worimi Local Aboriginal Land Council in their letter to Indigenous Outcomes dated 10 November 2006 that there is

a general lack of Cultural and Heritage materials on site. A copy of this letter is included with the October report included forming part of the EA.

Accordingly, the measures proposed to address the wishes of the community concerning the relevant Aboriginal objects and places are attachments to the relevant reports.

3.5 Significance assessment

As evidenced by the reports and documents prepared by Indigenous Outcomes referred to in section 3.1, I disagree that there was no discussion regarding the archaeological significance of the surface and sub-surface finds. I note that relevant discussions in this regard are found in both reports.

Importantly, section 8.2 of the October 2006 report states as follows:

"The extremely low density of artifacts, generally disturbed nature of the ground surface and absence of any diagnostic artifacts or definite cultural features limits the potential of the sites to contribute to the archeological knowledge of the local area."

Accordingly, in my view a Cultural Heritage Management Plan is not necessary or appropriate in this case.

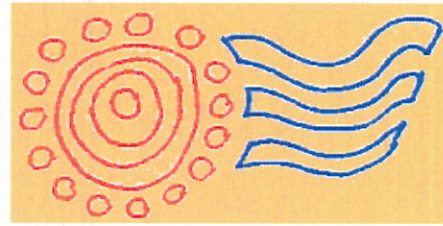
In conclusion, given the relative lack of Cultural Heritage significance associated with the subject site and the extensive consultation process and agreement of the relevant Aboriginal groups to this determination, it is considered that the proposed development is acceptable on indigenous Cultural Heritage grounds.

Yours respectfully



Cheryl Kitchener
Managing Director

ANNEXURE A



Mr Craig Marler
Senior Planner
Asquith & de Witt Pty Ltd
Unit 7, 335 Hillsborough Road,
Warners Bay NSW 2282

4th February, 2008

Dear Mr Marler,

**Re: Part 3A – Redlake Enterprises Mixed use Development, Tomago –
Port Stephens Local Government Area – DECC Adequacy Review**

*Subsurface Archaeological Investigations of Selected Aboriginal Sites at the
Proposed Industrial Development Tomago Road, Tomago Report – dated
October 2006*

I refer to the letter dated 16 January, 2008 which outlines a series of concerns with the above archaeological report. In particular I would like to address the issues is number 4 in the letter from DECC regarding; *Uncertainties and deficiencies identified in the archaeological assessment for Aboriginal cultural Heritage values.*

As outlined in the letter the concerns from DECC with the archaeological reports are:

1. Deficiencies in the current level of ACH assessment occur in a number of areas'. DECC considers the level of investigation does not provide a clear indication of the level of Aboriginal cultural material on site.

The initial survey that was undertaken by Indigenous Outcomes and the Worimi LALC was extensive. The methodology for the survey included a complete on foot survey of the entire study area. The study area had a combination of landforms which included low lying wetlands, grass covered sand dunes and vegetated farmland. During the survey only 7 archaeological sites were found, these were found within the sand dunes with approximately 128 stone artefacts being located. No other cultural material was found in the study area.

Indigenous Outcomes and the Worimi LALC were concerned with the cultural material that had been found in the sand dunes and requested further investigations in these areas to confirm the suspicions of finding other cultural material. The Worimi LALC acknowledged that although having no formal cultural knowledge of the area, had understood the sensitive nature of the sand dunes in relation to cultural activities and the association with stone

artefacts in the sand dunes, and therefore insisted on further investigations, Indigenous Outcomes agreed with their concerns.

Indigenous Outcomes consulted thoroughly with the Worimi LALC regarding the cultural material found on site and the potential of finding more material. Therefore we believe that our research and survey techniques are beyond reproach.

2. Differences in the level of ACH material identified in the initial survey carried out in March 2006 and the test excavations carried out in October 2006.

Before the sub-surface investigation the cultural material that had previously be located, had disappeared, even though we tried to relocate the material, it was evident that the moving sand dunes had impacted on the original site of the artefacts.

During the investigation we summarised that although the initial sites had been impacted and that only one site had produced any material and we would focus on this area in the excavation process. As a result of the findings during the excavation we ascertained that the material present was possibly the result of earlier material found with very little new cultural material presenting itself.

Testing for sub-surface deposits was carried out as per the s.87 permit in several different ways, which depended on the questions being asked in the study design. An appropriate approach and one advocated in the Australia ICOMOS Burra Charter is to "*do as much as necessary but as little as possible*", meaning that sufficient intrusion into the archaeological record is undertaken to answer the questions being asked, but that disturbance is kept to a minimum to retain as much of the site's integrity as possible in case there is a possibility of amending development plans to conserve the archaeological deposits. In the case of Redlake development, the proponents had shown a willingness to amend their plans for the proposed industrial development when possible, to minimise impacts on the recorded sites.

With the discussion with DECC, the Worimi LALC and the team from Indigenous Outcomes we concluded that with the shifting sand dunes that the cultural material found and the excavation that had occurred had sufficiently answered the questions from the Aboriginal community and the satisfied DECC.

3. No excavation occurred beyond the 'B' horizon which is comprised of a sandy soil despite there being potential for a lower horizon to contain further sub-surface material or deposits.

The methodology and design for the s.87 was prepared in consultation with the DECC archaeologist, the Worimi LALC and Indigenous Outcomes team. During numerous conversations between DECC and Indigenous Outcomes it

was decided to focus on the 'A' horizon as it was evident that the cultural material was more noticeable in the 'A' horizon at the time of the initial survey.

In relation to the stratigraphy of the site shovel pits were dug to the sandy soil layer (B Horizon) as (approximately) a spade width x spade length. When the sandy soil layer too hard to allow retrieval of the shovel, the hole was lengthened to enable the spade to reach the base of the hole. The hole was also extended when artefacts appeared in the sieves or in the stratigraphic sections and this occurred on several occasions.

Dimensions were recorded for each shovel pit together with their stratigraphic profiles. All sediments were put through nested 5 and 10 mm sieves, and in some cases the sediment was spread out on tarpaulins to dry before being sieved. Artefacts retrieved from the sieves or pits were bagged and labelled.

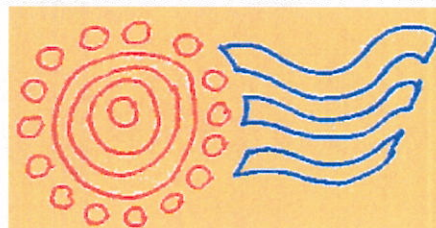
Bulk soil samples were taken from several shovel pits for analysis. All work outlined in the sub-surface investigation as per the s.87 permit were carried out and processed by DECC.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Cheryl Kitchener', followed by a period.

Cheryl Kitchener
Managing Director
Indigenous Outcomes
ACN 108118636

ANNEXURE B



14th July, 2008

Manager of Planning and Aboriginal Heritage Section,
DECC
Locked Bag 914,
24 Moonee Street,
Coffs Harbour NSW 2450

Dear Sir,

**Part 3A Major Project Application MP07_0086 – Aboriginal Heritage
Assessment**

We refer to your letter dated 23 June 2008 in relation to the above and provide the following response.

Artifacts

We agree that the EA revealed that a large number of Aboriginal objects previously identified by Indigenous Outcomes Pty Ltd (at table 4 and Appendix 3 of the archaeological Aboriginal Heritage Assessment dated March 2006 – Appendix P of EA) were not able to be relocated during the subsequent Section 87 investigations. The reasons remain as stated in my October 2006 report which advised that discrepancies between the original and subsequent recordings of surface artifacts at three of the sites demonstrate the profound influences of taphonomic processes both natural and humanly induced (over a seven month period).

By way of clarification, the profound influences I refer to are the unique site conditions of the specific location. In particular the artifacts were found within sand dunes which by their nature are prone to movement and displacement (please see photos of the dune and its naturally dynamic context at Appendix A of this letter). In my opinion these displacement processes are as follows:

Natural

- Wind – the dune is particularly subject to wind as it is situated within a relatively open and exposed area.
- Rain – This has the effect of moving and covering artifacts.
- Natural movement given the instability of an exposed dune.

Non-Natural/Introduced

- The dune is subject to impacts from grazing and there is evidence of cattle movement across the dune (droppings and tracks, please see photos in Appendix A)
- Evidence of the dune being used for recreational purposes and in this regard we speculate that groups of people are likely to have used the site for social gatherings. There is evidence of bottles and other litter in this regard (please see photos in Appendix A).

The above in my view explains the reasons why artifacts are difficult to find when returning to this site, particularly noting the seven month gap between the site visits. It should also be noted that the artifacts being so small (see table 4 Appendix 3 – March 2006 Report) are subject to movement and over covering by sand by the above factors and given the site location and unique conditions.

I would like to note that during the October 2006 field survey, the local Aboriginal community representatives commented that they were not surprised when artifacts were not able to be relocated in this sand dune context. The local Aboriginal community is well aware of, and not surprised by, the natural over covering and displacement processes associated with sand dunes as described above.

Site Cards

The AHIMS site registration cards were completed for both the March and October 2006 reports and forward with those reports to the DECC office in Hurstville Sydney. This is my standard practice for all work of this type and in compliance with relevant legislation. The protocol is that I not keep a copy of these records but that a copy is provided to the Worimi LALC. If DECC are unable to locate a copy of the records I suggest that DECC contact Worimi Land Council who will have copies of the AHIMS site registration cards for both March and October 2006 surveys.

I would be pleased to accompany the relevant DECC officers to show them the various sites and to verify the above site conditions should this be of assistance. Please contact me if you have any questions in relation to the above.

Regards



Cheryl Kitchener
Managing Director











DEPOSITED PLAN ADMINISTRATION SHEET

Sheet 1 of 1 sheet(s)

SIGNATURES, SEALS and STATEMENTS of intention to dedicate public roads, to create public reserves, drainage reserves, easements, restrictions on the use of land or positive covenants.

Signed for and on behalf of the State Property Authority by *H.A. al* Anne Skewes, Chief Executive Officer, State Property Authority without assuming any personal liability in the presence of:

Al

H.A.
Anne Skewes, Chief Executive Officer

Maria Somerville

Signature of Witness

MARIA SOMERVILLE

Name of Witness (please print)

The Minister for Lands in accordance with Part 2 Division 5 of the Surveying Regulation 2006 and Section 55N of the Coastal Protection Act 1979 as amended approves the determination of the Mean High Water Mark of Lot 1001 as shown hereon.

Department of Lands File 07/4375 on 19 November 2007

Use PLAN FORM 6A

for additional certificates, signatures, seals and statements

~~Crown Lands NSW/Western Lands Office Approval~~

~~I, in approving this plan certify
(Authorised Officer)~~

~~that all necessary approvals in regard to the allocation of the land shown herein have been given~~

~~Signature:~~

~~Date:~~

~~File Number:~~

~~Office:~~

Subdivision Certificate

I certify that the provisions of s.109J of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to:

the proposed SUBDIVISION set out herein
(insert 'subdivision' or 'new road')

Gordon Wren
Certifying
Consent Authority

GORDON WREN

Date of Endorsement: 29 MAY 2008

Accreditation no: BPB 0447

Subdivision Certificate no: SUC003

File no: SEPP(MAJOR PROJECTS) 2005 - Sch 3, Part 10, Clause 12(2)

Re

* Delete whichever is inapplicable.



DP1127780 S

Registered: 25.6.2008

Title System: TORRENS

Purpose: SUBDIVISION

PLAN OF SUBDIVISION OF LOTS 4, 6, 7 AND 8
DP 37876, LOT 52 DP 577334, LOT 11 DP 774442
AND LOTS 151, 152 AND 153 DP 625755

LGA: Port Stephens

Locality: Tomago

Parish: Stockton

County: Gloucester

Surveying Regulation, 2006

I, Benjamin John Belfield of Monteath & Powys Pty Ltd a surveyor registered under the *Surveying Act, 2002*, certify that the survey represented in this plan is accurate, has been made in accordance with the *Surveying Regulation, 2006* and was completed on 12/09/07.

The survey relates to Lots 1001 and 1002
(specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey)

Signature *B. Belfield* Dated: 13/03/08
Surveyor registered under the *Surveying Act, 2002*

Datum Line: X-Y

Type: Urban/Rural

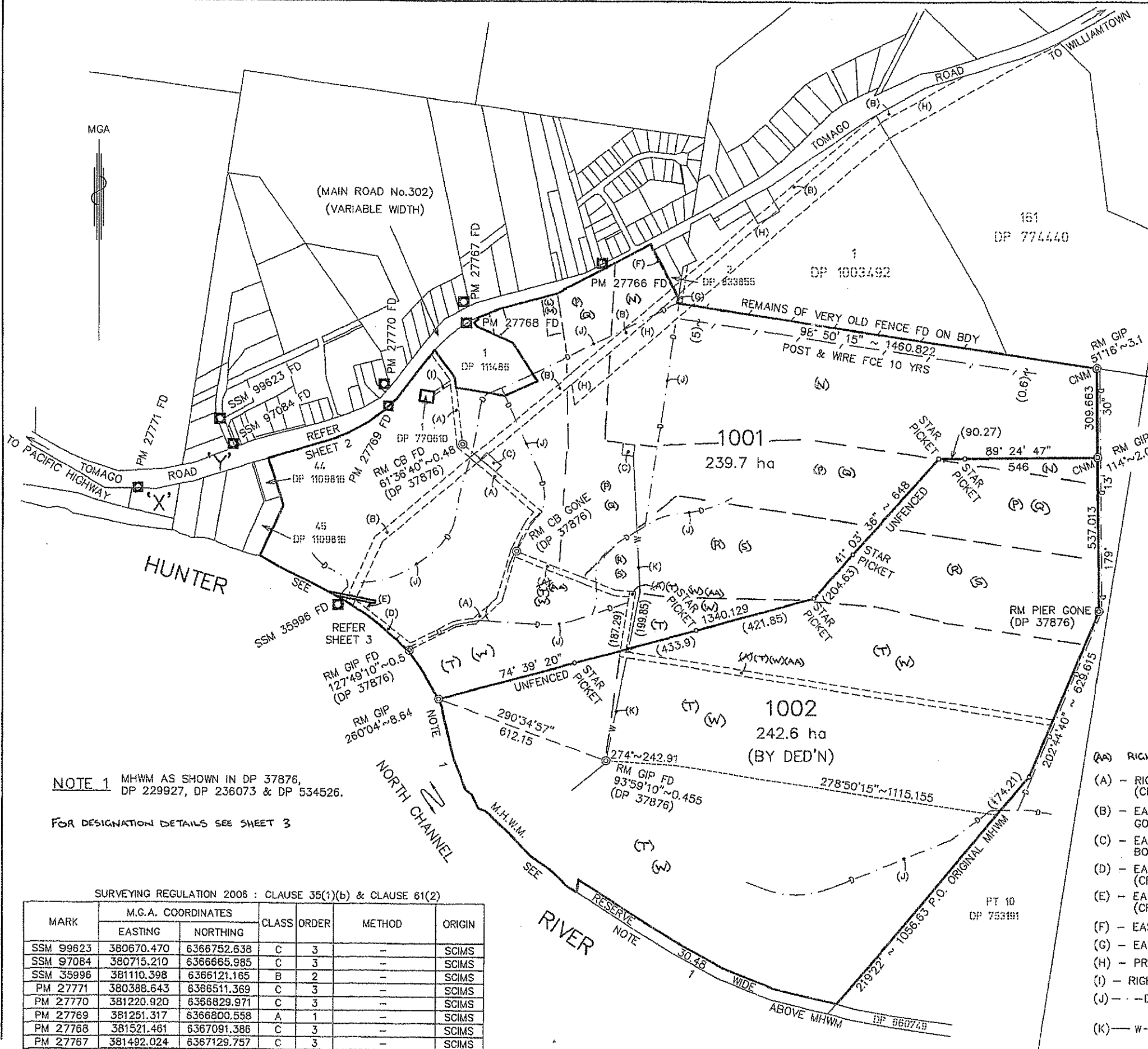
Plans used in the preparation of survey/compilation

DP 37876	DP 833855	DP 229927
DP 577334	DP 770610	DP 236073
DP 774442	DP 111486	DP 557698
DP 625755	DP 534526	DP 557697
DP 1109816	DP 226998	DP 1003492
DP 774440	DP 753191	

(if insufficient space use Plan Form 6A annexure sheet)

SURVEYOR'S REFERENCE: 03/084

* OFFICE USE ONLY



PM27771 TO SSM97084 'X' - 'Y'	64°39'52"~361.397 (SURVEY) 64°39'52"~361.401 (MGA GRND)
SSM97084 TO SSM99623	332°41'~97.548 (SURVEY) 332°41'10"~97.543 (MGA GRND)
SSM99623 TO PM27769	85°16'53"~582.964
PM27769 TO PM27770	314°03'28"~42.323
PM27770 TO PM27767	42°07'30"~404.275
PM27767 TO PM27768	142°28'26"~48.39
PM27768 TO PM27766	65°49'12"~510.797
PM27766 TO SSM35996	216°37'58"~1470.069
SSM35996 TO PM27771	298°23'53"~820.657

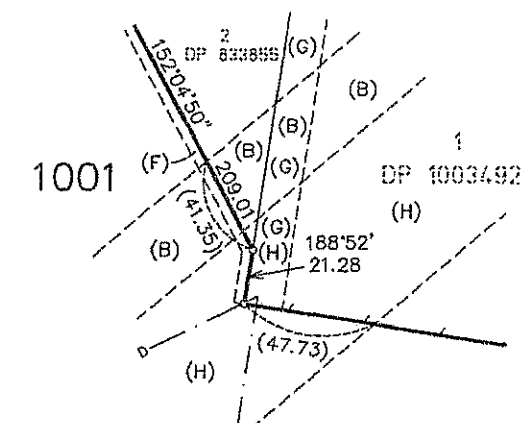


DIAGRAM 'E'
SCALE - 1:2000

NOTE 1 MHW as shown in DP 37876,
DP 229927, DP 236073 & DP 534526.

FOR DESIGNATION DETAILS SEE SHEET 3

SURVEYING REGULATION 2006 : CLAUSE 35(1)(b) & CLAUSE 61(2)

MARK	M.G.A. COORDINATES		CLASS	ORDER	METHOD	ORIGIN
	EASTING	NORTHING				
SSM 99623	380670.470	6366752.638	C	3	-	SCIMS
SSM 97084	380715.210	6366665.985	C	3	-	SCIMS
SSM 35996	381110.398	6366121.165	B	2	-	SCIMS
PM 27771	380388.643	6366511.369	C	3	-	SCIMS
PM 27770	381220.920	6366829.971	C	3	-	SCIMS
PM 27769	381251.317	6366800.558	A	1	-	SCIMS
PM 27768	381521.461	6367091.386	C	3	-	SCIMS
PM 27767	381492.024	6367129.757	C	3	-	SCIMS
PM 27766	381987.347	6367300.569	C	3	-	SCIMS

COMBINED SCALE FACTOR = 0.999774

ZONE 56

SOURCE : M.G.A. COORDINATES ADOPTED FROM SCIMS AS AT 10 SEPTEMBER 2007.

SURVEY TECHNIQUE USED DIFFERENTIAL GNSS WITH
DUAL FREQUENCY RECEIVERS FOR PART OF THIS SURVEY.

Surveyor: BENJAMEN JOHN BELFIELD
Date of Survey: 12/09/07
Surveyor's Ref: 03084DPA.DWG
2007M7100 (1088) COMP

PLAN OF

OF SUBDIVISION OF
LOTS 4, 6, 7 & 8 DP 37876,
LOT 52 DP 577334, LOT 11 DP 774442 &
LOTS 151, 152 & 153 DP 625755

LGA: PORT STEPHENS

Locality: TOMAGO

Subdivision No: - SUC003

Lengths are in metres. Reduction Ratio 1: 10000

Registered

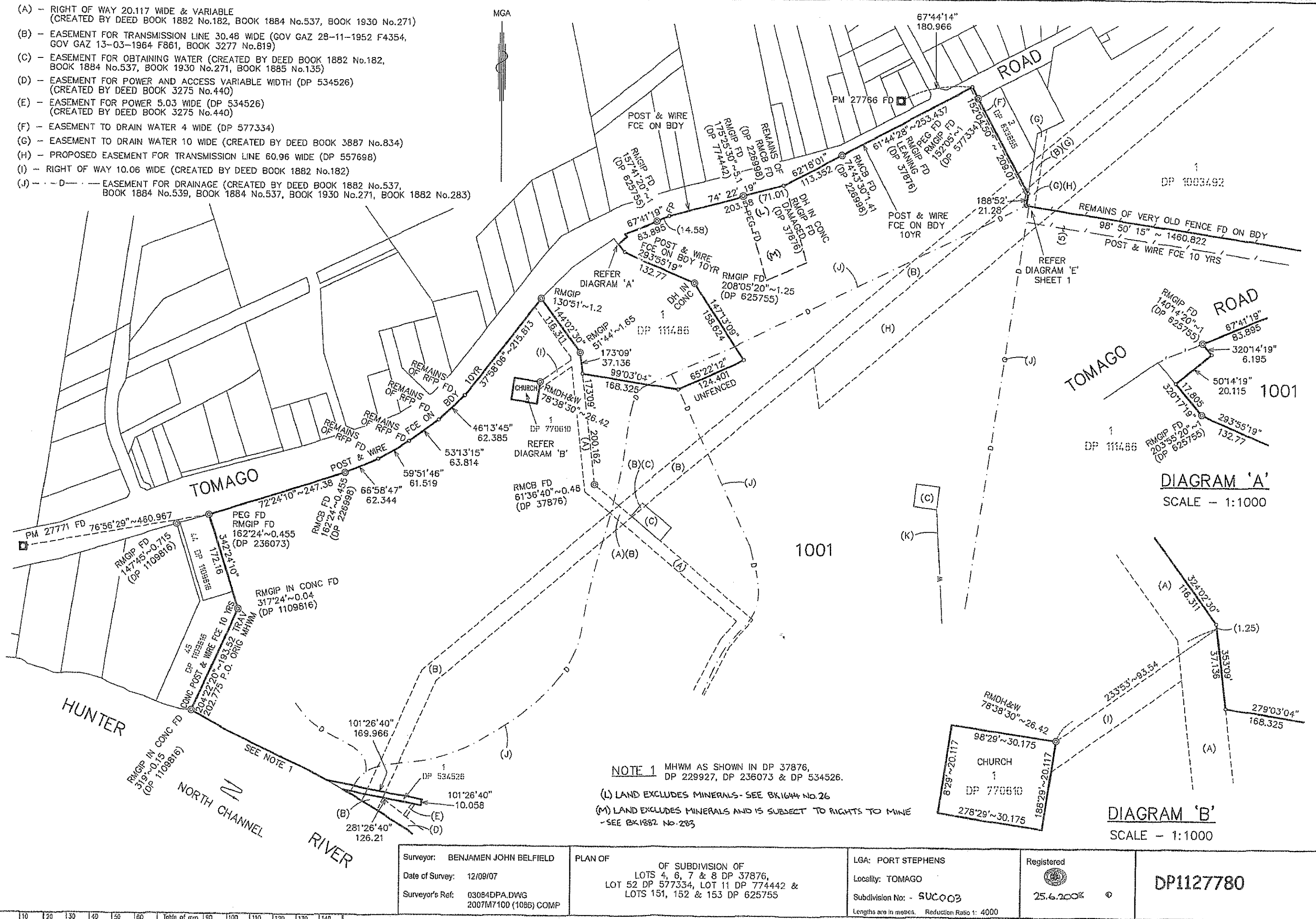


25.6.2008



DP1127780 P

- (A) - RIGHT OF WAY 20.117 WIDE & VARIABLE
(CREATED BY DEED BOOK 1882 No.182, BOOK 1884 No.537, BOOK 1930 No.271)
- (B) - EASEMENT FOR TRANSMISSION LINE 30.48 WIDE (GOV GAZ 28-11-1952 F4354, GOV GAZ 13-03-1964 F861, BOOK 3277 No.819)
- (C) - EASEMENT FOR OBTAINING WATER (CREATED BY DEED BOOK 1882 No.182, BOOK 1884 No.537, BOOK 1930 No.271, BOOK 1885 No.135)
- (D) - EASEMENT FOR POWER AND ACCESS VARIABLE WIDTH (DP 534526)
(CREATED BY DEED BOOK 3275 No.440)
- (E) - EASEMENT FOR POWER 5.03 WIDE (DP 534526)
(CREATED BY DEED BOOK 3275 No.440)
- (F) - EASEMENT TO DRAIN WATER 4 WIDE (DP 577334)
- (G) - EASEMENT TO DRAIN WATER 10 WIDE (CREATED BY DEED BOOK 3887 No.834)
- (H) - PROPOSED EASEMENT FOR TRANSMISSION LINE 60.96 WIDE (DP 557698)
- (I) - RIGHT OF WAY 10.06 WIDE (CREATED BY DEED BOOK 1882 No.182)
- (J) - D - - - EASEMENT FOR DRAINAGE (CREATED BY DEED BOOK 1882 No.537, BOOK 1884 No.539, BOOK 1884 No.537, BOOK 1930 No.271, BOOK 1882 No.283)



NOTE 1 MHW as shown in DP 37876, DP 229927, DP 236073 & DP 534526.

(L) LAND EXCLUDES MINERALS - SEE BK1644 NO.26
(M) LAND EXCLUDES MINERALS AND IS SUBJECT TO RIGHTS TO MINE
- SEE BK1882 NO.283

Surveyor: BENJAMEN JOHN BELFIELD
Date of Survey: 12/09/07
Surveyor's Ref: 03084DPA.DWG
2007M7100 (1086) COMP

PLAN OF
OF SUBDIVISION OF
LOTS 4, 6, 7 & 8 DP 37876,
LOT 52 DP 577334, LOT 11 DP 774442 &
LOTS 151, 152 & 153 DP 625755

LGA: PORT STEPHENS

Locality: TOMAGO

Subdivision No: - SUC003

Lengths are in metres, Reduction Ratio 1: 4000

Registered



25.6.200%

DP1127780



Surveyor: BENJAMEN JOHN BELFIELD Date of Survey: 12/08/07 Surveyor's Ref: 03084DPA.DWG 2007M7100 (1088) COMP	PLAN OF OF SUBDIVISION OF LOTS 4, 6, 7 & 8 DP 37876, LOT 52 DP 577334, LOT 11 DP 774442 & LOTS 151, 152 & 153 DP 625755	LGA: PORT STEPHENS Locality: TOMAGO Subdivision No: - SVC003 Lengths are in metres. Reduction Ratio 1: 2500	Registered  25.6.2008	DP1127780
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