



**VALLEY VIEW**

**INFRASTRUCTURE**

**AGREEMENT**

**DECEMBER 1998**

**ORIGINAL**

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THIS AGREEMENT is made on the 16<sup>th</sup> day of December 1998

BETWEEN:

**BANANA SHIRE COUNCIL** of Prairie Street, Biloela in the State of Queensland ("the Council")

AND:

**RIVENDELL ESTATE PTY LTD** as trustee for **RIVENDELL ESTATE TRUST** of PO Box 566, Biloela 4715 in the State of Queensland ("**Rivendell**" or "**Smith**"<sup>1</sup>)

AND:

**DARRYL and KERRI ROOTS** as trustees for **VALLEY VIEW TRUST** of 22 Ward Crescent, Biloela in the State of Queensland ("**Roots**")

AND:

**KENNETH and ELIZABETH MOIR** of "Wyora", Thangool, in the State of Queensland ("**Moir**")

AND:

**PATRICIA DAWSON** of Unit 18 Admiralty Towers, 501 Queen Street, Brisbane in the State of Queensland ("**Dawson**")

#### **NATURE AND PURPOSE OF AGREEMENT:**

This agreement is an *Ainfrasturcture agreement*" made under Part 2 of chapter 5 of the *Integrated Planning Act 1997* ("**IPA**").

The purpose of this agreement is to specify the obligations of the property owners to make monetary contributions towards the cost of provision of certain roads, sewerage and stormwater drainage infrastructure which is required to permit the residential development of their lands in an overall and co-ordinated basis so that:-

- (a) fragmented or piecemeal infrastructure provision is avoided;
- (b) the objects of the Council's planning scheme for development of the subject lands are more effectively achieved; and
- (c) the ultimate development approval process is simplified because the property owners (or their successors in title) will know the details of their infrastructure contribution obligations (for the specified infrastructure items) before commencing design and obtaining approval for individual developments.

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<sup>1</sup> Mr & Mrs Smith are the principals of Rivendell. Some documents in the Schedules were prepared before it was clarified that Rivendell owns the relevant land. To avoid duplication of costs, these documents have not been altered, and still refer to the relevant landowner as "Smith". This to be read as a reference to Rivendell.

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**BACKGROUND:**

- A. Rivendell is the registered proprietor of land in the County of Raglan Parish of Prairie and described as Lot 10 on RP 901786;
- B. Roots is the registered proprietor of land in the County of Raglan Parish of Prairie and described as Lot 9 on RP 901794;
- C. Moir is the registered proprietor of land in the County of Raglan Parish of Prairie and described as Lot 4 on RP 887937;
- D. Dawson is the registered proprietor of land in the County of Raglan Parish of Prairie and described as part Lot 14 on RP 887945;
- E. All of the lots referred to in Recitals A to D are hereinafter collectively and separately referred to as **“the relevant lands”**.
- F. Rivendell, Roots, Moir and Dawson are hereinafter severally and collectively referred to as **“the property owners”**.
- G. All parties are desirous of providing for the orderly future development of the relevant lands by securing agreement between them as to the nature and expected cost of specified road, sewerage and drainage infrastructure required to permit the lands to be developed for residential purposes.
- H. The Council is prepared to provide the required infrastructure, but only on the basis that agreement is reached between the Council and the property owners as to the details of the specified infrastructure to be provided for the relevant lands as a whole, and on an equitable basis upon which the property owners must make contributions towards the cost of that infrastructure (to reimburse the Council for part of the cost which will be incurred by the Council in providing the infrastructure), with such payments to be made at the time of development approval unless otherwise agreed.

**THE PARTIES AGREE AS FOLLOWS:**

**PART 1 - INTRODUCTION**

**Basis of agreement**

- 1. The basis of this agreement is that:-
    - (a) the Council will construct infrastructure as specified in Schedule 2 to this agreement;
    - (b) the infrastructure will be provided progressively generally in accordance with the construction time table set out in Schedule 4, and otherwise in such a manner and at such times as will match the provision of infrastructure with the progressive development of the relevant lands;
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- (c) the Council will, to the extent necessary, act as a “banker” for the provision of the infrastructure, in that infrastructure will be provided in accordance with the provisions of this agreement even if the Council does not at the time of provision of the infrastructure hold sufficient funds by way of contributions from the property owners (or successors in title) to fully fund the required infrastructure provision;
- (d) The land owners (or successors in title) will contribute their equitable proportion of the cost of provision of that infrastructure by payment of contributions determined in accordance with this agreement, which contributions will generally be payable at the time of carrying the development for which the infrastructure has been provided.

## **PART 2 - CONSTRUCTION OF INFRASTRUCTURE**

### **Identification of Infrastructure**

- 2. The items of infrastructure to which this agreement relates are the roads, sewerage and stormwater drainage works specified in the plans and documents comprising Schedule 2.

### **Timing for Construction**

- 3.
    - (a) The Council will construct the infrastructure generally in accordance with the construction schedule which comprises schedule 4 to this agreement.
    - (b) However:-
      - (i) the Council may defer construction of any infrastructure item to a later time than that shown in Schedule 4 (as determined by the Council, acting in good faith but in its sole discretion) if construction of the infrastructure item would be premature having regard to existing and approved development in the area to be serviced by the particular infrastructure item; and
      - (ii) the Council will, in good faith, consider any request by a property owner to construct an infrastructure item earlier than the time shown in Schedule 4 if that owner has obtained a development permit for particular development which requires provision of particular infrastructure in order for the approved development to proceed, and construction of the infrastructure at an earlier time will not impose an unreasonable or onerous financial burden on the Council having regard to the level of contributions which it has received under this agreement.
    - (c) If the Council refuses a request by a property owner to construct an infrastructure item earlier than the time shown in Schedule 4, the Council must nevertheless construct that item if the property owner first pays to the Council an amount calculated in accordance with clause 3(d).
    - (d) The amount to be paid under clause 3(c) is the amount of the ordinary contributions in respect of the infrastructure item to which the request relates which the Council
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has not yet received at the date of the property owner's request, but which it would have received prior to the time for payment of the contributions payable in respect of the property owner's proposed development, if development of the relevant lands had proceeded in accordance with the benchmark development sequence shown in Schedule 3.

- (e) If an amount is paid to the Council under clause 3(c):-
- (i) the Council must commence construction of the infrastructure item as soon as practicable after payment is received;
  - (ii) if the infrastructure item relates to Valley View Road, and all land on which the work is to be carried out has not yet been dedicated as a road, the Council must exercise its powers under clause 7 to secure the required dedication;
  - (iii) when the Council subsequently receives the contributions by reference to which the amount paid under clause 3(c) was calculated, the Council must pay those contributions to the property owner, without deduction, within 14 days after receipt by the Council.

### **PART 3 – CONTRIBUTIONS BY PROPERTY OWNERS**

#### **Payment of contributions**

4.

- (a) Each property owner agrees that it will pay the contributions towards the costs of the infrastructure as set out in Schedule 5 in respect of the land owned by each property owner.
- (b) However, if any lot in respect of which contributions are payable is developed for a purpose other than as a single detached dwelling, a special contribution will be payable for that allotment.
- (c) The special contribution must be calculated in a manner which reflects the principle that the contribution bears the same proportion to the ordinary contribution as set out in Schedule 5 as the level of usage of the relevant infrastructure from the particular development bears to the level of usage by a single detached dwelling.

*Example: A single dwelling is estimated to generate an average of 10 vehicle movements per day. If a child care centre is developed on an allotment which is subject to the contribution for roads, and it is estimated to generate 30 vehicle movements per day, the special contribution for roads for that lot is three times the ordinary contribution. The amount actually payable is the amount so calculated less a set off for any ordinary contribution already paid – see example under clause 4(e) below.*

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- (d) The basis upon which the ordinary contributions have been determined, that is, to reflect use of or load imposed on the relevant infrastructure by a single detached dwelling, is set out in Schedule 5 as an aid to determining special contributions where payable under clause 4(b).
- (e) If a contribution at the rate for a single detached dwelling has previously been paid in respect of a lot, and the lot is subsequently developed for a purpose other than as a single dwelling, the amount of the relevant contribution for a single dwelling as at the date of the payment for the actual development must be deducted from the contribution otherwise payable for that development, and the amount actually payable is the difference between those figures.

*Example: A road contribution of \$300 is paid at the time of subdivision on the basis that the lot is to be used for a single detached dwelling. It is subsequently decided to develop a child care centre on the allotment. At the time a development permit for building works is issued, the contribution calculated for the child care centre under this clause is \$990. On that date, the contribution for a single dwelling allotment has risen to \$330. The contribution actually payable is \$660*

- (f) If there is a dispute about the amount of a contribution payable under clause 4(b), the dispute is to be resolved under Part 7.

### **Timing of payment**

5.

- (a) Each property owner agrees to make payment:-
    - (i) for ordinary contributions, at the time the Council approves the plan of survey creating the relevant allotment under s 3.7.2 of the IPA, and in exchange for the approved plan;
    - (ii) for special contributions where the nature of the development is known when the relevant allotment is created, at the time the Council approves the plan of survey creating the relevant allotment under s 3.7.2 of the IPA, and in exchange for the approved plan;
    - (iii) for special contributions where clause 5(a)(ii) does not apply, at the time the Council issues a development permit for building work for the development, and in exchange for the permit.
  - (b) To avoid doubt, the payment required under clause 5(a):-
    - (i) is payment only in respect of the lots created pursuant to the relevant development approval; and
    - (ii) is required only to the extent that the lots created are within a relevant catchment identified in Schedule 5 for which contributions are payable; and
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- (iii) is not required to be made by any property owner in any amount except in exchange for an approved plan of survey or development permit, with no property owner being under an obligation to lodge an application for reconfiguration (subdivision) approval, or for any other development permit, at any time or at all.

**Adjustment of contribution rates**

6.

- (a) The contribution rates shown in Schedule 5 must be adjusted with effect from 1 July in each year.
  - (b) For each of the rates, the adjustment is made by:-
    - (i) multiplying the estimated value of the relevant works not yet carried out by the Council as at the relevant 1 July by the percentage increase in the ABS price index of materials used in building other than house building (Brisbane) between the June quarter for the year in which the adjustment is being made and the June quarter in the preceding year; and
    - (ii) multiplying the shortfall (if any) of the amount expended by the Council on the relevant works as compared to the amount of contributions received by the Council in respect of those works as at the relevant 1 July by the annual percentage interest rate payable by local governments in respect of borrowings from the Queensland Treasury Corporation Long Term Debt Pool as at the relevant 1 July; and
    - (iii) adding the amounts determined under (i) and (ii) to the estimated total cost of the relevant works in effect immediately prior to the relevant 1 July, to produce a new estimated total cost which will be in effect for the year from the relevant 1 July to the next 30 June;
    - (iv) determining the percentage increase in the new estimated total cost as compared to the previous estimate;
    - (v) increasing the relevant contribution rate by that percentage.
  - (c) Where contributions are required to be paid under this agreement after 1 July in any year, but before the adjusted contributions to apply with effect from 1 July are able to be determined:-
    - (i) the contributions must be paid at the rate then in force (without adjustment); and
    - (ii) any additional amount payable in consequence of the adjustment which applies for that year must be paid on demand by the Council once the adjusted contributions have been determined.
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- (d) To avoid doubt, nothing in this clause prevents the Council from determining that the adjusted contribution rate will be less than the rate which would otherwise apply following adjustment under clause 6(b).

## **PART 4 – LAND DEDICATION**

### **Road dedication**

7.

- (a) Each property owner whose land includes part of the land required for the extension of Valley View Road as shown on the plan in Schedule 1 agrees to dedicate the relevant part of that land as a public road.
- (b) No compensation is payable by the Council in respect of the dedication.
- (c) However, if the Council is of the opinion that a property owner is required under this clause to dedicate a disproportionate amount of land as compared to other property owners who are required to dedicate only a small portion (or none) of their land, the Council will compensate that property owner by allowing it a fair and reasonable credit against the road contributions otherwise payable by it under Part 3.
- (d) The dedication must be effected:-
- (i) at the time of subdivision of any land owned by the property owner adjoining the land to be dedicated; or
  - (ii) upon request by the Council,
- whichever first occurs.
- (e) The dedication must be effected:-
- (i) at the cost of the property owner where clause 7(d)(i) applies; or
  - (ii) at the cost of the Council where clause 7(d)(ii) applies.
- (f) Where clause 7(e)(ii) applies, the property owner must permit the Council and its agents authorised in writing to enter the property owner's land at all reasonable times, upon first giving the property owner written notice, for the purpose of carrying out survey and other work (not involving substantial interference with the land) necessary in order to effect the dedication.
- (g) The parties acknowledge that the plan in Schedule 1 is a preliminary or concept plan and that that, accordingly, there may be minor variations between that plan and the final surveyed dimensions and alignment of the extension of Valley View Road. The property owners agree that they will make no objection to such minor variations.
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- (h) For clause 7(g), a variation of the alignment within the Moir land is a minor variation, even if the change would not be regarded as minor under the ordinary meaning of that term, so long as the width and length of the road section through the Moir land is not substantially different from that contemplated at the date of this agreement.

*Note: This subclause has been included to recognise that the location of the alignment within the Moir land is far less certain than the location within lands to the west of the Moir land, and that detailed planning prior to commencement of development of the Moir land may require the alignment to be moved.*

- (i) Any dispute as to whether a variation referred to in clause 7(g) is or is not a minor variation, including a dispute about the application of clause 7(h), must be resolved under Part 7.

#### **Grant of sewerage easement**

8.

- (a) Rivendell agrees to grant the sewerage easement over the Smith land shown on the plan comprising Schedule 6, on the terms set out in the easement document forming part of that Schedule, forthwith upon execution of this agreement.
- (b) The easement must be prepared and registered at the Council's cost (but Rivendell must pay its own legal costs, if any, in relation to the easement).

## **PART 5 - FUTURE DEVELOPMENT OF RELEVANT LANDS**

#### **Limits on Council's future discretion**

9.

- (a) To the extent that a provision of this Part purports to limit the future exercise of a statutory discretion by the Council, that provision is inserted intentionally and is intended to be given effect to the maximum extent permissible having regard to s 5.2.6 of the IPA.
- (b) To the extent (if any) to which a limitation on discretion exceeds what is permissible having regard to 5.2.6 of the IPA, that limitation:-
- (i) is nevertheless to be given full effect (so far as is practicable and subject to any necessary modification or adaptation of the limitation) to the extent that it does not exceed what is permissible; and
- (ii) has no effect and creates no obligation on the Council to the extent that it does exceed what is permissible.
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**No amendment of planning scheme for relevant lands**

10.

- (a) The Council must not amend its planning scheme as in force on the date of this agreement in any manner which substantially derogates from the development entitlements conferred upon the property owners (or any of them) under the planning scheme as it exists at the date of this agreement, and under this agreement, except with the written consent of each property owner whose development entitlements are affected by the proposed amendment.
- (b) However, to avoid doubt, clause 10(a) is not contravened by any amendment of the planning scheme which may be required under the IPA upon approval of a development application as contemplated by this agreement in respect of the Dawson land<sup>2</sup>.

**Development approvals for relevant lands**

11. Subject to:-

- (a) consideration of all relevant technical, engineering, design and density issues (including orderly development and orderly provision of services) raised by a particular application; and
- (b) the imposition of conditions relevant to (and not an unreasonable imposition on), or reasonably required by the approval of, the particular application,

the Council agrees to approve any future development application for the relevant lands if the application is generally consistent with the indicative subdivision layouts shown in Schedule 1.

**Particular condition for Rivendell land**

12. The Council and Rivendell acknowledge and agree that, if approval is given for the development of the Rivendell land fronting Road No. 2 (west) as shown in Schedule 1:-
- (a) Rivendell will be required to provide road access from the development to Valley View Road via Road No. 1 (west);
  - (b) Within that section of the road access which adjoins land in respect of which no development application has yet been approved, the required standard of construction involves dedication to the full required width as shown in Schedule 1, but construction only to usual rural road standards;

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<sup>2</sup> The Dawson land is presently zoned "Rural". The Council has determined that it is suitable for urban development as contemplated by this agreement, and development approval may be given under the IPA accordingly. However, prior to commencement of the IPA, rezoning to "Residential" would have been required prior to the approval of such an development application. Rezoning as such is no longer required, but s 6.1.34 of the IPA requires that the zoning maps be amended to reflect any such approval.

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- (c) Rivendell will be required to construct the road access to full urban standards as a condition of approval of a subsequent development application or applications in respect of land which fronts the road access.

**No further infrastructure requirements to be imposed**

13.

- (a) The contributions to be paid by the property owners to the Council under this agreement represent the full contributions by the property owners in respect of development infrastructure for:-
    - (i) construction of local government roads (other than roads entirely internal to a development);
    - (ii) external works for sewerage; and
    - (iii) external works for stormwater drainage,  
for future development of the relevant lands.
  - (b) The Council must not impose on any future development application any condition which directly or indirectly requires a property owner to make a monetary contribution towards, or provide works for, a matter referred to in clause 13(a) in relation to development of the relevant lands.
  - (c) To avoid doubt, clauses 13(a) and (b) do not apply to:-
    - (i) requirements to contribute towards the cost of sewerage headworks (which requirements will be imposed as conditions of development approval in the same way as if this agreement did not exist);
    - (ii) requirements for the dedication of land for local government roads, other than for the extension of Valley View Road (which requirements will be imposed as conditions of development approval in a manner which is generally consistent with the indicative subdivision layouts in Schedule 1); or
    - (iii) requirements lawfully imposed in respect of works or impacts on State - controlled roads under sections 40 and 42 of the *Transport Infrastructure Act 1994*, or through the exercise of concurrence agency jurisdiction under the IPA; or
    - (iv) requirements lawfully imposed about other development infrastructure (water supply, parks etc) not mentioned at all in this agreement.
  - (d) Except to the extent (if any) otherwise specifically mandated by relevant legislation, clauses 13(a) and 13(b) must be given full force and effect despite any change in the Council's requirements for infrastructure provision as in force at the time of
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approval of a future development application as compared to its requirements at the date of this agreement.

## **PART 6 - ADMINISTRATIVE**

### **Costs**

14. Each party shall be responsible for their own legal costs of and incidental to the preparation and execution of this agreement.

### **Novation of agreement required on transfer**

15. A property owner must not sell, transfer or otherwise dispose of the relevant lands owned by it or any part thereof unless the purchaser, transferee or disponent (the “**incoming party**”) has entered into a deed with the Council providing for:-

- (a) performance by incoming party of the obligations of the property owner in relation to that part of the relevant lands to which the sale, transfer or alienation relates to the extent that such obligations have not yet been performed;
- (b) assignment of the property owner’s other rights and entitlements under this agreement to the incoming party to the extent that those rights and entitlements relate to the land being sold, transferred or alienated.

### **Rights and obligations to run with the land**

- 16.
- (a) It is the intention of all parties that the obligations of the property owners under this agreement attach to the relevant lands and bind the successors in title of those lands under s 5.2.5 of the IPA.
  - (b) Subject to compliance with clause 15, the development rights under this agreement are conferred on the property owners and their successors in title.
  - (c) The Council will whenever reasonably required so to do by a property owner or a successor in title (but at no cost to the Council) execute any assurances or other documents which may reasonably be required by way of assurance to the owner or successor of the development rights under this agreement.

### **Extinguishment or modification of obligations if development rights lost**

- 17.
- (a) If (otherwise than due to a breach by the Council of clause 10) the development rights conferred by Part 4 of this agreement are substantially and adversely affected by a change in planning or development control legislation applicable to the relevant lands (or any part thereof) the Council and affected property owners must negotiate in good faith to determine the extent to which the property owners’ obligations under this agreement should be modified or extinguished having regard to:-
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- (i) the extent to which the development rights conferred by Part 4 have been exercised up to the date of the legislative change (or remain capable of exercise despite that change) as compared to the extent to which those rights have been lost; and
  - (ii) the extent to which the Council has incurred expenditure in the provision of infrastructure under this agreement in anticipation of receiving contributions (which have not yet been received) to offset that expenditure;
- (b) If despite negotiating in good faith under clause 17(a), the parties cannot agree within 60 days of the commencement of negotiations, either party may refer the matter to dispute resolution under Part 7.
- (c) Upon agreement being reached under clause 17(a) or upon a determination being made following reference to dispute resolution under clause 17(b), the parties must as soon as practicable thereafter apply execute a variation of this agreement to give effect to the agreement or determination.

**Review of agreement if circumstances change**

18.

- (a) The parties acknowledge that there is no certainty as at the date of this agreement about:-
- (i) market demand for development of the type contemplated by this agreement;
  - (ii) assuming that the whole of the development is viable, the market timing for the development or any part of it;
  - (iii) the actual development sequence (despite the Council's preference that development proceed in accordance with the benchmark development sequence in Schedule 3).
- (b) The parties therefore agree that if circumstances arise such that any party bona fide believes that the expectations at the date of this agreement about matters set out in clause 18(a) are not being fulfilled, and gives written notice to the other parties accordingly, all parties must negotiate in good faith with a view to securing agreement on amendments to this agreement to make its provisions more consistent with the pattern of development and market demand which does in fact emerge over time.

**Immediate force of agreement for parties signing**

19.

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- (a) This agreement has been prepared in contemplation that Dawson will become a party, but it is not certain at the date of execution by the other parties that this will occur.
- (b) The Council, Rivendell, Roots and Moir agree to be bound by this agreement if each of them has signed it, and to each perform their respective obligations under the agreement, despite the fact that Dawson has not signed the agreement.
- (c) However, if Dawson has not signed the agreement by 31 May 1999, and any party:-
  - (i) believes that her failure to sign the agreement causes a substantial change to the benefits of the agreement to that party, or the burdens imposed by the agreement on that party; and
  - (ii) gives written notice to the other parties accordingly,

all parties must negotiate in good faith with a view to securing agreement on amendments to this agreement to make its provisions more equitable and consistent with the original intent that the Council will provide certain (specified and limited) infrastructure necessary to facilitate development of lands owned by other parties to the agreement (but not necessarily other persons), subject to those parties becoming obliged, at the time of development, to make an equitable contribution towards the costs of that infrastructure.

## **PART 7 - DISPUTE RESOLUTION**

### **Referral to dispute resolution**

20. It is agreed that if:-

- (a) either party alleges or contends that the meaning or effect of any provision of this agreement is uncertain and therefore to any extent void or of no effect or unenforceable;
- (b) any other dispute arises between the parties relating in any way to the meaning and effect of any provision of this agreement or the scope, content or extent of the respective obligations of either party hereunder; or
- (c) a dispute arises in relation to any other matter by under or in connection with this agreement including decisions made by the Council,

then, unless the matter is justiciable by way of appeal to the Planning and Environment Court, that matter may be referred to the final decision of a person ("**the Expert**") appointed in accordance with clause 21 who must give a decision in writing on the matter. A party who wishes to refer a matter to the Expert must serve on the other party a written reference giving full particulars of the matter and thereupon the parties must attempt to reach agreement on the appointment of the Expert.

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### **Appointment of Expert**

- 21.
- (a) If after fourteen (14) days from service of the written reference the parties are unable to agree upon the appointment of the Expert, the party seeking the reference may request the President for the time being of the Institute of Engineers Australia, Queensland Division to nominate a person having the qualifications set out in clause 22.
  - (b) The parties in dispute must together appoint the person agreed upon by them or the person nominated by the President to be the Expert for the purpose of this clause within seven (7) days of agreement by them on the identity of the Expert or a nomination by the President.
  - (c) If either party refuses to join in the appointment then the other party is hereby irrevocably authorised to appoint the Expert.

### **Qualifications of Expert**

22. The Expert referred to in clause 21 must be a professional person in the discipline most appropriate to the character of the dispute and must be an individual member, or a director of a corporate member, of the Expert's professional body with not less than ten (10) years continuous professional experience in his or her discipline, and with such experience being substantially related to conditions and requirements for new developments.

### **Function and powers of Expert**

23. By the consent to act, the function of the Expert when determining a matter referred to the Expert is to make certain by the terms of his or her decision what is contended to be uncertain or to resolve any dispute and in considering and giving a decision, the Expert must seek to give effect to the purposes of this agreement and otherwise:-
- (a) acts as an expert and not as an arbitrator; and
  - (b) without limiting in any way the discharge of his or her function hereunder and the utilisation of expert knowledge skill and experience, may refer to and use knowledge and experience of:-
    - (i) the IPA and the planning scheme as well as and other planning schemes in force in Queensland;
    - (ii) the terms of arrangements and agreements and conditions of approvals consents and refusals and reasons therefor and policy adopted from time to time by the Council generally in relation to applications for approval of reconfiguration (subdivision) of land; and
    - (iii) the common or usual or other requirements or standards or any usual or expected variation of requirements or standards adopted from time to time in
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relation to or applicable to the use or development of lands in the Council's area and in other comparable local government areas;

- (c) may seek submissions on the matter in dispute orally or in writing from both parties;
- (d) may award costs including the Expert's own costs against either party if the Expert is of the opinion that such party acted frivolously or vexatiously or unreasonably (but not otherwise);
- (e) must act in accordance with the principles of natural justice and fairness;
- (f) if he or she finds it necessary, may consult a person having the appropriate qualifications for advice in relation to aspects of the dispute not directly within his or her professional competence; and
- (g) must give a decision in writing.

#### **Effect of Expert's decision**

24. The Expert's decision:-

- (a) where it makes certain a provision of this agreement, is deemed for all purposes to form part of and be incorporated in this agreement from the date of this agreement;
- (b) where it resolves a dispute between the parties arising out of a decision by the Council, is substituted for any decision made by Council.

## **PART 8 - INTERPRETATION**

### **Definitions**

25. In this agreement:-

**“future development application”** means an application for approval to carry out assessable development, including but not limited to, reconfiguration by way of subdivision made in respect of the relevant lands (or any part thereof) under the IPA or the planning scheme;

**“ordinary contribution”** means a contribution set out in Schedule 5, being the a contribution payable on the basis that the relevant allotment is to be developed (only) as a single detached dwelling.

**“planning scheme”** means the Town Planning Scheme for the Shire of Banana.

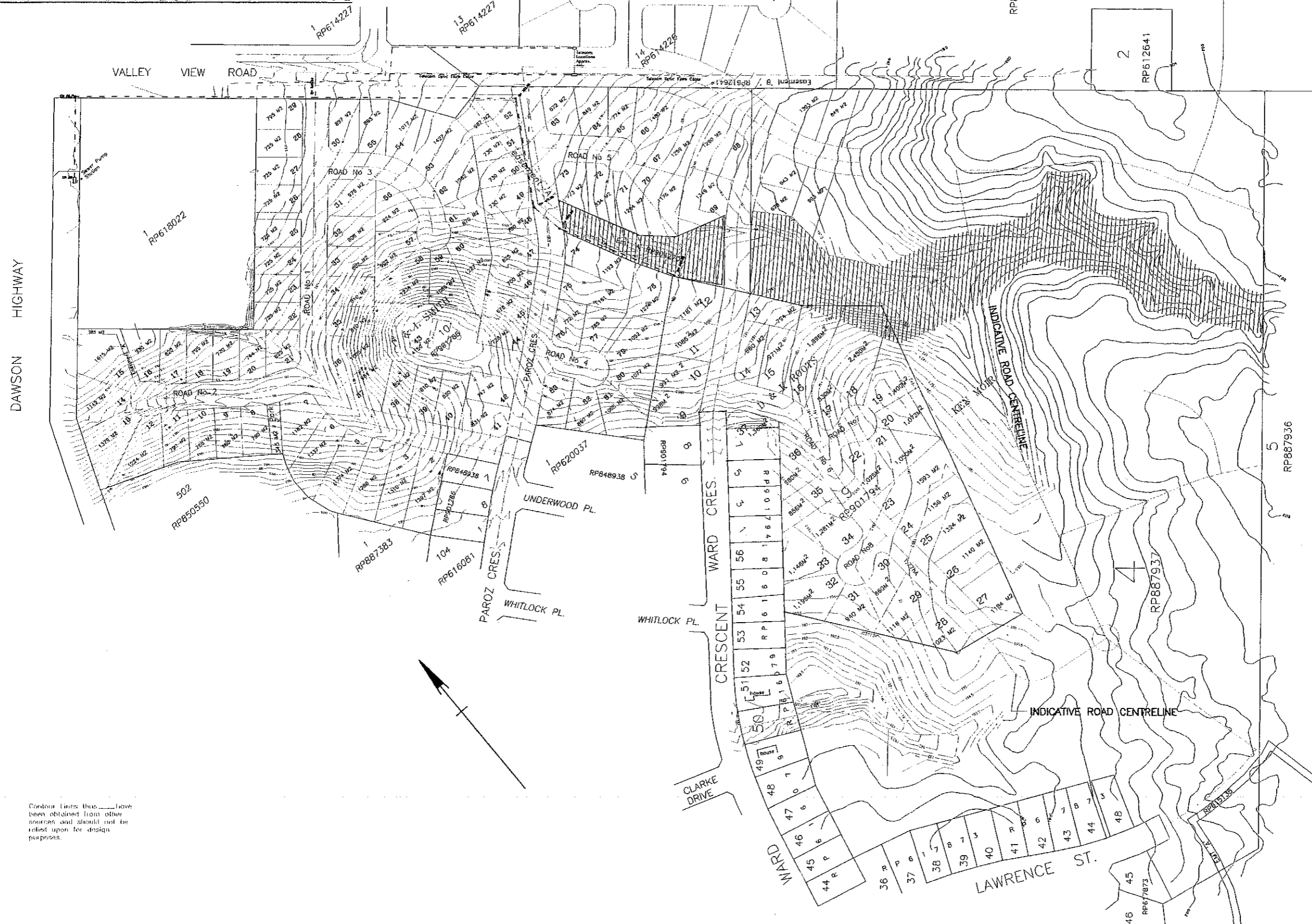
**“special contribution”** means a contribution payable under clause 4(b) because the relevant allotment is to be developed for a purpose other than a single detached dwelling.

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**Schedule 1**  
(Indicative subdivision layout)

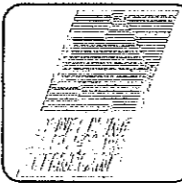
# SCHEDULE 1.

## INDICATIVE SUBDIVISION LAYOUT



Contour lines that have been obtained from other sources and should not be relied upon for design purposes.

**Fredriksen Maclean & Associates**  
**CONSULTING SURVEYORS**  
 GLADSTONE  
 34 Herbert Street  
 Phone (07)49 2 5677  
 Fax (07)49 2 4928  
 P.O. Box 1245  
 Email: fredmac@maclean.com.au



Property Description: Valley View Estate Biloela.  
 Local Authority: BANANA SHIRE COUNCIL  
 Level Datum: AHD  
 Origin: PSM63989 RL172.0x2  
 Horizontal Datum: Meridian  
 Origin:

Scale: 1 : 1,500  
 Surveyed: DWI  
 F. Rocks  
 Comp. File 2156 1A.DWG  
 Checked:  
 Approved:

| Amendments |         |
|------------|---------|
| Date       | Details |
| 11.9.98    | ISSUE   |

Client: BANANA SHIRE COUNCIL  
 Title: CONCEPT PLAN  
 Project: VALLEY VIEW ESTATE

Sheet 1 of 1 Sheets  
 Drawing Number: 2156-1A

**Schedule 2**  
**(Specification of Infrastructure)**

## SCHEDULE 2

## Infrastructure Items

### Costs and Time of Installation

| <i>Infrastructure Item</i>   | <i>Cost<br/>\$</i> | <i>Year of<br/>Installation</i> |
|--|--------------------|---------------------------------|
| <i>Sewerage Trunk Main</i>   | 71 950             | 1999                            |
| <i>Roads/Transport</i>   |                    |                                 |
| • Stage 1 Valley View Road including intersection upgrade (Section A to B) | 41 000             | 1999                            |
| • Stage 2 Valley View Road (Section B to C)                                | 29 000             | 1999                            |
| • Stage 3 Valley View Road (Section C to D)                                | 45 000             | 2000                            |
| • Stage 4 Ward Crescent (Section D to E)                                   | 33 000             | 2002                            |
| • Whitlock/Paroz intersection upgrade                                      | 5 000              | 1999                            |
| <i>Stormwater Drainage</i>   | 45 000             | 2001                            |

#### Notes:

- 1 The year of installation relates to development following the Benchmark Development Sequencing Plan. This plan may vary over time. The infrastructure construction is more dependent on the construction timing schedule set out in Schedule 4.
- 2 Roads Stage 4 Ward Crescent will be constructed as a bitumen sealed rural access standard road under the terms of this agreement. As lots are developed each side of Ward Crescent, individual developers will be responsible for road widening, kerb and channelling, underground stormwater drainage and footpath construction.

**Schedule 3**

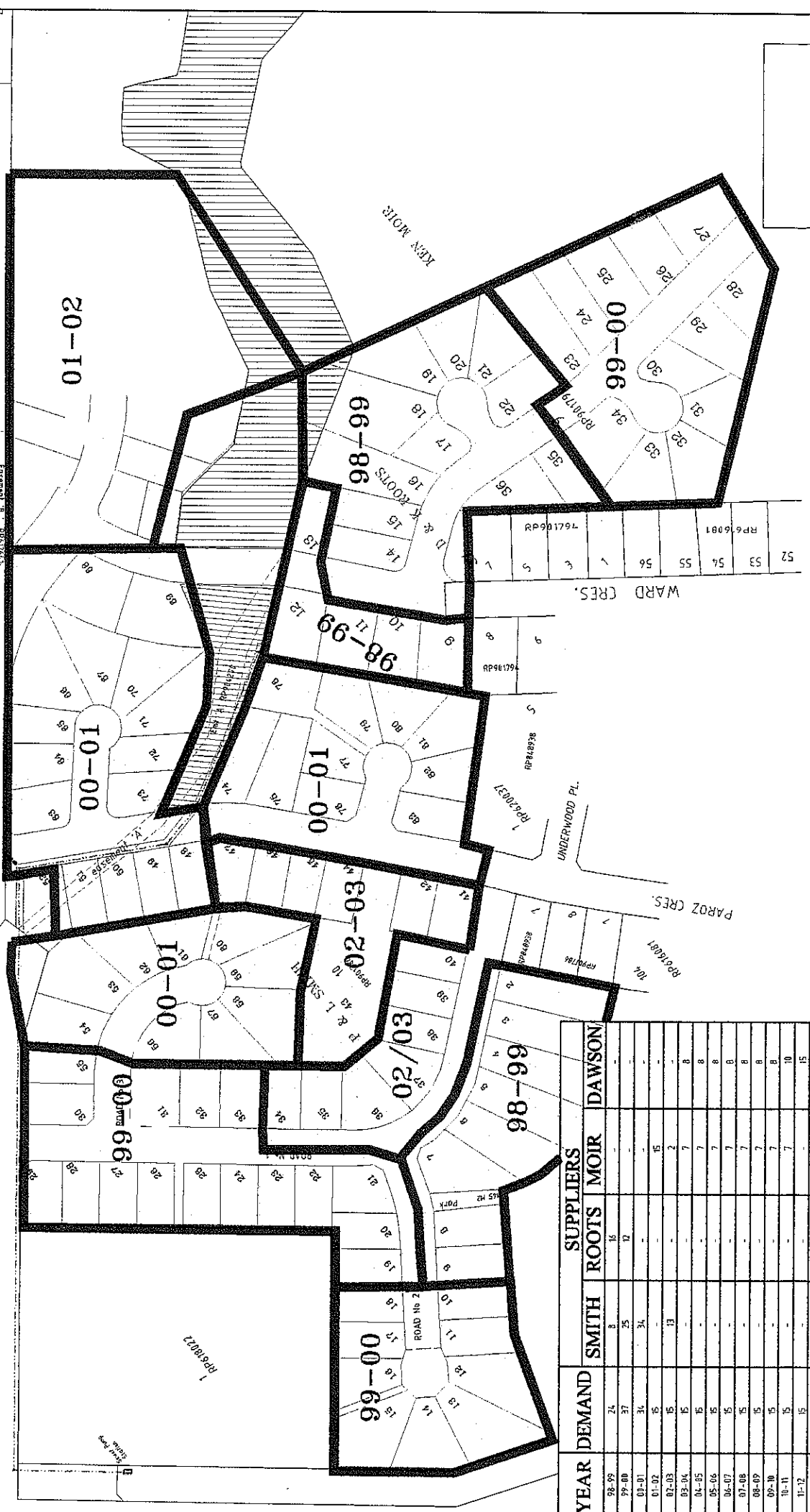
(Benchmark development sequence)

# SCHEDULE 3.

## BENCHMARK DEVELOPMENT SEQUENCE

VALLEY VIEW ROAD

RP887945  
17



| YEAR DEMAND | SUPPLIERS |       |      |        |
|-------------|-----------|-------|------|--------|
|             | SMITH     | ROOTS | MOIR | DAWSON |
| 98-99       | 24        | 16    | -    | -      |
| 99-00       | 37        | 17    | -    | -      |
| 01-01       | 34        | 01-01 | -    | -      |
| 01-02       | 5         | -     | -    | -      |
| 01-03       | 5         | -     | -    | -      |
| 02-03       | 15        | -     | -    | -      |
| 03-04       | 15        | -     | -    | -      |
| 04-05       | 15        | -     | -    | -      |
| 05-06       | 15        | -     | -    | -      |
| 06-07       | 15        | -     | -    | -      |
| 07-08       | 15        | -     | -    | -      |
| 08-09       | 15        | -     | -    | -      |
| 09-10       | 15        | -     | -    | -      |
| 10-11       | 15        | -     | -    | -      |
| 11-12       | 15        | -     | -    | -      |
| TOTAL       | 240       | 28    | 73   | 95     |



**Schedule 4**

(Construction timing schedule)

**SCHEDULE 4****Construction Timing Schedule**

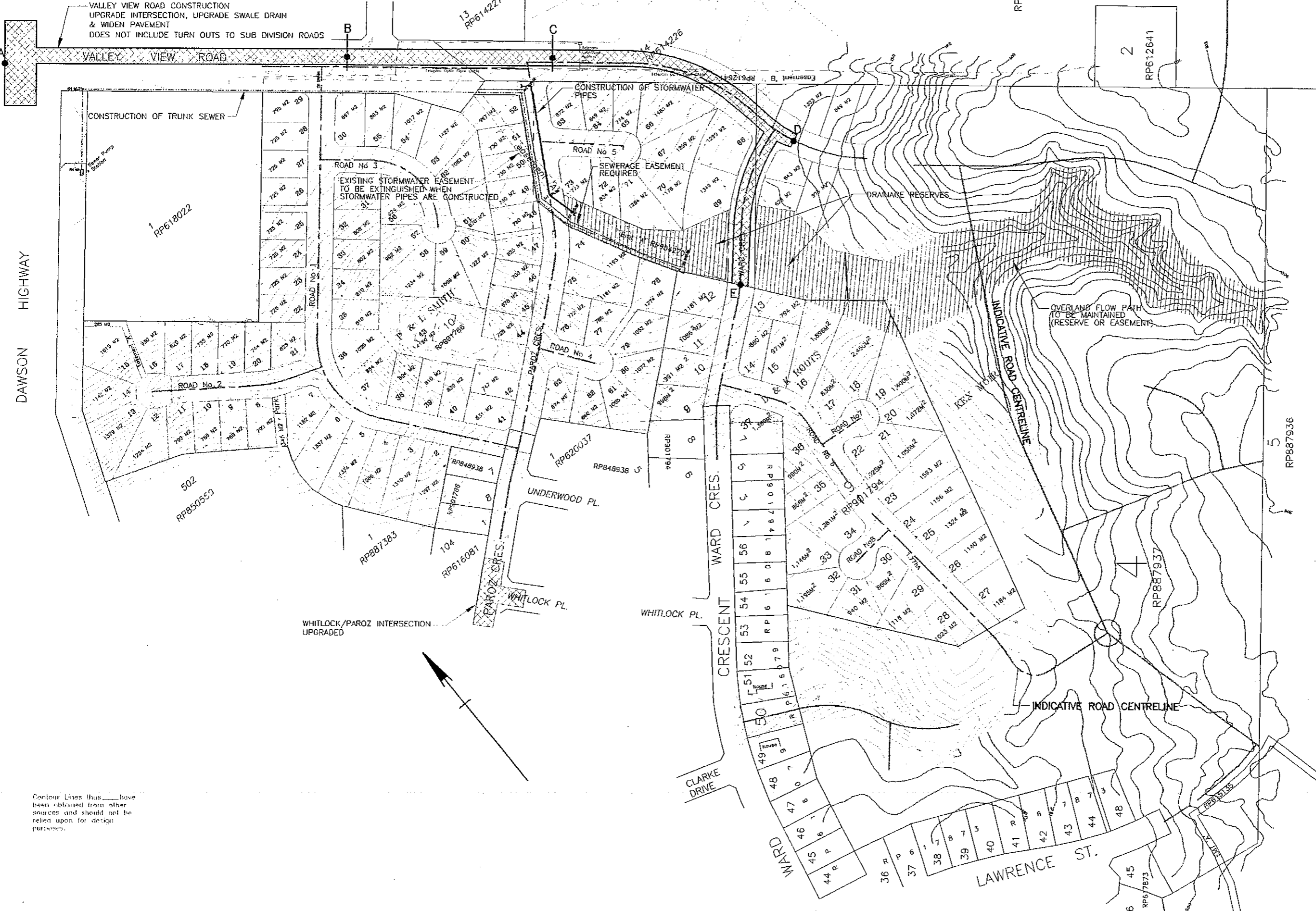
| <i>Infrastructure Item</i>                           | <i>Time for construction</i>  |
|--|---|
| <b>Roads</b>   |   |
| Valley View Road – Section A to B                    | Construction to commence at the time of commencement of operational works associated with the subdivision of any lands which creates allotments with frontage to roads No 1, 2 or 3. Refer attached plan.   |
| Valley View Road – Section B to C                    | Construction to commence at the time of commencement of operational works associated with the subdivision of any lands which creates allotments with frontage to Paroz Crescent extending as far as the intersection with Valley View Road. Refer attached plan.              |
| Valley View Road – Section C to D                    | Construction to commence at the time of commencement of operational works associated with the subdivision of any lands presently owned by Moir which creates allotments with frontage to roads east of the drainage reserve or as necessary to provide access to Dawson land. |
| Valley View Road – Section D to E<br>(Ward Crescent) | Construction to commence at the time of commencement of operational works associated with the subdivision of any lands in Roads Area No 3 south of the drainage reserve when the total lots created in Area 3 exceeds 40. Refer attached plan and Schedule 5.                 |
| Whitlock/Paroz intersection                          | Within 12 months of signing of infrastructure agreement.  |
| <b>Sewerage</b>                                      |   |
| Construction of sewerage trunk main                  | Upon commencement of operational works associated with the first subdivision application in respect of any part of the relevant lands in this sewer catchment. Refer attached plan.   |

**SCHEDULE 4 cont****Construction Timing Schedule**

| <i>Infrastructure Item</i>           | <i>Time for construction</i>  |
|--------------------------------------|---|
| <b>Drainage</b>                      |   |
| Construction of underground drainage | Construction to commence at the time of commencement of operational works associated with the subdivision of any lands north of the overland drainage reserve which, without the underground drainage, would receive overland flow from the northern discharge point of that reserve. This work will allow extinguishment of the stormwater drainage easement on lots fronting Paroz Crescent. Refer attached plan. |

# SCHEDULE 4.

## CONSTRUCTION TIMING SCHEDULE



VALLEY VIEW ROAD CONSTRUCTION  
UPGRADE INTERSECTION, UPGRADE SWALE DRAIN  
& WIDEN PAVEMENT  
DOES NOT INCLUDE TURN OUTS TO SUB DIVISION ROADS

CONSTRUCTION OF TRUNK SEWER

CONSTRUCTION OF STORMWATER PIPES

EXISTING STORMWATER EASEMENT  
TO BE EXTINGUISHED WHEN  
STORMWATER PIPES ARE CONSTRUCTED


SEWERAGE EASEMENT  
REQUIRED

DRAINAGE RESERVES

OVERLAND FLOW PATH  
TO BE MAINTAINED  
(RESERVE OR EASEMENTS)

WHITLOCK/PAROZ INTERSECTION  
UPGRADED

INDICATIVE ROAD CENTRELINE

Contour Lines thus  have  
been obtained from other  
sources and should not be  
relied upon for design  
purposes.

**Fredriksen Maclean & Associates**  
CONSULTING SURVEYORS  
GLADSTONE BILOELA  
34 Herbert Street Cnr Greyville St & Gladstone Rd.  
Phone (07)4912 5677 Phone (0)3492 1400  
Fax (0)34912 4928 P.O. Box 58  
P.O. Box 1245  
Email : fredmac@salcon.com.au



|                      |                           |
|----------------------|---------------------------|
| Property Description | Valley View Estate Biola. |
| Local Authority      | BANANA SHIRE COUNCIL      |
| Level Datum          | ABHD                      |
| Origin               | PSM63889 RI 172.062       |
| Horizontal Datum     |                           |
| Meridian             |                           |
| Origin               |                           |

|          |           |
|----------|-----------|
| Scale    | 1 : 1,500 |
| Surveyed | LWF       |
| Checked  |           |
| Approved |           |

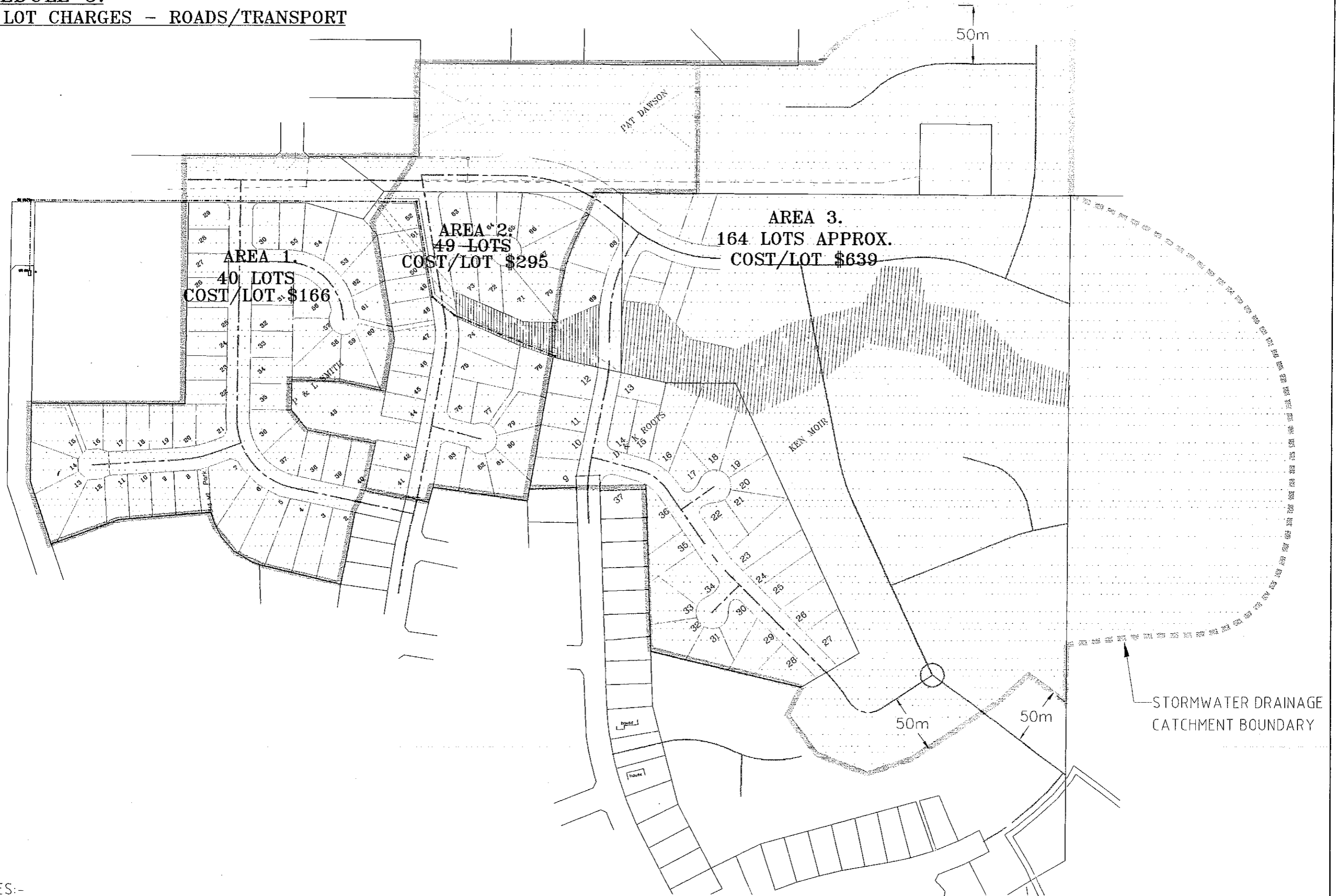
| Amendments |         |
|------------|---------|
| Date       | Details |
| 11.9.96    | ISSUE   |
|            |         |
|            |         |

|         |                      |
|---------|----------------------|
| Client  | BANANA SHIRE COUNCIL |
| Title   | CONCEPT PLAN         |
| Project | VALLEY VIEW ESTATE   |

|                     |
|---------------------|
| Sheet 1 of 1 Sheets |
| Drawing Number      |
| 2156-1A             |

**Schedule 5**  
(Catchment plans and tables of per lot charges)

**SCHEDULE 5.**  
**PER LOT CHARGES - ROADS/TRANSPORT**



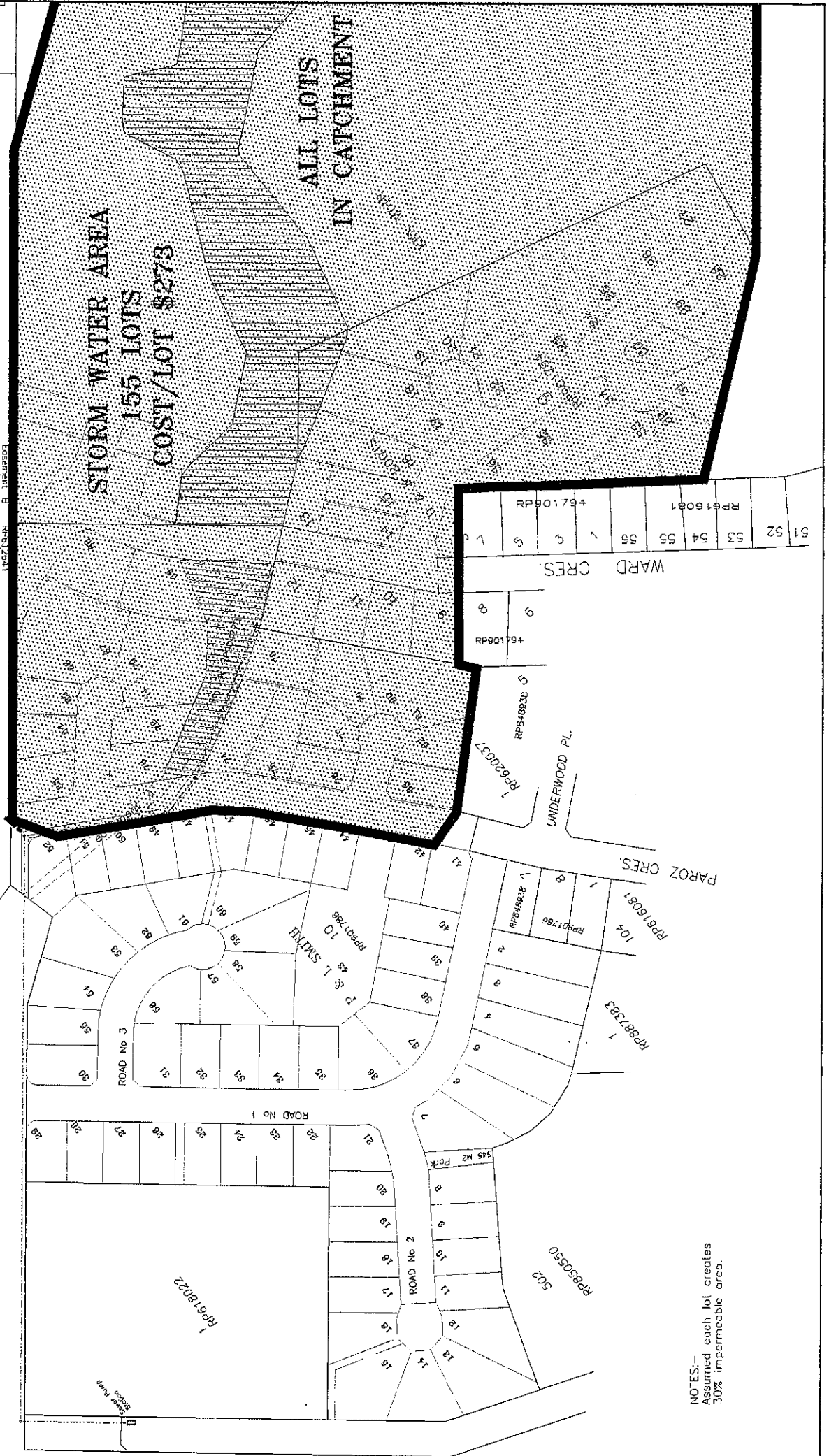
NOTES:-  
1. Assumed Traffic generation, 10 vehicle movements per day per lot.

**SCHEDULE 5.  
PER LOT CHARGES - STORMWATER CATCHMENT**

14  
RP887945

2

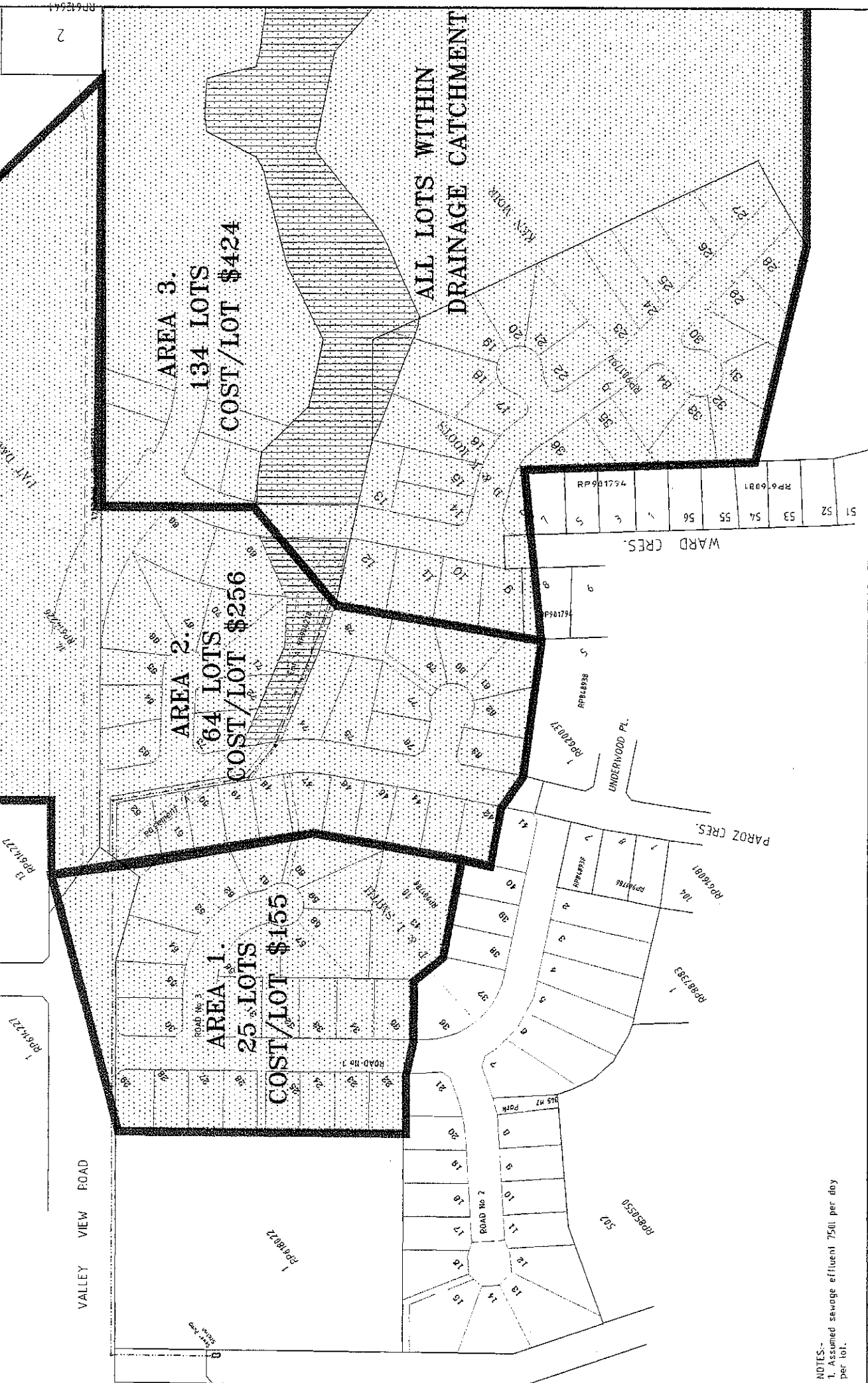
VALLEY VIEW ROAD



NOTES: -  
Assumed each lot creates  
30% impermeable area.

# SCHEDULE 5.

## PER LOT CHARGES - SEWERAGE



NOTES:-  
1. Assumed sewage effluent 750l per day per lot.



**Schedule 6**  
(Sewerage easement plan and document)

Dealing No.

Stamp Duty Imprint

1. Grantor RIVENDELL ESTATE PTY LTD ACN 080 745 875 Lodger Name, address & phone number Lodger Code

| 2. Description of Easement/Lot  | County | Parish  | Title Reference |
|---|--------|---------|-----------------|
| Servient Tenement (burdened land)<br>Easement B in Lot 10 on Registered Plan 901786 on SP111750 | Raglan | Prairie | 50161545        |

\*Dominant Tenement (benefited land)  
NOT APPLICABLE

\* not applicable if easement in gross

| 3. Interest being burdened | *4. Interest being benefited |
|----------------------------|------------------------------|
| Fee Simple                 | NOT APPLICABLE               |

\* not applicable if easement in gross

5. Grantee Given names Surname/Company name and number (include tenancy if more than one)  
BANANA SHIRE COUNCIL

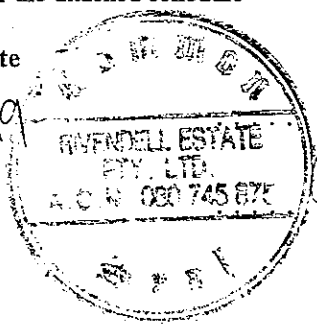
6. Consideration \$1.00 7. Purpose of easement Sewerage Works

8. Grant/Execution

The Grantor for the above consideration grants to the Grantee the easement over the servient tenement for the purpose stated in item 7 and the Grantor and Grantee covenant with each other in terms of the attached schedule

Witnessing Officer  
*M. Green* signature  
 M. Carolyn. Kate. Green full name  
 C. Dec. 3349 qualification  
 as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

Execution Date  
13/1/99



Grantor's Signature  
*[Handwritten Signature]*

Witnessing Officer  
 signature  
 full name  
 qualification  
 as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

Execution Date  
/ /

Grantee's Signature

## Title Reference 50161545

1. The Grantor hereby grants, transfers and confers unto the Grantee full free and uninterrupted right and liberty at all times and from time to time with or without assistants, vehicles, apparatus and equipment as reasonably deemed necessary to install and then to maintain on the servient tenement a sewerage main and other apparatus or works reasonably required in connection therewith, and to inspect, test, operate, maintain, repair, alter, add to, replace or remove such sewerage main or other apparatus or works at such time or times as deemed expedient by the Grantee.
2. The Grantee shall have free and uninterrupted right and liberty at all times and from time to time with or without assistants, vehicles, apparatus and equipment as reasonably deemed necessary:
  - (a) to enter upon and go, pass and repass over and along the servient tenement; and
  - (b) to open and to break up the soil of the servient tenement or any part thereof as well the sub-surface as the surface thereof; and
  - (c) to bring and place in and upon the servient tenement and remove such apparatus, plant, materials, machinery, tools and other articles as the Grantee may reasonably consider desirable or expedient; and
  - (d) to do such things on the servient tenement as the Grantee deems necessary to construct, inspect, test, operate, maintain, repair, alter, add to, replace and remove the sewerage main or apparatus or works; and
  - (e) generally to do on the servient tenement such acts and things as may be necessary or requisite to enable the Grantee to install the sewerage main and to comply with its responsibilities as Local Authority and to exercise the powers aforesaid.
3. The Grantor shall not plant on the servient tenement any trees, crops or other plants. The Grantee may clear the servient tenement and cut and remove timber, trees, undergrowth, crops and fences.
4. Notwithstanding any rule of law or equity to the contrary the sewerage main and all pipes, valves, fittings, meters, connections and all other equipment and apparatus whether or not similar to the foregoing brought onto, laid, constructed or erected upon or buried in or under the servient tenement by the Grantee shall at all times remain the property of the Grantee notwithstanding that the same may be annexed or affixed to the servient tenement and that the same or any part thereof may at any time and from time to time be removed in whole or in part by the Grantee.
5. Upon the discontinuance of the use of the servient tenement by the Grantee and of the exercise by the Grantee of the rights hereby granted to it, the Grantee shall remove the sewerage main or other apparatus or works above the ground surface and will restore the servient tenement to the same unimproved condition as its condition as is existing as at the date of this easement, so far as it is practicable so to do, but the Grantee may at its option leave undisturbed apparatus or works below the ground surface.
6. The Grantee shall at all times hereafter exercise the rights and privileges hereby granted in a proper and workmanlike manner and so as to cause as little inconvenience as practicable and do as little damage as practicable to the servient tenement and that part of the Grantor's said land which it is necessary to pass over to gain entry to the servient tenement.
7. The Grantor shall not construct any improvements on the servient tenement.

## Title Reference 50161545

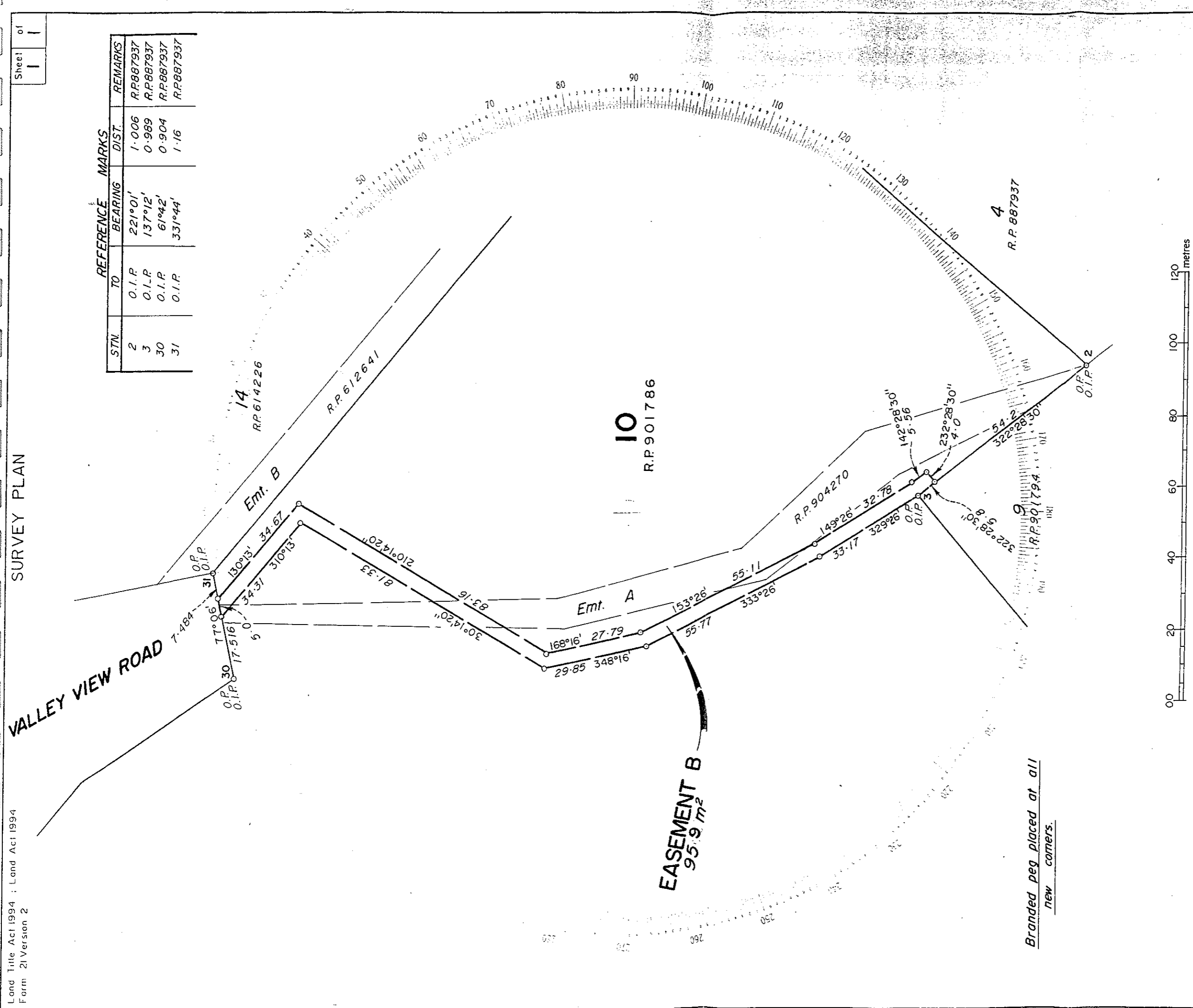
8. Except in the case of emergency, where no prior notice shall be required to be given, the Grantee shall give prior notice to the Grantor of it's intention to enter upon the servient tenement and/or the land of the Grantor to exercise the powers given to the Grantee by this Agreement.
9. The Grantee, exercising reasonable care, shall not be responsible to the Grantor for any damage to the Grantor's land in the exercise by the Grantee of the powers given under this Agreement, but the Grantee shall be responsible for all damage caused by it's servants, agents or contractors or other persons authorised by it to any of the improvements erected on the Grantor's land, or any damage to the Grantor's land, in excess of mere disturbance caused by the opening and breaking up of the soil and sub-soil.
10. The Grantor represents that the servient tenement is not subject to any leases, licences, mortgages, encumbrances or liens or other rights or interest, other than as noted on Title 50161545.

SURVEY PLAN

Land Title Act 1994 : Land Act 1994  
Form 21 Version 2

Sheet of 1

| STN | TO     | BEARING | DIST. | REMARKS    |
|-----|--------|---------|-------|------------|
| 2   | O.I.P. | 221°01' | 1.006 | R.P.887937 |
| 3   | O.I.P. | 137°12' | 0.989 | R.P.887937 |
| 30  | O.I.P. | 61°42'  | 0.904 | R.P.887937 |
| 31  | O.I.P. | 331°44' | 1.16  | R.P.887937 |



Scale: 1 : 1000  
Format: STANDARD

State copyright reserved.

PLAN OF  
**EASEMENT B** in Lot 10  
on R.P.901786

PARISH: PRAIRIE COUNTY: Raglan

Meridian: of R.P.901786 F/N's: NO

I, David William FREDRIKSEN hereby certify that I have surveyed the land comprised in this plan by David Graham BARRETT, Surveying Graduate for whose work I accept responsibility, that the plan is accurate, that the said survey was performed in accordance with the Surveyors Act 1977 and the Surveyors Regulation 1992 and that the said survey was completed on 9.9.1998.

*D. W. Fredriksen*  
Licensed Surveyor

Date: 12/10/98

Plan Status:

2156

Valley View Infrastructure Agreement  
Banana Shire Council  
Page 23

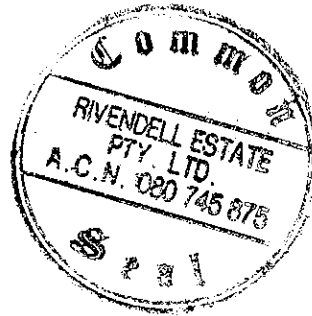
IN WITNESS WHEREOF the above named parties have signed this agreement on the days set out below.

Signed under the Corporate Seal of **BANANA SHIRE COUNCIL** and attested by BARRY RIDEOUT (Mayor) and JOHN HOOPER (CEO) on the 17 day of December 1998, in the presence of:-

*B. R. Rideout*  
*C.K. Hooper*  
ACTING CHIEF EXECUTIVE OFFICER.  
CHRISTOPHER TEITZEL

(Witness) *M. Spear*

Signed under the Common Seal of **RIVENDELL PTY LTD** and attested by PAUL SMITH and LYNN SMITH (both directors, who certify that they are authorised to affix the seal) on the 13<sup>th</sup> day of ~~December~~ JANUARY 1998, in the presence of:-



*Paul Smith*  
*Lynn Smith*

(Witness) *A. Wambrook*

Signed by **DARRYL ROOTS** and **KERRI ROOTS** on the 18 day of December 1998, in the presence of:-

*Darryl Roots*  
*Kerri Roots*

(Witness) *J. Wright*

Signed by **KENNETH MOIR** and **ELIZABETH MOIR** on the 6 day of ~~December 1998~~ January 1999, in the presence of:-

*Kenneth Moir*  
*Elizabeth Moir*

(Witness) *J. Wright*

Signed by **PATRICIA DAWSON** on the 22 day of ~~February~~ JANUARY 1999, in the presence of:-

*Patricia Dawson*

(Witness) *A. Wambrook*