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80-133-07260.

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**Deed of Approval to Operate an
Underpass, Paths, Drains and
Electrical Conduits**

Director-General, Department of Main Roads

and

Coeur De Lion Investments Pty Limited
ACN 006 334 872

Released under RTI - DTMR

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This Deed

is made on the day of , 2006 between the following parties:

- 1 **Director-General, Department of Main Roads**
for and on behalf of the State of Queensland
(hereinafter called "**the Director-General**")

- 2 **Coeur De Lion Investments Pty Limited**
ACN 006 334 872
of Villas 1-4 Warran Road, Hyatt Regency Coolum, Yaroomba, Qld, 4573
(hereinafter called "**the Company**")

Recitals

- A. The Company is the registered proprietor of Lot 26 on SP 179447 and Lot 23 on SP 179447, each of those pieces of land described as Lot 11 on Survey Plan SP 128974, situated in the County of Canning, Parish of Maroochy (hereinafter called "**the Company Properties**"), which properties abut on the Caloundra-Noosa Road, also known as the David Low Way (hereinafter called "**the Road**") and upon which the Company has constructed the Resort known at the date of this Deed as Hyatt Regency Coolum (hereinafter called "**the Resort**").

- B. The Road is a State Controlled road under the provisions of the *Transport Infrastructure Act 1994* and under control of the Director-General.

- C. The Company has, with the approval of the Director-General, constructed various works (hereinafter called "**the Works**") across and under the Road.

- D. As part of the Works, the Company has included an underpass (hereinafter called "**the Underpass**") across and under the Road. The Underpass is shown on the plan contained in annexure "A".

- E. The Director-General is prepared to renew a right for the Company for the continuing maintenance, operation and use of the Works, including the Underpass, subject to the conditions set out hereunder.

The Deed witnesses

that the Director-General hereby grants to the Company the right to maintain, operate and use the Underpass being part of the works constructed, the paths, two drains and five electrical Conduits, to the satisfaction of the Director-General subject to the *Transport Infrastructure Act 1994* and the *Transport Operations (Road Use Management) Act 1994* and the restrictions, conditions and stipulations set out hereunder, and to this end and intent, the parties hereby agree as follows:

1 Interpretation

In this Deed, unless the contrary intention appears:

- (a) a reference to any statute or statutory instrument shall include any statutes or statutory instruments in amendment thereof or in substitution thereof;
- (b) the singular shall include the plural and vice versa, a reference to any gender includes all the other genders, and the reference to a person includes a reference to a corporation and vice versa;
- (c) the following terms shall have the meanings respectively assigned to them;
 - (1) **“Company”** means Coeur de Lion Investments Pty Ltd ACN 006 334 872;
 - (2) **“Company Properties”** means the properties described in Recital A;
 - (3) **“Conduits”** means Conduits to be laid within the Land together with any materials contained inside the Conduits;
 - (4) **“Date of Commencement”** means the date of this agreement;
 - (5) **“Director-General”** means the Director-General for the Department of Main Roads;
 - (6) **“Land”** means that part of the Road on which the Underpass is constructed;
 - (7) **“Resort”** means the tourist resort known as the Hyati Regency Coolum situated on the Company Properties;
 - (8) **“Road”** means the Caloundra-Noosa Road, also known as the David Low Way, a State Controlled road under the *Transport Infrastructure Act 1994*;
 - (9) **“Underpass”** means the Underpass constructed in and under part of the Road;
 - (10) **“Works”** means the Underpass, together with the paths, drains, Conduits and associated infrastructure constructed by the Company in and under part or the Road.

2 Term

- 2.1 Subject to the provisions hereof, this Deed shall remain in force for a period of fifteen (15) years commencing from the date of commencement.
- 2.2 If the Company requires a renewal of this Deed after the expiration of the period of fifteen (15) years from the date of commencement and has given to the Director-General not less than three (3) months before the expiration date notice in writing in that behalf, then, provided the Company has complied with the restrictions, conditions and stipulations hereof, the Director-General may, in his absolute discretion, grant to the Company a renewal of this Deed under such restrictions, conditions and stipulations as the Director-General may think fit.

3 No Estate or Interest in Land

The Company shall not by virtue of any provision of this Deed to obtain any estate or interest whatsoever in the Road and this Deed shall operate and shall be read or construed merely as a grant of a permit for the maintenance, operation, use and continuance of the existence of the Works, subject to the restrictions, conditions and stipulations of this Deed.

4 Rates and Outgoing

The Company shall duly and punctually pay all rates, taxes, assessments, duties, impositions and other outgoings whatsoever in respect of the Works which may be lawfully imposed, assessed, levied or charged by or payable to any duly constituted authority in that behalf and whether payable by owner or occupier or partly by each.

5 Authorised Use

5.1 Subject to clause 6, the Company shall not allow the Underpass or the paths to be used for any purpose other than for:

- (a) pedestrian, bicycle and golf buggy access for parties using the facilities within the Resort or the adjacent beach;
- (b) pedestrian and vehicular access by servants, agents, contractors, invitees and licensees of the Company (or its related entities) for the purposes of or in connection with the business carried on by the Company (or its related entities) on the Company Properties and purposes reasonably incidental to that business or the use, occupation and ownership thereof by the Company; and
- (c) pedestrian and vehicular access by servants, agents, contractors, invitees and licensees of the Company (or its related entities) for the purpose of or in connection with the development and sale of land owned by the Company (or its related entities) and purposes reasonably incidental to the development and sale of land owned by the Company (or its related entities).

5.2 Subject to clause 6 hereof, the Company shall not allow the drains or Conduits to be used for any other purpose than as authorised by the Director-General.

6 Public Use

The Company shall not prohibit or restrict the public from using the Underpass or the Land for pedestrian use nor shall the Company prohibit the public from using the Land in any manner to which the public are normally entitled.

7 Maintenance, Inspection and Repair

- 7.1 The Company shall for the duration of this Deed maintain at its own cost the Underpass, the paths and the drains and the Conduits when placed and the Land in good repair and safe, sound, clean and orderly condition to the satisfaction of the Director-General (acting reasonably).
- 7.2 The Company shall permit the Director-General, his officers, servants and agents at all reasonable times to inspect the Underpass, the paths and the drains and the Conduits or any part of parts thereof by means of any lands for the purpose of ascertaining whether the Company is duly observing, performing and fulfilling all and every restriction and stipulation hereof.
- 7.3 The Director-General may, from time to time, by notice in writing inform the Company of any defect or want of maintenance and repair and if any such notice is not obeyed to the satisfaction of the Director-General (acting reasonably) within the time prescribed by such notice, the Director-General may perform or cause to be performed the work and reparation and recover all reasonable costs, charges and expenses in connection therewith from the Company. The Director-General must allow the Company a reasonable time to carry out any works required under this clause 7.3.

8 Notice of Work

- 8.1 The Company shall give prior notice to the Director-General, in writing, detailing any maintenance or any other work it proposes to carry out to the Underpass, the drains, the Conduits, the paths or the Land, including details of the proposed methods and timing for executing such maintenance or other work (other than that needed because of emergency or danger to the public) and such work shall not be commenced until the Director-General's approval in writing is given, such approval not to be unreasonably withheld.
- 8.2 Where it is necessary for any of the purposes of this Deed to prohibit, divert or direct all or any part of the traffic in or from the Road or any part thereof, the Company shall provide the Director-General with details of the work or other purposes and the Director-General shall determine (acting reasonably) when such prohibition, diversion or direction of traffic shall take place and shall make arrangements and provide such employees of the Director-General as the Director-General considers necessary or desirable for the safe and effective regulation of traffic in the locality of the Road and the Company shall pay, to the Director-General the reasonable costs of such arrangements, the amount determined by the Director-General (acting reasonably) as sufficient to compensate him for the attendance of his employees and any other reasonable costs which are incurred by or demanded of the Director-General (acting reasonably) as a result of, or in connection with, such prohibition, diversion or direction of traffic.

9 Upgrading of Road

In the event of upgrading or maintenance on the Road being required, any additions, extensions, alterations required to the Underpass, the paths, the drains or the Conduits to permit continued safe operation of the Road, shall be determined by the Director-General, (acting reasonably) and advised to the Company prior to the upgrading or maintenance being required. The Company shall meet all reasonable costs associated with such additions, extensions or alterations required to the Underpass, the paths, the drains or the Conduits and in addition, any reasonable additional cost of upgrading or maintenance of the Road caused by the existence of the Underpass, the paths, the drains or the Conduits.

10 Prohibited Practices

The Company shall not:

- (a) remove, alter or add to the Underpass, the paths, the drains or the Conduits or any part thereof, without the prior written permission of the Director-General, not to be unreasonably withheld;
- (b) paint or mark on the Underpass, the paths, the drains or the Land or the Road generally, or attach thereto any ornamentation, marking, sign, banner, flag or other article without the prior written permission of the Director-General, not to be unreasonably withheld.

11 Injury to the Public

The Company shall not commit any act or deed on the Works or the Land, and shall, where possible prevent any person from committing any act or deed on the Works or the Land, which causes or may cause injury or danger to any other person whether in or on the Works or the Land or the Road generally.

12 Indemnity and Release

12.1 The Company shall indemnify and keep indemnified at all times the Director-General, the State of Queensland and its employees, contractors or agents from and against all claims, demands, actions, suits, proceedings, losses, damages or expenses (including legal expenses incurred in defending claims, demands, actions, suits, proceedings) that may be brought against or incurred by the Director-General, the State of Queensland or its employees, contractors and agents in respect of:

- (a) personal injury or death of any person;
- (b) loss or damage to any property,

arising, directly or indirectly:

- (1) from the existence, maintenance or use of the Works or the Land or any part of the Underpass, the paths, the drains, the Conduits or the Land;

- (2) as a consequence of any default, unlawful act, or negligent act or omission by the Company, its employee, agents or sub-contractors; or
 - (3) from the failure by the Company to observe or perform any of the terms and conditions of this Deed
- 12.2 The Company shall release and discharge the Director-General, the State of Queensland and its employees, contractors and agents from any claim, demand, action, suit or proceeding that but for the provisions of this clause 12 the Company might otherwise bring against or make upon the Director-General, the State of Queensland and its employees, contractors or agents.
- 12.3 The indemnity and release provided in this clause 12 will be reduced to the extent of any contributing;
- (a) negligent act or omission;
 - (b) unlawful act; or
 - (c) breach of this Deed.
- by the Director-General, the State of Queensland or its employees in the course of employment or its contractors or agents acting with lawful authority.
- 12.4 The indemnities provided in sub-clauses 12.1 and 12.2 are in addition to and not exclusive of any other rights the Director-General may have against the Company at general law, whether statutory or otherwise.
- 12.5 This clause 12 survives termination or expiration of this Deed

13 Public Liability Insurance

- 13.1 Within one (1) day of the Date of Commencement, the Company shall take out a public liability policy of insurance in the joint names of the Director-General and the Company for their respective rights and interests to cover their liabilities to third parties, including the liabilities as set out in Clause 13.
- 13.2 The public liability policy of insurance shall include a cross liability clause in which the insurer agrees to waive all rights or subrogation or action that he may have or acquire against all or any of the persons comprising the insured and for the purposes of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance has been issued to each of them (subject always to the overall sum insured not being increased thereby).
- 13.3 The public liability policy of insurance shall be for an amount not less than the sum of \$10,000,000 per occurrence and shall be effected with an insurer or insurers approved in writing by the Director-General, which approvals shall not be unreasonably withheld. The policy shall be maintained during the currency of this Deed and any renewal hereof.

14 Evidence of Insurance

- 14.1 Within seven (7) days of the Date of Commencement, and then whenever reasonably requested in writing from time to time so to do by the Director-General, the Company shall produce evidence to the satisfaction of the Director-General (acting reasonably) of the insurance effected and maintained by the Company for the purposes of clause 13. If, after being requested in writing by the Director-General so to do, the Company fails to produce evidence of compliance with its insurance obligations under clause 13 which is to the satisfaction and approval of the Director-General (acting reasonably), the Director-General may effect and keep in force any such insurance and pay such premiums as may be reasonably necessary for that purpose and the amount so paid shall be a debt due from the Company to the Director-General.
- 14.2 In addition to the obligations imposed by clause 14.1, the company shall, upon the first anniversary of the date of commencement, and upon every anniversary of this Deed thereafter, promptly provide the Director-General with a copy of the a certificate of currency for the policy of insurance effected as required by clause 13.
- 14.3 The Company shall ensure that the policy of insurance effected as required by clause 13 shall contain provisions acceptable to the Director-General (acting reasonably) that will:
- (a) require the insurer, whenever the insurer gives to or serves upon the Company a notice of cancellation or any other notice under or in relation to the policy, at the same time to inform the Director-General in writing that the notice has been given to or served upon the Company; and
 - (b) provide that a notice of claim given to the insurer by the Director-General or the Company shall be accepted by the insurer as a notice of claim given to the insurer by the Director-General and the Company.
- 14.4 The Company shall, as soon as practicable, inform the Director-General in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by clause 13 and shall ensure that the Director-General is kept fully informed of subsequent action and developments concerning the claim.
- 14.5 The effecting of insurance as required in clause 13 shall not in any way limit the liabilities or obligations of the Company under other provisions of this Deed.

15 Director-General not to be Liable

The Director-General shall not be called upon or required to pay to the Company or to any other person, firm, corporation or Company an sum of money whether in the form of compensation or otherwise howsoever in respect of personal injury to or the death of any person whomsoever or loss of or damage to any property whatsoever arising out of or as a consequence of the construction, maintenance, existence or use of the Underpass, the paths, the drains, the Conduits or the Land or as a consequence of the placing of the Conduits. This clause will survive the termination or expiration of this Deed.

16 Determination of Deed

- 16.1 In any of the following cases, it shall be lawful for the Director-General, without any notice or demand except where specified, herein at any time thereafter to determine this Deed:
- (a) if there is any breach or non-observance or non-performance or non-fulfilment by the Company of any of the restrictions, conditions and stipulations herein contained and the Company fails to remedy the breach or non-performance within a reasonable time after notice to remedy has been given to the Company by the Director-General;
 - (b) if the company enters into a Scheme of Compromise or Arrangement with its Creditors, a Receiver or Receiver and Manager is appointed to the Company, there is an appointment of an administrator or administrators of the Company, a resolution is passed to wind up the Company or the Company goes into compulsory or voluntary liquidation;
 - (c) if otherwise than for the purpose of reconstruction a petition shall be represented or an effective resolution shall be passed or an order made for the winding-up of the Company;
 - (d) if a distress or execution shall lawfully be levied or enforced against any of the property of the Company;
 - (e) upon the expiration of a notice in writing given by the Director-General to the Company that this Deed is determined for one or more of the purposes for which land may be taken pursuant to the *Acquisition of Land Act 1967-1977* which notice shall be given at least twelve (12) months before it is to come into effect;
 - (f) if at any time the Company is not the registered proprietor in fee simple of any part of the Company Properties.
- 16.1A Subject to clause 16.1, if any part of the Company Properties is disposed of by the Company during the Term, it shall be lawful for the Director-General, without any notice or demand except where specified, herein at any time thereafter to determine this Deed, but only to the extent that the Deed benefits the part of the Company Properties of which the Company is no longer the registered proprietor in fee simple. The effect of such determination will be that this Deed will continue to operate in relation to the part of the Company Properties for which the Company remains the registered proprietor in fee simple.
- 16.2 Upon the determination of the Deed, whether under clause 16.1, 16.1A, or otherwise, the Director-General may, without prejudice to any other right that he may have under this Deed, serve notice upon the Company to remove the Underpass, the paths, the drains, the Conduits and to remove or make other arrangements for any services comprising part of the Underpass or comprising the Conduits at the cost and expense of the Company and without any compensation thereof within the period as stated in the notice and in accordance with the directions of the Director-General.
- 16.3 If the Company fails to comply with the notice given by the Director-General under clause 16.2, the Director-General may remove or otherwise deal with the Underpass and the paths in such manner as he thinks fit.

16.4 The Company hereby agrees:

- (a) that, for the purposes of exercising his rights under clause 16.3, the Director-General and his servants and agents together with plant, machinery and equipment shall have a right of access and ingress over the Land owned or controlled by the Company.
- (b) that the Director-General and his servants and agents shall not be liable to the Company for any damage caused to any property of the Company in the exercise of the rights under clause 16.3 other than for damages caused or contributed to by the negligence of the Director-General, his employees in the course of employment or his agents acting within lawful authority;
- (c) that the Company shall pay to the Director-General such sum as determined by the Director-General to be sufficient to compensate him for the work carried out by him in exercising the rights under clause 16.3 and any other work carried out by the Director-General relating to such exercise and that such sum is a debt due from the Company to the Director-General under this Deed; and
- (d) that the Company shall not be entitled to claim any payment by way of compensation or otherwise as being due from the Director-General to the Company in respect of the exercise of the rights under clause 16.3.

17 Benefit of the Company

- 17.1 This Deed shall inure only for the benefit of the Company and any permitted assignee of the Company hereunder and shall not run with the land or any part thereof.
- 17.2 The Company must give the Director-General written notification of its intention to dispose of any part or all of the Company Properties prior to the date of the intended disposal.

18 Company to Comply with Legislation

- 18.1 The Company shall comply with the requirements of all Acts of the Parliament of the Commonwealth and with the requirements of the provisions of all Acts of the Parliament of the State of Queensland and with the requirements of all statutory instruments made or issued under any such Act and with the lawful requirements of public and other authorities including the Council of the Maroochy Shire in any way affecting or applicable to the erection, maintenance, existence or use of the Underpass or paths.
- 18.2 The Company shall give all notices necessary to comply with the aforesaid requirements and shall pay and bear all fees payable in connection therewith.

19 Company not to Assign without Approval

The Company shall not, without the prior written approval of the Director-General, such consent not to be unreasonably withheld, and except on such terms and conditions as are reasonably determined in writing by the Director-General,

assign, mortgage, charge or encumber this Deed or any part thereof or any benefit hereunder.

20 Development of Company Properties

During the Term, the Director-General agrees to grant similar rights of access as permitted under this Deed to any lot owner or bodies corporate in respect of lots or community titles schemes created, reconfigured or developed from the Company Properties ("Developments"), in response to an application for such access, subject to:

- (a) any requirements or conditions that the Queensland Department of Main Roads chooses to impose as a concurrence agency under the *Integrated Planning Act 1997* in relation to any development application for the approval of such Developments;
- (b) any other conditions reasonably consistent with the administration of the Queensland Department of Main Roads' responsibilities under the legislation that it administers; and
- (c) any other Queensland government planning conditions or policies whether currently in existence or at the time of the Developments.

Comment: "other land" owned by the 'Company or its related entities' is far to broad if this clause is going to remain.

21 Stamp Duty

Any stamp duties on this Deed shall be paid by the Company.

22 Notices

- 22.1 Any document which is to be or may be issued or given to or served upon the Company under this Deed shall be deemed to have been sufficiently issued or given to or served upon the Company if it is handed to an officer of the Company or is sent by prepaid post to or is left at the address of the Queensland registered office of the Company or at such other address as is agreed between the parties hereto in writing for the purpose of service of documents.
- 22.2 Any document which is to be or may be issued or given to or served upon the Director-General under this Deed shall be deemed to be sufficiently issued or served upon the Director-General if it is handed to the Director-General or is sent by prepaid post to or is left at the address of the Director-General at Boundary Street, Spring Hill, Brisbane in the said state.
- 22.3 Any document sent by prepaid post shall be deemed to have been issued or given to or served upon the Company or the Director-General, as the case may be, at the time at which it would normally arrive in the ordinary course of the post at the address to which it is directed.

23 Performance by Other Officers

Any restriction, condition or stipulation of this Deed required or expressed to be performed by the Director-General may be performed by any officer appointed for the due and proper administration of the *Transport Infrastructure Act 1994* and the Company shall accept the actions of such officer as the actions of the Director-General for the purpose of this Deed.

24 Warranty

The Director-General warrants that it has the power and statutory authority to enter into and carry out its obligations under this Deed.

25 No Fetter on Powers

Nothing in the Deed will in any way restrict, modify or alter any right, power, remedy or procedure that the Director-General or the State of Queensland may now, or at any time in the future, exercise under any statutory power or duty. In the event of any inconsistency between this Deed and any statutory power or duty, the statutory power or duty will prevail to the extent of the inconsistency and the Director General or the State of Queensland will not be liable for any compensation or to the Company in respect of the operation of this clause, nor will the exercise of any such statutory right, power or remedy or procedure amount to a breach of this Deed.

26 Entire Agreement

This Deed shall constitute the complete agreement between the parties and will prevail over all prior negotiations, representations, and agreements, whether oral or written.

27 Variations

The Director-General and the Company agree that this Deed (including the Schedule) may be varied from time to time by a party making a written request to the other party for a variation and the other party agreeing in writing to such request.

28 Waiver

- 28.1 No modification, variation or amendment of this Deed, or waiver, or discharge or release in respect of this Deed, whether at law or in equity shall be of any force or effect unless such modification, variation or amendment in writing has been signed by the parties.
- 28.2 No delay or omission to exercise any right, power or remedy accruing to the Director-General upon any continuing breach or default under this Deed shall

impair any such right, power or remedy, nor shall it be construed to be a waiver of any right of the Director-General to take action or make a claim in respect of a continuing breach or default or to be an acquiescence of it.

29 Severance

If any provision, in part or whole, of this Deed is invalid for any reason then such provision or part that is invalid shall be severed from the valid provisions or parts and such invalidity shall not affect the enforceability of the remaining provisions and parts of this Deed.

30 Jurisdiction

This Deed shall be governed by and construed in accordance with the laws of the State of Queensland and the parties agree to submit to the jurisdiction of the courts of that State and any higher courts that have the right to hear appeals from those courts.

Signed sealed and delivered by
Coeur de Lion Investments Pty Ltd ACN 006 334 872

by its duly authorised attorneys in the presence of:

NR
[Redacted]

Witness

PI
[Redacted]

Name (please print)

NR
[Redacted]

Witness

PI
[Redacted]

Name (please print)

NR
[Redacted]

Attorney

PI
[Redacted]

Name (please print)

NR
[Redacted]

Attorney

PI
[Redacted]

Name (please print)

Signed sealed and delivered *G S DAWSON* [Redacted] *M(TP)*.....(print name/position) as
delegate of the Director-General, Department of Main Roads for and on behalf of the State of
Queensland in the presence of.....(print name) a witness.

NR
[Redacted]

Witness

30 March 2006

personal information

Name (please print)

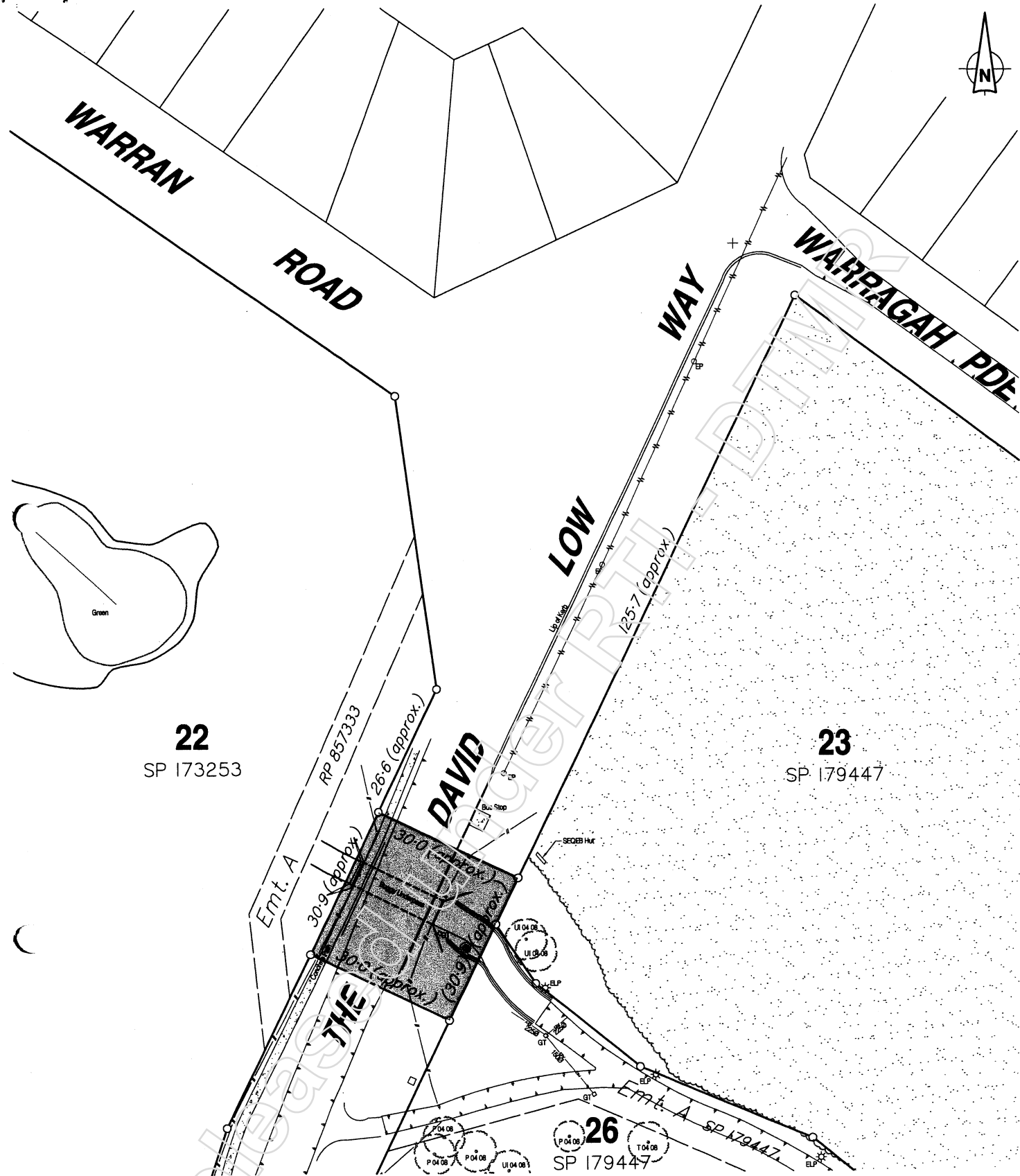
NR
[Redacted]

personal information

Name (please print)

Annexure A – Plan of Underpass

Released under RTI - DTMR



22
SP 173253

23
SP 179447

26
SP 179447

Property Details

Address: David Low Way, Coolum
 RPD: Lot 22 on SP 173253 and Lots 23 & 26 on SP 179447
 Local Authority: Maroochy Shire Council
 Parish: Maroochy
 County: Canning

Notes

Design subject to Local Authority approvals and detailed design requirements. Areas and dimensions are approximate only and are subject to final survey.

Disclaimer: Any licence expressed or implied, to use this document for any purpose whatsoever is restricted to the terms of the agreement or implied agreement between Jensen Bowers and the instructing party.



Hyatt Regency Coolur
Underpass Sketch Plan