

Deed of Compensation and Acquisition

Section 30 Agreement

Villawood Renewal Project
Acquisition of Fairfield City Council Land

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

SECTION 30 AGREEMENT

RECITALS

- A. Fairfield City Council ABN 83 140 439 239 (**Landowner**) is the owner of an Interest in the Land.
- B. The New South Wales Land and Housing Corporation ABN 24 960 729 253 (**LAHC**) is authorised to acquire land by compulsory process under the *Housing Act 2001* (NSW).
- C. LAHC has informed the Landowner that LAHC wishes to exercise its power to compulsorily acquire the Landowner's Interest in the Land for the purposes of the Villawood Renewal Project with the agreement of the Landowner subject to the terms of this deed. Accordingly, without issuing a proposed acquisition notice to the Landowner, LAHC and the Landowner have agreed that LAHC will acquire the Interest in the Land by publication of an acquisition notice in the Government Gazette.
- D. LAHC and the Landowner have agreed a full and final amount of compensation payable by LAHC to the Landowner in consideration of the acquisition of the Interest in the Land.
- E. LAHC and the Landowner agree that this deed is made in accordance with and in satisfaction of section 30 of the Act.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this deed unless the context requires otherwise.

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

Acquisition means compulsory acquisition by agreement under section 30 of the Act.

Acquisition Date means the date of publication of the Acquisition by LAHC of the Interest in the Land in the Government Gazette.

Acquisition Notice means the notice in respect of the Acquisition published in the Government Gazette in accordance with section 19(1) of the Act.

Acquisition Window means the period:

- (a) commencing on the date of this deed; and
- (b) ending on the date that the first Construction Certificate is granted in respect of the Development.

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

Claim means any claim, duty, obligation, cost or liability of any kind including one which is prospective or contingent (whether or not the subject of a court order) (including, but not limited to, any rights to compensation, injurious affectation or reimbursement of any kind and any other claim a party may have or but for this deed might otherwise have had against the other party with respect to the Land, the Acquisition of the Land, and other matters included in the Compensation, under the Act or any other legislation).

Compensation means the compensation stated under clause 2.3(a), being the agreed full and final amount of all compensation to which the Landowner is entitled for the acquisition of the Landowner's Interest in the Land.

Construction Certificate has the same meaning as in section 6.4(a) of the *Environmental Planning and Assessment Act 1979* (NSW).

Development means the 'Development' as defined in the document titled '*Villawood Renewal Project – Kamira Court – Planning Agreement*' entered into between the Landowner, LAHC and the 'Developer' referred to in that document'

Government Gazette means the official journal published by the NSW Government containing proclamations and notifications, including land acquisition notices.

Interest in the Land means:

- (a) a legal or equitable estate or interest in the Land; and
- (b) easements, rights, charges, powers or privileges over, or in connection with, the Land.

LAHC means the New South Wales Land and Housing Corporation, a statutory body representing the Crown, constituted under section 6 of the *Housing Act 2001* (NSW).

Land means:

- (a) Part Lot 31 in DP 36718; and
- (b) Part Kamira Court Road,

being land shown in the plan annexed and marked "Annexure A".

Landowner means Fairfield City Council ABN 83 140 439 239.

Villawood Renewal Project means the project for the redevelopment of land at Villawood, including the Land, the subject of separate legal arrangements between LAHC and a developer (as varied from time to time).

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) the singular includes the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document;
- (d) a reference to a party to this deed includes the party's successors, permitted substitutes and permitted assigns;
- (e) a body (including an institute, association or authority), whether statutory or not which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers or functions;

- (f) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (g) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (h) nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it;
- (i) **land** includes any air or water in, on, above or beneath the ground;
- (j) **dollars** or **\$** is to Australian dollars; and
- (k) mentioning anything after "includes" or "including" does not limit what else might be included.

2. **ACQUISITION AND COMPENSATION**

2.1 **This deed**

LAHC and the Landowner agree as follows:

- (a) pursuant to section 30 of the Act, LAHC will compulsorily acquire the Interest in the Land from the Landowner in accordance with the terms of this deed; and
- (b) this deed is an agreement in writing setting out all relevant matters concerning the acquisition of the Interest in the Land and the compensation to be paid for the acquisition of the Interest in the Land.

2.2 **Acquisition of the Interest in the Land**

- (a) LAHC must complete the Acquisition during the Acquisition Window.
- (b) The Landowner acknowledges and agrees that:
 - (i) on and from the Acquisition Date, the Landowner:
 - (A) has no Interest in the Land; and
 - (B) is not entitled to make any claim to possession of, or title to, the Land after the Acquisition Date, despite the fact that the Landowner may still be noted as the registered proprietor or lessee on the certificate of title to the Land after the Acquisition Date; and
 - (ii) without limiting sub-clause (b), on publication of the Acquisition Notice by LAHC of the Interest in the Land in the Government Gazette, the Interest in the Land will formally vest in LAHC under the Act.
- (c) Within five (5) Business Days of LAHC being made aware of the Acquisition Date, LAHC must provide written notice to:
 - (i) the Landowner that publication of the Acquisition Notice in the Government Gazette has occurred.
- (d) LAHC acknowledges and agrees that:
 - (i) it is acquiring the Landowner's Interest in the Land on an "as is" basis;

- (ii) it will acquire the Landowner's Interest in the Land in its present state and subject to all defects, obligations and liabilities (of whatever nature and however described); and
- (iii) promptly following the Acquisition Date, it will complete and lodge (and where appropriate register) all documents necessary to formally record the change in ownership from the Landowner to LAHC.

2.3 Compensation

- (a) LAHC and the Landowner acknowledge and agree that no Compensation is payable by LAHC in respect of LAHC's Acquisition of the Landowner's Interest in the Land.
- (b) LAHC and the Landowner acknowledge and agree that:
 - (i) the Compensation is a full and final settlement of every Claim arising out of or in connection with LAHC's acquisition of the Landowner's Interest in the Land;
 - (ii) the parties expect that no GST will apply to LAHC's acquisition of the Landowner's Interest in the Land;
 - (iii) if the acquisition of the Interest in the Land is determined to be a taxable supply, the Compensation will be increased by the same amount as the GST payable by the Landowner in connection with the supply of the Interest in the Land (and that amount will be a debt due and payable by LAHC within 10 Business Days of demand for payment by the Landowner); and
 - (iv) the Compensation includes all reasonable relocation costs and expenses that are expected to be incurred by the Landowner to deliver vacant possession of the Land to LAHC by the Acquisition Date.
- (c) The Landowner must not, and must use reasonable endeavours to ensure that any person claiming through it does not, obtain or seek to obtain other compensation or relief under the Act in relation to, arising out of or in connection with the Acquisition of the Landowners' Interest in Land.

2.4 The Landowner's warranties

The Landowner warrants in favour of LAHC that as at the date of this deed, it has an estate in fee simple in the Land and any other person having any legal or equitable interest in the Land and the nature and extent of such interests was disclosed by the Landowner to LAHC prior to the date of this deed.

2.5 Dealings and caveat

The Landowner acknowledges and agrees that, commencing from the date of this deed until the end of the Acquisition Window:

- (a) it will not, and will not attempt to, deal with or create any Interest in the Land in any way except as expressly directed by LAHC in writing;
- (b) LAHC has a caveatable interest in the Land and LAHC is entitled to lodge a caveat on the title to the Land to note its interest in the Land; and
- (c) it must not, and must use reasonable endeavours to ensure that any person claiming through the Landowner does not, lodge a lapsing notice in respect of, or otherwise challenge the validity of, any caveat lodged by LAHC as contemplated by subclause (b).

2.6 Release and indemnity in relation to Acquisition of the Landowner's Interest in Land

On and from the date of this deed:

- (a) the Landowner:
 - (i) will not make any Claim against LAHC and unconditionally and forever releases LAHC from any Claim for which the Landowner is or may be liable or may suffer or incur for whatever reason in any way relating to, arising out of or in connection with the Acquisition of the Landowner's Interest in the Land, except to the extent of any breach of this deed by LAHC; and
 - (ii) indemnifies LAHC and will keep LAHC indemnified from and against any Claim for which LAHC may be liable or suffers or incurs in any way relating to, arising out of or in connection with a breach by the Landowner of sub-clause (a)(i), and
- (b) LAHC:
 - (i) will not make any Claim against the Landowner and unconditionally and forever releases the Landowner from any Claim for which LAHC is or may be liable or may suffer or incur for whatever reason in any way relating to, arising out of or in connection with the Acquisition of the Landowner's Interest in the Land, except to the extent of any breach of this deed by the Landowner; and
 - (ii) indemnifies the Landowner and will keep the Landowner indemnified from and against any Claim for which the Landowner may be liable for or suffers or incurs in any way relating to, arising out of or in connection with a breach by LAHC of sub-clause (b)(i).

3.1 Notices

- (a) Any notice, consent or other communication under this deed must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (i) delivered to that person's address;
 - (ii) sent by pre-paid mail to that person's address; or
 - (iii) transmitted by email to that person's address.
- (b) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (i) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (ii) if sent by pre-paid mail, on the third Business Day after posting; and
 - (iii) if sent by email and the sender does not receive a delivery failure message from the sender, within a period of twenty four (24) hours of the email being sent.
- (c) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

3.2 Confidentiality

This deed is confidential and can only be disclosed if required:

- (a) by law or in accordance with NSW Government policies and requirements;
- (b) to an officer or employee of the party; or
- (c) to a person who is engaged by the party to provide professional advice (such as legal, financial or accounting advice) to it about the Land.

3.3 Entire agreement

This deed contains the entire agreement between the parties with respect to its subject matter and sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

3.4 Assignment

A party cannot assign, charge, encumber or otherwise deal with any of its rights or obligations under this deed, or attempt or purport to do so, without the prior written consent of the other party.

3.5 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

3.6 Further assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this deed and the transactions contemplated by it.

3.7 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this deed.

3.8 Stamp duty

LAHC is responsible for paying and must pay any duty payable in respect of this deed.

3.9 Governing law and jurisdiction

This deed is governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction in New South Wales.

3.10 No fetter

Nothing in this deed is intended to operate to fetter, in any unlawful manner the power of the Landowner, as a local council under the *Local Government Act 1993* (NSW), to make any law or to exercise any of its statutory powers or discretions.

3.11 Legal advice

The Landowner confirms and agrees that it has obtained legal advice from a barrister or solicitor (other than a solicitor acting for LAHC, or a solicitor employed in the legal practice of such a solicitor) explaining the effect of this deed.

3.12 Termination

If the Acquisition does not occur by the end of the Acquisition Window, then either party may immediately terminate this deed by giving written notice to the other party.

3.13 Electronic execution

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
 - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the document;
 - (ii) insertion of the person's name on to the document; or
 - (iii) use of a stylus or touch finger on a touch screen to sign the document;provided that in each of the above cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the document;
 - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the document; or
 - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
- (e) The parties agree that if a witness is required, the signing of this deed (whether by wet ink or in accordance with this clause) may be witnessed via audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).
- (f) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this agreement for all purposes, including exchange.

EXECUTED AS A DEED

Date of this Deed _____

SIGNED, SEALED and DELIVERED for
New South Wales Land and Housing
Corporation ABN 24 960 729 253 by its
authorised delegate in the presence of:

Signature of authorised delegate

Electronic signature of me, _____ ,
affixed by me on _____ .

Signature of witness

Name

Name

Position

Address of witness

***I, _____ , certify this document was signed in counterpart and
witnessed over audio visual link in accordance with section 14G of the Electronic
Transactions Act 2000.***

SIGNED, SEALED and DELIVERED for
Fairfield City Council ABN 83 140 439
239 by its authorised delegate in the
presence of:

Signature of authorised delegate

Signature of witness

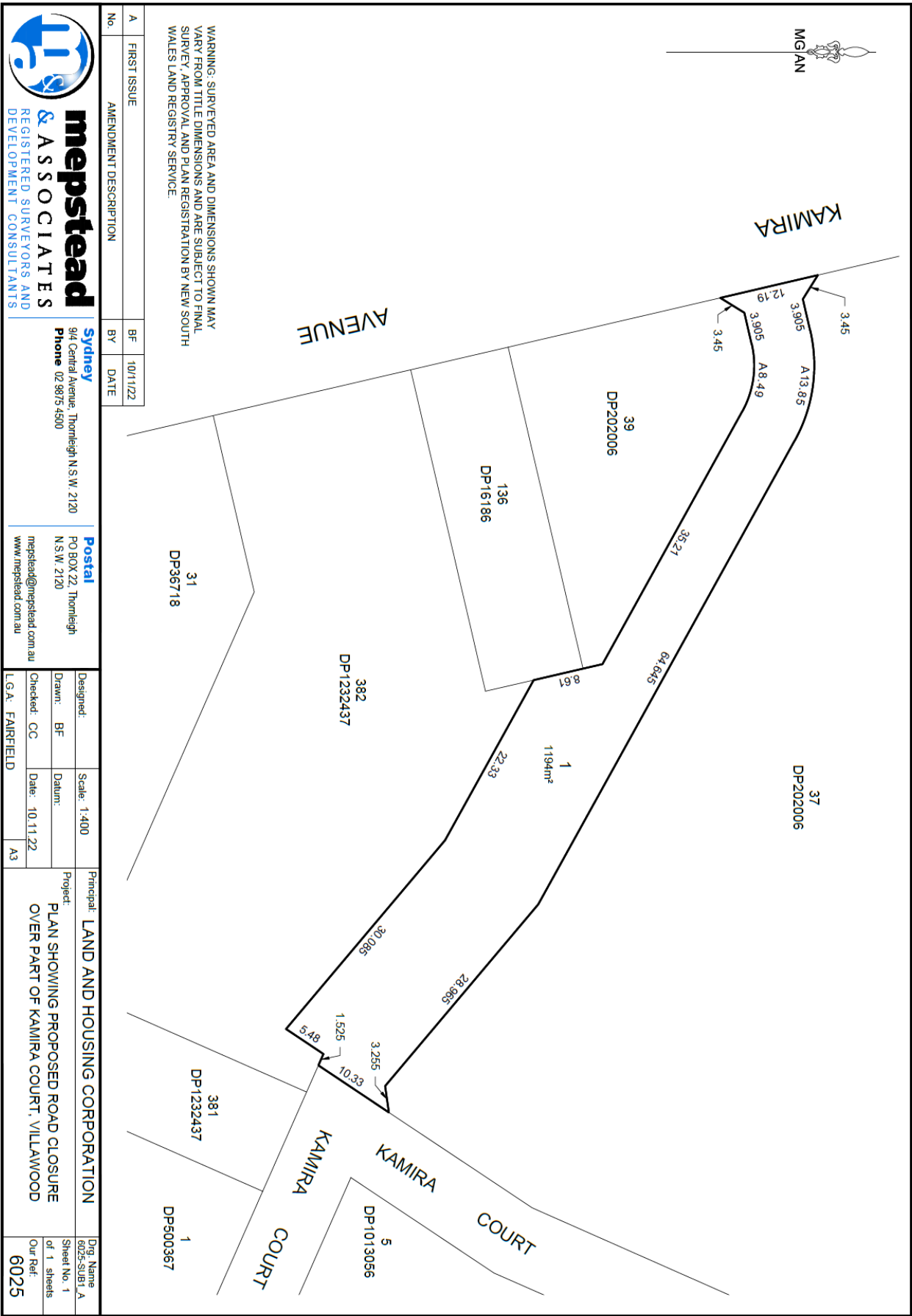
Name

Name

Position

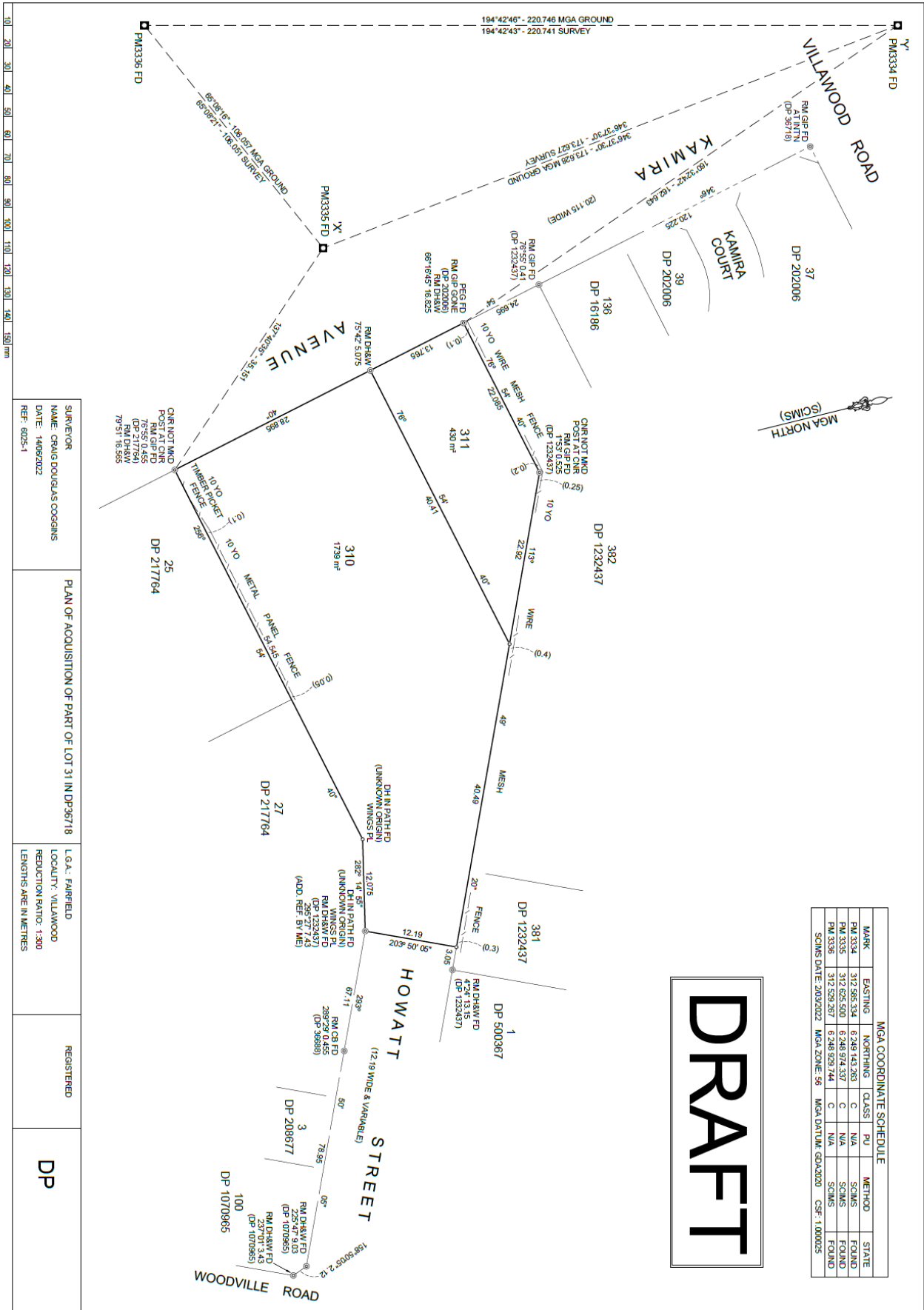
Address of witness

Annexure "A" – Plan of the Land



MGA COORDINATE SCHEDULE					
MARK	EASTING	NORTHING	CLASS	RU	METHOD
PM3334	312 585 334	6 249 743 263	C	N/A	SCIMS FOUND
PM3335	312 623 500	6 248 874 337	C	N/A	SCIMS FOUND
PM3336	312 523 267	6 248 823 144	C	N/A	SCIMS FOUND
SCIMS DATE: 2003/2022 MGA ZONE: 96 MGA DATUM: GDA2020 CSF: 1.000025					

DRAFT



SURVEYOR NAME: CRAIG DOUGLAS COGGINS DATE: 14/08/2022 REF: 8025-1	PLAN OF ACQUISITION OF PART OF LOT 31 IN DP36718	LGA: FAIRFIELD LOCALITY: VILLAWOOD REDUCTION RATIO: 1:300 LENGTHS ARE IN METRES	REGISTERED	DP
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10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 mm