

**DEMAINING AGREEMENT**

*Between*

**THE STATE OF QUEENSLAND ACTING THROUGH THE DEPARTMENT  
OF MAIN ROADS ("Main Roads")**

*and*

**NOOSA SHIRE COUNCIL**

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THIS AGREEMENT is made this 20<sup>th</sup> day of April 2000.

**BETWEEN: THE STATE OF QUEENSLAND** acting through the Department of Main Roads.

("Main Roads")

**AND: COUNCIL OF THE SHIRE OF NOOSA.**

("Council")

**RECITAL:**

Main Roads, in accordance with relevant road implementation programs, has reached agreement with Noosa Shire Council whereby in the event of the revocation of certain parts of State-controlled roads Main Roads will provide funding towards the carrying out of certain works which will contribute to the effectiveness and efficiency of the road network. The parties acknowledge that the matters dealt with in this agreement are an outcome of a specific planning process undertaken between Main Roads and Council.

**OPERATIVE PROVISIONS**

The parties hereby agree as follows:-

**1. Part 1 – Preliminary**

**1.1 Governing Law**

This agreement is governed by and must be construed in accordance with the law of Queensland. Each party submits to the non-exclusive jurisdiction of the Queensland Courts.

**1.2 Transport Infrastructure Act**

This agreement is entered into for the purposes of sections 27 and 30 of the Transport Infrastructure Act 1994.

**1.3 Short Title**

This agreement may be referred to as the Noosa Demaining Agreement 2000.

**1.4 Commencement**

This agreement commences on the date when the last party signs it.

**1.5 Definitions**

In this agreement unless the context otherwise requires:

**“Certificate of Approval”** means a written statement, signed by the Council’s Engineer certifying that the works or a defined part of the works for the New Roads has been accepted by the Council and has been constructed in accordance with the plans and specifications as previously verified by Main Roads.

**“Force Majeure”** means an event whether of a kind herein after specified or otherwise which is not within the control of the person claiming Force Majeure and which could not have been prevented by the exercise by that person of a standard of foresight, care and diligence consistent with that of a prudent and competent person under the circumstances, and includes any failure to obtain any statutory approvals in terms of clause 2.6 hereof, decrees of Commonwealth Government, an act of God, industrial disturbance, act of public enemy, war, international blockade, public riot, lightning, flood, earthquake, fire and storm.

**“Integrated Regional Transport Plan”** means the integrated regional transport plan for the south east region of Queensland referred to in section 15 of the *Transport Planning and Co-ordination Act 1994*.

**“Progress Certificate”** means a statement submitted to Main Roads by the Council’s Engineer certifying the value of work completed in respect of a Certificate of Approval.

**“the Act”** means the *Transport Infrastructure Act 1994*.

**“the North Coast State-controlled roads”** means the roads described in Schedule 1 being roads which have been or were declared to be State-controlled roads pursuant to section 23 of the Act and whose approximate locations are illustrated in Figure 1.

**“the Demained Roads”** means those parts of the North Coast State-controlled roads which are to be or have been revoked as State-controlled roads under the Act, being more particularly specified in Schedule 2 and whose approximate locations are identified in Figure 2.

**“the New Roads”** means those roads which are constructed or yet to be constructed, being more particularly specified in Schedule 4 and whose approximate locations are identified in Figure 3.

## 1.6 Other Expressions

Where any term or expression used is not defined by this agreement but is defined by the Act then that term or expression has the meaning given to it by the Act unless the context requires otherwise.

## 1.7 References

In this agreement unless the context requires otherwise:

a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any statutory instruments issued under, that legislation or legislative provision;

words denoting the singular number include the plural and vice versa;

a word denoting an individual or person includes a corporation, firm, authority, government or government authority or vice versa;

a word denoting a gender includes all genders;

a reference to a recital, clause, schedule, figure or annexure is a recital, clause, schedule, figure or annexure of or to this agreement;

a reference to any party to this agreement or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns.

## **1.8 Headings**

Headings are for convenience of reference only and do not affect interpretation of this agreement.

## **1.9 Schedules, Figures and Annexures**

The schedules, figures and annexures to this agreement take that form for convenience only and for all purposes form part of this agreement.

## **1.10 Notices**

Any notice given by a party may be signed by an officer of that party or the solicitor for that party. A party receiving a notice is not obliged to enquire as to the authority of the officer signing the notice. A notice must be in writing and is treated as being duly given if it is:

left at the other party's address; or

sent by prepaid mail to the other party's address; or

transmitted by facsimile to the other party's facsimile number.

A notice given in accordance with this clause is treated as having been duly given and received:

when delivered (if left at the other party's address); or

on the second business day after posting (if sent by prepaid mail); or

on the business day of transmission (if given by facsimile, transmitted before the normal close of business of the receiving party and no intimation is received that the

notice has not been received whether that intimation comes from the party or from operation of facsimile machinery or otherwise).

For the purpose of this clause the address and facsimile number of a party is the address and number set out below or another address or number which a party may from time to time give notice to the other:

<b>Party</b>	<b>Address and Number</b>
Main Roads	The District Director 50 River Road PO Box 183 GYMPIE QLD 4570 Facsimile Number (07) 5482 0499
The Council	The Chief Executive Officer Noosa Shire Council PO Box 141 TEWANTIN QLD 4565 Facsimile Number (07) 5447 1062

### 1.11 Amendments

No modification, variation or amendment of this agreement is of any force or effect unless;

it is in writing and has been signed by the parties; and

it complies with the requirements of section 27 and 30 of the Act.

### 1.12 Costs

Each party must pay its own legal costs of and incidental to this agreement provided that any stamp duty payable on this agreement shall be paid by Main Roads.

## 2. Part 2 – Substantive

### 2.1 Revocation

The parties acknowledge and agree that in the event that the Demanded Roads are revoked as State-controlled roads under the Act then such roads as are located in the area of the Council shall from the date of notice of the revocation in the Government Gazette transfer to the control of the Council and the Council shall thereafter be responsible for the maintenance and future capital works to such roads.

### 2.2 Council to Construct New Roads

- (a) The Council will cause the New Roads to be planned, designed and constructed and shall acquire all lands within Noosa Shire reasonably necessary for the purpose.

The New Roads shall be designed and constructed to an undivided two lane standard except for the section of the Noosaville Bypass from Eenie Creek Road to Goodchap Street, which shall be designed and constructed to a divided two lane standard. In fulfilling its obligations under this clause 2.2 the Council shall comply with its own rules and requirements applicable to the calling for tenders for contracts for the construction of roads under its control.

- (b) Prior to the commencement of the construction of the New Roads the Council shall, in accordance with the reasonable requests of Main Roads and in the absence of any request as soon as is reasonably practicable, progressively submit to Main Roads copies of preliminary and final plans and specifications for the construction of the New Roads.
- (c) Plans and specifications shall be provided to Main Roads in sufficient detail to enable Main Roads to verify that the Council has complied with clause 2.2(a). Main Roads must provide that verification in writing to the Council without undue delay.
- (d) No variation or alteration of the plans and specifications verified by Main Roads under clause 2.2(c) may be made without the further verification in writing of Main Roads in accordance with clause 2.2(c).
- (e) The Council must not commence construction of any part of the New Roads unless the plans and specification relating to that part have received the verification in writing of Main Roads pursuant to clause 2.2(c).
- (f) The Council must ensure that the construction of the New Roads complies with the plans and specifications verified under this clause 2.2.

### **2.3 Eenie Creek Road**

The Council shall arrange funding for and construct Eenie Creek Road between the Eumundi – Noosa Road and the new Southern Access Road.

### **2.4 Payments and other Funding**

- (a) Subject to the Demained Roads being revoked as State-controlled roads in accordance with clause 2.1 Main Roads agrees to pay to the Council the amounts set out in Schedule 3.
- (b) Subject to the following provisions of this clause, Main Roads agrees to fund the reasonable costs of the Council in respect of the planning, acquisition of land, design and construction of the New Roads in accordance with clause 2.2(a), including the Council's direct administration costs of planning, design and construction supervision on a cost recovery basis only
- (c) Payments to be made by Main Roads to the Council for work completed for the indicative costs of the New Roads shall not exceed the maximum annual cash flow amounts as shown in the table set out in clause 2.8 unless varied in accordance with clause 2.4 (d). Payments shall be made in accordance with Clause 2.5.

- (d) Where Council finds it necessary to vary the scope of works or the maximum annual cash flow amount for any particular project as shown in the table set out in clause 2.8, the Council shall submit to Main Roads full details of the required variation including the reasons for it, any change in the maximum annual cash flow and the timing of the works which must then be approved by Main Roads before the variation can take effect.

## **2.5 Progress Payments**

- (a) When the New Roads, or such substantial part of the New Roads as the Council's Engineer sees fit to define, have been constructed in accordance with the drawings and specifications as previously verified by Main Roads, the Council's Engineer shall issue a Certificate of Approval to Main Roads for the New Roads or the defined part of the New Roads, as relevant.
- (b) In conjunction with a Certificate of Approval the Council's Engineer may prepare a Progress Certificate setting out his valuation of the work completed in respect of a Certificate of Approval and shall forward copies of the Progress Certificate to the Council and to Main Roads.
- (c) A Progress Certificate shall only be regarded as the Engineer's estimate of the value of the work completed and shall not be held in any way to be absolute evidence of the quality or the quantity of work completed.
- (d) Within one (1) month of receipt of a Progress Certificate, Main Roads shall reimburse the Council the reasonable costs incorporated within a Certificate of Approval. Before making payment to the Council, Main Roads may require the Council's Engineer to show evidence of his payments for materials and services relative to the work completed in respect of a Certificate of Approval.

## **2.6 Lands to be made Available**

Main Roads shall make available to the use of Council such land which Main Roads has acquired, sufficient to enable the construction of Eenie Creek Road or any of the New Roads together with any land which Main Roads may have acquired sufficient for the upgrading of the Demained Roads.

If any land reasonably required for the New Roads is outside the area of the Council and the Council cannot otherwise reasonably acquire that land, Main Roads will recommend to the Minister that the land be acquired by exercise of the powers that obtain through s25 of the *Transport Planning and Coordination Act 1994*.

## **2.7 Approvals**

Main Roads shall exercise its best endeavors to assist Council to obtain all approvals necessary for the construction of the crossing of Weyba Creek as part of Eenie Creek Road Stage II where such approvals are required by any Act other than the *Local*



*Government Act 1993* or other Act which imposes a duty or obligation on the Council in its capacity as a local government.

## 2.8 Program

- (a) In undertaking its obligations under this agreement the Council will exercise its best endeavors to have the planning, acquisition of land, design and construction of the New Roads completed within the following target dates set out in the following table provided that a reasonable extension of the target dates shall be allowed following notice by the Council that the Council is or is likely to be delayed in the execution of the works:-

Project	Indicative Cost \$	Program \$				Completion Target Date
		2000/01	2001/02	2002/03	2003/04	
Southern Access Road	7,400,000		2,500,000	2,500,000	2,400,000	June 2004
Eenie Creek Rd Stage I	2,400,000	2,400,000				June 2001
Eenie Creek Rd Stage II	10,800,000		2,500,000	2,500,000	5,800,000	June 2004

- (b) The Council shall advise Main Roads in writing at least every six (6) months of the progressive timetable for undertaking its obligations under this agreement.

## 2.9 Tewanin Bypass

The Integrated Regional Transport Plan includes the investigation of strategic road opportunities including a Tewanin Bypass. Given that these investigations establish a need for a Tewanin Bypass connecting the Cooroy-Noosa Road to the Eumundi-Noosa Road, then, subject to the Act, Main Roads will plan, design and construct it.

## 2.10 Indemnity

The Council indemnifies and undertakes at all times hereafter to keep indemnified The State of Queensland together with their present and former Ministers, officers, servants and agents ("**the Indemnified**") against all actions, proceedings, claims and demands whatsoever that may be brought and made or prosecuted against the Indemnified by any person whomsoever in respect of any loss of life or damage or injury to person or property in respect of the planning, design, construction and use of both the New Roads and the road referred to in clause 2.3, and against all costs, charges and expenses that may be incurred by the Indemnified in defending or settling such actions, proceedings, claims and demands.

## 2.11 Acknowledgments

The parties acknowledge that certain actions required by this agreement have already occurred including:

- The revocation of the Demained Roads by notice in the Government Gazette No 72 of 26 June 1998 pp1023-1024 to take effect from 1 July 1998.
- Payment of funds in accordance with Schedule 3 of this Agreement other than the amount of \$3,000,000.00 within 30 days of commencement of this agreement.

### **3. Part 3 – General Provisions**

#### **3.1 Alternative Dispute Resolution**

- (a) Without prejudice to any other right or entitlement under this agreement or otherwise, in the event of any dispute arising between the parties to this agreement in respect of or in connection with the agreement (including the validity breach or termination of it) any party (in this clause called “the first party”) may give written notice to the other party (in this clause called “the second party”) –
  - (i) inviting the second party to participate in an alternative dispute resolution procedure; and
  - (ii) designating as the first party’s representative in negotiations relating to the dispute, a person with authority to settle the dispute.
- (b) Upon receipt of a notice, the second party shall itself give written notice to the first party within 7 days, designating its representative in negotiations relating to the dispute who will have similar authority to that of the first party’s representative to settle the dispute.
- (c) The designated persons shall, within 10 days of the last designation, seek to resolve the dispute.
- (d) If the dispute is not resolved within the 10 day period, the parties shall seek during the next 7 days to agree on a process for resolving the whole or part of the dispute through means other than litigation or arbitration (such as further negotiations, mediation, conciliation, independent expert determination).
- (e) The rules governing any alternative dispute resolution technique adopted by the parties, shall be as recommended by LEADR (Lawyers Engaged in Alternative Dispute Resolution).
- (f) The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause for any purpose other than in an attempt to settle a dispute under this Agreement.
- (g) In the event that the dispute is not resolved by agreement within 45 days of the date upon which the first party gave notice under paragraph (a), either party may refer the dispute to arbitration or commence court proceedings.

### 3.2 Force Majeure

If a party is unable by reason of Force Majeure to carry out their obligations, notice must be given to the other party and the obligations will then be suspended during the period for which the Force Majeure or its effect extends.

Where obligations of Main Roads are dependent upon the occurrence of specified circumstances then Main Roads will be relieved of its obligations for so long as there is a change or deviation or non-occurrence of those circumstances arising from a matter beyond Main Road's control.

### 3.3 Confidentiality

- (a) The terms of this agreement shall be treated as confidential by the parties and shall not be divulged in whole or in part to third persons without the prior written consent of the parties, except to the extent that such information or data lawfully is or becomes within the public domain.
- (b) Each party shall take all steps reasonably necessary to ensure that the terms of this agreement shall be known only to such persons (including any employees of a party) as may reasonably require knowledge thereof in the course of their duties or functions.

### 3.4 GST

- (a) For the purpose of this clause:
  - (i) "GST" means the goods and services tax which results from the enactment of the GST Acts.
  - (ii) "GST Acts" means *A New Tax System (Goods and Services Tax) Act 1999* and the related Acts which constitute the Commonwealth taxation reform.
  - (iii) "New Tax System changes" has the meaning given to it in a *A New Tax System (Trade Practices Amendment) Act 1999*.
- (b) The parties acknowledge that the GST may be payable on the supply of goods and/or services under this Agreement.
- (c) Where the GST is payable upon any supply of goods and/or services under this Agreement, the consideration payable by Main Roads to the Council for the supply shall be adjusted in accordance with sub-clauses (d) - (f).
- (d) The Council shall pass on to Main Roads the benefits of any New Tax System changes and adjust the consideration payable by Main Roads under this Agreement accordingly ("the Benefits").
- (e) Subject to the Council issuing a valid GST tax invoice and subject to sub-clauses (h) - (k), the consideration payable by Main Roads to the Council for the supply (after

adjustment for the Benefits) shall be increased by the amount equal to that which the Council is obliged to remit as GST on the supply ("the Amounts").

(f) If it is determined on reasonable grounds that the amount of GST collected from Main Roads under this clause differs, for any reason, from the amount of GST paid or payable by the Council, including by reason of:

- (i) any amendment to the GST;
- (ii) the issue of a ruling or advice by the Commissioner of Taxation; or
- (iii) a refund to Main Roads in respect of a supply made under this Agreement,

Main Roads shall be entitled to a refund of the additional consideration collected from Main Roads.

- (g) The parties shall exchange such information as is reasonably necessary for each to make a reasonable assessment of the Benefits and the Amounts.
- (h) The Council shall keep sufficient records of supplies made prior to 1 July 2000 (or such later date as the GST Acts may require) to enable the Commissioner to assess the value of those supplies pursuant to the special transitional rules for construction agreements contained in the GST Acts ("the Transitional Rules").
- (i) If the Council fails to keep sufficient records as required by sub-clause (h), the Council shall, at its own cost, engage a valuer or other recognised person to determine the value of work and materials permanently incorporated into or affixed on the site of the works as at the start of 1 July 2000 in accordance with the Transitional Rules.
- (j) Without limitation, the Council shall take all necessary steps to determine the value of work and materials permanently incorporated into or affixed on the site of the works as at the start of 1 July 2000 in accordance with the Transitional Rules.
- (k) Where the Council fails to comply with the terms of sub-clauses (h) - (j) so that Main Roads loses the benefit of a GST calculation in accordance with the Transitional Rules, then:
  - (i) Main Roads may engage a valuer or other recognised person, at the Council's costs to determine the value specified in sub-clause (i); and
  - (ii) the Council shall not be entitled to increase the consideration in accordance with sub-clause (e) by any amount greater than would have been the case had the Transitional Rules applied.

**Schedule 1**

**List of State-controlled Roads:**

Maroochydore – Noosa Road (Road No 133) – also known as the David Low Way.

Eumundi – Noosa Road (Road No 140)

Cooroy – Noosa Road (Road No 142)

Tewantin-Boreen Point Road (Road No 1421)

**Schedule 2**

**Specification of Demained Roads:**

Maroochydore – Noosa Road (Road No 133) from the Maroochy Shire boundary at 28.96km to the end of the declaration at the intersection with Noosa Drive at 40.35km.

Eumundi – Noosa Road (Road No 140) from 410m west of the intersection with Beckmans Road to the end of the declaration at 17.28km.

Cooroy – Noosa Road (Road No 142) form 30m east of Gyndier Drive to the end of the declaration at the intersection with the Maroochydore – Noosa Road at 20.80km.

Tewantin – Boreen Point Road (Road No 1421) from the start of the declaration at the intersection with Poinciana Avenue to 180m north of the intersection with Yellowwood Close.

**Schedule 3**

**Amounts to be Paid to Council:**

\$2,860,000.00 by 30 June 1998 (the receipt of which is hereby acknowledged)

\$2,860,000.00 by 30 June 1999 (the receipt of which is hereby acknowledged)

\$3,000,000.00 within 30 days of commencement of this Agreement.

**Schedule 4**

**Specification of New Roads:**

The proposed new Southern Access Road (also referred to as the Noosaville Bypass) from Emu Mountain Road to Goodchap Street, including necessary intersections with Emu Mountain Road and/or Eumundi – Noosa Road at the southern end, with Eenie Creek Road and with Goodchap Street and/or Eumundi – Noosa Road at the northern end.

Eenie Creek Road Stage 1 from the New Southern Access Road (Noosaville Bypass) to Reef Street.

Eenie Creek Road Stage 2 from Reef Street to Cooyar Street.

**THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATES  
APPEARING BELOW.**

SIGNED for and on behalf of the

STATE OF QUEENSLAND

this 20<sup>th</sup> day of April 2000

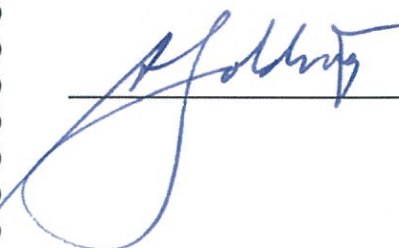
by Stephen Golding

a duly authorised officer  
in the presence of:

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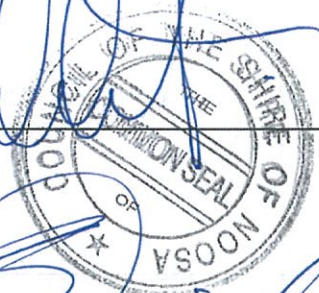

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**THE COMMON SEAL of THE COUNCIL  
OF THE SHIRE OF NOOSA**

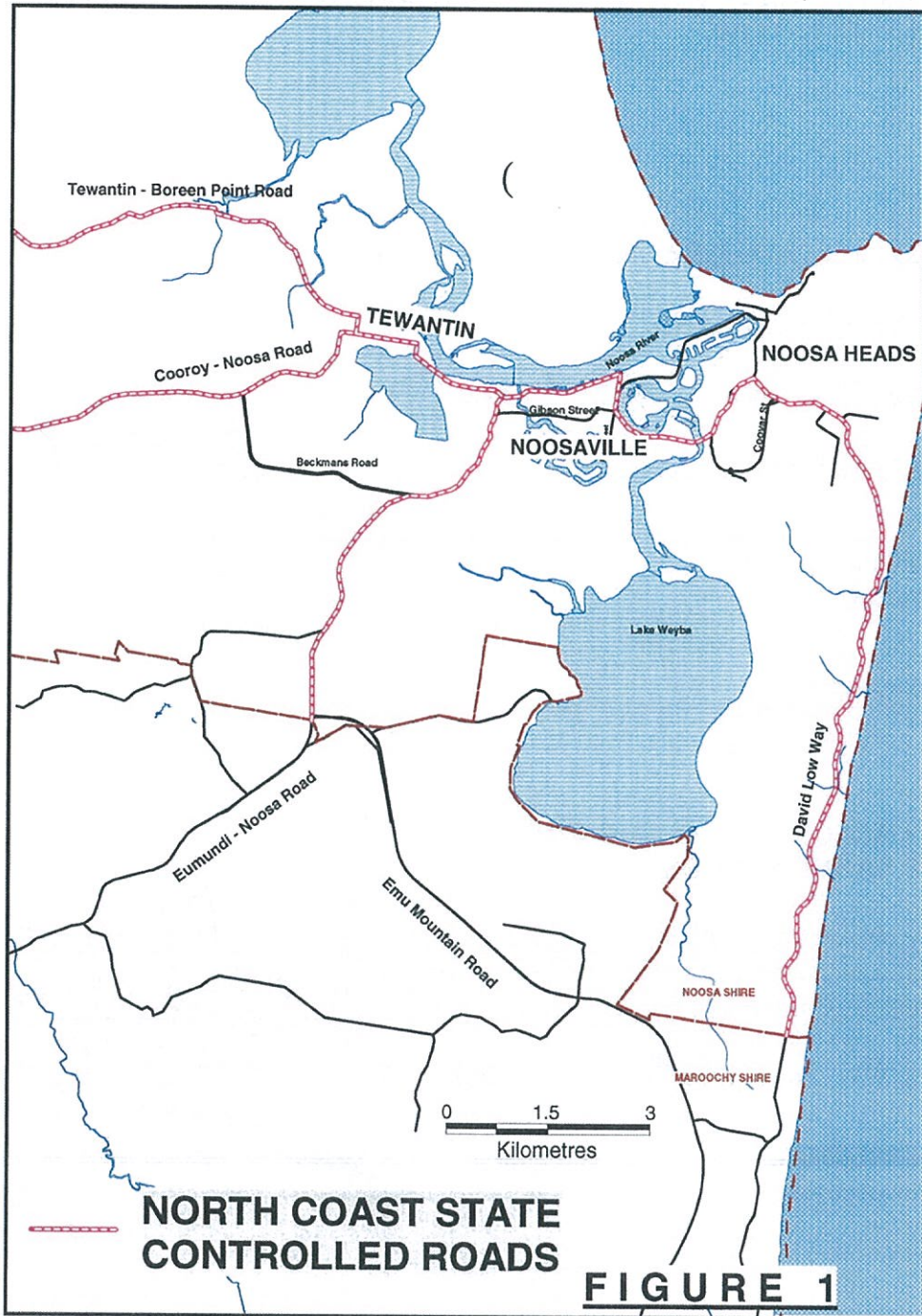
was duly affixed to this document by authority of  
a resolution of the Council in the presence of the  
Mayor and the Chief Executive Officer.

this 18<sup>th</sup> day of April 2000.

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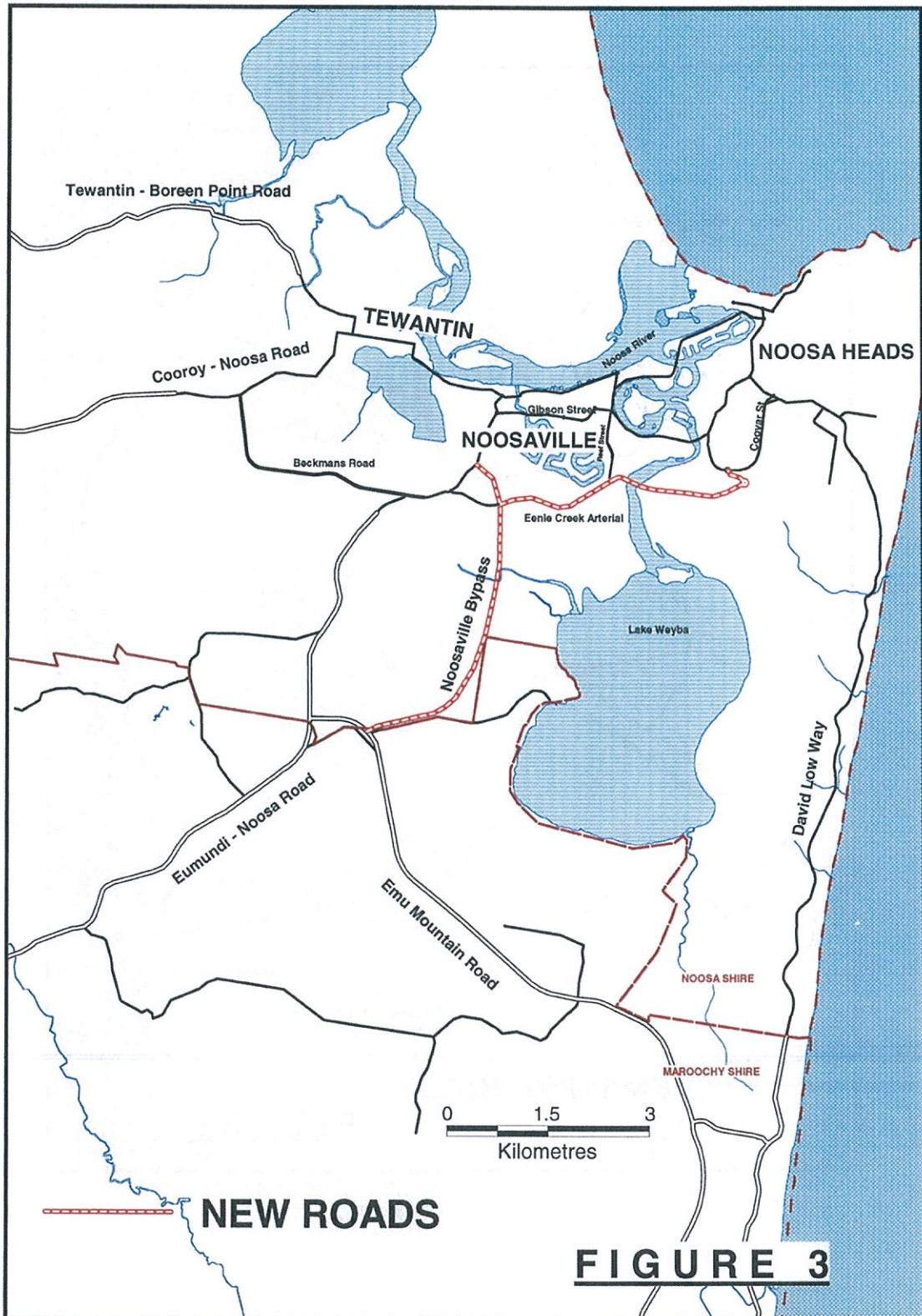


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