

Our Ref: KC:LL:20101774

27 October 2009

Australian Competition &
Consumer Commission
Level 3
East Point Plaza
233 Adelaide Terrace
PERTH WA 6000

DOC II

Dear Sirs

**EXCLUSIVE DEALING NOTIFICATION - FROM G - BLUEWATER DEVELOPMENTS
(WA) PTY LTD AS TRUSTEE FOR THE COOGEE DEVELOPMENT UNIT TRUST**

Please find **enclosed** the following materials for your attention:

1. Form G – Exclusive Dealing Notification (together with a supporting submission) for lodgement; and
2. A cheque for \$100.00 payable to the Australian Competition and Consumer Commission in payment of the notification fee in relation to a notification under section 93(1) of the Trade Practices Act relating to conduct described in sub sections 47(6) and/or 47(7) of that Act.

Please contact Kim Costello of our office on 9443 2544 if you have any queries.

Yours faithfully
IRDI LEGAL



.....
Kim Costello
Lawyer

Email: kim@irdi.com.au

Enc. (1)

ACCC

27 OCT 2009

PERTH

Form G

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N94281 **Bluewater Developments (WA) Pty Ltd (ACN 131 915 234) as trustee
for the Coogee Development Unit Trust**

.....
.....
.....

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Land development

.....
.....
.....

- (c) Address in Australia for service of documents on that person:

C/- Irdi Legal, 248 Oxford Street, Leederville WA 6007

.....
.....
.....

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Sale of land

.....
.....
.....

- (b) Description of the conduct or proposed conduct:

Condition of purchase of land that buyer engages nominated builder to construct a dwelling on the land.

.....
.....
.....
.....

(Refer to direction 4)

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:

(Refer to direction 5)

Buyers of residential properties in the North Coogee area of Western Australia.

.....
.....
.....

- (b) Number of those persons:

- (i) At present time:

Up to a maximum of 10.

.....

- (ii) Estimated within the next year:

(Refer to direction 6)

Up to a maximum of 10.

.....

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not currently known.

.....
.....
.....
.....

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Refer to annexure.

.....
.....
.....

- (b) Facts and evidence relied upon in support of these claims:

Refer to annexure.

.....
.....
.....

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

The relevant market is the market for residential properties in the suburb of North Coogee (situated in the Perth Metropolitan Area, Western Australia).

.....
.....

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

Refer to annexure.

.....
.....

- (b) Facts and evidence relevant to these detriments:

Refer to annexure.

.....
.....

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Claude Giorgi
C/- Buildwise
Unit 1, 24 Parkland Road
OSBORNE PARK WA 6017
Phone: (08) 9444 8711

Dated.....*12/6/10/09.*.....

Signed by/on behalf of the applicant

.....
(Signature)

CLAUDE GIORGI.....
(Full Name)

BLUEWATER DEVELOPMENTS (WA) PTY LTD
(Organisation)

DIRECTOR.....*SECRETARY.*.....
(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

ANNEXURE TO NOTIFICATION OF EXCLUSIVE DEALING (Form G)
BLUEWATER DEVELOPMENTS (WA) PTY LTD (ACN 131 915 234)
AS TRUSTEE FOR THE COOGEE DEVELOPMENT UNIT TRUST

BACKGROUND:

Bluewater Developments (WA) Pty Ltd (ACN 131 915 234) as trustee for the Coogee Development Unit Trust ("Bluewater") is the owner of twelve (12) lots of land in the suburb of North Coogee in Western Australia. The lots, being Lots 773 to 778 inclusive on Deposited Plan 58899 and Lots 779 to 784 inclusive on Deposited Plan 58900 are grouped, with the two deposited plans being adjacent to each other.

Attached is a copy of Deposited Plan 58899 and Deposited Plan 58900.

The lots are vacant and it is proposed by Bluewater that a high-quality residential home (in keeping with the area) be constructed upon each lot (other than Lots 773 and 774) in conjunction with the sale of the lots to buyers. Lots 773 and 774 will be dealt with as set out in the fifth paragraph of this annexure.

Bluewater wishes to create a group of high-quality residences for sale to buyers. Bluewater wishes the buyers to have the comfort of knowing what the lots within the group will look like once the residences have been completed. Bluewater has engaged a high-calibre builder, Buildwise, to design appropriate residences to be constructed upon each of the lots. Each design includes appropriate finishes and colour schemes. The designs address site constraints and will be in keeping with other residences constructed, or proposed to be constructed, in the area.

Lots 773 and 774 will be amalgamated and a group of three (3) apartments will be constructed upon the amalgamated lots. The apartments will be strata-titled. Bluewater will engage Buildwise to construct the apartments. The proposed strata lots will be pre-sold by Bluewater and will not form part of the "house and land" packages which are the subject of this notification.

The remaining ten (10) lots will be offered for sale to buyers. The buyers may choose to purchase a "house and land" package from Bluewater or, alternatively, purchase a lot from Bluewater on the basis that Bluewater arranges construction of the residence upon the lot with settlement on the lot to place after practical completion of the residence.

The residence to be constructed upon each lot has been specifically designed for the particular lot. The plans and specifications for the residence to be constructed upon

each lot will be annexed to, and form part of, the contract of sale for the lot. The buyers will have the opportunity to consider the plans and specifications before entering into the contract to purchase the lot.

Claude Giorgi has an interest in both Bluewater and Buildwise.

POTENTIAL THIRD-LINE FORCING:

The proposed “house and land” package, pursuant to which the buyers purchase a lot on the condition that the buyers enter into a building contract with Buildwise to construct a residence upon the lot, potentially comprises third-line forcing.

The building contract between each buyer and Buildwise will specify the residence to be constructed by Buildwise and the specifications, standards and deadlines for the construction of the residence. It will also specify the price payable to Buildwise for the construction of the residence. The building contract will be a lump sum contract using the Housing Industry of Australia form.

BRIEF SUMMARY OF THE MARKET:

The relevant market is the residential real estate market in North Coogee (which forms part of the Perth Metropolitan Area, Western Australia).

The proposed sale of the “house and land” packages by Bluewater does not have the effect of substantially lessening competition in the relevant market. The sale of a maximum of ten (10) lots represents a small portion of the residential real estate available for purchase in the relevant market.

PUBLIC BENEFIT FROM THE PROPOSED CONDUCT:

The use of one builder to construct residences on a group of adjoining lots results in cost savings through economies of scale.

The “house and land” package requires the buyer to settle upon the purchase of the lot prior to the construction of the residence. This results in a saving of duty payable by the buyer on the transfer of the lot.

The land and building component of each package is clearly disclosed in the contract of sale and therefore potential buyers are aware of all costs before entering into the land contract and building contract.

Each building contract will be set at a fixed price. Buildwise will not be entitled to increase the price to the buyer unless the buyer requests a variation to the design. The

cost of the variation must be approved by the buyer before Buildwise undertakes the variation.

Each buyer will have some control over the cost of funding required to construct the residence. Some buyers may require less funding than others.

As the relevant lots are relatively small, it is preferable not to have multiple builders constructing improvements on the lots as there are limited areas for storage of materials. It is more appropriate for a single builder to construct the residences on each of the lots.

Buildwise has designed each of the residences and has already determined the most efficient method of construction of the residences individually and as a group. Shorter building timeframes will be available for buyers as building licences can be obtained relatively quickly by Buildwise due to the nature of the design.

As Buildwise will construct each of the residences, there are further cost and time savings as tradesmen will be able to move from one residence to the next.

LIMITED PUBLIC DETRIMENT:

Apart from the reduction in the number of competing builders for the construction of residences upon the lots, we are not aware of any public detriment arising from the buyers' "house and land" package. The reduction in the number of competing builders is insignificant in the context of the relevant market.

SUMMARY:

For the reasons stated above, the proposed conduct provides benefits to the public and will have no public detriment.



| SUBJECT | PURPOSE | STATUTORY REFERENCE | ORIGIN | LAND BURDENED | BENEFIT TO | COMMENTS |
|---------|------------------------|---------------------------------|-----------------------------|-----------------|--|-------------|
| ⑥ | EASEMENT (Easement) | SEC. 47 OF THE P & O ACT, REG 6 | DOC C43650 | LOTS 9025, 9026 | SEE DOCUMENT | SEE NOTE 7. |
| ⑥ B | EASEMENT (Easement) | SEC. 47 OF THE P & O ACT, REG 6 | DP 54243 | LOT 9520 | WATER CORPORATION ELECTRICITY NETWORKS CORPORATION | |
| ⑥ | EASEMENT (Easement) | SEC. 47 OF THE P & O ACT, REG 8 | DP 58100 | LOT 9520 | | |
| ⑥ | EASEMENT (Easement) | SEC. 47 OF THE P & O ACT, REG 6 | THIS PLAN | LOT 9025 | WATER CORPORATION | |
| ⑥ A | EASEMENT (Easement) | SEC. 47 OF THE P & O ACT, REG 6 | THIS PLAN | LOT 9025 | WATER CORPORATION | |
| | RESTRICTIVE COVENANT | SEC. 1340 OF THE TLA | THIS PLAN & DOC K 764780 | LOTS 773-778 | LOTS 773-778 | |

NOTE: 'Z' - THE DIMENSIONS AND POSITION ARE BASED ON
ACCURATE SURVEYED ALIGNMENTS

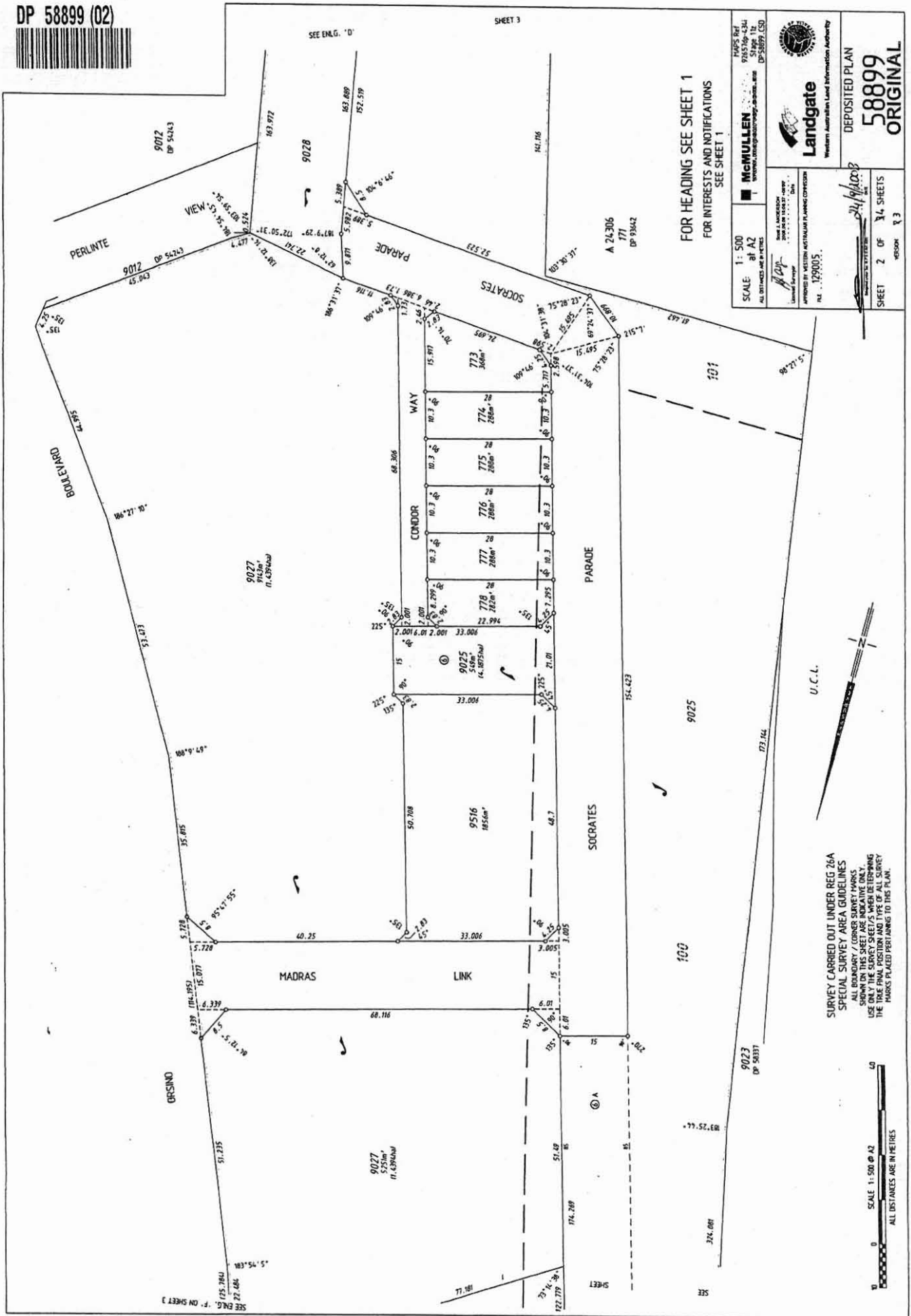
U.C.L. 76

SURVEY CARRIED OUT UNDER REG 26A
SPECIAL SURVEY AREA GUIDELINES

SEE SHEETS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 8

[illegible]

DP 58899 (02)



FOR HEADING SEE SHEET 1
FOR INTERESTS AND NOTIFICATIONS
SEE SHEET 1

| | | | | |
|---|--|---|--|---|
| <p>MAPS REF DP 58899 (01) DP 58899 (02) DP 58899 (03) DP 58899 (04) DP 58899 (05)</p> | | <p>McMULLEN SURVEYING 11290005</p> | <p>Landgate Western Australian Land Information Authority</p> | <p>DEPOSITED PLAN 58899 ORIGINAL</p> |
| <p>SCALE: 1: 500 at A2 ALL DISTANCES ARE IN METRES</p> | | | | |
| <p>APPROVED BY WESTERN AUSTRALIAN PLANNING COMMISSION DATE: 11/10/05</p> | | <p>SHEET 2 OF 34 SHEETS VERSION 3.3</p> | | |

U.C.L.

SURVEY CARRIED OUT UNDER REG 26A
SPECIAL SURVEY AREA GUIDELINES
ALL BOUNDARY / CORNER SURVEY MARKS
SHOWN ON THIS PLAN ARE THE RESULT OF
A SURVEY CARRIED OUT IN ACCORDANCE
WITH THE SURVEY ACT 1988 AND THE
SURVEY REGULATIONS 1988. THE
TRUE FINAL POSITION AND TYPE OF ALL SURVEY
MARKS PLACED PERTAINING TO THIS PLAN.



DP 58899 (03)

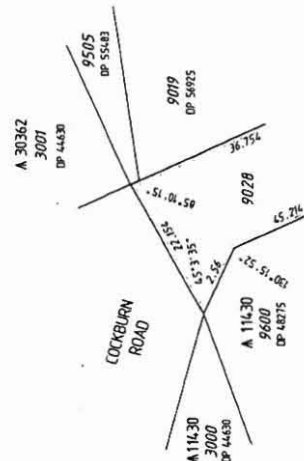


A24306
171
DP 53642

ENLARGEMENT 'D'
Not to scale



ENLARGEMENT 'C'
Not to scale



ENLARGEMENT 'E'
Not to scale

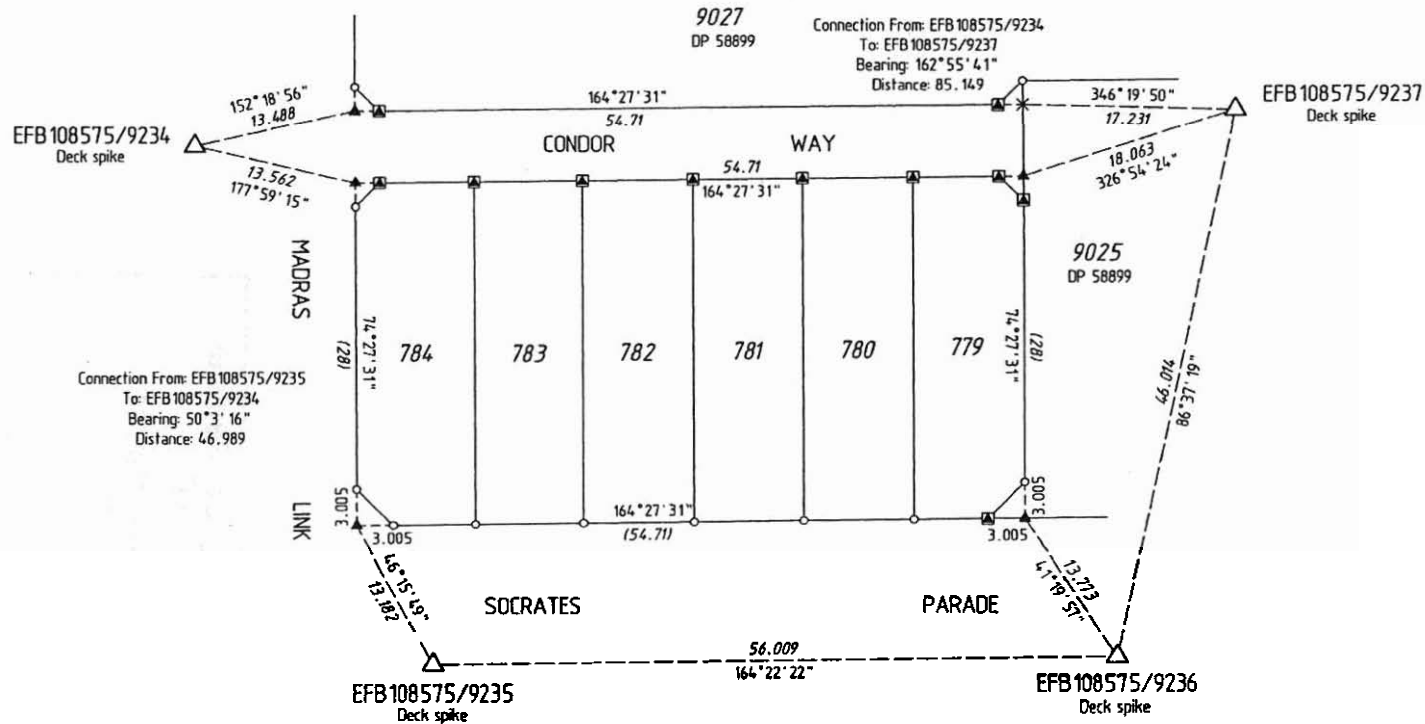
SURVEY CARRIED OUT UNDER REG 26A
SPECIAL SURVEY AREA GUIDELINES
ALL BOUNDARY / CORNER SURVEY MARKS
SHOWN ON THIS PLAN ARE TO BE PLACED
USE ONLY THE SURVEY SHEETS WHEN DETERMINING
THE TRUE FINAL POSITION AND TYPE OF ALL SURVEY
MARKS PLACED PERTAINING TO THIS PLAN.

FOR HEADING SEE SHEET 1
FOR INTERESTS AND NOTIFICATIONS
SEE SHEET 1

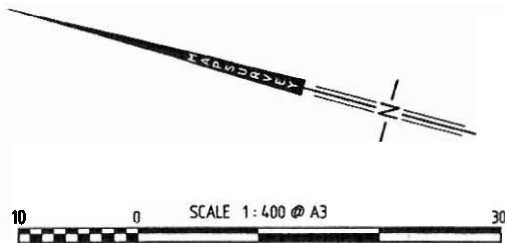
| | | |
|--|---|--|
| <p>Not to scale SCALE Orig @ A2</p> <p>ALL DISTANCES ARE IN METERS</p> <p>Landgate Surveyor APPROVED BY WESTERN AUSTRALIAN PLANNING COMMISSION PA 129005</p> | <p>DP 58899 (03) ROADS ACT 1947 S248 11c DP 58899 (03)</p> <p>McMULLEN SURVEYING & ENGINEERING 1000/1001 STATION STREET PERTH WA 6000 TEL: 08 9442 1111 WWW.MCMULLEN.SURVEYING.COM.AU</p> <p>Landgate Western Australian Land Information Authority</p> | <p>DEPOSITED PLAN 58899 ORIGINAL</p> <p>24/9/2008</p> <p>SHEET 3 OF 34 SHEETS VERSION 1.3</p> |
|--|---|--|

SCALE 1:500 @ A2
ALL DISTANCES ARE IN METRES

DP 58900 (02)



SURVEY SHEET AUDITED
DATE: 9.12.08 HK
DOCKET: 02787-2008



FOR INTERESTS AND NOTIFICATIONS
SEE SHEET 1

LEGEND

- Denotes Peg unless stated otherwise
- ▲ Denotes Nail
- Denotes Nail and Plate
- × Denotes Spike
- Denotes Drill Hole
- ⊙ Denotes Deck Spike
- ⊞ Denotes Deck Spike and Plate
- △ Denotes Standard Survey Mark (SSM)
- ▲ Denotes Permanent Survey Mark (PSM)
- ⊞ Denotes Permanent Control Mark (PCM)
- ⊞ Denotes Temporary Control Mark (TCM)

**FOR HEADING SEE SHEET 1
SURVEY INFORMATION ONLY
SURVEY SHEET**

**SURVEY CARRIED OUT UNDER REG 26A
SPECIAL SURVEY AREA GUIDELINES**

ALL BEARINGS AND DISTANCES ON THIS SHEET
ARE THE RESULT OF LEAST SQUARES ADJUSTMENTS
CARRIED OUT ON FIELD OBSERVATIONS

GRID DATUM IS PCG94

| | | | | |
|--|--|--|--|---|
| SCALE: 1:400 at A3 ALL DISTANCES ARE IN METRES | | McMULLENOLAN <small>Surveyors, drafters, planners, valuers, etc.</small> | | MAPS Ref 92657dp-435d Stage 11zPh2 |
| APPROVED BY WESTERN AUSTRALIAN PLANNING COMMISSION FILE 429005 | | Landgate Western Australian Land Information | | |
| SHEET 2 OF 2 SHEETS VERSION 1.3 | | DEPOSITED PLAN 58900 ORIGINAL | | |