

LEGAL DOCUMENT LODGEMENT FORM

Lodgement Date: 12/3/14

Date of Legal Document: 11/3/14

Type of Document: Deed of Variation to Voluntary Planning Agreement (VPA)

Expiry Date of Document (if applicable): following compliance with clause 5.2

Parties: WSC & Warnervale Medical Holdings Pty Ltd & Trustees of the Roman Catholic Church for the Diocese of Broken Bay

Address: 85 Sparks Rd, Woongarrah

Details of Document: Deed of Variation to VPA in relation to the amount and payment of contributions

Property Description: Lot 3 DP 1155796 Sparks Rd, Woongarrah, NSW

Review Date: N/A

Responsible Officer: Sharron Colquhoun

Folder Number: DA/1396/2009/D

Note: This form and the original documents are to be delivered to Corporate Information

Legal Document supersedes LDOC: N/A (if applicable)

DEED OF VARIATION OF VOLUNTARY PLANNING AGREEMENT

PARTIES

Wyong Shire Council of Council Chambers, Hely Street, Wyong in the State of New South Wales ("**Council**")

The Trustees of the Roman Catholic Church of the Diocese of Broken Bay of Building 2, 423 Pennant Hills Road, Pennant Hills in the State of New South Wales ("**the Church**")

and

Warnervale Medical Holdings Pty Limited as trustee for the **Warnervale Medical Holdings Unit Trust** of PO Box 27, Toukley in the State of New South Wales ("**the Developer**")

BACKGROUND

- A. On 24 September 2010 the Parties entered in to the Voluntary Planning Agreement ("VPA"). The VPA makes provision for the payment of contributions to Council for the development of the Developer Land and related matters. The VPA does not provide for the staged payment of contributions to Council.
- B. At the time the Parties entered in to the VPA the Church owned the Church Land. Since that time the Church Land has been subdivided in to a number of lots, one of which is the Developer Land, and the Developer has purchased the Developer Land from the Church.
- C. The original Development Consent did not provide for staged development of the Developer Land. The Modified Consent, being a modification of the Development Consent, does provide for the staged development of the Developer Land. The Developer has completed Stage 1 of the Development on the Developer Land, pursuant to the Modified Consent.
- D. The effect of this Deed is to vary the VPA so as to permit the staged payment of developer contributions consistent with the staging permitted under the Modified Consent; to acknowledge that the Developer has paid the Previous Contributions; to provide for the return to the Developer of both the Bank Guarantee and the proportion of the Previous Contributions that relate to Stage 1; to remove the Church as a party to the Current VPA; and to make consequential modifications to the VPA.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless express or implied to the contrary:

Act means the *Environmental Planning and Assessment Act 1979*;

Bank Guarantee means any guarantee paid to Council by the Developer pursuant to clause. 7 of the VPA;

Church means The Trustees of the Roman Catholic Church of the Diocese of Broken Bay;

Church Land means the land previously known as Lot 8 DP 7738;

Council means Wyong Shire Council;

Deed means this document and any annexures or schedules attached to this document;

Developer means Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust;

Developer Land means Lot 3 in Deposited Plan 1155796, otherwise known as 85 Sparks Road, Woongarah;

Development means the development of the Developer Land that is permitted by the Modified Consent;

Development Consent means the conditional consent to the development application DA/1396/2009, granted on or about 29 June 2010;

Development Contributions Plan means the "Warnervale Town Centre Section 94 Development Contributions Plan", or any other similarly named document, that permits Council to require the payment of Monetary Contributions for development within the Warnervale Town Centre;

LPMA means the Land and Property Management Authority, or its successors or assigns;

Modified Consent means the Development Consent, as modified pursuant to s. 96 of the Act on 16 February 2011 (modification application DA/1396/2009/A), 5 September 2011 (modification application DA/1396/C) and 9 November 2011 (modification application DA/1396/D);

Occupation Certificate has the same meaning as in the Act;

Parties mean the parties to this Deed;

Party means a party to this Deed;

Previous Contributions means the monies paid to Council under the Current VPA, being the total sum of \$698,002.69 paid to Council on 16 October 2011;

Stage 1 means that part of the Development completed prior to this Deed, being Stage 1 of the Development as set out in the Modified Consent and as evidenced by Interim Occupation Certificate dated 24th August 2012 for Construction Certificate 861/2010/B, as per plan in Annexure "A" to this Deed;

Stage 2 means those parts of the Development other than Stage 1;

VPA means Planning Agreement dated 24 September 2010 between Council, the Church and the Developer, a copy of which is Annexure "B" to this Deed;

Warnervale Town Centre means an area of land within the local government area of Wyong Shire, and bounded by Hiawatha, Hakone and Sparks Roads and east of Bruce Crescent.

- 1.2 A word or phrase which is used in this Deed and is defined in the VPA, but is not defined in this Deed, has the meaning given to it in the VPA.
- 1.3 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
 - 1.1.1 The headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.1.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.1.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

- 1.1.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.1.5 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.1.6 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.1.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.1.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.1.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.1.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular and a reference to any gender denotes the other genders, unless otherwise defined.
- 1.1.11 References to the word "include" or "including" are to be construed without limitation.
- 1.1.12 A reference to this Deed includes the agreement recorded in this Deed.
- 1.1.13 A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.1.14 The schedule to this Deed forms part of this Deed.

2. GOVENING LAW AND JURISDICTION

- 2.1 This Deed is governed by and is to be construed in accordance with the laws of New South Wales. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New South Wales and waives any right to object to proceedings being brought in those Courts.

3. OPERATION

- 3.1 The parties agree that this Deed takes effect after the Parties have executed this Deed and on the date upon its registration in accordance with clause 7.1.

4. VARIATION

Variation

- 4.1 The Parties agree that the VPA be varied as follows with effect from the date of this Deed:
 - 4.1.1 by replacing all references in the VPA to the phrases "Owner", "Land" and "Proposed Lot 3" with "Church", "Church Land" and "Developer Land" respectively;
 - 4.1.2 In clause. 4.1 of the VPA the :
 - (a) Replace the definitions of "Bank Guarantee", "Development" and "Future Development": with the following:

Bank Guarantee means any guarantee paid to Council by the Developer pursuant to clause 7 of the unmodified version of this Agreement executed by the Parties on 24 September 2010;

Development means the development of the Developer Land that is permitted by the Modified Consent;

Future Development means any development on the developer land that is beyond the scope of the Modified Consent.

- (b) Insert the following additional definitions:

Developer Land means Lot 3 in Deposited Plan 1155796, otherwise known as 85 Sparks Road, Woongarra;

Modified Consent means the Development Consent, as modified pursuant to s. 96 of the Act on 16 February 2011 (modification application DA/1396/2009/A), 5 September 2011 (modification application DA/1396/C) and 9 November 2011 (modification application DA/1396/D);

Occupation Certificate has the same meaning as in the Act;

Previous Contributions means the monies paid to Council under the Current VPA, being the total sum of \$698,002.69 paid to Council on 16 October 2011;

Stage 1 means that part of the Development completed prior to this Agreement, being Stage 1 of the Development as set out in the Modified Consent and as evidenced by Interim Occupation Certificate dated 24th August 2012 for Construction Certificate 861/2010/B, as per plan in Attachment A to this Agreement.

Stage 2 means those parts of the Development other than Stage 1;

- (c) Delete the definitions of "Proposed Lot 3" and "Monetary Contributions".

4.1.3 Schedule 1 is deleted and replaced with the Schedule 1 of this Agreement;

4.1.4 Clause 5 is deleted and replaced with the following:

5 MONETARY CONTRIBUTIONS

5.1 The Developer and Council agree that:

- (a) The Developer paid the Previous Contributions to Council on 16 October 2011; and
- (b) As at November 2011 the indexed value of the Previous Contributions was \$719,111.64, of which \$602,415.78 related to Stage 1 and \$116,695.86 related to Stage 2; and
- (c) The Developer has met its obligation to pay developer contributions in respect to Stage 1 of the Development by the payment of the component of the Previous Contributions that the Developer and Council have agreed relate that Stage 1; and
- (d) Council will repay the sum calculated in accordance with the following formula to the Developer within 14 days of the date on which this clause becomes operative:

$$\text{Amount to be repaid} = \$116,695.64 \times \frac{\text{CPI-B}}{\text{CPI-A}}$$

where:

CPI-B is the Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of the repayment required by this clause 5.1(d);

CPI-A The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics as at November 2012.

(e) The Developer and Council agree that the repayment that Council is required to make pursuant to cl. 5.1(d) is repayment of that part of the Previous Contributions that relates to Stage 2 of the Development.

5.2 The Developer agrees to pay to Council a monetary contribution calculated in accordance with the following in respect to Stage 2 of the Development, such payment to be paid prior to the issue of an Occupation Certificate in respect to Stage 2:

Developer contribution to be paid = \$455, 814.52 x $\frac{\text{CPI-C}}{\text{CPI-A}}$

where:

CPI-C is the Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of the contribution is to be paid by this clause 5.2);

CPI-A The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics as at November 2012.

5.3 Council and the Developer agree that:

(a) no amendment will be made to the contributions required to be paid under this Agreement as a result of the adoption of any Development Contributions Plan; and

(b) Schedule 1 to this Agreement identifies the purposes for which the Previous Contribution and the contributions to be paid pursuant to clause. 5.2 are made.

5.4 In the event that the Modified Consent is further modified so that Stage 2 of the Development is to be completed in more than one stage then Council may give notice in writing to the Developer that permits the contributions that the Developer is required to pay to Council pursuant to cl. 5.2 to be paid by way of instalments. The Developer acknowledges that Council has an absolute discretion whether it gives any such notice and as to the content of that notice.

4.1.6 Clause 6 is deleted.

4.1.7 Clause 7 is deleted.

4.1.8 Clause 8.1 is deleted and replaced with the following

8.1 *The parties agree that:*

- (a) *Nothing in this Agreement operates to fetter, in any way, Council's ability to impose on any grant of consent for Future Development of the Developer Land a condition requiring the making of a contribution for the purpose of s. 94 and/or 94A of the Act; and:*
- (b) *Nothing in this Agreement operates to confer any credit to the Developer or any other person in respect to any Future Development of the Developer Land.*

Affirmation

4.2 Other than the variation to the VPA given effect by this Agreement, the Parties ratify and affirm the VPA in all other respects.

5. RETURN OF BANK GUARANTEE

Council will return the Bank Guarantee to the Developer within fourteen (14) days of the date on which this Deed becomes operative.

6. RELEASE

Release of the Church

6.1 The Parties acknowledge and agree that the Church has met its obligations under the VPA.

6.2 The Parties agree that as from the date of this Deed, Council and the Developer release and discharge the Church from all its obligations under VPA and agree:

- (a) not to make any claim or demand or commence any action or proceedings against the Church in respect of the VPA; and
- (b) that this Deed may be pleaded in bar in any such action or proceeding.

Release of Council and Developer

6.3 The Church releases Council and the Developer from all claims arising under the VPA as from the date of this Agreement.

7. REGISTRATION

- 7.1 The Developer agrees to procure, at no cost to Council, the registration of this Agreement pursuant to section 93H of the Act on the relevant folios of the Register pertaining to the Land as soon as practicable following the execution of this Agreement. This obligation includes the Developer procuring, at no cost to Council, the written consent of any mortgagee or other person holding an interest in the Developer Land that is necessary to effect the registration required by this clause.

8. COSTS

- 8.1 The Developer agrees to pay all of its costs (inclusive of GST) in connection with this Agreement, including the negotiation and execution of this agreement, all legal advice and costs associated with this Agreement, and the registration of this agreement in accordance with clause 8 of this Agreement.
- 8.2 The Developer agrees to pay to Council the sum of \$5,500 (inclusive of GST) towards the negotiation, preparation, processing and execution of this agreement. This payment may be deducted by Council from any amount that Council is required to pay to the Developer pursuant to clause 5.1(d) of Current VPA, as modified by clause. 5 of this Agreement.

SCHEDULE 1

Amount and Timing of Monetary Contributions

Item	Description	Rate as at May 2010	Factor	Amount required under Current VPA (as at May 2010)	Previous Contributions (paid 16/8/2011)	Previous Contributions Paid Indexed to November 2012	Total Amount required to be paid under this Agreement, Indexed to November 2012	Rationale for stage 1 payments	Stage 1 %	Payment required for Stage 1	Required to be paid prior to issue of the construction certificant for Stage 2
Integrated Water Cycle Management and Drainage											
NDA											
1	Integrated Water Cycle Management	\$ 27,099.00	1.348	\$ 36,529.45			\$39,215	Relates to total land area	100%	\$ 39,215.44	\$ -
2	Drainage and Water Quality – Land	\$ 34,784.00	1.348	\$ 46,888.83			\$50,337	Relates to total land area	100%	\$ 50,336.54	\$ -
3	Drainage and Water Quality – Works	\$ 58,650.00	1.348	\$ 79,060.20			\$84,873	Relates to total land area	100%	\$ 84,873.45	\$ -
Studies, Valuations and Administration											
NDA											
4	Studies and Land Valuations	\$ 2,710.00	1.348	\$ 3,653.08			\$3,922	Relates to total land area	100%	\$ 3,921.69	\$ -
5	Plan Administration	\$ 2,292.00	1.348	\$ 3,089.62			\$3,317	Relates to total land area	100%	\$ 3,316.79	\$ -
Sub-Total		\$ 125,535.00	1.348ha	\$ 169,221.18			\$181,664			\$ 181,663.91	\$ -
Roadworks											
DVT's											
6	Sparks Road/Minnesota Rod Intersection	\$ 47.40	2170	\$ 102,858.00			\$110,421	based on 48% of total traffic generation.	48%	\$ 53,002.12	\$ 57,418.97
7	Sparks Road/Entrance Drive Intersection	\$ 48.12	2,170	\$ 104,420.40				Now being paid for by the State Govt.	0%	\$ -	\$ -
8	Link Road Stage 1	\$ 51.44	2,170	\$ 111,624.80			\$119,833	based on 48% of total traffic generation	48%	\$ 57,519.60	\$ 62,312.90
9	Link Road Stage 2	\$ 139.07	2,170	\$ 301,781.90			\$323,972	based on 48% of total traffic generation	48%	\$ 155,506.44	\$ 168,465.31
10	Sparks Road Pedestrian Facilities at Railway Overpass	\$ 4.68	2,170	\$ 10,155.60			\$10,902	based on 48% of total traffic generation	48%	\$ 5,233.12	\$ 5,669.21
11	Mataram/Hiwatha Road Intersection	\$ 10.45	2,170	\$ 22,676.50			\$24,344	based on 48% of total traffic generation	48%	\$ 11,685.07	\$ 12,658.82
12	Entrance Drive Intersection	\$ 31.35	2,170	\$ 68,029.50			\$73,032	based on 48% of total traffic generation	48%	\$ 35,055.20	\$ 37,976.47
13	Pacific Highway/Chelmsford Road Intersection	\$ 15.60	2,170	\$ 33,852.00			\$36,341	based on 48% of total traffic generation	48%	\$ 17,443.74	\$ 18,897.38
14	Sub-Arterial/Railway Station Intersection	\$ 42.38	2,170	\$ 91,964.60			\$98,727	based on 48% of total traffic generation	48%	\$ 47,388.82	\$ 51,337.89
15	Chelmsford Road/Arizona Road Intersection	\$ 33.91	2,170	\$ 73,584.70			\$78,995	based on 48% of total traffic generation	48%	\$ 37,917.76	\$ 41,077.58
16	Roadworks and Traffic Management – Future Development	\$TBA	TBA				\$0				
Sub-Total		\$ 424.40		\$ 920,948.00			\$ 876,566.39			\$ 420,751.87	\$ 455,814.52
TOTAL				\$ 1,090,169.18	\$ 698,002.69	\$ 719,111.64	\$ 1,058,230.31			\$ 602,415.78	\$ 455,814.52
Proposed Refund										\$ 116,695.86	
Costs as per Clause 17 of this Agreement										\$ 5,500.00	
Refund, less costs above										\$ 111,195.86	

EXECUTED as a DEED

Date: 10.3.14

Executed for and on behalf of Wyong Shire Council:

[Handwritten signature of Michael Whittaker] *[Handwritten signature of Deborah Aitchison]*

Signature of General Manager

Signature of Witness

Michael Whittaker

Name

Deborah Aitchison

Executed for and on behalf of Warnervale Medical Holdings Pty Limited as trustee of the Warnervale Medical Holdings Unit Trust in accordance with section 127(1) of the Corporations Act:

[Handwritten signature of Melanie Cranney]

Melanie Cranney
Sole Director

The common seal of The Trustees of the Roman Catholic Church for the Diocese of Broken Bay ABN: 79 031 652 544 was hereunto affixed in pursuance of a resolution passed at a meeting of the said Body Corporate in the presence of the Bishop and two other members thereof all of whose signatures are set opposite hereto:

[Handwritten signature of David L. Walker]

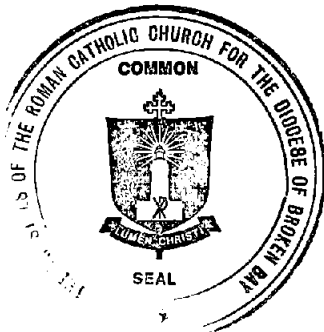
Bishop *DAVID LANS WALKER*

[Handwritten signature of Vincent Robert Casey]

Member *VINCENT ROBERT CASEY*

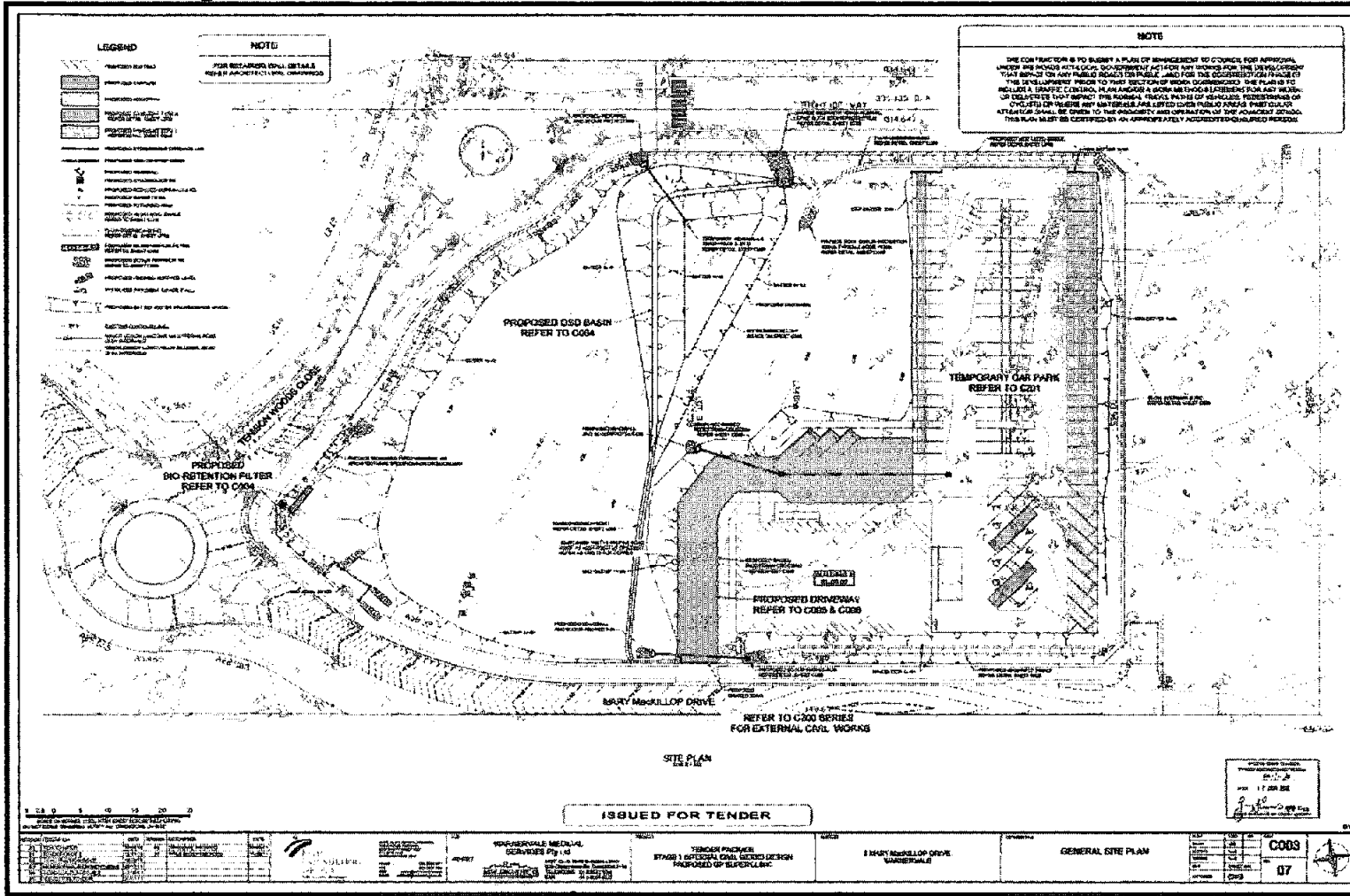
[Handwritten signature of Joan Bernard Hannon]

Member *JOAN BERNARD HANNON*



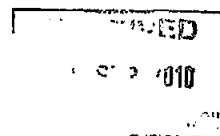
ANNEXURE A

Plan of Stage 1



ANNEXURE B

Council Reference LDOC009115



VOLUNTARY PLANNING AGREEMENT

Wyong Shire Council (ABN 47 054 613 735)

And

The Trustees of the Roman Catholic Church of the Diocese of Broken Bay
(ABN 79 031 652 544)

And

Warnervale Medical Holdings Pty Limited (ACN 140069889) as trustee for
Warnervale Medical Holdings Unit Trust (ABN 92 338 068 421)

Final v1 16 June 2010

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Final v1 15 June 2010

PLANNING AGREEMENT

DATE 19.2.10

PARTIES

Wyong Shire Council of Council Chambers, Hely Street, Wyong in the State of New South Wales ("Council")

and

The Trustees of the Roman Catholic Church of the Diocese of Broken Bay of Building 2, 423 Pennant Hills Road, Pennant Hills in the State of New South Wales ("the Owner")

and

Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust of PO Box 27, Toukley in the State of New South Wales ("the Developer")

BACKGROUND

- a. The Owner has lodged a development application with Council for the subdivision of the Land. If consent is granted by Council to that application, the Owner intends selling Proposed Lot 3 of that subdivision to the Developer.
- b. The Developer has lodged the Development Application with Council to develop Proposed Lot 3 for a health services facility (General Practitioner super clinic) and associated facilities, including carparking and strata subdivision.
- c. The Developer acknowledges that the Development generates the need to upgrade existing and/or provide new local community infrastructure.
- d. The Warnervale Town Centre Development Contributions Plan has not been adopted and the Developer has offered to enter into this Agreement to pay Council Monetary Contributions towards various categories of local community infrastructure.
- e. The Developer intends to carry out the Future Development of the Land, subject to Council approval.

OPERATIVE PROVISIONS

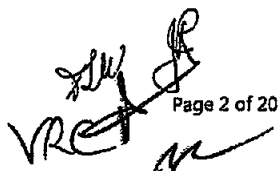
1 PLANNING AGREEMENT UNDER THE ACT

- 1.1 The parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 APPLICATION OF THIS AGREEMENT

- 2.1 This Agreement applies to the Land.

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3 OPERATION OF THIS AGREEMENT

3.1 Subject to clause 3.2, this Agreement takes effect once executed by all parties.

3.2 Clauses 5 and 6 of this Agreement will only operate if and when:

- (a) the subdivision of the Land has been approved;
- (b) the purchase of proposed Lot 3 by the Developer has been completed, or the Developer has been granted exclusive possession of Proposed Lot 3; and
- (c) the Development Consent is granted.

3.3 This Agreement identifies the arrangements with regards to the payment of Monetary Contributions towards off-site community infrastructure.

4 DEFINITIONS AND INTERPRETATION

4.1 In this Agreement the following definitions apply:

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

Authority means Council, the NSW Department of Environment, Climate Change and Water (DECCW), the NSW Department of Planning (DoP), the NSW Roads and Traffic Authority (RTA) and any heirs and successors of those organisations;

Bank Guarantee means an unconditional and irrevocable undertaking issued by a major Australian bank in favour of Council in a form acceptable to Council (acting reasonably) to pay on demand the amount specified in the guarantee;

Concept Plan/s means the plan/s at Annexure A to this Agreement;

Council means Wyong Shire Council or its representatives or assigns;

Deal, Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or disencumbering or otherwise dealing with the Land;

Developer means Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust or its representatives or assigns;

Development means the development of the Land as shown on the Concept Plan/s and the Development Application;

Development Application means the Development shown in development application No. 1396/2009 lodged with Council;

Development Consent means any consent issued by or on behalf of Council in relation to Development Application 1396/2009;

Development Contributions Plan means the Warnervale Town Centre Section 94 Development Contributions Plan, or any other similarly named document, that permits Council to require the payment of Monetary Contributions for development within the Warnervale Town Centre;

Future Development means the development of those portions of the Concept Plan/s which are hatched and entitled "Future Development" within Proposed Lot 3. The future development of Proposed Lot 3 is understood to involve a private hospital which will generate additional traffic and therefore a need to contribute to surrounding road and intersection upgrades;

Land means Lot 8 DP 7738 – otherwise known as 85 Sparks Road, Woongarah;

LPMA means the Land and Property Management Authority, or its successors or assigns;

Minister means the Minister administering the Act, from time to time;

Monetary Contributions means the monetary contributions specified at clause 5 and in Schedule 1 of this Agreement;

Owner means the Trustees of the Roman Catholic Church of the Diocese of Broken Bay or its representatives or assigns;

Parties mean the Council, the Owner and the Developer, including their successors and assigns;

Party means a party to this Agreement including its successors and assigns;

Proposed Lot 3 means the portion of the Land identified Part 3 in the Concept Plan/s;

Regulation means the Environmental Planning and Assessment Regulation 2000;

Roads mean those roadwork and intersection upgrade projects identified as Items 6-15 in the table in Schedule 1.

Warnervale Town Centre means an area of land within the local government area of Wyong Shire, and bounded by Hiawatha, Hakone and Sparks Roads and east of Bruce Crescent.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) The headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular and a reference to any gender denotes the other genders, unless otherwise defined.
- (k) References to the word "include" or "including" are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) The schedule to this Agreement forms part of this Agreement.

5 PAYMENT OF THE MONETARY CONTRIBUTIONS

- 5.1 The Developer agrees to pay the Monetary Contributions to Council in the amounts specified (including any indexation costs calculated in accordance with clause 6), and by the times specified in Schedule 1 of this Agreement.
- 5.2 Where a Development Contributions Plan has been adopted by Council for the Warnervale Town Centre, and no payment to Council of any of the Monetary Contributions has been made, the amount of Monetary Contributions payable under this Agreement will only be in accordance with the amounts specified at Schedule 1 of this Agreement where the total contributions as calculated by Council as payable under the Warnervale Town Centre Contributions Plan are greater than those required in total under Schedule 1.
- 5.3 In circumstances where clause 5.2 applies, and the total contributions as calculated by Council as payable under the Development Contributions Plan are less than the total Monetary Contributions payable pursuant to Schedule 1, then the Developer can choose to pay the contributions under the Development Contributions Plan in lieu of the Monetary Contribution amounts specified in Schedule 1, as applicable. Nonetheless, the times specified for payment of Monetary Contribution amounts under Schedule 1 remain as specified in that Schedule.
- 5.4 For the avoidance of doubt, where Monetary Contributions have been paid under this Agreement, and the Development Contributions Plan has not been adopted at the time of payment, the Developer agrees that those Monetary Contributions paid will not be revised or refunded, and all Monetary Contributions as required by the terms of Schedule 1 to this Agreement are to be paid, even if the Development Contributions Plan at a later point in time allows or permits lesser contributions.
- 5.5 The Parties agree that Monetary Contributions for Roads for any Future Development will be calculated, levied and paid in accordance with the following formula and at the times specified in Schedule 1:

$R \times DVTs$

Where:

R Rate per DVT of \$424.40 (indexed in accordance with clause 6)

DVTs Number of daily vehicles trips generated by the Future Development, as determined by Council in consultation with the Developer.

6 INDEXATION OF AMOUNTS PAYABLE BY THE PARTIES

6.1 The Monetary Contributions payable under this Agreement (including all upper limit amounts) are to be indexed from the date of execution of this Agreement in accordance with the following formula:

$$C \times \frac{\text{CPI 2}}{\text{CPI 1}}$$

Where:

- C The original value of the Monetary Contribution identified in this Agreement
- CPI 2 The Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of payment
- CPI 1 The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics at the date of execution of the Planning Agreement

7 SECURITY

- 7.1 The Developer will lodge with Council a Bank Guarantee to the value of \$60,000.00 within 10 business days after execution of this Agreement.
- 7.2 If any of the Monetary Contributions are not paid in full by the times specified in Schedule 1, Council may call upon the Bank Guarantee without reference to the Developer, and apply that money as a payment or part payment of the outstanding Monetary Contributions, but without prejudice to any other rights Council has (under this Agreement or otherwise) to pursue outstanding Monetary Contributions
- 7.3 Council agrees to discharge the Bank Guarantee when the Monetary Contributions have been paid in full for Items 1-15.

8 APPLICATION OF SECTION 94 & 94A OF THE ACT TO THE DEVELOPMENT

- 8.1 The Parties agree that Council is excluded from applying a condition of consent of the nature referred to in section 94 or 94A(1) of the Act in relation to Future Development of Proposed Lot 3, except as provided for in clause 5.5 of this agreement.
- 8.2 The Parties agree that Council retains the right to levy water and sewer charges against the Development and Future Development of Proposed Lot 3 pursuant to Section 306 of the Water Management Act 2000.

9 REGISTRATION OF THIS AGREEMENT

- 9.1 The Owner and Developer agree to procure the registration of this Agreement pursuant to section 93H of the Act on the relevant folios of the Register pertaining to the Land as soon as practicable following execution of this Agreement and obtain the written consent of any mortgagee or other person with an interest in the Land to such registration.

To that end the Owner and Developer agree to deliver to the Council within 7 working days of the date of execution of this agreement, all necessary documents in registrable form to enable Council to lodge those documents at LPMA and obtain immediate registration of this agreement on the title to the Land.

- 9.2 Council agrees that once the plan of subdivision creating Proposed Lot 3 has been registered, it will consent to have this Agreement removed from the remainder of the Land, such that this Agreement will only apply to the newly created Lot 3.

10 DEVELOPER & OWNER WARRANTIES AND INDEMNITIES

- 10.1 The Developer warrants to Council that:

- (a) It intends to purchase Proposed Lot 3 from the Owner;
- (b) It is able to fully comply with its obligations under this Agreement;
- (c) It has full capacity to enter into this Agreement; and
- (d) There is no legal impediment to it entering into this Agreement, or performing its obligations under it.

- 10.2 The Developer guarantees to Council the due and punctual payment of all moneys due and payable or from time to time due and payable to Council by the Developer pursuant to or in connection with this Agreement.

- 10.3 The Developer agrees that Council is not required to proceed against the Developer or exhaust any remedies it may have in relation to the Developer or enforce any security it may hold with respect to the Developer's obligations, but is entitled to demand and receive payment when any payment is due under this Agreement.

- 10.4 The Owner warrants that it will promptly register with LPMA the relevant plans of subdivision following the grant of any development consent so as to enable it to sell Proposed Lot 3 to the Developer.

11 REVIEW OF THIS AGREEMENT

- 11.1 Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.
- 11.2 Each of the Parties individually reserves the right to review this Agreement if and when there is a grant of approval for a modification to the Development Consent.

12 DISPUTE RESOLUTION

- 12.1 If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (**Dispute**), any court or arbitration proceedings shall not be commenced by or against Council, the Developer or their successors or assigns, relating to the Dispute unless the parties to the Dispute (**Parties**) have complied with this clause, except where a party seeks urgent interlocutory relief.

12.2 A party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other parties to the Dispute, specifying the nature of the Dispute.

- (i) The Parties agree to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 working days of the receipt of written notice of the Dispute.
- (ii) The Parties agree that the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
- (iii) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
- (iv) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
- (v) If any procedural aspects are not specified sufficiently in the rules under clause 12.1, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
- (vi) A legal representative acting for either of the Parties may participate in the mediation.

12.3 From the time when a notice of Dispute is served, neither party shall take action to terminate this Agreement, until after the conclusion of the mediation.

12.4 Should mediation fail to resolve any dispute then the dispute shall be determined by arbitration pursuant to the Commercial Arbitration Act 1984 and the General Manager of the Council shall request the President for the time being of The Law Society of New South Wales to appoint an arbitrator to carry out such arbitration in accordance with the provisions of such Act.

12.5 Despite clauses 12.1, 12.2, 12.3 and 12.4, either Council or one or more of the Developers may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

13 NOTICES

13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below
- (b) Faxed or emailed to that Party at the relevant details set out below

(i) Council: Wyong Shire Council
Attention: Senior Contributions Officer
Address: DX 7306 WYONG
Fax No: (02) 4350 2098
Email: wesley.wilson@wyong.nsw.gov.au

(ii) Owner: The Trustees of the Roman Catholic Church of the Diocese of Broken Bay
Attention: Karl Henry, Property Manager
Address: PO Box 340, Pennant Hills, NSW, 1715
Fax No: (02) 9847 0501

(iii) Developer: Warnervale Medical Holdings Pty Limited
Attention: Denise Barrett or Peter Buckingham-Jones
Address: PO Box 27, Toukley, NSW, 2263
Fax No: (02) 4397 2544
Email: denise.barrett@toukleydoctors.com.au or
peter.buckinghamjones@toukleydoctors.com.au

- 13.2 If a party gives the other party 3 working days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- 13.3 Any notice, consent, information, application or request is to be treated or given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 working days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if it is on a business day, after 5.00pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

14 APPROVALS AND CONSENT

- 14.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, Council may give or withhold an approval or consent to be given under this Agreement in Council's absolute discretion and subject to any conditions determined by the Council. Council is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 ASSIGNMENT AND DEALINGS

- 15.1 The Developer and Owner agree with Council that they will not Deal, transfer or mortgage their interest in the Land prior to the registration of this Agreement as a Planning Agreement upon the title of the Land as contemplated in clause 9 of this Agreement.
- 15.2 Notwithstanding this clause, Council will not unreasonably withhold its consent to any transfer or mortgage provided that the proposed transferee or mortgagee consents on terms acceptable to Council to permit and facilitate registration of this Agreement at LPMA in the manner contemplated in clause 9.
- 15.3 The Developer and Owner agree that they will not lodge any caveat or other instrument upon the title of the Land which will prohibit or hinder registration of this Agreement at LPMA in the manner contemplated in clause 9 of this Agreement.

16 COSTS

16.1 The Developer agrees to pay or reimburse the costs of Council in connection with the:

- (a) Negotiation, preparation and execution of this planning agreement, to a *maximum* of \$5,000.00;
- (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$215.00, and
- (c) Registration of this planning agreement,

within 7 working days after receipt of a tax invoice from Council.

17 ENTIRE AGREEMENT

17.1 This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party before this Agreement was executed, except as permitted by law.

18 FURTHER ACTS

18.1 Each Party agrees to promptly execute all documents and do all such things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

19 GOVERNING LAW AND JURISDICTION

19.1 This Agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 12 of this Agreement have first been satisfied.

20 JOINT AND INDIVIDUAL LIABILITY AND BENEFITS

20.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

21 NO FETTER

21.1 Nothing in this Agreement is to be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

22 SEVERABILITY

22.1 If a clause or part of a clause in this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

23 WAIVER

23.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

J.R.
D.H.W.
VRC

SCHEDULE 1

Amount and Timing of Monetary Contributions

Item	Description	Rate	Factor	Amount	Timing
Integrated Water Cycle Management and Drainage					
1	Integrated Water Cycle Management	\$27,099	1.348ha	\$36,529.45	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
2	Drainage and Water Quality – Land	\$34,784	1.348ha	\$46,888.83	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
3	Drainage and Water Quality – Works	\$58,650	1.348ha	\$79,060.20	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
Studies, Valuations and Administration					
4	Studies and Land Valuations	\$2,710	1.348ha	\$3,653.08	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
5	Plan Administration	\$2,292	1.348ha	\$3,089.62	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
Sub-Total		\$125,535	1.348ha	\$169,221	
Roadworks and Traffic Management					
6	Sparks Road/Minnesota Road Intersection	\$47.40	2,170 DVTs	\$102,858	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
7	Sparks Road/Entrance Drive Intersection	\$48.12	2,170 DVTs	\$104,420	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
8	Link Road Stage 1	\$51.44	2,170 DVTs	\$111,625	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
9	Link Road Stage 2	\$139.07	2,170 DVTs	\$301,782	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent

10	Sparks Road Pedestrian Facilities at Railway Overpass	\$4.68	2,170 DVTs	\$10,156	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
11	Mataram/Hiawatha Road Intersection	\$10.45	2,170 DVTs	\$22,677	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
12	Entrance Drive Intersection	\$31.35	2,170 DVTs	\$68,030	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
13	Pacific Highway/Chelmsford Road Intersection	\$15.60	2,170 DVTs	\$33,852	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
14	Sub-Arterial/Railway Station Intersection	\$42.38	2,170 DVTs	\$91,965	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
15	Chelmsford Road/Arizona Road Intersection	\$33.91	2,170 DVTs	\$73,585	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
16	Roadworks and Traffic Management – Future Development	\$TBA	TBA	\$TBA	Prior to the issue of the first Construction Certificate for the Future Development, as authorised by a consent
Sub-Total		\$424.40		\$920,950	
TOTAL				\$1,090,171	

*As at May 2010 – to be indexed at time of payment in accordance with formula in clause 6

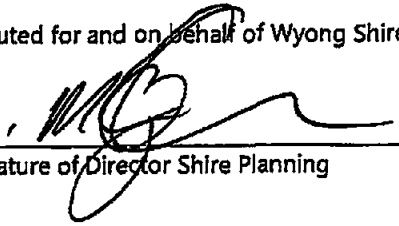
JR
~~*D*~~
RC
VRC
Eden


RC

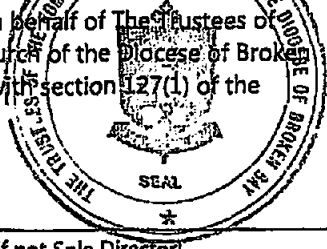
EXECUTED as an agreement

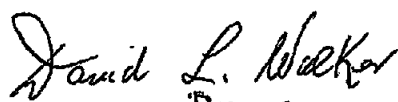
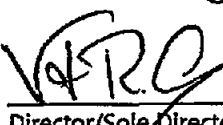
Date: 24.09.2010

Executed for and on behalf of Wyong Shire Council:


Signature of Director Shire Planning
Gina Vereker


Signature of Witness
Wesley Wilson
Name

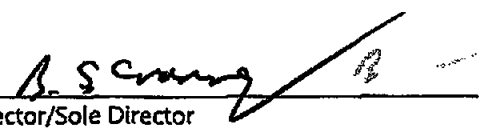
Executed for and on behalf of The Trustees of Roman Catholic Church of the Diocese of Broken Bay in accordance with section 127(1) of the Corporations Act:

Director/Secretary [if not Sole Director]


BISHOP DAVID L. WALKER

Director/Sole Director

Name [BLOCK LETTERS]

VINCENT R. CASBY Jack Robson
Name [BLOCK LETTERS]

Executed for and on behalf of Warnervale Medical Holdings Pty Limited as trustee of the Warnervale Medical Holdings Unit Trust in accordance with section 127(1) of the Corporations Act:

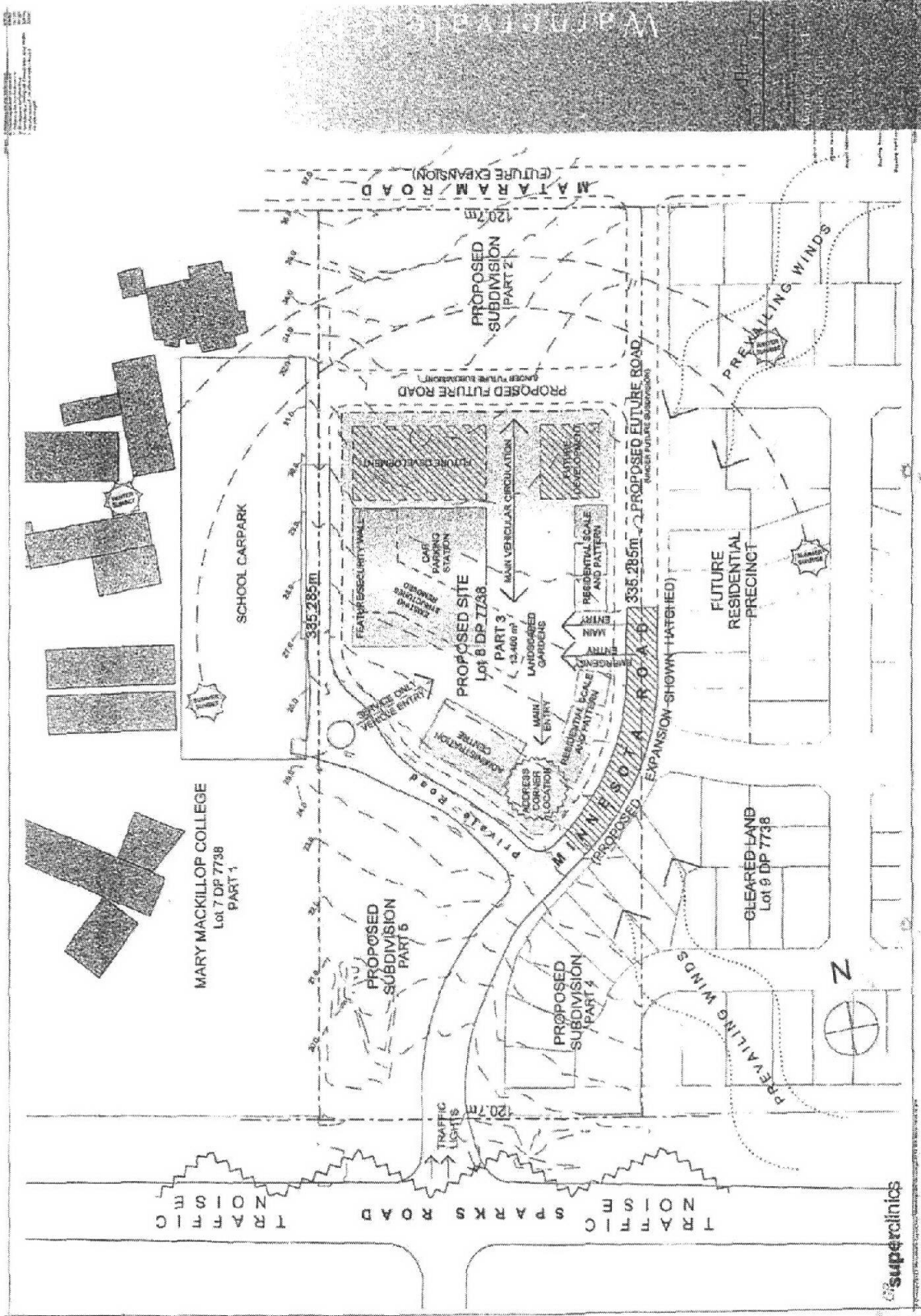

Director/Sole Director

Name [BLOCK LETTERS]

BRADLEY STEPHEN CRANEY
Name [BLOCK LETTERS]

ANNEXURE A

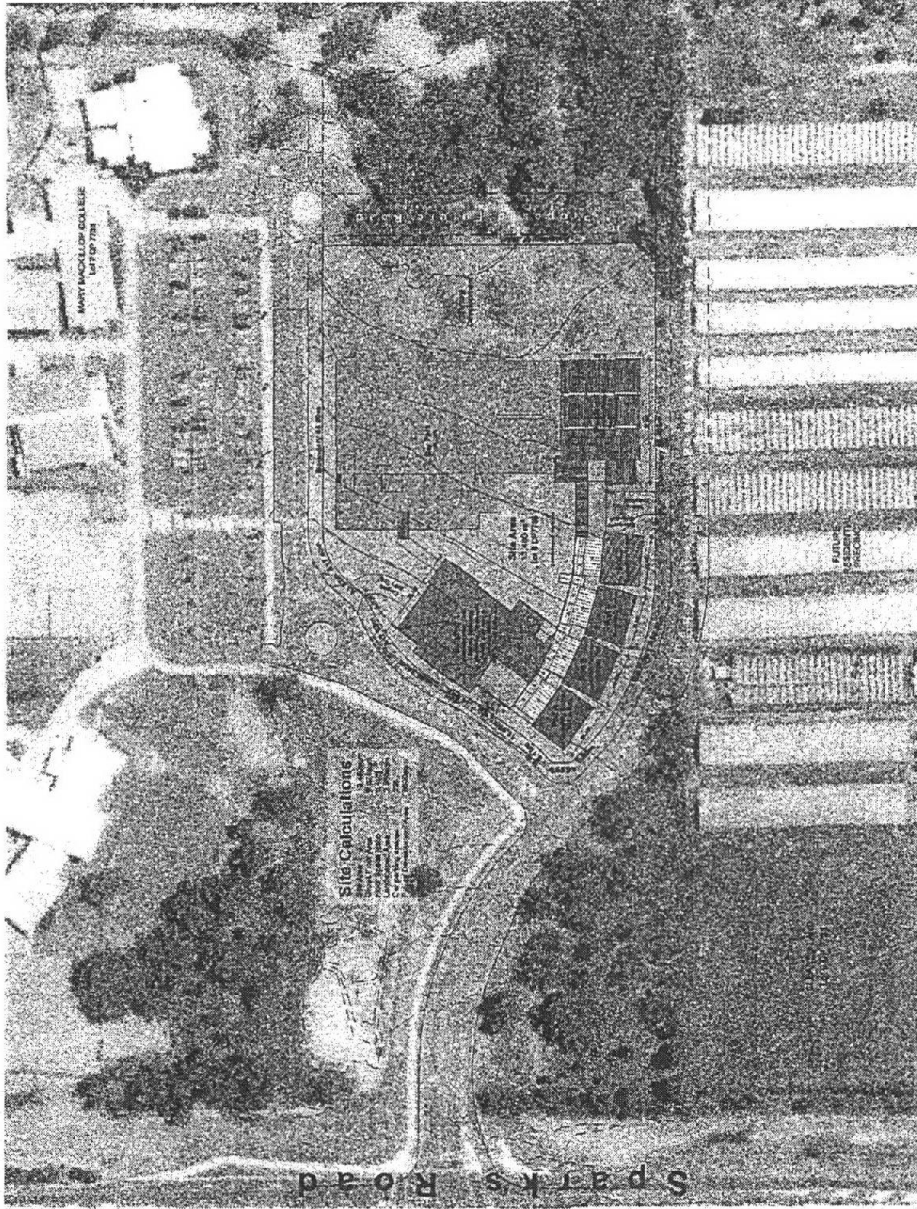
Concept Plan/s



Final v1 16 June 2010

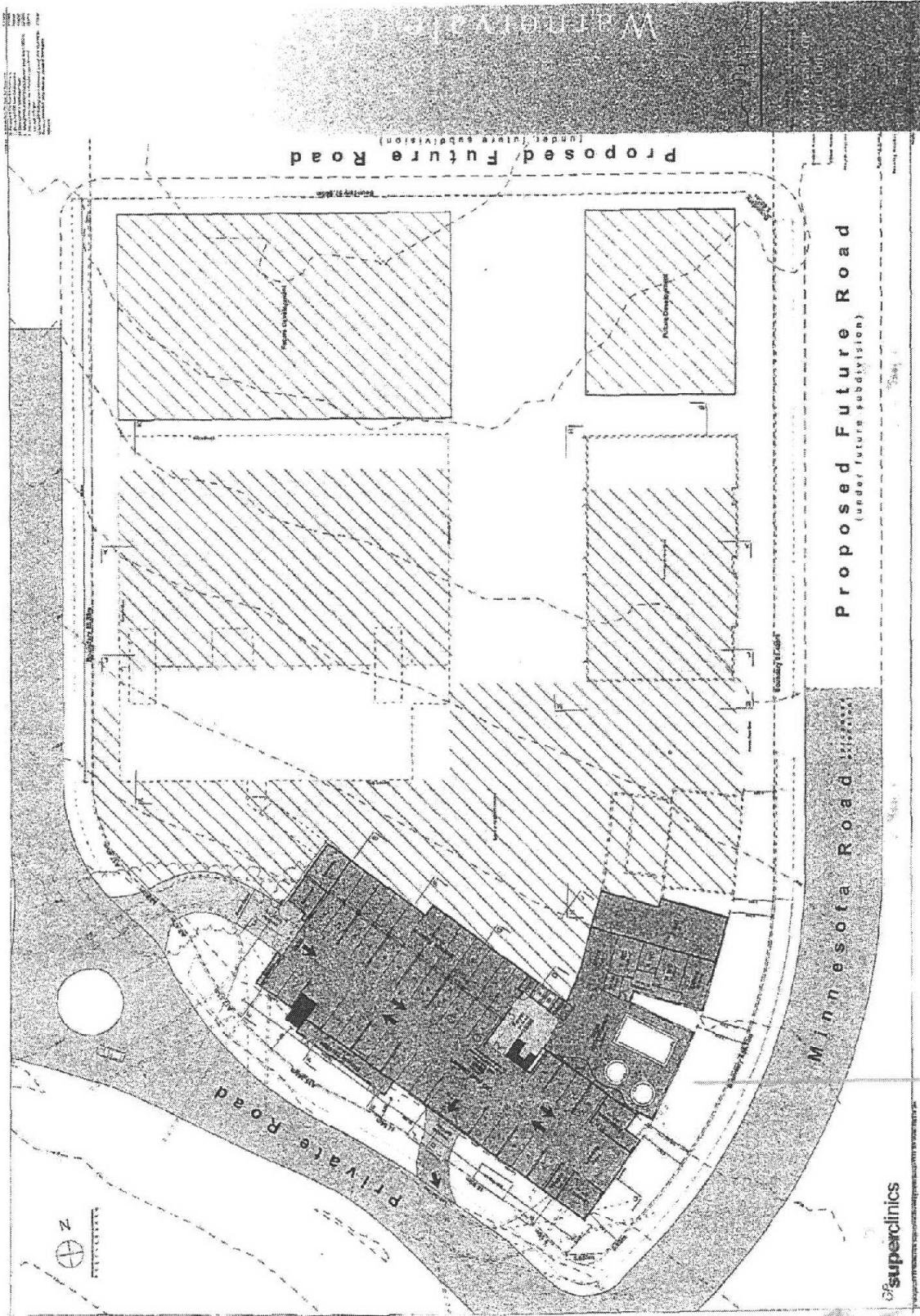
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PROJECT: 2020835/626720
DATE: 16 June 2010
DRAWN BY: JAW
CHECKED BY: JRC
SCALE: AS SHOWN
SHEET NO: 16 OF 20



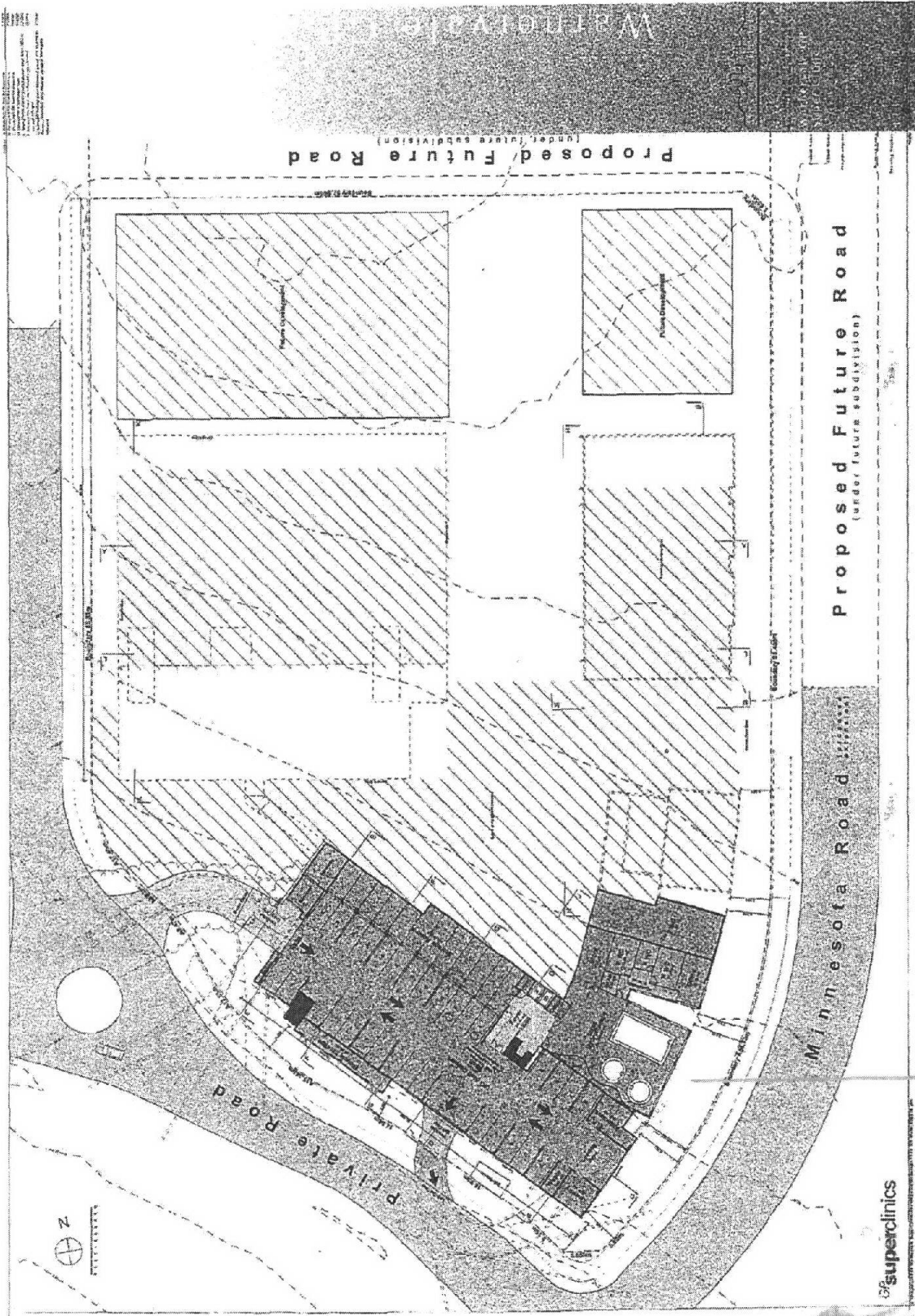
superclinics

JAW
JRC
[Signature]



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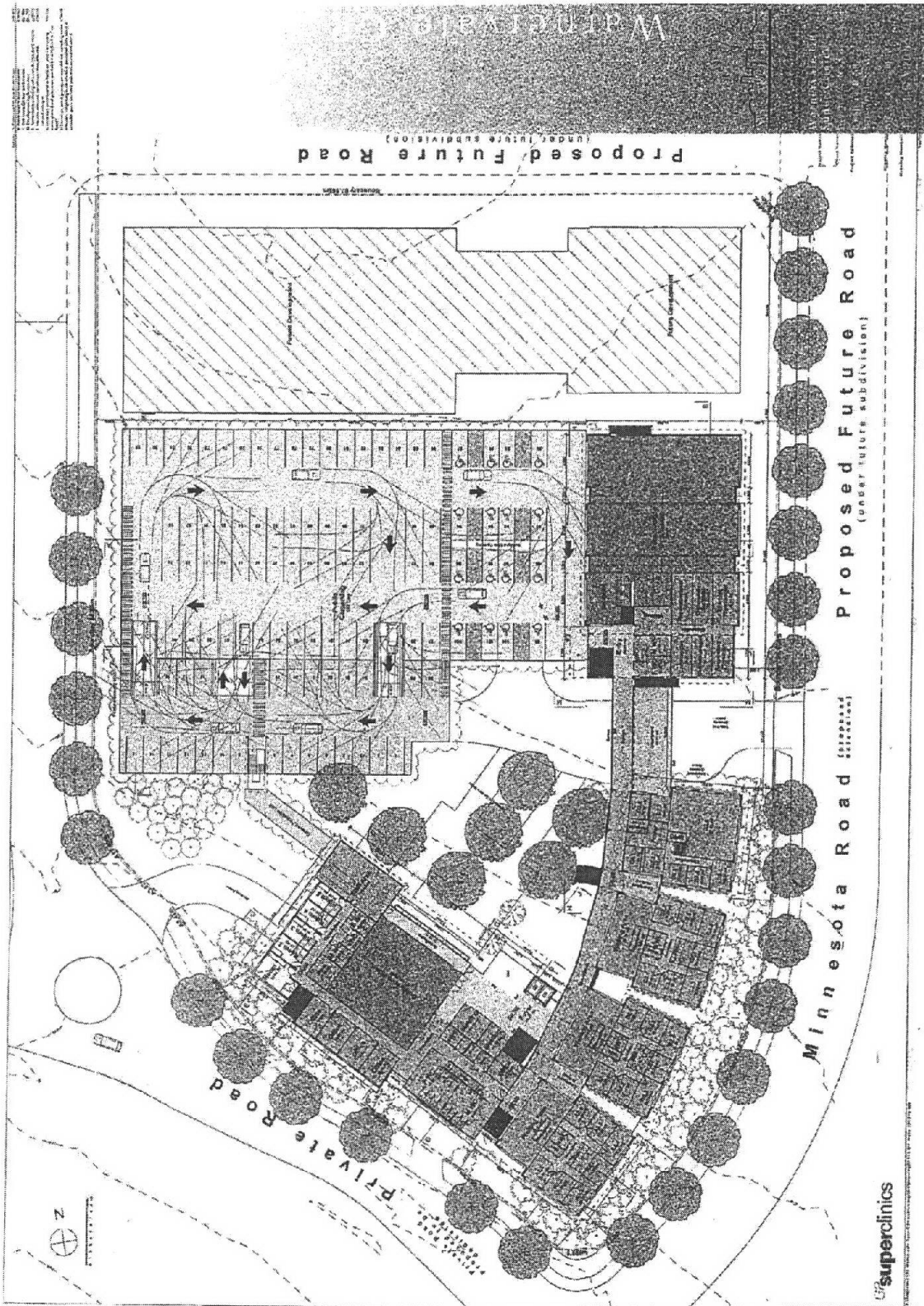
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A

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