

**INDIGENOUS LAND USE AGREEMENT  
Bunjalung of Byron Bay (Arakwal)**

**DEED OF AGREEMENT MADE**

**DECEMBER 2000.**

**PARTIES:**

**RICHARD SANDERSON AMERY, THE MINISTER FOR LAND AND WATER CONSERVATION OF THE STATE OF NEW SOUTH WALES in his capacities as the Minister administering the *Crown Lands Act 1989 (NSW)* and THE STATE MINISTER FOR NEW SOUTH WALES under the *Native Title Act 1993 (Cth)***

**AND**

**ROBERT JOHN DEBUS, THE MINISTER FOR THE ENVIRONMENT OF THE STATE OF NEW SOUTH WALES in his capacity as the Minister administering the *National Parks and Wildlife Act 1974 (NSW)***

**AND**

**DIRECTOR-GENERAL OF NATIONAL PARKS AND WILDLIFE under the *National Parks and Wildlife Act 1974 (NSW)***

**AND**

**CAPE BYRON STATE RECREATION AREA TRUST constituted under section 47B of the *National Parks and Wildlife Act 1974 (NSW)***

**AND**

**THE ARAKWAL ABORIGINAL CORPORATION incorporated under the *Aboriginal Councils and Associations Act 1976 (Cth)***

**AND**

**LORNA IRENE KELLY AND LINDA JANE VIDLER ON BEHALF OF THE ARAKWAL PEOPLE**

**AND**

**TWEED BYRON LOCAL ABORIGINAL LAND COUNCIL constituted under the *Aboriginal Land Rights Act 1983 (NSW)***

**AND**

**NEW SOUTH WALES ABORIGINAL LAND COUNCIL constituted under the *Aboriginal Land Rights Act 1983 (NSW)***

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## RECITALS:

- A. The Registered Native Title Claimants lodged Applications for Determination of Native Title NC95/1 (NG6010/98) and NC97/36 (NG6088/98) under the *Native Title Act 1993* (Cth).
- B. By these Applications for Determination of Native Title the Registered Native Title Claimants claim on their own behalf and on behalf of the Aboriginal people referred to as the Arakwal people to hold native title in the National Park Land, Iron Bark Avenue Land and the Paterson Street Land.
- C. The Minister for the Environment is considering a recommendation to the Governor that the National Park Land be reserved as a national park under the *National Parks and Wildlife Act 1974* (NSW).
- D. The Registered Native Title Claimants and the Arakwal Corporation support the reservation and management of the National Park Land as a national park and in accordance with this Agreement they seek to have the National Park named the 'Arakwal National Park' and to be involved in the care, control and management of the National Park.
- E. The Registered Native Title Claimants and the Arakwal Corporation acknowledge that any acts done by or under the Cape Byron State Recreation Area Agreement entered into on 3 April 1997, a copy of which is contained in Schedule J, are valid to the extent of any invalidity.
- F. The Registered Native Title Claimants wish to obtain a residential tenancy agreement to the Cottage at the Pass.
- G. The Minister for the Environment and the Minister for LWC, for and on behalf of the State of New South Wales, are willing to transfer certain lands and provide other assistance to the Registered Native Title Claimants in consideration of this Agreement.

## OPERATIVE PROVISIONS

The parties agree as follows:

### 1 Interpretation

1.1 In this Agreement unless the context or subject matter otherwise indicates or requires:

"Access road" means the land described in Schedule B.

"Agreement Area" means, pursuant to s.24CG(2), a complete description of the lands dealt with in this Agreement as described in Schedule A.

"ALR Act" means the *Aboriginal Land Rights Act 1983* (NSW) and regulations made under that Act, or any Act of the Parliament of New South Wales replacing that Act.

**"Arakwal Corporation"** means the Arakwal Aboriginal Corporation incorporated under the *Aboriginal Councils and Associations Act 1976 (Cth)*.

**"Arakwal people"** means those indigenous persons who hold native title (if any) in the Agreement Area.

**"Bill of works"** means the list of maintenance and improvement works contained in Schedule F that have been agreed upon by members of the Arakwal Corporation and the SRA Trust to be carried out by the SRA Trust to the Cottage at the Pass.

**"Cape Byron State Recreation Area"** means the land described in Schedule J.

**"Cape Byron State Recreation Area Agreement"** means the Deed of Agreement executed on 3 April 1997, a copy of which is contained in Schedule K.

**"Cottage at the Pass"** means the cottage premises within Cape Byron State Recreation Area described in Schedule D.

**"Director-General"** means the Director-General of National Parks and Wildlife within the meaning of the *National Parks and Wildlife Act 1974 (NSW)*.

**"Future act(s)"** means future act(s) as defined in the *NTA*.

**"Iron Bark Avenue Land"** means the land described in Schedule B.

**"Management Committee"** means the Arakwal National Park Management Committee established in accordance with Schedule G.

**"Minister for the Environment"** means the Minister administering the *National Parks and Wildlife Act 1974 (NSW)*.

**"Minister for LWC"** means the Minister for Land and Water Conservation who is also the Minister administering the *Crown Lands Act 1989 (NSW)*.

**"Management of the National Park Land"** means the conditions provided for in Schedule G for the creation, management and operation of the National Park Land and waters contained therein.

**"National Park Future Act"** means a future act which consists of the following:

- a) A proclamation reserving the National Park Land as the Arakwal National Park in accordance with this Agreement; and
- b) The preparation, adoption, implementation and amendment of a plan of management for the Arakwal National Park; and
- c) The making, amendment or revocation of a Land Management Regulation under the *NPW Act* in relation to or applicable to the National Park Land; and
- d) Any other activities undertaken in accordance with or incidental to the carrying out of such activities under the *NPW Act*, regulations or a plan of management including the

construction of public works and facilities for or related to the purpose of the management of the National Park.

**"National Park Land"** means the land described in Schedule C.

**"NPW Act"** means the *National Parks and Wildlife Act 1974* (NSW) and regulations made under that Act, or any Act of the Parliament of New South Wales replacing that Act.

**"NPWS"** means the National Parks and Wildlife Service constituted by the *National Parks and Wildlife Act 1974* (NSW).

**"NSWALC"** means New South Wales Aboriginal Land Council.

**"NTA"** means the *Native Title Act 1993* (Cth) and regulations made under that Act.

**"NTA (NSW)"** means the *Native Title (New South Wales) Act 1994* (NSW) and regulations made under that Act, or any Act of the Parliament of New South Wales replacing that Act.

**"Parties"** means the parties to this Agreement.

**"Paterson Street Land"** means the land described in Schedule E.

**"Prescribed Charges"** means the charges not payable by the landlord under section 19 of the *RT Act* and at the date of the agreement prescribed in section 11 of the *Residential Tenancies (Residential Premises) Regulation 1995* or any regulations of the Parliament of New South Wales replacing those regulations.

**"Registered Native Title Claimants"** means Lorna Irene Kelly and Linda Jane Vidler on behalf of the Arakwal people as contained in a copy of an extract from the Register of Native Title Claims in Schedule M to this Agreement (in compliance with regulation 7(2)(c) of the *Native Title (Indigenous Land Use Agreements) Regulations 1999*).

**"RT Act"** means the *Residential Tenancies Act 1987* (NSW) and regulations or any Act of the Parliament of New South Wales replacing that Act.

**"SRA Trust"** means the Cape Byron State Recreation Area Trust established under section 47GA of the *NPW Act*.

**"State"** means the Government of New South Wales and includes a Minister of the Government.

**"State Minister"** means the New South Wales Minister nominated under the *Native Title Act 1993* (Cth) being at the time of the commencement of this Agreement the Minister for Land and Water Conservation.

**"TBLALC"** means the Tweed Byron Local Aboriginal Land Council.

1.2 In this Agreement unless the context or subject matter otherwise indicates or requires:

- a) the word person includes a body corporate or a statutory corporation;
- b) words denoting the singular number shall include the plural and vice versa;

- c) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including but not limited to persons taking by novation), and assigns;
- d) a reference to anything is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- e) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- f) a reference to a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure to this Agreement;
- g) a recital, schedule or annexure or a description of the parties to this Agreement forms part of this Agreement;
- h) a reference to any agreement is a reference to this Agreement (and where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time; and
- i) a reference to a Minister, authority, body or person includes the Minister, authority, body or person for the time being performing the functions performed by that Minister, authority, body or person at the date of this Agreement.

1.3 The parties intend that this Agreement shall have effect as a Deed.

## 2 Objects

2.1 The main objects of this Agreement are that:

- 2.1.1 the National Park Land be created as the Arakwal National Park;
- 2.1.2 the Iron Bark Avenue Land be transferred to the Arakwal Corporation;
- 2.1.3 there be an opening of an access road between the Iron Bark Avenue Land and Iron Bark Avenue;
- 2.1.4 the NPWS shall consult to develop a proposal to recommend to the Governor to dedicate land in the Taylor's Lake Area as a nature reserve;
- 2.1.5 the Cottage at the Pass is available as accommodation to the Registered Native Title Claimants pending the Iron Bark Avenue Land being developed for residential occupation;
- 2.1.6 the Cape Byron State Recreation Area Agreement is validated to the extent of any invalidity; and
- 2.1.7 the Paterson Street Land be transferred to the Arakwal Corporation.

### **3 Commencement**

#### **3.1 The parties agree:**

- 3.1.1** that clauses 1, 2, 3, 4, 9, 14, 16, 17, 18 and 20 commence on the date of execution of this Agreement; and
- 3.1.2** that clauses 5, 6, 7, 8, 10, 11, 12, 13, 15, and 19 commence on the date on which the Native Title Registrar enters this Agreement on the Register of Indigenous Land Use Agreements established and maintained under the *NTA*.

**3.2** The parties agree that if this Agreement is not registered as an Indigenous Land Use Agreement to which Subdivision C of Division 3 of Part 2 of the *NTA* applies, within a period of twenty-four (24) months from the date of commencement of this clause or such further period as agreed between the State Minister and the Registered Native Title Claimants, the Agreement shall cease to have effect.

### **4 Registration as an Indigenous Land Use Agreement**

**4.1** The parties agree in accordance with section 24CG(1) of the *NTA* that the State Minister and the Registered Native Title Claimants will jointly apply for the registration of this Agreement as an Indigenous Land Use Agreement to which Subdivision C of Division 3 of Part 2 of the *NTA* applies.

**4.2** The NSWALC agrees that if it has formed the opinion as provided for in paragraphs (a) and (b) of section 203BE(5), it will provide the State Minister with written certification of the application for registration of the Agreement within twenty-eight (28) days of its execution.

**4.3** If the NSWALC does not provide such certification within 28 days, the Registered Native Title Claimants will provide to the State Minister in order to assist in applying for registration, statements in accordance with section 24CG(3)(b) (i) and (ii) of the *NTA*:

**4.3.1** to the effect that all reasonable efforts have been made (including conducting consultation with the NSWALC) to ensure that all persons who hold or may hold native title in relation to the Agreement Area have been identified, and that all of the persons so identified have authorised the making of the Agreement, and

**4.3.2** briefly setting out the grounds on which the Native Title Registrar should be satisfied that the above requirements are met.

**4.4** The parties agree that if the NSWALC does not provide certification in accordance with clause 4.2 they will use their best endeavours to provide all reasonable assistance to enable the State Minister and the Registered Native Title Claimants to obtain registration of this Agreement.



## 5 Future Acts authorised

- 5.1 For the purposes of section 24EB(1)(b) of the *NTA* the parties consent to the doing of future acts under the *NTA* comprising:
- 5.1.1 the National Park Future Acts as defined in clause 1 and further provided for in clause 6;
  - 5.1.2 the surrender of any native title rights and interests in the Iron Bark Avenue Land as provided for in clause 7;
  - 5.1.3 the opening of a road over part of Crown Reserve No. 67201 for Public Recreation to connect the Iron Bark Avenue Land to Iron Bark Avenue as provided for in clause 8;
  - 5.1.4 the surrender of any native title rights and interests in the Paterson Street Land as provided for in clause 12; and
  - 5.1.5 the subsequent transfer of the Iron Bark Avenue Land and the Paterson Street Land to the Arakwal Corporation.

## 6 National Park Future Acts

- 6.1 The Registered Native Title Claimants to the extent that they hold native title to the land and waters in the National Park Land consent to the creation of a National Park, to be named the Arakwal National Park, by the Governor under the *NPW Act* over the National Park Land within a period of three (3) years from the commencement of this clause or within such longer period as the Registered Native Title Claimants may agree to in writing.
- 6.2 The Registered Native Title Claimants and the Minister for the Environment agree that parts of the National Park Land can be created as a national park at different times during the period provided for in clause 6.1.
- 6.3 The Registered Native Title Claimants, the Minister for the Environment and the Director-General agree that the National Park will be created, managed and operated in accordance with the provisions of Schedule G entitled "Management of the National Park Land".
- 6.4 The Minister for the Environment and the Director-General before undertaking any National Park Future Act (other than the reservation of the Arakwal National Park, as provided for in clause 6.1 and 6.2) will notify and give the Arakwal Corporation not less than a period of twenty-eight (28) days in which to comment on the proposed future act (which may include but is not limited to the adoption of a plan of management, the construction of public works, infrastructure, facilities, or the carrying out of repair or demolition work in relation to the Arakwal National Park).
- 6.5 In the event that public works or facilities have to be constructed, repaired or demolished urgently for the reasonable management of the National Park or the health and safety of the public, the Minister for the Environment and the Director-General need not comply with the notification process contained in clause 6.4 provided that notice of

the undertaking of the public works and facilities is given to the Arakwal Corporation as soon as practicable after commencing to undertake the works or facilities.

## 7 Iron Bark Avenue Land

- 7.1 In addition to any assistance, compensation or benefit provided to the Arakwal people under this Agreement the Minister for LWC agrees to transfer an estate in fee simple in the Iron Bark Avenue Land to the Arakwal Corporation within a period of three (3) months from the commencement of this clause or such longer period as may be agreed between the Minister for LWC and the Registered Native Title Claimants.
- 7.2 For the purposes of clause 7.1 the Minister for LWC warrants that he is satisfied that it is in the public interest to transfer the Iron Bark Avenue Land to the Arakwal Corporation without assessing that land under Part 3 of the *Crown Lands Act 1989* (NSW), and that in exercising his power to transfer that land he has had due regard to the principles of Crown land management.
- 7.3 To enable the transfer of the estate in fee simple to take place the Registered Native Title Claimants surrender to the Crown any native title rights and interests they may hold in the land and the surrender shall take effect upon registration of the transfer of the land to the Arakwal Corporation under the *Real Property Act 1900* (NSW). Pursuant to section 24CG(2) a complete description of the area is contained in Schedule B.
- 7.4 The Arakwal Corporation acknowledges and declares that it will hold the Iron Bark Avenue Land in trust for the Arakwal people.
- 7.5 The Arakwal Corporation warrants that upon becoming the registered proprietor of the Iron Bark Avenue Land it will use its best endeavours to lodge a copy of this Agreement with the Registrar-General for safe custody and reference pursuant to section 82 of the *Real Property Act 1900* (NSW) for the purpose of having the Registrar-General record in the Register a caveat forbidding the registration of any instrument not in accordance with the declaration of trust contained in clause 7.4 so far as it concerns the Iron Bark Avenue Land.
- 7.6 The Minister for LWC will not be required to comply with clause 7.1 if the land is subject to a claim under the *ALR Act* which the Minister is required to grant under that Act or whilst the Minister is restrained by a court of competent jurisdiction from transferring the land.

## 8 Opening of an access road to connect the Iron Bark Avenue Land to Iron Bark Avenue

- 8.1 The Minister for LWC agrees to revoke part of Crown Reserve No. 67201 for Public Recreation, being an area of land 20.115 metres wide and extending along the western boundary of lot 105 in deposited plan 755695, to provide an access road between the north-eastern corner of the Iron Bark Avenue Land and Iron Bark Avenue.
- 8.2 To enable the opening of the public road to take place, the Registered Native Title Claimants surrender to the Crown any native title rights and interests they may have in that land and the surrender shall take effect upon registration of the Agreement.

- 8.3 Following surrender as provided for in clause 8.2, and before the transfer of the Iron Bark Avenue Land provided for in clause 7, the Minister for LWC will take action under section 12 of the *Roads Act 1993* to dedicate that land as a public road.

## 9 Future Nature Reserve in Taylor's Lake Area

- 9.1 NPWS shall consult with the Registered Native Title Claimants and all interested persons with a view to developing a proposal by consensus to recommend to the Governor that land in the area of Taylor's Lake be dedicated as a nature reserve under the *NPW Act*.

## 10 Cottage at the Pass

### *Tenancy of the Cottage*

- 10.1 Within a period of sixty (60) days from the date of the commencement of this clause, or as soon thereafter as maintenance work is carried out to a workman-like standard under the Bill of Works contained in Schedule F, the SRA Trust with the written consent of the Director-General shall take all necessary action pursuant to the *NPW Act* to grant a residential tenancy agreement (first term) to the Arakwal Corporation to the Cottage at the Pass (hereafter referred to in this clause as "the cottage tenancy") on the terms and conditions contained in clause 10.2 to this Agreement.

### *Conditions of Tenancy*

- 10.2 Subject to the provisions of the *NPW Act* and the *RT Act*, the cottage tenancy shall:
- (a) be in the form of and be subject to the conditions of the applicable standard form of residential tenancy agreement prescribed by the regulations under the *RT Act* in force at the date the Agreement is made; and
  - (b) be for a maximum term of three (3) years; and
  - (c) be occupied as a residence for three (3) people being nominees of the Arakwal Corporation; and
  - (d) reserve an amount of yearly rent, payable in advance for the sum of \$100; and
  - (e) provide for the SRA Trust to waive payment of rent for any week or period of weeks during the term of the residential tenancy agreement or any extension of the term of the residential tenancy agreement that the premises are in the opinion of the SRA Trust adequately maintained pursuant to the *RT Act*; and
  - (f) require the Arakwal Corporation to pay all telephone, gas, electricity, and other service charges of a similar kind pursuant to section 19 of the *RT Act* payable in respect of the premises during the term of the residential tenancy agreement and any extension of the term of that agreement; and
  - (g) not permit the assignment of the whole or any part of the Arakwal Corporation's interest under the residential tenancy agreement or the sub-letting of the Cottage at the Pass.

### ***Payment of Costs and Charges***

- 10.3 The SRA Trust with the written consent of the Director-General shall cause to be prepared the residential tenancy agreement for the cottage tenancy and shall meet the cost of preparation of the cottage tenancy and all other costs and charges in respect of the residential tenancy agreement, including stamp duty and fees but not including charges for telephone, gas, electricity, other service charges of a similar kind or any Prescribed Charges under section 19 of the *RT Act*.

### ***Extension of Tenancy***

- 10.4 Subject to the residential tenancy agreement and clause 10.2 and if requested in writing by the Arakwal Corporation not more than six (6) months and not less than three (3) months prior to the expiry of the term of the cottage tenancy, the SRA Trust with the written consent of the Director-General will extend the term of the residential tenancy agreement for a further three (3) years (second term).

### ***Negotiate Further Extension***

- 10.5 The Arakwal Corporation may make a request in writing, not more than six (6) months and not less than three (3) months prior to the expiry of the second term of the residential tenancy agreement, to the SRA Trust, to extend the term of the residential tenancy agreement for a further three (3) years if at the end of the second term of the residential tenancy agreement the Iron Bark Avenue Land is not developed for residential occupation.
- 10.6 In clause 10.5 "developed for residential occupation" means a dwelling house capable of accommodating people is constructed on the Iron Bark Avenue Land.

### ***Notice of Termination***

- 10.7 The Arakwal Corporation agrees that if, at the end of the first or second term of the residential tenancy agreement the Iron Bark Avenue Land has been developed for residential occupation, the options for the extension of the residential tenancy agreement shall not be exercised.
- 10.8 If the Arakwal Corporation intends to terminate the residential tenancy agreement during the currency of the term, they will notify the SRA Trust in writing thirty (30) days prior to vacant possession.

## **11 Validation of Cape Byron State Recreation Area Agreement**

- 11.1 The Registered Native Title Claimants and the Arakwal Corporation agree that the making of the Cape Byron State Recreation Area Agreement, and the doing of any acts under that agreement including:
- 11.1.1 the creation of a State Recreation Area at Cape Byron; and
- 11.1.2 the agreement by the then Minister for LWC to transfer land known as the Interpretive Centre Site to the TBLALC;

are validated to the extent of any invalidity that may exist, by the making of this Agreement.

- 11.2 For the purposes of this clause, the term "Interpretive Centre Site" means the land referred to as the Paterson Street Land.

## 12 Paterson Street Land

- 12.1 To enable the fee simple estate in the Paterson Street Land, that was transferred to the TBLALC pursuant to the Cape Byron State Recreation Area Agreement, to be transferred by the TBLALC to the Arakwal Corporation, in accordance with that Agreement:

- (a) the State Minister agrees to accept from the Registered Native Title Claimants a surrender to the Crown of any native title rights and interests they may hold in that land;
- (b) the Registered Native Title Claimants surrender to the Crown any native title rights and interests they may hold in that land and the surrender shall take effect upon the commencement of this clause;
- (c) in consequence of the surrender of native title the Registered Native Title Claimants, the State Minister, and the NSWALC, being parties to the native title determination application NC97/36 (NG6088/98) lodged in respect of the Paterson Street Land, have agreed that they will apply for the order set out in Schedule L to be made by the Federal Court, pursuant to subsections 87(1) and (2) of the *NTA*, that native title does not exist in relation to the Paterson Street Land; and
- (d) the TBLALC agrees to transfer the Paterson Street Land to the Arakwal Corporation within two (2) months of a determination from the Federal Court that native title does not exist in that land.

- 12.2 In the event that the Federal Court declines to make an order in terms of, or consistent with, the order provided for in Schedule L, the Arakwal Corporation agrees to make a non-claimant application, as soon as practicable, seeking a determination that native title does not exist in the Paterson Street Land, consequent upon the surrender of native title in that land as provided for in subparagraphs 12.1 (a) and (b).

- 12.3 The Registered Native Title Claimants, the Arakwal people and the Arakwal Corporation agree to waive any claim for compensation to which they may be entitled, and to indemnify Her Majesty the Queen, Her Heirs and successors, the Minister for the Environment, Minister for LWC, State Minister, Director-General, SRA Trust and any other servant, agent or officer of the State against any claims, demands, actions, suits and causes of action or awards of compensation made, in relation to or arising from the surrender of native title rights and interests under this clause.

- 12.4 The State Minister, the Registered Native Title Claimants, the NSWALC, the TBLALC and the Arakwal Corporation agree to execute all documents as may be

necessary to implement the provisions of this clause and to facilitate the transfer of the Paterson Street Land to the Arakwal Corporation.

### **13 Compensation for past acts, intermediate period acts, future acts and validated acts**

13.1 The Registered Native Title Claimants acknowledge and agree that the benefits conferred under this Agreement (in accordance with clauses 6, 7, 8, and 10) including:

13.1.1 the creation of the National Park Land as the Arakwal National Park;

13.1.2 the transfer of the Iron Bark Avenue Land to the Arakwal Corporation;

13.1.3 the opening of an access road between the Iron Bark Avenue Land and Iron Bark Avenue;

13.1.4 the tenancy of the Cottage at the Pass to the Arakwal Corporation; and

13.1.5 the undertakings by the NPWS contained in Schedule G and any assistance and benefits provided to the Registered Native Title Claimants or Arakwal Corporation under that Schedule;

represent full compensation, to which any person holding native title or at any time having held native title in or in relation to the Agreement Area or the Cape Byron State Recreation Area is entitled under any law in force in New South Wales, for the doing of any future acts under this Agreement and for any past acts and intermediate period acts occurring in or on the Agreement Area and for the doing of any acts under the Cape Byron State Recreation Area Agreement and that no claims for compensation will be made by the Registered Native Title Claimants or any person claiming to be a member of the Arakwal people under any law of the Commonwealth or the State for past acts, intermediate period acts or future acts under this Agreement in relation to the Agreement Area or for any acts done under the Cape Byron State Recreation Area Agreement.

13.2 In consideration of this Agreement, the Registered Native Title Claimants and the Arakwal Corporation discharge and release Her Majesty the Queen, Her Heirs and successors, the Minister for the Environment, Minister for LWC, State Minister, Director-General, SRA Trust and any other servant, agent or officer of the State from all claims, demands, actions, suits and causes of action or sums of money, compensation, interest, damages, costs, charges and expenses relating to the future acts under this Agreement.

13.3 The Arakwal Corporation acknowledges that it will hold the Iron Bark Avenue Land in accordance with clause 7.4, and the cottage tenancy on behalf of the Arakwal people and any other persons holding native title in relation to the land or waters in the Agreement Area, including persons who are not parties to this Agreement, and indemnifies Her Majesty the Queen, Her Heirs and successors, the Minister for the Environment, Minister for LWC, State Minister, Director-General, SRA Trust and any other servant, agent or officer of the State against any claims, demands, actions,

suits and causes of action or awards of compensation made to any person holding native title.

- 13.4 The Registered Native Title Claimants and the Arakwal Corporation agree that all persons holding native title in relation to any land or waters in the Agreement Area, including persons who are not parties to the Agreement, are entitled to share or benefit in the compensation provided under this Agreement.

## 14 Native Title

- 14.1 The Registered Native Title Claimants warrant that they are persons authorised by the Arakwal people under section 251A of the *NTA* to enter this Agreement.

- 14.2 The Arakwal Corporation warrants that under the rules of the corporation all persons holding native title to the land are entitled to be members of the corporation.

- 14.3 The parties acknowledge that except as provided in clause 7 (Iron Bark Avenue Land), clause 8 (Opening of an access road to connect the Iron Bark Avenue Land to Iron Bark Avenue) and clause 12 (Paterson Street Land):

14.3.1 this Agreement does not constitute any surrender, by the Registered Native Title Claimants of any native title rights and interests held by them in or in relation to the National Park Land or otherwise than in accordance with this Agreement; and

14.3.2 the rights (if any) of the Registered Native Title Claimants, the Arakwal people or other persons in connection with any native title held in relation to the National Park Land are not affected except as is provided for in this Agreement and to the extent necessary to give effect to this Agreement.

- 14.4 The parties acknowledge that the making of this Agreement or the doing of any acts under this Agreement by the State is not evidence that the State recognises that the Registered Native Title Claimants or the Arakwal people hold native title in the land and they agree that they will not use this Agreement or the making of this Agreement as evidence of native title in any legal proceeding relating to native title.

- 14.5 The Registered Native Title Claimants warrant that they will not assert, upon registration of this Agreement, any native title rights and interests in the National Park Land which are inconsistent with the creation of that land as a national park under the *NPW Act* and regulations, and acknowledge that by the creation of the Arakwal National Park as a national park that the public are entitled to enjoy all rights and interests which the public are entitled to enjoy in national parks.

## 15 Contractual Effect of Registered Agreement

- 15.1 Pursuant to section 24EA of the *NTA*, this Agreement has effect as if:

15.1.1 it were a contract among the parties to the Agreement; and

15.1.2 all persons holding native title in relation to any of the land or waters in the area covered by the Agreement, who are not already parties to the

Agreement, are bound by the Agreement in the same way as the native title group.

## **16 Variation of Agreement**

16.1 This Agreement may be varied only by the agreement in writing of the parties.

## **17 Dispute Resolution Mechanism**

17.1 If, during the performance of this Agreement, one of the parties does not perform their obligations under the Agreement and a dispute arises:

- (a) the aggrieved party shall give notice to the non-compliant party that they have twenty-eight (28) days to perform their obligations under the Agreement; and
- (b) if the non-compliant party has not performed their obligations under the Agreement after twenty-eight (28) days a conference will be scheduled so that the parties to the dispute may discuss the issues in dispute; and
- (c) the parties to the dispute will use their best endeavours to settle the dispute; and
- (d) if the dispute resolution mechanisms contained in this clause are not successful in resolving the dispute then any one of the parties to the dispute may commence proceedings in a court of competent jurisdiction.

17.2 The parties agree that clause 17.1 does not apply to a dispute arising from the management of the National Park under Schedule G for which another dispute resolution procedure exists in Item 13.2 of Schedule G.

## **18 Notices**

18.1 The parties agree that if under this Agreement any notice is required to be given or any document, information, certificate or statement is required to be provided to any party such notice, document, information, certificate or statement shall be in writing and shall be sent by pre-paid post or by facsimile transmission to that party's last known address or facsimile transmission number.

18.2 For the purpose of clause 18.1, Schedule I contains a list of addresses, telephone and facsimile transmission numbers for the parties that are current as at the date of execution of this Agreement.

## **19 Complete Description of Areas where there is a Surrender of Native Title**

19.1 For the purposes of section 24CG(2) of the *NTA* and regulation 7(e) of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* the parties acknowledge that the surrender of native title in this agreement is intended to extinguish any native title rights and interests that may exist in the following lands:



- 19.1.1 the Iron Bark Avenue Land as provided for in clause 7.3 (a complete description of the land is contained in Schedule B);
- 19.1.2 The access road to connect the Iron Bark Avenue land to Iron Bark Avenue as provided for in clause 8.2 (a complete description of the land is contained in Schedule B); and
- 19.1.3 the Paterson Street Land as provided for in clause 12.1 (a complete description of the land is contained in Schedule E).

## 20 General

### *Giving effect to the Agreement*

- 20.1 Each party will, at its own expense, on the request of another party in writing, do everything reasonably necessary to give effect to this Agreement and the matters contemplated by it.

### *Legal and other costs*

- 20.2 The Registered Native Title Claimants and the Arakwal Corporation shall not be responsible for any stamp duty (including fines or penalties) payable on or with respect to this Agreement or any Agreement to be entered into under this Agreement or any act done under this Agreement.
- 20.3 The parties are otherwise to bear their own costs.

### *Governing Law*

- 20.4 This Agreement is governed by the law in force in the State of New South Wales.

IN WITNESS OF their Agreement and in compliance with regulation 7(b) of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* the parties agree to the application being made have hereunder signed their names and affixed their seals

Signed sealed and delivered  
by **RICHARD SANDERSON AMERY**,  
the Minister for Land and Water Conservation  
of the State of New South Wales and the  
State Minister for New South Wales under  
the *Native Title Act 1993* (Cth) in the presence of:

Signed sealed and delivered  
by **ROBERT JOHN DEBUS**,  
the Minister for the Environment  
of the State of New South Wales  
in the presence of:

\_\_\_\_\_  
Signed sealed and delivered  
by **Brian Gilligan,**  
the **Director-General of**  
**National Parks and Wildlife**  
of the State of New South Wales  
in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Signed sealed and delivered  
by **CAPE BYRON STATE RECREATION**  
**AREA TRUST**  
Trust Member Representative  
in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
The Common Seal of the  
**ARAKWAL ABORIGINAL CORPORATION**  
was hereunto affixed in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Governing Committee Members.

\_\_\_\_\_  
Signed sealed and delivered by  
**LORNA IRENE KELLY,**  
Applicant  
in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Signed sealed and delivered by  
**LINDA JANE VIDLER,**  
Applicant  
in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
The Common Seal of  
**NEW SOUTH WALES ABORIGINAL**  
**LAND COUNCIL**  
was hereunto affixed in the presence of:

\_\_\_\_\_

---

**The Common Seal of  
TWEED BYRON LOCAL ABORIGINAL  
LAND COUNCIL**  
was hereunto affixed in the presence of:

---

**Schedule A**

**[Includes the areas described in Schedules B; C, D, E and J.]**

## Schedule B

### *The Iron Bark Avenue Land*

AMG Zone 56 Coordinates for the corner stations of Lot 435 in DP729107 numbered 1 to 5 on Diagram "A" attached.

| Station | Easting   | Northing   |
|---------|-----------|------------|
| 1.      | 559952.40 | 6828876.20 |
| 2.      | 560090.70 | 6828852.70 |
| 3.      | 560076.10 | 6828768.05 |
| 4.      | 559958.70 | 6828787.50 |
| 5.      | 559950.65 | 6828851.50 |

### *The Iron Bark Avenue Land Access Road*

AMG Zone 56 Coordinates for the corner stations of an access road between the north-eastern corner of the Iron Bark Avenue Land and Iron Bark Avenue numbered 1 to 4 on Diagram "B" attached.

| Station | Easting   | Northing   |
|---------|-----------|------------|
| 1.      | 560070.61 | 6828876.81 |
| 2.      | 560098.84 | 6828884.02 |
| 3.      | 560091.03 | 6828852.17 |
| 4.      | 560065.81 | 6828856.98 |

## Schedule C

### *The Arakwal National Park*

AMG Zone 56 Coordinates for the corner stations of Lot 171 in DP755695 numbered 1 to 6 on Diagram "D" attached.

| Station | Easting   | Northing   |
|---------|-----------|------------|
| 1.      | 560618.62 | 6830367.11 |
| 2.      | 560693.12 | 6830351.70 |
| 3.      | 560668.18 | 6830229.50 |
| 4       | 560581.31 | 6830247.70 |
| 5.      | 560599.43 | 6830265.39 |
| 6.      | 560609.38 | 6830297.56 |

AMG Zone 56 Coordinates for the corner stations of Lot 454 in Dp48493 numbered 1 to 6 on Diagram "E" attached.

| Station | Easting   | Northing   |
|---------|-----------|------------|
| 1.      | 560852.37 | 6831009.50 |
| 2.      | 561118.12 | 6830962.54 |
| 3.      | 560887.35 | 6829837.66 |
| 4       | 560661.01 | 6829876.67 |
| 5.      | 560674.11 | 6829943.53 |
| 6.      | 560644.86 | 6830005.71 |

AMG Zone 56 Coordinates for the corner stations of Lot 428 in DP729069 numbered 1 to 5 on Diagram "F" attached:

| Station | Easting   | Northing   |
|---------|-----------|------------|
| 1.      | 560882.19 | 6829821.83 |
| 2.      | 561165.58 | 6829771.24 |
| 3.      | 560729.22 | 6828808.55 |
| 4       | 560145.23 | 6828936.05 |
| 5.      | 560865.85 | 6829728.18 |

AMG Zone 56 Coordinates for the corner stations of Lot 324 in DP755695 numbered 1 to 6 on Diagram "G" attached:

| Station | Easting   | Northing   |
|---------|-----------|------------|
| 1.      | 560625.42 | 6829390.42 |
| 2.      | 560713.41 | 6829357.71 |
| 3.      | 560689.86 | 6829295.30 |
| 4       | 560701.13 | 6829290.16 |
| 5.      | 560614.21 | 6829063.01 |
| 6.      | 560513.94 | 6829102.40 |

AMG Zone 56 Coordinates for the corner stations of Lot 437 in DP729107 numbered 1 to 14 on Diagram "H" attached:

| Station | Easting   | Northing   |
|---------|-----------|------------|
| 1.      | 560064.63 | 6828856.43 |
| 2.      | 560070.95 | 6828877.48 |
| 3.      | 560099.31 | 6828883.81 |
| 4.      | 560145.18 | 6828936.10 |
| 5.      | 560731.54 | 6828809.08 |
| 6.      | 560441.49 | 6827967.39 |
| 7.      | 559700.21 | 6828102.74 |
| 8.      | 559820.57 | 6828443.78 |
| 9.      | 560302.58 | 6828359.72 |
| 10.     | 560339.89 | 6822564.73 |
| 11.     | 560117.50 | 6828606.35 |
| 12.     | 560123.35 | 6828625.38 |
| 13.     | 560110.67 | 6828628.36 |
| 14.     | 560108.56 | 6828842.83 |

AMG Zone 56 Coordinates for the corner stations of Lot 427 in DP729068 (not reserved as part of Cape Byron State Recreation Area by notification in the Government Gazette dated 4 December 1998) numbered 1 to 6 on Diagram "T" attached:

| Station | Easting   | Northing   |
|---------|-----------|------------|
| 1.      | 561126.04 | 6831007.34 |
| 2.      | 561285.05 | 6830927.78 |
| 3.      | 561456.96 | 6830970.78 |
| 4.      | 561676.14 | 6830788.03 |
| 5.      | 561166.87 | 6829773.20 |
| 6.      | 560881.08 | 6829820.50 |

AMG Zone 56 Coordinates for an area bounded by Lots 1 and 10 DP270196, Lot 437 DP729107, the mean low water mark of the South Pacific Ocean and the easterly prolongation of the southern boundary of Lot 1 in DP270196, numbered 1 to 4 on Diagram "J" attached:

| Station | Easting   | Northing   |
|---------|-----------|------------|
| 1.      | 560370.81 | 6827982.88 |
| 2.      | 560494.28 | 6827959.45 |
| 3.      | 560267.04 | 6827191.26 |
| 4.      | 560136.20 | 6827234.60 |

## Schedule D

### *Cottage at the Pass Land Description*

The dwelling also known as Parkers Cottage that is situated within the Cape Byron State Recreation Area, on the corner of Lighthouse Road and Brooke Drive, Byron Bay, and an area surrounding Parkers Cottage which the National Parks and Wildlife Service and the Registered Native Title Claimants have agreed will form part of the residential tenancy agreement referred to in clause 10.

The Cottage and the agreed boundary of the surrounding area are shown on Diagram "M".

The AMG Zone 56 Coordinate locating the Cottage at the Pass Land is numbered 1 on Diagram "N" attached.

| <b>Station</b> | <b>Easting</b> | <b>Northing</b> |
|----------------|----------------|-----------------|
| 1.             | 561363.51      | 6831599.49      |



## Schedule E

### *The Paterson Street Land*

AMG Zone 56 Coordinates for the corner stations of Lot 452 in DP48493 numbered 1 to 7 on Diagram "C" attached.

| <b>Station</b> | <b>Easting</b> | <b>Northing</b> |
|----------------|----------------|-----------------|
| 1.             | 560864.00      | 6831087.40      |
| 2.             | 560996.00      | 6831064.70      |
| 3.             | 561037.00      | 6831019.60      |
| 4              | 561088.80      | 6830992.25      |
| 5.             | 561121.45      | 6830987.50      |
| 6.             | 561115.70      | 6830961.15      |
| 7.             | 560848.10      | 6831009.00      |

## Schedule F

### *Bill of Works for the Cottage at the Pass*

1. The construction of toilet, shower and laundry facilities as per Diagrams 'K1', 'K2', 'K3' and 'K4' attached.
2. Minor kitchen alterations to area where shower removed with installation of kitchen bench.
3. The connection of a front verandah as per Diagrams 'K1' and 'K3' attached.
4. The minor alteration to the existing two bedrooms to make them individual rooms rather than walk through.
5. Paint interior of cottage.

## Schedule G "Management of National Park".

### 1 Establishment of Management Committee

#### 1.1 Constitution of Management Committee

1.1.1 The Minister will within a period of sixty (60) days from the reservation of the Arakwal National Park constitute a special liaison advisory committee as an advisory committee under the NPW Act.

1.1.2 The special liaison advisory committee shall be subject to the provisions of the NPW Act and to the extent that there may be any inconsistency between those provisions and the provisions of this Agreement in relation to the special liaison advisory committee, the provisions of the NPW Act shall prevail.

1.1.3 The parties acknowledge that the Minister may constitute other advisory committees for the Arakwal National Park or for a combination of lands that include the Arakwal National Park.

#### 1.2 Name of Management Committee

1.2.1 The special liaison advisory committee to be constituted in accordance with this Agreement shall be named the "Arakwal National Park Management Committee" (Management Committee).

#### 1.3 Composition of Management Committee

1.3.1 The Management Committee shall consist of the following persons appointed by the Minister:

- (a) three (3) persons nominated by the Arakwal Corporation, who shall be members of the Arakwal Corporation; and
- (b) three (3) officers or employees of NPWS nominated by the Director-General. One of these persons must be a senior officer of NPWS who has a current delegation (with limitations or conditions) under the NPW Act to perform all or any of the powers and functions of the Director-General in relation to the care control and management of the Arakwal National Park; and
- (c) one (1) Byron Shire Councillor who is for the time being a member of the Byron Shire Council Aboriginal Consultative Committee.

#### 1.4 Procedure of Management Committee

1.4.1 The procedure for the calling of meetings of the Management Committee and for the conduct of business at those meetings, subject to this Agreement and the *NPW Act*, shall be as determined by the Management Committee.

1.4.2 Four (4) members of the Management Committee shall form a quorum at any meeting of the Management Committee provided at least two of those members are nominees of the Arakwal Corporation and one is a nominee of the Director-General. Any duly convened meeting at which a quorum is present shall be competent to transact any business of the Committee.

## 1.5 Decisions of Management Committee

1.5.1 Wherever possible a decision of the Management Committee is to be reached by consensus of the members of the Committee.

1.5.2 A decision supported by a majority of the votes cast at a meeting of the Management Committee at which a quorum is present shall be the decision of the Committee.

## 1.6 Secretary of Management Committee

1.6.1 The Director-General shall appoint a secretary (the secretary) to the Management Committee.

1.6.2 The costs of the secretary, including remuneration, shall be met by the NPWS.

1.6.3 The secretary may be an officer or employee of NPWS or another person.

1.6.4 The Director-General shall give due regard to the recommendations of the Management Committee with respect to the appointment of the secretary and that appointment may include a member of the Arakwal Corporation if they have sufficient expertise to carry out the functions of a secretary as provided in clause 1.6.5.

1.6.5 The functions of the secretary to the Management Committee shall include:

- (a) convening meetings of the Management Committee in a timely manner and making all necessary arrangements for the attendance of members at the meeting;
- (b) receiving and responding to all Management Committee correspondence in a timely manner;
- (c) maintaining the accounts and records of the Management Committee;
- (d) recording the names of members in attendance and the names of any members absent from each meeting of the Management Committee and in respect of any member absent from a meeting, whether the member was absent without leave of the Committee or without being excused by the Committee;
- (e) taking minutes of the meetings of the Management Committee as instructed by the Committee;

- (f) executing documents on behalf of the Management Committee from time to time as authorised and required by the Committee; and
- (g) other matters relating to the Management Committee as directed by the Management Committee.

## 2 Role, responsibility and functions of Management Committee

### 2.1 Recommendations to NPWS

2.1.1 The Management Committee may make recommendations to the Director-General for the Arakwal National Park concerning the care control and management of the Arakwal National Park.

2.1.2 The Management Committee may make recommendations to the Director-General regarding educational and interpretative policies to be adopted by the Director-General and NPWS in relation to the Arakwal National Park.

### 2.2 Exercise of functions in accordance with Plan of Management

2.2.1 The Management Committee must exercise its functions under this Schedule in accordance with any plan of management in force with respect to the Arakwal National Park under the *NPW Act*.

2.2.2 In exercise of its functions with respect to the care control and management of any part of the National Park Land for which no plan of management is in force under the *NPW Act*, the Management Committee shall consult with and have regard to the advice of the Director-General.

### 2.3 Reporting

2.3.1 At least once every twelve months the Management Committee shall forward a report in writing to the Director-General containing the following information:

- (a) details of the frequency of meetings of the Management Committee held over the preceding period of twelve (12) months, the members who attended those meetings, the members who were absent from those meetings without leave of the Committee or without being excused by the Committee and other information considered relevant by the Management Committee to be included in the report; and
- (b) such other information as may be requested from time to time by the Director-General and which the Management Committee determines to be appropriate to include in the report.

## 2.4 Frequency of Meetings

- 2.4.1 A quorum of the Management Committee shall meet a minimum of three (3) times per year on the dates and times and at the locations determined by the Management Committee.
- 2.4.2 A meeting of the Management Committee may be conducted by telephone where the members consider it would be expedient or appropriate to do so or the urgency of the business to be transacted or considered would prevent the members from meeting in person.
- 2.4.3 Any member may at any time request the secretary to the Management Committee to convene a meeting of the members.
- 2.4.4 Whether a meeting should be open or closed is to be determined by the Management Committee.

## 3 Plan of Management and other Operational Plans

### 3.1 Preparation of Plan of Management

- 3.1.1 The Director-General shall cause a plan of management to be prepared for the Arakwal National Park pursuant to the *NPW Act*.
- 3.1.2 The Director-General must cause the plan of management to be prepared according to the recommendations of the Management Committee and if the Minister does not adopt those recommendations he must provide the Management Committee with reasons.
- 3.1.3 Without derogating from Part 5 of the *NPW Act*, the plan of management shall provide for the conduct of studies concerning the threat, if any, to threatened or endangered species of animal-life or plant-life by the exercise of rights to hunt or fish or to gather traditional foods in the area of the plan of management, by the Registered Native Title Claimants to the extent that they are able to do so under the law in or in relation to the area or by other indigenous persons before any such rights are exercised, and for the regular monitoring of the exercise of those rights.
- 3.1.4 The parties agree that if such studies are undertaken pursuant to clause 3.1.3 and a recommendation is made as a result of those studies the recommendation to restrict certain activities shall be put to the management committee for its decision on whether it will recommend to the Director-General that the activities should continue.

### 3.2 Independent Assessment

- 3.2.1 The nominees of the Arakwal Corporation shall have the right to obtain from any person with relevant qualifications or experience an independent assessment of the plan of management prepared for the Arakwal National Park and all other

operational plans, planning and assessment documents, reports, and surveys that impact on the care control and management of the Arakwal National Park.

3.2.2 NPWS shall meet the reasonable costs of any such independent assessment up to a maximum amount of \$5,000 in any single financial year upon receipt from the Arakwal Corporation of a fully itemised bill of costs by the person who carried out the independent assessment and a copy of all written instructions (original and supplementary) given to that person, as well as a note containing a summary of any oral instructions given. The NPWS shall not be liable for any additional costs incurred by the nominees of the Arakwal Corporation without its consent.

## 4 Role and responsibility of National Parks and Wildlife Service

### 4.1 Recommendations by Management Committee

4.1.1 The Director-General and NPWS shall consult with the Management Committee in all matters relating to the care control and management of the Arakwal National Park and shall consider all recommendations made by the Management Committee in relation thereto.

4.1.2 The Director-General shall not refuse to adopt, and shall not adopt subject to conditions, a recommendation of the Management Committee concerning the care control and management of the Arakwal National Park without first inviting the Management Committee to make submissions in support of the recommendation and considering any such submissions which are made by the Management Committee within a reasonable time thereafter.

4.1.3 In the event that the Director-General decides not to adopt, or decides to adopt subject to conditions, any recommendation of the Management Committee in relation to the care control and management of the Arakwal National Park the Director-General shall give in writing to the Committee reasons for making that decision.

### 4.2 Independence of Management Committee

The Director-General and the NPWS shall permit the Management Committee to function with the highest level of autonomy and independence available to it under law.

### 4.3 Regulations

The Minister shall consult with the Management Committee before the making amending or repealing of any proclamations regulations or by-laws in respect of the Arakwal National Park unless proclamations regulations or by-laws apply to all National Parks under the *NPW Act*.

#### 4.4 Funding for the Management Committee

##### 4.4.1 NPWS shall meet the following costs and expenses:

- (a) the costs that are reasonably required for the administration of the Management Committee; and
- (b) any expenses reasonably incurred by members of the Management Committee in the performance of their duties as members of the Management Committee; and
- (c) the reasonable travel and ancillary costs of the members of the Management Committee nominated by the Arakwal Corporation to attend meetings of the Management Committee and in connection with the business of the Management Committee.

### 5 Insurance

#### 5.1 Management Committee members and others

- 5.1.1 Where Management Committee members or voluntary workers authorised by the Director-General or NPWS voluntarily work on or off the lands on projects pursuant to this agreement those members and workers will be covered under the Treasury Managed Fund against any injury sustained during or arising from that work.
- 5.1.2 The Minister and the Director-General agree that members of the Management Committee will be covered under the Treasury Managed Fund against any personal injury sustained while engaged in official duties both on and off the lands.
- 5.1.3 The Minister agrees that the State will provide indemnity for Management Committee members when acting *intra vires* and in good faith in the discharge of their duties (whether acting individually or collectively).

### 6 Exemption from fees

- 6.1 The parties agree that members of the Arakwal Corporation and other indigenous persons authorised by the Arakwal Corporation will not be liable to pay entry, camping or any other fees (excluding payment of gas facilities) for use of or access to the lands should any be imposed for the National Park Lands.
- 6.2 The parties agree that such access without fees does not give any rights to use of the NPWS's, goods, plant, machinery or utilities on or for the lands without the express authorisation of the Director-General and that fees and charges may be levied for such use.

### 7 Restriction on dealings

Except as provided for in this Agreement, the Minister and the Director-General covenant not to grant a lease, licence, easement, or permit in respect of any land



within the Arakwal National Park or otherwise deal with such land under the *NPW Act* (to the extent authorised by the Act) without first notifying the Registered Native Title Claimants and the Arakwal Corporation and giving them an opportunity to comment on the proposed dealing.

## 8 Access rights

8.1 Subject to this Schedule, the *NPW Act* and regulations, a plan of management, section 211 of the *NTA* and to the extent able to be exercised by law or authorised by law, all members of the Arakwal Corporation shall have access to the National Park lands for the following purposes:

- (a) protection and conservation of cultural heritage and areas of cultural significance;
- (b) the conduct of ceremonies under traditional law or custom;
- (c) gathering material for traditional medicines, ceremonies and food; and
- (d) for fishing and hunting purposes.

## 9. Research and Information

### 9.1 Cultural Sites

9.1.1 The Director-General shall implement a program to identify and record Aboriginal cultural sites within the Arakwal National Park.

9.1.2 The program shall be developed and implemented in consultation with the Arakwal Corporation and the Management Committee.

9.1.3 The Director-General and NPWS shall keep confidential the nature and location of any sacred site identified and recorded pursuant to this Schedule and, unless otherwise required by law shall not, without the consent of the Arakwal Corporation, disclose any information about the site to persons other than the Registered Native Title Claimants, the Arakwal People and the Management Committee.

### 9.2 Access to information

9.2.1 The nominees of the Arakwal Corporation may request the Director-General to provide them with access to documents or information in the possession of NPWS relating to the Arakwal National Park and the Director-General shall, so far as is reasonably practicable, comply with that request.

9.2.2 The Director-General may refuse to give access to any document that is an exempt document within the meaning of the *Freedom of Information Act 1989*, subject to privilege, any privacy laws, or information that was provided to the Director-General in confidence.

## **10 Employment**

### **10.1 Positions for indigenous persons**

- 10.1.1 The Minister and the Director-General shall provide for the appointment under the *Public Sector Management Act 1988* of at least three (3) indigenous persons in the administration or care control and management of the Arakwal National Park.
- 10.1.2 NPWS shall specify as a desirable qualification for the appointment or employment of any indigenous person in the administration or care control and management of the Arakwal National Park that the person be a member of the Arakwal People.
- 10.1.3 NPWS shall request in writing to the Arakwal Corporation to certify in writing whether or not an applicant for appointment to a position with NPWS or for employment by NPWS is a member of the Arakwal Corporation. The Arakwal Corporation shall reply within fourteen (14) days of receiving that request.

### **10.2 Selection procedures**

- 10.2.1 NPWS shall consult with the Management Committee and have regard to the recommendations of the Management Committee about the procedures to be adopted for the selection and appointment of a person to a position with NPWS where the duties and functions of the position shall require the officer to be responsible for or to be substantially involved in the day to day care control and management of the Arakwal National Park.
- 10.2.2 NPWS shall include a person nominated by the Arakwal Corporation as an independent member on any selection committee convened to consider applicants for appointment to a position with NPWS where the duties and functions of the position shall require the officer to be responsible for or to be substantially involved in the day to day care control and management of the Arakwal National Park.
- 10.2.3 NPWS shall consider the suggestions and comments of the Management Committee in relation to the employment of all persons who shall be responsible for or who shall be substantially involved in the day to day care control and management of the Arakwal National Park.

### **10.3 Cross-cultural awareness**

NPWS shall ensure that not later than six (6) months after an officer or employee of NPWS commences duties involving the officer or employee in the administration planning care control and management of the Arakwal National Park, the officer or employee attends a cross-cultural awareness course the broad objectives of which are agreed to by the Arakwal Corporation.

## **11 Training**

### **11.1 Training outside employment**

- 11.1.1 The Arakwal Corporation may establish an Aboriginal Training Program ("the training program") for the education and skills training of adult indigenous persons in areas relevant to the administration planning care control and management of the Arakwal National Park.
- 11.1.2 The training program may take the form of traineeships to be offered by the Arakwal Corporation in consultation with NPWS to adult indigenous persons to undertake a course of study in a secondary or tertiary educational institution or a course of training in a skills training program approved by NPWS.
- 11.1.3 The traineeships may be awarded by the Arakwal Corporation in such manner and subject to such terms and conditions as the Arakwal Corporation thinks fit.
- 11.1.4 If requested by the Arakwal Corporation, NPWS shall endeavour to secure funds up to an amount of \$150,000 over three years to meet the cost of the traineeships.
- 11.1.5 The funds secured by NPWS for the traineeships shall be allocated by NPWS to the holders of the traineeships in the amounts determined by NPWS in consultation with the Arakwal Corporation.

### **11.2 Training within employment**

- 11.2.1 NPWS shall ensure that indigenous persons employed by NPWS in the administration or care control and management of the Arakwal National Park or whose duties of employment will substantially involve them in the administration or care control and management of the Arakwal National Park receive training in their work.
- 11.2.2 The training of indigenous persons pursuant to this clause may take the form of on-the-job training or attendance at structured internal courses of study provided by NPWS or attendance at an external course of study determined by NPWS in consultation with the Management Committee.
- 11.2.3 The training of indigenous persons pursuant to this clause shall be provided by NPWS at its cost and within the course of employment of the employee.

## **12 Contractors**

### **12.1 Definition of work**

- 12.1.1 In this clause "the work" means a work service or consultancy to be carried out in relation to the Arakwal National Park under a contract or arrangement between NPWS and a person who is not an officer or employee of NPWS.

## 12.2 Notification of work

12.2.1 NPWS, before tendering for the work or calling for expressions of interest from persons to do the work or entering into any contract with a person to do the work, shall notify the Arakwal Corporation of the proposed work.

12.2.2 The Arakwal Corporation may inform NPWS that it wishes to be engaged to undertake the work or that it does not wish to be engaged to undertake the work but would like to be consulted about the conditions of the proposed tender or expression of interest or the conditions of the proposed contract, as the case may be.

## 12.3 Engagement of the Corporation

12.3.1 If the Arakwal Corporation informs NPWS that it wishes to be engaged to undertake the work, NPWS shall consider whether, having regard to the nature of the work to be performed, it would be necessary or desirable to directly engage the Arakwal Corporation without competition.

12.3.2 It shall be a relevant consideration for NPWS to take into account in deciding whether or not it would be necessary or desirable to engage the Arakwal Corporation without competition to do the work, that the nature of the work would require access to be given to confidential information about Aboriginal cultural sites within the Arakwal National Park or the work may have an adverse impact on such sites.

## 12.4 Engagement of other contractors

12.4.1 If the Arakwal Corporation informs NPWS that it does not wish to be engaged to undertake the work but would like to be consulted about the conditions of the proposed tender or expression of interest or the conditions of the proposed contract for the work (as the case may be), NPWS shall consult with the Arakwal Corporation about the conditions and consider any comments and suggestions made by the Arakwal Corporation before inviting tenders or calling for expressions of interest or entering into a contract in relation to the work.

## 12.5 Restriction on engagement of the Corporation

12.5.1 In the event that NPWS determines to engage a person to carry out the work through a process of competition by tender or by expression of interest and before inviting tenders or expressions of interest NPWS consults with the Arakwal Corporation about the conditions of the proposed tender or expression of interest or the conditions of a proposed contract for the work (as the case may be), the Arakwal Corporation covenants that it shall not tender for the work or express an interest in being engaged to undertake the work or disclose any information about the proposed work to any person and NPWS covenants that it shall not enter into a contract with the Arakwal Corporation to do the work.

## **13 Commercial Undertakings**

### **13.1 Licences for trade or business**

**13.1.1** If requested in writing by the Arakwal Corporation, the Director-General shall consider granting a licence to the Arakwal Corporation or a person nominated by the Arakwal Corporation to carry on a trade, business or occupation within the Arakwal National Park.

**13.1.2** The Arakwal Corporation shall, in any request made to the Director-General under this clause, give full particulars of the trade business or occupation for which the licence is sought and the conditions subject to which the holder of any licence granted would propose to carry out the trade business or occupation.

**13.1.3** The Director-General may request the Arakwal Corporation to provide additional information before deciding whether or not to grant a licence.

### **13.2 Dispute Resolution**

If the Arakwal Corporation are dissatisfied with any decision of the Director-General or the NPWS made in respect of or arising from a recommendation of the Management Committee regarding the Arakwal National Park the Arakwal Corporation must notify the Director-General in writing and if the dispute cannot be resolved by discussions between the parties it shall be referred to mediation in accordance with Schedule H to this Agreement.

## Schedule H

### Dispute Resolution Mechanism

#### 1 *Dispute Resolution Clause*

- 1.1 A party will not start court proceedings in respect of a dispute arising out of this agreement ("dispute") unless it has complied with this clause.
- 1.2 A party complaining that a dispute has arisen must notify the other party or parties giving details of the dispute.
- 1.3 During the twenty one (21) day period after notice is given under clause 1.2 (or a longer period agreed in writing by the parties) ("initial period") each party must use its best efforts to resolve the dispute.
- 1.4 If the parties are unable to resolve the dispute within the initial period each party agrees that the dispute must be referred for mediation in accordance with the mediation rules of the Law Society of New South Wales, at the request of any party, to:
  - (a) a mediator agreed upon by the parties; or
  - (b) if the parties are unable to agree on a mediator within seven (7) days after the end of the initial period, a mediator nominated by the then current President of the NSW Law Society.
- 1.5 The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.
- 1.6 Any information or documents disclosed by a party under this clause:
  - (a) must be kept confidential; and
  - (b) may not be used except to attempt to resolve the dispute.
- 1.7 Each party must bear its own costs of complying with this clause and the parties must bear equally the costs of any mediator engaged.
- 1.8 After the initial period a party who has complied with clauses 1.1, 1.2 and 1.3 may terminate the resolution process by giving notice to each other party.
- 1.9 If, in relation to a dispute, a party breaches any provision of clauses 1.3 to 1.6 each other party need not comply with clauses 1.1 to 1.6 in relation to that dispute.
- 1.10 In the event that the dispute is not settled by mediation within thirty (30) days of written notice by one party to the others of the dispute (or such further period agreed in writing between the parties), any party may commence proceedings in a court of competent jurisdiction.

## Schedule I

### *Addresses for Notices and Where Parties Can be Contacted*

Richard Sanderson Amery  
The Minister for Land and  
Water Conservation  
23-33 Bridge Street  
SYDNEY NSW 2000  
Ph: (02) 9228-6111  
Fx: (02) 9228-6455

Robert John Debus  
The Minister for  
the Environment  
Level 25/59-61 Goulburn Street  
SYDNEY NSW 2000  
Ph: (02) 9995-6500  
Fx: (02) 9281-1115

Mr Brian Gilligan  
Director-General of the  
National Parks And Wildlife Service  
43 Bridge Street  
HURSTVILLE NSW 2220  
Ph: (02) 9585-6444  
Fx: (02) 9585-6555

Cape Byron State Recreation Area Trust  
PO Box 127  
BYRON BAY NSW 2481  
Ph: (02) 6685-8565  
Fx: (02) 6685-7054

The Arakwal Aboriginal Corporation  
PO Box 42  
BRUNSWICK HEADS NSW 2483  
Ph: c/- Wroth Wall (02) 6684-1191  
Fx: c/- Wroth Wall (02) 6684-3395

On behalf of the Arakwal People:  
Lorna Kelly  
Cabbage Tree Island  
Via WARDELL NSW 2477  
Ph: c/- Wroth Wall (02) 6684-1191  
Fx: c/- Wroth Wall (02) 6684-3395

Linda Vidler  
30 Gordon Street  
BYRON BAY NSW 2481  
Ph: c/- Wroth Wall (02) 6684-1191  
Fx: c/- Wroth Wall (02) 6684-3395

Tweed Byron Local Aboriginal  
Land Council  
9 Morton Street  
CHINDERAH NSW 2487  
Ph: (02) 6674-3600  
Fx: (02) 6674-2603

NSW Aboriginal Land Council  
33 Argyle Street  
PARRAMATTA NSW 2150  
Ph: (02) 9689-4444  
Fx: (02) 9689-4502

### Schedule J

#### *The Cape Byron State Recreation Area*

AMG Zone 56 Coordinates for the Cape Byron State Recreation Area numbered 1 to 14 on Diagram "L" as attached.

| Station | Easting   | Northing   |
|---------|-----------|------------|
| 1.      | 560887.81 | 6831442.25 |
| 2.      | 561242.06 | 6831963.70 |
| 3.      | 561318.19 | 6832031.08 |
| 4       | 561774.92 | 6831972.49 |
| 5       | 562035.48 | 6832209.77 |
| 6       | 562293.13 | 6832332.81 |
| 7       | 562337.04 | 6831966.63 |
| 8       | 562178.96 | 6831254.77 |
| 9       | 561672.44 | 6830786.06 |
| 10      | 561456.96 | 6830970.78 |
| 11      | 561285.05 | 6830927.78 |
| 12      | 561028.34 | 6831058.49 |
| 13      | 561122.03 | 6831251.84 |
| 14      | 561060.54 | 6831304.57 |



BETWEEN

PAMELA DIANE AILAN, THE MINISTER FOR THE  
ENVIRONMENT

AND

KIMBERLEY MAXWELL YEADON, THE MINISTER FOR LAND  
AND WATER CONSERVATION FOR AND ON BEHALF OF THE  
STATE OF NEW SOUTH WALES

AND

LORNA KELLY, LINDA VIDLER AND YVONNE GRAHAM ON  
BEHALF OF THE ARAKWAL PEOPLE

AND

ARAKWAL ABORIGINAL CORPORATION

AND

TWEED BYRON LOCAL ABORIGINAL LAND COUNCIL

3 APRIL, 1997

BETWEEN

- A. PAMELA DIANE ALLAN, THE MINISTER FOR THE ENVIRONMENT IN HER CAPACITY AS THE MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT (THE MINISTER FOR THE ENVIRONMENT)
- AND
- B. KIMBERLEY MAXWELL YEADON, THE MINISTER FOR LAND AND WATER CONSERVATION IN HIS CAPACITY AS THE MINISTER ADMINISTERING THE CROWN LANDS ACTS (THE MINISTER FOR LAND AND WATER CONSERVATION) AND ON BEHALF OF THE STATE OF NEW SOUTH WALES (THE STATE)
- AND
- C. LORNA KELLY, LINDA VIDLER AND YVONNE GRAHAM ON BEHALF OF THE ARAKWAL PEOPLE (THE APPLICANTS)
- AND
- D. ARAKWAL ABORIGINAL CORPORATION (THE CORPORATION)
- AND
- E. TWEED BYRON LOCAL ABORIGINAL LAND COUNCIL

1. WHEREAS

- A. The Applicants have lodged a Native Title determination application in the National Native Title Tribunal by which application they claim Native Title in and over the Subject Land.
- B. The Applicants desire to live and work in the Byron Shire community in a way that promotes mutual respect between Aboriginal and non-Aboriginal people and harmonious community relations among those who live and work in the Byron Shire Area community.
- C. The State desires to promote mutual respect between Aboriginal and non-Aboriginal people and harmonious community relations among those who live and work in the Byron Shire community.
- D. The State proposes to gazette the Subject Land as a State Recreation Area under the *National Parks and Wildlife Act (1974)* (NSW).
- E. The Applicants consent for the State to gazette the Subject Land as a State Recreation Area under the *National Parks and Wildlife Act (1974)* (NSW) in accordance with this deed.
- F. The Applicants acknowledge the report of the Cape Byron Consultative Committee as amended and the recommendations relating to the Subject Land.

2. DEFINITIONS:

The following definitions apply in this deed:

- 2.1 "ALR Act" means the New South Wales *Aboriginal Land Rights Act (1983)*(NSW).
- 2.2 "Application" means the Applicant's Application for a determination of Native Title under s.61 of the *Native Title Act (1993)*(Commonwealth), as amended, which was lodged with the National Native Title Tribunal (the "Tribunal") on 22 December, 1994, and accepted by the Tribunal 20 September, 1995 (NC 95/1).
- 2.3 "Arakwal Aboriginal Corporation" (the Corporation) is a corporation established under the *Aboriginal Councils and Associations Act (1976)*(Commonwealth) and is a prescribed Body Corporate as determined by the *Native Title Act (1993)*.
- 2.4 "Cape Byron Consultative Committee" means the committee established in Byron Bay and convened by the National Parks and Wildlife Service.
- 2.5 "Interpretative Centre Site" means the land described in Schedule B.
- 2.6 "Native Title Act" means the *Native Title Act (1993)*(Commonwealth).
- 2.7 "Native Title Holders" has the meaning given to it within the *Native Title Act (1993)*(Commonwealth).
- 2.8 "Plan Of Management" has the meaning given to it within the *NSW National Parks and Wildlife Act (1974)*(NSW).
- 2.9 "Prescribed Body Corporate" has the meaning given to it within the *Native Title Act (1993)*(Commonwealth).
- 2.10 "State Recreation Area" has the meaning given to it within the *NSW National Parks and Wildlife Act (1974)*(NSW).
- 2.11 "Subject Land" means the area of land and waters that is the subject of this deed as described in Schedule "A".
- 2.12 "The Corporation" has the same meaning as "Arakwal Aboriginal Corporation".
- 2.13 "Traditional owners" means the Applicants, members of the Arakwal Aboriginal Corporation and others recognised as belonging to the Arakwal People.
- 2.14 "Trust" means the Trust created under the *National Parks and Wildlife Act (1974)*(NSW), for the care control and management of the State Recreation Area.

3. NATIVE TITLE

- 3.1 This deed is made without prejudice to the existence or non-existence of the Applicant's native title rights in the Subject Land
  - 3.1.1 If the Applicants are found to be the Native Title Holders of the Subject Land then this deed shall also take effect pursuant to s.21 of the Native Title Act.
  - 3.1.2 If the Applicants are not found to be the Native Title Holders of the Subject Land then this deed takes effect on the premises and terms as agreed amongst the parties.
- 3.2 The parties acknowledge that this deed does not constitute any surrender of native title in the Subject Land by the Arakwal People, and that native title in the Subject Land will not be extinguished to any extent by the doing of any of the acts which are authorised by this deed.
- 3.3 The parties acknowledge that the deed does not constitute any acknowledgment of native title in the Subject Land by the State of New South Wales.
- 3.4 The State agrees not to oppose a determination of native title over the Interpretative Centre Site in favour of the Applicants if an application is not contested by a third party.

4. STATE RECREATION AREA

- 4.1 The Applicants agree and consent to the State creating a State Recreation Area over the Subject Land in accordance with this deed.
- 4.2 The care control and management of the State Recreation Area over the Subject Land shall be vested in a Trust and the Trust shall be incorporated under the *National Parks and Wildlife Act (1974)(NSW)*.
- 4.3 At all times one member of the Trust shall be a nominee of the Arakwal Aboriginal Corporation as an ex-officio member of the Trust.
- 4.4 It is acknowledged by the Applicants that for twelve months after the date of this deed the State Recreation Area over the Subject Land will be managed in accordance with the Plan of Management for the area adopted under the *Crown Lands Act (1989)(NSW)*.
- 4.5 All future plans of management of the State Recreation Area over the Subject Land, with the exception of the current Plan of Management as described in 4.4 above, shall be prepared with the consultation and consent of the Arakwal Aboriginal Corporation. Such consent shall not unreasonably be withheld.
- 4.6 Should a dispute arise between the Arakwal Aboriginal Corporation and other members of the State Recreation Area Trust Board or the State in relation to the Plan of Management over the Subject Land the matter shall be referred to arbitration in accordance with Schedule "C" to this deed.
- 4.7 The requirement for consent of the Arakwal Aboriginal Corporation as provided for in clause 4.5 is not intended to affect the discretion of the Minister for the Environment, under Part 5 of the *National Parks and Wildlife Act (1974)(NSW)* or in any legislation replacing that Act.
- 4.8 The Trust shall where practicable employ local Aboriginal people in positions of the administration, management, and field staff of the Trust as determined by the Plan of Management of the Subject Land and subject to the *Anti Discrimination Act (1977)(NSW)*. However, this is not to affect staff employed by the Trust at the date of this deed.

## 5. ACCESS FOR TRADITIONAL PURPOSES

- 5.1 Traditional owners shall have access to the Subject Land for traditional purposes, including but not limited to:
1. protection and conservation of cultural heritage,
  2. access to sites of significance,
  3. access for ceremonies under traditional law,
  4. gathering material for traditional medicines and ceremonies,
  5. access for fishing purposes.

## 6. ABORIGINAL LAND CLAIM

- 6.1 Tweed Byron Local Aboriginal Land Council agrees to make a claim under the ALR Act for the Interpretive Centre Site within seven days from the making of this deed.
- 6.2 As at the date of this deed, the Minister for Land and Water Conservation acknowledges, following relevant investigations, that the Interpretive Centre Site is claimable Crown land within the meaning of the ALR Act.
- 6.3 The Minister for Land and Water Conservation agrees that within one month from that making of a claim referred to in 6.1 above, he will determine the said claim and, as expeditiously as possible thereafter transfer the Interpretive Centre Site to the Tweed Byron Local Aboriginal Land Council.
- 6.4 Tweed Byron Local Aboriginal Land Council agree to do all things necessary to transfer all rights and interests in the Interpretive Centre Site to the Arakwal Aboriginal Corporation.

## 7. SCHEDULES

The following are the Schedules to this deed:

- A Description of the Subject Land and the proposed State Recreation Area.
- B Description of the Interpretive Centre Site.
- C Dispute Resolution Mechanism.

IN WITNESS OF their agreement the parties have hereunder signed their names and affixed their seals

A. Signed sealed and delivered by Pamela Diane Allan, Minister for the Environment in her capacity as the Minister administering the National Parks and Wildlife Act in the presence of:

*Pam Allan*  
*Pam Allan*

B. Signed sealed and delivered by Kimberley Maxwell Yeadon, Minister for Land and Water Conservation in his capacity as the Minister administering the Crown Lands Act and on behalf of the State of New South Wales in the presence of:

*Kim Yeadon*  
*Kim Yeadon*

C1. Signed sealed and delivered by Lorna Kelly, Applicant in the presence of:

*Lorna Kelly*

*Lorna Kelly*

C2. Signed sealed and delivered by Linda Vidler, Applicant in the presence of:

*Linda Vidler*

*Linda Vidler*

C3. Signed sealed and delivered by Yvonne Graham, Applicant in the presence of:

*Yvonne Graham*

*Yvonne Graham*

D. The common Seal of the Arakwal Aboriginal Corporation was here unto affixed in the presence of Lorna Kelly, Linda Vidler, and Yvonne Graham Governing Committee Members.

*(Kim W 11520)*

*Lorna Kelly*  
*Yvonne Graham*  
*Linda Vidler*



E. Signed sealed and delivered by George Scott, Secretary for and on behalf of the Tweed Byron Local Aboriginal Land Council in the presence of:

*George Scott*

*George Scott*  
*George Scott*



## SCHEDULE "A"

### 1. DESCRIPTION OF SUBJECT LAND

All of the land comprising Reserve 140050, Parish Byron, County Rous at Byron Bay, being the land reserved from sale for the Public purpose of public recreation and preservation of Native Flora by notification in the NSW Government Gazette of 11 November 1988.

## SCHEDULE "B"

### 2. DESCRIPTION OF INTERPRETATIVE CENTRE SITE

Commencing at the north west corner of portion 218 Shire of Byron, Parish of Byron, County of Rous, extending north to the southern boundary of Lighthouse Road, extending north east following the southern boundary of Lighthouse Road to the north western boundary of Tallow Beach Road, extending south east following the southern boundary of Tallow Beach Road to the eastern boundary of portion 218, extending south following the eastern boundary of portion 218 to the south east corner of portion 218, extending south following the eastern boundary of MS 691 Gfn Parish of Byron, County of Rous for 20 metres, then extending west to the western boundary of MS 691 Gfn Parish of Byron, County of Rous then extending north to the point of commencement.

## SCHEDULE "C"

### 3. DISPUTE RESOLUTION MECHANISM

- 3.1 Should a dispute arise as referred to in clause 4.6 above then each party to the dispute shall appoint one person to represent their interests.
- 3.2 The persons nominated by the parties shall negotiate in good faith to reach an agreement that is satisfactory to all parties.
- 3.3 If a resolution cannot be reached to the satisfaction to all parties to the dispute then the parties agree that the dispute shall be submitted to arbitration administered by the National Dispute Centre Ltd of Sydney, in the State of New South Wales.
- 3.4 The Parties shall select a person to conduct the arbitration. Failing agreement between the parties the Arbitrator shall be appointed by the National Dispute Centre.
- 3.5 The procedure shall be determined by the Arbitrator and the arbitration shall be in accordance with and subject to the laws of New South Wales.
- 3.6 The decision of the Arbitrator shall be final and shall include any apportionment of costs between the parties.

## SCHEDULE "A"

### 1. DESCRIPTION OF SUBJECT LAND

All of the land comprising Reserve 140050, Parish Byron, County Rous at Byron Bay, being the land reserved from sale for the Public purpose of public recreation and preservation of Native Flora by notification in the NSW Government Gazette of 11 November 1988.

## SCHEDULE "B"

### 2. DESCRIPTION OF INTERPRETATIVE CENTRE SITE

Commencing at the north west corner of portion 218 Shire of Byron, Parish of Byron, County of Rous, extending north to the southern boundary of Lighthouse Road; extending north east following the southern boundary of Lighthouse Road to the north western boundary of Tallow Beach Road, extending south east following the southern boundary of Tallow Beach Road to the eastern boundary of portion 218, extending south following the eastern boundary of portion 218 to the south east corner of portion 218, extending south following the eastern boundary of MS 691 Gfn Parish of Byron, County of Rous for 20 metres, then extending west to the western boundary of MS 691 Gfn Parish of Byron, County of Rous then extending north to the point of commencement.

## SCHEDULE "C"

### 3. DISPUTE RESOLUTION MECHANISM

- 3.1 Should a dispute arise as referred to in clause 4.6 above then each party to the dispute shall appoint one person to represent their interests.
- 3.2 The persons nominated by the parties shall negotiate in good faith to reach an agreement that is satisfactory to all parties.
- 3.3 If a resolution cannot be reached to the satisfaction to all parties to the dispute then the parties agree that the dispute shall be submitted to arbitration administered by the National Dispute Centre Ltd of Sydney, in the State of New South Wales.
- 3.4 The Parties shall select a person to conduct the arbitration. Failing agreement between the parties the Arbitrator shall be appointed by the National Dispute Centre.
- 3.5 The procedure shall be determined by the Arbitrator and the arbitration shall be in accordance with and subject to the laws of New South Wales.
- 3.6 The decision of the Arbitrator shall be final and shall include any apportionment of costs between the parties.



**Schedule L****IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY**

No. NG 6088 of 1998

**BETWEEN: LORNA KELLY , LINDA  
VIDLER AND YVONNE  
GRAHAM on behalf of THE  
ARAKWAL PEOPLE****AND: NEW SOUTH WALES  
ABORIGINAL LAND  
COUNCIL****AND: MINISTER FOR LAND AND  
WATER CONSERVATION  
FOR THE STATE OF NEW  
SOUTH WALES****ORDER****JUDGE:****DATE:****WHERE MADE: SYDNEY****THE COURT ORDERS THAT:**

1. Native title does not exist in the land the subject of native title determination application NC97/36 (NG6088/98).
2. Each party shall be liable to pay their own costs arising from the proceedings.



# NATIONAL NATIVE TITLE TRIBUNAL

## Application Information and Extract from the Register of Native Title Claims

### Application Information

|                       |                             |           |
|-----------------------|-----------------------------|-----------|
| Application numbers:  | Federal Court number:       | NG6010/98 |
|                       | NNTT number:                | NC95/1    |
| Application name:     | Arakwal people              |           |
| Registration history: | Registered from 08/09/1995. |           |

### Register Extract (pursuant to s.186 of the *Native Title Act 1993*)

|                                 |  |
|---------------------------------|--|
| Application lodged with:        | National Native Title Tribunal   |
| Date application lodged:        | 22/12/1994   |
| Date claim entered on Register: | 08/09/1995   |
| Applicants:                     | Ms Linda Vidler, Ms Lorna Kelly  |
| Address for service:            | Wroth Wall<br>Wroth Wall Solicitor<br>PO Box 646<br>MULLUMBIMBY NSW 2482<br>Phone: (02) 6684 1991<br>Fax: (02) 6684 3395 |

### Area covered by the claim:

A) The area covered by the application are:

| Number* | Identification |
|---------|----------------|
| 2       | 392/728 539    |
| 3       | 396/728 544    |
| 4       | 398/728 550    |
| 6       | 171/755 695    |

|    |                   |
|----|-------------------|
| 7  | 441/800 268       |
| 8  | 428/729 069       |
| 9  | 427/729 068       |
| 10 | 395/728 541       |
| 11 | 409/729 057       |
| 12 | 410 - 426/729 062 |
| 14 | 435/729 10        |
| 15 | 437/729 107       |
| 16 | 438/729 107       |
| 18 | 1 & 2/125 324     |
| 22 | 370/723 047       |
| 25 | 5/26/758 207      |
| 30 | 383/728 202       |
| 32 | 386/728 517       |
| 33 | 399/728 551       |
| 34 | 408/729 057       |
| 37 | 387/728 536       |
| 38 | 1/23/758 207      |
| 39 | 407/729 057       |
| 43 | Ms 691 Gfn        |

44 The area described as the sandy beach and dunes down to low tide mark stretching from the south-eastern side of the Belongil Creek mouth following the beach line in a south-easterly direction to Cape Byron and continuing in a southerly direction along Tallows Beach to the southern portion of Broken Head Nature Reserve.

45 All exposed land mass within an area of five (5) km from the High Tide mark within the sea extending from the south-eastern side of the Belongil Creek mouth following the beach line in a south-easterly direction to Cape Byron and continuing in a southerly direction along Tallows Beach to the southern portion of Broken Head Nature Reserve; including areas described as "Snapper Rocks, Kings Rock, Cocked Head Rocks, and Julian Rocks" (Juan and Julian Rocks).

46 The sea extending five (5) km from the High Tide mark extending from the south-eastern side of the Belongil Creek mouth following the beach line in a south-easterly direction along Tallows Beach to the southern portion of Broken Head Nature Reserve.

The sea areas claimed correspond to the areas adjacent to the land area claimed. Therefore to be consistent the applicants seek to extend the sea, beach and dune areas claimed to the northern most point of the land claimed.

48 Unmeasured vacant crown land

\* This reference number refers to the reference number allocated to the land claimed by the Department of Land and Water Conservation.

B) The application does not include any areas within the boundaries of the area covered by the application as shown on the map, Attachment C which are outside the areas described in paragraph A to this attachment.

The following areas are excluded from the application:

1. Subject to paragraph 3 below, the area covered by the application excludes any land or waters covered by:

a) a Schedule interest;

- b) a freehold estate;
- c) commercial lease that is neither an agricultural lease nor a pastoral lease;
- d) an exclusive agricultural lease or an exclusive pastoral lease;
- e) a residential lease;
- f) a community purpose lease;
- g) a lease dissected from a mining lease and referred to in s.23B(2)(vii) of the Native Title Act (1993)(Cth);
- h) any lease (other than a mining lease) that confers a right to exclusive possession over particular land or waters;

which were validly granted or vested on or before 23 December 1996.

2. Subject to paragraph 3, the area covered by the application excludes any area covered by the valid construction or establishment of any public work, where the construction or establishment of the public work commenced on or before 23 December 1996.

3. Where the act specified in paragraphs 1 and 2 falls within the provision of:

- Torres Strait Islanders;
  - a) s.23B (9) Exclusion of acts benefiting Aboriginal peoples or
  - b) s.23B (9A) Establishment of a National Park or State park;
  - c) s.23B (9B) Acts where legislation provides for non-
- extinguishment;
  - d) s.23B (9C) Exclusion of Crown to Crown grants; or
  - e) s.23B (10) Exclusion by regulation;

the area covered by the act is not from the application.

4. All other area in which native title has been extinguished are to be excluded.

\*Note: All references to sections are references to the Native Title Act (1993) (Cth).

All definitions of terms used in this Attachment are as defined in the Native Title Act (1993)(Cth).

#### Persons claiming to hold native title:

(a) Those people descended from the following person:

Bobby of Bumberbin (born between 1817 and 1837, and died 23 March 1907) and Alice (unknown);

Harry Bray (born 1850 and died 17 October 1922) and Clara (Bray) (born 1864 and died 7 May 1922); and

Linda Jane Bray (born between 1903 and 1905, and died 14 January 1953) and Jim Kay (born 1879 or 1901, and died 1977 at Ballina).

(b) Those persons personally known to the acknowledged elders of the native title claim group or (in the case of children) are personally known to senior members of subsidiary families who are themselves members of the native title claim group; and

(c) either:

Those persons resident with the claimant community in the traditional country of the native title claim group; or

Those persons who have maintained their primary identification with the native title claim group by regularly visiting the native title claim group in the claimed traditional country; and

(d) Those persons accepted by the acknowledged elders of the native title claim group as recognising and observing the laws and customs of the native title claim group

#### Registered native title rights and interests:

The following Native Title Rights & Interests were entered on the Register on 16/02/2000:

a) the right to own the application area; b) the right to possess the application area; c) the right to occupy the application area; d) the right to use and enjoy the application area; e) the right to make decisions about the use and enjoyment of the application area; f) the right to control the access of others to the application area; g) the right to use and enjoy resources of the application area including, but not limited to:

i) the right to hunt and fish on or from the land and waters, and to collect food from the land and waters;

ii) the right to take items from the land, and waters such as timber, stones, resin and shells and to make such things as shelter, tools and hunting implements;

iii) the right to manage animals, plants and minerals on the application area;

h) the right to control the use and enjoyment of others of resources of the application area;

k) the right to speak for the application area

l) the right to conduct ceremonies on the land and waters

m) the right of free access to the application area for the purpose of satisfying the rights identified in the preceding sub-paragraphs

2. Subject to paragraphs 3, 4 and 5, the native title rights and interests specified in paragraph 1 confer possession, occupation, use and enjoyment of the land and waters covered by the application on the native title claim group to the exclusion of all others.

3. The rights and interests claimed in paragraphs 1 and 2 above (the native title rights and interests) are:

a. Subject to the rights and interests of those lawfully exercising rights and interests which have been validly created and vested in them by the State of New South Wales; and

b. Subject to the rights and interests of those lawfully exercising rights and interests which have been validly created or vested in them by the Commonwealth of Australia.

4. Further and in the alternative to paragraph 3 and subject to paragraph 5 below:

a. If

i) the area covered by the application or part of the area covered by the application is or was the subject of a "Previous Non-Exclusive Possession Act" as defined in the Native Title Act (1993) (Cth); and

ii) The previous Non-Exclusive Possession Act involved the grant of rights and interests which were not inconsistent with the rights and interests claimed in paragraph 1 and/or 2 above; then

The native title rights and interests claimed under paragraphs 1 and/or 2 are claimed subject to the rights and interests granted under the Previous Non-Exclusive Possession Act (as provided by section 23G (1)(a) of the Native Title Act (1993) (Cth);

b. If:

i) The area covered by the application or a part of the area covered by the application is or was the subject of a Previous Non-Exclusive Possession Act as defined by section 23 F of the Native Title Act (1993) (Cth); and

ii) the Previous Non-Exclusive Possession Act involved the grant of rights and interests which were inconsistent with the rights and interests claimed in paragraphs 1 and/or 2 above but did not extinguish them; then

the rights and interests claimed under paragraphs 1 and/or 2 are claimed subject to any suspension of them during the currency of the Previous Non-Exclusive Possession Act as provided by section 23G(1)(b)(ii) of the Native Title Act (1993) (Cth);

c. If:

i) The area covered by the application or a part of the area covered by the application is or was the subject of a "Category B Past Act" as defined by section 230 of the Native Title Act (1993) (Cth) or a "Category B Intermediate Period Act" as defined by section 232C of the Native Title Act (1993) (Cth); and

ii) The Category B Past Act or the Category B Intermediate Period Act involved the grant of rights and interests which were not inconsistent with the rights and interests claimed in paragraphs 1 and/or 2 above; and

iii) The Category B Past Act or the Category B Intermediate Period Act was not a Previous Non-Exclusive Possession Act; then

Those rights and interests referred to in paragraphs 1 and/or 2 which are not inconsistent with the rights and interests granted under the Category B Past Act or the Category B Intermediate Period Act are claimed;

d. If:

i) The area covered by the application or a part of the area covered by the application is or was the subject of:

- (1) a "Category C Past Act" as defined by section 231 of the Native Title Act (1993) (Cth); or
- (2) a "Category C Intermediate Period Act" as defined 232D of the Native Title Act (1993) (Cth); or
- (3) a "Category D Past Act" as defined by section 232 of the Native Title Act (1993) (Cth); or
- (4) a "Category D Intermediate Period Act" as defined by section 232E of the Native Title Act (1993)(Cth); and

ii) The Category C Past Act, Category C Intermediate Period Act, Category D Past Act and/or Category D Intermediate Period Act referred to in the preceding sub-paragraph was not a Previous Non-Exclusive Possession Act; then

Subject to the operation of the "Non-extinguishment Principle" as defined by section 238 of the Native Title Act (1993)(Cth), those rights and interests claimed under paragraph 1 and/or 2 are claimed.

5. Native title rights and interests are not claimed in respect of:

- a. Any land excluded from the application area within the boundaries of the area covered by the application by Schedule B;
- b. Any minerals, petroleum or gas which are wholly owned by the Crown.

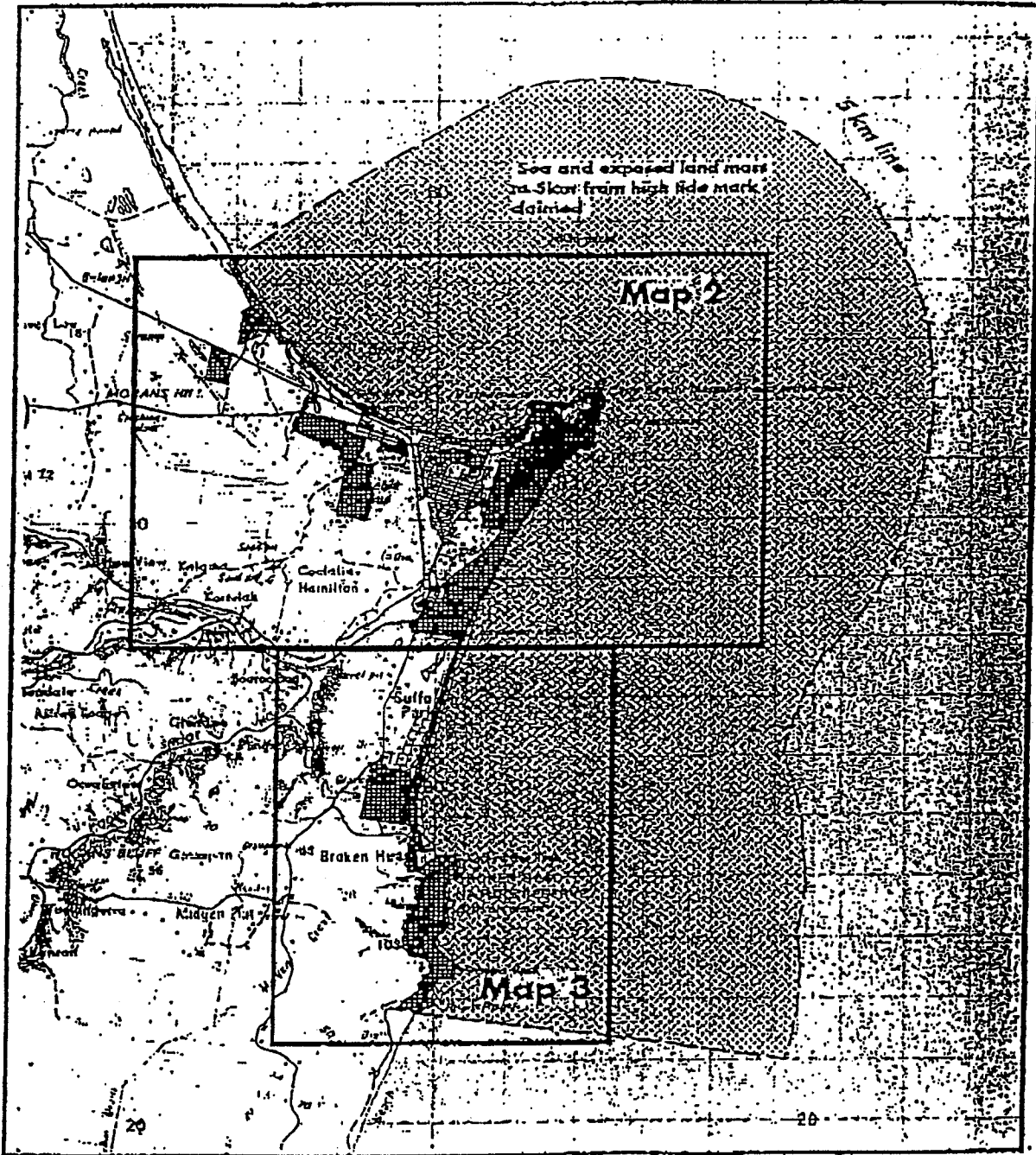
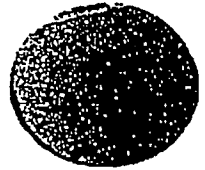
Details of the activities in exercise of those rights and interests are provided in Schedule F and T.

Register attachments:

- 1. Map of Claim Area, Attachment A, 1 page - A4, Attached 22/12/1994.

*ix: The Register may, in accordance with s.188 of the Native Title Act 1993, contain confidential information that will not appear on the Extract*

NNTT – Register of Native Title Claims – NC95/1  
Arakwal People  
Attachment “A” is a map of the application area.  
Attached 22/2/2000.  
1 x A4 page.



Map produced by ALISAC for the National Native Title Tribunal  
Base map copyright Commonwealth





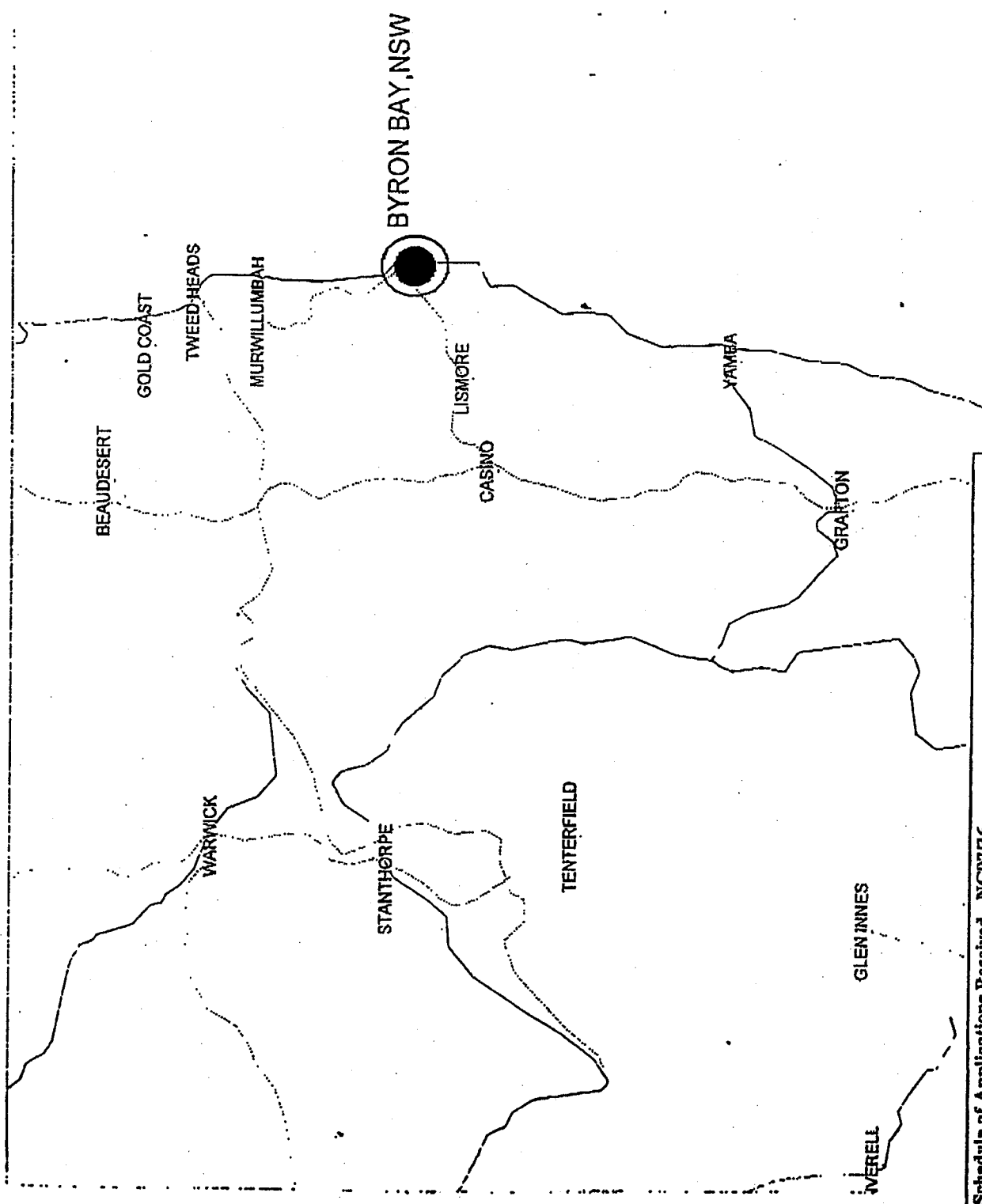
## NATIONAL NATIVE TITLE TRIBUNAL

### Claimant Application Summary

|   |   |
|---|---|
| Application numbers                               | Federal Court number: NG6088/98<br>NNTT number: NC97/36   |
| Application name                                  | Byron Bay Bundjalung People # 2   |
| Name of body where application lodged             | National Native Title Tribunal  |
| Date application lodged                           | 12/12/1997  |
| Current stage(s)                                  | In Mediation  |
| Old Act* Applicants                               |   |
| Former Old Act* registered native title claimants | Lorna Kelly, Linda Vidler and Yvonne Graham   |
| Address for service                               | Wroth Wall<br>Wroth Wall Solicitor<br>PO Box 646<br>MULLUMBIMBY NSW 2482<br>Phone: (02) 6684 1991<br>Fax: (02) 6684 3395  |
| Persons claiming to hold native title             | Lorna Kelly, Linda Vidler and Yvonne Graham on behalf of the Arakwal of the Bundjalung Nation.  |
| Native title rights and interests claimed         | The native title rights and interests held by the Arakwal people of the Bundjalung Nation pursuant to their traditional laws and customs confer possession, occupation, use and enjoyment of the land to the exclusion of all others, subject to any rights or interests created by the State of New South Wales or the Commonwealth of Australia which are not inconsistent with the Racial Discrimination Act (1975) or the Native Title Act (1993) (Commonwealth).   |
| Area  | <p><b>Jurisdiction:</b> New South Wales<br/> <b>Location:</b> The application covers Crown Land being part of portion 218 Shire of Byron, Parish of Byron, County of Rous and a small parcel of adjoining Crown land.<br/> <b>Local government region(s):</b> Byron Shire Council<br/> <b>ATSIC region(s):</b> Many Rivers Regional Council<br/> <b>Representative A/TSI body(s):</b> NSW Aboriginal Land Council<br/> <b>Land/ water and/or sea:</b> Land/ Water</p> <p><b>Area covered by the claim (as detailed in the application):</b><br/> Commencing at the north west corner of portion 218 Shire of Byron, Parish of Byron, County of Rous, extending east along the northern boundary of portion 218 to its junction with the southern boundary of Talow Beach Road, extending south east following the southern boundary of Tallow Beach Road to the eastern boundary of portion 218, extending south following the eastern boundary of portion 218 to the south east corner of portion 218, extending south following the eastern boundary of MS 691 Gfn Parish of Byron, County of Rous for 20 metres, then extending west to the western boundary of MS 691 Gfn Parish of Byron, County of Rous then extending north to the point of commencement. A plan of the application is attached. Application amended 20/02/1998.</p> |

|                                 |   |
|---------------------------------|---|
| <b>Registration information</b> | <p>Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.</p> <p>Registration test status:<br/>Not Accepted for registration</p>   |
| <b>Attachments</b>              | <ol style="list-style-type: none"> <li>1. Map of Claim Area, Attachment A of the Application, 1 page - A4, Attached 12/12/1997.</li> <li>2. General Locality Map, Attachment B of the Application, 1 page - A4, Attached 12/12/1997.</li> </ol>   |
| <b>NNTT contact details</b>     | <p>Case manager: Samantha Saunders<br/> Address: National Native Title Tribunal<br/> Level 25<br/> 25 Bligh Street<br/> SYDNEY NSW 2000</p> <p>GPO Box 9973<br/> SYDNEY NSW 2001</p> <p>Phone: (02) 9235 6300<br/> Freecall 1800 640 501</p> <p>Fax: (02) 9233 5613<br/> Web page: <a href="http://www.nntt.gov.au">www.nntt.gov.au</a></p> |

\* *Old A.C. Applicants/Registered Native Title Claimants are those persons defined by the Native Title Act 1993 prior to 30 September 1998.*



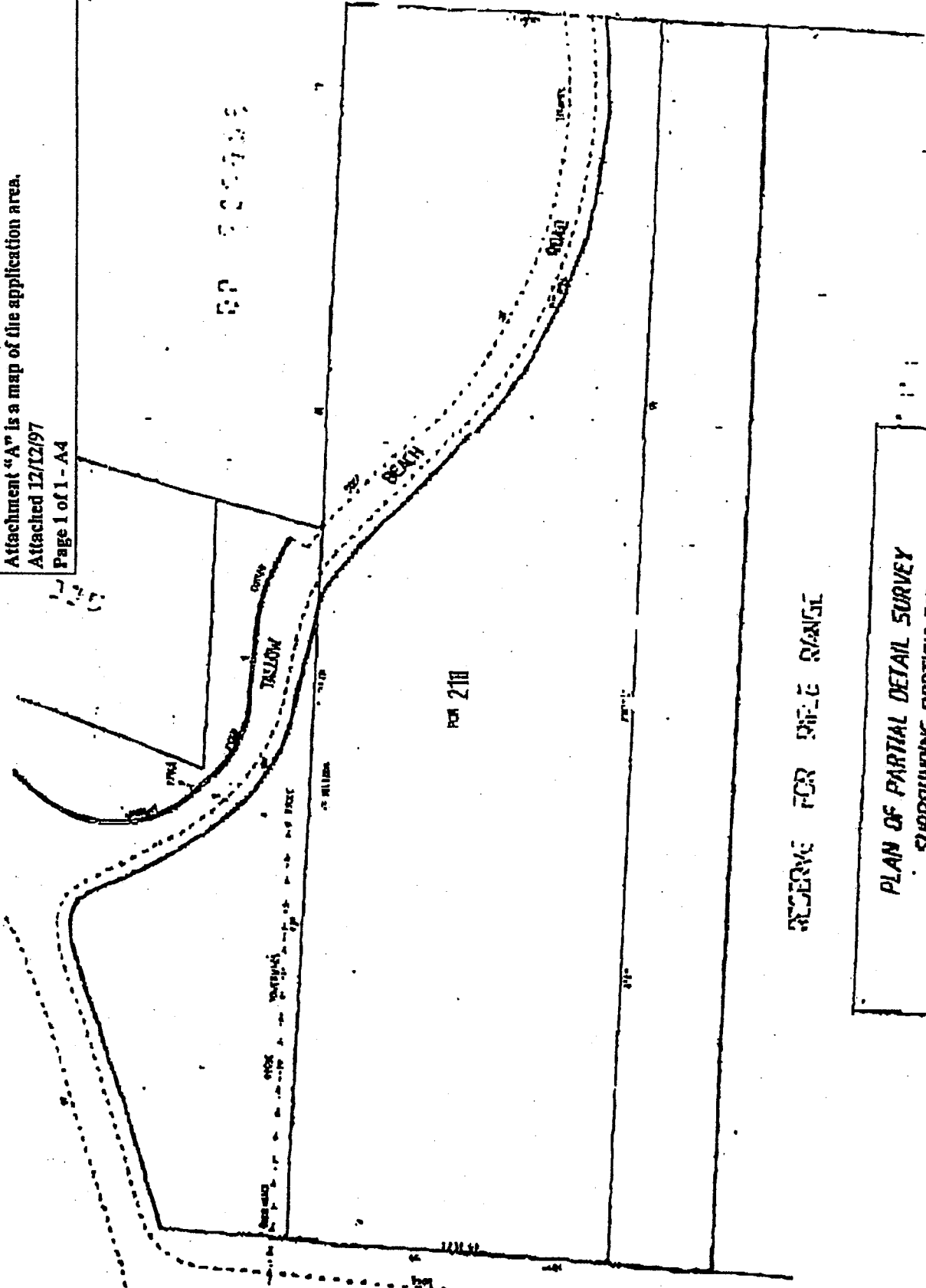
INTT - Schedule of Applications Received - NC97/36

Attachment #3 - Byron Bay

This map is only a general indication of the locality of the application area.  
 It is not an exact representation of the application area.  
 Attached 12/12/97.

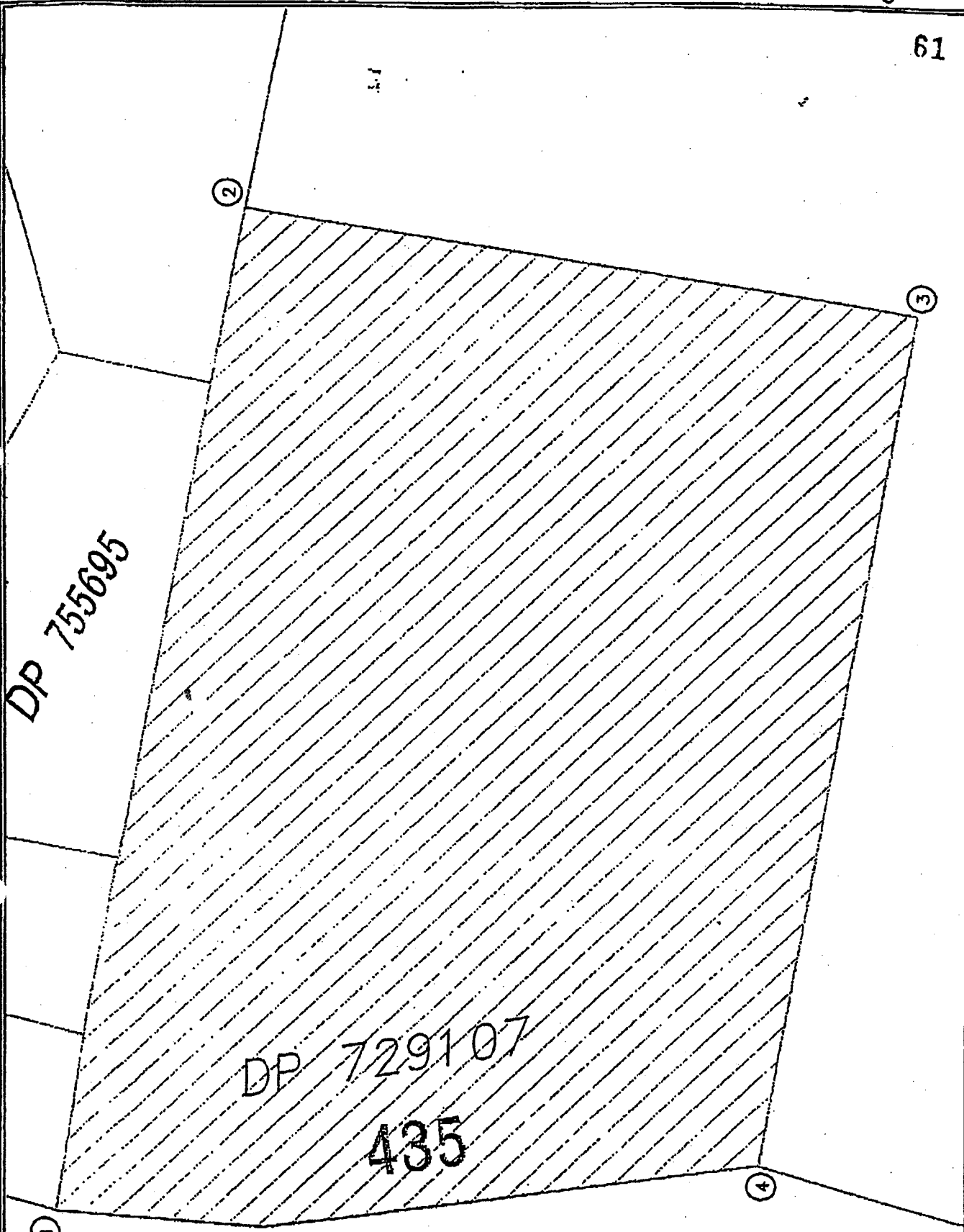
NNTI - Schedule of Application received - NC:97/56  
 Arakwal People #3 - Byron Bay  
 Attachment "A" is a map of the application area.  
 Attached 12/12/97  
 Page 1 of 1 - A4

TOTAL

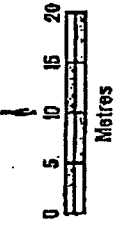


RESERVE FOR PUBLIC SERVICE  
 PLAN OF PARTIAL DETAIL SURVEY  
 SURROUNDING PORTION 21B  
 PATERSON STREET BYRON BAY  
 Byron Council Parish Byron County Roux

## Diagrams Attached to the Arakwal Agreement

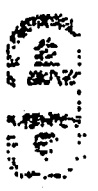


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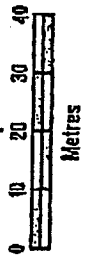
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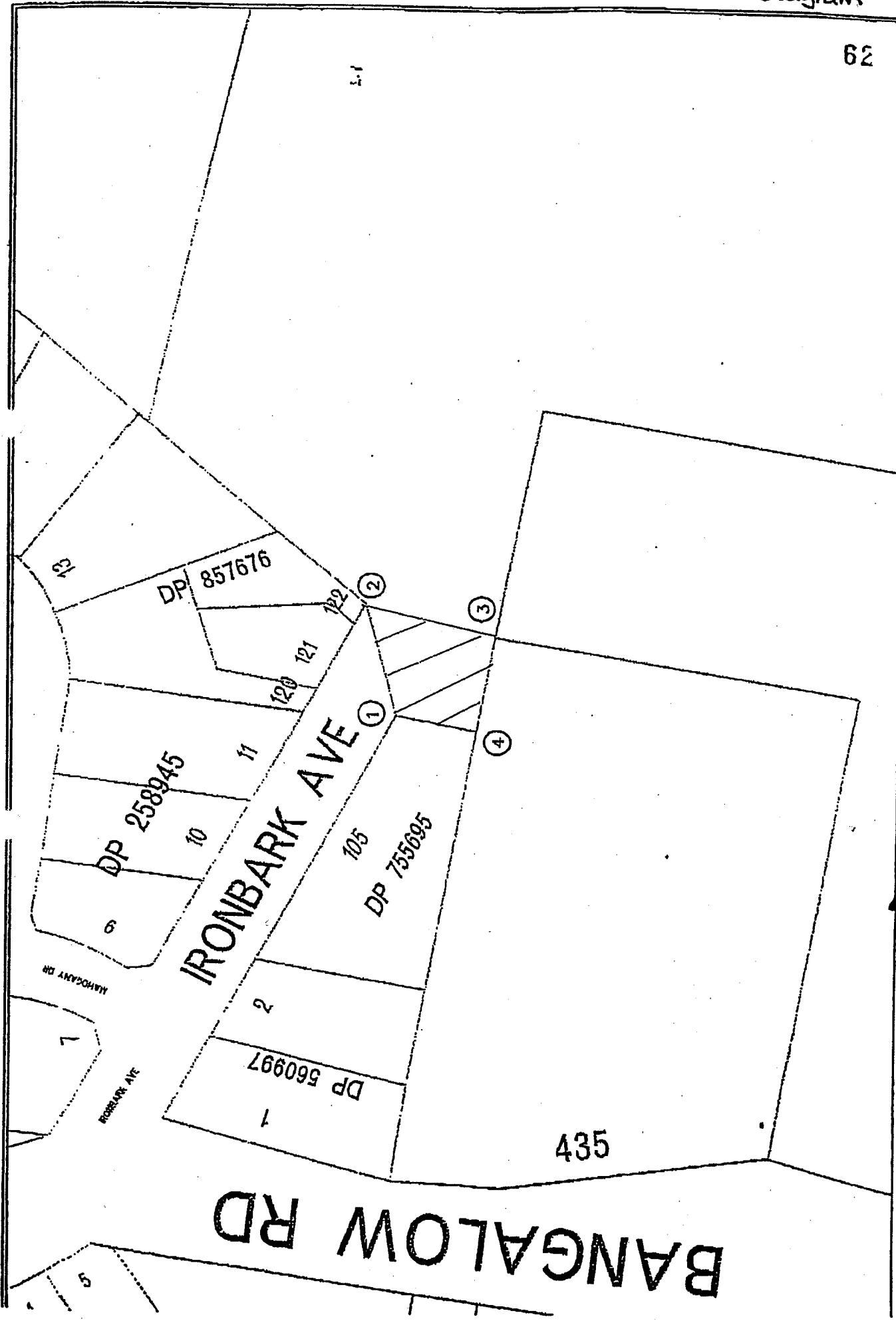
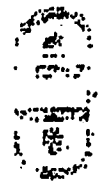




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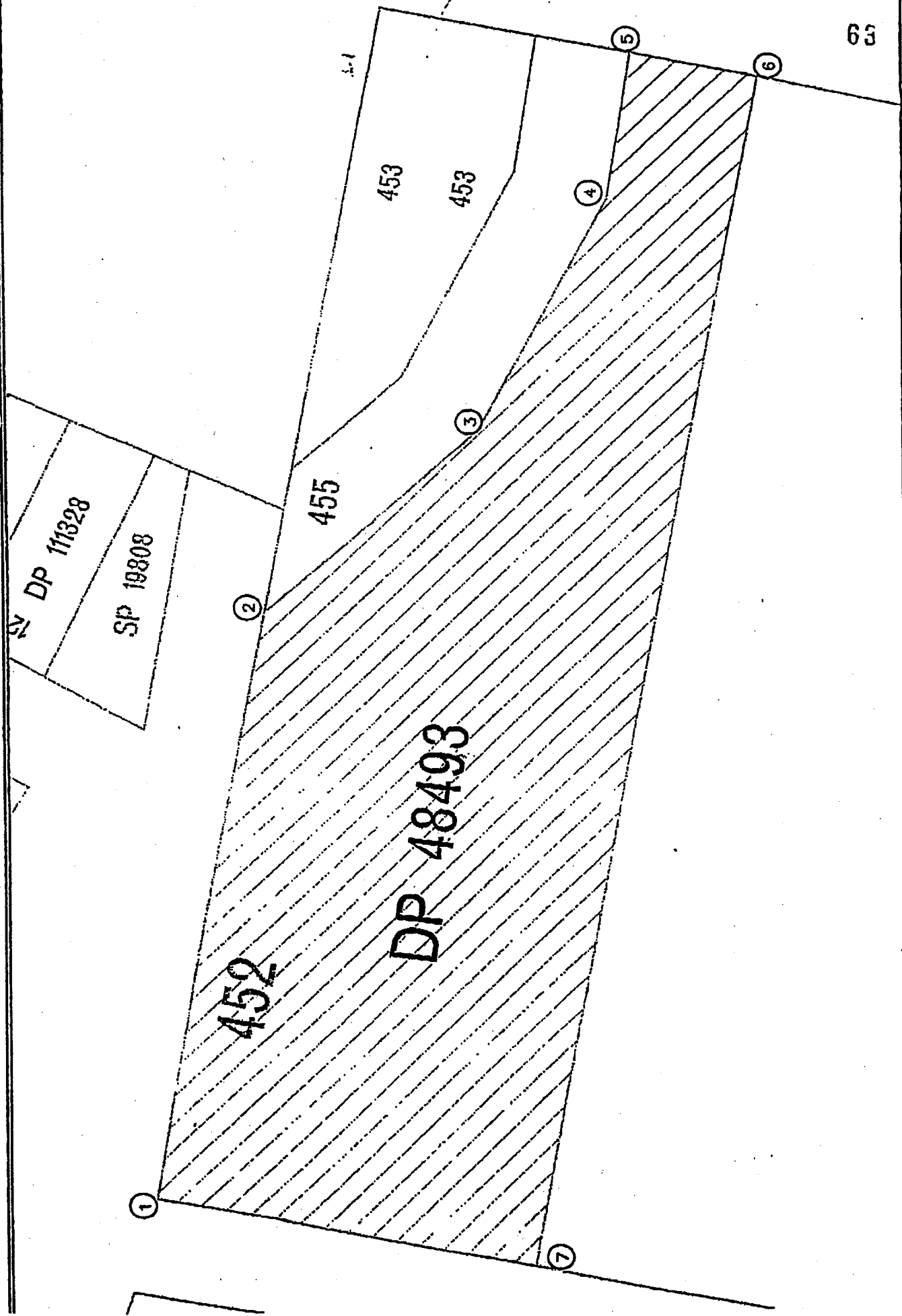


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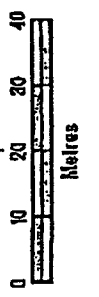




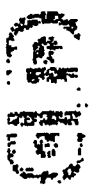
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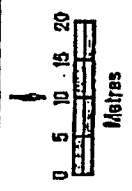
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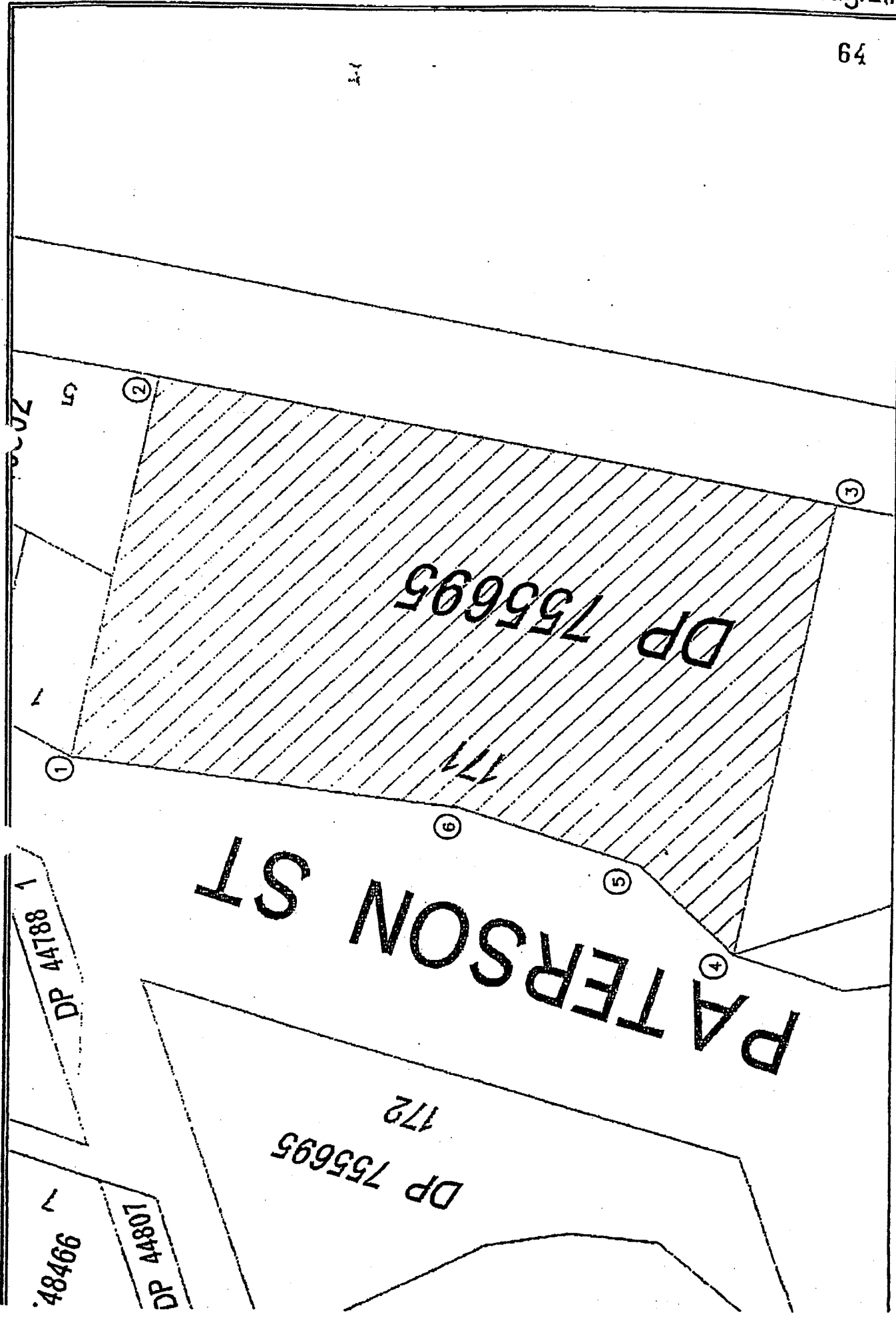
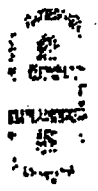




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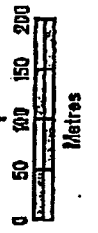


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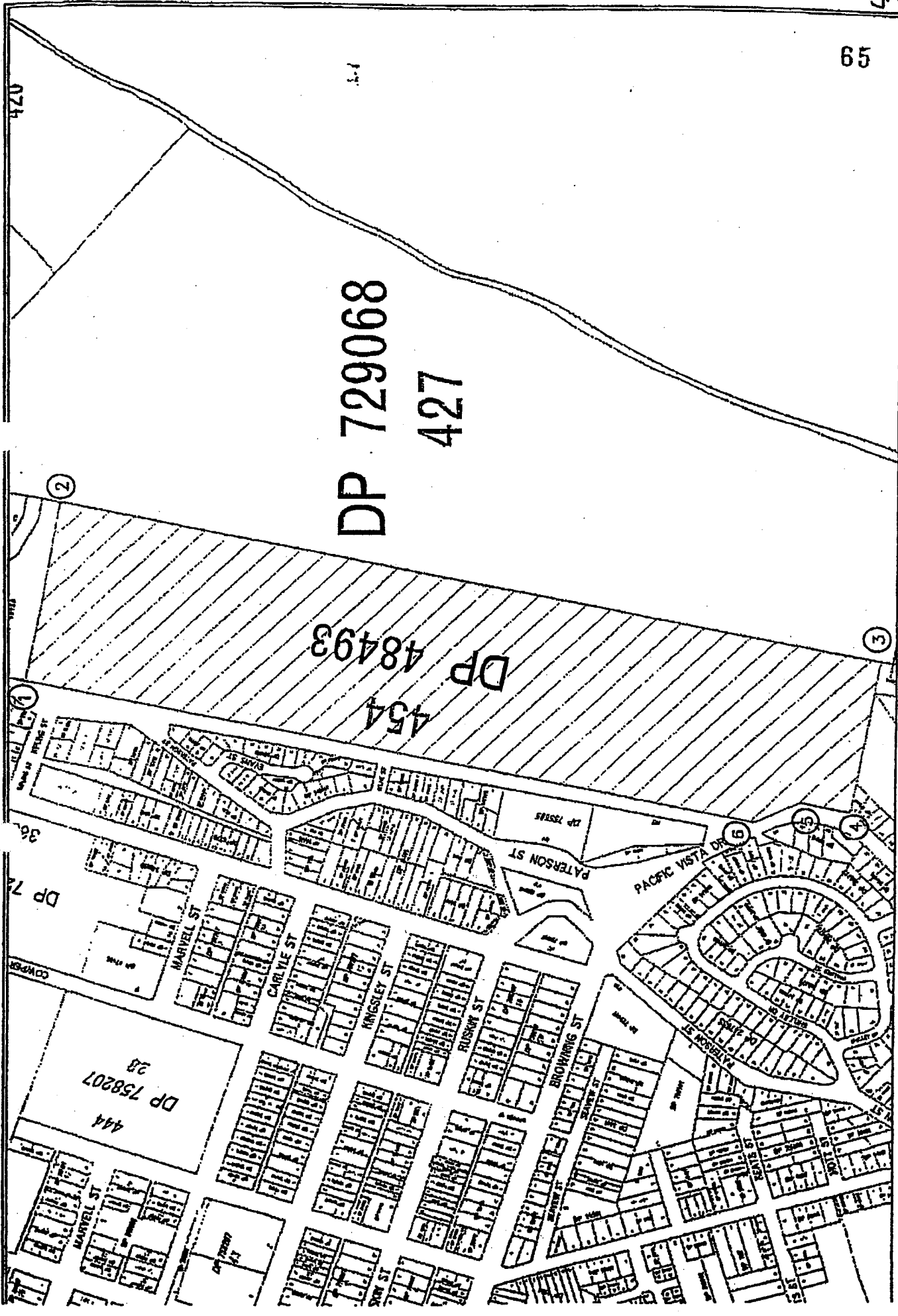
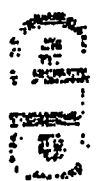




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DP 48493  
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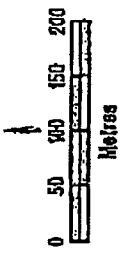
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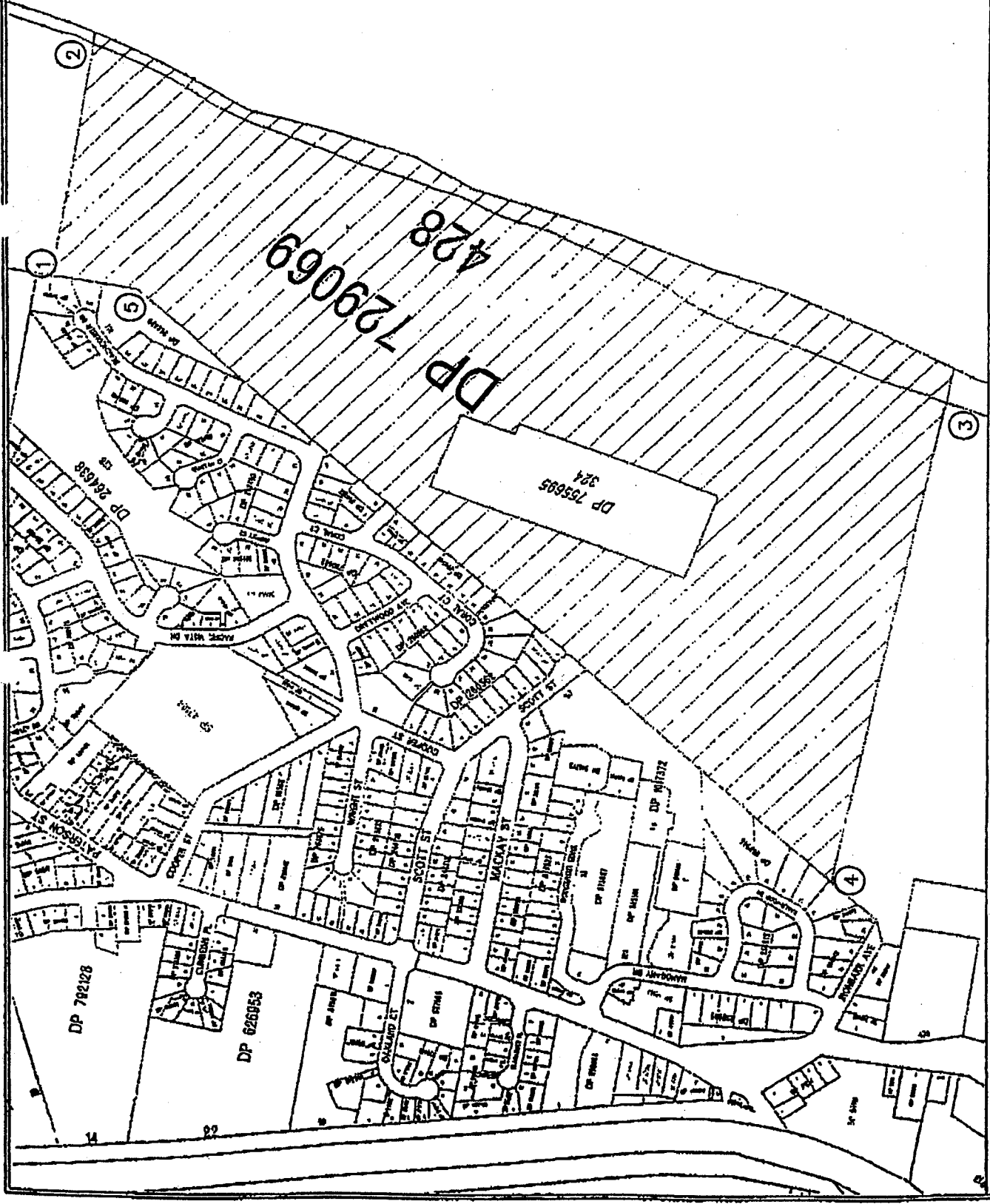
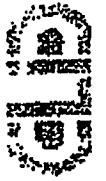


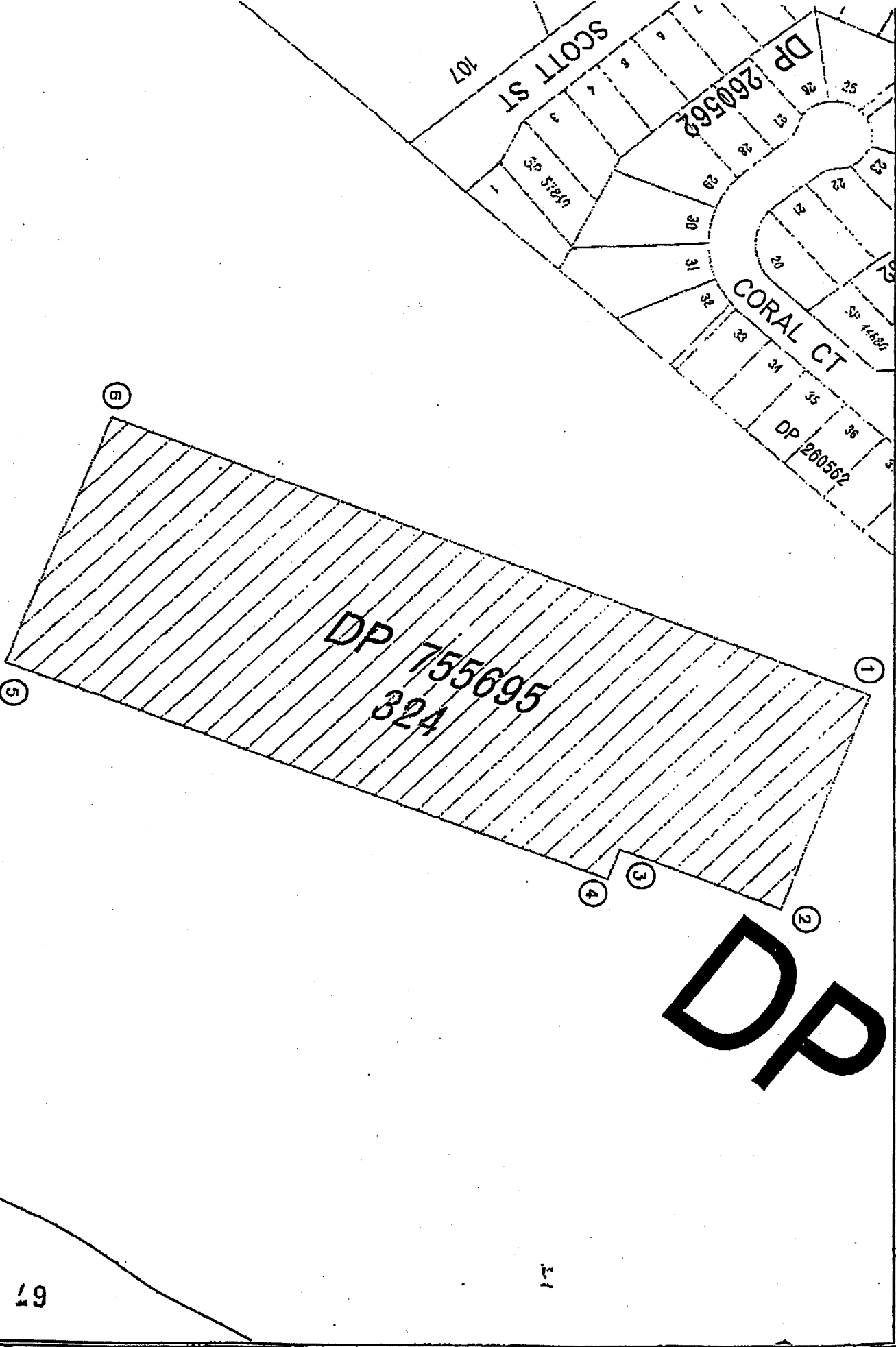
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Departmental Office: Griffin Telephone: (604) 664-2970

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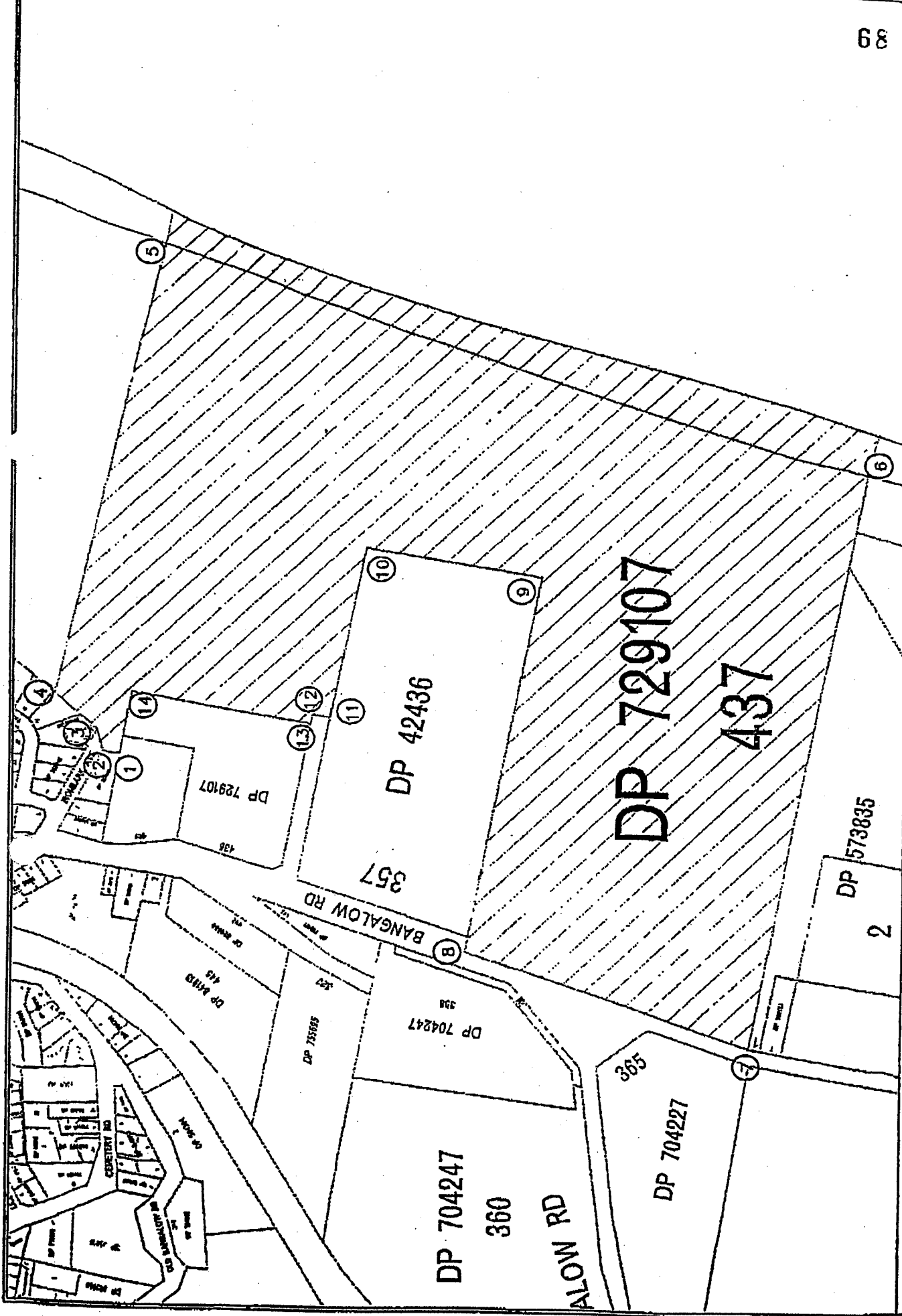
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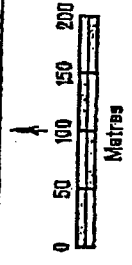
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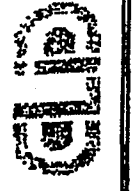
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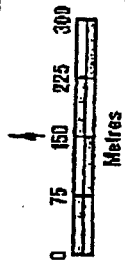


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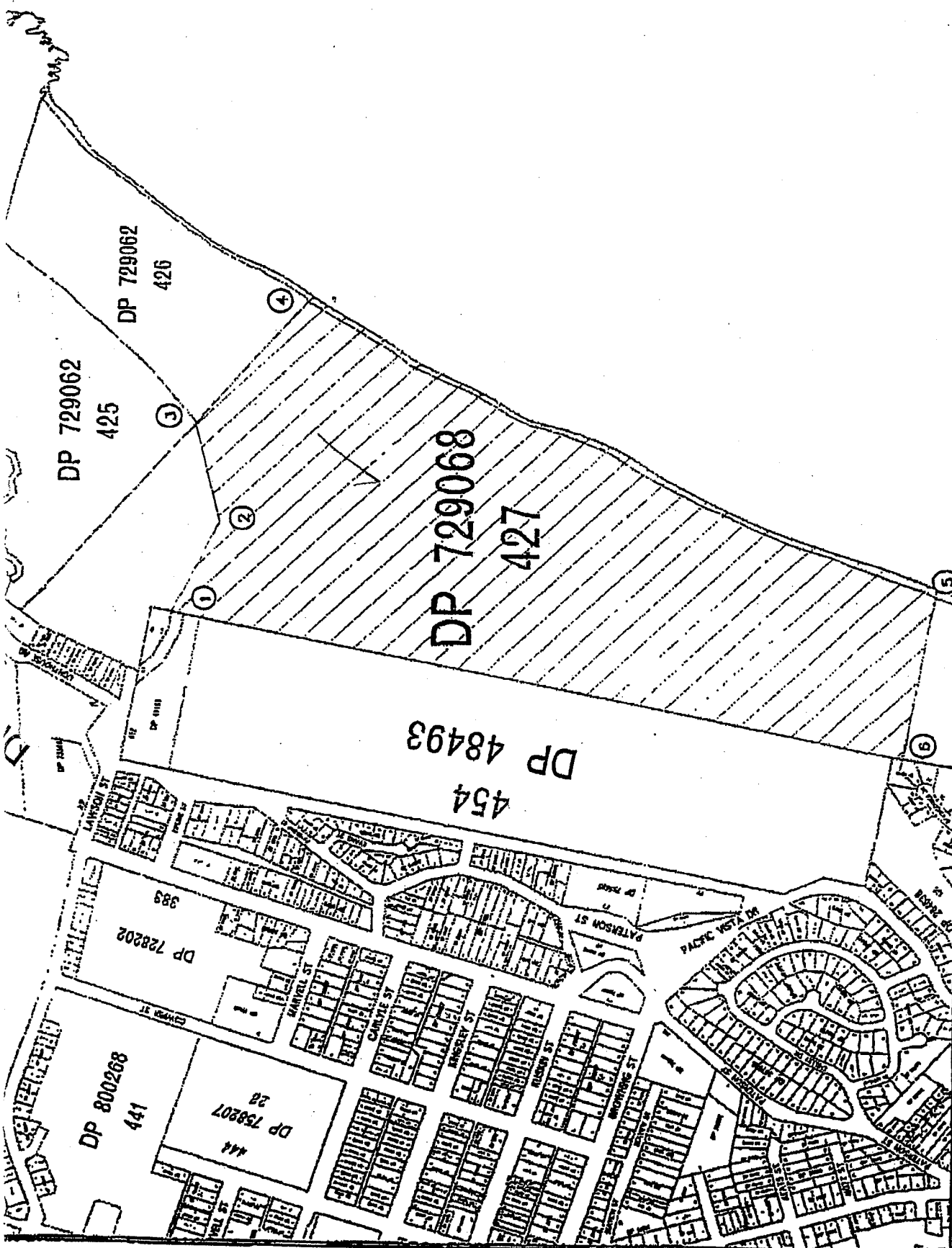




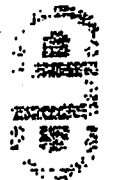
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Department of Environment and Heritage  
Departmental Office Carlton Telephone (03) 4241 0000

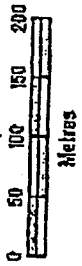


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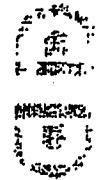




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437 DP 729107

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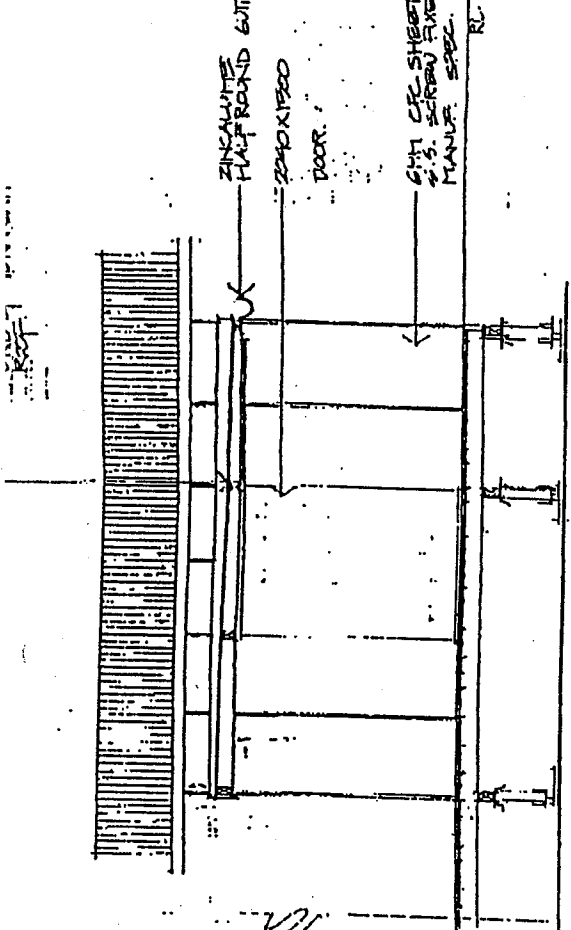
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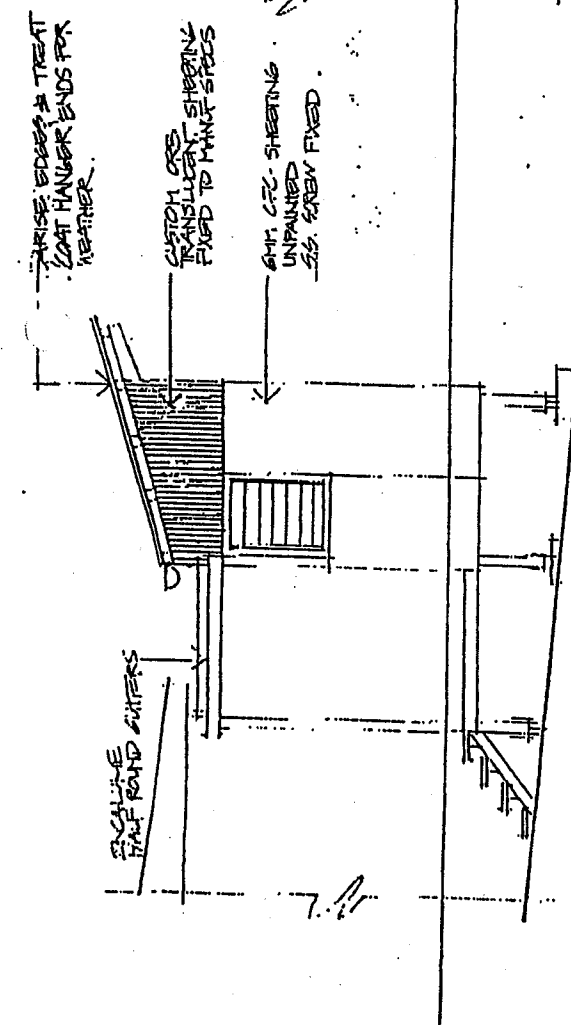
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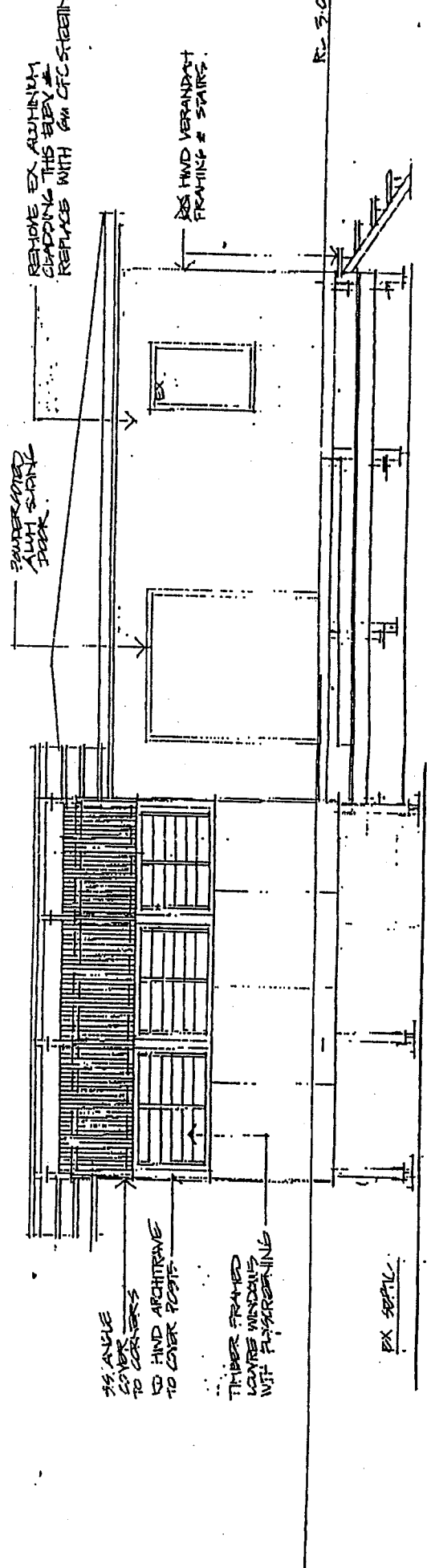
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SECTION



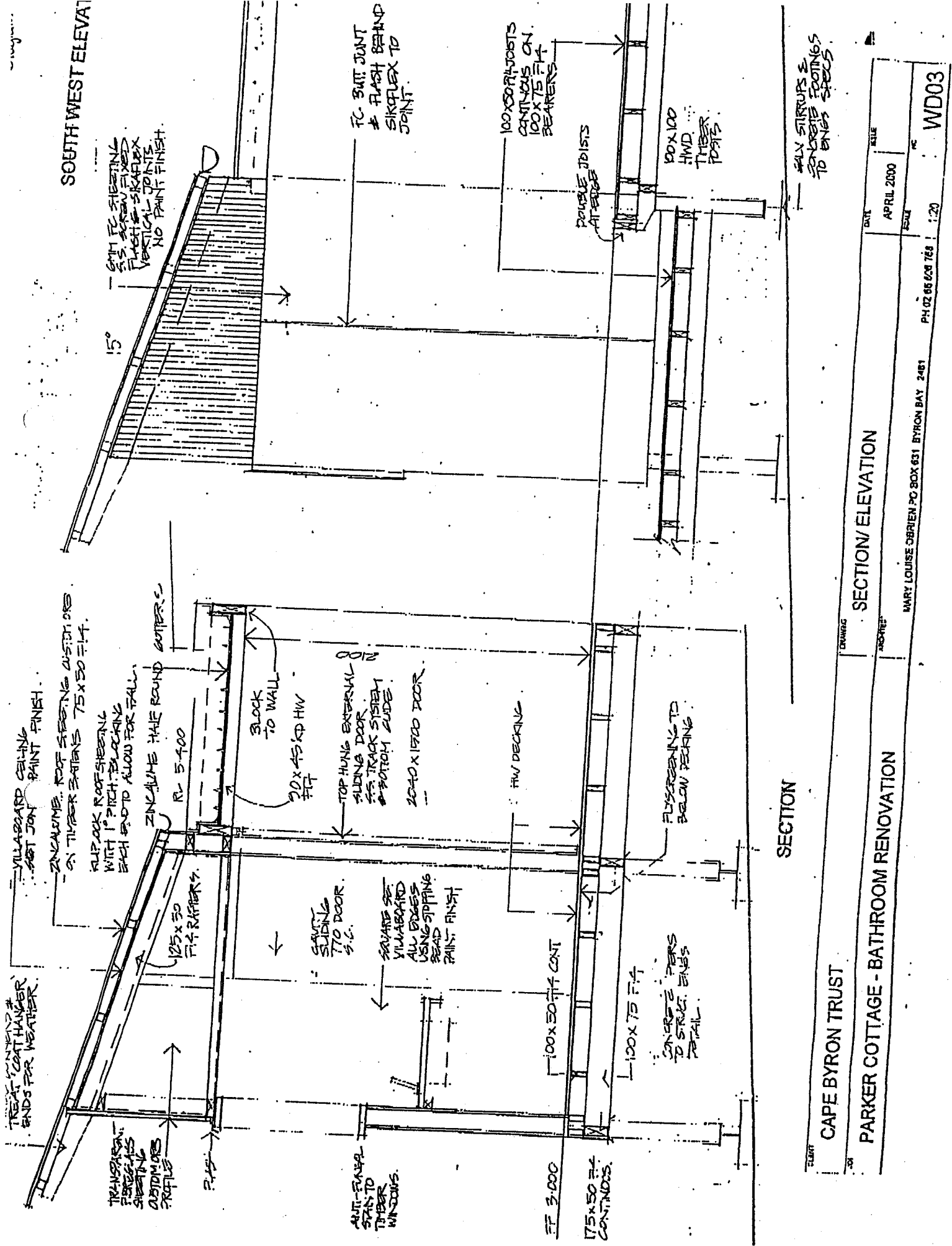
NORTH EAST ELEVATION



NORTH WEST ELEVATION

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| PROJECT | PARKER COTTAGE - BATHROOM RENOVATION | ARCHITECT | MARY LOUISE OBEREN PO BOX 631 BYRON BAY 2481 | SCALE | 1:50       | DATE  | APRIL 2000 |
|         |                                      |           |  |       |            |       | WD02       |





SOUTH WEST ELEVATION

TREAT COAT HANGER ENDS FOR WEATHER.  
 GYPSUM BOARD CEILING - SET JOIN PAINT FINISH.  
 ZINC-ALUME ROOF SHEETING WITH 1" PITCH. BLOCKING EACH END TO ALLOW FOR FALL.  
 ZINC-ALUME HALF ROUND GUTTERS.  
 125x50 F14 RAFTERS.  
 TRANSPARENT FIBREGLASS SHEETING CUSTOMERS PROFILE.

5/8" FC SHEETING 5/8" SIKAFLEX FLASHING SIKAFLEX VERTICAL JOINTS NO PAINT FINISH.

15°

RL 5-700

30x45 KD HW  
 BLOCK TO WALL  
 TOP HUNG EXTERNAL SLIDING DOOR 5/8" TRACK SYSTEM BOTTOM GUIDE.  
 2040 x 1900 DOOR

SAVARD SET VINYLBOARD ALL EDGES USING STIPING BEAD PAINT FINISH

ANTI-FRASH STAYS TO TIMBER WINDOWS.

100x50 RJ JOISTS CONTINUOUS ON 100x75 F14 BEARERS

DOUBLE JOISTS AT EDGE

100x100 HMD THREADED RODS

100x50 F14 CONT

100x75 F14

CONCRETE PERS TO STRUCT. ENDS DETAIL.

FF 3-000

175x50 F14 CONTINUOUS.

F14 SCREENING TO BELOW DECKING

SECTION

HALY STRUTS & CONCRETE FOOTINGS TO BRGS STEPS.

CAPE BYRON TRUST

PARKER COTTAGE - BATHROOM RENOVATION

SECTION/ELEVATION

DATE

APRIL 2000

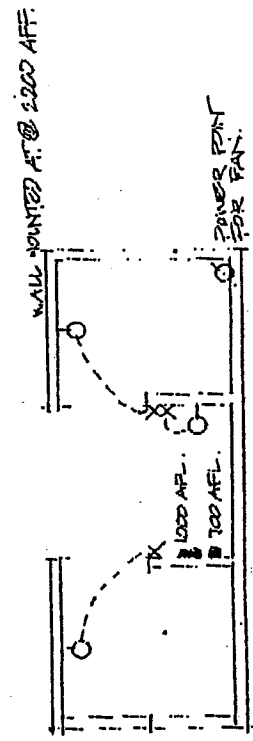
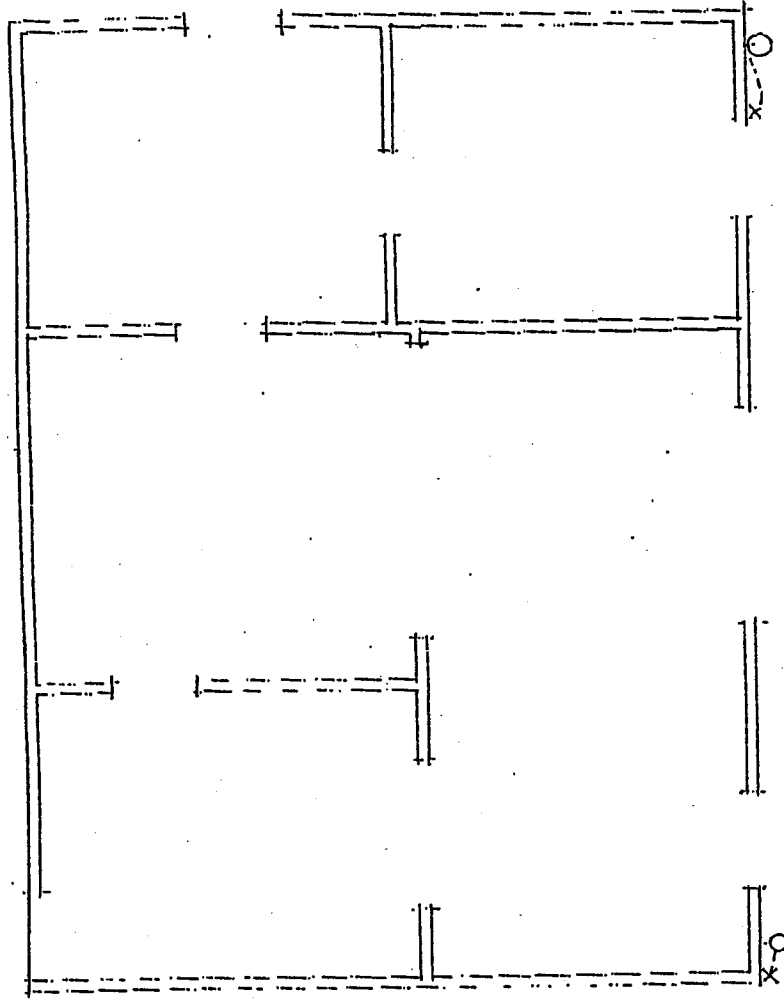
MARY LOUISE O'BRIEN PO BOX 631 BYRON BAY 2481

PH 02 66 631 763

SCALE

1:20

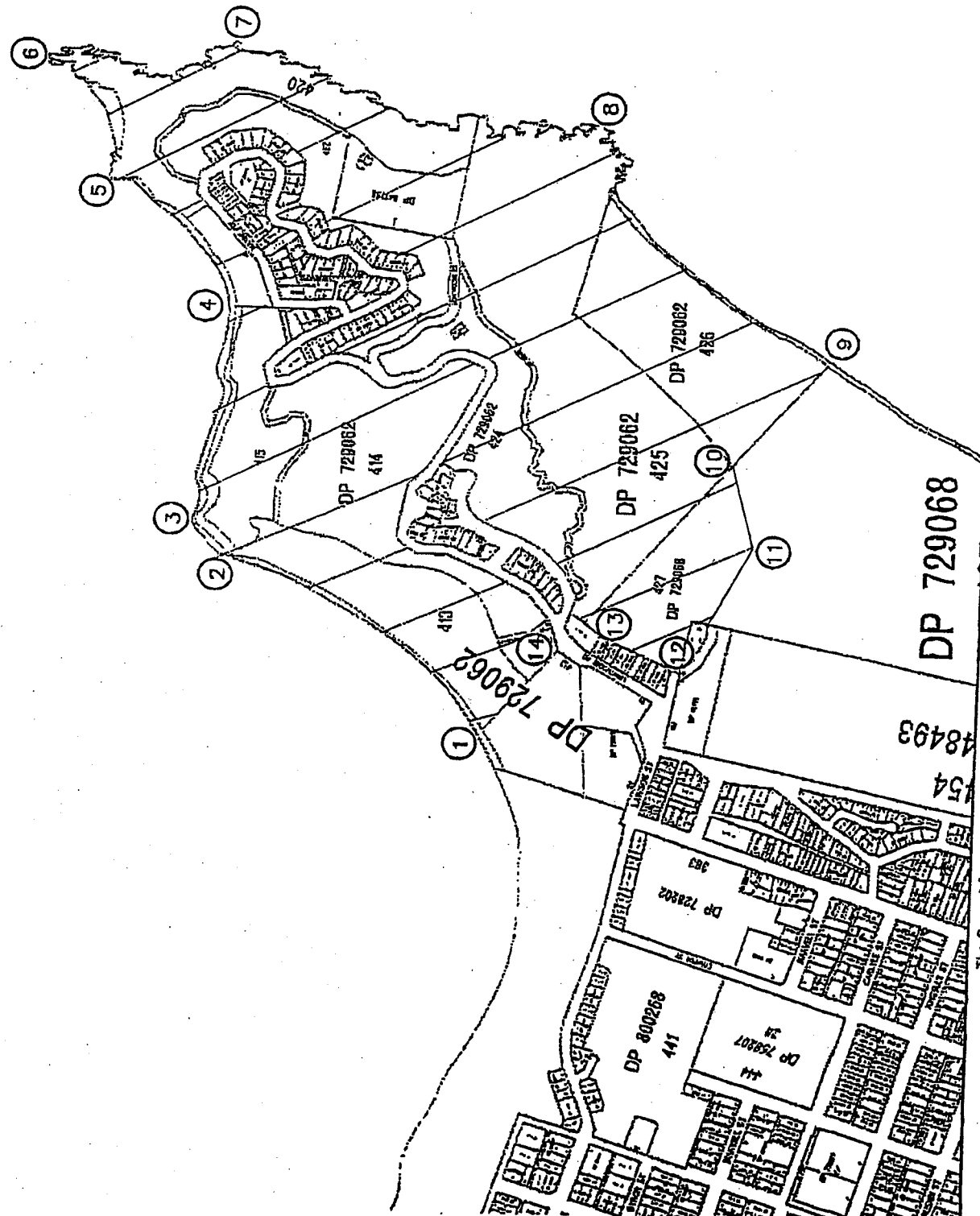
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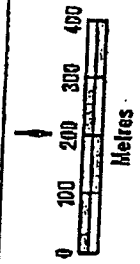
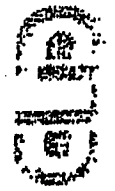
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| DESIGNER    | MARY LOUISE SURIEN P.C. BCY 53: BYRON BAY 2401 | DATE |            | SCALE |      | NO. |      |
| PROJECT NO. | PH 02 66 806 764                               | DATE |            | SCALE |      | NO. |      |



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Date printed: 13/10/2000



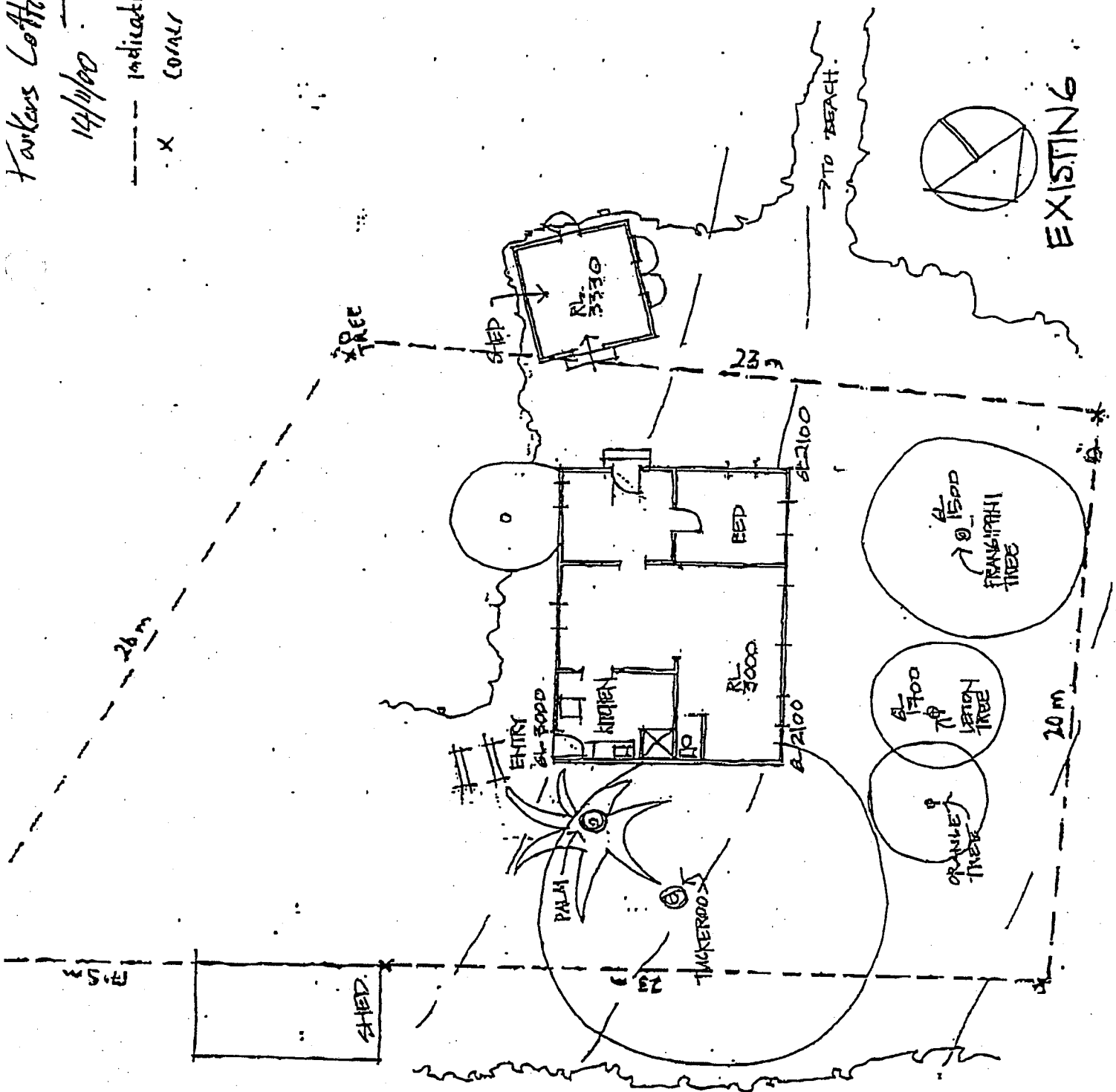
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Farkas Cottage  
14/4/00

--- indicates boundary.  
x corner pegs.

1:200



EXISTING

→ TO BEACH.

x TREE

STEP

23'000

23'000

21'000

BED

21'000

21'000

ENTRY

24'000

KITCHEN

PALM

TICKERWOOD

ORANGE TREE

LEMON TREE

FRANGIPANI TREE

26m

17'500

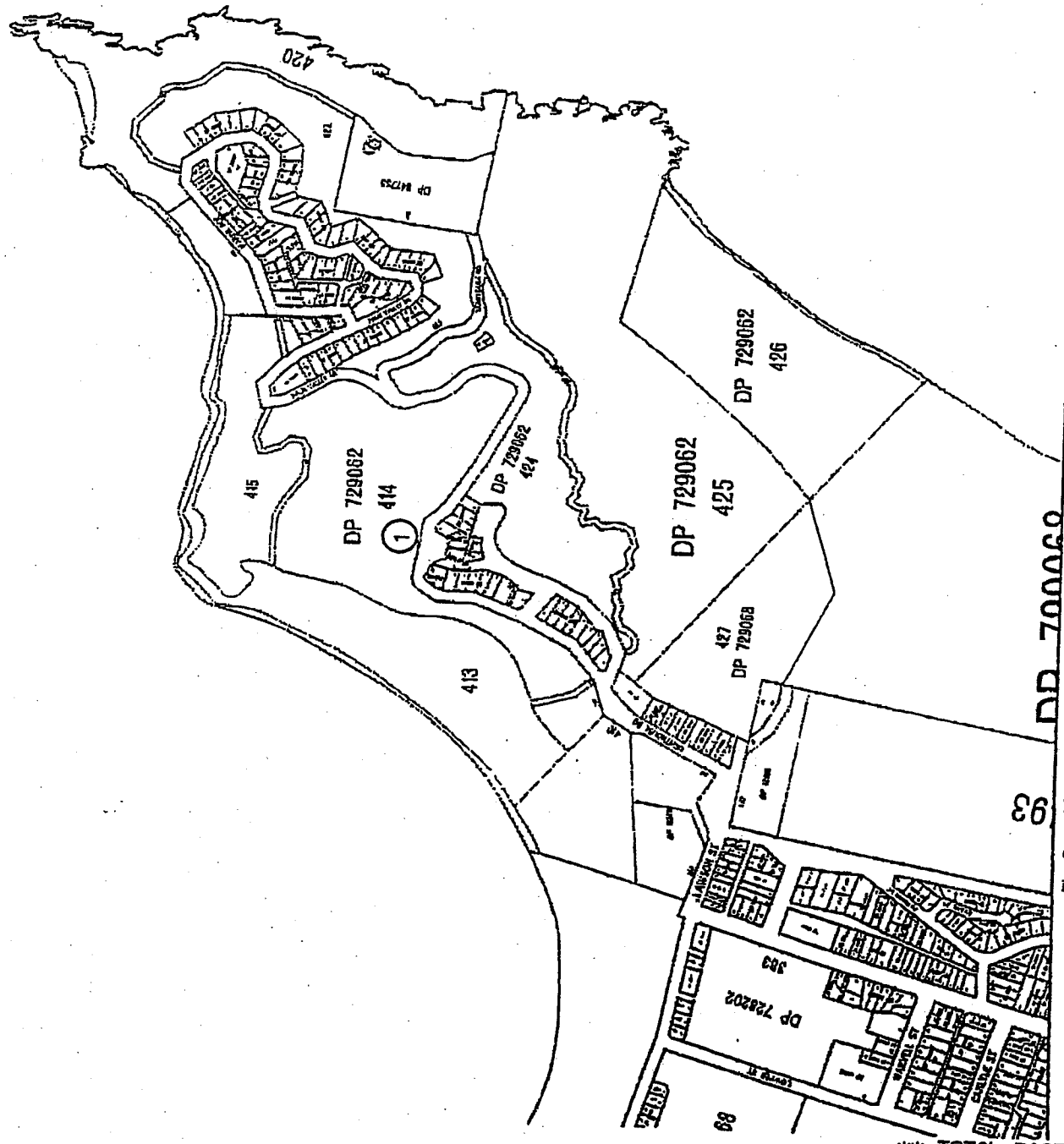
20m

Diagram N

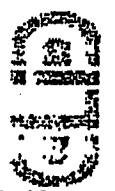


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