

Fishermans Bay Management Pty Ltd

Land Division (1 into 432 allotments)

Fisherman Bay Settlement –
 Allotment 4 Fisherman Bay Road, Fisherman Bay

DA 344/D007/10

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Fisherman's Bay



Source – Postcard provided by the Applicant

OVERVIEW

Application No	344/D007/10
Unique ID/KNET ID	35472
Applicant	Fisherman's Bay Management Pty Ltd
Proposal	Land Division (1 into 432)
Subject Land	Fisherman's Bay Settlement [Allotment 4, File Plan: 2184 – Certificate of Title: Volume: 5503 / Folio:193]
Zone/Policy Area	Township Zone, Coastal Zone & General Farming Zone
Relevant Authority	State Commission Assessment Panel (SCAP)
Lodgement Date	29 July 2010
Council	District Council of Barunga West
Development Plan	21 February 2008
Type of Development	Merit
Public Notification	Category 1
Referral Agencies	Environment Protection Authority DEWNR – Coastal Protection Board District Council of Barunga West DOH – Environmental Health
Report Author	Ben Green, Consultant Planner
RECOMMENDATION	Development Plan Consent subject to Conditions

EXECUTIVE SUMMARY

The current land division application was lodged on 29 July 2010 and seeks to divide the subject land at Fisherman's Bay into 432 additional free hold allotments to reflect the current pattern of settlement zoned Township in the Development Plan.

At present the ability to occupy and use the land at Fisherman's Bay is controlled via annual licenses issued by the owners of the land Fisherman's Bay Management Pty Ltd (FBM) to individual licensees. Those licensees have developed 'shacks', dwellings and other structures (to varying standard) on the land that they currently do not own outright under free hold title.

The proposed land division is linked to the separate current approvals of the construction of coastal protection works (levee and seawall) and waste water treatment plant (WWTP) by way of an agreed Infrastructure Deed and bank mortgage between Council and the applicant to ensure that the proposed allotments are suitable for their intended residential use.

The key issue with this land division has been the ability to ensure that the proposed residential allotments (through the free hold process) were protected from future inundation / sea level rise through an appropriate coast protection strategy (levee and sea wall) and that the issue of adequately dealing with wastewater management be achieved through the replacement of on-site / ad-hoc septic systems with an appropriate community scheme (WWTP). The signed Infrastructure Deed and bank mortgage between the applicant and Council now ensure that the infrastructure required for this project can be delivered, with adequate security, within a reasonable timeframe.

The application was previously categorised by DAC as a 'consent on-merit' and Category 1 form of development, and it is on this basis that this report has been prepared with a recommendation of approval subject to a number of conditions for consideration by the State Commission Assessment Panel.

ASSESSMENT REPORT

1. BACKGROUND

Fisherman's Bay is a holiday 'shack' area that has developed on private land over approximately 80 years and now comprises over 400 shacks on parcels of land of various sizes. The proposal is to move from an annual lease system of tenure to a titled subdivision that will enable the purchase of allotments within the settlement and provide a more appropriate level of infrastructure.

The current land division application was lodged on 29 July 2010 and seeks to divide the subject land into 432 additional allotments to reflect the current pattern of settlement.

Proposed allotment sizes vary in size from 141m² to 2001m² (excluding reserves) and creates an average density of approximately 600m².

A previous land division application (DA 344/D006/99) was assessed and approved by the Council, but lapsed without a clearance certificate being granted by the Commission.

The current land division application is being assessed by SCAP as a Category 1 'consent on-merit' form of development and has been referred to relevant state agencies for comment – including the Environment Protection Authority, the Coast Protection Board, Transport Services (DPTI), Crown Lands (DEWNR) and SA Water Corporation.

Due to the various complexities of the proposal, combined with the number of key stakeholders with competing points of view and different decision powers, the assessment of the proposal stalled and communication between the Applicant, Fisherman's Bay Management Pty Ltd (FBM) and Council had deteriorated.

At the request of Council, DAC was appointed the relevant planning authority by the Minister for Planning pursuant to Section 34(1)(b)(iii) of the *Development Act 1993*.

An independent facilitator (Ms Simone Fogarty - GHD) was also appointed by the Department to assist in identifying and resolving outstanding issues. A report on these matters was finalised by Ms Fogarty in June 2012, which identified –

- that the core issue revolved around how the proposed infrastructure works (namely the construction of a seawall and a waste water treatment plant) to support the development would be funded and delivered, and then backed by appropriate liability and maintenance periods that might be required in the future to cater for a 100-year scenario.

And to ensure that the proposed allotments were protected from future inundation / sea level rise through an appropriate coast protection strategy and that the issue of adequately dealing with wastewater management, be achieved through the replacement of on-site / ad-hoc systems with an appropriate community scheme.

At its meeting of 28 June 2012, the Commission resolved to defer further consideration of the land division application pending the provision of further information and resolution of the following matters:

- Coast Protection Strategy: that addresses both coastal flooding and erosion to the satisfaction of the Coast Protection Board and the Commission;
- Wastewater Treatment system: required to service existing and future development within the area of the land division;

- Public roads and footpaths: designed and constructed to Council specifications, noting the state of existing infrastructure and the need to achieve practical and cost-effective outcomes for a coastal shack settlement.
- Stormwater Management: to be detailed in a concept plan that can meet Council's broad requirements and then be dealt with as a condition to allow detailed design;
- Building Fire safety: a number of buildings are unlikely to meet the requirements of Regulation 5A of the *Development Regulations 2008* primarily relating to meeting shacks being located within the specified setback requirements for fire safety under the Building Code of Australia. To this end, a number of options will need to be considered to ensure compliance, from structural upgrades to demolition
- Open space: the provision of open space, and/or financial contribution in lieu is to be determined.

An amended land division plan was lodged on 18 April 2017, along with supporting information provided by Botten Levinson Lawyers on behalf of FBM, which aimed to address all outstanding matters raised at the 28 July 2012 DAC meeting. This information was re-referred to Council and state agencies for comment.

Notably, within the 5-year timeframe from DAC's deferral in 2012 until the amended plans and documentation were formally lodged with DAC, Botten Levinson Lawyers have confirmed by correspondence that the Attorney General, the Minister for Transport and Infrastructure and the Minister for Sustainability, Environment and Conservation have committed (by way of signed deed) to the granting of appropriate tenure to the Council for the construction and maintenance of the seawall. Further, both the Harbors land and the Crown land will be the subject of easements in favour of the Council. Due to the likely inherent delay of the process in granting an easement over the Crown land (estimated 2-year process) tenure over that land will be secured in the interim by a 10 year license. We note that in preparing this report that we have not been privy to any of this correspondence regarding the Ministers commitment or the 10-year license.

Pursuant to Section 41 of the *Development Act 1993*, the applicant commenced proceedings in the ERD Court in July 2017 seeking a decision on the proposal (which follows on from similar proceedings commenced in 2012). These proceedings are currently "on-hold" pending a decision from the SCAP.

To assist the Commission in its consideration of the matter, the Department engaged Ben Green & Associates to undertake an independent assessment of the amended proposal and prepare a report for the SCAP's consideration.

On 15 September 2017, DPTI staff and Mr Ben Green visited Fisherman's Bay, undertook an inspection of the land, and discussed the application with FBM Board Members on-site and Mr Andrew Cole, Chief Executive of the Council in the Council office.

Both FBM and Council have been working towards finalizing a number of binding instruments (namely an infrastructure deed and bank mortgages) to ensure that supporting infrastructure can be appropriately funded and delivered following the sale of certain allotments that are not subject to inundation to assist in funding the provision of infrastructure and namely the seawall.

Two related development applications, for the construction of a waste water treatment plant (DA 344/102/06) and a sea wall (DA 344/101/12), have been independently approved but not constructed. Both authorisations remain valid, having being extended to 14 July 2018 whilst the land division application remains to be determined. Although these applications were determined independently of the proposed land division, the land

division remains contingent on these “associated infrastructure works” being undertaken to ensure the proposed allotments can function and are suitable for their intended predominantly residential purpose. An Infrastructure Deed and bank mortgage between Council and FBM has been recently agreed by both parties which outlines the applicant’s obligations to undertake these works to the satisfaction of Council who will ultimately take on maintenance of the infrastructure (roads, drainage and seawall but not the WWTP).

As a side note, the District Council of Barunga West submitted a Statement of Intent (SOI) for a Fisherman Bay Residential Built Form Development Plan Amendment (DPA) to the Minister for Planning in January 2016. Commencement approval was granted in June 2016. This was also a key finding within the independent review of Ms Simone Fogarty in June 2012 that confirmed “... it would be appropriate to introduce additional Development Plan policy that describes the current character of the settlement, identifies those design elements that contribute to this character (e.g. more informal and less regular arrangements) and promotes the continuation of this character through various design and infrastructure standards”.

The proposed policy amendments seek to introduce more up-to-date and targeted built form/urban design policy for future residential development at Fisherman’s Bay. These guidelines or principles of development control are intended to take account of the unique nature of the Fisherman’s Bay location and the history of the smaller and somewhat irregular allotment size and pattern of the area.

The DPA does not seek to alter zone boundaries or rezone additional land for urban proposes, but simply seeks to provide additional targeted policy to improve on the current limited residential built form policy as it relates to the existing coastal settlement of Fisherman’s Bay.

At this point in time, no decision has been made on these policy amendments by the Minister for Planning.

DESCRIPTION OF PROPOSAL

Application details of the proposed land division are contained in the ATTACHMENTS.

The proposal is for a free hold Torrens Title land division to create 432 allotments within the Township Zone and General Farming Zone encompassing the existing coastal settlement of Fisherman’s Bay.

The proposal is linked to the separate approvals of the construction of coastal protection works (seawall) and waste water treatment plant (WWTP) by way of an agreed infrastructure deed and bank mortgage between Council and FBM to ensure that the proposed allotments are suitable for their intended residential use (as they will be protected from inundation) and that waste control is adequately dealt with in an environmentally appropriate manner.

The proposed Torrens Title allotments include:

- 402 allotments that reflect existing licenses to occupy settlement;
- 8 reserve allotments, including 2 drainage reserves;
- 22 allotments forming public roads.

The land division design and layout predominantly reflects the existing pattern of development within the Fisherman’s Bay Settlement as a free holding exercise for more permanent tenure (over the existing long standing residential use of the land) whilst also providing allotments over public roads and open space / drainage reserves to create a

more orderly township development with dwellings adequately supported and protected by appropriate levels of infrastructure.

At this point in time we have requested, but still not received, a survey plan that overlays the existing built form onto the land division to clearly confirm that the proposed land division is designed to reflect the existing built form. For all intents and purposes we have agreed that this is what is proposed and have assessed the application accordingly. We have been informed by Botten Levinson Lawyers that this survey plan will be provided prior to the SCAP meeting.

Seawall –

The approved seawall is external to the subject land (predominantly around the northern / eastern coastal side of the settlement) and is to be constructed mostly on Crown or Council reserve land (not under the control of the applicant) and is contained within Development Application 344/101/12, which was granted Development Approval on 14 July 2014. The purpose of the seawall is to protect the low lying land within the Fisherman's Bay settlement from inundation by coastal flood waters and future sea level rise. At present, the low lying areas of the settlement are subject to tidal inundation, at certain times, when sea water moves in from Spencer Gulf to Fishermans Bay, and also on the alternate tide when sea water moves out again from Fishermans Bay, through the wetlands east of the settlement, as the water moves back out to sea.

Waste Water Treatment Plant-

The approved WWTP is located on the same allotment south of the settlement on more elevated ground, however the development site is located within the General Farming Zone. The WWTP is intended to service each of the proposed allotments and receive/process the septic waste generated.

The WWTP is contained within Development Application 344/102/16 which was granted Development Approval on 14 May 2010. Dwellings within the settlement currently have their own septic systems that would not meet current environmental standards.

The WWTP will be operated by a Water Industry Entity under the *Water Industry Act*. The entity will be empowered under the Act to require properties to connect to the WWTP and charge all properties for the provision of waste water services, subject to price regulation by ESCOSA. The applicant does not propose for allotments to be connected to the WWTP prior to clearance as some 'shack' owners will be seeking to demolish their existing 'shacks' once the freeholding proceeds, presumably for redevelopment of a more substantial built form.

Both the seawall and WWTP have not yet been constructed. The period for substantial commencement of both applications has been extended to 14 July 2018. Substantial completion for both the seawall and the WWTP would be required by 14 July 2020.

The seawall and WWTP are considered fundamental to the merits of the proposed freehold land division as they serve to ensure the proposed allotments are suitable for their intended residential use. Whilst these components have been lodged and approved separately to the land division, they are inexorably linked as associated infrastructure works to the land division.

Noting this, the current application before the SCAP seeks to link these three elements (land division, seawall and WWTP) via an appropriate means of security such as an Infrastructure Deed and mortgage structure and relevant conditions of approval for the land division.

Security –

To ensure the works required for the seawall and WWTP are constructed within a reasonable timeframe an Infrastructure Deed and a mortgage structure has been nominated as appropriate mechanisms to ensure the sufficient delivery and the rollout of the infrastructure.

The development of the Infrastructure Deed and mortgage structure has taken some time to work through between the legal teams of the Council and the FBM but now both parties have signed the final version.

FBM essentially require the funds from the sale of some of the free hold allotments (not subject to inundation) to assist in constructing the seawall and other stormwater and drainage infrastructure to ensure landholdings are not subject to flooding and are safe and fit for their intended use.

In short, we understand the Council is generally supportive of the free holding process and the issuing of Titles prior to relevant infrastructure being installed provided there are appropriate legal mechanisms in place to ensure the funding and construction of the necessary works, and that this doesn't become a future issue / liability for Council and rate payers.

Generally, the terms in which all works required to undertake a land division are negotiated between the relevant parties (applicant and typically Council), meaning - the works are undertaken to a certain standard, or, the works are bonded to an agreed amount following Development Approval and prior to the issuing of Section 51 clearance ahead of the allotments being issued.

In this instance, the proposal relies on the construction and commissioning of the seawall and the WWTP on land external to the settlement (approved via separate applications and linked via the Infrastructure Deed). This is required to adequately ensure the allotments are suitable for their intended purpose and furthermore requires certain (non-flood prone) titles to be released to raise capital to enable infrastructure works to be undertaken (or bonded) in order to be able to release allotments prone to inundation.

At its Special Meeting of 10 October 2017, the Council endorsed and permitted the execution of a final Infrastructure Deed, which has now been signed by the FBM (also in October 2017 as we understand it) along with a bank mortgage to form a binding agreement between the parties relating to the roll out of infrastructure.

The proposal includes a two-phase security mechanism along with defects security to bridge the 'gap' between development approval and the provision of a conventional security bond for the construction of the approved Coastal Protection Works (seawall).

Phase 1 security includes –

The first phase includes a mortgage over the land (to Council) before residential titles can be issued. The mortgage will then be partially discharged over the land not subject to inundation and/or requiring Regulation 5A building fire safety clearance, leaving around 20 properties (owned by FBM) and the non-transferable land subject to the mortgage preventing creation of titles and sale of those properties until such time as the phase 2 security is provided.

The first phase security is intended as a bridging mechanism, enabling titles to begin to be issued, generating sufficient cash flow for phase 2 security to be adequately provided.

This Phase 1 security is limited to no more than 6 months after the first Section 51 certificate is issued for any one or more allotments in the project within the Transferrable Land (land generally on 'higher ground' and not subject to inundation).

The mortgage ensures that the Developer both provides the Phase 2 security and does not transfer the parts of the land subject to inundation (the non-Transferrable Land).

Phase 2 security includes -

Once FBM has the cash inflow (or following development approval and sales revenue, the bank releases funds for the works and securities etc) and in any event within 6 months of the first Section 51 certificate, then FBM can provide a more enduring security for the remainder of the project.

Phase 2 security will be a conventional form of security in the form of bank guarantee or money held in trust to the value of approx. \$3.2M for the delivery of the seawall.

In order for the two phase security mechanism to operate there will be "superlots" or balance allotments created (Staging) separating the land over which the mortgage will operate from sale-ready allotments (referred to in the Infrastructure Deed as the Transferrable Land).

The Transferable Land plan (Annexure 3 in the Infrastructure Deed) confirms on a survey plan that all allotments below 3.15 AHD (As per PDC 8/19 of the Township Zone) marked in blue / green & red hatch are those allotments that are non-transferable. Furthermore, there is a specific list of allotments in the definition of 'Transferable Land' in the Infrastructure Deed that are also non-transferable as they are owned by FBM and required as security.

Individual titles for allotments subject to inundation will not be created until the Phase 2 security is provided, or the coast protection works are adequately constructed. This will enable the sale of sufficient allotments to fund the phase 2 security (bank guarantee or similar) and the completion of the coast protection works.

Once the phase 2 security is in place, or the coastal protection works are adequately completed the mortgage can be removed / discharged by the Council.

Mortgage –

The purpose of the mortgage is not to provide security for the amount of approximately \$3.2M for construction of the seawall. It is a bridging or holding mechanism that operates as a restriction over FBM's land holdings until the Phase 2 security or coastal protection works are provided / completed.

Staging –

The applicant has confirmed the likely staging of the development as set out below:

1. Infrastructure Deed signed by Council and FBM (already undertaken)
2. Development Approval granted by SCAP
3. Mortgage Registered over the land (Phase 1)
4. Bonding Agreement with the Council for internal Civil Works (Roads & Stormwater)
5. Initial plan of division and associated LTO dealing –
 - a. To create a "super lot" for the non-transferable (mortgage) low lying land prone to inundation as well as the 21 allotments owned by FBM. An indicative Staging plan with the proposed "super lot" is still being

- prepared at the time of preparing this report and will be provided prior to the SCAP meeting.
- b. Discharge the mortgage (partial discharge) over the Transferrable land so that it only applies to the non-transferable land
 - c. Create and transfer(sell) the first stage of transferrable non-inundated allotments, free of mortgage, subject to:
 - Contracts for sale
 - Resolution of fire-safety issues
 - Possibly 60 or 70 allotments
 - d. Leave a balance allotment comprising the inundated land and any transferable non-inundated land not yet ready to be created as individual allotments
 - e. Create and vest roads and reserves in the Council
 - f. Create easements in favour of Council
 6. Phase 2 Security provided (within 6 months of the first allotment being granted Section 51 Clearance)
 7. Mortgage fully discharged
 8. Titles for remaining Transferable and non-Transferable land issued
 9. Coast Protection Works completed
 10. Phase 2 security released

Defects Security includes –

The Defects Security of \$350,000 will be provided by the Developer for the duration of the Defects Period that has also now been agreed with the Council for a period of 12 months that commences on the date of issue of the Certificate of Practical Completion

Civil Infrastructure –

Stormwater – stormwater drainage and detention works shall be undertaken generally in accordance with the stormwater concept plan prepared by Tonkin Consulting, being Sheet 03, Revision 3 (undated).

A Reserve Matter has been applied to the recommendation requiring a detailed Stormwater Management Plan as the Council remains concerned with the ability of the proposal to adequately drain the low lying areas that are also subject to the flow of water from a high tide.

Relevant conditions of approval have also been applied to this application to ensure detailed engineering design captures the requirements of Council.

Roads – internal roads shall be constructed or upgraded in accordance with the proposed Sealed Road and Stormwater Drainage Network, Figure 01 Plan prepared by Tonkin Consulting (undated).

The Applicant also engaged the services of experienced traffic consultants, MFY to assist in the preparation of the road layout and the plans have been further amended to address previous design concerns of Council.

Relevant conditions of approval have also been applied to this application to ensure detailed engineering design captures the requirements of Council.

Public Open Space Contribution –

It has been agreed between the applicant and the Council that an arbitrary sum of \$700,000 will be paid as a contribution in lieu of providing the full 12.5% of the subject land for public open space. The contribution amount requirement of the Development Act (\$900,000) was reduced by Council following further discussion and agreement with

the applicant given the level of infrastructure proposed to be provided to the settlement as part of the application including the provision of roads and drainage, the seawall and the WWTP.

Tenure –

Crown Land – Council will be granted the License and / or care and control of the Crown land apart from a License for the Applicant to undertake Coastal Protection Works.

Harbors Land – Council will be granted the License and / or care and control of the Harbors land apart from a License for the Applicant to undertake Coastal Protection Works.

Easement to Council over Land – On deposit of the plan of division necessary to divide the land the Applicant shall grant Council an easement over the land to enable Council to maintain, expand and replace the Coastal Protection Works.

Building Fire Safety –

Pursuant to the Development Regulations 2008 – Regulation 5A all built form on the proposed allotments relating to an existing Class 1 or 2 building that contain walls exposed to a fire source feature as a result of the proposed division must comply with Section C—Volume 1, and P 2.3.1—Volume 2, of the Building Code prior to the issuing of Section 51 Clearance.

A condition of approval is further proposed to ensure that this element of the proposal is properly adhered to in an orderly manner.

At the time of preparing this report we have sought confirmation from the applicant relating to the level of non-compliance with the building code proposed as part of the land division. We are informed that a “Building & Fire Safety Audit” was undertaken by Katnich Dodd Building Certifiers in approximately 2014 / 2015 and are yet to be provided with a copy (overview) of their Audit / Report, which we are informed will be provided through to the SCAP prior to the meeting.

3.0 SITE AND LOCALITY

3.1 Site Description

The subject land consists of the portion of Allotment 4 in Filed Plan 2184, Fisherman Bay Road, Fisherman Bay and is contained in certificate of Title Book Volume 5503 & Folio 193.

Plan/Parcel	Street	Suburb	Hundred	Title
A4, FP2184	Fisherman Bay Road	Fisherman Bay	Mundoora	CT 5503/193

The subject land is located approximately 2.5 kilometres north of the township of Port Broughton at the northern end of the Yorke Peninsula and contains the Fisherman's Bay settlement. We are of the understanding that 'shacks' were first built in the settlement in the 1920's and have been managed by the land owner / applicant of this proposal (Fisherman Bay Management Pty Ltd) since purchasing the land in 1973.

The settlement has evolved as a casual, relaxed beach 'shack' area of a moderate and unique amenity which comprises approximately 380 shacks set out in a grid like pattern with private roads (some of which are sealed) an administration office, store,

boat ramp, public toilets and a developed beachfront area including bitumen carpark area and two play grounds.

The shack buildings have a distinctive character and form, are of a relatively small size (compared to more contemporary permanent dwellings and country township areas) and have, in many instances, used relatively cheap construction materials.

The roads are relatively informal in design, with no formal footpaths but there is a reduced speed expectation and informal parking arrangements within the settlement. The parcels of land are irregular in size and shape. There are communal areas, but these are generally located on the foreshore and the focus for recreational activity is the beach and roads.

There are some formed sealed roads including Whittings Road and Snapper Road, which is the main road into the Settlement, providing vehicular access to the settlement from Port Broughton, which enters from the south west corner of the settlement and links with the FBM Management Building and the foreshore and boat ramp.

In terms of other infrastructure, there is an SA Water mains water connection at the south west corner of the allotment alongside Fisherman Bay Road. The settlement is not serviced by any mains sewer infrastructure. The 'shacks' and dwellings are connected to mains electricity.

At present the ability to occupy and use the land at Fisherman's Bay is controlled via annual licenses as opposed to each site being owned outright under freehold Torrens title.

The land is considered to have a coastal settlement character and in some parts is low lying and requires protection from tidal inundation and potential sea level rise in the future through an appropriate coast protection strategy, such as the approved levee and seawall.

3.2 Locality

The settlement is located at the tip of a small peninsular at the northern end of Yorke Peninsula at the entrance to Fisherman Bay. Mundaroo Channel and Spencer Gulf is located to the west, Shag Island is visible to the northwest and the Crown Land Fisherman Bay "shack" lease holdings (outside the subject land) are located to the east of the subject land with their leases not being renewed.

The settlement displays a moderate level of amenity and exhibits the characteristics of a typical coastal settlement with roads laid out in a grid like pattern of reasonable standard, a local shop servicing the community, a community hall, 'shacks', dwellings, boat sheds, two playgrounds, a boat ramp, swimming pontoons, public toilets, lawn picnic areas and sandy beaches.

The settlement is bordered to the west and north by coastal reserves and sandy beaches. Separating the land from Fisherman Bay to the east is a low lying tidal wetland.

The land to the south of the settlement and visible on the approach from Port Broughton and Spencer Highway is primarily used for cropping and is largely unimpacted by the proposed development, apart from accommodating the approved and yet to be constructed WWTP proposed to service the settlement.

Figure 1 – Location Map



Source – Property Location Browser

Figure 2 – Subject Site



Source – Property Location Browser



Above: Western edge of township (coastal foreshore).
Below: View along Whiting Road – note unsealed roadway.





Above: Various shack styles and rudimentary building materials

4.0 COUNCIL COMMENTS

At the request of Council, the Commission was appointed the relevant authority for the application by the Minister for Planning pursuant to s.34(1)(b)(iii) of the *Development Act 1993*.

Throughout the process, the District Council of Barunga West was consulted as a referral agency and has been represented by Norman Waterhouse Lawyers.

In short, we understand the Council is generally supportive of the free holding process and the issuing of Titles prior to relevant infrastructure being installed provided there are appropriate legal mechanisms in place provided to ensure the funding and construction of the necessary works, and that this doesn't become a future issue / liability for Council and rate payers.

The Council prepared and has endorsed and executed the Infrastructure Deed and executed the mortgage on the basis that the mortgage is intended as an interim bridging mechanism only while FBM generates sufficient cashflow to provide the Phase 2 Security.

A response has been sought from Council in relation to draft conditions of approval to ensure they satisfy Council's requirements. Council confirmed that the proposed conditions were acceptable on 20 October 2017. These conditions and requirements are incorporated into the recommendation.



Above & Below: Building fire safety issues will need to be addressed.



5.0 STATUTORY REFERRAL BODY COMMENTS

Referral responses are contained in the ATTACHMENTS.

Relevant State Government referrals were undertaken in accordance with section 37 *Development Act 1993* and Schedule 8 of the *Development Regulations 2008*.

A summary of the referral position and key planning matters are identified under the relevant headings below.

Where an agency has recommended conditions, these have been taken into consideration when preparing the recommendation.

5.1 Coast Protection Board

The Coastal Protection Board advised that should the application be approved, conditions should be applied that address coastal flooding, erosion and stormwater management.

The Board advised that it has no objection to the coastal protection strategy (seawall) approved in DA 344/101/12, provided that dedication of Crown land to the Council is assured and that the Infrastructure Deed has been entered into, as this would provide assurance that Council has ongoing responsibility to provide, monitor, maintain, upgrade or modify all protection measures associated with the proposal.

The Board has no objection to the proposed land division provided that, prior to any approval, the implementation and viability of the associated coastal protection strategy (approved 14 July 2014) is assured. Therefore the SCAP should first determine the status of the necessary tenure agreements and associated Infrastructure Deed between the applicant and Council, which outlines responsibilities to provide, monitor, maintain, upgrade or modify the coastal protection strategy. As outlined in Section 1.0 of this report, it is understood that the tenure agreements have been resolved.

5.2 Environment Protection Authority

The EPA considered a number of environmental issues in relation to their assessment: air quality, noise, construction impacts, site contamination, stormwater, wastewater and marine impacts.

Separate consideration has already been given to the wastewater treatment plant and coastal protection levee – both components ensuring that adequate infrastructure (when constructed) is in place to manage wastewater and protect the settlement from tidal inundation.

No detrimental environmental impacts are envisaged – noting the proposed location of the CWMS meets EPA requirements in relation to separation distance (200m) and noise, and the plant capacity is sufficient to meet expected demand. Treated wastewater (to Class B standard) will be irrigated to Lucerne.

One directed condition and a number of advisory notes were recommended.

5.3 DPTI – Transport Services Division

The Transport Services Division has no requirements. It noted that the plan of division abuts roads under the care, control and management of the District

Council of Barunga West and seeks to formalise the existing arrangement for the subject site.

Whilst no objections were raised in principle, the department noted that should any significant development of proposed Lot 452 be undertaken (balance of land located within the General Farming Zone), a traffic impact statement assessing the impacts and potential improvements would be required at the 'feeder junctions' of Port Pirie – Port Broughton/Aitchison Road and Port Pirie – Port Brought Road/Bay Street will need to be undertaken.

5.4 Department of Health

All proposed allotments must connect to a communal wastewater management system. For this, installation approval(s) for all wastewater components would be required from the relevant authority.

5.5 Department of State Development

The central archive, which includes the Register of Aboriginal Sites and Objects (the Register), administered by the Department of State Development, Aboriginal Affairs and Reconciliation, has no entries for Aboriginal sites within the application area.

The Aboriginal heritage advice does not address obligations pursuant to the Native Title Act 1993 which is provided by the Native Title Section of the Crown Solicitor's Office.

The advice outlines a note to the applicant which has been incorporated into the recommendation.

5.6 SA Water

The SA Water corporation has no requirements pursuant to Section 33 of the *Development Act 1993*.

5.7 DEWNR – Crown Lands

Non-mandatory referral. No comment within 4-week referral period.

6.0 PUBLIC NOTIFICATION

The application was determined by DPTI staff to be a Category 1 development pursuant to Schedule 9 Part 1(5) of the *Development Regulations 2008* as the development involves the division of land where the land is to be used for a purpose which is consistent with the objective of the zone under the relevant Development Plan and will not change the nature and function of an existing road.

In addition, Township Zone Principle of Development Control 20 of the District Council of Barunga West Development Plan consolidated 21 February 2008 further designates 'land division' as a Category 1 form of development.

As such, no public notification was required.

7.0 POLICY OVERVIEW

The subject land is situated within the Township Zone and General Farming Zone as depicted on Zone Map BaW/11 of the Barunga West Council Development Plan (Consolidated 21 February 2008).

7.1 Zone

The subject land is located within the Township Zone and General Farming Zone as depicted on Map Baw/11 and is identified as a 'settlement' on Structure Plan Map BaW/1 (Overlay 1).

The application proposes to create a series of additional allotments around existing "shack" sites of the Fisherman Bay settlement located within the Township Zone. The balance of the allotment to the south will retain the approved WWTP and is situated within the General Farming Zone.

The Township Zone encompasses the developments at Alford, Fisherman Bay, Kulpara, Mundoora and Tickera which typify the small but important townships which are located within Barunga West. These townships contain a range of land uses and are serviced by varying grades of infrastructure. The Desired Character of the Zone recognises that the augmentation of such infrastructure may be required to cater for future development.

The Objectives of the zone envisage residential development and small-scale services and facilities grouped together to meet the needs of the local community and the visiting public; conservation and enhancement of the local scale; main road streetscape and scenic rural settings; contribution to the desired character of the zone; and development in an orderly and compact form.

The Township Zone identifies two PDCs specific to the settlement at Fisherman Bay, namely PDC 8 and 9.

PDC 8 identifies that *'all development at Fisherman Bay should have a minimum site level of 3.15 AHD and a minimum floor level of 3.40m AHD'*. This principle is also reiterated in the procedural matters section as a trigger for 'non-complying' development.

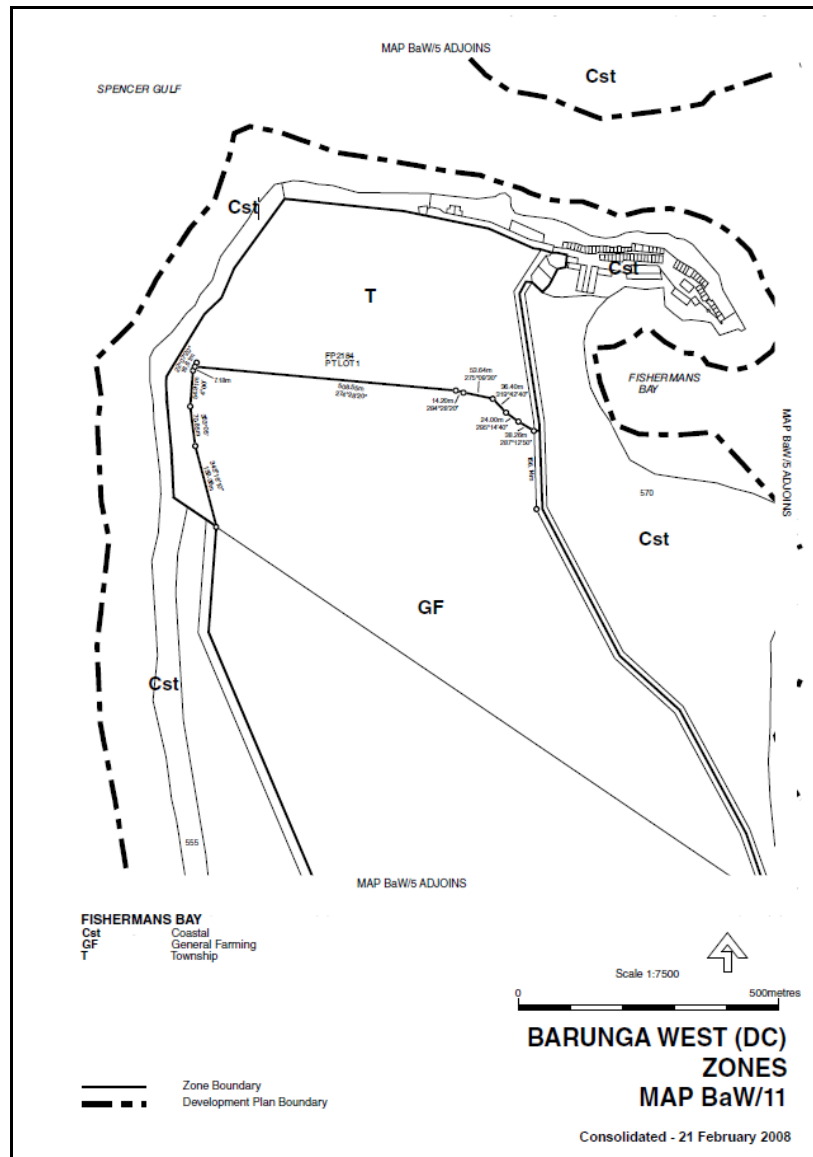
PDC 9 relates to development of the southernmost site at Fisherman Bay and the policy states that this site *'...is provided for the resettlement of shacks and development should commence from the site nearest to the road, with a single point of access off the main road.'* We understand this policy seeks to contain the footprint of the settlement and limit any expansion further south (albeit on the same allotment). At any rate, the land to the south is located within the General Farming Zone and would, in our view, be a 'non-complying' form of development.

In relation to the non-complying trigger and PDC 8 above, it is important to mention that upon lodgement, assessment and prior to Ben Green & Associates being requested to undertake this assessment, the DAC had adopted the similar view of the applicant (through various correspondence prepared by Botten Levinson lawyers) in that despite the proposed allotments occupying land lower than the identified levels, the proposal for land division itself is not a form of non-complying development.

We have considered relevant principles and reviewed the independent opinion submitted by Ms Jeni Nolan in her Planning Report prepared on behalf of the applicant, and are inclined to adopt this approach in relation to this procedural matter. Ms Nolan's approach considers the reference to 'all development' in the non-

complying trigger and PDC 8 and is of the view that if this were to include 'land division' it would expressly say so, as per a series of other PDC's cited throughout the Development Plan.

Figure 3 – Zoning Map



Land Division is listed as a form of non-complying development within the General Farming Zone where it creates allotments less than 40 hectares in area, unless the requirements of PDC's 9 and 10 are in place or provided for in the Development Application.

Although no additional title's' are proposed to be created within the General Farming Zone, the resulting balance of land is, in itself, a new title and therefore consideration should be had of the relevant land divisions principles.

PDC 9 of the General Farming Zone relates to allotments of less than 40 hectares. Proposed allotment 452 (balance of land) is approximately 44.9 hectares and therefore this PDC does not apply.

PDC 10 of the General Farming Zone states '*Land Division which does not involve the creation of additional allotments should be undertaken only where:*

- (a) *The number of resulting allotments of less than 40 hectares is not greater than that existed prior to re-adjustment of the boundaries of the Certificate of Title.*
- (b) *All of the allotments are greater than 10 hectares in area.*

Proposed allotment 452 (balance land) will exist as a single allotment within the General Farming Zone, is larger than 40 hectares in size and therefore is considered to be in keeping with the above policy, and therefore is considered to adequately satisfy the exception from the non-complying process.

Furthermore, when Ben Green & Associates was appointed to review the application, it was queried whether, on the basis of the decision of the ERD Court in *Hagger v Development Assessment Commission [2006] SAERDC 56* whether the application is non-complying because the existing allotment straddles both the Township Zone and the General Farming Zone, within which land division of this nature would be non-complying.

Mr Tom Game of Botten Levinson Lawyers provided a detailed response to this notion, dated 14 September 2017 and enclosed advice to DAC and Council dated 29 July 2010 that professes the nature of development is indeed not a form of non-complying development and that it is a 'consent on-merit' form of development.

For some time the application has been viewed by DPTI and presented to DAC as a 'consent on-merit' form of development and on this basis is being processed accordingly.

8.0 PLANNING ASSESSMENT

The application has been assessed against the relevant provisions of the District Council of Barunga West Development Plan, consolidated 21 February 2008, which are contained in Appendix One

8.1 Land Use / Intent of the Zone

Principle of Development Control (PDC) 1 of the Township Zone identifies the various kinds of development that are appropriate within the Zone. It is acknowledged that several of these uses are evident within the Fisherman Bay settlement including: community facilities, dwelling, small scale tourist development, recreation area and small shops.

The proposed development involves the creation of additional allotments around existing built form and does not seek to change the use of the land.

The proposed development effectively proposes the 'status quo' in terms of land use, which is considered to be in keeping with the desired character, objectives and principles of the Township Zone.

The freeholding of allotments will provide greater certainty and security for future owners to undertake improvements of their sites, and the division will also facilitate necessary infrastructure to service the settlement and protect it from inundation of flood waters.

In terms of the proposed land use the proposed development is considered to align with the intent of the Township Zone objectives and principles.

8.2 Design and Appearance / Character

The existing settlement has a reasonable level of amenity as a 'shack' settlement and rural enclave that has been established over several decades.

The character of the settlement is unlikely to be altered to a significant degree as a result of the proposed development alone, however, the proposed division is envisaged to potentially be a catalyst for change (with the financial security derived from free hold title being the precursor for new investment and the redevelopment of existing shack sites).

There are a number of examples throughout the settlement where existing buildings straddle proposed internal boundaries and in order to satisfy the building fire safety requirements of the *Building Code*, it will be necessary for portions of some buildings to be partially (or totally) removed.

In accordance with Regulation 5a of the *Development Regulations 2008*, it is a requirement that the proposed division complies with the relevant sections of the Building Code in this regard, and it must do so before the issuing of a certificate in respect of the division under section 51 of the *Development Act 1993*.

Furthermore, it is proposed that a Condition of Approval also ensure that all allotments satisfy the Regulation 5a. On request, the applicants are also yet to provide a copy of the buildings overlaid over the proposed allotments to qualify the manner in which the allotments are proposed whilst confirming which built form will require remedial works or removal to adhere to Regulation 5a. The applicant has confirmed that this information will be forthcoming prior to the SCAP meeting.

Given the complexities surrounding these matters, the applicant has also not provided a staging plan and is proposing to rely on a more 'ad hoc' approach seeking the relevant clearances when and if a site is ready (and following fulfillment of obligations pursuant to the agreed Infrastructure Deed). On request the applicant is also going to provide an indicative staging plan to provide further understanding as per the likely development of the land division.

The land division will ultimately change the tenure of the land and provide the added security for owners of a Torrens Title allotment. On this basis owners may seek to redevelop their sites with more substantial built form which has the ability to alter the appearance and character of the settlement, however, these changes will be the subject of future Development Applications to be considered by the Council.

Commencement approval was granted in June 2016 by the Minister for Planning for a Statement of Intent lodged by the District Council of Barunga West for a Fisherman Bay Residential Built Form Development Plan Amendment (DPA).

The proposed policy amendments seek to introduce more up-to-date and targeted built form/urban design policy for future residential development at Fisherman Bay. These guidelines or principles of development are intended to take account of the unique nature of the Fisherman Bay location and the history of the smaller and somewhat irregular allotment size and pattern of the area.

The DPA does not seek to alter zone boundaries or rezone additional land for urban proposes, but simply seeks to provide additional targeted policy to improve

on the current limited residential built form policy as it relates to the existing coastal settlement of Fisherman's Bay.

Should the proposed changes in the DPA be adopted, this will provide guidance for the redevelopment of the proposed allotments whilst building on the existing character of the settlement.

8.3 Land Division

The Township Zone identifies a single PDC in relation to the division of land. This PDC seeks a range of allotment sizes to suit the intended development of the land, together with smaller allotments being encouraged adjacent to the town centre or reserves, and larger low-density allotments around the perimeter of the zone.

The proposal seeks to divide the subject land in such a way that it reflects the existing land uses within the settlement predominantly around existing built form. There will be no material effect in the use of this land as a result of the development allowing for the (historical) 'status quo' to remain, apart from the necessary infrastructure works required to service the free hold allotments with the key components of which located outside of the Township Zone, external to the Fisherman Bay settlement and approved on separate applications.

These infrastructure works are considered necessary to ensure that the proposed allotments are suitable for their intended purposes, both in terms of having adequate waste control systems and being protected from coastal inundation. The mechanisms to deliver this infrastructure are discussed in detail in previous sections of this report, however it is important to note that, in our view, these mechanisms and the provision of infrastructure are fundamental to the application, and without such agreements in place, there would be limited merit to support the application.

Whilst the freeholding of allotments may result in the redevelopment of a number of shacks or dwellings, the proposal does not increase the overall development potential of the land. The existing and intended use of the allotments is considered to be compatible with the surrounding (existing) uses and will not prevent the attainment of the objectives for the area.

As discussed elsewhere within this report, the proposed development will occur in a series of stages that will be dictated by a number of factors including: site levels / risk of inundation, land ownership, and compliance with building fire safety matters. At first glance the staging may appear to be somewhat unordered and intricate, however, the initial indicative stages are considered appropriate as they follow a logical sequence of events such as those detailed within the Infrastructure Deed broadly permitting those allotments considered 'reasonable' to be released with funds raised contributing to the development of the necessary coastal protection works, civils works and other infrastructure not currently provided within the settlement.

Overall and on balance, the proposed land division is considered to generally comply with the provisions of the Township Zone and more broadly the Barunga West Development Plan relating to land division.

8.4 Public Open Space

An open space contribution as set out in Section 50(7) of the *Development Act 1993* is applicable to the proposed development.

The land division proposes a number of reserves and drainage reserves. The largest reserve is proposed allotment 446 which is located along the north-west portion of the site between the ocean and the rear of allotments 28-44 and frontage to Whiting Road at its northern end. This reserve is 3581m² of the total 4444m² non-drainage reserve area which is significantly less than the 12.5% requirement of the *Development Act 1993*.

It is understood that over an extended period of time, the Council and the applicant have been in negotiations regarding a monetary contribution in lieu of providing 12.5% open space. These negotiations arrived at an arbitrary sum of \$700,000.00 to be payable into Councils open space fund.

We have been informed that an agreement between the parties has been reached (by the applicant – still to be confirmed by Council) that the open space contribution may be paid in stages, with not less than \$1,745.64 being paid for each allotment (excluding roads and reserves) before the issue of a Section 51 certification for that allotment. The full amount is to be paid before more than 80% of the allotments (excluding roads and reserves) have been created. A condition of approval to this effect is included in the recommendation.

8.5 Infrastructure – Civils / Seawall / WWTP

The Council-wide section of the Development Plan contains a series of Principles of Development Control relevant to land divisions and the provision of necessary infrastructure to ensure the allotments are suitable for their intended use.

The applicant has provided reasonably detailed civil plans in the form of a proposed stormwater drainage concept prepared by Tonkin's Engineers, and a Traffic Report prepared by MFY that considers the standard of the formed road network and provides advice as to the upgrade requirements.

It is understood that Council's remains concerned regarding the stormwater drainage in low lying land and as such this matter has been recommended to be dealt with as a Reserve Matter.

In our view, both the construction of the seawall and WWTP are fundamental to the success of the land division and it is clear that the applicant and Council have liaised extensively to work towards an agreed resolution of necessary infrastructure to service the proposed land division.

Given the applicants are requesting both Development Plan and Land Division Consent a detailed set of engineering conditions are proposed to ensure that the land division and associated infrastructure is carried out in an orderly manner.

8.6 Response to the DAC Deferral Matters -dated 28 June 2012

As outlined in Section 1 of this report, in 2012 the Commission resolved to defer the application pending the provision of further information and the resolution of a

number of matters. The following is a summary of the deferral matters and outlines what has occurred in the time since the deferral.

- **Coast Protection Strategy:** A strategy in the form of the construction of a seawall (and levee), which has been approved by DAC (and extended) addresses both coastal flooding and erosion to the satisfaction of the Coast Protection Board and the Commission. Development Approval remains valid for the construction of a seawall to prevent and/or minimise inundation from tidal waters.

The construction of the seawall is a requirement of the signed Infrastructure Deed and is to be undertaken by the proponent whilst also recommended a condition of approval.

Furthermore, the ability to construct the sea wall and levee on Crown and Harbor land has, to the best of our knowledge, been approved by the relevant Ministers by way of an impending deed and interim 10 year license.

This matter is considered to be resolved.

- **Wastewater Treatment System:** Development Approval remains valid for a WWTP that will service the settlement.

The construction of the WWTP is a requirement of the signed Infrastructure Deed and is to be undertaken by the proponent whilst also recommended a condition of approval.

This matter is considered to be resolved.

- **Public roads and footpaths:** Council has provided its requirements in relation to road and footpath infrastructure. These requirements are proposed to form a condition of approval.

These matters form the basis of a number of recommended conditions of approval.

This matter is considered to be resolved.

- **Stormwater Management:** This matter remains outstanding. Should the SCAP resolve to support the recommendation matters relating to stormwater management are recommended to form a Reserve Matter for resolution and finalisation prior to Development Approval.

A number of conditions are also recommended for the appropriate development of stormwater and drainage infrastructure.

This matter is partially resolved however is recommended to be formalised by way of a Reserve Matter.

- **Building Fire safety:** This matter remains unchanged. A number of buildings within the settlement are unlikely to meet the requirements of Regulation 5A of the *Development Regulations 2008* and thereby not satisfying the relevant fire safety requirements under the Building Code of Australia. To this end, a number of options will need to be considered to ensure compliance including structural upgrades through to total/partial demolition. Individual assessments will be required for each building prior to Section 51 clearance, and a condition of approval to this effect is included in the recommendation.

This matter remains unchanged however is recommenced to be enforced by way of condition of approval with section 51 clearance withheld until such time as a building complies with the Development Regulation 2008 requirements.

- Open space: In addition to the areas of open space provided within the settlement, the applicant and Council have agreed to a financial contribution of \$700,000 into Councils Open Space Fund in lieu of providing 12.5% open space.

This matter is resolved to the satisfaction of Council and also forms a recommended condition of approval.

9.0 CONCLUSION

In our opinion, the proposed development represents an appropriate form of development in the context of the intent of the Township Zone and General Farming Zone, the general provisions of the Development Plan and the 'unique' circumstances of the subject land being a long standing 'shack' settlement development and been in existence for a number of years.

In our opinion, the proposal on balance is considered to be consistent with a number of relevant provisions of the Development Plan and is a desirable outcome in so far as the existing character of the locality essentially unchanged and is consistent with freeholding existing allotments with the provision of adequate infrastructure.

For all of the above reasons, it is concluded that:

- the proposed land division is considered orderly and achieves the economic delivery of infrastructure by essentially creating Torrens Title for existing and long standing built form and land uses;
- the development resolves a number of infrastructure issues relating to tidal inundation and inadequate method of waste disposal;
- the proposal offers a substantial contribution by the applicant towards all relevant infrastructure including the seawall, WWTP, roads, drainage reserves etc;
- the proposal is configured to the functional requirements associated with the current development on the allotments;
- the land division provides for a range of allotment sizes;
- there is no vegetation, native or otherwise proposed to be removed;
- the development provides for the existing and envisaged land uses and is consistent with the Township Zone.

As such, the proposal suitably accords with, or does not offend (is not seriously at variance with), the overall Barunga West (DC) Development Plan, and moreover displays enough merit in that it warrants the issuing of Development Plan Consent pursuant to Section 33 (1)(a) of the *Development Act 1993*.

10. RECOMMENDATION

It is recommended that the State Commission Assessment Panel:

- 1) RESOLVE that the proposed development is NOT “seriously at variance” with the Development Plan.
- 2) RESOLVE that the State Commission Assessment Panel is satisfied that the proposal generally accords with the related Objectives and Principles of Development Control of the Barunga West Development Plan, consolidated 21 February 2008.
- 3) RESOLVE to grant Development Plan Consent and Land Division Consent to the proposal by Fishermans Bay Management Pty Ltd for Land Division (1 into 432 allotments) at Lot 4 Fisherman Bay Road, Fisherman Bay subject to the following conditions of consent.

DEVELOPMENT PLAN CONSENT CONDITIONS

1. That except where minor amendments may be required by other relevant Acts, or by conditions imposed by this application, the development shall be established in strict accordance with the details and following amended plans submitted in Development Application No 344/D007/10:
 - Plan of division prepared by Lester Franks surveyors (9 sheets), being revision 23, dated 30 March 2017.
 - Stormwater concept plan prepared by Tonkin Consulting, being Sheet 03, Revision 3 (undated)
 - Sealed Road and Stormwater Drainage Network plan prepared by Tonkin Consulting dated 15 July 2014
 - Infrastructure Deed between District Council of Barunga West and Fishermans Bay Management Pty Ltd – Coastal Protection Works & Waste Water Treatment Plant executed

LAND DIVISION CONSENT CONDITIONS

2. All built form on the proposed allotments relating to an existing Class 1 or 2 building that contain walls exposed to a fire source feature as a result of the proposed division must comply with Section C—Volume 1, and P 2.3.1—Volume 2, of the Building Code with respect to Regulation 5A of the Development Regulations 2008 prior to the issuing of Section 51 Clearance.
3. Prior to the grant of a Section 51 certificate for any allotments identified as being at risk of coastal inundation as identified on the Lester Franks Contour Survey Drawing No. CCFP0009 Rev 1 as land identified under 3.15m AHD (shown north-west area only) and 2.85 AHD (shown south-east area only) respectively, the applicant shall construct the seawall and coast protection works approved in DA 344/101/12V1 (or an approved variation of DA 344/101/12V1 or subsequent approval to the same effect) unless Phase 2 Security has been provided to the Council in accordance with the terms of the Infrastructure Deed referred to in Condition 1 of the development plan consent.
4. Prior to the grant of a Section 51 certificate the applicants will construct (and secure the connection of allotments to) an approved waste water treatment plant (whether approved in DA 344/102/06 or a subsequent approval to the same effect) unless a suitable arrangement is in place to the satisfaction of the SCAP.

5. Where stormwater drainage infrastructure is proposed to traverse allotments, appropriate easements in favour of the Council shall be provided and designated on the final plan of division prior to deposit.
6. All civil works necessary for the development shall be provided by the applicant at the full cost of the applicant/owner and shall be designed by a qualified Civil Engineer, and construction supervised by a qualified civil engineer. All works shall be designed and constructed in accordance with relevant Australian industry standards and guidelines and to the reasonable satisfaction of Council.
7. Stormwater drainage and detention works shall be undertaken generally in accordance with the stormwater concept plan prepared by Tonkin Consulting, being Sheet 03, Revision 3 (undated) and shall, in any event, be designed and constructed to ensure the safe and efficient drainage of land and disposal of stormwater in accordance with recognised engineering practice. The stormwater shall be disposed of in such a manner that it does not flow or discharge onto land of adjoining owners or lie against any building or create insanitary conditions to the satisfaction of the Council.

Note: The safe and efficient drainage of land and disposal of stormwater are prescribed by Regulation 54(4).

8. Prior to the grant of a Section 51 certificate, the applicant shall prepare (in consultation with the District Council of Barunga West) a Stormwater Management Plan by experienced civil engineers for the proposed land division that ensures the stormwater disposal systems proposed be designed and constructed to the reasonable satisfaction of the Council. In particular, that adequate drainage be provided in all low lying areas of the division and particularly those areas that may also be affected by the high tide. Satisfactory easements shall also be provided over relevant infrastructure whilst also providing drains with adequate dimension to satisfactory cater for the drainage of the whole of the land.
9. The stormwater drainage and road works shall be constructed prior to the grant of a Section 51 certificate unless SCAP is satisfied that the applicant has entered into a binding agreement, supported by adequate security, for the construction of the stormwater drainage and road works to the reasonable satisfaction of Council.
10. All requirements in regard to the construction of stormwater drains and services are to be met to the reasonable satisfaction of Council, including:
 - a. Management of stormwater shall occur generally in accordance with the stormwater management report, drawings and calculations submitted in support of the application, including any specific conditions of approval. Detailed design shall be to the reasonable satisfaction of the Council.
 - b. As a minimum, the drainage design shall cater for piped flows for a 1- in-10 ARI event and an overland flow path for events up to 1-in-100 ARI.
 - c. Rear of allotment drainage is to be designed to cater for 20yr ARI flows with safe conveyance to the detention basin, as required.
 - d. The flow rate of stormwater leaving the site shall be designed so that it does not exceed the pre-developed flow rate for all recurrence intervals up to a 20 year ARI.
 - e. Stormwater discharge into any existing watercourse or detention basin must be designed to prevent erosion of the water bodies to the satisfaction of Council.

- f. A system to improve stormwater quality shall be designed and constructed in a location and of a design to the reasonable satisfaction of Council to ensure that pollutants are trapped prior to exiting the site or entering the natural watercourse. The design (including, but not limited to gross pollutant traps, swales and detention / bioretention basin) must:
 - Meet the following quality targets for removal of pollutants from the typical annual urban load with no treatment:
 - 80% retention of suspended solids
 - 60% retention of total phosphorus
 - 45% retention of total nitrogen
 - 100% reduction of gross pollutants
 - Ensure groundwater resources are not unduly impacted on.
 - g. A maintenance plan must be developed for the components of the proposed stormwater system, including the gross pollutant traps to maintain optimum performance.
 - h. Drainage calculations and design shall ensure all properties are protect from a 100-year average recurrence interval storm.
11. The internal roads shall be constructed or upgraded in accordance with the Proposed Sealed Road and Stormwater Drainage Network plan prepared by Tonkin Consulting dated 15 July 2014 and subject to compliance with any additional specifications or requirements of the Council, to Council's reasonable satisfaction.
12. All new sealed road surfaces shall be provided with a flush concrete edge beam standard.
13. All Council requirements in regard to the construction of roads are to be met, including:
 - a. All roads shall be designed and constructed in a manner which allows safe and convenient property access via individual driveways considering horizontal and vertical sight distance and grade. Batter grades to allotments shall not be steeper than 1-in-5 unless approved otherwise. Where batter grades and allotment grades are steeper than 1-in-5 are approved or where sight distance is not adequate, a driveway location plan shall be provided that demonstrates that safe and convenient property access can be provided.
 - b. All traffic control devices shall be designed and installed to Council satisfaction and any non-conforming devices approved by the Department of Planning, Transport and Infrastructure.
 - c. Where kerbing is proposed, semi-mountable kerbing and channel is to be used, unless otherwise agreed by Council.
14. Pursuant to Section 50 of the *Development Act* the applicant shall pay a \$700,000.00 open space contribution to the Council. The open space contribution may be paid in stages, with not less than \$1,745.64 being paid for each allotment (excluding roads and reserves) before the issue of a Section 51 certification for that allotment. The full amount is to be paid before more than 80% of the allotments (excluding roads and reserves) have been created.
15. The development may be undertaken in stages as determined by a staging plan approved by SCAP, with separate section 51 certificates issued for each stage.

16. Construction and Management Plans are to be provided to Council to its reasonable satisfaction, including:

- a. All civil works necessary for the development shall be designed by a qualified Civil Engineer, and construction supervised by a suitably qualified person. All works shall be designed and constructed in accordance with relevant industry standards and guidelines.
- b. Design and construction of all infrastructure must be done in accordance with the Council's standards and Requirements unless otherwise approved by Council.
- c. A Construction Environmental Management Plan (CEMP) must be developed prior to construction commencing which addresses the mitigation or minimisation of environmental impacts (especially from noise, dust, stormwater and waste) during the construction phase. The plan must be prepared to the satisfaction of the Council and submitted prior to commencement of site works. The CEMP must be implemented during construction and include measures that address the following issues (as a minimum):
 - Noise and vibration management, including controlling noise at the source; scheduling noisy activities between 7 am and 7 pm Monday to Saturday unless otherwise permitted by the EPA (and in accordance with the General Environmental Duty as described in section 25 of the Environment Protection Act 1993), equipment maintenance; use of mufflers and silencers; use of noise barriers.
 - Air quality management, including minimising the area and extent of earthworks required; ensuring disturbed areas are protected and revegetated in a timely manner; specific measures to manage dust and limit emissions, including covered construction vehicles to prevent any loss of load; management of any odours from any organic and other sources.
 - Fire prevention and management.
 - Waste management.
 - A Soil Erosion and Drainage Management Plan (SEDMP) must be prepared and implemented in accordance with the EPA Stormwater Pollution Prevention Code of Practice and other relevant industry standards and guidelines for the building and construction industry to prevent soil sediment and pollutants leaving the site or entering watercourses during development of the site and construction of dwellings. The SEDMP must indicate how erosion and sediment transport would be managed during the construction phase and include elements such as:
 - The installation of a shaker pad at the entrance/exit to the development site
 - Avoiding unnecessary cut and fill and unnecessary clearing of vegetation
 - Protecting exposed soil through temporary vegetation or jute matting, hay bales or silt fences, catch drains and the containment of stockpiles.
 - Hydroseeding upon completion of construction to stabilise soils
 - The use of dust suppression equipment.

These plans shall also include detail of how effective measures shall be implemented during the construction of the development and ongoing use of the land in accordance with this consent to:

- prevent silt run-off from the land to adjoining properties, roads and drains.
- control dust arising from the construction and other activities, so as not to, in the opinion of Council, be a nuisance to residents or occupiers on adjacent or nearby land.
- ensure that soil or mud is not transferred onto the adjacent roadways by vehicles leaving the site.

- ensure that all litter and building waste is contained on the subject site in a suitable bin or enclosure.
 - ensure that no sound is emitted from any device, plant or equipment or from any source or activity to become an unreasonable nuisance, in the opinion of Council, to the occupiers of adjacent land.
 - following construction of a stage, ensure all disturbed land is managed to prevent silt runoff and dust.
- d. A Construction Management Plan (CMP) shall be prepared for the development prior to construction commencing for review of Council, which includes reporting, compliance, conformance and complaint management and addresses specific site conditions and work practices including traffic management, dust and air pollution, working hours, noise, water quality management, native vegetation, flora and fauna, flood management, water quality management, cultural heritage, waste management, contamination, community notification and consultation.
- e. A Quality Assurance Plan pertaining to design, inspection, testing and survey of all engineering works shall be submitted and approved at the time of design approval and include compulsory notification to Council for inspection of works.
- f. Prior to construction commencing the contractor shall undertake a condition survey of the adjoining roads and infrastructure and a CCTV survey of any Council underground infrastructure that may be affected by the works and again at completion of the works. Any damage shall be repaired to the reasonable satisfaction of Council.
17. All fill/material is to be managed as follows:
- Any fill material brought to the site must be clean and not contaminated by construction or demolition debris, industrial or chemical matter, or pest plant or pathogenic material.
 - No topsoil shall be removed from the subject land.
 - Any contaminated material, including construction or demolition debris, industrial or chemical matter, encountered during earthworks on the subject land shall be removed to the satisfaction of Council.
18. The following is to be provided to Council at the completion of works prior to issuing of Section 51 clearance:
- Following completion of the works and prior to occupation, the contractor shall remove all accumulated material from the permanent drainage infrastructure. The contractor shall arrange for a CCTV survey of all Council stormwater pipes and make a copy of the video plus associated written report available to Council. A further video survey shall be undertaken by the contractor if considered necessary by Council to demonstrate that identified defects in the pipe system have been satisfactorily repaired.
 - "As-Constructed" drawings and an asset register shall be submitted to Council for all infrastructure to be vested in Council, including stormwater drainage, wastewater drainage, roads, footpaths and kerbing. The plans are to be provided in accordance with relevant Council standards.
 - The applicant shall provide a certificate, prepared by a suitably qualified person, declaring that all works have been carried out in a satisfactory manner and meet all the provisions of the development approval, approved plans and specifications.
 - A completed Quality Assurance Plan is to be provided that includes copies of all testing and certifications.
19. A final plan complying with the requirements for plans as set out in the Manual of Survey Practice Volume 1 (Plan Presentation and Guidelines) issued by the Registrar

General to be lodged with the State Commissions Assessment Panel for Land Division Certificate purposes.

EPA CONDITIONS

20. A Soil Erosion and Drainage Management Plan (SEDMP) must be prepared and implemented to the satisfaction of SCAP, in accordance with the Code of Practice for the Building and Construction Industry (1999) to prevent soil sediment and pollutants leaving the site or entering the marine environments during construction of roads and installation of infrastructure.

ADVISORY NOTES

- a. This Development Plan Consent will expire after 12 months from the date of this Notification, unless final Development Approval from Council has been received within that period or this Consent has been extended by the Development Assessment Commission.
- b. The applicant is also advised that any act or work authorised or required by this Notification must be substantially commenced within 1 year of the final Development Approval issued by Council and substantially completed within 3 years of the date of final Development Approval issued by Council, unless that Development Approval is extended by the Council.
- c. The applicant has a right of appeal against the conditions which have been imposed on this Development Plan Consent. Such an appeal must be lodged at the Environment, Resources and Development Court within two months from the day of receiving this notice or such longer time as the Court may allow. The applicant is asked to contact the Court if wishing to appeal. The Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide, (telephone number 8204 0289).

COAST PROTECTION BOARD NOTES

- d. The applicant is advised that sites or objects may exist in the proposed development area, even though the Register of Aboriginal Sites and Objects does not identify them. All Aboriginal sites and objects are protected under the *Aboriginal Heritage Act 1988* (the Act), whether they are listed in the central archive or not. Land within 200 metres of a watercourse (for example the River Murray and its overflow areas) in particular, may contain Aboriginal sites and objects.

Pursuant to the Act, it is an offence to damage, disturb or interfere with any Aboriginal site or damage any Aboriginal object (registered or not) without the authority of the Minister for Aboriginal Affairs and Reconciliation (the Minister). If the planned activity is likely to damage, disturb or interfere with a site or object, authorisation of the activity must be first obtained from the Minister under Section 23 of the Act. Section 20 of the Act requires that any Aboriginal sites, objects or remains, discovered on the land, need to be reported to the Minister. Penalties apply for failure to comply with the Act.

ENVIRONMENT PROTECTION AUTHORITY NOTES

- e. The applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act 1993, to take all reasonable and practicable measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause environmental harm.
- f. The applicant is advised that the Environmental Protection (Water Quality) Policy 2015 came into effect on 1 January 2016. Therefore, all reasonable and practicable measures must be put in place to prevent or minimise environmental harm during the construction process. The Environmental Protection (Water Quality) Policy 2015 can be found at:

[https://www.legislation.sa.gov.au/LZ/C/POL/Environment%20Protection%20\(Water%20Quality\)%20Policy%202015.aspx](https://www.legislation.sa.gov.au/LZ/C/POL/Environment%20Protection%20(Water%20Quality)%20Policy%202015.aspx)

EPA information sheets, guidelines documents, codes of practice, technical bulletins etc can be accessed on the following web

BEN GREEN
CONSULTANT PLANNER
DEVELOPMENT DIVISION (DPTI)

20.10.17

APPENDIX ONE

The relevant planning policies are contained in the Barunga West Council Development Plan (Consolidated 21 February 2008) and listed below -

TOWNSHIP ZONE

Desired Character

The Township Zone encompasses the developments at Alford, Fisherman Bay, Kulpara, Mundoora and Tickera which typify the small but important townships which are located within Barunga West. Apart from Fisherman Bay, Townships are generally located within the farming areas of the council area, and provide a limited service and accommodation role for those residents and surrounding farm owners. These Townships contain a range of land uses including community facilities, educational establishments, commercial and service facilities, recreational areas, and residential accommodation. Levels of infrastructure and servicing existing within Townships varies and future development may require augmentation of such services.

OBJECTIVES

Objective 1: Residential development and small-scale services and facilities grouped together to meet the needs of the local community and the visiting public.

Objective 2: Conservation and enhancement of the local scale, main road streetscape and scenic rural setting of the township.

Objective 3: Development that contributes to the desired character of the zone.

Objective 4: Development to be in an orderly and compact form.

PRINCIPLES OF DEVELOPMENT CONTROL

PDC1 The following kinds of development are considered appropriate in the Township Zone:

- Community Facilities
- Educational Establishment
- Dwelling
- Small Scale Tourist Development
- Recreation Area
- Shops under 250 square metres in size.

PDC2 Development listed as non-complying in the Township Zone is considered inappropriate and is not envisaged, and should not be undertaken.

PDC3 Residential development should be mainly in the form of low-density detached dwellings, with a limited range of medium density residential development.

PDC4 Retail, business and commercial development in the zone should only be undertaken as a logical extension to existing activities of this type and consistent with the township's desired character.

PDC6 Development of townships should be confined within the boundaries of these townships.

PDC8 All development at Fisherman Bay should have a minimum site level of 3.15m AHD and a minimum floor level of 3.40m AHD.

PDC9 Development of the southernmost site at Fisherman Bay is provided for the resettlement of shacks and development should commence from the site nearest to the road, with a single point of access off the main road.

Form and Character

PDC10 Development should not be undertaken unless it is consistent with the Desired Character and
Appropriate uses for the zone.

PDC12 Housing types, other than detached dwellings, should:

- (a) comprise small groups of dwellings, avoiding large expanses of common parking and vehicle manoeuvring areas,
- (b) be designed and sited to retain existing trees and shrubs of substantial size or merit in terms of the contribution they make to the township character.

PDC13 Dwellings should be designed within the following parameters:

Application	Value
Minimum setback from primary road frontage	8 metres
Minimum setback from secondary road frontage	5 metres
Minimum setback from side boundaries	2 metres
Minimum setback from back boundary	10 metres
Maximum site coverage	30%
Maximum height	2 storeys
Minimum area of private open space	50%
Minimum number of on site car parking spaces	Two - One of which should be covered

Land Division

PDC16 A range of allotment sizes to suit the intended development of the land should be provided, with smaller allotments being encouraged adjacent to the town centre or reserves, and larger low-density allotments around the periphery of the zone.

Non-complying Development

PDC19 The following kinds of development are **non-complying** in the Township Zone:

- All development at Fisherman Bay except where the:
 - (a) site level is greater than 3.15m AHD; and
 - (b) finished floor level is more than 3.40m AHD.
- Crematorium
- Dairy
- Fuel Depot
- General Industry
- Horse Keeping
- Intensive Animal Keeping
- Road Transport Terminal

Shop or group of shops except where the gross leasable floor area is less than 250 square metres
 Special Industry
 Stock Sales Yard
 Stock Slaughter Works
 Waste Reception, Storage, Treatment or Disposal
 Wrecking Yard

Public Notification

PDC20 Categories of public notification are prescribed in schedule 9 of the Development Regulations 1993. Further, the following forms of development are designated:

Category 1

Dwelling
 Land Division
 Recreation Area
 Shop

Category 2

Church
 Community Centre
 Educational Establishment
 Pre-School
 Nursing Home
 Retirement Village

COASTAL ZONE

The objectives and principles of development control that follow apply to the Coastal Zone - shown on [Maps BaW/4 to 14](#). These are additional to those expressed for the whole council area.

This zone abuts the coast and is currently being affected by coastline storm tide flooding and erosion, and this risk will increase in the event of future sea level rise due to global warming. Development within this zone may be subject to flooding and/or erosion either now or in the future. Protection strategies may be required for existing development. New development should be set back from the coast and/or be built to specific minimum site and floor levels to minimise these risks.

Council has adopted policies in the Development Plan setting criteria to meet both the present and predicted future flooding and/or erosion risks within this zone. These policies will be applied to all development, whether total replacement, alteration or additions. All development in this zone will be referred to the Coastal and Marine Section of the Department for Environment, Heritage and Aboriginal Affairs, for comment, in respect of both and flooding and erosion.

OBJECTIVES

Objective 1: Retention in a natural state of the environmentally, culturally and ecologically significant features within the zone.

Objective 4: Protection of scenic amenity and appearance of the landscape.

Objective 6: The upgrading of existing dwellings to assist environmental improvements.

Objective 7: Preservation and management of coastal land features, environmentally important natural features, including lakes, wetlands, dunes, stands of native vegetation,

wildlife habitat, estuarine areas, exposed cliffs, headlands, hilltops and areas which form an attractive background to urban and tourist developments.

Objective 10: Development only undertaken on land which is not subject to, or can be appropriately protected from, coastal hazards, and does not adversely effect the natural coastal processes

Objective 11: Avoid development which is likely to adversely effect the coast by pollution, erosion, damage or depletion of physical or biological resources.

Objective 12: Development should maintain or enhance public use and access to the coastline.

Objective 13: Development which will not require now, or in the future, public expenditure on protection of the development or the environment.

PRINCIPLES OF DEVELOPMENT CONTROL

PDC1 Development should not be undertaken on coastal dune systems, tidal wetlands, mangroves, sand dunes or other environmentally-sensitive areas.

PDC2 Development should not be undertaken where it will create or aggravate coastal erosion, or if it will require coast protection works which will cause or aggravate coastal erosion.

PDC3 Development of a minor nature only should be undertaken in this zone and then only where it is ancillary to the agricultural use of land.

PDC4 Low-intensity agriculture and free-range grazing should continue in this zone with due regard to the conservation of the environment, the preservation of vegetation and the ecology, and proper land management practices.

PDC5 Development should be designed, located and constructed to complement and preserve the character and amenity of the environment, and not be located where it will intrude unnecessarily on the skyline.

PDC6 Development should not prevent public access to the coast.

PDC8 Environmentally significant habitats should be conserved in their natural state and not be impaired or destroyed by development.

PDC12 Land division involving the creation of additional allotments of less than 40 hectares should not be undertaken unless:

- (a) an owner of land wishes to create a separate allotment of one hectare in area to contain one of two habitable dwellings on the land each of which was built or under construction on 21 January 1982, or
- (b) only one additional allotment is to be created; or
- (c) for the creation of an allotment to accommodate an existing dwelling currently on Crown land, or
- (d) for the creation of a public road or public reserve.

PDC13 Land division which does not involve the creation of additional allotments should not be undertaken unless:

- (a) the number of resulting allotments of less than 40 hectares is not greater than the number that existed prior to the readjustment of the boundaries of the Certificate of title; and

(b) all of the allotments are greater than ten hectares in area.

General

PDC27 Development (including land division, where relevant) should:

- (a) be visually compatible with the area in which it is located;
- (b) not impair the environmental significance of the area;
- (c) not adversely impact upon the ability to maintain the coastal frontage in a stable and natural condition;
- (d) minimise vehicle access to the area the subject of the development;
- (e) avoid adverse impact on the environment by the appropriate location of vehicle access means to the coast.
- (f) provide the maximum possible waterfront reserve between buildings and the water;
- (g) provide and maintain public access routes to waterfront reserves;
- (h) be undertaken in a manner which minimises the effect on natural features, flora and fauna, land adjoining water or scenic routes or scenically attractive areas;
- (i) not impair the use or management of natural resources for the best interests of the community;
- (j) be designed to minimise potential risk from bushfire hazard;
- (k) not detract from the value or significance within the locality of items, land, buildings and structures of exceptional beauty or aesthetic, architectural, scientific, cultural, historic, or other heritage value, including Aboriginal sites of anthropological, archaeological or historic significance;
- (l) be landscaped with locally indigenous species in order to enhance the amenity of the area and to screen buildings from public view; and
- (m) only use second hand or re-used materials for external cladding for any buildings when it is of sound condition, good quality and painted an appropriate colour to harmonise with the surrounding environment.

PDC29 All development within the Coastal Zone is **non-complying** except:

- (i) public recreation facilities;
- (ii) alteration of, addition to, or replacement of a dwelling existing as at 12 December 1994 on Crown land, unless the requirements of principle of development control 13 are in place or provided for in the development application;
- (iii) land division:
 - (a) for the creation of an allotment to accommodate an existing dwelling on Crown land, unless the requirements of principle of development control 13 are in place or provided for in the development application.

PDC30 The kind of development listed in [Table BaW/4](#) is assigned Category 1 or Category 2 for the purpose of **Public Notification**.

GENERAL FARMING ZONE

The objectives and principles of development control that follow apply to the General Farming Zone shown on [Maps BaW/3 to 16](#). These are additional to those expressed for the whole Council area.

Objective 1: Promotion of general agricultural activities on large land holdings, with aquaculture, horticulture, commercial forestry and value adding rural industry at suitable locations.

Objective 2: Reinforcement of the existing rural character of the area.

The zone comprises most of the council area and is used mainly for agricultural production and the grazing of stock on relatively large holdings. The zone also includes some land divisions in the district referred to as Melton, Ninnes and Wokurna.

These land divisions have not grown to a level of recognition as settlements. They are therefore part of the general farming area. The existing allotments in these areas could be developed as infill. Such development should be orderly and compact, and have regard to the objectives of the zone.

The pattern of occupation with homesteads, ancillary buildings and paddocks enclosing crops and livestock dominate the area and firmly establish an open and rural scene. The climate, soil and landform characteristics of this zone favour the continuance of agricultural production and livestock grazing. It is desirable that these activities continue, and good land management techniques be encouraged to control proclaimed pest plants, vermin and soil erosion.

In order to improve the economy of the district, some agricultural-based industry, such as processing or handling or primary produce and intensification of agricultural activity, including aquaculture, is warranted. However, a large scale proliferation of intensive development and occupation of the zone would threaten its proper function and render the rural landscape susceptible to competing demands and undesirable change.

To maintain the agricultural importance and stability of the zone, it is vital that the size of the land holdings is not significantly reduced or densities increased, except in the case of aquaculture and that future pressures for development in the zone do not result in conversion of agricultural land to less productive uses.

Objective 3: Preservation of features of scenic, environmental, or heritage, including Aboriginal, significance,

PRINCIPLES OF DEVELOPMENT CONTROL

PDC1 Development should be primarily for agricultural production and livestock grazing on large land holdings, with aquaculture, horticulture and commercial forestry activities occurring where there is suitable land capability, drainage, aspect and availability of ground water.

PDC2 Development of a business, commercial or industrial nature should not take place, unless it:

- (a) is associated with the processing or holding of primary produce and would be of benefit to the rural community;
- (b) would not cause traffic problems or ribbon development along roads;
- (c) would not prejudice the use of the land for primary production;
- (d) would not impair the amenity of the locality;
- (e) cannot be accommodated on alternative sites within the townships or rural settlements; and
- (f) would be more effectively or conveniently located in a rural area.

PDC9 Land division involving the creation of additional allotments of less than 40 hectares should not be undertaken unless:

- (a) an owner of land wishes to create a separate allotment of one hectare in area to contain one of two habitable dwellings on the land, each of which was built or under construction on 21 January 1982; or

(b) the division is for the purpose of creating a separate allotment of one hectare in area to be used for buildings and facilities associated with value adding rural industry and processing, display and sale of goods grown on land; or
(c) the division is for the purpose of more intensive use of the land for horticulture, provided the allotment is not less than 10 hectares in area and where it has been established with a proof that:

- (i) water of sufficient quantity and quality is available to sustain the proposed horticultural use;
- (ii) the land is capable of and appropriate for the proposed horticultural use;
- (iii) the land is capable of supporting the horticultural use with reasonable investment and management inputs;
- (iv) the horticultural use will be compatible with the adjacent uses of the land;
- (v) there will be no adverse impacts on the downstream property owners, in terms of water flow and pollution by discharges; and
- (vii) no harmful risk of water table falling or rising will occur as a result of the excessive irrigation.

PDC10 Land division which does not involve the creation of additional allotments should be undertaken only where:

- (a) the number of resulting allotments of less than 40 hectares is not greater than that existed prior to re-adjustment of the boundaries of the Certificate of Title;
- (b) all of the allotments are greater than ten hectares in area.

PDC15 The following kinds of development (edited) are **non-complying** within the General Farming Zone:

Land Division which creates allotments less than 40 hectares in area, unless the requirements of principles of development control numbered 9 and 10 are in place or provided for in the development application

PDC16 The kind of development listed in [Table BaW/4](#) is assigned Category 1 or Category 2 for the purpose of **Public Notification**.

COUNCIL-WIDE

Area

The objectives and the principles of development control that follow apply to the whole area of the District Council of Barunga West.

Arrangement

The policies in relation to the whole Council area are expressed first and then in more detail for zones. Reference should be made to the provisions for the Council area and then to the relevant zone to determine all provisions applicable to any particular land or any particular type of development.

Background

The Yorke Peninsula is predominantly a general farming area, with grain, wool producing and commercial fishing being the principal farming activities. It makes a significant contribution to the State's economy.

The District Council of Barunga West, as part of the Yorke Peninsula, makes its own contribution by serving the farming community. It stretches from the eastern shores of Spencer Gulf to the western side of the South Flinders Ranges. Because the coastline is within the easy reach of the metropolitan Adelaide and the Mid North, the district has become a popular destination for those interested in coast-orientated recreation and leisure activities.

The principal towns in the district are Port Broughton and Bute. Port Broughton is a well known holiday town, with caravan parks and established holiday accommodation located along the scenically attractive beaches. Bute is a key service centre for the surrounding farming communities and plays an important role as a service hub for the surrounding primary production areas.

Port Broughton is the largest town in the district with the infrastructure of public services and facilities serving the needs of the surrounding communities. Bute is the second largest, and provides some of the services and facilities required by local people and tourists.

The existing townships at Alford, Tickera, Fisherman Bay, Mundoora, and Kulpara play a useful but limited role in providing urban facilities.

OBJECTIVES

Form of Development

Objective 1: Orderly and economic development

New housing and other urban development should be contiguous with, and form compact extensions of, the existing built up areas. This will achieve economy in the provision of public services and will be conducive to the creation of a safe, convenient and pleasant environment in which to live.

Objective 2: Development and conservation in accordance with the Barunga West district and Port Broughton township Structure Plans [Maps BaW/1 \(Overlay 1\) and BaW/1 \(Overlay 1\) Enlargement A](#).

These Structure Plans illustrate in general terms the desired strategy for future development of the council area and the Port Broughton township through the following measures:

- (a) development of the Port Broughton township in the council area on a carefully planned basis to protect its country town character while catering to the community needs for residential, social, educational, cultural, employment, recreational, economic and other needs of the district's population within the defined areas;
- (b) satisfaction of recreational and residential requirements in the defined settlements areas on the coast;
- (c) protection of the productivity of the district's agricultural industry;
- (d) strict control of development of rural industries and intensive animal keeping activities throughout the council area;
- (e) evaluation and management of mineral reserves by establishment of criteria for the opening and working of deposits;
- (f) conservation of the heritage, and areas of natural vegetation;
- (g) protection of the scenically and environmentally important coastal land;
- (h) protection of the quiet and pleasant nature of the area;
- (i) protection of the urban areas against the adverse impacts of the intensive rural industries and contamination from spray drift;

- (j) protection of public health by providing a safe, secure and healthy living environment for all in the district; and
- (k) provision for the safe and efficient movement of traffic along roads, and management of development abutting roads.

Objective 3: The location of:

- (a) living, business, service and community facilities contained within the towns of Port Broughton and Bute; and
- (b) agriculture, intensive animal keeping and extractive industry in suitable areas outside the towns of Port Broughton and Bute, and the townships of Alford, Tickera, Kulpara and Fisherman Bay.

Objective 4: A proper distribution and segregation of living, working and recreational activities by the allocation of suitable areas of land for those purposes.

Objective 5: The proper location of public and community facilities by the reservation of suitable land in advance of the need.

Objective 6: The redevelopment of localities which have a bad or unsatisfactory layout, or unhealthy or obsolete development.

Objective 7: Productive rural land retained for primary production.

Objective 8: Promotion of local employment opportunities.

Objective 9: Co-ordination of development in the council area with that of other the council areas which may be affected.

Interface between Land Uses

Objective 10: Development located and designed to prevent adverse impact and conflict between land uses.

Objective 11: Protect community health and amenity and support the operation of all desired land uses.

Movement of People and Goods

Objective 18: Safe and efficient movement of people and goods by road.

Objective 19: The free flow of traffic on roads by minimising interference from adjoining development.

Objective 20: Development and associated points of access and egress not create conditions which cause interference with the free flow of traffic on adjoining roads.

Objective 21: Development to provide for an on-site parking, loading, unloading, turning and fuelling of vehicles. Vehicles are required to enter and exit the site in a forward direction.

Objective 22: Better access to scenic areas along the coast, and other areas of special interest.

Objective 23: Protection of land in the vicinity of the primary and other secondary arterial roads from unsightly development.

Public Utilities

Objective 27: Development should not result in increased pollution of water catchment areas.

Objective 28: Economy in the provision of services.

Objective 29: Minimisation of impact of the placement of public services on the natural, historic or architectural features and character of the district.

Objective 30: Development connected to any common effluent discharge scheme should not exceed the capacity of the scheme.

Conservation

Objective 38: Conservation, preservation or enhancement of scenically attractive areas, including land adjoining water and scenic routes.

Objective 39: Conservation of the historic and scenically-attractive areas, including trees and sites of visual significance.

Objective 42: Preservation of buildings or sites of historic, architectural, scientific, social, including Aboriginal, cultural heritage, significance.

Objective 43: Retention of native vegetation where clearance may cause soil erosion, soil slip and soil salinization, flooding or a deterioration in the quality of surface waters.

Objective 45: Protection of all water resources from pollution or excessive usage which would threaten the long-term reliability of existing resources.

Objective 46: Minimise the potential for site erosion and subsequent sedimentation during land development and construction works.

Objective 47: Coastal areas protected, restored, developed and managed in accordance with the Development Plan provisions.

Objective 48: Conservation and, where necessary, restoration of land, buildings and structures of historical, architectural, scientific, natural, social, including Aboriginal, cultural, or other heritage significance.

Objective 49: Management of wastewaters without risk of pollution to surface or ground water resources

Residential Development

Objective 51: Safe, pleasant and convenient living areas.

Open Space

Objective 56: Conservation and preservation of flora, fauna and scenery, and the creation and enlargement of recreation areas by establishing parks and reserves to link up with the Heyden Trail.

Coastal Areas

Objective 62: Coastal areas protected, restored, developed and managed in accordance with the Development Plan provisions.

Objective 63: Sustain or enhance the natural coastal environment in South Australia.

Objective 64: Preserve and manage the environmentally important features of coastal areas, including mangroves, wetlands, dune areas, stands of native vegetation, wildlife habitats and estuarine areas.

Objective 65: Preserve places of heritage, cultural, scientific, environmental, educational or landscape importance, and areas which form an attractive backdrop to urban and tourist development.

Objective 66: Preserve areas of high landscape and amenity value, including exposed cliffs, headlands, islands and hill tops, and areas which form an attractive background to urban and tourist developments.

Objective 67: Maintain and improve public access to the coast in keeping with other objectives for protection of the environment, heritage and amenity.

Objective 68: Development which recognises and allows for hazards to coastal development by inundation, storm tides and stormwater, or combined storm tides and stormwater, coastal erosion, and sand drift, including an allowance for changes in sea level due to natural subsidence and predicted climate change during the first 100 years of the development.

Objective 69: Developers bearing the cost of protecting private development from the effects of coastal processes or the environment from the effects of development rather than the community.

Objective 70: Protect the physical and economic resources of the coast from inappropriate development.

Objective 71: Locate all housing, including holiday houses, tourist accommodation, marinas and rural living on land zoned for such purposes, and where it is environmentally acceptable and forms orderly and economic development.

Objective 72: Redevelop and redesign unsatisfactory coastal living areas which do not satisfy environmental, health or public access standards for coastal areas.

Objective 73: Development of coastal urban settlements, coastal rural living, tourist accommodation and marinas in an orderly and economic manner which provides for a range of sites while ensuring the number of locations and the size of the zones do not exceed that which is indicated as being required by a realistic assessment of the future demand.

Objective 74: Protect the coast from development that will adversely affect the marine and onshore coastal environment whether by pollution, erosion, damage or depletion of physical or biological resources, interference with natural coastal processes or any other means.

Rural Development

Objective 75: The retention of rural land for agricultural and pastoral purposes except for value adding activities in rural areas, and the maintenance of the natural character and beauty of such areas.

Land Division

Objective 80: Division of rural land limited to that necessary for agricultural and pastoral purposes to satisfy the genuine demands of primary production, and to avoid fragmentation, except for value adding activities associated with rural-based industry.

Objective 81: Control the division of rural land to less than 40 ha unless the division is intended for intensive agricultural, or rural based industry.

Objective 82: Division of land to be controlled so as not to increase the potential for clearance of native vegetation.

Stormwater Management

Objective 83: Development that maximises the use of stormwater.

Objective 84: Development designed and located to protect stormwater from pollution sources.

Objective 85: Development designed and located to protect or enhance the environmental values of receiving waters.

Objective 86: Development designed and located to prevent erosion.

Settlements

Objective 87: Consolidation of existing townships of Alford, Tickera, Kulpara, Mundoora, Fisherman Bay, and the settlement at Melton.

Objective 88: Development of an urban character, not associated with the major towns, contained in townships and settlements.

PRINCIPLES OF DEVELOPMENT CONTROL

The principles of development control that follow apply to the whole area of the District Council of Barunga West.

Form of Development

PDC1 Existing development which is not consistent with the objectives and principles of development control for the council area should be altered, enlarged or expanded only if:

- (a) the character and amenity of the locality is not detrimentally affected or the health and living standards of the community are not lowered as a result of the increased intensity of activity;
- (b) the total floor area of buildings or external areas used directly in conjunction with the existing development, does not exceed 50 per cent of the total floor area or external area as at (23 September 1999);
- (c) in case of the keeping of animals, the additional animals proposed to be kept, do not exceed 50 per cent of the number kept on (23 September 1999); and
- (d) the alteration, enlargement or extension is restricted to the site on which the use is situated.

PDC3 Development proposed near the boundary of a zone should have regard to the existing land uses and policies applicable to land in the neighbouring zone.

PDC4 Development should not prejudice the future use of land proposed to accommodate the expansion of the towns of Port Broughton and Bute and the townships of Alford, Tickera Kulpara, Mundoora and Fisherman Bay.

PDC5 Development should not be undertaken on land:

- (a) liable to inundation by tidal, drainage or floodwaters, nor on land which would become flood-prone allowing for 0.95 metres of relative sea level rise.
- (b) which could not reasonably be protected against stormwater flooding, should relative sea level rise by 0.95 metres;
- (c) where it will create or aggravate coastal erosion, or if it will require coast protection works which will cause or aggravate coastal erosion.

PDC6 Provision should be made for the satisfactory disposal of effluents into approved sewerage systems. Solid and liquid wastes should be disposed of to the satisfaction of the relevant public health authority.

PDC7 All development should control the export of sediment, suspended solids, organic matter, nutrient, micro-organisms and litter in stormwater run-off.

PDC8 New development should incorporate a stormwater management scheme that controls run-off from paved surfaces eg car park and roadways, so as to drain to landscape plantings.

PDC11 Expansion of the developed areas within the town boundaries should:

- (a) be integrated and co-ordinated with an overall layout plan for the land concerned and, if necessary, the adjoining land;
- (b) proceed in an orderly sequence;
- (c) not proceed until the existing allotments within the townships are substantially built upon; and
- (d) present a reasonable choice of location to the consumer.

PDC17 Development should provide for a safe, convenient and healthy living environment for the population of the district.

Interface Between Land Uses

PDC23 Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following:

- (a) the emission of effluent, odour, smoke, fumes, dust or other airborne pollutants
- (b) noise
- (c) vibration
- (d) electrical interference
- (e) light spill
- (f) glare
- (g) hours of operation
- (h) traffic impacts.

PDC24 Development should be designed and sited to minimise negative impact on existing and potential future land uses considered appropriate in the locality.

Land Division

PDC34 All allotments should have a public road frontage and not be solely dependent upon private road, or right of way, or similar for access.

PDC35 Boundaries of new allotments should not cross areas of native vegetation.

PDC36 Land should not be divided:

- (a) in a manner which would prevent the satisfactory future division of the land or any part thereof;
- (b) if the proposed use, or the establishment of the proposed use, is likely to lead to undue erosion of the land in the vicinity thereof;
- (c) if new allotments do not contain cleared area for dwellings;
- (d) unless wastes produced by the proposed use of the land, or any use permitted by the principles of development control, can be managed so as to prevent pollution of a public water supply or any surface of underground water resources;
- (e) unless provision can be made for the disposal of wastewaters from each allotment without risk to human and environmental health;
- (f) if the size, shape and location of, and the slope and nature of the land contained in, each allotment resulting from the division is unsuitable for the purpose of which the allotment is to be used;
- (g) if any part of the land is likely to be inundated by tidal or floodwaters and the proposed allotments are to be used for a purpose which would be detrimentally affected when the land is inundated;
- (h) where community facilities or public utilities are lacking or inadequate;
- (i) where the proposed use of the land is the same as the proposed use of other existing allotments in the vicinity, and a substantial number of the existing allotments have not been used for that purpose;
- (j) if land division would lead to development on that land which is incompatible with mining of significant mineral resources.
- (k) if boundaries of new allotments will cross any areas of native vegetation; or
- (l) if there is likely to be significant fire risk.

PDC37 When land is divided:

- (a) any reserves or easements necessary for the provision of public utility services should be provided;
- (b) stormwater should be capable of being managed safely and efficiently from each proposed allotment and disposed of from the land in a satisfactory manner;
- (c) a water supply sufficient for the purpose for which the allotment is to be used should be made available to each allotment;
- (d) provision should be made for the management of waste waters, sewage and other effluents from each allotment without risk to human and environmental health;
- (e) roads or thoroughfares should be provided where necessary for safe and convenient communication with adjoining land and neighbouring localities;
- (f) each allotment resulting from the division should have safe and convenient access to the carriageway of an existing or proposed road or thoroughfare; however, for a number of contiguous allotments in an 80km/h or higher speed zone, access via a service lane would be preferred;
- (g) proposed roads should be graded, or be capable of being graded to connect safely and conveniently with an existing road or thoroughfare;
- (h) for urban purposes, provision should be made for suitable land to be set aside for useable local open space;
- (i) where it would lead to development on land which is incompatible with mining of significant mineral resources;
- (j) if the land borders a river, lake or creek, the land immediately adjoining the river, lake or creek should become public open space, with a public road fronting the open space; and

(k) adequate area should be available on each allotment to ensure that development of buildings, structures, access tracks etc do not impinge on areas of native vegetation.

PDC38 Where land, which has frontage to sea, is divided, a reserve of at least 30 metres in width should be provided along such frontage.

Stormwater Management

PDC39 Development of stormwater management systems should be designed and located to improve the quality of stormwater, minimise pollutant transfer to receiving waters and protect downstream receiving waters from high levels of flow.

PDC40 Development should incorporate appropriate measures to minimise any concentrated stormwater discharge from the site.

PDC41 Development should not have a detrimental effect on the quality or hydrology of groundwater.

PDC43 Site drainage should include, where practicable, scope for on-site stormwater detention, retention and use, including the collection and storing of water from roofs and communal car parks in appropriate devices.

Residential Development

PDC46 Residential development should not be undertaken unless the site is connected to a reticulated water supply and the effluent disposal system, or unless the developer is prepared to make appropriate arrangements for on-site discharge of the effluent.

Movement of People and Goods

PDC56 Access to and from public roads should be safe and convenient, and not cause conditions that interfere with the safe and efficient movement of traffic on abutting roads.

Public Utilities

PDC65 Development should be economically connected to, or be able to be connected to, all weather roads and public utilities such as water supply for domestic, fire fighting and live stock use, effluent, drainage, electricity, lighting and telephone services, likely to be required by the user of the development.

PDC66 The treatment and disposal of effluent and other waste material from a development or use of land should, having regard to the location and design of that development or use, be able to be achieved without risk to health or impairment to the environment.

PDC67 Development that requires the construction or extension of a private water supply scheme should not take place unless:

- (a) a water supply can be provided which has a source of water of adequate magnitude and reliability; and
- (b) the standard of construction and operation of the scheme, the quality of supply and legal arrangements for the supply between the parties will meet the ongoing requirements of the communities served.

PDC68 Urban development should not be dependent on an indirect water supply.

PDC69 Development should not be undertaken which would lead to the pollution of any water resource.

PDC70 Urban development should be capable of economic servicing for garbage collection, fire protection and street lighting.

Conservation

PDC96 Native vegetation should not be cleared if it:

- (a) provides important habitat for wildlife;
- (b) has a high plant species diversity, rare or endangered plant species and plant associations;
- (c) has high amenity value;
- (d) contributes to the landscape quality of an area;
- (e) has high value as a remnant of vegetation associations characteristic of the district prior to extensive clearance;
- (f) is associated with sites of scientific, archaeological, historic, or cultural significance; or
- (g) is growing in, or is characteristically associated with, a wetland environment.

PDC97 Native vegetation should not be cleared if such clearance is likely to:

- (a) create or contribute to soil erosion;
- (b) decrease soil stability and initiate soil slip;
- (c) create, or contribute to, a local or regional soil salinity problem;
- (d) lead to the deterioration in the quality of surface waters; or
- (e) create or exacerbate the incidence or intensity of local or regional flooding.

PDC98 When clearance is proposed, consideration should be given to:

- (a) retention of native vegetation for, or as:
 - (i) conservation of natural biodiversity;
 - (ii) amenity purposes;
 - (iii) livestock shade and shelter; or
 - (iv) protection from erosion along watercourses and the filtering suspended solids and nutrients from runoff;
- (b) the effects of retention on farm management; and
- (c) the implications of retention or clearance on fire control.

PDC99 Development should not cause pollution of surface water and groundwater.

PDC100 Development should not proceed on any land where the proper and safe treatment and/or management of wastes produced by the proposed land use is not possible without risk to health or impairment of the environment.

PDC103 The seashore and sand dunes adjoining the land, should be protected from development and excessive recreational use which detracts from the area's scenic beauty and natural character.

PDC107 Development should be designed having regard to natural coastal processes. Where applicable, it should incorporate suitable protective works.

PDC112 Development should maximise the protection of flora and fauna.

PDC113 Residential development should not be undertaken within 350 metres of an existing or proposed common effluent drainage scheme lagoon.

Site Contamination

PDC117 In order to prevent harm to human health or the environment, development should not be undertaken on contaminated land or on potentially contaminated land unless:

- (a) the land is remediated to a level that makes it suitable and safe for the proposed use; or
- (b) the land will be maintained in a condition or the development will be undertaken in a manner that will not pose a threat to the health and safety of the environment or occupiers of the land or land in the locality.

Rural Development

PDC134 Land which is suitable for agriculture should, wherever possible, be used, or remain available for use, for primary production, unless required for public purposes, or other uses consistent with the objectives of the council area.

Coastal Areas

The following principles of development control are applicable to all development which could impact on coastal areas, affect coastal processes or be subject to effect or hazard from coastal processes now or in future, whether or not the development is located in a designated coastal area.

Environmental Protection

PDC153 Development, including flood, erosion and wave protection measures, should not adversely affect the ecology of the coastal areas, the seabed or coastal waters by pollution, significant loss of habitat, interference with coastal processes or any other means.

PDC154 Development should not be located in delicate or environmentally-sensitive coastal features such as sand dunes, wetlands or important remnants of native vegetation.

PDC155 Development should not, nor be likely to, adversely affect the ecology and stability of environmentally-sensitive coastal features.

PDC156 Development should not be undertaken where it will create or aggravate coastal erosion, or where it will require coast protection works which cause or aggravate coastal erosion.

PDC157 Land should only be divided in such a way that:

- (a) it or the subsequent development and use of the land will not adversely affect the management of the land, adjoining land or the coast;
- (b) sand dunes, wetlands and remnant vegetation are maintained in single parcels;
- (c) the number of allotments abutting directly onto the coast or onto a reserve for conservation purposes is minimised; and
- (d) outside of urban, tourist accommodation and rural living zones it will not result in allotments with frontages to the coast or coastal reserve shorter than the depth of the allotment (or less than the square root of the area for irregular shaped allotment).

PDC158 Development should be designed for solid or fluid wastes and stormwater run-off to be managed so that it will not cause pollution or other detrimental impacts on the marine and on-shore environment of coastal areas.

PDC159 Effluent disposal systems incorporating soakage trenches or a similar system should be located not less than 100 metres where it is necessary to avoid effluent migration onto the inter-tidal zone, the 100 metres to be measured from:

- (a) the mean high water mark at spring tide adjusted for any subsidence for the first 50 years of development plus a sea level rise of one metre; or
- (b) the nearest boundary of any erosion buffer determined in accordance with principle of development control numbered 190, whichever is the greater. Except where SA Health Commission standards can be met by a lesser setback.

PDC160 Development should preserve natural drainage systems and not significantly increase or decrease the volume of water flowing to the sea. Where necessary, it should incorporate stormwater management schemes including:

- (a) on-site harvesting of water and land based disposal systems;
- (b) retention basins to facilitate settlements of pollutants and to regulate water flow; and
- (c) infiltration.

PDC161 Development should not cause deleterious effects on the quality or hydrology of ground water.

PDC163 Development should not preclude the natural geomorphologic and ecological adjustment to changing climate, sea level or other conditions. For example, landward migration of coastal wetlands should not be prevented by embankments. Development should be designed to allow for new areas to be colonised by mangroves and wetland species and for removal of existing embankments where practical.

Preservation of scenic, heritage and other values

PDC165 Development should not result in the disturbance or devaluation of sites of heritage, cultural, scientific or educational significance.

PDC167 Development within urban and tourist accommodation zones should be designed and sited in sympathy with the existing natural and built character of its locality. It should not be out of scale, of conflicting colour or materials or detract from any backdrop to the zone, nor project above the skyline visible from the coast, with the existing natural, cultural and built character.

PDC169 All development should incorporate measures (not being measures that themselves cause environmental harm) to avoid the discharge or deposit of waste from that activity or land:

- (a) into any waters; or
- (b) onto land in a place from which it is reasonably likely to enter any waters (including by processes such as seepage or infiltration or carriage by wind, rain, sea spray, or stormwater or by the rising of the water table), and, in taking those measures, should apply the waste management hierarchy, ie avoid, minimise, reuse, recycle, recover (for reuse), treat, dispose in an environmentally sound manner.

Maintenance of Public Access

PDC176 Development adjacent to the coast should not be undertaken unless it has, or incorporates the provision of a public reserve, not including a road or erosion buffer provided in accordance with principle of development control 189, of at least 50 metres between such development and toe of the primary dune or top edge of the escarpment, unless the development relates to a small-scale infill in a predominantly urban zone.

PDC177 Development which abuts or includes a coastal reserve for scenic, conservation or recreational purposes should be located and designed in such a way as to have regard to the purpose, management and amenity of the reserve and to prevent illegal incorporation of reserve land into private land.

PDC178 All development, including marinas and aquaculture development, should be located and designed for public access along the waterfront, to beaches and coastal reserves to be maintained, if not increased.

PDC179 Access to beaches and reserves should be, by means of walkways and roads suitably designed and constructed to meet the environmental objectives and principles of development control for coastal areas.

Hazard Risk Minimisation

PDC183 Development should not occur on land where the risk of flooding is unacceptable having regard to personal and public safety and to property damage.

PDC184 For the purpose of assessing coastal developments the standard sea-flood risk level for a development site is defined as the 100-year average return interval extreme sea level (tide, stormwater and associated wave effects combined), plus an allowance for land subsidence for 50 years at the site.

PDC188 Development which requires protection measures against coastal erosion, sea or stormwater flooding, sand drift or the management of other coastal processes at the time of development, or which may require protection or management measures in the future, should only be undertaken if:

- (a) the measures themselves will not have an adverse effect on coastal ecology, processes, conservation, public access and amenity;
- (b) the measures do not now, or in the future require community resources, including land;
- (c) the risk of failure of measures such as sand management, levee banks, flood gates, valves or stormwater pumping, is appropriate to the degree of the potential impact of failure; and
- (d) adequate financial guarantees are in place to cover future construction, operation, maintenance and management of the protection measures.

PDC189 Development should be set-back a sufficient distance from the coast to provide an erosion buffer which will allow for at least 100 years of coastal retreat for single buildings or small-scale developments, or 200 years of retreat for large-scale developments such as new towns, unless:

- (a) the development incorporates private coastal works to protect the development and public reserve from the anticipated erosion, and the private coastal works comply with principle of development control 188; or
- (b) the Council is committed to protecting the public reserve and development from the anticipated coastal erosion.

PDC190 Where a coastal reserve exists, or is to be provided in accordance with principle of development control 178, it should be increased in width by the amount of buffer required.

PDC191 The width of an erosion buffer should be based on:

- (a) the susceptibility of the coast to erosion;
- (b) local coastal processes;
- (c) the effect of severe storm events;
- (d) the effect of a 0.3 metres rise in sea level over the next 50 years on coastal processes and storms; and
- (e) the availability of practical measures to protect the development from erosion caused by a further sea level rise of 0.7 metres per 50 years thereafter.

PDC192 Where there is inadequate area to provide the necessary erosion buffer to development on land at risk from long-term coastal erosion (for example, small-scale infill development including land division), such development should not occur unless:

- (a) the council has committed itself to erosion protection measures which may be necessary along this section of the coast; or
- (b) a legally binding agreement is included on the freehold certificate(s) of title(s) that protection measures will not be built and that any building will be transportable and will be removed when threatened by erosion or storm surge flooding; or
- (c) a legally binding agreement is included on the freehold certificate(s) of title(s) that protection measures that comply with principle of development control 188 for coastal development will be built by the land owner(s) when required.

PDC193 Development should not occur where essential services cannot be economically provided and maintained having regard to flood risk and sea level rise where emergency vehicle access would be prevented by a 100-year average return interval extreme sea level event, adjusted for 100 years of sea level rise.

Settlement, Tourist Facilities and Marina's in Appropriate Zones

PDC198 Urban development including holiday house settlements and tourist developments, marinas, rural living, country living and other development of a non-commercial farming nature, including land division for all such development, should only be undertaken in zones designated for such development.

No Premature Development

PDC201 Development, including land division, urban, holiday settlement, tourist development and other urban-type development should be:

- (a) compact not linear development;
- (b) contiguous with any existing built-up areas;
- (c) developed in a staged and orderly manner which facilitates the economic provision of services and infrastructure; and
- (d) provided with an adequate reticulated domestic-quality mains water supply and a common effluent drainage scheme, where available.

Re-development of Unsatisfactory Areas

PDC202 Existing development which is contrary to the objectives for coastal areas should not be redeveloped unless the redevelopment significantly rectifies the unsatisfactory aspects.



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Application Detail

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General

Unique Id : 35472
 Development No : 344/D007/10
 Application Type : Conventional Land Division
 Application Extent : Provisional Development Plan Consent with Land Division Consent
 Land Use/Building Consent : No
 Council Name : District Council of Barunga West
 Agents Reference : CCF.52.S1
 Short Reference : FishFisherm
 Submitting Agents Name : Lester Franks
 Submitted By : Fred Horvath, Lester Franks
 Application Status : Lodged & Distributed (No Decision)

Application Type Details : Conventional Land Division

[Hide](#)

Total Area of Land to be Divided : 67.6 hectares
 Reserve Area : 6526 square metres
 Number of existing allotments : 1
 Number of proposed allotments (excluding road 405
 and reserve) :
 Number of additional allotments : 404

Applicant Details

[Hide](#)

Salutation	Name	Organisation Name	Address
		Fishermans Bay Management Pty. Ltd.	C / - Lester Franks First Floor, 22 Chancery Lane, Adelaide SA 5000 South Australia AUSTRALIA

Owner Details

[Hide](#)

Salutation	Name	Organisation Name	Address
		Fishermans Bay Management Pty. Ltd.	C / - Lester Franks First Floor, 22 Chancery Lane, Adelaide SA 5000 South Australia AUSTRALIA

Contact Details

[Hide](#)

Salutation	Name	Address	Telephone	Fax	Email
Mr	Andrew Butcher	22 Chancery Lane Adelaide 5000 South Australia AUSTRALIA	Telephone 1 : 8223 5220 Telephone 2 : Mobile :	Fax 1 : 8223 5226 Fax 2 :	abutcher@lesterfranks.com.au

Subject/Property Details

[Hide](#)

House No. :
 Lot No. :
 Street : Fisherman Bay Rd
 Suburb/Town Fisherman Bay
 Hundred: Munderoo
 Reference Section:

Title Reference and Plan Parcel

Title Code	Title Description	Volume	Folio	Plan Code	Plan Description	Plan No.	Parcel No.
CT	Certificate of Title	5503	193	F	Filed Plan	2184	A4

Other Details

[Hide](#)

Existing Use : Township & General Farming
 Description of Proposed Development : Land Division
 Does either schedule 21 or 22 of the No
 Development Regulations 1993 apply? :
 Notes :

Additional Information Requests :

Additional Fees and Payments :

Lodgement Date : 29 Jul 2010
 Months for Development Approval Request : 12

Categorisation Details

[Hide](#)

Decision Authority : DAC
 Application Classification : Major
 Kind of Development : Merit
 Notification Category : Not Applicable
 Zone : Township & General Farming
 Development Plan Map No : BaW/11
 Allocated Planner : Phil Turvey
 Categorisation Comments : Mandatory referral to the EPA - Schedule 8 Item 10(b)
 Planning Report uploaded 16/8/10
 Categorised By : Biljana Prokic
 Categorisation Date : 28 Apr 2017



Distribution Details

[Hide](#)

Referral Agency	Referred to Agent	First Accessed	Referral State	Due Date	Response
SA Water Corporation	02 Aug 2010	07 Nov 2011	Returned on 09 Aug 2010		Show
DoH - Environmental Health	02 Aug 2010	06 Aug 2010	Returned on 06 Sep 2010		Show
Development Assessment Commission	02 Aug 2010	02 Aug 2010	Returned on 22 Nov 2010		Show
Environment Protection Authority	02 Aug 2010	03 Aug 2010	Returned on 20 Aug 2010		Show
DPTI - Transport Services Division	02 Aug 2010	03 Aug 2010	Returned on 26 Aug 2010		Show
DEWNR - Coast Protection Board	17 Aug 2010	26 Aug 2010	Returned on 14 Sep 2010		Show
Environment Protection Authority	25 Aug 2010	26 Aug 2010	Over-ridden		Show
Environment Protection Authority	21 Jul 2011	22 Jul 2011	Over-ridden		Show
DEWNR - Coast Protection Board	21 Jul 2011	08 Aug 2011	Returned on 18 Aug 2011		Show
Environment Protection Authority	25 Aug 2011	26 Aug 2011	Returned on 02 Sep 2011		Show
Environment Protection Authority	13 Oct 2011	14 Oct 2011	Returned on 14 Oct 2011		Show
District Council of Barunga West	17 Nov 2011	28 Dec 2011	Returned on 02 Feb 2012		Show
DEWNR - Crown Lands- YP & Mid North Councils	08 Feb 2012	09 Feb 2012	Over-ridden		Show
District Council of Barunga West	20 Apr 2017	28 Jul 2017	Over-ridden		Show
Environment Protection Authority	20 Apr 2017	20 Apr 2017	Returned on 18 May 2017		Show
DoH - Environmental Health	20 Apr 2017	21 Apr 2017	Returned on 18 May 2017		Show
DEWNR - Coast Protection Board	20 Apr 2017	01 May 2017	Returned on 31 Aug 2017		Show
DEWNR - Crown Lands- YP & Mid North Councils	20 Apr 2017		Overdue	18 May 2017	Show
DPC- Aboriginal Affairs & Reconciliation	20 Apr 2017	01 May 2017	Returned on 03 May 2017		Show
District Council of Barunga West	28 Apr 2017	28 Jul 2017	Overdue	09 Jun 2017	Show
Decision Authority	Distributed for Decision	First Accessed	Decision State	Decision Issued	Response
District Council of Barunga West	02 Aug 2010	19 Aug 2010	Over-ridden		Show
District Council of Barunga West	17 Aug 2010	19 Aug 2010	Over-ridden		Show
District Council of Barunga West	21 Jul 2011	26 Jul 2011	Over-ridden		Show
District Council of Barunga West	25 Aug 2011	01 Sep 2011	Over-ridden		Show
Development Assessment Commission	17 Nov 2011	23 Nov 2011	Over-ridden		Show
Development Assessment Commission	20 Apr 2017	20 Apr 2017	Over-ridden		Show
Development Assessment Commission	28 Apr 2017	28 Apr 2017	Current		Show

Decision Details

[Hide](#)

There has not yet been a decision submitted for this application

Overtaken Decision Details

[Hide](#)

There are no overtaken decision details currently available for this application

Clock Stops (Development Assessment Commission only)

[Hide](#)

Reason	Stopped Date	Start Date	Last Updated By	Last Updated Date	Notes
Applicants request	20 Jan 2012	20 Apr 2017	Biljana Prokic	20/04/2017 10:49:49 AM	Show

Lodgement Fees

[Hide](#)

Fee Invoice No.	Fee Invoice Date	Invoice Description	Fee Status
32170	29 Jul 2010	New Application Invoice	Fees Paid
Fee Line Type Description			Total Fee (\$)
Lodgement Fee (additional allotment)			175.00
Land Division Fee (additional allotment)			132.00
Land Division Fee (per Additional Allotment)			5050.00
Statement of Requirements Fee (additional allotment)			349.00
Certificate of Approval Fee (additional allotments)			290.00
DAC Consultation Report Fee (additional allotments)			174.00
Invoice Total Fee(\$):			6170.00

Certificate of Approval (CoA) Details

[Hide](#)

CoA Id	Stage Number	Status	Certificate Plan	Issue Date	Issuing Officer	Date Deposited	Deposited Plan No. (DP)	Detail
30877	001	Awaiting DA Decision						Show

There are no further Certificate of Approval (CoA) details

Certificate of Approval (CoA) Clearance Requirements Details

[Hide](#)

CoA Clearance Requirement Description	CoA Id	Stage No.	Agency Name	Distribution Date	Status	Detail
That a certified survey plan shall be lodged for Certificate purposes.	30877	001	Development Assessment Commission	22 Nov 2010	Not yet Met	Show
SA Water has no requirements pursuant to the Development Act.	30877	001	SA Water Corporation		No Requirements	

Additional DA Fees

[Hide](#)

Additional DA Fees - Paid

Fee Desc	Fee Issue Date	Payment Date	Total Fee (\$) Incl. GST	Detail
No Fees have been paid yet				

Additional DA Fees - Outstanding

Fee Desc	Fee Issue Date	Total Fee (\$) Incl. GST
Mandatory Referral - EPA	17 Nov 2011	186.00

Additional CoA Fees

[Hide](#)

There are currently no Certificate of Approval (CoA) fees generated for this application

Application Documents

[Hide](#)

Document Title	Document Type	Version #	State	File Size (Kb)	Date Uploaded	Notes
CT 5503_193	Certificate of Title/Lease	1	Uploaded	85.2100000	29 Jul 2010	Show
CCF0P005rev17	Proposed Plan of Division	1	Uploaded	2002.8200000	29 Jul 2010	Show
CCF0P005rev17 New	Proposed Plan of Division	2	Uploaded	2252.5700000	19 Jul 2011	Show
CCF0P005rev17 New	Proposed Plan of Division	3	Uploaded	2252.4100000	23 Aug 2011	Show
CCF0P005rev17 New	Proposed Plan of Division	4	Uploaded	1895.3300000	18 Apr 2017	Show
Bizgate Lodgement Receipt	Miscellaneous	1	Uploaded	29.3400000	29 Jul 2010	Show
L - Presiding Member, DAC	Miscellaneous	1	Uploaded	78.6800000	29 Jul 2010	Show
L - Mr Marziale, DC of Barunga West	Miscellaneous	1	Uploaded	409.2200000	29 Jul 2010	Show
LOTS Admin Interests	Miscellaneous	1	Uploaded	70.0000000	30 Jul 2010	Show
Location Plan Enlargement New	Miscellaneous	1	Uploaded	33.0600000	30 Jul 2010	Show
Location Plan New	Miscellaneous	1	Uploaded	28.0200000	30 Jul 2010	Show
DAC Regulation 29 Letter New	Miscellaneous	1	Uploaded	195.0000000	03 Aug 2010	Show
Planning Rpt 130810 New	Miscellaneous	1	Uploaded	132.1500000	16 Aug 2010	Show

Plan Diagram New	Miscellaneous	1	Uploaded	10.2400000	16 Mar 2011	Show
DAC_12.7.11 New	Miscellaneous	1	Uploaded	39.3100000	18 Jul 2011	Show
DC_Barunga_West-land_division New	Miscellaneous	1	Uploaded	155.9800000	18 Jul 2011	Show
DC_Barunga_West-Levee New	Miscellaneous	1	Uploaded	440.0500000	18 Jul 2011	Show
Tonkin_report_(final) New	Miscellaneous	1	Uploaded	1689.6400000	18 Jul 2011	Show
DAC Regulation 29 Letter A/P 19/07/11) New	Miscellaneous	1	Uploaded	195.5000000	21 Jul 2011	Show
DAC Regulation 29 Letter (A/P 23/08/11) New	Miscellaneous	1	Uploaded	195.5000000	25 Aug 2011	Show
Plan Diagram New	Miscellaneous	1	Uploaded	10.6500000	08 Sep 2011	Show
Botten Levison reply to EPA New	Miscellaneous	1	Uploaded	11086.8100000	26 Sep 2011	Show
DAC - now decision authority New	Miscellaneous	1	Uploaded	288.0600000	17 Nov 2011	Show
Council extension request New	Miscellaneous	1	Uploaded	355.0200000	23 Nov 2011	Show
Building Branch - DPLG Referral New	Miscellaneous	1	Uploaded	230.0000000	02 Dec 2011	Show
Additional Info from Council - Apr 12 New	Miscellaneous	1	Uploaded	640.2400000	27 Apr 2012	Show
Response Rec'd from Council - May 12 New	Miscellaneous	1	Uploaded	810.3100000	16 May 2012	Show
20101278_SHT 03 Rev_3 New	Miscellaneous	1	Uploaded	399.1700000	18 Apr 2017	Show
Letter to Simon Neldner_13.04.17 New	Miscellaneous	1	Uploaded	475.6300000	18 Apr 2017	Show
Stormwater Concept Plan by Tonkin_Sheet 3, Rev. 3 New	Miscellaneous	1	Uploaded	413.9500000	18 Apr 2017	Show
Department of Planning, Transport and Infrastructure Only Documents						Hide
Document Title	Document Type	Version #	State	File Size (Kb)	Date Uploaded	Notes
Letter from App: Botten/Levinson RE: EPA referral New	Miscellaneous	1	Uploaded	154.9400000	14 Oct 2010	Show
Lawyer report New	Miscellaneous	1	Uploaded	970.2900000	22 Jun 2011	Show
Botten-Levinson request to Council New	Miscellaneous	1	Uploaded	72.6600000	22 Jun 2011	Show
Letter from Botten Levinson New	Miscellaneous	1	Uploaded	226.6100000	05 Apr 2012	Show
Final Plan Documents for Certificate of Approval (CoA)						Hide
There are no Final Plans for Certificate of Approval (CoA) currently associated with this application						
Certified Certificate of Approval (CoA) Plan Documents						Hide
There are no Certified Certificate of Approval (CoA) Plans currently associated with this application						
Mode:ApplicationDisplay/Revision:14						
DisclaimerTerms and Department of Planning, Transport and Infrastructure, Ground Floor 101 Grenfell Street, ADELAIDE South Australia 5000 - P 1800 752 664 Copyright Conditions						

The Hon John Rau MP

eA149199

30 September 2011



**Government
of South Australia**

Deputy Premier

Attorney-General

Minister for Justice

**Minister for Urban Development,
Planning and the City of Adelaide**

Minister for Tourism

Minister for Food Marketing

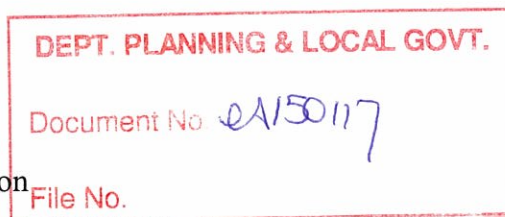
45 Pirie Street
Adelaide SA 5000

GPO Box 464
Adelaide SA 5001
DX 336

Tel 08 8207 1723
Fax 08 8207 1736

attorney-general@agd.sa.gov.au

Ms Rocio Barua
Secretary
Development Assessment Commission
GPO Box 1815
ADELAIDE SA 5000



Attention: Ms Barua

Dear Ms Barua

I refer to development applications 344/D007/10 for Land Division and 344/0071/11 for Seawall, which have been lodged at the District Council of Barunga West.

Acting on the request of the District Council of Barunga West, I have declared the Development Assessment Commission, pursuant to Section 34 of the *Development Act 1993*, to be the relevant planning authority for the applications.

Please note that I have advised both the District Council of Barunga West and the applicant that the Development Assessment Commission will be the relevant authority for this application.

Please advise the Assessment Branch so that the assessment process can be initiated as soon as possible.

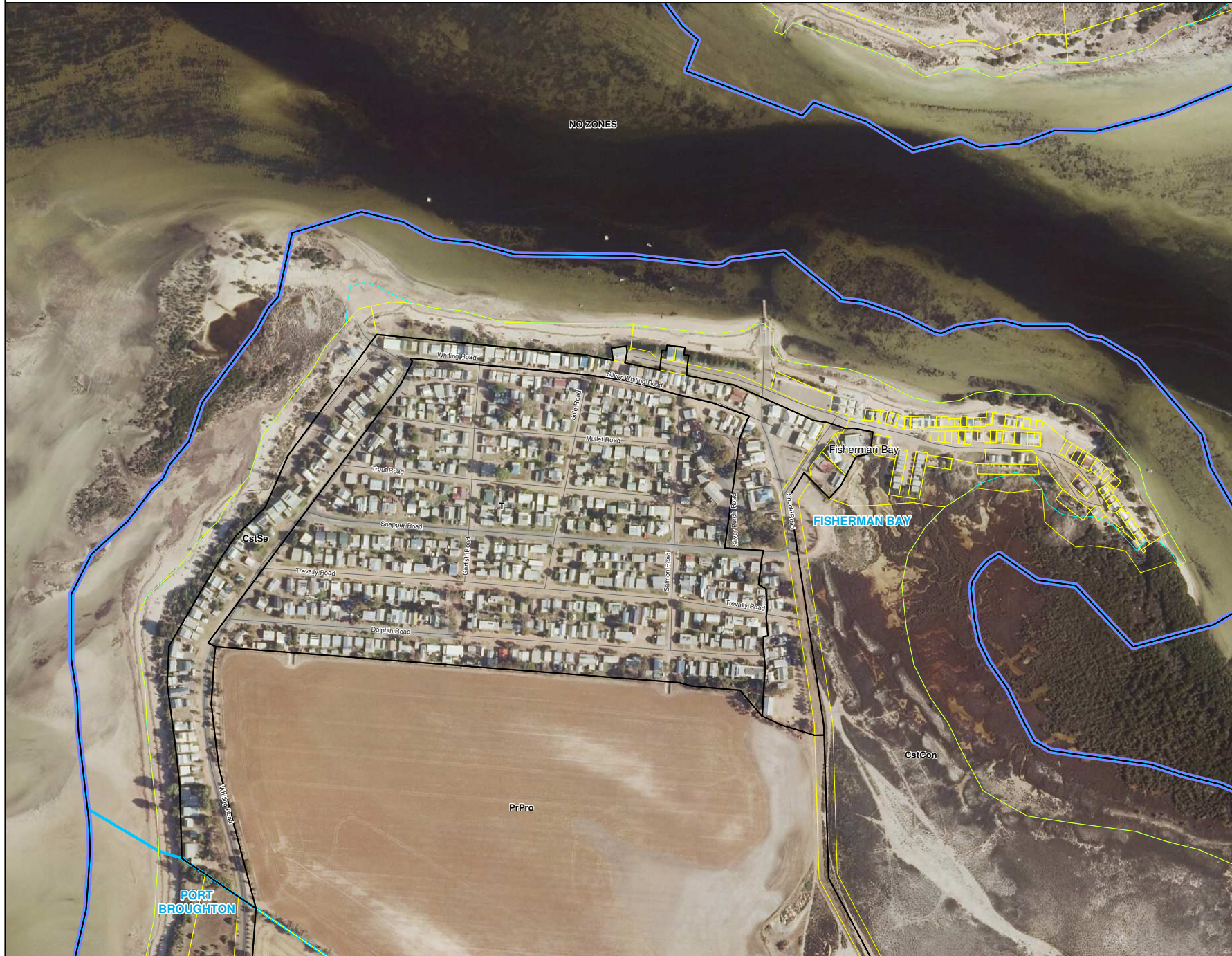
Yours sincerely

John Rau

Deputy Premier

Minister for Urban Development, Planning and the City of Adelaide

FISHERMAN BAY

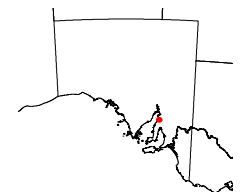


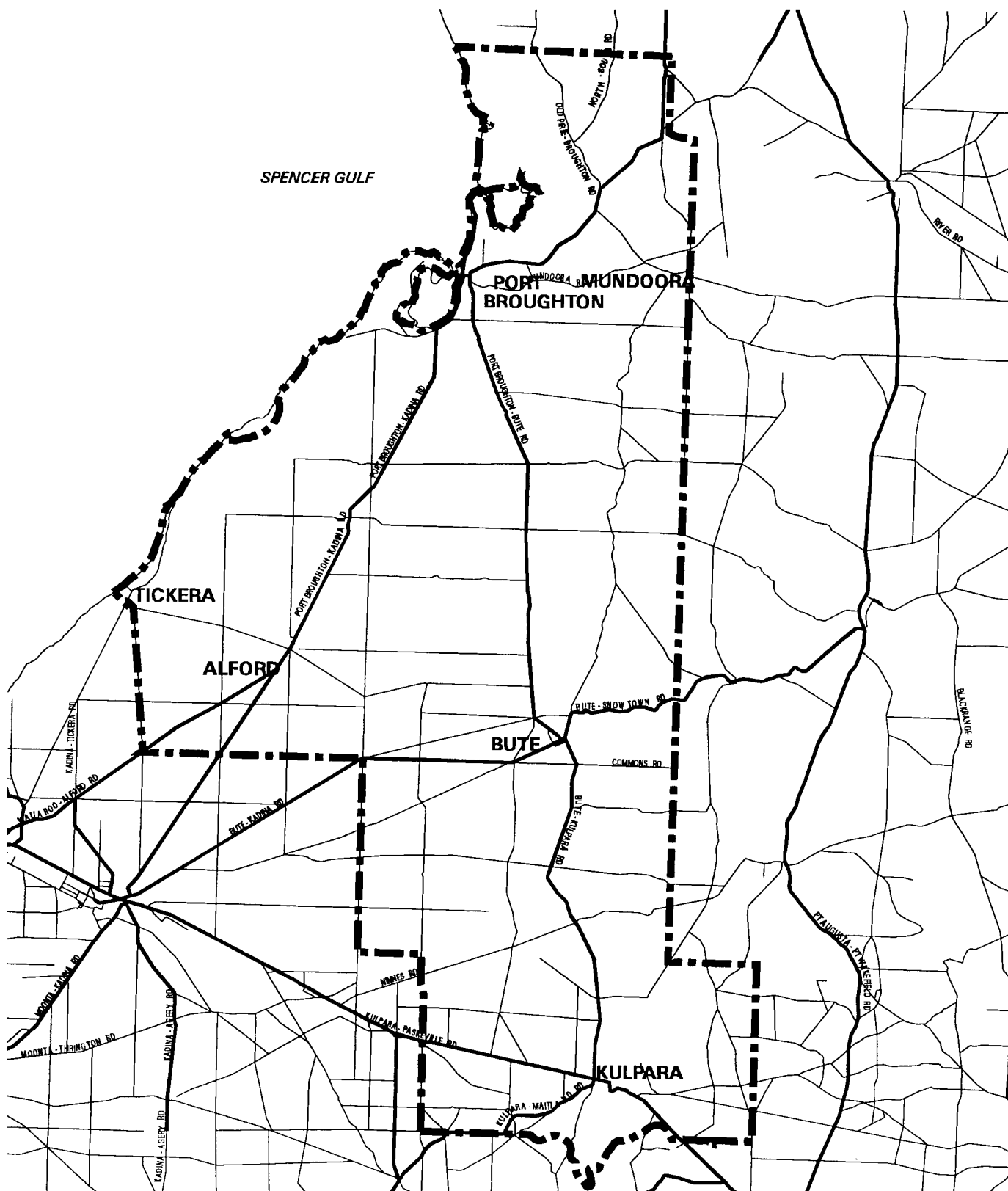
- Local government boundary
- Suburbs
- Zoning
- Cadastre (2017)
- Main road
- Other road
- Major towns
- Other towns and localities



Produced by Department of Planning, Transport and Infrastructure.

Valuation derived data has been supplied by DPTI and is current to 30 June 2017. Topographic data supplied by DEWNR, DPTI and Geoscience Australia. Imagery supplied by Government of South Australia.





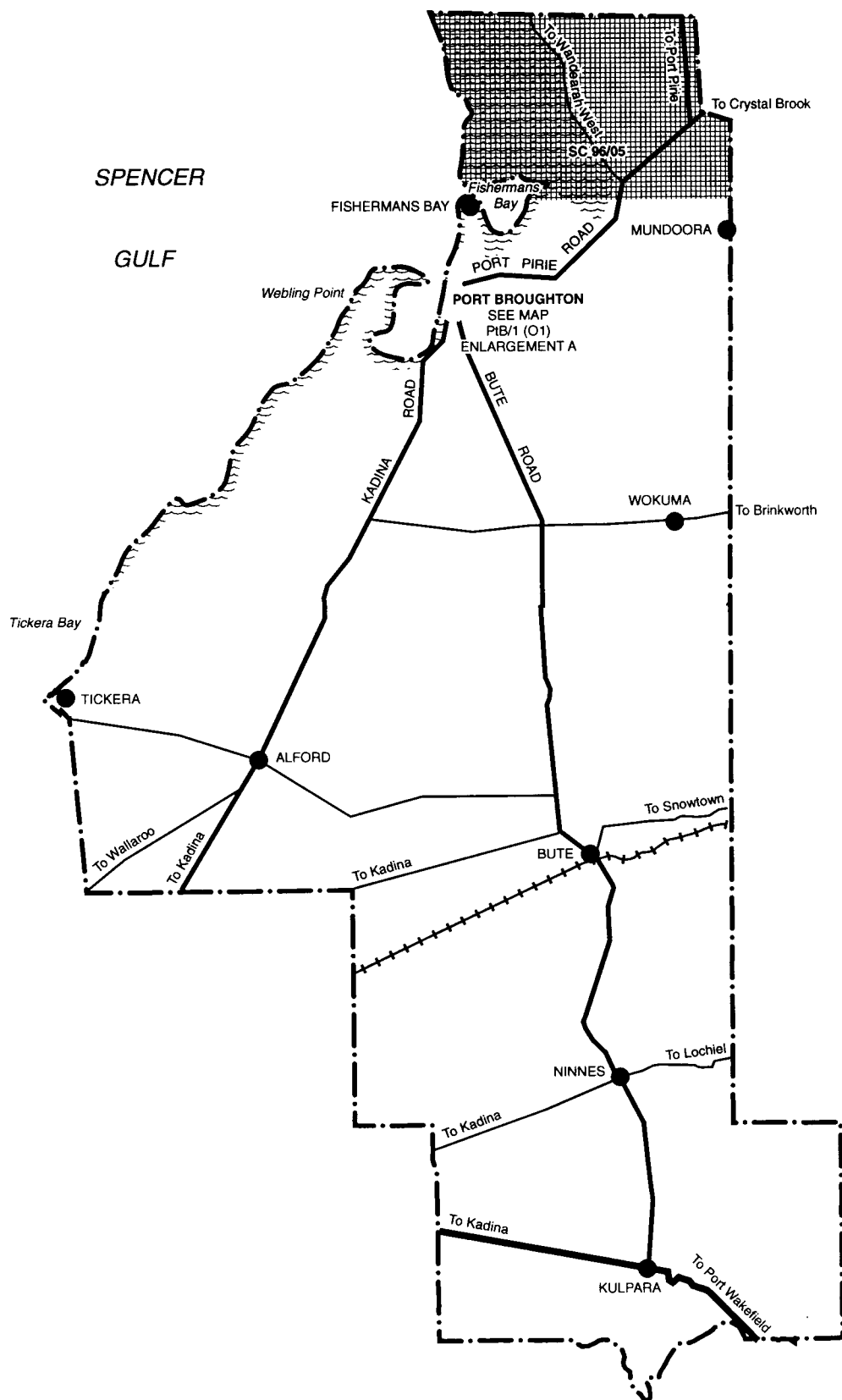
To identify the precise location of the Development Plan boundary refer to Map BaW/2 then select the relevant Zone Map



0 15km

BARUNGA WEST (DC) MAP BaW/1

— ■ — Development Plan Boundary



- Settlement
- Rural
- ▤ Coastal
- ▨ Area of Aboriginal Interest SC 96/05
- Primary Arterial Road
- Secondary Arterial Road
- Major Collector Road
- + + + Railway
- - - Local Government Area Boundary



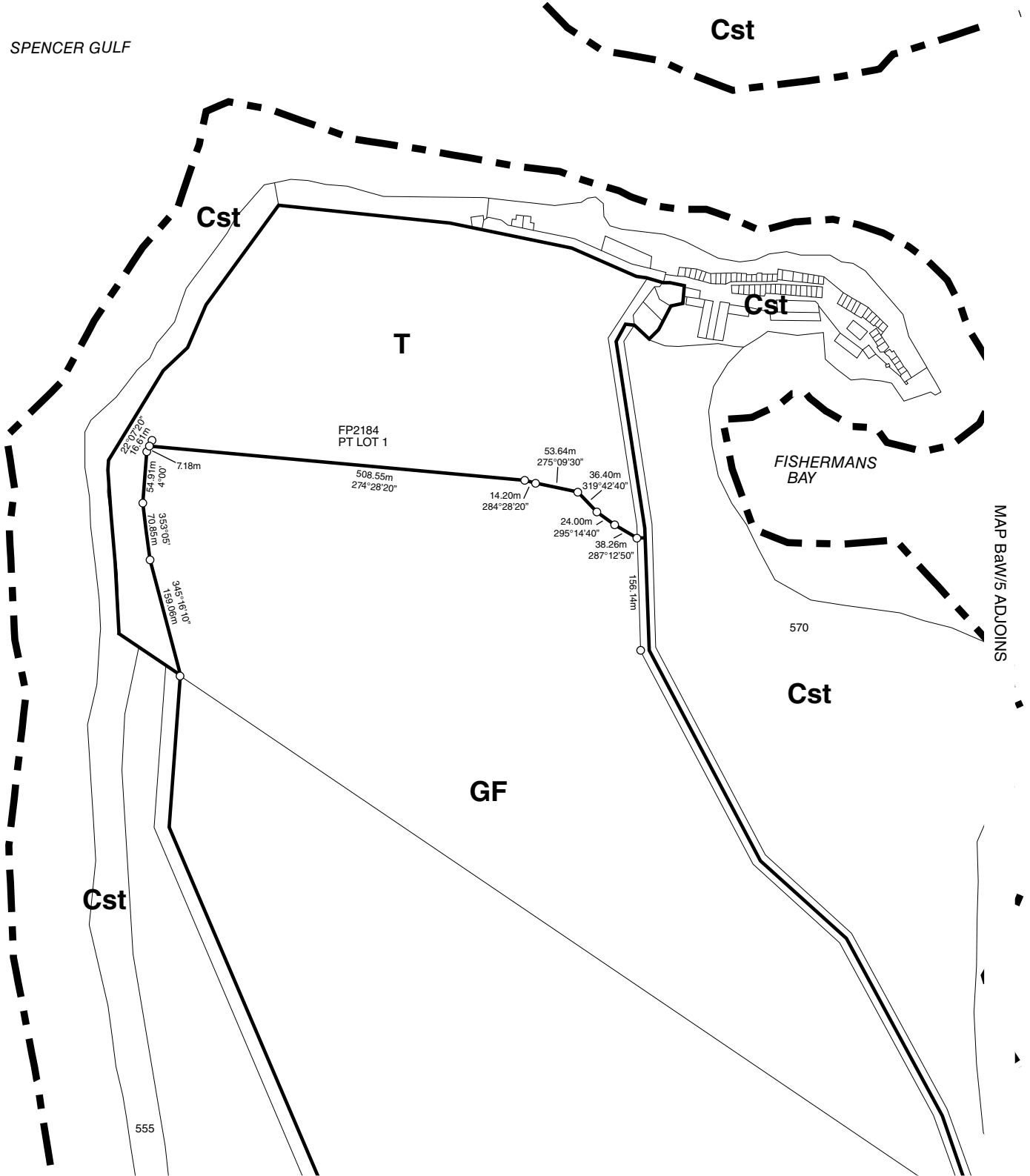
0 km 10 20

DISTRICT COUNCIL OF BARUNGA WEST STRUCTURE PLAN MAP BaW/1 (Overlay 1)

Consolidated - 21 February 2008

SPENCER GULF

MAP BaW/5 ADJOINS



FISHERMANS BAY

Cst Coastal
GF General Farming
T Township

MAP BaW/5 ADJOINS



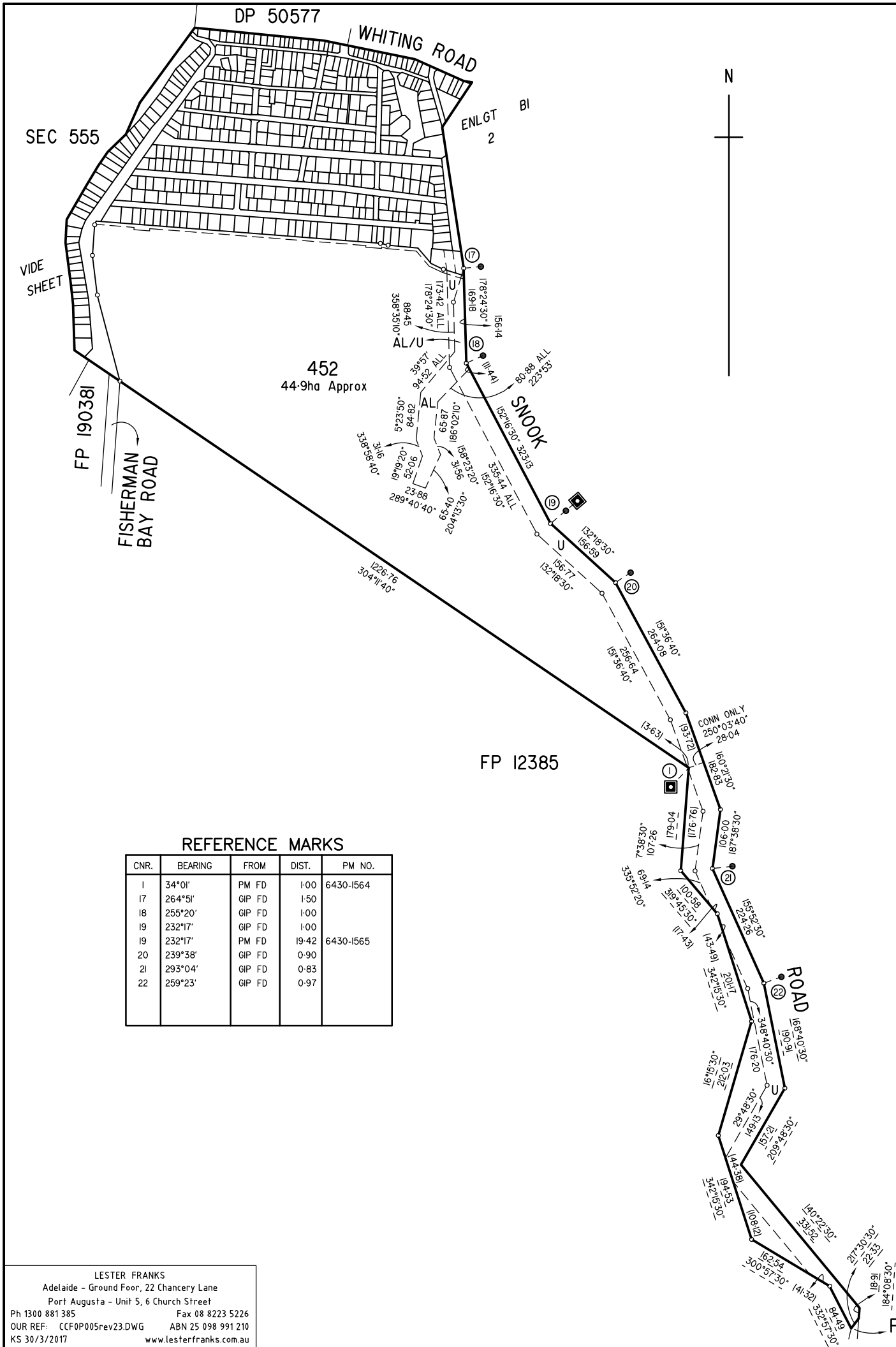
Scale 1:7500

0 500metres

**BARUNGA WEST (DC)
ZONES
MAP BaW/11**

— Zone Boundary
- - - Development Plan Boundary

Consolidated - 21 February 2008



EASEMENT NOTES CONTINUED

RECIPROCAL PARTY WALL RIGHTS ARE TO BE CREATED OVER PORTIONS OF ALLOTMENTS 78 AND 447 MARKED Q AND R RESPECTIVELY.

PARTY WALL IS OCCUPIED.

PORTION OF ALLOTMENT 235 MARKED S IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 236.

PORTION OF ALLOTMENT 236 MARKED T IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 235.

PORTION OF ALLOTMENTS 374 AND 452 MARKED U ARE TO BE SUBJECT TO A RIGHT OF WAY APPURTENANT TO THE COUNCIL FOR THE AREA.

PORTION OF ALLOTMENT 320 MARKED V IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 321.

PORTION OF ALLOTMENT 321 MARKED W IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 322.

PORTION OF ALLOTMENT 357 MARKED X IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 356.

PORTION OF ALLOTMENT 339 MARKED Y IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 340.

PORTION OF ALLOTMENT 341 MARKED Z IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 453.

PORTION OF ALLOTMENT 273 MARKED AA IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 272.

PORTION OF ALLOTMENT 256 MARKED BB IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 257.

PORTION OF ALLOTMENT 251 MARKED CC IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 223.

PORTION OF ALLOTMENT 219 MARKED DD IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 220.

PORTION OF ALLOTMENT 209 MARKED EE IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 210.

PORTION OF ALLOTMENT 169 MARKED FF IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 170.

PORTION OF ALLOTMENT 239 MARKED GG IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 240.

PORTION OF ALLOTMENT 367 MARKED HH IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 366.

PORTION OF ALLOTMENT 371 MARKED JJ IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 372.

PORTION OF ALLOTMENT 303 MARKED KK IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 304.

PORTION OF ALLOTMENT 157 MARKED LL IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 159.

PORTION OF ALLOTMENT 148 MARKED MM IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 150(RESERVE).

PORTION OF ALLOTMENT 147 MARKED NN IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 146.

PORTION OF ALLOTMENT 45 MARKED PP IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 446(RESERVE).

PORTION OF ALLOTMENT 88 MARKED QQ IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 89.

PORTION OF ALLOTMENT 50 MARKED RR IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 49.

PORTION OF ALLOTMENTS 53 AND 105 MARKED SS IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 104.

PORTION OF ALLOTMENT 53 MARKED TT IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 52.

PORTION OF ALLOTMENT 53 MARKED UU IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 54.

PORTION OF ALLOTMENT 106 MARKED VV IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 107.

PORTION OF ALLOTMENT 56 MARKED WW IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 57.

PORTION OF ALLOTMENT 59 MARKED XX IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 60.

PORTION OF ALLOTMENT 112 MARKED YY IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 111.

PORTION OF ALLOTMENT 74 MARKED ZZ IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 73.

PORTION OF ALLOTMENTS 73 AND 74 MARKED AB IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 76.

PORTION OF ALLOTMENT 142 MARKED AD IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 143.

PORTION OF ALLOTMENTS 141 AND 142 MARKED AE IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 140.

PORTION OF ALLOTMENT 279 MARKED AF IS TO BE SUBJECT TO AN EASEMENT FOR THE TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE APPURTENANT TO ALLOTMENT 280.

PORTION OF ALLOTMENTS 91, 101, 102, 103 AND 452 MARKED AG ARE TO BE SUBJECT TO A SERVICE EASEMENT TO THE COUNCIL FOR THE AREA FOR DRAINAGE PURPOSES.

PORTION OF ALLOTMENT 85 (DRAINAGE RESERVE) MARKED AH IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENTS 80, 81, 82, 83 AND 84.

PORTION OF ALLOTMENT 102 MARKED AJ IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENTS 86, 87, 88, 89, 90, 97, 98, 99, 101, 103 AND 409.

PORTION OF ALLOTMENT 103 MARKED AK IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENTS 86, 87, 88, 89, 90, 97, 98, 99, 101, 102 AND 409.

PORTION OF ALLOTMENTS 374 AND 452 MARKED AL IS TO BE SUBJECT TO AN EASEMENT FOR COASTAL PROTECTION PURPOSES APPURTENANT TO THE COUNCIL FOR THE AREA.

PLAN NUMBER

THIS IS SHEET 1 OF 9 SHEETS

DEPOSITED / 2
ACCEPTED FOR FILING PRO REGISTRAR GENERAL
MAP REF. 6430-06 DEV. No. 344/D007/10

TITLE SYSTEM REAL PROPERTY ACT

TITLE REFERENCE
CT 5503/193

O.B./LAST PLAN REF. FPX46159 TOTAL AREA 67.6ha Approx

DOCKET No. -

FIELD BOOK No. -

CLOSURE CHECKED PLAN EXAMINED PLAN APPROVED P.M.S. APPROVED

IRRIGATION AREA - DIVISION -
HUNDRED MUNDODORA
AREA FISHERMAN BAY
COUNCIL D.C. OF BARUNGA WEST

PLAN OF DIVISION

ALLOTMENT 4 IN FP 2184
OF SECTION 569 AND
PART SECTION K

SCALE 0 100 200 300 400 500 METRES

STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS

PORTION OF ALLOTMENTS 160 AND 161 MARKED C ARE TO BE SUBJECT TO A SERVICE EASEMENT TO DISTRIBUTION LESSOR CORPORATION (SUBJECT TO L.8890000) FOR ELECTRICITY SUPPLY PURPOSES.

PORTION OF ALLOTMENT 8 MARKED D IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 9.

PORTION OF ALLOTMENT 9 MARKED E IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 8.

PORTION OF ALLOTMENT 397 MARKED F IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 396.

PORTION OF ALLOTMENT 396 MARKED G IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 395.

PORTION OF ALLOTMENT 395 MARKED H IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 396.

PORTION OF ALLOTMENT 366 MARKED J IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 367.

PORTION OF ALLOTMENT 367 MARKED K IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 366.

PORTION OF ALLOTMENT 340 MARKED L IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 453.

PORTION OF ALLOTMENT 453 MARKED M IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 340.

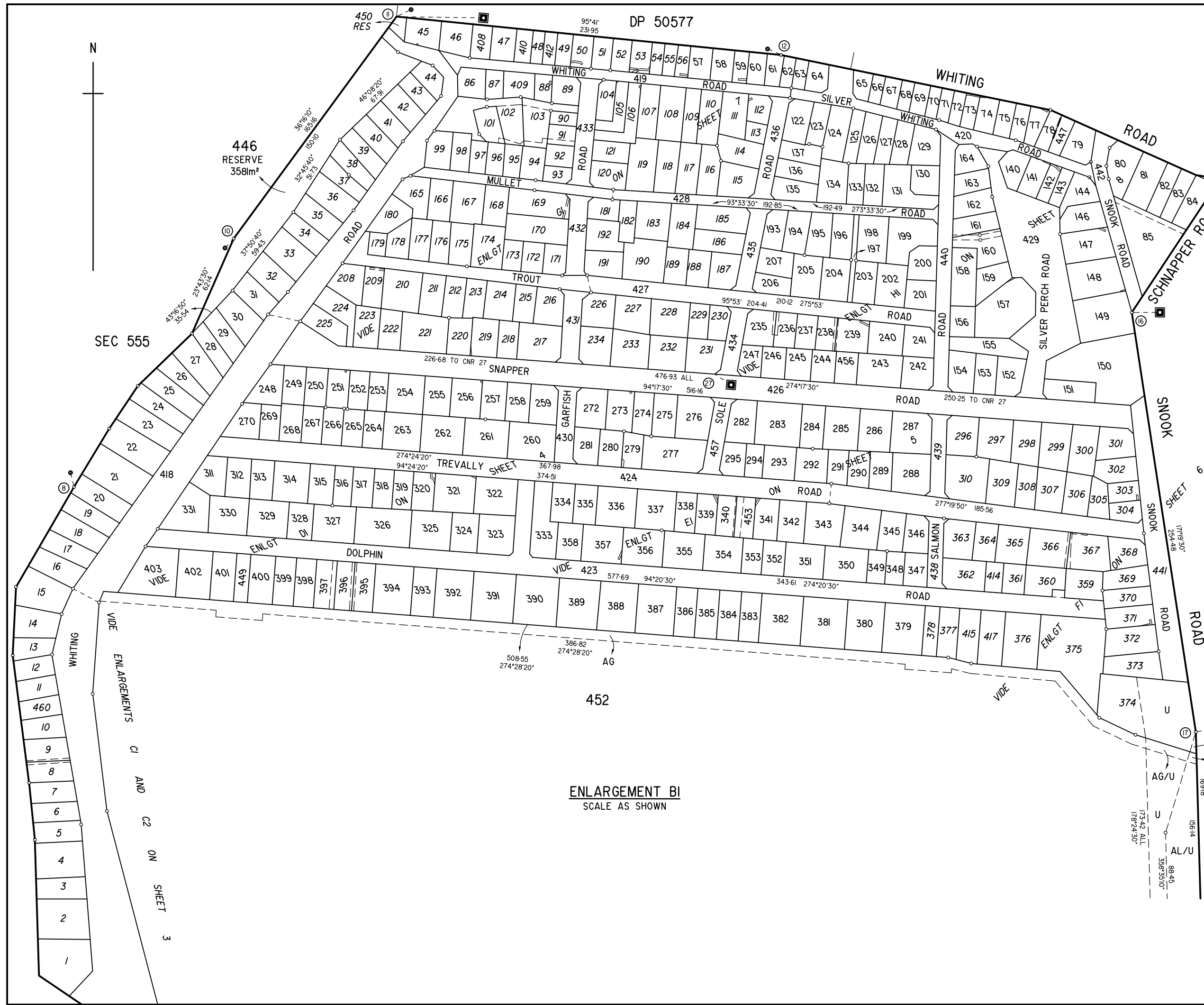
PORTION OF ALLOTMENT 238 MARKED N IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 239.

PORTION OF ALLOTMENT 239 MARKED P IS TO BE SUBJECT TO A FREE AND UNRESTRICTED RIGHT OF WAY APPURTENANT TO ALLOTMENT 238.

VIDE CONTINUATION

LEGEND
NETWORK PSM
NETWORK STATION
PERMANENT SURVEY MARK
REFERENCE MARKS
DRILL HOLE & WING
DIRECTION CHANGE
PART DISTANCES
CALCULATED DATA
COPIED DATA

ALL DISTANCES ARE GROUND DISTANCES
COMBINED SCALE FACTOR 1.00052 ZONE 53 MGA 94
BEARING DATUM 124.11.38 DISTANCE 1226.81
DERIVED FROM PSM 6430-1561 TO PSM 6430-1564
I, _____
licensed surveyor of South Australia do hereby certify -
(1) That this plan has been made from surveys carried out by me or under my personal supervision and in accordance with the Survey Act 1992
(2) That the field work was completed on the _____ day of _____ 20 _____
except for final placement of survey marks.
(strike out if not applicable)
Date _____ Licensed Surveyor



PLAN NUMBER

DEPOSITED / 2
ACCEPTED FOR FILING / 2
PRO REGISTRAR GENERAL

THIS IS SHEET 2 OF MY PLAN IN 9 SHEETS

DATED

LICENSED SURVEYOR

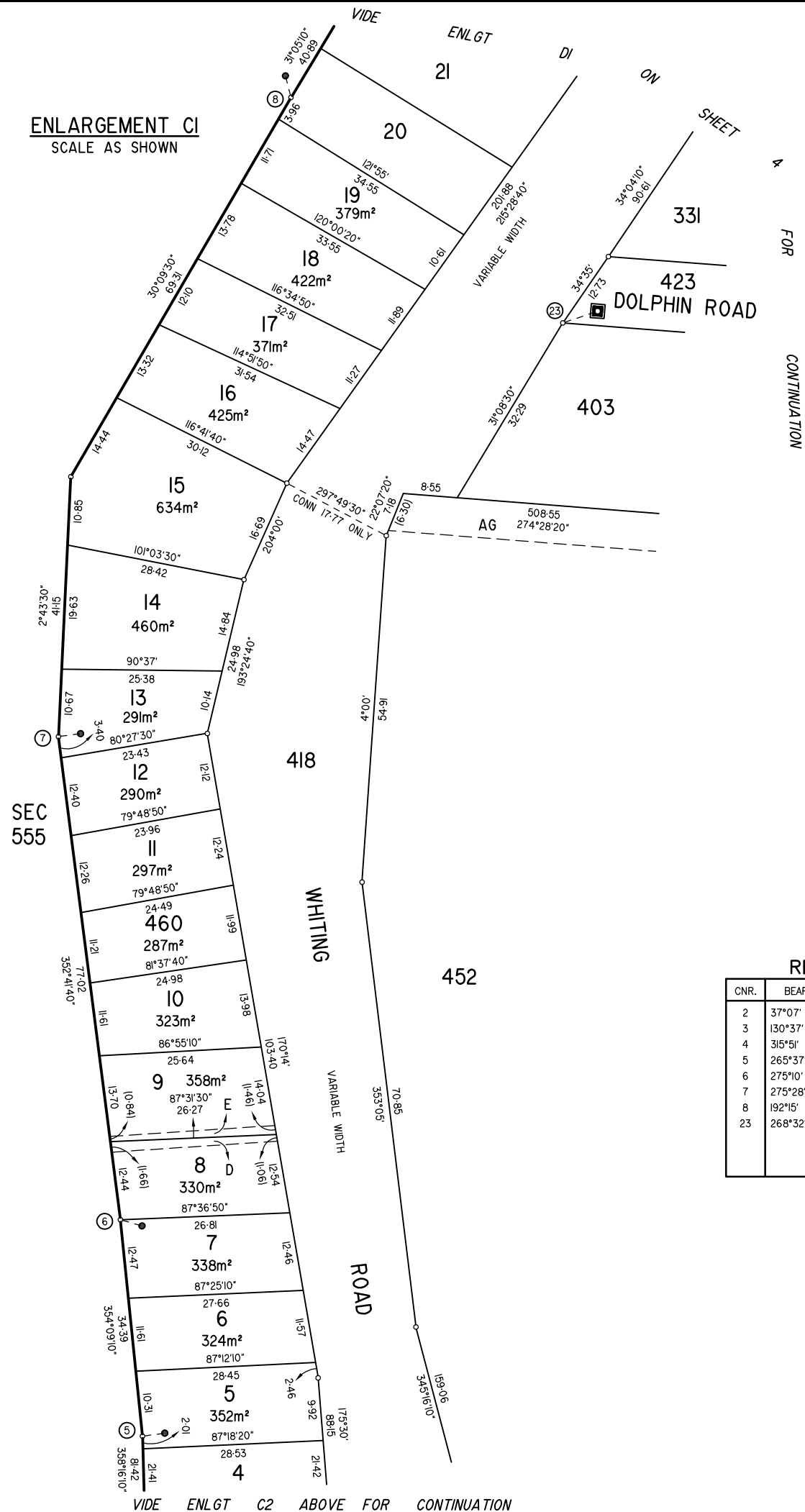
SCALE 0 25 50 75 100 125 METRES

STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS

VIDE SHEET 1 FOR DISPOSITION OF EASEMENTS.

REFERENCE MARKS				
CNR.	BEARING	FROM	DIST.	PM NO.
8	192°15'	GIP FD	0.96	
10	25°08'	GIP FD	1.00	
11	250°48'	GIP FD	1.44	
12	275°03'	PM FD	52.04	6430-1272
16	104°05'	GIP FD	0.98	
17	282°24'	PM FD	1.00	6430-1562
18	264°51'	GIP FD	1.50	
27	255°20'	GIP FD	1.00	
	280°48'	PM	1.46	6430-2267

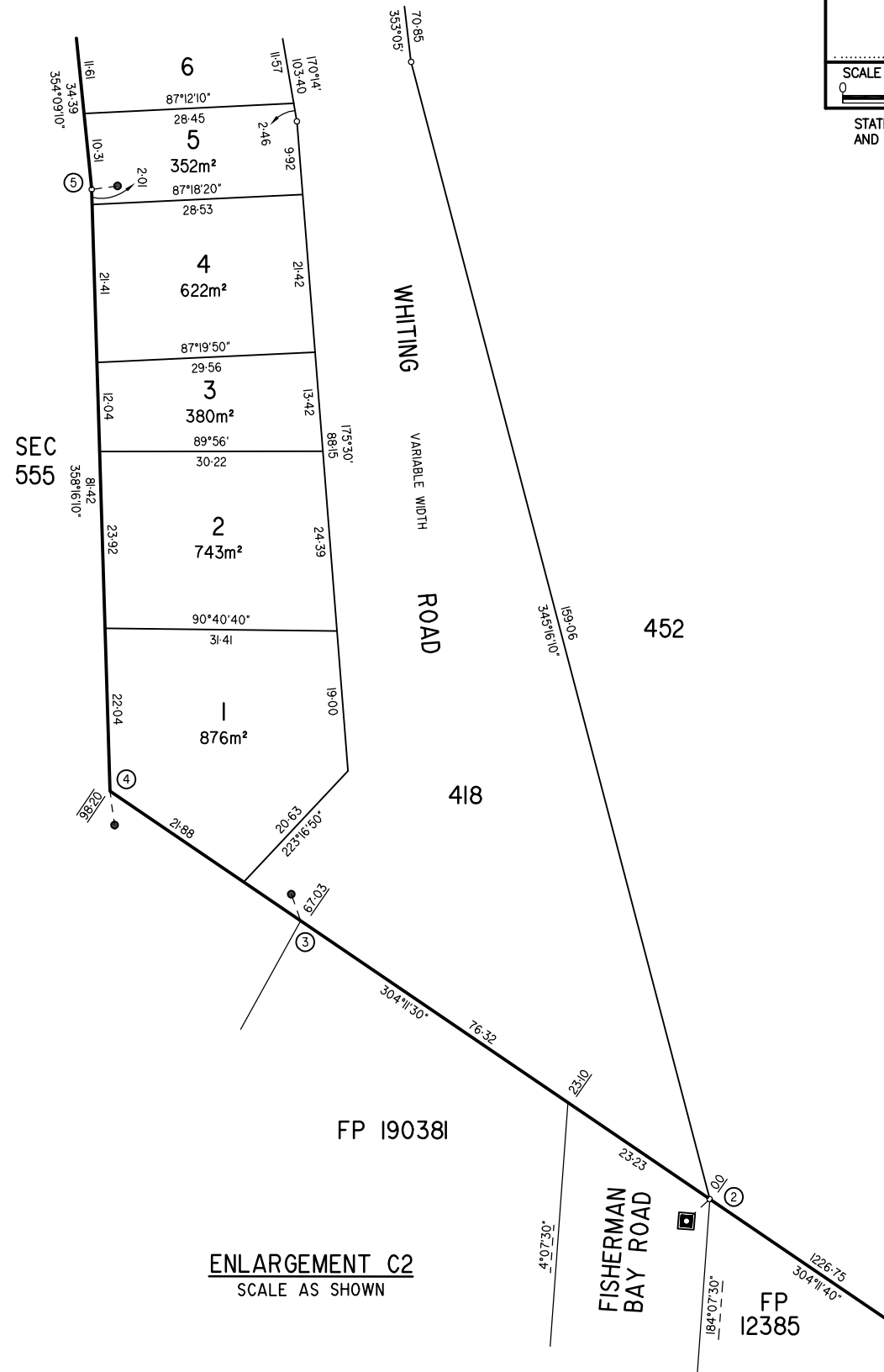
ENLARGEMENT C1
SCALE AS SHOWN



REFERENCE MARKS

CNR.	BEARING	FROM	DIST.	PM NO.
2	37°07'	PM FD	1.00	6430-1561
3	130°37'	GIP FD	1.00	
4	315°51'	GIP FD	3.77	
5	265°37'	GIP FD	1.00	
6	275°10'	GIP FD	0.96	
7	275°28'	GIP FD	1.25	
8	192°15'	GIP FD	0.96	
23	268°32'	PM	2.50	6430-2263

VIDE ENLGT C1 BELOW FOR CONTINUATION



PLAN NUMBER

DEPOSITED / /2
ACCEPTED FOR FILING PRO REGISTRAR GENERAL

THIS IS SHEET 3 OF MY PLAN IN 9 SHEETS

DATED

LICENSED SURVEYOR

SCALE 0 10 20 30 40 50 METRES

STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS

N



PLAN NUMBER

DEPOSITED / 2
ACCEPTED FOR FILING / PRO REGISTRAR GENERAL

THIS IS SHEET 4 OF MY PLAN IN 9 SHEETS

DATED

SCALE 0 10 20 30 40 50 METRES

STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS

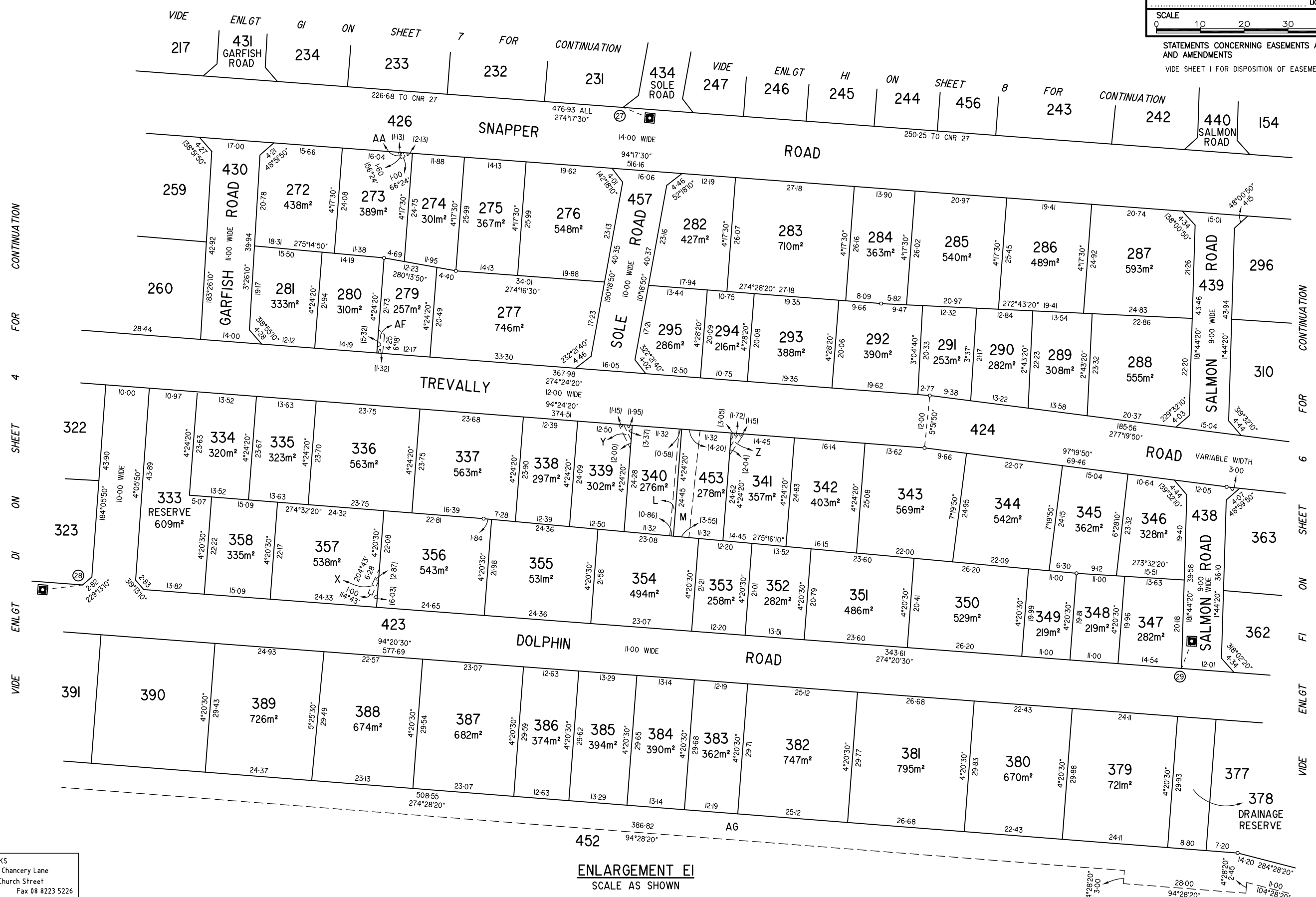
VIDE SHEET 1 FOR DISPOSITION OF EASEMENTS.

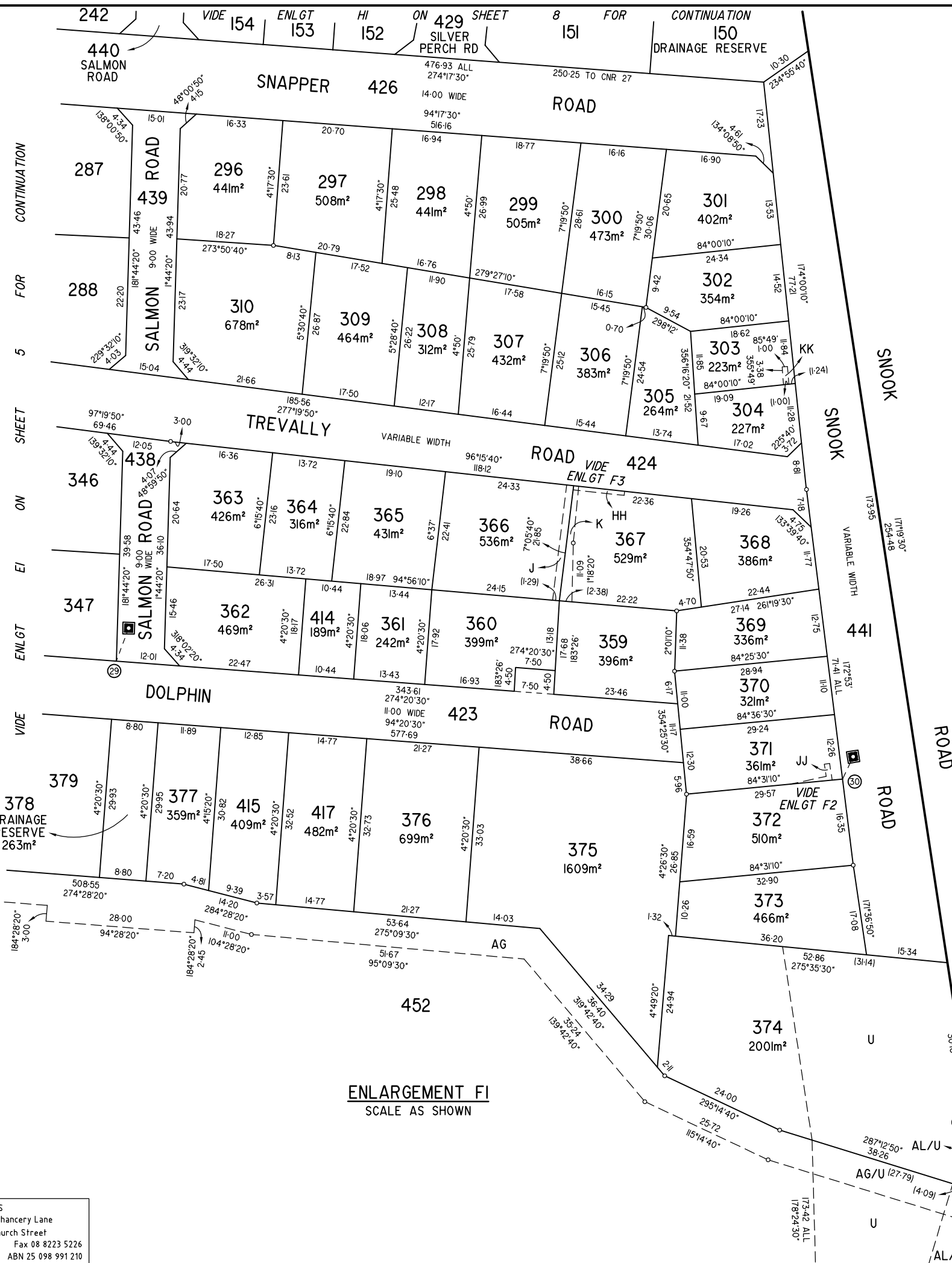
LESTER FRANKS
Adelaide - Ground Floor, 22 Chancery Lane
Port Augusta - Unit 5, 6 Church Street
Ph 1300 881 385 Fax 08 8223 5226
OUR REF: CCF0P005Rev23.DWG ABN 25 098 991 210
KS 30/3/2017 www.lesterfranks.com.au

REFERENCE MARKS				
CNR.	BEARING	FROM	DIST.	PM NO.
27	280°48'	PM	1.46	6430-2267
28	93°29'	PM	9.15	6430-2266
29	187°30'	PM	2.51	6430-2269

PLAN NUMBER	
DEPOSITED	/ /2
ACCEPTED FOR FILING	PRO REGISTRAR GENERAL
THIS IS SHEET 5 OF MY PLAN IN 9 SHEETS	
DATED	
LICENSED SURVEYOR	
SCALE	METRES
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STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS
 VIDE SHEET 1 FOR DISPOSITION OF EASEMENTS.

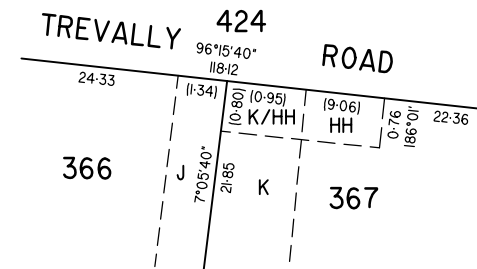




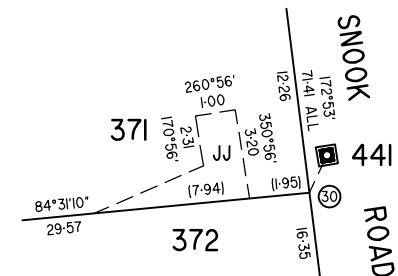
REFERENCE MARKS				
CNR.	BEARING	FROM	DIST.	PM NO.
17	264°51'	GIP FD	1-50	
29	187°30"	PM	2-51	6430-2269
30	190°10'	PM	2-08	6430-2270

PLAN NUMBER	
DEPOSITED	/ /2
ACCEPTED FOR FILING	PRO REGISTRAR GENERAL
THIS IS SHEET 6 OF MY PLAN IN 9 SHEETS	
DATED	
LICENSED SURVEYOR	
SCALE	METRES
0 10 20 30 40 50	
STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS	
VIDE SHEET 1 FOR DISPOSITION OF EASEMENTS.	

ENLARGEMENT F3
NOT TO SCALE



ENLARGEMENT F2
NOT TO SCALE



ENLARGEMENT G2
NOT TO SCALE

DP 50577

ENLARGEMENT G1
SCALE AS SHOWN

PLAN NUMBER

DEPOSITED / 2
ACCEPTED FOR FILING PRO REGISTRAR GENERAL

THIS IS SHEET 7 OF MY PLAN IN 9 SHEETS

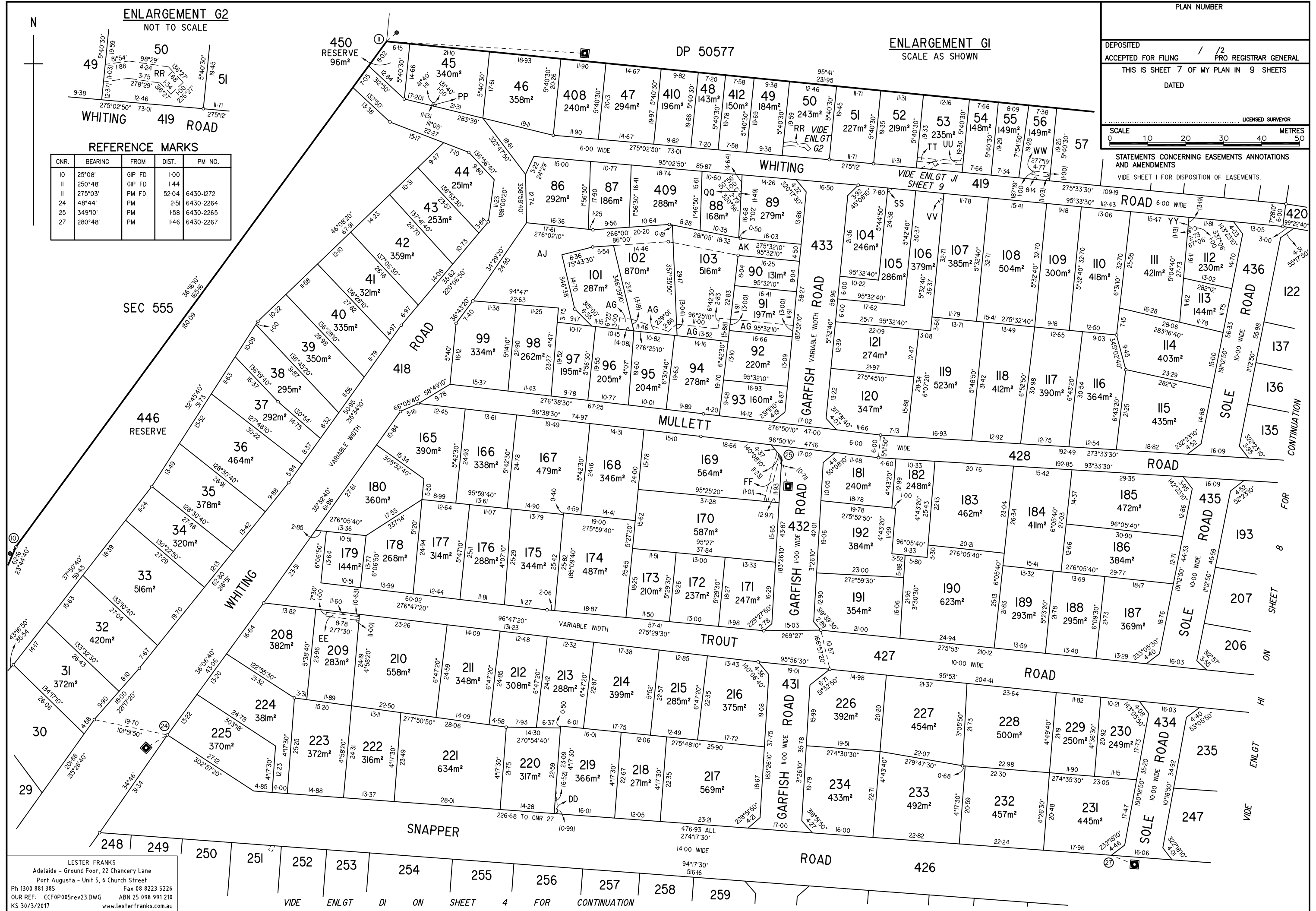
DATED

LICENSED SURVEYOR

SCALE 0 10 20 30 40 50 METRES

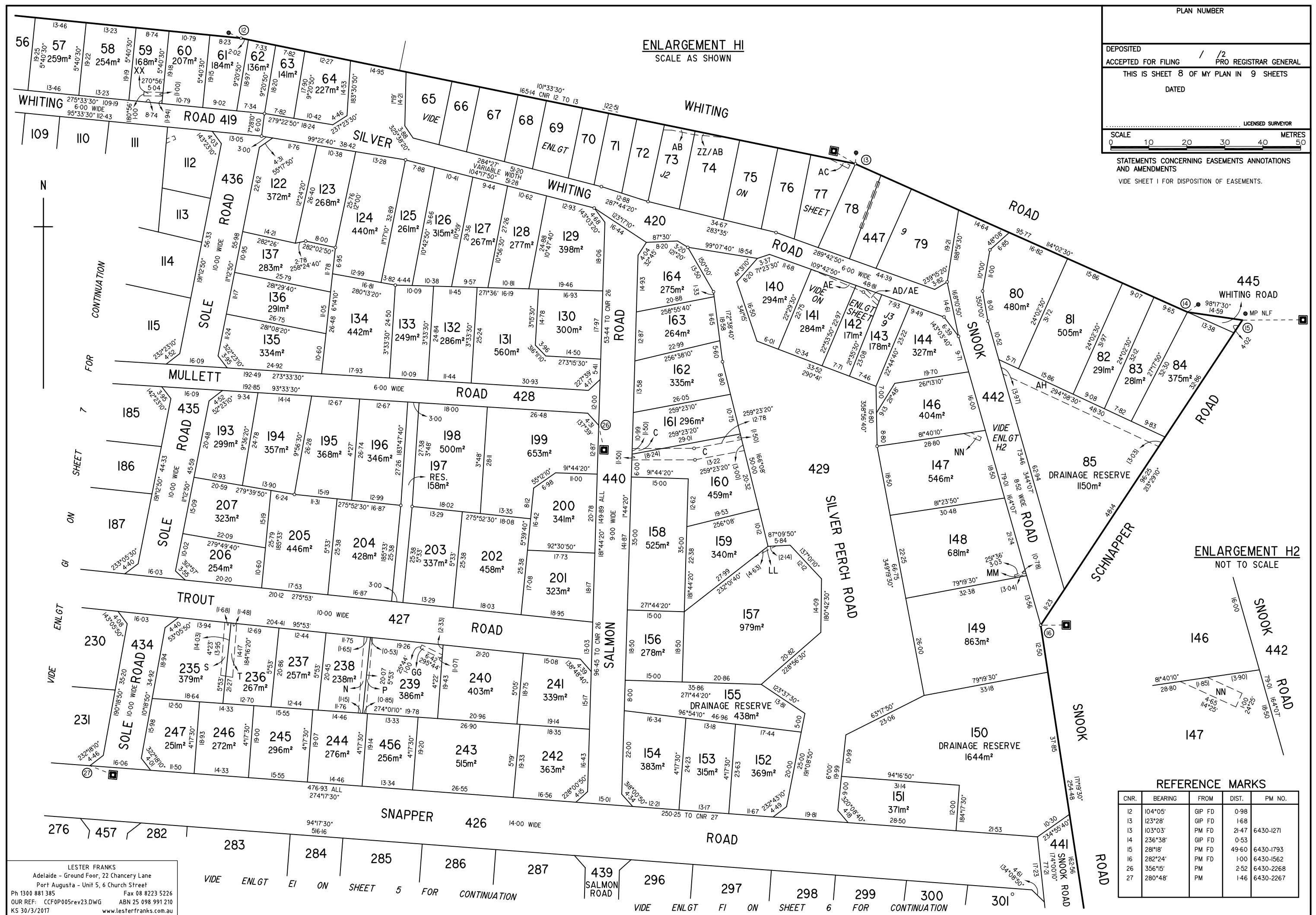
STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS
VIDE SHEET 1 FOR DISPOSITION OF EASEMENTS.

REFERENCE MARKS				
CNR.	BEARING	FROM	DIST.	PM NO.
10	25°08'	GIP FD	1-00	
11	250°48'	GIP FD	1-44	
12	275°03'	PM FD	52-04	6430-1272
24	48°44'	PM	2-51	6430-2264
25	349°10'	PM	1-58	6430-2265
27	280°48'	PM	1-46	6430-2267



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Adelaide - Ground Floor, 22 Chancery Lane
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Ph 1300 881 385 Fax 08 8223 5226
OUR REF: CCF0P005Rev23.DWG ABN 25 098 991 210
KS 30/3/2017 www.lesterfranks.com.au

VIDE ENLGT DI ON SHEET 4 FOR CONTINUATION



PLAN NUMBER

DEPOSITED
ACCEPTED FOR FILING / 2
PRO REGISTRAR GENERAL

THIS IS SHEET 9 OF MY PLAN IN 9 SHEETS

DATED

LICENSED SURVEYOR

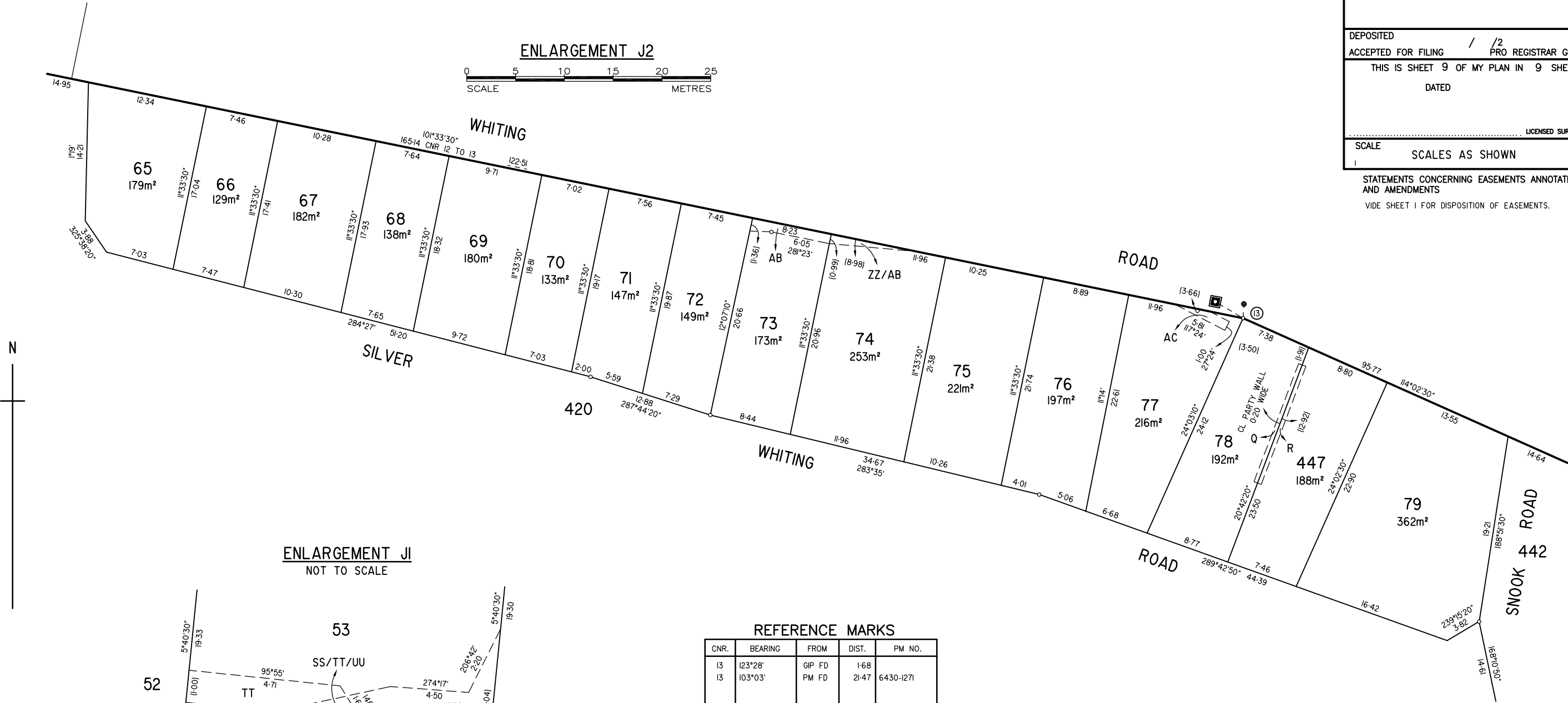
SCALE
1

SCALES AS SHOWN

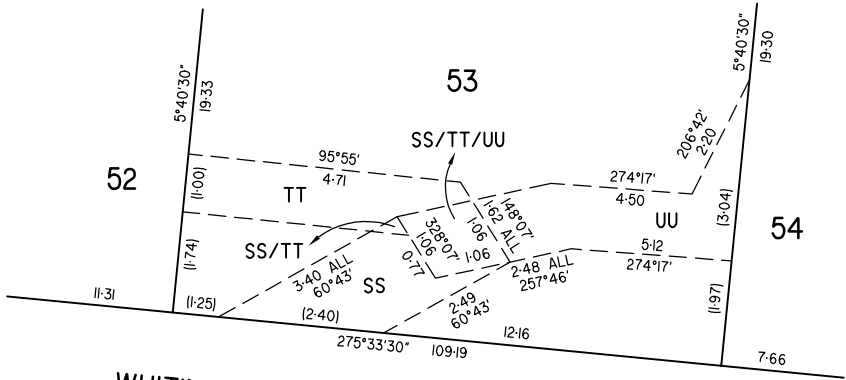
METRES

STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS
VIDE SHEET 1 FOR DISPOSITION OF EASEMENTS.

ENLARGEMENT J2



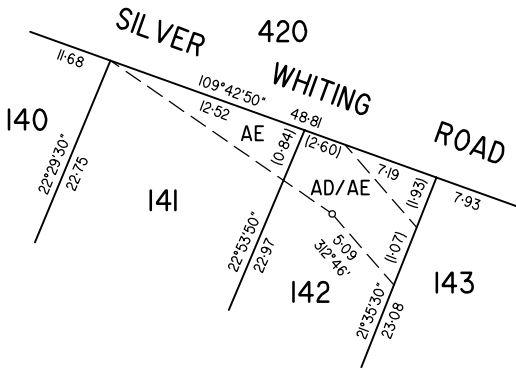
ENLARGEMENT J1
NOT TO SCALE

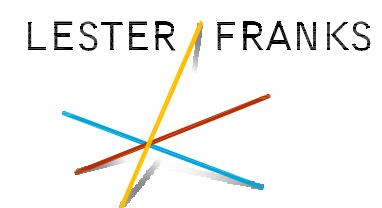
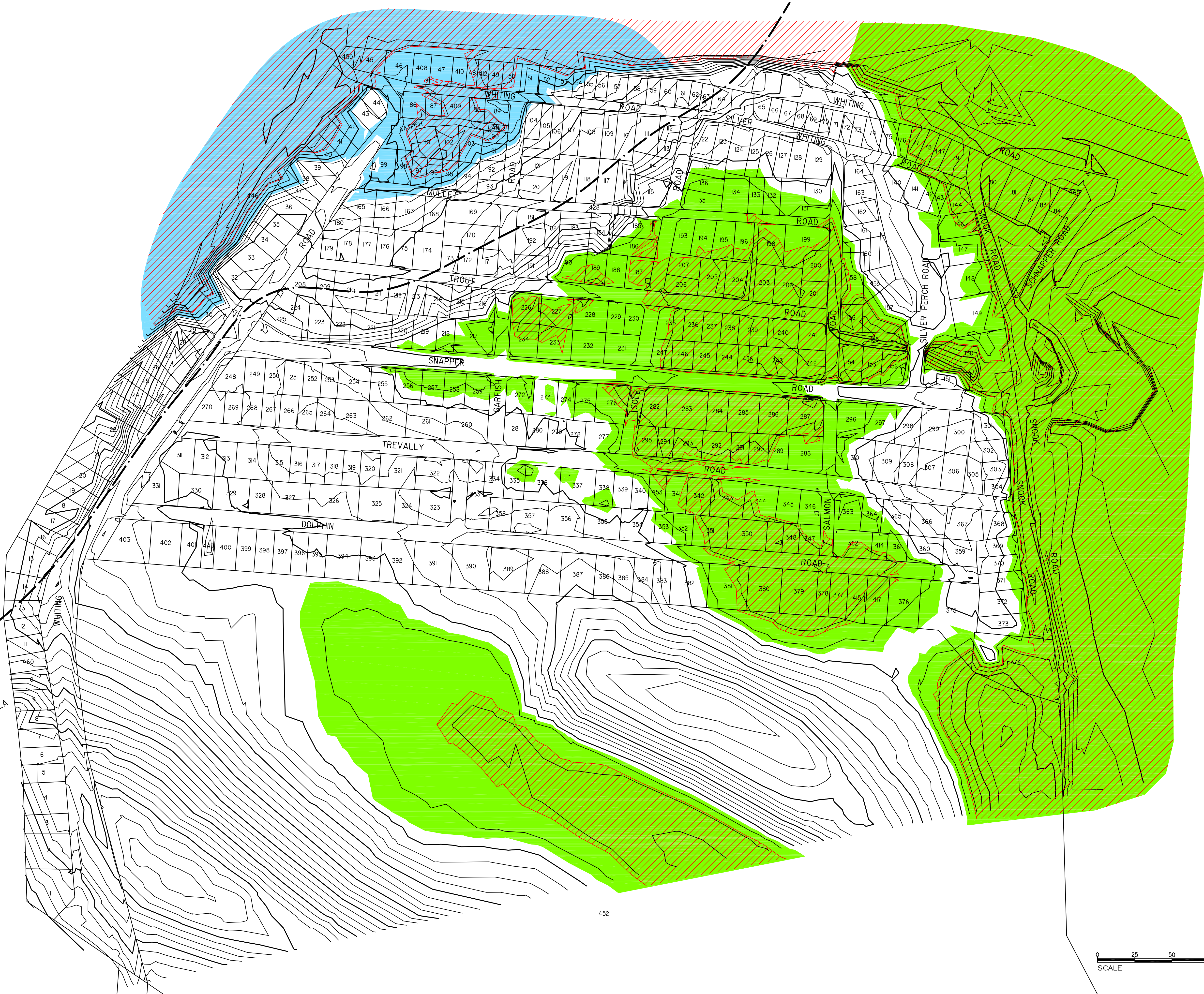
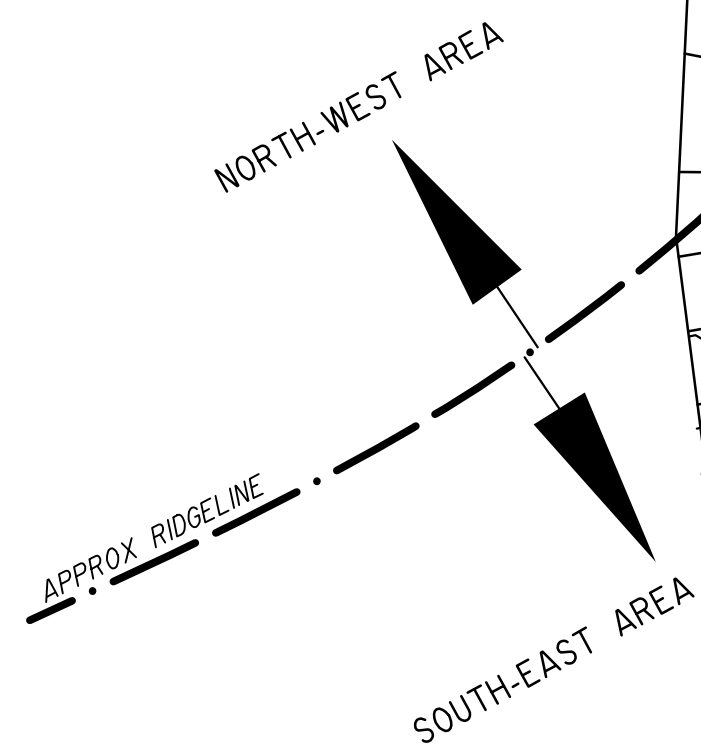


REFERENCE MARKS

CNR.	BEARING	FROM	DIST.	PM NO.
I3	123°28'	GIP FD	1-68	
I3	103°03'	PM FD	21-47	6430-1271

ENLARGEMENT J3
NOT TO SCALE





Surveyors | Planners | Project Managers
A | 1st Floor, 22 Chancery Lane, Adelaide
South Australia 5000
T | 08 8223 5220 F | 08 8223 5226
E | info@lesterfranks.com.au
W | www.lesterfranks.com.au

NO	DATE	DRN	CHKD	DESCRIPTION
01	10/9/10	KS	TB	APPROX RIDGELINE, SEPARATE LEVELS SHOWN
00	20/7/10	KS	TB	FIRST ISSUE

LEGEND

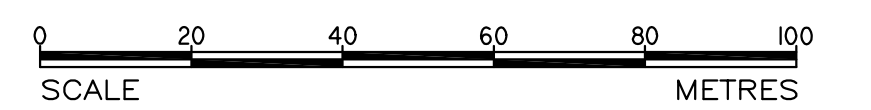
- AREA BELOW 3.15m AHD (SHOWN NORTH-WEST AREA ONLY)
- AREA BELOW 2.85m AHD (SHOWN SOUTH-EAST AREA ONLY)
- AREA BELOW 2.55m AHD

- MAJOR CONTOUR 1.0m
- MINOR CONTOUR 0.25m

NOTES
CONTOURS DERIVED FROM LIMITED SURVEY ONLY
MOSTLY ALONG ROADS) AND MAY NOT ACCURATELY
REFLECT THE LEVELS WITHIN BLOCKS.

OUR REF: CCFP0009rev01.DWG	A00052
CONTOUR INTERVAL: 0.25m	
DATUM: AUSTRALIAN HEIGHT DATUM (AHD)	
SCALE: 1:1250	ORIGINAL SHEET SIZE: A1
DATE OF SURVEY: VARIOUS	
DRAWING No: CCFP0009	REV 01 SHEET No: 1 OF 1

FISHERMAN'S BAY MGT. P/L
CONTOUR SURVEY
Dev N° 344/D006/99
FISHERMAN BAY



Surveyors | Planners | Project Managers
A | Ground Floor, 22 Chancery Ln, Adelaide
South Australia 5000
T | 1300 881 385 F | 08 8223 5226
E | info@lesterfranks.com.au
W | www.lesterfranks.com.au

00	18/10/17	KS	KS	FIRST ISSUE	
NO	DATE	DRN	CHKD	DESCRIPTION	
This plan is not intended for attachment to sale contract documents					

NOTES
BUILDINGS SHOWN IN RED ARE PLOTTED FROM
OLD AERIAL PHOTOGRAPHY ONLY

OUR REF: CCFP0020rev00.DWG	A00052
CONTOUR INTERVAL: -	
DATUM: -	
SCALE: 1:1000	ORIGINAL SHEET SIZE: A1
DATE OF SURVEY:	
DRAWING No: CCFP0020	REV 00 SHEET No: 1 OF 1

FBMC
BUILDING/BOUNDARY PLAN
DN344/D007/10
FISHERMAN BAY



PLAN NUMBER

DEPOSITED / 2

ACCEPTED FOR FILING / PRO REGISTRAR GENERAL

THIS IS SHEET 2 OF MY PLAN IN 9 SHEETS

DATED

LOCATED SURVEYOR

SCALE 0 25 50 75 100 METRES 1:25

STATEMENTS CONCERNING EASEMENTS ANNOTATIONS AND AMENDMENTS

VIDE SHEET 1 FOR DISPOSITION OF EASEMENTS.

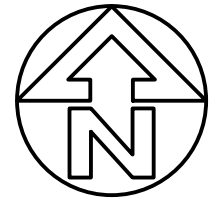
REFERENCE MARKS

CNR.	BEARING	FROM	DIST.	PM NO.
8	192°15'	GP FD	0-96	
10	25°08'	GP FD	1-00	
11	250°48'	GP FD	1-44	
12	275°03'	PM FD	52-04	6430-1272
16	104°05'	GP FD	0-98	
16	282°24'	PM FD	1-00	6430-1562
17	264°51'	GP FD	1-50	
18	255°20'	GP FD	1-00	
27	280°48'	PM	1-46	6430-2267

- non-transferable land
- Transferable land
- roads
- reserves

LESTER FRANKS
Adelaide - Ground Floor, 22 Chancery Lane
Port Augusta - Unit 5, 4 Church Street
Ph 1300 881 385 Fax 08 9223 5226
OUR REF: CCFOP005rev23.DWG ABN 25 698 991 216
KS 30/3/2017 www.lesterfranks.com.au

T:\2010\20101278 FISHERMANS BAY LAND DIVISION - FISHERMANS BAY MANAGEMENT PTY LTD\EXTERNAL SUPPLIED INFORMATION\ROADS AND TRAFFIC\110270_01_MODIFIED.DWG [SHEET 01] 15-Jul-2014 - 4:01pm
© TONKIN CONSULTING TC411CENV.dwg



LEGEND

- EXISTING SEALED ROADS
- ROADS TO BE SEALED & KERBED
- NEW ROAD SEAL & ROAD SIDE SWALE DRAIN
- DETENTION BASIN AREA (PROPOSED FOOTPRINT)
- PROPOSED STORMWATER DRAINAGE NETWORK

NOTE:
CONCEPT ONLY SUBJECT TO
DETAIL DESIGN.

PLAN
SCALE 1:1000

SCALE 1:1000

Coords to MGA 54, GDA 94 ???

ALL LEVELS TO A.H.D.

REV	ISSUED FOR INFORMATION	AMENDMENT / REASON FOR ISSUE	15/07/14	JT	DBB	DWGCHK.	VERIFIED	APPROVED
			DATE	DES.	DWN.			

www.tonkin.com.au



Job No: 2010.1278
Filename: 110270_01_MODIFIED.DWG
Survey By:
Survey Date:
Scale: 1:1000
Sheet Size: A1

FISHERMANS BAY MANAGEMENT PTY LTD
PROPOSED SEALED ROAD &
STORMWATER DRAINAGE NETWORK

Figure 01



FISHERMAN'S BAY AERIAL OVERLAY

Our ref: JAL/210198

13 April 2017

Simon Neldner
Department of Planning, Transport and Infrastructure
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By email: simon.neldner@sa.gov.au

Dear Simon

DA 344/D007/10 - Land Division – Fisherman's Bay

This firm acts for the applicant, Fisherman's Bay Management Pty Ltd (**FBM**). The application involves the division of land to 'freehold' the existing shack sites within the township known as Fisherman's Bay.

At its meeting on 14 June 2012 the DAC indicated that it supported the application and resolved that certain issues should be addressed before the application was determined.

Since that time the applicant has expended considerable effort to progress the application and address a number of related issues.

We believe that the issues identified by the DAC in 2012 have been resolved such that the application can now be determined.

Please find enclosed the following additional material, which has been uploaded to EDALA:

- (a) Amended plan of division prepared by Lester Franks surveyors (9 sheets), being revision 23, dated 30 March 2017;
- (b) Proposed sealed road and stormwater drainage network plan prepared by Tonkin Consulting dated 15 July 2014;
- (c) Stormwater concept plan prepared by Tonkin Consulting, being Sheet 03, Revision 3 (undated).

1. Amendments to the application

The application as originally lodged sought only development plan consent. FBM wishes to amend the application to also seek land division consent and development approval. This is of very little practical consequence.

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FBM also amends the application to expressly incorporate the construction of the coast protection works (seawall) and waste water treatment plant (**WWTP**) as part of the proposal. To the extent necessary, FBM would accept conditions of consent requiring the seawall and WWTP works to be undertaken over a reasonable period.

The incorporation of these works into the proposal avoids the need for separate agreements tying them to the land division.

The WWTP was approved in 2006. There have been a number of advances in technology since that time, such that FBM may elect to seek approval for an alternative WWTP design. This prospect can be accommodated through a suitably flexible condition that requires the proposed allotments to be connected to and serviced by an approved WWTP.

2. Amendments to plan of division

There have been some minor amendments to the plan of division since it was last presented to the DAC, as follows:

1. The access way previously identified as Catfish Lane does not have sufficient width to be accepted as a public road by the Council. As a result, the access way has been converted to a right of way, with the right of way land attaching to Lot 102 and 103 (refer areas marked AJ and AK on sheet 7).
2. Lot 360 has been amended to provide for a truck turning area at the eastern end of Dolphin Road.
3. An easement over the FBM land in favour of the Council for coast protection works (seawall) has been added (refer area marked AL on sheet 1).
4. A right of way over portion of Lot 85 (drainage reserve) has been included in favour of the adjoining lots 80-84 (refer area marked AH on sheet 8).
5. An easement for drainage purposes has been included adjacent the southern end of the settlement, linking the two detention basins adjacent Lot 378 and 449 (refer area marked AG on sheet 2).
6. The service easements previously shown on the plan of division have been removed. Since the proposal was last considered by the DAC the provisions of the *Water Industry Act* 2012 have come into operation. That Act gives water industry entities the right to lay and maintain water supply and waste water service infrastructure without the need for registered easements. Water supply and waste water services will be provided by water industry entities and accordingly registered service easements are unnecessary.

The land is partly affected by a public right of way. The Minister for Sustainability, Environment and Conservation has agreed to the extinguishment of that right of way over the land in return for a right of way being granted along the eastern boundary of the land in favour of the Council (refer area marked U on sheet 1). The extinguishment of the public right of way will occur at the time of deposit of the plan of division.

3. Native Title

FBM has worked with the State Government to resolve any potential native title issues, particularly relating to the Crown and harbors land on which the seawall is to be constructed.

Negotiations with the Attorney-General, the Minister for Transport and Infrastructure and the Minister for Sustainability, Environment and Conservation have culminated in a deed which has now been executed by all parties.

The terms of the Deed are confidential. Broadly, in exchange for a contribution by our client, the State takes on the liability for any Native Title claim over the land. For its part, the State has agreed to resume the relevant land as Crown land and then dedicate it to the care, control and management of the Council to enable the seawall.

4. Seawall / coast protection works approval (DAC List of Issues item 1)

The seawall / coast protection works are the subject of DA 344/101/12 as varied by DA 344/101/12V1. The coast protection works were granted full development approval on 14 July 2014.

The DAC has extended the period for substantial commencement of this approval until 14 July 2018. Works must be fully completed by 14 July 2020.

The condition proposed above referring to the amendment by FBM of this land division to incorporate the construction of the Seawall could ideally allow construction to occur after deposit of the plan of division and within the lifespan of the seawall approval (i.e., by 14 July 2020)

5. WWTP approval (DAC List of Issues item 2)

The development will be serviced by a privately owned and operated Waste Water Treatment Plant (WWTP).

The WWTP (DA 344/102/06) was granted full development approval on 14 May 2010.

That approval has also been extended to require substantial commencement by 14 July 2018 and substantial completion by 14 July 2020.

As noted above, the final design of the WWTP may be revisited prior to section 51 clearance. As with the seawall, any condition would ideally allow this to be constructed after deposit of the plan of division and by 14 July 2020.

6. Creation of seawall corridor secured

The seawall / coast protection works will be undertaken on:

- (a) “Harbors land” under the care and control of DPTI;
- (b) “Crown land” under the care and control of DEWNR;
- (c) Council owned land; and
- (d) FBM land.

To enable appropriate tenure to be granted over the relevant areas of Harbors land and Crown land, those parcels are proposed to be divided to create a “corridor” of land containing the seawall. The seawall corridor will be created by two separate land divisions (one for Crown land and one for Harbors land), neither of which require development approval. The two land divisions are underway with the respective departments.

The seawall corridor (and associated easements) will be of sufficient width to enable the maintenance of the seawall infrastructure and its future expansion should that prove necessary.

7. Tenure over seawall corridor

The Attorney-General, the Minister for Transport and Infrastructure and the Minister for Sustainability, Environment and Conservation have committed to the granting of appropriate tenure to the Council for the construction and maintenance of the seawall.

The preparation and agreement of necessary documents is well underway.

The Harbors land will be the subject of an easement, but a three year construction licence may also be granted to guard against any delay in the creation of the easement.

The Crown land will in the long term be the subject of an easement and a dedication to the Council. However, because of potential delays in the creation of an easement due to native title processes, in the interim period a 10 year licence has been offered by the State.

8. Roads and footpaths (DAC List of Issues items 3 and 4)

The requirements for the construction of roads and footpaths have been agreed with the Council. The updated roads concept plan annexed to this letter was considered at a full Council meeting on 10 December 2014, and referred to as “Attachment 9”. At that meeting the Council relevantly resolved as follows:

c) Roads – Council letter dated 26 April 2012;

Council acknowledges the updated roads concept plan (Attachment 9) and additional information, and agrees that:

- All sealed road surfaces should be provided with a flush concrete edge beam;*
- There should be an alternative traffic control configuration for the intersection of Trevally and Salmon Road, in order to allow access and minimise closed road intersections;*
- That the unmade road between Trevally and Dolphin Road should remain an unmade road.*

d) Roads, kerbs and footpaths;

Council acknowledges the updated roads concept plan (Attachment 9) and additional information, and agrees that the hierarchy of proposed roads is a reasonable design response to the compromise required over roads, kerbs and footpaths within the area of the proposed land division at Fisherman Bay.

FBM has no objection to retaining access through the intersection of Trevally and Salmon Road as requested by the Council. No further changes to the plan of division are required to retain this access.

The final design for construction of roads and footpaths is of course in any event addressed by Regulation 53.

9. Sight lines

Due to the (existing) narrow width of roads, sight lines are limited for drivers exiting individual properties. MFY traffic engineers have advised that appropriate sight lines can be maintained by ensuring that no fences are erected along the road reserve boundary, with the exception of Snapper Road and Whiting Road (south of Snapper Road). This is not presently an issue as the shack settlement does not feature fencing to front boundaries.

Fisherman's Bay is an area to which the usual fencing exemptions do not apply and fencing can in this instance be adequately controlled by the Council.

Schedule 3 clause 4(1)(f) permits the erection of a fence not exceeding 2.1 metres in height. However, the exemption does not apply to a fence in:

the Hills Face Zone, a Historic (Conservation) Zone, a Historic (Conservation) Policy Area, a Historic Conservation Area, a Watercourse Zone, a Flood Zone or Flood Plain delineated by the relevant Development Plan, or in any other zone or area delineated as such a zone or area in a map in the relevant Development Plan, or otherwise indicated by requirements in the relevant Development Plan for minimum finished floor levels expressed by reference to ARI or AHD.

Within the Township Zone references are made to Fisherman's Bay being potentially affected by sea and stormwater flooding. Importantly, Principle of Development Control 9 in the Zone states that:

All development at Fisherman Bay should have a minimum site level of 3.15 metres AHD and a minimum floor level of 3.40 metres AHD.

As such, the usual ability to construct fences does not apply, and the Regulations only permit the construction of post and wire fences without approval. Any other form of fencing will require approval and the Council will be able to ensure that sight lines are not compromised.

It is understood that the Council is preparing fencing policies for Fisherman's Bay in a DPA which can reinforce the sight line requirements.

10. Stormwater (DAC List of Issues item 5)

At its meeting on 14 June 2012 the DAC resolved that the proposal regarding stormwater collection and drainage are satisfactory and noted that the requirements for stormwater works can be dealt with as a land division requirement in any forthcoming approval.

The stormwater concept plan previously considered by the Council has had a minor update to incorporate flows into detention basins A and B adjacent the southern row of allotments. A copy of the updated stormwater concept plan is **attached**.

To the extent that further refinement of the design may be required, pursuant to Regulation 54 of the *Development Regulations* any drain which is necessary in accordance with recognised engineering practice for the safe and efficient drainage of the land and for the safe and efficient disposal of stormwater and effluent from the land must be provided and constructed. Accordingly, it is unnecessary to impose a condition of consent dealing with stormwater works. The proposal includes a stormwater concept which is sufficient for the purposes of development plan consent and land division consent with detailed design to be addressed under Part 9 of the Regulations.

11. Building fire safety issues (DAC List of Issues item 6)

The age and circumstances of the shack settlement are such that a number of existing buildings do not have the requisite level of fire rating for structures located on or close to a boundary. Pursuant to Regulation 5A this is a matter which is required to be resolved before the issue of new titles (but does not affect development approval).

At its meeting in 2012 the DAC resolved that “it is accepted the matter can be dealt with at a later date under section 51 of the Act, and accordingly there will be no requirement of the DAC that this matter be further addressed for the purposes of development approval”.

Notwithstanding that the DAC has agreed that the matter can be dealt with after the grant of development approval, I offer some further detail about the issues and the manner in which they are likely to be addressed.

Firstly, the issue is a theoretical one in so far as the situation already exists and the land division does not of itself give rise to any increased risk to fire safety.

It has been identified that the location of some buildings adjacent to the proposed allotment boundaries does not meet the deemed-to-satisfy fire safety provisions of the Building Code. Approximately 145 allotments are potentially affected, although that figure may now be less. Katnich Dodd have been engaged to survey the affected allotments and advise on necessary works to comply with the Building Code for each allotment.

The issue is capable of being overcome in most cases by relatively modest building works, such as the sealing of windows of buildings on or close to the boundary, or the addition of hebel or other fire rated cladding material to external walls.

In the present case, the requirement for rectification works will need to be linked to the creation and sale of the allotments for a number of reasons, including:

- (a) Some purchasers intend to demolish and redevelop their shacks upon receiving a freehold title, making the rectification works unnecessary. Any proposed redevelopment will of course require development approval and need to demonstrate compliance with the Building Code.
- (b) The shacks are the property of the licensees and not FBM as owner. FBM does not (other than where agreements for purchase have been entered into with licensees) itself have the authority to undertake the rectification works to each shack.
- (c) The solutions for achieving compliance are varied but generally they are relatively straightforward to achieve. They are not so vexed that the suitability of the land division is an issue.

As such, compliance with Regulation 5A is likely to be through a range of mechanisms depending on the particular circumstance of the affected buildings.

Licensees of 115 out of the 145 affected allotments have to date entered into contracts to ensure that their dwelling complies with Building Code fire safety requirements. The agreements provide for the undertaking of remedial works where there is non-compliance with legislative or regulatory requirements. FBM must give written notice of the relevant extent of the non-compliance to the owner of each proposed allotment. If, after 90 days, an owner does not comply with that notice, FBM has a right to enter and undertake the required remedial works on the owner's property.

The remaining affected shacks (approximately 30) which have been identified as having potential fire source feature issues are not the subject of purchase agreements. FBM will secure the necessary works to those affected shacks either as part of future purchase agreements or through amending the terms of any further licence offered to the owners of those shacks. Once development approval has been granted, there will be a greater level of reassurance (and incentive) for shack owners to enter into purchase agreements.

The Council of course has a range of powers to require fire safety issues to be addressed that operate quite independently from the land division process¹.

The DAC can therefore be confident that the land division is appropriate and that the requirements of Regulation 5A will be sufficient to ensure compliance with the Building Rules.

12. Open space contribution (DAC List of Issues item 7)

A reduced open space contribution has been agreed to by Council. In any event this is a section 51 clearance issue and does not affect the grant of development approval by the DAC.

13. Bonding agreements

There is of course no legal requirement for security to be provided for the construction of infrastructure or other civil works associated with a land division, and no prescribed manner in which security must be provided.

FBM nonetheless is currently negotiating bonding agreements with the Council in the event that they are required.

This is a matter to be resolved separately and does not affect the grant of development approval.

14. Anticipated timing

As part of the proposed land division, FBM will be providing a large amount of 'public' infrastructure, including:

- (a) Seawalls to protect the township from coastal inundation and erosion;
- (b) Boat ramp access facilities;
- (c) A Waste Water Treatment Plant;

¹ *Development Act*, section 71.
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- (d) Sealed roads; and
- (e) Stormwater drainage works.

The infrastructure will be constructed at a cost of many millions of dollars.

The Council ultimately benefits from the care and control of much of this infrastructure, with the exception of the Waste Water Treatment Plant.

FBM is unable to access any significant funds until titles have been created and it is able to settle on contracts for the sale of shack sites. It is simply not possible for FBM to construct all of the infrastructure prior to settlement. Accordingly the conditions linking the Seawall and WWTP need to allow for the construction of that infrastructure after the deposit of the plan of division. Given that this is an unusual situation where the existing buildings and shack sites are being retrofitted with infrastructure which has been absent for decades, this approach is appropriate. This is very different to a Greenfield development site. The biggest risk to the community is that this development does not occur and the existing shacks remain in situ without all of this proposed infrastructure.

FBM intends to construct the infrastructure in stages, with the following indicative timeframes (where T represents the creation of allotments):

- (a) Seawall T+12 months
- (b) Waste Water Treatment Plant T+24 months

I trust that this information addresses the issues identified by the DAC. We look forward to the determination of the application as soon as possible.

Please feel free to contact me to discuss.

Yours faithfully



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Land division for Fisherman Bay

Location:

Lot 4, Fisherman Bay Road, Fisherman Bay

Prepared for:

Fisherman's Bay Management Pty Ltd

13 August 2010

PLANNING REPORT

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1. Introduction

The Fisherman Bay Township (also known as Fisherman's Bay) is located approximately five (5) kilometres to the north of the centre of Port Broughton. The township commenced its life as a shack settlement in the early 1900's whereby the land owner charged a casual licence to allow people to construct holiday shacks. In the 1970's the land owner sold the land to Fisherman's Bay Management Pty Ltd. Fisherman's Bay Management Pty Ltd grants short term licences to occupy to residents and holiday makers and manages the town, including the roads, trees and reserves while the Council manages the foreshore including the boat ramps and beaches.

On the 16 February 2000, Land Division and Development Approval was granted for the creation of 405 additional allotments, the majority of which were allotments to reflect the existing licences to occupy within the township. That application has been subject to a number of extensions. A wastewater treatment plant, to be sited on the balance of the land outside of the Township Zone boundary, was granted Development Plan Consent in November 2007 and has recently been granted Building Rules Consent and full Development Approval.

The original application lapsed on the 24 April 2010. However, on the 23 April 2010, the proponent lodged an application to extend the approval together with a variation application seeking to make a number of amendments to the proposal. Those amendments seek to rectify errors/inconsistencies; to fine tune the plan of division to better reflect on ground circumstances; and to improve the design of the proposal, particularly in relation to improving vehicular access and to ensure compliance with separation distances between existing buildings and the proposed allotment boundaries. The variation application proposed a notable contribution to infrastructure for the town as part of the variation which, in effect, not only replaces conditions 2 and 3 of the original approval but could also be applied for infrastructure to protect the town from potential climate change and associated sea level rise impacts.

The proponent has recently lodged a 'fresh' application for a proposal consistent with the details of the proposal as contained within the variation application. Nolan Rumsby Planners have been requested to review the proposed 'fresh' land division application and to prepare a planning report on our findings.

In forming my opinions as to the relative merits of the proposal, I have viewed the plans prepared by Lester Franks Survey and Geographic Pty Ltd, referenced as CCPOP005rev17.DWG, Sheets 1 to 9, dated 21 April 2010. These plans are identical to the plans lodged with the variation application.

I have also inspected the site and locality of the subject land and considered the relevant provisions of the Barunga West (DC) Development Plan (consolidated 21 February 2008).

This report represents my professional views in this matter.

I advise of my opinions and findings as follows.

2. Background

The original land division application (Development Application no 344/D006/99) was approved on 16 February 2000 subject to six (6) conditions. Since the original approval date, the application has been subject to a number of extension of time applications to extend the period of the currency of the application. A variation application for minor amendments to the approved land division was lodged in April 2010.

In addition, an application for the construction of a wastewater treatment plant (satisfying one of the conditions of the original approval requiring connection of the allotments to an effluent and treatment scheme) has been granted Development Approval.

Since the original approval the report *Climate Change - Risks to Australia's Coast - A First Pass National Assessment* by the Australian Government Department for Climate Change has been released. This report is the first of a three pass process where the third pass is the local level site specific assessment of potentially sensitive sites.

The report is of little benefit for the assessment of the application (not withstanding that it does not form part of, nor is referred to within the South Australian development assessment framework) as the report acknowledges that detailed regional and local assessment under worse case scenarios are needed to inform decision makers.

I understand that the Council is privy to other information that shows the potential impact of coastal processes on Fisherman Bay under a number of scenarios but that the information is currently confidential and not in the public domain.

The Development Plan contains numerous provisions relating to climate change and the potential for sea level rise which are addressed in this application. I cannot have regard to information apparently in the Council's possession that I cannot see. Further, the Council should not have regard to that information unless it informs the Council in relation to the provisions of the current Development Plan.

3. Subject Land and Locality

The subject land consists of the portion Allotment 4 in Filed Plan 2184, Fisherman Bay Road, Fisherman Bay that is contained within the Township Zone (the northern half of allotment 4) – Certificate of Title Volume 5503, Folio 193. The subject land is located approximately 2.5 kilometres north of the northern edge of Port Broughton.

Fisherman Bay started its life as a shack settlement located on private land in the early 1900's where the original land holder charged people a casual licence to allow them to construct shacks and live on the land. Fisherman's Bay Management Pty Ltd purchased the land in the 1970's and has continued the practice of granting short term licences to occupy portions of the subject land.

The township has the characteristics of a typical coastal settlement with roads (private roads, some of which are sealed) set out in a grid pattern, a local shop serving the local community, dwellings and shacks, boat sheds, two playgrounds, a boat ramp, swimming pontoons, public toilets, lawned picnic areas and sandy beaches.

There is one formed road, Fisherman Bay Road, providing vehicular access to the township which enters the township from the south western corner. Another unmade road, Snook Road, joins the south eastern corner of the township but that road reserve does not provide all weather access to the township.

The actual Fisherman Bay is located to the east of the township with main channel access to the bay located directly to the north of the township. Shag Island is located to the west of the township with Munderoo Bay located to the south of the Island. The land to the south of the township is used for farming purposes, mainly for cropping.

The township is bordered to the west and north by coastal reserves and sandy beaches.

4. The Proposal

The proposal is for a land division to create a total of 432 allotments within the Township Zone of Fisherman Bay. The allotments created are for the following purposes:

- 402 allotments to reflect the existing licences to occupy within the township;
- Eight (8) reserves, including two (2) drainage reserves; and
- 22 allotments forming public roads.

A notable component of the application is that the proponent proposes a financial guarantee towards infrastructure, including infrastructure to protect the township developments from inundation.

The layout of the land division allows for

- Vehicular access and manoeuvrability, particularly for service vehicles;
- The provision of formal access arrangements to existing garages;
- Allotment boundaries that reflect the existing use of the land while ensuring that there are no encroachment issues and to provide the appropriate separation between existing buildings and proposed boundaries to ensure that the Building Rules provisions are not breached.

I am instructed that as a result of previous discussions, the Council was prepared to accept the vesting of the roads and drainage reserves in their existing condition as this would be offset by a general contribution towards infrastructure. That contribution was previously to be made in the form of land that would be vested in the Council, which in turn would have to be developed and realised in order to be converted to a monetary contribution. I am further instructed that the variation proposed in this application is a significantly increased contribution and is proposed in the form of a bank guarantee for \$1.625 million.

5. Planning Assessment

The current Development Plan is the Barunga West (DC) Development Plan consolidated on the 21 February 2008.

The subject land is located within the Township Zone, as shown on Map BaW/1, and is not located within a policy area. The subject land is located within the area designated 'Settlement' as depicted on the District Council of Barunga West Structure Plan Map BaW/1 (Overlay 1).

The Township Zone encompasses the developments at Alford, Kulpara, Mundoora, Tickera as well as Fisherman Bay. The Objectives of the zone seek residential development and small-scale services and facilities to meet the needs of the local community and visiting public; conservation and enhancement of the local scale, main road streetscape and scenic rural settings; contribution of the desired character to the zone; and development in an orderly and compact form.

The Council Wide Section of the current Development Plan contains numerous provisions relating to the protection of development from natural coastal processes. Council Wide Principle 185 states that land should not be divided for commercial, industrial or residential purposes unless adequate development sites on each allotment are at least 0.3 metres above the standard sea-flood risk level unless the land is, or can be, appropriately protected.

Zone Principle 1 lists the kinds of development that are appropriate in the Township Zone and includes a number of uses that are currently present within Fisherman Bay, including community facilities, dwellings, small scale tourist development, small shops and recreation areas.

Zone Principle 8 designates the minimum site level of 3.15m AHD and a minimum floor level of 3.40m AHD for building development within Fisherman Bay.

It is noted that these levels are also contained within Zone Principle 19 which lists the kinds of development that are non-complying in the Township Zone and includes:

All development at Fisherman Bay except where the:

- (a) site level is greater than 3.15m AHD; and
- (b) finished floor level is more than 3.40m AHD.

I have been instructed by the applicant's solicitors to assess this application on the basis that this provision does not trigger the non-complying process for this application.

I am independently of the opinion that this provision does not trigger the non-complying process for a number of reasons, including the following:

(i) the wording does not relate to land division

Although the item includes the phrase ‘All development’, a land division clearly cannot have a finished floor level and the phrase specifies a site level **and** a finished floor level. This provision, in my view, is intended to apply to ‘buildings’.

The phrase ‘all development’ is used elsewhere in the Development Plan and the context of the phrase needs to be taken into account to determine which forms of development the provision applies to.

For example, the wording of ‘all development’ in Council Wide Principle 7 would encompass land division proposals, however, its use in Council Wide Principle 42, where all development should contain a rainwater tank, would not be applicable for a land division proposal. Other provisions, such as Council Wide Principle 178, emphasis that the provision applies to marinas and aquaculture development by stating *All development, including marinas and aquaculture development...*

Other provisions of the Development Plan specifically identify, when the form of development is inclusive of land division, by using the phrase “including land division” within the provision as per the following examples:

Council Wide Principle 192: *...for example, small-scale infill development including land division, such development should not occur unless...;*

Council Wide Principle 198: *...and other development of a non-commercial farming nature, including land division for all such development...;*

Council Wide Principle 201: *Development, including land division, ...;*

Coastal Zone Principle 27: *Development (including land division, where relevant) should....*

[my emphasis]

If Zone Principle 8 and Zone Principle 19 were intended to apply to a land division, the drafters of the Development Plan would reference that intention in the same fashion as above and changed the wording of the ‘level’ tests to reflect an ‘and/or’ approach so as to cover both building development and land division.

(ii) The Development Plan is a Guide

The Courts have repeatedly stated that the provisions of the Development Plan are not to be construed like a statute and that the Development Plan is a guide and it is neither reasonable nor sensible (for the above reasons) to practically apply a non-complying status to this application. It is clear from a reading of the Township Zone that land division is intended within Fisherman Bay provided protection from coastal processes can be addressed – such protection is clearly not limited to site levels or finished floor levels. In these circumstances land division which meets the intent of the zone (including protection from coastal processes) cannot possibly be non-complying.

For the above reasons, I do not consider the matter to be non-complying.

In addition to Zone Principle 8, the second provision specifically relating to Fisherman Bay is Zone Principle 9 which is as follows:

- 9 Development of the southernmost site at Fisherman Bay is provided for the resettlement of shacks and development should commence from the site nearest to the road, with a single point of access off the main road.**

It appears that with the gazettal and consolidation of the General PAR (Amalgamation of the Port Broughton (DC) and Bute (DC) Development Plans) on the 23 September 1999, the southern boundary of the then Settlement (Fishermans Bay) Zone was moved approximately 105 metres south of the former boundary. In addition, the above principle was included within the zone provisions.

With the consolidation of a Section 27(5) Amendment – Waste Disposal (Landfill) PAR (Ministerial) [an Environment, Resources and Development Committee suggested amendment] and a Section 29(2)(a) and (b) amendment [amendments that do not alter the effect of an underlying policy or correcting an error] on the 13 April 2000, the southern boundary of the Settlement Zone was again adjusted, this time in a northerly direction. However, the abovementioned Principle 9 was not removed. As there is no longer a southern most site, the principle has no work to do.

The zone contains the following Principle that encourages a range of allotment sizes:

- 16 A range of allotment sizes to suit the intended development of the land should be provided, with smaller allotments being encouraged adjacent to the town centre or reserves, and larger low-density allotments around the periphery of the zone.**

The proposal to create allotments for the existing lease areas of dwellings/shacks/land within the existing Township boundaries is consistent with providing a range of allotments sizes sought by the above provision.

The proposed land division would (and has) lead to greater opportunities for investment for infrastructure to service the township, including the establishment of a \$6 million wastewater treatment plant.

5.1 Coastal process protection and management

The Development Plan contains numerous provisions relating to the protection and management of natural coastal processes. Provisions identify the need for the development site on each allotment created by a land division to be able to be protected from coastal inundation by either having a minimum site level or by way of protection of the land, for example, by coastal works.

The proposal presents an opportunity to not only protect each individual allotment as they are redeveloped over time (which might have occurred by raising the building site level to greater than 3.15m AHD and ensuring a finished floor level of greater than 3.40m AHD) but to provide protection of the whole of the township, including all existing development, by financial contribution to coastal process protection and management.

It is noted that coastal process protection and management infrastructure and strategies will be required no matter whether the proposed variation is approved or not and regardless of whether the land division proceeds. The township has been established for a considerable time and will clearly remain for a considerable time longer.

As such, the Council will need to provide some protection to the town from potential sea level rise, storm surges and king tides. Not only does this application provide the opportunity to gain significant financial support for these measures, the land division will provide the financial incentive to upgrade other infrastructure services (such as roads) and will ensure the construction of the approved wastewater treatment plant to minimise any environmental harm to the coastal environment.

5.2 Land division specific provisions

No major physical change, or change in land use will occur as a result of the proposed land division. The division simply reflects the current usage of the land. The balance of Allotment 4, outside of the township boundary, will continue to be used for farming purposes as desired by the General Farming Zone as well as for the wastewater treatment plant.

The proposal will not lead to a potential for land use conflict and will take place in a manner which will not interfere with the effective and proper use of any other land in the locality. The existing (and intended) use of the allotments is compatible with the surrounding uses and will not prevent the attainment of the objectives for other land.

Access to the subject land will be via existing driveways and access points from the proposed roads reserves. The layout of the allotments and proposed road reserves will provide sufficient vehicle manoeuvring areas for vehicles, including fire fighting and other emergency vehicles.

The proposal will not result in any increase in traffic visiting the site or locality nor interfere with the free flow of traffic on the existing road network.

The proposal will not result in an increase in demand on public utilities and it will utilize existing services and infrastructure such as telephone, water, electricity and roads. The proposed allotments will be connected to the wastewater treatment plant.

In light of the above, I am of the opinion that the proposal is consistent with the intent of the zone and is not detrimental to the attainment of the objectives of the zone as the proposal does not:

- materially affect the current use of the land;
- does not increase the development potential of the land;
- does not create an expectation of additional services; and
- does not involve any major physical change to the land.

The majority of the provisions of the Development Plan relating to land division seek to ensure that land division is only undertaken where the land is suitable for its intended purposes and that the essential public services and required easements are provided in an orderly and economic manner.

The provisions of the Development Plan relating to land division are addressed summarily as follows:

- the existing uses of the subject land are consistent with the uses listed as appropriate in the zone. The current use of the subject land will not change as a result of the proposal;
- the size, shape, location, slope and nature of the land contained in the proposed allotments are suitable for their existing purposes;
- the current use of the allotments will not lead to erosion, cause pollution or exploitation of a public water supply or any surface or underground water resource;
- the proposal will not lead to the sterilisation of mineral resources;
- the proposal does not affect heritage items;
- no native vegetation is detrimentally affected by the proposal; and
- the proposal provides for significant coastal protection and management infrastructure and strategies.

5.3 Open Space

Fisherman Bay was originally established so that holiday makers and permanent residents could enjoy the seaside location and the broad sandy beaches. To the north, north east and west of the subject land are allotments contained within the Coastal Zone which have land use codes designated by the Valuer General as Reserves and are used for open space for recreation purposes.

The intent of the land division is to divide the subject land in such a way that it reflects the existing land uses within the township. The portion of the Township Zone subject to this application does not contain significant areas of open space as that open space is provided within the areas abutting the subject land as well as the remainder of the township developments to the east of the subject land.

Nevertheless, the proposal does contain a total of eight (8) reserves. Two (2) of these are to double as drainage reserves (proposed allotments 378 and 449) while the remaining reserves will be used for open space (proposed allotments 150, 155, 197, 333, 446 and 450).

Section 50 of the Development Act, 1993, deals with the Open space contribution scheme. It is noted that where an application provides for the division of land into more than 20 allotments, and one or more allotments is less than one hectare in area, the council in whose area the land is situated **may** require **up to** 12.5 percent in area of the relevant area be vested in the council or the Crown (as the case requires) to be held as open space [my emphasis]. The wording is such that the Council does not have to request the full 12.5 percent of the relevant area or contribution for the difference.

In addition, considering that the recreational focus of the visitors to, and the majority of the residents of, the township, are the beaches and coastal reserves it is appropriate, in my opinion, that no additional open space reserves (or contributions) are provided other than the reserves as shown on the application plans. I can see no adverse social or planning consequences stemming from what is in effect the ongoing (and long past) use of the coast as forming the open space 'contribution' to the township.

6. Conclusions

For all of the above reasons, I conclude that the proposal is acceptable when balanced against all the relevant provisions of the Development Plan is consistent with the attainment of the Objectives of the Township Zone for Fisherman Bay.

In particular, I note that:

- the proposal is configured to the functional requirements associated with the current development on the proposed allotments;
- the proposed allotments will be supplied with all of the essential services required in these matters in an orderly and economic manner;
- the existing use of the subject land is appropriate considering the Zone provisions, the historic uses of the subject land and the uses predominate in the locality;
- the proposal provides for a range of allotment sizes;;
- the zone now allows the creation of a range of allotment sizes to suit the intended development of the land;
- the land division would lead to greater opportunities for investment for service infrastructure, such as wastewater infrastructure, to service the township;
- the application proposes a substantial contribution to coastal process protection and management infrastructure and strategies which would be required no matter if the land division proceeds or not;
- the proposal includes a financial contribution towards infrastructure, such as roads and drainage reserves; and
- the land division will provide the financial incentive to upgrade infrastructure services and to ensure the construction of the approved wastewater treatment plant, to minimise any environmental harm to the coastal environment.

As such, the proposal complies with the majority of the pertinent Development Plan provisions and is consistent with the attainment of the objectives of the zone, and therefore, in my view, warrants Development Plan Consent, Land Division Consent and Development Approval.

Nolan Rumsby *Planners*



Jeni Nolan, MPIA CPP
B.A. Planning, G.D. Environmental Planning



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20101278LA5/JO/JO

2 May 2011

Fisherman's Bay Management Pty Ltd
PO Box 210
PORT BROUGHTON SA 5522

Attention: Ms Corynn Goricki

Dear Corynn

FISHERMAN'S BAY STORMWATER MANAGEMENT PLAN AND LEVEE

Fisherman's Bay Pty Ltd engaged Tonkin Consulting to undertake preliminary design for stormwater management and a levee for sea level rise protection for the existing shack settlement to assist in obtaining torrens titles for each of the existing dwellings. These designs are intended to support the current Development Application (344/D007/10).

In addition, we have also produced a construction cost estimate for the proposed stormwater infrastructure and levee works.

Site Description

Fisherman's Bay is a holiday settlement located approximately five kilometres north of Port Broughton in the Barunga West District Council area. The site is bounded by the coastline on the north, north-eastern and north-western boundaries. As part of the development it is proposed that a levee will be constructed to protect the development during flood tide events and to accommodate the potential for sea water rise due to climate change. Greenfields exist to the south of the site, which are currently zoned as agricultural.

A review of the Fisherman's Bay Landscape study (2008) suggests that the soils found in Fisherman's Bay are typically coastal soils with a high sand content.

Fisherman's Bay is low lying, being only two metres above normal sea levels in some areas. The site is reasonably flat, but grades generally to the east, with localised areas of depression throughout the site. There are no creeks or other water courses within or near the township; however there are two separate mangrove estuaries on the east and west sides of the development which assists in reducing inundation throughout the whole town in flood events and an existing depression (gully) to the south.

Existing roads in the development are either crowned or contain a central largely informal invert drain, and many are unsealed. There are several existing retention basins within the development. These cater for localised catchments only and discharge via infiltration and evaporation.



Stormwater Objectives / Council Requirements

The following objectives are considered to be appropriate for adoption in consideration of stormwater management options for the site and are taken from Council's Development plan:

- Development should be designed so that stormwater runoff is disposed of in a manner that will not cause pollution or other detrimental impacts on the marine and on-shore environment of coastal areas.
- The risk of failure of measures such as sand management, levee banks, flood gates, valves or stormwater pumping, is acceptable relative to the potential hazard resulting from their failure. The issue of levees is dealt with separately in this report.
- Development should not be undertaken in areas liable to inundation by tidal, drainage or flood waters unless the development can achieve all of the following:
 - It is developed with a public stormwater system capable of catering for a 1-in-100 year average return interval flood event.
 - Buildings are designed and constructed to prevent the entry of floodwaters in a 1-in-100 year average return interval flood event.
- Development should not be undertaken unless the finished floor level of the building is raised to a level of 300 mm above the Australian Height Datum (AHD) height of a one in 100 year average return interval flood event (ARI) flood or known flood level, whichever is greater.
- Development should include stormwater management systems to mitigate peak flows and manage the rate and duration of stormwater discharges from the site to ensure the carrying capacities of downstream systems are not overloaded.
- Development should include stormwater management systems to minimise the discharge of sediment, suspended solids, organic matter, nutrients, bacteria, litter and other contaminants to the stormwater system.

Hydrology

The site was modelled using the computer based, urban hydrological modelling program, DRAINS. In order to calculate the total site runoff, the following parameters were used within the model.

- Total Allotment size: 210,000 m²
 - Individual allotments approx 350 m² with 100 m² shack (including other site buildings, sheds etc.)
- Time of Concentration: 5 minutes (Impervious), 20 minutes (Pervious)
- Hydraulic Conductivity: 1x10⁻⁴ m/s (Sand; High infiltration rate)

The pre-development 100 year ARI peak flow generated from the site as a whole was calculated to be 2 m³/s. The proposed development is not expected to change the 100 year ARI peak flow however, measures will be put into place to retain stormwater during flood events, and release after flooding.

Proposed stormwater management approach

As the site is already developed with existing dwellings, in the short term it is not feasible to raise the land to a level above the 100 year flood extents. In addition, a levee is proposed around the site to a minimum level of 3.15 m AHD to protect against sea flood events. Therefore the following management plan is based on largely retaining the current natural fall of the subject area.

There are some small rural sub-catchments that naturally fall toward the subject site. Where external catchments have a natural grading toward the subject area, cut-off drains will be used to contain and redirect the external flows. The internal stormwater system deals with runoff from the site area only. The location of the cut-off drains are shown on the attached stormwater management plan.

There are several low points throughout the site that cannot currently drain offsite or to an existing on-site basin. As it is currently impractical to change the topography of the allotments, it is proposed that a stormwater network be installed that is of a 100 year design standard (i.e. no flooding of allotments occurs up to and including the 100 year storm event).

This proposal would include the installation of an extensive underground stormwater drainage network, as the 'trapped' low points throughout the proposed development must have flood protection from the 100 year ARI event. As such, pits and pipes would have to connect to all these localised low points.

The roads are proposed to be sealed and kerbed to allow for runoff to enter the proposed stormwater drainage network.

The overland flow paths will be directed to four proposed basins throughout the site. These will be an extension of the two existing basins adjacent Dolphin Road (Basins A and B), the existing basin north of the Fishermans Bay Management office (lot 150 and Lot 155, Basin C) on Silver Perch Road and a new basin in the existing open space area south of lots 80-84 on Snook Road (Basin D). These basins will be designed to will contain flows up to and including the 1 in 100 year ARI storm event.

The basins should have the following specifications:

Storage No.	Volume (m³)	Basin Invert (AHD)	100 year water level (AHD)	Storage Size (w x d) (m)
A	250	1.6	2.55	510
B	250	1.3	2.3	510
C	1500	0.6	1.7	2000
D	1000	0.6	1.3	1000

The areas proposed for the basins are currently largely open space.

There are also two additional trapped low points that require a small storage capability in the event of the 100 year flood. They are the existing basin on Dolphin Road (which can remain as the existing footprint) and in the depression in Catfish Lane. This low point will be addressed by installing a drainage pit of some sort and providing underground drainage to new infrastructure in Catfish Lane via an easement.

Pipe layouts are shown on the attached stormwater management plan.

This layout has the advantage of being compatible in the long term when finished floor levels are raised to the required tidal flood protection levels. There will be few issues related to driveway grades as the road network will remain largely at the current levels. However, the increased stormwater network and surfacing and reshaping of roads will have significant cost implications.

Tidal Effects

The proposed flood protection levee around the development is designed to protect the allotments from flooding in events up to and including the 1 in 100 year design storm tide level.

According to information obtained from the Bureau of Meteorology the mean highest high water (MHHW) level is currently 0.48 m AHD for Port Broughton. In correspondence from BMT WBM Pty Ltd on 13 September 2010 (Ref DCP: L.B18123.002.doc) the Coastal Protection Board requires that 300mm sea level rise is taken into account for in the 50 year design, with a further 700 mm of sea level rise for the 100 year design. This gives the possible MHHW sea level in 2100 as 1.48 m AHD.

The basins and outlets in the proposed development should ideally be designed such that they can be drained above this level to avoid possible ingress of sea water during high tides. However, it is impractical to design the basins corresponding to this height due to the large footprint required due to the shallow depth of the basins. As such, further investigation is recommended to be undertaken to assess the groundwater levels at the sites of the proposed basins so that deeper basins can be designed (ensuring no ingress of sea water).

The basin outlets are designed to be above the mean lowest low water level (MLLW) accounting for sea level rise (0.26 m AHD in 2100). This will mean that the basins can fill during high tides and discharge at a lower tidal level.

Stormwater quality improvement

In accordance with current practice for residential Stormwater Management, a water quality improvement device should be fitted on the inlets to the detention storage. Given the nature of the proposed development, the target pollutants for removal shall be litter and other gross pollutants.

The following proprietary devices are considered suitable for this purpose:

- Rocla CDS Unit
- Humes Humeguard
- Ecosol RSF4000

Water Re-Use

It is proposed that the roof runoff from the allotments be stored in minimum 1 kL individual tanks on each lot and re-used for purposes such as irrigation, laundry use and toilet flushing. This may reduce the amount of runoff entering the basins, however it has been considered that the individual tanks are full at the beginning of a flood event.

Stormwater Management Conclusion

- Our assessment has outlined a proposed approach to manage site runoff, flood risk and water quality improvement.
- Our current assessment has found that the existing site runoff will not increase when the site is developed
- The stormwater management plan is proposed to include detention basins that will contain flows up to the 1 in 100 year ARI event
- An overland flood flow path using an upgraded underground network is proposed, consisting of sealed roads, concrete kerb and gutter, drainage pits, and underground stormwater infrastructure.
- A hydrogeological assessment of the groundwater is required to accurately set basin invert levels and assess potential groundwater ingress.
- The basin outlets will be set above the predicted 2100 low tide level.
- Water quality improvement devices will be fitted on the basin inlets.
- Individual allotment stormwater re-use can be incorporated in the form of 1 kL tanks.

Levee Background and Objectives

Fisherman's Bay is located on low-lying coastal land and is currently at risk of inundation due to ocean flooding. This risk is expected to become increasingly likely as sea level rise due to global warming occurs. In correspondence from BMT WBM Pty Ltd on 13 September 2010 (Ref DCP: L.B18123.002.doc) it was recommended that two possible solutions be considered. The first was to raise the level of the land and the second was to create a levee around the development.

In that letter the conclusion was reached that raising the level of the land was not feasible in the short term and thus a levee was considered the most feasible option to protect the land.

The required height of the levee will increase over time due to the effect of sea level rise. It is proposed that the levee be initially designed for a 50 year sea level rise with provisions made for the 100 year sea level rise.

The required height of the levee varies across the site due to the difference in wave action experienced by the coastline. The western and north-western edges of the site are to be a minimum 3.15 m AHD (for the 50 year sea level rise) whereas the north-eastern and eastern edges of the site are to be a minimum 2.85 m AHD (also for the 50 year sea level rise). These heights consist of:

- +2.55 m AHD for 100 year design storm tide level;
- +0.3 m sea level rise (50 year);
- +0.3 m wave set up and run up where applicable;

The Coast Protection Board has indicated that heights will increase to 3.85 m AHD and 3.55 m AHD respectively for the 100 year sea level rise.

The majority of the levee is to be constructed entirely of locally won sand material. However it was recommended that the section of levee surrounding the roads which provide beach access at the north-western corner of the site and access to the boat ramp be protected by a rock armoured levee.

It should be noted that the preliminary design of the levee has not taken into consideration the potential effects of erosion on the structure.

Location of Levee

The levee location plan produced by Tonkin Consulting shows the extent of the levee surrounding the site. The extent has been produced based on the survey provided by Lester Franks (CCF0P005rev17, 21/4/2010) as well as aerial photography obtained from the Department of Environment and Natural resources. The levee is only required in areas that are below the elevation of the levee for the proposed 50 year sea level rise.

The levee has been designed to follow the boundary line of the beachside properties where possible. However due to existing community infrastructure the majority of the levee is located some distance from the property boundaries. It should be noted that a large portion of the levee is located on Crown Land, portion of which is under the care and control of the Council. A minimum 3.6 m corridor has been left between the toe of the levee and the property boundary and existing community infrastructure to accommodate for the 100 year levee to be constructed in the future.

Where existing roadways cross the nominated alignment of the levee it is recommended that these sections of road be locally raised to match the height of the levee to ensure a constant barrier against ocean flooding is maintained. The slope of the roadways will need to allow vehicles to safely negotiate across the levee while minimising the impact on the surrounding infrastructure. The maximum slope will depend on the type of vehicles crossing the levee but is likely to be in the order of 1:6 to 1:8.

Design of the roadway which provides access to the boat ramp is of particular importance as the vehicles using this will be towing boats. Detailed design shall consider the access requirements outlined in the relevant boat ramp design guidelines and standards.

The extent of the levee at the south-eastern corner of the site shall continue until it reaches land of equivalent height to the levee. The extent shown on the plan is indicative only due to the limited extent of survey. To minimise the disturbance to the native Samphire on the eastern side of Snook Road we recommend aligning the levee on the disused section of Snook Road where possible (south of Snapper Road). The toe of the levee shall be as close to the trees along the property boundaries as practically possible to minimise any disturbance to the native Samphire. The levee should return to the western side of the disused Snook Road alignment following the southernmost property and continue until the natural land reaches the required 2.85m elevation.

Levee Design

The levee (as seen in the accompanying typical cross-sections) has been designed with slopes of 1 in 4 and a 3.0 m wide flat section on top.

The slope of 1 in 4 has been assumed as a maximum acceptable slope for a structure made of sandy material. The 3.0 m wide flat section on top of the levee is included to allow construction vehicles to access the levee to properly trim, shape and compact the structure.

The levee for the 100 year sea level rise is anticipated to maintain the 1 in 4 slopes but will have a reduced top width (1.0 m). This will minimise the corridor between the toe of the levee and the property boundary for the first 50 years of the structure.

Rock Armoured Levee

A desktop study was undertaken to provide preliminary rock sizing for the rock armoured section of the levee. Due to the location of the site it is not anticipated that large wave activity from the Spencer Gulf would be significant with a wave height at the shore of Fisherman's Bay of approximately 1.1 m adopted.

A typical cross-section of the rock armoured levee can be seen in the accompanying typical section design sheet.

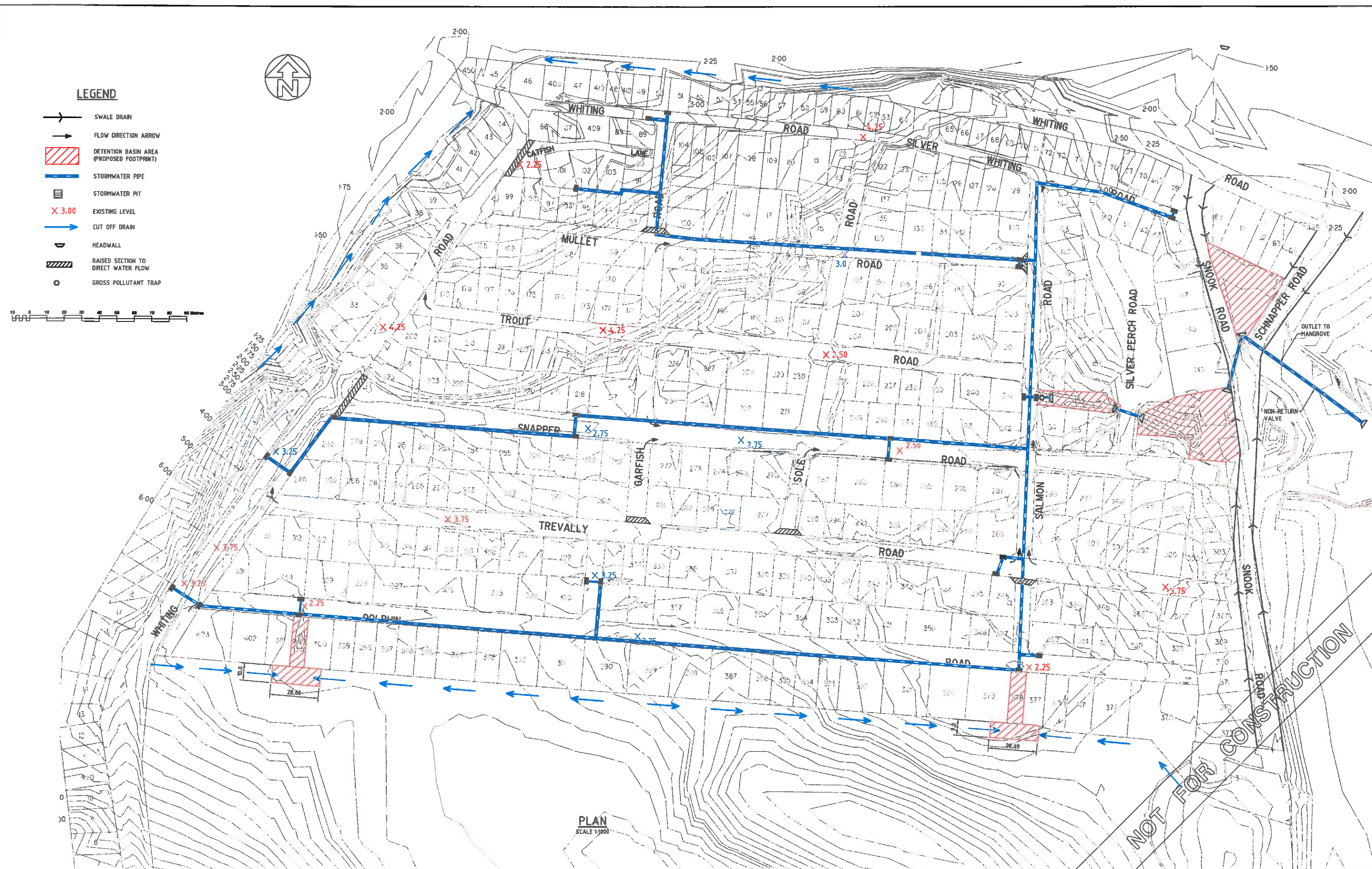
We assume that the above is satisfactory. If you wish to discuss any aspect of the above please contact Jo O'Brien or Tom Grantham on 8273 3100.

Yours faithfully
TONKIN CONSULTING

A handwritten signature in blue ink, appearing to be "JC Tyler", written over the company name.

JC TYLER, MIEAust
Civil Team Leader

Enc Site Plan
 Stormwater Management Plan
 Flood Risk Statement
 Levee Location Plan
 Levee Typical Cross-Sections

[illegible]



NOTES:
1. HEIGHT, AND THEREFORE WIDTH, OF LEVEE IS INDICATIVE ONLY DUE TO LIMITED EXTENT OF SURVEY. LEVEE SHOWN IS 2.0m HIGH WITH 1:4 SLOPE ON EITHER SIDE AND 3.0m WIDE TOP SECTION. (SEE SHEET 4 FOR TYPICAL CROSS SECTIONS)
2. WHERE VEHICLE ACCESS IS REQUIRED THROUGH THE LEVEE THE ROAD IS TO BE LOCALLY RAISED TO MATCH THE HEIGHT OF THE LEVEE. THE MAXIMUM GRADE OF THE ROAD IS LIKELY TO BE 1:6 - 1:8 DEPENDING ON THE TYPE OF TRAFFIC THAT WILL USE THE CROSSOVERS.

REVISION	AMENDMENT / REASON FOR ISSUE	APPROVED	DATE
3	LEVEE ALIGNMENT UPDATED		
2	ISSUED FOR PUBLIC COMMENT		
1	ISSUED FOR COMMENT		

NOTES:
ALL LEVELS TO A.H.D.
100mm ON ORIGINAL DRAWING
DO NOT SCALE

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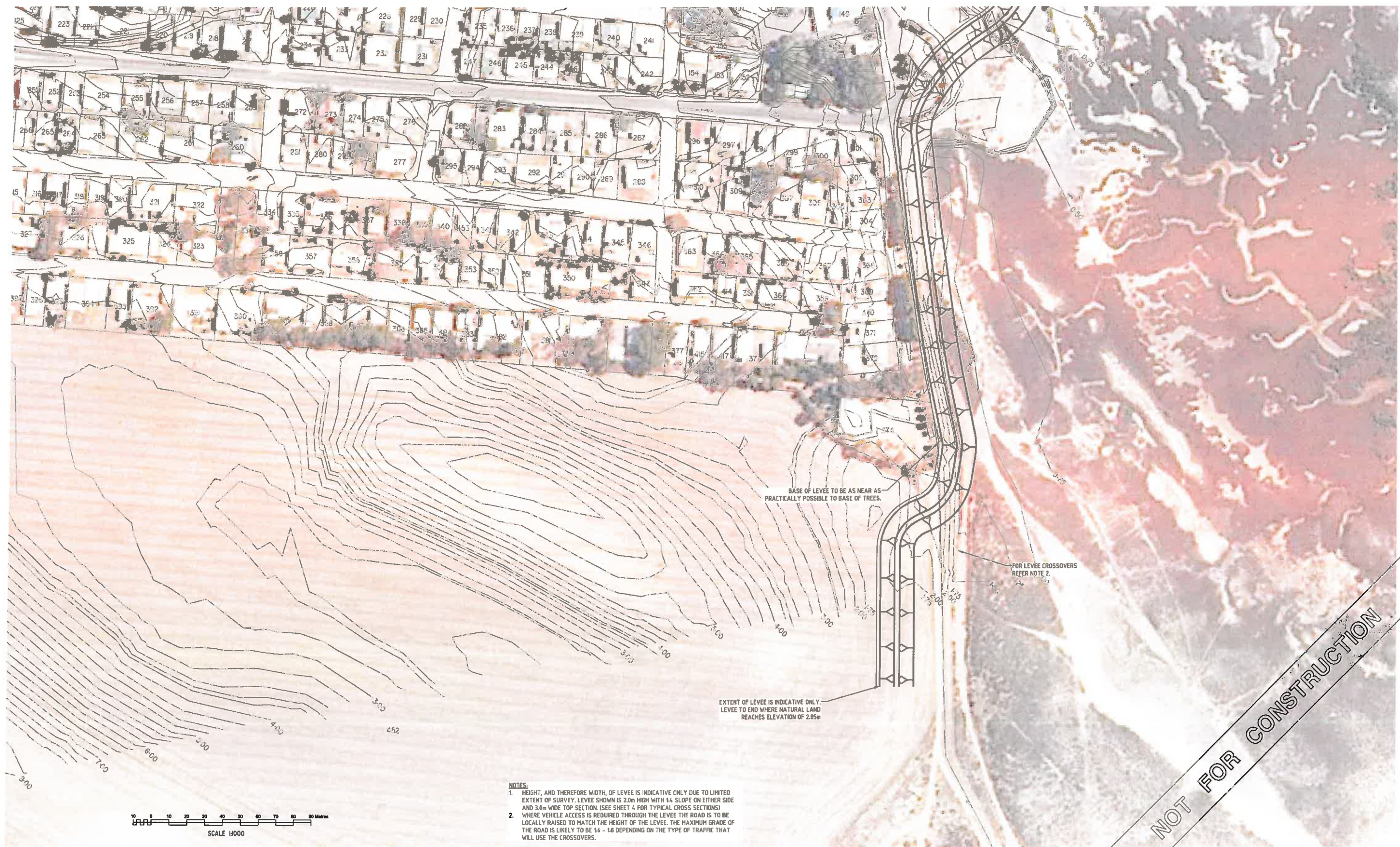
APPROVED COMPANY

ISO 9001
Quality Management System

AS 9001

SCALE: 1:1000	SHEET SIZE: A1
DRAWN: JO	CEM
PROJECT MANAGER:	SENIOR DRAFTER:
SURVEYED: LESTER FRANKS	SURVEY DATE:
APPROVED:	
DATE:	

FISHERMANS BAY MANAGEMENT PTY LTD			
FISHERMANS BAY LAND DIVISION			
LEVEE BANK LOCATION PLAN			
FILENAME: 20101278_PLAN_LEVEE_ALIGNMENT_REV2.DWG	JOB NUMBER: 2010.1278	SHEET NUMBER: 02	REVISION: 3



- NOTES:
1. HEIGHT, AND THEREFORE WIDTH, OF LEVEE IS INDICATIVE ONLY DUE TO LIMITED EXTENT OF SURVEY. LEVEE SHOWN IS 2.0m HIGH WITH 1:4 SLOPE ON EITHER SIDE AND 3.0m WIDE TOP SECTION. (SEE SHEET 4 FOR TYPICAL CROSS SECTIONS)
 2. WHERE VEHICLE ACCESS IS REQUIRED THROUGH THE LEVEE THE ROAD IS TO BE LOCALLY RAISED TO MATCH THE HEIGHT OF THE LEVEE. THE MAXIMUM GRADE OF THE ROAD IS LIKELY TO BE 1:6 - 1:8 DEPENDING ON THE TYPE OF TRAFFIC THAT WILL USE THE CROSSOVERS.

REVISION	AMENDMENT / REASON FOR ISSUE	APPROVED	DATE
3	LEVEE ALIGNMENT UPDATED		
2	ISSUED FOR PUBLIC COMMENT		
1	ISSUED FOR COMMENT		

NOTES:

ALL LEVELS TO A.H.D.

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AND AUTOMOTIVE



SCALE: 1:1000	SHEET SIZE: A1
DESIGNER: JD	DRAWN: CEM
PROJECT MANAGER:	SENIOR DRAFTER:
SURVEYED: LESTER FRANKS	SURVEY DATE:
APPROVED:	
DATE:	

FISHERMANS BAY MANAGEMENT PTY LTD

FISHERMANS BAY LAND DIVISION
LEVEE BANK LOCATION PLAN

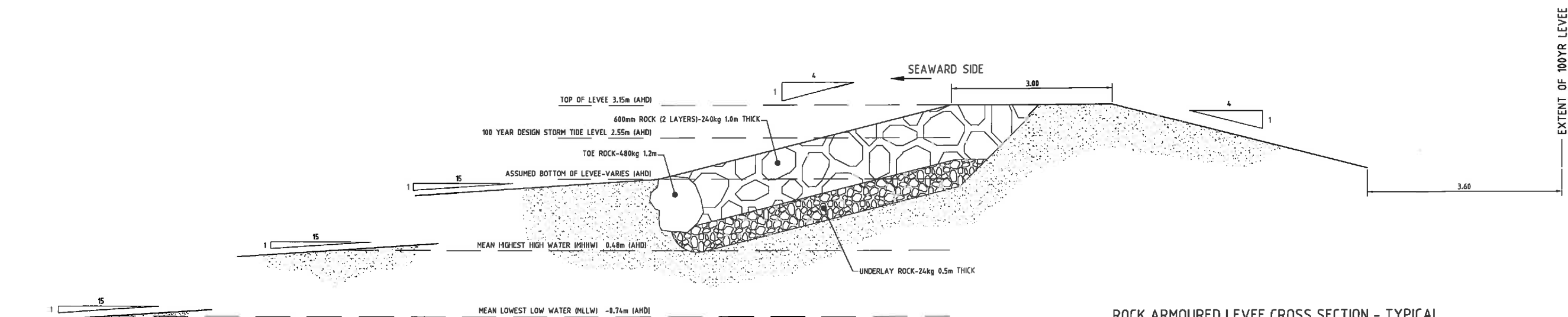
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JOB NUMBER
2010.1278

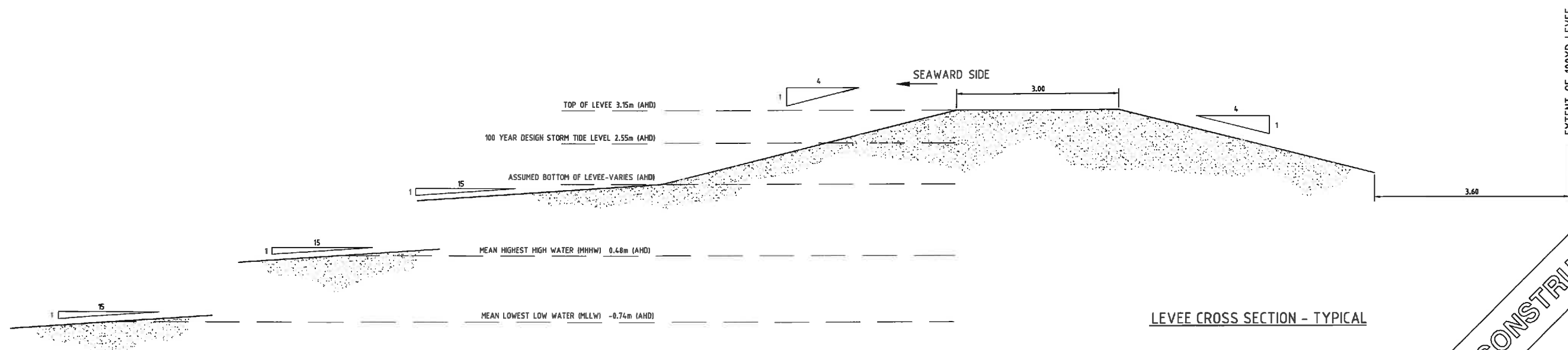
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03

REVISION
3

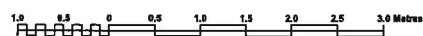
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ROCK ARMoured LEVEE CROSS SECTION - TYPICAL



LEVEE CROSS SECTION - TYPICAL



NOT FOR CONSTRUCTION

REVISION	AMENDMENT / REASON FOR ISSUE	APPROVED	DATE
2	ISSUED FOR PUBLIC COMMENT	TG	13.12.10
1	ISSUED FOR COMMENT		

NOTES:

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SCALE: 1:40 (AT A1)	SHEET SIZE: A1
DESIGNED: TG	DRAWN: ALW
PROJECT MANAGER:	SENIOR DRAFTER:
SURVEYED:	SURVEY DATE:
APPROVED:	
DATE:	

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FISHERMANS BAY LAND DIVISION
LEVEE DETAIL
TYPICAL CROSS SECTIONS

FILENAME: 20101278_PLAN_LEVEE.DWG

JOB NUMBER: 2010.1278

SHEET NUMBER: 04

REVISION: 2

Construction Cost Estimate for levee work and stormwater management
Job No. 2010.1278
3-Mar-11
Tom Grantham

ITEM	DESCRIPTION	UNIT	Quantity	Rate (\$)	Total
1	Preliminaries				
1.1	Establishment	Item	1	50000.00	\$50,000.00
1.2	Demobilisation (including clean up)	Item	1	30000.00	\$30,000.00
1.3	Engineering - Setting out / Survey	Item	1	15000.00	\$15,000.00
1.4	Testing (as specified)	Item	1	20000.00	\$20,000.00
1.5	Service Location	Item	1	5000.00	\$5,000.00
1.6	Insurances: Const Work & Public Liability	Item	1	2000.00	\$2,000.00
1.7	Silt Control	Item	1	30000.00	\$30,000.00

SUBTOTAL \$152,000.00

ITEM	DESCRIPTION	UNIT	Quantity	Rate (\$)	Total
2	Demolition and Earthworks				
2.1	Stripping of 100mm topsoil for levee construction, stockpile on site and re-use in construction of levee	m ²	12500	4.00	\$50,000.00
2.2	Excavate material for basins, stockpile on site and re-use in construction of levee	m ³	3000	11.00	\$33,000.00
2.3	Place and compact excavated material to construct levee wall	m ³	4250	15.00	\$63,750.00
2.4	Supply, place and compact suitable material for construction of levee	m ³	4050	20.00	\$81,000.00
2.5	De-watering	Days	60	500.00	\$30,000.00

SUBTOTAL \$257,750.00

ITEM	DESCRIPTION	UNIT	Quantity	Rate (\$)	Total
3	Stormwater				
3.1	Supply and place 375 mm RCP including trenching and backfilling	lin m	450	200	\$90,000.00
3.2	Supply and place 450 mm RCP including trenching and backfilling	lin m	180	245	\$44,100.00
3.3	Supply and place 525 mm RCP including trenching and backfilling	lin m	290	285	\$82,650.00
3.4	Supply and place 600 mm RCP including trenching and backfilling	lin m	380	330	\$125,700.00
3.5	Supply and place 750 mm RCP including trenching and backfilling	lin m	80	450	\$36,000.00
3.6	Supply and place 825 mm RCP including trenching and backfilling	lin m	30	525	\$15,750.00
3.7	Supply and place 1200 mm RCP including trenching and backfilling	lin m	15	915	\$13,725.00
3.8	Supply and place 450 mm x 300 mm concrete box culvert including trenching and backfilling	lin m	35	350.00	\$12,250.00
3.9	Supply and place 900 mm x 300 mm concrete box culvert including trenching and backfilling	lin m	130	500.00	\$65,000.00
3.1	Supply and install double side entry pit	each	13	750.00	\$9,750.00
3.11	Supply and place concrete headwall	each	5	600.00	\$2,500.00
3.12	Supply and install flood gate	each	4	500.00	\$2,000.00

SUBTOTAL \$502,425.00

ITEM	DESCRIPTION	UNIT	Quantity	Rate (\$)	Total
4	Pavement works				
4.1	Shape and compact subgrade	m ²	15042	3.00	\$45,126.00
4.2	Supply, place and compact spray seal	m ²	15042	6.00	\$90,252.00

SUBTOTAL \$135,378.00

ITEM	DESCRIPTION	UNIT	Quantity	Rate (\$)	Total
5	Concrete works				
5.1	Supply and construct 125 mm semi mountable concrete kerb and gutter	lin m	4345	40.00	\$173,800.00

SUBTOTAL \$173,800.00

ITEM	DESCRIPTION	UNIT	Quantity	Rate (\$)	Total
6	Rock armoured levee				
6.1	Supply and lay Bidim A44	m ²	3000	8.00	\$24,000.00
6.2	Supply and place rock (approx. 30kg) underlay	m ³	1012.5	35.00	\$35,437.50
6.3	Supply and place rock (approx 300kg) armour	m ³	1575	45.00	\$70,875.00
6.4	Supply and place toe stones (approx 600kg)	lin m	300	60.00	\$18,000.00

SUBTOTAL \$148,312.50

TOTAL Civil Works	\$1,369,665.50
Contingencies (15%)	\$ 205,449.83
Total Civil Works Cost Inc. Contingencies (exc. GST)	\$ 1,575,115.33

GST (10%)	\$ 157,511.53
CITB (0.25%)	\$ 4,391.57
GRAND TOTAL Inc. GST & Contingencies	\$ 1,736,958.42

Note: Cost estimates provided by Tonkin Consulting are based upon historic cost information and experience, and do not allow for:

- Latent conditions
- Changes in scope
- Market conditions (ie competition, escalation)
- No allowance for site contamination and remediation
- No allowance for Rock
- No allowance has been made for the staging of these works
- No allowance has been made for providing new pavement material for roads. It has been assumed that existing pavement material exists and it is suitable for the local traffic conditions
- No allowance has been made for service relocation

The following items included in the estimate are provisional only:-

- Earthworks quantities
- Road areas

Tonkin Consulting recommend that a professional Quantity Surveyor be engaged if assurance of cost is required and project budget estimates allowing for these factors are required.



Fisherman's Bay Management Pty Ltd

**FISHERMAN BAY LAND DIVISION
FISHERMAN BAY**

TRAFFIC REPORT

December 2011

11-0270

Traffic • Parking • Transport

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Murray F. Young and Associates

ABN 79 102 630 759



DOCUMENT ISSUE

Revision issue	Date	Description	Approved by
Draft 1	21 December 2011	Draft report	MLM
Rev A	22 December 2011	Final report	MLM

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1.0 INTRODUCTION

This report relates to the proposal to subdivide the large single allotment on which Fisherman Bay has been developed to create individual allotments for each existing dwelling. The subdivision would also formalise the existing road network within road reserves which would then be vested in Council.

This assessment has considered the existing standard of the formed road network at Fisherman Bay and provides advice as to upgrade requirements which should be implemented in order for the roads to be of an appropriate public road standard.

The key traffic engineering assessment parameters considered during the review of the road network relate to accessibility and safety.

The report supplements MFY drawing no. 110270_01b_sk01 (refer Appendix A) which has been prepared to illustrate a preferred carriageway alignment of roads within the network plus appropriate traffic control.

2.0 EXISTING SITUATION

Fisherman Bay is a small seaside town on the northern tip of the Yorke Peninsula which has been developed on a single allotment. It consists of a series of “shack” like dwellings which are accessed via a private road system.

Access to the town is via Whiting Road, which provides a connection to Port Broughton. Whiting Road is sealed and has a carriageway width of approximately 6 m. Snapper Road is the collector road which provides access through Fisherman Bay. It is sealed with a carriageway width of approximately 6 m.

With the exception of a section of Dolphin Road, the balance of the road network is unsealed. The formed carriageway width of the roads varies from approximately 4.0 m to 6.2 m throughout the township. All roads are currently two-way.

Minimal verge widths have been maintained adjacent each road, resulting in the edge of the carriageway being close to the dwellings. Stobie poles have been erected along each road but are typically outside the formed carriageway. The road network is not currently kerbed and informal access is provided to each dwelling.

A number of road closures have been effected throughout the road network, typically by implementation of a series of rocks and landscaping. No formal turning areas have been provided adjacent the road closures, although vehicles are able to turn using driveways or within informal turning areas.

A 30 km/h speed limit applies on Whiting Road on its approach to Fisherman Bay. This limit has been approved by the Department of Planning, Transport and Infrastructure (DPTI). Speed signs have been erected to advise drivers of this limit. Speed zone signage has not been erected on the balance of the road network and it would appear that the lower limit may not apply on these private roads.

Minimal signage has been erected on the road network, resulting in a number of uncontrolled intersections within the township.

The township is serviced by Council's refuse collection system, with the refuse collection vehicle accessing the existing road network.

3.0 ROAD SAFETY ASSESSMENT

An inspection of the Fisherman Bay road network identified a low speed and volume traffic environment which provides access for all existing dwellings. Despite the narrow width of a number of roads, it operates effectively due to the low traffic volumes and reduced speed environment.

Notwithstanding this, there are a number of issues which would need to be resolved in order for the network to be appropriately designed as a public road system, namely:

- there are a number of roads which are too narrow to accommodate two-way simultaneous traffic flow. While this could be managed for short lengths of road, there are no opportunities for overtaking/passing areas to be provided;
- minimum sight line criteria are obstructed at some intersections;
- existing treatments to effect road closures do not comply with the *“Code of Technical Requirements for the Legal Use of Traffic Control Devices”* (the Code);
- existing four-way intersections are not controlled;
- turning facilities are not provided within the culs-de-sac; and
- the verge widths are inadequate to ensure minimum sight lines are maintained for drivers exiting garages/car ports.

A number of traffic control treatments (closures) appear to have been installed to reduce vehicle speeds, albeit it appears they have not formally been approved.

4.0 THE PROPOSAL

It is proposed to create a division of land which would result in each dwelling being located on an individual allotment and road reserves being created along the alignment of each road which will be vested in Council.

Infrastructure works will include providing a sealed carriageway along each road alignment.

Council has requested an assessment of the traffic control requirements which should also be implemented on the road network as part of the proposed land division.

5.0 RECOMMENDED TREATMENTS

In order to address the traffic safety issues identified on the site, the following treatments are recommended:

- provision of a two-way carriageway width of desirably 6.0 m on through roads. Such a pavement width will adequately provide for two vehicles to pass. Due to the nature of the access points to the allotments on-street parking should not compromise the operation of the road. In any event, parking could be prohibited along one side by Council if it proved to be problematic at a later date;
- conversion of Mullet Road and Silver Whiting Road to one-way traffic flow, given the narrow pavement width;
- provision of turning access at the end of dead-end roads. Such areas should accommodate turning movements of the refuse vehicle;
- modification of the pavement alignment or intersection priority to ensure Safe Intersection Sight Distance (SISD) for a 30 km/h design speed can be achieved;
- provision of give-way signage and associated pavement marking at all four-way intersections. Details of identified signs are illustrated in the signage schedule in Appendix B; and
- upgrade of existing road closure treatments to include an appropriate closure treatment and accompanying signage.

MFY drawing no. 110270_01b_SK01 (refer Appendix A) illustrates a concept road layout which is based on the above recommendations. In regard to this plan, the following aspects should be noted:

- the western end of Trout Road and the northern end of Salmon Road would only be 5.5 m wide due to the proximity of the adjacent dwellings. Given the low traffic volumes in these sections of road, it is considered that they will be able to adequately accommodate two-way traffic movements;
- Sole Road, at its intersection with Trout Road, would be slightly narrowed to ensure minimum sight lines are maintained;
- a number of existing road closures would be removed;
- modifications would be required to Lots 360 and 310 to accommodate the turning areas;
- a number of intersection treatments would be implemented on Silver Whiting Road to maintain sight lines;
- the narrow portion of Catfish Lane would be incorporated into Lots 102 and 103, with a right-of-way provided for adjacent allotments, as required; and

- the priority for traffic at the Snapper Road/Whiting Road intersection would be amended to provide priority to the higher traffic flow.

In addition to the above, the following will warrant consideration/review during detailed design of the roads:

- the devices used to effect the road closures will need to comply with the Code. Figure 1 illustrates a concept of a typical treatment and signage at a closure which could be supplemented with landscaping;

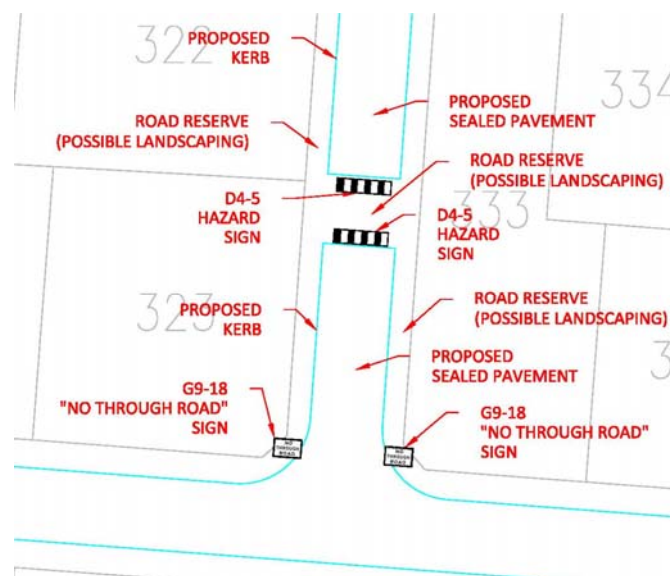


Figure 1: Typical treatment and signage at a road closure

- sight lines should be provided for drivers exiting individual properties. In lieu of a 2.5 m wide minimum verge, this could be achieved by ensuring no fences are erected along the road reserve boundary. Such a scenario should apply on all streets within the township with the exception of Snapper Road and Whiting Road (south of Snapper Road);
- a detailed site survey is likely to be required to produce the construction plans for the roads. Such a survey should identify the stobie pole locations which may then result in minor changes to the carriageway alignment to ensure minimum clearances are maintained to stobie poles;
- the 30 km/h speed zone should desirably be applied to the entire road network. This will require a plan to be prepared and lodged with DPTI for approval. Consideration could be given to an area wide speed zone. Preliminary discussions with officers at DPTI has indicated that such a proposal would likely be considered favourably;
- the need for tanker access to service the petrol filling station (currently closed) in Silver Perch Road should be reviewed; and
- there will need to be a review of street lighting requirements.

6.0 SUMMARY

In summary, the existing road network in Fisherman Bay operates with a low traffic volume and low speed environment. It provides functional access to existing dwellings.

Nonetheless, there are a number of design deficiencies which should be improved if the road network is to be upgraded and vested in Council.

A number of recommendations have been provided in this report and on the attached plan which would result in a practical road network which achieves appropriate road safety requirements within the constraints of the existing site design.



APPENDIX A

MFY DRAWING NO. 110270_01B_SK01



FISHERMAN BAY

PROPOSED LAND DIVISION

POTENTIAL TRAFFIC CONTROL LAYOUT

<div>Drawing: 110270_01b_SK01</div> <div>Project Name: Fisherman Bay Land Division</div> <div>Client: Fisherman's Bay Management Pty Ltd</div>	<div>Project Number: 11-0270</div> <div>Drawn: D.K</div> <div>Date: 21.12.2011</div>	<div>Revision: B</div> <div>Scale: 1:1000</div> <div>Paper Size: A1</div>
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Wednesday, 21 December 2011 10:45:51 AM



APPENDIX B

SIGNAGE SCHEDULE

CODE	DESCRIPTION	SIZE	QUANTITY	COLOUR	NOTES
11-0270 LAND DIVISION FISHERMAN BAY					
<i>Regulatory / Warning / Guide Signs</i>					
R1-2	Give Way 	750 high x 866 wide	17	Black and red on white background	
R2-4	No Entry 	450 x 450	14	White on red background	
D4-5	 Obstruction Marker	450 high x 1800 wide	9	Black and white strips	
G9-18	No Through Road 	600 high x 900 wide	12	Black on white background	

Notes:

1. Regulatory signs are indicative only, and to be installed in accordance with AS1742.
2. All linemarking to be reflective white paint, unless otherwise noted.



Ref: CPB/130/10
14th September 2010

Trevor Smith
Development Assessment Commission
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Adelaide 5001

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Keswick SA 5035

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Australia
DX138

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Dear Trevor Smith

Development Application No	344/D007/10
Applicant	Lester Franks
Description	Land Division
Location	Allotment 4, Fisherman Bay Road (Hd Mundoorra)
Council	Development Assessment Commission

This development was referred to the Coast Protection Board (the Board) pursuant to Regulation 29 of the Development Regulations 1993. The Board provides the following comments to assist Council in its assessment of this application.

In accord with part 43 of the Development Regulations, a copy of the decision notification must be forwarded to the Board at the above address.

The following response is provided under delegated authority for the Board in compliance with its policies. Those policies are contained in the Board's Policy Document which is located on the following internet web site:

http://www.environment.sa.gov.au/coasts/pdfs/cpb_policy_document_2002.pdf

Proposal

The proposal is to create 432 allotments at Fisherman Bay; 402 individual freehold allotments to reflect existing licence arrangements, 8 reserves, and 22 allotments forming public roads.

Currently, Fisherman Bay is a privately owned and managed company township on one allotment, where short term licenses are provided to shack owners who largely occupy low lying land vulnerable to coastal flooding.

A similar land division proposal was submitted in 1999 and received development approval against the advice of the Board in 2000. The Board recommended refusal because the development was at variance with the Board's coastal flooding and erosion hazard risk policies. It was appreciated at the time, however, that the majority of the proposed allotments were already occupied (shacks under private license arrangements) and accordingly the Board recommended that should the planning authority be satisfied the land is suitable for division then the development should only proceed in conjunction with:

- An appropriate effluent and stormwater management plan, and
- A protection strategy that addresses coastal flooding and erosion hazard risks.

It is our understanding that the development was approved without consideration of a coastal protection strategy or stormwater management plan.

Comments

Flooding

The Board's flooding policies are reflected in the Council Wide principles contained within Council's Development Plan.

The Board's current policy is generally not to provide coast protection works for private development. The advice provided here in relation to the proposed development should not be taken to indicate any commitment in that regard.

Fisherman Bay is largely low lying with roads, dwellings and other infrastructure being subject to a significant coastal flooding risk. This risk will increase in the event of future sea level rise due to global warming.

For compliance with the Board's coastal flooding risk standard, minimum building site and floor levels of 3.15 and 3.40 metres, Australian Height Datum (AHD), respectively, are required for development in this area. Board policy also requires that the development is capable, by reasonably practical means, of being protected or raised to withstand a further 0.7m of sea level rise to the year 2100.

Given that the town is vulnerable to flood and most of the proposed 402 private allotments are already developed below the Board's standard level, coastal hazard mitigation via incremental redevelopment (raising site levels) is not, in isolation, an adequate coastal protection strategy.

Given that the majority of the proposed allotments are relatively small (e.g. ranging from 200-400 m²), significant constraints exist when requiring individual sites to be raised, i.e. gradient requirements for vehicle access (provided the roads remain low), the significant import of fill, the construction of large retaining walls and associated costs, etc. A coastal protection strategy prepared in conjunction with this proposal could determine if a lesser site level requirement could be achieved for sites protected from coastal flooding by works provided as part of this development (refer to the Board Standards, p. 48 of the Board Policy Document for specific criteria).

Further to meeting Board Policy concerning immediate flood mitigation requirements, without a coastal protection strategy in conjunction with this proposal (i.e. design, costing, long term maintenance and upgrade requirements etc) it is not understood if this development is capable, by reasonably practical means, of being protected or raised to withstand a further 0.7m of sea level rise to the year 2100.

To suggest that "coastal process protection and management infrastructure and strategies will be required no matter whether the proposed variation is approved or not and regardless of whether the land division proceeds" (p.7 of the planning report) delays a critical planning requirement to address coastal hazard risks prior to development.

Please note that the Board will not oppose development where there is already a need for protection of existing development (i.e. Fisherman Bay), however, this is only where protection is likely to be provided by Local or State Government and where the new proposal would not add to this need, nor to the cost. Without a coastal protection strategy in conjunction with this proposal, the Board is uncertain if Council will accept the proposed financial guarantee (based on other land to be vested in Council to be developed at a later date) to construct protection at a later date, particular given there is no understanding of protection design solutions or actual costs (immediate and ongoing).

The planning report suggests that there will be no major physical change to Fisherman Bay as a result of this proposal. On the contrary, creating and releasing 402 new individual freehold allotments onto the market will inevitably lead to the redevelopment of existing holiday shacks into permanent homes, i.e. substantial reinvestment in a vulnerable town with no protection strategy.

Without an adequate coastal protection strategy and associated stormwater management plan, this proposal is not considered to satisfy the Board's flooding hazard risk policies.

Erosion

The Board's erosion policies are reflected in the Council Wide principles contained within Council's Development Plan.

The coastline at this location is subject to coastal erosion and this risk will increase in the event of future sea level rise due to global warming. Without an adequate coastal protection strategy, this proposal is not considered to satisfy the Board's erosion hazard risk policies.

Coast Protection Board Response

Without an adequate coastal protection strategy the proposal does not comply with the Board's erosion and flooding hazard risk policies. The Board strongly advises that should the application be approved the following conditions must be applied:

Conditions

- A coastal protection strategy that addresses both coastal flooding and erosion must be prepared to the satisfaction of the Coast Protection Board.
- An appropriate stormwater management plan must be prepared to the satisfaction of the Coast Protection Board.

Disclaimer

The Board attaches the following disclaimer to the above advice;

Based upon current knowledge and information the development and development site is at some risk of coastal erosion and inundation due to extreme tides notwithstanding any recommendations or advice herein, or may be at future risk. Neither erosion nor the effect of sea level change on this can be predicted with certainty. Also, mean sea level may rise by more than the 0.3 metres assumed in assessing this application.

Accordingly neither the South Australian Coast Protection Board nor any of its servants, agents or officers accept any responsibility for any loss of life and property that may occur as a result of such circumstances.

If this application is approved, the Council should consider including a similar disclaimer in its Decision Notification to the applicant. However, no reference must be made to the Coast Protection Board in the Council's disclaimer.

Yours faithfully



Arron Broom
Planning Officer
Coastal Management Branch
Delegate for Coast Protection Board



Ref: CPB/130/10
18th August 2011

Phil Turvey
Development Assessment Commission
GPO Box 1815
Adelaide 5001

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Dear Phil

Development Application No	Amendment 344/D007/10
Applicant	Lester Franks
Description	Land Division
Location	Allotment 4, Fisherman Bay Road (Hd Mundoorra)
Council	Development Assessment Commission

This development was referred to the Coast Protection Board (the Board) pursuant to Regulation 29 of the Development Regulations 1993. The Board provides the following comments to assist Council in its assessment of this application.

In accord with part 43 of the Development Regulations, a copy of the decision notification must be forwarded to the Board at the above address.

The following response is provided under delegated authority for the Board in compliance with its policies. Those policies are contained in the Board's Policy Document which is located on the following internet web site:

http://www.environment.sa.gov.au/coasts/pdfs/cpb_policy_document_2002.pdf

Proposal

The proposal is for minor amendments to the previous proposal to create 432 allotments at Fisherman Bay.

Coast Protection Board Response

There is no change to the Board's original response. Please refer to the Board's previous letter dated 14th September 2010.

Disclaimer

The Board attaches the following disclaimer to the above advice;

Based upon current knowledge and information the development and development site is at some risk of coastal erosion and inundation due to extreme tides notwithstanding any recommendations or advice herein, or may be at future risk. Neither erosion nor the effect of sea level change on this can be predicted with certainty. Also, mean sea level may rise by more than the 0.3 metres assumed in assessing this application.

Accordingly neither the South Australian Coast Protection Board nor any of its servants, agents or officers accept any responsibility for any loss of life and property that may occur as a result of such circumstances.

If this application is approved, the Council should consider including a similar disclaimer in its Decision Notification to the applicant. However, no reference must be made to the Coast Protection Board in the Council's disclaimer.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Arron Broom', with a long horizontal flourish extending to the right.

Arron Broom
Planning Officer
Policy Directorate, DENR
Delegate for Coast Protection Board



Ref: CPB 130/10
31 August 2017

Phil Turvey
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Via EDALA

Dear Phil

Development Application No	344/D007/10
Applicant	Fisherman's Bay Management Pty Ltd
Description	Land Division (1 into 405 allotments) – Amendment
Location	Fisherman's Bay
Council	DC Barunga West
Development Plan Zone	Coastal Settlement Zone, Township Zone
Planning Authority	Development Assessment Commission

I refer to the above development application forwarded to the Coast Protection Board (the Board) in accordance with Section 37 of the Development Act 1993. The planning authority is required to have regard to this response prior to making a decision on the proposal.

In accord with part 43 of the Development Regulations, a copy of the decision notification must be forwarded to the Board at the above address.

The following response is provided under delegated authority for the Board in compliance with its policies. Those policies are contained in the Board's Policy Document which is located on the following internet web site:

http://www.environment.sa.gov.au/about-us/boards-and-committees/Coast_Protection_Board/Policies_strategic_plans

More information on coastal development assessment and planning policy is contained in the Coastal Planning Information Package at:

<http://www.environment.sa.gov.au/our-places/coasts>

Proposal

The proposal is for further amendments to an existing land division proposal yet to be determined by the Development Assessment Commission (DAC). The amendments are outlined in a Botten Levinson letter dated 13 April 2017.

Background

The Board originally advised (4 September 2010) DAC that should the application be approved, conditions be applied that address coastal flooding, erosion and stormwater management. The

Board reiterated this position in its response (18 August 2011) to proposed minor amendments to the land division.

The applicant subsequently submitted a separate Development Application (DA 344/0101/12) for a coastal protection strategy that was approved 14 July 2014. The Board had no objection to that DA provided, amongst other conditions, that dedication of Crown land to the Council is assured and that the Infrastructure Deed (or similar binding agreement) had been entered into, as this would provide assurance that Council has ongoing responsibility to provide, monitor, maintain, upgrade or modify all protection measures associated with the proposal.

The Board is unsure as to the progress of the necessary tenure agreements and associated Infrastructure Deed (or similar binding agreement), which underpins the viability of the coastal protection strategy. The Board understands DAC has extended the period for substantial commencement of the approved coastal protection strategy until 14 July 2018.

Coast Protection Board Response

The Board has no objection to the proposed amendment to the existing land division application provided that, prior to any approval, the implementation and viability of the associated coastal protection strategy (approved 14 July 2014) is assured. Therefore, DAC should first determine the status of the necessary tenure agreements and associated Infrastructure Deed (or similar binding agreement) between the applicant and Council, which outlines responsibilities to provide, monitor, maintain, upgrade or modify the coastal protection strategy.

Yours faithfully



Arron Broom
Policy Planner
Coastal Management Branch – Climate Change Group
DEWNR
Delegate for Coast Protection Board

*In reply please quote F2010/00149, D4894950
Enquiries to Mr. Matthew Small
Telephone (08) 8343 2825*



**Government
of South Australia**

Department for Transport,
Energy and Infrastructure

26 August 2010

The Presiding Member
Development Assessment Commission
GPO Box 1815
ADELAIDE SA 5001

Transport Services
ABN 41 659 119 911
77 Grenfell Street
Adelaide SA 5000

Telephone: 8343 2222
Facsimile: 8343 2725
GPO Box 1533
Adelaide SA 5001

Dear Sir,

PROPOSED DEVELOPMENT APPLICATION - DIVISION OF LAND
DEVELOPMENT NO. 344/D007/10, FISHERMAN BAY ROAD,
FISHERMAN BAY

I refer to your EDALA Application (Unique Id 35472 referred on 2 August 2010), concerning the above development application. The Transport Services Division of the Department for Transport, Energy and Infrastructure (DTEI) provides the following comments:

- This plan of division abuts roads under the care, control and management of the District Council of Barunga West and seeks to formalise the existing arrangement for the subject site. Whilst DTEI raises no objection in principle to this application, should any further significant development of proposed Lot 452 be undertaken in the future, a traffic impact statement assessing the impacts (and potential improvements required) at the 'feeder junctions' of Port Pirie – Port Broughton Road/Aitchison Road and Port Pirie – Port Broughton Road/Bay Street will need to be undertaken and forwarded to DTEI for review and comment.

Yours sincerely,

MANAGER, TRAFFIC AND ACCESS STANDARDS
for **COMMISSIONER OF HIGHWAYS**

Fishermans Bay Management Pty Ltd
C/- Lester Franks
First Floor, 22 Chancery Lane
Adelaide SA 5000

Dear Lester,

Thank you for the Development Assessment Commission EDALA system notification dated 20 April 2017, ID 35472 Development Application number 344/D007/10, regarding the proposed land division of 1 into 405 allotments at Fisherman Bay Road, Fisherman Bay. The parcel detail is CT 5503/193 F2184 A4.

I advise that the central archive, which includes the Register of Aboriginal Sites and Objects (the Register), administered by the Department of State Development, Aboriginal Affairs and Reconciliation (DSD-AAR), has no entries for Aboriginal sites within the application area.

The applicant is advised that sites or objects may exist in the proposed development area, even though the Register does not identify them. All Aboriginal sites and objects are protected under the *Aboriginal Heritage Act 1988* (the Act), whether they are listed in the central archive or not. Land within 200 metres of a watercourse (for example the River Murray and its overflow areas) in particular, may contain Aboriginal sites and objects.

Pursuant to the Act, it is an offence to damage, disturb or interfere with any Aboriginal site or damage any Aboriginal object (registered or not) without the authority of the Minister for Aboriginal Affairs and Reconciliation (the Minister). If the planned activity is likely to damage, disturb or interfere with a site or object, authorisation of the activity must be first obtained from the Minister under Section 23 of the Act. Section 20 of the Act requires that any Aboriginal sites, objects or remains, discovered on the land, need to be reported to the Minister. Penalties apply for failure to comply with the Act.

It should be noted that this Aboriginal heritage advice has not addressed any relevant obligations pursuant to the *Native Title Act 1993*. Native title advice is provided by the Native Title Section of the Crown Solicitor's Office.

Please be aware in this area there are various Aboriginal groups/organisations/traditional owners that may have an interest, these may include:

NARUNGA NATIONS ABORIGINAL CORPORATION

Chairperson: Garry Goldsmith
Mobile: 0438 800 486
Email: goldsmith.garry@gmail.com



**Government
of South Australia**

Department of
State Development

NUKUNU PEOPLES COUNCIL INC

Chairperson: Michael Turner
Address: PO Box 70 PORT GERMEIN SA 5495
Email: michael.turner@pikawiya.org.au
Mobile: 0484639612

For further information please contact the Aboriginal Heritage Team on telephone (08) 8226 8900.

Yours sincerely

A handwritten signature in black ink, appearing to read "Perry Langeberg".

Perry Langeberg
SENIOR INFORMATION OFFICER (HERITAGE)
ABORIGINAL AFFAIRS & RECONCILIATION

1 May 2017

EPA Reference: 32405

13 October 2011

Mr Phil Turvey
Assessment Coordinator
Development Assessment Commission
GPO Box 1815
ADELAIDE SA 5000

Dear Mr Turvey

ADVICE FOR REGARD - Activity of Environmental Significance

Development Application No.	344/D007/10 A1
Applicant	Fishermans Bay Management Pty. Ltd. (Lester Franks)
Location	A4 FP2184, Hundred Mundoorra, Fisherman Bay Road, Fisherman Bay SA 5522.
Activity of Environmental Significance	Schedule 8 Item 10(b); Schedule 21 Item
Proposal	Land Division

Decision Notification	A copy of the decision notification must be forwarded to: Client Services Officer Environment Protection Authority GPO Box 2607 ADELAIDE SA 5001
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I refer to the above development application forwarded to the Environment Protection Authority (EPA) in accordance with Section 37 of the *Development Act 1993*. The proposed development involves an activity of environmental significance as described above.

The following response is provided in accordance with Section 37(4)(a)(i) of the *Development Act 1993* and Schedule 8 Item 10(b) of the *Development Regulations 2008*.

In determining this response the EPA had regard to and sought to further the objects of the *Environment Protection Act 1993*, and also had regard to:

- the General Environmental Duty, as defined in Part 4, Section 25 (1) of the Act; and
- relevant Environment Protection Policies made under Part 5 of the Act.

Please direct all queries relating to the contents of this correspondence to Maryann Galloway on telephone (08) 8204 2072 or facsimile (08) 8124 4673 or email Maryann.Galloway@epa.sa.gov.au.

THE PROPOSAL

The proposal is for land division that seeks to create a total of 405 residential allotments from one existing allotment. The proposal seeks to create individual freehold allotments (Torrens Title) to reflect current licence arrangements between land occupiers and Fisherman's Bay Management.

A coastal levee is proposed (subject to separate development application and therefore not part of this current application; however included for information) along the northern most boundaries to the site, as part of the overall redevelopment of Fisherman's Bay; to protect the residential during flood tide events and to accommodate the potential for sea water rise due to climate change. The proposed levee and a previously approved wastewater treatment plant (344/102/06 (assessed by the EPA in 2007) were considered in the EPA's assessment of this application because there was a need to ensure provisions for adequate wastewater treatment infrastructure and protection from tidal inundation were part of the overall proposed redevelopment of Fisherman's Bay.

SITE DESCRIPTION

The site of the proposed development is within an area zoned *Township* (northern portion) and *General Farming* (southern portion). The subject area is primarily a holiday settlement and is bounded by coastline to the north, north eastern and north western boundaries. Some areas of land upon which the residential development is proposed, is only two metres above normal sea level.

The subject land is currently divided into a number of informal allotments with existing dwellings (mostly shacks) occupied under a lease/licence arrangement. The land division is to create allotments reflecting the existing leased/licensed areas and hence the site is already developed with existing dwellings.

Proposed location of the Community Wastewater Management System

The previously approved community wastewater management system (CWMS) (the term CWMS now refers to systems formerly known as *wastewater treatment plant* (WWTP)) and associated ponds, would be located in the southern portion of the subject land which is zoned *General Farming* (GF). Land east of the proposed CWMS site is zoned *Coastal* (Cst), is low lying and contains a significant area of samphire. The closest residential property is approximately 370 metres (m) to the north of the proposed site of the CWMS and a commercial fish farming enterprise exists approximately 250m to the south west.

The location of the CWMS as originally proposed in development application 344/102/06, was repositioned in the amended application (344/102/06 in accordance with the Parsons Brinckerhoff report *Fishermans Bay Sewage Disposal - Management Plan*, dated 19 September 2007 (Amendment 2) in consultation with the EPA. This land is also at greater altitude (approximately 4m AHD) than the site originally proposed and this would assist in preventing impact from tidal inundation; however, the proposed coastal levee would further

ensure this; if approved. Further, the 344/102/06 proposal allows for the productive irrigation of treated effluent to land surrounding the CWMS plant. Whilst the initial proposal appeared to nominate areas within the coastal zone for irrigation purposes, the amended application indicates that irrigation would be limited to areas that are currently under cultivation.

The EPA-recommended separation distance in terms of residential development, for a CWMS plant of the size and type proposed is 200m. The nearest receptor is a commercial fish farming enterprise approximately 250m to the south west; therefore, the proposal meets the recommended separation. It should be noted however, that a significant parcel of land to the north west of the proposed treatment plant site maybe the subject of future development and as such a sufficient separation/buffer should be maintained.

CONSIDERATION

Advice in this letter includes consideration of the location with respect to existing land uses and is aimed at protecting the environment and avoiding potential adverse impacts upon the locality. Such advice does not attempt to assess the merits of the proposed development against development plan principles of development control and does not take into account future development.

Environmental Issues

Air Quality

Because of the type of CWMS sewage treatment process proposed (aeration and retention) and that the current separation distances are adequate, odour from the CWMS is not expected to cause unacceptable odour impact upon future occupants within the proposed residential development. However, the recommended separation of at least 200m between the CWMS plant and nearest dwellings should be maintained to minimise noise impact. A note is therefore included in this letter to draw the applicant's attention to the need to maintain at least 200m separation.

Noise

Because the type of plant and machinery proposed for the CWMS and that there is adequate separation between the proposed CWMS plant site and the nearest residential property, noise of the CWMS treatment plant is not expected to cause unacceptable environmental impact upon future occupants of the proposed residential development. However, the recommended separation of 200m between the CWMS plant and nearest dwellings should be maintained to minimise noise impact. A note is therefore included in this letter to draw the applicant's attention to the need to maintain at least 200m separation.

Construction Impacts

During construction of the proposed residential development infrastructure including the previously approved CWMS, the applicant should ensure that every effort is made to minimise dust emissions generated from site works, particularly by use of heavy machinery. Dust generated by machinery and vehicular movement during site works, and any open stockpiling of soil or building materials at the site, must be suppressed by regular application

of water to ensure that dust generation does not become a nuisance off-site.

Construction noise can cause nuisance to nearby residential occupants and therefore activities which include the operation of machinery may need to be restricted to between 7am and 7pm Monday to Saturday and, if necessary, on Sunday between 9am and 7pm to minimise the potential for complaint from noise nuisance.

Construction must be undertaken in accordance with Division 1 of Part 6 of the *Environment Protection (Noise) Policy 2007* at all times. A note to this effect has been included in the advice section of this response.

Site Contamination

Because the proposed use of the subject land would not change with the proposed development and that no record of site contamination exists on EPA files, no further investigation has been undertaken to determine whether the site is suitable for the proposed residential development. However, Council is reminded to ensure it is comfortable that the subject land is suitable for the proposed use, particularly given the proposed formalising of land tenure.

Water Quality

Stormwater

As part of the proposed development, roads would be sealed with concrete kerb and gutter drainage pits with underground stormwater infrastructure installed. The proposed stormwater management for the land division is outlined in the Tonkin consulting document entitled *Fisherman's Bay Stormwater Management Plan and Levee*, dated 2 May 2011. This includes:

- Provision of cut off drains to redirect flows from external catchments that naturally fall toward the subject land
- Installation of a 100 year design stormwater network in the form of an extensive underground stormwater drainage network
- Overland flow paths to be directed to four proposed basins throughout the site
- 2 basins; A and B, on Dolphin road to be extensions of existing basins; Basin C is an existing basin; creation of a new basin D on Snook Road
- The basins are currently open space and would be designed to contain flows up to and including a 1 in 100 year ARI storm event
- Installation of gross pollutant traps (GPT) at the detention basin inlets.

Due to the existing nature of the development and taking into account sea level rise until 2100, basins may fill during high tide and drain during low tide. Tonkin Consulting has therefore recommended further investigation of groundwater levels at the site be undertaken, so that deeper basins could be designed to avoid this.

The EPA supports the State Government initiative to implement Water Sensitive Urban Design (WSUD) in all new developments. Use of the principles of WSUD assists in offsetting the effects of urban development through improving management of urban stormwater and wastewater and minimising the impacts of urban pollution, and assists in preventing damaging to the coastal environment.

The proposed development is limited in its inclusion of WSUD features, however potentially further components of WSUD could be considered and incorporated in the final design. The EPA urges that the final design incorporates a range of WSUD features to achieve water quality improvements and limit impacts to the near shore environment.

During site works, particular attention must be given to protecting land stability and to immediate rehabilitation and stabilisation after disturbance of the land surface. Development of a Soil Erosion and Drainage Management Plan (SEDMP) in accordance with the *Code of Practice for the Building and Construction Industry* to prevent soil sediment and pollutants leaving the site or entering the marine environment during construction of roads and installation of services would assist with this. A condition is included in this letter, requiring the preparation of a SEDMP.

Wastewater

The applicant states in the current application for the proposed land division (344/D007/10) that wastewater from the proposed new allotments would be directed to the previously approved wastewater treatment plant for Fisherman's Bay (344/102/06). The location of the proposed plant is upon land of approximately 4m AHD height. The proposed CWMS infrastructure would also incorporate the *AIRVAC Vacuum Sewerage System* recommended for areas at risk of tidal inundation and sea level rise. Thus, the introduction of a Community Wastewater Management System (CWMS) in a settlement where ageing septic systems exist, would address the long term sustainability of wastewater management. The proposed CWMS (344/102/06) constitutes an improvement upon the current arrangements and the EPA is therefore satisfied that the provision of the proposed formal sewage collection, treatment and disposal system is adequately designed for the intended purpose.

The introduction of a CWMS with positive environmental outcomes is a progressive step in achieving compliance with the *Environment Protection (Water Quality) Policy 2003*. The policy seeks to use codes of practice that describe best practice environmental management, specify requirements to ensure that essential practices are met, establish an obligation not to discharge listed pollutants into waters and restrict the discharge of effluent onto land where it is liable to enter into waters. However, construction to the specifications detailed in the already approved development application 344/102/06 is critical and the applicant is therefore reminded of these details in the attached EPA response to this previous application (344/102/06).

Effluent from the CWMS plant would be treated to class B standard and irrigated to lucerne and there is potential for irrigated effluent to enter the tidal groundwater due to the high permeability of the soil. However, irrigation management would be addressed through EPA licence, required for the operation of the proposed CWMS. A note is therefore included in this letter to remind the applicant of the requirement for a licence.

Information in this letter relating to the proposed CWMS is not exhaustive. Further details are discussed in the attached EPA's response letter to development application 344/102/06 and the Council and applicant are advised to review this response to ensure its directed conditions and recommendations are followed.

Marine

Given that further information provided by the applicant confirms that:

- wastewater from the proposed new allotments would be directed to the previously approved (344/102/06) proposed CWMS incorporating effluent disposal to lucerne and not to the onsite septic tank systems currently used
- the proposed CWMS is of sufficient capacity to cope with the new allotments
- the treatment plant is appropriately sited to withstand coastal water inundation from a 1 in 100 average return interval storm (ARI)
- no additional fill material would be introduced to raise the subject land and instead a coastal levee would be constructed to protect occupants from tidal inundation,

the EPA is satisfied that the proposed development could proceed without adverse impact upon the local marine environment, provided the development is carried out as proposed and in accordance with conditions that follow.

CONCLUSION

Provided the proposed development is carried out as detailed in the application and in accordance with recommended conditions that follow, the potential for environmental for environmental impact can be kept within acceptable limits.

Based on information provided in the application for reference (and not for formal assessment by the EPA), the proposed coastal levee (subject to separate application; assumed not to be referred to the EPA) would also protect occupants of the proposed residential development from tidal inundation and sea water rise. Whilst the proposed levee would minimise any risk of inundation to wastewater infrastructure, the location of the proposed CWMS plant upon land of approximately 4m AHD height incorporating the proposed *AIRVAC Vacuum Sewerage System*, is considered to be sufficiently sited and designed such that any risk of environmental impact is mitigated.

Further, with respect to any envisaged future expansion to residential development at the subject site, at least 200 metres separation should be maintained between the site of the approved CWMS plant/lagoons and the nearest dwelling, to avoid environmental impact (mainly from odour and noise) upon nearest occupants.

ADVICE

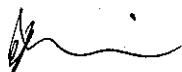
The planning authority is advised to attach the following condition to any approval:

1. A Soil Erosion and Drainage Management Plan (SEDMP) must be prepared and implemented in accordance with the *Code of Practice for the Building and Construction Industry* to prevent soil sediment and pollutants leaving the site or entering the marine environments during construction of roads and installation of infrastructure.

The following notes provide important information for the benefit of the applicant and are requested to be included in any approval:

- The company/person responsible for the design, construction and operation of this development is reminded of its general environmental duty, as required by Section 25 of the Environment Protection Act, to take all reasonable and practicable measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause environmental harm.
- Construction noise can cause nuisance to nearby residential occupants and therefore activities which include the operation of machinery may need to be restricted to between 7am and 7pm Monday to Saturday and if necessary, on Sunday between 9am and 7pm to minimise the potential for complaint from noise nuisance.
- Construction must be undertaken in accordance with Division 1 of Part 6 of the *Environment Protection (Noise) Policy 2007* at all times.
- With respect to any envisaged future expansion to residential development at the subject site, at least 200 metres separation should be maintained between the site of the approved CWMS plant/lagoons and the nearest dwelling, to avoid environmental impact (mainly from odour and noise) upon nearest occupants.
- An environmental authorisation in the form of a licence is required for the operation of the previously approved Community Wastewater Management System (CWMS) (Development Application 344/102/06) proposed to serve this residential development and the applicant is required to contact the Environment Protection Authority before acting on that approval to ascertain licensing requirements.
- Any information sheets, guidelines documents, codes of practice, technical bulletins etc. that are referenced in this response can be accessed on the following web site: www.epa.sa.gov.au

Yours faithfully



Hayley Riggs
Delegate

ENVIRONMENT PROTECTION AUTHORITY

EPA Reference: 34070

18 May 2017

Dr Simon Neldner
Team Leader - Development Assessment
Development Assessment Commission
GPO Box 1815
ADELAIDE SA 5001

Dear Dr Neldner

ADVICE FOR REGARD - Activity of Environmental Significance

Development Application No.	344/D007/10 A2
Applicant	Fishermans Bay Management Pty Ltd (Lester Franks)
Location	A4 FP2184, Hundred Mundoorra, Fisherman Bay Road, Fisherman Bay SA 5522.
Activity of Environmental Significance	Schedule 8 Item 10(b); Schedule 21 Item
Proposal	Land Division.
Decision Notification	A copy of the decision notification must be forwarded to: Client Services Officer Environment Protection Authority GPO Box 2607 ADELAIDE SA 5001.

I refer to the above development application forwarded to the Environment Protection Authority (EPA) in accordance with Section 37 of the *Development Act 1993*. The proposed development involves an activity of environmental significance as described above.

The following response is provided in accordance with Section 37(4)(a)(i) of the *Development Act 1993* and Schedule 8 Item 10(b) of the *Development Regulations 2008*.

In determining this response the EPA had regard to and sought to further the objects of the *Environment Protection Act 1993*, and also had regard to:

- the General Environmental Duty, as defined in Part 4, Section 25 (1) of the Act; and
- relevant Environment Protection Policies made under Part 5 of the Act.

Please direct all queries relating to the contents of this correspondence to Melissa Chrystal on telephone (08) 8204 1318 or facsimile (08) 8124 4673 or email Melissa.Chrystal@epa.sa.gov.au.

THE PROPOSAL

The proposal is for the land division of one allotment into 402 residential allotments, three (open space) reserves, four drainage reserves and associated roads.

The development application (DA) referred to the EPA on 21 April 2017 is a proposed amendment to DA 344/D007/10. The EPA previously considered DA 344/D007/10 and provided advice to the Development Assessment Commission (DAC) by letter dated 13 October 2011.

The current version of the DA features the same number of residential allotments in the same allotment pattern (which is governed by the location of existing dwellings/shacks). Proposed amendments relate to the location of easements.

A letter prepared by Botten Levinson Lawyers on behalf of the applicant and dated 13 April 2017, states that the DA is proposed to be amended to "expressly incorporate the construction of the coast protection works (seawall) and waste water treatment plan (WWTP) as part of the proposal" and as such both land division and development approval is sought.

The Botten Levinson Lawyers letter notes that the seawall was granted development approval on 14 July 2014 (DA 344/101/12 V1) and the period for substantial commencement of the seawall has been extended to 14 July 2018. Further the WWTP was granted development approval on 14 May 2010 (DA 344/102/06) and the period for substantial commencement of the WWTP has also been extended to 14 July 2018. Substantial completion for both the seawall and the WWTP would be required by 14 July 2020.

This DA seeks to incorporate the seawall and the WWTP into the land division DA to avoid the need for separate agreements.

SITE DESCRIPTION

The site of the proposed development is Fisherman Bay Road, Fisherman Bay (also described as A4 FP2184).

The site of the proposed residential allotments is located on land currently within the Township Zone of the *Barunga West Council Development Plan* (consolidated 19 March 2015). The remnant allotment to the south is located on land currently within the Primary Production Zone of the same development plan. At the time of lodging the original DA, the land was located within the Township and General Farming Zones.

The site is currently occupied by dwellings and shacks that reflect current licence arrangements between land occupiers and Fisherman's Bay Management Pty Ltd.

The subject site is located at the northern end of the Yorke Peninsula at the entrance of Fisherman Bay. Surrounding land uses include vacant, former agricultural land to the south.

The site was not inspected during the consideration of this DA but has been viewed using mapping information available to the EPA, including recent aerial imagery, and considered according to existing knowledge of the site and the locality.

CONSIDERATION

Advice in this letter includes consideration of the location with respect to existing land uses and is aimed at protecting the environment and avoiding potential adverse impacts upon the locality.

When assessing the proposed development, the EPA considered the plans and specifications supplied in the application including (but not limited to) the following documents:

- Nine sheets of proposed Plan of Division, reference: CCFOP005rev23.DWG, prepared by Lester Franks and dated 30/3/2017
- Letter from Botten Levinson Lawyers to Department of Planning, Transport and Infrastructure, reference: JAL/210198 and dated 13 April 2017, and
- Stormwater Concept Plan, job number 2010.1278, sheet number 03, revision 3, prepared by Tonkin Consulting and undated.

When assessing development applications referred to the EPA in accordance with the requirements of the *Development Act 1993*, section 57 of the *Environment Protection Act 1993* ('the EP Act') states that the EPA must have regard to the general environmental duty, any relevant environment protection policies (EPPs) and the waste strategy for the State adopted under the *Zero Waste SA Act 2004* (if relevant).

The general environmental duty, as described at section 25 of the EP Act, states:

A person must not undertake an activity that pollutes, or might pollute, the environment unless the person takes all reasonable and practicable measures to prevent or minimise any resulting environmental harm.

It is noted that the EPA has not re-assessed the seawall/coast protection works or the wastewater treatment plant. Instead the EPA is satisfied to rely on the EPA's previous advice and approvals for the seawall/coast protection works and the wastewater treatment plant via DA 344/101/12 V1 and DA 344/102/06 respectively.

ENVIRONMENTAL ISSUES

Water Quality

Until 1 January 2016, water quality in South Australia was protected by the *Environment Protection Act 1993* and the associated *Environment Protection (Water Quality) Policy 2003* (hereafter the Water Quality Policy 2003). Given that the original application was lodged prior to 1 January 2016, this amendment has been considered in relation to the Water Quality Policy 2003. The Water Quality Policy 2003 places a general obligation on persons undertaking activities and the occupiers of land to take all reasonable and practicable measures to avoid discharge or deposit of waste from that activity or land into any waters.

While the Water Quality Policy 2003 is applicable for assessment purposes, the applicant will still be required to undertake the proposed activity in accordance with the new *Environment Protection (Water Quality) Policy 2015* which came into effect on 1 January 2016 (hereafter

the Water Quality Policy 2015). Similar to the Water Quality Policy 2003, the Water Quality Policy 2015 requires that all reasonable and practicable measures are put in place to prevent or minimise environmental harm. A note is therefore included below in this regard.

ADVICE

As the amended land division proposal DA 344/D007/10 is extensively the same as the previous version considered by the EPA in 2011, the EPA's advice dated 13 October 2011 remains relevant. Similarly the condition advised by the EPA's advice dated 13 October 2011 (as reiterated below) is requested to be attached to any consent granted.

The EPA raises no objection to the seawall and WWTP approvals being added to, and/or referenced by, this DA.

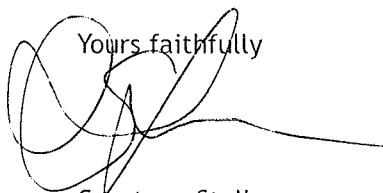
The planning authority is advised to attach the following conditions to any approval:

1. A Soil Erosion and Drainage Management Plan (SEDMP) must be prepared and implemented in accordance with the *Code of Practice for the Building and Construction Industry (1999)* http://www.epa.sa.gov.au/files/47790_bccop1.pdf to prevent soil sediment and pollutants leaving the site or entering the marine environments during construction of roads and installation of infrastructure.

The following notes provide important information for the benefit of the applicant and are requested to be included in any approval:

- The applicant is reminded of its general environmental duty, as required by section 25 of the *Environment Protection Act 1993*, to take all reasonable and practicable measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause environmental harm.
- The applicant is advised that the *Environment Protection (Water Quality) Policy 2015* came into effect on 1 January 2016. Therefore, all reasonable and practicable measures must be put in place to prevent or minimise environmental harm during the construction process. The *Environment Protection (Water Quality) Policy 2015* can be found at:
[https://www.legislation.sa.gov.au/LZ/C/POL/Environment%20Protection%20\(Water%20Quality\)%20Policy%202015.aspx](https://www.legislation.sa.gov.au/LZ/C/POL/Environment%20Protection%20(Water%20Quality)%20Policy%202015.aspx) .
- EPA information sheets, guidelines documents, codes of practice, technical bulletins etc can be accessed on the following web site: <http://www.epa.sa.gov.au>

Yours faithfully



Courtney Stollznaw
Delegate

ENVIRONMENT PROTECTION AUTHORITY



09 August 2010

Our Ref: 06/02992

The Chairman
Development Assessment Commission
136 North Terrace
ADELAIDE SA 5000

Dear Sir/Madam

PROPOSED LAND DIVISION APPLICATION NO: 344/D007/10 AT FISHERMAN BAY

In response to the abovementioned proposal, I advise that this Corporation has no requirements pursuant to Section 33 of the Development Act.

Yours faithfully

Bronwyn Lindner

for MANAGER LAND DEVELOPMENT & CONNECTIONS

SA Water
Level 6, 250 Victoria Square
ADELAIDE SA 5000
Ph (08) 7424 1119
Inquiries Bronwyn Lindner
Telephone 74241144

Our ref: THG/210198

14 September 2017

Mr Robert Kleeman
Department of Planning, Transport and Infrastructure
GPO BOX 1533
ADELAIDE SA 5001

By email: robert.kleeman@sa.gov.au

Dear Robert

DA 344/D007/10 - Land Division – Fisherman's Bay

I refer to Ben Green's email of 11 September 2017 posing a number of queries for the applicant to consider and address.

I will respond to the remaining issues separately but I wanted to address the non-complying query to the extent that you are considering raising that as an issue at this point.

I anticipate that the applicant will be justifiably outraged if issues of characterisation of the land division are indeed raised some 7 years after the application was lodged.

The question of characterisation was addressed at the time of lodgement of the application, with both the Council and the DAC expressly accepting that the application was a merit, category 1 development. I can produce those records of correspondence if necessary.

The application has of course subsequently been processed by the DAC (and put to a meeting of the DAC) on the basis that it is a merit, category 1 development.

Notwithstanding, I briefly address the two non-complying issues that have been raised.

Township Zone PDC 19 – finished floor and site levels

This provision was addressed in detail at the time of lodgement of the application. I refer you to our letter to the Council of 29 July 2010, and our letter to the DAC of the same date, copies of which are **enclosed**.

The position expressed in our letter to the Council remains current, and was of course accepted by the Council and the DAC.

General Farming Zone – *Hagger* point

It has been queried whether, on the basis of the decision of the ERD Court in *Hagger v Development Assessment Commission*¹ the application is non-complying because the existing allotment straddles both the Township Zone and the General Farming Zone, within which land division is non-complying. For the reasons that follow, it is my view that *Hagger* should not be followed, or applied to this development and that it is not non-complying.

PDC 15 of the General Farming Zone relevantly states that the following kinds of development are non-complying **within** the Zone:

Land Division which creates allotments less than 40 hectares in area, unless the requirements of principles of development control numbered 9 and 10 are in place or provided for in the development application

The land is currently contained in one allotment. As can be seen from the plan of division, a large number of residential allotments are proposed wholly within the Township Zone. The balance of the land will comprise an allotment of almost 45 hectares, in the General Farming Zone.

The first point to note is that to the extent that the application involves land division in the General Farming Zone, it results in an allotment of greater than 40 hectares, and therefore does not fall foul of PDC 15.

However, the better view in my opinion is that the proposed development does not involve any land division in the General Farming Zone and the provisions of that Zone are irrelevant to the question of characterisation.

It is important to have regard to the precise wording of the Development Plan in determining the nature of the development and whether or not the proposed land division is non-complying.

The first observation to be made is that the land division has to take place “**within** the General Farming zone”. As described above, no land division is proposed “within” the General Farming Zone. Currently there is one allotment (or part allotment) in the General Farming Zone and should the land division be approved, there will (still) be one allotment within that Zone. In other words there will be no net gain or any additional allotments within the General Farming Zone. No boundary of any allotment in that zone will be altered at all.

Therefore, no land division is proposed “**within**” the General Farming Zone so as to render this application non-complying.

This view is supported by the decision of the Full Court of the Supreme Court in the matter of *R v SA Planning Commission; ex parte City of Burnside & Blass*².

The proposed division has some similarities to that matter which concerned land in one Certificate of Title which was partly in the R1A Zone and partly within the Hills Face Zone. An application was submitted to the SA Planning Commission to divide the land.

¹ [2006] SAERDC 56

² (1986) 45 SASR 487

Residential lots were proposed in the R1A land and there was a balance lot in the Hills Face Zone. The Hills Face Zone provisions contained “a prohibition” against the creation of further allotments. One of the questions considered by the Full Court was whether or not the land division was prohibited (non-complying) on the basis that the prohibition against land division in the Hills Face Zone was infringed. On the question as to whether or not any development was proposed in the HFZ Justice Jacobs said the following:

It is, however, of critical importance, but wholly consistent with that Policy, that the Schedule speaks of all classes of development in the Hills Face Zone, and so far as the subject land is concerned I am quite unable to see that there is any class of development in that portion thereof which is wholly designated and identified as part of the Hills Face Zone. If consent is granted, it will remain intact exactly as it is now. The only difference, if it be a difference, is that it will bear an allotment number in an approved plan of subdivision.³

It had been contended by the SAPC that because there was a proposed subdivision of an allotment that was partly within the Hills Face Zone, that subdivision (ie land division in today's terminology) was proposed in the Hills Face Zone itself. Justice Jacobs said this in response to that contention:

To say, as the Commission says, that this result follows because the portion of the subject land in the Hills Face Zone will be included in the plan of division – in which it will receive an allotment number but will in all other respects remain unchanged – is in my opinion to stretch the definition of development too far; but more than that, it invites a construction of the Act and Regulations for which there is no justification in terms of planning principle or the scheme of the legislation.⁴

Justice Jacobs made it clear that there was no development proposed in the Hills Face Zone.

Justice Olsson, who wrote the leading judgment, strongly rejected the contention by the SAPC:

The simple argument of the SAPC is that, once it appears that any portion of the land in a certificate of title (however large or small that portion may be) falls within the HFZ then, because (by definition) the whole of the land in a certificate of title constitutes an allotment, any division of the land is necessarily a development falling within the purview of par 3 of the Seventh Schedule. Accordingly the SAPC is the relevant planning authority in relation to it, even though the division does not relate to any of the land within the HFZ and would have no practical impact upon it.

In my opinion such a contention is untenable and flies in the face of the plain intendment of the Planning Act 1982 and regulations.⁵

³ Ibid, at 490.

⁴ Ibid, at 491.

⁵ Ibid, at 500.

Justice Olsson also turned his mind to the question of whether any development was proposed in the HFZ:

It is, I think, no accident that par 3 speaks of development “in” the HFZ. It is thereby conveying the concept that it is only where there is a proposed division of an allotment (in the sense of land within it) within the HFZ that the SAPC is to become the relevant planning authority⁶.

In my opinion, that case clearly establishes that the present application is properly to be regarded as a ‘merit’ application.

To the extent that *Hagger* can be argued to be authority for the view that the non-complying provisions of the General Farming Zone are relevant, I make the following observations.

Firstly, *Hagger* can be distinguished on its facts, both in the arrangement of allotments and zone boundaries and the fact that here the balance allotment will exceed 40 hectares in size as sought by the General Farming Zone (*Hagger* involved undersized allotments).

Further, Her Honour Judge Cole cannot have intended Her judgment in *Hagger* to be read in a manner inconsistent with the decision of the Full Court of the Supreme Court in *R v SAPC; ex parte City of Burnside*.

To the extent that any direct inconsistency exists between the judgments, the decision of the Full Court of the Supreme Court is to be preferred, and would be binding on the ERD Court.

The application is not non-complying.

Yours faithfully



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Encl Letters to DAC and Council 29 July 2010

Cc Mr Ben Green
Ben Green & Associates

⁶ Ibid, at 501.

Our ref: THG/210198

27 September 2017

Mr Ben Green
Ben Green & Associates
PO Box 392
BRIGHTON SA 5048

By email: bengreen@bengreen.com.au

Dear Ben

DA 344/D007/10 - Land Division – Fisherman's Bay

I write to you in your capacity as a planning consultant engaged by the State Commission Assessment Panel (**SCAP**) to assist with the assessment of the above application.

I refer to your email of 11 September 2017 and provide a response to the remaining issues raised in that email, namely clarification regarding staging, conditions and the construction of the waste water treatment plant (**WWTP**).

Staging

FBM intends to create allotments in stages. While FBM has identified in broad terms the way that the development will be staged, the staging will be influenced by a number of factors which make it difficult to commit at the outset to a particular staging plan.

1. FBM has proposed a two phase security mechanism for the construction of the coast protection works. The first phase involves a mortgage over the land and then a partial discharge of that mortgage, leaving around 20 (or possibly more) properties subject to the mortgage, preventing the creation of titles and the sale of those properties until such time as the phase 2 security is provided. The first phase security is intended as a bridging mechanism, enabling titles to begin to be issued, generating sufficient cash flow for the phase 2 security to be provided. The phase 2 security will be a conventional form of security such as a bank guarantee or money held in trust. In order for the two phase security mechanism to operate there will need to be superlots or balance allotments separating the land over which the mortgage will operate from the sale-ready allotments (referred to as **the Transferrable land**).
2. As part of its discussions with the Council (and the resulting infrastructure agreement) FBM proposes that the allotments which are not affected by coastal inundation will generally be created before the allotments which may be subject to inundation. Individual titles for allotments subject to inundation will not be created until the Phase 2 security is provided, or the coast protection works are constructed.

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This will enable the sale of sufficient allotments to fund the phase 2 security and the completion of the coast protection works. However, the distribution of flood affected and non-affected allotments is not particularly linear and the release of non-affected allotments will also be influenced by other factors discussed below.

3. Contracts for sale do not exist over all allotments. While this does not prevent the creation of allotments, it may influence the staging, with the obvious incentive for FBM to create the allotments subject to contracts for sale.
4. The age and circumstances of the shack settlement are such that a number of existing buildings do not have the requisite level of fire rating for structures located on or close to a boundary. Pursuant to Regulation 5A this is a matter which is required to be resolved before the issue of new titles (but does not affect development approval). As explained in our letter of 13 April 2017 this issue will be addressed through a range of mechanisms. However, it is another issue which has the potential to influence the final staging plan.

The final staging will be determined based upon the various factors identified above.

To assist with understanding the likely staging of the development, we set out below the likely process that will be followed.

1. Infrastructure Deed signed and development approval granted;
2. Mortgage registered over land;
3. Bonding agreement with the Council for internal civil works (roads and stormwater);
4. Initial plan of division and associated LTO dealing to:
 - 4.1. Create a “super-lot” for the non-Transferable (mortgage) land;
 - 4.2. Discharge the mortgage (partial discharge) over the Transferable land so that it only applies to the non-Transferable land;
 - 4.3. Create and transfer (sell) the first stage of transferable non-inundated allotments, free of mortgage, subject to;
 - 4.3.1. Contracts for sale; and
 - 4.3.2. Resolution of fire-safety issues;
 - 4.4. Leave a balance allotment comprising the inundated land and any transferable non-inundated land not yet ready to be created as individual allotments;
 - 4.5. Create and vest roads and reserves in the Council; and
 - 4.6. Create easements in favour of the Council;
5. Phase 2 security provided;
6. Mortgage fully discharged;
7. Titles for remaining Transferable and non-Transferable land issued;
8. Coast protection works completed; and
9. Phase 2 security released.

WWTP

You have queried the mechanism to ensure that all allotments are connected to the WWTP as part of the development.

There are a range of mechanisms that will achieve this.

1. The WWTP will be operated by a Water Industry Entity under the *Water Industry Act* (such as FB Water Treatment Services Pty Ltd). The entity will be empowered under the Act to require properties to connect and to charge all properties for the provision of waste water services, subject to price regulation by ESCOSA. There is therefore both a legal power to require properties to connect to the WWTP and a commercial incentive for the entity operating the WWTP to ensure that all properties are connected.
2. The contracts for sale for all allotments include an obligation on FBM to construct the WWTP, and a requirement that purchasers connect their allotment to the WWTP within a prescribed period. Further, the contracts are subject to special conditions obliging purchasers to execute an encumbrance reinforcing the requirement to connect to the WWTP.
3. The internal sewerage network will be constructed at the same time as the stormwater and other internal civil works are undertaken. It will be logical from a construction perspective for sewer connections to be completed at the same time, where possible.
4. All dwellings within the settlement currently have their own septic systems, regulated (and approved) by the Council. While there are various mechanisms to ensure that all properties connect to the WWTP, it should be acknowledged that the need for the WWTP is not a product of the land division.
5. The Council will of course as part of any application for development on the allotments require that the allotments are connected to the WWTP, as would be the case for a conventional 'greenfields' development. Given that septic tanks and associated drainage areas occupy relatively large areas, property owners will also for practical purposes be likely to need to connect to the WWTP to free up space for development.

It is not necessary or desirable that allotments be required to connect to the WWTP prior to the issue of section 51 certificates both because the WWTP is unlikely to be constructed before section 51 certificates but also because some shack owners will be seeking to demolish their existing shacks once the freeholding proceeds.

Conditions

In addition to any standard requirements of the SCAP, FBM proposes the following suite of conditions for consideration:

1. The development shall be undertaken in accordance with plan of division prepared by Lester Franks surveyors (9 sheets), being revision 23, dated 30 March 2017;
2. Stormwater drainage and detention works shall be undertaken generally in accordance with the stormwater concept plan prepared by Tonkin Consulting, being Sheet 03, Revision 3 (undated) and shall in any event be designed and constructed to ensure the safe and efficient drainage of land and disposal of stormwater in accordance with recognised engineering practice.

Note: The safe and efficient drainage of land and disposal of stormwater are prescribed by Regulation 54(4).

3. The internal roads shall be constructed or upgraded in accordance with the Proposed Sealed Road and Stormwater Drainage Network Plan prepared by Tonkin Consulting dated 15 July 2014 and in a manner specified by the Council.

Note: Refer Council resolution of 10 December 2014

4. All new sealed road surfaces shall be provided with a flush concrete edge beam.
Note: Refer Council resolution of 10 December 2014
5. The stormwater drainage and road works shall be constructed prior to the grant of a section 51 certificate unless a suitable agreement for the construction of those works is in place to the satisfaction of the SCAP.
6. Pursuant to section 50 of the *Development Act* the applicant shall pay a \$700,000.00 open space contribution to the Council. The open space contribution may be paid in stages, with not less than \$1,745.64 being paid for each allotment (excluding roads and reserves) before the issue of a section 51 certificate for that allotment. The full amount is to be paid before more than 80% of the allotments (excluding roads and reserves) have been created.
7. The development may be undertaken in stages as determined by the applicant, with separate section 51 certificates issued for each stage.
8. Prior to the grant of a section 51 certificate for any allotments identified as being at risk of coastal inundation the applicant shall construct the seawall and coast protection works approved in DA 344/101/12V1 (or an approved variation of DA 344/101/12V1) unless a binding arrangement for those works has been entered into to the satisfaction of the SCAP.
9. Prior to the grant of a section 51 certificate the applicants will construct (and secure the connection of allotments to) an approved waste water treatment plant (whether approved in DA 344/102/06 or a subsequent approval) unless a suitable agreement is in place to the satisfaction of the SCAP.
10. A final plan complying with the requirements for plans as set out in the Manual of Survey Practice Volume 1 (Plan Presentation and Guidelines) issued by the Registrar General to be lodged with the State Commission Assessment Panel for Land Division Certificate purposes.

I trust that this addresses your queries.

Needless to say, feel free to contact me to discuss any of the above.

Yours faithfully



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Draft List of Issues following DAC Meeting 14 June 2012 Regarding Fishermans Bay Land Division 344/D007/10

The following Matters are to be addressed before further consideration of the above application by the Development Assessment Commission

1. Coast Protection Strategy

A coast protection strategy is considered necessary to protect the township from future inundation and sea level rise. The strategy is required to be submitted as part of the land division application that addresses both coastal flooding and erosion to the Satisfaction of the Coast Protection Board and the Commission.

The strategy needs to address at least the following:

- A detailed design of any structures or works (eg seawall). The documentation need not be to working drawing standard, but must include at least elevations, cross-sections, materials, finishing, method and timing of construction, and predicted maintenance requirements
- As a minimum, the structures or works must be designed to accommodate the predicted sea level rise and demonstrating the works are capable of future extension as set out in the Coast Protection Board Policy
- A detailed location and site plan of the proposed works
- If the works are proposed on land other than land under the control of the applicant, sufficient evidence that satisfies the DAC that the works are able to be placed on the land
- If the works are to be constructed by someone other than the applicant, legally binding documentation that satisfies the DAC that the works will be undertaken

A planning condition could be placed on any approval

2. Wastewater Treatment System

A waste management system is required to service existing and future development within the area of the land division. A suitable waste management system has been proposed and approved in development number 344/102/06.

The provision of a waste management system cannot be required under Section 33 of the Development Act and accordingly the intention to provide the system must be part of the land division application whereby appropriate conditions of approval concerning the timing and of

construction and commissioning can be guaranteed. The land division application needs to be amended to embody the approved system such that a condition could be placed on any subsequent approval requiring the construction and commissioning of the system prior to the issue of a certificate under Section 51.

If any parties other than the applicant are intended to be involved in the construction, operation and/or management of the system, **a legally binding agreement signed by all of the relevant parties to that effect is required to satisfy the DAC that the system will be installed and operated as required.** This is required to ensure the system will be constructed and operated.

3. Roads

Minor amendments are required to be made to the plan of division to satisfy the requirements of the Council as outlined in their letter to the DAC dated 26 April 2012. Alternatively this matter could be addressed by a planning condition.

It is noted the Council require the roads to be sealed and provided with kerbs and gutters. The DAC has no specific planning requirement in this regard, however considers the requirement may be excessive to actual need given the nature of the township, the likely traffic volumes and the speed limits applying. The Commission would encourage the Council to identify priority road(s) for sealing with the remainder remaining unsealed but constructed to Council specification. **The outcome of any such negotiations could be dealt with by amendment to the application documentation or by condition.**

4. Footpaths

It is noted the Council require footpaths either side of all roads. The DAC has no specific planning requirement in this regard, however considers the requirement may be excessive to actual need given the nature of the township and the speed limits applying.

As this is a Council requirement, The DAC believes this matter should be settled between the applicant and the Council, **the outcome of which can be reflected in any forthcoming approval.**

5. Stormwater

It is understood the proposals regarding stormwater collection and drainage are satisfactory. **Accordingly the requirement for stormwater works can be dealt with as a land division requirement in any forthcoming approval.**

6. Fire Safety

An issue has been identified that a number of buildings are unlikely to meet the requirements of Regulation 5A of the Development Regulations

2008. Whilst the matter has been raised at this stage of the assessment, as a possible remedy could have impact on the design and layout of the subdivision, **it is accepted the matter can be dealt with at a later date under Section 51 of the Act, and accordingly there will be no requirement of DAC that this matter be further addressed for the purposes of Development Approval.**

7. Open Space

The provision of open space, and or financial contribution in lieu, is a matter of policy to be determined by the Council. The DAC will adopt any reasonable requirement of the Council in this respect. **The DAC considers there could be some scope to factor the open space requirements in to the coastal protection works as depending on the design and siting of the works it is possible they would form a part of the townships open space/recreational area.**

Dated 19 June 2012