

REF NO: GC130307

CONFIDENTIAL ITEMS

Marion South Plan – Etiria No 25 Pty Ltd Deed (Makris Group)

Ref No: GC130307F01

File No: 4.65.1.6

Moved Councillor Connor, Seconded Councillor Durward that Council:

1. Resolves to enter into a deed with Etiria No 25 Pty Ltd and Hallett Cove Holdings Pty Ltd (the Makris Group) to facilitate the Makris Group providing \$1.25 million towards the development of the Connector Road and committing the City of Marion to provide a minor portion of the land provided by the Commissioner of Highways to the Makris Group for a nominal fee (Appendix 1 – Makris Group Deed).
2. Authorises the Chief Executive Officer to make such minor amendments to the deed between Council and the Makris Group as are required to give it business efficacy and to protect the Council's financial position and commercial interests, provided that such amendments do not affect the general purpose and intent of the proposed deed or the amount of any consideration.
3. Pursuant to Section 37(b) of the Local Government Act 1999, authorises the Mayor and Chief Executive Officer to enter into and execute the proposed deed between the Council and the Makris Group, as amended on behalf of Council.
4. Pursuant to Section 91(7) and (9) of the Act, Council orders that this Report, the minutes arising from this Report, the deed at Appendix 1 and any other documentation associated with the Report having been considered in confidence under Section 90(2) and (3)(d), and (g) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council meeting in December 2007.

Carried

Councillor Vicky Veliskou called for a division:

Those in favour: Councillors Victory, Mudge, Jason Veliskou, Whennan, Verrall, Bouwens, Durward, Bayliss, Connor and Telfer

Those against: Councillor Vicky Veliskou

Carried

**CITY OF MARION
COUNCIL MEETING
13 MARCH 2007**

**REPORT RELATING TO:
A leader in delivery of the Community Vision**

Originating Officer: Oliver Pfueller, Business Planner, Strategic and Economic Projects

Director: Jeff Rittberger, Director Governance

Subject: Marion South Plan – Etiria No 25 Pty Ltd Deed (Makris Group)

Ref No: GC130307F01

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If the Council so determines it to be necessary and appropriate, this matter may be considered in confidence under Section 90(2) and 3(d), and (g) of the Local Government Act on the grounds that :

- it would involve a disclosure of the commercial information which is of a confidential nature (not being a trade secret) that could reasonably be expected to prejudice the commercial position of the Makris Group which supplied the information, or to confer a commercial advantage on a third party, and in weighing up the factors for (transparency) and against (maintain confidentiality of commercially sensitive information at this point in time) disclosure, the public's interest is best served by not considering or discussing the Report publicly at this point in time; and
- to maintain a duty of confidence that the Council has to the Makris Group



Mark Searle
Chief Executive Officer

1. Pursuant to Section 90(2) and (3)(d), and (g) of the Local Government Act 1999 the Council orders the public be excluded, with the exception of *[insert those Council staff remaining by their title or position, the names of any other people/privy to the item of business]* on the basis that it will receive and consider the Report from the Manager Strategic and Economic Projects titled "Marion South Plan – Etiria No 25 Pty Ltd Deed (Makris Group)" and that Council is satisfied that the principle that the

meeting should be conducted in a place open to the public has been outweighed in relation to receiving, considering and discussing the Report and associated documentation in this matter because:

- it would involve a disclosure of the commercial information which is of a confidential nature (not being a trade secret) that could reasonably be expected to prejudice the commercial position of the Makris Group which supplied the information, or to confer a commercial advantage on a third party, and in weighing up the factors for (transparency) and against (maintain confidentiality of commercially sensitive information at this point in time) disclosure, the public's interest is best served by not considering or discussing the Report publicly at this point in time; and
- the Council is subject to a duty of confidence to the Makris Group

CORPORATE OBJECTIVES:

MS1 A civic heart for southern Marion

Encourage the Redevelopment of the Hallett Cove Shopping Centre

Facilitate the development of the Connector Road

REPORT OBJECTIVES AND EXECUTIVE SUMMARY

To consider the deed between the Makris Group as parent company of Etiria (No 25) Pty Ltd and Hallett Cove Holdings Pty Ltd and the City of Marion to enable the development of the Marion South Plan – Connector Road in conjunction with encouraging the development of the Hallett Cove Shopping Centre.

This report is 1 of 3 reports to the 13 March Council meeting regarding the Marion South Plan Connector Road the others are GC130307RO7 and GC130307RO8.

Through the deed the Makris Group will contribute \$1.25 million towards the development of the Connector Road and the City of Marion will provide a portion of the land received from the State Government but not required for the road for a nominal fee to the Makris Group for car parking.

Executing the Makris deed is the final step for the City of Marion to conclude the deeds required for the development of the Connector Road.

A copy of the deed is provided in Annexure 1.

RECOMMENDATIONS

That Council

1. **Resolves to enter into a deed with Etiria No 25 Pty Ltd and Hallett Cove Holdings Pty Ltd (the Makris Group) to facilitate the Makris Group providing \$1.25 million towards the development of the Connector Road and committing the City of Marion to provide a minor portion of the land**

provided by the Commissioner of Highways to the Makris Group for a nominal fee (Appendix 1 – Makris Group Deed).

2. Authorises the Chief Executive Officer to make such minor amendments to the deed between Council and the Makris Group as are required to give it business efficacy and to protect the Council's financial position and commercial interests, provided that such amendments do not affect the general purpose and intent of the proposed deed or the amount of any consideration.
3. Pursuant to Section 37(b) of the Local Government Act 1999, authorises the Mayor and Chief Executive Officer to enter into and execute the proposed deed between the Council and the Makris Group, as amended on behalf of Council.
4. Pursuant to Section 91(7) and (9) of the Act, Council orders that this Report, the minutes arising from this Report, the deed at Appendix 1 and any other documentation associated with the Report having been considered in confidence under Section 90(2) and (3)(d), and (g) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council meeting in December 2007.

DUE DATES

Recommendation 1	13 March 2007
Recommendation 2	13 March 2007
Recommendation 3	13 March 2007
Recommendation 4	December 2007

BACKGROUND:

The Marion Strategic Plan 2006-2020 involves establishing a civic heart for southern Marion, through the development of the Connector Road and the facilitation of the redevelopment of the Hallett Cove Shopping Centre. The Marion South Plan was developed (in part) to address the need for better connection of the suburbs of Hallett Cove, Sheidow Park and Trott Park and to encourage improved retail development. The Marion South Plan has been subject to extensive community consultation since 2003.

Council has been negotiating with the Makris Group since late 2000 to encourage the redevelopment of the Centre and integrate its redevelopment with the establishment of the Connector Road.

Council previously entered into a deed with the Makris Group in 2004. After having secured all necessary funding plus the land for the construction of the Connector Road a new deed with the Makris Group was required to reflect these changes and to outline the up-to-date conditions precedent and obligations. The 2004 deed is superseded by the new deed.

The Makris Group intends to redevelop the Hallett Cove Shopping Centre to offer appropriate services and facilities to the growing Southern area. This \$50 million development was approved in 2004 under the condition that the Connector Road

opens before the expanded Shopping Centre starts trading. Due to design changes the Makris Group lodged an amended Development Application which is currently being assessed by the Development Assessment Commission (DAC).

The deed with the Makris Group contains a number of conditions precedent and obligations on both parties. The conditions precedent can be waived by the bound party. When all conditions precedent are satisfied the obligations laid out in the deed must be followed.

(Appendix 1 to this report contains a copy of the deed.)

Conditions precedent on Council;

- Receive Land from Commissioner of Highways (clause 2.1);
- Receive Bankers Undertaking (cl. 2.6);
- Call Tender (cl. 2.7);
- Receive acceptable Tender (cl. 2.7.3.2);
- DTEI approve specifications for Lonsdale intersection (cl. 2.9).

Since finalising negotiations with the Makris Group the City of Marion has executed the land transfer documents for the required land from the Commissioner of Highways, secured all funding commitments and received the costing figures for the construction of the Connector Road.

Tender process

The condition precedent referring to call tender is subject to the City of Marion receiving Banker's Undertakings from the Makris Group to secure the corresponding financial contribution. Only after Council receives the Banker's Undertakings is Council committed to call tender for construction of the Connector Road.

Council needs to call for tender for the construction of the Connector Road within three months after receiving the Makris Group's Banker's Undertakings (cl. 2.7). Council is then committed to accept a tender offer of a reputable contractor that offers a price within budget and conforms with Council's tender terms and conditions (cl. 2.7.3.1-3).

In the case that the tender price is not within budget Council together with the Makris Group shall undertake steps to secure further funding. If sufficient funding is secured, Council is obligated to re-tender.

DTEI specifications for Lonsdale intersection

Currently, the Department for Transport, Energy and Infrastructure (DTEI) is in the process to approving the design by Council for the Lonsdale – Connector Road intersection. According to the deed with the State Government (approved by Council on 24 October 2006, refer to GC241006R12) DTEI needs to approve this design.

Conditions precedent on the Makris Group;

- Lifting of existing easements to enable the redevelopment (clause 2.2);
- Existing shopping centre tenants' consent to redevelopment (cl. 2.3);

- Obtain binding agreement to lease the new supermarket and discount department store (cl. 2.4);
- Receive development approval for redevelopment (cl. 2.5);
- Provide Banker's Undertaking to Council (cl. 2.6) ;
- Mortgagee consent (cl. 2.8).

At present, the development application for the expansion of the Shopping Centre is with the Development Assessment Commission for consideration.

When the above conditions precedent are fulfilled and Council has received the Banker's Undertakings and called, assessed and awarded tender, the following obligations on the parties are to be conformed with.

Council obligations,

- that the balance of the TransAdelaide railway land not required for the Connector Road be divided and transferred to the Makris Group for car parking for a nominal fee (cl. 5);
- that Council uses its best endeavours to procure Practical Completion of the Connector Road as soon as reasonably practical (cl. 7.4);
- Council to use its best endeavours to assist the Makris Group achieve public bus usage into the shopping centre (cl. 11);
- if Council at a future date determines to sell its interest in any land in the area bounded by the railway corridor, Lonsdale Road, Ramrod Avenue and Zwerner Drive then the Makris Group has the first right of refusal to purchase that interest (cl. 13);
- after completion of the western part of the Connector Road and for the time that the land division is being undertaken by TransportSA Council grants the Makris Group for no licence fee a licence to enter this land to undertake their construction works necessary on this land (cl. 15).

Makris obligations,

- that the Makris Group redevelops the Hallett Cove Shopping Centre (cl. 9);
- that the design of the shopping centre and the Civic Centre be linked with a public access entry (cl. 9.2.3);
- contribute \$1,250,000 to the cost of the Connector Road (cl. 8);
- secure their contribution by providing two (2) Banker's Undertakings prior to Council calling tender (cl. 2.6 and 12);
- if the Makris Group sells the Hallett Cove Shopping Centre they must ensure that the obligations in the deed are transferred to the new owner (cl. 14).

The contribution of the \$1.25 million is to be provided by the Makris Group in two equal portions of \$ 625,000; the first to be made after completion of the western part of the Connector Road and the reminder after completion of the whole Connector Road (cl. 8).

Should the Makris Group not deliver these payments on time or in full amount, Council can obtain the outstanding monies by drawing on the held Banker's Undertaking. As soon as a due amount is paid in full Council is required to return the corresponding Banker's Undertaking (cl. 12).

Each party to bear its own risk

Crucial for the relationship between Council and the Makris Group is that both parties bear their own risks (cl. 6). Therefore, Council cannot be held liable by the Makris Group for not completing the Connector Road prior to the completion of their development of the Shopping Centre.

Further development - Civic Centre

Opposite the Shopping Centre Council currently operates a library and a youth centre in a strata unit. Part of the Marion South Plan is to 'Investigate in the development of a Civic Centre' to either expand or replace this existing facility at a later date.

Car park rights and further development

Should Council resolve to proceed with the Civic Centre at its current location and wish to develop the strata unit into an expanded site, then the Makris Group is required to provide car parking on their premises if Council obtains development approval (cl. 10) and the Makris Group obtains approval from the major tenants of the Shopping Centre. These car parking rights are detailed in a licence attached to the deed as Annexure 6.

In exchange for these car parks Council needs to make available land for car parks for the Makris Group (cl. 10.2) as the Makris Group is legally required to provide a certain number of car parks corresponding to their development approval.

Construction levels – Connector West

In Annexure 5 a plan is attached to the deed that specifies the agreed construction levels between the developments of the Connector Road by Council and the redeveloped Shopping Centre by the Makris Group.

It is agreed between the parties that the western part of the Connector Road which adjoins the entry points of the Makris Group's development is to be built to its existing ground level (cl. 7.7).

IMPLEMENTATION:

If Council adopts the Recommendations of this report the deed will be entered into with the Makris Group. The progress of the deed will then be subject to fulfilling the conditions precedent referred to above.

Due Diligence

During the development of the deed, a legal and financial due diligence examination has been undertaken on the Makris Group with the following representing a summary of findings.

Legal:

A "Credit Wise Report" for each company that is a party to the deed was obtained from Baycorp Advantage.

Baycorp Advantage develop the report on the basis of information about a company's:

1. Shopping pattern	The type and frequency of credit applications made by a company.
2. Company information	The number and the age of director(s), industry characteristics, time since incorporation and security information
3. Age of file and pattern of enquiries	The spread of credit activity as it relates to the age of the company
4. Derogatory information recorded about a director	Information such as court judgements, bankruptcies and external administrations (i.e. liquidation, receivership)
5. Court writ information	Information on any court writs associated with the company

After an examination of the above factors, Baycorp Advantage have advised the following details for each company within the Craven Group:

6. Directors	For both Etiria (No. 25) Pty Ltd and Hallett Cove Holdings Pty Ltd: Constantinos Makris	
7. Shareholders	Etiria (No. 25) Pty Ltd	Balgra Pty Ltd Constantinos Makris
	Hallett Cove Holdings Pty Ltd	North Adelaide Village Shopping Centre
8. Derogatory information	Etiria (No. 25) Pty Ltd	1 previous external administration
	Hallett Cove Holdings Pty Ltd	No derogatory information recorded
9. Credit Enquiries	Etiria (No. 25) Pty Ltd	4 enquiries
	Hallett Cove Holdings Pty Ltd	3 enquiries
10. Court writs	No court writs have been reported	
11. Relative Risk*	Etiria (No. 25) Pty Ltd	3.59 times better than average**
	Hallett Cove Holdings Pty Ltd	2.95 times better than average**

* Relative risk is a rating determined by Baycorp on the basis of the above information when compared to other companies on the comprehensive Baycorp database.

** The scale of rating =

5 or more x worse

3 x worse

average

3 x better

5 or more x better

A better than average rating is positive

Financial:

Given the nature of the deed being entered into, a financial due diligence was undertaken by Phil Paterson of Grant Thornton Chartered Accountants with a view to reviewing the ability of Etiria (No. 25) Pty Ltd and Hallett Cove Holdings Pty Ltd to participate in the deed to redevelop the Hallett Cove District Shopping Centre.

Outcomes of the financial due diligence highlighted that the two companies entering into the deed would require the support of another member of the Makris Group in order to fulfil their commitments. As such, discussions have been held with representatives of the Makris Group, and it has been agreed that The Makris Trust would be included as a party to the deed.

Based on a review of the financial statements of the Makris Group of companies, the Makris Trust appears to be an entity of some substance and would have the capacity to support Etiria (No. 25) Pty Ltd and Hallett Cove Holdings Pty Ltd to re-develop the Hallett Cove Shopping Centre.

In addition to the above, the Makris Group has provided representations to Council that:

- The valuations of the properties contained within the financial statements of Etiria (No. 25) Pty Ltd, Hallett Cove Holdings Pty Ltd and The Makris Trust represent a true and fair valuation of the properties.
- The financial position of the Makris Group has not substantially changed from June 2003 being the date of the last financial statements examined in the due diligence process.
- Will assure Council as to the expected tenancy of the re-developed shopping centre.
- Will assure Council as to the Group's capacity to finance the re-development.

After considering the above information and the nature of the deed being entered into with the Makris Group, there appears to be minimal risk in terms of Makris' financial ability to participate in the deed to redevelop the Hallett Cove District Shopping Centre.

CONSULTATION:

The Marion South Plan and the redevelopment of the Hallett Cove Shopping Centre has been the subject of extensive community consultation during 2003. Twenty thousand brochures were distributed to residents, 8 public meetings were held; 492 response forms and 117 letters were received from the public and there were two petitions against the development of the connector road. A 500 household telephone survey was conducted in late 2003 that demonstrated high levels of support for the connector road and the redevelopment of the Hallett Cove Shopping Centre.

Since 2003 a series of public meetings, City Limits articles and public displays of information at the Hallett Cove Shopping Centre have been conducted.

BUDGET IMPLICATIONS:

The Makris Group will pay \$1,250,000 towards the cost of the Connector Road. A total funding commitment of \$12.9 million (including the Makris Group's contribution) has been secured for the development of the Connector Road. There is a separate report on the pre-tender cost estimate for the Connector Road.

ENVIRONMENT:

The redevelopment of the Hallett Cove Shopping Centre contains a number of initiatives relating to stormwater management and includes materials and design treatments to reduce energy consumption. The Shopping Centre design and accommodation of bus stops and bicycle facilities would encourage non private car use to the Shopping Centre.

CONCLUSION:

The current Hallett Cove Shopping Centre does not adequately serve the needs of the southern residents of Marion. The various elements of the shopping centre are poorly integrated and the centre is in need of significant investment to redress its small range of retail activities and poor amenity.

The redevelopment of the Hallett Cove Shopping Centre would provide convenient shopping facilities for southern residents and will generate a significant number of local jobs.

The deed fully defines the conditions precedent for the agreement and the obligations of Council and the Makris Group.

The Makris Group will contribute \$1.25 million to the development of the Connector Road, a banker's undertaking for the \$1.25 million will need to be received from the Makris prior to proceeding to tender for the construction of the road.

Appendix 1: Etiria No 25 Pty Ltd Deed

THE CORPORATION OF THE CITY OF MARION
("Council")

and

ETIRIA (NO 25) PTY LTD

and

HALLETT COVE HOLDINGS PTY LTD
(together called "Etiria")

DEED

THIS DEED is made the _____ day of _____ 2007

BETWEEN: THE CORPORATION OF THE CITY OF MARION of 245 Sturt Road, Marion SA 5047 ("Council").

AND: ETIRIA (NO 25) PTY LTD ACN 008 282 246 and HALLETT COVE HOLDINGS PTY LTD ACN 095 834 656 both of Level 6, 32 Grenfell Street, Adelaide SA 5000 (either jointly or severally as the context requires "Etiria")

RECITALS:

- A. The Council is the local government authority with jurisdiction over an area known to the Council as 'South Ward'. It has been recognised that South Ward could be enhanced by specific initiatives. Various initiatives have been identified and each of the parties to this Deed has an involvement in pursuing those initiatives.
- B. In order to give effect to those initiatives, various actions need to be taken. Each of the parties to the Deed acknowledges that it has a role to play to achieve the desired outcomes in this regard. The parties have agreed on a broad concept of the proposed reconfiguration of land ownership, redevelopment and variation of the land use for the Hallett Cove District Shopping Centre and the area immediately surrounding the Hallett Cove District Shopping Centre in accordance with the concept plan in Annexure 1 ("the Concept Plan").
- C. Council's existing hierarchy of retail and commercial centres in the suburbs of Sheidow Park, Trott Park and Hallett Cove comprises the District Centre A Zone – Hallett Cove Policy Area, a Local Commercial Zone adjacent to Lonsdale Road and Neighbourhood Centre Zones located at Lemon Road and Heysen Drive. Council wishes to see the development of the District Centre A Zone – Hallett Cove Policy Area as the dominant retail and commercial centre in the suburbs of Sheidow Park, Trott Park and Hallett Cove.
- D. The Commissioner of Highways has agreed to transfer the Railway Corridor to the Council subject to the deposit of a Plan of Land Division creating a separate Allotment for the Railway Corridor.
- E. Etiria is the registered proprietor and operator of the Hallett Cove District Shopping Centre.
- F. As at the date of this Deed the Council has obtained funding of \$11.65 million from Federal, State and Local Government and from other sources to construct the Connector Road which amount together with the Contribution Amount was calculated, on the basis of the design of the works dated November 2005, as being sufficient to enable the Connector Road and associated works to be undertaken.
- G. If Council undertakes Council's Development Etiria has agreed to grant certain rights of way and easements over the Car Parks in favour of the Strata Corporation subject to the Council making alternative car parks available on terms and conditions satisfactory to Etiria and any major tenants.
- H. Etiria and the Council entered into a Deed dated 2 December 2004 in order to record various arrangements between the parties and this Deed supersedes the rights and obligations contained therein.

THE PARTIES AGREE AS FOLLOWS:**1. INTERPRETATION****1.1 Background**

The background set out above forms part of this Deed and the parties agree that the background is true and accurate.

1.2 Definitions

In the interpretation of this Deed unless the contrary intention appears or unless the context otherwise requires, the following expressions have the following meanings:

- 1.2.1 "Application Plan" means the site plan contained in Development Application No 100/524/2003 as varied by site plan number 111-Q in the Development Application No 100/2307/2006 which site plan is contained in Annexure 2;
- 1.2.2 "Approved Plan" means the Application Plan or any amendment to the Application Plan that subsequently has been given Provisional Development Plan Consent by the DAC;
- 1.2.3 "Banker's Undertaking" means an unconditional and irrevocable undertaking by a financial institution acceptable to the Council in the form approved by the Council;
- 1.2.4 "Car Parks" means the seventy (70) car parks within Etiria's Development;
- 1.2.5 "Commencement Date" means the date all Conditions Precedent are satisfied or waived;
- 1.2.6 "Concept Plan" means the concept for the comprehensive integrated and coordinated redevelopment of the Hallett Cove District Centre Zone Policy Area A as described in Recital B and as shown in Annexure 1;
- 1.2.7 "Conditions Precedent" means the conditions precedent set out in clause 2;
- 1.2.8 "Connector Road" means a road accessible for vehicles between the suburbs of Sheidow Park, Trott Park and Hallett Cove from Berrima Road to Zwerner Drive mainly following the Railway Corridor as shown generally in the Connector Road Plan, Annexure 4 together with all associated works including the construction of two cross-overs from the carriageway to the edge of the road reserve to the relevant boundaries of the Hallett Cove District Shopping Centre on the Connector West and one cross-over from the carriageway to the edge of the road reserve to the relevant boundaries of the Hallett Cove District Shopping Centre on Lonsdale Road.
- 1.2.9 "Contribution Amount" means the amount of ONE MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,250,000.00);
- 1.2.10 "Council Budget" is an amount of \$12.9 million.

- 1.2.11 "Council's Development" means the potential redevelopment of the land comprised in Strata Plan 10132 involving the construction of a new civic centre facility on that land to include inter alia an expanded library, multi-purpose meeting hall, meeting rooms, ancillary facilities and a civic plaza;
- 1.2.12 "DAC" means the Development Assessment Commission;
- 1.2.13 "DTEI" means the Department for Transport, Energy and Infrastructure;
- 1.2.14 "Etiria's Development" means the proposed redevelopment of the Hallett Cove Shopping Centre to be carried out by Etiria in accordance with the Approved Plan and all conditions imposed by DAC in the Provisional Development Plan Consent and any amendments to the Application that subsequently have been given Provisional Development Plan Consent by the DAC;
- 1.2.15 "Hallett Cove District Shopping Centre" means the shopping centre currently conducted on Etiria's land being Certificates of Title Volume 5198 Folio 502, Volume 5314 Folio 47 and Volume 5847 Folio 479;
- 1.2.16 "Practical Completion" means, in relation to Etiria's Development, when:
- 1.2.16.1 the works comprised in Etiria's Development are reasonably fit for use and occupation;
 - 1.2.16.2 the works comprised in Etiria's Development are substantially complete and any incomplete work or defects remaining in the works are of a minor nature and number, the completion or rectification of which is not practical at that time and will not unreasonably affect occupation and use;
 - 1.2.16.3 all commissioning tests in relation to the plant and equipment have been carried out successfully; and
 - 1.2.16.4 any approvals required for occupation have been obtained from the relevant authorities and copies of documents evidencing the approvals have been provided to the superintendent;
- 1.2.17 "Practical Completion" means, in relation to the Connector Road, when:
- 1.2.17.1 the works comprised in the construction of the Connector Road are reasonably fit for use; and
 - 1.2.17.2 the works comprised in the construction of the Connector Road are substantially complete and any incomplete work or defects remaining in the works are of a minor nature and number, the completion or rectification of which is not practical at that time and will not unreasonably affect its use;
- 1.2.18 "Railway Corridor" means land owned by TransAdelaide generally between Gledsdale Road and Lander Road defined as, the portion of Certificate of Title Volume 5944 Folio 785 comprised in Pieces 72 and

73 in Filed Plan Number 218863 and a portion of Piece 71 in Filed Plan 218863, the portion of Certificate of Title Volume 5944 Folio 786 comprised of pieces 1 and 2 in Filed Plan Number 148236, the whole of Certificate of Title Volume 5721 Folio 702, and the whole of Certificate of Title Volume 5722 Folio 152 together with portions of Certificate of Title Volume 5855 Folio 552 comprised in closed roads marked "R", "S", "T", "Y" and "Z" in Road Plan 1188 and which includes the Railway Land.

- 1.2.19 "Railway Land" means that portion of the Railway Corridor marked "New Lot" on the plan contained in Annexure 3.
- 1.2.20 "Railway Land Division" means the division of the Railway Corridor to create an allotment for the Railway Land.
- 1.2.21 "Connector West" means that portion of the Connector Road comprising the alignment west of Lonsdale Road; and
- 1.2.22 "Strata Corporation" means Strata Corporation No. 10132 Incorporated and includes any successor in title to that Corporation under the *Community Titles Act 1996* or any other Act.

1.3 General

Unless the contrary intention appears:

- 1.3.1 Words denoting the singular number only include the plural number and vice versa.
- 1.3.2 Reference to any gender includes every other gender and words denoting individuals shall include corporations and vice versa.
- 1.3.3 Reference to any Act of Parliament, Statute or Regulation includes any amendment currently in force at the relevant time and any Act of Parliament, Statute or Regulation enacted or passed in substitution therefore.
- 1.3.4 A reference to the "parties" means the parties to this Agreement.
- 1.3.5 Headings are for convenience of reference only and do not affect the interpretation or construction of this indenture.
- 1.3.6 A reference to a Clause, Schedule, Annexure or exhibit is to a clause, schedule, annexure, or exhibit of or to this Agreement, each of which forms part of this Agreement.
- 1.3.7 Including and similar expressions are not and will not be treated as words of limitation.
- 1.3.8 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- 1.3.9 Where an expression is defined anywhere in this Agreement, it has the same meaning throughout.
- 1.3.10 A reference to any instrument (such as a deed, agreement or document) is to that instrument (or, if required by the context, to a part

of it) as amended, novated, substituted or supplemented at any time and from time to time.

1.4 Writing required

No variation or waiver of, or any consent to any departure by either party from, a provision of this Deed is of any force or effect unless it is confirmed in writing, signed by the parties and then that variation, waiver or consent is effective only to the extent to which it is made or given.

1.5 Waiver and exercise of rights

The failure, delay, relaxation, or indulgence on the part of either party in exercising any power or right conferred upon that party by this Deed does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other right or power under this Deed.

1.6 Entire Agreement

This Deed constitutes the sole and entire agreement between the parties and no warranties, representations, guarantees or other terms or conditions of whatsoever nature not contained and recorded herein shall be of any force.

1.7 Invalid or unenforceable provisions

If any provision of this Deed is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with their terms.

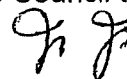
1.8 Contra Proferentem

In the interpretation of this Deed, no rule of construction applies to the disadvantage of one party on the basis that that party put forward or drafted this Deed or any provision in it.

2. CONDITIONS PRECEDENT

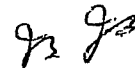
The rights and obligations of the parties under this Deed are subject to the satisfaction of each of the following conditions precedent:

2.1 Transfer of Railway Corridor to Council

2.1.1 The Commissioner of Highways transferring to the Council the Railway Corridor on or before ~~28 February~~ 2007. *16 March* 

2.1.2 The Council will, to the extent that it is able, use its best efforts to fulfil this Condition Precedent.

2.2 Relocation or Extinguishment of Easements and Rights

2.2.1 Etiria at its cost on or before ~~28 February~~ 2007 if it considers it necessary procuring relocation or if this is not possible extinguishment *16 March* 

on terms acceptable to it of the easements listed below so as to enable unrestricted development as depicted on the Approved Plan:

- 2.2.1.1 the easement over the land marked B in Certificate of Title Volume 5847 Folio 479 to Distribution Lessor Corporation;
- 2.2.1.2 the easement for sewerage purposes over the land marked A in Certificate of Title Volume 5314 Folio 47;
- 2.2.1.3 the easement for infrastructure over the land marked B in Certificate of Title Volume 5198 Folio 502.

2.2.2 Etiria will use its best efforts to fulfil this Condition Precedent.

2.3 Internal Shopping Centre Rights

2.3.1 Etiria at its cost obtaining on or before ~~28 February~~ ^{16 March} 2007 on terms acceptable to it:

2.3.1.1 the unconditional consent to the Approved Plan of any tenant or occupant of the Hallett Cove District Shopping Centre who has statutory, contractual or any other rights concerning or relating to redevelopment of the Hallett Cove District Shopping Centre or any part thereof, including but not limited to the tenant of Lease No. ~~(INSERT)~~ and **10621788**

2.3.1.2 the unconditional binding consent of any tenant or occupant of the Hallett Cove District Shopping Centre who due to Etiria's Development may or will need to have its occupancy arrangements terminated or surrendered or its business relocated.

2.3.2 Etiria will use its best efforts to fulfil this Condition Precedent.

2.4 Agreements for Supermarket & DDS

2.4.1 Etiria at its cost obtaining on or before ~~28 February~~ ^{16 March} 2007 on terms and conditions acceptable to it:

2.4.1.1 a binding agreement to lease the area marked "New Major Store" on the Plan as supermarket having a lettable area of not less than 3000m²; and

2.4.1.2 a binding agreement to lease the area marked "New DDS Major Store" on the Plan as discount department store having a lettable area of not less than 4000m².

2.4.2 Etiria will use its best efforts to fulfil this Condition Precedent.

2.5 Development Approval

2.5.1 Etiria at its cost obtaining on or before ~~28 February~~ ^{16 March} 2007 from DAC on terms and conditions acceptable to it:

- (a) provisional development plan consent in respect of Development Application No. 100/2307/2006; and

- (b) provisional building rules consent for initial demolition work in respect of Etiria's Development.

2.5.2 Etiria will use its best efforts to fulfil this Condition Precedent.

2.6 Provision of Banker's Undertaking

2.6.1 Etiria providing to the Council after the date upon which the Conditions Precedent specified in clauses 2.1 to 2.5, 2.8 and 2.9 have been satisfied but within fourteen days of the Council resolving to seek tenders pursuant to clause 2.7.3.5 two (2) Banker's Undertakings in favour of the Council and issued by a financial institution having an office in Adelaide which, in aggregate, equal the amount of the Contribution Amount.

2.6.2 If the Condition Precedent in clause 2.7 is not satisfied by the date specified in clause 2.7.1 then Council will return the Banker's Undertakings to Etiria on termination of this Deed under clause 4.3.

2.7 Awarding of Tender

2.7.1 The Council accepting, on or before the date three months after the date on which the condition precedent in clause 2.6 is satisfied, an offer made by way of tender pursuant to the tender process set out in clause 2.7.2 to undertake the construction of the Connector Road.

2.7.2 The parties acknowledge and agree that for the Council to procure the construction of the Connector Road it is required by its policies, procedures and other legislative requirements to carry out the following actions:

2.7.2.1 Enter into agreements on terms acceptable to the Council which secure sufficient funding for the Connector Road;

2.7.2.2 Procure the development of a detailed design of the Connector Road which will enable the Council to request tenders in relation to the construction of the Connector Road; and

2.7.2.3 Undertake a tender process for the construction of the Connector Road in accordance with all relevant policies and procedures of the Council and other legislative requirements.

2.7.3 The Council will accept an offer made by way of tender pursuant to clause 2.7.1 if:

2.7.3.1 the offer is made by a reputable responsible and solvent contractor;

2.7.3.2 the price tendered to undertake the construction of the Connector Road is within Council's Budget; and

2.7.3.3 the tender is a conforming tender consistent with Council's tender terms and conditions.

2.7.3.4 The Council will use its best efforts to fulfil this Condition Precedent.

2.7.3.5 Without limiting clause 2.7.3.4 the Council will seek tenders to undertake the construction of the Connector Road upon satisfaction or waiver of the Conditions Precedent contained in clauses 2.1 to 2.6 inclusive and clauses 2.8 and 2.9.

2.7.4 Clause 2.7.3 does not require the Council to award a tender or continue a tender process if the Council is of the opinion that it should terminate the tender process or refuse to award the tender for reasons of probity or good governance provided that in those circumstances the Council will retender the works to construct the Connector Road as soon as reasonably practicable thereafter.

2.7.5 If the Council does not receive a tender which complies with the criteria set out in clauses 2.7.3.2 and 2.7.3.3 the Council will in consultation with Etiria reconsider the design of the Connector Road and otherwise review the terms of the tender process and will as soon as reasonably practicable seek further tenders for the construction of the Connector Road and the provisions of clause 2.7.3 and this clause 2.7.5 shall apply in respect of such further tender.

2.7.6 If following the seeking of further tenders pursuant to clause 2.7.5 the criteria set out in clause 2.7.3.2 and 2.7.3.3 has not been satisfied both parties shall together take such further steps as shall be agreed between the parties in order to obtain such additional funding in excess of Council's Budget ("**Additional Funding**") as shall be required in order to enable Council to award the tender to construct the Connector Road in accordance with this clause 2.7 provided however that this clause does not impose an obligation on the Council to continue to seek tenders or engage a tenderer unless Additional Funding becomes available.

2.8 Mortgagee Consent

2.8.1 Etiria at its cost obtaining on or before ^{16 March 2007} ~~28 February 2007~~ the consent of the mortgagee of the Hallett Cove District Shopping Centre to this Deed.

2.8.2 Etiria will use its best efforts to fulfil this Condition Precedent.

2.9 DTEI Specifications

2.9.1 The Council obtaining approval from the Commissioner of Highways for the construction of the signalled intersection on Lonsdale Road and the construction of the Connector Road from Berrima Road across Lonsdale Road to its intersection with Gledsdale Road and Quailo Avenue.

2.9.2 The Council will use its best efforts to obtain the approval referred to in clause 2.9.1 as soon as practicable after the date of this Deed.

2.9.3 Etiria acknowledges that the approval referred to in clause 2.9.1 will be provided to the Council by the Commissioner of Highways no earlier than 21 Business Days after the date on which the Council provides to

the Commissioner of Highways a detailed design of the Connector Road. The Council then has the opportunity to review and revise such specifications. These periods will be taken into account when considering whether or not the Council has obtained the approval referred to in clause 2.9.1 as soon as practicable after the date of this Deed.

3. PROGRESS OF CONDITIONS PRECEDENT

- 3.1 All parties will co-operate with each other and keep each other fully informed in relation to the progress of applications and other matters necessary to fulfil the Conditions Precedent.
- 3.2 As soon as a Condition Precedent is fulfilled, the party responsible for fulfilling that Condition Precedent will advise the other parties by notice in writing. For the purposes of this clause 3.2 the Conditions Precedent will be deemed to have been fulfilled on the date that the last of the conditions has been fulfilled or waived.

4. SATISFACTION OF CONDITIONS PRECEDENT

- 4.1 The Council and Etiria agree that the conditions to which this Deed are subject pursuant to clauses 2.2 2.3 2.4 2.5 and 2.8 are inserted for the sole benefit of Etiria and Etiria may at any time prior to the date upon which the relevant conditions are to be satisfied by notice in writing to the Council waive the satisfaction of the conditions.
- 4.2 The Council and Etiria agree that the conditions to which this Deed is subject pursuant to clauses 2.1 2.6 2.7 and 2.9 are for the sole benefit of the Council and the Council may at any time by notice in writing to Etiria given at any time prior to the date by which the relevant conditions are to be satisfied waive the satisfaction of those conditions.
- 4.3 If any of the conditions are not fulfilled or waived before the date by which the relevant condition is to be satisfied either party may terminate this Deed by seven (7) days written notice to the other (unless the relevant condition precedent is fulfilled during the notice period).
- 4.4 If either party terminates this Deed due to the non-satisfaction of a Condition Precedent then neither party shall have any rights against the other under this Deed except in respect of a default due to a party not using its best efforts under clause 2.

5. TRANSFER OF RAILWAY LAND TO ETIRIA

Subject to the satisfaction of all of the Conditions Precedent the Council agrees to sell to an entity who is a member of the Makris Group of Companies nominated by Etiria which agrees to purchase from the Council an estate in fee simple in the whole of the Railway Land upon the following terms and conditions:

- 5.1 Purchase Price – Ten Dollars (\$10.00).
- 5.2 The transfer of the Railway Land is subject to the Council procuring the deposit of the Railway Land Division within twelve (12) months from the date of this Deed.

- 5.3 The Council will use its best efforts to procure the deposit of the Railway Land Division as soon as reasonably practicable and in any event no later than the date specified in clause 5.2.
- 5.4 Settlement shall be effected twenty one (21) days from the date of deposit of the Railway Land Division.
- 5.5 Council will not provide any warranties as to the state or condition of the Railway Land.
- 5.6 The Contract shall otherwise be on the terms and conditions of the Law Society of South Australia Contract for Sale and Purchase of Land and shall require Etiria to use the Railway Land as a car park.

6. PARTIES TO BEAR OWN RISK

- 6.1 Nothing in this Deed gives rise to any legal liability by the Council to Etiria where the Council has failed to Practically Complete the Connector Road prior to the Practical Completion of Etiria's Development.
- 6.2 Etiria hereby releases the Council from any liability as described in clause 6.1 incurred on its part and it indemnifies and saves harmless the Council with respect to any claim made by any person claiming through occupation or anticipated occupation of the Hallett Cove District Shopping Centre arising out of such delay it being the intention of the parties that the Council will bear the risks associated with the construction of the Connector Road and Etiria shall bear the risks associated with Etiria's Development.

7. CONSTRUCTION OF CONNECTOR ROAD BY COUNCIL

- 7.1 Council acknowledges that notwithstanding that Etiria may have completed Etiria's Development it is a requirement of DAC that Etiria will not be able to occupy Etiria's Development unless and until the Connector Road is completed and able to be used for vehicular access to and from Etiria's Development.
- 7.2 Subject to satisfaction of all of the Conditions Precedent the Council shall at its own cost and expense (but subject to the provisions of clause 8) procure the construction of the Connector Road in accordance with the tender documentation issued by the Council pursuant to clause 2.6.
- 7.3 Council will subject to Etiria providing the Banker's Undertaking pursuant to clause 2.6.1 procure the commencement of construction of the Connector Road no later than thirty (30) days after the Commencement Date.
- 7.4 Having regard to the matters set out in clause 7.1 and subject to satisfaction of all of the Conditions Precedent the Council will use its best endeavours to procure Practical Completion of the Connector Road as soon as reasonably practical.
- 7.5 Etiria acknowledges that when the traffic signals at the intersection of Lonsdale Road and the Connector Road become operational, the access from Lonsdale Road to the Hallett Cove District Shopping Centre existing at the date of this Deed will be closed. The Council agrees that prior to such traffic signals becoming operational it will have procured the completion of a new cross-over from Lonsdale Road to the boundary of the Hallett Cove District Shopping Centre.

7.6 For the avoidance of any doubt, the Council agrees that it will ensure that the new cross-over contemplated by clause 7.5 will be physically open for vehicular traffic on or before the date on which the traffic signals referred to in that clause become operational and, consequently, the current cross-over is closed.

7.7 The parties agree that the levels of the Connector Road where it adjoins the entry points to the Etiria Development and of the Etiria Development are indicated on the plan contained in Annexure 5 and:

7.7.1 the Council agrees to procure the Connector Road to be built to the levels indicated in the attached plan contained in Annexure 5; and

7.7.2 Etiria agrees to procure the Etiria Development to be built to the levels indicated in the attached plan contained in Annexure 5.

8. PAYMENT OF CONTRIBUTION AMOUNT

8.1 Etiria will pay the Contribution Amount to the Council in the following instalments:

8.1.1 The sum of Six Hundred and Twenty Five Thousand Dollars (\$625,000.00) on the last to occur of Practical Completion of the Connector West and the date upon which the Connector West is legally and physically open for use by vehicular traffic;

8.1.2 The sum of Six Hundred and Twenty Five Thousand Dollars (\$625,000.00) upon the last to occur of Practical Completion of the whole of the Connector Road and the date upon which the whole of the Connector Road is physically open for use by vehicular traffic.

8.2 Nothing in this Deed shall oblige Etiria to pay any amount towards the construction of the Connector Road in excess of the Contribution Amount.

9. ETIRIA'S DEVELOPMENT

9.1 Subject to satisfaction of each of the Conditions Precedent and Practical Completion of the Connector Road Etiria shall at its own cost and expense in all things cause the land which forms part of the Hallett Cove District Shopping Centre or nearby land owned by Etiria and/or any party who is an associate of Etiria within the meaning of the Corporations Act 2001 to be developed in accordance with the Approved Plan and consistent with the shopping centre's "District Centre Zoning".

9.2 It is acknowledged and agreed between the parties that the new improvements and works as marked on the Concept Plan are indicative only and notwithstanding any other provision in this Deed Etiria without the consent of the Council may vary the nature and extent of such proposed improvements and works provided that the following key features are retained:

9.2.1 development by the Council of the Connector Road

9.2.2 the primary vehicle access to the proposed new Hallett Cove District Shopping Centre is from the Connector Road to the south western boundary of the proposed new Hallett Cove District Shopping Centre running parallel with Shakes Crescent;

9.2.3 and that the retail activities provided by Etiria and the community facilities provided by Council are to be linked with a public entry access way to the west of the Hallett Cove District Shopping Centre to the adjacent community facilities to reinforce that the Hallett Cove District Shopping Centre is the focal point of retail and community activity in the suburbs of Hallett Cove, Trott Park and Sheidow Park.

9.3 Notwithstanding clause 9.2, where any variation to the Application Plan may or will have a material impact on the specific criteria set out in clauses 9.2.1 to 9.2.3 Etiria will bring such variations to the attention of the Council and the parties shall liaise with each other in relation to such variations and shall co-operate with and assist each other in order to achieve completion of the overall development upon and subject to the terms and conditions in this Deed.

10. GRANT OF CAR PARK RIGHTS AND FUTURE DEVELOPMENT OF LAND AND STRATA PLAN NO. 10132

10.1 The parties acknowledge that prior to the execution of this Deed the parties have held discussions concerning the possible future development by the Council of the land comprised in Strata Plan No. 10132 ("Strata Land") for the purpose of expanding the existing community facilities on that land.

10.2 The parties agree that if and when Council's Development receives development approval Etiria will grant rights of way and easements to the Strata Corporation comprising 70 car parks on the terms and conditions contained in Annexure 6. Contemporaneously, and in exchange and to compensate for these Council agrees to make available land for car parks to be approved by the Development Assessment Commission for car parking for the Hallett Cove Shopping Centre on terms and conditions satisfactory to Etiria.

10.3 The obligation of Etiria to grant the rights of way and easements pursuant to this clause 10 is subject to Etiria obtaining all necessary consents and approvals from major tenants of the Hallett Cove District Shopping Centre.

11. BUS TERMINAL WITHIN CENTRE

The Council agrees to use its best endeavours if necessary to assist Etiria to procure a legally enforceable agreement between Etiria and Department of Transport, Energy and Infrastructure (or such other statutory body who is responsible for bus transportation) on or prior to the date of Practical Completion of the Etiria Development for bus usage and bus terminals within the Hallett Cove District Shopping Centre as depicted on the Approved Plan on terms acceptable to Etiria.

12. APPLICATION OF BANKER'S UNDERTAKINGS

12.1 The Banker's Undertakings providing pursuant to clause 2.6.1 may be called upon by the Council if Etiria fails to pay the relevant portion or part thereof of the Contribution Amount within fourteen days of the date on which the Council notifies to Etiria that the relevant portion of the Contribution Amount is payable in accordance with clause 8.

12.2 Contemporaneously with Council's receipt of the payment by Etiria of the instalment of the Contribution Amount specified in clause 8.1.1 the Council shall return one of the Banker's Undertakings;

- 12.3 Contemporaneously with Council's receipt of the payment by Etiria of the instalment of the Contribution Amount specified in clause 8.1.2 the Council shall return the remaining Banker's Undertaking.

13. FIRST RIGHT OF REFUSAL TO PURCHASE

- 13.1 The Council agrees that should it wish to dispose of or transfer the whole or any portion of any interest (including without limit fee simple, strata title, community title or rights of way) in the land bounded by the Connector Road, Lonsdale Road, Ramrod Avenue and Zwerner Drive, then Etiria or such entity, being a member of the Makris Group of Companies, nominated by Etiria shall have the right of first refusal to purchase such interests subject to the following covenants terms and conditions:
- 13.2 This first right of refusal shall continue only so long as Etiria, or another member of the Makris Group of Companies remains the registered proprietor of the Hallett Cove District Shopping Centre.
- 13.3 The Council shall give notice in writing to Etiria of its intention to dispose of such interest (hereinafter called "the Notice") and such Notice shall constitute an offer by the Council to sell the interest to Etiria and shall specify the consideration required by the Council from Etiria for the purchase by Etiria of the said interest. Such Notice shall also include details of the terms and conditions of sale for such interest. The consideration expressed in such Notice shall not in any respect whatsoever take into account for the purposes of valuation the value of any improvements renovations or alterations made by Etiria to the interest. Further, it shall not seek to impose any more onerous obligations and duties upon Etiria or require Etiria to pay any greater pecuniary sum than that which the Council would impose or require from a purchaser other than Etiria.
- 13.4 Etiria shall within twenty eight (28) days after the service of the Notice give notice in writing to the Council of Etiria's acceptance or rejection of the Council's offer to sell. In the event of service of a notice of acceptance by Etiria on the Council there shall be deemed to be a binding contract for the sale by the Council and the purchase by Etiria of the land for the consideration stated in the notice given by the Council to Etiria (which consideration is hereinafter called "the purchase price") and otherwise on the terms and conditions specified on the Notice under clause 13.3.
- 13.5 In the event that Etiria serves a notice of rejection on the Council or does not reply to the Notice within twenty eight (28) days then the Council will be at liberty at any time thereafter to dispose of or transfer the said interest to any other person on terms and conditions previously offered to Etiria, but the Council shall not be entitled to dispose of or transfer the said interest on more favourable terms than those first offered to Etiria without first giving Etiria the opportunity of purchasing the same on the more favourable terms upon the terms and in the manner set out above.
- 13.6 The parties acknowledge that the disposal or transfer of any interest by the Council pursuant to this clause 13 is if applicable subject to the Council resolving to revoke any community land classification of that interest pursuant to Section 194(3)(b) of the Local Government Act.

14. RESTRICTION ON SALE

Each party covenants with each of the other parties that from the date of this Deed it will not mortgage, dispose of or otherwise deal with any land subject to this Deed in a manner which is inconsistent with the intentions of the parties as set out in this Deed, unless the mortgagee or other third party agrees to be bound by the terms of this Deed. Existing arrangements in place and known to all of the parties as at the date of this Deed are not subject to the terms of this clause 14.

15. ACCESS TO RAILWAY LAND

15.1 To enable the Council to construct the Connector West, it will be necessary for the Council to undertake certain excavation and backfilling of the Railway Corridor, which works may involve parts of the Railway Land. The parties agree to co-operate with each other in relation to the undertaking of these works.

15.2 From the later of:

15.2.1 the completion of the works described in clause 15.1; and

15.2.2 the date on which the Council becomes registered as proprietor of the Railway Corridor;

and expiring on the date of settlement of the purchase by Etiria from the Council of the Railway Land, the Council shall grant to Etiria for no licence fee a licence to enter upon the Railway Land for the purpose of undertaking the Etiria Development including constructing the car park within the Etiria Development and upon completion of the Etiria Development (if settlement has not been effected) to use the Railway Land for car parking purposes.

15.3 Etiria shall occupy the Railway Land at its own risk and shall indemnify the Council in respect of any actions claims proceedings demands costs or expenses which the Council may suffer sustain or incur by reason of the undertaking by Etiria of the Etiria Development during the period of the Licence referred to in clause 15.2.

16. COSTS

Unless and except as specified otherwise herein, the parties will bear their own costs and expenses incurred in connection with negotiating, agreeing and stamping this Deed and of all other transfers and instruments to be prepared, executed and stamped hereunder.

17. GST

17.1 For the purposes of this clause 17:

"GST" means the goods and services tax imposed under the GST Legislation;

"GST Legislation" means the A New Tax System (Goods and Services Tax) Act 1999 and associated legislation;

Terms used in this clause 17 which are defined in the GST Legislation have the meanings given to them in the GST Legislation.

17.2 All amounts payable under this Deed ("Payment") are exclusive of GST. The supplier may in addition to the Payment, recover from the recipient (and the

recipient shall pay or reimburse the supplier) the GST on the Payment at the same time as the Payment is due. The supplier will in respect of the taxable supply provide the recipient with a tax invoice prior to the Payment being due.

18. DEFAULT

If any party ("the Defaulting Party") commits any default hereunder, and fails to rectify that default in accordance with a written notice given by the other party giving details of the default complained of and specifying the time in which it is to be rectified (being a reasonable time in all the circumstances and being not less than thirty (30) days) then the other party may at any time thereafter (unless the default is rectified in the meantime) terminate this Deed by giving a further written notice to the Defaulting Party.

19. CO-OPERATION AND GOOD FAITH

- 19.1 The parties agree that they will co-operate with each other and at all times act in good faith and with the joint objective of successfully and expeditiously concluding all of the arrangements contemplated in this Deed and also to work together in a co-operative manner in all respects and in particular in relation to the agreeing to the nature of the works to be carried out in order to give effect to the intent of this Deed.
- 19.2 The parties acknowledge and agree that it is their objective to implement the necessary changes in land ownership and use and make the necessary variations to boundaries of certain land and to carry out the redevelopment in accordance with the Concept Plan. Both parties agree to act in good faith and to use their reasonable endeavours to achieve the outcome contemplated in the Concept Plan. Both parties agree to liaise closely with one another in relation to works programs, coordination of Practical Completion of the Connector Road and Practical Completion of the Etiria Development. In addition both parties agree to work closely to minimise as much as is practicable any disruption to users of the Hallett Cove Shopping Centre, the land subject to Strata Plan 10132 and neighbouring areas.
- 19.3 To enhance their ability to fulfil the co-operative objectives set out in this clause, the parties agree to meet within twelve (12) months of the opening of the Connector Road to discuss possible areas of collaboration in relation to the Hallett Cove Shopping Centre and Council's Development.

20. CONFIDENTIALITY

- 20.1 Each of the Council and Etiria agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose whatsoever, except for the purposes of and in the manner contemplated by this Deed, and agrees that it will:

20.1.1 keep confidential;

20.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;

20.1.3 maintain proper and secure custody of; and

20.1.4 not use or reproduce in any form,

any Confidential Information belonging to the other party.

- 20.2 The duty of confidence referred to in clause 20.1 will not extend to such of the Confidential Information as:
- 20.2.1 was known to the Receiving Party as at the date of this Deed otherwise than as a result of disclosure by the Disclosing Party;
 - 20.2.2 was in or becomes part of the public domain otherwise than as a result of a breach by the Receiving Party of its obligations under this Deed;
 - 20.2.3 is disclosed to the Receiving Party by any third party which does not owe any obligation to the Disclosing Party (directly or indirectly); or
 - 20.2.4 is required by law to be disclosed by the Receiving Party provided that the Receiving Party will immediately notify the Disclosing Party of any such requirement – if possible before making the disclosure.
- 20.3 The onus of proof of the matters referred to in clause 20.2 is on the Receiving Party.
- 20.4 Notwithstanding the provisions of clause 20.1 Confidential Information may be disclosed by the Receiving Party:
- 20.4.1 to employees, legal advisers, auditors and other consultants of a party requiring the information for the purposes of this Deed; or
 - 20.4.2 with the consent of the Disclosing Party, which consent may be given or withheld at the Disclosing Party's absolute discretion.
- 20.5 If the Receiving Party proposes to release or provide access to Confidential Information under clause 20.4.1, it will not do so until it has obtained from such employers, legal advisors, auditors or other consultants a written undertaking to keep that information confidential and not to release it to any other party.
- 20.6 The Freedom of Information Act 1991 (SA) ("**FOI Act**") gives members of the public rights to access Council documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including deeds, held by the Council subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or the preservation of personal privacy in respect of those from whom information is collected and held by the Council and other public authorities.
- 20.7 For the purposes of the FOI Act, the following clauses, annexures, schedules and appendices of the Deed are confidential:
- 20.7.1 clause 1.2.9;
 - 20.7.2 clause 2.6;
 - 20.7.3 clause 5;
 - 20.7.4 clause 8; and
 - 20.7.5 clause 12.

20.8 Unauthorised disclosure of the confidential clauses and the subject matter contained therein constitutes a breach of a party's obligations under this Deed.

20.9 For the purposes of this clause:

20.9.1 "Confidential Information" means any information (in whatever form and whether recorded or not) which is:

20.9.1.1 designated as confidential;

20.9.1.2 confidential by its nature; or

20.9.1.3 disclosed or obtained in circumstances importing an obligation of confidence;

and specifically includes (but is not limited to) the information contained in clause 20.87.

20.9.2 "Disclosing Party" means a party who disclosed its Confidential Information under this Deed and "Receiving Party" means a party who receives Confidential Information under this Deed; and

20.9.3 "third party" means and includes all persons, including all consultants, agents, officers, directors and employees of a party.

21. PARTNERSHIP

Nothing contained in this Deed will be deemed or construed by the parties on or by any third party as creating a relationship of partnership or principal and agent or of joint venture between the parties.

22. ACKNOWLEDGEMENT

22.1 Council recognises that its current zoning provides that the Hallett Cove District Shopping Centre be the dominant retailing facility in the suburbs of Sheidow Park, Trott Park and Hallett Cove. As at the date of this Deed, it is Council's intention that the Hallett Cove District Shopping Centre remains as the highest order retail and commerce centre in the suburbs of Sheidow Park, Trott Park and Hallett Cove.

22.2 Nothing in clause 22.1 shall prevent the Council from:

22.2.1 responding to a plan amendment report proposed by the relevant Minister and contributing in accordance with its statutory duties and obligations to the Minister's proposal;

22.2.2 carrying out a periodic review of the existing Development Plan itself as required by the Development Act 1993 and including proposing amendments to such plan; or

22.2.3 carrying out any statutory or common law duties imposed upon it as a Local Government Authority, or where it acts as a relevant authority under the Development Act 1993, or as a relevant authority under any other statute.

- 22.3 Both parties acknowledge and agree that upon execution of the Deed all rights and liabilities of the parties under deed dated 2 December 2004 are discharged and neither party shall have a claim against the other arising from that deed.

EXECUTED as a Deed.

ETIRIA (NO 25) PTY LTD

EXECUTED by ETIRIA (NO 25) PTY LTD in)
 accordance with the Corporations Act 2001.)
)

.....
 Constantinos Makris
 Sole Director and Sole Secretary

(Note: please affix common seal if required by the Company's Constitution)

OR

Signed by **JOHN DAVID BLUNT**)
 of Level 6, 32 Grenfell Street, Adelaide SA 5000)
 as attorney for **ETIRIA (NO 25) PTY LTD** in)
 the presence of:)

.....
 Signature of WITNESS - Signed in my)
 presence by the ATTORNEY who is either)
 personally known to me or has satisfied me as)
 to his identity*)

.....
 Kathryn Patricia Innes
 Print Full Name of Witness
 32 Grenfell Street
 Adelaide 5000
 Address of Witness

Bus. Hours Telephone No: 84152800

OR

ETIRIA (NO 25) PTY LTD by its
 attorney

.....
 Power of Attorney No. 10599636

Signed by **JONATHAN CHARLES CLARKE**
of Level 5, 63 Pirie Street, Adelaide SA 5000
as attorney for **ETIRIA (NO 25) PTY LTD** in
the presence of:

ETIRIA (NO 25) PTY LTD by its
attorney

Power of Attorney No.

Signature of WITNESS - Signed in my
presence by the ATTORNEY who is either
personally known to me or has satisfied me as
to his identity*

Print Full Name of Witness

Address of Witness

Bus. Hours Telephone No:

HALLETT COVE HOLDINGS PTY LTD

EXECUTED by **HALLETT COVE HOLDINGS**
PTY LTD in accordance with the Corporations
Act 2001:

Constantinos Makris
Sole Director and Sole Secretary

(Note: please affix common seal if required by the Company's Constitution)

OR

Signed by **JOHN DAVID BLUNT**
of Level 6, 32 Grenfell Street, Adelaide SA 5000
as attorney for **HALLETT COVE HOLDINGS**
PTY LTD in the presence of:

HALLETT COVE HOLDINGS
PTY LTD by its attorney

Power of Attorney No. dated 3 July 2006

Signature of WITNESS - Signed in my
presence by the ATTORNEY who is either
personally known to me or has satisfied me as
to his identity*,

Kathryn Patricia Innes

Print Full Name of Witness

32 Grenfell Street
Adelaide 5000

Address of Witness

Bus. Hours Telephone No: 8452800

OR

Signed by **JONATHAN CHARLES CLARKE**
 of Level 5, 63 Pirie Street, Adelaide SA 5000
 as attorney for **HALLETT COVE HOLDINGS**
PTY LTD in the presence of:

HALLETT COVE HOLDINGS
PTY LTD by its attorney

.....
 Power of Attorney No.

.....
 Signature of WITNESS - Signed in my
 presence by the ATTORNEY who is either
 personally known to me or has satisfied me as
 to his identity*

.....
 Print Full Name of Witness

.....
 Address of Witness

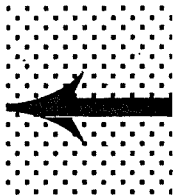
Bus. Hours Telephone No:.....

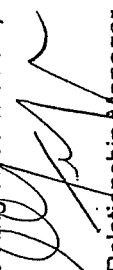

THE CORPORATION OF THE CITY
OF MARION

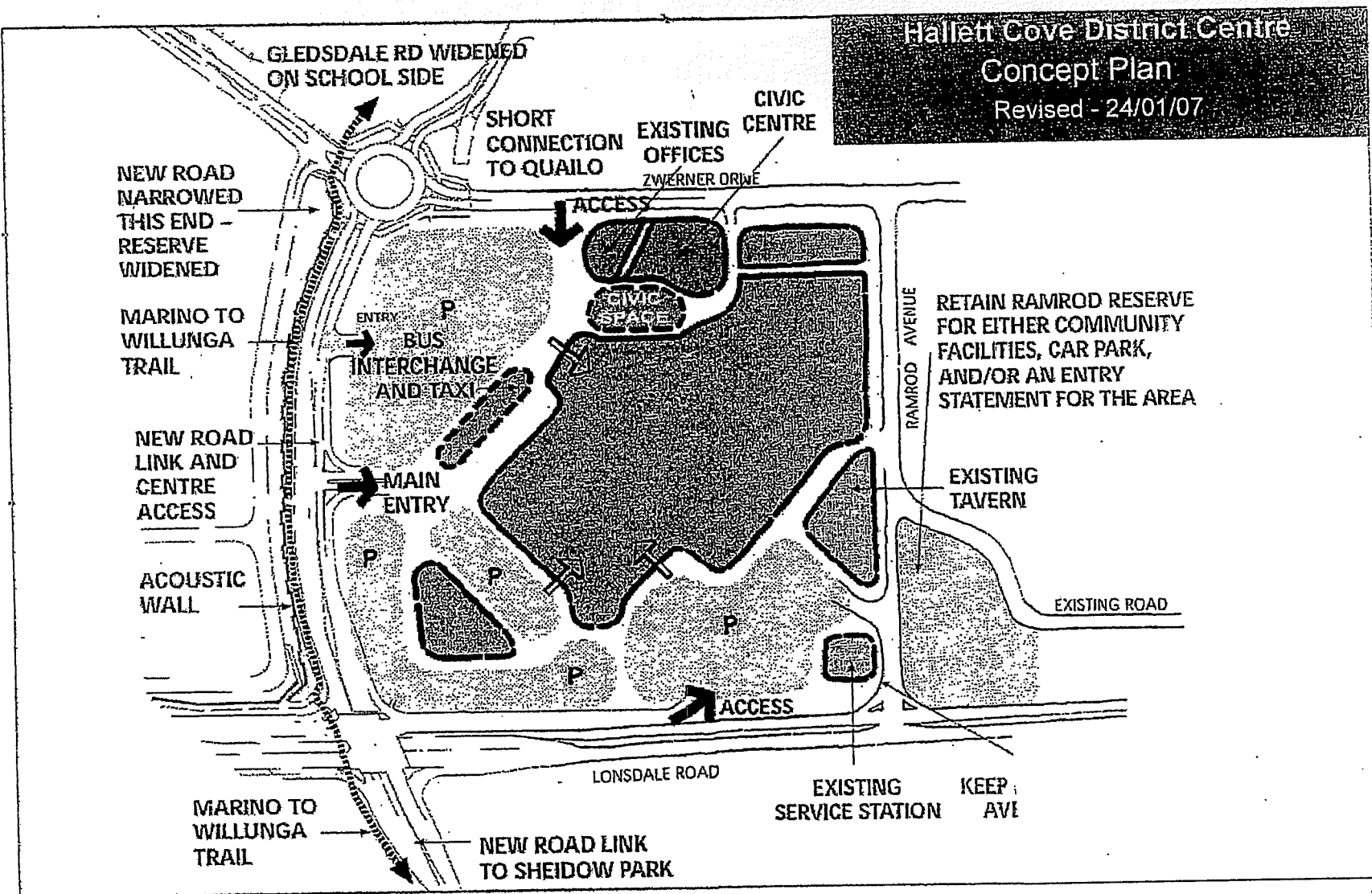
The **COMMON SEAL** of THE
 CORPORATION OF THE CITY OF
 MARION was hereunto affixed in the
 presence of:

.....
 Mayor

.....
 Chief Executive Officer



NATIONAL AUSTRALIA BANK LIMITED ACN 004 044 937 By its Attorney	
CHARLIE FRANKS of 22-28 King William Street, ADELAIDE	Senior Relationship Manager In the State of South Australia P/A No. 7075481 In the presence of
	
(Witness Signature)	Melanie Fox Foster (Print Full Name)
122 King William St Adelaide (Print Address)	(Phone No.) 8407 6116

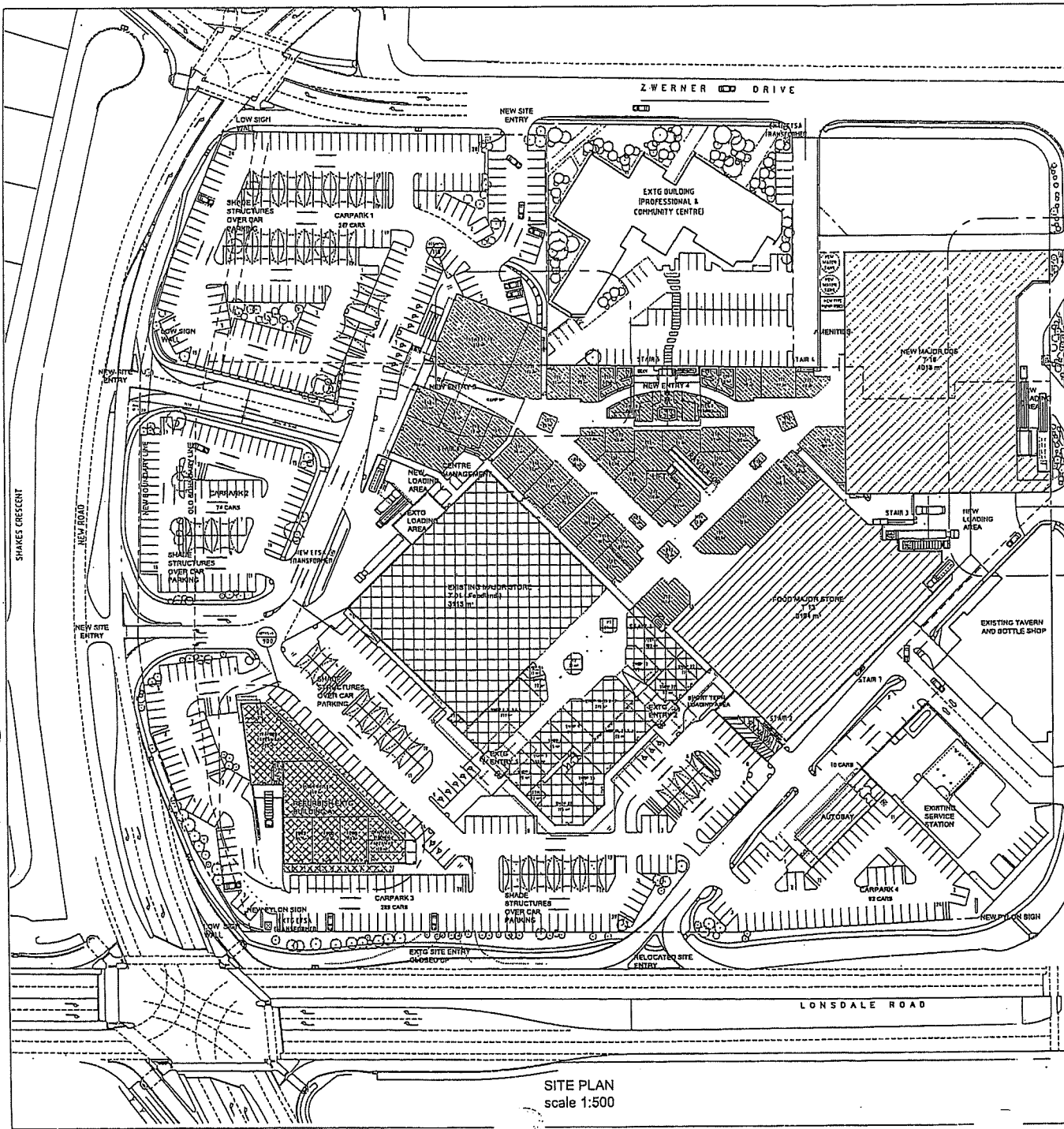


ANNEXURE 1
CONCEPT PLAN

ANNEXURE 2 APPLICATION PLAN

PLEASE CONSULT THE DEVELOPER AND ARCHITECT FOR ANY CHANGES TO THE DEVELOPMENT PLAN. THE DEVELOPER AND ARCHITECT ARE NOT RESPONSIBLE FOR ANY CHANGES TO THE DEVELOPMENT PLAN. THE DEVELOPER AND ARCHITECT ARE NOT RESPONSIBLE FOR ANY CHANGES TO THE DEVELOPMENT PLAN.

NO.	DATE	REVISION	BY
1	10/10/06	Issue for information only	SA
2	10/10/06	Issue for information only	SA
3	10/10/06	Issue for information only	SA
4	10/10/06	Issue for information only	SA
5	10/10/06	Issue for information only	SA
6	10/10/06	Issue for information only	SA
7	10/10/06	Issue for information only	SA
8	10/10/06	Issue for information only	SA
9	10/10/06	Issue for information only	SA
10	10/10/06	Issue for information only	SA

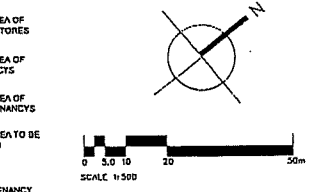


KEY

- INDICATES AREA OF NEW MAJOR STORES
- INDICATES AREA OF NEW TENANCIES
- INDICATES AREA OF EXISTING TENANCIES
- INDICATES AREA TO BE REFURBISHED
- NEW INTER TENANCY WALL
- EXISTING WALL

NOTE: FOR DIMENSIONED PLANS REFER TO PLANS AS INDICATED IN BUILDING KEY PLAN ABOVE.
REFER TO LANDSCAPE PLAN FROM WHICH FOR EXISTING AND PLANTING SCHEDULE

BUILDING KEY PLAN



FOR D.A. ISSUE ONLY

RECEIVED
20 OCT 2005
DEVELOPMENT & PLANNING

Client:
The Makris Group
Level 4
32 Grenfell Street
ADELAIDE
SA 5000
TEL: (08) 8212 1396 FAX: (08) 8212 1456

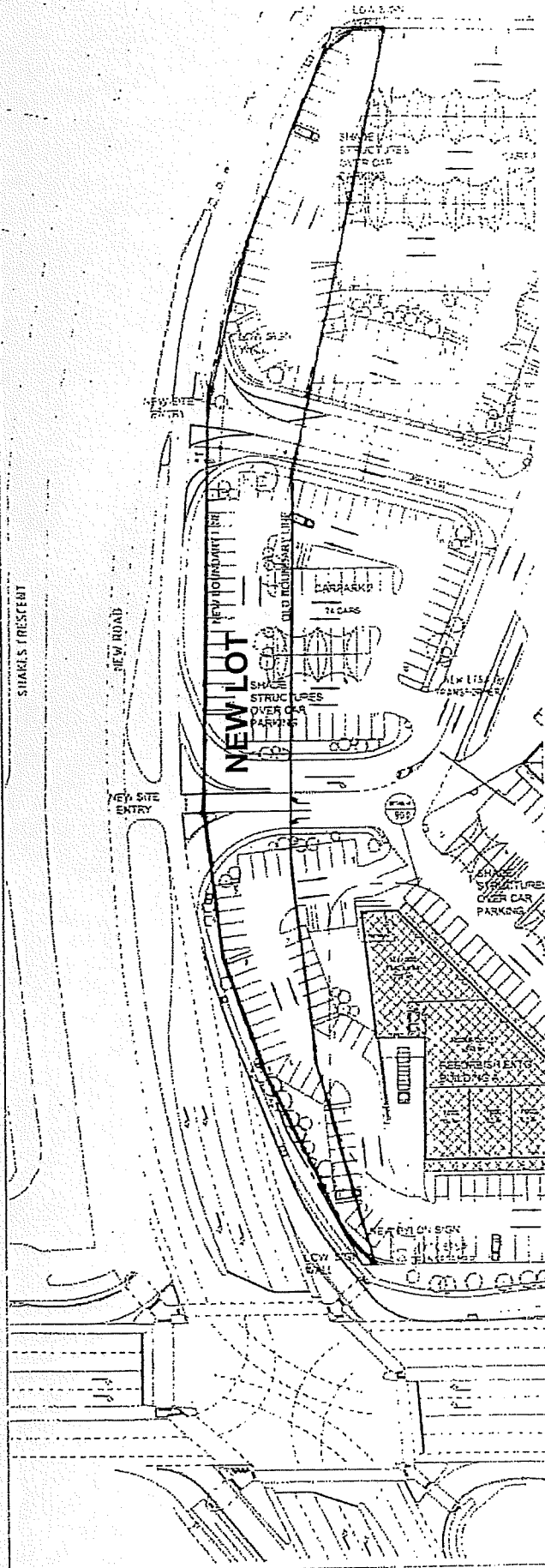
Planning Consultant:
Stuart Bain & Associates
Level 1
72 Grenfell Street
ADELAIDE SA 5000
TEL: (08) 8410 4941 FAX: (08) 8410 0100

Transportation Consultant:
Munro F. Young & Associates
102 Grenfell Road
ADELAIDE SA 5000
TEL: (08) 8217 0091 FAX: (08) 8217 6626

saunders creative
Level 3, 33 Grenfell St.
ADELAIDE
SA 5000
TEL: (08) 8212 4707
F: (08) 8212 4708
E: info@saunderscreative.com.au
W: www.saunderscreative.com.au

PROJECT: HALLETT COVE DISTRICT CENTRE DEVELOPMENT	
DRAWING: SITE PLAN NOTATIONAL	
SCALE: 1:300	PROJECT NO: 631.000
DATE: 10/10/06	REVISION: 111
BY: VN	DATE: 10/10/06
CHECKED: VN	DATE: 10/10/06
APPROVED: VN	DATE: 10/10/06

SITE PLAN
scale 1:500



THESE RESULTS ARE IN ACCORDANCE WITH THE
FINDINGS OF OTHER STUDIES WHICH HAVE
SHOWN THAT THE USE OF A
STANDARDIZED TEST IS THE MOST
EFFECTIVE METHOD OF ASSESSING
LEARNING.

DATE	DESCRIPTION	AMOUNT	BALANCE
1971-01-01	OPENING BALANCE	100.00	100.00
1971-01-15	PAYROLL	25.00	75.00
1971-02-01	RENT	15.00	60.00
1971-02-15	UTILITIES	10.00	50.00
1971-03-01	SALES	30.00	80.00
1971-03-15	PAYROLL	25.00	55.00
1971-04-01	RENT	15.00	40.00
1971-04-15	UTILITIES	10.00	30.00
1971-05-01	SALES	30.00	60.00
1971-05-15	PAYROLL	25.00	35.00
1971-06-01	RENT	15.00	20.00
1971-06-15	UTILITIES	10.00	10.00
1971-07-01	SALES	30.00	40.00
1971-07-15	PAYROLL	25.00	15.00
1971-08-01	RENT	15.00	0.00
1971-08-15	UTILITIES	10.00	10.00
1971-09-01	SALES	30.00	40.00
1971-09-15	PAYROLL	25.00	15.00
1971-10-01	RENT	15.00	0.00
1971-10-15	UTILITIES	10.00	10.00
1971-11-01	SALES	30.00	40.00
1971-11-15	PAYROLL	25.00	15.00
1971-12-01	RENT	15.00	0.00
1971-12-15	UTILITIES	10.00	10.00
1972-01-01	SALES	30.00	40.00
1972-01-15	PAYROLL	25.00	15.00
1972-02-01	RENT	15.00	0.00
1972-02-15	UTILITIES	10.00	10.00
1972-03-01	SALES	30.00	40.00
1972-03-15	PAYROLL	25.00	15.00
1972-04-01	RENT	15.00	0.00
1972-04-15	UTILITIES	10.00	10.00
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1973-01-01	SALES	30.00	40.00
1973-01-15	PAYROLL	25.00	15.00
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1973-12-01	RENT	15.00	0.00
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1974-01-15	PAYROLL	25.00	15.00
1974-02-01	RENT	15.00	0.00
1974-02-15	UTILITIES	10.00	10.00
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1981-11-15	PAYROLL	25.00	15.00
1981-12-01	RENT	15.00	0.00
1981-12-15	UTILITIES	10.00	10.00
1982-01-01	SALES	30.00	40.00
1982-01-15	PAYROLL	25.00	15.00
1982-02-01	RENT	15.00	0.00
1982-02-15	UTILITIES	10.00	10.00
1982-03-01	SALES	30.00	40.00
1982-03-15	PAYROLL	25.00	15

OFFICE OF THE DIRECTOR
SERIES T-1000
1-1-1968







REF ID: A6117
SERIALS ACQUISITION
PLANNING UNIT

REF ID: A66777
PAGE 702
10-1-1950

SECRET
NOFORN
UNCLASSIFIED

BUILDING KEY PLAN

KEY

- | | |
|-----------------------------------------------------------------------------------|-----------------------------------------|
|  | INDICATES AREA OF
NEW MAJOR STORES |
|  | INDICATES AREA OF
NEW TENANCIES |
|  | INDICATES AREA OF
EXISTING TENANCIES |
|  | INDICATES AREA TO BE
REFURBISHED |
|  | NEW INTER TENANCY
WALL |
|  | EXISTING WALL |

NOTE
FOR DIMENSIONED PLANS REFER TO
PLANS AS INDICATED IN BUILDING
KEY PLAN ABOVE

REFER TO LANDSCAPE PLAN FOR
DIVISION FOR EXTENT AND PLANTING
SCHEDULE

FOR D.A. ISSUE ONLY

Transportation Consultant
Murphy F. Young & Associates
107 Greenwich Road
Uxley
AQUILA
SA 5561
TEL: (08) 837 0091 FAX: (08) 8372 6626

Planning Consultant
Stuart Main & Associates
16-01
77 Glenview Street
Bedford Hills, NY 10503
FAX (914) 822-8158


TEL (01) 6712 1335 FAX (01) 6712 1466

Client

The Makris Group

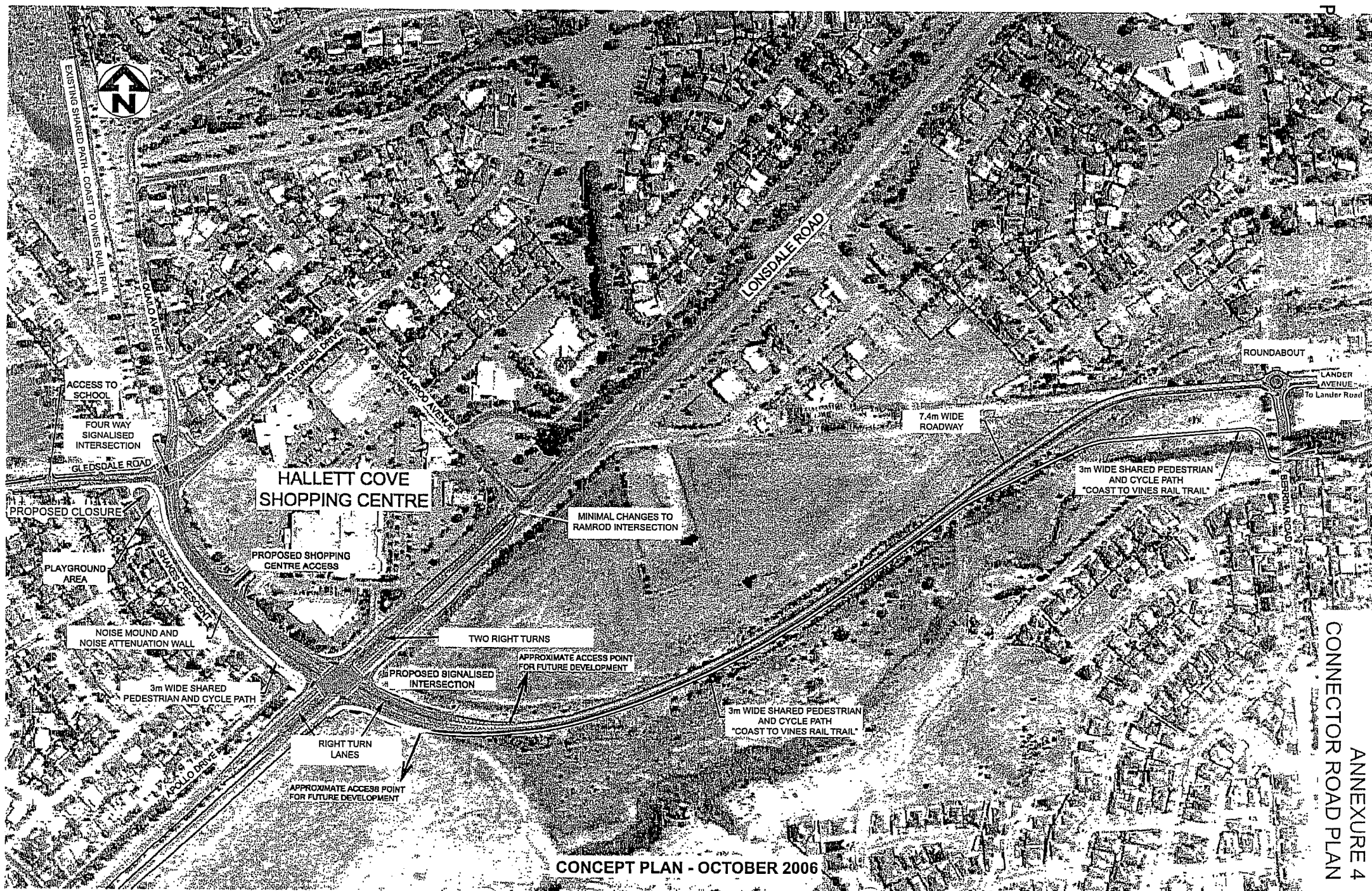
Level 4
32 Gower Street
ADELPHI
SW 5E0U

TEL (01) 6712 1335 FAX (01) 6712 1466



Dept. 5, 315 West 14th St.
 New York, NY 10011
 Tel: (212) 675-1234
 Fax: (212) 675-1234
 E-mail: info@saunderscreative.com
 Web: www.saunderscreative.com

HALLETT COVE DISTRICT CENTRE DEVELOPMENT	
SITE PLAN NOTATIONAL	
1.500	651.000
5M	111
Q	



ANNEXURE 6

EASEMENT RIGHTS OF WAY AND CAR PARKING

A free and unrestricted right of way and liberty at all times and from time to time for the Grantee and its servants agents contractors lessees licensees invitees customers visitors and other persons authorised by the Grantee and other persons claiming through the Grantee in common with the Grantor to pass and repass for all purposes and either with or without motor vehicles or other vehicles and to stand and park on that portion marked [**] in Filed Plan No. [**] for a maximum of 3 hours and to stand and park on that portion marked [**] in Filed Plan No. [**] for an unlimited time. Being portion of the land comprised in Certificates of Title Register Books Volume [**] Folio [**] and Volume [**] Folios [**] and [**], comprising seventy (70) car parks including at least 3 spaces for people with disabilities (the "**Carparking Areas**").

AND IT IS HEREBY AGREED BY THE GRANTOR AND THE GRANTEE that in the event that the Grantor wishes to redevelop the whole or any part of the land (including any buildings thereon) on which the Carparking Areas are situated which development results in the diminution of the Carparking Areas, then the following conditions shall apply:

1. The Grantee shall consent to the extinguishment of all or part of the rights in relation to the Carparking Areas as is necessary to carry out such redevelopment;
2. The Grantor shall grant to the Grantee rights similar to those contained herein over further land which similar rights may include (but are not limited to) rights to stand and park motor vehicles on the upper levels of a decked carpark and shall ensure that the number of carparking areas made available to the Grantee are not less than the Carparking Areas (the "**New Carparking Area**");
3. The Grantee's consent given pursuant to clause 1 of this instrument is subject to and conditional upon the Grantor applying for and obtaining the approval of the Development Assessment Commission to the variation of the Grantee's development application made in relation to the land contained in Certificate of Title Register Book Volume [**] Folio [**] (the "**Grantee's Land**") and to the relevant authority consenting generally to the location, dimensions, number, layout and design of the New Carparking Areas;
4. The Grantor shall pay all costs and expense associate with:
 - 4.1 the application made to the Development Assessment Commission; and
 - 4.2 the amendment and variation of the Grantee's development application
 - 4.3 referred to in clause 3 of this instrument;
5. If for whatever reason the Grantor is unable to obtain approval of the Development Assessment Commission as required by clause 3 of this instrument, then the Grantor shall not extinguish or in any way alter the rights of the Grantee in relation to the Carparking Areas or otherwise seek to relocate the Carparking Areas and clauses 6 and 7 of this instrument shall not apply;
6. Where the Grantor is successful in obtaining the approval of the Development Assessment Commission as required by clause 3 of this instrument, the Grantor shall ensure that all the New Carparking Areas are accessible at all times, are not situated more than 100 metre radius from the closest access point to the Grantee's Land except that the requisite number of spaces for people with disabilities shall be within

25 metres of the closest point of access to the Grantee's land and be as direct as possible and be open at all times;

7. The conditions in clause 6 of this instrument or such other conditions agreed to by the Grantee shall apply to any temporary parking arrangements made to facilitate the development;
8. Both the Grantor and the Grantee shall execute all further documentation necessary to give effect to the foregoing provisions;
9. All reasonable costs incurred by the Grantee in complying with any request pursuant to the foregoing provisions shall be paid by the Grantor.

AND IT IS HEREBY AGREED BY THE GRANTOR AND THE GRANTEE that the Grantor will undertake in a timely manner all necessary maintenance of the Carparking Areas

