

37	18 Jan 10	Proposed Sale of Portion of the Haines Road Reserve and Development of the Crown Reserve	<p>Reason: (b) information the disclosure of which:</p> <p>(i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and</p> <p>(ii) would, on balance be contrary to the public interest.</p>	Discussion, reports, attachments and minutes	Concluded.	Extend Confidential Order until 2012 The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.	5 Sept 11	NA	RELEASE 5 Sept 11
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73.2 **REPORT TITLE:** **CONFIDENTIAL REPORT: PROPOSED
SALE OF PORTION OF THE HAINES ROAD
RESERVE AND DEVELOPMENT OF THE
CROWN RESERVE**

DATE OF MEETING: 18 JANUARY 2010
AUTHOR: **DAVID NINIO/ROSS MALLETT**
AUTHOR'S TITLE: **SPECIAL PROJECTS OFFICER/PROJECT
MANAGER**

REPRESENTORS: **BRIAN CLANCEY**
FILE NUMBER: **60/110/029**
DEPARTMENT: **INFRASTRUCTURE & PROJECTS**
DEPARTMENT
MANAGER: **BRIAN CLANCEY**

Moved Councillor Gamble that Council:

1. Pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:
 - (b) information the disclosure of which:
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - (ii) would, on balance be contrary to the public interest.
2. Determine that the Acting Chief Executive Officer, General Manager Governance & Projects, General Manager Vision and Compliance, Senior Project Manager – Infrastructure, Manager Projects and the Minute Secretary be permitted to remain in the room.

Seconded Councillor Zanker and CARRIED

Moved Councillor Gamble that Council:

3. Accepts the offer from Wryxon Pty Ltd and Crownco Pty Ltd to purchase from Council the land marked "A" on Attachment 2 for the sum of \$645,000.00 plus GST on the terms set out in the Essential Conditions of Sale included as Attachment 3, which will form the basis of the contract to be executed by the parties, subject to any minor amendments that may be agreed between the parties required to finalise the contract.

4. Note the requirement of the Surveyor-General that the amendments made to the road process proposal for the Haines Road Reserve will require a re-advertisement of the amended proposal and authorize the Chief Executive Officer to undertake this and –
 - b. submit a further report to Council with any representations or objections or –
 - c. if no representations or objections are received to make a road process order in respect of the closure of the Haines Road Reserve shown in "A" and "B" on Attachment 2 and submit the order to the Surveyor General requesting confirmation of the order by the Minister for Infrastructure.
5. Resolves that the said road process order include a further order that the land marked "A" on Attachment 2 be added to Allotment 28 in Certificate of Title Volume 5818 Folio 898.
6. Resolves under Section 193(4a) of the Local Government Act 1999 that the land marked "B" on Attachment 2 is to be excluded from classification as community land.
7. Notes that the new road process order, if confirmed by the Minister, will vest in fee simple (freehold title) of the land marked "B" on Attachment 2 in Council enabling Council to sell the land in future when this stage of the Bluestone Estate development shown on Attachment 4 is implemented.
8. Resolves to grant an easement over part of the land marked "B" as shown on Attachment 2 to provide a potential access to the Crown Reserve Section 132 adjacent to B.
9. Authorises the Mayor and Chief Executive Officer to execute, sign and seal all documents required to finalise the sale of the land marked "A" in Attachment 2, the road process order and the grant of easements.
10. Authorises the Chief Executive Officer or nominee to issue a permit to Wryxon Pty Ltd and Crownco Pty Ltd under Section 221 of the Local Government Act 1999 in accordance with the Essential Conditions in Attachment 3.
11. Authorises the Chief Executive Officer or his nominee to apply to the Crown to change the dedication to the Council of the Crown Reserve located on Haines Road, Mount Barker, contained in Certificate of Title Volume 5628 Folio 921 (Section 132) and coloured Green on Attachment 4 from Quarry purposes to either Park or Community Recreation & Sport.

12. Authorises the Chief Executive Officer to consult the Crown and undertake community consultation on amending the community land management plan for the Crown Reserve from Natural Areas to Park or Community Recreation & Sport when the dedication of the land has been changed.
13. Notes that at the suggestion of Council, Wryxon Pty Ltd & Crownco Pty Ltd have agreed to reduce its reserve contribution by approximately 1500 square metres given the proposal to establish the 8,064 square metre Crown Reserve as public open space, representing an annual saving to Council in maintenance cost of approximately \$1100. Proposed plan of division attached and marked as Attachment 5 – approval subject to Development Act decision.
14. Notes that subject to the approval of the Development Assessment Commission to the reduction of 1500 square metres in Wryxon Pty Ltd & Crownco Pty Ltd's reserve contribution, Wryxon/Crownco will pay to Council the prescribed contribution (under the Development Act) of approximately \$33,860.
15. Resolves that subject to the Crown approving the proposed change in dedication to recreational purposes, the development of the Crown Reserve with a current estimated cost of \$71,000 will be considered as part of the future development proposal for the Bluestone Estate.
16. Resolves that, subject to Development Assessment Commission approval of the development application for land division, Wryxon/Crownco's payment of \$33,860 to offset its reduced reserve contribution is deposited in a Council reserve account to be used towards the development of the Crown Reserve when this occurs in the future.
17. Notes that negotiations will take place with Mount Barker Developments No 1 Pty Ltd for a financial contribution equivalent to one third of the costs for the development of the Crown Reserve.
18. Orders that pursuant to Section 91(7),(8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential and that the revocation of confidentiality be delegated to the CEO to determine when there is no legal or commercial need for continued confidentiality, and that this order be reviewed every 12 months.

Seconded Councillor Zanker and CARRIED

17 **CONFIDENTIAL REPORTS**

17.1 **REPORT TITLE: CONFIDENTIAL REPORT: PROPOSED
SALE OF PORTION OF THE HAINES ROAD
RESERVE AND DEVELOPMENT OF THE
CROWN RESERVE**

DATE OF MEETING: 18 JANUARY 2010

AUTHOR: DAVID NINIO/ROSS MALLETT

**AUTHOR'S TITLE: SPECIAL PROJECTS OFFICER/PROJECT
MANAGER**

REPRESENTORS: BRIAN CLANCEY

FILE NUMBER: 60/110/029

**ATTACHMENTS: 1. LOCATION PLAN
 2. CLOSURE OPTION PLAN
 3. CONDITIONS OF OFFER
 4. BLUESTONE STAGE 5 PLAN
 5. WELLINGTON ROAD RESIDENTIAL
 DIVISION PLAN**

DEPARTMENT: INFRASTRUCTURE & PROJECTS

**DEPARTMENT
MANAGER: BRIAN CLANCEY**

PURPOSE

For Council to determine the proposed approach to the Haines Road Reserve (unmade) and the adjacent Crown Reserve currently dedicated to Council for Quarry purposes. Refer Attachment 1.

RECOMMENDATION

That Council:

1. Pursuant to Section 90(2) and 90(3) of the Local Government Act 1999 orders that the public be excluded from attendance at the meeting to consider in confidence matters regarding:
 - (b) information the disclosure of which:
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and

- (ii) would, on balance be contrary to the public interest.
2. Determine that the Acting Chief Executive Officer, General Manager Governance & Projects, General Manager Vision and Compliance, Senior Project Manager – Infrastructure, Manager Projects and the Minute Secretary be permitted to remain in the room.
 3. Accepts the offer from Wryxon Pty Ltd and Crownco Pty Ltd to purchase from Council the land marked "A" on Attachment 2 for the sum of \$645,000.00 plus GST on the terms set out in the Essential Conditions of Sale included as Attachment 3, which will form the basis of the contract to be executed by the parties, subject to any minor amendments that may be agreed between the parties required to finalise the contract.
 4. Note the requirement of the Surveyor-General that the amendments made to the road process proposal for the Haines Road Reserve will require a re-advertisement of the amended proposal and authorize the Chief Executive Officer to undertake this and –
 - a. submit a further report to Council with any representations or objections or –
 - b. if no representations or objections are received to make a road process order in respect of the closure of the Haines Road Reserve shown in "A" and "B" on Attachment 2 and submit the order to the Surveyor General requesting confirmation of the order by the Minister for Infrastructure.
 5. Resolves that the said road process order include a further order that the land marked "A" on Attachment 2 be added to Allotment 28 in Certificate of Title Volume 5818 Folio 898.
 6. Resolves under Section 193(4a) of the Local Government Act 1999 that the land marked "B" on Attachment 2 is to be excluded from classification as community land.
 7. Notes that the new road process order, if confirmed by the Minister, will vest in fee simple (freehold title) of the land marked "B" on Attachment 2 in Council enabling Council to sell the land in future when this stage of the Bluestone Estate development shown on Attachment 4 is implemented.
 8. Resolves to grant an easement over part of the land marked "B" on Attachment 2 in order to provide access to the land marked "B" from the land marked A and to provide a potential access to the Crown Reserve Section 132 adjacent to B.

9. Authorises the Mayor and Chief Executive Officer to execute, sign and seal all documents required to finalise the sale of the land marked "A" in Attachment 2, the road process order and the grant of easements.
10. Authorises the Chief Executive Officer or nominee to issue a permit to Wryxon Pty Ltd and Crownco Pty Ltd under Section 221 of the Local Government Act 1999 in accordance with the Essential Conditions in Attachment 3.
11. Authorises the Chief Executive Officer or his nominee to apply to the Crown to change the dedication to the Council of the Crown Reserve located on Haines Road, Mount Barker, contained in Certificate of Title Volume 5628 Folio 921 (Section 132) and coloured Green on Attachment 4 from Quarry purposes to either Park or Community Recreation & Sport.
12. Authorises the Chief Executive Officer to amend the community land management plan for the Crown Reserve from Natural Areas to Park or Community Recreation & Sport when the dedication of the land has been changed.
13. Notes that at the suggestion of Council, Wryxon Pty Ltd & Crownco Pty Ltd have agreed to reduce its reserve contribution by approximately 1500 square metres given the proposal to establish the 8,064 square metre Crown Reserve as public open space, representing an annual saving to Council in maintenance cost of approximately \$1100. Proposed plan of division attached and marked as Attachment 5 – approval subject to Development Act decision.
14. Notes that subject to the approval of the Development Assessment Commission to the reduction of 1500 square metres in Wryxon Pty Ltd & Crownco Pty Ltd's reserve contribution, Wryxon/Crownco will pay to Council the prescribed contribution (under the Development Act) of approximately \$33,860.
15. Resolves that subject to the Crown approving the proposed change in dedication to recreational purposes, the development of the Crown Reserve with a current estimated cost of \$71,000 will be considered as part of the future development proposal for the Bluestone Estate.
16. Resolves that, subject to Development Assessment Commission approval of the development application for land division, Wryxon/Crownco's payment of \$33,860 to offset its reduced reserve contribution is deposited in a Council

reserve account to be used towards the development of the Crown Reserve when this occurs in the future.

17. Notes that negotiations will take place with Mount Barker Developments No 1 Pty Ltd for a financial contribution equivalent to one third of the costs for the development of the Crown Reserve.
18. Orders that pursuant to Section 91(7),(8) and (9) of the Local Government Act 1999 that the discussion, reports, attachments and minutes relating to this item be kept confidential and that the revocation of confidentiality be delegated to the CEO to determine when there is no legal or commercial need for continued confidentiality, and that this order be reviewed every 12 months.

BACKGROUND

At its meeting of the 17th November 2008, Council noted -

1. *the results of the community consultation process (no objections);*
2. *the approach to the retention of significant trees and*
3. *authorised the CEO (or nominee) to enter into commercial negotiations with the owners of the two adjoining parcels of land regarding the possible sale of the two pieces of the portion of Haines Road, Mount Barker that is intended to be closed with a further report to be provided to Council on the outcomes of the negotiations.*

DISCUSSION

Extensive negotiations have taken place with the two developers resulting in the consummation of an agreement with one developer, Wryxon Pty Ltd & Crownco Pty Ltd to purchase, on commercial terms, an approximately 9,379 square metre portion of the road reserve.

The purchase price was based on two independent Valuations with the resulting negotiated price of \$645,000 (plus GST if applicable) considered to be most reasonable for Council whilst facilitating the orderly land division of the purchaser's adjacent property.

Both Valuations were based on a hypothetical development model which took into account the benefit to be received by the adjoining land owners and hence a corresponding level of value.

Herron Todd White valued the land 2/10/2009 at \$692,000 and Egan National Valuers 31/7/09 at \$670000.

Further, Council will retain ownership of the balance of the road reserve valued between \$160,000 and \$203,000 which, in the medium term, can be sold 'englobo' (as a whole) or developed (at minimal cost) and sold, subject to statutory approvals, as 2 or possibly 3 individual residential allotments.

The sale of the whole of the land or in its subdivided form will depend on the timing of the Mount Barker Developments No 1 Pty Ltd's adjacent land currently designated as Stage 5 of the Bluestone Estate.

Development of this stage will provide road and other services access to Council's land resulting in moderate costs to create individual allotments in the event that Council determines the land division option.

Further, the existing Crown Reserve will, subject to all consents and approvals, be developed as an attractive area of Park or Community Recreation (subject to future determination).

POLICY IMPLICATIONS

1. Financial/budget

Some costs have been incurred to date for the purposes of valuation, survey and legal advice.

Further costs will be incurred for the possible community consultation process, applications and land division process, final survey and final legal work.

Some of these costs will be borne by the purchaser, Wryxon/Crownco, with the balance coming from Council's income of \$645,000 (plus GST if applicable).

At this time, it is unlikely that the income will be received in the current (09/10) financial year with costs incurred to date and ongoing to 30/6/10 requiring payment ahead of income.

Further, Council will receive approximately \$33,680 as an open space contribution from the developer and an asset with a current valuation of between \$160,000 and \$203,000.

2. Legal

Extensive legal advice has been sought with regards the methodology of division and ownership together with the legal documentation required to facilitate the somewhat complex transaction.

3. Staffing/Work Plans

The proposal can be managed and implemented by existing staff.

4. Environmental

Development of the proposed public open space will create an environmental benefit and enhance an existing area of low grade land.

5. Social

The proposal will result in the orderly development of the Wryxon/Crownco (Linford) land; provide Council with a medium term financial benefit and create an area of public open space for future residents to enjoy.

6. Strategic Plans

The following provisions of the Strategic Plan (2009 - 2019) are considered relevant to this matter –

Goal Area 1 – People, Communities and Culture

Goal Area 2 – Our Environment

Goal Area 4 – Infrastructure and Human Settlements

7. Risk Assessment

Risks are considered moderate and commercial by nature and include failure to achieve the various approvals via Surveyor General, Crown Lands, possible community objection and completion of the Contract of Sale with the purchaser.

8. Asset Management

Formal approval to the proposal will result in Council ownership of some 3,720 square metres of land which will remain an asset until Bluestone Estate proceeds with development of the surrounding land.

At that time, Council will be in a position to consider either the englobo sale or the division of the land for sale as 2 or possibly more residential allotments.

COMMUNITY CONSULTATION

1. Customer Needs Analysis

Community consultation took place mid 2008 and further community consultation may now be required as a consequence of the changes incurred as a result of the negotiation process. The consultation process will consist of public notice in the Courier, SA Government Gazette, the Local Government Centre, Library and Council's website. Letters will

also be sent to adjoining property owners, affected government departments and utilities.

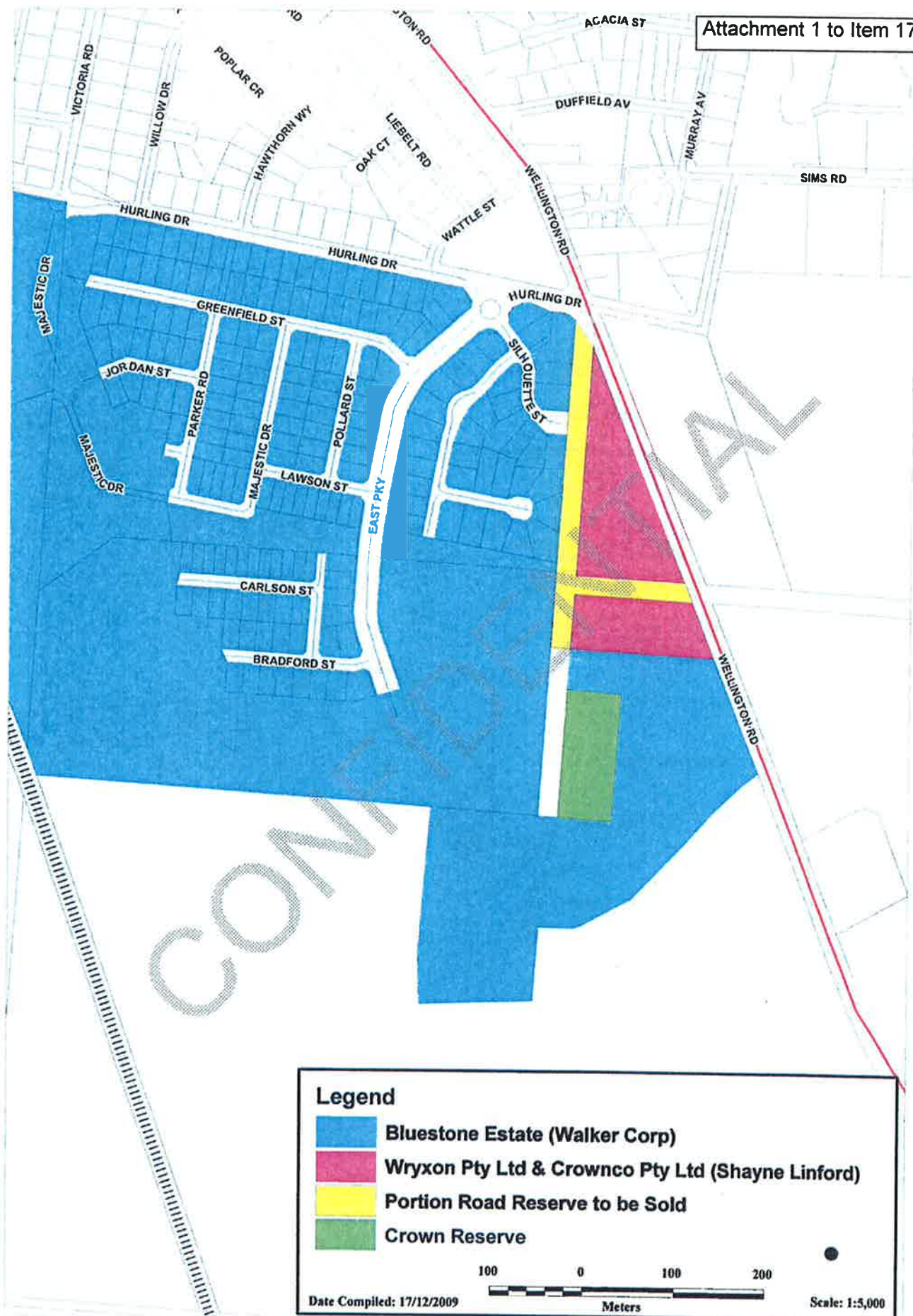
Council did not receive any objections to the initial proposed road closure in 2008.

2. Promotion/Communications

No promotion or communication is considered other than the above mentioned community consultation.

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Attachment 1 to Item 17.1



AMENDED PLAN

(Revision-06 21/12/2009)

Attachment 2 to Item 17.1

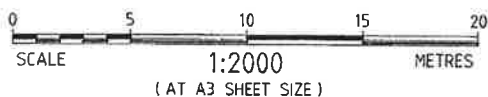
PRELIMINARY PLAN

DISTRICT COUNCIL OF MOUNT BARKER

PP / 07 / 0072

PROPOSED ROAD CLOSING

HUNDRED OF MACCLESFIELD
PORTION OF HAINES (PUBLIC) ROAD
IN THE AREA NAMED
MOUNT BARKER

**ROADS TO BE CLOSED LETTERED A & B**

CLOSED ROAD 'A' IS TO MERGE WITH ADJOINING
ALLOTMENT 28 IN F160105 (C.T. 5818/898)

CLOSED ROAD 'B' IS TO VEST AS CLOSED ROAD
IN THE NAME OF THE COUNCIL FOR THE AREA

I HEREBY CERTIFY THAT THE PORTIONS OF ROAD
TO BE CLOSED AND LETTERED A & B HEREON ARE
PUBLIC ROAD WITHIN THE MEANING OF SECTION 3
OF THE ROADS (OPENING & CLOSING) ACT, 1991
(AUTHORITY :- PUBLIC MAP)

LICENSED SURVEYOR

PROPOSAL CERTIFIED CORRECT AS TO INTENT

Dated / / 2009 FOR COUNCIL

DISPOSITION OF (PROPOSED) EASEMENTS

NOTE - RIGHTS OF WAY C, D, E & F WILL BE
CREATED BY DOCUMENTS ACCOMPANYING THE
FINAL PLAN LODGED UNDER THE ROAD
(OPENING AND CLOSING) ACT 1991

THE LAND MARKED C HEREON IS TO BE SUBJECT
TO A (LONG FORM) RIGHT OF WAY APPURTENANT
TO THE ADJOINING SECTION 132 (C.R. 5628/921)

THE LAND MARKED D HEREON IS TO BE SUBJECT
TO A (LONG FORM) RIGHT OF WAY APPURTENANT
THE PROPOSED ALLOTMENT B

THE LAND MARKED E HEREON IS TO BE SUBJECT
TO A (SHORT FORM) FREE AND UNRESTRICTED
RIGHT OF WAY APPURTENANT TO THE ADJOINING
SECTION 132 (C.R. 5628/921)

THE LAND MARKED F HEREON IS TO BE SUBJECT
TO A (SHORT FORM) FREE AND UNRESTRICTED
RIGHT OF WAY APPURTENANT TO THE PROPOSED
ALLOTMENT B

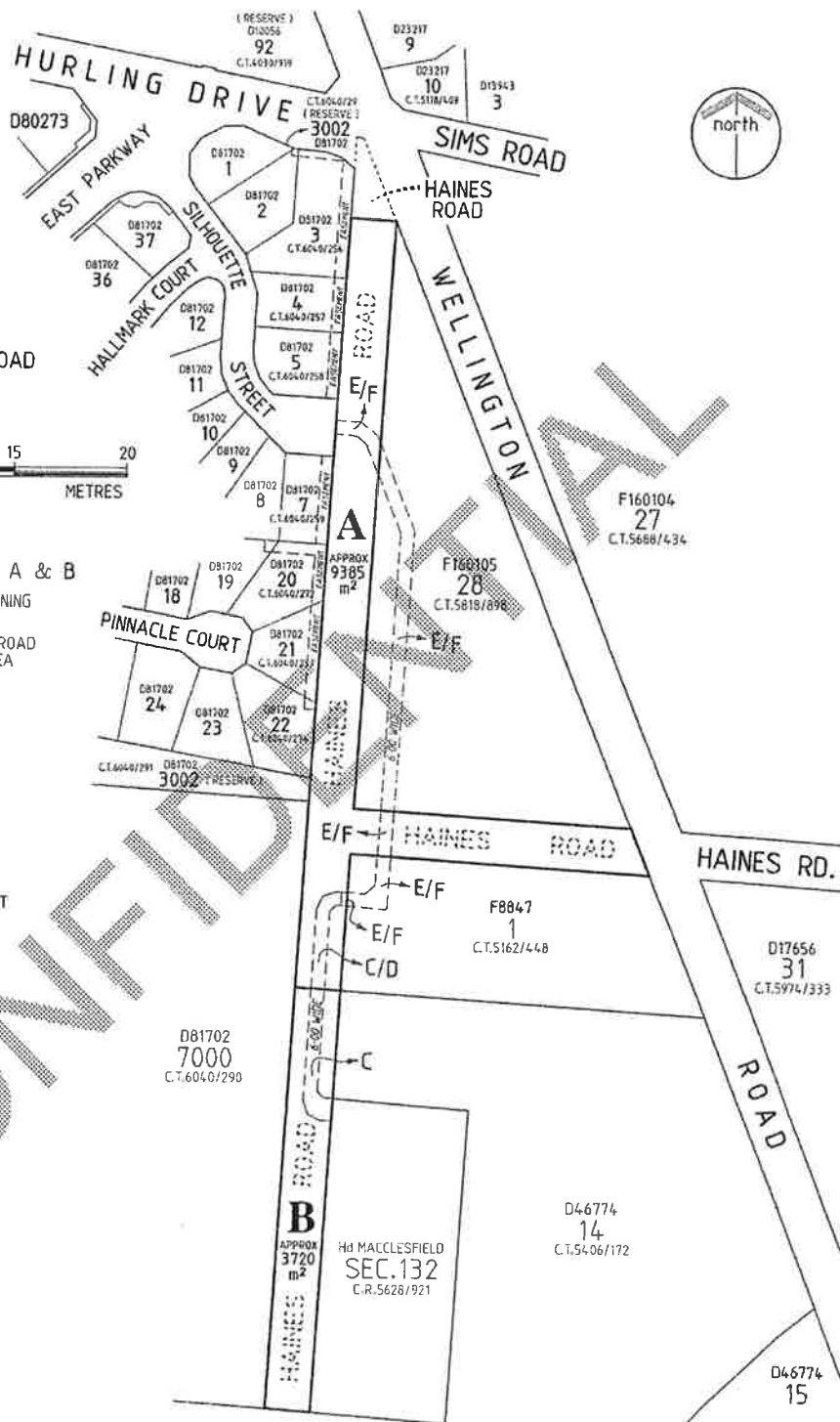
FYFE PTY LTD

SURVEYORS and ENGINEERS

143 FULLARTON ROAD ROSE PARK SA 5067
PHONE (08) 8364 1000 FAX (08) 8364 0904
Brisbane (07) 3208 6566 A.C.N. 062 592 465

Reference 13345-4-5 Dwg No 13345 RU1-r6

QA Rev 06 Date 21/12/09 Drawn FAB SVY



NB EASEMENT DESCRIPTION SUBJECT
TO MINOR VARIATION AT THE
DISCRETION OF THE SURVEYOR GENERAL.

ESSENTIAL CONDITIONS OF OFFER**PROPOSED LAND ACQUISITION OF HAINES ROAD RESERVE****APPROX 9,385 SQUARE METRES****SUBJECT TO COUNCIL APPROVAL**

1. **Vendor:** District Council of Mount Barker
2. **Purchaser:** Wryxon Pty Ltd and Crownco Pty Ltd
(Equal tenants in common) – (Owners of Lot 28 in CT 5818/898)
3. **Description of Land:** Whole of land coloured red and marked “A” on Preliminary Plan (PP/07/0072) prepared by Fyfe Pty Ltd Surveyors dated 20/11/09 (Dwg No. 16612-1-6 RCO Rev 01) (“the Land”)
4. **Purchase Price:** \$645,000.00 plus GST if applicable.
5. **Deposit:** \$75,000.00 by bank cheque on date of Contract.
6. **Balance of Purchase Price:** \$570,000.00 by bank cheque at Settlement Date.
7. **Settlement Date:** Seven days from the date of the notice of confirmation of the road process order appearing in the Government Gazette. (This notice will vest the closed road reserve marked “A” in the Purchaser – Item 2 above).
8. **Costs:** The Purchaser to bear all costs such as survey fees, associated with the proposed merger of the road reserve marked “A” and “B” and in respect of the granting of the proposed easements except for legal costs.

Each party to bear its own legal costs in respect of the Contract for sale and purchase of the Land.
9. **Licence to enter the land:** The Vendor to issue a permit under Section 221 of the Local Government Act 1999 to the Purchaser to enable the Purchaser and its agents and contractors to enter the Land/road reserve marked “A” at any reasonable time for the purpose of conducting surveys, inspections, examinations, tests and approved development works in connection with the Purchaser’s future development proposals on the Land or its adjoining land. No fee will be required for this permit.

The Section 221 permit will be on the Vendor’s standard terms including insurance (Public liability - \$20M), indemnity, removal of any structures etc and will be for a

- 2 -

period commencing on the date of the Contract and ending on the date of the Gazette Notice referred to in Item 7.

All risks associated with the issue of the permit are to be borne by the Purchaser.

10. The Purchaser to arrange for the preparation and submission of a development application to the relevant authority under the Development Act 1993 for the land division as shown in QED Preliminary Concept Plan Project 10521 Drawing No. 001 dated 17th September 2009 within fourteen days of the date of the Contract.
11. If development approval for the land division in Item 10 is not approved by the relevant authority within 3 months of the date that the road process order is made then either party may terminate this Contract and the deposit paid by the Purchaser shall be refunded by the Vendor within 14 days of the date of the decision of the relevant authority.
12. The Vendor to recommence the road process within 14 days of the date of the resolution by the Vendor to approve these Essential Conditions, the road process to include the amendment of the Preliminary Plan (PP/07/00720) referred to in Item 2 as required and public advertisement and statutory consultation in accordance with the Roads (Opening and Closing) Act 1991.
13. The Vendor to consider any representations to the road process arising from public advertisement and statutory consultation and determine whether to make a road process order in respect of the closure of the Haines Road Reserve.
14. Subject to the Vendor determining to make a road process order in accordance with Item 13 the Vendor shall submit the order to the Surveyor-General within three months of it being made.
15. The Purchaser to agree to grant an easement to the Vendor over the land coloured green and blue (northern portion) on Preliminary Plan (PP/07/0072) prepared by Fyfe Pty Ltd Surveyors dated 20/11/09 (Dwg No. 16612-1-6 RCO Rev 01) prior to the submission of the road process order for the closure of Haines Road Reserve to the Surveyor-General. The easement to be granted at the same time as or immediately after the vesting of the road reserve marked "A" in the Purchaser.
16. The Vendor to agree to grant an easement over the northern portion of the area marked "B" in the Preliminary Plan referred to in Item 15 to provide access to "B" and access to Section 132.
17. The Purchaser's surveyor, Fyfe Pty Ltd, will liaise with the Surveyor-General and use its best endeavours to ensure that the road process order is recommended for confirmation to the Minister for Infrastructure but so that such confirmation is not obtained before the date on which the development application referred to in Item 10 is approved by the relevant authority under the Development Act 1993.
18. This Contract is conditional on the following matters:-
 - 18.1 The making of a road process order and confirmation of that road process order by the Minister for Infrastructure.
 - 18.2 The granting of development approval in Item 10.

- 3 -

- 18.3 The deposit of the road plan/closed road certificate by the Registrar-General (subject to confirmation).
19. If the confirmation of the road process order by the Minister for Infrastructure is not obtained within eight calendar months from the date of the Contract, then either party may terminate the Contract and the deposit paid by the Purchaser shall be refunded by the Vendor within fourteen days of the end of that eight month period. (Sunset Clause).
20. The parties may mutually agree to the extension of the period in Item 19 but are not obliged to do so.
21. The above items will be included as Special Conditions as part of the Law Society of SA's Contract for the Sale and Purchase of Land General Conditions.

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