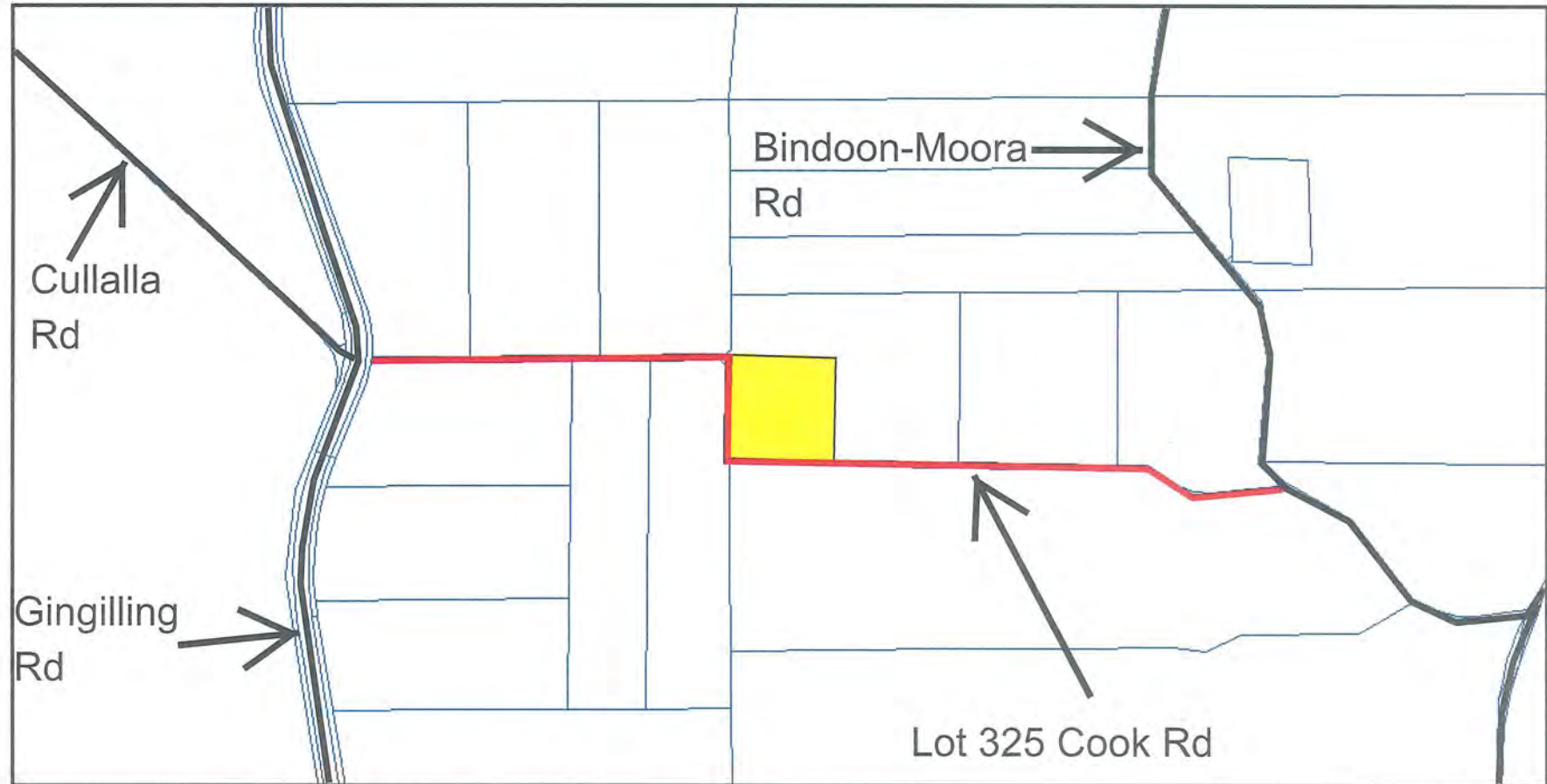


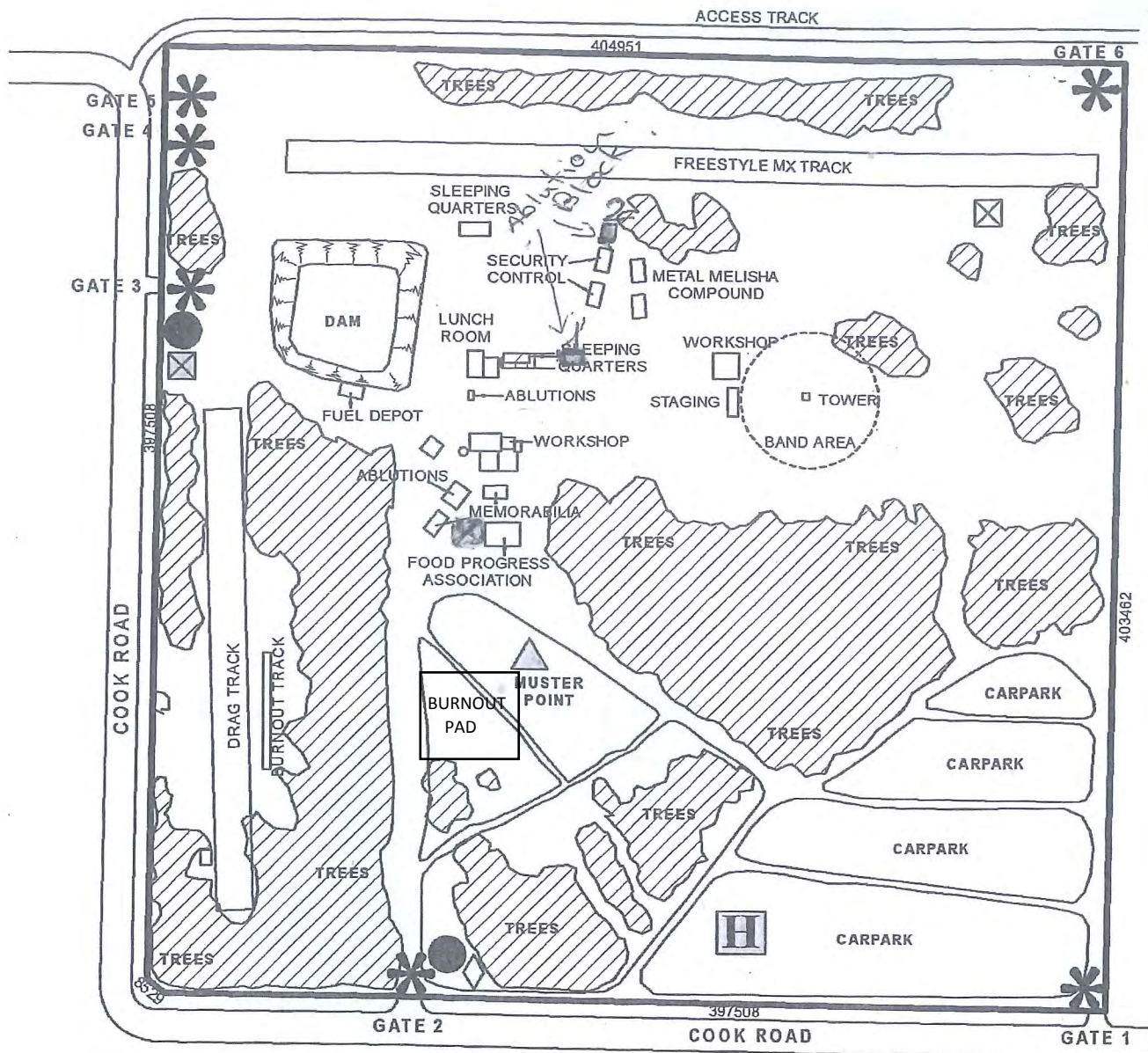


Development Services Attachments
Wednesday, 15 April 2015

REPORT NUMBER	REPORT TITLE AND ATTACHMENT DESCRIPTION	PAGE NUMBER(S)
9.1.1	Proposed Public Event “Bindoon Dirt Drags 2015” – Lot 325 Cook Road, Mooliabeenee 1. Locality Plan 2. Site Plan 3. Risk Management Plan	1 – 10
9.1.2	Proposed Variations to Deed of Agreement – Maryville Downs 1. Request for Variations dated 3 March 2015 and Council Minutes for Item 9.1.2 - 16 July 2014 2. Revised Deed dated 30 January 2015	11 – 37
9.1.3	Proposed Transport Depot – Lot 3 (RN 3907) Great Northern Highway, Muchea 1. Locality Plan 2. Application details 3. Schedule of Submissions 4. Site Photos	38 – 56

Attachment 1 - Locality Plan Lot 325 (RN318) Cook Road, Mooliabeenie





LEGEND

- △ MUSTER POINT
- ◇ FIRE DEPOT
- ⊠ AMBULANCE
- ⊠ HELIPAD
- FIRE UNITS
- * EMERGENCY GATES

SITE PLAN FOR 325 COOK ROAD BINDOON

RISK MANAGEMENT PLAN

Prepared For

Bindoon Dirt Drags

on

18th April 2015

**Managed By Bindi Bindi Investments
Pty Ltd**

DOCUMENT CONTROL		
Version Control	Risk Action Plan 2005 version 1.00 doc	Created on 21/3/05
		Updated on 23/1/15
Prepared By	Benjamin Ortin	Director
Approved By	Pat Donnelly	Co-Director
Approved By	?	Chittering Shire Council

BINDI BINDI INVESTMENTS PTY LTD

RISK MANAGEMENT FOR BINDOON DIRT DRAGS

1.0 INTRODUCTION

The Risk Management Plan has been developed to assist Bindi Bindi Investments in its management of the Annual Dirt Drags. As a major event there are a range of risks that have implications for the Company, Emergency Services and the general public. The Company have responsibilities with all these stakeholders hence the need for this Risk Management Plan.

2.0 BACKGROUND

The Company has been successfully hosting Bindoon Dirt Drags for nine years with this year being its tenth.

The Bindoon Dirt Drags annual event is held at the Bindoon Extreme Park, Lot 318 Cook Road, Mooliabeenie.

Attendance at the Dirt Drags depending on weather conditions is between 3,000 and 5,000 people. With part proceeds being donated to nominated charities.

3.0 RISK MANAGEMENT PLAN

3.1 Plan Process

The plan has been developed by Bindi Bindi Investments.

The risks are identified and treated in accordance with AS/NZS 4360:2000, using the “qualitative analysis” method.

This plan is to be considered as a living document and will be revised and expanded in keeping with the knowledge and key learning’s captured each year at the conclusion of the tenth Annual Dirt Drags.

This Plan documents the process whereby the risks are:

RISK DEFINITION AND CLASSIFICATION
 The following information is based upon AS/NZS 4360:2004

Qualitative measures of consequence or impact		
Level	Description	Example
1	Insignificant	No injuries, low financial loss, insignificant impact on the performance of the network
2	Minor	First aid treatment, on-site release immediately contained, medium financial loss. May experience a general lessening of the level of service in the immediate vicinity of the site but generally operate within acceptable levels of service on the network
3	Moderate	Medical treatment required, on-site release contained with outside assistance, high financial loss. Some loss of service resources
4	Major	Extensive injuries/major financial loss. On site release contained on site with external resources
5	Catastrophic	Death/huge financial loss. Toxic release with detrimental effects

Qualitative measures of Likelihood		
Level	Description	Example
A	Almost certain	The event is expected to occur in most circumstances
B	Likely	The event will probably occur in most circumstances.
C	Moderate	The event should occur at some time
D	Unlikely	The event could occur at some time
E	Rare	The event may occur only in exceptional circumstances.

Qualitative risk analysis matrix – risk rating					
Likelihood	Insignificant	Minor	Moderate	Major	Catastrophic
A – Almost Certain	H	H	E	E	E
B - Likely	M.	H	E	E	E
C - Moderate	L	M	H	E	E
D - Unlikely	L	M	H	E	E
E - Rare	L	L	M	H	H

E = Extreme risk; immediate action required
 H = High risk; Unacceptable risk, detailed research required, elimination preferred
 S = Significant risk; High priority, rigid management systems
 M = Moderate risk; Medium priority, management responsibility must be specified.
 L = Low risk; manage by routine procedure

<u>NO</u>	<u>DESCRIPTION OF RISK</u>	<u>LIKELIHOOD</u>	<u>CONSEQUENCE</u>	<u>RATING</u>	<u>RISK RESPONSE / TREATMENT</u>
1	CROWD CONTROL & SECURITY				
1A	Insufficient number of personnel to manage crowds	D	2		<ul style="list-style-type: none"> • 100 personnel are responsible for Crowd Control and Security over the event period. • Organisers track ticket-sales
1B	Patrons may go to unsecure areas	D	2		<ul style="list-style-type: none"> • Areas that are not designated for the event are fenced and appropriately signed. These areas are also patrolled by Security
1C	Patrons may find difficulty in getting back to camping area post event	D	2		<ul style="list-style-type: none"> • Lighting towers positioned on-site to assist with crowd flow • Crowd Control manage the ingress/egress to camping area
1D	Crowd may become unruly	C	2		<ul style="list-style-type: none"> • Crowd Control and Security Management Plans address the response • Organisers have Emergency Response Team and Crisis Management Team to be deployed if required
1E	Power failure occurs in the evening	D	3		<ul style="list-style-type: none"> • Generators are on standby for such incident
1F	Bomb Threat	D	3		<ul style="list-style-type: none"> • Security survey the area prior to the event • Visual inspection of bags at point of entry. • Remove any unattended bags for inspection by authorities. • Emergency Evacuation Plan implemented by organisers
2	FIRE CONTROL				
2A	Fire on-site	D	4		<ul style="list-style-type: none"> • Site is protected by a 6 mtr firebreak • Authorised Fire Personel supply vehicles with full fire equipment and communication systems • No LPG private gas cylinders or BBQ's are allowed to be used on the site. If found they are removed and stored in the main compound or the Fire Depot compound. • The water supply pump located at the bottom dam will have a top loading hose for FESA Fire Tenders to refill from. • 60 – 80 Portable Fire Extinguishers on-site • Fire vehicles travel around the site throughout the event • FMP covers specific control mechanisms and designed and implemented by experienced Fire Personnel • Emergency Evacuation Plan implemented by organisers

<u>NO</u>	<u>DESCRIPTION OF RISK</u>	<u>LIKELIHOOD</u>	<u>CONSEQUENCE</u>	<u>RATING</u>	<u>RISK RESPONSE / TREATMENT</u>
2B	Fire within Pine area behind spectator area	D	4		<ul style="list-style-type: none"> Pre-event the area is cleared of all pines by use of Bobcats and rakes. FMP covers specific control mechanisms
2C	Fire within the Diesel Compound	D	3		<ul style="list-style-type: none"> Tanks to be emptied pre event Diesel Compound is locked and appropriately signed and patrolled by Security
2D	Fire within specific event area	D	4		<ul style="list-style-type: none"> Regulations re maximum LPG are adhered to Portable fire equipment is located across event sites
3	ROCK BAND AREA				
3A	Unruly crowd	C	3		<ul style="list-style-type: none"> Crowd Control and Security positioned PA announcements
3B	Fire	D	3		<ul style="list-style-type: none"> Stage area is covered by 2 x Fire Personnel near the stage area and the electrical stage equipment.
3C	Pyrotechnic mishap	D	3		<ul style="list-style-type: none"> Standard Operating Procedures to be followed and all approvals secured Area checked for combustibles prior to firing Firing point chosen to maximise separation distances. Wind strength, safety distances etc are all in accordance with Aust Standard AS 2187.4 -1998. Contractor compliant to the Explosives & Dangerous Goods Act of 1961 and the Regulations of 1963 Fallout zone is per the site map Stage area is covered by 2 x Fire Personnel near the stage area and the electrical stage equipment.
3D	Asset Damage	D	2		<ul style="list-style-type: none"> Security guards are appointed to look after the venue and equipment prior to and after the event
3E	Power failure	D	3		<ul style="list-style-type: none"> All power and lighting is installed by licensed technicians. Generators on stand-by (main and back-up)
3F	Structural collapse	D	4		<ul style="list-style-type: none"> Contractor has structural engineering certificate and public liability insurance Medical Station located near to the stage.
3G	Excessive Noise	D	1		<ul style="list-style-type: none"> Council advised of noise prior to event
3H	Cabling	D	2		<ul style="list-style-type: none"> Contractors equipment is tested and tagged and cabling is in a safe position and covered
3I	Electrocution and equipment failure	D	3		<ul style="list-style-type: none"> Lighting contractor has electrical engineer's certificate Contractor tests equipment well prior to event

<u>NO</u>	<u>DESCRIPTION OF RISK</u>	<u>LIKELIHOOD</u>	<u>CONSEQUENCE</u>	<u>RATING</u>	<u>RISK RESPONSE / TREATMENT</u>
4	DRAG RACES AND MOTORCROSS				
4A	Track Safety	C	3		<ul style="list-style-type: none"> • Cyclone fencing surround areas • 10 metre gap between fence and track and managed by Security • Tracks covered with clay and compound pre-event
4B	Medical incident	C	3		<ul style="list-style-type: none"> • Ambulance located at area and Medical Management control mechanisms deployed
4C	Pyrotechnic mishap	D	3		<ul style="list-style-type: none"> • Standard Operating Procedures to be followed and all approvals secured • Area checked for combustibles prior to firing • Firing point chosen to maximise separation distances. • Wind strength, safety distances etc are all in accordance with Aust Standard AS 2187.4 -1998. • Contractor compliant to the Explosives & Dangerous Goods Act of 1961 and the Regulations of 1963 • Fallout zone is per the site map • Stage area is covered by 2 x Fire Personnel near the stage area and the electrical stage equipment.
5	COMMUNICATIONS				
5A	Communications Flow	E	3		<ul style="list-style-type: none"> • 100 Staff on two-ways • 4 channels dedicated to event • Command Centre • Communication flow included in EMP and CMP
5B	Communications Failure	C	3		<ul style="list-style-type: none"> • All systems tested • Satellite Phone operated by Event Organiser • Crisis Communications Plan implemented
6	ALCOHOL & DRUGS				
6A	Sale of alcohol on-site	D	2		<ul style="list-style-type: none"> • No alcohol is sold on-site - the event is promoted as an alcohol free event
6B	Inebriated people head for the dam	D	3		<ul style="list-style-type: none"> • Dam area is fenced off with signage stating it's a no go area.
6C	Syringes	D	2		<ul style="list-style-type: none"> • Medical Centres house safe boxes

<u>NO</u>	<u>DESCRIPTION OF RISK</u>	<u>LIKELIHOOD</u>	<u>CONSEQUENCE</u>	<u>RATING</u>	<u>RISK RESPONSE / TREATMENT</u>
7	TOILETS				
7A	Insufficient toilets	E	3		<ul style="list-style-type: none"> • 60/70 toilets hired from Coates / Prestige Portables Hire. • Permanent abolition block on-site • Toilets are well signed..
7B	Overflow of toilets	D	2		<ul style="list-style-type: none"> • Toilets pumped out on early Sunday by contractors • Contractor available to come over-event for additional pumping • Organisers keep people away from the effected area and install temporary signage
8	WASTE				
8A	Waste Removal	E	3		<ul style="list-style-type: none"> • Waste Management Plan implemented
8B	Waste Safety	D	2		<ul style="list-style-type: none"> • Patrons given tidy bags on entry to site • MC and general announcements request patrons collect own rubbish and deposit in bins provided.
9	TRAFFIC MANAGEMENT				
9A	Traffic flows (speed and volumes) along the road creating hazardous work sites and unsafe access to site.	C	3/5	MODERATE	<ul style="list-style-type: none"> • TMP to outline control mechanism that will be used to provide adequate separation of traffic from site and safe protection of workers • Introduce speed restriction zones where appropriate to reduce risk
9B	A vehicle may misread the correct alignment and collide with work personnel within the site	C	3	MODERATE	<ul style="list-style-type: none"> • Appropriately designed and implemented traffic control plans
9C	A vehicle may misread the correct alignment and collide with work personnel within the site due to an incorrectly designed traffic control layout	D	3	MODERATE	<ul style="list-style-type: none"> • Appropriately qualified and experienced personnel have designed Traffic Management Plans.

<u>NO</u>	<u>DESCRIPTION OF RISK</u>	<u>LIKELIHOOD</u>	<u>CONSEQUENCE</u>	<u>RATING</u>	<u>RISK RESPONSE / TREATMENT</u>
8D	A vehicle may misread the correct alignment and collide with work personnel within the site due to an incorrectly implemented traffic control layout	C	3	MODERATE	<ul style="list-style-type: none"> Traffic Control is to be installed and maintained by appropriately qualified and experienced personnel
9D	Unacceptable delays and congestion may result from the works	D	4	MODERATE	<ul style="list-style-type: none"> Appropriately qualified and experienced personnel have designed traffic Management Plans so as to minimise delays and congestion
9E	Emergency Vehicles to access site	D	2		<ul style="list-style-type: none"> Site Map highlights 6 Emergency Access areas
9F	Road Closures	E	3		<ul style="list-style-type: none"> Road closures are booked through Police and Chittering Shire Council six weeks prior to the event.
10	MEDICAL				
10A	Incident requiring immediate on-site attention	C	2		<ul style="list-style-type: none"> Full medical team on-site Three fully services Ambulances on site Medical procedures implemented
10B	Incident requiring external attention	D	3		<ul style="list-style-type: none"> Full medical team on-site Three fully services Ambulances on site Utilisation of St John Ambulance Helicopter Medical Management procedures implemented
11	FOOD VENDORS				
11A	Food Contamination	D	4	Management	<ul style="list-style-type: none"> Ensure food vendors provide clean and healthy facilities. Food vendors to obtain licence from Council health inspectors prior to the event. Any persons affected by food contamination to be referred to 1st Aid Posts or Ambulance posts
12	WEATHER				
12A	Inclement weather	D	4		<ul style="list-style-type: none"> Advance weather forecasts to be monitored.



OUR REF: GLE MAR

03 March 2015

Shire of Chittering
PO Box 70
Great North Highway
Bindoon WA 6502

Attention: Mr A Awang – Executive Manager Development Services

RobertsDay
planning.design.place

Dear Azhar,

Maryville Estate – Stage 11 Deed

We refer to your email of 25 February 2015 which contained the Draft Deed for Stage 11 Maryville. Following a review of the Draft Deed by this office and the landowners we seek the following modifications:

- 1) The Draft Deed proposes the introduction of some new clauses to the original Deed, which are not required or supported by the landowners.
- 2) Background point 1 – The Shire of Chittering Council has resolved to support a more recent variation to the Deed at their Ordinary meeting held on the 16 July 2014 (copy attached) which needs to be reflected in the modified Deed.
- 3) In order to incorporate the modifications as set out in the 16 July 2014 resolution of Council clause 18.1 (a) (10 ha POS) and clause 19 (Cash Payment for Community Fund) need to be deleted, and the Caveat withdrawn.
- 4) As the 10 ha POS has been created and ceded to the Shire of Chittering Lot 651 now Lot 9011 does not need to form part of the Deed and reference to Maryville Wines Pty Ltd can be removed.
- 5) Clause 18.2 – to be modified with the inclusion of ‘stage 11’ as follows:

‘.....within six months of the Owners applying to Landgate for new titles to be issued in respect of the stage 11 land’

- 6) Item 4 (3) – to be modified in accordance with the Council resolution of 16 July 2014 as follows:

‘swale drainage is to be installed/constructed for the length of McGlew Road to the specifications and satisfaction of the Shire of Chittering’.

roberts day
abn 53 667 373 703
level one
130 royal street east perth
wa australia 6004
t+61 8 9218 8700
robertsday.com.au
perth melbourne sydney

- 7) Clause 6- A Reserve Bond does not form part of the Original Deed and does not form part of the 16 July 2014 Resolution of Council. We seek the deletion of this clause, as there are no grounds for its inclusion in the Deed and will not be supported by the landowners.
- 8) Clause 7- This clause seeks to introduce an obligation on the landowners in addition to the conditions of subdivision approval for Stage 11 and the Original Deed. In addition as per clause 6, this clause does not form part of the 16 July 2014 Resolution of Council. If stage 11 does not proceed the upgrading of McGlew Rd will not occur. We seek deletion of this clause, as there are no grounds for its inclusion in the Deed and will not be supported by the landowners.
- 9) Clause 12- To be reworded given the deletion of the Reserve Bond. Clauses a, b and c to make reference to the construction contract for McGlew Road with 5% of the value of the contract being held for the defect's period.
- 10) Clause 21-We question the need for this clause given the property is subject to a caveat as detailed in clause 22.
- 11) Why is there a need to reference the Original Deed. Given the landowner commitments with respect to Lot 651 have been fulfilled there should simply be one Deed which sets out the remaining commitments with reference to Lot 650 and the subdivision approval for stage 11.

We look forward to your response on the above modifications. Should you require any clarification on the above please do not hesitate to contact the undersigned on 9218 8700.

Yours sincerely
ROBERTS DAY



TIM TREFRY (FPIA)
DIRECTOR

Cc: Mr T Prindiville – Bernville Pty Ltd

9.1.2 Request to revise Deed – Stage 11 Maryville Downs Estate, Lower Chittering

Applicant	RobertsDay
File ref	04/10/22
Prepared by	Brendan Jeans, Senior Planning Officer
Supervised by	Azhar Awang, Executive Manager Development Services
Voting requirements	Simple Majority
Documents tabled	Nil
Attachments	1. Applicant's letter of request

Background

The Shire recently received a request from RobertsDay Planning consultants (Attachment 1) for Council to consider revising the Deed.

Council at its 15 May 2013 Ordinary Council Meeting resolved to support variations to the existing Deed:

That Council advise the Applicant regarding the proposed Development Plan for Stage 11 Maryville the following:

1. *supports the variation to the Deed of Agreement to include the following;*
 - a. *10m widening of McGlew Road free of cost to Council;*
 - b. *Land containing Marbling Brook to be fenced and ceded free of cost to Council;*
 - c. *A cash payment to be made in lieu of the Deed of Agreement for the creation of lots 650 and 651 at Maryville into a 'Community Fund';*
 - d. *Cede free of cost 10ha for Public Open Space to be made available to Council within six (6) months from the date of the approval of the subdivision of stage 11 by the WAPC;*
 - e. *Cede free of cost 46ha for Public Open Space to be made available to Council within six (6) months from the date of the approval of the subdivision of stage 11 by the WAPC.*
2. *that the Chief Executive Officer be authorised to negotiate with the developer on Council's contribution for the construction of McGlew Road.*
3. *that Stage 12 will be considered as a separate application once the above conditions (1) and (2) above have been satisfied.*
4. *Authorises the Chief Executive Officer and the Shire President to sign and affix the Common Seal incorporating the above conditions into the Deed of Agreement.*
5. *All costs associated with the Deed of Agreement shall be borne by the Applicant.*

Following Council's resolution the owner Bernville Pty Ltd has contributed \$20,000 for the 'Community Fund' required in 1c above and lodged the Deposited Plan for subdivision clearance to cede the 10ha Public Open Space to the Shire as required in 1d above, to which the Shire has signed and awaiting the creation of the Certificate of Title from Landgate. RobertsDay, on behalf of the owner, and the Shire have also negotiated acceptable terms of the contribution to the construction of McGlew Road which have been agreed to be inserted into the Deed.

As mentioned in the letter (Attachment 1), RobertsDay are seeking the variations to the Deed to be revised to:

1. Reflect the completion of 1c and 1d as per Council's Resolution from the 15 May 2013 OCM by removing them from the revised Deed;

2. Remove the provision requiring the ceding of the 46ha Public Open Space lot within a 6 month period from the Deed to retain it as the condition of subdivision approval of Stage 11; and
3. Insert new clauses into the Deed which outlines the contributions of the construction of McGlew Road as negotiated as per condition 2 of Council's Resolution from the 15 May 2013 OCM.
4. Amend the standard of construction for McGlew Road as discussed with the Shire to allow swale rather than piped drainage.
5. Include the upgrade of the McGlew and Muchea East Road intersection.

Consultation

Chief Executive Officer
Executive Manager Development Services
Executive Manager Corporate Services

Mcleods Barristers and Solicitors have been briefly consulted relating to the revisions of the Deed and its preparation.

Statutory Environment

State: Transfer of Land Act 1893 (as amended)

Policy Implications

Execution of documents

Financial Implications

The inclusion in the Deed of a road contribution by the Shire of up to a maximum of \$80,000 or 10%, whichever is lesser. Provisions have been made in Council's 2014/15 Budget.

The Applicant bears all costs associated with the Deed.

Strategic Implications

Nil

Site Inspection

Site inspection undertaken: N/A

Triple Bottom Line Assessment

Economic Implications

There are no known significant economic implications associated with the variations to the Deed.

Social implications

There are no known significant social implications associated with the variations to the Deed.

Environmental implications

There are no known significant environmental implications associated with the variations to the Deed.

Comment

It is considered the revisions to the Deed are appropriate following what has taken place since Council's last consideration of the Deed.

Community Fund

The Developer has paid the Shire a total of \$20,000 for the purposes of the 'community fund' required in the Deed when the land is subdivided. The Stage 11 lot has been subdivided (to separate Stage 11 and Stage 12 parcels) resulting in the creation of 2 lots. The Deed required \$10,000 per lot; hence the \$20,000 contribution which meets this requirement and removes the need for it to remain in the Deed.

McGlew Road

The Deed includes a section that sets out the standard of road construction of McGlew Road. Council's last consideration to variations of the Deed at the May OCM resulted in Council's support for negotiations to take place regarding the Shire's contribution to the construction of McGlew Road. The Developer and Shire have now negotiated contributions for the road construction. It was agreed the Shire would contribute up to 10% of the cost, but not exceeding \$80,000 and the Developer would contribute the remainder of no less than 90%.

A small amendment to the standard of road construction has also been requested. The Shire's Technical Services department have advised swale drainage is acceptable. During these discussions the Shire have requested the Muchea East Road intersection upgrade be included in the Deed.

Should the Deed of Agreement be amended as per the Officer's Recommendation, the Development Plan for Stage 12 of Maryville Downs can then be considered by Council.

9.1.2 OFFICER RECOMMENDATION

Moved Cr Douglas / Seconded Cr Mackie

1. That subject to Council receiving the certificate of titles for the 10ha POS site, Council endorse the following modifications to the Deed of Agreement dated 27 October 2008 for Stage 11 of Maryville Downs Estate:
 - a. Remove 'Clause 7 – Payment of Contribution for Community Fund'.
 - b. Amend 'Clause 1 – Ceding of Land for POS/Conservation Area' requiring the 46ha Public Open Space lot to be ceded as a condition of the subdivision (first stage) of Stage 11.
 - c. Insert the negotiated details relating to the contributions for the construction of McGlew Road, more specifically the Applicant funds no less than 90% and the Shire funds up to 10%, but no more than \$80,000.
 - d. Amend 'Clause 6 – Standard of Construction of Road' to be swale drainage rather than piped drainage and include the upgrade of the Muchea East/McGlew Road intersection.
2. Council Authorises the Shire President and Chief Executive Officer to sign and affix the Common Seal to the Deed of Agreement with the modifications set out in 1 above.
3. All costs associated with the Deed of Agreement shall be borne by the Applicant;
4. Council advises the applicant of the above.

COUNCILLOR MOTION/COUNCIL RESOLUTION - 040714

Moved Cr Rossouw / Seconded Cr Gibson

That item 9.1.2 lay on the table until the applicant has submitted the certificate of titles for the 10ha POS site.

THE MOTION WAS PUT AND DECLARED CARRIED 7/0

Agreement for Stage 11
Maryville: Lot 651 Santa
Gertrudis Drive and Lot 650
McGlew Road, Lower
Chittering

Maryville Wines Pty Ltd

Bernville Pty Ltd

Shire of Chittering



McLEODS

Barristers & Solicitors

Stirling Law Chambers | 220-222 Stirling Highway | CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: mcleods@mcleods.com.au

Ref: SR-CHITT-24270

Copyright notice

McLeods owns the copyright in this document and commercial use of the document without the permission of McLeods is prohibited.

Table of Contents

Copyright notice	i
Details	1
Agreed terms	3
1. Defined terms and interpretation	3
1.1 Defined terms	3
1.2 Interpretation	3
1.3 Headings	4
2. Acceptance of Obligations	4
3. Joint and Several Liability	5
4. Owners' Covenants: Design Drawings for Road Works	5
5. Construction of McGlew Road in accordance with Approved Plans and Ceding of Road Land	5
6. Reserve Bond	6
6.1 Reserve Bond	6
6.2 Return of Reserve Bond	6
7. Default	7
7.1 Default in ceding of Road Land	7
7.2 Default in completion of Road Works	7
8. Standard of construction of Road Works	7
9. Practical Completion	8
10. Defects Liability	8
11. Supervision Fee	8
12. Defects Liability Reserve Bond	9
13. Risk and Liability	9
14. Road Works	9
15. Consultation with Shire	9
16. Indemnity	10
17. Acknowledgement of Owners	10
18. Ceding of land for Public Open Space	10
18.1 Cede Portion of Land as Public Open Space	10
18.2 Ceding of Land under Original Deed	10
19. Cash Payment for Community Fund	11
20. Dispute Resolution	11
21. No Disposal	11
22. Charge and Caveat	11
23. Withdrawal of Caveat	11
24. Costs	12

25. Notices	12
26. Variation	12
27. Further assurances	13
28. Severance	13
29. Waiver	13
30. Applicable law	13
Schedule	14
Signing page	16
Annexure 1 – Original Deed	17
Annexure 2 – Road Land	18

Details

Parties

Maryville Wines Pty Ltd (ACN 097 109 147)

of Suite 12, 57 Labouchere Road, South Perth, Western Australia
(**Maryville**)

and

Bernville Pty Ltd (ACN 008 667 356)

of Suite 12, 57 Labouchere Road, South Perth, Western Australia
(**Bernville**)

(together the **Owners**)

Shire of Chittering

of PO Box 70, Bindoon, Western Australia
(**Shire**)

Background

- A Maryville is registered as the proprietor of an estate in fee simple in land being Lot 651 on Deposited Plan 66292 being the whole of the land comprised in Certificate of Title Volume 2735 Folio 887 (**Lot 651**).
- B Bernville is registered as the proprietor of an estate in fee simple in land being Lot 650 on Deposited Plan 66292 being the whole of the land comprised in Certificate of Title Volume 2735 Folio 886 (**Lot 650**).
- C Lots 650 and 651 together comprise the Land (**Land**) the subject of a development known as Stage 11 Maryville.
- D Maryville entered into a deed with the Shire dated 24 June 2013 entitled 'Replacement Deed: Lot 651 Santa Gertrudis Drive, Lower Chittering' (**Maryville Deed**).
- E Bernville entered into a deed with the Shire dated 24 June 2013 entitled 'Replacement Deed: Lot 650 McGlew Road, Lower Chittering' (**Bernville Deed**).
- F Stamford Forrest Pty Ltd (ACN 008 733 542) (**Vendor**) was the owner of Lot 650 and 651, formally Lot 9009 on Deposited Plan 58356 being the whole land comprised in Certificate of Title Volume 2692 Folio 491, prior to the subdivision of the Land which created Lots 651 and 650 (**Subdivision**). Following the Subdivision the Vendor transferred Lots 651 and 650 to Maryville and Bernville respectively.
- G The Maryville Deed and the Bernville Deed both replace a deed between the Shire and the Vendor dated 27 October 2008 in respect of the conditions of the Subdivision approval (WAPC Application No. 136786) (**Original Deed**), a copy of which is annexed hereto as **Annexure 1**.

H In the Maryville Deed and the Bernville Deed, Maryville and Bernville respectively undertook, on the exact same terms in each deed, to perform and be bound by the obligations of the Vendor under the Original Deed (**Replacement Deeds**).

I At the Ordinary Council Meeting on 15 May 2013, the Shire passed Resolution 190513 (**Resolution**) which states:

‘OFFICER RECOMMENDATION / COUNCIL RESOLUTION – 190513

Moved Cr Rossouw / Seconded Cr Mackie

That Council advise the Applicant regarding the proposed Development Plan for Stage 11 Maryville the following:

1. supports the variation to the Deed of Agreement to include the following;
 - a. 10m widening of McGlew Road free of cost to Council;
 - b. Land containing Marbling Brook to be fenced and ceded free of cost to Council;
 - c. A cash payment to be made in lieu of the Deed of Agreement for the creation of lots 650 and 651 at Maryville into a ‘Community Fund’;
 - d. Cede free of cost 10ha for Public Open Space to be made available to Council within six (6) months from the date of the approval of the subdivision of stage 11 by the WAPC;
 - e. Cede free of cost 46ha for Public Open Space to be made available to Council within six (6) months from the date of the approval of the subdivision of stage 11 by the WAPC.
2. that the Chief Executive Officer be authorised to negotiate with the developer on Council’s contribution for the construction of McGlew Road.
3. that Stage 12 will be considered as a separate application once the above conditions (1) and (2) above have been satisfied.
4. authorises the Chief Executive Officer and the Shire President to sign and affix the Common Seal incorporating the above conditions into the Deed of Agreement.
5. all costs associated with the Deed of Agreement shall be borne by the Applicant.

THE MOTION WAS PUT AND DECLARED CARRIED 6/0
BY ABSOLUTE MAJORITY’

J The Parties enter into this Deed to comply with the Resolution.

K The Owners have agreed to be jointly and severally liable for the obligations imposed on the Owners by this Deed and to remain bound by the obligations imposed on the Owners under the Replacement Deeds.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

(1) In this Deed, unless the contrary intention appears –

Approved Plans means any plans or drawings identifying the area of McGlew Road to be constructed and detailing the works required to complete construction of McGlew Road as approved by the Shire;

CEO means the Chief Executive Officer for the time being of the Shire or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Deed;

Bank Guarantee means the amount specified in **Item 2** of the Schedule;

Business Day means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia;

Completion Date means a date being [please instruct X] years from the date of execution of this Deed by the Parties;

Deed means this deed as supplemented, amended or varied from time to time;

Dispute means any dispute, difference of opinion or disagreement between the Parties arising out of or in connection with this Deed;

Land means the land described **Item 1** of the Schedule;

Shire's Obligations means the obligations set out or implied in this Deed, the Replacement Deeds or imposed by law to be performed by the Shire;

Owners' Obligations means the obligations set out or implied in this Deed, the Replacement Deeds or imposed by law to be performed by any person other than the Shire;

Notice means each notice, demand, consent or authority given or made to any person under this Deed;

Party means the Shire or the Owners according to the context;

Reserve Bond means the amount of money to be held by the Shire as set out in Item 2 of the Schedule;

Road Land means that portion of the Land delineated and marked on the sketch annexed hereto as **Annexure 2**; and

Schedule means the Schedule to this Deed.

1.2 Interpretation

(1) In this Deed-

(a) words denoting -

(i) the singular includes the plural and vice versa; and

- (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to -
 - (i) a person includes a firm, an unincorporated association, an incorporated association, a corporation and a government or statutory body or authority;
 - (ii) a person includes their legal personal representatives, successors and assigns;
 - (iii) a statute, regulation, local law or any other written law, code or policy includes subsidiary legislation or an instrument made under it, and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation, and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) provisions or terms of this Deed, or another document, deed, understanding or arrangement, include a reference to both express and implied provisions and terms;
 - (vii) time is to local time in Perth, Western Australia;
 - (viii) \$ or dollars is a reference to the lawful currency of Australia;
 - (ix) this Deed or any other document includes this Deed or other document as amended or replaced and despite any change in the identity of the parties;
 - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions or other electronic mail or transmissions; and
 - (xi) any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
- (d) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

1.3 Headings

Headings do not affect the interpretation of this Deed.

2. Acceptance of Obligations

- (1) The Owners hereby covenant and agree that the Owners' obligations under this Deed shall be in addition to the obligations of the Owners under the Replacement Deeds and the Replacement Deeds remain in full force and effect.
- (2) The Owners and the Shire agree that this Deed shall not alter or amend the rights and obligations of the Parties under the Replacement Deeds and that this Deed does not release any party from any obligation contained in the Replacement Deeds.

- (3) The Owners and the Shire agree that should any term within this Deed be inconsistent with any term of the Replacement Deeds, the Replacement Deeds shall be amended to the extent of the inconsistency.

3. Joint and Several Liability

The Owners covenant and agree that the rights and obligations of the Owners under this Deed shall be joint and several.

4. Owners' Covenants: Design Drawings for Road Works

The Owners HEREBY COVENANT AND AGREE with the Shire that they will submit design drawings for McGlew Road for approval by the Shire to enable completion of construction of McGlew Road by the Completion Date.

5. Construction of McGlew Road in accordance with Approved Plans and Ceding of Road Land

- (1) The Owners COVENANT AND AGREE with the Shire that they shall:
- (a) at their own expense cede the Road Land to the Shire free of cost and without payment of compensation by the Crown or the Shire, which for the sake of clarity shall include the subdivision of the Land to create the Road Land and the issue of new Certificates of Title for the proposed subdivided lots in accordance with the Original Deed and as soon as reasonably practicable to enable completion of the Road Works by the Completion Date;
 - (b) subject to clause 5(2)(d), at their own expense complete construction of all works required to construct those parts of McGlew Road identified in the Approved Plans and more particularly specified in **Item 4** of the Schedule to this Deed and to the satisfaction of the Shire (acting reasonably) (**Road Works**) by the Completion Date; and
 - (c) not make any substantial or material change to the Approved Plans unless otherwise agreed to in writing by the Shire.
- (2) The Shire COVENANTS AND AGREES with the Owners that:
- (a) if the Owners seek to vary the Approved Plans the Shire will consider and determine that request within a reasonable period of time;
 - (b) if the request made in **clause 5(2)(a)** is approved then the amendment forms part of the Approved Plans;
 - (c) if the request made in **clause 5(2)(a)** is refused but the Owners consider that the amendment is required in order to ensure efficacy or suitability of the Road Works for their intended purpose then the Owners may seek to have the matter resolved in accordance with **clause 21** and until that dispute is resolved its obligations under this Deed are suspended; and
 - (d) it shall contribute 10% of the costs of the completion of the Road Works or \$80,000.00, whichever is the lesser amount.

6. Reserve Bond

6.1 Reserve Bond

- (1) The Owners covenant and agree to pay the Reserve Bond to the Shire, in accordance with any directions of the Shire.
- (2) The Reserve Bond will be in respect of the obligations of the Owners under this Deed and the other Deeds.
- (3) The Owners acknowledge and agree that at any time, the Shire may without notice deduct from the Reserve Bond any money to be used in connection with the Upgrade Works, as the Shire deems appropriate at its sole discretion.
- (4) The Owners covenant and agree that the lodging of the Reserve Bond and payment of any deductions from the Reserve Bond shall be without prejudice to the right of the Shire to recover from the Owners any further amount owing pursuant to the Deeds or this Deed of variation which exceeds the Reserve Bond, and to any other remedy the Shire may have against the Owners.

6.2 Return of Reserve Bond

The Shire and the Landowners agree that:

- (a) upon full completion of the Upgrading works to the satisfaction of the Shire and on a written request from the Landowners to refund to the Landowners the balance (if any) of the Reserve Bond within 21 days minus 5% of the total of the Bond which shall be retained by the Shire for a further period for Defects Liability; and
 - (b) where the Shire has drawn on the Reserve Bond pursuant to **Clause 6.1(3)** of this Deed and the Reserve Bond has been insufficient to cover the Shire's reasonable costs, then any costs in excess of the Reserve Bond shall be a liquidated debt recoverable by the Shire in a court of competent jurisdiction as against the Owners Extension of time for Completion Date
- (2) Subject to **clause 7(2)** below, the Parties agree the Completion Date for the ceding of the Road Land and the completion of the Road Works may be extended for a period determined by the Shire acting reasonably and in consultation with the Owners in the event that the ceding of the Road Land and the completion of the Road Works cannot be completed on or before the Completion Date for a reason or reasons beyond the reasonable control of the Owners, including but not limited to:
- (a) acts of God, including fire, bushfire, lightning, storm, tidal wave, cyclone, hurricane, earthquake, landslide, mudslide, washouts and flood;
 - (b) epidemics, public health scares or outbreaks of disease;
 - (c) war, revolution or other state of armed hostility of a like nature;
 - (d) insurrection, civil disturbances or riot (except where arising within the custodial areas);
 - (e) collisions or accidents which constitute a major catastrophe, an example being an aircraft crash or nuclear contamination;
 - (f) unavailability or lack of reasonable availability in the State of labour and or building and construction materials; and

- (g) a strike, lockout, or other industrial disturbance or restraint of labour, involving employees.
- (3) To permit the Shire to consider extending the Completion Date for the ceding of the Road Land and the completion of the Road Works in accordance with **clause 6.2(2)** the Owners must provide to the Shire reasonable evidence within a reasonable period of time, as to the reason for and the extent of the delay and the reasonable steps taken by the Owners to overcome that delay.

7. Default

7.1 Default in ceding of Road Land

In the event that the Owners default in ceding the Road Land in accordance with **clause 5(1)(a)** of this Deed and the Original Deed by the Completion Date, or such other date agreed to by the Shire in accordance with **clause 7**, the Owners AUTHORISE the Shire to complete the ceding of the Road Land and for that purpose IRREVOCABLY APPOINT the Shire its attorney from the date of this Deed until the issue of the new Certificates of Title referred to in **clause 5(1)(a)** for and on its behalf to enable the Shire to complete the ceding of the Road Land and will indemnify the Shire against any cost the Shire may incur in carrying out such acts on the Owners' behalf should the Shire exercise its power to do so. Furthermore, the Shire may draw from the Bond to cover any costs incurred by the Shire in completing the ceding of the Road Land, and the Parties agree that any costs in excess of the Bond amount shall be a liquidated debt recoverable from the Owners in a court of competent jurisdiction.

7.2 Default in completion of Road Works

If the Road Works are not completed to the reasonable satisfaction of the Shire by the Completion Date, or such other date agreed to by the Shire in accordance with **clause 7**, and that default is not remedied within 30 days after written notice from the Shire, the Shire may:

- (a) enter onto the Land (or any part thereof) and complete the Road Works; and
- (b) recover the cost of the Road Works from the Owners and draw from the Bond to cover any costs incurred by the Shire in the completion of the Road Works, and the Parties agree that any costs in excess of the Bond shall be a liquidated debt recoverable in a court of competent jurisdiction.

8. Standard of construction of Road Works

The Owners COVENANT AND AGREE with the Shire that:

- (a) the Owners shall complete the Road Works in accordance with the Approved Plans and the specifications at **Item 4** of the Schedule to this Deed and to the satisfaction of the Shire (acting reasonably);
- (b) all materials used in the works specified in **clause 98(a)** and standards of workmanship shall be in conformity with the specifications normally applied to the works specified in **clause 98(a)** by the Shire;
- (c) in the absence of any express provision made by the Shire in respect of any material or standard of workmanship that material or that standard of workmanship as the case may be shall be of a kind which is both suitable for its purpose and consistent with the nature and character of that part of the works specified in **clause 98(a)** for which it is used;
- (d) if required by the Shire, the Owners shall produce evidence that the materials used or to be used in connection with the works specified in **clause 98(a)** comply with the provisions of this **clause 98**;

- (e) the Owners shall comply with the Shire's standard requirements in relation to the inspection of works before those works are covered up;
- (f) subject to compliance by the Owners with **clause 98(e)**, should the Shire issue instructions to the Owners to open up for inspection any works covered up or to arrange for or carry out any testing of any materials (whether or not already incorporated in the works specified in this **clause 98**) or of any executed work, the Owners shall comply with those instructions and the cost of any such opening up or testing (together with the cost of making good in consequence thereof) shall be paid by the Shire to the Owners unless:
 - (i) such opening up or testing is consequent upon a failure of the Owners to comply with some provision of this **clause 98**;
 - (ii) the opening up or testing shows that such work or materials are not in accordance with this **clause 98**; or
 - (iii) the Owners have not complied with **clause 98(e)**;
- (g) if the quality of the work or materials is not in accordance with the requirements of this **clause 98** then the Owners must remove and/or re-execute and/or replace any such work or materials and make good any defect at the Owners' expense; and
- (h) the requirements under this clause in respect of the standard of the works are in addition to any standards required under the Original Deed and Replacement Deeds.

9. Practical Completion

The Shire COVENANTS AND AGREES with the Owners that:

- (a) within 14 days of the date of notice that the Road Works have reached completion, the Shire will issue to the Owners a certificate of Practical Completion provided that the Road Works have in the opinion of the Shire (acting reasonably) been carried out in accordance with the Approved Plans and the standards referred to in **clause 9** and are suitable for their proposed use despite that there may be some items of work that have not been completed but which do not prevent the Road Works from being lawfully used as a public road (**Practical Completion**);
- (b) within 14 days of notice that the Road Works have reached completion, the Shire will issue to the Owners a written list of outstanding items that must be completed before the certificate of Practical Completion can be issued; and
- (c) within 14 days of completing the list of works referred to in **clause 9(b)** the Shire will issue the certificate of Practical Completion.

10. Defects Liability

The Owners AGREE with the Shire that any defects, shrinkages or other faults in any Road Works specified in **clause 9(a)** which may be evident and be notified in writing by the Shire to the Owners within twelve (12) months after the date of completion of those works shall upon the issue of written instructions from the Shire be made good by the Owners within a reasonable time but in any event within three (3) months after the issue of the instructions.

11. Supervision Fee

The Shire and the Owners AGREE that:

- (a) the Owners will pay to the Shire a supervision fee equivalent to an amount being that percentage of the cost of the civil works required to be carried out by the Owners to complete the Road Works calculated in accordance with section 158 of the *Planning and Development Act 2005* (**Supervision Fee**); and
- (b) the Supervision Fee shall not be refundable and may be retained by the Shire and applied by the Shire in its absolute discretion.

12. Defects Liability Reserve Bond

The Owners AGREE with the Shire that:

- (a) the Shire shall be entitled to retain 5% of the Reserve Bond referred to in **clause 4** as security against any defects arising in respect of the Road Works for McGlew Road (**Defects Bank Guarantee**);
- (b) subject to paragraph (c) of this clause the Shire may retain the 5% of the Reserve Bond for a period of 12 months from the date of practical completion of the Road Works and if at the expiration of that time the Shire is satisfied that the Road Works have been completed to its reasonable satisfaction and that there are no defects which are required to be remedied the Shire shall return the final 5% of the Reserve Bond to the Owners; and
- (c) in the event that the Shire requests any remedial works to be carried out or any defects to be remedied, the Owners must carry out such works in an expedient manner and the Owners shall not be entitled to the return of the final 5% of the Bond until such time as such defects have been remedied to the satisfaction of the Shire.

13. Risk and Liability

The Owners COVENANT AND AGREE with the Shire that the Road Works shall in all respects be at the risk of the Owners but only until the date of the certificate of Practical Completion is issued and until that date the Owners are liable for and HEREBY INDEMNIFY the Shire against:

- (a) any liability loss claim or proceeding in respect of any injury loss or damage whatsoever to any property real or personal insofar as such injury loss or damage arises out of or in the course of or by reason of the carrying out the Road Works except to the extent that any liability loss claim or proceeding is caused or contributed to by the negligent act or omission of the Shire or any employee contractor or agent of the Shire; and
- (b) any liability loss claim or proceeding whatsoever arising under any statute or at common law in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by such works except to the extent that any liability loss claim or proceeding is caused or contributed to by the negligent act or omission of the Shire or any employee contractor or agent of the Shire.

14. Road Works

For the avoidance of doubt, the Owners acknowledge and agree that the Road Works includes, but is not limited to, those works listed in **Item 4** of the Schedule to this Deed.

15. Consultation with Shire

The Owners AGREE to provide the Shire with written notice:

- (a) in the event that the nature or quality of the Road Works varies from the Approved Plans; and

- (b) following completion of the Road Works.

16. Indemnity

In the event of default by the Owners in the completion of the Road Works in accordance with **clause 5(1)(b)** and the Shire carrying out the Road Works in accordance with **clause 87.2**, the Owners HEREBY COVENANT and AGREE to indemnify and keep indemnified the Shire and any employees, contractors or agents authorised by the Shire to enter onto the Land and carry out the Road Works in respect of all claims, demands, suits, actions or legal proceedings of whatsoever nature and howsoever arising in respect of any act done or attempted to be done in connection with the completion of the Road Works except where any claim, demand or liability arises as a result of negligence or default of the Shire, its servants, agents, contractors or consultants.

17. Acknowledgement of Owners

The Owners acknowledge and agree with the Shire that:

- (a) if it does not cede the Road Land and complete the Road Works by the Completion Date, or such other date agreed to by the Shire in accordance with **clause 7**, it will be open to the Shire to take action to secure compliance with the terms of this Deed, including completing the Road Works and drawing upon the Bank Guarantee and/or recovering the cost of the Road Works from the Owners, commencing an action for breach of contract, and/or obtaining an order for specific performance; and
- (b) the Road Land is to be ceded to the Shire free of cost and without payment of compensation by the Crown or the Shire.

18. Ceding of land for Public Open Space

18.1 Cede Portion of Land as Public Open Space

The Owners ACKNOWLEDGE AND AGREE with the Shire that:

- (a) they shall cede, at the Owners' cost, to the Crown for vesting in the Shire a 10 hectare area of the Land as public open space (**POS Land**) and shall ensure that the POS Land is shown on any deposited plan of survey prepared to effect the subdivision of the Land;
- (b) it shall submit any plan of subdivision of the Land to the Shire for approval prior to the lodgement of that plan at Landgate;
- (c) the Shire shall not be required to provide its clearance in relation to any deposited plan of subdivision in respect of the Land unless the POS Land is shown on the deposited plan for the purposes of ceding and vesting the POS Land in the Shire;
- (d) that the Owners shall cede the POS Land as soon as reasonably practical but in any event no later than six months after the subdivision for stage 11 of the Maryville Development being approved by the WAPC; and
- (e) the obligation to cede the POS Land contained in this **Clause 18.1** is additional to the requirement that the Owners cede 46 hectares of land for use as public open space pursuant to clause 1 of the Original Deed.

18.2 Ceding of Land under Original Deed

In addition to the obligation to cede 46 hectares of land for conservation set out in clause 1 of the Original Deed, the Owners further UNDERTAKE and AGREE to cede that 46 hectares to the

Crown within six months ~~of the approval of the subdivision of stage 11 by the WAPC~~ of the Owners applying to Landgate for new titles to be issued in respect of the Land.

19. Cash Payment for Community Fund

- (a) The ~~Owners UNDERTAKE and~~ Parties AGREE that ~~they will~~ the Owners have pay-paid ~~the a~~ contribution to a community fund as referred to in Clause 7(b), of the Original Deed, specifically an amount of \$20,000 representing a \$10,000 contribution for Lot 650 and \$10,000 for Lot 651 ~~within six months of the date of approval of the subdivision of stage 11 by WAPC.~~
- (b) The Owners and the City HEREBY MUTUALLY AGREE to that the Owner is released from that portion of the obligation set out in Clause 7(a) of the Original Deed which states that the contribution is to be paid 'on the sale of each of the lots'.
- ~~(c) The Owners acknowledge that they will continue to be bound by and agree to perform all those obligations continued in Clause 7 of the Original Deed, but that the operation of this Clause 19 requires that payment of the contribution is due within six months of the date of subdivision approval being granted by WAPC and not upon the sale of either Lot 650 or Lot 651.~~

20. Dispute Resolution

If at any time a Dispute arises between the Parties, either Party must, as soon as reasonably practicable, give to the other notice of the existence of the Dispute giving full particulars of the nature and extent of the Dispute. Prior to either Party taking any other dispute resolution proceedings (other than applications for urgent interlocutory relief), the Parties must attempt, for a period of 14 days after receipt by one Party of a notice from the other Party of the existence of the Dispute, to settle such Dispute amicably by mutual discussions between the Parties.

21. No Disposal

The Owners FURTHER AGREE with the Shire that it shall not sell transfer mortgage lease charge assign or otherwise dispose of or encumber the Land or any part or interest therein or any rights of the Owners therein without the prior written consent of the Shire which consent shall not be withheld if the person to whom any such right or interest in the Land is to be granted has first executed a deed of covenant (or in the case of a mortgagee an undertaking in a form satisfactory to the Shire) to be prepared by the Shire's solicitors at the cost of the Owners or such person whereby that person covenants to observe and perform such of the covenants, conditions and stipulations herein contained (including this present covenant) as the Shire shall require as if that person had been a party to this Deed.

22. Charge and Caveat

The Owners CHARGE the Land in favour of the Shire with the performance of its obligations undertaken hereunder and with the payment of all or any moneys payable or which may become payable by the Owners pursuant to this Deed and for the purpose of securing the same authorises the Shire to lodge absolute caveats at Landgate against the Certificates of Title to the Land in order to protect the rights and interests of the Shire under this Deed.

23. Withdrawal of Caveat

Subject to there being no subsisting or unremedied breach of any provision of this Deed and subject to:

- (a) the Owners complying with **clause 23** hereof the Shire agrees that on receipt of a written request from the Owners it shall provide to the Owners at the Owners' cost in registrable form a duly executed withdrawal of any caveat lodged by the Shire pursuant to this Deed to enable registration of any transfer lease assignment or mortgage document so long as the Shire is able to re-lodge its absolute caveat following such registration; and
- (b) the Owners having ceded the Road Land and completed the Road Works in accordance with **clauses 5(1)(a) and 5(1)(b)** of this Deed the Shire shall provide to the Owners on receipt of a written request from the Owners and at the Owners' cost a withdrawal of any caveat lodged by the Shire pursuant to this Deed and the provisions of this Deed shall then be of no further force and effect.

24. Costs

The Owners shall pay the Shire's reasonable legal costs of and incidental to the preparation (including all preliminary drafts), negotiation, execution and stamping of this Deed and duty payable hereon.

25. Notices

Any communication under or in connection with this Deed -

- (a) must be in writing;
- (b) must be addressed in the manner specified in **Item 3** of the Schedule;
- (c) must be signed by the Party making the communication or on its behalf by the solicitor for, or by any attorney, director, secretary, or authorised agent or officer of, any Party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with **clause 25(b)** of this Deed;
- (e) will be deemed to be given or made -
 - (i) if by personal delivery, when delivered;
 - (ii) if by leaving the Notice at an address specified in **clause 25(b)** of this Deed, when left at that address unless the time of leaving the Notice is not on a Business Day or after 5pm on a Business Day, in which case it will be deemed to be given or made on the next following Business Day;
 - (iii) if by post, on the second Business Day following the date of posting of the Notice to an address specified in **clause 25(b)** of this Deed, and
 - (iv) if by facsimile, when despatched by facsimile to a number specified in **clause 25(b)** of this Deed unless the time of dispatch is not on a Business Day or after 5 pm on a Business Day, in which case it will be deemed to be given or made on the next following Business Day.

26. Variation

A variation to this Deed must be in writing and signed by the Parties.

27. Further assurances

Each Party must execute and deliver all such documents, instruments and writings and must do and must procure to be done all such acts and things as may be necessary or desirable to implement and give full effect to the provisions and purpose of this Deed.

28. Severance

If any part of this Deed is, or becomes, void or unenforceable that part is or will be, severed from this Deed to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

29. Waiver

The Parties mutually covenant and agree that -

- (a) no right under this Deed is waived or deemed to be waived except by notice in writing signed by the Party waiving the right;
- (b) a waiver by one Party under **clause 29(a)** of this Deed does not prejudice its rights in respect of any subsequent breach of this Deed by the other Party; and
- (c) a Party does not waive its rights under this Deed because it grants an extension or forbearance to the other Party.

30. Applicable law

This Deed shall be governed by the laws of the State of Western Australia, and where applicable the Commonwealth of Australia.

Schedule

Item 1 Land

Lot 651 on Deposited Plan 66292 and being the whole of the land comprised in Certificate of Title Volume 2735 Folio 887; and

Lot 650 on Diagram 66292 and being the whole of the land comprised in Certificate of Title Volume 2735 Folio 886.

Item 2 Reserve Bond

\$[please instruct amount of Bond - this should be equivalent to a genuine pre-estimate of the cost of the works]XXX

Item 3 Notices

Owners

Maryville

Address: Suite 12
57 Labouchere Road
SOUTH PERTH, WA 6151

Fax No: (08) XXXXXXXX

Attention: [insert position]

Bernville

Address: Suite 12
57 Labouchere Road
SOUTH PERTH, WA 6151

Fax No: (08) XXXXXXXX

Attention: [insert position]

Shire

Address: Shire of Chittering
PO Box
BINDOON WA 6502

Fax No: (08) 9576 1250

Attention: Chief Executive Officer

Item 4 Road Works

Condition 4 of the Western Australian Planning Commission Approval for Application No. 136786 in respect of the Land relevantly states:

“4. Arrangements must be made with the local government for the upgrading and/or construction of McGlew Road connected to a sealed road of the locality to the satisfaction of the Local Government”

The Shire has determined that the following works must be carried out to satisfy the above condition:

1. McGlew Road is to be widened by 10 metres in accordance with the Shire of Chittering’s *Local Planning Policy No. 16 – Roads and Drainage*, so as McGlew Road, which is currently 20 metres wide, become 30 metres in width;
2. the existing levels of McGlew Road are to be lifted and flattened out;
3. ~~pipel~~ drainage is to be installed/constructed for the length of McGlew Road in accordance with an Urban Water Management Plan approved by the Department of Water;
4. the entire of McGlew Road is to be sealed with one ~~two~~ coats not less than 30mm of asphalt which is to be not less than 7 metres wide;
5. guide posts and traffic signs are to be installed along McGlew road as the Shire instructs;
6. the necessary line markings are to be put onto McGlew Road; and
7. the intersection of McGlew Road and Chittering Road is to be upgraded in a manner which the Shire deems appropriate.

[Shire to instruct whether any further requirements to be inserted]

Signing page

EXECUTED

2014

Executed by Maryville Vines Pty Ltd (ACN 097 109 147) in accordance with section 127 of the Corporations Act:

Signature of director

Signature of director/company secretary

Name of director (print)

Name of director/company secretary (print)

Executed by Bernville Pty Ltd (ACN 008 667 356) in accordance with section 127 of the Corporations Act:

Signature of director

Signature of director/company secretary

Name of director (print)

Name of director/company secretary (print)

The Common Seal of the **Shire of Chittering** was hereunto affixed in the presence of -

Shire President

(Print full name)

Chief Executive Officer

(Print full name)

24270-14.03.19-SR-Deed

Annexure 1 – Original Deed

Annexure 2 – Road Land



DSY Engineering
 Lt 3 (3907) Gt Northern Highway
 CHITTERING WA 6084

Shire of Chittering
 PO Box 70
 BINDOON WA 6502

Dear Sir/Madam

Proposed Transport Depot and Hardstand
Lot 3 Great Northern Highway, Muchea

Introduction

DSY Engineering seeks Planning Approval for a "Transport Depot" and hardstand on Lot 3 Great Northern Highway, Muchea. Further information on the proposed use and compliance with the Shire's Town Planning Scheme is provided below. Signed application forms and relevant plans are attached to this correspondence.

The site

The application applies to Lot 3 Great Northern Highway, Muchea (the site). The total site area is 5.9666 ha. The details on the Certificate of Title are as follows.

Lot number	Volume/Folio	Diagram	Owner
3	585/14A	25291	Shawn Douglas Graham and Sharon Michele Crawford

Existing development on Lot 3 includes existing offices and sheds associated with the DSY Engineering business (rural industry). Surrounding land uses comprises primarily agriculture and other rural industry. The site is located approximately 2.5-3km north-east of the Muchea town site, and is currently zoned *Agricultural Resource*.



Lot 3 Great Northern Highway, Muchea – Site Location



The Proposal

The proposal seeks to develop a Transport Depot on the site to formalise current activities of DSY Engineering due to business diversity and expansion.

As well one new hardstand area is proposed for Lot 3 (0.78ha.) Rainfall runoff will be directed into current drainage to the existing swale basin to prevent water runoff to surrounding properties.

Operating hours will not change from 7.00am-6.00pm Monday to Saturday.

Vehicle movements will not increase.

The improvements to be made on the site are shown on the plans at Attachment 2 and include:

- Site Layout
- Proposed Development
- Site Drainage Arrangement
- Site Feature and Contour Survey
- Site Context and Environment

Policy and Statutory Framework

Shire of Chittering Town Planning Scheme No. 6 (TPS)

The site is zoned *Agricultural Resource* in the Shire of Chittering Town Planning Scheme No. 6 (TPS). The use being applied for is *Transport Depot* which is an 'A' use in this zone. This means that the use requires Council approval and needs to be advertised.

A Transport Depot is defined in the TPS as *premises used for the garaging of two (2) or more motor vehicles, used or intended to be used for carrying of goods or persons for hire or reward, or for the transfer of goods or persons, and includes maintenance and repair of the vehicles, used but not for other vehicles.*

The Scheme also indicates that the site is located within the *Military Considerations* Special Control Area (SCA). The purpose of this SCA is largely to protect residential development from noise impacts and to protect the integrity of the RAAF Air Base Pearce operations. It is not considered that the land use of a transport depot will be adversely impacted by noise from the air base operations or that the transport depot will affect the operations of the air base.

A small section at the eastern end of Lot 3 is within the *Landscape Protection* SCA, the purpose of which is to prevent development which could adversely affect the landscape value within this area. There is already an existing building located at this end of Lot 3, along with some screening vegetation. No development is proposed in this area as part of this application, and it is therefore considered the proposed development will not have an impact on the landscape value of the SCA.

The site is shown on the Scheme map below.



Lot 3 Great Northern Highway, Mucnea – Scheme Map

The Scheme contains general provisions relating the *Agricultural Protection* zone. These are addressed in the following table.

Objective	Comment
<i>To preserve productive land suitable for grazing, cropping and intensive horticulture and other compatible productive rural uses in a sustainable manner.</i>	Lot 3 is already used for rural industry and the proposed development will be an extension to the development already on site
<i>To protect the landform and landscape values of the district against despoliation and land degradation.</i>	The site is almost completely flat and doesn't have any significant landscape features. It has also been mostly cleared and development on Lot 3 already comprises some buildings and development associated with the existing rural-industry land use. The proposed transport depot is not expected to have a significant impact on landform and landscape values. Some vegetation screening already exists along the eastern boundary of Lot 3 and through the centre of the site to reduce views into the site.
<i>To encourage intensive agriculture and associated tourist facilities, where appropriate.</i>	Lot 3 is already used for rural industry and the proposed development will be an extension to the development already on site. The property is not being used for horticulture; therefore the proposal will not result in a reduction in this land use.
<i>To allow for the extraction of basic raw materials where it is environmentally and socially acceptable.</i>	The proposal doesn't propose the extraction of basic raw materials.

Environment and Drainage

As lot 3 is largely cleared of vegetation apart from a few scattered trees and a row of trees along the road, the proposed development will not result in the removal of any trees and will have minimal environmental impact in terms of protection of vegetation, habitat and biodiversity.

The plans at Attachment 2 show that the drainage to the swale basin is at the south-west corner of Lot 3 and all drainage will be directed into here. This is to ensure that water does not drain onto surrounding properties and enter nearby wetlands and watercourses. The land slopes gently from north to south by approximately 1.5mAHD across the site. Water will flow downhill with the slope of the land.

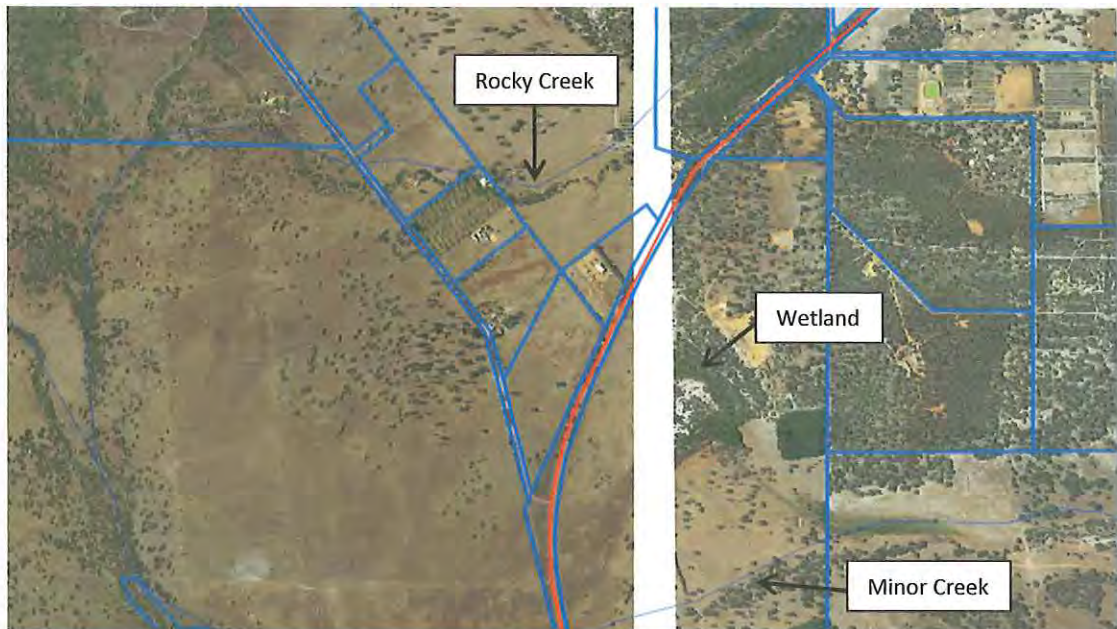
The existing swale basin of Lot 3 currently captures water from this site.

There are no natural water features on the site such as wetlands or watercourses, although the Department of Environment Regulation Geomorphic Wetlands Swan Coastal Plain dataset shows a *Multiple Use* wetland across the site. This classification is the lowest management category and is defined as *wetlands with few remaining important attributes and functions*. The degraded nature of this wetland means that development will generally not have a significant impact on the function of the wetland. EPA Guidance Statement 33 recommends that for Multiple Use wetlands that *all reasonable measures are taken to retain the wetland's hydrological functions (including on site water infiltration and flood detention)*. Lot 3 has already been cleared and used for agriculture and rural industry and therefore the wetland's hydrological functions have already been significantly modified. The application includes measures to retain water onsite and to drain into an existing drainage basin to protect surrounding waterways and wetlands in accordance with the Guidance Statement.

Two watercourses exist on either side of the site. The watercourse to the north is named Rocky Creek. It does not pass through the site and therefore will not be directly affected by the proposed development. Another minor watercourse runs to the south of the site.

A wetland is located on the property to the south of the Great Northern Highway. This wetland is listed in the Geomorphic Wetlands Swan Coastal Plain dataset as a *Sumpland*. The management category is *Resource Enhancement* which are *wetlands which may have been partially modified but still support substantial ecological attributes and functions*. The wetland and watercourse to the south of the site will not be directly impacted from the development and all water will be directed into the drainage basin so that water runoff does not leave the site.

The surrounding water features are shown in the plan below and at Attachment 2.



Lot 3 Great Northern Highway, Muchea – Surrounding Water Features

Conclusion

It is respectfully requested that the Shire of Chittering consider this request for an Additional Use of a *Transport Depot* on Lot 3 Great Northern Highway, Muchea.

Should you have any queries regarding the application, please don't hesitate to contact the undersigned.

Yours sincerely,



Shawn Graham

DSY Engineering

Managing Director

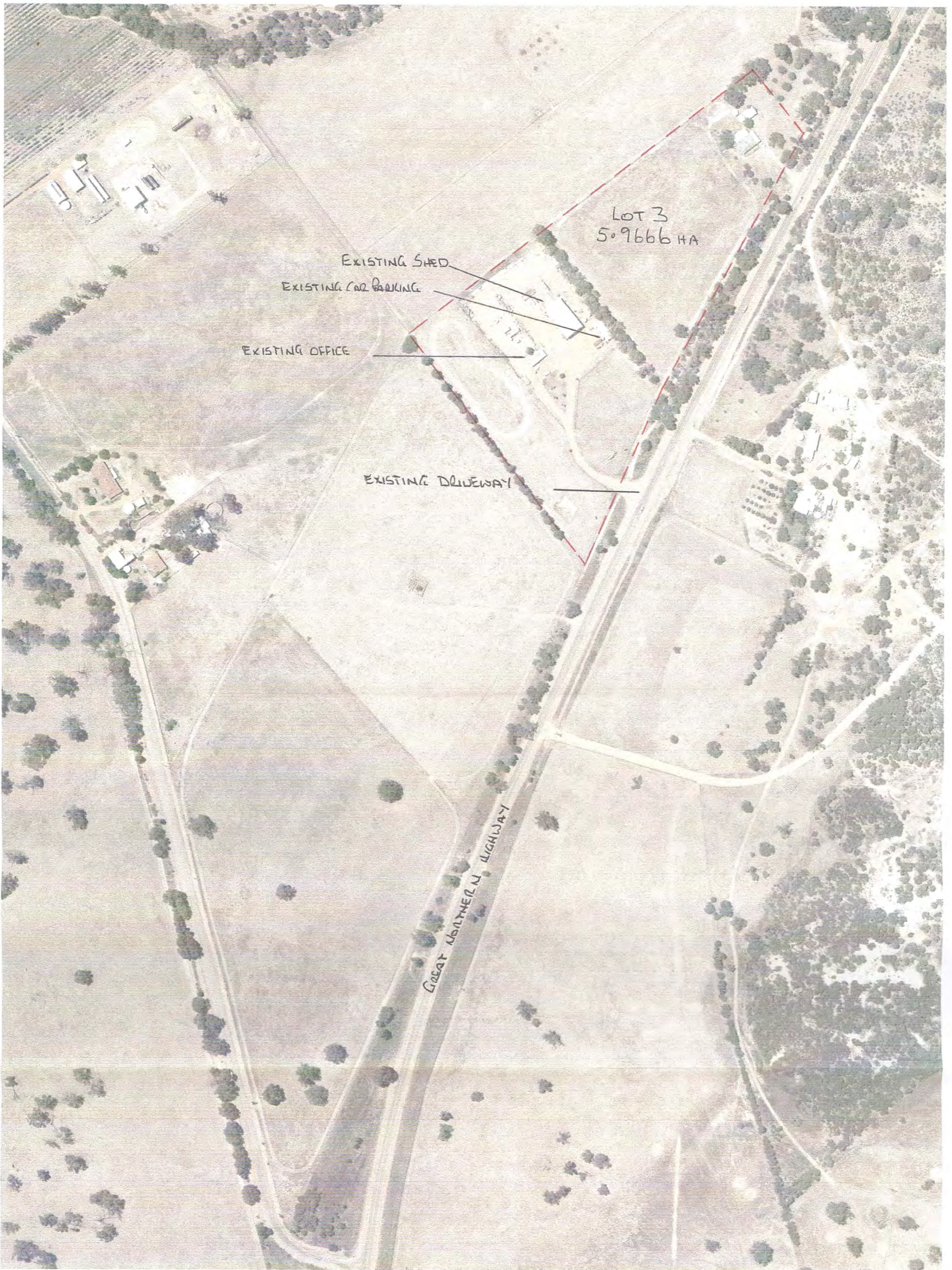
3 April 2014

Enc:

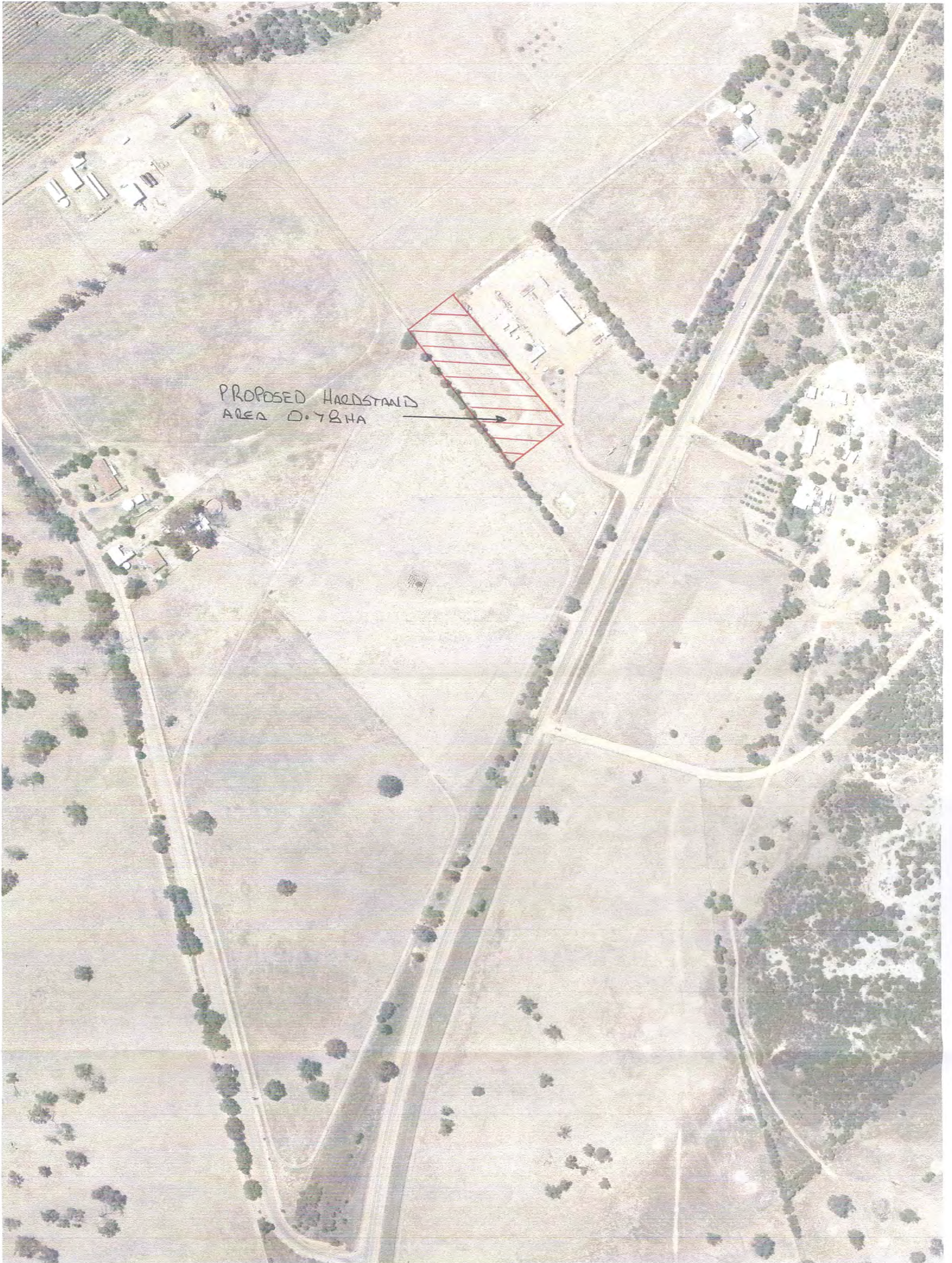
1. Application Forms
2. Plans
3. Certificate of Title

ATTACHMENT 2

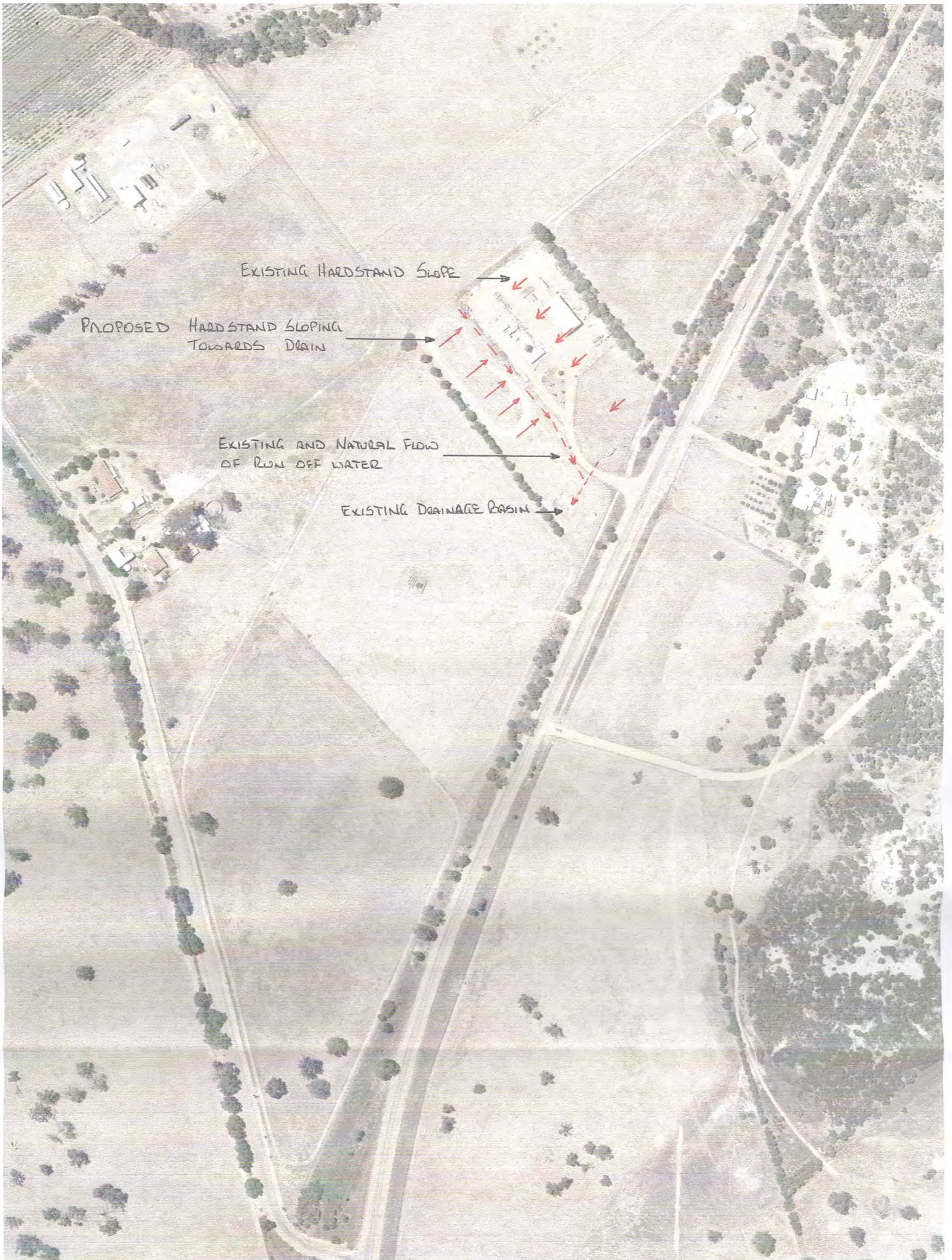
Plans



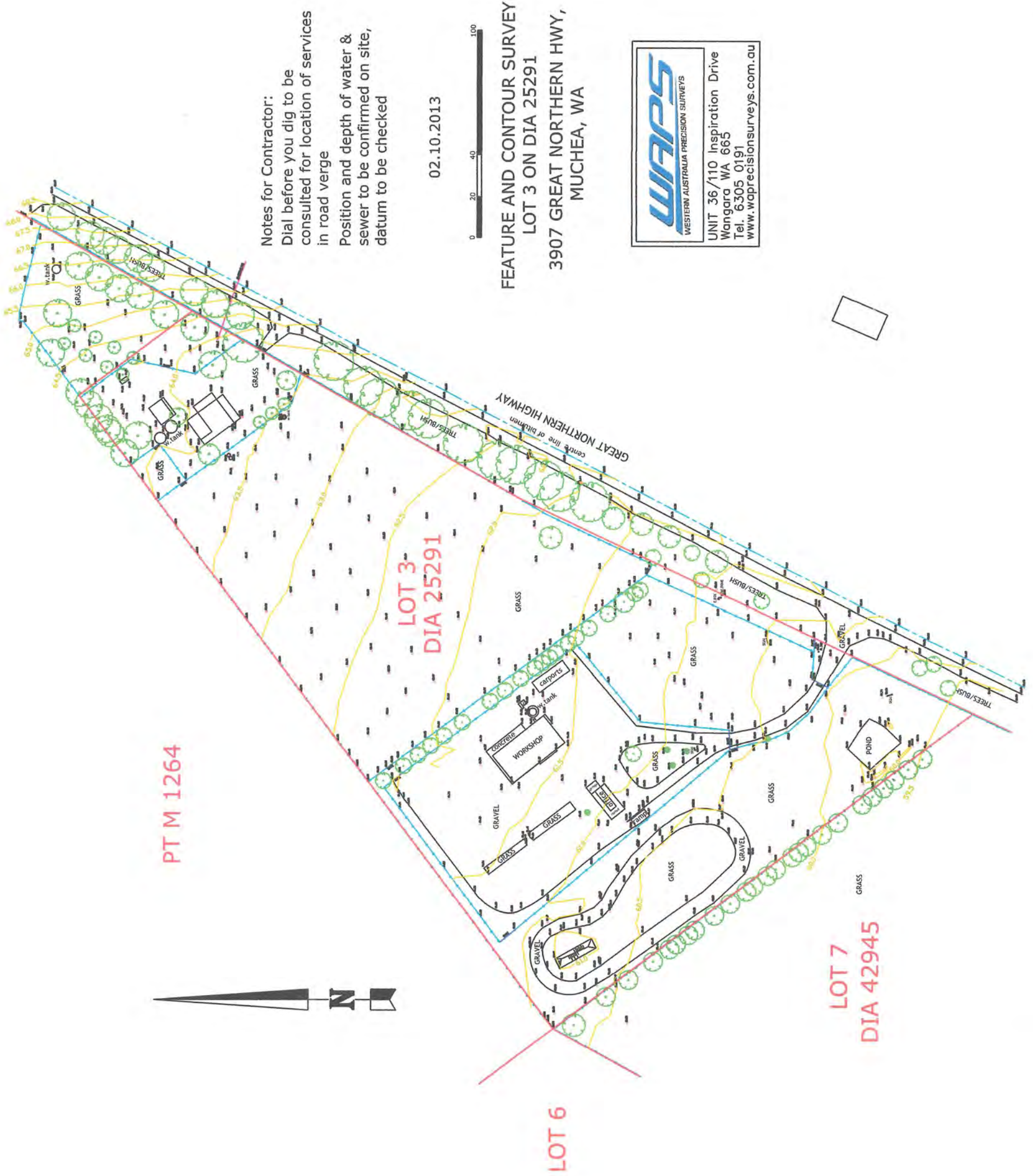
DSY ENGINEERING - SITE LAYOUT
LOT 3 GREAT NORTHERN HIGHWAY MUCKEA



DSY ENGINEERING - PROPOSED DEVELOPMENT
LOT 3 GREAT NORTHERN HIGHWAY MUCKEEA



DS7 ENGINEERING - SITE DRAINAGE ARRANGEMENT
LOT 3 GREAT NORTHERN HIGHWAY MUCKEEA



Notes for Contractor:
 Dial before you dig to be consulted for location of services in road verge
 Position and depth of water & sewer to be confirmed on site, datum to be checked

02.10.2013

FEATURE AND CONTOUR SURVEY
 LOT 3 ON DIA 25291
 3907 GREAT NORTHERN HWY,
 MUCHEA, WA

WAPS
 WESTERN AUSTRALIA PRECISION SURVEYS
 UNIT 36/110 Inspiration Drive
 Wangara WA 6665
 Tel. 6305 0191
 www.waprecisionsurveys.com.au



Submission Comments	Applicant Response Comments	Officer Response Comments
Public Submission - A	<ol style="list-style-type: none"> Please be advised that as an adjoining landowner, I have no objections to the proposal as written in the application document. As I understand it, there will be no extension of Operating Hours and Vehicle Movements will not increase. 	<ol style="list-style-type: none"> 1. Noted No additional movements or operational hours proposed. This is recommended as a condition of approval in the Officer's Recommendation.
Submission - B Ellen Brockman Integrated Catchment Group	<ol style="list-style-type: none"> There is no mention in the documentation as to how many vehicles can or will be on site at any one time. Is this decided by the Council? The experience in the City of Swan and the transport depots there along Great Northern Hwy is very unsightly establishments. Muchea is the gateway to the Shire of Chittering and every effort should be made to ensure this doesn't happen here. Ward's Transport on the corner of Great Northern Hwy and Muchea East Road were apparently not required to have screening vegetation except a row of grape vines, nor the property opposite which really is not acceptable. This area is already beginning to look unappealing when the Shire is trying to promote Chittering as a tourist destination and day trip area. A landscaping/vegetation screening using local native plants needs to be established, at least along the Great Northern Hwy frontage. It can become an industrial area but does not need to be an unsightly industrial area. The management plan mentions nothing about fuelling of vehicles. Does a transport depot allow refuelling and storage of fuel on site? If so then a sealed bunded area with hydrocarbon separation drain is required for fuel storage and transfer. Will there be any wash down facilities at the site? If so, then special consideration will need to be given for this activity, especially if they are stock trucks and trailers. No mention of how any spillage from trucks whether hydrocarbon or other substances will be dealt with should it occur. Douglas Stockyards may have already installed a piezometer along the western boundary. If this is the case then this can be used to monitor the groundwater for contamination. Any gravel used to create the hardstand needs to be certified Dieback free gravel or from a source that is certified Dieback free. 	<ol style="list-style-type: none"> Applicant advised no additional movements associated with proposal. In total no more than 10 movements per day. This is recommended as a condition and a requirement of Main Roads and is reflected in the Officer's Recommendation. Noted. Vegetation screening is recommended as a condition and has been instigated by the Applicant. Noted Applicant's response. It is recommended as a condition of approval that no refuelling occur on site. Noted Applicant's response. It is recommended as a condition of approval that no wash down facilities are permitted on site. This has now been addressed in the Catchment Management Plan with drainage swales and a vegetated basin. Noted. This is part of the Catchment Management Plan which is to be complied with as a condition of approval. Noted as a condition of approval in the Officer's Recommendation.
Submission - C	1. No comments.	1. Noted.
Department of Water Submission - D Main Roads Western Australia	<ol style="list-style-type: none"> MRWA does not support the proponent's assertion that heavy vehicle movements will not increase from those currently, which are supposed to be ancillary to an engineering business, being of low volume and frequency. If this was the case then there would be no need for approval of a transport depot land use. MRWA is unable to support a transport depot and the potential increase in frequency and volume of heavy vehicles, due to the construction of the Perth to Darwin National Highway (PDNH), which has now secured funding and is currently undergoing detailed planning. 	1-7. Submission revised from point 8 onwards.

	<p>3. The preferred PDNH alignment concept and reservation, which has been endorsed by the Shire of Chittering Council, includes a service road access to Lot 3, however the design of the service road is not suitable for the high volume and frequency of heavy vehicles associated with a Transport Depot, as the service road design was based on the land use of Lot 3 being 'Rural'.</p> <p>4. In addition to the current and future vehicle access to Lot 3 not being suitable for the type and frequency of vehicle associated with a transport depot, the development of this type of land use is not in keeping with strategic planning for the site, which is proposed to remain rural.</p> <p>5. Any industrial development should be located in the Muchea Employment Node immediately to the south of Lot 3, which has been identified as the strategic location for industrial development in the Shire.</p> <p>6. Further the Shire's Local Planning Strategy identifies future 'Rural Retreat' and 'Conservation' land uses immediately north of Lot 3, which are not compatible with an industrial land use.</p> <p>7. As Lot 3 is not a suitable location for access by a high volume and frequency of heavy vehicles, if the current business is generating heavy vehicle movements in contradiction to the approved use, then appropriate action by the Shire is recommended to rectify the breach.</p> <p>Updated submission</p> <p>8. Provided there are fewer than 5 heavy vehicle movements turning in or out of your lot in any hour and does not exceed a total of 10 vehicle movements per day then access will need to be a Rural Basic (BA) Treatment.</p> <p>9. Main Roads will request that the Shire of Chittering include that the above maximum number of heavy vehicle movements be a condition of your development approval.</p> <p>10. This will require your access to be designed to accommodate lane correct access by the maximum sized vehicle that will be accessing your property (i.e. B Double or Double Road Train) and as indicated on the attached guide drawing. As a commercial enterprise it is also a requirement that the access be sealed from Great Northern Highway back to the property boundary or to a maximum of 20 metres.</p> <p>11. Should circumstances change and vehicle numbers exceed the approved numbers then Main Roads will require the property owner to provide a Traffic Impact Assessment to define the necessary improvements that may be required to accommodate the increased vehicle movements.</p>	<p>8 – 11. Accept to maintain existing vehicle numbers.</p> <p>8. Noted. Vehicle Movements has been recommended as a condition of approval in accordance with Main Roads requirements.</p> <p>9. Noted as above.</p> <p>10. Noted.</p> <p>11. Noted. Any amendments would require further consultation and subject to Main Roads approval.</p>
--	--	--



Photo 1: Looking north west on southern side boundary.



Photo 2: Looking north west on internal security fencing to existing compound.

Attachment 5 – Site Photos



Photo 3: Access to Great Northern Highway from hardstand.