

THOMSON GEER

LAWYERS

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Planning Agreement

between

oOh!media Fly Pty Limited
ABN 55 094 425 395
(Developer)

and

Bayside Council
ABN 80 690 785 443 Branch 003
(Council)

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This agreement is made on 20th March 2019

2018

between **oOh!media Fly Pty Limited** ABN 55 094 425 395 of Level 2, 76 Berry Street, North Sydney NSW 2060 (**Developer**)

and **Bayside Council** ABN 80 690 785 443 Branch 003 of 444 - 446 Princes Highway, Rockdale NSW 2216 (**Council**)

Recitals

- A The Developer is the operator of the Existing Signage situated on the Land.
- B The Developer has lodged the Current Development Applications and proposes to lodge Future Applications to develop Digital Signage on the Land.
- C By way of this Agreement, the Developer agrees to provide the Development Contributions on the terms and conditions of this Agreement pursuant to section 7.4 of the Act in relation to the Current Development Applications and the Future Applications.
- D This Agreement between the parties has been entered into for the purposes of satisfying Clause 13 of the State Environmental Planning Policy No. 64 (Advertising and Signage) and the Transport Corridor Outdoor Advertising and Signage Guidelines for the provision of the public benefit to be provided in connection with the display of the advertisements in relation to the Current Development Applications and the Future Applications.

Now it is agreed as follows:

1 Definitions and interpretation

1.1 Definitions

In this agreement:

Act means the *Environmental Planning and Assessment Act 1979* (NSW);

Bank Guarantee means the bank guarantees to be provided in accordance with Clause 18.

Business Day means:

- (a) for the purposes of receiving a Notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and
- (b) for any other purposes, a day on which the banks are open for business in Sydney, New South Wales other than a Saturday, Sunday or public holiday in Sydney, New South Wales;

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, Loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this agreement;

Commencement Date means the date of execution of this Agreement.

Construction Certificate means has the same meaning as in section 6.4(a) of the Act;

Consumer Price Index means:

- (a) the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics; and

- (b) if this price index is discontinued or abolished or if the items or weighting of the items whose prices are considered vary so as to change the basis of the price index, then any price index the Developer selects that, as nearly as practicable, serves the same purpose;

Current Development Applications means Development Application Nos. DA2017/1140, DA2017/1141, DA2017/1142, DA2018/1135 and DA2018/1183 for the Development.

Identification Document means the document in 5 numbered parts containing photos indicating the Land and Existing Signage contained at **Schedule 4**.

Development means the development that is sought to be approved in the Current Development Applications, which includes among other things Digital Signage;

Development Application has the same meaning as in section 1.4 of the Act;

Development Consent has the same meaning as in section 1.4 of the Act;

Development Contribution means the monetary contribution amount required to be paid by the Developer pursuant to this Agreement.

Digital Display Area means the area of Signage comprising of digital technology (including but not limited to light emitting diode technology) in a screen configuration used, intended to be used or otherwise set aside for the display of advertisements or other signs, notices, content, devices or representations.

Digital Signage means Signage with a Digital Display Area.

Existing Signage means the Signage that is on the Land as at the date of this Agreement as indicated in Schedule 1 and also indicated in the Identification Document in **Schedule 4**.

First Payment Date means the date being 14 days after:

- (a) a Construction Certificate is granted in relation to the Current Development Applications; and
- (a) a Construction Certificate is granted in relation to the Future Applications,

Future Applications means Development Applications or Modification Applications proposed to be lodged by the Developer in relation to the Land seeking Development Consent (or modification of an existing Development Consent) to convert the Existing Signage to, or replace the Existing Signage with, Digital Signage, and does not include Signage that is the subject of the Current Development Applications.

Future Development means the development that is sought to be approved under the Future Applications, which will include among other things Digital Signage;

Government Agency means any government, governmental, semi governmental, administrative, fiscal or judicial body department, commission, authority, tribunal, agency or entity;

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

GST Law has the same meaning as in the GST Act;

Insolvency Event means the occurrence of any one or more of the following events regarding any party to this agreement:

- (b) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;

- (c) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed regarding all or any material asset of the party;
- (d) a security holder, mortgagee or chargee has taken attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or chargor; or
- (e) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it;

Land means the Land described in Schedule 1;

Liability means any liability or obligation (whether actual, contingent or prospective) including any Loss, irrespective of when the acts, events or things giving rise to the liability or obligation occurred;

Loss includes any loss, damage, cost, charge liability (including Tax liability) or expense (including legal costs and expenses);

Modification Application means an application to modify a development consent under section 4.55 of the Act.

Party means a party to this Agreement including their successors and assigns.

Planning Agreement has the same meaning as in section 7.1 of the Act.

Public Purpose means public benefit works in relation to transport and traffic matters of a public nature, including but not limited to public transport, transport safety, transport amenity improvements, pedestrian safety, improving traffic safety (road, rail, bicycle and pedestrian), providing or improving public transport services, improving or providing public amenity within or adjacent to roads, school safety infrastructure and programs, or other community benefits relating to transport, traffic, pedestrian matters.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW);

Signage means a sign or infrastructure which supports a sign on which advertisements or content are displayed, and includes the Existing Signage and Digital Signage.

Tax means all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.

Term means the period that:

- (a) a Development Consent granted in relation to the Current Development Applications; or
- (b) a Development Consent or modification application approval in relation to the Future Applications,

is in force for, being:

- (c) 15 years after the date on which the Development Consent becomes effective and operates in accordance with s 4.20 of the Act; or
- (d) any lesser period specified in the Development Consent.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) a reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this agreement and references to this agreement include any recital, schedule or annexure;
 - (iv) any contract (including this agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
 - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
 - (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
 - (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
 - (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
 - (x) time is a reference to legal time in Sydney, New South Wales;
 - (xi) a reference to a day or a month means a calendar day or calendar month;
 - (xii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) unless expressly stated, no party enters into this agreement as agent for any other person (or otherwise on their behalf or for their benefit);
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (d) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
- (e) headings and the table of contents are for convenience only and do not form part of this agreement or affect its interpretation;
- (f) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
- (h) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- (i) where there are two or more persons in a party each are bound jointly and severally; and

- (j) a provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

2 Planning Agreement under the Act

The parties mutually acknowledge and agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3 Application of this Agreement

- 3.1 This Agreement applies to the Land, the Existing Signage on the Land, the Current Development Applications, the Future Applications, the Development and to the Future Development.
- 3.2 Nothing in this Agreement affects the operation of the Development Consents that are ongoing and in force in respect of the Existing Signage. The parties agree that said Development Consents will continue to operate for the duration of the Term and are not taken to be abandoned by the Developer's use or operation of the relevant Signage as Digital Signage for the Term.

4 Operation of this Agreement

This Agreement takes effects from the date this Agreement is executed by the Parties.

5 Development Contributions - the Current Development Applications

- 5.1 **Schedule 2** has effect in relation to the Development Contributions to be made by the Developer under this Agreement in relation to the Current Development Applications.
- 5.2 If Development Consent is granted in relation to the Current Development Applications, and a Construction Certificate is issued, the Developer must make the Development Contributions (as set out in **Schedule 2**) to Council in accordance with this Agreement.
- 5.3 For the purposes of clause 5.2:
- (a) the Developer acknowledges that it must lodge a Construction Certificate prior to commencement of works or use associated with the Current Development Applications (pursuant to section 6.7 of the Act);
 - (b) Council acknowledges that the Developer may elect not to take up Development Consent granted in relation to a Current Development Application;
 - (c) the Developer must immediately notify Council of the date a Construction Certificate is issued in relation to the Current Development Applications;
 - (d) if the Developer commences any construction work (or use) in relation to Digital Signage approved pursuant to the Current Development Applications without a Construction Certificate, the First Payment Date is taken to be the date of grant of development consent of the Current Development Applications and the Developer is immediately liable to pay the Development Contribution calculated from that date plus interest at a rate of 10% above the daily Reserve Bank of Australia Cash Rate from the date that payment was due up to and including the date the overdue amount is paid.

- 5.4 The Developer agrees to make and the Council agrees to accept, the Development Contributions in relation to the Current Development Applications, to be applied for the Public Purpose by the Council.
- 5.5 The Developer and the Council agree that on each anniversary of the First Payment Date the Development Contribution in relation to the Current Development Applications will increase by the increase in the Consumer Price Index for the prior year.

6 Development Contributions - the Future Applications

- 6.1 Council acknowledges that the Developer intends to lodge Future Applications to develop new Digital Signage (in addition to the Digital Signage the subject of the Current Development Applications).
- 6.2 **Schedule 3** has effect in relation to the Development Contributions to be made by the Developer under this Agreement in relation to the Future Applications.
- 6.3 If Development Consent is granted in relation to the Future Applications and a Construction Certificate is issued, the Developer must make the Development Contributions (as set out in **Schedule 3**) to Council in accordance with this Agreement.
- 6.4 For the purposes of clause 6.3:
- (a) the Developer acknowledges that it must lodge a Construction Certificate prior to commencement of works or use associated with the Future Applications (pursuant to section 6.7 of the Act);
 - (b) Council acknowledges that the Developer may elect not to take up Development Consent granted in relation to a Future Application;
 - (c) the Developer must immediately notify Council of the date a Construction Certificate is issued in relation to the Future Applications;
 - (d) if the Developer commences any construction work (or use) in relation to Digital Signage approved pursuant to the Future Applications without a Construction Certificate, the First Payment Date is taken to be the date of grant of development consent of the Future Applications and the Developer is immediately liable to pay the Development Contribution calculated from that date plus interest at a rate of 10% above the daily Reserve Bank of Australia Cash Rate from the date that payment was due up to and including the date the overdue amount is paid.
- 6.5 The Developer agrees to make and the Council agrees to accept, the Development Contributions in relation to the Future Applications, to be applied for the Public Purpose by the Council.
- 6.6 The Developer and the Council agree that on each anniversary of the First Payment Date the Development Contribution in relation to the Future Applications will increase by the increase in the Consumer Price Index for the prior year.

7 Adjustment of Development Contribution

- 7.1 If at any time the use or operation of any of the Signage by the Developer pursuant to any development consent granted to the Current Development Applications or the Future Applications permanently ceases for any reason, including as a result of the termination of a lease or licence under which the Developer had a right to access and use the Land to operate the relevant Signage, the parties acknowledge that:
- (a) the Developer may provide written evidence to the Council to demonstrate that the use or operation of particular Signage by the Developer has permanently ceased; and

- (b) Council must give genuine consideration to any such evidence and, if satisfied (acting reasonably) that the use and operation of the particular Signage by the Developer has permanently ceased, adjust the Development Contribution to the effect that the Development Contribution in relation to the said Signage is no longer payable by the Developer. If requested by either party, the parties must promptly negotiate an amendment to this Agreement to formally record the removal of the particular Signage from the operation of this Agreement.

8 Late Payment

- 8.1 Where any payment of a Development Contribution is not made on or before the due date for payment, the unpaid amount will accrue interest at a rate of 2% above the daily Reserve Bank of Australia Cash Rate from the date that payment was due up to and including the date when the overdue amount is paid.
- 8.2 If the Developer has not paid Development Contributions as required for 3 consecutive months, despite the Council having issued tax invoices in accordance with this Agreement for each of those 3 months, then the Developer must cease the use of the Digital Signage.

9 Consolidation of payment dates

- 9.1 Without limiting the generality of Clause 21.7 of this Agreement, the parties acknowledge that they may, from time to time, negotiate and execute a variation of this Agreement so as to make provision for the date or dates on which recurrent payments of Development Contributions required by this Agreement are due to be consolidated (with appropriate adjustments) so as to make provision for a recurrent consolidated payment of the total Development Contribution payable.

10 Allocation of Display Time

- 10.1 In addition to the Development Contributions, subject to clause 10.2, the Developer agrees to allocate during the Term the following display time in relation to Signage which is the subject of development consent in relation to the Current Development Applications or the Future Applications:
 - (a) 2.5% of the display time on digital Signage to Destination NSW to advertise NSW; and
 - (b) 2.5% of the display time on digital Signage to Council to advertise Council events.
- 10.2 The Developer's obligation under clause 10.1 is subject to the following conditions:
 - (a) Council must comply with the Developer's standard commercial terms and conditions for the display of advertisements on advertising assets;
 - (b) Council must pay any production or service costs in connection with the display of an advertisement;
 - (c) the right to display an advertisement on digital Signage is personal to each of Destination NSW and Council and cannot be transferred or sold to another person, or exchanged for any other benefit or for cash;
 - (d) if at any time during the Term either Destination NSW or Council does not use its allocation of display time on digital Signage to display an advertisement, then that unused display time is immediately forfeited to the Developer and does not accrue for future use; and
 - (e) Council must ensure that any advertisement displayed does not include the logo or branding of any third party, infringe any third party's intellectual property rights or

breach any law or regulation, except that Council may include the logo or branding of a third party to identify it as a sponsor of the Council event being advertised.

11 Council's obligations in respect of the Development

- 11.1 Subject to clause 11.2 and clause 13, Council must not erect, install, plant or otherwise place, or grant to itself or any third party any licence, consent or approval to erect, install, plant or otherwise place, any plant or equipment, vegetation, structure, object, building or work on land owned, managed or controlled by Council which has or will have the effect of obscuring or obstructing visual access to the Signage from any public road for the duration of the Term.
- 11.2 Clause 11.1 does not limit or fetter in any way Council's ability to exercise its rights and responsibilities in relation to road safety or functions as a roads authority under the Roads Act 1993 including, without limitation, the installation or display of a prescribed traffic control device pursuant to the *Road Transport Act 2013* or otherwise installing or erecting signs or devices related to traffic and pedestrian safety or the regulation of pedestrians and traffic.

12 Assignment and Transfer

- 12.1 Unless the matters specified in clause 12.2 are satisfied, the Developer is not to do any of the following:
- (a) assign, transfer dispose or novate to any person the Developer's rights or obligations under this Agreement
- 12.2 The matters required to be satisfied for the purposes of clause 12.1 are as follows:
- (a) the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned, transferred or novated, of an agreement in favour of the Council on terms that are no less favourable to Council than the terms of this agreement,
 - (b) Council, by notice in writing to the Developer, has stated that evidence satisfactory to Council has been produced to show that the assignee, transferee or novatee, is reasonably capable of performing its obligations under the Agreement,
 - (c) the Developer is not in breach of this Agreement, and
- 12.3 Any purported dealing in breach of this clause is of no effect.

13 Council's acknowledgement

- 13.1 Subject to clause 13.2, Council acknowledges and agrees that for the duration of the Term:
- (a) the payment of the Development Contribution and the allocation of display time pursuant to clause 10 is in substitution for the payment of any other fees, rates, charges or levies (**Levy Payments**) which Council could or may seek to impose on the Developer and its successors or assigns in respect of the Existing Signage, Development and Future Development;
 - (b) Council releases the Developer and its successors or assigns from all liability for Levy Payments in respect of the Existing Signage, Development and Future Development;
 - (c) Council will not seek to impose levies to the same effect of the Development Contributions.
- 13.2 Nothing in clause 13.1 limits or fetters in any way Council's power to impose fees, rates, charges or levies under any Act (including but not limited to the *Local Government Act 1993*) regulation, statutory rule or similar which the Council could or may seek to impose:

- (a) on the owner of the Land; or
- (b) as a standard application fee, lodgement fee or other administrative or processing fee or charge that is payable to Council in connection with any Development Application, Modification application, application for a Construction Certificate or similar including in relation to any Future Application.

14 No fetter

- 14.1 Nothing in this Agreement shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
- 14.2 For the avoidance of doubt, nothing in this Agreement shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty in relation to
 - (a) assessment and determination of the Current Development Applications or Future Applications;
 - (b) the exercise of Council's functions as a roads authority under the *Roads Act 1993*; or
 - (c) the exercise of Council's functions under the *Road Transport Act 2013* including but not limited to the installation or display of prescribed traffic control devices pursuant to that Act; or
 - (d) any other power or functions relating to installing or erecting signs or devices with respect to traffic and pedestrian safety or the regulation of traffic and pedestrians generally.

15 Application of sections 7.11 and 7.12 of the Act to the Development

- 15.1 This Agreement excludes the application of Sections 7.11 and 7.12 of the Act to the Development and to the Future Development.

16 No Registration of this Agreement

- 16.1 The Parties agree that this Agreement will not be registered for the purposes of section 7.6 of the Act.

17 Dispute Resolution

17.1 Notice of Dispute

If a party claims that a dispute has arisen under this agreement (**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**).

17.2 Response to Notice

Within 20 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

17.3 Negotiation

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.

17.4 Further Notice if not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**).

17.5 Mediation

The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- (a) the parties must agree the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the appointment of a Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply to appoint a mediator;
- (c) the Mediator appointed pursuant to this clause 17.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with her function as mediator, she being required to fully disclose any such interest or duty before her appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to her knowledge by reason of her appointment and performance of her duties;
- (e) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to costs and expenses:
 - (i) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

17.6 Litigation

If the dispute is not finally resolved in accordance with clause 17.5, either party is at liberty to litigate the dispute.

17.7 Exchange of information

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause 13 for any purpose other than an attempt to settle a dispute between the parties.

17.8 Continue to perform obligations

Each party must continue to perform its obligations under this agreement, notwithstanding the existence of a dispute.

18 Bank Guarantee

- 18.1 At the time of application for the first Construction Certificate in relation to the Current Development Applications, the Developer must deliver to Council an irrevocable and unconditional Bank Guarantee in favour of Council equivalent to one quarter of the annual Development Contribution required to be paid under Clause 5 and Schedule 2 of this Agreement in relation to each of the Current Development Applications.
- 18.2 The Council must return the Bank Guarantee referred to in Clause 18.1 at the end of the Term of Development Consents granted in relation to the Current Development Applications. For the purposes of this clause if the Term of Development Consents granted in relation to the Current Development Applications is different, the Bank Guarantee is to be returned at the end of the Term that expires last.
- 18.3 If a Development Consent or Modification Application approval is granted in relation to the Future Applications, and the Developer applies for a Construction Certificate in relation to that Future Application, then at the time of applying for said Construction Certificate the Developer must deliver to Council an irrevocable and unconditional Bank Guarantee in favour of Council equivalent to one quarter of the annual Development Contribution required to be paid under Clause 6 and Schedule 3 of this Agreement in relation to each of the Future Applications.
- 18.4 If the Development Contribution is adjusted in accordance with clause 7, the Developer may substitute the Bank Guarantee for the amount equivalent to one quarter of the adjusted annual Development Contribution.
- 18.5 The Council must return the Bank Guarantee referred to in Clause 18.3 at the end of the Term of a Development Consent granted in relation to the Future Applications.
- 18.6 If the Developer does not comply with its obligations under this Agreement, the Council may after 14 days' notice, call on the Bank Guarantee.

19 No issue of Construction Certificates if this Agreement is breached

- 19.1 No Construction Certificate may be issued in relation the Future Applications if a Development Contribution required to be paid by the Developer has not been paid in breach of this Agreement.

20 GST

20.1 Defined GST terms

In this clause 20, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and

20.2 GST to be added to amounts payable

If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the party providing the consideration for that Taxable Supply must also pay the GST Amount as additional consideration. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

20.3 Tax invoice

If a Party is liable for GST on any payments made under this Agreement, the other Party must issue a tax invoice (or an adjustment note) to the liable Party for any GST payable under this agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

20.4 GST obligations to survive termination

This clause 20 will continue to apply after expiration of termination of this Agreement.

21 Notices

21.1 Service of notices

A notice, consent, approval or other communication under this agreement (**Notice**) must be:

- (a) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in clause 21.3; and
- (b) delivered by personal service, sent by pre-paid mail or transmitted by facsimile or email, or any other lawful means.

21.2 Effect of receipt

- (a) A Notice given in accordance with this clause 21.2 is treated as having been given and received:
 - (i) if personally delivered, on delivery;
 - (ii) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting (or the seventh Business Day after the date of posting if sent to or from an address outside Australia);
 - (iii) if sent by facsimile, when the sender's fax machine produces a transmission report stating that the transmission of the entire Notice was complete; and
 - (iv) if sent by email, at the time of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered,

except that, if the delivery, receipt or transmission is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.

21.3 Addresses

- (a) The particulars for delivery of Notices are initially:

oOh!media Fly Pty Limited

Name:	Christian Slater
Attention:	Legal Counsel
Address:	Level 2, 76 Berry Street, North Sydney NSW 2060
Email:	christian.slater@oohmedia.com.au

Bayside Council

Name: Clare Harley
 Attention: Manager Strategic Planning
 Address: 444 – 446 Princess Highway, Rockdale NSW 2216
 Email: clare.harley@bayside.nsw.gov.au

- (b) A party may change its address for the delivery of Notices by notifying that change to each other party. The notification is effective on the later of the date specified in the Notice or five Business Days after the Notice is given.

22 General

22.1 Legal costs

- (a) Except as expressly stated otherwise in this agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this agreement.
- (b) The Developer must pay all legal costs (assessed on an indemnity basis) and out of pocket disbursements incurred by the Council in relation to enforcing the Developer's obligations under this Agreement.

22.2 Governing law and jurisdiction

- (a) This agreement is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

22.3 Severability

- (a) Subject to clause 22.3(b), if a provision of this agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this agreement.
- (b) Clause 22.3(a) does not apply if severing the provision:
- (i) materially alters the:
 - (A) scope and nature of this agreement; or
 - (B) the relative commercial or financial positions of the parties; or
 - (ii) would be contrary to public policy.

22.4 Rights cumulative

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

22.5 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.

- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

22.6 Survival

The rights and obligations of the parties do not merge on:

- (a) completion of any transaction under this agreement; or
- (b) termination or expiration of the agreement.

22.7 Amendment

This agreement may only be varied or replaced by an agreement executed by the parties.

22.8 Assignment

- (a) The Developer must not assign or deal with its rights under this agreement without the prior written consent of Council.

22.9 Counterparts

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

22.10 Entire understanding

- (a) This agreement contains the entire understanding between the parties as to the subject matter of this agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this agreement are merged in and superseded by this agreement and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

Executed as an agreement

Executed by oOh!media Fly Pty Limited ABN
55 094 425 395 in accordance with section 127
of the *Corporations Act 2001* (Cth):

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Executed by Bayside Council ABN 80 690
785 443 BRANCH 003 in the presence of:

Witness

JUSTIN RAPISARDA

Name of Witness
BLOCK LETTERS

General Manager

MEREDITH WALLACE

Meredith Wallace
BLOCK LETTERS
*please strike out as appropriate

Executed as an agreement

Executed by oOh!media Fly Pty Limited ABN
55 094 425 395 in accordance with section 127
of the *Corporations Act 2001* (Cth):

[Redacted Signature]

Director

Sheila Alison Mary Lines

Name of Director
BLOCK LETTERS

[Redacted Signature]

*Director/*Company Secretary

Christopher John Roberts

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Executed by Bayside Council ABN 80 690
785 443 BRANCH 003 in the presence of:

Witness

General Manager

Name of Witness
BLOCK LETTERS

Meredith Wallace
BLOCK LETTERS
*please strike out as appropriate

1 The Land

Land	Registered Dealing Number of leasehold interest in Land (if applicable)	Signage reference within Figure 1	Reference to Identification Document
Lot 54 in DP1097375	AG34627 (as varied)	JDE-PACK comprising 3 signs	5
Lot 52 in DP1097377	AG34626 (as varied)	JDV-O, JDV-I, BEP-O, BE-I, JDW5-I, JDW4-O, JDW3-I, JDW2-O, JDW1-I	4 BE-I is the sign the subject of DA2017/1140 BEP-O is the sign the subject of DA2017/1141 JDV-I and JDV-O are the signs the subject of DA2017/1142
Lot 401 in DP1215182	AG342625 (as varied)	BR-O, GN-O, GS-IA,B,C Trivision	3 GN-O is the sign the subject of modification application no. DA2018/1135
Lot 58 in DP648872 and Lot 201 in DP777213	AG342624 (as varied)	NS-1, NS-2, NS-3	3
Lot 57 in DP648872	Licence agreement	RN-I, RN-O	3 RN-I is the sign the subject of modification application no. DA2018/1183
Lot 9 in DP747022	Unregistered lease	QDV-O, QDV-I, 2020-SAS2 comprising 4 signs	2
Lot 11 in DP213317		2020-SAS1 comprising 4 signs, QDW8, 2020-SAS51 comprising 3 signs, QDW6, QDW3, QDW2, QDW1	1

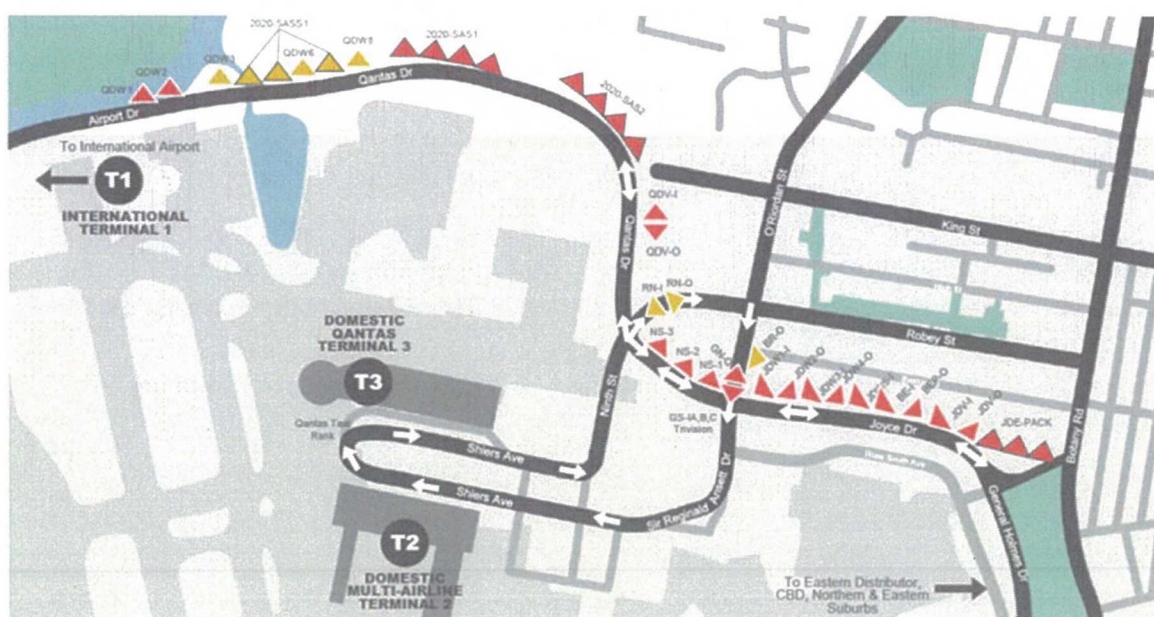


Figure 1: Map depicting the Signage

2 Development Contributions - the Current Development Applications

Column 1	Column 2	Column 3	Column 4
Development Application	Signage details	Monetary Contribution payable for the duration of the Term ¹	Timing of payment
DA 2017/1142	Signage Reference Number: Dimensions: JDV 0 1 and JDV - 0 JDV 0 1: 17.92 x 5.12m JDV - 0: 17.92 x 5.12m Total area of Digital Display Area under DA 2017/1142: 183.5008 square metres	\$101,842.95 (increased in accordance with cl 5.5)	Provided that Council has issued a invoice to the Developer for the amount payable, the Developer must pay the Monetary Contribution in relation to DA 2017/1142 in advance in equal monthly instalments on and from the First Payment Date until the end of the Term.
DA 2017/1140	Sign Reference Number: BE - I Dimensions: 38.77 x 10.24m Total area of Digital Display Area under DA 2017/1140: 397.0048 square metres	\$220,337.66 (increased in accordance with cl 5.5)	Provided that Council has issued a invoice to the Developer for the amount payable, the Developer must pay the Monetary Contribution in relation to DA 2017/1140 in advance in equal monthly instalments on and from the First Payment Date until the end of the Term.
DA 2017/1141	Sign Reference Number: BEP - O Digital Display Area: Dimensions: x 10.24m Total area of Digital Display Area under DA	\$37,395.46 (increased in accordance with cl 5.5)	Provided that Council has issued a invoice to the Developer for the amount payable, the Developer must pay the Monetary Contribution in relation to DA 2017/1141 in advance in equal monthly instalments on and from the First Payment Date until the end of the Term.

¹ Calculated at the rate of \$555 per physical square metre of the Digital Display Area

	2017/ 1141: 67.3792 square metres		
DA 2018/1135	Signage Reference Number: GN - O Dimensions: 22.68 x 5.85m Total area of Digital Display Area under DA 2018/1135: 132.678 square metres	\$73,636.29 (increased in accordance with cl 5.5)	Provided that Council has issued a invoice to the Developer for the amount payable, the Developer must pay the Monetary Contribution in relation to DA 2017/1135 in advance in equal monthly instalments on and from the First Payment Date until the end of the Term.
DA 2018/1183	Signage Reference Number: RN - I Dimensions: 12.44 x 3.29m Total area of Digital Display Area under DA 2018/1183: 40.9276	\$22,714.82 (increased in accordance with cl 5.5)	Provided that Council has issued a invoice to the Developer for the amount payable, the Developer must pay the Monetary Contribution in relation to DA 2017/1183 in advance in equal monthly instalments on and from the First Payment Date until the end of the Term.

3 Development Contributions - the Future Applications

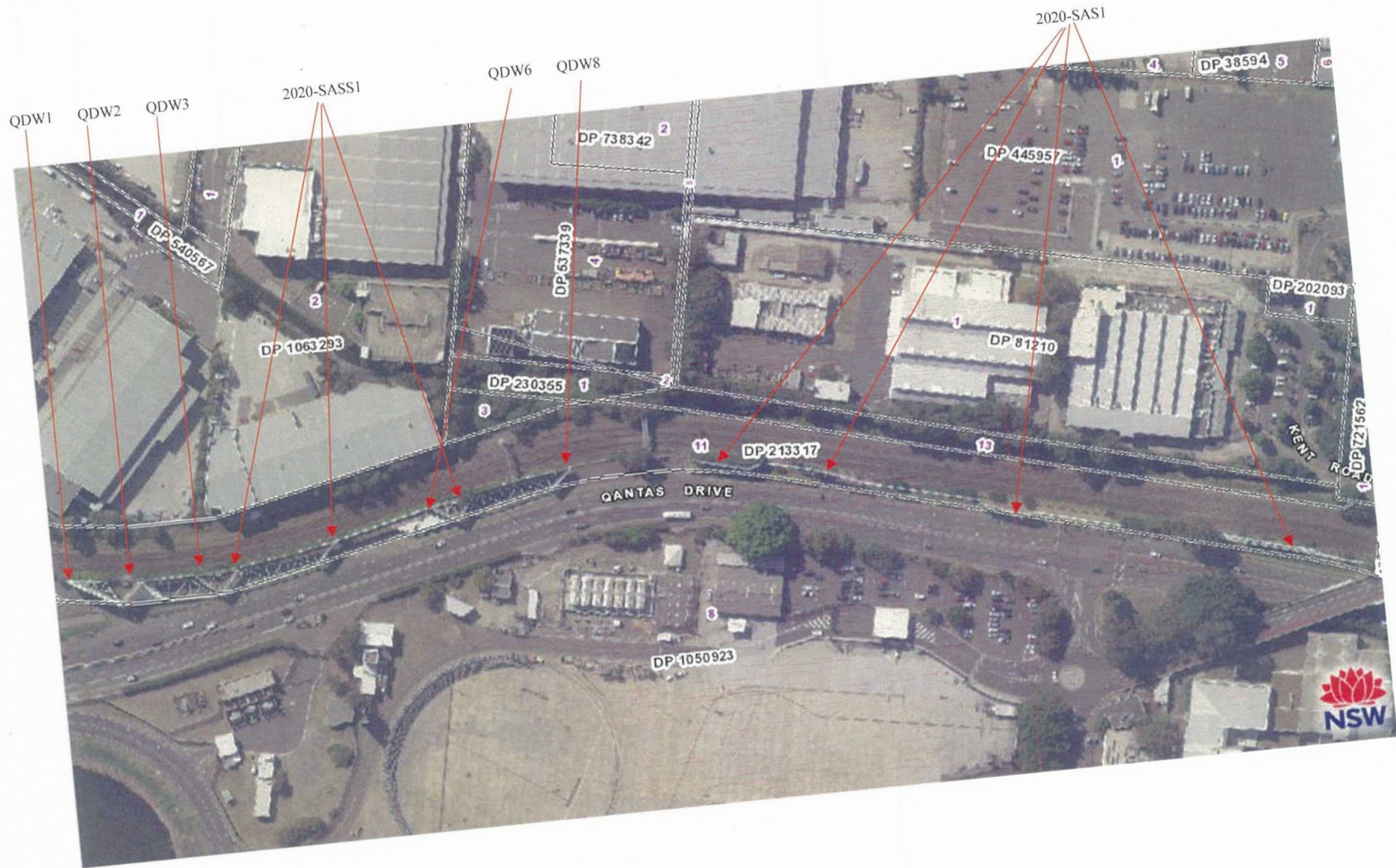
Column 1	Column 2	Column 3	Column 4
Development Application or Modification Application	Signage details	Monetary Contribution (per annum for the duration of the Term) ²	Timing
The Future Applications	The Signage details including Digital Display Area will be as described or indicated in plan form in any Development Consent or Modification Application approval that is granted in relation to the Future Applications.	The Monetary Contribution is to be calculated by multiplying: (a) the Digital Display Area in square metres³; by (b) the rate of \$555 indexed annually from the date of this Agreement by the increase in the Consumer Price Index during the prior year. (increased in accordance with cl 6.6)	Provided that Council has issued a invoice to the Developer for the amount payable, the Developer must pay the Monetary Contribution in relation to the Future Applications in advance in equal monthly instalments on and from the First Payment Date until the end of the Term.

² Calculated at the rate of \$555 per physical square metre of Digital Display Area.

³ As described or indicated in plan form in any Development Consent or modification approval that is granted in relation to the Future Applications.

4 Identification Document

1. Qantas Drive signs on Lot 11 in Deposited Plan 213317





QDW1





QDW3









2. Qantas Drive signs on Lot 9 in Deposited Plan 747022





2020-SAS2

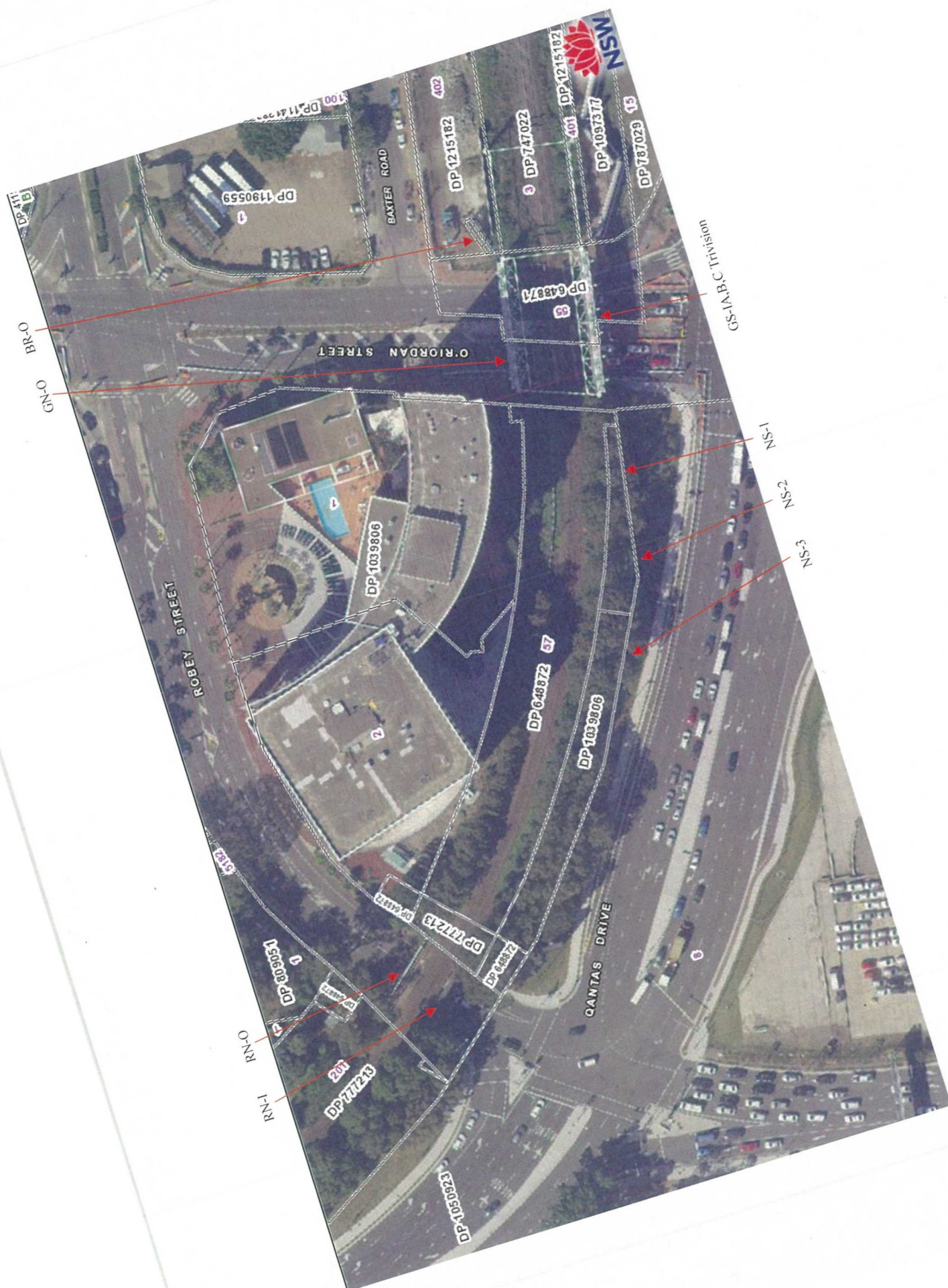


QDV-I



QDV-O

3. Robey Street, Ninth Street and O'Riordan Street signs

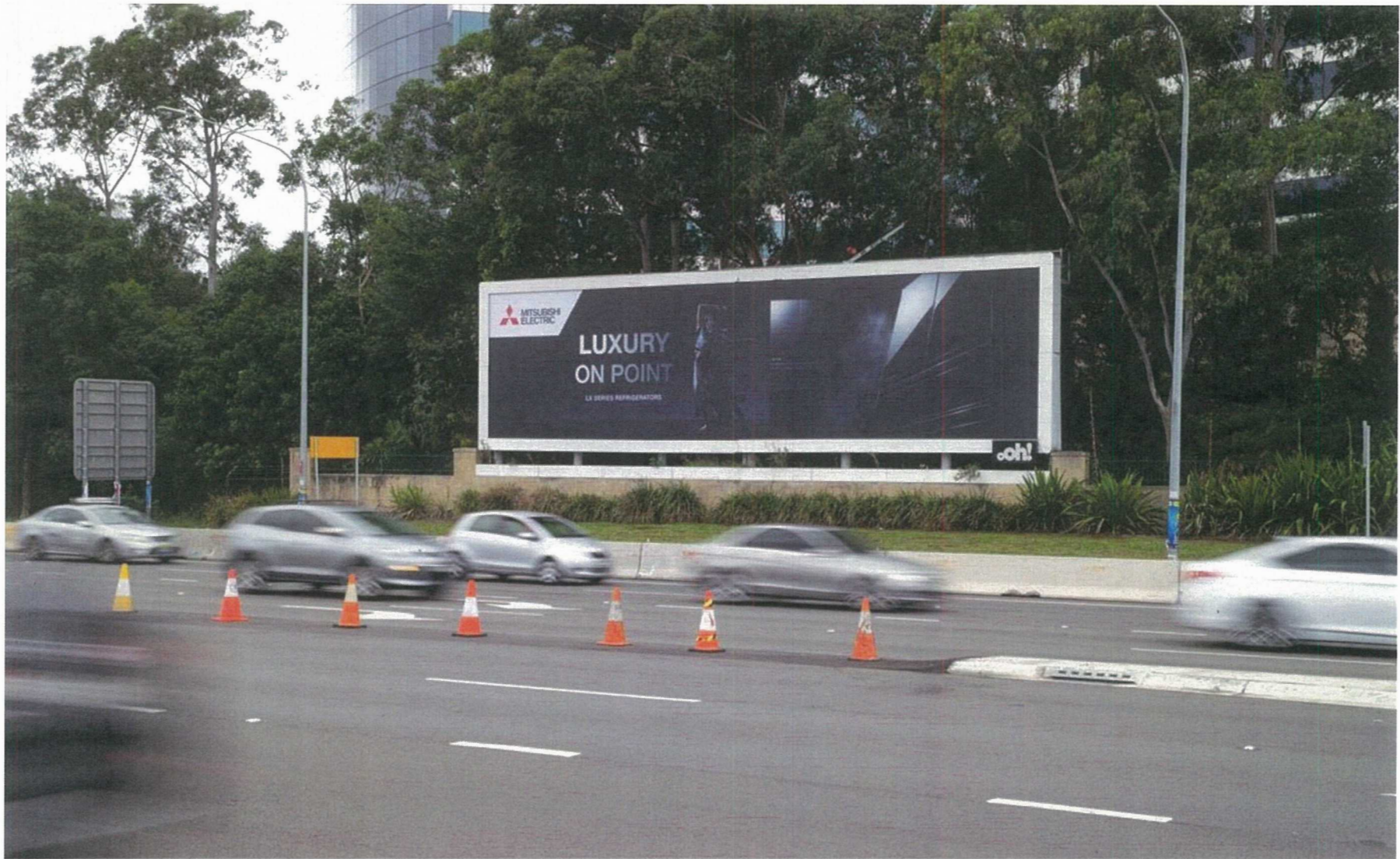




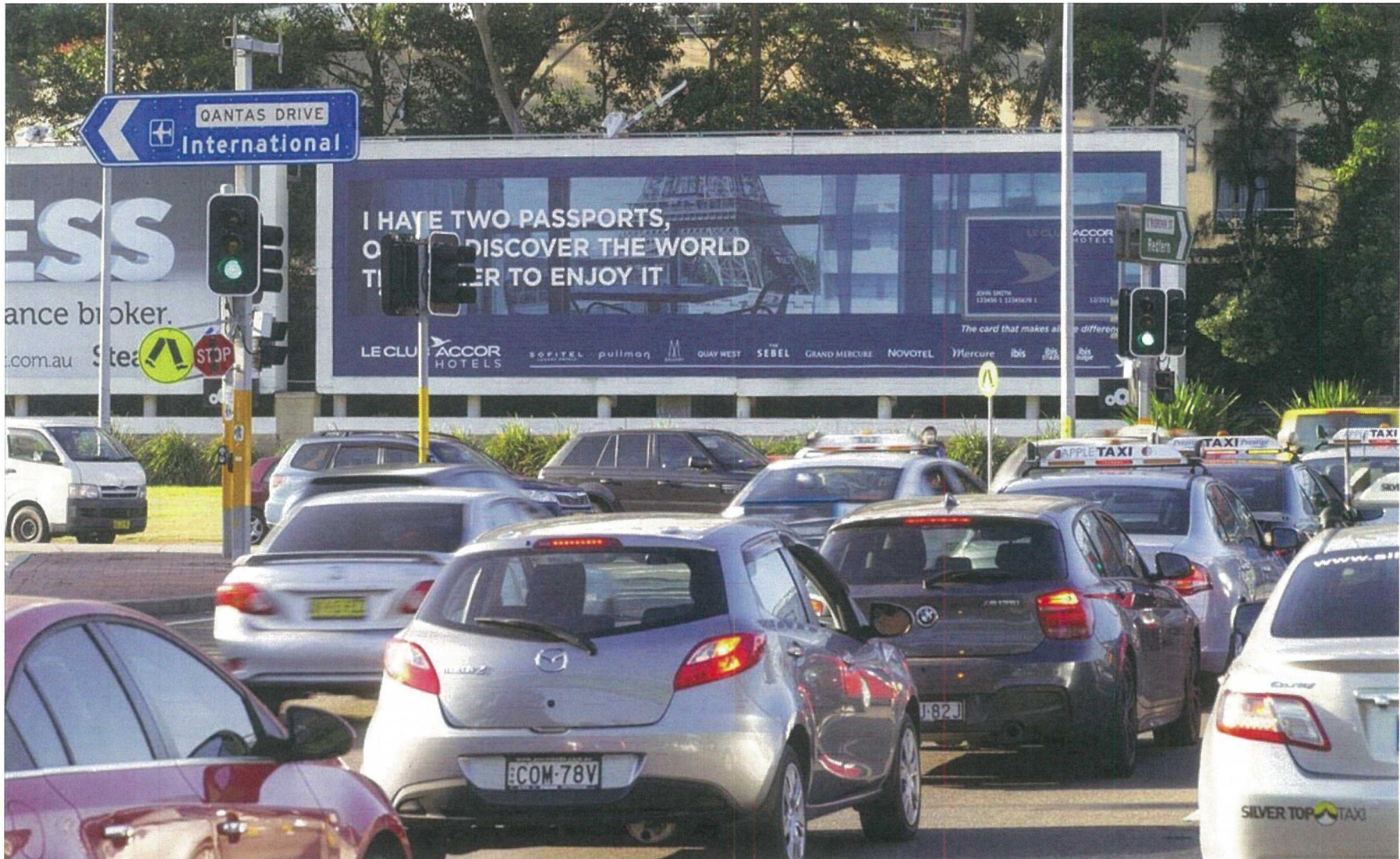
RN-I



RN-O

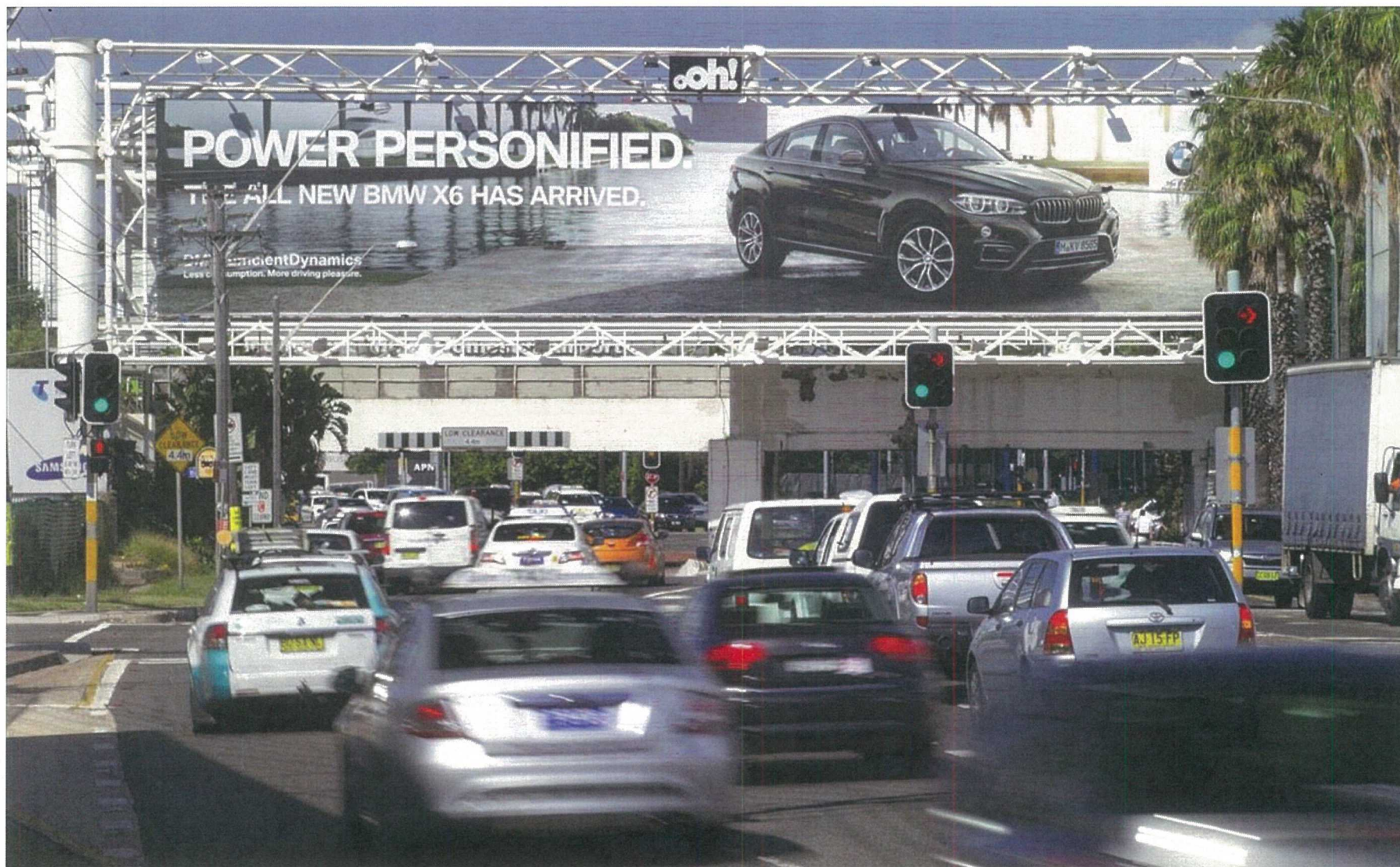








GS-1A,B,C Trivision





BR-O

4. Joyce Drive signs on Lot 52 in Deposited Plan 1097377





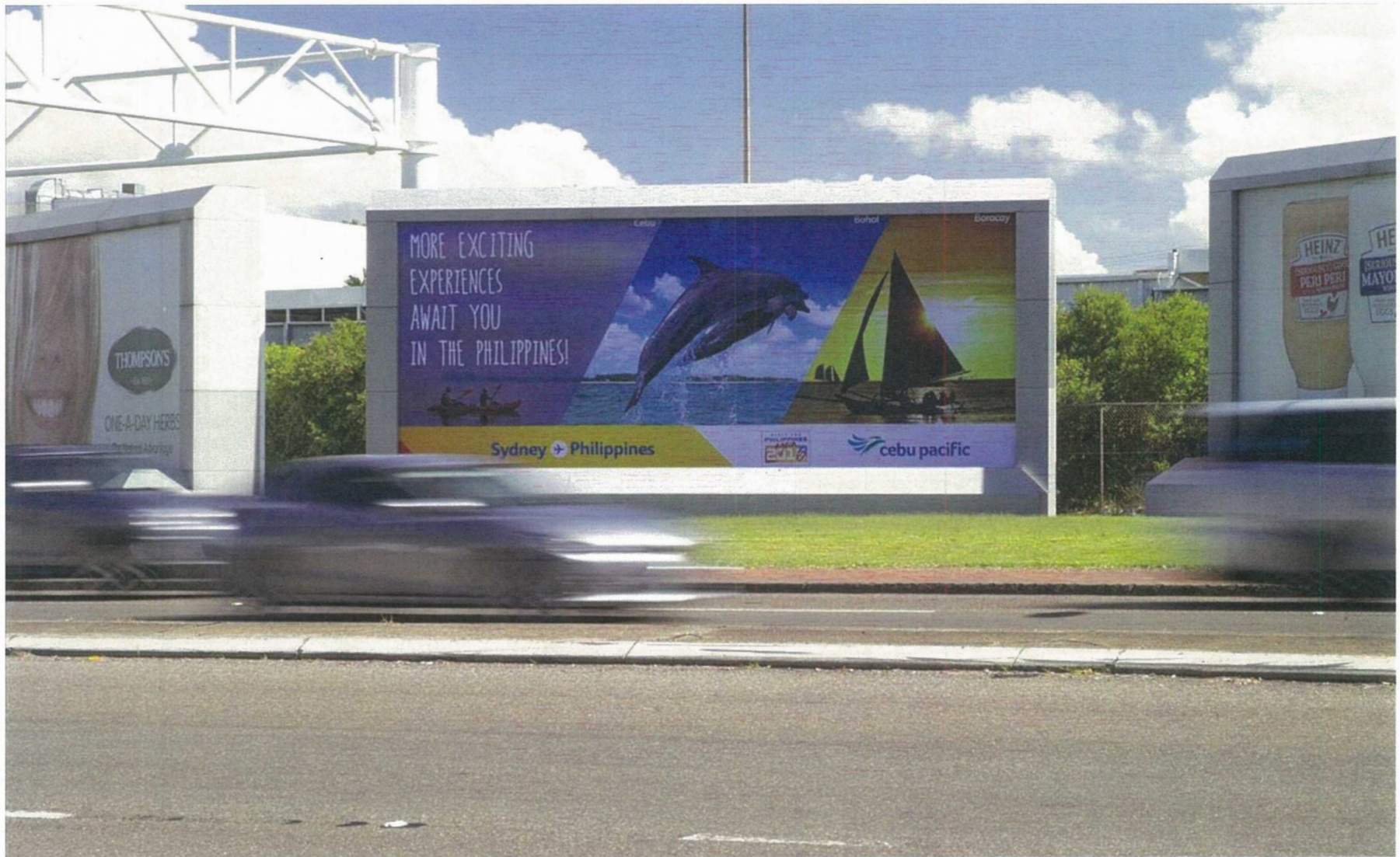
JDW1-1



JDW2-O



JDW3-I



JDW4-O



JDW5-1



BE-1



BEP-O

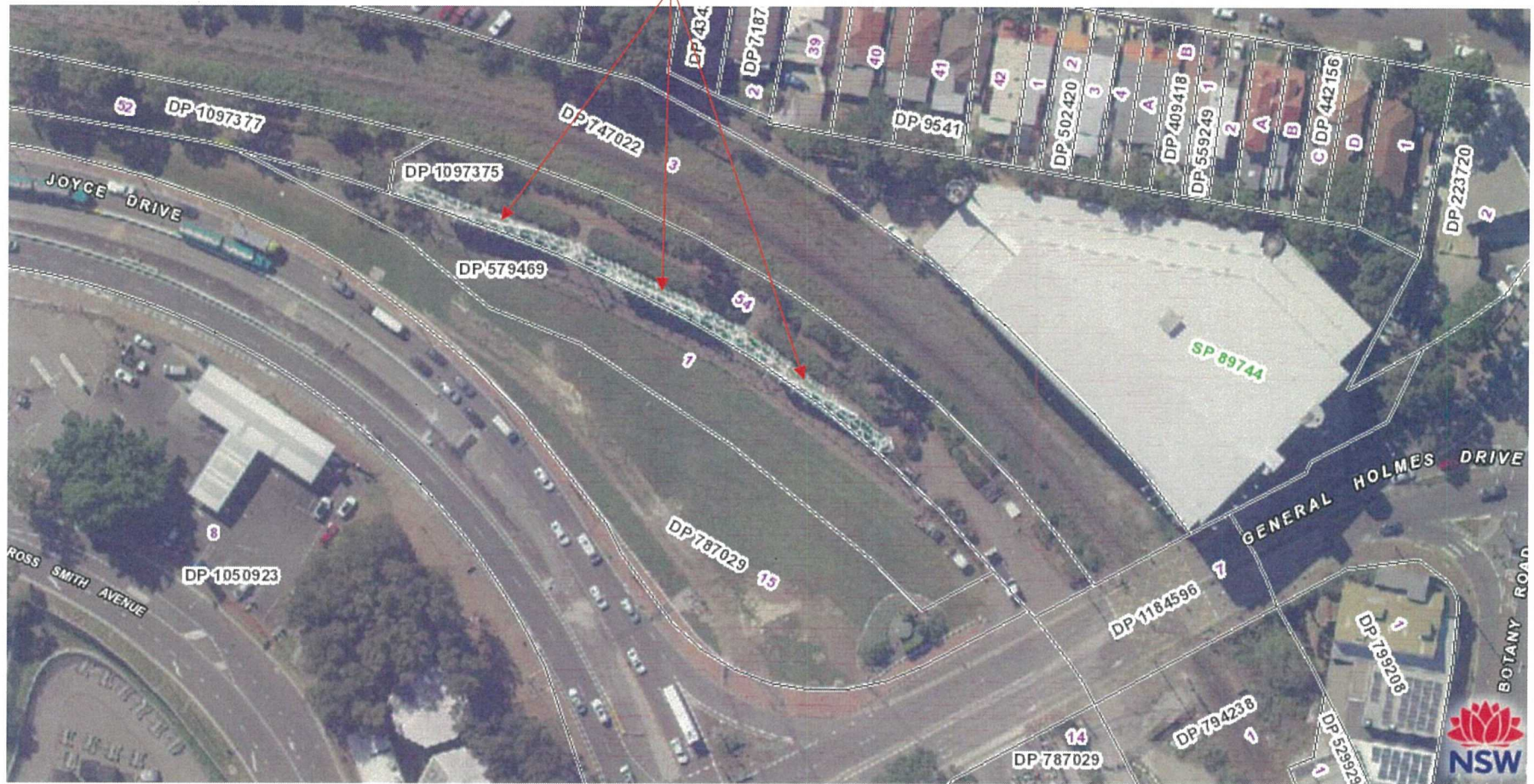


JDV-I



5. Joyce Drive signs on Lot 54 in Deposited Plan 1097375

JDE-PACK





JDE-PACK