

Annexure 3

Department of Main Roads
Deed

3.2.97

DATED

199

BETWEEN:

**THE STATE OF QUEENSLAND ACTING
THROUGH THE DEPARTMENT OF MAIN
ROADS**

("Main Roads")

AND:

**LEDA MANORSTEAD PTY LTD ACN 058
793 114**

("Leda")

DEED

HICKEY LAWYERS

Sixth Floor

Corporate Centre One

Cnr Bundall Road & Slatyer Avenue

BUNDALL QLD 4217

TEL: (07) 5574 1000

FAX: (07) 5574 1130

5574 1000

THIS DEED is made this third day of February, 1997.

BETWEEN: THE STATE OF QUEENSLAND ACTING THROUGH THE DEPARTMENT OF MAIN ROADS of 36-38 Cotton Street, Nerang in the State of Queensland (hereinafter called "Main Roads")

AND: LEDA MANORSTEAD PTY. LIMITED ACN 058 793 114 of 5 - 9 Harbourview Crescent, Milsons Point in the State of New South Wales (hereinafter called "Leda")

WHEREAS:

- A. Leda is the registered proprietor of Cobaki Lakes, a property situated on the New South Wales side of the New South Wales/Queensland border containing all of the land described in the Folio Identifiers detailed in Schedule 1 (hereinafter called "Cobaki Lakes").
- B. Leda intends to develop a residential estate at Cobaki Lakes.
- C. As part of the Development Approvals for Cobaki Lakes, Leda is required to provide access to Cobaki Lakes from the Gold Coast Highway/Boyd Street intersection and for this purpose Leda intends to utilise Boyd Street and extend Boyd Street so that access can be obtained to Cobaki Lakes from the Gold Coast Highway/Boyd Street intersection along Boyd Street to Cobaki Lakes (hereinafter called "the Boyd Street Extension").
- D. To utilise the Boyd Street Extension, it is necessary for a new intersection to be constructed where the Gold Coast Highway and Boyd Street intersect (hereinafter called "the Gold Coast Highway/Boyd Street Intersection").
- E. Leda is to construct the Gold Coast Highway/Boyd Street Intersection at the cost and expense of Leda.
- F. Main Roads is prepared to agree to the construction of the Gold Coast Highway/Boyd Street Intersection subject to Leda entering into this Deed.

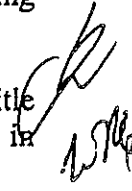
NOW IN CONSIDERATION OF THESE PRESENTS AND THE TERMS AND CONDITIONS HEREINAFTER APPEARING IT IS AGREED AS FOLLOWS:

1. **CONSENT TO CONSTRUCTION AND USE OF GOLD COAST HIGHWAY/BOYD STREET INTERSECTION:**

Leda shall obtain approval from Main Roads for plans of construction within the State Controlled Road Reserve prior to commencing construction of any works.

Main Roads, following its approval, will allow Leda at its cost and expense to construct the Gold Coast Highway/Boyd Street intersection and to allow Leda and its successors in title and invitees to utilise the Gold Coast Highway/Boyd Street Intersection so constructed on the following terms:

- (a) Leda shall be permitted to initially construct the Initial Layout provided:
 - (i) Leda shall give Main Roads ten (10) working days notice in writing of its intention to commence construction of the Initial Layout, prior to work commencing.

- (ii) Leda shall construct the Initial Layout prior to Commencement of Development of Cobaki Lakes.
 - (iii) The Initial Layout shall be constructed to the standards prescribed by the Main Roads Standards and Specifications.
 - (iv) Leda shall complete construction of the Initial Layout within three (3) calendar months of the date of commencement. In the event that the Initial Layout is not completed by this stage, Leda agrees to pay liquidated damages to Main Roads for each day the initial layout is not completed beyond this date, to be calculated at a daily rate of \$500.00 per day.
- (b) Leda shall commence the construction of the Interim Layout within one (1) month of Leda or any successors in title to Leda proceeding to Develop, Market and Sell in excess of 1,000 residential lots at Cobaki Lakes. The Interim Layout, once construction has commenced, shall be completed within six (6) calendar months. The Interim Layout shall be completed to standards prescribed by the Main Roads Standards and Specifications. Leda shall give Main Roads ten (10) days notice in writing of its intention to commence construction of the Interim Layout. In the event that the Interim Layout is not completed by this stage, Leda agrees to pay Liquidated damages to Main Roads for each day the Interim Layout is not completed beyond this date, to be calculated at a daily rate of \$500.00 per day.
- (c) Leda or any of its successors must commence the construction of the Ultimate Layout within two (2) months of any of the following occurring:
- (i) ~~Within two (2) months of~~ Leda or any successors in title to Leda commencing to Develop, Market and Sell in excess of 2,900 residential lots at Cobaki Lakes; 
 - (ii) Traffic volume travelling along the Gold Coast Highway exceeds 4,300 vehicles on a Typical Business Day, for 2 way traffic at Peak Hour. Traffic volumes shall be calculated by a traffic count on the Gold Coast Highway (north and south bound), 50 metres north of the proposed Gold Coast Highway/Boyd Street Intersection, provided that through traffic on the Gold Coast Highway is to be counted only and not vehicle turn movements associated with Boyd Street only. This count is to be undertaken by Main Roads and the results of the count shall be provided to Leda from time to time; or
 - (iii) If traffic operational problems at the Gold Coast Highway/Boyd Street Intersection occur. Any determination as to whether there are traffic operational

- A. Saturation at the Gold Coast Highway/Boyd Street intersection shall be calculated by Main Roads utilising SIDRA and in making a calculation, utilising SIDRA, Main Roads shall not take into account, other traffic light signals at other points on the highway that are not properly co-ordinated with the Gold Coast Highway/Boyd Street Extension and Main Roads shall utilise a practical cycle time as specified in SIDRA to calculate the saturation;
- B. The determination of operational problems shall take place on a Typical Business Day.

Main Roads will meter traffic accessing the Gold Coast Highway from Boyd Street by restricting green time for the Boyd Street approach.

The Ultimate Layout, once construction is commenced, shall be completed within six (6) calendar months. The Ultimate Layout shall be constructed to the standards prescribed by the Main Roads Standards and Specifications. In the event that the Ultimate Layout is not completed by this stage, Leda agrees to pay liquidated damages to Main Roads for each day the Ultimate Layout is not completed beyond this date, to be calculated at a daily rate of \$500.00 per day. Leda shall give Main Roads ten (10) working days notice in writing of its intention to commence construction of the Ultimate Layout, prior to work commencing.

2. LEDA TO LODGE A BOND PRIOR TO CONSTRUCTION

- A. Leda shall not commence to construct the Initial Layout, the Interim Layout or the Ultimate Layout or carry out any works to the Gold Coast Highway/Boyd Street Intersection unless, Leda lodges a sum of money or alternatively an unconditional bank guarantee, as a Bond, with Main Roads (hereinafter called "the Bond") on the following terms:
 - (a) The Bond shall be the total cost of construction for the Initial Layout, the Interim Layout and the Ultimate Layout and this cost shall be determined by a Quantity Surveyor engaged by Leda and agreed to by Main Roads. When Leda have finalised construction of the Initial Layout, the amount of the Bond can be reduced to the total cost for construction of the Interim Layout and the Ultimate Layout. When the Interim Layout has been constructed, the total cost of the Bond can be reduced to the total cost for construction of the Ultimate Layout.
 - (b) The Bond shall be lodged by Leda with Main Roads prior to the date of commencement of construction of the Initial Layout.
 - (c) The Bond or any part of the Bond shall be available to be utilised by Main Roads if Leda fails to commence construction of the Initial

Deed or if completion of construction of the Initial Layout, the Interim Layout or the Ultimate Layout has not been completed to the satisfaction of Main Roads within six (6) months of the date of commencement of the particular layout in question.

- (d) The Bond shall be refunded or released by Main Roads to Leda if:
- (i) Leda notifies Main Roads in writing that it does not require use of the Gold Coast Highway/Boyd Street Intersection for access to Cobaki Lakes as it has arranged alternative access to Cobaki Lakes or Leda can establish on reasonable grounds that alternative road works or some other step Leda is prepared to carry out will alleviate any requirement for the construction of the Ultimate Layout, provided Main Roads agrees that the alternative access or the alternative roadworks or other steps are appropriate and adequate to appropriately alleviate the demands to utilise the Gold Coast Highway/Boyd Street Intersection;
 - (ii) Leda constructs the Ultimate Layout in accordance with this Deed and upon the expiration of the Maintenance Period.

If any of items 2A(d) above are satisfied and Leda requires the release of the Bond in circumstances where the Initial Layout, the Interim Layout or the Ultimate Layout are partly completed, Main Roads shall not be required to release the Bond until such time as Leda, ~~in its discretion~~, completes the construction of the stage that it has commenced.

- B. Main Roads shall be entitled to utilise the Bond or any part of the Bond to pay the costs associated with Leda properly fulfilling its duties and obligations under this Deed provided Main Roads gives a minimum 14 days notice in writing to Leda of Leda's failure and allows Leda an opportunity to remedy any defect, if:
- (a) Leda fails to comply with its obligations in this Deed in the construction of the Initial Layout, the Interim Layout or the Ultimate Layout; or
 - (b) An order is made or resolution passed for the winding up of Leda or Leda has appointed to it a Receiver, a Receiver and Manager, Controller, Administrator, Liquidator, Provisional Liquidator or Trustee within the meaning of the Corporations Law.

3. CIRCUMSTANCES WHERE LEDA IS NOT OBLIGATED TO CONSTRUCT THE INITIAL LAYOUT, THE INTERIM LAYOUT OR THE ULTIMATE LAYOUT

- A. Leda shall not be required to construct the Initial Layout, the Interim Layout, or the Ultimate Layout if Leda notifies Main Roads in writing that it does not require use of the Gold Coast Highway/Boyd Street Intersection for access to Cobaki Lakes as it has arranged alternative access to Cobaki Lakes or Leda can

of the Ultimate Layout, provided Main Roads agrees that the alternative access or the alternative roadworks or other steps are appropriate and adequate to appropriately alleviate the demands to utilise the Gold Coast Highway/Boyd Street Intersection.

WITH AN INTERCHANGE AT BOYD STREET

B. Leda shall not be required to commence construction of the Initial Layout if the Tugun By-Pass proposed is completed prior to the commencement of construction of the Initial Layout and operational to through traffic, thereby providing alternative access both north and south bound to Cobaki Lakes.

C. Leda must complete construction of the Initial Layout, the Interim Layout or the Ultimate Layout if construction of a stage is commenced, despite clauses 3A and 3B of this Deed.

4. CONDITIONS ON CONTINUED AVAILABILITY OF GOLD COAST HIGHWAY/BOYD STREET INTERSECTION

Main Roads hereby agrees to the construction of the Gold Coast Highway/Boyd Street Intersection in accordance with this Deed and the continued availability of the use of the Gold Coast/Boyd Street Intersection provided Leda restricts the development, marketing and sale of Cobaki Lakes to below 3,500 residential lots until the Tugun By-Pass proposed is completed ~~prior to the commencement of construction of the Initial Layout~~ and operational to through traffic, thereby providing alternative access both north and south bound to Cobaki Lakes.

5. TRAFFIC MANAGEMENT PLAN

WITH AN INTERCHANGE AT BOYD STREET

Prior to the commencement of the Initial Layout, the Interim Layout or the Ultimate Layout, Leda shall prepare and have approved by Main Roads a Traffic Management Plan. Leda hereby covenants to be responsible for and manage traffic and traffic systems in the vicinity of the Gold Coast Highway/Boyd Street Intersection in accordance with the Traffic Management Plan to be approved.

6. DEFECTS LIABILITY

Leda hereby covenants to repair any defects, as defined by the Main Roads Maintenance Policy, in the construction of the Initial Layout, the Interim Layout or the Ultimate Layout for a period of twelve (12) calendar months following the date of completion of these Layouts ("the Maintenance Period") and Main Roads hereby agrees that the at the expiration of the Maintenance Period Leda shall have no further liability whatsoever and Leda shall be released from any further obligation to maintain or repair the Gold Coast Highway/Boyd Street Intersection whatsoever.

7. NO WARRANTY

Leda hereby acknowledges that Main Roads does not provide any warranty that the Initial Layout, the Interim Layout or the Ultimate Layout will have sufficient capacity to satisfy volumes of traffic that may utilise this intersection.

8. LEDA TO RELOCATE SERVICES

relocation as a result of the construction of the Initial Layout, the Interim Layout or the Ultimate Layout shall be temporarily or permanently (as the case requires) relocated at the cost and expense of Leda.

9. LEDA ENTITLED TO SUBCONTRACT

Leda shall be entitled to subcontract or arrange for the works necessary to construct the Initial Layout, Interim Layout or the Ultimate Layout provided any subcontractor utilised is consented to by Main Roads and that consent is not unreasonably, capriciously or arbitrarily withheld or delayed. Leda hereby acknowledges and agrees that irrespective of any subcontracting of the work, Leda's obligations shall continue under this Deed.

10. LEDA RESPONSIBLE FOR PROTECTION OF PERSONS & PROPERTY

A. Leda covenants and agrees at all times during the construction of the Initial Layout, the ~~Initial~~ ^{INTERIM} Layout and the Ultimate Layout and during the Maintenance Period, Leda must:

- (a) provide all things and take all measures necessary to protect persons and property; and
- (b) avoid unnecessary interference with the passage of persons and vehicles,

in or about the vicinity of the construction site and Leda assumes all responsibility for liability to person or property.

Without limiting the generality of Leda's obligations and this clause, Leda will provide barricades, fences, guards, temporary roads, footpaths, warning signs, lighting, traffic flagging, safety helmets, clothing, and removal of obstructions.

B. Leda indemnifies Main Roads against:

- (a) loss of or damage to property of Main Roads including existing property on which the construction of the Initial Layout, the Interim Layout and the Ultimate Layout under this Deed is being carried out; and
- (b) claims by any person against Main Roads in respect of personal injury or death or loss of the damage to any property,

arising out of or as a consequence of this Deed, until the conclusion of the maintenance period.

11. LEDA TO INSURE

A. Prior to the commencement of construction of the Initial Layout, Leda must take out and maintain for the term of this Deed a Public Liability Policy of Insurance ("the Policy") in the joint names of Main Roads and Leda which covers Main Roads, Leda and all sub-contractors engaged from time to time by Leda under this Deed for their respective rights, interests and liabilities to third parties, including the liabilities as set out in clause ~~8~~ of this Deed.

(\$10,000,000.00) for any one event and must be effected with an insurer authorised by the Commonwealth Superannuation and Insurance Commission to operate in Australia and in terms approved in writing by Main Roads.

- B. Prior to the commencement of construction of the Initial Layout, and whenever requested in writing from time to time thereafter so to do by Main Roads, Leda must produce evidence to the satisfaction of Main Roads of the Policy effected and maintained by Leda. If, after being requested in writing by Main Roads so to do, the Contractor fails to produce evidence of compliance with its insurance obligations under clause 11A of this Deed, which is to the satisfaction and approval of Main Roads, Main Roads may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and the amount so paid is a debt due from Leda to Main Roads.

Leda must ensure that the Policy contains provisions acceptable to Main Roads that will:

- (a) require the insurer, whenever the insurer gives to or serves upon Leda or a sub-contractor a notice of cancellation or other notice under or in relation to all or any of the interests insured under the Policy, at the same time to give notice to Main Roads in writing that the notice has been given to or served upon Leda or the sub-contractor;
- (b) require that the insurer will not cancel or vary the interests of all or any of the co-insured under the Policy at the request of an insured party except upon the consent of all the co-insured;
- (c) provide that a notice of claim given to the insurer by one insured is to be accepted by the insurer as a notice of claim given to the insurer by all the insured; and
- (d) require the insurer, whenever Leda fails to renew the Policy or to pay a premium, to immediately give notice in writing of that fact to Main Roads and prior to the insurer giving any notice of cancellation.

The Contractor must inform Main Roads in writing of the occurrence of any event within 7 days of it that may give rise to a claim under the policy and must ensure that Main Roads is kept fully informed of subsequent action and developments concerning the claim.

12. MAIN ROADS TO TEST CONSTRUCTION MATERIAL

Main Roads shall be entitled at reasonable times and on reasonable notice to examine and test any materials utilised in the construction of the Initial Layout, the Interim Layout or the Ultimate Layout or the construction of these layouts themselves provided the inspection does not unduly interfere with Leda and provided the inspections are at the cost and expense of Main Roads.

13. VARIATIONS TO LAYOUT

Main Roads shall be entitled to require Leda to vary the construction of the Initial Layout, the Interim Layout or the Ultimate Layout provided that if the

expense of Main Roads.

14. **NO AGENCY, PARTNERSHIP OR JOINT VENTURE RELATIONSHIP**

Leda and Main Roads agree that nothing in this Deed shall constitute Leda and Main Roads as agents, partners or joint venture parties.

15. **ASSIGNMENT**

Leda shall only be entitled to assign its interest in this Deed if it obtains the consent in writing of Main Roads to that assignment and Main Roads shall not unreasonably, arbitrarily or capriciously withhold or delay giving to Leda that consent provided Leda obtains from any assignee a Deed of Covenant to be bound by and to perform this Deed as if it was originally named therein in the place and stead of Leda.

16. **SEVERANCE**

A provision of this Deed which is unenforceable in a jurisdiction shall, in that jurisdiction, be ineffective to the extent of the unenforceability without invalidating the remaining provisions of this Deed and without affecting enforceability of the provision in another jurisdiction.

17. **COSTS AND STAMP DUTY**

Each party shall bear their own costs of and incidental to the preparation and execution of this Deed, but all stamp duty payable in respect of this Deed shall be payable by Leda.

18. **APPLICABLE LAW**

The law applicable to this Deed shall be the law of the State of Queensland and the parties hereto, where necessary, shall submit to the exclusive jurisdiction of any competent Court of the State of Queensland having jurisdiction in relation to any matter or thing arising out of this Deed.

19. **ENTIRE AGREEMENT**

This Deed constitutes the entire agreement of the parties and supersedes all prior agreements, understandings and negotiations entered into in respect of the matters set out herein.

20. **NO WAIVER**

Failure or omission by a party at any time to enforce or require strict compliance with a provision of this Deed shall not affect, or abrogate or modify that provision in any way, or the rights of the party concerned to avail itself, or himself, of the remedies it or he may have for a breach of the provision.

21. **NOTICES**

A party may give a notice required under this Deed by delivering the notice to

transmission.

If before 4.00 p.m. local time in the place of delivery a party delivers a notice:

- (a) By hand;
- (b) By telex and the sending party receives the answer back of the other party at the end of the transmission; or
- (c) By facsimile and the sending party completes the transmission;

the notice will be taken as given on the day of delivery or transmission, and in any other case, on the next day.

If a party gives the notice by post, the notice will be taken as given on the second business day in the place of delivery after the notice is posted.

If a party gives notice by telex or facsimile transmission and the transmission is not fully legible, or if the sending party, at the time of transmission, has reason to believe that the telex or facsimile transmission is not fully legible, the party concerned may not rely upon this clause to prove the giving of the notice.

22. INTERPRETATION

Except where the context expressly or impliedly requires an interpretation to the contrary, the words and expressions set out in the Schedule 2 hereto shall have the meanings set out opposite them.

24. DISPUTE RESOLUTION

- (a) Unless a party to this Deed has complied with the paragraphs (a) - (d) of this clause, that party may not commence court proceedings or arbitration relating to any dispute arising from this Deed except where that party seeks urgent interlocutory relief, in which case that party need not comply with this clause before seeking such relief. Where a party to this Deed fails to comply with paragraphs (a) - (d) of this clause, any other party to the Deed in dispute with the party, if so failing to comply, need not comply with this clause before referring the dispute to arbitration, or commencing court proceedings relating to that dispute.
- (b) Any party to this Deed, claiming that a dispute has arisen under this Deed between any of the parties to this Deed, shall give written notice to the other party, or parties in dispute, designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute, and each other party given written notice shall promptly give notice in writing to the other parties in dispute, designating as its representative in negotiations relating to the dispute a person with similar authority.
- (c) The designated persons shall, within ten days of the last designation required by paragraph (b) of this clause, following whatever

- (d) If the dispute is not resolved within the following ten days (or within such further period as the representatives may agree is appropriate) the parties in dispute shall within a further ten days (or within such further period as the representatives may agree is appropriate) seek to agree on a process for resolving the whole or part of the dispute through means other than litigation or arbitration, such as further negotiations, mediation, conciliation, independent expert determination or mini-trial and on:
 - (i) the procedure and timetable for any exchange of documents and other information relating to the dispute;
 - (ii) Procedural rules and a timetable for the conduct of the selected mode of proceeding;
 - (iii) a procedure for selection and compensation of any neutral person who may be employed by the parties in dispute; and
 - (iv) Whether the parties should seek the assistance of a dispute resolution organisation.
- (e) The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties.
- (f) After the expiration of the time established by or agreed under paragraph (d) of this clause for agreement on a dispute resolution process, any party which has complied with the provisions of paragraphs (a) - (d) of this clause may in writing terminate the dispute resolution process provided for in those paragraphs and may then refer the dispute to arbitration or commence court proceedings relating to the dispute.

25. **MAIN ROADS TO BE INFORMED**

Main Roads shall be informed as to the progress and development of Cobaki Lakes and the sale of lots in Cobaki Lakes. The information provided will include:

- (a) the date the development of Cobaki Lakes has commenced; and
- (b) the dates when the triggers in clause 1(b) and 1(c) have been reached.

The information must be provided every 4 calendar months to Main Roads.

**SCHEDULE 1
COBAKI LAKES DESCRIPTION OF LAND
(RECITAL A)
SCHEDULE 1**

1. Lot 46 in DP 755740 (formerly Portion 46 of the Parish) comprising an area of 59.89 hectares as comprised in certificate of title folio identifier 46/755740 (also currently Volume 12244 Folio 50) excepting the land below a depth of 15.24 metres from the surface.
2. Lots 54, 55 and 228 in DP 755740 (formerly Portions 54,55 and 228 of the Parish) comprising an area of 196 hectares exclusive of roads as comprised in certificate of title folio identifier Auto Consol 12214-250 (also currently Volume 12214 Folio 250).
3. Lot 199 in DP 755740 (formerly Portion 199 of the Parish) comprising an area of 21.95 hectares as comprised in certificate of title folio identifier 199/755740 (also currently Volume 10228 Folio 178).
4. Lot 200 in DP 755740 (formerly Portion 200 of the Parish) comprising an area of 16.19 hectares as comprised in certificate of title folio identifier 200/755740 (also currently Volume 12575 Folio 215).
5. Lot 201 in DP 755740 (formerly Portion 201 of the Parish) comprising an area of 54.23 hectares as comprised in certificate of title folio identifier 201/755740 (also currently Volume 12496 Folio 206).
6. Lot 202 in DP 755740 (formerly Portion 202 of the Parish) comprising an area of 32.98 hectares as comprised in certificate of title folio identifier 202/755740 (also currently Volume 12575 Folio 218).
7. Lot 205 in DP 755740 (formerly Portion 205 of the Parish) comprising an area of 43.2 hectares as comprised in certificate of title folio identifier 205/755740 (also currently Volume 12575 Folio 216).
8. Lot 206 in DP 755740 (formerly Portion 206 of the Parish) comprising an area of 37.74 hectares as comprised in certificate of title folio identifier 206/755740 (also currently Volume 12575 Folio 219).
9. Lot 209 in DP 755740 (formerly Portion 209 of the Parish) comprising an area of 16.19 hectares as comprised in certificate of title folio identifier 209/755740 (also currently Volume 12575 Folio 217).
10. Lot 305 in DP 755740 (formerly Portion 305 of the Parish) comprising an area of 31.97 hectares as comprised in certificate of title folio identifier 305/755740 (also currently Volume 12471 Folio 38).
11. Lot 1 in DP 562222 comprising an area of 8.277 hectares as comprised in certificate of title folio identifier 1/562222 (also currently Volume 12225 Folio 10).
12. Lot 2 in DP 566529 comprising an area of 15.78 hectares exclusive of roads as comprised in certificate of title folio identifier 2/566529 (also currently Volume 12392 Folio 8).
13. Lot 1 in DP 570076 comprising an area of 37.96 hectares exclusive of roads as comprised in certificate of title folio identifier 1/570076 (also currently Volume 12686 Folio 35).
14. Lot 1 in DP 570077 comprising an area of 20.70 hectares as comprised in certificate of title folio identifier 1/570077 (also currently Volume 12608 Folio 234).

All areas are approximate. The location of each parcel is shown on the indicative plan overleaf.

**SCHEDULE 2
(Clause 11)**

INTERPRETATION

Except where the context expressly or impliedly requires an interpretation to the contrary, the following words and expressions shall have the meanings set out opposite them as follows.

"the Bond" means the Bond detailed at clause 2.

"Commencement of Development of Cobaki Lakes" means the first time when all of the following take place at Cobaki Lakes:

- (a) Leda or any successors in title to Leda lodge for registration with the Land Titles Office a Linen Plan of Subdivision for any part of the Land at Cobaki Lakes, as a deposited plan for residential lots only; and
- (b) Leda or any successors in title to Leda enter into a Contract of Sale to sell a residential lot and complete that Contract of Sale; and
- (c) The purchaser of any residential lot at Cobaki Lakes from Leda or any successors in title, constructs a residential dwelling on that lot;

"corporation" includes a Body Corporate of any nature;

"this Deed" or "the Deed" means this document and includes its Schedules and annexures (if any);

"Development Approvals" means the Development Approval granted by the Tweed Shire Council for the Subdivision and development of Cobaki Lakes;

"the Development, Marketing and Sale" or "Develop, Market and Sell" means all of the following take place for each relevant lot:

- (a) Leda or any successors in title to Leda lodge for registration with the Land Titles Office a Linen Plan of Subdivision for any part of the Land at Cobaki Lakes, as a deposited plan for residential lots only; and
- (b) Leda or any successors in title to Leda enter into a Contract of Sale to sell a residential lot and complete that Contract of Sale, provided Leda shows to Main Roads evidence of the appropriate building approval; and

"Initial Layout" means Leda's initial construction of the Gold Coast Highway/Boyd Street Intersection so as to carry out road pavement works highlighted in yellow and the other works illustrated on the Plan contained in Schedule 3 and to carry out the work itemised in the Schedule of Works contained at Schedule 4 and to be constructed

"Interim Layout" means the works to be undertaken by Leda on the construction of the Gold Coast Highway/Boyd Street Intersection after the construction of the Initial Layout and prior to construction of the Ultimate Layout so as to carry out road pavement works highlighted in yellow and the other works illustrated on the Plan contained in Schedule 5 and to carry out the work itemised in the Schedule of Works contained at Schedule 6 and to be constructed in accordance with clause 1.

"Land Titles Office" means the Land Titles Office New South Wales.

"Linen Plan of Subdivision" means a plan prepared in a form to be registered in the Land Titles office affecting a Subdivision of any of the land at Cobaki Lakes.

"Main Roads Standards and Specifications" means the Standard Specifications Roads, Second Edition 1993 issued by the Queensland Department of Transport, Transport Technology Division as originally made, and as amended from time to time since it was originally made, or as replaced by another document.

"Peak Hour" means the hour of any day that involves the greatest amount of traffic utilising the relevant road for the whole of the day under consideration;

"person" includes a natural person, firm, corporation, unincorporated body of persons, State, Territory, Government Department and Government Agency;

"SIDRA" means a computer software package used for traffic analysis and known as Signalised Intersection Design and Research Aid.

"State Controlled Road Reserve" means the area surrounding the Gold Coast Highway/Boyd Street intersection over which Main Roads have jurisdiction.

"statute" includes an Act of Parliament, proclamation, order in Council, regulation, rule, by-law or ordinance and a notice or order issued pursuant to a statute;

"Traffic Management Plan" means a plan detailing how traffic will be managed during construction. This plan is to be signed by a chartered professional engineer who is a member of the Institute of Engineers Australia and/or a registered professional engineer of Queensland.

"Tugun by-pass" means the construction of an additional arterial public sealed road to national highway standard generally travelling in a north south direction and connecting the intersection of the Pacific Highway and Stewart Road in Currumbin to the Pacific Highway and Kennedy Drive Tweed Heads. Currently a study entitled the "Southern Gold Coast/Tweed Corridor" is under way. One of the issues being investigated is the need for a Tugun by-pass and if needed its locations and access points to the existing network will be considered. There can be no guarantee that the construction of a Tugun by-pass, if found necessary, will include and access at Boyd Street.

"Typical Business Day" shall mean a Tuesday or Wednesday of a non holiday period for Queensland.

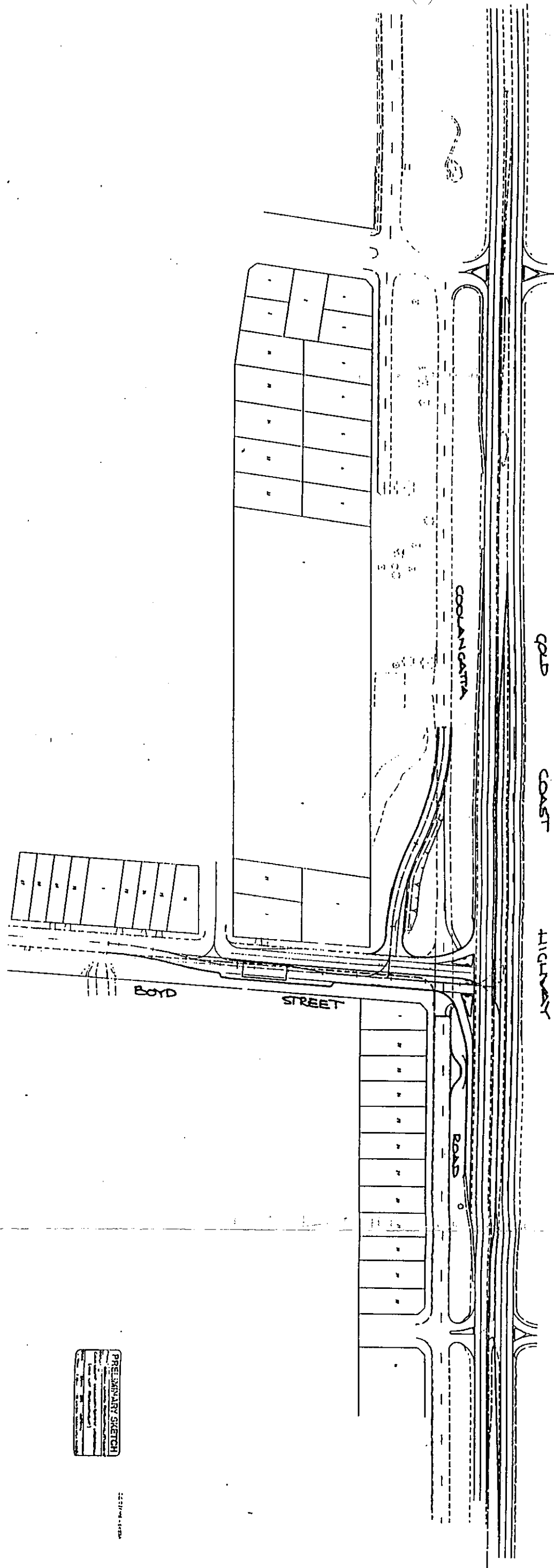
"Ultimate Layout" means Leda's ultimate construction of the Gold Coast Highway/Boyd Street Intersection so as to carry out road pavement works highlighted in yellow and the other works illustrated on the Plan contained in Schedule 7 and to carry out the

In this Deed, unless the context requires otherwise:

- (a) Words importing the singular number include the plural number and vice versa;
- (b) Words importing any gender include the other gender;
- (c) Words importing the whole of the matter or thing include a part of the matter or thing;
- (d) The conjunctive includes the disjunctive and vice versa;
- (e) Derivatives of a word defined in this Deed have a corresponding meaning;
- (f) a reference to writing includes printing, engraving, typewriting, lithography, photography, facsimile transmission and any other mode of reproducing words in a visible form;
- (g) A reference to statute includes a reference to an enactment amending or consolidating the statute and an enactment substituted for the enactment;

The heading for a clause in this Deed does not form part of the clause. Headings are included in this Deed for convenience only and shall not be used to interpret this Deed.

**SCHEDULE 3
INITIAL LAYOUT
(Clause 1)**



PRELIMINARY SKETCH

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**SCHEDULE 4
SCHEDULE OF WORKS FOR INITIAL LAYOUT
TO BE CARRIED OUT BY LEDA**

SCHEDULE OF RATES

Project Number: CG231.301

Project COBAKI LAKES DEVELOPMENT
PHASE 1 - 1000 LOTS

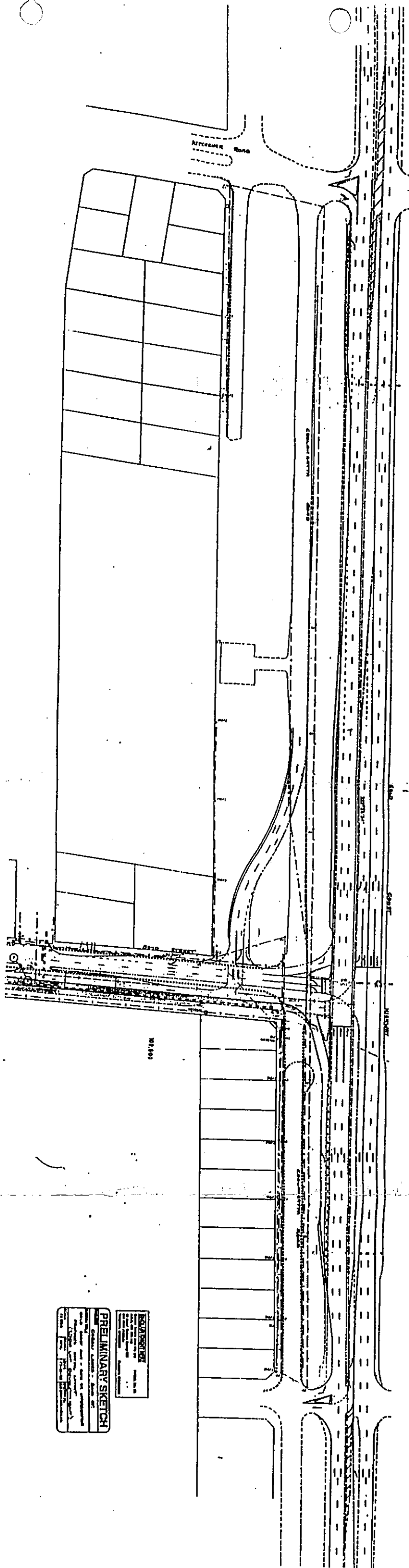
ITEM NO	DESCRIPTION OF WORKS	UNIT	ESTIMATED QUANTITY	RATE \$	AMOUNT
1	ESTABLISHMENT AND TRAFFIC CONTROL				
1.01	Site establishment and disestablishment	Item	Lump Sum		\$ 15,000
1.02	Provision for traffic	Item	Lump Sum		\$ 25,000
1.03	Dust control	1000l	200	9.00	\$ 1,800
1.04	Specified compliance tests listed by test number and description	Item	Lump Sum		\$ 8,000
2	MATERIALS SUPPLIED AND/OR WORK CARRIED OUT BY THE PRINCIPAL				
2.01	Alteration to SEQEB	Item	Lump Sum		\$ 5,000
2.02	Alteration to Telecom	Item	Lump Sum		\$ 2,000
2.03	Gold Coast City Council Water Supply to Traffic Island	Item	Lump Sum		\$ 4,000
2.04	Supply of traffic signals (excl. footings and ducting)	Item	Lump Sum		\$ 95,000
2.05	Intersection lighting (excl. footings and ducting)	Item	Lump Sum		\$ 50,000
3	DRAINAGE				
3.01	Supply of concrete pipe culvert components including delivery	Item	Lump Sum		\$ 14,700
3.02	Removal/demolition of culverts, complete	Item	Lump Sum		\$ 4,400
3.03	Removal/demolition of culverts, end structures only	Item	Lump Sum		\$ 300
3.04	Removal/demolition of concrete kerb including kerb crossings	m	200	6.00	\$ 7,200
3.05	Removal/demolition of gullies	each	3	290.00	\$ 870
3.06	Removal/demolition of manholes	each	3	290.00	\$ 870
3.07	Installation of concrete pipe culvert components (375mm dia Class 2)	m	60	40.00	\$ 2,400
3.08	Installation of concrete pipe culvert components (525mm dia Class 2)	m	95	55.00	\$ 5,225
3.09	Installation of concrete pipe culvert components (600mm dia Class 2)	m	25	65.00	\$ 1,625
3.10	Installation of concrete pipe culvert components (750mm dia Class 2)	m	37	76.00	\$ 2,812
3.11	Installation of concrete pipe culvert components (825mm dia Class 2)	m	80	80.00	\$ 6,400
3.12	Installation of concrete pipe culvert components (900mm dia Class 2)	m	65	90.00	\$ 5,850
3.13	Construction of headwall	each	1	1000.00	\$ 1,000
3.14	Concrete kerb Type 13	m	1274	20.00	\$ 25,480
3.15	Concrete kerb crossings (pedestrian)	each	4	270.00	\$ 1,080
3.16	Concrete kerb and channel Type 6	m	435	22.00	\$ 9,570

ITEM NO	DESCRIPTION OF WORKS	UNIT	ESTIMATED QUANTITY	RATE \$	AMOUNT
3.17	Concrete kerb and channel crossings (pedestrian)	each	2	280.00	\$ 560
3.18	Concrete field inlet gullies	each	3	1150.00	\$ 3,450
3.19	Concrete manholes	each	6	1000.00	\$ 6,000
3.20	Precast concrete side inlet gullies with cast-in-place pit (1P1T)	each	4	2700.00	\$ 10,800
3.21	Subsoil drains, Type C	m	440	30.00	\$ 13,200
3.22	Grouted rock pitching	m2	5	35.00	\$ 175
3.23	Hand-placed concrete paving (100mm thick patterned and pigmented)	m2	616	36.00	\$ 22,176
3.24	Hand-placed concrete paving (75mm thick to cycleways)	m2	216	36.00	\$ 7,776
4	GENERAL EARTHWORKS				
4.01	Clearing and grubbing	Item	Lump Sum		\$ 3,000
4.02	Ground surface treatment, standard	m2	200	1.50	\$ 300
4.03	Road excavation, all material	m3	4529	6.50	\$ 29,439
4.04	Culvert and/or end structure excavation	m3	320	15.00	\$ 4,800
4.05	Road Embankment	m3	380	6.50	\$ 2,470
5	PAVEMENTS				
5.01	Base	m3	1025	54.00	\$ 55,350
5.02	Subbase	m3	1207	50.00	\$ 60,350
5.03	Lower Subbase	m3	480	45.00	\$ 21,600
5.04	CBR 15	m3	1584	45.00	\$ 71,280
6	HOT-MIXED ASPHALT PAVEMENTS				
6.01	Preparation of the existing surface	m2	9095	0.10	\$ 910
6.02	Tack Coat 0.3 l/m2	litre	2729	1.30	\$ 3,548
6.03	Hot-mixed asphalt pavement, 14mm mix	tonne	822	95.00	\$ 78,090
7	ROAD FURNITURE				
7.01	Removal and re-erection of road furniture	Item	Lump Sum		\$ 2,000
7.02	Supply of road signs	Item	Lump Sum		\$ 6,000
7.03	Installation of road signs	Item	Lump Sum		\$ 3,000
7.04	Raised pavement markers	each	40	50.00	\$ 2,000
7.05	Steel beam guard-rail	m	20	70.00	\$ 1,400
8	ELECTRICAL WORKS				
8.01	Supply of electrical conduit, 1/100mm diameter (route lighting)	m	975	29.00	\$ 28,275
8.02	Supply of electrical conduit, 2/100mm diameter (traffic signals)	m	115	45.00	\$ 5,175
8.03	Supply of electrical conduit, 50mm diameter (signal coordination)	m	425	25.00	\$ 10,625
8.04	Supply of electrical pit, type 4	each	20	180.00	\$ 3,600
8.05	Installation of electrical pit, type 7	each	6	270.00	\$ 1,620

ITEM NO	DESCRIPTION OF WORKS	UNIT	ESTIMATED QUANTITY	RATE \$	AMOUNT
8.06	Slip base road lighting pole footing, average/good soil, no crossfall	each	20	585.00	\$ 11,700
8.07	Traffic signal post footing	each	5	600.00	\$ 3,000
8.08	Traffic signal mast arm footing, average/good soil	each	1	650.00	\$ 650
9	LANDSCAPING				
9.01	Stripping topsoil	m3	372	2.75	\$ 1,078
9.02	Spreading of topsoil	m3	392	1.50	\$ 588
9.03	Turfing	m2	1000	2.00	\$ 2,000
10	MISCELLANEOUS				
10.01	Reprofile existing pavement under proposed AC overlay	m2	1550	15.00	\$ 23,250
10.02	Scarify and remove existing pavement	m2	1030	2.50	\$ 2,575
10.03	Water conduit to medians, Boyd Street (100mm dia)	m	25	20.00	\$ 500
10.04	Sawcut existing pavement	m	1620	2.50	\$ 4,050
10.05	Concrete protective slabs to existing Telecom	m	33	65.00	\$ 2,470
10.06	Concrete protective slabs to existing watermains	m	33	50.00	\$ 1,650
	SUB TOTAL				\$ 808,062
11	UPGRADE WORK IN BOYD STREET CH. 226.048 TO CH. 400.00				
11.01	Preparation of surface	Item			\$ 1,250
11.02	Lifting manhole to new road level	No.	1	250	\$ 250
11.03	25mm overlay	m2	1920	8	\$ 15,360
11.04	Linemarking	Item			\$ 400
	CH. 400.000 TO CH. 600.000				
11.05	Preparation of surface	Item			\$ 3,500
11.06	Lifting manhole to new road level	No.	2	250	\$ 500
11.07	Pavement deformation repairs	m2	10	160	\$ 1,600
11.08	50mm overlay	m2	2200	14.5	\$ 31,900
11.09	Linemarking	Item			\$ 400
	CH. 600.000 TO CH. 868.666				Nil
	SUB TOTAL				\$ 55,160
12	BIKEWAY				
12.01	Construction of bikeway (CH 00.000 TO CH 868.666)	m	869	30	\$ 26,070
	SUB TOTAL				\$ 26,070
	TOTAL				\$ 889,292

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SCHEDULE 5
INTERIM LAYOUT
(Clause 1)



101000

PLANNING
 PRELIMINARY SKETCH
 This drawing is a preliminary sketch and is not intended to be used for construction purposes. It is subject to change without notice.
 Date: 10/10/00
 Scale: As Shown

**SCHEDULE 6
SCHEDULE OF WORKS FOR INTERIM LAYOUT
TO BE CARRIED OUT BY LEDA**

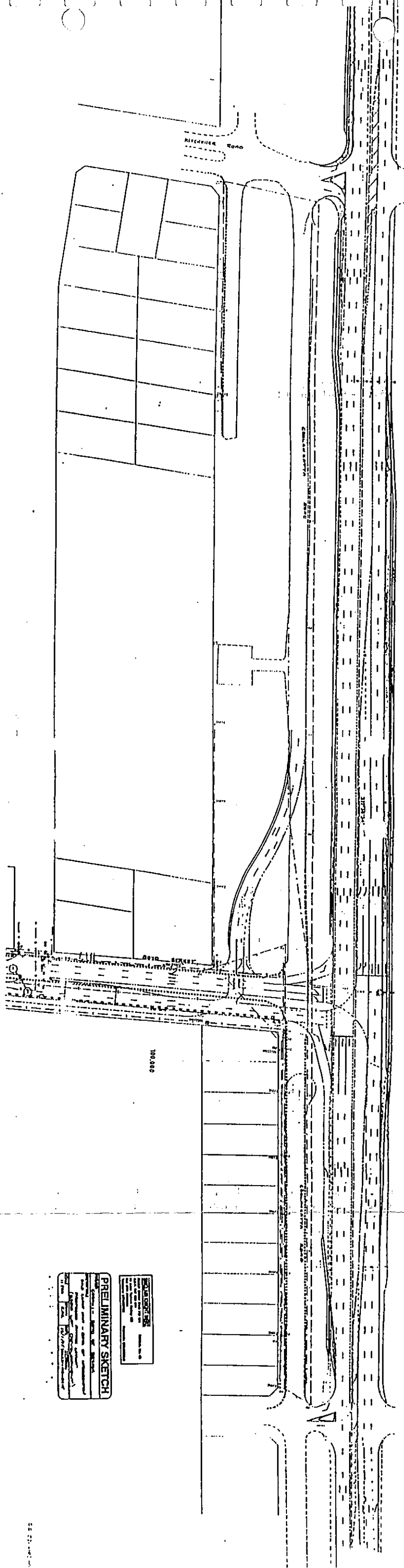
SCHEDULE OF RATES

Project Number: CG231.301

Project COBAKI LAKES DEVELOPMENT
PHASE 2 - 2900 LOTS

ITEM NO	DESCRIPTION OF WORKS	UNIT	ESTIMATED QUANTITY	RATE \$	AMOUNT
1	ESTABLISHMENT AND TRAFFIC CONTROL				
1.01	Site establishment and disestablishment	Item	Lump Sum		\$ 5,000
1.02	Provision for traffic	Item	Lump Sum		\$ 5,000
1.03	Dust control	1000l	100	9.00	\$ 900
1.04	Specified compliance tests listed by test number and description	Item	Lump Sum		\$ 1,000
2	DRAINAGE				
2.01	Removal/demolition of concrete kerb including kerb crossings	m	135	6.00	\$ 810
2.02	Removal/demolition of gullies	each	1	290.00	\$ 290
2.03	Installation of concrete pipe culvert components (375mm dia Class 2)	m	2.44	40.00	\$ 100
2.04	Concrete kerb and channel Type 6	m	135	22.00	\$ 2,970
2.05	Concrete kerb and channel crossings (pedestrian)	each	1	280.00	\$ 280
2.06	Precast concrete side inlet gullies with cast-in-place pit (1P1T)	each	1	3,000	\$ 3,000
2.07	Subsoil drains, Type C	m	135	30.00	\$ 4,050
3	GENERAL EARTHWORKS				
3.01	Road excavation, all material	m3	170	6.50	\$ 1,105
4	PAVEMENTS				
4.01	Base	m3	33	54.00	\$ 1,782
4.02	Subbase	m3	90	54.00	\$ 4,860
5	HOT-MIXED ASPHALT PAVEMENTS				
5.01	Preparation of the existing surface	m2	210	0.20	\$ 42
5.02	Tack Coat 0.3 l/m2	litre	63	1.30	\$ 82
5.03	Hot-mixed asphalt pavement, 14mm mix	tonne	22	95.00	\$ 2,090
6	ROAD FURNITURE				
6.01	Removal and re-erection of road furniture				\$ 500
7	MISCELLANEOUS				
7.01	Sawcut existing pavement	m	135	2.50	\$ 338
	TOTAL				\$ 34,199
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**SCHEDULE 7
ULTIMATE LAYOUT**



Highway Road

100.000

SCALE
 1" = 100'

PRELIMINARY SKETCH
 This drawing is a preliminary sketch and is not to be used for construction purposes. It is subject to change without notice.

DATE: 11/11/11

SCHEDULE 8
SCHEDULE OF WORKS FOR ULTIMATE LAYOUT
TO BE CARRIED OUT BY LEDA

SCHEDULE OF RATES

Project Number: CG231.301

Project COBAKI LAKES DEVELOPMENT
PHASE 3 - 3500 LOTS

ITEM NO	DESCRIPTION OF WORKS	UNIT	ESTIMATED QUANTITY	RATE \$	AMOUNT
1	ESTABLISHMENT AND TRAFFIC CONTROL				
1.01	Site establishment and disestablishment	Item	Lump Sum		\$ 5,000
1.02	Provision for traffic	Item	Lump Sum		\$ 5,000
1.03	Dust control	1000l	200	9.00	\$ 1,800
1.04	Specified compliance tests listed by test number and description	Item	Lump Sum		\$ 1,000
2	DRAINAGE				
2.01	Removal/demolition of concrete kerb including kerb crossings				
2.02	Concrete kerb Type 13	m	30	6.00	\$ 180
2.03	Hand-placed concrete paving (100mm thick patterned and pigmented)	m2	30	36.00	\$ 1,080
3	GENERAL EARTHWORKS				
3.01	Clearing and grubbing	Item	Lump Sum		\$ 1,000
3.02	Road excavation, all material	m3	2000	6.50	\$ 13,000
3.03	Road Embankment	m3	380	6.50	\$ 2,470
4	PAVEMENTS				
4.01	Base	m3	375	54.00	\$ 20,250
4.02	Subbase	m3	375	50.00	\$ 18,750
4.03	Lower Subbase	m3	300	45.00	\$ 13,500
4.04	CBR 15	m3	990	45.00	\$ 44,550
5	HOT-MIXED ASPHALT PAVEMENTS				
5.01	Preparation of the existing surface	m2	3000	0.10	\$ 300
5.02	Tack Coat 0.3 l/m2	litre	900	1.30	\$ 1,170
5.03	Hot-mixed asphalt pavement, 14mm mix	tonne	288	95.00	\$ 27,360
6	ROAD FURNITURE				
6.01	Removal and re-erection of road furniture	Item	Lump Sum		\$ 1,000

ITEM NO	DESCRIPTION OF WORKS	UNIT	ESTIMATED QUANTITY	RATE \$	AMOUNT
7	LANDSCAPING				
7.01	Stripping topsoil	m3	200	2.75	\$ 550
7.02	Spreading of topsoil	m3	200	1.50	\$ 300
7.03	Turfing	m2	500	2.00	\$ 1,000
8	MISCELLANEOUS				
8.01	Sawcut existing pavement	m	925	2.50	\$ 2,313
	TOTAL				\$ 162,073

IN WITNESS WHEREOF these presents were executed on the days and year hereinafter set out the completion of such execution being on the day and year first hereinbefore appearing.

SIGNED SEALED AND DELIVERED by

[Signature]

DEPARTMENT OF MAIN ROADS for and on

behalf of THE STATE OF QUEENSLAND

in the presence of

John Nieken
JP



THE COMMON SEAL of LEDA)
MANORSTEAD PTY. LIMITED ACN)
058 793 114 was hereunto affixed in)
accordance with its Articles of)
Association under the hands of *WKSRL*)
a Director and *R.P. PAROLAN*)
a Director/)
Secretary who certify that they are the)
proper officers to affix such seal)

[Signature]
.....
Director

[Signature]
.....
Director/Secretary

pwb/050197

Annexure 1

Gold Coast City Council
Deed

8.7.93

Solicitors & Notaries

DATED _____

Level 14
50 Cavill Avenue
Surfers Paradise
Queensland 4217

Telephone
(075) 70 0200

Facsimile
(075) 92 2285

FR

**CALSONIC MANAGEMENT SERVICES PTY LTD
COUNCIL OF THE CITY OF GOLD COAST**

**DEED RELATING TO BOYD STREET
ROAD CONSTRUCTION**

**FEEZ RUTHNING
Solicitors and Notaries
Level 14
50 Cavill Avenue
SURFERS PARADISE QLD 4217**

Telephone: (075) 700 200
Ref: GRH
J:\M52\810158

DATED _____

PAUL RIVALE
Paul Rivale
Commissioner of Stamp Duties,
Queensland

CALSONIC MANAGEMENT SERVICES PTY LTD
COUNCIL OF THE CITY OF GOLD COAST

DEED RELATING TO BOYD STREET
ROAD CONSTRUCTION

FEEZ RUTHNING
Solicitors and Notaries
Level 14
50 Cavill Avenue
SURFERS PARADISE QLD 4217

Telephone: (075) 700 200
Ref: GRH
J:\M52\810158

DEED RELATING TO ROAD CONSTRUCTION

THIS DEED is made the ¹⁴ 8th day of JULY One Thousand Nine Hundred and Ninety Three

BETWEEN CALSONIC MANAGEMENT SERVICES PTY LTD A.C.N 010 909 976 a company duly incorporated in Queensland and having its registered office at Level 12, Corporate Centre One, Bundall Road, Bundall in the said State (hereinafter with its successors and assigns called "Calsonic") of the one part

AND COUNCIL OF THE CITY OF GOLD COAST a Body Corporate created by and under the Local Government Act 1936 (hereinafter with its successors and assigns called "the Council") of the other part

WHEREAS:

- A. Calsonic's Ultimate Holding Company is Calsonic International Inc, A.R.B.N. 010 954 195 and is the registered proprietor of an estate in fee simple in that parcel of land situated within the area administered by the Council of the Shire of Tweed and more particularly described in the First Schedule hereto and hereinafter referred to as "the Cobaki Site".
- B. Calsonic proposes to develop the Cobaki Site as a master planned community in accordance with approvals granted or to be granted by the Council of the Shire of Tweed as required.
- C. As required in Condition 7 of an Amended Consent issued 30/3/93 - Notice No. 92/315 by the Council of the Shire of Tweed, Calsonic is required to obtain any required Permits and Agreements from the Council in respect of roadworks to occur within the boundary of the Council and Calsonic is required to lodge with the Council of the Shire of Tweed confirmation of an Agreement with the Council prior to commencement of work on the Cobaki Site.
- D. To comply with Condition 7 of the Amended Consent issued 30/3/93 Calsonic has requested the Council for consent to construct an extension of Boyd Street, Tugun from the point where the sealed section currently terminates to the State border ("the Boyd Street (Qld) Extension), at which point it will link with further roadworks to be undertaken by Calsonic between the New South Wales border and the Cobaki Site.
- E. The Council and Calsonic acknowledge and agree that the construction of the extension to Boyd Street in conjunction with certain other works to be undertaken in the Shire of Tweed may result in or contribute to traffic volume on Boyd Street exceeding the current design capacity for Boyd Street.
- F. The Council has agreed to Calsonic undertaking the Boyd Street (Qld) Extension upon the terms and conditions hereinafter appearing.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires:

"Access Road" means the temporary access road which may be built by Calsonic in the location of the Boyd Street (Qld) Extension pursuant to Clause 2 hereof;

"Boyd Street East" means that part of Boyd Street, Tugun which may require upgrading to four (4) lanes pursuant to this Agreement and being the area shaded in green on the plan forming Appendix 1 hereto.

"Boyd Street (NSW) Extension" means the proposed extension to Boyd Street on the New South Wales side of the border the approximate location of which is shaded in blue on the plan forming Appendix 1 hereto.

"Boyd Street (Qld) Extension" means the proposed extension to Boyd Street on the Queensland side of the border the approximate location of which is shaded in red on the plan forming Appendix 1 hereto, and the construction of which forms part of the Initial Boyd Street Upgrade.

"Boyd Street Four Lane Upgrade" means the upgrading of Boyd Street East to four (4) lanes which may be required pursuant to Clause 5 of this Agreement and which is more particularly described in the Fourth Schedule hereto.

"Business Day" means a day on which banks are open for commercial business in the place specified in the provision in which the expression occurs or (if none) in the place or places where performance of the provision is to take place;

"Calsonic" means Calsonic Management Services Pty Ltd ACN 010 909 976 its successors and assigns;

"Cobaki Site" means the land described in the First Schedule hereto;

"Completed" means in relation to the Initial Boyd Street Upgrade or the Boyd Street Four Lane Upgrade or the Western Bypass (as the case may require) that stage when the relevant road works have been completed and accepted by the relevant authority.

"Engineer" means the Chief Engineer or such person who performs similar duties for the time being of the Council;

"Event of Force Majeure" means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it; without limiting the above it includes:

- (a) a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage or vandalism;
- (b) a strike, lockout or industrial action, dispute or disturbance of any kind;
- (c) an act of a government or a Government Authority;
- (d) an act of God; or
- (e) a storm, tempest, fire, flood, earthquake or other natural calamity;

"Hospital Roundabout Land" means the land described in the Second Schedule hereto;

"Initial Boyd Street Upgrade" means the works more particularly described in the Third Schedule hereto for the upgrade of Boyd Street and its surrounds pursuant to Clause 3 of this Deed.

"Traffic Calming Bond" means the bond in the sum of (Initially) \$60,000.00 to be provided by Calsonic to the Council as security for the Traffic Calming Works.

"Traffic Calming Works" means the potential road works to Tugun, Morshead and Monash Streets which may be required pursuant to Clause 7 hereof.

"Upgrade Bond" means the bond in the sum of (Initially) \$589,300 to be provided by Calsonic to the Council as security for the Boyd Street Four Lane Upgrade and includes any further bond provided in substitution therefor pursuant to this Deed.

"Western Bypass" means the proposed arterial road the location and purpose of which is referred to in Section 13 of the Lower Tweed Transportation Study and includes the interchanges required to allow for the transfer of traffic from the Western Bypass to the Boyd Street (NSW) Extension and vice versa.

1.2 Interpretation

In the interpretation of this Deed, unless the context otherwise requires:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) references to a person include a corporation, association, partnership, Government Authority, or other legal entity;

- (d) references to writing include any means of representing or reproducing words (In English), figures, drawings or symbols, in a visible, tangible form;
- (e) references to signature and signing include due execution by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) references to clauses, schedules and appendices refer to clauses, schedules and appendices of this Deed;
- (j) headings and the table of contents are used for convenience only and are to be disregarded;
- (k) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (l) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (m) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it; and
- (n) if any term of this Deed is legally unenforceable or made inapplicable, it shall be severed or read down, but so as to maintain (as far as possible) all other terms of this Deed (unless to do so would change the underlying principal commercial purposes of this Deed).

2. CONSTRUCTION OF ACCESS ROAD

2.1 Construction of Access Road

Upon execution of this Deed Calsonic shall be entitled to construct a temporary access road from the point where the sealed section of Boyd Street currently ceases at CH 930.200 up to the State Border the nature and location of the Access Road being more particularly shown on Drawing No. C1873:10:13A prepared by Burchill Bate Parker & Partners Pty Ltd ("the Access Road").

2.2 Use of Access Road

Calsonic shall be entitled to use the Access Road as a restricted roadway for itself, Council, their employees, contractors, agents and licensees until completion of the Initial Boyd Street Upgrade.

2.3 Fencing

Calsonic shall for safety construct fencing or gateways restricting access at the eastern and western ends of the Access Road to a standard satisfactory to the Council.

3. INITIAL BOYD STREET UPGRADE

3.1 Calsonic to Submit Plans

If Calsonic proceeds with the subdivision of the Cobaki Site for residential development then prior to commencing the Initial Boyd Street Upgrade, it shall submit final design plans for the construction of the Initial Boyd Street Upgrade for approval by the Council and (to the extent necessary) the Department of Transport Queensland.

3.2 Council to Consider and Approve Plans

Provided that the detailed design for that section of Boyd Street, Coolangatta at the Gold Coast Highway has been completed, the Council shall as soon as practicable thereafter consider and approve the plans with such amendments (if any) as shall be reasonably necessary.

3.3 Commencement of Construction

Calsonic shall within 180 days of:-

- (a) receipt of written notice from the Council that the necessary access restrictions of Coolangatta Road pursuant to Clause 3.5 have been effected; or
- (b) approval by the Council and (if necessary) the Department of Transport Queensland of the plans referred to in Sub-Clause (a) hereof

(whichever is the later) commence construction of the Initial Boyd Street Upgrade and shall thereafter complete the same as soon as reasonably practicable.

3.4 Council to Provide Necessary Land

The Council shall make available the Hospital Roundabout Land and any other land required for the Initial Boyd Street Upgrade without charge provided that Calsonic shall provide all necessary surveys and legal services required for the purpose of transfer or dedication of the Hospital Roundabout Land as a road.

3.5 Closure of Coolangatta Road

The Council shall forthwith upon submission by Calsonic of the plans referred to in Clause 3.1 take all necessary steps to procure the restriction of access of the southern part of Coolangatta Road where it intersects Boyd Street to allow for the construction of the Initial Boyd Street Upgrade by Calsonic.

3.6 Liability for Boyd Street Four Lane Upgrade and Traffic Calming Works

Upon commencement by Calsonic of the Initial Boyd Street Upgrade the provisions of Clauses 4,5,6 and 7 hereof shall come into effect and be binding upon the parties hereto and prior to commencement of the Initial Boyd Street Upgrade Calsonic shall lodge the Upgrade Bond and the Traffic Calming-Bond with the Council.

3.7 Nature of Bond

The Upgrade Bond and the Traffic Calming Bond shall each be in the format as approved by the Council (such approval not to be unreasonably withheld) and in the form of an Irrevocable documentary credit from a prime American or Japanese bank confirmed by Westpac Banking Corporation or such other Australian bank as the parties may agree from time to time.

4. BOYD STREET FOUR LANE UPGRADE

4.1 Council May Give Show Cause Notice

If after completion of the Initial Boyd Street Upgrade the Council conducts traffic counts which demonstrate that peak hourly east-bound traffic volume on Boyd Street where it crosses the State Border (the "Count Point") is exceeding 800 vehicles per hour on typical Business Days outside of school holiday periods the Council may give notice to Calsonic in the form of the Fifth Schedule ("the Show Cause Notice") to show cause within 60 days of receipt of the Show Cause Notice as to why the Calsonic should not be required to undertake the Boyd Street Four Lane Upgrade.

4.2 Calsonic May Suggest Alternative Proposal

Calsonic may in response to a Show Cause Notice either:

- (a) by notice in writing to the Council given not later than 60 days after the Show Cause Notice ("the Alternative Proposal Notice") describe in sufficient detail other measures or steps to be undertaken within New South Wales to reduce the traffic flow at the Count

Point to below 800 vehicles per hour within three (3) months of such proposal being accepted by the Council (hereinafter referred to as "the Alternative Proposal"); or

- (b) give notice to the Council not later than 60 days after the Show Cause Notice that Calsonic proposes to undertake or procure the undertaking of the Boyd Street Four Lane Upgrade, such notice to be accompanied by final plans for the Boyd Street Four Lane Upgrade.

4.3 Council May Give Final Notice

If:-

- (a) Calsonic does not submit an Alternative Proposal Notice under Sub-Clause 4.5(b) in response to a Show Cause Notice; or
- (b) the Alternative Proposal after proper and reasonable consideration by the Council is not accepted by the Council; or
- (c) an Alternative Proposal after being accepted by the Council does not within the period of three (3) months from its implementation reduce the peak hourly east-bound traffic volume at the Count Point to below 800 vehicles per hour or lower on typical Business Days outside of school holiday periods;

then, but not before, the Council shall be entitled to give a further notice to Calsonic ("the Final Notice") in the format of the Sixth Schedule calling upon Calsonic to undertake or procure the undertaking of the Boyd Street Four Lane Upgrade.

4.4 Calsonic May Give Notice in Response

Upon receipt of the Final Notice Calsonic may within forty-two (42) days thereafter either:-

- (a) give notice to the Council that Calsonic does not wish to undertake the Boyd Street Four Lane Upgrade and that the Council may have recourse to the Upgrade Bond; or
- (b) give notice to the Council that Calsonic proposes to undertake or procure the undertaking of the Boyd Street Four Lane Upgrade, such notice to be accompanied by final plans for the Boyd Street Four Lane Upgrade.

If Calsonic fails to give either of the notices referred to in this Sub-Clause then Calsonic shall be deemed to have waived its right to undertake the construction of the Boyd Street Four Lane Upgrade itself.

4.5 Time for Completion of Boyd Street Four Lane Upgrade

If Calsonic gives the Council the notice referred to in Sub-Clause 4.2(b) or 4.4(b) Calsonic shall commence construction of the Boyd Street Four Lane Upgrade within two (2) months of the date of receipt notice of approval of the final plans for the Boyd Street Four Lane Upgrade and complete construction thereof within six (6) months of such approval.

5. RECOURSE TO BOND

5.1 Council May Have Recourse to Upgrade Bond

Should Calsonic give the notice referred to in Sub-Clause 4.4(a) or fail to give the notice referred to in Sub-Clause 4.4(b) or having given that notice or notice under Sub-Clause 4.2(b) fail to perform its obligations under Sub-Clause 4.5 (in this Clause referred to as "the Trigger Events") the Council may at its election have recourse to the Upgrade Bond:-

- (a) to the extent of the amount or amounts which the Engineer certifies as representing the fair estimated cost of completing the Boyd Street Four Lane Upgrade which costs shall include the Council's charges for supervision, administration and overheads or to the extent to which sum as is certified by the Engineer aforesaid is not paid by Calsonic;
- (b) to the extent of such sums as the Engineer certifies as representing the fair estimated costs (which shall include the Council's costs and charges for supervision, administration and overheads) of demolishing and/or altering or amending or otherwise making good

any defective workmanship or materials undertaken, carried out, completed or used by Calsonic in the Boyd Street Four Lane Upgrade;

- (c) to the extent of such sum as the Engineer certifies as representing the fair estimated costs of carrying out such further or other works as the Engineer deems necessary to mitigate the effects of any uncompleted work or improperly or partly completed work by Calsonic with respect to the Boyd Street Four Lane Upgrade.

5.2 Engineer's Estimates to be Prima Facie Evidence

Any estimate made by the Engineer under and by virtue of Sub-Clause 5.1 shall be prima facie evidence of the correctness thereof unless manifestly unfair or incorrect.

5.3 Application of Bond by Council

The Council shall apply any sum or sums received by it pursuant to Sub-Clause 5.1 as far as the said sum or sums shall extend to or towards any one or more of the following:-

- (a) in carrying out the Boyd Street Four Lane Upgrade or any part of it not done or undertaken by Calsonic within the time stipulated or prescribed;
- (b) in demolishing, reconstructing, altering or amending any improperly completed or partly completed part of the Boyd Street Four Lane Upgrade done or undertaken by Calsonic;
- (c) in carrying out such other work as the Engineer may consider necessary to mitigate the affects of any uncompleted or improperly completed or partly completed part of the Boyd Street Four Lane Upgrade undertaken by Calsonic.

5.4 Council to Account to Calsonic for Balance

If the Council calls upon the Upgrade Bond pursuant to this Clause and the actual cost of undertaking the Boyd Street Four Lane Upgrade is less than the amount of the Upgrade Bond the Council shall within one (1) month of completion of the Boyd Street Four Lane Upgrade or within eight (8) months of making claim on the Upgrade Bond (whichever is earlier) return the unexpended portion of the Bond moneys to Calsonic.

5.5 Council to Provide Details of Costs

If the Council calls upon the Upgrade Bond pursuant to this Clause then after completion of the Boyd Street Four Lane Upgrade it shall within one (1) month if requested in writing by Calsonic provide to Calsonic complete itemised accounts showing the total costs incurred by the Council with respect to the amounts referred to in Sub-Clauses 5.1(a), (b) and (c) in respect of which the Council has reimbursed itself from the proceeds of the Upgrade Bond.

5.6 Precondition to Calling on Upgrade Bond

- (a) Before it may call for payment on the Upgrade Bond the Council shall firstly give Calsonic not less than twenty-one (21) days notice of its intention to do so, such notice not to be given until the Council has given Calsonic a Final Notice.
- (b) The Council shall not be entitled to call upon the Upgrade Bond unless a resolution of Council to that effect has been passed and the Town Clerk so certifies to the Obligor under the Upgrade Bond.

6. SURRENDER/REDUCTION/RENEWAL OF UPGRADE BOND BY COUNCIL

6.1 When Bond to be Surrendered

The Council shall surrender and return the Upgrade Bond to Calsonic and Calsonic shall be released from any further liability in respect of the Boyd Street Four Lane Upgrade in any of the following circumstances:-

- (a) if the Boyd Street Four Lane Upgrade or other works having the same substantial effect occurs before Calsonic becomes liable to undertake the Boyd Street Four Lane Upgrade;

- (b) If, having become liable to undertake the Boyd Street Four Lane Upgrade, Calsonic undertakes and completes the same so as to be accepted by the Council and the Maintenance period in Clause 10.2 has expired;
- (c) If Calsonic has in a manner reasonably satisfactory to the Council arranged for Council of the Shire of Tweed or such other party to undertake the obligations of Calsonic with respect to the Boyd Street Four Lane Upgrade;
- (d) if the Council is satisfied in its absolute discretion that Calsonic should no longer be liable for the Boyd Street Four Lane Upgrade.

6.2 Other Contributions At the Council's Discretion

Calsonic acknowledges and accepts that Council may at its discretion, impose reasonable relevant and appropriate contributions towards the Boyd Street Four Lane Upgrade on any application for development, consent, or rezoning or subdivision to the extent it is entitled to do so.

6.3 Upgrade Bond to be Reduced Accordingly

In the event that the Council receives a contribution (or security for such contribution) from other parties to works which would comprise part of or operate in substitution for the Boyd Street Four Lane Upgrade so as to render it in whole or in part unnecessary or as to reduce the proportion of the cost of the Boyd Street Four Lane Upgrade for which Calsonic may be come responsible the Council will thereupon give notice thereof to Calsonic (including details of the amount by which that contribution will offset the estimated cost of the Boyd Street Four Lane Upgrade) and upon receipt of such notice Calsonic shall be entitled to reduce the amount of the Upgrade Bond accordingly.

6.4 Renewal/Replacement of Upgrade Bond

Subject to Sub-Clause 6.5 Calsonic shall not later than fourteen (14) days before the then current Upgrade Bond held by the Council expires deliver to the Council a replacement Upgrade Bond with an expiry date being not later than three (3) years after the date of expiry of the then current Upgrade Bond.

6.5 Review of Amount of Upgrade Bond

Any replacement Upgrade Bond shall be for such amount as agreed between the parties not later than thirty (30) days prior to the date of expiry of the then current Upgrade Bond or if the matter has not been agreed between the parties then for such increase of or reduction in the then current Upgrade Bond in order to reflect increases in the Roadworks Cost Index as published by the Department of Transport or in the event that such Index is not published then such increased or reduced sum to reflect the alterations in accordance with changes in the Consumer Price Index (All Groups) Brisbane.

7. TRAFFIC CALMING WORKS

7.1 Council May Give Traffic Calming Notice

If after completion of the Initial Boyd Street Upgrade the Council undertakes traffic surveys which demonstrate by factual evidence that:-

- (a) daily traffic volumes on Tugun, Morshead and Monash Streets Tugun (or any of them) substantially exceed the traffic volumes prevailing before the completion of the Initial Boyd Street Upgrade; and
- (b) the Engineer is of the opinion that such increase represents an unacceptable traffic and public safety risk to the residents of those streets

the Council may give notice to Calsonic in the form of the Seventh Schedule ("the Traffic Calming Notice") requiring Calsonic to undertake such works to those streets as may reasonably be required to remove or minimise the risks to traffic and public safety hereinbefore referred to ("the Traffic Calming Works").

7.2 Calsonic May Suggest Alternative Proposal

Calsonic may in response to the Traffic Calming Notice by notice in writing to the Council given not later than thirty (30) days after receipt of the Traffic Calming Notice propose to Council an alternative method of addressing the traffic and public safety risk.

7.3 Council and Calsonic to Discuss

The Council shall give reasonable consideration and respond to any proposal put forth by Calsonic pursuant to Clause 7.2 but shall not be bound to accept the same.

7.4 Council May Give Final Notice

After considering any alternative proposal put forward by Calsonic the Council shall if it does not accept the same give notice (in this Clause referred to as "the Final Notice") in the form of the Eighth Schedule to Calsonic specifying the nature of the Traffic Calming Works required and Calsonic shall have the right within thirty (30) days of receipt of the Final Notice to:-

- (a) give notice to the Council that Calsonic does not wish to undertake the Traffic Calming Works and that the Council may have recourse to the Traffic Calming Bond; or
- (b) give notice to the Council that Calsonic proposes to undertake or procure the undertaking of the Traffic Calming Works, such notice to be accompanied by final plans for the Traffic Calming Works.

7.5 Time for Completion of Traffic Calming Works

If Calsonic gives the Council the notice referred to in Sub-Clause 7.4(b) Calsonic shall commence construction of the Traffic Calming Works within 1 month of notice from the Council of approval of the final plans for the Traffic Calming Works and complete the construction thereof within four (4) months of such notice of approval.

7.6 Council May have Recourse to Bond

Should Calsonic give the notice referred to in Sub-Clause 7.4(a) or fail to give the notice referred to in Sub-Clause 7.4(b) or having given that notice fail to perform its obligations under Sub-Clause 7.5 (in this Clause referred to as "the Trigger Events") the Council may at its election have recourse to the Traffic Calming Bond:-

- (a) to the extent of the amount or amounts which the Engineer certifies as representing the fair estimated cost of completing the Traffic Calming Works which costs shall include the Council's charges for supervision, administration and overheads or to the extent to which sum as is certified by the Engineer aforesaid is not paid by Calsonic;
- (b) to the extent of such sums as the Engineer certifies as representing the fair estimated costs (which shall include the Council's costs and charges for supervision, administration and overheads) of demolishing and/or altering or amending or otherwise making good any defective workmanship or materials undertaken, carried out, completed or used by Calsonic in the Traffic Calming Works;
- (c) to the extent of such sum as the Engineer certifies as representing the fair estimated costs of carrying out such further or other works as the Engineer deems necessary to mitigate the effects of any uncompleted work or improperly or partly completed work by Calsonic with respect to the Traffic Calming Works.

7.7 Engineer's Estimates to be Prima Facie Evidence

Any estimate made by the Engineer under and by virtue of Sub-Clause 7.6 shall be prima facie evidence of the correctness thereof unless manifestly unfair or incorrect.

7.8 Application of Bond by Council

The Council shall apply any sum or sums received by it pursuant to Sub-Clause 7.6 as far as the said sum or sums shall extend to or towards any one or more of the following:-

- (a) In carrying out the Traffic Calming Works or any part of it not done or undertaken by Calsonic within the time stipulated or prescribed;

- (b) In demolishing, reconstructing, altering or amending any Improperly completed or partly completed part of the Traffic Calming Works done or undertaken by Calsonic;
- (c) in carrying out such other work as the Engineer may consider necessary to mitigate the affects of any uncompleted or Improperly completed or partly completed part of the Traffic Calming Works undertaken by Calsonic.

7.9 Council to Account to Calsonic for Balance

If the Council calls upon the Traffic Calming Bond pursuant to this Clause and the actual cost of undertaking the Traffic Calming Works is less than the amount of the Traffic Calming Bond the Council shall within one (1) month of completion of the Traffic Calming Works or within six (6) months of making claim on the Traffic Calming Bond (whichever is earlier) return the unexpended portion of the Traffic Calming Bond moneys to Calsonic.

7.10 Council to Provide Details of Costs

If the Council calls upon the Traffic Calming Bond pursuant to this Clause then after completion of the Traffic Calming Works if requested in writing by Calsonic provide to Calsonic it will complete itemised accounts showing the total costs incurred by the Council with respect to the amounts referred to in Sub-Clauses 7.6 (a)(b) and (c) in respect of which the Council has reimbursed itself from the proceeds of the Traffic Calming Bond.

7.11 Precondition to Calling on Traffic Calming Bond

Before it may call for payment on the Traffic Calming Bond the Council shall firstly give Calsonic not less than twenty-one (21) days notice of its intention to do so, such notice not to be given until one of the Trigger Events has occurred.

7.12 When Bond to be Surrendered

The Council shall surrender and return the Traffic Calming Bond to Calsonic and Calsonic shall be released from any further liability in respect of the Traffic Calming Works in any of the following circumstances:-

- (a) If, having become liable to undertake the Traffic Calming Works, Calsonic undertakes and completes the same so as to be accepted by the Council and the Maintenance period in Clause 10.2 has expired;
- (b) If the Boyd Street Four Lane Upgrade is completed before Calsonic becomes liable to undertake the Traffic Calming Works.
- (c) If Calsonic notifies the Council that it believes the Traffic Calming Works will not be required (including reasons for it forming that belief) and after due consideration the Council accepts Calsonic's submission that the Traffic Calming Works will not be required.
- (d) if the Traffic Calming Works are undertaken before Calsonic becomes liable to do so.

7.13 Other Contribution for Traffic Calming at the Council's Discretion

Calsonic acknowledges and accepts that Council may at its discretion, impose reasonable relevant and appropriate contributions towards the Traffic Calming Works on any application for development, consent, or rezoning or subdivision to the extent it is entitled to do so.

7.14 Traffic Calming Bond to be Reduced Accordingly

In the event that the Council receives a contribution (or security for such contribution) from other parties to works which would comprise part of or operate in substitution for the Traffic Calming Works so as to render it in whole or in part unnecessary or so as to reduce the proportion of the cost of the Traffic Calming Works for which Calsonic may become responsible the Council will thereupon give notice thereof to Calsonic (including details of the amount by which that contribution will offset the estimated cost of the Traffic Calming Works) and upon receipt of such notice Calsonic shall be entitled to reduce the amount of the Traffic Calming Bond accordingly.

7.15 Renewal/Replacement of Traffic Calming Bond

Subject to Sub-Clause 7.16 Calsonic shall not later than fourteen (14) days before the then current Traffic Calming Bond held by the Council expires deliver to the Council a replacement Traffic Calming Bond with an expiry date being not later than three (3) years after the date of expiry of the then current Traffic Calming Bond.

7.16 Parties May Require Review of Amount of Traffic Calming Bond

Any replacement Traffic Calming Bond shall be for such amount as agreed between the parties not later than thirty (30) days prior to the date of expiry of the then current Traffic Calming Bond or if the matter has not been agreed between the parties then for such increase of the then current Traffic Calming Bond in order to reflect increases in the Roadworks Costs Index as published by the Department of Transport or in the event that such Index is not published then such increased sum to reflect the alterations in accordance with changes in the Consumer Price Index (All Groups) Brisbane.

8. ASSIGNMENT

8.1 Calsonic May Assign

If the Cobaki Site or any part thereof or any interest therein is at law or in equity sold, transferred or alienated or subjected to any trust or agreed to be sold, transferred or subjected to any trust other than in the ordinary course of development of the Cobaki Site and sale of subdivided portions to various purchasers (hereinafter referred to as a "transfer") then Calsonic shall have the right to assign its rights, duties and obligations under this Deed to any purchaser, transferee or beneficiary of any trust created in respect of the Cobaki Site (hereinafter referred to as "the Assignee") subject to the conditions hereinafter appearing.

8.2 Assignee to be Bound

If such transfer takes place prior to the performance and fulfilment of the provisions of this Deed or any of them on the part of Calsonic to be performed and fulfilled any such transfer shall be made subject to compliance with the provisions of this Deed or such part of it as remains unperformed or unfulfilled on the part of Calsonic and so that the Assignee shall be bound contractually by this Deed with the Council for the performance and fulfilment of the provisions of this Deed on the part of Calsonic to be performed and fulfilled or such of those provisions as shall remain unperformed or unfulfilled at the date of such transfer;

8.3 Assignee to Provide Security

The Assignee shall furnish to the Council such security as shall be required by the Council for such performance and fulfilment by the Assignee until the Assignee becomes contractually bound to the Council and furnishes an appropriate security to replace the Upgrade Bond and/or the Traffic Calming Bond held by the Council prior to such transfer.

8.4 Calsonic May Remain Liable

In default of any transfer being made otherwise than in compliance with the foregoing provisions of this Clause, Calsonic shall remain liable for the performance and fulfilment of this Deed and shall at the cost and expense of Calsonic sign, seal and make and do all such documents, acts, matters and things as shall be necessary to comply with and fulfil such of the provisions of this Deed as have not been complied with and fulfilled and on the part of Calsonic to be performed and fulfilled at such time or times as the Council shall require notwithstanding that the time or times appointed for such compliance and fulfilment shall not then have arrived. ↗

8.5 Calsonic Released If Transfer Complies

If any transfer shall have been made in compliance with the provisions of this Clause then Calsonic shall from the date of compliance with these provisions be released from any further liability to the Council pursuant to this Deed but without prejudice to any antecedent breach of its obligations under this Deed prior to the date of such compliance.

9. STANDARD AND DESIGN OF WORKS

9.1 Design and Specification for Works

All designs and specifications for any works which Calsonic has obliged to undertake, carry out, provide or do under or by virtue of this Deed shall be prepared by a qualified Consulting Engineer at the cost of Calsonic unless otherwise provided and shall be submitted to the Council for approval thereof and where necessary the approval of any other authority or Instrumentality having jurisdiction and no such works shall be commenced by Calsonic before it has obtained the said approval or approvals in each and every case.

9.2 Works to be to the Satisfaction of Engineer

All works which Calsonic is obliged to undertake, carry out, provide or do under or by virtue of this Deed or any (Schedule hereto whether in conjunction with the Council or not) shall be undertaken, carried out, provided or done to the reasonable requirements and reasonable satisfaction of the Engineer and under his supervision and to the requirements and satisfaction of any governmental authority or instrumentality having jurisdiction and regard thereto and Calsonic will apply for any approvals from the said authorities or Instrumentalities.

9.3 Indemnity by Calsonic

Calsonic hereby agrees to indemnify and keep indemnified the Council at all times and to save it harmless against all claims, demands, proceedings, damages or costs by or at the inference of any person or body in relation to or in connection with the making, providing, construction or existence of any of the works made and provided by or on behalf of Calsonic in accordance with this Deed or any injury or accident arising therefrom prior to the exceptions of same by Council.

10. ACCEPTANCE OF WORKS BY COUNCIL

10.1 Acceptance of Works

For the purposes of this Clause any road works to be undertaken by Calsonic shall be deemed to have been accepted by the Council when they have been completed in a proper and workmanlike manner to the reasonable satisfaction of the Engineer and he issues his certificate to that effect.

10.2 Maintenance Period for Works

All works which Calsonic is obliged to undertake, carry out, provide or do under or by virtue of this Deed or any Schedule hereto (whether in conjunction with the Council or not) shall be maintained by Calsonic for a period of twelve (12) months after the issue of the Certificate for the acceptance of works referred to in Clause 10.1 and such maintenance shall be for any defect in materials or construction of or works that are actually completed by Calsonic or some other person or Company on its behalf.

10.3 Vesting of Works in Council

Where applicable, upon completion and acceptance by Council of any works to be undertaken and provided by Calsonic pursuant to this Deed the same will vest in the Council and thereafter the Council will after the Maintenance Period referred to in Clause 10.2 be responsible for any further maintenance thereof.

11. DISPUTE RESOLUTION

11.1 Procedure

If any dispute, conflict or difference ("a Dispute") arises between the parties at any time as to the construction of this Deed or as to any other matter or thing of whatsoever nature arising under or in connection with it including (but not limited to:-

- (a) whether any works to be undertaken by Calsonic pursuant to this Deed have been undertaken in a proper and workmanlike manner;
- (b) whether any works required to be undertaken under this Deed have been properly completed (as that term is defined in this agreement);

- (c) whether or not the Boyd Street Four Lane Upgrade is required or otherwise;
- (d) whether an Alternative Proposal as defined in Sub-Clause 4.5 should be implemented;
- (e) whether any estimates made by the Engineer pursuant to this Agreement are correct or reasonable;
- (f) whether the Upgrade Bond should be reduced or Increased

then the Dispute shall be managed as follows:-

11.2 Reference to Mediation

- (a) The Parties shall refer the Dispute to mediation provided by the Dispute Resolution Centre, Bond University ("the Centre").
- (b) The reference shall commence when any party gives notice to the other specifying the Dispute and requiring its resolution under this clause.
- (c) The Parties agree to accept the directions of the Director of the Centre in relation to the convening, organisation and conduct of the mediation.
- (d) Any Information or documents obtained as part of the reference under this clause shall not be used for any purpose other than the settlement of the Dispute through mediation.

11.3 Final Resolution

If the Dispute is not resolved within twenty-one (21) days of the commencement of the reference under Clause 11.1 then either party may then, but not earlier (except for urgent interlocutory relief), commence proceedings in any court of competent jurisdiction.

11.4 Intention of Parties

The intention of the Parties is that the status quo should be maintained whilst the Parties negotiate (and, if necessary, mediate) to resolve the Dispute in an amicable fashion without resort to litigation if possible.

11.5 Contract Performance

Each party shall continue to perform its obligations under this Deed notwithstanding the existence of a Dispute or any proceedings under this clause.

12. FORCE MAJEURE

12.1 Excuse from performance of Obligations

If any party is prevented, hindered or delayed from performing any of its obligations under this Agreement (other than an obligation to pay money) by an Event of Force Majeure, then as long as that situation continues, that party shall be excused from performance of such obligation to the extent it is so prevented, hindered or delayed, and the time for performance of such obligation shall be extended accordingly.

12.2 Notification

A party affected by an Event of Force Majeure shall immediately notify the other parties of its occurrence and its effect or likely effect, and (subject to Clause 12.3) use all reasonable endeavours to minimise the effect of the Event of Force Majeure and to bring it to an end.

12.3 Industrial Action

No party shall be obliged to settle any strike or other industrial action, dispute or disturbance of any kind, except on terms wholly satisfactory to it.

13. NOTICES**13.1 Means of giving notice**

Any notice or other communication in connection with this Agreement is taken to have been duly given when made in writing and delivered or sent by post or facsimile to the party to which such notice or communication is intended to be given, at the following respective addresses:

The Council:

The Town Clerk
Gold Coast City Council
PO Box 5042
GOLD COAST MAIL CENTRE QLD 4217

Calsonic:

The Secretary
Calsonic Management Services Pty Ltd
PO Box 5778
GOLD COAST MAIL CENTRE QLD 4217

or to such other address or facsimile number as may from time to time be notified in writing by either party to the other for the purposes of this Clause.

13.2 Receipt after Posting

Any notice or other communication sent by post shall be taken to have been received at the expiration of two (2) Business Days after the date of posting.

13.3 Receipt of Facsimile

Any notice or other communication sent by facsimile transmission is taken to have been received upon completion of an apparently successful transmission to the recipient. However, if a facsimile is transmitted on a Business Day after 5.00 p.m. (at the place of receipt) or on a day which is not a Business Day, it shall be deemed to have been received on the next Business Day.

14. PROPER LAW: JURISDICTION**14.1 Choice of law**

This Agreement is governed by and shall be construed in accordance with the laws of Queensland

14.2 Jurisdiction

- (a) (Entered into in Queensland) This Agreement is deemed to be entered into in the State of Queensland.
- (b) (Queensland Courts) Any action, suit or proceeding relating in any way to this Agreement may be instituted, heard and determined in a court of competent jurisdiction in Brisbane or Southport.
- (c) (Submission to jurisdiction) Each party irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.
- (d) (Waiver of objection) Each party irrevocably waives any objection which it may now or in the future have to the laying of venue of any action, suit or proceeding relating in any way to this Deed brought in such court.
- (e) (Waiver of inconvenient forum claim) Each party irrevocably waives any claim that any such action, suit or proceeding brought in any such court is brought in an inconvenient forum.

15. GENERAL PROVISIONS**15.1 Successors**

This Deed is binding on the parties and their respective successors and permitted assigns, and shall be enforceable by and against the parties or those successors and assigns.

15.2 Variations and waivers to be in writing

No variation, modification or waiver of any provision in this Deed, nor consent to any departure by any party from any such provision, shall be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent shall be effective only to the extent to or for which it may be made or given.

15.3 Waiver

No failure, delay, relaxation or indulgence by any party in exercising any right conferred on such party by this Deed shall operate as a waiver of such right, nor shall any single or partial exercise of any such right nor any single failure to do so, preclude any other or future exercise of it, or the exercise of any other right under this Deed.

15.4 Further Assurances

Each party to this Deed shall do all things and sign all deeds and other documents as may reasonably be required by the other so as to carry out and give effect to the terms and intentions of this Deed and to perfect, protect and preserve the rights of the other parties to this Deed.

15.5 Joint and Several obligations

If any party consists of more than one person, then the liability of those persons in all respects under this Deed shall be a joint liability of each two or more of those persons and a liability of each of those persons severally.

15.6 Liabilities to More than One Party

Any agreement, representation or warranty in favour of more than one party is for the benefit of each two or more of those parties jointly and each of them severally.

15.7 Costs

Calsonic shall pay all costs, including the Council's legal costs on a solicitor and own client basis of and incidental to negotiations, preparation and execution of this Deed.

15.8 Time of Essence

Time is of the essence of this Deed.

FIRST SCHEDULE
The Cobaki Site

The parcel of land the approximate location of which is identified on the Plan forming Appendix 3 and being more particularly described as follows:-

DESCRIPTION	VOL.	FOL.	AREA
Lot 46 DP755740	12244	50	59.89 ha
Lot 54 DP755740	12214	250	32.38 ha
Lot 55 DP755740	12214	250	86.20 ha
Lot 199 DP755740	10228	178	21.95 ha
Lot 200 DP755740	12575	215	16.19 ha
Lot 201 DP755740	12496	206	54.23 ha
Lot 202 DP755740	12575	218	32.98 ha
Lot 205 DP755740	12575	216	43.20 ha
Lot 206 DP755740	12575	219	37.74 ha
Lot 209 DP755740	12575	217	16.19 ha
Lot 228 DP755740	12214	250	77.40 ha
Lot 305 DP755740	12471	38	31.97 ha
Lot 1 DP562222	12225	10	8.277ha
Lot 2 DP566529	12392	8	15.78 ha
Lot 1 DP570076	12686	35	37.96 ha
Lot 1 DP570077	12608	234	20.70 ha

All being Parish of Terranora, County of Rous, Shire of Tweed in the State of New South Wales.

SECOND SCHEDULE
Hospital Roundabout Land

The triangular portion of Council freehold land, approximately 1300m², which adjoins the Boyd Street road reserve to the southern side as identified on the Burchill Bate Parker & Partner plans C1873:10:03, C1873:10:11 and C1873:11:03.

THIRD SCHEDULE
Initial Boyd Street Upgrade

Those road works proposed by Calsonic and shown on preliminary design plans submitted to Council for:-

1. (a) The intersection of Boyd Street to Gold Coast Highway as shown on Burchill Bate Parker & Partner plans C1873:09:01 to 18 as amended by Council's decision PD102 on 11 December 1992 and the Burchill Bate Parker & Partner plan C1873:09:SK2
- (b) Those road works from the roundabout entrance to the John Flynn Hospital to the State border as shown on Burchill Bate Parker & Partner plans C1873:10:01 to 12 (but amended to show the road as having a width of 8 metres).
2. The construction of a pedestrian and cycle link on the northern side of Boyd Street between the State Border and the Gold Coast Highway with adequate provision made at any intersection for pedestrian and cycle crossings.
3. Continuity of the existing bicycle facility on Coolangatta Road to ensure adequate pedestrian cycle crossings are provided and bike path linkages are extended to connect to existing bikeways.

FOURTH SCHEDULE
Boyd Street Four Lane Upgrade

works associated with the four lane upgrading of Boyd Street between the Boyd Street section to the Gold Coast Highway and the roundabout to the John Flynn Hospital as shown on Burchill Bate Parker & Partner plans C1873:11:01 to 05 and the Burchill Bate Parker & Partner Schedule of Works dated 29 April 1993.

FIFTH SCHEDULE

Show Cause Notice for Boyd Street Four Lane Upgrade (Clause 4.3)

TO: Calsonic Management Services Pty Ltd ACN 010 909 976
 Level 12
 Corporate Centre One
 Bundall Road
 BUNDALL QLD 4217

Council of the City of Gold Coast hereby gives you notice pursuant to Clause 4.1 of the agreement dated 1993 entered between us that peak hourly east-bound traffic volume on Boyd Street where it crosses the State Border now exceeds 800 vehicles per hour on typical business days outside of school holiday periods and calls upon you to show cause within sixty (60) days of receipt of this notice as to why you should not be required to undertake the Boyd Street Four Lane Upgrade as defined in the said agreement.

Attached to this notice is the summarised traffic counting data supporting Council's right to issue this notice.

Please note that you may in response to this notice either:-

- (a) by notice in writing given not later than sixty (60) days after receipt of this notice describe in sufficient detail other measures or steps to be undertaken within New South Wales to reduce the traffic flow at the count point mentioned above to below 800 vehicles per hour within three (3) months of such proposal being accepted by Council; or
- (b) give notice to the Council not later than sixty (60) days after receipt of this notice that you propose to undertake or procure the undertaking of the Boyd Street Four Lane Upgrade, such notice to be accompanied by final plans for the Boyd Street Four Lane Upgrade.

DATED THIS DAY OF 19 .

.....
 TOWN CLERK

SIXTH SCHEDULE**Final Notice Relating to Boyd Street Four Lane Upgrade (Clause 4.3)**

TO: Calsonic Management Services Pty Ltd ACN 010 909 976
Level 12
Corporate Centre One
Bundall Road
BUNDALL QLD 4217

Council of the City of Gold Coast hereby gives you notice pursuant to Clause 4.3 of the agreement dated 1993 entered between us that [insert grounds under Clause 4.3 pursuant to which the notice is given] and hereby calls upon you to undertake or procure the undertaking of the Boyd Street Four Lane Upgrade as defined in the said agreement.

Please note that pursuant to Clause 4.4 of the said agreement you may within forty-two (42) days of receipt of this notice either:-

- (a) give notice to the Council that you do not wish to undertake the Boyd Street Four Lane Upgrade and that the Council may have recourse to the Upgrade Bond provided pursuant to the said agreement; or
- (b) give notice to the Council that you propose to undertake or procure the undertaking of the Boyd Street Four Lane Upgrade, such notice to be accompanied by final plans for the Boyd Street Four Lane Upgrade.

If you fail to give either of the notices referred to above then you shall be deemed to have waived your right to undertake the construction of the Boyd Street Four Lane Upgrade.

DATED THIS DAY OF 19 .

.....
TOWN CLERK

SEVENTH SCHEDULE
Traffic Calming Notice (Clause 7.1)

TO: Calsonic Management Services Pty Ltd ACN 010 909 976
Level 12
Corporate Centre One
Bundall Road
BUNDALL QLD 4217

Council of the City of Gold Coast hereby gives you notice pursuant to Clause 7.1 of the agreement date 1993 that the Council has undertaken traffic surveys which demonstrate by factual evidence that:-

- (a) daily traffic volumes on Tugun; Morshead and Monash Streets, Tugun [~~delete or amend as appropriate~~] substantially exceed the traffic volumes prevailing before the completion of the Initial Boyd Street Upgrade; and
- (b) the Chief Engineer is of the opinion that such increase represents an unacceptable traffic and public safety risk to the residents of those streets.

And hereby requires you to undertake the works specified in the appendix to this agreement such works being reasonably required to remove or minimise the risk to traffic and public safety hereinbefore referred to.

Attached to this notice is the traffic survey upon which this notice is given.

Please note that in response to this notice you may by notice in writing to the Council given not later than thirty (30) days after receipt of this notice propose to the Council an alternative method of addressing the traffic and public safety risk referred to above.

DATED THIS DAY OF 19

.....
TOWN CLERK

EIGHTH SCHEDULE
Final Notice for Traffic Calming Works (Clause 7.4)

TO: Calsonic Management Services Pty Ltd ACN 010 909 976
Level 12
Corporate Centre One
Bundall Road
BUNDALL QLD 4217

Council of the City of Gold Coast hereby gives you notice pursuant to Clause 7.4 of the agreement dated 1993 entered between us that having given consideration to any alternative proposals put forward by Calsonic pursuant to Clause 7.2 of the said agreement now requires Calsonic to undertake the Traffic Calming Works specified in the Schedule to this notice.

You are advised that you have the right within thirty (30) days of receipt of this notice to:-

- (a) give notice to the Council that you do not wish to undertake the Traffic Calming Works and that the Council may have recourse to the Traffic Calming Bond; or
- (b) give notice to the Council that you propose to undertake or procure the undertaking of the Traffic Calming Works, in which case the notice must be accompanied by final plans for the Traffic Calming Works.

DATED THIS DAY OF 19 .

.....
TOWN CLERK

APPENDIX 1
[Plan of Boyd Street East, Boyd Street (Qld) and (NSW) Extensions]



Cobaki Lakes

APPENDIX 1

COBAKI LAKES

COBAKI LAKES

COBAKI BROADWAY

CROWN WETLAND

SWANUP

BY-PASS

BY-PASS

NIHRAN HOSPITAL

SEWAGE TREATMENT PLANT

TIP

GENCO BENT

OLD NSW

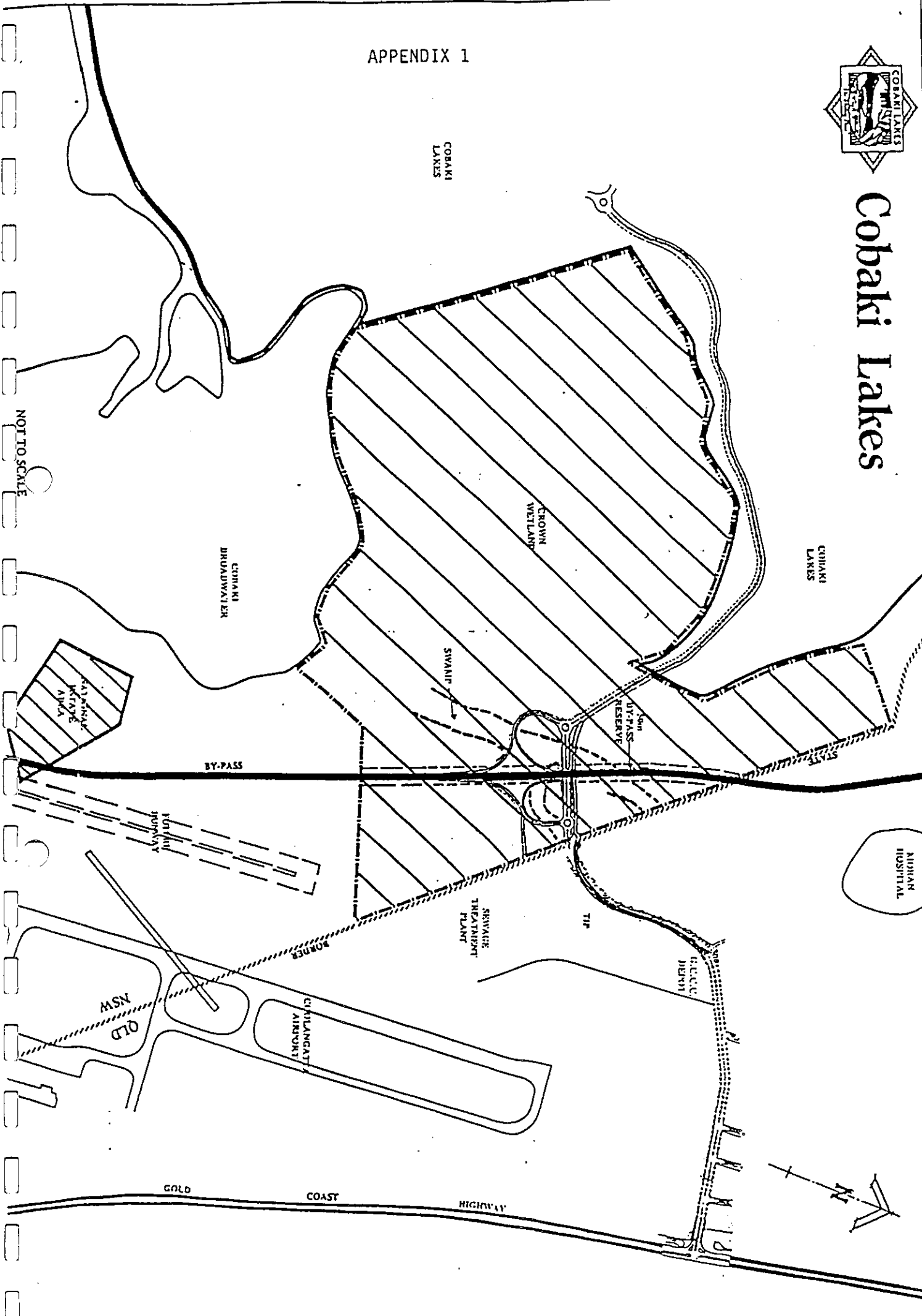
WILLANGAT AIRPORT

GOLD

COAST

HIGHWAY

NOT TO SCALE

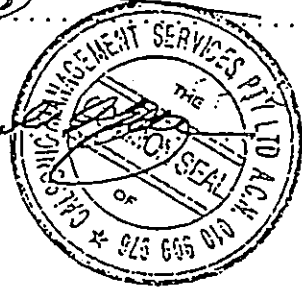


IN WITNESS WHEREOF the parties hereto have executed on the day and year first hereinbefore written.

THE COMMON SEAL of CALSONIC MANAGEMENT SERVICES PTY LTD was hereunto affixed in the presence of

Y. LANE M. KAKIMOTO a Director and X HAROLD J. ELLIS a Director/Secretary of the company who certify they are the proper officers to affix the seal

.....
Director
.....
Director/Secretary



X J.A. Gidley J.P.
A Justice of the Peace/Solicitor

GIVEN under the Corporate Seal of COUNCIL OF THE CITY OF GOLD COAST this 21 day of July, 1993 and signed by ALEXANDER JAMES DOUGLAS BELL (Mayor) and ROBERT ERIC MARUICE TOWSON (Deputy Town Clerk) who certify they are the proper officers to affix this seal in the presence of

.....
Mayor
.....
Deputy Town Clerk

.....
A Justice of the Peace/Solicitor

JOHN RANGI ERIC CAMPBELL J.P.

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Annexure 2

Tweed Shire Council
Deed

6.8.93

RUTHNING

Solicitors & Notaries

Level 14
50 Cavill Avenue
Surfers Paradise
Queensland 4217

Telephone
(075) 70 0200

Facsimile
(075) 92 2285

FR

**CALSONIC MANAGEMENT SERVICES PTY LTD
TWEED COUNCIL**

BOYD STREET ROAD WORKS DEED

**FEEZ RUTHNING
Solicitors and Notaries
Level 14
50 Cavill Avenue
SURFERS PARADISE QLD 4217**

Telephone: (075) 700 200
Ref: GRH:J:\m55\8271

DATED 5TH AUGUST 1993

CALSONIC MANAGEMENT SERVICES PTY LTD
TWEED COUNCIL

BOYD STREET ROAD WORKS DEED

FEEZ RUTHNING
Solicitors and Notaries
Level 14
50 Cavill Avenue
SURFERS PARADISE QLD 4217

Telephone: (075) 700 200
Ref: GRH:J:\m55\8271

DEVELOPMENT DEED

THIS DEED is made the 6TH day of AUGUST ~~1993~~ One Thousand Nine Hundred and Ninety Three

BETWEEN CALSONIC MANAGEMENT SERVICES PTY LTD A.C.N 010 909 976 a company duly incorporated in Queensland and having its registered office at Level 12, Corporate Centre One, Bundall Road, Bundall in the said State (hereinafter with its successors and assigns called "the Applicant") of the one part

AND TWEED COUNCIL a body corporate created by and under the Local Government Act (1919) (hereinafter with its successors and assigns called "the Council") of the other part

WHEREAS:

- A. The Applicant's ultimate holding company, Calsonic International Inc, A.R.B.N. 010 954 195 is the registered proprietor of an estate in fee simple in that parcel of land situated within the area administered by the Council being the land more particularly described in the First Schedule hereto and hereinafter referred to as "the Cobaki Site".
- B. The Applicant proposes to develop the Cobaki Site as a master planned community in accordance with approvals granted or to be granted by the Council as required.
- C. By Development Approval dated 5th January 1993 and amended on 30th March 1993 ("the Approval") the Council has granted the Applicant consent to develop certain land forming part of the Cobaki Site and further land more particularly described in the Second Schedule (which land is hereinafter referred to as "the Road Reserve") for the purpose of the construction of a road and associated road works extending from within the Cobaki Site to the State border ("the Boyd Street (NSW) Extension").
- D. Upon or immediately prior to the construction of the proposed arterial by-pass road known as the Western Bypass it will be necessary for the Council to construct an overpass of two or more lanes ("the Boyd Street Overpass") on the Boyd Street (NSW) Extension upon or immediately prior to commencement of construction of that portion of the Western Bypass which intersects with the Boyd Street (NSW) Extension.
- E. It is the intention of the parties hereto that the Council be responsible for the costs of the design, approval and construction of the Boyd Street Overpass and for any necessary land acquisitions, at a future prescribed time, but that the Applicant contribute a certain sum to such costs.
- F. The Applicant has agreed to contribute an amount of money towards the completion of the Boyd Street Overpass by the Council to the extent of two (2) lanes only.
- G. It is acknowledged by the Council and the Applicant that future development within the Tweed Shire will require the construction of further road works including a connector road from the Bilambil Heights area joining to the Boyd Street (NSW) Extension (which further connector road is hereinafter referred to as "the Bilambil Heights Connector Road").
- H. The Bilambil Heights Connector Road will traverse the Cobaki Site in the approximate location shown on the plan forming Appendix 3.
- I. The Council and the Applicant acknowledge and agree that the road system comprising the Bilambil Heights Connector Road, and the Boyd Street (NSW) Extension will form an important part of the road network servicing the Tweed Shire and will facilitate the future development of the Bilambil Heights area and the realisation of the Tweed Local Environmental Plan.
- J. The Council of the City of Gold Coast (hereinafter with its successors and assigns called "GCCC") has conditionally agreed with the Applicant that the Applicant may construct an extension of Boyd Street, Tugun from the point where it currently terminates to the State border to link with the Boyd Street (NSW) Extension (which extension of Boyd Street in Queensland is hereinafter referred to as "the Boyd Street (Qld) Extension").
- K. As a condition of its agreement to allow the construction of the Boyd Street (Qld) Extension, GCCC has required the Applicant to agree (inter alia) to upgrade that part of Boyd Street Tugun the approximate location of which is indicated on the plan forming Appendix 1 (hereinafter referred to as "Boyd Street East") to four (4) lanes if the flow of eastbound traffic at the Count Point should exceed the volume specified in Clause 4 of the GCCC Agreement before the completion of the proposed Western Bypass.

- L. The Council further acknowledges and accepts that if the Bilambil Heights Connector Road is completed before the completion of the Western Bypass it will increase the traffic flow at the Count Point which may cause the Applicant to incur or contribute to the Applicant incurring liability in respect of the upgrading of Boyd Street East to four (4) lanes ("the Upgrade Liability").
- M. The Boyd Street (Qld) Extension and the Boyd Street Upgrade (if required) will benefit the Shire of Tweed by providing an alternative northerly access to the Gold Coast and Pacific Highways which will enable the residential development of the Bilambil Heights area and the fulfilment of the Tweed Local Environmental Plan.
- N. The parties have entered into this Deed to clarify certain of the conditions contained in the Approval and to ensure that the Applicant is properly protected against or compensated for the Upgrade Liability.

NOW THIS DEED WITNESSETH AND THE PARTIES COVENANT AND AGREE AS FOLLOWS:-

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires:

"Applicant" means Calsonic Management Services Pty Ltd its successors and assigns.

"Approval" means the Development Approval granted by the Council in respect of development application number 92/315 for the construction of a road and associated road works, a copy of which Development Approval forms Appendix 2.

"Bilambil Heights Connector Road" means the road to be constructed to link the Bilambil Heights area and other areas of the Tweed Shire with the Boyd Street (NSW) Extension and includes the Cobaki Road Land, and includes any other road connection in the same general vicinity having the same intentions or consequence;

"Boyd Street East" means that part of Boyd Street Tugun which may require upgrading to four (4) lanes pursuant to the GCCC Agreement being the area shaded in green on the plan forming Appendix 1.

"Boyd Street (Qld) Extension" means the proposed extension to Boyd Street on the Queensland side of the State border the approximate location of which is shaded in red on the plan forming Appendix 1.

"Boyd Street (NSW) Extension" means the proposed two lane extension to Boyd Street on the New South Wales side of the border the approximate location of which is shaded in blue on the plan forming Appendix 1.

"Boyd Street Overpass" means the two-lane overpass on the Boyd Street (NSW) Extension to be constructed at the point where the Boyd Street (NSW) Extension intersects the proposed Western Bypass the scope and approximate current cost of which is identified by the Schedule of Works forming Appendix 4 but does not include any additional lanes or ramps which the Council may construct or cause to be constructed.

"Boyd Street Upgrade" means the upgrading of Boyd Street East to four (4) lanes pursuant to Clause 4 of the GCCC Agreement.

"Business Day" means a day on which banks are open for commercial business in the place specified in the provision in which the expression occurs or (if none) in the place or places where performance of the provision is to take place;

"Cobaki Road Land" means that part of the Cobaki Site to be acquired by the Council for two lanes of the Bilambil Heights Connector Road being that portion of land having a width of not more than 20 metres, linking with (and, in part, parallel to) the Boyd Street (NSW) Extension and traversing the Cobaki site in the approximate location shaded blue on the plan forming Appendix 3.

"Cobaki Site" means the land more particularly described in the First Schedule.

"committed" means with respect to the Western Bypass that stage where either the Federal Government or the New South Wales State Government and Queensland State Government have in their current budgets committed funding for the construction of the Western Bypass where it will intersect Boyd Street (NSW) Extension and have formally requested Council to commence construction of the Boyd Street Overpass.

"Completed" means in relation to the Western Bypass or the Boyd Street (NSW) Extension or the Bilambil Heights Connector Road that stage when construction of the relevant road works has been finished and accepted by the relevant authority.

"Completion of the Cobaki Project" means that stage when the Council has sealed the linen plans for the last stage of the proposed residential subdivision of the Cobaki Site and has released the same to the Applicant.

"Council" means Tweed Council its successors and assigns.

"Count Point" means the point on Boyd Street in Queensland where it crosses the border from Queensland into New South Wales.

"EP & A Act" means the Environmental Planning & Assessment Act (1979).

"Event of Force Majeure" means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it; without limiting the above it includes:

- (a) a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage or vandalism;
- (b) a strike, lockout or industrial action, dispute or disturbance of any kind;
- (c) an act of a government, local government, or a government authority;
- (d) an act of God; or
- (e) a storm, tempest, fire, flood, earthquake or other natural calamity;

"GCCC" means The Council of the City of Gold Coast its successors and assigns.

"GCCC Agreement" means the agreement entered or to be entered between the Applicant and GCCC providing for (inter alia) the construction of the Boyd Street (Qld) Extension and the Boyd Street Upgrade, an unsigned copy of which forms Appendix 5.

"Road Reserve" means the area of land comprising approximately 6.86ha required for the construction of the Boyd Street (NSW) Extension and being described as Lots 1, 2, 3 and 4 on Deposited Plan 822863.

"RTA" means the Roads and Traffic Authority of New South Wales.

"Overpass Bond" means the bond to be provided to the Council to secure the contribution to be made by the Applicant towards the construction of the Boyd Street Overpass.

"Overpass Contribution" means the sum of money to be contributed by the Applicant to the construction of the Boyd Street Overpass as determined in accordance with Clause 4.

"Upgrade Bond" means the bond in the sum of (initially) \$589,300 to be provided by the Applicant to GCCC as security for the Upgrade Liability or any part thereof and includes any further bond provided in substitution therefor pursuant to the GCCC Agreement.

"Upgrade Liability" means any costs expenses commitments or other liability which the Applicant may incur directly or indirectly in connection with the Boyd Street Upgrade including without limitation the costs and expenses of the Applicant in undertaking the Boyd Street Upgrade (whether by way of reimbursement of such costs to GCCC or otherwise) and includes the cost of providing maintaining and renewing the Upgrade Bond.

"Western Bypass" means the proposed arterial road the approximate proposed location of which is shown on the plan forming Appendix 1 and the purpose of which is to alleviate traffic congestion in the southern Gold Coast area and which is referred to in Section 13 of the Tweed Council Local Government Study.

1.2 Interpretation

In the interpretation of this Deed, unless the context otherwise requires:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) references to a person include a corporation, association, partnership, Government Authority, or other legal entity;
- (d) references to writing include any means of representing or reproducing words (in English), figures, drawings or symbols, in a visible, tangible form;
- (e) references to signature and signing include due execution by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) references to clauses, schedules and appendices refer to clauses, schedules and appendices of this Deed;
- (j) headings and the table of contents are used for convenience only and are to be disregarded;
- (k) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (l) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (m) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it; and
- (n) if any term of this Deed is legally unenforceable or made inapplicable, it shall be severed or read down, but so as to maintain (as far as possible) all other terms of this Deed (unless to do so would change the underlying principal commercial purposes of this Deed).

2. CONSTRUCTION OF BOYD STREET (NSW) EXTENSION

The Applicant will upon execution of this Deed and the GCCC Agreement construct the road and associated road works for the Boyd Street (NSW) Extension in accordance with the provisions of the Approval.

3. COUNCIL TO REIMBURSE APPLICANT FOR ROAD RESERVE

3.1 Amount

In consideration of the Applicant acquiring the Road Reserve for the purpose of the construction of the Boyd Street (NSW) Extension and the Boyd Street Overpass the Council will reimburse to the Applicant its costs of acquisition in the sum of \$60,000.00 by giving credits to the Applicant against liability for any contributions or dedications under Section 94 of the EP & A Act to that sum in respect of any applications for development consent lodged by or on behalf of the Applicant with the Council.

3.2 Section 94 Contributions

The Council will include the cost of the reimbursement referred to in Clause 3.1 and the cost of purchase of the Cobaki Road Land as part of its costs estimate for calculation of infrastructure costs for the purpose of Section 94 of the EP & A Act.

4. CONSTRUCTION OF BOYD STREET OVERPASS

4.1 Responsibility for Costs of Construction

The Council acknowledges and agrees that the Council is responsible for the cost of design, approval and construction of the Boyd Street Overpass and the relevant interchanges with the Western Bypass and that the estimated costs thereof (including the costs of providing the Overpass Bond) have been or will be taken into account in determining future Lower Tweed Transportation Contributions under Section 94 of the EP & A Act.

4.2 Applicant to Contribute to Costs of Boyd Street Overpass

- (a) The Applicant will contribute the sum of \$1,570,000 (which sum as increased or reduced in accordance with sub-clause 4.4 is hereinafter referred to as "the Overpass Contribution") towards the costs of constructing the Boyd Street Overpass.
- (b) The parties acknowledge and agree that the said sum is a contribution only and does not constitute an estimate or calculation of the final cost of the Boyd Street Overpass for the purposes of Section 94 of the EP & A Act.

4.3 Delivery of Bond

- (a) The Applicant will prior to commencing works in accordance with the Approval deliver to the Council a bond in favour of the Council for a sum equivalent to the Overpass Contribution as security for the performance by the Applicant of its obligation to make the Overpass Contribution ("the Overpass Bond").
- (b) The Overpass Bond shall be in the form of an irrevocable documentary credit from a prime American or Japanese bank confirmed by Westpac Banking Corporation or such other Australian bank as the parties may agree from time to time.

4.4 Review of Overpass Contribution

- (a) Either party may not less than three (3) months prior to the expiry date of the then current Overpass Bond give notice to the other ("the Bond Review Notice") notifying the other party of its then current estimate of the cost of undertaking the works and providing the materials specified in Appendix 4 (which works are those works which it is estimated would be required to complete the construction of the Boyd Street Overpass) (the "revised estimate"). Any Bond Review Notice shall be accompanied by the cost estimates upon which the revised estimate is based.
- (b) Unless the other party disputes the revised estimate of the Overpass Contribution in the Bond Review Notice within twenty-one (21) days of receipt thereof, the revised estimate shall become the Overpass Contribution and the Applicant shall arrange for a new Overpass Bond for a sum equivalent to the revised estimate and shall deliver the same to the Council in exchange for the then current Overpass Bond.
- (c) If either party disputes the revised estimate then it may refer the dispute to determination by an expert pursuant to Clause 8.
- (d) If an Overpass Bond becomes due for renewal before any such dispute has been resolved the Applicant shall provide a replacement bond of the same amount as the then current Overpass Bond pending resolution of the dispute.

4.5 Renewal/Replacement of Overpass Bond

Subject to Sub-Clause 4.4 the Applicant shall not later than fourteen (14) days before the then current Overpass Bond held by the Council expires deliver to the Council a replacement Overpass Bond for the then current Overpass Contribution with an expiry date being not later than three (3) years after the date of expiry of the then current Overpass Bond.

4.6 Failure by the Applicant to Renew Bond

- (a) If seven (7) days prior to the date of expiry of the then current Overpass Bond the Applicant has not provided to the Council a replacement Overpass Bond for the same amount (or such other amount as may be required pursuant to Sub-Clause 4.4) the Council shall be entitled to call upon the then current Overpass Bond.
- (b) If the Council calls upon the Overpass Bond pursuant to this Sub-Clause it shall forthwith invest the monies received in an authorised trustee investment, with the monies together with the interest accrued thereon being held pursuant to the same terms and conditions as the Overpass Bond itself.
- (c) The Applicant shall have the right at any time thereafter to require payment of the monies so held and the interest accrued to it or as it directs in exchange for a new Overpass Bond for the amount of the then current Overpass Contribution.

4.7 Council to Give Notice of Proposed Construction of Boyd Street Overpass

When the Council is notified by the RTA or other competent authority that:-

- (a) construction of the Western Bypass has been committed; and
- (b) Council is required to construct the Boyd Street Overpass;

Council shall within fourteen (14) days give the Applicant written notice thereof accordingly.

4.8 Council to Give Notice of Completion of Boyd Street Overpass

The Council shall upon commencement of construction of the Boyd Street Overpass give notice thereof to the Applicant and the Applicant shall within thirty (30) days of receipt of such notice pay the Overpass Contribution, failing which the Council may have recourse to the Overpass Bond to the extent necessary to satisfy the Applicant's obligation to make the Overpass Contribution and shall account forthwith to the Applicant for the balance (if any).

4.9 Pre-Condition to calling on Overpass Bond

- (a) Before it may call for payment on the Overpass Bond the Council shall firstly give the Applicant not less than twenty-one (21) days notice of its intention to do so.
- (b) The Council shall not be entitled to call upon the Overpass Bond unless a resolution of Council to that effect has been passed and the General Manager so certifies to the Obligor under the Overpass Bond.

4.10 Council to Seek Other Contributions Where Possible

The Council acknowledges and accepts that the Boyd Street Overpass will bring positive benefits to other developers and ratepayers in its jurisdiction and undertakes to impose reasonable relevant and appropriate contributions towards the Boyd Street Overpass on any application for development, consent, or rezoning or subdivision to the extent it is entitled to do so.

4.11 Applicant to Receive Section 94 Credits

- (a) In consideration of the Applicant agreeing to make the Overpass Contribution and providing the Overpass Bond the Council hereby waives the requirement that the Applicant pay any contributions in respect of the Cobaki Site which might otherwise have been imposed by the Council in accordance with Lower Tweed Transportation Study (or equivalent transportation contribution plan in force from time to time) pursuant to its powers under Section 94 of the EP & A Act until the contributions so waived equal the aggregate of the Overpass Contribution and one-half the costs incurred by the Applicant in establishing maintaining and renewing the Overpass Bond from time to time ("the Aggregate Sum").
- (b) If at any time the amount of the Overpass Contribution is reduced pursuant to sub-clause 4.4 or if for any reason whatsoever the amount of the Aggregate Sum at any time is less than the amount of Section 94 contributions waived pursuant to this sub-clause,

then the Applicant shall forthwith pay to the Council any Section 94 contributions so waived in excess of the Aggregate Sum.

- (c) The Applicant shall when requested by the Council provide to the Council details of the costs incurred by the Applicant in establishing maintaining and renewing the Overpass Bond certified correct by Messrs KPMG Peat Marwick.

4.12 When Overpass Bond to be Surrendered

- (a) If:-
- (i) the Western Bypass project is abandoned prior to the completion of the Cobaki Lakes Project; or
 - (ii) the Council refuses or is unable to comply with its obligations under sub-clause 4.11; or
 - (iii) some other party pays the cost of construction or becomes liable to pay the cost of construction of the Boyd Street Overpass; or
 - (iv) contributions collected and set aside by the Council towards the cost of construction of the Boyd Street Overpass equal or exceed the Council's reasonable estimate of the actual cost of construction thereof;

then the Applicant shall be released from any further liability to make the Overpass Contribution or to contribute in any other way to the construction of the Boyd Street Overpass. The Applicant may then at its option either pay the Council any contributions waived by the Council pursuant to Clause 4.11 (in which case the Council will forthwith return the Overpass Bond to the Applicant) or may authorise the Council to make immediate call upon the Overpass Bond to the extent of such waived contributions (in which case the Council shall account forthwith to the Applicant for the balance if any of the funds realised by calling upon the Overpass Bond).

- (b) If upon completion of the Cobaki Project the Council has not given the Applicant the notices referred to in sub-clauses 4.7 and 4.8 then the Applicant will pay the Overpass Contribution to the Council within twenty-eight (28) days of the completion of the Cobaki Project (or within that period authorise the Council to make immediate call upon the Overpass Bond to the extent of the Overpass Contribution) whereupon the Applicant shall be released from any further liability to make the Overpass Contribution or to contribute in any other way to the construction of the Boyd Street Overpass.

5. BOYD STREET QUEENSLAND UPGRADE

5.1 Benefits of Upgrade

The parties acknowledge and agree that:-

- (a) the Applicant has entered into or is about to enter into an agreement ("the GCCC Agreement") with the Council for the City of Gold Coast ("GCCC") to provide (inter alia) for those circumstances in which the Applicant will become responsible for the Boyd Street Upgrade.
- (b) the Boyd Street (Queensland) Extension and the Boyd Street Upgrade (if required) will benefit the Shire of Tweed by providing an alternative northerly access to the Gold Coast and Pacific Highways which will enable the residential development of the Bilambil Heights area and the fulfilment of the Tweed Local Environmental Plan.

5.2 Avoidance of Upgrade Liability

The Council shall use all reasonable endeavours to ensure that the Applicant does not incur the Upgrade Liability and in particular, as long as the Upgrade Liability or the potential therefor still exists will:-

- (a) not construct or approve the construction of the Bilambil Connector Road until the Western Bypass, the Boyd Street Overpass and the interchanges between them have been completed or someone else has accepted the Upgrade Liability;

- (b) limit any distributor road improvements in the Pigabeen and Cobaki area south of the Cobaki Site sectors 4, 13 and 14 as identified on page 33 of the Finance Policy and Resources Committee Report of 22nd May 1991 to essential structural and safety requirements so as to maintain the existing geometry of the road system until the Western Bypass is committed.

5.3 Indemnity for Upgrade Liability

In consideration of the Applicant entering into the GCCC Agreement and assuming initial responsibility for the Upgrade Liability the Council covenants with the Applicant that it will to the fullest extent permitted by law indemnify the Applicant against or reimburse the Applicant for any cost liability expense or claim which the Applicant may incur directly or indirectly as a result of any failure by the Council to fulfil its obligations under Sub-clause 5.2, and for that purpose but without limiting the generality of the foregoing shall:-

- (a) where it is relevant and reasonable to do so impose conditions on other developers in sectors 4, 13, and 14 as identified on page 33 of the Finance Policy and Resources Committee Report of 22nd May 1991 requiring them to contribute towards the cost of the Boyd Street Upgrade or towards reimbursement of the Upgrade Liability as a condition of any consent or approval for development;
- (b) give such credits to the Applicant against liability for contributions under Section 94 of the EP&A Act in respect of the Cobaki Site as may be necessary to fulfil the Council's obligation hereunder;
- (c) include the cost of indemnifying the Applicant against the Upgrade Liability as part of its costs estimate for calculation of Section 94 levies for the relevant sectors mentioned in Sub-clause 5.2(b)

to the intent that the Applicant shall be properly indemnified against or compensated for any Upgrade Liability which it may incur to the extent that it is within the power of the Council to do so.

5.4 Applicant to Mitigate

The Applicant will:-

- (a) keep the Council fully advised of any act or event which may result in the Applicant incurring the Upgrade Liability.
- (b) comply with the terms and conditions of the GCCC Agreement and enforce proper compliance therewith by GCCC to the intent that the potential for the incurring of the Upgrade Liability by the Applicant shall be minimised.

5.5 Council to Use Best Endeavours to Extinguish Upgrade Liability

- (a) The parties acknowledge and agree that it is desirable that Calsonic should be released from the Upgrade Liability upon completion of the Cobaki Project
- (b) The Council shall as soon as is reasonably practicable after the completion of the Cobaki Project use best endeavours to facilitate the release by GCCC of the Applicant from any further liability with regard to the Boyd Street Upgrade and to procure the return to the Applicant of the Upgrade Bond.

6. BILAMBIL HEIGHTS CONNECTOR ROAD

6.1 Applicant May Require Purchase

If:-

- (a) the Applicant becomes liable to undertake or pay for the Boyd Street Upgrade pursuant to the GCCC Agreement; or
- (b) GCCC makes a call upon the Upgrade Bond; or
- (c) upon the completion of the Cobaki Project;

or on or after the 1st July 2003 (whichever occurs the earliest) the Applicant shall have the right to require the Council to purchase the Cobaki Road Land from the Applicant for an amount equivalent to the then current market value of the Cobaki Road Land, at the time the Applicant gives the Council the Applicant's Notice.

6.2 Applicant to Give Notice

The Applicant may give the Council notice in writing (in this Clause called "the Applicant's Notice") that one of the events referred to in sub-clause 6.1 has occurred, such notice to be accompanied by:-

- (a) (where appropriate) written confirmation from GCCC that the Applicant has incurred the Upgrade Liability;
- (b) the Applicant's assessment of the then current market value of the Cobaki Road Land.
- (c) a survey showing the exact location, area and dimensions of the Cobaki Road Land.

6.3 Dispute as to Value

- (a) The Council may within thirty (30) days of receipt of the Applicant's Notice give notice to the Applicant (in this Clause called "the Dispute Notice") that it disputes the Applicant's assessment of the current market value of the Cobaki Road Land, in which case the dispute shall be determined in accordance with Clause 8.
- (b) In determining the current market value, regard shall be had and allowance made for any works which have been undertaken by or on behalf of the Applicant to the Cobaki Road Land which form part of or are a pre-requisite to the construction of the Bilambil Heights Connector Road including (but not limited to) any cutting and grading, compaction, laying of road base or other similar works performed on the Cobaki Road Land.

6.4 Completion of Purchase

Completion of the purchase of the Cobaki Road Land by the Council shall take place:-

- (a) on the date which is sixty (60) days from the Applicant's Notice; or
- (b) (where the Council has given a Dispute Notice) on the date which is fourteen (14) days after determination of the dispute; or
- (c) on the 1st day of July 2003;

whichever date is the latest, unless the Applicant has incurred the Upgrade Liability as a result of the Council's failure to comply with the terms of sub-clauses 5.2(a) or (b), in which case completion shall occur on the date which is sixty (60) days from the Applicant's Notice or (where the Council has given a dispute Notice) on the date which is fourteen (14) days after determination of the dispute, whichever date is the later..

6.5 Costs

The Council shall pay the Applicant's reasonable survey and legal fees and disbursements in relation to the identification and transfer of the Cobaki Road Land and shall pay any stamp duty assessed thereon or on the provisions of this Clause 6.

6.6 Purchase Not to Affect Council's Obligations

The purchase by the Council of the Cobaki Road Land shall in no way diminish or affect the Council's statutory obligation in relation to the dedication of land free of cost or the payment of a monetary contribution (or both) in respect of the Cobaki Site or project pursuant to Section 94 of the EP & A Act nor shall it diminish affect or satisfy the obligations of the Council under Clause 5.

7. SECTION 94 CONTRIBUTIONS

7.1 Section 94 Contributions Plan to Include Certain Works

The Council covenants and agrees that the Lower Tweed Transportation Study contributions plan approved under Section 94AB of the EP & A Act (and as amended from time to time pursuant to that Act) shall make provision for and take full account of estimated costs of acquisition of land and the design and construction of:-

- (a) The Boyd Street (NSW) Extension;
- (b) The Boyd Street Overpass and relevant interchanges with the Western Bypass;
- (c) The Bilambil Heights Connector Road;
- (d) The tick control electronic surveillance equipment to be installed as required by the Board of Tick Control on the Boyd Street (NSW) Extension, if such costs are reasonably required to be met as part of the construction of the Boyd Street (NSW) Extension.

in this clause referred to as "the Works".

7.2 Applicant to Receive Appropriate Credits

The Council covenants and agrees that it is the intention of the parties (to the extent that it is not expressly provided for elsewhere in this deed) that the Council take into consideration and grant appropriate credits to the Applicant against liability for any contributions or dedications under Section 94 of the EP & A Act in respect of any of the Works undertaken by or at the cost of the Applicant and any land for any of the Works acquired by the Applicant and dedicated to the Council free of charge.

8. DISPUTE RESOLUTION

8.1 Parties to Endeavour to Resolve Disputes

If any dispute or difference arises between the parties at any time as to the construction of this Deed or as to any other matter or thing of whatsoever nature arising under or in connection with it including (but not limited to):-

- (a) whether any works to be undertaken by the Applicant pursuant to this Deed have been undertaken in a proper and workmanlike manner;
- (b) whether any works required to be undertaken under this Deed have been properly completed (as that term is defined in this agreement);
- (c) whether the Overpass Bond should be reduced or increased;
- (d) the current market value of the Cobaki Road Land

then either Party may give notice to the other in writing adequately identifying the matters the subject of the dispute or difference together with detailed particulars of it. Thereafter, the parties shall use their best endeavours to resolve the dispute or difference and for this purpose they shall hold such meetings and conduct such negotiations as may be necessary in the circumstances.

8.2 Appointment of Expert

If the dispute or difference is not resolved within fourteen (14) days (or such further period as the parties may agree as appropriate) of the date of receipt of the written notice referred to in Sub-Clause 8.1 then the dispute or difference shall be determined by an independent person holding the appropriate qualifications or expertise and nominated by the President for the time being of the New South Wales Law Society (Incorporated) ("the Expert").

8.3 Parties May Make Submissions etc

Upon appointment of the Expert both parties shall be entitled to make such submissions and to provide such documents and other evidence to the Expert as they may wish.

8.4 Experts Determination Binding

The determination of the Expert on the dispute shall be final and binding upon the parties.

8.5 Costs of Determination

The costs and expenses of the determination shall be met by the parties in the proportions determined by the Expert.

9. FORCE MAJEURE

9.1 Excuse from performance of Obligations

If any party is prevented, hindered or delayed from performing any of its obligations under this Agreement (other than an obligation to pay money) by an Event of Force Majeure, then as long as that situation continues, that party shall be excused from performance of such obligation to the extent it is so prevented, hindered or delayed, and the time for performance of such obligation shall be extended accordingly.

9.2 Notification

A party affected by an Event of Force Majeure shall immediately notify the other parties of its occurrence and its effect or likely effect, and (subject to Clause 9.3) use all reasonable endeavours to minimise the effect of the Event of Force Majeure and to bring it to an end.

9.3 Industrial Action

No party shall be obliged to settle any strike or other industrial action, dispute or disturbance of any kind, except on terms wholly satisfactory to it.

10. NOTICES

10.1 Means of giving notice

Any notice or other communication in connection with this Agreement is taken to have been duly given when made in writing and delivered or sent by post or facsimile to the party to which such notice or communication is intended to be given, at the following respective addresses:

The Council: Civic and Cultural Centre,
Murwillumbah NSW 2484 (For the Attention of the General Manager)
Facsimile No: (066) 720429

The Applicant: Level 15, 50 Cavill Avenue,
Surfers Paradise Qld 4217
Facsimile No: (075) 709947

or to such other address or facsimile number as may from time to time be notified in writing by either party to the other for the purposes of this Clause.

10.2 Receipt after Posting

Any notice or other communication sent by post shall be taken to have been received at the expiration of two (2) Business Days after the date of posting.

10.3 Receipt of Facsimile

Any notice or other communication sent by facsimile transmission is taken to have been received upon completion of an apparently successful transmission to the recipient. However, if a facsimile is transmitted on a Business Day after 5.00 p.m. (at the place of receipt) or on a day which is not a Business Day, it shall be deemed to have been received on the next Business Day.

11. ASSIGNMENT BY APPLICANT

11.1 Applicant May Assign

If the Cobaki Site or any part thereof or any interest therein is at law or in equity sold, transferred or alienated or subjected to any trust or agreed to be sold, transferred or subjected to any trust other than in the ordinary course of development of the Cobaki Site and sale of subdivided portions to various purchasers (hereinafter referred to as a "transfer") then the Applicant shall

have the right to assign its rights, duties and obligations under this Deed to any purchaser, transferee or beneficiary of any trust created in respect of the Cobaki Site (hereinafter referred to as "the Assignee") subject to the conditions hereinafter appearing.

11.2 Assignee to be Bound

If such transfer takes place prior to the performance and fulfilment of the provisions of this Deed or any of them on the part of the Applicant to be performed and fulfilled any such transfer shall be made subject to compliance with the provisions of this Deed or such part of it as remains unperformed or unfulfilled on the part of the Applicant and so that the Assignee shall be bound contractually by this Deed with the Council for the performance and fulfilment of the provisions of this Deed on the part of the Applicant to be performed and fulfilled or such of those provisions as shall remain unperformed or unfulfilled at the date of such transfer;

11.3 Assignee to Provide Security

The Assignee shall furnish to the Council such security as shall be required by the Council for such performance and fulfilment by the Assignee until the Assignee becomes contractually bound to the Council and furnishes an appropriate security to replace the Upgrade Bond held by the Council prior to such transfer.

11.4 Applicant May Remain Liable

In default of any transfer being made otherwise than in compliance with the foregoing provisions of this Clause, the Applicant shall remain liable for the performance and fulfilment of this Deed and shall at the cost and expense of the Applicant sign, seal and make and do all such documents, acts, matters and things as shall be necessary to comply with and fulfil such of the provisions of this Deed as have not been complied with and fulfilled and on the part of the Applicant to be performed and fulfilled at such time or times as the Council shall require notwithstanding that the time or times appointed for such compliance and fulfilment shall not then have arrived;

11.5 Applicant Released if Transfer Complies

If any transfer shall have been made in compliance with the provisions of this Clause then the Applicant shall from the date of compliance with these provisions be released from any further liability to the Council pursuant to this Deed but without prejudice to any antecedent breach of its obligations under this Deed prior to the date of such compliance.

12. PROPER LAW: JURISDICTION

12.1 Choice of law

This Agreement is governed by and shall be construed in accordance with the laws of New South Wales

12.2 Jurisdiction

- (a) (Entered into in New South Wales) This Agreement is deemed to be entered into in the State of New South Wales.
- (b) (New South Wales Courts) Any action, suit or proceeding relating in any way to this Agreement may be instituted, heard and determined in a court of competent jurisdiction in [insert relevant location].
- (c) (Submission to jurisdiction) Each party irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.
- (d) (Waiver of objection) Each party irrevocably waives any objection which it may now or in the future have to the laying of venue of any action, suit or proceeding relating in any way to this Deed brought in such court.
- (e) (Waiver of inconvenient forum claim) Each party irrevocably waives any claim that any such action, suit or proceeding brought in any such court is brought in an inconvenient forum.

13. GENERAL PROVISIONS**13.1 Successors**

This Deed is binding on the parties and their respective successors and permitted assigns, and shall be enforceable by and against the parties or those successors and assigns.

13.2 Variations and waivers to be in writing

No variation, modification or waiver of any provision in this Deed, nor consent to any departure by any party from any such provision, shall be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent shall be effective only to the extent to or for which it may be made or given.

13.3 Waiver

No failure, delay, relaxation or indulgence by any party in exercising any right conferred on such party by this Deed shall operate as a waiver of such right, nor shall any single or partial exercise of any such right nor any single failure to do so, preclude any other or future exercise of it, or the exercise of any other right under this Deed.

13.4 Further Assurances

Each party to this Deed shall do all things and sign all deeds and other documents as may reasonably be required by the other so as to carry out and give effect to the terms and intentions of this Deed and to perfect, protect and preserve the rights of the other parties to this Deed.

13.5 Joint and Several obligations

If any party consists of more than one person, then the liability of those persons in all respects under this Deed shall be a joint liability of each two or more of those persons and a liability of each of those persons severally.

13.6 Liabilities to More than One Party

Any agreement, representation or warranty in favour of more than one party is for the benefit of each two or more of those parties jointly and each of them severally.

13.7 Costs

(Each party pays own costs) Subject to any contrary provision in this Deed, each party shall bear its own costs (including legal costs) of and incidental to the preparation, negotiation and signing of this Deed.

13.8 Time of Essence

Time is of the essence of this Deed.

FIRST SCHEDULE
(Description of Cobaki Site)

The parcel of land the approximate location of which is identified on the Plan forming Appendix 3 and being more particularly described as follows:-

DESCRIPTION	VOL.	FOL.	AREA
Lot 46 DP755740	12244	50	59.89 ha
Lot 54 DP755740	12214	250	32.38 ha
Lot 55 DP755740	12214	250	86.20 ha
Lot 199 DP755740	10228	178	21.95 ha
Lot 200 DP755740	12575	215	16.19 ha
Lot 201 DP755740	12496	206	54.23 ha
Lot 202 DP755740	12575	218	32.98 ha
Lot 205 DP755740	12575	216	43.20 ha
Lot 206 DP755740	12575	219	37.74 ha
Lot 209 DP755740	12575	217	16.19 ha
Lot 228 DP755740	12214	250	77.40 ha
Lot 305 DP755740	12471	38	31.97 ha
Lot 1 DP562222	12225	10	8.277ha
Lot 2 DP566529	12392	8	15.78 ha
Lot 1 DP570076	12686	35	37.96 ha
Lot 1 DP570077	12608	234	20.70 ha

All being Parish of Terranora, County of Rous, Shire of Tweed in the State of New South Wales.

APPENDIX 1

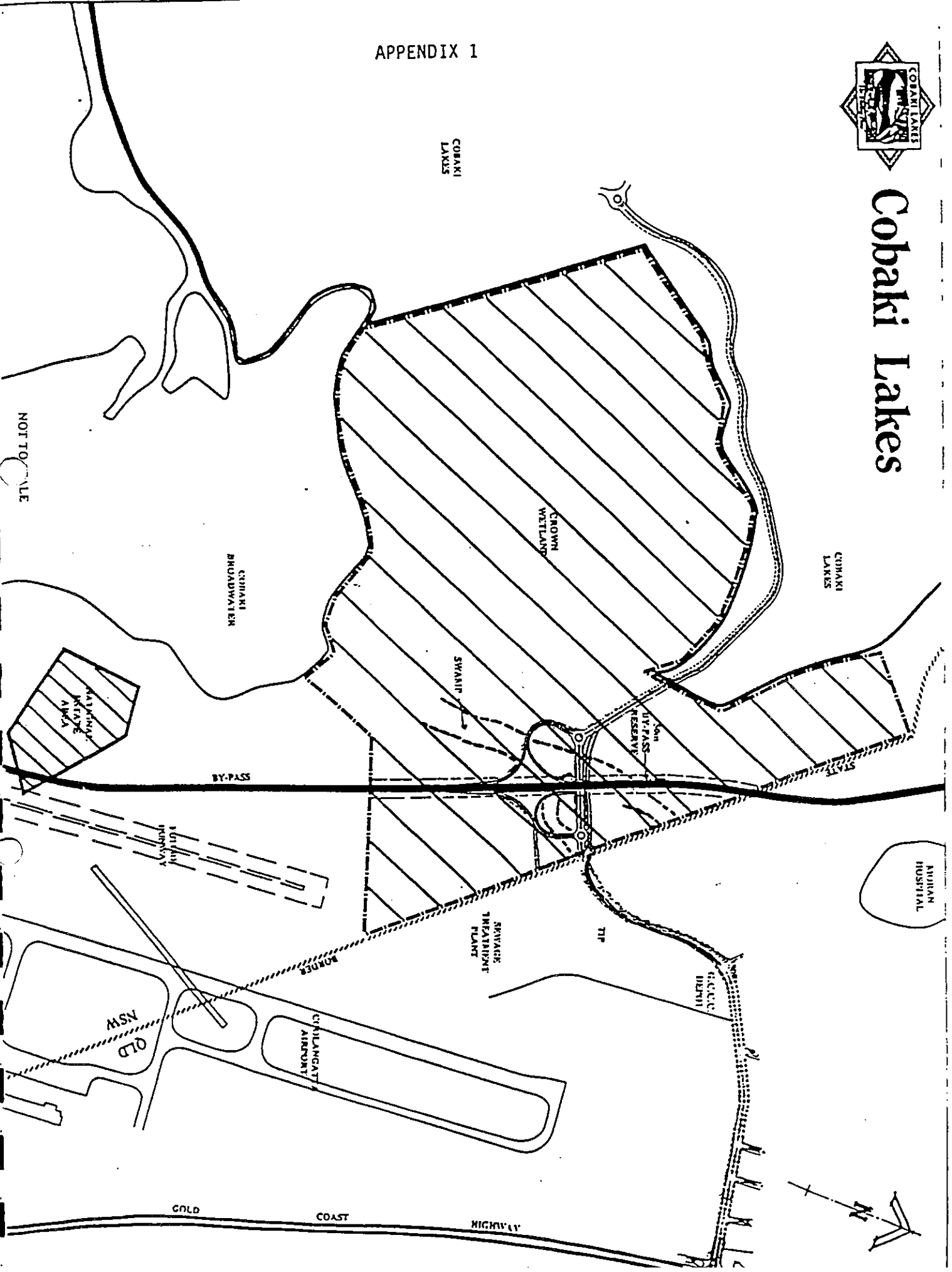
[Plan of Boyd Street East, Boyd Street (NSW) Extension and Boyd Street (QLD) Extension]



Cobaki Lakes

APPENDIX 1

COBAKI LAKES



APPENDIX 2
[Development Approval]



THE COUNCIL OF THE SHIRE OF TWEED

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

NOTICE TO APPLICANT OF APPROVAL OF A DEVELOPMENT APPLICATION

To: Calsonic Management Services Pty Ltd
Cobaki Lakes
PO Box 5778
GOLD COAST MAIL CENTRE 4217

Pursuant to Section 92 of the Act, notice is hereby given of the determination by the Tweed Shire Council of Development Application No. 92/315 relating to land described as -

Lots 200, 201, 202, 209 & 54 in DP 755740 & Crown Land between the Subject Site & the State Border,
Old Piggabeen Road
Cobaki 2485

to be developed in accordance with plans and details submitted for the purpose of -

THE CONSTRUCTION OF A ROAD & ASSOCIATED ROADWORKS (BOYD STREET EXTENSION).

The Development Application has been determined by the granting of consent subject to the conditions set out in this notice.

The conditions of consent are as follows -

1. Development of the site being carried generally in accordance with Plan Nos.

C11.101.05/DA/20 Rev B
C11.101.05/DA/21
C11.101.05/DA/22
C11.101.05/DA/23 Rev D
C11.101.05/DA/24 Rev B
C11.101.05/DA/25
C11.101.05/DA/26 Rev B
C11.101.05/DA/27 Rev B
C11.101.05/DA/28 Rev B
C11.101.05/DA/29 Rev B
C11.101.05/DA/30 Rev A
C11.101.05/DA/31 Rev A
C11.101.05/DA/32 Rev A
C11.101.05/DA/33 Rev A

and in accordance with the statement of Environmental Effects prepared by G Sheils & Associates and dated September 1992 as amended by the following conditions.

2. Compliance at all times with all the measures to ameliorate adverse impacts as contained in the Statement of Environmental Effects referred to in Condition No. 1.
3. The grass swale adjacent to the road carriageway as shown on Plan No. C11.101.05/DA 22 being extended from Ch. 3335 to Ch. 3200. Plans to the satisfaction of the Director of Engineering Services are to be submitted and approved prior to commencement of any works on site.
4. Compliance with any requirements of the Environmental Planning Authority in respect of noise impacts associated with the development.
5. All siltation and sedimentation controls to be installed prior to commencements of earthworks which are required for road construction.
6. No vegetation of any description is to be burnt unless a pit burn program is approved.
7. The obtaining of any required permits and agreements from Gold Coast City Council in respect of roadworks to occur in that Shire. Proof in this regard to be lodged with Tweed Shire Council prior to the commencement of any works on site.
8. Obtaining of any requisite approvals from CALM for road opening and works required in the Crown Reserve. Proof in this regard to be submitted prior to commencement of any works on site.
9. The 20m wide maintenance areas shown adjacent to the roadway (including batters) through the Crown Reserve being reduced in width to 2.5m and vegetation outside this area maintained undisturbed.
10. A bond is to be lodged with Council prior to commencement of any works on site for the cost of a future Boyd Street overpass. The amount of the bond is to be based on a design in accordance with a plan to be submitted to the satisfaction of the Director Engineering Services. The bond shall be released on completion of the facility.
11. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property.
12. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
13. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.
14. The roadway is not to be physically used as a public road until written notification from the Director of Engineering Services is provided to the effect that all works pursuant to this consent have been carried out in accordance with the approved plans.
15. The proponent that carry out compensatory works in areas marked "regeneration" areas shown on Figure 4 of the documentation submitted to Council on 23 November 1992.
16. In respect of the land referred to in Condition No 15 and prior to the commencement of any on site works a management plan that be submitted to Council and include:

- a. Specific areas to be "regenerated".
- b. Extent of earthworks if any required.
- c. A habitation plan of proposed works with appropriate plantings including eucalyptus signata and banksia aemula to compensate for those affected by the proposed road.
- d. Details of measures to ensure adequate integration with existing adjacent wetland areas.

The Management Plan is to be fully implemented within 12 months of completion of the finished road works granted by this consent and maintained as specified in the Management Plan approved by the Director of Development Services.

17. The Environmental Officer to be appointed by the proponent shall submit at minimum annual intervals full, documentation and certification that compliance with Conditions No 15 and No 16 are being complied with.
18. The applicant shall prepare a plan of management specifically for the long-nosed potoroo - utilising the service of the C.S.I.R.O. and a qualified fauna consultant.

This management plan shall -

- a. Demonstrate the protection of the long-nosed potoroo's long-term viability;
- b. Be submitted to Council with final plans of engineering design for the road;
- c. Be implemented within 12 months of completion of the finalised roadworks granted by this consent - or earlier if recommended by the C.S.I.R.O. scientists and/or qualified fauna consultant engaged by the applicant.

The reasons for the imposition of conditions are to minimise any adverse impact the development may cause and to give effect to the objectives of the Environmental Planning and Assessment Act, 1979.

Dated 5TH day of JANUARY 1993.

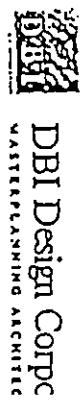
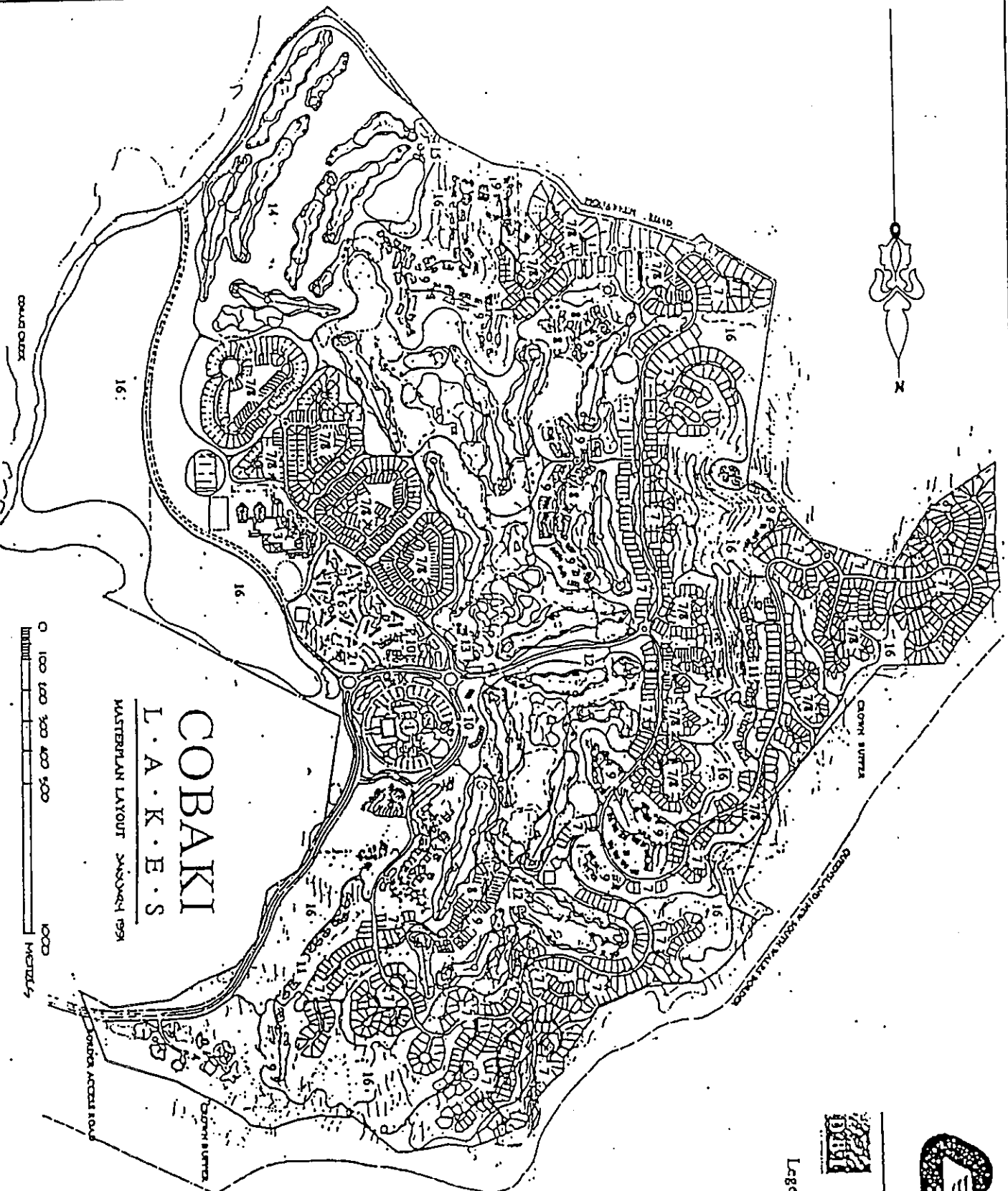
J.S. Nixon
J.S NIXON
SHIRE CLERK

(N.B. Refer to Notes attached to this Notice)

per

APPENDIX 3

[Plan of Bilambil Heights Connector Road]



Legend

- 1 TOWN CENTRE
- 2 RESIDENTS' CLUBHOUSE
- 3 ACCESS EDUCATION CTR
- 4 RESEARCH AND TECHNOI
- 5 TOURIST ACCOMMODATI
- 6 RETIREES' RESIDENTIAL
- 7 LOW DENSITY RESIDENT (Lot sizes 600 sq.m. to 2000 sq.m. including rural residential lots)
- 8 UPPER-LOW DENSITY RE (Lot sizes 350 sq.m. to 600 sq.m.)
- 9 LOW-MEDIUM DENSITY (Townhouses)
- 10 MEDIUM DENSITY RESID (Mid-rise buildings)
- 11 UPPER-MEDIUM DENSIT (Multi-story apartments)
- 12 GOLF COURSE (18 HOLE)
- 13 CLUBHOUSE
- 14 FAMILY GOLF CENTRE
- 15 FAMILY GOLF CENTRE
- 16 OPEN SPACE

COBAKI LAKES ENVIRONMENTAL IMPROVEMENT PROJECT MASTER PLAN PREPARED BY LANDOX

FIGURE 11

APPENDIX 4
[Schedule of Works for Boyd Street Overpass]

PROPOSED BOYD STREET EXTENSION OVERPASS FOR FUTURE WESTERN

BYPASS - February 1993

1.	Transport of Plant	Item	1,500.00
2.	Kerb and Gutter	1060m @ \$4.50/m	47,700.00
3.	Earthworks (Fill)	61400m ³ @ \$8.50/m ³	521,900.00
4.	Trim Subgrade	22500m ³ @ \$0.70/m ³	31,500.00
5.	Gravel Pavement (300mm)	1038m ³ @ \$20/m ³	20,775.00
6.	Spread, Trim, Compact	7000m ² @ \$3.37/m ²	23,625.00
7.	Asphaltic Concrete (38mm)	270t @ \$95/t	25,650.00
8.	Guard Rail	450m @ \$75/m	33,750.00
9.	Footpaving	980m ² @ \$25/m ²	24,500.00
10.	Bridge Extension (in lieu of culverts)	315m ² @ \$1200/m ²	378,000.00
11.	Less deduction for fill, gravel & AC	Item	- 59,564.00
12.	Drainage Pipes - C 1155	200m @ 200/m	40,000.00
13.	Bridge	342m ² @ 1200m ²	410,400.00
14.	Fencing		40,000.00
15.	Lighting		20,000.00
16.	Revegetation/Landscaping	Item	<u>10,000.00</u>
			Total \$1,569,736.00

APPENDIX 5

[Copy unsigned agreement between Applicant & GCCC]