

# *Government Gazette*

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# GOVERNMENT NOTICES

## TRANSPORT ADMINISTRATION ACT 1988

### LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

#### Notice of Compulsory Acquisition of Interest in Land for the Purposes of the Transport Administration Act 1988

Transport for NSW by its delegate declares, with the approval of His Excellency the Governor, that the construction lease described in Schedule 1 below is acquired by compulsory process under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* as authorised by clause 11 of Schedule 1 of the *Transport Administration Act 1988* for the purposes of the *Transport Administration Act 1988*.

IVAN GLAVINIC  
Deputy Program Director – Sydney Metro

#### SCHEDULE 1

A construction lease on the terms set out in Schedule 2 over the land situated at McMahons Point, in the Local Government Area of North Sydney, Parish of Willoughby and County of Cumberland which is shown as "Lot 901" on the plan set out at Annexure A to the construction lease terms in Schedule 2, comprising:

- part of Lot 1 in Deposited Plan 902933;
- the whole of Lot 1 in Deposited Plan 1159898;
- the whole of Lot 1 in Deposited Plan 581992;
- part of Lot 2 in Deposited Plan 230594;
- part of Lot 7048 in Deposited Plan 1077149; and
- part of Blues Point Road.

**SCHEDULE 2**  
**Terms of Construction Lease**



# Construction Lease

Transport for NSW

ABN 18 804 239 602

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**PARTIES:**

- (1) The registered proprietor from time to time of each Lot or part thereof forming part of the Premises (**Landlord**); and
- (2) Transport for NSW ABN 18 804 239 602 (**TfNSW**).

**RECITALS**

- (A) TfNSW requires access to the Premises for the Permitted Use for the purposes of the Project.
- (B) TfNSW has compulsorily acquired a lease on the terms of this document from the Landlord in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions apply in this document:

**Acquisition Notice** means the acquisition notice effecting the acquisition of a lease on the terms of this document published in the Government Gazette.

**Business Day** means any day other than:

- (a) a day that is a Saturday, Sunday or public holiday generally in Sydney; or
- (b) 27, 28, 29, 30 or 31 December.

**Claim** means any claim, action, demand or proceeding for payment of money (including damages):

- (a) under, arising out of, or in any way in connection with, this lease; and
- (b) otherwise at law including:
  - (i) under or for breach of any statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution, including restitution based on unjust enrichment.

**Commencing Date** means 1 June 2018.

**Contractor** means the contractor or contractors, as the case may be, engaged by TfNSW from time to time to carry out the Works.

**Government Authority** includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, officer, statutory corporation or instrumentality.

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

**GST Law** means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Landlord** means, in respect of each Lot or part thereof forming part of the Premises, the registered proprietor of that Lot from time to time.

**Law** means

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) any approvals (including any condition or requirement under them).

**Legislative Requirements** means any:

- (a) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (b) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Works.

**Permitted Use** means demolition, investigation, design, construction, testing, commissioning and access for the purpose of carrying out the Project.

**Premises** means "Lot 901" on the plan at Annexure A, comprising:

- (a) part of Lot 1 in Deposited Plan 902933;
- (b) the whole of Lot 1 in Deposited Plan 1159898;
- (c) the whole of Lot 1 in Deposited Plan 581992;
- (d) part of Lot 2 in Deposited Plan 230594;
- (e) part of Lot 7048 in Deposited Plan 1077149; and
- (f) part of Blues Point Road.

**Project** means the Sydney Metro City & Southwest project.

**Term** means the term of the lease granted pursuant to this document, beginning on the Commencing Date and ending on the earlier of:

- (a) the Terminating Date; and
- (b) such earlier date as determined in accordance with clause 8.

**Terminating Date** means 30 June 2022.

**TfNSW** means Transport for NSW ABN 18 804 239 602.

**TfNSW's Agents** means:

- (a) TfNSW's employees, officers, consultants, agents, contractors and invitees or any of them;
- (b) the Contractor; and
- (c) the Contractor's employees, officers, consultants, agents, contractors and invitees or any of them.

**WHS Act** means the *Work Health and Safety Act 2011* (NSW).

**WHS Legislation** means legislation relating to health and safety at work including:

- (a) the WHS Act; and
- (b) the WHS Regulation.

**WHS Regulation** means the Work Health and Safety Regulation 2017 (NSW).

**Works** means any works carried out on the Premises by TfNSW or its Contractors.

## 1.2 Interpretation

In this lease:

- (a) headings are for convenience only and do not affect interpretation; and
- (b) the following rules apply in interpreting this lease unless the context makes clear a rule is not intended to apply:
  - (i) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
  - (ii) **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;
  - (iii) 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;
  - (iv) a reference to a document (including this lease) is to that document as varied, novated, ratified or replaced from time to time;
  - (v) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
  - (vi) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (vii) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this lease, and a reference to this lease includes all schedules, exhibits, attachments and annexures to it;
  - (viii) 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;
  - (ix) **includes** in any form is not a word of limitation;
  - (x) a reference to **\$** or **dollar** is to Australian currency; and
  - (xi) terms defined in the GST Law have the same meaning in this document unless the context otherwise requires.



- (xii) if a party is a member of a GST group, references to GST which the party must pay and to input tax credits which the party is entitled to claim include GST which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled.

**1.3 Business Day**

If the day on or by which anything is to be done under this lease is not a Business Day, that thing must be done no later than the next Business Day.

**1.4 Excluding liability**

Any provision of this lease which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by law.

**1.5 Exclusion of implied covenants and powers**

The covenants and powers implied by section 84, section 84A, section 85, section 86, section 132, section 133, section 133A and section 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

**2. TFNSW'S OBLIGATIONS**

**2.1 Permitted Use**

TfNSW must use the Premises only for the Permitted Use.

**2.2 Utilities and services**

TfNSW must pay all costs for the supply of any services consumed by it on the Premises during the Term.

**2.3 Handover obligations**

- (a) On or before the end of the Term, TfNSW will:
  - (i) vacate the Premises and remove from the Premises all its property, scaffolding, loose materials, waste and rubbish;
  - (ii) return the Premises to the Landlord:
    - (A) in a condition commensurate with the condition it was in at the Commencing Date or as otherwise agreed by the parties; and
    - (B) in a condition that satisfies the requirements of any consent or approval granted under the *Environmental Planning and Assessment Act 1979* in respect of the Works that apply to the Premises; and
  - (iii) subject to clauses 2.3(c) and 2.3(d), ensure that any damage caused to the Premises by the carrying out of the Works is made good or repaired.
- (b) If the parties have entered into a further lease for the Premises which commences immediately after the end of the Term, then clause 2.3(a) will apply at the end of the term of the further lease.
- (c) The obligation in clause 2.3(a)(iii) does not apply to the extent of any damage caused by or contributed to by:

- (i) any act of the Landlord or its employees, agents or contractors, or any negligence for which the Landlord is responsible; or
  - (ii) the act or omission of a third party, unless that third party is one of TfNSW's Agents.
- (d) The Landlord and TfNSW acknowledge and agree that:
- (i) the infrastructure and landscaping located on the Premises at the Commencing Date will be demolished and/or removed by TfNSW; and
  - (ii) unless otherwise agreed in writing between the parties, TfNSW will reinstate the infrastructure and landscaping when this lease ends.

### 3. **COMPLIANCE WITH LEGISLATIVE AND WHS REQUIREMENTS**

#### 3.1 **Compliance with Legislative Requirements**

TfNSW must, and must procure that the Contractor will, at all times fully comply with all Legislative Requirements in any way affecting or applicable to the Works.

#### 3.2 **Principal Contractor**

- (a) In this clause 3.2, the terms "construction work", "construction project", "principal contractor" and "workplace" have the same meanings given to those terms under the WHS Legislation.
- (b) Without limiting TfNSW's obligations under any other provision of this lease:
  - (i) to the extent that the work under this lease or any contract or subcontract relating to the Works includes construction work, TfNSW:
    - (A) is, for the purpose of Chapter 6 of the WHS Regulation, a person conducting a business or undertaking that has commissioned the construction project(s) that form the whole or part of the work under this lease, the contract or subcontract;
    - (B) will engage the Contractor (as notified to the Landlord by TfNSW) in accordance with clause 293(2) of the WHS Regulation as the principal contractor for the work under this lease, the contract or subcontract; and
    - (C) will authorise the Contractor to have management and control of each workplace at which the work under this lease, the contract or subcontract is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
  - (ii) TfNSW will procure that the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation,
- (c) and the Contractor's engagement and authorisation as a principal contractor will continue:
  - (i) subject to clause 3.2(c)(ii), until completion of the works (unless sooner revoked by TfNSW); and
  - (ii) in respect of any rectification of defects that is construction work, during the period any such work is carried out.

**3.3 Work Health and Safety**

TfNSW must carry out any works on the Premises;

- (a) safely and in a manner that does not put the health and safety of persons at risk; and
- (b) in a manner that protects property.

**4. QUIET ENJOYMENT AND RIGHTS OF INSPECTION**

Subject to TfNSW complying with its obligations under this lease, TfNSW may occupy the Premises during the Term without interference from the Landlord.

**5. RISK AND INDEMNITY**

- (a) TfNSW enters, occupies, uses and keeps the Premises, and TfNSW's Agents are permitted to access, occupy, use and keep the Premises, at the risk of TfNSW.

- (b) TfNSW must indemnify the Landlord against:

- (i) the loss, destruction or damage of any of the Landlord's real or personal property; or

- (ii) any Claim against the Landlord or liability the Landlord may have to third parties in respect of or arising out of or in connection with:

- (A) any illness, personal injury to, or death of, any person; or

- (B) the loss, destruction or damage of any real or personal property,

to the extent caused by, arising out of, or in any way in connection with, the construction of the Works or any failure by TfNSW to comply with its obligations under this lease, except to the extent caused or contributed to by the act or omission of the Landlord or the Landlord's employees, agents, contractors or officers.

- (c) TfNSW has no liability, nor will the Landlord be entitled to make any Claim against TfNSW or TfNSW's Agents in respect of:

- (i) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect); or

- (ii) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent incurred or sustained by the Landlord as a result of any act or omission of TfNSW (whether negligent or otherwise).

**6. GST**

**6.1 Payment of GST**

If GST is or will be payable on a supply made under or in connection with this document, to the extent that the consideration otherwise provided for that supply under this document is not stated to include an amount in respect of GST on the supply:

- (a) the consideration otherwise provided for that supply under this document is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within seven days of receiving a written demand from the supplier.

## 6.2 **Tax invoice/adjustment note**

The right of the supplier to recover any amount in respect of GST under this document on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient within the time period within which the recipient is otherwise entitled to the relevant input tax credits.

## 6.3 **Change in the GST Law**

If the GST Law changes (including without limitation as a result of a change in the GST rate) after the date of this document, any consideration that expressly includes GST must be adjusted to reflect the change in the GST Law.

## 6.4 **Indemnities and reimbursement**

- (a) Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this document must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.
- (b) The parties each indemnify the other against all GST, and losses, liabilities and expenses (including legal liabilities on a full indemnity basis) that the other incurs (directly or indirectly) as a result of a breach of a warranty or other provision in this document relating to GST.

## 7. **FURTHER LEASE**

### 7.1 **Parties to negotiate**

If TfNSW gives the Landlord a notice before the Terminating Date that it requires a further lease over the Premises for the purposes of the Project, the parties will negotiate in good faith to agree the terms of that further lease.

### 7.2 **Holding over**

If the Landlord has not granted TfNSW a new lease of the Premises as contemplated under clause 7.1 and TfNSW continues to occupy the Premises after the Terminating Date with the Landlord's consent, TfNSW occupies the Premises under a monthly lease that:

- (a) either party may terminate on 1 month's notice ending on any day by giving notice in writing to the other; and
- (b) is on the same terms as this lease (with any changes appropriate to a monthly lease).

8. **TERMINATION**

- (a) TfNSW may terminate this lease at any time during the Term by giving the Landlord one month's prior written notice specifying the date that the lease will come to an end (the **Surrender Date**).
- (b) With effect from but not including the Surrender Date:
  - (i) TfNSW, as beneficial owner, surrenders TfNSW's interest in this lease and the Premises to the Landlord; and
  - (ii) the Landlord accepts that surrender.
- (c) On or before the Surrender Date, TfNSW must leave the Premises and return the Premises to the Landlord in the condition required by clause 2.3.
- (d) With effect from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date.

9. **GENERAL**

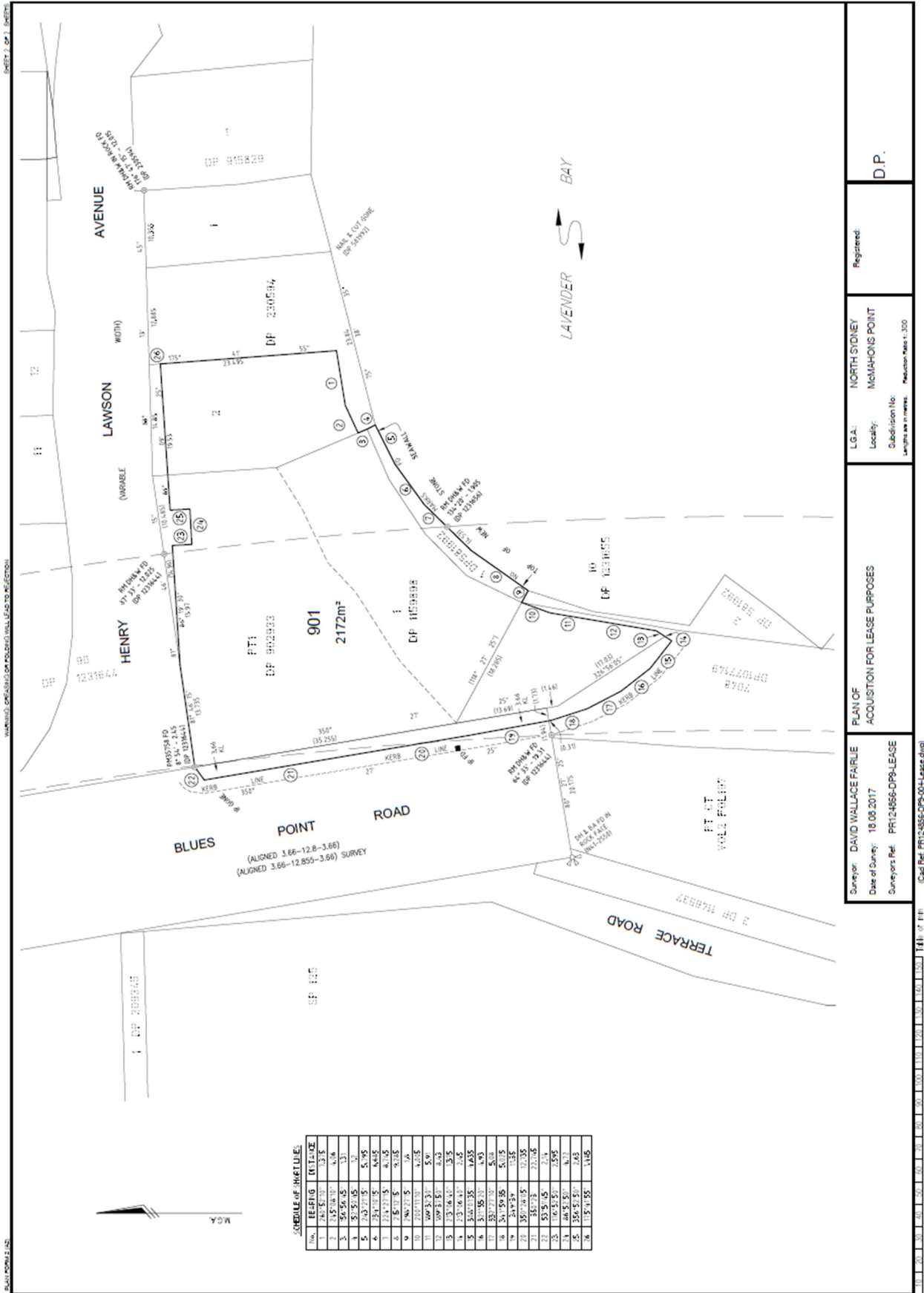
9.1 **Governing law**

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

9.2 **TfNSW and the Landlord as public authorities**

The Landlord and TfNSW acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of either of TfNSW or the Landlord (if applicable) to exercise any of its functions and powers pursuant to any legislation.





(Transport for NSW Document Number: SM18/000011)

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