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)

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PLANNING AGREEMENT

DATE 24.09.2010

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 quarantee;

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;

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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, Woongarrah;

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.

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- (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.
- (I) 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 x 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.

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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 x <u>CPI 2</u> CPI 1

Where:

CPI 1

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

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

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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.

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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.

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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.
- 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.

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- 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

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(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: <u>denise.barrett@toukleydoctors.com.au</u> or <u>peter.buckinghamjones@toukleydoctors.com.au</u>

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.

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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.

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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.

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SCHEDULE 1

Amount and Timing of Monetary Contributions

	Description		Factor	Amount	Timing 🚣 🗯
	ated Water Cycle Management				
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
	s, Valuations and Administratio	-,		T .	· · · · · · · · · · · · · · · · · · ·
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
	otal	\$125,535	1.348ha	\$169,221	代表的話題是是依然開始到
	orks and Traffic Management	1 + 1 = 10		1 22 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	
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

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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	ТВА	\$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 \$1,090,171	

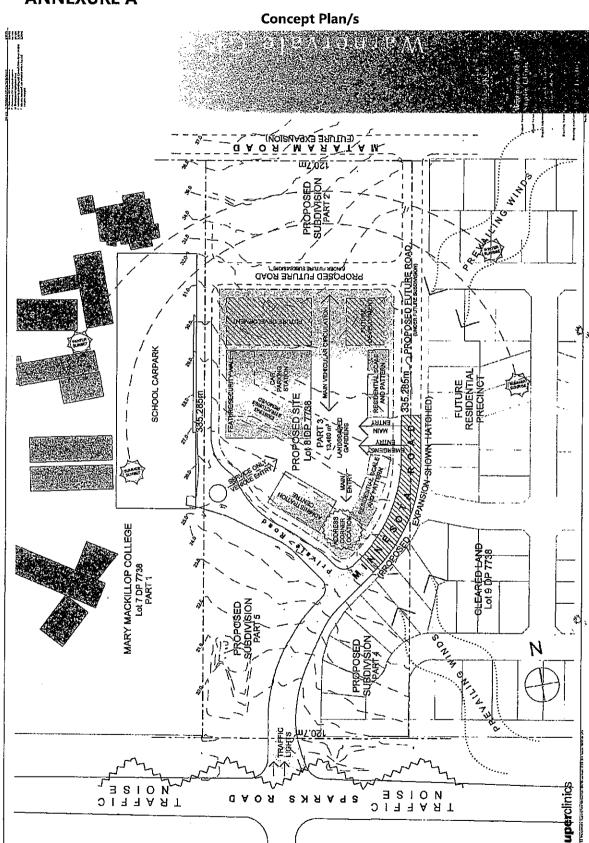
^{*}As at May 2010 – to be indexed at time of payment in accordance with formula in clause 6

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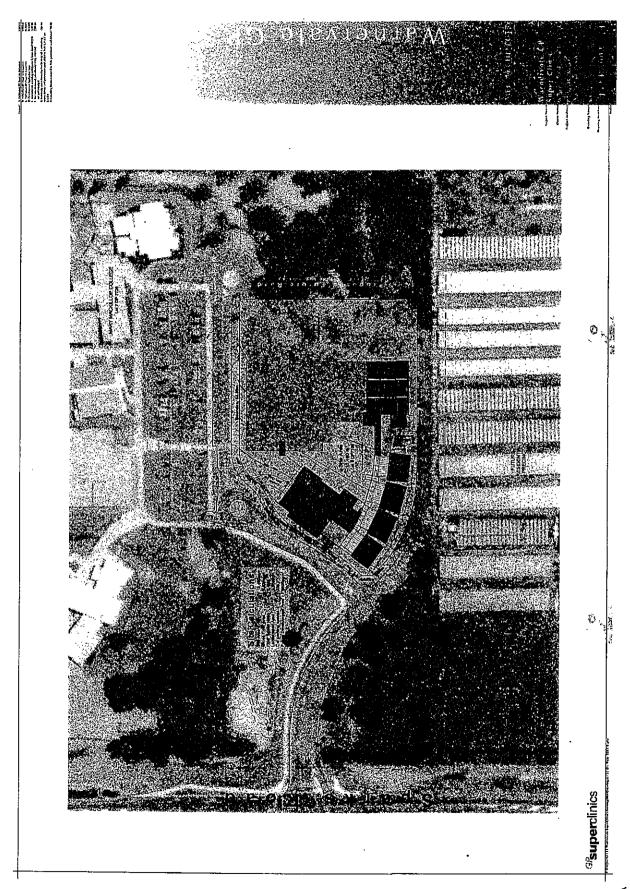
Da	24.09.2010	
Ex	ecuted for and on behalf of Wyong Shire Council:	
	MO.	
Sig	gnature of Director Shire Planning	Signature of Witness
,		WESLEY WUSON
€ Gi	na Vereker	Name
Rc Ba Cc	ecuted for and on behalf of The Trustees of sman Catholic Church of the Diocese of Broken y in accordance with section 127(1) of the proporations Act:	Director/Sole/Director
Na	me [BLOCK LETTERS]	Name [BLOCK LETTERS]
Но Ме	ecuted for and on behalf of Warnervale Medical Idings Pty Limited as trustee of the Warnervale Edical Holdings Unit Trust in accordance with Etion 127(1) of the Corporations Act:	
Dir	ector/Secretary [if not Sole Director]	Director/Sole Director
	me [BLOCK LETTERS]	BRADLEY STEPHEN CRANNEY Name [BLOCK LETTERS]

ANNEXURE A



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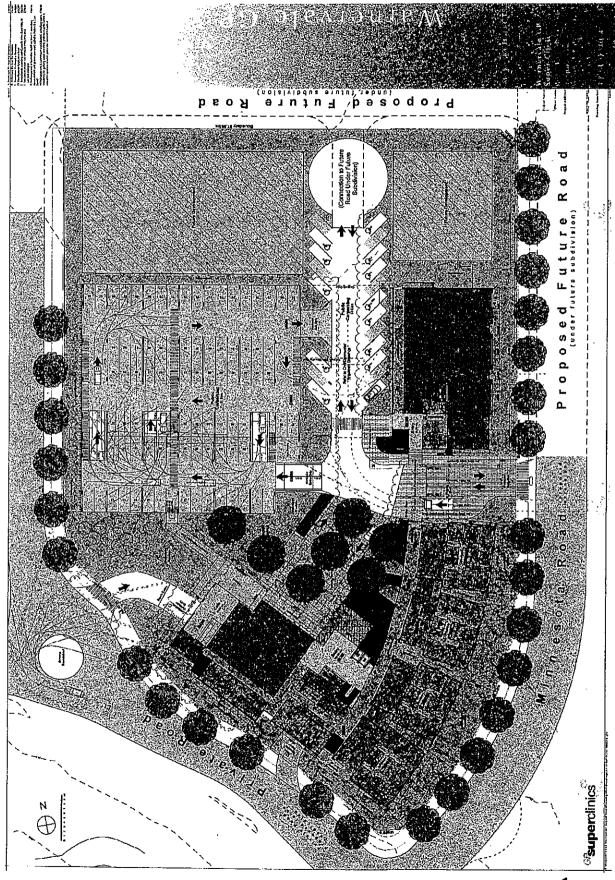


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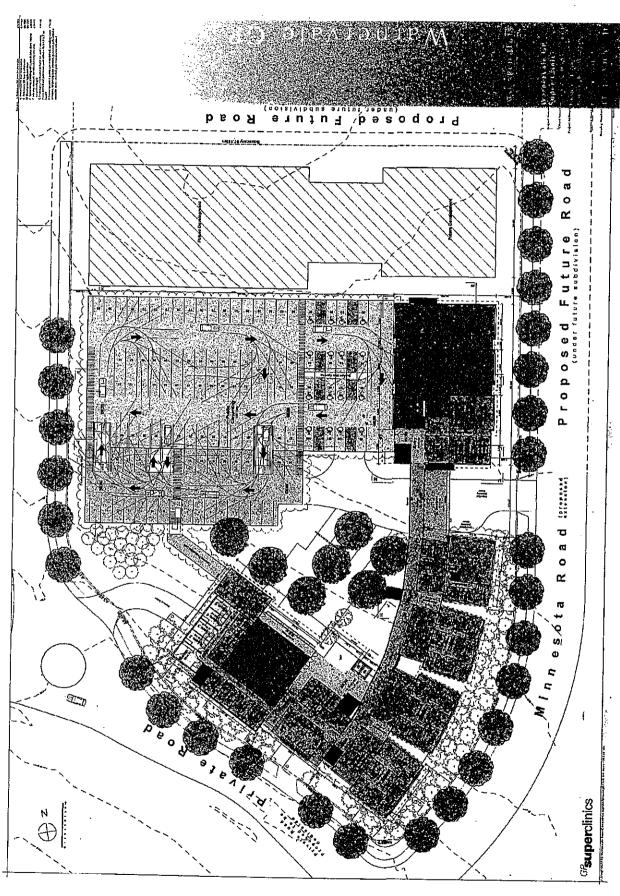
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