

23 December 2008

Sam Haddad
Director General
Department of Planning
23-33 Bridge Street
SYDNEY NSW 2000

Attention: Simon Bennett

Dear Mr Haddad

**Modification to MP 08_0069 Potts Hill
Stage 1 Civil Infrastructure Works Project Application**

We refer to the abovementioned Project Application for the Stage 1 Civil Infrastructure Works at Potts Hill (Bankstown LGA) approved by the Minister for Planning on 26 November 2008.

Landcom writes to request the Minister (or her delegate) to modify the consent for Project Application MP 08_0069 under Section 75W of the *Environmental Planning and Assessment Act 1979* as described below. Consistent with the provisions of relevant legislation, please also find enclosed the fee of \$750.00 for the assessment of the request.

The modification comprises two elements:

- (a) Additional earthworks associated with the approved works on the eastern precinct that are proposed within the western precinct; and
- (b) Following a review of the Instrument of Approval, we are of the view that several conditions either limit or impose significant and unreasonable requirements upon the development. Our proposed modifications would not alter or detrimentally affect the intent of the conditions and would provide certainty and flexibility for both our client and the Department of Planning.

The details are set out below.

Additional earthworks within the western precinct

The approved earthworks will require the construction of a "borrow pit" of approximately 50,000m³ of soil which will be excavated from the Western Precinct and transferred to the Eastern Precinct.



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The proposed dimensions and location of the borrow pit is shown on the plans prepared by J Wyndam Prince and are marked Attachments A and B respectively. It is located wholly within the land to which the approval of Project Application MP 08_0069 applies. The opportunity to source the material onsite within the western precinct and relocate to the eastern precinct will have minimal impact. The following assessment outlines those impacts.

Environmental Assessment of the Borrow Pit

Geotechnical conditions

The Coffey Geotechnics report date 30 January 2008, titled "Project 50363- Potts Hill Geotechnical Investigation Report", identified the site of the proposed Borrow Pit to be within Zones 2 and 3. This report noted the fill to be generally crushed shale with depths of between 5.2m to 8.9m. The general description of the material was a silty clay with crushed shale fragments of low to medium plasticity. The report confirms that the fill was created by placement of excavated natural materials during Reservoir construction.

Traffic

The contractor appointed to carry out the approved bulk earthworks and excavation works will also be responsible for moving soil between the borrow pit and the Eastern Precinct along pathways wholly within the site. As a result, there will be no traffic movements on the surrounding road network arising from the proposed modification.

Ecology

As indicated on the location plan for the borrow pit, the subject site does not contain any vegetation of significance, and as a result will not have any detrimental effects on the ecology of the site.

Heritage

The borrow pit is located outside the revised State Heritage Register boundary recently approved by the Heritage Council. As a result, there will be no heritage impacts arising from the proposal.

Soil Contamination

The Coffey Geotechnics Report confirms that typically no contaminated material was found in the area of the proposed Borrow Pit. The report noted that some local areas of fill may contain construction waste such as asphalt, scrap metal and glass fragments. The excavation and removal of the fill from the borrow pit will be overseen by an experienced engineering contract superintendent. If any contaminated materials are identified during the excavation operation, the material will be separately stockpiled, screened and tested and all waste materials removed from site to an approved waste disposal authority.

Landcom believes that the existing consent conditions for the Project Application (MP 08_0069) can also address the impacts generated by this additional scope of work.

Modification of Consent Conditions and Statements of Commitment

The Minister's determination of the Project Application Approval (MP 08_0069) includes a number of conditions including Condition 1 – Development description (Condition 1), Condition 5 – Public dedication of roads (Condition 5), and Condition 15 – Dust control measures (Condition 15). Their current requirements, scope of proposed modification (**identified in bold**) and justification are outlined in the following paragraphs.

a) Condition 1 – Development description

We note that the current wording of Condition 1 excludes the proposed excavation of soil from the borrow pit. To avoid any doubt about the scope of approved works, we request that Condition 1 be modified as follows:

“Condition 1 – Development description

Project approval is granted only to construction activities within the areas of the Potts Hill Reservoirs land identified as the Eastern Precinct, Bruncker Road Site, and Bagdad Street Site as described in the EA and amended in the PPR, principally:

- a) Disconnection, relocation, augmentation and reconnection of utilities and services;*
- b) Removal and proper disposal of hazardous materials and site remediation;*
- c) Demolition of 21 existing built structures and any associated subterranean elements identified as being of low or no heritage significance;*
- d) Removal of existing tress (sic) and vegetation/landscaping as necessary;*
- e) Bulk excavation and earthworks, **including extraction of soil from the Western Precinct as indicated on the approved plans;***
- f) Construction of two roads within the Eastern Precinct and associated retaining walls; and*
- g) Provision of new stormwater management and drainage infrastructure; and subdivision into nine lots.”*

Assuming the above wording is endorsed, Condition 2 – Development in accordance with plans and documentation would also need to be modified to make reference to the plans titled Revised Road 2 – private access (numbered 7337-03-01 dated 19 December, 2008) and Revised Road 1 – private access dated 4 December, 2008, at the bottom of the table in Condition 2.

b) Condition 5 – Public dedication of roads

During preparation of the original application, it was proposed to construct the two roads as public access roads and dedicate them to Bankstown City Council. Condition 5 acknowledges this position and requires construction of the roads in accordance with Council's relevant

standards and further requires the proponent to obtain written agreement from Council that it is willing to accept the dedication. However since the Minister for Planning's approval, Sydney Water Corporation has indicated that it may retain one or both of the proposed roads in private ownership.

We therefore request that Condition 5 be modified to allow Road 1 and / or Road 2 to be constructed and operated as a private road(s) should Sydney Water Corporation choose to do so. Attachments C,D, and E are plans prepared by Worley Parsons illustrating the specifications to which one or both roads would be constructed if retained as private roads. The requested rewording of Condition 5 is as follows:

"Condition 5 – Construction of roads

The proposed access roads may be constructed as either public or private roads.

In the event that the proposed public access roads are designed and constructed as public roads, they shall be designed in accordance with the relevant standards of Bankstown City Council and dedicated to Council as public roads, subject to the proponent obtaining the written agreement of Council prior to dedication of the roads. Should an agreement regarding the public dedication of the roads not be reached within 3 months from the date of this approval, or at such earlier time that negotiations have been exhausted, the proponent shall submit to the Department of Planning evidence of the attempts made to satisfy Council's concerns and the Director General shall determine the future designation of the roads.

In the event that one or both access roads are retained in private ownership, they shall be constructed to the specifications identified in plans dated 19th December, 2008. Appropriate easements under Section 88B or 88E of the Conveyancing Act, 1919 shall be submitted with the final plan of subdivision demonstrating any necessary restrictive covenants, easements, and / or rights of way required to provide access to the lots within the subdivision."

We note that the specifications of any future private road needs to be documented and accordingly we suggest that Condition 2 – Development in accordance with plans and documentation be modified by further inserting the words Revised Road 2 – private access (numbered 7337-03-01 dated 19 December, 2008) and Revised Road 1 – private access dated 4 December, 2008 at the bottom of the table in Condition 2.

b) Condition 15 – Dust control measures

Condition 15 requires the implementation of adequate measures to be taken to prevent dust from affecting the amenity of the surrounding area during construction. The condition further prohibits any dust resulting from contamination remediation procedures from leaving the site. We assume this condition has been imposed to reinforce our commitment to the preparation of an Environmental Management Plan which will address (amongst other things) the measures and standards to be implemented on the site to manage potential dust impacts.

Whilst there is absolutely no intention to deliberately release dust from the site, we are concerned that any unintentional release of dust would actually be a breach of the approval. Furthermore, we are not convinced that an auditor would sign off the condition as currently worded on the basis that no guarantee could be provided that dust hadn't escaped from the site. It is therefore our view that the approved wording renders total compliance with this condition impossible. Our suggested rewording of the condition (below) emphasises our commitment to minimising dust emissions, which we believe is the actual intent of the condition:

"Condition 15 – Dust control measures

Best endeavours shall be undertaken to prevent dust from affecting the amenity of the surrounding area during construction, in particular, any dust resulting from contamination remediation procedures".

Modifications to Statements of Commitments

The Statement of Commitments obligates Landcom to the carrying out of development in accordance with the approved plans, which indicate the construction of signalised intersections at Roads 1 and 2. As you are aware, Landcom has received advice from the RTA that signalisation is not required on Brunner Rd and Road 2 until 2016. In the meantime the RTA have requested that the intersection solution can accommodate the signalisation in 2016.

To avoid any future confusion, it is proposed to revise the Statements of Commitment to refer to an amended plan which does not indicate the intersection treatment for Road 2 and Brunner Rd. Further, we propose to comply with Condition 7 of the approval which requires us to comply with the RTA's (or the relevant roads authority's) standards.

The revised plan is marked Attachment F.

The proposed modifications reflect the current scope of works and will provide the level of flexibility required to proceed with the development, without raising any additional environmental planning assessment issues. In our view, these modifications are generally minor and consistent with the intent of the approval, and do not warrant any further advertising, notification or exhibition for public comment, or consultation with Council.

We trust this request for a modification contains all the necessary information and can be processed promptly to allow development on the site consistent with the Project Application Approval and the intent of the conditions at the time of approval.

A full set of the plans are included for your information.

If you have any queries or would like to discuss this matter further, please do not hesitate to contact me on 9841 8702 or nwoodrow@landcom.nsw.gov.au.

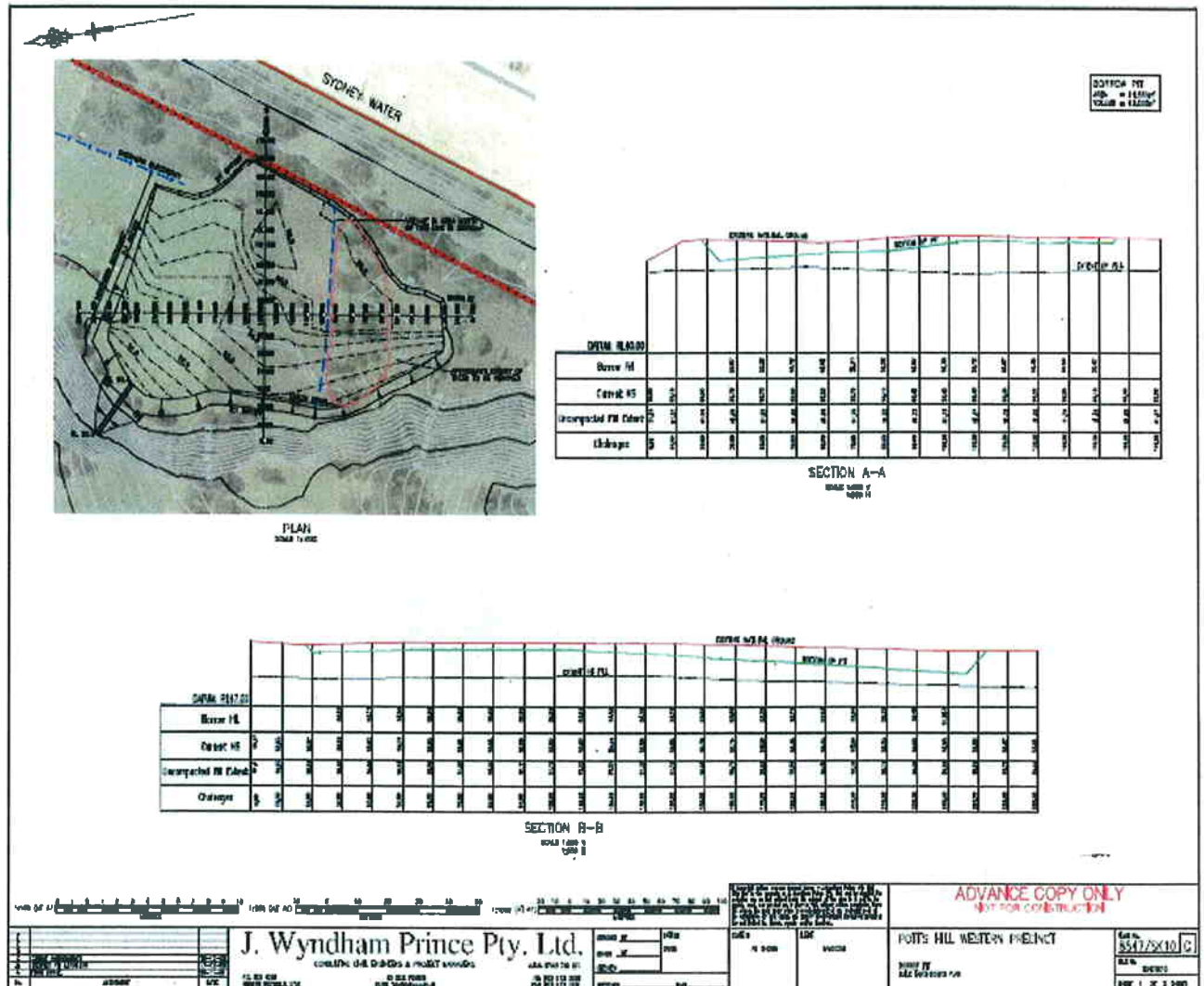
Yours sincerely,

NWoodrow

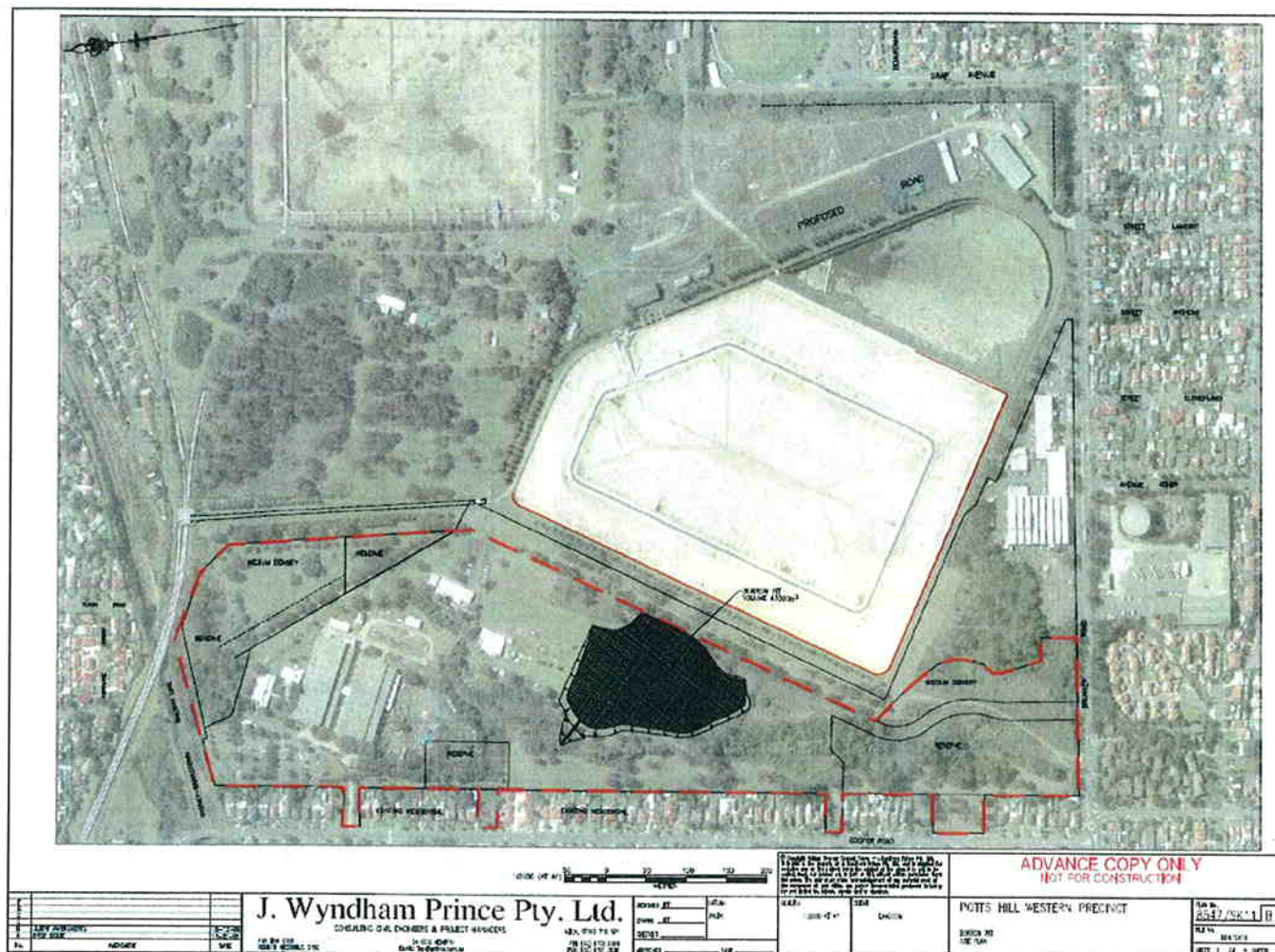
23.12.08.

Nicole Woodrow
Senior Development Manager

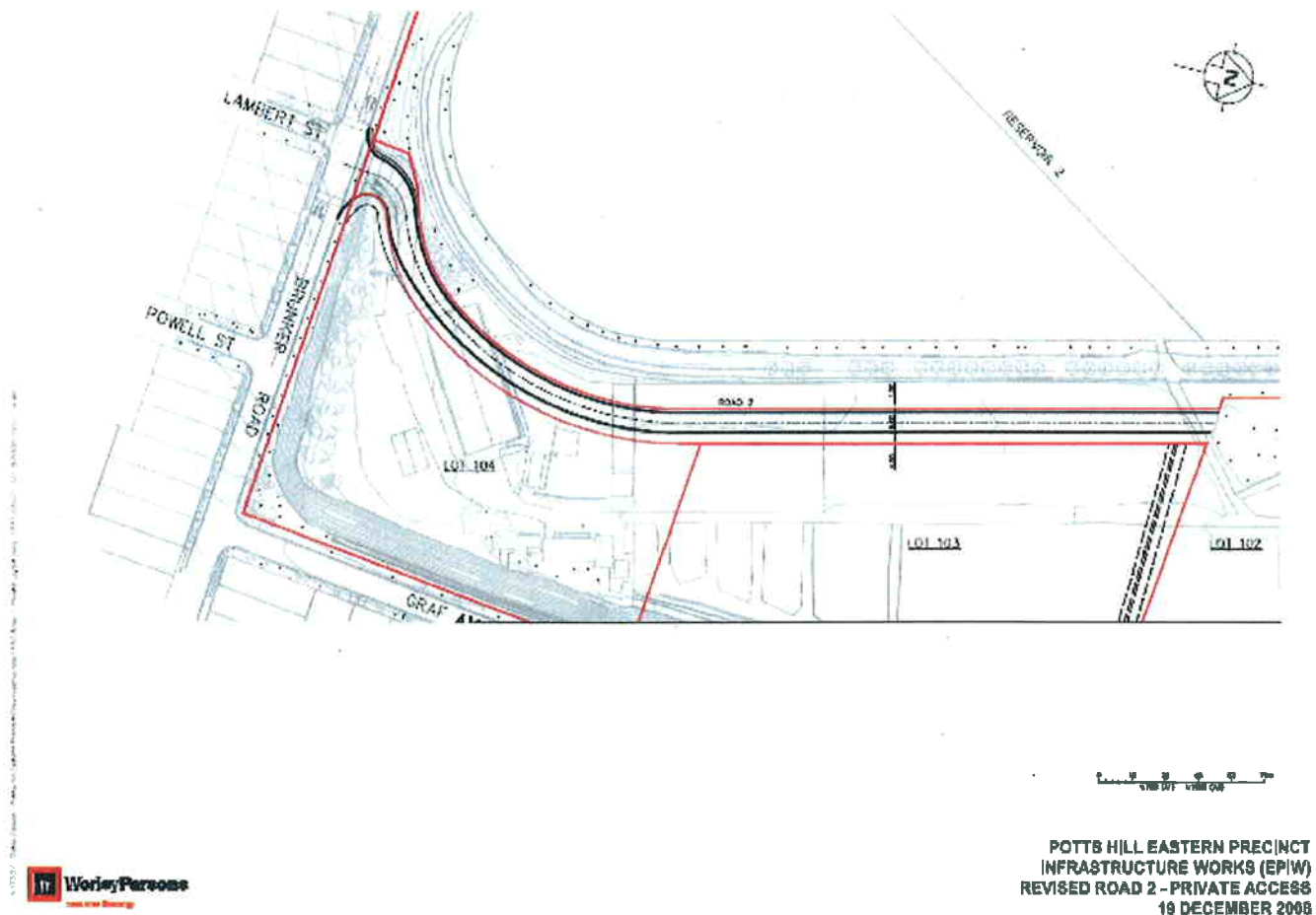
Attachment A – Profile of the proposed "Borrow Pit".



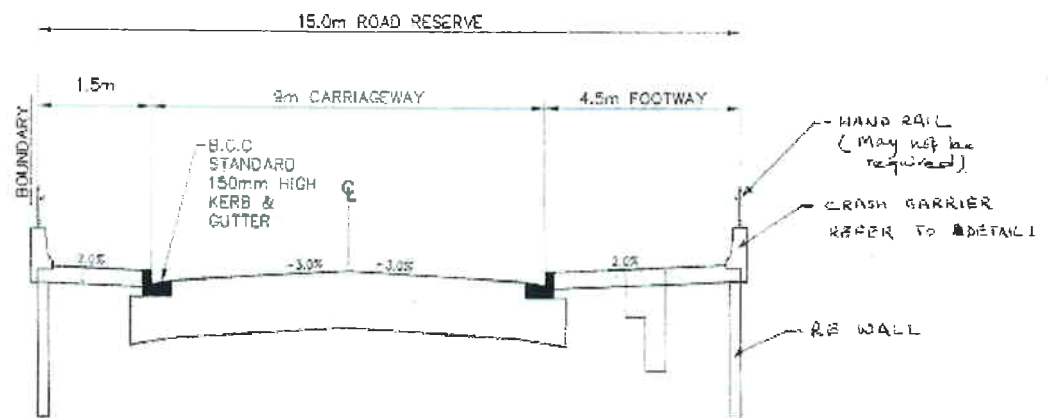
Attachment B – Location of the proposed "Borrow Pit"



Attachment C – Road 2 – Proposed Private Access



Attachment D – Road 1 and 2 typical cross section

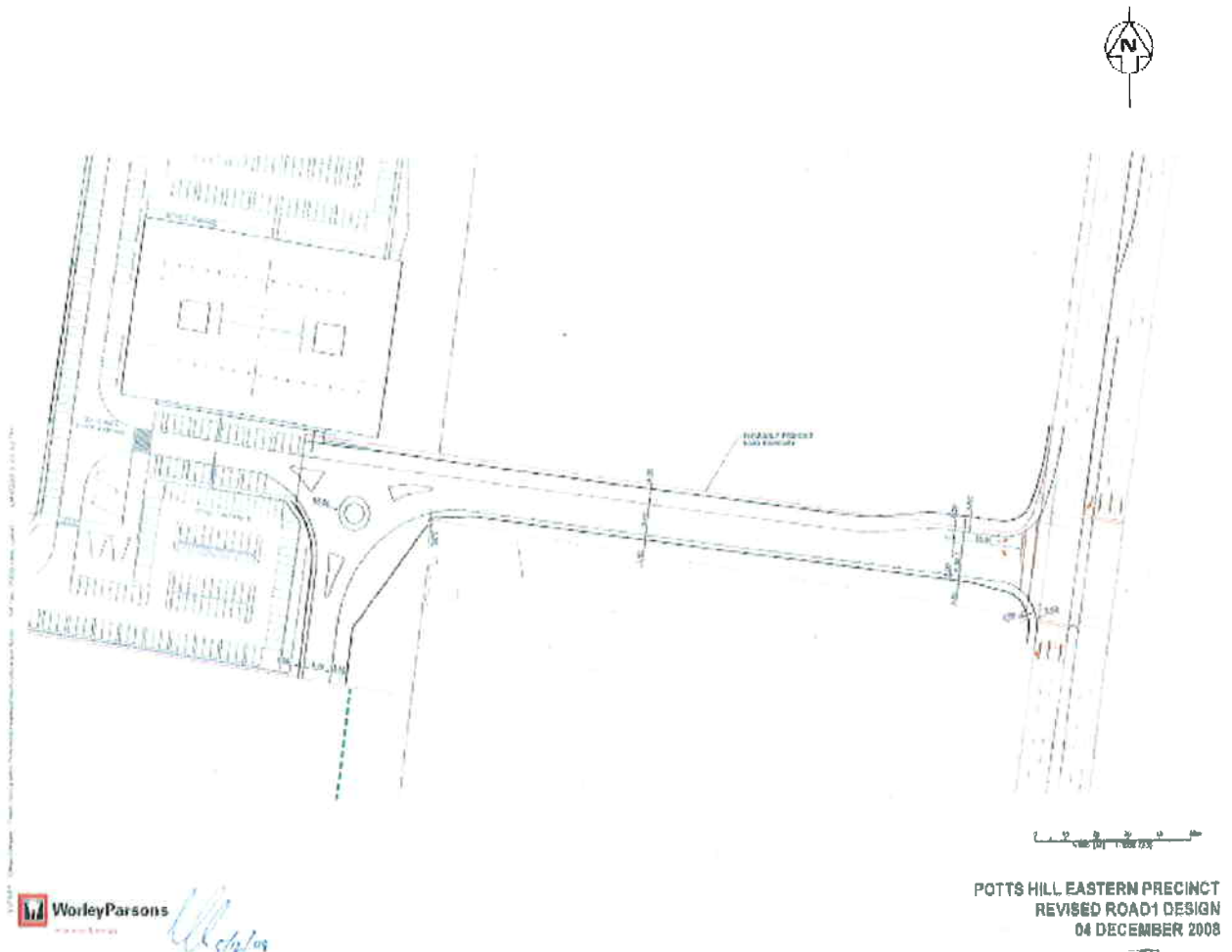


ROAD 1 TYPICAL CROSS SECTION 1

SCALE 1:100

Rev. 001 1.1.2011

Attachment E – Road 1 – Proposed Private Access



Attachment F – Revised Site Layout Plan