



Dated

1 0 JAN 2011

Minister for Planning

ABN 38 755 709 681

Dart West Developments Pty Limited

ABN 32 107 685 370

Planning Agreement

Environmental Planning and Assessment Act 1979

Badgally Road Extension

(Camden Valley Way to Eagle Vale Road)

TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATION	1
1.1	Definitions	1
1.2	Interpretation	4
2	OPERATION AND APPLICATION OF THIS DEED	6
2.1	Operation	6
2.2	Application	6
3	APPLICATION OF SECTION 94, SECTION 94A, SECTION 94EF OF THE ACT	6
4	AGREEMENT BETWEEN THE PARTIES	6
4.1	The Road Work	6
4.2	Staging and approval for construction of the Road Work	7
4.3	Attainment of Milestones relating to the Road Work	7
4.4	Application of SIC Offset Amounts	8
4.5	Security relating to certain Milestones	9
4.6	Transfer of the Road Work Land	9
5	LAND OWNERSHIP	10
5.1	Land ownership	10
6	DISPUTE RESOLUTION	10
6.1	Not commence	10
6.2	Written notice of dispute	10
6.3	Attempt to resolve	10
6.4	Mediation	10
6.5	Court proceedings	11
6.6	Not use information	11
6.7	No prejudice	11
7	GST	11
7.1	Definitions	11
7.2	Intention of the parties	11
7.3	Reimbursement	11
7.4	Consideration GST exclusive	12
7.5	Additional Amounts for GST	12
7.6	Non monetary consideration	12
7.7	Assumptions	12
7.8	No merger	12
8	ASSIGNMENT	12
8.1	Consent	12
9	WARRANTIES OF CAPACITY	13
9.1	General warranties	13
9.2	Power of attorney	13

10	GENERAL PROVISIONS	13
10.1	Entire Deed	13
10.2	Variation.....	13
10.3	Waiver.....	13
10.4	Further assurances	14
10.5	Time for doing acts.....	14
10.6	Governing law and jurisdiction	14
10.7	Severance.....	14
10.8	Preservation of existing rights	14
10.9	No merger.....	14
10.10	Counterparts	15
10.11	Relationship of parties.....	15
10.12	Good faith	15
10.13	No fetter	15
10.14	Explanatory note	15
10.15	Expenses and stamp duty	15
10.16	Notices.....	15
	SCHEDULE 1	18
	SCHEDULE 2	19
	SCHEDULE 3	20
	SCHEDULE 4.....	21
	SCHEDULE 5.....	22
	SCHEDULE 6.....	24

THIS Deed is dated

1 0 JAN 2011

PARTIES:

MINISTER FOR PLANNING (ABN 38 755 709 681) of Level 35, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (**Minister**)

DART WEST DEVELOPMENTS PTY LIMITED ABN 32 107 685 370 of Suite 6, 320A Camden Valley Way, Narellan New South Wales 2567 (**Developer**)

INTRODUCTION:

- A** The Developer proposes to carry out the Development within the Growth Centres.
- B** The Minister has determined under section 94EE of the Act that a Special Infrastructure Contribution is payable in respect of land within the Growth Centres.
- C** The Developer will be obliged to make a Special Infrastructure Contribution in accordance with the Ministerial Determination if Development Consent is granted to the Development.
- D** The Developer proposes to meet any obligation it may have in relation to the Development to make a Special Infrastructure Contribution by providing certain infrastructure.
- E** The Parties have agreed to enter into this Deed to give effect to the above arrangements.
- F** For the avoidance of doubt, the parties intend this Deed to constitute the entire agreement and understanding between them in relation to the subject matter of this Deed and have agreed that any prior arrangements between them relating to the subject matter of this Deed are rescinded and have no further force or effect.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this **Deed**, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979* (NSW);

Address for Service means the address of each party appearing in Schedule 6 or any new address notified by any party to all other parties as its new Address for Service;

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department;

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required for the commencement and carrying out of the works the subject of this Deed or the Development generally;

Attributable Cost, in relation to each Stage of the Road Work, is the attributable cost of that Stage of the Road Work determined in accordance with the Practice Note applying at the date on which a request is made under clause 4.3(b) for an entitlement to a SIC Offset Amount in respect of that Stage of the Road Work, and for the avoidance of doubt, includes any indexation in accordance with the Practice Note.

Authorised Progress Claim Certificates means a certificate signed by a director of the Developer (or the General Manager – Property of the Developer) confirming that the Developer has paid the amount specified in that Certificate to the third party contractor for work performed under the Construction Contract;

Bank Guarantee means an irrevocable and unconditional undertaking:

(a) by an Australian bank and which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time; and

(b) on terms,

acceptable to the Minister, in the Minister's absolute discretion, to pay the face value of that undertaking (being such an amount as is required under this Deed) on demand;

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day;

Consent Authority means the Authority having the function to determine an application for Approval;

Construction Contract means a contract between the Developer and a third party, meeting the requirements of clause 4.2, for the carrying out of the Road Work or any Stage of the Road Work by that third party;

Department means the NSW Department of Planning;

Development means development within the Growth Centres for urban purposes in accordance with the Indicative Layout Plan;

Development Consent has the same meaning as in the Act;

Director-General means the Director-General of the Department of Planning;

Explanatory Note means the explanatory note required by the Regulation;

Growth Centres means each and any of:

- (a) the North West Growth Centre; and
- (b) the South West Growth Centre of Sydney;

GST means any form of goods and services tax payable under the GST Legislation;

GST Legislation means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Indicative Layout Plan means the Turner Road Precinct Indicative Layout Plan shown in Figure 2 of the *Turner Road Precinct Development Control Plan 2007*;

Land means the land described in Schedule 2;

Milestone means works or other activities specified in Column 4 of the Table in Schedule 3 relating to the carrying out of the Road Work;

Minister means the Minister for Planning or a Deputy Director-General of the Department;

Ministerial Determination means the determination made by the Minister under s94EE of the Act in relation to the North West and South West Growth Centres dated 14 November 2008 as amended, supplemented or substituted from time to time;

Ministerial Direction means the direction made by the Minister to the Consent Authority for the Development under s94EF of the Act dated 18 November 2008 as amended, supplemented or substituted from time to time;

Plans means the plans listed and contained in Schedule 4;

Practice Note means the document entitled *Growth Centres Special Infrastructure Contribution Practice Note, November 2008* published by the Department as amended, supplemented or substituted from time to time;

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW);

Residential Lot means an area of land on which a single dwelling is intended to be located, being either:

- (a) a lot in a plan of subdivision on which it is intended that one dwelling house will be erected; or
- (b) a part of a lot in a plan of subdivision on which it is intended that one dwelling will be located.

Road has the same meaning as in the *Roads Act 1993*;

Roads Authority has the same meaning as in the *Roads Act 1993*;

Road Work means each and any of the six stages of work described in Schedule 5;

Road Work Land means the land on which the Road Work is to be constructed including adequate provision for verges and intersections;

SIC Offset Amount means in relation to each Milestone for a Stage of the Road Work, 20% of the Attributable Cost for that Stage of the Road Work;

SIC Offset Certificate means a certificate specifying:

- (a) the SIC Offset Amounts earned in relation to the Road Work at the date of the certificate, and
- (b) the SIC Offset Amounts applied in accordance with clause 4.4 at the date of the certificate, and
- (c) the SIC Offset Amounts remaining available to be applied in accordance with clause 4.4;

Special Infrastructure Contribution (SIC) means a contribution towards the provision of infrastructure determined in accordance with the Ministerial Determination and the Practice Note;

Stage means stages of the Road Work as described in Schedule 5.

Subdivision Certificate has the same meaning as in the Act.

Table means the Table in Schedule 3 relating to the Road Work.

1.2 Interpretation

In this Deed unless the context clearly indicates otherwise:

- (a) a reference to **this Deed** or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and

any subordinate legislation issued under that legislation or legislative provision;

- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this Deed;
- (f) the **schedules** form part of this Deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and

- (s) neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

The parties agree that:

- (a) this Deed constitutes a planning agreement within the meaning of section 93F of the Act.
- (b) this Deed will commence from the date this Deed is signed by all the parties.

2.2 Application

This Deed applies to:

- (a) the Land; and
- (b) the Development.

3 APPLICATION OF SECTION 94, SECTION 94A, SECTION 94EF OF THE ACT

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in **Schedule 1**.

4 AGREEMENT BETWEEN THE PARTIES

4.1 The Road Work

- (a) It is acknowledged that:
 - (i) the Practice Note and the Ministerial Determination have the effect that the Developer will be required to make a SIC in relation to the Development of the Land if Development Consent is granted to the Development of the Land; and
 - (ii) this Deed sets out the manner in which the Developer can satisfy its obligations to make a SIC under a Development Consent in relation to the Development of the Land; and
- (b) The Developer is required to carry out the Road Work in accordance with this Deed, and to the satisfaction of the relevant Roads Authority, if

Development Consent is granted to the Development of the Land, subject to a condition requiring the making of a SIC.

4.2 Staging and approval for construction of the Road Work

- (a) Other than for Stage 1A as described in Schedule 5 to this Deed, the Developer must provide written notice to the Minister which confirms that it intends to commence the Road Works or a Stage of the Road Work ("**the Notice**").
- (b) The Road Work is to be carried out in accordance with Schedule 5.
- (c) The Notice must be accompanied by the proposed Construction Contract for the Road Work or the relevant Stage of the Road Work.
- (d) The Construction Contract must:
 - (i) identify a superintendent for the Road Work;
 - (ii) separately identify those works comprising the Road Works, whether through a separate bill of quantities or separate contract;
 - (iii) identify the proposed contract value for each item of the Road Work; and
 - (iv) identify the terms and conditions applicable to the carrying out of the Road Work.
- (e) The Developer cannot vary the Stages or any material aspect of the approved Construction Contract, other than with the prior written approval of the Minister.

4.3 Attainment of Milestones relating to the Road Work

- (a) If the Developer achieves a Milestone (to the satisfaction of the Minister) the Developer will be entitled to a SIC Offset Amount in relation to that Milestone in accordance with this clause 4.3.
- (b) The Developer may request from the Minister an entitlement to a SIC Offset Amount in relation to a Milestone upon achievement of that Milestone (to the satisfaction of the Minister) if the Developer provides to the Minister:
 - (i) a written request requesting such entitlement together with an Authorised Progress Claim Certificate and such other supporting documentation as is necessary for the Minister to determine whether that Milestone has been achieved; and

- (ii) such other information as is reasonably requested by the Minister (promptly after any such request) in order for the Minister to assess the Developer's request for such entitlement.
- (c) If, and only if, a Milestone is achieved to the satisfaction of the Minister and the Minister has received a request for an entitlement to the SIC Offset Amount from the Developer in relation to that Milestone, then:
 - (i) within 45 days of the Minister receiving all the information required under clause 4.3(b), the Minister will notify the Developer in writing that its request has been approved and will, at the same time, issue a SIC Offset Certificate stating the SIC Offset Amount to which the Developer is entitled following the achievement of that Milestone; and
 - (ii) on and from the date of the Minister's notice, the Developer is entitled to the SIC Offset Amount which corresponds to that Milestone.
- (d) If a Milestone is not achieved to the satisfaction of the Minister and the Minister has received a request for entitlement to the SIC Offset Amount from the Developer in relation to that Milestone, then the Minister will notify the Developer that its request has not been approved and provide the Developer with details as to why the Minister is of the opinion that the relevant Milestone has not been achieved.
- (e) Where the Minister is of the opinion that the relevant Milestone has not been achieved and the Developer has received a notice from the Minister in accordance with clause 4.3(d), the Developer may re-submit a request for an entitlement to a SIC Offset Amount in accordance with 4.3(b) provided that the Developer:
 - (i) has taken into account the concerns of the Minister and his reasons as to why the relevant Milestone has not been achieved; and
 - (ii) agrees to provide any additional information which the Minister may require in order for the Minister to assess the Developer's request for such entitlement.

4.4 Application of SIC Offset Amounts

The Minister acknowledges and agrees that:

- (a) if a Milestone is achieved to the satisfaction of the Minister; and
- (b) a SIC Offset Certificate is issued in accordance with clause 4.3 of this Deed

the SIC Offset Amount specified in the SIC Offset Certificate can be applied towards the partial or full satisfaction of the SIC to be made by the Developer pursuant to a Development Consent in respect of the Development of the Land and any other SIC that the Developer may be required to make pursuant to a Development Consent from time to time in respect of the Development or in relation to other land within the Growth Centres.

4.5 Security relating to certain Milestones

(a) If at any time a Milestone has not been achieved, but the Developer wishes to become entitled to SIC Offset Amounts in relation to the whole of that Milestone and apply the whole or any part of those SIC Offset Amounts in accordance with clause 4.4 above, then, subject to obtaining the Minister's prior written approval, the Developer may provide the Minister with a Bank Guarantee with a face value equivalent to the SIC Offset Amount to which the Developer wishes to become so entitled.

(b) If the Developer provides to the Minister:

- (i) a written request that that Bank Guarantee be returned together with an Authorised Progress Claim Certificate and such other supporting documentation as is necessary for the Minister to determine whether the Developer had achieved the Milestone for which the Bank Guarantee had been provided; and
- (ii) such other information as is reasonably requested by the Minister (promptly after any such request) in order for the Minister to assess the Developer's request for the Bank Guarantee to be returned,

then if the Minister is satisfied that that Milestone has actually been achieved, the Minister is to release and return that Bank Guarantee to the Developer within 90 days of any such request.

(c) In the event that the Developer fails to achieve the Milestone to which the Bank Guarantee relates to the satisfaction of the Minister by the date which is two years after the date the relevant Bank Guarantee is provided then the Minister may call upon that Bank Guarantee and retain the proceeds of such claim to facilitate the achievement of that Milestone.

4.6 Transfer of the Road Work Land

The Developer must transfer the Road Work Land to the relevant Roads Authority as soon as practicable following completion of the Road Work.

5 LAND OWNERSHIP

5.1 Land ownership

- (a) The parties acknowledge that as at the date of this Deed, the Developer does not own the Road Work Land.
- (b) The Developer nevertheless warrants that it has a legally enforceable right to complete the Road Work to enable it to comply with all of its obligations under this Deed as and when they arise.

6 DISPUTE RESOLUTION

6.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this **clause 6**.

6.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this Deed must give written notice to the other party specifying the nature of the dispute.

6.3 Attempt to resolve

On receipt of notice under **clause 6.2**, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

6.4 Mediation

If the parties do not agree within 21 days of receipt of notice under **clause 6.2** (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

6.5 Court proceedings

If the dispute is not resolved within 60 days after notice is given under **clause 6.2** then any party which has complied with the provisions of this **clause 6** may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

6.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 6** is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this **clause 6** for any purpose other than in an attempt to settle the dispute.

6.7 No prejudice

This **clause 6** does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

7 GST

7.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

7.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this Deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

7.3 Reimbursement

Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

7.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this **clause 7**.

7.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this Deed (the GST Amount), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Minister.

7.6 Non monetary consideration

Clause 7.5 applies to non-monetary consideration.

7.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under **clause 7.5** the Developer will assume the Minister is not entitled to any input tax credit.

7.8 No merger

This clause will not merge on completion or termination of this Deed.

8 ASSIGNMENT

8.1 Consent

This Deed is personal to each party and no party may assign the rights or benefits of this Deed to any person except:

- (a) to a related body corporate, after obtaining the consent of the other parties, which the other parties must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this Deed; or

- (b) to any other person, with the prior consent of the other parties, which the other parties may give, give conditionally or withhold in its absolute discretion; or
- (c) the Developer is not in breach of this Deed.

9 WARRANTIES OF CAPACITY

9.1 General warranties

Each party warrants to each other party that:

- (a) this Deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this Deed in the capacity of trustee of any trust.

9.2 Power of attorney

If an attorney executes this Deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

10 GENERAL PROVISIONS

10.1 Entire Deed

This Deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

10.2 Variation

This Deed must not be varied except by a later written document executed by all parties.

10.3 Waiver

A right created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

10.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this Deed.

10.5 Time for doing acts

(a) If:

(i) the time for doing any act or thing required to be done; or

(ii) a notice period specified in this Deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

10.6 Governing law and jurisdiction

(a) The laws applicable in New South Wales govern this Deed.

(b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

10.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

10.8 Preservation of existing rights

The expiration or termination of this Deed does not affect any right that has accrued to a party before the expiration or termination date.

10.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

10.10 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

10.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

10.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Deed.

10.13 No fetter

Nothing in this Deed shall be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this Deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

10.14 Explanatory note

- (a) The Explanatory Note was exhibited with this Deed in accordance with clause 25E of the Regulation.
- (b) The Explanatory Note must not be used to assist in construing this Deed.

10.15 Expenses and stamp duty

The Developer must pay all stamp duty assessed on or in respect of this Deed and any instrument or transaction required by or necessary to give effect to this Deed.

10.16 Notices

Any notice, demand, consent, approval, request or other communication (notice) to be given under this Deed must be in writing and must be given to the recipient at its Address for Service by being:

- (a) hand delivered; or
- (b) sent by facsimile transmission.

A notice is given if:

- (a) hand delivered, on the date of delivery; or
- (b) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted.

EXECUTED as a Deed

Signed sealed and delivered for and on
behalf of the **Minister for Planning**, in the
presence of:

Michael Fleming

Signature of Witness

Tony Kelly

Signature of the Minister for Planning

Michael Fleming

Name of Witness in full

TONY KELLY

The Hon. Anthony Kelly MP
Minister for Planning

Signed sealed and delivered by Dart)
West Developments Pty Limited ABN 32)
107 685 370 in accordance with)
section 127 of the Corporations Act:

Arnold Vitocco

Signature of Director

ARNOLD VITOCO

Name of Director

Tony Perich

Signature of Director/Secretary

TONY PERICH

Name of Director/Secretary

SCHEDULE 1

Requirements under section 93F (clause 1.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Deed complying with the Act.

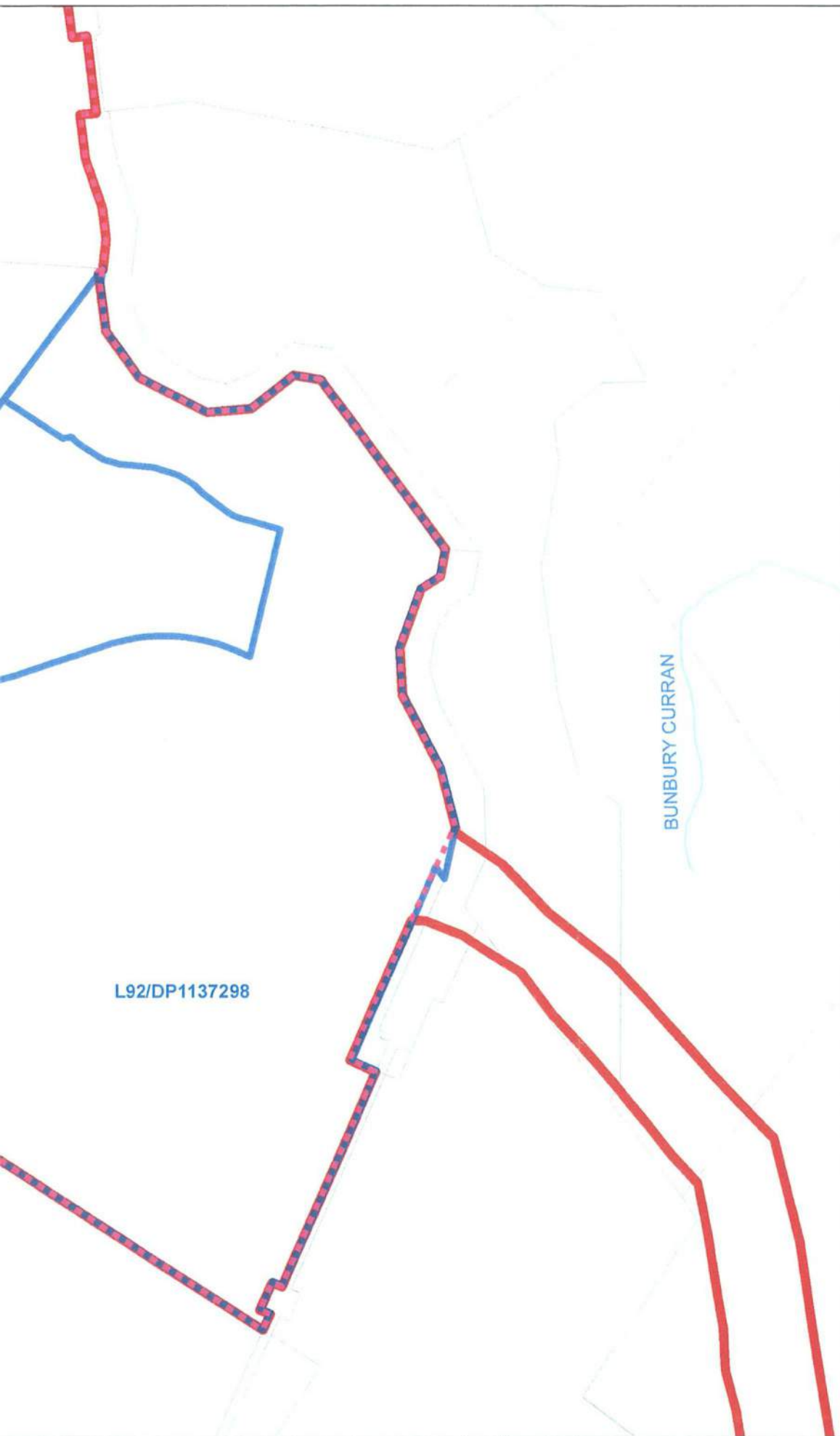
REQUIREMENT UNDER THE ACT	THIS DEED
<p>Planning instrument and/or development application – (section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) N/A</p> <p>(b) Yes</p> <p>(c) Yes</p>
<p>Description of land to which this Deed applies – (section 93F(3)(a))</p>	<p>See definition in clause 1.1</p>
<p>Description of the development to which this Deed applies – (section 93F(3)(b))</p>	<p>See definition in clause 1.1</p>
<p>The scope, timing and manner of delivery of contribution required by this Deed – (section 93F(3)(c))</p>	<p>See clause 4</p>
<p>Applicability of section 94 of the Act – (section 93F(3)(d))</p>	<p>Not excluded</p>
<p>Applicability of section 94A of the Act – (section 93F(3)(d))</p>	<p>Not excluded</p>
<p>Applicability of section 94EF of the Act – (section 93F(3)(d))</p>	<p>Not excluded</p>
<p>Consideration of benefits under this Deed if section 94 applies – (section 93F(3)(e))</p>	<p>No</p>
<p>Mechanism for Dispute Resolution – (section 93F(3)(f))</p>	<p>See clause 6</p>
<p>Enforcement of this Deed – (section 93F(3)(g))</p>	<p>See clause 6</p>
<p>No obligation to grant consent or exercise functions – (section 93F(9))</p>	<p>See clause 10.13</p>

SCHEDULE 2

The Land

The land identified in the attached plan titled "Turner Road Precinct – Subject Land" as the "Subject Land" and edged in blue, being the land which was formerly comprised in:

- (a) Lot 90 in Deposited Plan 1137298 being folio identifier 90/1137298;
- (b) Lot 91 in Deposited Plan 1137298 being folio identifier 91/1137298;
- (c) Lot 92 in Deposited Plan 1137298 being folio identifier 92/1137298;



BUNBURY CURRAN

L92/DP1137298

Legend

-  Creek
-  Subject Land
-  Precinct Boundary
-  SW Growth Centre Boundary

Dept. of Lands Cadastre
01/11/2009

November 2009

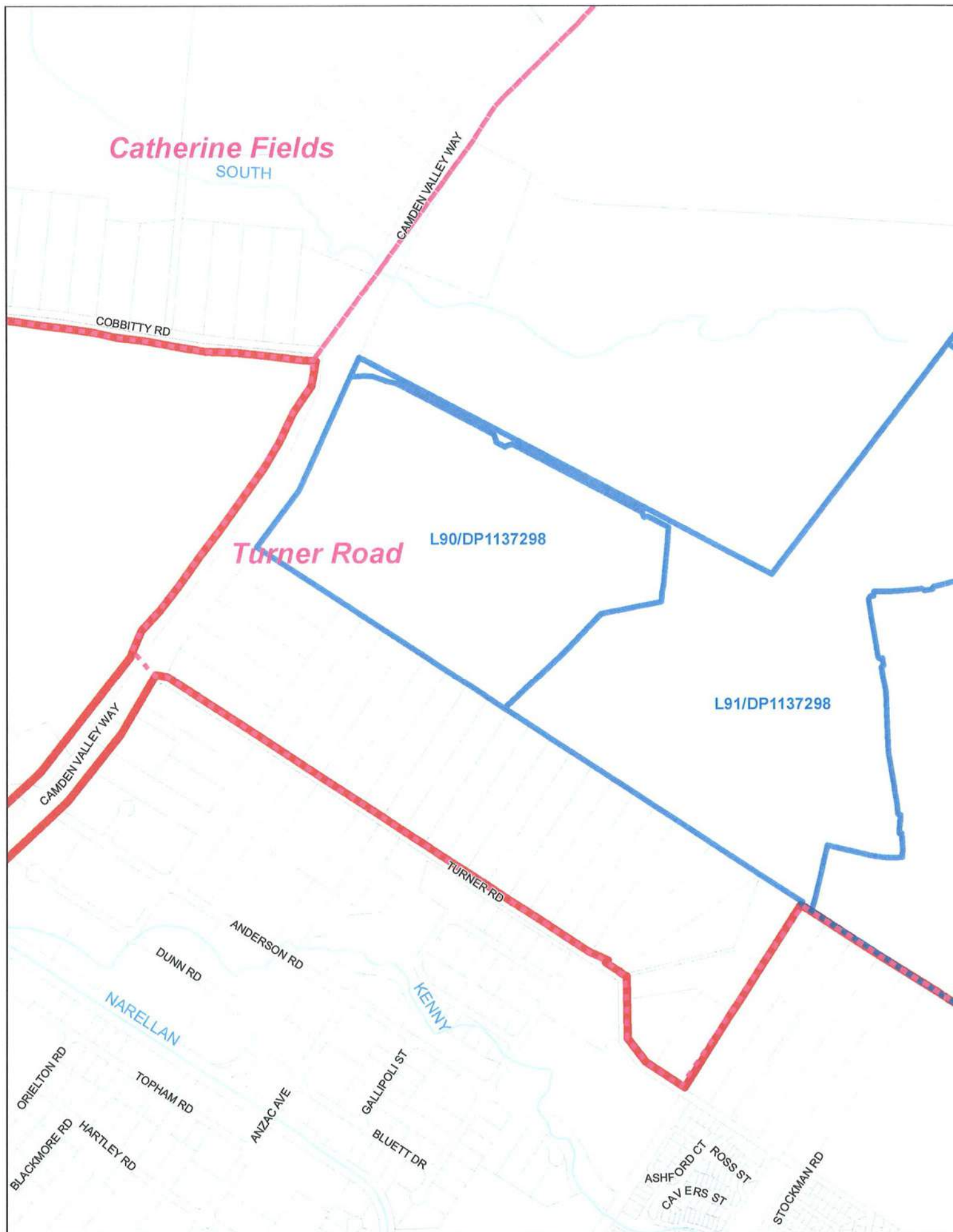
Disclaimer
The information contained on this map is, to the best of the Government's knowledge correct. However, no warranty or guarantee is provided by the Government and no liability is accepted for any loss or damage resulting from any person relying upon or using the information contained in the map.



0 250 500
Meters



Planning



Turner Road Precinct - Subject Land

Printing Date: November 16, 2009 File: G:\GCC\GCC - INDEX\COMMUNICATIONS\80 Resources\15 GIS\PROJECTS\TurnerRoad\Maps\TurnerRoad_Precinct_SubjectLand_1109.mxd

SCHEDULE 3

SIC Offset Amounts – Table (clause 4.3)

Notes relating to Schedule 3

Column 1 refers to the Stages described in Schedule 5

Column 2 specifies, in dollars, the Attributable Cost of the Stage as at December 2008.

Column 3 specifies, in dollars the Special Infrastructure Contribution Offset Amount to which the developer will be entitled on completion of a Milestone as at December 2008 which is 20% of the Attributable Cost for the Stage.

Column 4 describes a *Milestone*, as defined in clause 1.1.

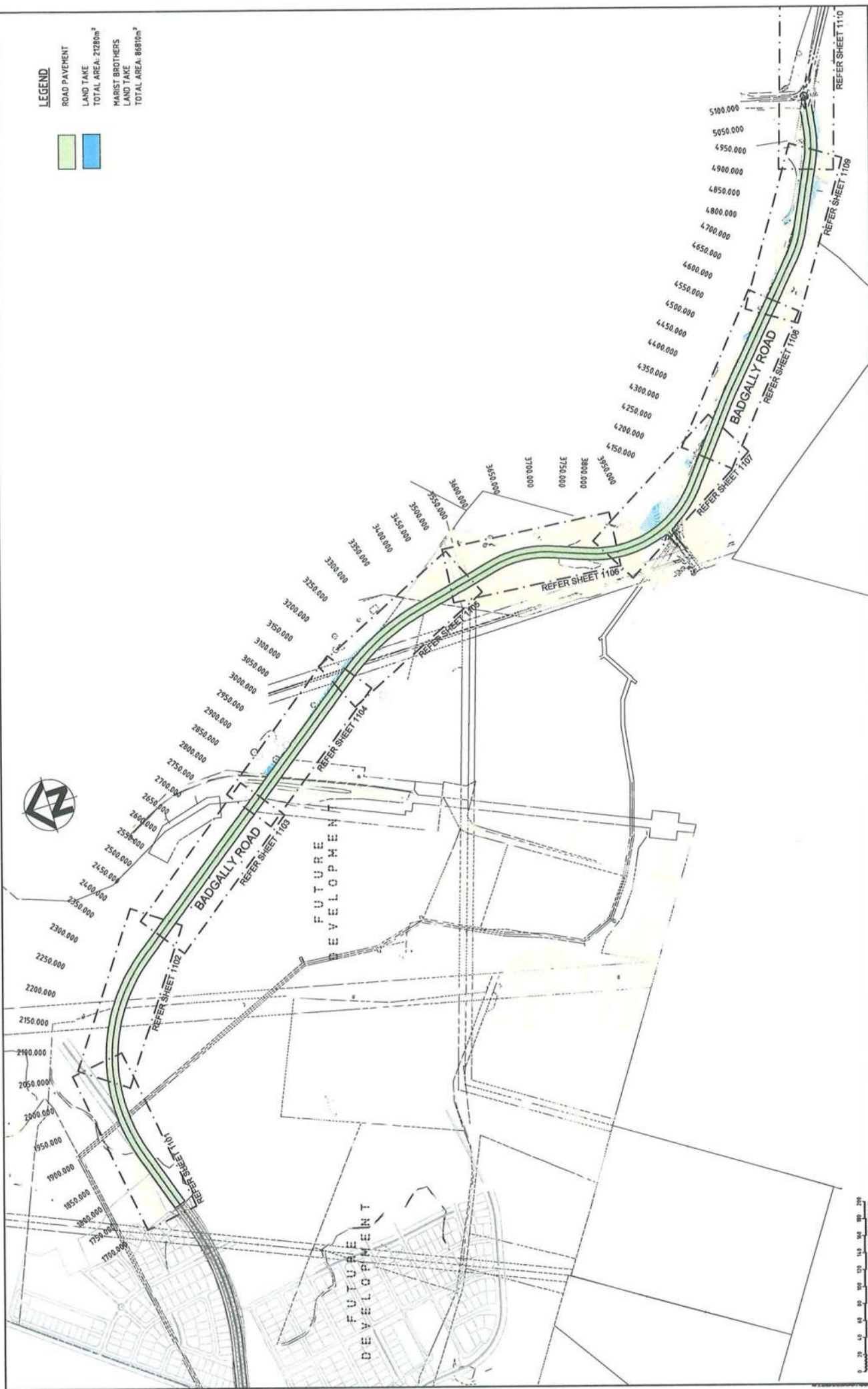
Column 1	Column 2	Column 3	Column 4	
Stage	Attributable Cost	SIC Offset Amount per Milestone	Milestones	
			No.	Description
1A	\$6,700,428.00	\$1,340,085.60	1	Expenditure of 25% of the value of the Construction Contract
			2	Expenditure of 50% of the value of the Construction Contract
			3	Expenditure of 75% of the value of the Construction Contract
			4	Expenditure of 100% of the value of the Construction Contract
			5	The later of handover of the Road Work, acceptance of the Road Work by the relevant Roads Authority, and completion of any defects liability period for the Road Work.
2	\$5,275,324.00	\$1,055,064.80	1-5	As for Stage 1A
3	\$12,760,772.00	\$2,552,154.40	1-5	As for Stage 1A
4	\$1,313,342.00	\$262,668.40	1-5	As for Stage 1A
5	\$3,401,220.00	\$680,244.00	1-5	As for Stage 1A
6	\$11,209,572.00	\$2,241,914.40	1-5	As for Stage 1A
Total	\$40,660,000.00			

SCHEDULE 4

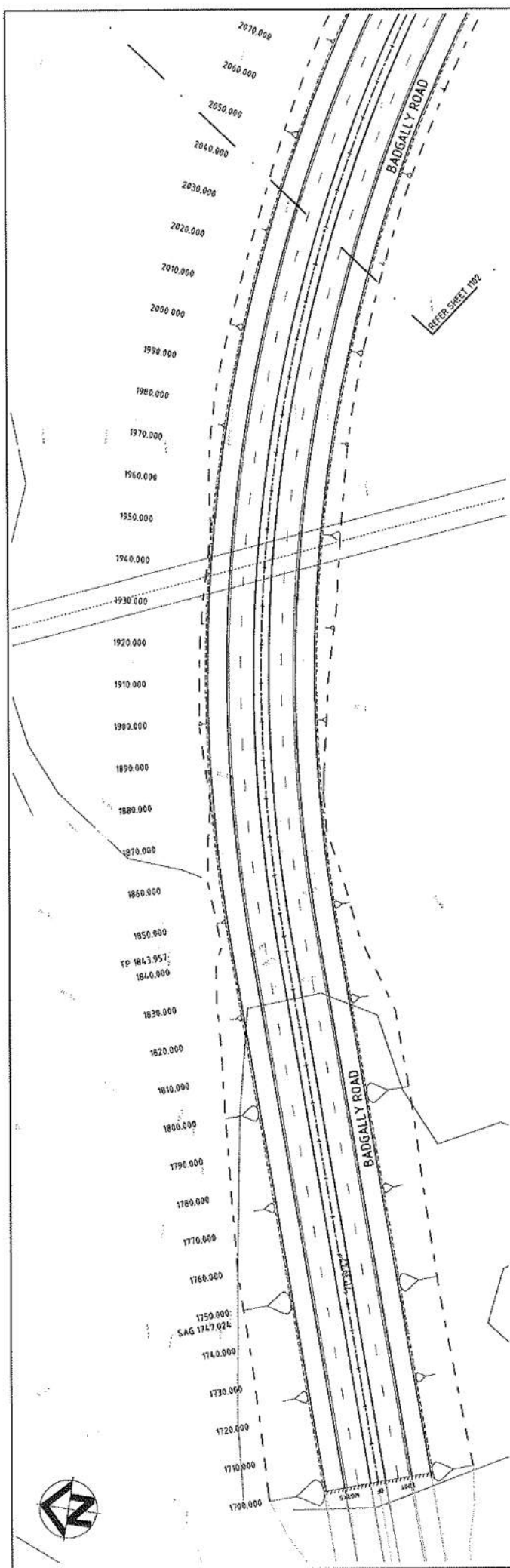
Plans

LEGEND

ROAD PAVEMENT
LAND TAKE
TOTAL AREA: 2128m²
MARIST BROTHERS
LAND TAKE
TOTAL AREA: 86810m²



GENERAL LAYOUT PLAN DART WEST BADGALLY ROAD CORRIDOR INVESTIGATION		Scale: 1:500 Date: 10/01/2011 Project: 1001
Project: 1001 Date: 10/01/2011		Client: Brown Consulting (NSW) Pty Ltd Address: Level 2, 2 Ryland Place, North Sydney, NSW 1585 Telephone: 02 8808 5000 Fax: 02 8808 5009 Email: info@brownconsulting.com.au
All dimensions to be checked prior to construction. Use written dimensions only, do not scale.		Scale: 1:500 Date: 10/01/2011



PLAN - BADGALLY ROAD
SCALE 1:500

LONGITUDINAL SECTION CENTRELINE - BADGALLY ROAD
SCALE 1:100 (V)

CHAINAGE	EXISTING LEVEL	DESIGN LEVEL	DESIGN GRADE	DESIGN GEOMETRY	DATE: 01/11/2011
1700.000	170.00	170.00	2.5%		
1710.000	171.00	171.00	2.5%		
1720.000	172.00	172.00	2.5%		
1730.000	173.00	173.00	2.5%		
1740.000	174.00	174.00	2.5%		
1750.000	175.00	175.00	2.5%		
1760.000	176.00	176.00	2.5%		
1770.000	177.00	177.00	2.5%		
1780.000	178.00	178.00	2.5%		
1790.000	179.00	179.00	2.5%		
1800.000	180.00	180.00	2.5%		
1810.000	181.00	181.00	2.5%		
1820.000	182.00	182.00	2.5%		
1830.000	183.00	183.00	2.5%		
1840.000	184.00	184.00	2.5%		
1850.000	185.00	185.00	2.5%		
1860.000	186.00	186.00	2.5%		
1870.000	187.00	187.00	2.5%		
1880.000	188.00	188.00	2.5%		
1890.000	189.00	189.00	2.5%		
1900.000	190.00	190.00	2.5%		
1910.000	191.00	191.00	2.5%		
1920.000	192.00	192.00	2.5%		
1930.000	193.00	193.00	2.5%		
1940.000	194.00	194.00	2.5%		
1950.000	195.00	195.00	2.5%		
1960.000	196.00	196.00	2.5%		
1970.000	197.00	197.00	2.5%		
1980.000	198.00	198.00	2.5%		
1990.000	199.00	199.00	2.5%		
2000.000	200.00	200.00	2.5%		
2010.000	201.00	201.00	2.5%		
2020.000	202.00	202.00	2.5%		
2030.000	203.00	203.00	2.5%		
2040.000	204.00	204.00	2.5%		
2050.000	205.00	205.00	2.5%		
2060.000	206.00	206.00	2.5%		
2070.000	207.00	207.00	2.5%		

LONGITUDINAL SECTION CENTRELINE - BADGALLY ROAD
SCALE 1:100 (V)

BROWN

Level 2, 3 Suburb Road, Mountbatten, NSW 1585 Australia
Telephone: 02 8868 5500 Facsimile: 02 8868 5899

ALL DIMENSIONS TO BE CHECKED
FOR CONSTRUCTION USE
WRITTEN DIMENSIONS ONLY, DO
NOT SCALE.

DATE: 01/11/2011
BY: [Signature]
CHECKED BY: [Signature]
DESIGNED BY: [Signature]

DART WEST

BADGALLY ROAD

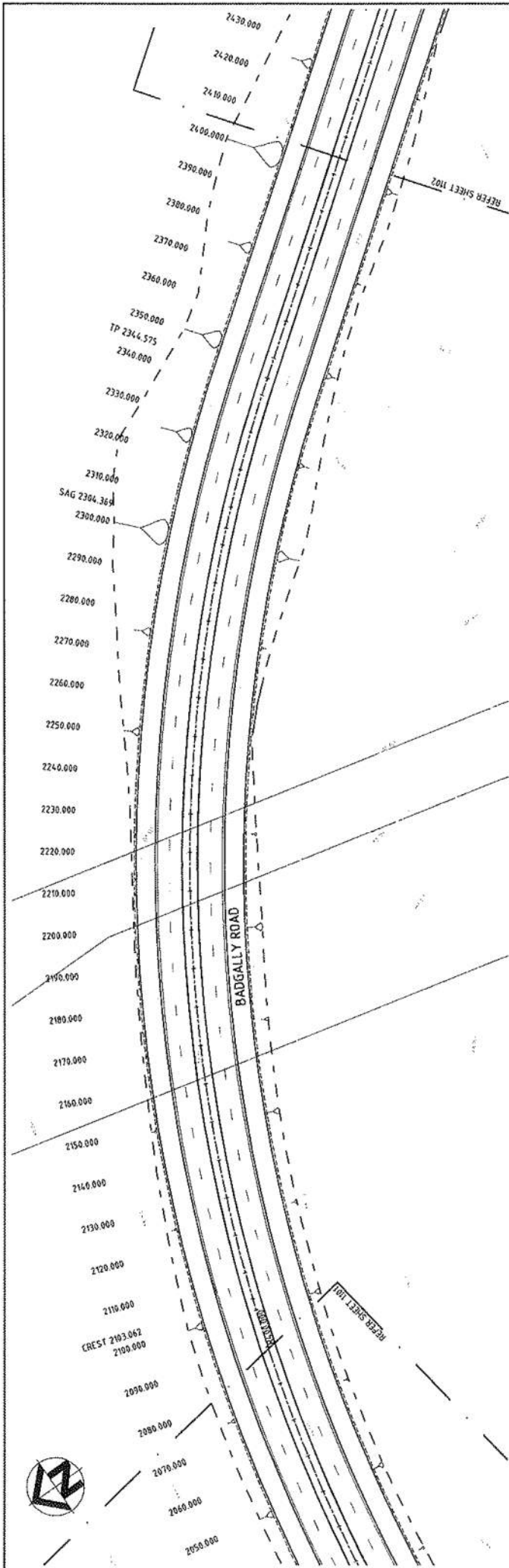
CORRIDOR INVESTIGATION

Project: [Blank]

Scale: 1:500

Sheet: 01 OF 10

Drawn by: [Blank]
Checked by: [Blank]
Designed by: [Blank]



PLAN - BADGALLY ROAD
SCALE 1:500

LONGITUDINAL SECTION CENTRELINE - BADGALLY ROAD
SCALE 1:500 (H)
SCALE 1:100 (V)

STATION	DESIGN LEVEL	EXISTING LEVEL	CHAINAGE
2430.000	168.95	167.13	000
2420.000	168.91	167.13	100
2410.000	169.98	168.25	200
2400.000	169.98	168.25	300
2390.000	169.98	168.25	400
2380.000	169.98	168.25	500
2370.000	169.98	168.25	600
2360.000	169.98	168.25	700
2350.000	169.98	168.25	800
2344.575	169.98	168.25	900
2340.000	169.98	168.25	1000
2330.000	169.98	168.25	1100
2320.000	169.98	168.25	1200
2310.000	169.98	168.25	1300
2304.364	169.98	168.25	1400
2300.000	169.98	168.25	1500
2290.000	169.98	168.25	1600
2280.000	169.98	168.25	1700
2270.000	169.98	168.25	1800
2260.000	169.98	168.25	1900
2250.000	169.98	168.25	2000
2240.000	169.98	168.25	2100
2230.000	169.98	168.25	2200
2220.000	169.98	168.25	2300
2210.000	169.98	168.25	2400
2200.000	169.98	168.25	2500
2190.000	169.98	168.25	2600
2180.000	169.98	168.25	2700
2170.000	169.98	168.25	2800
2160.000	169.98	168.25	2900
2150.000	169.98	168.25	3000
2140.000	169.98	168.25	3100
2130.000	169.98	168.25	3200
2120.000	169.98	168.25	3300
2110.000	169.98	168.25	3400
2103.042	169.98	168.25	3500
2100.000	169.98	168.25	3600
2090.000	169.98	168.25	3700
2080.000	169.98	168.25	3800
2070.000	169.98	168.25	3900
2060.000	169.98	168.25	4000
2050.000	169.98	168.25	4100

LONGITUDINAL SECTION CENTRELINE - BADGALLY ROAD
SCALE 1:500 (H)
SCALE 1:100 (V)

BROWN

Surveying & Consulting (NSW) Pty Ltd
Level 2, 2 Bickton Place, Newport, Victoria 3206
Telephone: 03 8800 5000, Fax: 03 8800 5099
Email: info@brown.com.au, www.brown.com.au

Drawn by: [Name]
Checked by: [Name]
Reviewed by: [Name]
Date: [Date]

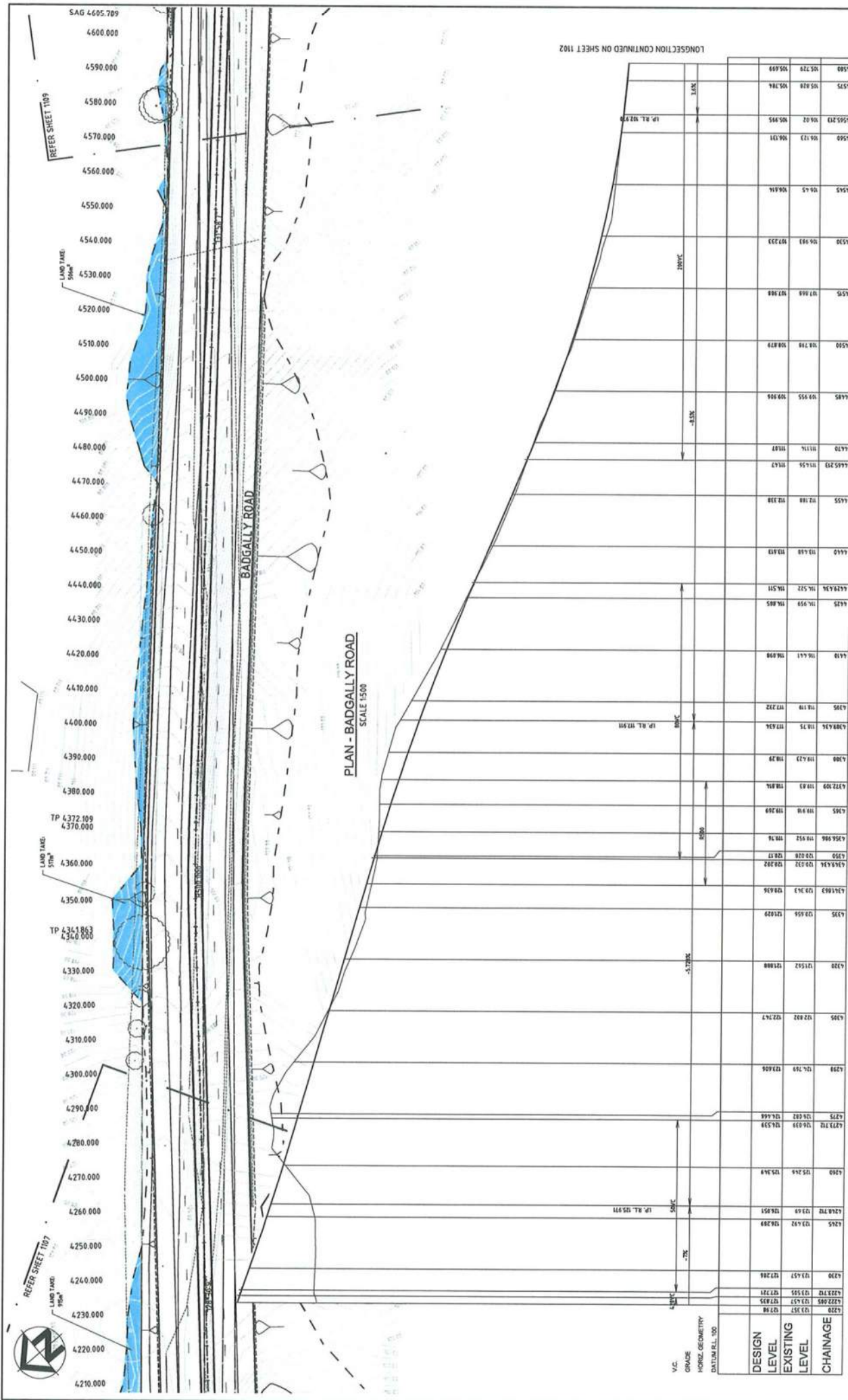
LAYOUT PLAN & LONGSECTION
SHEET 02 OF 10

DART WEST
BADGALLY ROAD
CORRIDOR INVESTIGATION

Scale: 1:500
Drawing No: 1102

ALL DIMENSIONS TO BE CHECKED
ON SITE BY SUPERINTENDANT
CONTRACTOR. DIMENSIONS ONLY, DO
NOT SCALE.

Project No: [Number]
Sheet No: 02 OF 10



LONGSECTION CONTINUED ON SHEET 1102

LONGITUDINAL SECTION CENTRELINE - BADGALLY ROAD
SCALE 1:100 (H)
SCALE 1:100 (V)

CHAINAGE	DESIGN LEVEL	EXISTING LEVEL
4220	423.95	423.95
4230	424.57	424.57
4240	425.57	425.57
4250	426.97	426.97
4260	428.49	428.49
4270	429.97	429.97
4280	431.49	431.49
4290	432.97	432.97
4300	434.49	434.49
4310	435.97	435.97
4320	437.49	437.49
4330	438.97	438.97
4340	440.49	440.49
4350	441.97	441.97
4360	443.49	443.49
4370	444.97	444.97
4380	446.49	446.49
4390	447.97	447.97
4400	449.49	449.49
4410	450.97	450.97
4420	452.49	452.49
4430	453.97	453.97
4440	455.49	455.49
4450	456.97	456.97
4460	458.49	458.49
4470	459.97	459.97
4480	461.49	461.49
4490	462.97	462.97
4500	464.49	464.49
4510	465.97	465.97
4520	467.49	467.49
4530	468.97	468.97
4540	470.49	470.49
4550	471.97	471.97
4560	473.49	473.49
4570	474.97	474.97
4580	476.49	476.49
4590	477.97	477.97
4600	479.49	479.49

DATE: 11/08
BY: JWP
CHECKED: JWP
SCALE 1:100 (H)
SCALE 1:100 (V)

BROWN

Level 2, 2 Burleigh Place, North Sydney, NSW 1585 Australia
Tel: 02 9360 5000 Fax: 02 9360 5001 Email: info@brown.com.au

Project: DART WEST
Sheet: 1108 OF 10
Scale: 1:100

Author: JWP
Check: JWP
Date: 11/08

Project: DART WEST
Sheet: 1108 OF 10
Scale: 1:100

Project: DART WEST
Sheet: 1108 OF 10
Scale: 1:100



TYPICAL SECTION
CH 1700 TO CH 2900
SCALE 1:100
NATURAL



TYPICAL SECTION
CH 2900 TO CH 8050
SCALE 1:100
NATURAL

SCALE 1:100 (IN)

NO.	DATE	DESCRIPTION	BY	CHKD
1	10/1/11	ISSUED FOR PERMIT	JL	JS
2	10/1/11	REVISED FOR PERMIT	JL	JS
3	10/1/11	REVISED FOR PERMIT	JL	JS
4	10/1/11	REVISED FOR PERMIT	JL	JS
5	10/1/11	REVISED FOR PERMIT	JL	JS
6	10/1/11	REVISED FOR PERMIT	JL	JS
7	10/1/11	REVISED FOR PERMIT	JL	JS
8	10/1/11	REVISED FOR PERMIT	JL	JS
9	10/1/11	REVISED FOR PERMIT	JL	JS
10	10/1/11	REVISED FOR PERMIT	JL	JS

ALL DIMENSIONS TO BE CHECKED
ON SITE BY SUPERINTENDENT
AND FIELD ENGINEER. DIMENSIONS
SHOWN ARE FOR INFORMATION ONLY.
NOT SCALE.



BROWN
Level 2, 2nd Floor, 1000 Main Street, Suite 200, Springfield, MA 01103
Tel: 417-833-2000 Fax: 417-833-2001
www.brownconsulting.com

Project: DART WEST
Badgally Road
Corridor Investigation
Scale: 1:100
Date: 10/1/11

Client: DART WEST
Badgally Road
Corridor Investigation

Project: PROPOSED BADGALLY ROAD
TYPICAL CROSS SECTIONS
Scale: 1:100
Date: 10/1/11

Sheet: 00
Total: 00

SCHEDULE 5

1 ROAD WORK

The construction of Badgally Road generally as shown on the Plans in the following stages:

Stage 1A – Construction of Badgally Road from Camden Valley Way to Ch 1460 (approximately), including;

- Construction of the Camden Valley Way spur and the two lane southern carriageway including intersections and ancillaries;
- The dedication by the Developer of the portion of Road Work Land for this stage owned by 'The Trustees of the Marist Brothers' (approximately 2.5Ha) to the Public as Road;

Stage 2 - Construction of Badgally Road from Ch 1460 (approximately) to Ch 2600(approximately), including;

- Construction of the two lane southern carriageway including intersections and ancillaries;
- The dedication by the Developer of the Road Work Land (full road width) for this Stage to the Public as Road;

Stage 3 - Construction of Badgally Road from Ch 2600 (approximately) to Eagle Vale Drive, including;

- Construction of the two lane southern carriageway including intersections and ancillaries;
- The dedication by the Developer of the Road Work Land (full road width) for this Stage to the Public as Road;

Stage 4 - Construction of Badgally Road from Ch 1200 (approximately) to Ch 1590 (approximately), including;

- Construction of the two lane northern carriageway including intersections and ancillaries;

Stage 5 - Construction of Badgally Road from Ch 1590 (approximately) to Ch 2600(approximately), including;

- Construction of the two lane northern carriageway including intersections and ancillaries;

Stage 6 - Construction of Badgally Road from Ch 2600 (approximately) to Eagle Vale Drive, including;

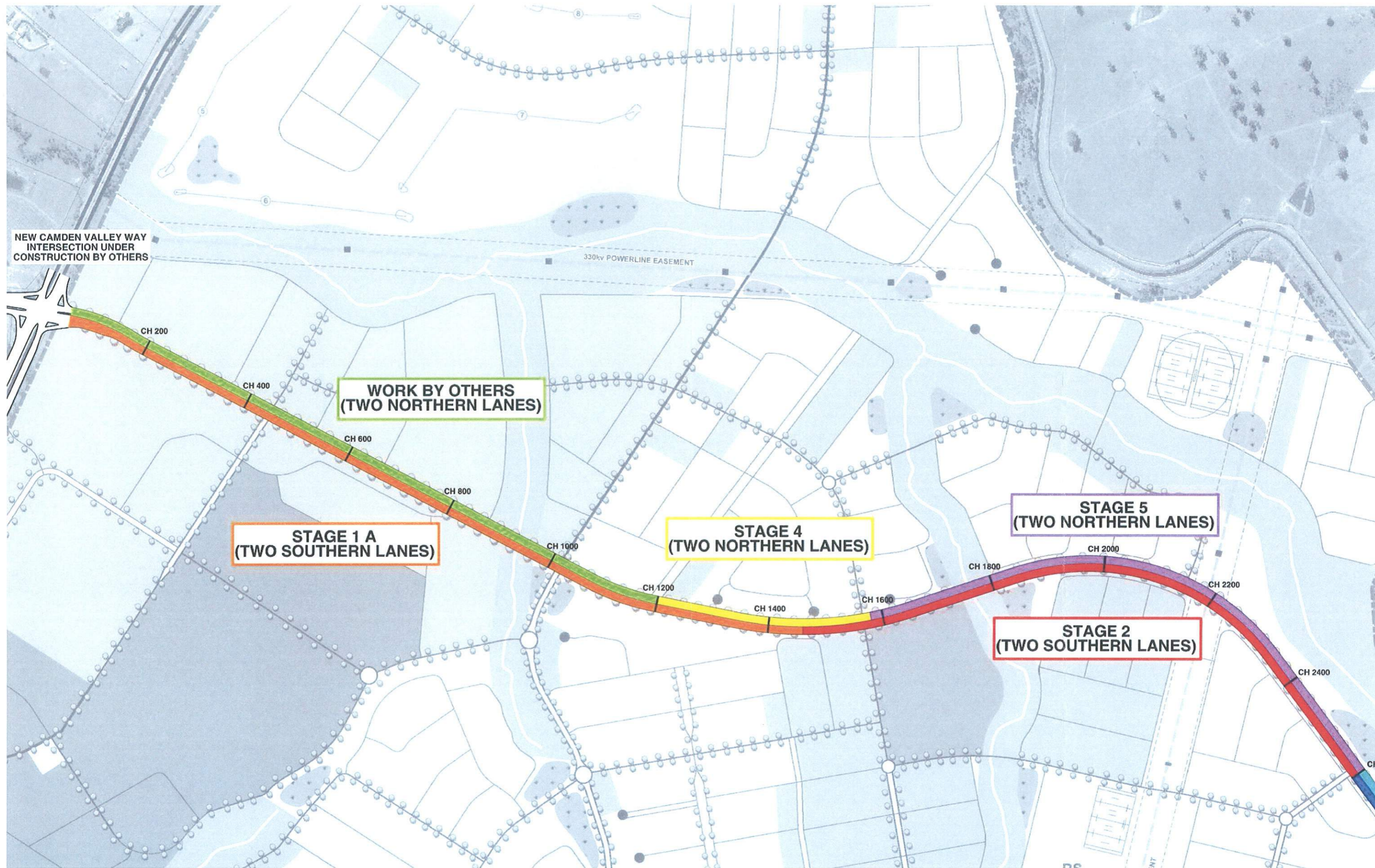
- Construction of the two lane northern carriageway including intersections and ancillaries;
- The dedication by the Developer of any additional Road Work Land required for the construction of this Stage to the Public as Road.

2 STAGING OF ROAD WORK


Stage	Delivery Milestone
1A	Prior to the issue of a Subdivision Certificate for a plan of subdivision to create lots which are intended to accommodate the 100 th Residential Lot within the Land.
2	Prior to the issue of a Subdivision Certificate for a plan of subdivision to create lots which are intended to accommodate the 600 th Residential Lot within the Land
3	Prior to the issue of a Subdivision Certificate for a plan of subdivision to create lots which are intended to accommodate the 750 th Residential Lot within the Land
4	Prior to the issue of a Subdivision Certificate for a plan of subdivision to create lots which are intended to accommodate the 1,400 th Residential Lot within the Land
5	Prior to the issue of a Subdivision Certificate for a plan of subdivision to create lots which are intended to accommodate the 1,800 th Residential Lot within the Land
6	Prior to the issue of a Subdivision Certificate for a plan of subdivision to create lots which are intended to accommodate the 2,040 th Residential Lot within the Land

3 VARIATION TO STAGING OR DELIVERY TIMETABLE

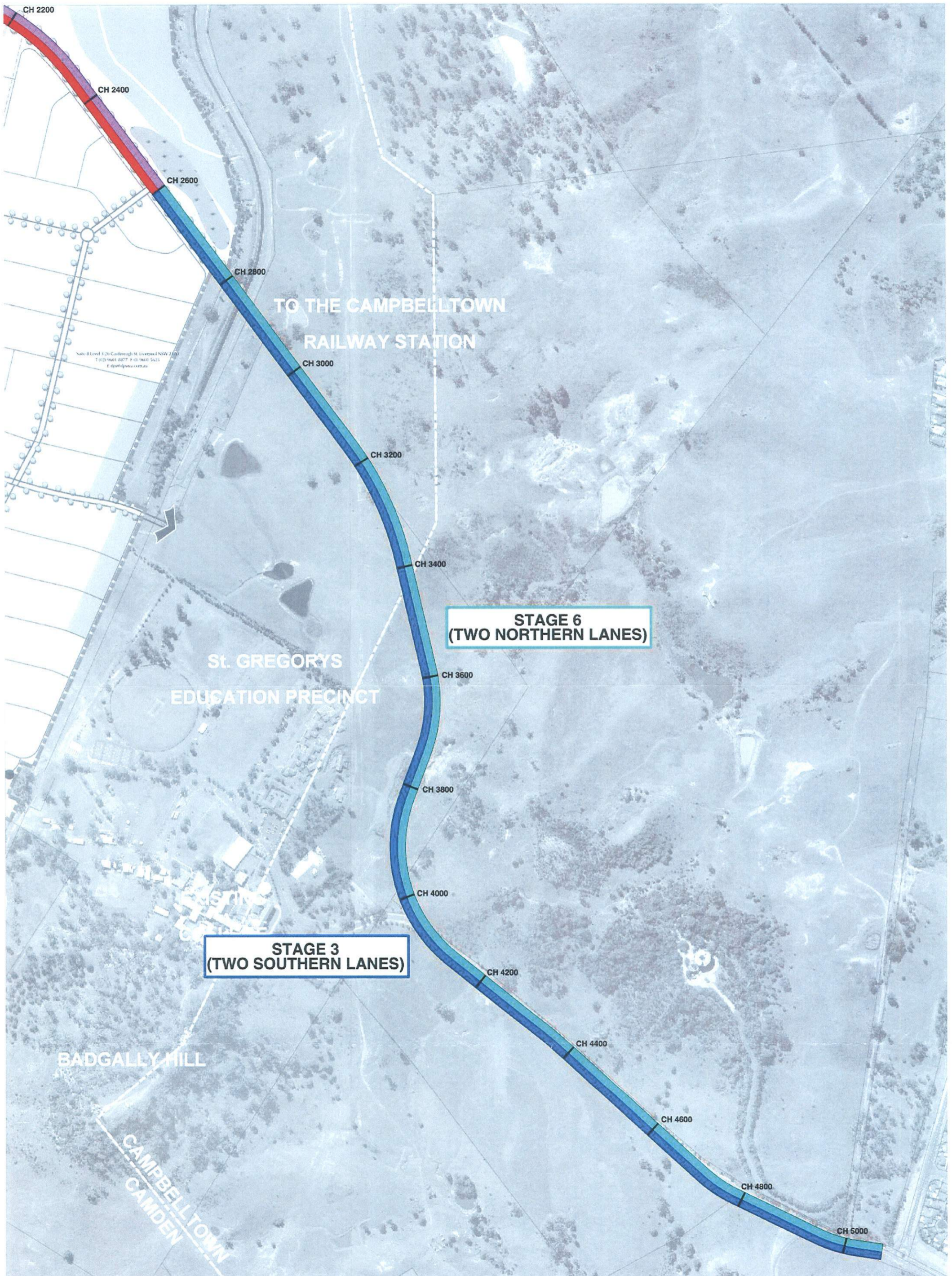
- 3.1** The parties to this Deed acknowledge that unless otherwise agreed the Road Work will be constructed in stages as described in this Schedule 5.
- 3.2** The parties to this Deed acknowledge that circumstances may arise which will require amendment to the staging of the Road Work.
- 3.3** The Developer may, by notice in writing, request changes to the staging of the Road Work.
- 3.4** A notice provided under clause 3.3 of this Schedule 5, shall include a written justification of the proposed changes to the staging of the Road Work, a description of the requested changes, and a revised staging program for the remaining stages of the Road Work.
- 3.5** Within 30 days of receipt of a notice under clause 3.3 of this Schedule 5, the Minister must provide written notice to the Developer either approving, or not approving the request to vary the staging of the Road Work.
- 3.6** In determining whether to approve a request for a variation to the staging of the Road Work, the Minister must act reasonably.



BADGALLY ROAD STAGING PLAN (PLAN 1 OF 2) GREGORY HILLS PROPOSED BADGALLY ROAD EXTENSION


 Plan No: DARGH053 • Date: 4/12/2009 • Scale: 1:6000@A3
 Note: All areas and dimensions subject to detail survey.


 Development Planning Strategies
 Suite 11 Level 1 20 Cadellagh St, Liverpool NSW 2170
 T: (02) 9601 0077 F: (02) 9601 3625
 E: dpl@dpw.nsw.gov.au



BADGALLY ROAD STAGING PLAN (PLAN 2 OF 2) GREGORY HILLS PROPOSED BADGALLY ROAD EXTENSION

SCHEDULE 6

Address for Service (clause 10.16)

Minister for Planning

Contact: Director-General, Department of Planning

Attn: Andrew Jackson, Executive Director Strategy Infrastructure
Planning

Address: 23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6511

Dart West Developments Pty Limited

Contact: David Taylor, General Manager - Property

Address: 18 McKenzie Boulevard
GREGORY HILLS NSW 2567

Facsimile No: (02) 4623 8925