

And the number of the lots 3 to 20 inclusive with the respective areas are then listed.

[50] The proposed subdivision plan was not identified. So the question is what is the proposed subdivision plan referred to in the agreement?

[51] It is common ground between the parties that the negotiations were conducted against the background of the Suttle Plan. And it is the testimony of Mr. Suttle which was accepted by Mr. Gittens that at the time the agreement was executed, Mr. Suttle was not given a copy of the proposed subdivision plan referred to in the agreement. And so Mr. Suttle contends that the proposed subdivision plan is the Suttle Plan.

[52] This contention cannot hold. First, the Suttle Plan contains only 13 lots whereas in the Schedule, the lots to be sold are 19 numbered 3 to 20 inclusive – a total of 18 lots. Second, the areas of the 18 lots specified in the Schedule do not and cannot correspond with the areas specified for the lots listed on the Suttle Plan since those 13 lots were further subdivided. Third, it flies in the face of common sense that Mr. Gittens would offer to buy the land *for further development* and then proceed to develop it in accordance with the Suttle Plan. (*Emphasis added*).

[53] Counsel for the Suttles next submits that the proposed subdivision plan is the undated and uncertified plan admitted into evidence by consent as