

BLAKE DAWSON WALDRON

L A W Y E R S


New Orange Acute Mental Health Facility Site Licence

Health Administration Corporation

**Pinnacle Healthcare (OAHS) Pty Ltd as trustee of the Pinnacle Healthcare
(OAHS)Trust**

ACN 120 747 588

Level 36
Grosvenor Place
225 George Street
Sydney NSW 2000
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CONTENTS

1.	INTERPRETATION	2
1.1	Definitions	2
1.2	Interpretation	3
1.3	Capacity of the Licensee	4
2.	GRANT OF LICENCE	4
2.1	Term of licence	4
2.2	Licence	4
2.3	Nature of Licence	4
3.	LICENCE FEE	5
4.	LICENSEE'S OBLIGATIONS	5
4.1	General obligations	5
4.2	Restrictions on Licensee	5
5.	ASSIGNMENT	6
6.	GENERAL	6
6.1	Notices	6
6.2	Governing law	7
6.3	Waiver	7
6.4	Counterparts	8
6.5	Entire agreement	8
7.	GST	8
8.	RECIPIENT CREATED TAX INVOICES	8
	SCHEDULE 1	10
	ANNEXURE A	12

SCHEDULE**Item 1****Licensor**

Name: Health Administration Corporation, a corporation sole constituted under section 9 of the *Health Administration Act 1982*

Address: 73 Miller Street
North Sydney, NSW 2000

Fax number: (02) 9391 9831

Attention: Project Director

Item 2**Licensee**

Name: Pinnacle Healthcare (OAHS) Pty Ltd as trustee of the Pinnacle Healthcare (OAHS) Trust

Address: Level 23, The Chifley Tower
2 Chifley Square
Sydney NSW 2000

Facsimile: (02) 9223 2907

Attention: Project Company Representative

Item 3**Commencing Date**

Financial Close

Item 4**Site**

That part of Lot 300 in Deposited Plan 1115809 and Lot 230 in Deposited Plan 720596 marked "C" on the plan attached as Annexure A

SITE LICENCE**DATE** 21 DECEMBER 2007**PARTIES**

Health Administration Corporation, a corporation sole constituted under section 9 of the *Health Administration Act 1982*

Pinnacle Healthcare (OAHS) Pty Ltd ACN 120 747 588 as trustee of the Trust

RECITALS

The Licensor has agreed to grant the Licensee a licence to enter, occupy and use the Site for the purpose of carrying out the Project Obligations.

OPERATIVE PROVISIONS**1. INTERPRETATION****1.1 Definitions**

In this deed, capitalised terms have the same meaning as that set out in the Project Deed unless otherwise stated below or the context otherwise requires:

Business Day means a day on which banks are open for general banking business in the city where the Site is located.

Commencing Date means the date specified in **Item 3**.

Early Payout Amount has the meaning given to it in the Master Licence Agreement.

Licence means the licence to access and use the Site granted by the Licensor to the Licensee under this deed.

Licence Fee means the fee determined in accordance with the Master Licence Agreement.

Licensee's Agent means every agent, employee, licensee, contractor and invitee of the Licensee.

Licensee means the party named in **Item 2**.

Licensor means the party named in **Item 1**.

NSW Health Tenant Agreement means any arrangement, contract or agreement described in column 2 of schedule 1.

NSW Health Tenants means the entities listed in column 1 of schedule 1.

Project Deed means the deed entitled "Orange and Associated Health Services PPP Project Deed" between the Licensor and the Licensee dated on or about the date of this licence.

Project Obligations means the obligations of the Licensee (in its capacity as Project Company) under the Project Deed to carry out or procure the performance of the Temporary Works, the Works and the Services.

Site means the area specified in **Item 4**.

Term means the term of the licence granted under this deed commencing on the Commencing Date and ending on the Terminating Date.

Terminating Date means the day on which the Licensee is no longer required under the terms of the Project Deed to carry out the Works or the Temporary Works or provide the Services on the Site.

1.2 Interpretation

In this deed, headings and underlining are for convenience only and do not affect interpretation, and unless the context otherwise requires:

- (a) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (b) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (c) a reference to any gender includes all genders;
- (d) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this deed;
- (e) a recital, schedule, annexure, exhibit or a description of the parties forms part of this deed;
- (f) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (g) a reference to any party to this deed or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (h) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (i) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- (j) a reference to a month is to a calendar month;
- (k) a reference to an Item is to the relevant Item in the Schedule; and
- (l) words importing the singular include the plural and vice versa.

1.3 Capacity of the Licensee

Clause 1.10 of the Project Deed applies to this deed, mutatis mutandis, as if set out in this deed with references to the "Project Company" being construed as references to the "Licensee".

2. GRANT OF LICENCE

2.1 Term of licence

The Term begins on the Commencing Date and ends on the Terminating Date.

2.2 Licence

- (a) The Licensor grants to the Licensee and the Licensee's Agents a non-exclusive licence for the Term to enter, occupy and use the Site for the sole purpose of carrying out the Project Obligations or in anticipation of the Project Obligations.
- (b) Without limiting clause 5.1 of the Project Deed, the Licensee's rights under paragraph (a) are subject to the rights of any NSW Health Tenants under the NSW Health Tenant Agreements and the other matters set out in clause 5.1(b)(i) of the Project Deed.
- (c) The Licensee must ensure that:
 - (i) nothing the Licensee does on the Site will unreasonably interfere with the rights of NSW Health Tenants; and
 - (ii) the Licensee does not cause the Licensor to be in breach of any NSW Health Tenant Agreement.

2.3 Nature of Licence

- (a) The licence granted under this deed:
 - (i) is personal to the Licensee; and
 - (ii) will not operate or be deemed to operate in any way as a demise of any part of the Site and the Licensee is not entitled to any estate, right or interest in the Site or any part of the Site, other than the rights created by the provisions of this deed.
- (b) Nothing in this deed:
 - (i) confers on the Licensee any rights as a tenant of the Site; or
 - (ii) creates the relationship of landlord and tenant between the parties.
- (c) NSW Health may at any time during the term of the Licence exercise its rights under clause 5.1(c) of the Project Deed in respect of the Licence or the Site to which the Licence relates.

3. LICENCE FEE

The Licensee must pay the Licence Fee to the Licensor in accordance with the Master Licence Agreement.

4. LICENSEE'S OBLIGATIONS

4.1 General obligations

Without limiting any other provision under this deed, the Licensee agrees with the Licensor:

- (a) **(Site)** to use the Site only for carrying out the Project Obligations and exercising its rights under this deed and the Project Deed;
- (b) **(no exclusivity)** that the licence granted under this deed confers no right of exclusive occupation or access in respect of the Site;
- (c) **(no objection)** to not object or interfere with the Licensor's exercise of its rights as set out in the Project Deed;
- (d) **(make good)** to make good, if applicable, in accordance with the Works Program and the performance of the relevant Services under the Project Deed, any disturbance or damage caused to any part of the Site in connection with the Licensee's or a Subcontractors entry, occupation or use of the Site;
- (e) **(access)** to permit the Project Director to enter the Site for the purpose of inspecting any part of the Site provided that the Project Director complies with the reasonable site safety and security requirements of the Licensee;
- (f) **(safety)** during each Construction Phase for the Site, to provide all things and take all measures necessary to protect and ensure the safety of people on the Site;
- (g) **(interference)** to avoid or minimise unnecessary interference with the passage of people and vehicles and the operations and activities carried out of, on or from areas adjacent to the Site;
- (h) **(notice)** to promptly deliver to the Project Director a copy of every notice received by the Licensee which affects the Site or any Adjoining Property; and
- (i) **(responsibility)** that the Licensee is solely responsible for any person who enters the Site on behalf of or with the permission of the Licensee.

4.2 Restrictions on Licensee

The Licensee must not:

- (a) **(no nuisance)** except as permitted under this Licence and the other Project Documents, do or permit to be done on any part of the Site anything which may cause a nuisance, annoyance, disturbance or damage to the Site or any land adjacent to the Site;

- (b) **(no breach by Licensor)** do or permit to be done on any part of the Site anything which may cause the Licensor to breach any of its obligations under any easement, covenant, restriction on use, licence, lease or other right, encumbrance or affection;
- (c) **(no signage)** without the prior written consent of the Project Director, exhibit on any part of the exterior of the Site any notice, sign, signboard or advertisement;
- (d) **(no rubbish)** do anything to cause any part of the Site or any land adjacent to the Site to become unclean or untidy except:
 - (i) in accordance with the Works Program; or
 - (ii) where permitted in the course of performing any Services;
- (e) **(no breach)** breach any statutory or other lawful requirements relating to the Licensee's use, access and occupation of the Site; or
- (f) **(other arrangements)** enter into or grant or agree to enter into or grant any rights or other arrangements with any person or persons relating to all or any part of the Site except as permitted by this deed and the other Project Documents.

5. ASSIGNMENT

- (a) The Licensee must not, except in accordance with the Project Deed or the Financing Agreements, dispose of, declare a trust over or otherwise create an interest in its rights under this deed.
- (b) The Licensee acknowledges that the Licensor has agreed to assign all amounts due under this deed and the Master Licence Agreement including the Licence Fee (exclusive of GST) and any Early Payout Amount payable under the Master Licence Agreement pursuant to the Securitisation Deed with Ancora. On receipt of a notice of assignment:
 - (i) the Licensee must pay the Licence Fee and any other amounts (exclusive of GST) to Ancora in accordance with the notice;
 - (ii) any such payment will discharge the liability of the Licensee to pay the Licence Fee under this deed; and
 - (iii) the Licensee must pay the GST payable under clause 7 of this deed in respect of the Licence Fee and any other amounts payable under this deed to NSW Health.

6. GENERAL

6.1 Notices

- (a) For the purpose of this clause **notice** means a notice, consent, approval or other communication under this deed.

-
- (b) A notice must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
- (i) delivered to that person's address;
 - (ii) sent by pre-paid mail to that person's address; or
 - (iii) transmitted by facsimile to that person's address.
- (c) A notice given to a person in accordance with this clause is regarded as having been given and received:
- (i) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (ii) if sent by pre-paid mail, on the third Business Day after posting; or
 - (iii) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if the report states that transmission was completed before 5.00pm on a Business Day, otherwise on the next Business Day.
- (d) For the purpose of this clause the address of a person is the address set out below that person's name in the relevant Item in the Schedule or another address of which that person may from time to time give notice to the other party to this deed.
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6.2 Governing law

This deed is governed by the law in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which may hear appeals from those courts in respect of any proceedings in connection with this deed.

6.3 Waiver

- (a) The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- (b) The Licensor's acceptance of the Licence Fee or any other money under this deed does not operate as a waiver of the Licensor's rights under this deed.

6.4 Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

6.5 Entire agreement

This deed and the Project Deed constitute the entire agreement between the parties on the subject matter of this deed. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this deed and the Project Deed. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this deed and the Project Deed.

7. GST

Subject to clause 8 of this deed, clause 42.3 of the Project Deed is incorporated in, and regarded as contained in, this deed.

8. RECIPIENT CREATED TAX INVOICES

- (a) Where the Licensee must issue a tax invoice or an adjustment note for a supply made under this deed, the Licensee must pay any amount in respect of GST on the supply at the same time as all other amounts in relation to the supply are required to be paid under this deed or if that time has already occurred, within 7 days of a written request from the Licensor for payment of the amount of GST.
- (b) The Licensor:
 - (i) warrants to the Licensee that at the time of:
 - (A) entering into this deed;
 - (B) each supply occurring or being deemed to have occurred under this deed; and
 - (C) each tax invoice or adjustment note being issued by the Licensee to the Licensor under this deed,the Licensor will be registered for GST;
 - (ii) must produce written evidence satisfactory to the Licensee of that registration if the Licensee requests it;
 - (iii) must notify the Licensee within 7 days if the Licensor ceases to be registered for GST;
 - (iv) agrees that it will not issue a tax invoice or adjustment note for supplies the Licensor makes under this deed in respect of which the Licensee must issue a tax invoice or adjustment note.

- (c) The Licensee:
- (i) warrants to the Licensor that at the time of:
 - (A) entering into this deed;
 - (B) each supply occurring or being deemed to have occurred under this deed; and
 - (C) each tax invoice and adjustment note being issued by the Licensee to the Licensor under the deed,the Licensee will be registered for GST;
 - (ii) indemnifies the Licensor against any loss resulting from the Licensee not being so registered;
 - (iii) must produce written evidence satisfactory to the Licensor of such registration if the Licensor requests it;
 - (iv) must notify the Licensor within 7 days if the Licensee ceases to be registered for GST or if it does not or ceases to satisfy any of the requirements of the Commissioner for the Licensee to issue tax invoices or adjustment notes;
 - (v) must issue the original or a copy of a tax invoice to the Licensor within 28 days of the making, or determining the value of the taxable supply and the Licensee will retain, as appropriate, the original or a copy of the tax invoice;
 - (vi) must issue the original or a copy of an adjustment note to the Licensor for supplies in respect of which the Licensee has issued a tax invoice within 28 days of the occurrence of an adjustment and the Licensee will retain, as appropriate, the original or a copy of the adjustment note;
 - (vii) will reasonably comply with its obligations under taxation laws;
 - (viii) will not issue a document that would otherwise be a tax invoice or adjustment note on or after the date when the requirements of the Commissioner for the Licensee to issue tax invoices or adjustment notes fail to be satisfied; and
 - (ix) indemnifies the Licensor against any liability for GST and any penalties resulting from the understatement of the GST payable on a tax invoice or adjustment note which the Licensee issues in respect of any supply made by the Licensor under this deed.
- (d) This clause applies to all supplies under or in connection with this deed made by the Licensor to the Licensee.

SCHEDULE 1

NSW HEALTH TENANTS

NSW Health Tenants

Not applicable.


NSW Health Tenant Agreement

Not applicable.

EXECUTED as a deed.

Execution by Licensor

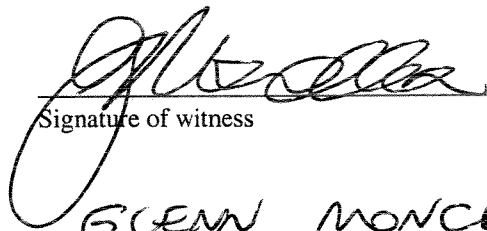
SIGNED, SEALED and DELIVERED
by **DAVID GATES**
as delegate of the **HEALTH**
ADMINISTRATION CORPORATION
pursuant to section 21 of the Health
Administration Act 1982 (NSW) under
delegation of 20 NOVEMBER 2007, in the
presence of:



Signature of Minister / Delegate

David Gates

Name of Delegate (if applicable)



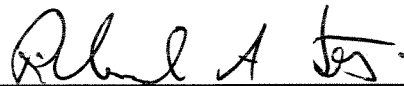
Signature of witness

GLENN MONCETON

Name

Execution by Licensee

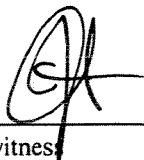
SIGNED, SEALED and DELIVERED for
Pinnacle Healthcare (OAHS) Pty Ltd as
trustee of the **Pinnacle Healthcare**
(OAHS) Trust under power of attorney in
the presence of:



Signature of attorney

RICHARD A SMITH

Name



Signature of witness

JENNIFER TYLEK.

Name

13/12/07

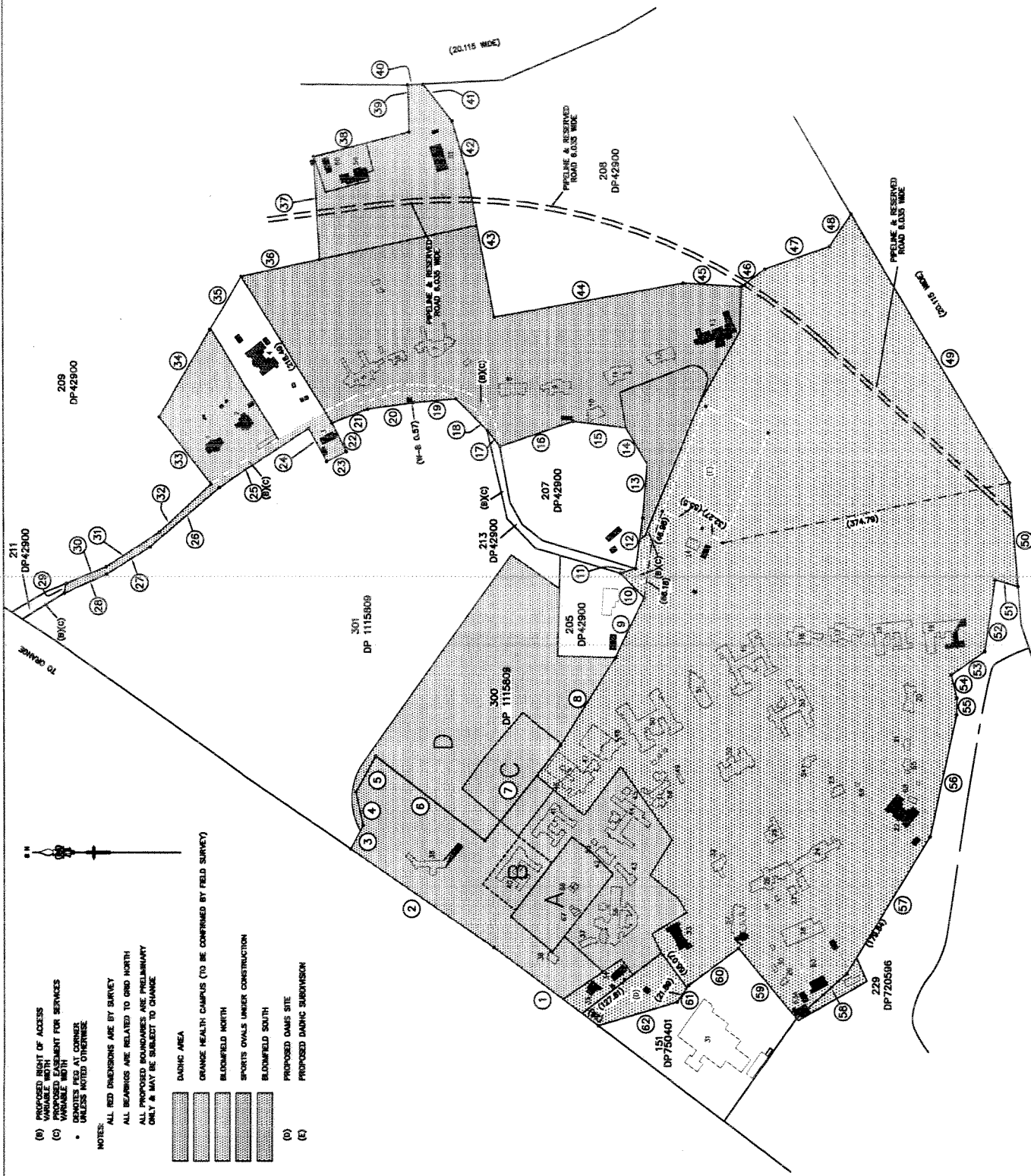
Date of power of attorney

ANNEXURE A

SITE PLAN

EXISTING BUILDINGS

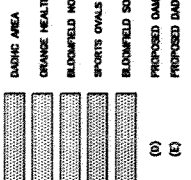
- 1 Residence 1
- 2 Residence 2
- 3 Residence 3
- 4 Tallwood Hospital
- 5 Ward 2: Ortho House
- 6 Ward 1: Neurology
- 7 Ward 3: Yarnhill
- 8 Ward 4: Bed
- 9 Ward 5: Pool
- 10 Pre-work Unit
- 11 Ward 6: North
- 12 Ward 7: Seven Oaks
- 13 Ward 8: Harcon
- 14 Swimming Pool
- 15 Ward 14
- 16 Ward 13: Cabanna Villa
- 17 Ward 12: Buntlers
- 18 Ward 11
- 19 Ward 10: Parkview
- 20 Ward 9: Pine Lodge
- 21 Residence 5
- 22 Golfing Club House
- 23 Residence 6: Methodist Accommodation
- 24 Perkins: Rehabilitation Unit
- 25 Sun Lodge
- 26 Multi-purpose Building
- 27 Electricka Workshop
- 28 Mesh Store
- 29 Bricklayers Hut
- 30 Transport Med Room/Staff Hut
- 31 Laundry
- 32 Residence 7: Moynoy Cottage
- 33 Corporate Services Building - Ward 22
- 34 Residence 11: Moynoy Cottage
- 35 Residence 10: Moynoy Cottage
- 36 Cottage 8: Moynoy Cottage
- 37 Residence 9: Moynoy Cottage
- 38 Ward 20: (To be demolished)
- 39 Toilet Block (demolished 2007)
- 40 Ward 18: Child services Block
- 41 Ward 19: Living Units
- 42 Medical Records
- 43 -Ward 23 - Annexe
- 44 Dental Clinic
- 45 Ward 17: Teen House
- 46 Yandina - Occupational Ward
- 47 Ward 16: Menzies
- 48 Chapel
- 49 Ward 15 - Workshops (Rural & Remots MH)
- 50 Leisure Centre
- 51 Administration
- 52 Audley Clinic
- 53 Museum
- 54 Outdoor Staff: Meal Room (Previous Mattress Room)
- 55 Carabobe Clinic
- 56 The Pipers
- 57 Wattle Grove
- 58 O'Brien Centre (Bloomfield North)
- 59 O'Brien Centre (Bloomfield North)
- 60 Government Store (Bloomfield North)
- 61 Pottery Shed
- 62 Transport Compound
- 63 Allo-medical Building
- 64 Net Room (71 Forest Road)
- 65 Cottage A
- 66 Cottage B
- 67 Cottage C
- 68 Nursery Shed 1
- 69 Nursery Shed 2
- 70 Pump House
- 71 Substation 1
- 72 Substation 2
- 73 Gas Unit
- 74 The Hut



- (B) PROPOSED RIGHT OF ACCESS
- (C) VARIABLE WIDTH EASEMENT FOR SERVICES
- (D) DENOTES FEE AT CORNER UNLESS NOTED OTHERWISE

NOTES:

- ALL RED DIMENSIONS ARE BY SURVEY
- ALL BEARINGS ARE RELATED TO GRID NORTH
- ALL PROPOSED BOUNDARIES ARE PRELIMINARY ONLY & MAY BE SUBJECT TO CHANGE



LINE	BEARING	DISTANCE
1	340.15°	217.75
2	101.72°	51.25
3	177.25°	51.25
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60	177.25°	51.25
61	177.25°	51.25
62	177.25°	51.25

AMENDMENTS		REFERENCE:	REG D SURVEYOR
No.	DESCRIPTION	DATE	
A	BOUNDARIES OF DP 1115909 & PROPOSED LICENCE AREA ADDED TO PLAN	24/10/07	
B	SITE USAGE BOUNDARIES ADDED TO PLAN	16/11/07	
C	ADDITIONAL BUILDINGS ADDED	22/11/07	
D	SITE USAGE BOUNDARIES & BUILDINGS TABLE AMENDED	27/11/07	
CLIENT: GREATER WESTERN AREA HEALTH SERVICE		DATE: 16/11/2007	
PROJECT: PLAN SHOWING PROPOSED SITE USAGE		SCALE: 1 : 2500 (A1)	
LOT 230 DP 720596		DATUM: A.H.D.	
FOREST, BLOOMFIELD & HUNTLEY ROADS, ORANGE		SITE AREA: 58.9ha	
LGA: ORANGE		SHEET 1 OF 1 SHEETS	
CRAIG JACQUES & ASSOC. (ORANGE) PTY LTD LAND SURVEYING CONSULTANTS P.O. BOX 8526, ORANGE EAST NSW 2800 PH: (02) 6362 1900 FAX: (02) 6362 4300 E-MAIL: admin@cja.net.au			