
The Minister for Planning

Landcom trading as UrbanGrowth NSW

Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)

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Date 30 AUGUST 2015

Parties

The Minister for Planning ABN 38 755 709 681 of Level 15, 52 Martin Place, Sydney NSW 2000 (**Minister**)

Landcom trading as UrbanGrowth NSW ABN 79 268 260 688 of Level 16, 227 Elizabeth Street, Sydney NSW 2000 (**Developer**)

Background

- A The Developer has obtained the Development Consent to carry out the Development on the Land.
 - B The Land is located in the North Ryde Station Priority Precinct.
 - C The Developer has offered to enter into this deed to provide Development Contributions in connection with the Development by:
 - (a) delivering the Road Works; or
 - (b) delivering the Wicks Road and Waterloo Road Intersection Works and procuring the delivery of the remaining Road Works through provision of the Contribution Amount to the Minister.
-

Operative provisions

1 Planning agreement under the Act

The Parties agree that this deed is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this deed

This deed applies to:

- (a) the Land; and
- (b) the Development.

3 Operation and commencement of this deed

This deed will commence on the date that it is entered into in accordance with clause 25C(1) of the Regulation.

4 Definitions

In this deed the following terms have the following meanings:

Act	The <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Additional Land	Part Lot 2 in Deposited Plan 528488 and part Lot 7 in Deposited Plan 1046090.
Approval	Any consent, approval, authorisation, licence, registration, order, permission or concurrence required by Law, including those under this deed and includes the Development Consent.
Authority	Any federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
Base RCMPI	The RCMPI number for the quarter ending 30 June 2015.
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Claim	Any allegation, debt, cause of action, liability, claim, Loss, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise, including (without limitation), any claim for compensation arising under or pursuant to the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
Complying Development Certificate	Has the meaning given to that term in the Act.
Construction Certificate	Has the meaning given to that term in the Act.
Contribution Amount	The amount of: $\$10.4 \text{ million (excluding GST)} \times \frac{\text{Current RCMPI}}{\text{Base RCMPI}}$
Current RCMPI	The RCMPI number for the quarter ending immediately before the date on which the Contribution Amount is to be paid in accordance with this deed.
Delhi Road	The design and construction of works required to widen Delhi

Widening Works	Road eastbound from the M2 Motorway to the east of Julius Avenue (eastern intersection) and associated modifications, as shown indicatively on the plan at Annexure B – Part 1 , and as further described in schedule 4 .
Department	The Department of Planning & Environment, formerly the Department of Planning & Infrastructure, or any other government department, agency or body replacing it from time to time.
Developer Land	Lot 101 in Deposited Plan 1131776.
Development	<p>The staged development of the Land in accordance with:</p> <p>(a) the approved concept proposal including:</p> <ul style="list-style-type: none"> (i) subdivision of the Land into 12 development lots, 5 public open space lots and 2 public road lots; (ii) allocation of a maximum gross floor area to each of the development lots (total of 238,919m² across the Land plus an additional 2,500m² to proposed Lot 104 for a community facility); (iii) infrastructure, civil works and landscaping; and <p>(b) the Stage 1 Works,</p> <p>and, for the avoidance of doubt, includes the development of the development lots pursuant to subsequent Planning Approvals.</p>
Development Consent	Development consent SSD 5093 dated 5 March 2015 granted for the Development under section 89E of the Act by the delegate of the Minister.
Development Contribution	To dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a Public Purpose.
Dispute	Includes any difference, dispute, matter, question, controversy or Claim.
Explanatory Note	The Explanatory Note attached at schedule 5 .
GST	Any form of goods and services tax payable under the GST Legislation.
GST Legislation	The <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Guarantee	A Treasury Guarantee being an unconditional undertaking, with a 5 year expiry date naming the Minister and the Department as beneficiaries which will be replaced, in the

	same form, no later than 5 Business Days prior to its expiry (where applicable).
Guarantee Amount	\$10.4 million (excluding GST).
Handover	To handover ownership and control of a part or the whole of the Road Works in accordance with any WAD.
Land	The combined area of the Developer Land and the Additional Land as depicted on the plan at Annexure A .
Law	Any statute, regulation, rule, proclamation, order, ordinance or by-law whether present or future and whether Commonwealth, State, territorial or local, and the common law.
Loss	Any loss (including loss of profit and loss of expected profit), Claim, action, liability, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character which the Minister pays, suffers or incurs or is liable for, including: <ul style="list-style-type: none"> (a) liabilities on account of Tax; (b) interest and other amounts payable to third parties; and (c) legal and other expenses incurred in connection with investigating or defending any Claim or action, whether or not resulting in any liability, and all amounts paid in settlement of any Claim or action.
LPI	NSW Land and Property Information or any other government agency or body replacing it.
North Ryde Station Priority Precinct	The approximately 12.5 hectare precinct in the Ryde local government area which has been rezoned for the purpose of high density residential and mixed land uses with more than 2.4 hectares for passive and active open space, as described in the Precinct Report.
Party	A party to this deed, including their successors and assigns, but only to the extent that assignment is permitted under clause 12 .
Planning Approval	Development consent granted under Part 4 of the Act or an approval under Part 5 of the Act.
Practical Completion	The stage in the execution of the Road Works by the Developer pursuant to a WAD or a condition of the Development Consent, being when the relevant works have been completed and are ready for their intended use except for minor omissions and minor defects.
Precinct	The North Ryde Station Urban Activation Precinct.

Report	Finalisation Report prepared by the Department and dated July 2013.
Public Purpose	Any purpose that benefits the public or a section of the public, specified in section 93F(2) of the Act.
RCMPI	The Road Construction Sub-Index of the Road Construction and Maintenance Price Index published by the Bureau of Infrastructure, Transport and Regional Economics.
Regulation	The <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
RMS	Roads and Maritime Services ABN 76 236 371 088 a NSW Government agency and corporation incorporated under the <i>Transport Administration Act 1988</i> (NSW).
Road Works	<p>The:</p> <ul style="list-style-type: none">(a) Delhi Road Widening Works;(b) Wicks Road and Epping Road Intersection Works; and(c) Wicks Road and Waterloo Road Intersection Works.
Secretary	The Secretary of the Department of Planning and Environment, from time to time.
Stage 1 Works	<p>The following works to be undertaken in the following phases:</p> <ul style="list-style-type: none">(a) Phase 1 – site preparation works including demolition, remediation and rehabilitation and bulk earth works;(b) Phase 2A – superlot subdivision to create 4 public roads and a future public road lot, 5 public reserve lots, 3 future development lots and 2 superlots;(c) Phase 2B – civil and public domain works including road and intersection construction, open space establishment and embellishment, pedestrian pathways and cycleways, drainage, public domain works and services infrastructure;(d) Phase 3 – subdivision to create 8 development lots; and(e) Phase 4 – construction of a pedestrian bridge over Delhi Road.
Subdivision Certificate	Has the same meaning as in the Act.
Tax	A tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Transferee	Any person or entity not a Party to this deed.
WAD	<p>A Works Authorisation Deed(s) entered into by RMS and the Developer:</p> <p>(a) regarding the design and construction of the Road Works the subject of the WAD and their Handover to RMS by the Developer; and</p> <p>(b) consistent with the terms of this deed.</p>
Wicks Road and Epping Road Intersection Works	The design and construction of works required to install additional lanes on Wicks Road at Epping Road, as shown indicatively on the plan at Annexure B – Part 2 , and as further described in schedule 4 .
Wicks Road and Waterloo Road Intersection Works	The works required to install traffic signals at the intersection of Wicks Road and Waterloo Road, as shown indicatively on the plan at Annexure B – Part 3 , and as further described in schedule 4 .

5 Development Contributions to be made under this deed

5.1 Developer to provide Development Contribution

The Developer agrees to:

- (a) deliver the Road Works where the estimated cost for the delivery of the Road Works, excluding the Wicks Road and Waterloo Road Intersection Works, having regard to RMS' construction requirements is less than \$10.4 million (excluding GST) (plus a 50% contingency); or
- (b) deliver the Wicks Road and Waterloo Road Intersection Works and pay the Contribution Amount to the Minister towards the delivery of the Delhi Road Widening Works and the Wicks Road and Epping Road Intersection Works,

in accordance with this deed, including, without limitation **schedule 2**.

5.2 Delivery of the Road Works

- (a) On or before 30 June 2016, or any later date as may be agreed by the parties in writing, the Developer must provide written notification to the Minister as to whether the Developer:
 - (i) will undertake the Road Works in accordance with a WAD(s) and/or the conditions of the Development Consent; or
 - (ii) will:

- (A) undertake the Wicks Road and Waterloo Road Intersection Works in accordance with the conditions of the Development Consent and any WAD (if required); and
 - (B) will pay to the Minister the Contribution Amount towards the funding of the construction and delivery of the Delhi Road Widening Works and Wicks Road and Epping Road Intersection Works.
- (b) For the avoidance of doubt, if the Developer notifies the Minister under **clause 5.2(a)(i)** that it will undertake the Road Works, it must deliver the Delhi Road Widening Works and Wicks Road and Epping Road Intersection Works even if the total cost of those works will exceed the Contribution Amount.

6 Design, Construction and Handover of the Road Works

6.1 Developer to undertake Road Works

- (a) This **clause 6.1** applies:
 - (i) to the delivery of the Wicks Road and Waterloo Road Intersection Works pursuant to **clause 5.2(a)(ii)(A)**; and
 - (ii) where the Developer has elected to undertake the Road Works pursuant to **clause 5.2(a)(i)**.
- (b) The Developer must:
 - (i) enter into a WAD(s) with RMS for the Road Works on terms and conditions which:
 - (A) are consistent with the requirements of this deed, including **schedule 2**; and
 - (B) are acceptable to RMS and the Minister,as soon as possible after the election is made pursuant to **clause 5.2(a)** and prior to the commencement of any aspect of the Road Works;
 - (ii) provide an executed copy of any WAD(s) to the Minister within 5 Business Days of its execution by the Developer and RMS;
 - (iii) obtain the Minister's prior consent to any future proposed modification or termination of any WAD(s) which would be inconsistent with this deed or have the effect that the Road Works to which the WAD relates would not be delivered or would be varied to a significant extent, such consent not to be unreasonably withheld; and

- (iv) not commence construction of any part of the Road Works until the Developer has complied with the requirements of **clause 9.1** of this deed and **clause 1 of schedule 3**.
- (c) The Developer agrees to construct each part of the Road Works in accordance with:
 - (i) any Approvals granted for that part of the Road Works;
 - (ii) any applicable WAD(s);
 - (iii) any civil design documentation for that part of the Road Works approved by RMS in accordance with the Development Consent or any other Approvals; and
 - (iv) all applicable Laws.

6.2 Developer to pay Contribution Amount to Minister

- (a) This **clause 6.2** only applies if the Developer has elected to pay the Contribution Amount to the Minister towards the costs of the construction of the Delhi Road Widening Works and Wicks Road and Epping Road Intersection Works.
- (b) The Developer must:
 - (i) pay the Contribution Amount to the Minister by the date which is 60 Business Days after the date of the notice given under **clause 5.2(a)**; and
 - (ii) comply with the requirements of **clause 9.1** of this deed and **clause 1 of schedule 3**.

7 Application of sections 94, 94A and 94EF of the Act to the Development

The application of sections 94, 94A and 94EF of the Act is excluded to the extent stated in **schedule 1**.

8 Dispute Resolution

8.1 Notice of Dispute

If a Party claims that a Dispute has arisen under this deed (**Claimant**), it must give written notice to the other Party (**Respondent**) stating the matters in Dispute and designating as its representative a person to negotiate the Dispute (**Claim Notice**). Nothing in this clause prevents a Party seeking urgent injunctive or similar interim relief from a court.

8.2 Response to Notice

Within 10 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the Dispute.

8.3 Negotiation by nominated representatives

The nominated representatives must:

- (a) meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the Dispute within 15 Business Days after they have met.

8.4 Negotiation by senior representatives

If the Dispute is not resolved in accordance with **clause 8.3**:

- (a) the Claimant must:
 - (i) give written notice to the Respondent that the Dispute is to be escalated for negotiation by senior representatives of the Claimant and the Respondent; and
 - (ii) designate the Claimant's senior representative to negotiate the Dispute; and
- (b) the Respondent must designate its senior representative to negotiate the Dispute within 10 Business Days of receipt of a notice under **clause 8.4(a)**; and
- (c) the Claimant's and Respondent's senior representatives must:
 - (i) meet to discuss the matter in good faith within 15 Business Days after service by the Respondent of notice of its senior representative; and
 - (ii) use reasonable endeavours to settle or resolve the Dispute within 15 Business Days after they have met.

8.5 Litigation

If the Dispute is not resolved in accordance with **clause 8.4(b)**, the Parties will observe Premier's Memorandum M1997 'Litigation Involving Government Authorities' and the 2008 Model Litigant Policy for Civil Litigation.

8.6 Continue to Perform obligations

Each Party must continue to perform its obligations under this Agreement, notwithstanding the existence of a Dispute.

9 Enforcement

9.1 Developer to provide security

The Developer agrees to provide security for the performance of the Developer's obligations under this deed by providing the Guarantee to the Minister in accordance with the terms of **schedule 3**.

9.2 Enforcement by any party

- (a) Subject to compliance with **clause 8**, this deed may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this deed prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this deed or any matter to which this deed relates; and
 - (ii) the Minister from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this deed or any matter to which this deed relates.

10 Notices

10.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this deed is only given or made if it is in writing and:

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below.

Minister

Attention: The Secretary
Address: Department of Planning and Environment
23-33 Bridge Street
Sydney NSW 2000
Fax Number: (02) 9228 6455

Developer

Attention: Stuart McCowan, General Manager, Wholesale Projects
Address: Level 14, 60 Station Street
Parramatta NSW 2150
Fax Number: (02) 9841 8688

10.2 Change of details

If a Party gives the other Party three Business Days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

10.3 Giving of notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, two Business Days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the senders fax machine a report of an error free transmission to the correct fax number.

10.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

11 Approvals and consent

Except as otherwise set out in this deed, and subject to any statutory obligations, the Minister may give or withhold an approval or consent to be given under this deed in the Minister's absolute discretion and subject to any conditions determined by the Minister. The Minister is not obliged to give the Minister's reasons for giving or withholding consent or for giving consent subject to conditions.

12 Assignment and Dealings

The Developer must not assign the rights, obligations or interests under this deed to any Transferee.

13 Capacity

- (a) Each Party warrants to each other Party that this deed creates legal, valid and binding obligations, enforceable against the relevant Party in accordance with its terms.
- (b) The Parties represent and warrant that they have power to enter into this deed and comply with their obligations under this deed and that entry into this deed will not result in the breach of any law.

14 Reporting requirement

- (a) On each anniversary of the date of this deed or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report which must include those matters set out below, as applicable:
 - (i) a description of the status of the Development and the Road Works;

- (ii) a forecast in relation to the anticipated progression and completion of the Development and the Road Works; and
 - (iii) an estimated date for when the Developer expects to submit any application for a Complying Development Certificate, Construction Certificate or Subdivision Certificate in respect of any part of the Land.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Road Works.

15 GST

15.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

15.2 Intention of the parties

The Parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

15.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

15.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST Amount payable in relation to a supply for the purposes of **clause 15.5**.

15.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a Party under or in connection with this deed (the **GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, no GST Amount is payable by the Minister as Recipient of the supply and the Developer will ensure that the Developer provides a Tax Invoice to the Minister.

15.6 Non monetary consideration

Clause 15.5 applies to non-monetary consideration.

15.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under **clause 15.5** the Developer will assume the Minister is not entitled to any input tax credit.

15.8 No merger

This **clause 15** does not merge on the completion, rescission or other termination of this deed or on the transfer of any property supplied under this deed.

16 General provisions

16.1 Costs, expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements to a maximum of \$30,000 in connection with the negotiation, preparation, execution and carrying into effect of this deed and any document contemplated by it.
- (b) The Developer must pay all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed and any document contemplated by it.
- (d) The Developer must provide the Minister with bank cheques in respect of any costs incurred by the Minister pursuant to **clauses 16.1(a), 16.1(b)** and **16.1(c)**:
 - (i) where the Minister has provided the Developer written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

16.2 Entire agreement

- (a) This deed contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this deed was executed, except as permitted by law.

- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this deed.

16.3 Variation

- (a) This deed must not be varied except by a later written document executed by all Parties.
- (b) Subject to **clause 16.3(c)**, the Parties agree that the requirements of **clause 16.3(a)** will be satisfied where the Minister, in the Minister's absolute discretion, agrees to the Developer making minor amendments relating to the delivery of the Road Works and those amendments, and the consequences of those amendments under this deed, have been agreed by the Parties through an exchange of letters signed by or on behalf of the contact for each party specified in **clause 10** of this deed.
- (c) **Clause 16.3(b):**
 - (i) does not apply where the Act requires public notification of any amendment to this deed;
 - (ii) is subject to the Developer obtaining all required approvals including any Planning Approval or modification to a Planning Approval; and
 - (iii) is subject to **clause 16.7** of this deed.

16.4 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this deed and all transactions incidental to it.

16.5 Governing law and jurisdiction

This deed and the transactions contemplated by this deed are governed by and are to be construed in accordance with the laws applicable in New South Wales. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

16.6 Joint and individual liability and benefits

Except as otherwise set out in this deed, any agreement, covenant, representation or warranty under this deed by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

16.7 No fetter

Nothing in this deed will be construed as requiring the Minister to do anything that would cause it to be in breach of any of the Minister's obligations at law, and without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

16.8 Severability

If a clause or part of a clause of this deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this deed, but the rest of this deed is not affected.

16.9 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

16.10 Effect of Schedules

The Parties agree to comply with any terms contained in Schedules to this deed as if those terms were included in the operative part of the deed.

16.11 Relationship of parties

This deed is not intended to create a partnership, joint venture or agency relationship between the parties.

16.12 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this deed and to perform its obligations under it.

16.13 Counterparts

This deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

16.14 Rights cumulative

Except as expressly stated otherwise in this deed, the rights of a Party under this deed are cumulative and are in addition to any other rights of that Party.

16.15 Liability

An obligation of two or more persons binds them separately and together.

16.16 Interpretation

Unless expressed to the contrary, in this deed:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;

- (e) a reference in this deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney;
- (f) if the day on or by which any act, must be done under this deed is not a business day, the act must be done on or by the next business day;
- (g) '\$' or 'dollars' is a reference to Australian currency all amounts payable under this deed are payable in Australian dollars;
- (h) a reference in this deed to any law, legislation or legislative provision includes any statutory modification, amendment or re enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (i) a reference in this deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (j) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this deed;
- (k) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (l) a reference to a Party to this deed includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns; and
- (m) any schedules, annexures and attachments form part of this deed.

16.17 Headings

Headings do not affect the interpretation of this deed.

16.18 Effect of execution

This deed is not binding on any Party unless it or a counterpart has been duly executed by each Party.

Schedule 1

Requirements under the Act

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Table 1 – Requirements under section 93F of the Act

Provision of the Act	This deed
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this deed applies- (Section 93F(3)(a))	The whole of the Land.
Description of the development to which this deed applies- (Section 93F(3)(b)(ii))	The Development as defined in the definitions in clause 4 .
The scope, timing and manner of delivery of Development Contributions required by this deed - (Section 93F(3)(c))	Clauses 5 and 6 and schedule 2.
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 is not excluded in respect of any part of the Development.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A is not excluded in respect of any part of the Development.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF is excluded in respect of the whole and any part of the Development.
Applicability of Section 93F(3)(e) of the Act	The Road Works to be provided by the Developer under this deed must not be taken into consideration in determining a contribution under section 94 of the Act.

Provision of the Act	This deed
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 8.
Enforcement of this deed - (Section 93F(3)(g))	See clause 9.
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 16.7.

Table 2 – Other Matters

Provision of the Act	This deed
Registration of this deed (Section 93H)	This deed is not required to be registered on the title of the Land.
Whether this deed specifies that certain requirements must be complied with before a construction certificate is issued (Clause 25E(2)(g) of the Regulation)	No.
Whether this deed specifies that certain requirements must be complied with before an occupation certificate is issued (Clause 25E(2)(g) of the Regulation)	No.
Whether this deed specifies that certain requirements must be complied with before an subdivision certificate is issued (Clause 25E(2)(g) of the Regulation)	Yes – see schedule 2.

Schedule 2

Development Contributions

The Developer will provide the Development Contributions in accordance with the table below, subject to **clause 5.2(a)** of this deed:

Development Contribution	Date of commencement of the Road Works in accordance with a WAD(s) and any relevant condition of the Development Consent	Date of Practical Completion of the Road Works
The Road Works	Prior to the issue of the first Subdivision Certificate for the Stage 1 Works.	By 31 December 2020, unless otherwise agreed in writing in the Minister's absolute discretion.

Schedule 3

Security Terms

1 Security for Road Works

Upon execution of this deed, the Developer must provide the Guarantee to the Minister for the Guarantee Amount.

2 Claims under a Guarantee

The Minister may:

- (a) call upon the Guarantee provided in accordance with **clause 1** of this **schedule 3**; and
- (b) retain and apply such monies towards:
 - (i) achieving performance of the Road Works; and
 - (ii) the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (c) Prior to calling upon a Guarantee, the Minister must give the Developer not less than 10 Business Days written notice.
- (d) If:
 - (i) the Minister calls upon a Guarantee; and
 - (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Guarantee in accordance with **clause 2(c)** of this **schedule 3**,

then the Minister may request that the Developer provide an additional Guarantee(s) to secure performance of the Developer's obligations under this deed.

3 Release of Guarantee

- (a) The Minister will release the Guarantee(s) provided in accordance with **clause 1 and clause 2(d)** of this **schedule 3** subject to the Developer providing evidence to the Minister's satisfaction that:
 - (i) where any part of the Road Works are to be undertaken in accordance with a WAD(s), security has been provided for under the WAD(s) for the relevant Road Works and that security has

been provided to RMS' satisfaction in accordance with the WAD(s); and

- (ii) where the Contribution Amount is payable to the Minister, the Contribution Amount has been paid and the Minister has confirmed receipt.
- (b) Following satisfaction of the requirements of **clause 3(a)** of this **schedule 3**, the Minister will promptly return the Guarantee(s) (less any costs, charges, duties and Taxes payable), or the remainder of the monies secured by the Guarantee(s) (as the case may be), to the Developer.

Schedule 4

Description of Road Works

Wicks Road and Waterloo Road Intersection Works

- 100m left turn bay from Spine road on the M2 site;
- 1 through lane from Spine road into Waterloo road;
- Widen the south-west corner to allow large vehicles to turn left without lane-sharing;
- Left hand turning lane along the length of Wicks Road turning into Waterloo Road;
- Install traffic signals; and
- Utility services adjustments.

Wicks Road and Epping Road Intersection Works

- Add two additional short lanes approx. 60m long by widening Wicks Road (north) on the eastern side (into the service station) by 6m to provide a dedicated left-turn and right-turn lane, convert centre lane into through movement only;
- Widen Wicks Road (south) on the eastern side by 3m to provide an additional right-turn lane and convert the existing through/right-turn lane into a dedicated through lane; and
- Utility services adjustments.

Delhi Road Widening Works

- Delhi Road:
 - widen eastbound direction from one through lane to two through lanes between the M2 Motorway and 100m east of the eastern intersection with Julius Avenue;
- Intersection of Delhi Road and Road 38:
 - extend right-turn lane on Delhi Road to at least 120m; and
 - move the pedestrian crossing from the western side of the intersection to the eastern side.
- Intersection of Delhi Road and M2 Motorway Ramps:

- move the eastbound cycle lane onto the unused footpath and create kerb ramps to maintain path, relocate stop lines where necessary;
 - reduce the existing lanes to 3m; and
 - install a second right-turn bay 140 m long from Delhi Road into the M2 Motorway and adjust the length of the right-turn bay into Road 38.
- Intersection of Delhi Road, Julius Avenue and Plassey Road:
 - the addition of the second eastbound through lane.
- Utility services adjustments.

Schedule 5

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under section 93F of the *Environmental Planning and Assessment Act 1979* (NSW)

1 Parties

The Minister for Planning ABN 38 755 709 681 of Level 15, 52 Martin Place, Sydney NSW 2000 (**Minister**).

Landcom trading as UrbanGrowth NSW ABN 79 268 260 688 of Level 16, 227 Elizabeth Street, Sydney NSW 2000 (**Developer**).

2 Description of subject land

Lot 101 in DP 1131776, part Lot 2 in DP 528488 and part Lot 7 in DP 1046090 (**Land**).

3 Description of the Development

The staged development of the Land pursuant to State Significant Development Consent No. 5093 (**Development Consent**), being part of the North Ryde Station Urban Activation Precinct (**Precinct**), in accordance with:

- (a) the approved concept proposal including:
 - (i) subdivision of the Land into 12 development lots, 5 public open space lots and 2 public road lots;
 - (ii) allocation of a maximum gross floor area to each of the development lots (total of 238,919m² across the Land plus an additional 2,500m² to proposed Lot 104 for a community facility);

- (iii) infrastructure, civil works and landscaping; and
 - (b) the Stage 1 Works; and
- including the development of the development lots pursuant to any subsequent Planning Approvals (**Development**).

4 Summary of objectives, nature and effect of the draft planning agreement

4.1 Objectives of Planning Agreement

The objective of the Planning Agreement is to satisfy condition E7 of the Development Consent, which requires a planning agreement to be executed in relation to the provision of regional transport infrastructure.

4.2 Nature and effect of Planning Agreement

The regional transport infrastructure which the Developer has undertaken in the Planning Agreement to either deliver as works-in-kind or contribute to by way of a monetary contribution is:

The Delhi Road Widening Works

- (a) Delhi Road:
 - (i) the design and construction of works required to widen Delhi Road eastbound from the M2 Motorway to the east of Julius Avenue (eastern intersection) and associated modifications;
- (b) Intersection of Delhi Road and Road 38:
 - (i) extend the right-turn lane on Delhi Road to at least 120m; and
 - (ii) move the pedestrian crossing from the western side of the intersection to the eastern side;
- (c) Intersection of Delhi Road and M2 Motorway Ramps:
 - (i) move the eastbound cycle lane onto the unused footpath and create kerb ramps to maintain path, relocate stop lines where necessary;
 - (ii) reduce the existing lanes to 3m; and
 - (iii) install a second right-turn bay 140m long from Delhi Road into the M2 Motorway and adjust the length of the right-turn bay into Road 38;
- (d) Intersection of Delhi Road, Julius Avenue and Plassey Road:
 - (i) the addition of the second eastbound through lane; and
- (e) Utility services adjustments.

Wicks Road and Epping Road Intersection Works

- (a) Add two additional short lanes approximately 60m long by widening Wicks Road (north) on the eastern side (into the service station) by 6m to provide a dedicated left-turn and right-turn lane, convert centre lane into through movement only;
- (b) Widen Wicks Road (south) on the eastern side by 3m to provide an additional right-turn lane and convert the existing through-right-turn lane into a dedicated through lane; and
- (c) Utility services adjustments.

(together, **Regional Transport Infrastructure**)

In addition to providing or making a contribution towards the delivery of Regional Transport Infrastructure, the Developer is required to provide the Wicks Road and Waterloo Road Intersection Works by 31 December 2020, unless otherwise agreed by the Minister. Those works are contemplated by the Development Consent and comprise:

Wicks Road and Waterloo Road Intersection Works

- (a) a 100m left turn bay from the spine road to be constructed on the M2 site;
- (b) one through land from the Spine road into Waterloo Road;
- (c) widen the south-west corner of the intersection to allow large vehicles to turn left without lane-sharing;
- (d) a left hand turning lane along the length of Wicks Road turning into Waterloo Road;
- (e) install traffic signals; and
- (f) utility service adjustments.

The Planning Agreement meets the objective outlined above by requiring the Developer to deliver the Wicks Road and Waterloo Road Intersection Works and:

- (a) deliver the Regional Transport Infrastructure, where the cost for the delivery of the Regional Transport Infrastructure is less than \$10.4 million (excluding GST) (plus a 50% contingency); or
- (b) pay the sum of \$10.4 million (excluding GST) to the Minister, to fund the delivery of the Regional Transport Infrastructure.

The Developer must elect to deliver the Regional Transport Infrastructure or make the required monetary contribution on or before 30 June 2016 (or any later date as may be agreed with the Minister).

5 Assessment of the merits of the draft planning agreement

5.1 The planning purposes served by the Planning Agreement

In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purpose:

- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

The Minister and the Developer have assessed the Planning Agreement and hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above. This is because the Planning Agreement will ensure that the Developer makes appropriate development contributions towards the provision of regional transport infrastructure and services (by works-in-kind or a monetary contribution).

5.2 How the Planning Agreement promotes the Public Interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of regional transport infrastructure to satisfy the needs of the surrounding road network as a result of the Development and the growth of the Precinct.

5.3 How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the objects of the Act by encouraging:

- the promotion and co-ordination of the orderly and economic use and development of land.

The Planning Agreement promotes this object by requiring the Developer to make a contribution (by works-in-kind or a monetary contribution) towards the provision of regional transport infrastructure.

5.4 For Planning Authorities:

All Planning Authorities – Whether the Planning Agreement conforms with the Authority's Capital Works Program

Not applicable. The delivery of or monetary contribution towards the Regional Transport Infrastructure required by the Planning Agreement conforms with the *North Ryde Station Precinct Project Transport Management and Accessibility Plan* dated 22 November 2012 prepared by Parsons Brinckerhoff for Transport for NSW.

5.5 Certain requirements of the Planning Agreement to be complied with before issue of Planning Approval for subdivision or issue of a Complying Development Certificate, Construction Certificate or Subdivision Certificate

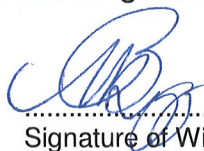
Where the Developer is to deliver the Regional Transport Infrastructure in accordance with the Planning Agreement, it must:

- (a) commence those works prior to the issue of the first subdivision certificate for the Stage 1 Works of the Development; and
- (b) deliver those works by 31 December 2020, unless otherwise agreed by the Minister.

Execution

Executed as a deed.

Executed by the **Minister for Planning** in the presence of:



Signature of Witness

MARLENE BEZZINA

Name of Witness (print)



Signature of Minister - DELEGATE

SIMON GARFIELD

Name of Minister - DELEGATE

Executed by **Landcom trading as UrbanGrowth NSW ABN 79 268 260 688** by its authorised delegate in the presence of:




Signature of Witness

VY NGUYEN

Name of Witness (print)

DEVELOPMENT DIRECTOR

Position of Witness (print)



Signature of delegate

DAVID PITCHFORD

Name of delegate (print)

CEO

Position of delegate (print)

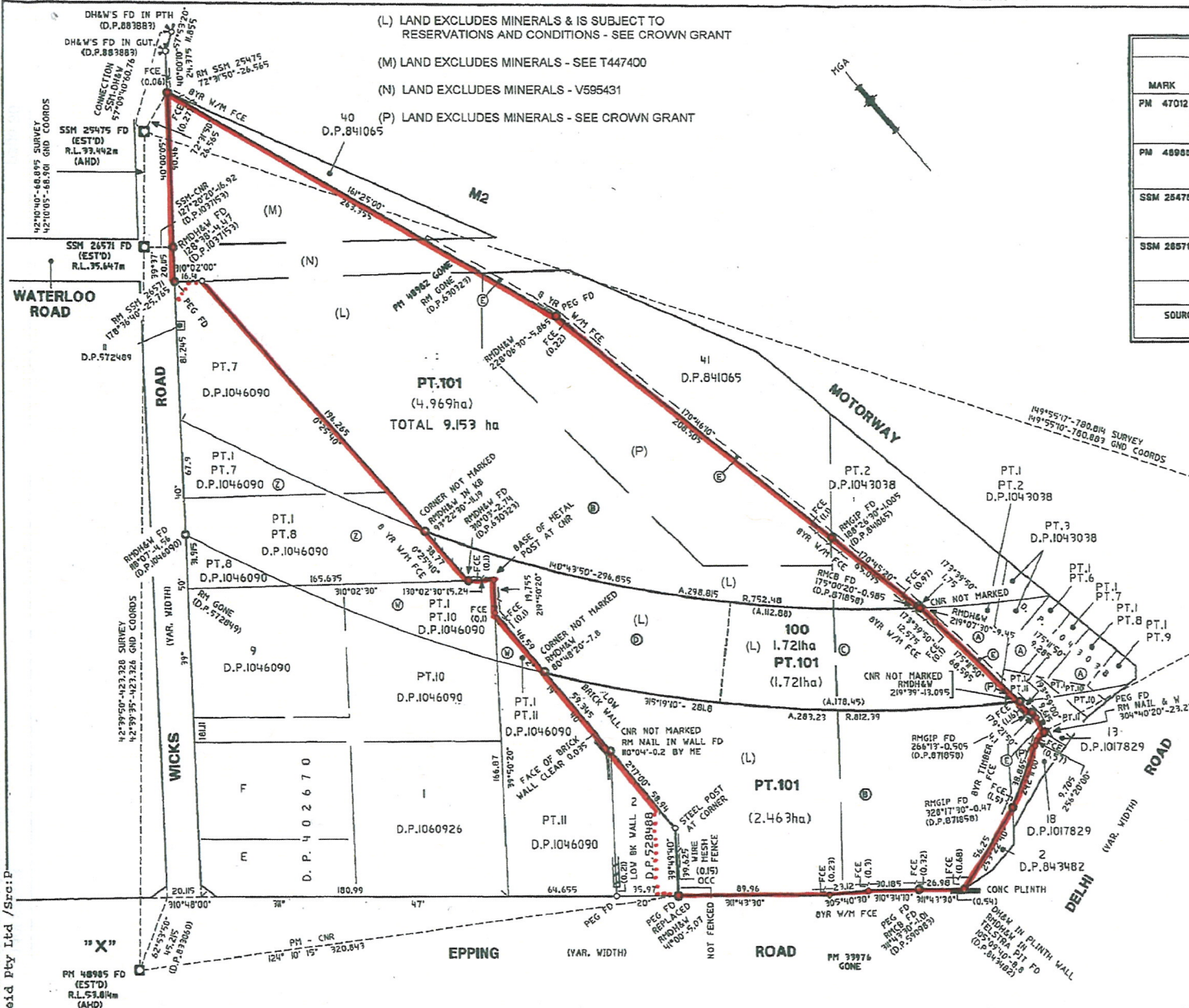
Annexure A

Plan of the Land

PLAN FORM 4 (A2)

WARNING: MEASURING OR FOLDING WILL LEAD TO REJECTION

Sheet No 1 of 1 Sheets



SURVEYING REGULATION 2006					
MARK	M.G.A. CO-ORDINATES		ZONE	CLASS	ORDER
	EASTING	NORTHING			
PM 47012	327 513.355	8 289 089.961	56	C	3
			R.L.	CLASS	ORDER
			84.06	LC	L3
PM 48085	328 888.879	8 269 413.284	56	B	2
			R.L.	CLASS	ORDER
			83.614	LB	L2
SSM 25478	327 221.978	8 250 776.846	58	B	2
			R.L.	CLASS	ORDER
			33.442	LC	L3
SSM 28571	327 175.728	8 250 724.580	56	B	2
			R.L.	CLASS	ORDER
			36.847	LC	L3
COMBINED SCALE FACTOR 0.999956					
SOURCE: MGA CO-ORDINATES ADOPTED FROM LPI NSW AS AT 14TH MARCH 2008					

Ⓔ - PROPOSED EASEMENT FOR GAS PIPELINE
 7 WIDE (D.P.1039249)

STRATUM NOTES

- Ⓐ LOT 1 D.P.1047838 UNLIMITED IN DEPTH AND LIMITED IN HEIGHT TO R.L.45
- Ⓑ PART LOT 101 UNLIMITED IN HEIGHT AND DEPTH
- Ⓒ PART LOT 100 LIMITED IN HEIGHT TO R.L.45 AND UNLIMITED IN DEPTH
 PART LOT 101 UNLIMITED IN HEIGHT AND LIMITED IN DEPTH TO R.L.45
- Ⓓ PART LOT 100 LIMITED IN HEIGHT TO R.L.40 AND UNLIMITED IN DEPTH
 PART LOT 101 UNLIMITED IN HEIGHT AND LIMITED IN DEPTH TO R.L.40
- Ⓔ LOT 1 D.P.1046090 UNLIMITED IN DEPTH AND LIMITED IN HEIGHT TO R.L.38
- Ⓕ LOT 1 D.P.1046090 UNLIMITED IN DEPTH AND LIMITED IN HEIGHT TO R.L.35

Surveyor: JASON RODNEY KEYWOOD
 WHELAN'S INSITES
 Date of Survey: 28TH MARCH 2008
 Surveyor's Ref: D975 / 08-020DPEP(A)

PLAN OF SUBDIVISION OF LOT A & PT LOT B
 D.P.345815, LOT Y D.P.395860, LOT 1 D.P.528488,
 LOT 5 D.P.533465, LOT 3 D.P.538375, LOT 1
 D.P.730990, LOT 21 & 22 D.P.841065, LOT 100
 & 101 D.P.871858 AND LOT 1 D.P.1037153

LGA: RYDE
 Locality: NORTH RYDE
 Subdivision No: ECRL
 Lengths are in metres. Reduction Ratio 1:800

Registered
 18.11.2008

DP1131776 P

Annexure B

Road Works Plans

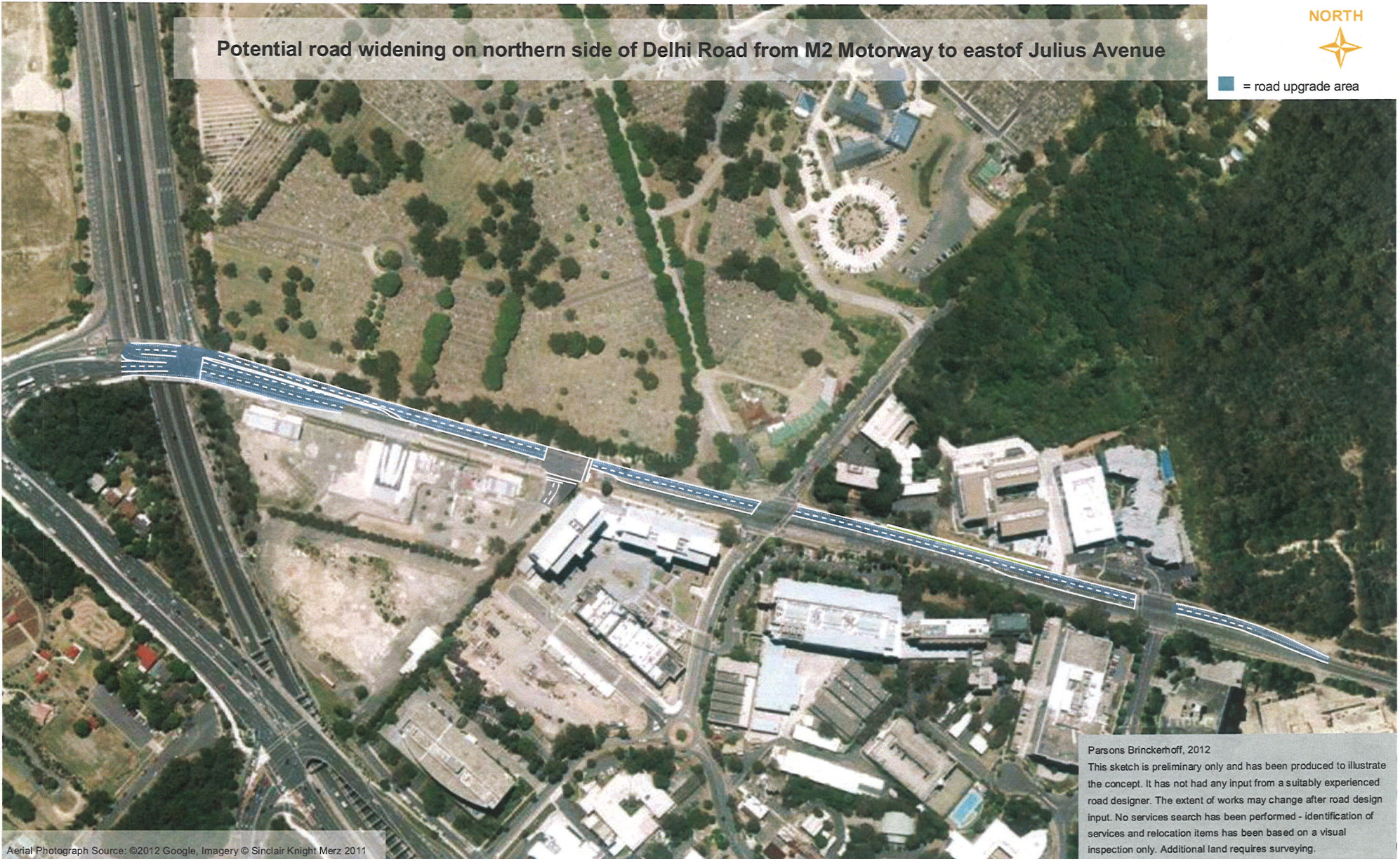
Part 1 – Delhi Road Widening Works

Potential road widening on northern side of Delhi Road from M2 Motorway to east of Julius Avenue

NORTH



■ = road upgrade area



Parsons Brinckerhoff, 2012

This sketch is preliminary only and has been produced to illustrate the concept. It has not had any input from a suitably experienced road designer. The extent of works may change after road design input. No services search has been performed - identification of services and relocation items has been based on a visual inspection only. Additional land requires surveying.

Aerial Photograph Source: ©2012 Google, Imagery © Sinclair Knight Merz 2011

For investigation purposes only, Draft 1 – 24 July 2012, Not to Scale

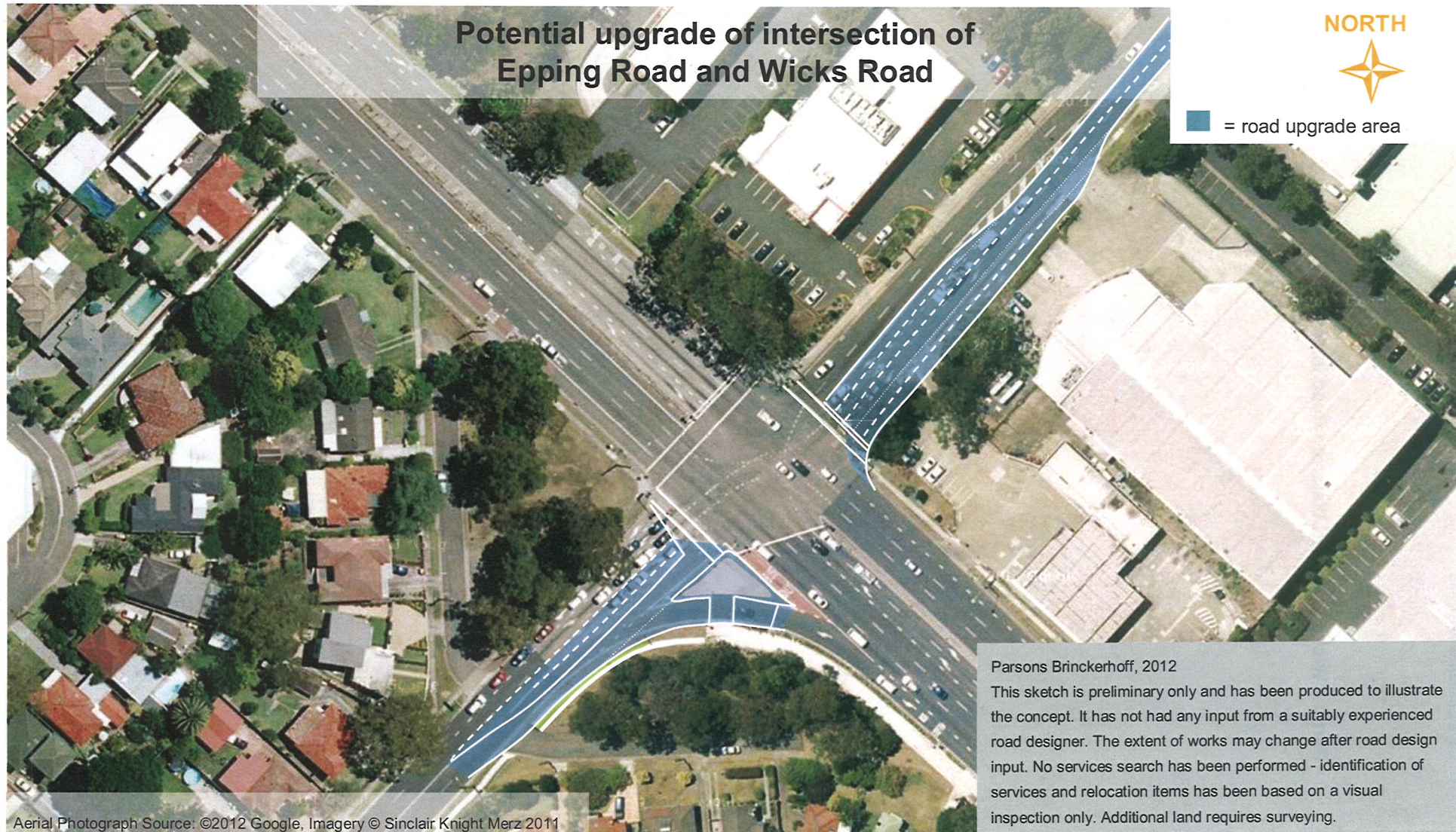
NORTH

Parsons Brinckerhoff, 2012

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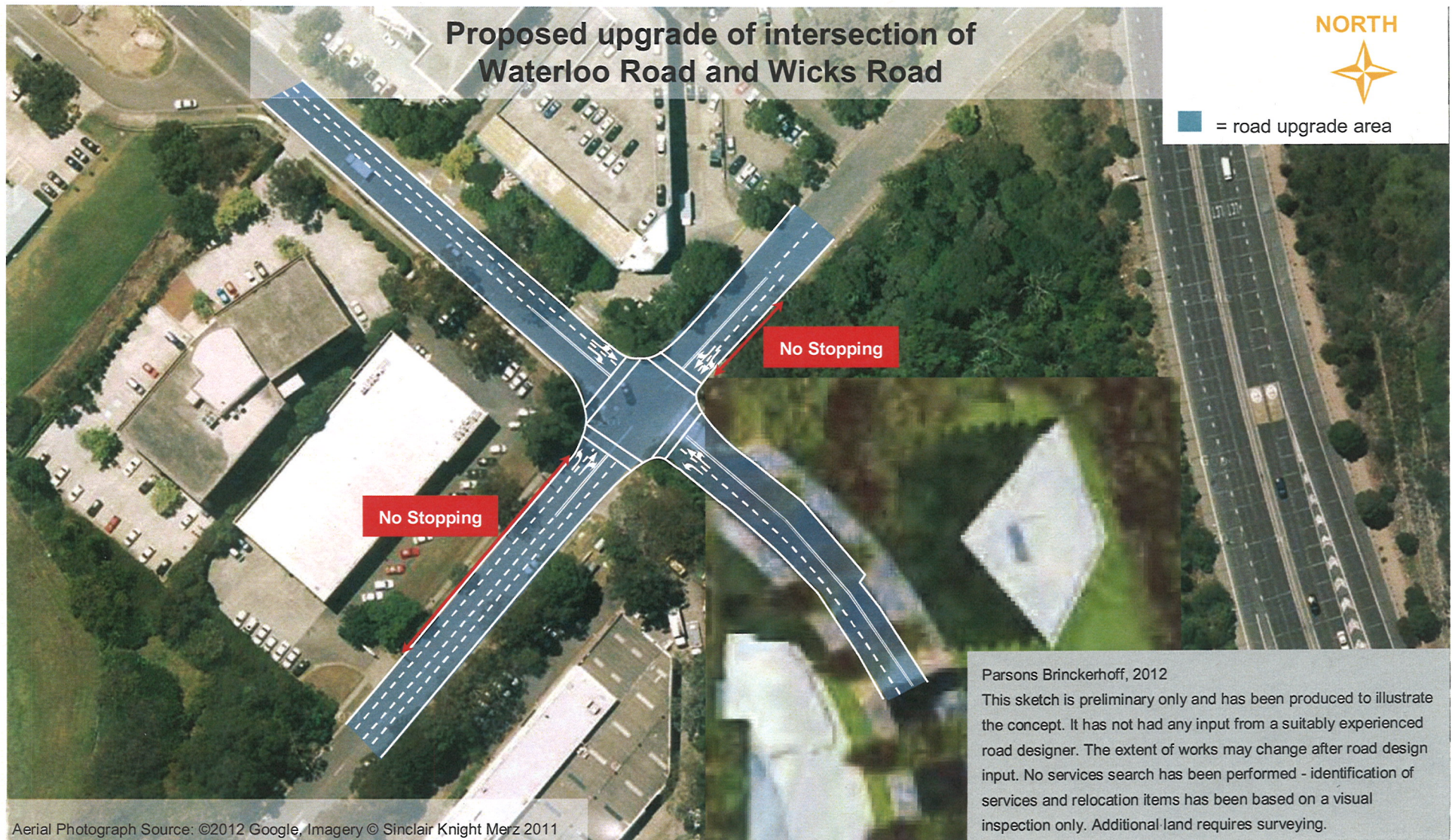
Aerial Photograph Source: ©2012 Google, Imagery © Sinclair Knight Merz 2011

Part 2 – Wicks Road and Epping Road Intersection Works



For investigation purposes only, Draft 1 – 24 July 2012, Not to Scale

Part 3 – Wicks Road and Waterloo Road Intersection Works



For investigation purposes only, Draft 1 – 24 July 2012, Not to Scale

