

# Deed of Acquisition and Compensation

**Planning Ministerial Corporation**

PMC

**Bird Bros Pty Ltd and A J Bush & Sons (Manufactures) Pty Ltd**

Landowner (as tenants in common in equal shares)

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## Contents

1.	Definitions and Interpretation .....	3
1.1	Definitions .....	3
1.2	Interpretation .....	5
2.	Pre-Acquisition Requirements .....	6
2.1	Boundary adjustment .....	6
2.2	Easement .....	6
2.3	Demolition and removal of existing buildings .....	6
2.4	Waste stockpiles .....	6
2.5	Remediation .....	6
2.6	Inspections and progress reports .....	7
3.	Acquisition of Land or Land Portions .....	7
3.1	Consent to Acquisition .....	7
3.2	Section 30 agreement .....	7
3.3	Completion of Pre-Acquisition Requirements .....	8
3.4	Failure to satisfy Pre-Acquisition Requirements .....	8
3.5	Timing of Acquisition .....	9
3.6	Compensation adjustments and payment .....	9
3.7	Deferred payment of Compensation by PMC .....	10
3.8	Staged Acquisition Proposal .....	10
4.	Access Licence .....	11
4.1	Licence .....	11
5.	Release and bar to proceedings .....	12
5.1	Release and Indemnity by Landowner .....	12
5.2	Bar to proceedings .....	12
6.	Warranties .....	12
6.1	Warranties generally .....	12
6.2	Warranties relating to the Land .....	13
6.3	General warranties .....	13
7.	Confidentiality .....	13
8.	GST .....	14
8.1	Definitions and interpretation .....	14
8.2	Reimbursements .....	14
8.3	GST payable .....	14
8.4	Variation .....	15
8.5	Penalties .....	15
9.	Stamp duty .....	15
10.	General .....	15
10.1	Notices .....	15
10.2	Governing law .....	16
10.3	Jurisdiction .....	16
10.4	Public authority .....	17
10.5	Severance .....	17
10.6	Further acts and documents .....	17
10.7	Entire agreement .....	17
10.8	Amendments .....	17
10.9	No merger .....	17
10.10	Counterparts .....	17
10.11	Waiver .....	17
Schedule 1 .....		20

Annexure A..... 23

Annexure B..... 24

Annexure C..... 25

## Deed of Acquisition and Compensation

Date 19 March 2021

**Parties** **Planning Ministerial Corporation** ABN 36 691 806 169, a statutory corporation constituted pursuant to the *Environmental Planning and Assessment Act 1979*, of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 (**PMC**)

**Bird Bros Pty Ltd** ACN 000 062 439, of Katz & Watson, Suite 201, Level 2, 8 Held Street, Chatswood NSW 2067 (**Bird Bros**)

and

**A J Bush & Sons (Manufactures) Pty Ltd** ACN 000 058 453, of 38 Parramatta Road, Homebush NSW 2140 (**AJ Bush**),

(together, the **Landowner**)

## Background

- A. The Landowner is the registered proprietor of the Land, as tenants in common in equal shares.
- B. The Land is reserved for regional open space under the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* and PMC is designated as the acquiring authority for the Land.
- C. By letter dated 12 August 2020, PMC made an offer to compulsorily acquire the Land by agreement.
- D. By letter dated 30 October 2020, the Landowner accepted PMC's offer.
- E. The parties have entered into this Deed to record the terms of their agreement pursuant to section 30 of the Acquisition Act.

## Operative provisions

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this Deed, unless the context otherwise requires:

**Acquisition** means the acquisition of the Land by PMC in accordance with the Acquisition Act.

**Acquisition Act** means the *Land Acquisition (Just Terms Compensation) Act 1991*.

**Acquisition Notice** means an acquisition notice under section 19 of the Acquisition Act.

**Access Road** means the existing access road shown in the plan at Annexure C.

**AJ Bush Land** means Lot 2 in DP 786801, being that land with a street address of 300 Garfield Road East, Riverstone NSW 2765.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in the city of Sydney, New South Wales.

**Compensation Amount** means \$72,570,000.00 (exclusive of GST) for "market value" plus \$44,400 (inclusive of GST) for "loss attributable to disturbance", as those expressions are defined in sections 56 and 59 of the Acquisition Act, subject to adjustment in accordance with clause 3.6 of this Deed.

**Contamination** means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, and which is a presence that presents a risk of harm to human health or any aspect of the Environment.

**Detailed Environmental Site Assessment** or **DESA** means an investigation of the Land to characterise Contamination that may be present on the Land or Land Portion (as applicable) and determine the potential risks to human health and the Environment presented by that Contamination in light of the Proposed Use.

**Encroachment Area** means the shaded area delineated on the survey plan at Annexure A being the area of building encroachments protruding from the AJ Bush Land.

**Environment** includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (d) the social, economic, aesthetic and cultural conditions that affect or are affected by, things mentioned in paragraphs (a) to (c) above.

**Garfield Road Upgrade** means the proposed road upgrade known as 'Garfield Road East', comprising the upgrade of about 3.4 kilometres of Garfield Road East, between Windsor Road, Box Hill and Piccadilly Street, Riverstone, as contemplated by the document published by Transport for NSW titled 'Garfield Road East Upgrade - Review and Environmental Factors' dated 29 October 2020.

**Land** means Lot 91 in DP 1097608.

**Land Portion** has the meaning given to that expression in clause 3.8.

**Law** means the common law and any act, ordinance, regulation, by-law, order or proclamation and includes the requirements of any government agency or of any authorisation affecting the Land or Land Portions (as applicable).

**Outstanding Requirements** has the meaning given to that expression in clause 3.3(d).

**Plan of Acquisition** means a Deposited Plan delineating the planned acquisition of the Land or Land Portions (as applicable).

**Pre-Acquisition Requirements** has the meaning given to that expression in clause 2.

**Proposed Use** means use of the Land or Land Portions (as applicable) for regional open space

**Regional Park** means the future Rouse Hill Regional Park as contemplated by the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

**Register** means the Torrens Title register for land held in NSW under the *Real Property Act 1900*.



**Registrar-General** means the Office of the Registrar General as represented by NSW Land Registry Services.

**Remediation Action Plan or RAP** means a plan which identifies measures to manage or remediate Contamination to acceptable levels so that the Land or Land Portion (as applicable) is suitable for its Proposed Use.

**Site Auditor** means an independent accredited site auditor pursuant to the scheme administered by the NSW Environment Protection Authority under Part 4 of the *Contaminated Land Management Act 1997*.

**Staged Acquisition Proposal** has the meaning given to that expression in clause 3.8.

**Waste** means any rubbish or other discarded, rejected, unwanted or abandoned substance.

## 1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation,
- and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
  - (c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee and further includes any person claiming on behalf of or under or through a party to this Deed;
  - (e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (f) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to this Deed;
  - (g) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (h) a reference to a statute includes any regulations or other instruments made under it (delegated legislation) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
  - (i) **"includes"** in any form is not a word of limitation; and
  - (j) a reference to **"\$"** or **"dollar"** is to Australian currency.

## 2. Pre-Acquisition Requirements

### 2.1 Boundary adjustment

Prior to the Acquisition of the Land or a Land Portion which contains any part of the Encroachment Area (as applicable), the Landowner must at its cost, procure a boundary adjustment to exclude from the Land or Land Portion (as applicable) the Encroachment Area.

### 2.2 Easement

- (a) Prior to the Acquisition of the Land or a Land Portion which contains any part of the area marked "(J)" delineated on the survey plan at Annexure B (as applicable), the Landowner will, at the Landowner's cost, create and register an easement for underground services over the easement area shown in the plan at Annexure B, to the benefit of the AJ Bush Land.
- (b) The terms of the easement must reflect the standard terms in Part 11 of Schedule 8 of the *Conveyancing Act 1919* (NSW).

### 2.3 Demolition and removal of existing buildings

Prior to the Acquisition of the Land or a Land Portion (as applicable), the Landowner must, at the Landowner's cost, demolish any buildings and structures, excluding the Access Road and anything within the Encroachment Area, that are located on the Land or Land Portion (as applicable) to natural ground level and dispose of any resulting demolition Waste off-site.

### 2.4 Waste stockpiles

Prior to the Acquisition of the Land or a Land Portion (as applicable), the Landowner must, at the Landowner's cost, remove any stockpiles of Waste located on the Land or Land Portion (as applicable) and dispose of them off-site.

### 2.5 Remediation

The Landowner must remediate the Land or each Land Portion (as applicable), at the Landowner's cost, to the standard necessary to make the Land or Land Portions (as applicable) suitable for use for the Proposed Use, generally as follows:

- (a) The Landowner must, at the Landowner's cost, appoint a Site Auditor, in connection with the remediation of the Land or Land Portions (as applicable).
- (b) The Landowner must ensure that:
  - (i) the terms of engagement of the Site Auditor provide that any interim or final advice, site audit statement or site audit report issued by the Site Auditor in relation to the Land or a Land Portion (as applicable) may be relied on by PMC; and
  - (ii) the Site Auditor is engaged on a joint brief of the parties, if requested by PMC in writing prior to the engagement of the Site Auditor.
- (c) The Landowner must, at the Landowner's cost, engage an environmental consultant to prepare, for endorsement by the Site Auditor:
  - (i) a Detailed Environmental Site Assessment (**DESA**); and
  - (ii) a Remediation Action Plan (**RAP**).

- (d) The Landowner may engage the environmental consultant to prepare a single DESA and RAP for the Land or a separate DESA and RAP for each Land Portion.
- (e) Prior to providing a RAP to the Site Auditor for endorsement, the Landowner must provide PMC with a period of 20 Business Days to review and provide comments on the RAP.
- (f) If within 20 Business Days of being provided with the RAP, PMC provides the Landowner with written comments on the RAP, the Landowner must ensure that the environmental consultant:
  - (i) has regard to PMC's written comments on the RAP before the RAP is finalised and provided to the Site Auditor for endorsement; and
  - (ii) incorporates PMC's written comments on the RAP to the extent that they are reasonably necessary to ensure that the Land or Land Portion (as applicable) would, following its remediation, be suitable for the Proposed Use.
- (g) The Landowner (and PMC, to the extent of its involvement in the process above) must use its best endeavours to procure the Site Auditor's endorsement to the RAP or RAPs covering the Land or Land Portions (as applicable) within six (6) months of the date of execution of this Deed.
- (h) The Landowner must ensure that the Land or each Land Portion (as applicable) is remediated in accordance with the applicable RAP as endorsed by the Site Auditor.
- (i) The Landowner must provide PMC with copies of any interim or final advice issued by the Site Auditor in relation to the remediation of the Land or a Land Portion (as applicable).
- (j) Prior to the Acquisition of the Land or Land Portion (as applicable), the Landowner must procure a site audit statement and site audit report from the Site Auditor certifying that the Land or Land Portion (as applicable) is suitable for the Proposed Use.
- (k) The Landowner must provide any site audit statement and site audit report issued by the Site Auditor to PMC in relation to the Land or a Land Portion (as applicable).

## **2.6 Inspections and progress reports**

- (a) If requested by PMC, the Landowner must provide reports, at reasonable intervals, on the progress of the remediation works or any other works required under this Deed.
- (b) PMC may, on five (5) Business Days' notice, enter the Land for the purpose of inspecting the Land or any works occurring on the Land, and may conduct testing or take samples from the whole or any part of the Land.

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## **3. Acquisition of Land or Land Portions**

### **3.1 Consent to Acquisition**

The Landowner consents to PMC acquiring the Land or Land Portions (as applicable), in accordance with the provisions of this Deed, by publication of an Acquisition Notice.

### **3.2 Section 30 agreement**

The parties acknowledge and agree that:



- (a) this Deed is an agreement in writing setting out all relevant matters concerning the Acquisition of the Land or Land Portions (as applicable) and the compensation to be paid for the Acquisition of the Land or Land Portions (as applicable);
- (b) this Deed is made in accordance with and in satisfaction of section 30 of the Acquisition Act; and
- (c) PMC is not required to comply with the pre-acquisition procedures in Part 2, Division 1 of the Acquisition Act.

### 3.3 Completion of Pre-Acquisition Requirements

- (a) The Landowner must use its best endeavours to satisfy the Pre-Acquisition Requirements in clause 2 on or before the date that is two (2) years after the date of endorsement of the RAP by the Site Auditor in accordance with clause 2.5.
- (b) The Landowner must notify PMC:
  - (i) six (6) months ahead of the date that the Landowner expects to satisfy the Pre-Acquisition Requirements for the Land or a Land Portion (as applicable), but only if that expected date is six (6) months or more after the date of this deed; and
  - (ii) at the time that the Pre-Acquisition Requirements have been satisfied for the Land or a Land Portion (as applicable).
- (c) PMC must inspect the Land or Land Portion (as applicable) within 20 Business Day of receiving notice that the Pre-Acquisition Requirements have been satisfied to confirm, acting reasonably and in good faith, whether it agrees that the Pre-Acquisition Requirements have been satisfied for the Land or Land Portion (as applicable).
- (d) In the event that PMC does not agree that the Pre-Acquisition Requirements have been satisfied, PMC is to specify what actions it believes need to be taken to satisfy the Pre-Acquisition Requirements for the Land or Land Portion (as applicable) (**Outstanding Requirements**) and notify the Landowner of these actions in its response to the Landowner under clause 3.3(c).
- (e) PMC must provide the Landowner with a reasonable opportunity to address any Outstanding Requirements, and if the Landowner notifies PMC that it has satisfied the Outstanding Requirements, PMC must reinspect the Land or Land Portion (as applicable) within 20 Business Days of receiving that notice and confirm, acting reasonably and in good faith, whether it agrees that the Pre-Acquisition Requirements have been satisfied for the Land or Land Portion (as applicable).
- (f) Either party may refer a dispute as to whether the Pre-Acquisition Requirements have been satisfied for expert determination in accordance with Schedule 1.

### 3.4 Failure to satisfy Pre-Acquisition Requirements

- (a) In the event that the Pre-Acquisition Requirements for the Land or Land Portion (as applicable) remain unsatisfied by the date that is three (3) years and six (6) months after the date of execution of this Deed, PMC may acquire the Land (or any Land Portion) and withhold from the Compensation Amount the reasonable estimated cost of satisfying the remaining Pre-Acquisition Requirements for the Land or Land Portion (as applicable), inclusive of a contingency not exceeding 20% of that reasonably estimated cost.
- (b) PMC agrees that it will then use its best endeavours to satisfy the remaining Pre-Acquisition Requirements as cost effectively as practicable.

- (c) If the cost of satisfying the remaining Pre-Acquisition Requirements is less than the amount which PMC withheld under clause 3.4(b) such that there is a surplus of funds held by PMC, PMC must, with 15 Business Days after satisfying the Pre-Acquisition Requirements, pay the surplus funds to the Landowner.
- (d) PMC must promptly, upon being requested to do so, provide such records to the Landowner as are necessary for the Landowner to independently verify the reasonableness of any costs or estimated costs relating to satisfaction of the remaining Pre-Acquisition Requirements.
- (e) Either party may refer a dispute as to the reasonable estimated cost, or actual cost, relating to satisfaction of Pre-Acquisition Requirements for expert determination in accordance with Schedule 1.

### 3.5 Timing of Acquisition

- (a) Subject to Ministerial and Executive Council approval, PMC agrees to acquire the Land or Land Portion (as applicable) within three (3) months of it agreeing that the Pre-Acquisition Requirements have been satisfied or an expert determination has been made which determines that the Pre-Acquisition Requirements have been satisfied in respect of the Land or Land Portion (as applicable).
- (b) In the event that the Land or Land Portion (as applicable) is not acquired within three (3) months of the Pre-Acquisition Requirements being agreed or determined to have been satisfied for the Land or Land Portion (as applicable), the Landowner may deliver a duly completed (but not stamped) transfer to PMC for the Land or Land Portion (as applicable), as executed by the Landowner, and naming PMC as the transferee, together with the Certificate of Title for the Land or Land Portion (as applicable).
- (c) The Compensation Amount (or part, in the case of a Land Portion) is payable to the Landowner by PMC within 20 Business Days after:
  - (i) PMC acquires the Land or Land Portion (as applicable); or
  - (ii) the Landowner delivers a duly completed (but not stamped) transfer to PMC for the Land or Land Portion (as applicable) and the Certificate of Title for the Land or Land Portion (as applicable) in accordance with clause 3.5(b).
- (d) Where a Staged Acquisition Proposal has been accepted by PMC under clause 3.8, but the Landowner's request to the Registrar-General under clause 3.8(d)(ii) is refused or does not result in the issue of a separate Certificate of Title for the relevant Land Portion, the requirements in clause 3.5(b) and (c)(ii), in so far as they contemplate the delivery by the Landowner of a transfer and Certificate of Title for a Land Portion, will be taken to have been satisfied for the relevant Land Portion if the Landowner has delivered a duly completed (but not stamped) transfer to PMC for the Land and the Certificate of Title for the Land.

### 3.6 Compensation adjustments and payment

- (a) Upon or as soon as reasonably practicable after being requested to do so by PMC, Bird Bros and AJ Bush must provide PMC with a duly signed payment direction providing bank account details to be used for the payment of the Compensation Amount.
- (b) The market value component of the Compensation Amount will be subject to adjustment, on a pro-rata basis, to account for the area required to be excluded from the Land by clause 2.1.



- (c) The Compensation Amount is to be paid in equal shares to Bird Bros and AJ Bush with the exception that any adjustment made in accordance with clause 3.6(b) is to be deducted from AJ Bush's share of the Compensation Amount.
- (d) In the event that the Land is to be acquired in portions pursuant to a Staged Acquisition Proposal, then the Compensation Amount will be payable in parts, calculated on a pro-rata basis according to the land area comprised within each Land Portion.
- (e) The payment of the Compensation Amount to the Landowner will be made in full and final satisfaction of the Landowner's claims for compensation under the Acquisition Act in respect of, inter alia:
  - (i) the Acquisition;
  - (ii) any facts, matters or circumstances in any way related to the Acquisition;
  - (iii) any losses, damages, costs, interest expenses, claims, demands or other liabilities which have been or may be occasioned by reason of the Acquisition; and
  - (iv) any legal or experts' fees incurred by the Landowner in connection with or related to the Acquisition, and any costs or expenses incurred by the Landowner in connection with negotiating, preparing, executing and performing this Deed.

### 3.7 Deferred payment of Compensation by PMC

- (a) In the event that PMC does not have sufficient budgetary allocation to pay the Compensation Amount or part (as applicable) by the time for payment required under this Deed, PMC may, by written notice to the Landowner, defer payment of the Compensation Amount or part (as applicable) until it receives sufficient budgetary allocation to pay the Compensation Amount, provided that any such period of deferral shall not exceed twelve (12) months.
- (b) Interest is payable to the Landowner on any deferred payment under clause 3.7(a) for the duration of the deferral, at the rate determined under section 50 of the Acquisition Act, with such interest to be compounded on a daily basis.

### 3.8 Staged Acquisition Proposal

- (a) The Landowner may submit a written proposal to PMC (**Staged Acquisition Proposal**) for the staged preparation and Acquisition under this Deed of the Land in portions (**Land Portions**).
- (b) A Staged Acquisition Proposal must:
  - (i) be accompanied by a survey plan delineating the boundaries of the proposed Land Portions prepared by and at the cost of the Landowner; and
  - (ii) provide an indication of the sequence in which the Landowner expects that the proposed Land Portions would be acquired by PMC.
- (c) PMC may, in its absolute discretion, determine to accept or reject a Staged Acquisition Proposal.
- (d) If PMC determines to accept a Staged Acquisition Proposal, then:

- (i) PMC will promptly cause a Plan of Acquisition (prepared by and at the cost of the Landowner) to be registered on title to the Land showing the Land Portions as separate parcels with their own title references;
- (ii) the Landowner will promptly after registration of the Plan of Acquisition, lodge a Request with the Registrar-General seeking to have such recordings made in the Register as are necessary to give effect to the subdivision depicted in the Plan of Acquisition and to have new Certificates of Title for the Land Portions issued in the name of the Landowner, in substitution of the Certificate of Title for the Land;
- (iii) PMC must use its best endeavours to assist the Landowner with the Request and any requisitions made by the Registrar-General, including promptly providing the Landowner with a letter addressed to the Registrar-General consenting to the Request, if requested to do so by the Landowner;
- (iv) clauses 2 and 3 of this Deed (inclusive) will apply, as appropriate, to each Land Portion, to the extent relevant to each Land Portion;
- (v) the Landowner must still satisfy the Pre-Acquisition Requirements for the Land, but may do so in a staged manner, one or more Land Portions at a time, to enable the Land Portions to be progressively acquired by PMC; and
- (vi) the Landowner will notify PMC if there is a change to the order in which the Landowner expects the Land Portions will be acquired, promptly after the Landowner becomes aware of the change.

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## **4. Access Licence**

### **4.1 Licence**

Upon PMC acquiring the Land or Land Portion containing any part of the Access Road (as applicable), PMC must grant AJ Bush a licence to use the Access Road or part (as applicable) for the purpose of AJ Bush, its sublicensees and invitees accessing the AJ Bush Land on the following terms:

- (a) The term of the licence is five (5) years from the date of the Acquisition of the Land or Land Portion (as applicable).
- (b) The licence may be terminated by either party during the term with six (6) months' notice in writing if the Garfield Road Upgrade has been completed and opened to the public, or if AJ Bush determines that the licence is no longer necessary for it to access the AJ Bush Land.
- (c) A monthly licence fee, to be determined by valuation, will be payable by AJ Bush to PMC during the period of the licence and any roll over period.
- (d) AJ Bush must, for the term of the licence and any roll over period, maintain insurance which provides cover for public liability risk within the licence area in the amount of \$5,000,000.00 for any one claim. The relevant insurance policy must name PMC as an interested party.
- (e) AJ Bush is liable for and indemnifies PMC against all liability, loss, costs and expenses arising from or incurred in connection with damage, loss, injury or death caused or contributed to by the use of the licence area or any act, omission, negligence or default of AJ Bush.



- (f) PMC may revoke the licence at any time within the five (5) year term, with 12 months written notice, if:
  - (i) PMC, acting reasonably, determines that the existence of the licence will delay the opening of the Regional Park or materially increase the cost of providing the Regional Park; and
  - (ii) PMC reasonably determines that there are no reasonable alternatives available to mitigate the delay or increased cost.

No compensation will be payable to AJ Bush for revocation of the licence in accordance with this provision.
- (g) At the end of the five (5) year term, the licence will continue to roll over for two (2) year terms until it is surrendered by AJ Bush or revoked by PMC. The licence may be revoked during a roll over period with six (6) months' notice in writing.

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## **5. Release and bar to proceedings**

### **5.1 Release and Indemnity by Landowner**

On and from the date that PMC has paid the Compensation Amount in full, and subject to the remaining provisions of this Deed, the Landowner:

- (a) releases and discharges PMC from all actions, suits, claims, demands, causes of action, costs and expenses, legal, equitable, under statute and otherwise, and other liabilities of any nature (whether or not the parties were or could have been aware of them) which the Landowner:
  - (i) now has;
  - (ii) at any time had;
  - (iii) may have; or
  - (iv) but for this Deed, could or might have had,

against PMC in any way connected or related to the Acquisition of the Land;
- (b) indemnifies PMC and will keep PMC indemnified from and against any loss arising out of, relating to or in connection with the matters the subject of the release given by the Landowner in clause 5.1(a) or by breach of the warranties given by the Landowner in clause 6.

### **5.2 Bar to proceedings**

This Deed may be pleaded as a full and complete defence by any party to any action, suit or proceedings commenced, continued or taken by another party or on its behalf in relation to any of the matters referred to in this Deed, except to enforce the terms of this Deed.

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## **6. Warranties**

### **6.1 Warranties generally**

Each warranty set out in this clause 6 is to be treated as a separate warranty and is not limited by reference to any other warranty or any other provision of this Deed. Each warranty in this clause 6 will remain in full force and effect after this Deed is entered into and a claim in relation to a warranty is not limited to breaches identified prior to entering into this Deed.

## 6.2 Warranties relating to the Land

- (a) The Landowner warrants that as at the date of this Deed:
  - (i) the Land is beneficially and exclusively held by the Landowner; and
  - (ii) the Landowner:
    - A. has not granted, nor purported or attempted to grant; and
    - B. is not aware of,
    - any interest (within the meaning of the Acquisition Act) in the Land to any other person, other than any such interest:
    - C. which is registered on the title to the Land in the Register immediately before the date of this Deed; or
    - D. of which the Landowner has advised PMC in writing prior to the date of this Deed.
- (b) The Landowner warrants that, on and from the date of this Deed, it will not grant, nor purport or attempt to grant, any interest (within the meaning of the Acquisition Act) in the Land to any other person without the prior written consent of PMC.

## 6.3 General warranties

The Landowner warrants to PMC that:

- (a) it has taken independent legal advice as to the terms, effect and extent of this Deed;
- (b) it has not relied upon any promises, representations or inducements made by PMC or any of PMC's officers, employees, agents or advisors, nor any conduct material to the entry into of this Deed other than as set out in this Deed;
- (c) it has power and has obtained all necessary authorisations to enter into and perform its obligations under this Deed; and
- (d) it is aware that PMC is relying on the warranties in this clause 6.3 in executing this Deed.

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## 7. Confidentiality

- (a) The parties agree to not disclose the existence or content of this Deed or any information relating to this Deed or the transaction provided by it (**Confidential Information**), except:
  - (i) to the extent necessary to enable either party to comply with the Law;
  - (ii) to either party's professional consultants or auditors;
  - (iii) where the Confidential Information was in the public domain before the disclosure through no fault of either party or its associates;
  - (iv) with the prior written agreement of the other party.

- (b) This clause 7 will not prevent PMC from disclosing Confidential Information to its responsible Minister, a committee of the New South Wales Parliament or any government agency.

## 8. GST

### 8.1 Definitions and interpretation

In this clause 8:

- (a) **Agreed Price** means the amount the Recipient is required to pay under any provision of this Deed (except this clause 8) for a supply;
- (b) **Supplier** means a party who makes a supply whether on behalf of another entity or otherwise;
- (c) **GST** includes amounts defined as "GST" under the GST law and:
  - (i) amounts payable on account of a notional liability under Division 177 of the GST Act; and
  - (ii) "GST equivalents" payments under the Intergovernmental Agreement Implementation (GST) Act 2000 (NSW) (or similar payments under corresponding legislation of any other State or Territory).
- (d) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999.
- (e) **GST law** has the same meaning as in the GST Act.
- (f) a reference to a supply is a supply under this Deed;
- (g) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member; and
- (h) words and phrases used that are also used in the GST Act have the same meaning as in that Act, except that:
  - (i) "GST" has the meaning given in clause 8.1(e);
  - (ii) **Recipient** means a party who provides or is liable to provide consideration under this Deed for a supply; and
  - (iii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply for the purposes of this clause.

### 8.2 Reimbursements

Any payment or reimbursement required to be made under this Deed that is calculated by reference to an amount paid or incurred is limited to the total amount less any input tax credit to which an entity is entitled for an acquisition to which the amount relates.

### 8.3 GST payable

Despite the other provisions of this Deed, if the Supplier is or becomes liable to pay GST in respect of any supply:

- (a) the Agreed Price for that supply is exclusive of GST;



- (b) the Recipient must pay an additional amount equal to the GST in connection with that supply;
- (c) the Supplier must issue a valid tax invoice to the Recipient in respect of that supply; and
- (d) the additional amount payable under clause 8.3(b) must be paid at the same time as the first part of any consideration is provided for that supply or on receipt of a valid tax invoice for the taxable supply to which the additional amount relates, whichever is the later.

#### 8.4 Variation

If the amount the Supplier recovers from the Recipient on account of GST on a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Recipient must pay to the Supplier on demand (or the Supplier must credit the Recipient with) the amount of that difference. If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note within 14 days after the date of the adjustment event.

#### 8.5 Penalties

If the Recipient does not comply with its obligations under this Deed or with its obligations under the GST law in connection with this Deed and because of this the Supplier becomes subject to penalties or interest for late payment of GST, then the Recipient must pay the Supplier on demand an amount equal to the amount of the penalties and interest.

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### 9. Stamp duty

PMC must pay all stamp duties (if any) and any related fines and penalties (if any) in respect of this Deed, the performance of this Deed and each transaction effected by or made under this Deed.

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### 10. General

#### 10.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

**PMC**

Name: PMC

Address: 4 Parramatta Square, 12 Darcy Street,  
Parramatta NSW 2150

Email: Pheona.Twist@planning.nsw.gov.au

For the attention of: Pheona Twist, Director OSL



**Landowner*****Bird Bros***

Name: Jeff Appel  
Bird Bros Pty Ltd

Address: Katz & Watson, Suite 201, Level 2, 8 Held Street, Chatswood  
NSW 2067

Email [REDACTED]

***AJ Bush***

Name: Cameron Bush  
A J Bush & Sons (Manufactures) Pty Ltd

Address: 38 Parramatta Road, Homebush NSW 2140

Email [REDACTED]

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered by hand, posted by prepaid post to the address, or sent by email to the address, of the addressee, in accordance with clause 10.1(b); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of email) at the time the email was sent, and
  - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

**10.2 Governing law**

This Deed is governed by and must be construed according to the law applying in New South Wales.

**10.3 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.3(a).

#### **10.4 Public authority**

The Landowner acknowledges and agrees that nothing in this Deed will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of PMC to exercise any of its functions and powers pursuant to any legislation.

#### **10.5 Severance**

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

#### **10.6 Further acts and documents**

Each party must promptly do all further acts (including passing resolutions) and execute and deliver all further documents (in form and content reasonably satisfactory to PMC) required by Law or reasonably requested by another party to give effect to this Deed.

#### **10.7 Entire agreement**

To the extent permitted by Law, in relation to the subject matter of this Deed, this Deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

#### **10.8 Amendments**

This Deed may only be varied by a Deed executed by or on behalf of each party.

#### **10.9 No merger**

This Deed will not in any way merge or prejudicially affect or be merged in or prejudicially affected by, and the parties' obligations under this Deed will not in any way be abrogated or released by any judgment or order, any contract, any costs of action or remedy, or any other matter or anything existing at any time.

#### **10.10 Counterparts**

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the Deed of each party who has executed and delivered that counterpart.

#### **10.11 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or

enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this Deed.

- (b) A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

Executed as a Deed.

SIGNED, SEALED and DELIVERED for the  
Planning Ministerial Corporation ABN 36 691 806  
169 by its authorised delegate in the presence of:

Signature of witness

Cloe Jolly

Name

Address of witness

Signature of authorised delegate

PHOENA TWIST

Name

DIRECTOR OFFICE OF STRATEGIC  
LANDS

Position

Executed by Bird Bros Pty Ltd ACN 000 062  
439 in accordance with section 127 of the  
Corporations Act 2001 (Cth):

Signature of director

PAUL EDWARD DEXTER

Signature of company secretary/director

JEFFREY APPEL

Executed by A J Bush & Sons (Manufactures)  
Pty Ltd ACN 000 058 453 in accordance with  
section 127 of the Corporations Act 2001 (Cth):

Signature of director

Alfred John Bush

Full name of director

Signature of company secretary/director

Ivan Jeffrey Bush

Full name of company secretary/director



## Schedule 1

### Expert Determination (Schedule 1)

#### 1. Application of this Schedule 1

- (a) This Schedule applies to disputes contemplated by clause 3.3(f) and 3.4(e) of this Deed.
- (b) A party who wishes to refer a matter for expert determination in accordance with this Deed must provide a written notice to the other parties which specifies the issues which that party wishes to have determined by an expert in accordance with this Schedule 1.

#### 2. Agreement on or nomination of expert

- (a) If a notice has been given under clause 1(b) of this Schedule 1, the parties must use all reasonable endeavours to agree on a person who is independent of all the parties, and is qualified in fields which are relevant to the determination of the issues specified in the notice, as the expert to determine the issues.
- (b) If the parties have not reached agreement on an expert within 10 Business Days after a notice has been given under clause 1(b) of this Schedule 1:
  - (i) any party may, by written notice (a copy of which the party must provide to the other parties), request the president of the Law Society of NSW or the president's delegate to nominate an expert; and
  - (ii) if a notice is issued in accordance with clause 2(b)(i) of this Schedule 1, each of the parties may propose three persons for the president to consider in nominating an expert.

#### 3. Appointment of expert

- (a) The parties must use their best endeavours to finalise the terms of the expert's retainer as soon as possible and, in any event, within 10 Business Days after the expert has been agreed or nominated under clause 2 of this Schedule 1.
- (b) If the expert appointed under clause 3(a) of this Schedule 1 dies or resigns, or the parties agree to replace the expert, before the expert issues a determination under this Schedule 1, then clauses 2 and 3(a) of this Schedule 1 re-apply as if a notice was given under clause 1(a) of this Schedule 1 in respect of the same issues on the day on which all parties become aware that the expert has died or resigned or they agree to replace the expert.
- (c) If the expert becomes aware at any stage of any circumstance that might reasonably be considered to adversely affect the expert's capacity to act independently or impartially:
  - (iii) the expert must inform the parties immediately;
  - (iv) the appointment of the expert will terminate unless the parties agree otherwise; and
  - (v) the expert will be treated as having resigned for the purposes of clause 3(b) of this Schedule 1.

**4. Role and powers of the expert**

The parties acknowledge and agree that the expert should, and they will use their best endeavours to ensure that expert will:

- (a) act as an expert and not as an arbitrator;
- (b) act independently of the parties, and act fairly and impartially as between the parties, giving each party a reasonable opportunity of presenting its case and countering any arguments of any opposing party, and a reasonable opportunity to make submissions on the matters for expert determination and the procedure for the expert determination;
- (c) proceed in any matter he or she thinks fit;
- (d) determine whether it is appropriate to co-opt legal or other technical expertise to assist his or her coordination of the dispute;
- (e) conduct any investigation which he or she considers necessary to resolve the dispute;
- (f) examine such documents, and interview such persons, as he or she may require; and
- (g) make such directions for the conduct of the expert determination as he or she considers necessary.

**5. Steps leading to commencement of expert determination**

The parties agree to comply with any procedural directions the expert may give in the preparation for or in the course of a preparatory conference.

**6. Representation and attendance**

During any conference or any stage of the expert determination, the parties may be represented by a legal representative and other persons with information or knowledge relevant to the expert determination.

**7. Obligation of parties**

The parties shall take all reasonable steps for the expeditious and cost-effective conduct of the expert determination. These steps include, but are not limited to, complying without delay with any direction or ruling by the expert as to the procedural or evidentiary matters.

**8. Confidentiality**

The parties must do, and must ensure that their representatives do, and must use their best endeavours to ensure that the expert and his or her representatives do, the following:

- (b) keep confidential any information which is provided to the expert and the other parties in the course of the expert determination process on the basis that it is confidential; and
- (c) not disclose or otherwise use that information other than for the purposes of the expert determination.

9. **Determination of expert**

- (a) A determination of the expert must be in writing and accompanied by reasons.
- (b) The parties acknowledge and agree that a determination of the expert:
  - (i) subject to subclause (c) below, will be final and binding on the parties; and
  - (ii) is not an arbitration within the meaning of any statute.
- (c) If the determination of the expert contains a clerical mistake, an error arising from an accidental inclusion or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect of form, then:
  - (i) the party which noticed the relevant matter must notify the other party in writing promptly,
  - (ii) the parties must use their best endeavours to ensure that the expert corrects the determination within 10 Business Days after they receive notice under clause 9(c)(i) of this Schedule 1; or
  - (iii) if the expert does not correct the determination within that time, the parties may agree to appoint a substitute expert in accordance with the procedures established by clause 2 of this Schedule 1.

10. **Costs**

Each party will:

- (d) bear its own costs in respect of any preparation and/or representation at any expert determination; and
- (e) pay one-half of the expert's costs and any incidental costs of facilitating the expert determination.

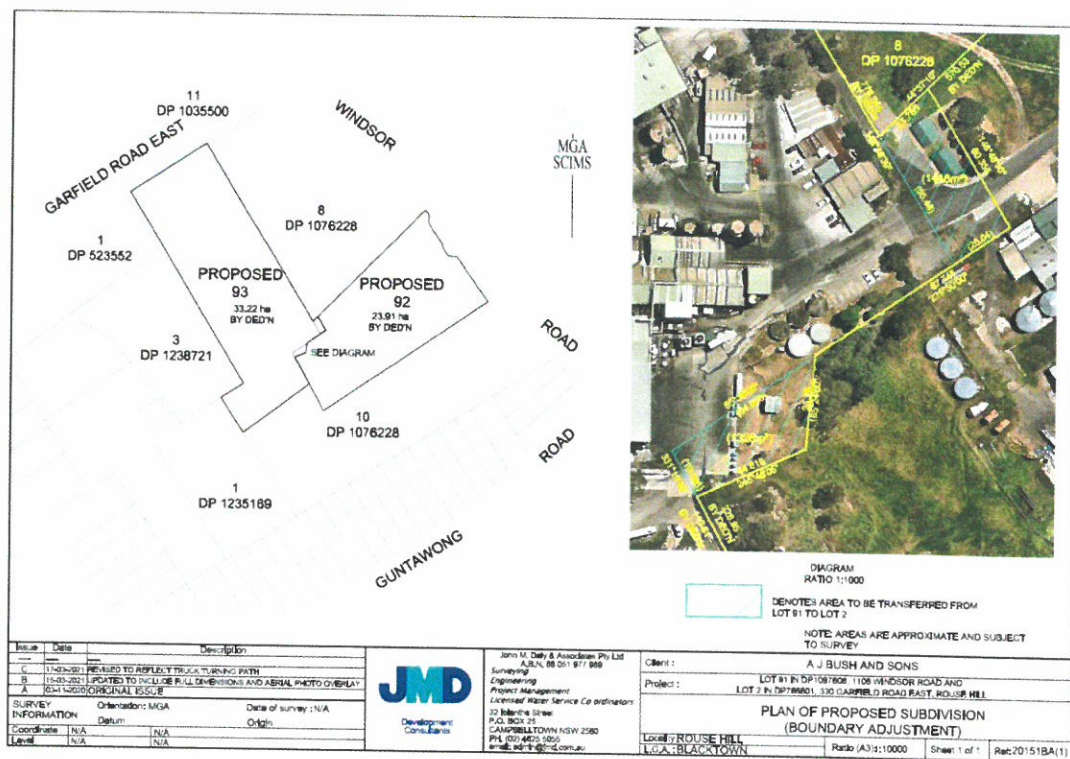
11. **No suspension of contractual obligations**

The referral of a dispute for expert determination under this Schedule 1 does not suspend the contractual obligations of the parties under this Deed.

12. **No prejudice**

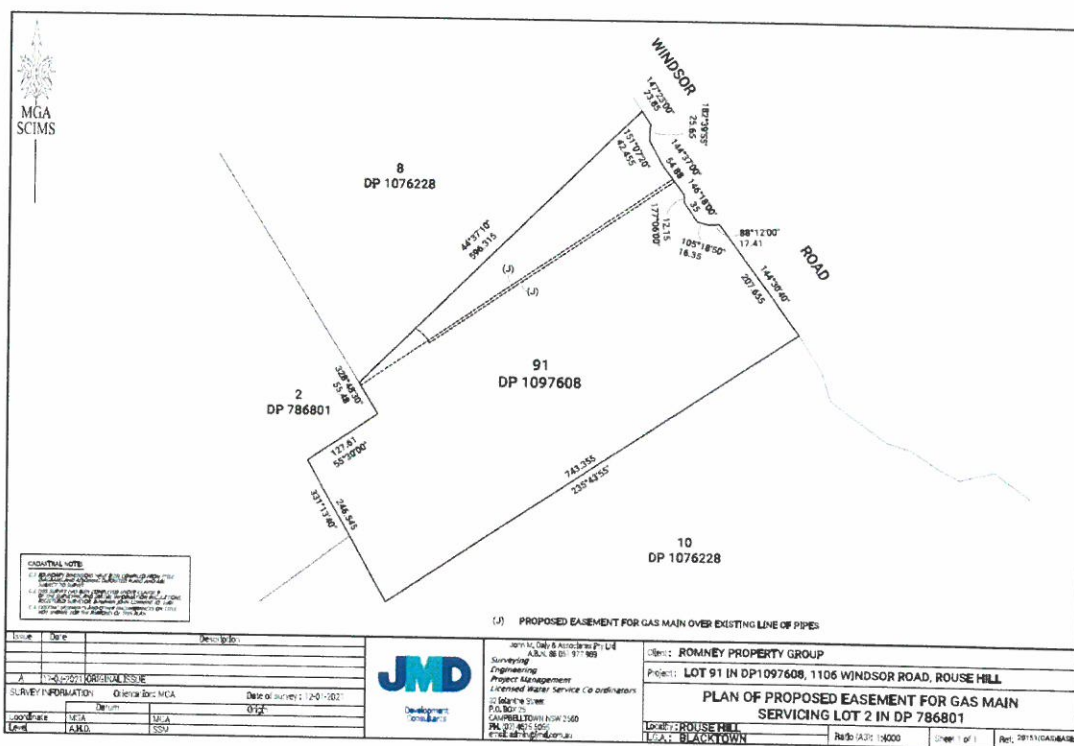
This Schedule 1 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

Annexure A



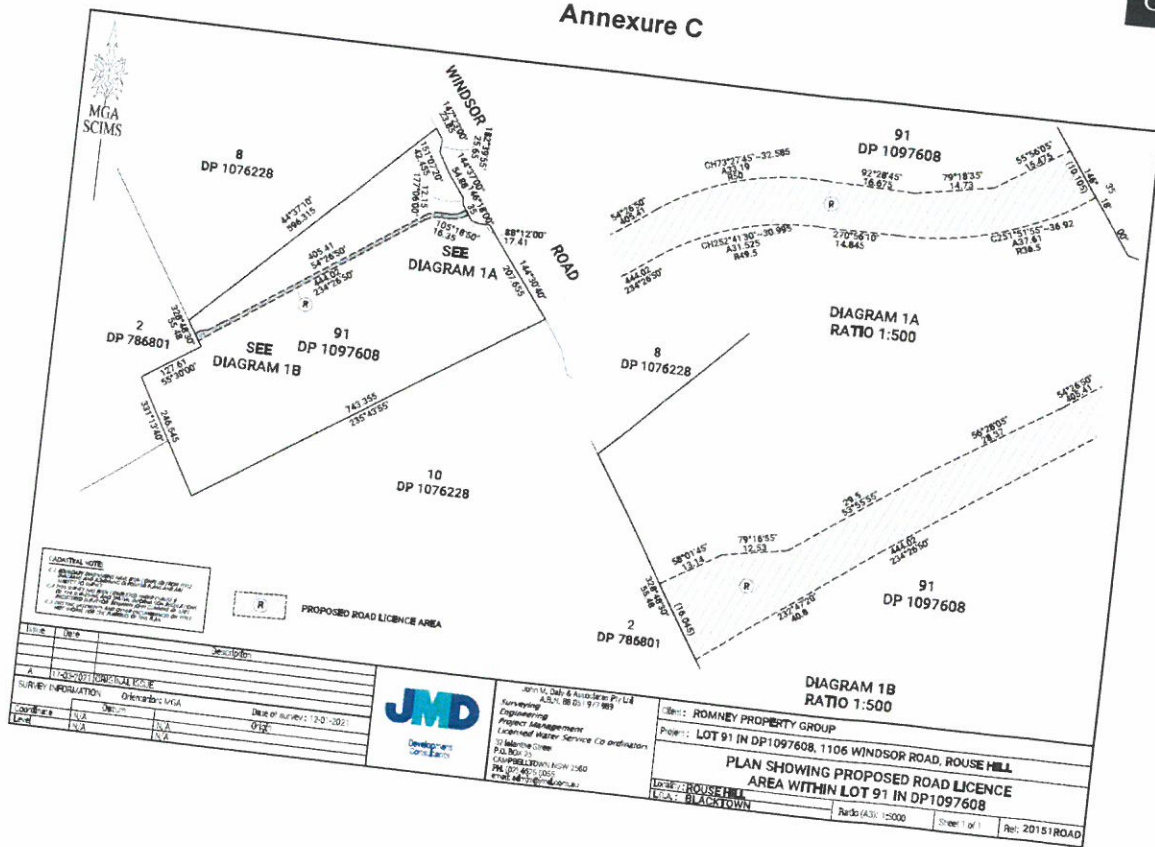


Annexure B



# Annexure C

CLAYTON UTZ



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