

## Appendix E

COMMONWEALTH OF AUSTRALIA

*ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999*

**DECISION ON CONTROLLED ACTION, CONTROLLING PROVISIONS AND DESIGNATION OF PROPONENT**

Pursuant to section 75 of the *Environment Protection and Biodiversity Conservation Act 1999*, I, MARK FLANIGAN, Assistant Secretary, Policy and Compliance Branch, Department of the Environment and Heritage, decide that the proposed action, set out in the Schedule, is a controlled action; that the controlling provisions for the action are those set out in the Schedule; and designate Shute Harbour Management Pty Ltd as proponent of the action.

**SCHEDULE**

The proposed action to develop a marina facility, and residential and commercial precincts, including associated infrastructure, at Shute Harbour, Shutehaven, Queensland, (EPBC 2003/1308).

The Part 3, Division 1, controlling provisions are:

- sections 12 and 15A (World Heritage);
- sections 18 and 18A (Listed threatened species and communities);
- sections 20 and 20A (Listed migratory species); and
- sections 23 and 24A (Marine environment).

Dated this 24 day of December 2003

  
ASSISTANT SECRETARY  
POLICY AND COMPLIANCE BRANCH  
DEPARTMENT OF THE ENVIRONMENT AND HERITAGE

## Appendix F

## **APPENDIX      FURTHER STUDIES BEING UNDERTAKEN**

**ENVIRONMENTAL:** Suitably qualified consultants will be contracted to undertake further investigations to those submitted in the original EIS to:

- Provide an assessment of the direct and indirect impacts of the development of Shute Harbour in the context of the World Heritage Areas and State Marine Park.
- Provide an assessment of the significance of the site for listed CAMBA / JAMBA or other migratory species and / or resident shorebirds. The assessment will include conservation measures for shorebirds on a local and regional perspective.
- Provide a revised marine mega fauna assessment to that contained in the original EIS. The EPA will be consulted prior to the undertaking of any surveys to ensure that adequate investigations are conducted.
- Provide details on protected species (eg. Turtles, dugongs, shorebirds) management during construction and operational phases including details of who will be responsible for the proposed management measures. The assessments will provide a description of the distribution and abundance of EPBC listed marine fauna and potential impacts. The EPBC species abundance and distribution within Shute Harbour will be described.
- The Marine mega fauna studies will describe the likely numbers and timing (eg. Peak/seasonal periods) of marine turtle species that would use Shute Bay's seagrasses as a foraging resource; and ecological processes that contribute to Shute Bay's moderate conservation value for marine turtles. In addition it will describe the potential impacts on inshore dolphin species such as the Irrawaddy River Dolphin and Indo-Pacific Humpback Dolphin have not been adequately addressed. These dolphin species are known from coastal, estuarine, and occasionally riverine species, in tropical and subtropical regions and occurs close to the coast, generally in less than 20 m depth.
- Potential impacts on crocodiles are not addressed in detail. It may be possible that the impacts of a residential/resort development in this area may attract crocodiles to this area. This should be addressed in the EIS.
- Provide a revised terrestrial fauna assessment to that contained in the original EIS. The EPA will be consulted prior to the undertaking of any surveys to ensure that adequate investigations are conducted. This will include investigations to determine if the EPBC species, False-water Rat may utilize areas of the project site or adjacent areas. SPRAT indicates this species is present in the area from Airlie Beach to Cape Palmerston and its habitat is mostly associated with mangroves. The studies will indicate whether targeted surveys were conducted for this species and describe potential impacts from the loss of potential habitat onsite.
- Provide a specific assessment of the susceptibility of the Proserpine Rock-wallaby (*Petrogale Persephone*) population to motor vehicle strikes along the Airlie Beach-Shute Bay Road. This assessment will examine the

## APPENDIX FURTHER STUDIES BEING UNDERTAKEN

existing situation and the potential for an increase in the number of motor vehicle strikes due construction and operational vehicle traffic, and the likely impact on the long-term continuation of this population. The EPA will be consulted prior to the undertaking of any surveys to ensure that adequate investigations are conducted.

- Provide a revised terrestrial flora assessment. The EPA will be consulted prior to the undertaking of any surveys to ensure that adequate investigations are conducted and that appropriate references are cited.
- The revised Flora assessment will determine the presence of any threatened flora species –such as *Leucopogon cuspidatus*, *Medicosma obovata* and *Ozothamnus eriorcephalus*. The studies will indicate whether there is habitat present in the area that supports these species. If habitat is present it will be stated in terms of the results of targeted surveys, copies of those surveys will be provided to the EPA and DEH.
- Provide detailed information on the proposed management and mitigation measures to address the potential impacts on the adjoining Conway National Park from flora landscaping species, particularly any potential to spread as weeds into the National Park.
- Provide an assessment of potential compensatory measures (and their likely effectiveness) to offset any expected environmental impacts from the proposal to achieve a no net loss of environmental values.
- Provide an assessment to determine the extent of mangroves areas and patches of seagrasses in Shute Bay. FRC surveys 1999 indicate <5% cover with Shute Bay described as the lowest energy area and determine any potential impact on the proposed dredging maintenance schedule.
- Provide an assessment to determine the Saltmarsh-mangrove-seagrass continuum – and what impacts are likely to occur to this habitat mosaic when it is disrupted through removal of mangrove foreshore community.
- Review and update the mapping of seagrass within the lease to determine density and extent.
- Provide an assessment to determine the species of fish which use the habitats proposed for development. For example how will the seagrass impacts through development actually affect the species such as syngnathids? Any potential loss assessment will be assessed in a local context.
- Provide an assessment to determine links between predicted turbidity and nutrient concentrations and influences on seagrass, coral and benthic vertebrate and invertebrate extent to be completed through predictive modeling, and the potential impacts of habitat loss for fish species, turtles and dugongs.

## **APPENDIX      FURTHER STUDIES BEING UNDERTAKEN**

**GEOLOGY AND HYDROLOGY:** Suitably qualified consultants will be contracted to undertake further investigations to those submitted in the original EIS to:

- Determine and validate the Wave Climate both ambient and extreme.
- Undertake current flow modeling and sedimentation rates.
- Finalize detailed geological assessments.

**ENGINEERING AND INFRASTRUCTURE DESIGN:** Suitably qualified consultants will be contracted to undertake further investigations to those submitted in the original EIS to:

- Undertake water quality sampling in Shute Bay and adjoining creeks.
- Undertake final engineering design for the cut and fill including final site and marina levels.
- Provide engineering plans, specifications and extent for Capital dredging.
- Provide the engineering Design for the Dredge spoil area.
- Detailed engineering design and testing of the Floating Breakwater.
- Detailed engineering design plans and specifications for the fuelling facility, and sullage pump out facility.
- Model and design storm water drainage and management, site retention, filtration and disposal.
- Design, roadways, driveways, car parking areas, grades cross sections verge details, road reserves and edge treatments.
- Draft Construction and Operational Environment Management Plans

**PLANNING:** Suitably qualified consultants will be contracted to undertake further investigations to those submitted in the original EIS to:

- Ensure the project is aligned with the provisions of the Strategic Plan or the Council has the ability to refuse the application;
- Conform with the requirements of the planning scheme, or provide sufficient justification for the departure from the current requirements, with particular emphasis on the residential component, and its height (e.g. max 2 storeys), bulk and scale;
- Determine the levels of assessment for the proposed development and compliance with the necessary codes;
- Demonstrate that the development is responsive to its location, with regard to existing uses, low intensity development and environmental issues and will not adversely affect the character of the area;
- Demonstrate compliance with all necessary legislation, including WHAMRP, MWRCMP, SCMP and State Planning Policies;
- Provide a needs analysis, with particular emphasis on marina berths, facilities and residential dwellings; demonstrate compliance with

## **APPENDIX      FURTHER STUDIES BEING UNDERTAKEN**

environmental principles, including World Heritage guidelines and ESD principles;

- Provide evidence that the proposal can be adequately serviced by infrastructure, with no direct financial impact on the WSC.

**ECONOMIC:** Suitably qualified consultants will be contracted to undertake further investigations to those submitted in the original EIS to:

- Provide an economic profile of the Whitsundays region focusing on the residential, commercial and tourism markets that will be impacted by the project.
- Identify and quantify the economic benefits and impacts to the State and regional economies that result from the project. It is expected that these economic impacts will result from both the construction and operational phases of the project.
- Provide a quantitative assessment to determine the current need for the proposed marina taking into consideration existing and approved but not yet developed marina within the Whitsunday region.
- Provide a revised assessment of the Shute Bay site as a suitable marina location within the Whitsunday region in the context of the “Primary Level Constraints” listed in the Whitsunday Region Marina Demand Study 2001.
- Provide a detailed Boating traffic survey encompassing all boating traffic in Shute Harbour with a view to determining potential impacts.
- Provide a detailed review of the strategic demand at least up to 2026 for public recreational boating facilities, in line with demographic projections elsewhere in the report. It should also consider the provision of an additional multi-lane boat ramp and queuing pontoon.

**CONSULTATION:** Suitably qualified consultants will be contracted to undertake further investigations to those submitted in the original EIS to provide:

A detailed program of public consultation to deliver quantitative data from but not limited to Advisory Agencies, Sunfish, Queensland Seafood Industry Association, Whitsunday Seagrass Watch, Whitsunday Tourism, Great Barrier Reef Charter Association, Mackay-Whitsunday Natural Resource Management Group, Central Queensland Land Council and Traditional Owner groups with interests in the area of the proposed development.

The community consultation program will include:

- effective community management;
- report sections outlining issues of concern and how the concerns are being addressed;
- how benefits flowing to the community will be maximized; and

## **APPENDIX      FURTHER STUDIES BEING UNDERTAKEN**

- an appendix listing Aboriginal and Torres Strait Islander people, communities and organizations that were consulted. Negotiations with the Traditional Owner groups have commenced and will be facilitated by the Central Queensland Land Council.

A consultation report will be provided describing the results of the community consultation program, identifying the groups and individuals consulted, the issues raised, and the means by which issues were addressed. It will describe the public information, participation or consultation activities undertaken in project formulation, project planning as well as any proposals for further public participation in project implementation. It will describe any activities previously undertaken or proposed to be undertaken to promote public awareness of and support for the proposal, the dates, the groups and individuals involved and the objectives of the activities.

- A program of ongoing public consultation will be provided and address such matters as information brochures, hotline telephone number, information site tours, public notices and public meetings. An information office will be opened in the existing Shute Harbour Ferry Terminal building to provide public access to information about the development.



## Appendix G





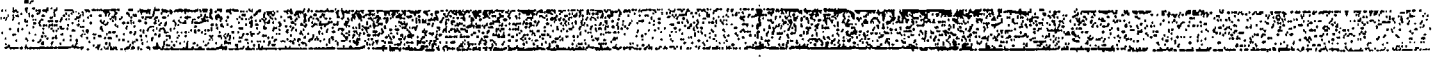
**AGREEMENT**

**BETWEEN**

**STATE OF QUEENSLAND**

**AND**

**SHUTE HARBOUR MARINA  
DEVELOPMENT PTY LTD.**



**A G R E E M E N T**

*Between*

**STATE OF QUEENSLAND**

*and*

**SHUTE HARBOUR MARINA DEVELOPMENT PTY LTD  
ACN 081 285 832**



**CROWN  
LAW**

**Crown Solicitor  
State Law Building  
50 Ann Street  
BRISBANE**

**Facsimile: (07) 3239 6386  
Telephone: (07) 3239 6915  
Reference: CP2/ROA077/2020/DER**

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THIS AGREEMENT is made this

day of

1999.

**BETWEEN:** State of Queensland represented by the Department of Main Roads of 46  
Gordon Street, Mackay in the State of Queensland.

("DMR")

**AND:** Shute Harbour Marina Development Pty Ltd ACN 081 285 832 having its  
registered office at 380 Shute Harbour Road, Airlie Beach in the State of  
Queensland.

("the Developer")

### RECITALS

- A. The Developer is the Lessee under special Lease No 200573 of an area of land described as Lot 2 on CP866441, County of Herbert, Parish of Conway for a term of 5 years commencing on 25 August 1994 ("the Special Lease").
- B. The Developer is also the holder of a Permit to Occupy No200566 in respect of an area of land described as Lot 1 on CP866441, County of Herbert, Parish of Conway for a term of 5 years commencing on 25 August 1994.
- C. The Developer has sought the approval of the Minister for Natural Resources to the granting of a new lease for a significant development under s.128 of the *Land Act 1994* over the Leased Area that is to commence upon the expiration of the Special Lease on 25 August 1999.
- D. The Department of Natural Resources is prepared to seek the necessary approval from the Minister for Natural Resources if the Developer satisfies the criteria set out in s.129 of the *Land Act 1994* and if the Developer obtains the written consent of DMR to the proposed Plan for the Road Reserve and the consent and/or details of the requirements of various government agencies including DMR to the Development.
- E. DMR has granted its consent to the proposed Plan for the Road Reserve which is set out in Schedule 1.
- F. DMR has no objection to the granting of a new lease to the Developer for the purpose of construction of the Development on the Leased Area provided that the Developer complies with the terms and conditions of this Agreement.
- G. The parties wish to record the terms of their agreement.

**THE PARTIES AGREE AS FOLLOWS -**

**1. Interpretation**

- 1.1 In this Agreement unless the context otherwise requires or the contrary intention appears, then the following terms shall have the meanings respectively assigned to them -

**"Agreement"** means this document and any reference to Schedules in this document.

**"Access Point"** means the point of access to the Development that is to be determined by the Developer in consultation with DMR

**"Council"** means the Whitsunday Shire Council

**"Date of this Agreement"** means the date referred to in clause 13 of this Agreement;

**"Development"** means the construction of a marina, resort hotel, accommodation, commercial and other activities;

**"Developer"** means Shute Harbour Marina Development Pty Ltd ACN 081 285 832;

**"Leased Area"** means the land described as Lots 1 and 2 on CP866441, County of Herbert, Parish of Conway;

**"Plan"** means the plan prepared by Ullman & Nolan Pty Ltd showing the proposed Road Reserve which is set out in Schedule 2;

**"Road Reserve"** means the area shown hatched in black on the Plan set out in Schedule 1;

**"Phase 1"** means the reclamation, benching and dredging stage of the Development;

**"Phase 2"** means the construction of the buildings and Access roads comprised in the Development;

**"Traffic Management Plan"** means the plan that is to be prepared by the Developer setting out the proposed access requirements for the Development and the potential impact of the Development on the present road system and is to be submitted to DMR for its approval.

- 1.2 A reference to a person includes a reference to corporations and other entities recognised by law.
- 1.3 In this Agreement the Table of Contents has been inserted for convenience of reference only and is not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.
- 1.4 A reference to a statute, regulation, ordinance or by-law shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same.

- 1.5 In this Agreement the headings to the clauses have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.
- 1.6 In the case of any inconsistency between the Schedules to this Agreement and a clause contained in this Agreement, the provisions of the clause shall prevail to the extent of any inconsistency.
- 1.7 The singular includes the plural and vice versa.
- 1.8 Words importing one gender shall include a reference to all other genders.
- 1.9 A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Agreement and includes any amendment to same made in accordance with this Agreement.
- 1.10 A covenant or agreement on the part of two or more persons shall be deemed to bind them jointly and severally.
2. **Provision of a Road Reserve**
  - 2.1 The Developer shall make provision for a Road Reserve to pass through the Leased Area generally in the location shown on the Plan to satisfy the anticipated future traffic requirements of DMR.
  - 2.2 The Developer shall use its best endeavours to comply in all respects with the anticipated traffic requirements of DMR, which are set out in Schedule 2, to the satisfaction of DMR and any other potential requirements that may be imposed by DMR at a later stage.
  - 2.3 In the event that the boundaries of the Road Reserve are to be changed in some way as a result of the determination of the Access Point to the Development then any such changes must be approved by DMR.
  - 2.4 Any costs associated with the possible realignment of the boundaries of the Road Reserve shall be paid by the Developer.
  - 2.5 In addition to the costs referred to in clause 2.4 any costs associated with alterations to the present road system that are required as a direct result of the construction of the Development shall be paid by the Developer.
  - 2.6 The Developer shall comply with the access requirements of DMR during Phase 1 of the works and will pay the reasonable costs associated with the impact on the Proserpine - Shute Harbour Road caused during the reclamation stage of the Development.
  - 2.7 The Developer acknowledges that further conditions may be imposed by the Chief Executive of DMR pursuant to s.40 of the *Transport Infrastructure Act 1994* at the time that the application for the Development is considered, if it has a significant impact on the Proserpine - Shute Harbour Road, which is a State-controlled road as defined in that Act.



### 3. **Traffic Management Plan**

- 3.1 The Developer shall prepare a Traffic Management Plan that sets out the proposed access requirements for the Development and the impact on the present road system of the Development prior to the commencement of Phase 2 and the Developer shall submit the Traffic Management Plan to DMR for its approval.
- 3.2 Any costs associated with the preparation of the Traffic Management Plan shall be paid by the Developer.

### 4. **Access to the Development**

- 4.1 The Developer must ensure that the Access Point to the Development is confined to one point of access only. If required, DMR may approve a temporary point of access for the construction of Stage 1 of the Development provided that the Developer constructs internal connector roads to Stage 2 of the Development. The temporary point of access can be removed at the time that the final Access Point is determined by the Developer in consultation with DMR.
- 4.2 The Access Point to the Development is to comply with the Austroads standards for intersection visibility and layout.
- 4.3 The Developer shall be responsible for any costs associated with any changes required to the boundaries of the Road Reserve to accommodate the intersection requirements.

### 5. **Construction of the Development**

- 5.1 The Developer must obtain any necessary consents and approvals from the Council and other relevant authorities prior to the construction of the Development.
- 5.2 DMR agrees that the Developer may reclaim and fill the land up to the seaward side batters that may be within the boundaries of the Road Reserve at any time during the construction of the Development.

### 6. **Construction of the Road Reserve**

- 6.1 During the establishment and construction of the Road Reserve in the Leased Area, if it becomes necessary for the boundaries of the Road Reserve to be realigned for any reason whatsoever then, the following clauses shall apply:-
- (a) If the area required for the Road Reserve is less than the area shown on the Plan then the additional area shall form part of the Leased Area and the Developer shall do whatever is necessary to alter the boundaries of the Road Reserve and the Leased Area; or
- (b) If the area of the Road Reserve is anticipated to be more than the area shown on the Plan then
- (i) the Developer shall do whatever is necessary to ensure that the road works fit within the Road Reserve by the construction of retaining walls or other necessary structures; or

- (ii) the Developer may realign the boundaries to increase the area of land available for the Road Reserve and the Developer shall do whatever is necessary to alter the boundaries of the Road Reserve and the Leased Area.

6.2 Any administrative or legal costs associated with the possible realignment of the boundaries of the Road Reserve or the construction of any retaining walls shall be paid by the Developer.

## 7. Assignment

7.1 Neither party to this Agreement may assign its rights and obligations without the prior written consent of the other party.

7.2 If the Developer wishes to assign the benefit of this Agreement then the Developer shall obtain a Deed of Covenant from the proposed Assignee to be bound by the terms and conditions of this Agreement including this clause.

## 8. Notices

8.1 Notices under this Agreement may be delivered by hand, by registered mail, by telex or by facsimile to the addresses specified in clause 8.3 or any substitute address as may have been notified in writing by the relevant addressee from time to time.

Notice will be deemed to be given:-

- (a) two (2) days after deposit in the mail with postage prepaid;
- (b) when delivered by hand; or
- (c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next working day, as the case may be.

8.2 The address for each party is:-

### DMR

Address:	46 Gordon Street, Mackay
Postal Address:	PO Box 62, Mackay Qld 4740
Attention:	District Director
Telephone:	(07) 4951 8541
Facsimile:	(07) 4951 8500

**The Developer**

Address: 20 Laidlaw Pde  
East Brisbane Qld 4169  
Postal Address: as above  
Attention: Vic Trimble  
Telephone: (07) 3391 8084  
Facsimile: (07) 3391 8384

**9. Governing Law**

This Agreement will be governed by and construed according to the law of the State of Queensland and the parties agree to submit to the jurisdiction of the Courts of the State of Queensland.

**10. Waiver**

No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party.

**11. Variation**

This Agreement may be varied at any time by a written agreement executed by both parties.

**12. Costs**

12.1 The Developer shall pay the costs of and incidental to the preparation of this Agreement.

12.2 Each party shall pay its own costs of and incidental to the negotiation and execution of this Agreement.

12.3 The Developer will pay any stamp duty payable on this Agreement.

**13. Execution**

13.1 The parties agree that if this Agreement is not executed by all parties on the same date, this Agreement shall commence on and from the last of the dates of execution.

13.2 The parties shall execute copies of this Agreement with each party retaining an original copy.

**14. Entire Agreement**

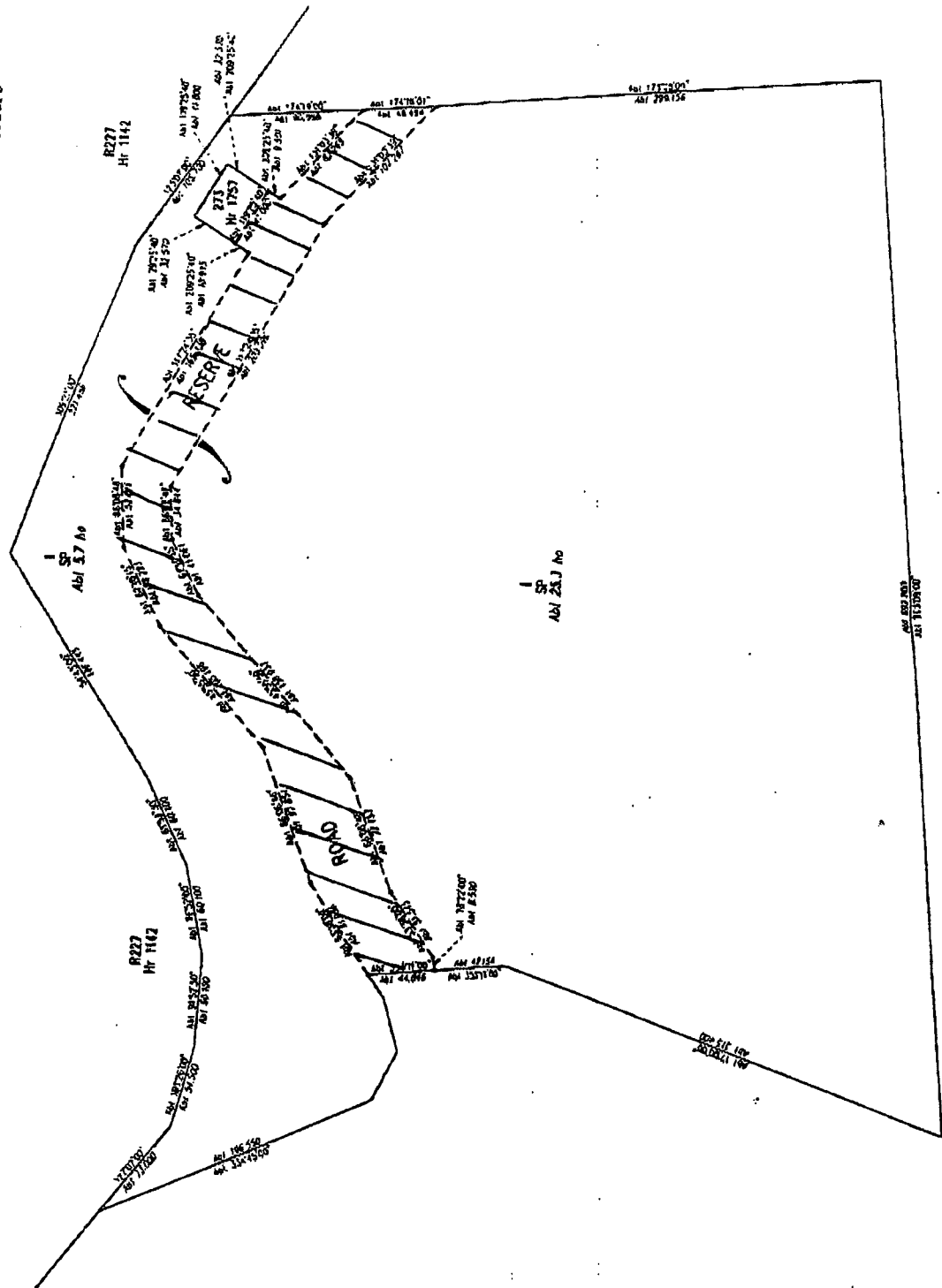
This Agreement constitute the entire agreement between the parties. Any prior arrangements, agreements, warranties, representations or undertakings are superceded.

**Schedule 1**

**Plan prepared by Ullman & Nolan Pty Ltd showing the proposed Road Reserve**

Schedule 1.

Parish of Conway  
County of Herbert



NOTE: ALL BEARINGS AND DISTANCES ARE SUBJECT TO SURVEY

SHUTE HARBOUR MARINA DEVELOPMENT PTY LTD  
PROPOSED LOT 1 ON SP  
CANCELING LOTS 1 & 2 ON CP 866441



## Schedule 2

**DMR's proposed requirements for the Construction of the Development**

1. Access to the Development is to be confined to one point of access. Approval may be given to a possible temporary Access Point for Stage 1 of the Development, provided that internal connection roads are provided to Stage 2 of the Development, and the temporary Access Point removed when the final Access Point is constructed.
2. Access is to be located to meet the Austroads standards for intersection visibility and layout. The Developer is to be responsible for any changes to the Road Reserve to accommodate any intersection requirements.
3. It will be the Developer's responsibility to ensure that the initial stages of the Development do not compromise any future access requirements.
4. If the Development is to occur on both sides of the Road Reserve measures will need to be implemented by the Developer to minimise any potential crossing conflicts by the provision of a Pedestrian/Vehicle underpass.
5. The Conditions of the lease (if any) need to specify that the boundaries of the Road Reserve may change dependent on the access intersection requirements, and the provision of filling of the Licensed Area.
6. The Developer is to address any necessary noise attenuation issues.
7. The Road Reserve must provide an area for the installation of services. As the Development is to be constructed in 2 Stages it may be necessary for the Developer to provide for interim and final location of services with associated costs of relocation to be paid by the Developer.
8. DMR has the following road template requirements:-
  - 3/3.5m Lanes (2 Through lanes + an overtaking lane)
  - 2/2.0m Shoulders
  - 2.0m central median
  - Width for tables drains, cut slopes, fill slopes, and 3.0m clearance for maintenance, These widths must relate to current natural surface levels.
9. The width for provision of access intersection works will be in addition to the above and will be the responsibility of the Developer.

THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATES APPEARING BELOW.

SIGNED for and on behalf of the

STATE OF QUEENSLAND

this 19 day of JULY 1999

by IAN R HUSBAND  
(full name)

a duly authorised officer  
in the presence of:

[Signature]

[Signature]

THE COMMON SEAL of  
Shute Harbour Development Pty Ltd

ACN 081 285 832 was duly affixed in  
accordance with its Articles of Association

this 16th day of JULY 1999

by VICTOR EDWARD TRIMTSKI  
(full name) a Director/Secretary

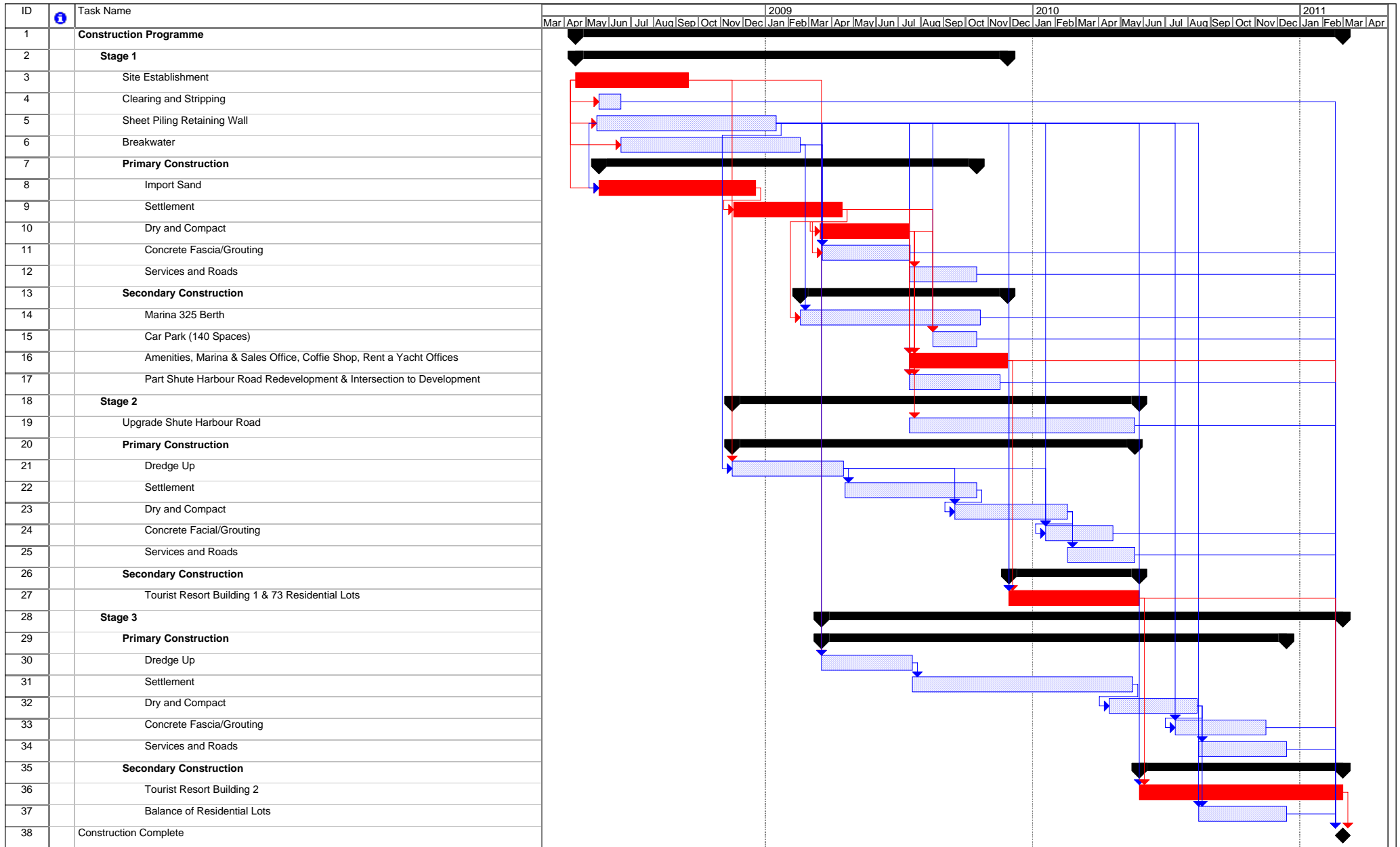
in the presence of:

[Signature]



## Appendix H





Project: SHMD Construction2.1 Date: Wed 5/7/06	Task		Critical Task Progress		Rolled Up Task		Rolled Up Progress		Project Summary	
	Task Progress		Milestone		Rolled Up Critical Task		Split		Group By Summary	
	Critical Task		Summary		Rolled Up Milestone		External Tasks		Deadline	