

28 November 2025

Lucinda Craig
Department of Planning, Housing and Infrastructure
Locked Bag 5022, Parramatta NSW 2124

By email Lucinda.Craig@dpie.nsw.gov.au

Dear Lucinda

**Response to request for additional information
SSD-63475709 Mingara Recreation Club Seniors Housing, Tumbi Umbi**

1. We act for Pariter Mingara Unit Trust.
2. The purpose of this letter is to respond to the Department's request for additional information dated 7 August 2025, which requests the following information:

"• The Department previously requested the detailed plans required to be approved by Council under Condition 8 of DA 420/98.

*It is acknowledged the RtS included a letter prepared by Wyong Shire Council (dated 25 October 1999), which addresses Condition 8 of DA 420/98. However, the correspondence predates the date of determination for DA 420/98 (09 March 2000). **Please clarify this and/or provide the final plans approved under Condition 8 of DA 420/98 and confirmation of Council's approval.***

• Please formally request an application amendment via the Major Projects portal." (Emphasis added).

Clarification as to dates

3. It is important as a starting point to clarify the timeline that has been incorrectly referred to in the above communication from the Department:
 - (a) On 24 February 1999, DA 420/98 was granted subject to a deferred commencement condition relating to mitigating flood impacts.
 - (b) On 25 October 1999, Council provided a letter explaining how condition 8 should be satisfied.
 - (c) On 9 March 2000, DA 420/98 was reissued with the deferred commenced condition removed, indicating that it had been satisfied as at that date.
 - (d) The construction certificate was also issued on 9 March 2000 (CC 235/2000).

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GPO Box 214, Sydney NSW
2001 Australia

Plans

DA stamped plans

4. The stamped plans for DA 420/98 dated 24 February 1999 show that grassed overflow parking could be provided in different locations in the precinct. Council imposed condition 8 when granting this consent which related to (amongst other things) the design of the carparking for this development, which was to be approved by Council prior to the issue of the construction certificate, therefore deferring the final location of the parking until a later point in time.
5. A copy of those stamped plans is provided at **Attachment 1**.

Construction certificate plan

6. Stamped plans for Construction Certificate 235/2000 have recently been located and are provided at **Attachment 2**. These include:
 - (a) Powell Dodds and Thorpe Architects stamped plan, 2886 – CC 01 Issue B, dated 9 March 2000. While this drawing shows various areas of “grass area”, it does not nominate any grassed overflow parking areas.
 - (b) Young Consulting Engineers plan titled "Site Plan" (drawing no. 999194 - 2, Rev. F), stamped by Wyong Shire Council on 9 March 2000 and referencing to "CC 235/2000" The plan does not mention or demarcate the location for any car parking.

Confirmation of Council's approval

7. The absence of any nominated carparking within the above CC plans is consistent with the letter received by Mingara from Council dated 25 October 1999, which confirmed that condition 8 could be satisfied with reference to existing carparking on the site.
8. Importantly, that letter stated:

"Condition 8

I confirm that in order to comply with this requirement, detailed design work will be limited to:

- *provision for set-down areas;*
- *provision for buses;*
- *provision for cyclists and pedestrians;*
- *the temporary access road.*

*In relation to all weather carparks, **there are adequate numbers of carspaces on the Club site for the existing Club and the proposed athletics facility.*** (Emphasis added).

9. Through this letter, Council confirms what it required to approve the "detailed plans" mentioned in condition 8. It is notably silent on the need to include in the detailed plans any grassed overflow car parking, and the letter also excuses the requirement for new all weather carparking to be included in the detailed plans through Council's acknowledgement that adequate numbers of car spaces already exist on the existing Club site.

10. This is important because the penultimate and ultimate paragraphs of condition 8 left to Council the approval of what was ultimately to be included in the "detailed plans". Condition 8 reads:

*"8 The **design** of the access roads and carparking for the development is to include:*

- *provision for set-down areas*
- *provision for buses*
- *provision for cyclists and pedestrians. Bicycle parking is to be in a secure area near to the development*
- *the temporary and ultimate access roads*
- *the road corridor from the western carpark to Beckingham Road*
- *provision for 150 all-weather parking spaces near to the development*
- *an additional 150 carparking spaces to be provided as grassed overflow parking.*

*Detailed plans are to be submitted to and **approved by Council prior to issue of a Construction Certificate.***

All works are to be completed and approved by Council prior to commencement of operations of the development." (Emphasis added).

11. Given that Council then issued the Construction Certificate and by implication "approved" the "detailed plans", an inference is available that condition 8 was satisfied at that time.
12. It also needs to be recognised that the Construction Certificate plans also become part of the development consent. Section 80(12) of the *Environmental Planning & Assessment Act 1979* (as at 2000) stated:

"(12) Effect of issuing construction certificate

If a consent authority or an accredited certifier issues a construction certificate, the construction certificate and any approved plans and specifications issued with respect to that construction certificate are taken to form part of the relevant development consent (other than for the purposes of section 96)." (Emphasis added).

13. The primacy of the Construction Certificate has been reinforced in various decisions in the last decade handed down by the NSW Court of Appeal (see *Bunderra Holdings Pty Ltd v Pasmenco Cockle Creek Smelter Pty Ltd* (2017) 96 NSWLR 434; [2017] NSWCA 263 at [211]-[217]; *Settlers Estate Pty Ltd v Penrith City Council* [2021] NSWCA 13; 247 LGERA 84 at [16], and *Burwood Council v Ralan Burwood Ltd* (2014) 206 LGERA 40; [2014] NSWCA 404 at [202]).
14. If the above is not accepted, Council also issued an Occupation Certificate on 22 September 2000, which provided another opportunity for Council to raise any issue with condition 8 pursuant to its further approval role conferred by the condition. We have not located any record of any issue arising at this stage following recent GIPA applications being made to Council.
15. Moreover, subsequent consents granted also make no mention of the need for further carparking to satisfy condition 8 of DA 420/98, which is relevant because condition 8 needed to be satisfied both prior to the issue of the construction certificate and prior to operation. The athletics track had been operating, and subsequent consents were being granted, again indicating no issue with compliance with the original condition 8. For example, the stamped plans for the Grandstand Consent (DA/56/2016, stamped on 19 February 2016) notably show "existing carparking" as follows on the Precinct Plan prepared by Graphite Architects (sheet SK 001, rev 2, dated 15.05.07):



16. No grassed overflow parking is labelled in the stamped plans for the Grandstand Consent (DA/56/2016).
17. Ultimately the historical development consent for the athletics track (DA 420/98) provides no express requirement for the continued maintenance of either hardstand or grassed overflow carparking. Reading the condition carefully, all that is required expressly is for the Applicant to submit detailed plans to Council, and then for Council to provide its approval as to the carparking detailed.
18. As discussed by the Land and Environment Court in *Howarth v Gosford City Council (No 2)* (2014) 204 LGERA 425, at [189] quoting *Scott v Wollongong City Council* (1992) 75 LGRA 112, at 118-9:

"it is common for development consent conditions to stipulate matters 'to be left for later' and for 'final decision by the consent authority or by some delegate or officer to whose satisfaction, for example, specified work is to be performed."
19. That appears to be what has occurred here. In this regard, the earlier development consent (DA 420/98) left it open to Council to approve the precise carparking arrangements needed to a later point in time.
20. In drafting condition 8 in this way, the condition defers what is required regarding to carparking to the approval of Council at two temporal checkpoints: the Construction Certificate; and prior to the commencement of operations of the athletics track development. In this instance, the requirements for carparking were deemed by Council to

be unnecessary for the reason given in the letter received by Mingara on 25 October 1999, namely the existing Club provided sufficient carparking spaces. We have outlined above that this led to the construction certificate plans subsequently omitting any grassed overflow parking or all weather parking on the precinct dedicated to the athletics facility.

21. To the extent any residual doubt exists, we also consider the presumption of regularity would also lead to the situation where condition 8 is deemed to have been satisfied. In this regard, in *Darley Australia Pty Ltd v Walfertan Processors Pty Ltd* [2012] NSWCA 48 McColl JA in the NSW Court of Appeal stated at [115] the following:

"115 The presumption of regularity has also been described as one which "arises from the ordinary course of business", being "a rule of very general application, that where an act is done which can be done legally only after the performance of some prior act, proof of the later carries with it a presumption of the due performance of the prior act": McLean Bros & Rigg Ltd v Grice [1906] HCA 1; (1906) 4 CLR 835 (at 850) per Griffith CJ (Barton and O'Connor JJ agreeing), citing Knox County v Ninth National Bank 147 US 91 (1893). In Minister for Natural Resources v NSW Aboriginal Land Council (at 164) McHugh JA explained its operation in the public law context as follows:

*"Where a public official or authority purports to exercise a power or to do an act in the course of his duties, a presumption arises that **all conditions necessary to the exercise of that power or the doing of that act have been fulfilled.**"* (Emphasis added).

22. In our view, the presumption operates here, as Council would not have issued either the Construction Certificate, the Occupation Certificate, or subsequent development consents had condition 8 not been satisfied.

Alternative position

23. Even if we are wrong about this, based on the Event Traffic Management Plan prepared by Traffix (a suitably qualified traffic engineer) (**attachment 3**) and the Transport and Accessibility Impact Assessment prepared by Traffix (**attachment 4**) for the State significant development application, the site has capacity to accommodate the carparking. Specifically:
- (a) 150 all weather spaces for the athletics track can be accommodated within the Clubs existing carpark (see page 44 of the Transport and Accessibility Impact Assessment). That is notably the same - coming to the same conclusion that council did in their letter dated 25 October 1999.
 - (b) there is space for 150 grassed overflow car spaces located on grass within the precinct which will not be interfered with by the State significant development application. A plan prepared by Traffix is provided at **attachment 5** (SK.01 rev A) showing this.
24. Although our view is that the consent does not require the provision of 150 grassed overflow car spaces, even if that requirement were held to continue, the consent does not specify the precise location for accommodating those car spaces, which as explained above was left to be determined post-consent.
25. Nevertheless, the Traffix plan (attachment 5) shows availability for over 150 grassed overflow spaces is located in an area which will remain untouched by the proposed State significant development, and is near to the athletics track. **Conclusion**

28 November 2025

26. It is our view that the historical development consent contains no ongoing carparking requirements, and no amendment to the original athletics track consent (DA 420/98) is required. Even if further parking for the athletics track was required, as shown in the attached documents, there is sufficient space for over 150 grassed overflow car spaces.

Yours faithfully

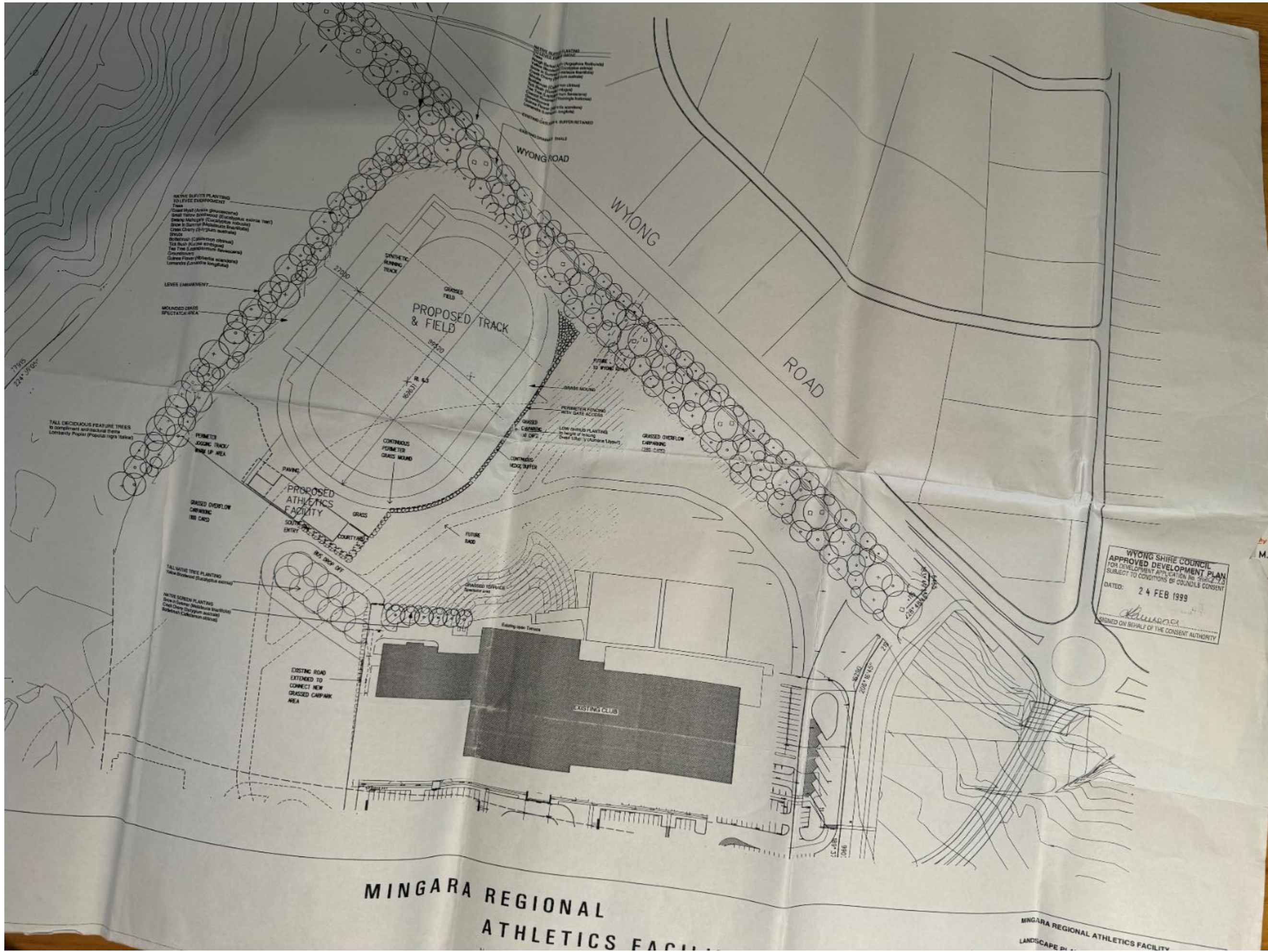


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NATIVE BUFFER PLANTING TO LIFE ENHANCEMENT
 Tree
 Coast Sheoak (Acacia glaucoconcolor)
 Small Tottlebush (Eucalyptus verticillata)
 Swamp Mahogany (Eucalyptus robusta)
 Snow Gums (Melaleuca leucadendron)
 Grass Oak (Grevillea robusta)
 Shrub
 Bottlebrush (Callistemon citrinus)
 Tea Bush (Kunzea ambigua)
 Tea Tree (Leptospermum laevis)
 Grevillea (Grevillea robusta)
 Lemnace (Lemnace laevigata)

LEVEE ENHANCEMENT

MOUNTED GRASS SPECTATOR AREA

TALL DECIDUOUS FEATURE TREES to complement architectural theme Lonsdale Paper (Liquidia rigida) (tree)

PERIMETER FENCING WITH GATE ACCESS

GRASED OVERFLOW CARPARKING (NO CAR)

TALL NATIVE TREE PLANTING (Eucalyptus verticillata)

NATIVE SCREEN PLANTING
 Small Tottlebush (Eucalyptus verticillata)
 Coast Sheoak (Acacia glaucoconcolor)
 Swamp Mahogany (Eucalyptus robusta)

EXISTING ROAD EXTENDED TO CONNECT NEW GRASED CARPARK AREA

WYONG SHIRE COUNCIL
APPROVED DEVELOPMENT PLAN
 FOR DEVELOPMENT APPLICATION No. 2008/270
 SUBJECT TO CONDITIONS OF COUNCIL'S CONSENT
 DATED: 24 FEB 1999
[Signature]
 SIGNED ON BEHALF OF THE CONSENT AUTHORITY

MINGARA REGIONAL
 ATHLETICS FACILITY

MINGARA REGIONAL ATHLETICS FACILITY
 LANDSCAPE PLAN



Athletics
DA

WYONG SHIRE COUNCIL
APPROVED DEVELOPMENT PLAN
FOR DEVELOPMENT APPLICATION NO. 102/1998
SUBJECT TO CONDITIONS OF COVENANTS CONTAINED
DATED: 24 FEB 1999
Mingara
SIGNED ON BEHALF OF THE CONSENT AUTHORITY

MINGARA REGIONAL
ATHLETICS FACILITY

November 1998

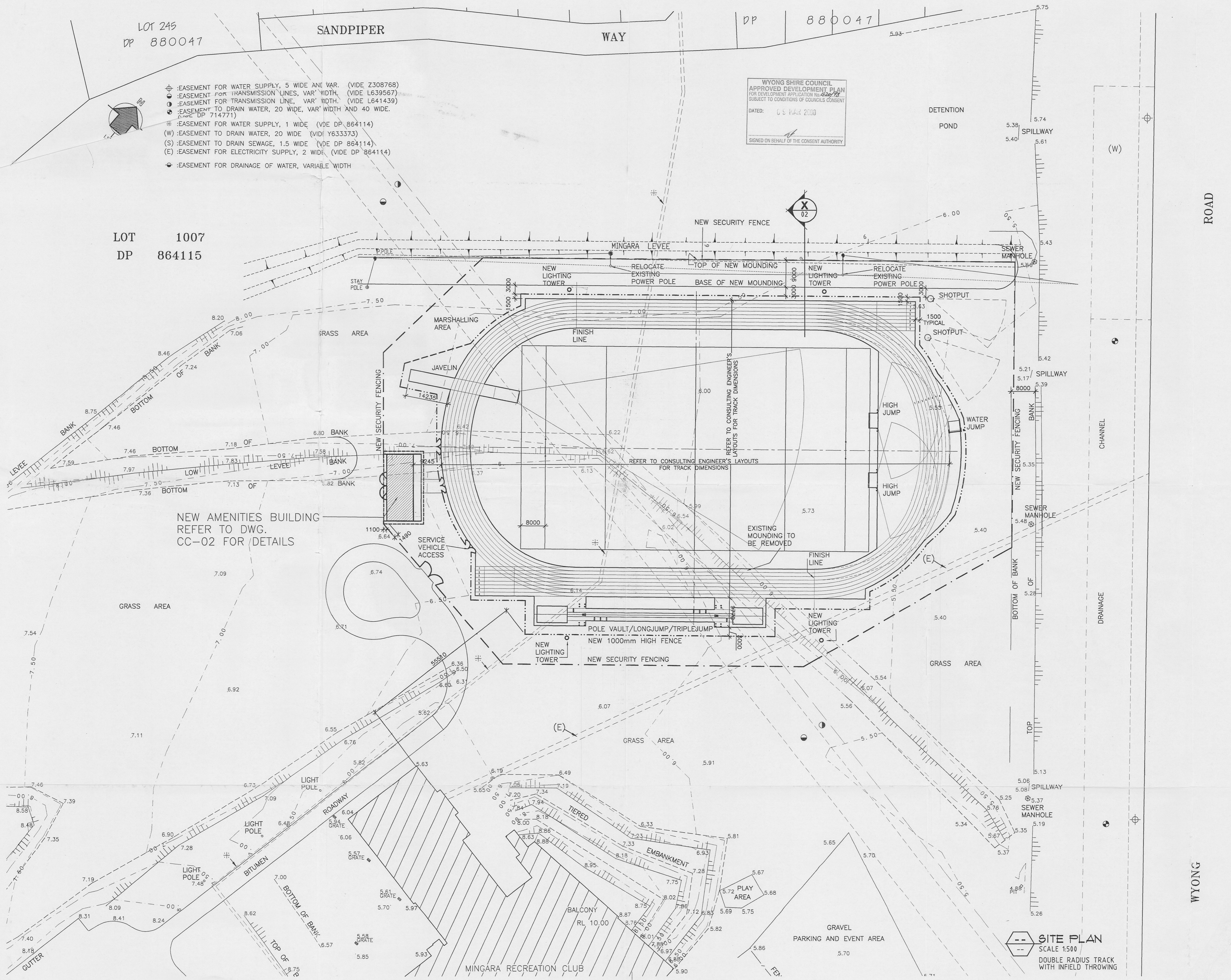
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DIMENSIONS
 Use Scaled dimensions in preference to as noted.
 Check all dimensions on site before fabrication or set out.

AUTHOR	SUPERINTENDENT	QUALITY CHECK
T.COTTER	T.COTTER	M.STIRLING

QUALITY CHECK		
DATE	CHECK STAGE	CHECKED

AMENDMENTS					
DATE	ISSUE	ACTIVITY	AUTH	SUPT	
9.11.99		DRAWING STARTED	TC	TC	
12.11.99	A	ISSUE FOR BA SUBMISSION	TC	TC	
12.1.00	B1	PAYNTER DIXON REQUEST - DRIVEWAY ALTERED	TC	TC	
	B2	SECURITY FENCE LAYOUT ALTERED			
	B3	NORTHERN JAVELIN LAYOUT DELETED			
	B4	PRELIMINARY WATERJUMP LAYOUT ADDED			
13.01.00	C	ALTER FENCE & GATE POSITION	AD	MS	
19.01.00	D1	FENCE ALTERED	AD	MS	
	D2	ROUNDBOUT REINSTATED			
04.02.2000	CC/A	AMENITIES BUILDING REPOSITIONED ISSUED FOR CONSTRUCTION CERTIFICATE	RDX	JB	
15.02.2000	CC/B	N/WEST BOUNDARY INDICATED AT 13500 FROM EDGE OF TRACK AT TOP OF NEW MOUNDING. N/EAST BOUNDARY EXTENDED TO MATCH	RDX	JB	



- ⊕ :EASEMENT FOR WATER SUPPLY, 5' WIDE AND VAR. (VIDE Z308768)
- :EASEMENT FOR TRANSMISSION LINES, VAR' WIDTH. (VIDE L639567)
- :EASEMENT FOR TRANSMISSION LINE, VAR' WIDTH. (VIDE L641439)
- ⊙ :EASEMENT TO DRAIN WATER, 20' WIDE, VAR' WIDTH AND 40' WIDE. (VIDE DP 714771)
- # :EASEMENT FOR WATER SUPPLY, 1' WIDE (VIDE DP 864114)
- (W) :EASEMENT TO DRAIN WATER, 20' WIDE (VIDE Y633373)
- (S) :EASEMENT TO DRAIN SEWAGE, 1.5' WIDE (VIDE DP 864114)
- (E) :EASEMENT FOR ELECTRICITY SUPPLY, 2' WIDE (VIDE DP 864114)
- ⊕ :EASEMENT FOR DRAINAGE OF WATER, VARIABLE WIDTH

WYONG SHIRE COUNCIL
 APPROVED DEVELOPMENT PLAN
 FOR DEVELOPMENT APPLICATION No. 426/99
 SUBJECT TO CONDITIONS OF COUNCIL'S CONSENT
 DATED: 03 MAY 2000
 SIGNED ON BEHALF OF THE CONSENT AUTHORITY

LOT 1007
 DP 864115

GRASS AREA

NEW AMENITIES BUILDING
 REFER TO DWG.
 CC-02 FOR DETAILS

SITE PLAN
 SCALE 1:500
 DOUBLE RADIUS TRACK
 WITH INFIELD THROWING

CLIENT CONTRACT NUMBER
MNG 1/4
 PROJECT
MINGARA RECREATION CLUB
 TITLE
ATHLETICS FACILITIES & AMENITIES BUILDING SITE PLAN

POWELL DODS & THORPE ARCHITECTS & INTERIORS
 P.D.T.
 154 Warrilow Street, Spring Hill, QLD, 4000 Australia Tel: 61 7 2211 1200
 Fax: 61 7 2212 1202
 PO BOX 2000, Brisbane, QLD, 4000 Australia Tel: 61 7 2212 1202
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 Level 2, 10-18 Cliff Street, Milsons Head, NSW, 2082 Australia Tel: 61 2 9922 8544
 Fax: 61 2 9922 8756
 Level 20, 108 Bank Street, Carrieton, VIC, 3083 Australia Tel: 64 9 320 6200
 Fax: 64 9 358 7540

PAYNTER DIXON CONSTRUCTIONS (AUST) Pty Ltd
 320 Liverpool Road, Ashfield NSW 2131 Australia Tel: (02) 9797 5555
 A.C.N. 061 149 415 Fax: (02) 9798 5005

JOB No.	STAGE	DRAWING No.	ISSUE
2886	CC	01	B

DO NOT SCALE

LOT 245
DP 8 8 0 0 4 7

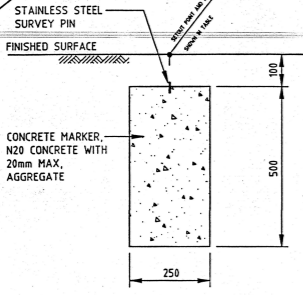
SANDPIPER WAY

DP 8 8 0 0 4 7

- ⊕ ASSESSMENT FOR WATER SUPPLY, 5 WIDE AND VAR. (CODE 2304183)
- ⊕ ASSESSMENT FOR TRANSMISSION LINE, VAR WIDTH. (CODE L435473)
- ⊕ ASSESSMENT FOR TRANSMISSION LINE, VAR WIDTH. (CODE L414393)
- ⊕ ASSESSMENT FOR DRAIN WATER, 20 WIDE, VAR WIDTH AND 40 WIDE. (CODE DP 714771)
- ⊕ ASSESSMENT FOR WATER SUPPLY, 1 WIDE (CODE DP 864115)
- (M) ASSESSMENT TO DRAIN WATER, 20 WIDE (CODE V432373)
- (S) ASSESSMENT TO DRAIN SERVICE, 1.5 WIDE (CODE DP 864114)
- (E) ASSESSMENT FOR ELECTRICITY SUPPLY, 2 WIDE (CODE DP 864114)
- ⊕ ASSESSMENT FOR DRAINAGE OF WATER, VARIABLE WIDTH

PROPOSED 150mm WATERMAIN EXTENSION
DESIGN & CONSTRUCTION BY OTHERS.

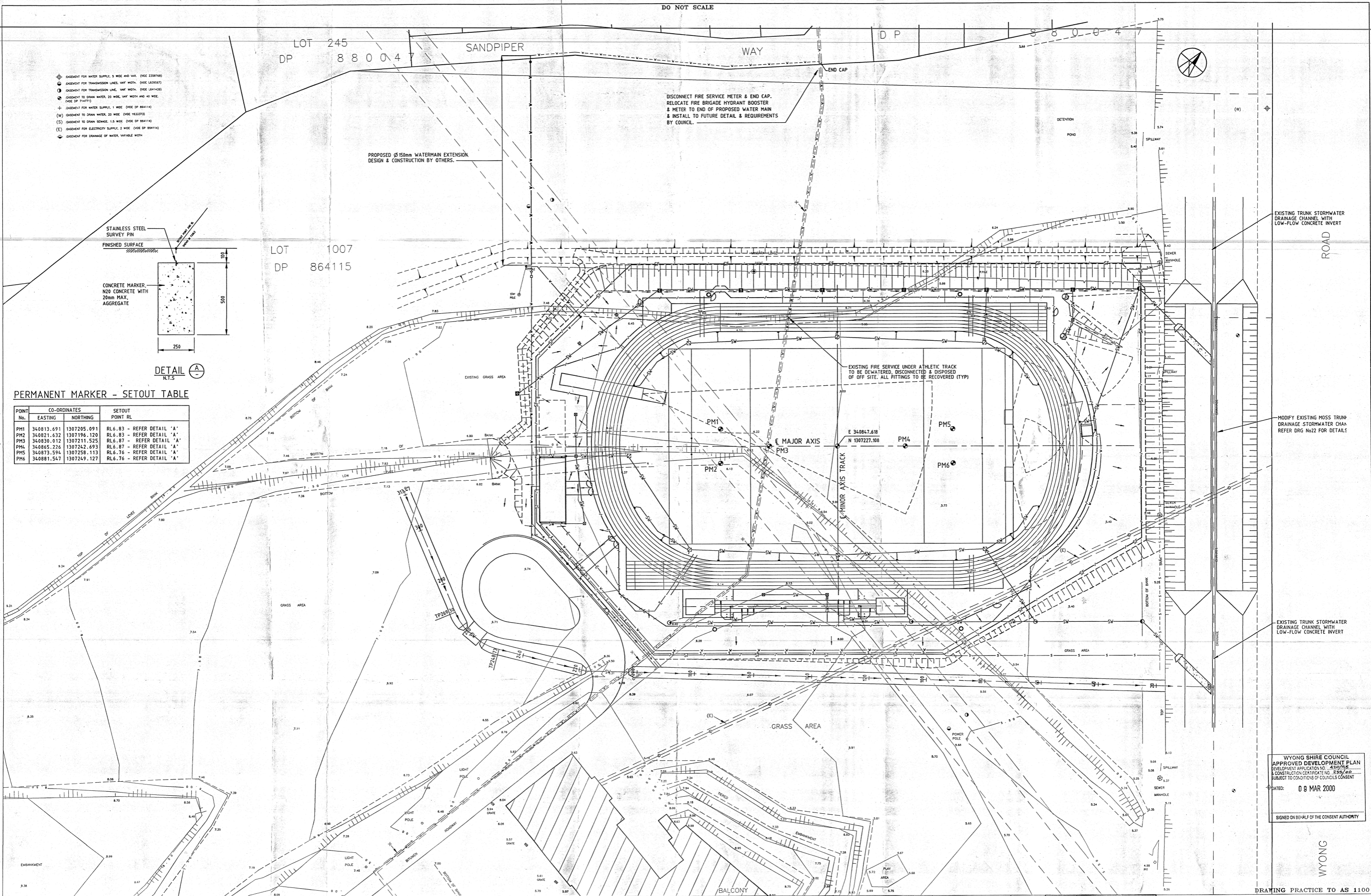
DISCONNECT FIRE SERVICE METER & END CAP.
RELOCATE FIRE BRIGADE HYDRANT BOOSTER
& METER TO END OF PROPOSED WATER MAIN
& INSTALL TO FUTURE DETAIL & REQUIREMENTS
BY COUNCIL.



LOT 1007
DP 864115

PERMANENT MARKER - SETOUT TABLE

POINT No.	CO-ORDINATES		SETOUT POINT RL
	EASTING	NORTHING	
PM1	340813.691	1307205.091	RL 6.83 - REFER DETAIL 'A'
PM2	340821.632	1307196.120	RL 6.83 - REFER DETAIL 'A'
PM3	340830.012	1307211.525	RL 6.87 - REFER DETAIL 'A'
PM4	340865.226	1307242.693	RL 6.87 - REFER DETAIL 'A'
PM5	340873.594	1307258.113	RL 6.76 - REFER DETAIL 'A'
PM6	340881.547	1307249.127	RL 6.76 - REFER DETAIL 'A'



EXISTING TRUNK STORMWATER DRAINAGE CHANNEL WITH LOW-FLOW CONCRETE INVERT

MODIFY EXISTING MOSS TRUN DRAINAGE STORMWATER CHAN REFER DRG N022 FOR DETAILS

EXISTING TRUNK STORMWATER DRAINAGE CHANNEL WITH LOW-FLOW CONCRETE INVERT

WYONG SHIRE COUNCIL
APPROVED DEVELOPMENT PLAN
DEVELOPMENT APPLICATION NO. 235/99
& CONSTRUCTION CERTIFICATE NO. 235/99
SUBJECT TO CONDITIONS OF COUNCIL'S CONSENT
DATED: 08 MAR 2000
SIGNED ON BEHALF OF THE CONSENT AUTHORITY

WYONG

DRAWING PRACTICE TO AS 1100

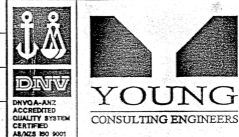
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No.	DESIGN	DATE	VERIF.	DATE	AMENDMENT
F		18/02/00			REVISED TENDER ISSUE, WATERMAIN ADJUSTED, PATHWAY ADDED
E		11/2/00			TENDER ISSUE
D		04/02/00			FOR COUNCIL APPROVAL
C		03/02/00			DRAFT
B		01/02/00			WATER JUMP ADDED, JAVELIN RUNWAY REMOVED
A	GJ	NOV. 99			TENDER REVIEW

No.	DESIGN	DATE	VERIF.	DATE	AMENDMENT
F		18/02/00			REVISED TENDER ISSUE, WATERMAIN ADJUSTED, PATHWAY ADDED
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A	GJ	NOV. 99			TENDER REVIEW

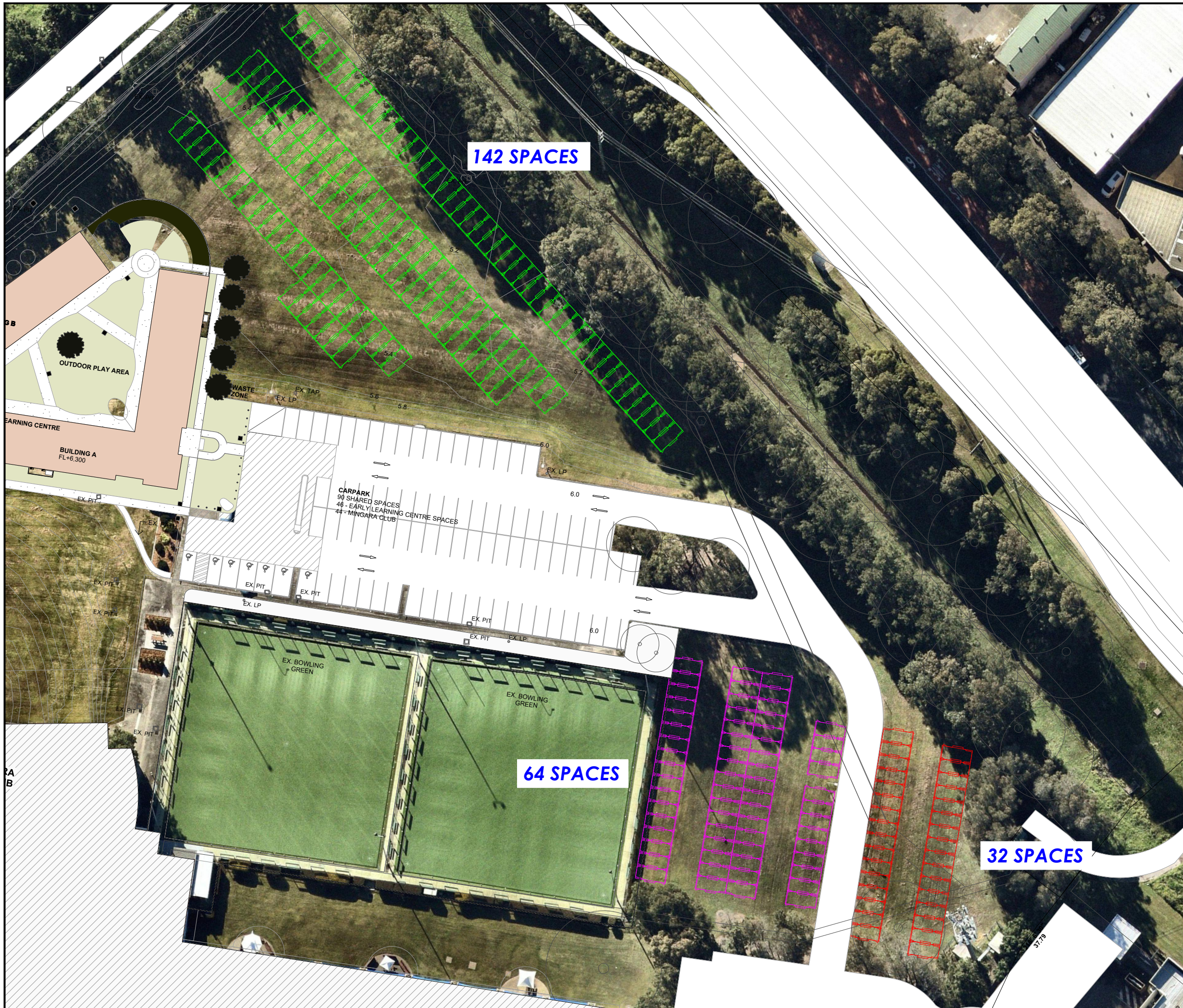


DRAWN	DESIGNED	DATE
G.J.		
DATE	VERIFIED	DATE
NOV. 1999		
SCALE	APPROVED	DATE
1:500		



ATHLETICS FACILITY
MINGARA RECREATION CLUB
SITE PLAN
No. IN SET
DRAWING No. 999194 - 2
REV F

380 PENNANT HILLS ROAD, PENNANT HILLS, NSW 2120
PHONE (02) 99802550 FAX (02) 99802556



Notes:

This drawing is prepared for information purposes only. It is not to be used for construction.

TRAFFIX is responsible for vehicle swept path diagrams and/or drawing mark-ups only. Base drawing prepared by others.

Vehicle swept path diagrams prepared using computer generated turning path software and associated CAD drawing platforms. Vehicle data based upon relevant Australian Standards (AS/NZS 2890.1:2004 Parking facilities - Off-street car parking, and/or AS2890.2:2002 Parking facilities - Off-street commercial vehicle facilities). These standards embody a degree of tolerance, however the vehicle characteristics in these standards represent a suitable design vehicle and do not account for all variations in vehicle dimensions / specifications and/or driver ability or behaviour.

Rev.	Revision Note	By.	Date
A	Swept Path Analysis	SH	03-06-25

Swept Path Legend

	Wheel Path
	Vehicle Body Envelope
	Clearance Envelope (300mm)

Architect
Marchese Partners

Client
Parifer Pty Ltd

Scale / Plan Orientation



Project Description
Tumbi Umbi Retirement Living

Drawing Prepared By

TRAFFIX
TRAFFIC AND TRANSPORT PLANNERS

Suite 2.08, 50 Holt Street t: +61 2 8324 8700
Surry Hills, NSW 2010 f: +61 2 9830 4481
PO Box 1124 w: www.traffix.com.au
Strawberry Hills, NSW 2012

Drawing Title
Overflow Car Parking Analysis

Drawn: SH Checked: BL Date: 03-06-25

23.303d26v02 TRAFFIX [Aerial] Design Review (Overflow Parking).dwg

Project No.	Drawing Phase	Drawing No.	Rev.
23.303	SDDA	SK.01	A