Planning Agreement under section 7.4 of the *Environmental Planning & Assessment Act 1979 (NSW)*

Date

Strathfield Municipal Council

ABN 52 719 940 263

3-5 Bridge Road Homebush West Pty Ltd

ACN 641 485 029

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Contents

Parties **5**

Background **5**

Operative part **5**

1 Definitions 5

2 Interpretation 8

3 Planning Agreement under the Act 9

4 Application of this agreement 9

5 Operation of this agreement 9

6 Contributions to be made under this agreement 10

6.1 Not used 10

6.2 Works 10

6.3 Dedication of Land 10

7 Application of sections 7.11, 7.12 and 7.24 of the Act to the Development 11

8 Registration of this agreement 11

8.1 Developer Interest 11

8.2 Registration of this agreement 11

8.3 Removal from Register 12

8.4 Caveat 12

9 Review of this agreement 12

10 Dispute Resolution 12

10.1 Reference to Dispute 12

10.2 Notice of Dispute 13

10.3 Representatives of Parties to Meet 13

10.4 Further Notice if Not Settled 13

10.5 Mediation 13

10.6 Expert determination 14

10.7 Litigation 15

10.8 No suspension of contractual obligations 15

11 Enforcement 15

11.1 Default 15

11.2 Bank Guarantee 15

11.3 Compulsory Acquisition 17

Draft

11.4 Not used 17

11.5 Restriction on the issue of Certificates 17

11.6 General Enforcement 18

12 Assignment and Dealings 18

12.1 Assignment 18

12.2 Arrangements with Mortgagee 18

12.3 Transfer of Land 18

13 Approvals and consents 19

14 No fetter 19

14.1 Discretion 19

14.2 No fetter 19

14.3 Planning Certificates 19

15 Notices 20

15.1 Notices 20

15.2 Notices sent by email: 20

15.3 Receipt of Notices sent by email 21

16 General 21

16.1 Relationship between parties 21

16.2 Time for doing acts 22

16.3 Further assurances 22

16.4 Joint and individual liability and benefits 22

16.5 Variations and Amendments 22

16.6 Counterparts 22

16.7 Legal expenses and stamp duty 22

16.8 Entire agreement 22

16.9 Representations and warranties 22

16.10 Severability 23

16.11 Invalidity 23

16.12 Waiver 23

16.13 GST 23

16.14 Governing law and jurisdiction 24

16.15 Electronic signature 24

Schedule 1 Works 25

Schedule 2 Construction terms 26

Draft

Schedule 3	**Not used**	**35**
Schedule 4	**Summary of requirements (section 7.4 of the Act) 36**	
Annexure A	**Plan showing Land**	**39**
Annexure B	**Plan showing Dedication Land**	**50**
Annexure C	**Plans showing Works**	**52**

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Agreement

Date

Parties

First party

Name	Strathfield Municipal Council
ABN	52 719 940 263
Contact	The General Manager
Short name	Council

Second party

Name	3-5 Bridge Road Homebush West Pty Ltd
ACN	641 485 029
Contact	The Manager
Short name	Developer

Background

A. The Developer is the owner of the Land.

B. The Development Application for the Development Consent (Current) was accompanied by an offer by the Developer to enter into this agreement to make contributions for public purposes if Development Consent (Current) was granted.

C. This agreement provides for the contributions for public purposes under the Development Consent (Current).

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

agreement means this document and includes all schedules and annexures to it.

Address means a party's address set out in the Notices clause of this agreement.

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement.

Annexure means an annexure to this agreement.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

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Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

(a) Australia and New Zealand Banking Group Limited,

(b) Commonwealth Bank of Australia,

(c) Macquarie Bank,

(d) National Australia Bank,

(e) St George Bank Limited,

(f) Westpac Banking Corporation, or

(g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council.

Bond means an insurance bond from an AAA credit rated party.

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays.

Certificate of Practical Completion means the written certificate confirming the Works, or part of the Works, have been completed to the Council's satisfaction issued under clause 8.1(d) of Schedule 2.

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement.

Construction Certificate means a construction certificate as defined under section 6.4(a) of the Act.

Construction Terms means the terms set out in Schedule 2.

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Dedication Land means that part of the Land to be dedicated to Council in accordance with this agreement, as shown on the plan at Annexure B.

Development means development of the Land authorised by the Development Consent (Current).

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Consent (Current) means the Development Consent on the terms contained in notice of determination of development application DA2016 / 170 / 2 issued by the Council.

Fax Number means a party's facsimile number set out in the Notices clause of this agreement.

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GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST.

Insolvent means, in relation to a party:

(a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;

(b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;

(c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;

(d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within [21] days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;

(e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;

(f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;

(g) an execution or analogous process is levied or enforced against the property of that party;

(h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;

(i) that party disposes of, or threatens to dispose of, a substantial part of its assets;

(j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or

(k) that party is unable to pay the party's debts as and when they become due and payable.

Land means the land comprised in certificate of title auto consol 2697-136 (Lots 29-30 in Section 16 in DP477) and known as 3 Bridge Road, Homebush West, NSW together with 23 / 9481 and known as 5 Bridge Road, Homebush West, NSW.

Law means:

(a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;

(b) any Approval, including any condition or requirement under it; and

(c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

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Occupation Certificate means an occupation certificate as defined under section 6.3 of the Act, and includes an interim Occupation Certificate or a final Occupation Certificate.

Public Road has the same meaning as in the *Roads Act 1993*.

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW).

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth).

Schedule means a schedule to this agreement.

Transferee has the meaning given in clause 12.3.

Works means the work set out in Schedule 1.

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

(a) (**documents**) a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;

(b) (**references**) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;

(c) (**headings**) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;

(d) (**person**) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

(e) (**party**) a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;

(f) (**president, CEO or managing director**) the president, CEO or managing director of a body or Authority means any person acting in that capacity;

(g) (**requirements**) a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;

(h) (**including**) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;

(i) (**corresponding meanings**) a word that is derived from a defined word has a corresponding meaning;

(j) (**singular**) the singular includes the plural and vice-versa;

(k) (**gender**) words importing one gender include all other genders;

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(l) (**parts**) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;

(m) (**rules of construction**) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;

(n) (**legislation**) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;

(o) (**time and date**) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in , Australia, even if the obligation is to be performed elsewhere;

(p) (**joint and several**) an agreement, representation, covenant, right or obligation:

(i) in favour of two or more persons is for the benefit of them jointly and severally; and

(ii) on the part of two or more persons binds them jointly and severally;

(q) (**writing**) a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;

(r) (**replacement bodies**) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;

(s) (**Australian currency**) a reference to dollars or $ is to Australian currency;

(t) (**month**) a reference to a month is a reference to a calendar month; and

(u) (**year**) a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

(a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.

(b) Schedule 4 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

(a) the Development, and

(b) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

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6 Contributions to be made under this agreement

6.1 Not used

6.2 Works

(a) The Developer will carry out the Works in accordance with this agreement, including the Construction Terms and any Development Consent granted for the Works.

(b) The Works or any part of the Works required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works.

(c) The Works or any part of the Works required under this agreement will be taken to have been delivered to Council when the land on which those Works are located is dedicated to Council.

(d) The Works must be delivered to the Council prior to the issue of an Occupation Certificate for the Development or any part of the Development.

(e) The parties agree and acknowledge that the public purposes served by the Works is to:

(i) Improve the public road network that incorporates Loftus Lane; and

(ii) Improve public amenity in the vicinity of the Land and Loftus Lane.

6.3 Dedication of Land

(a) The Developer must dedicate or cause to be transferred to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax.

(b) The obligation to dedicate the Dedication Land will be taken to have been satisfied when either:

(i) a Certificate of Title is issued by Land Registry Services NSW for the whole of the Public Road identifying the Council as the registered proprietor of that land without encumbrances as required by clause 6.3(a); or

(ii) when the Public Road is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 9 of the *Roads Act 1993*.

(c) The Dedication Land must be dedicated or transferred to Council prior to the issue of an Occupation Certificate for the Development or any part of the Development.

(d) The parties agree and acknowledge that the embellishment and dedication of the Dedication Land serve the public purposes of

(i) improving the public road network that incorporates Loftus Lane; and

(ii) improving public amenity in the vicinity of the Land and Loftus Lane.

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7 Application of sections 7.11, 7.12 and 7.24 of the Act to the Development

(a) This agreement does not the application of section 7.11 of the Act to the Development.

(b) This agreement does not exclude the application of section 7.12 of the Act to the Development.

(c) This agreement does not exclude the application of section 7.24 of the Act to the Development.

(d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

8 Registration of this agreement

8.1 Developer Interest

The Developer represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

8.2 Registration of this agreement

(a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.

(b) The Developer, at its own expense, must:

(i) procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date;

(ii) procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration; and

(iii) provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.

(c) The Developer at its own expense will take all practical steps, and otherwise do anything that the Council reasonably requires to procure:

(i) The consent of each person who:

(A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or

(B) is seized or possessed of an estate or interest in the Land,

(ii) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,

(iii) The execution of any documents; and

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(iv) The production of the relevant duplicate certificates of title,

to enable the registration of this agreement in accordance with this clause 8.2.

(d) The Landowner consents to the registration of the agreement in accordance with this clause 8.2.

8.3 Removal from Register

The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

8.4 Caveat

(a) The Developer acknowledges and agrees that:

(i) when this agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;

(ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.

(b) The Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with clause 8.2 and must not lodge any other caveats on the titles to any of the Land, other than in accordance with clause 8.4(c).

9 Review of this agreement

(a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.

(b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

(c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

10 Dispute Resolution

10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

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10.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

(a) The nature of the dispute,

(b) The alleged basis of the dispute, and

(c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 Representatives of Parties to Meet

(a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.

(b) The parties may, without limitation:

(i) resolve the dispute during the course of that meeting,

(ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or

(iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Further Notice if Not Settled

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

(a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);

(b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

(c) The mediator appointed pursuant to this clause 10.5 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 his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;

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(d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;

(e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);

(f) The parties agree to be bound by a 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; and

(g) In relation to costs and expenses:

(i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and

(ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that 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.

10.6 Expert determination

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

(a) The dispute must be determined by an independent expert in the relevant field:

(i) Agreed upon and appointed jointly by the parties; and

(ii) In the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;

(b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;

(c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;

(d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;

(e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and

(f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:

(i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or

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(ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 Litigation

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

11 Enforcement

11.1 Default

(a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

(b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.

(c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 Bank Guarantee

(a) On the execution of this agreement the Developer must provide to the Council a Bank Guarantee in the amount of $90,064 plus GST to secure the performance by the Developer of its obligations under this agreement including:

(i) the carrying out of the Works; and

(ii) causing the dedication, or transfer, of the Dedicated Land to the Council (at no cost to the Council).

(b) The Council may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee, require at any time the Developer to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain rectification of the errors. The Developer must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.

(c) The Council may call on a Bank Guarantee provided under this clause if:

(i) the Developer is in material or substantial breach of this agreement and have failed to rectify the breach within a reasonable period after having been given reasonable notice (which must not be less than 20 Business Days) in writing to do so in accordance with clause 11.1 of this agreement; or

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(ii) the Developer becomes Insolvent.

(d) Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause 11.2(a), the Developer must provide Council with one or more replacement Bank Guarantees (replacement Bank Guarantee) in an amount calculated in accordance with the following:

$$A = \frac{B \text{ x } D}{C}$$

Where:

A is the amount of the replacement Bank Guarantee,

B is the amount of the Bank Guarantee to be replaced,

C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,

D is the CPI for the quarter ending immediately before the date of the replacement Bank Guarantee,

provided A is greater than B.

(e) On receipt of a replacement Bank Guarantee provided under clause 11.2(d), the Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.

(f) At any time following the provision of a Bank Guarantee under this clause 11.2, the Developer may provide the Council with one or more Bank Guarantees (by way of replacement or top up) totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.

(g) Subject to clause 11.2(c), the Council may apply the proceeds of a Bank Guarantee in satisfaction of:

(i) any obligation of the Developer under this agreement that is secured by the Bank Guarantee in accordance with clause 11.2(a); and

(ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.

(h) The Council must promptly return a Bank Guarantee provided under this clause 11.2 to secure the provision of any Works if requested by the Developer and:

(i) a Certificate of Practical Completion has been issued for the item of Works to which the Bank Guarantee relates; and

(ii) the Developer has provided a Bond or Bank Guarantee under clause 8.5 of the Construction Terms (defects liability guarantee) for that item of the Works.

(i) For the avoidance of doubt, the Developer may direct Council in writing to continue to hold a Bank Guarantee in satisfaction of the requirement to submit a

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Bank Guarantee or Bond under clause 8.5 of the Construction Terms for defects liability.

(j) Nothing in this clause 11.2 prevents or restricts the Council from taking any enforcement action in relation to:

(i) any obligation of the Developer under this agreement; or

(ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,

that is not or cannot be satisfied by calling on a Bank Guarantee.

11.3 Compulsory Acquisition

(a) If the Developer does not dedicate the Dedication Land to Council as required by this agreement, the Council may compulsorily acquire the relevant land, in which case the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of $1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may call upon any Bank Guarantee provided under clause 11.2 to cover any costs, including legal costs, incurred by the Council on acquisition of the land.

(b) Clause 11.3(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

(c) Except as otherwise agreed between the Developer and Council, the Developer must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 11.3(a).

(d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land under clause 11.3(a).

(e) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 11.3(a) that are not or cannot be recovered by calling on a Bank Guarantee.

11.4 Not used

11.5 Restriction on the issue of Certificates

(a) In accordance with section 6.8 of the Act and clause 146A of the Regulation the obligations to provide a Bank Guarantee under clause 11.2 must be satisfied prior to the issue of a Construction Certificate for the Development or any part of the Development.

(b) In accordance with section 6.4 of the Act the obligations to:

(i) carry out the Works;

(ii) dedicate the Dedication Land; and

(iii) provide a Bank Guarantee or Bond for any item of the Works for defects liability under the Construction Terms,.

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must be satisfied prior to the issue of an Occupation Certificate for the Development or any part of the Development.

11.6 General Enforcement

(a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.

(b) Nothing in this agreement prevents:

(i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and

(ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

12 Assignment and Dealings

12.1 Assignment

(a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.

(b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.

(c) Any purported dealing in breach of this clause is of no effect.

12.2 Arrangements with Mortgagee

(a) The Developer agrees with the Council that if the Developer mortgages the Land after this agreement is entered into it must use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Developer, and the mortgagee who will be providing finance for the Works so that the mortgagee accepts that the responsibilities set out in this agreement are binding upon the mortgagee in the event that the Developer defaults on the mortgage and the mortgagee takes possession of the Land.

(b) The terms of the adoption of the obligations of the Developer by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Developer.

12.3 Transfer of Land

(a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:

(i) The Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer obligations under this agreement;

(ii) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;

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(iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;

(iv) The Transferee delivers to the Council replacement Bonds or Bank Guarantees as required by this agreement;

(v) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and

(vi) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

13 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to any Development Application, any other application for Development Consent or the Development Consent (Current) (all referred to in this agreement as a "**Discretion**").

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

(a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,

(b) If what is described in paragraph(a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and

(c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

14.3 Planning Certificates

The Developer acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 10.7 of the Act that this agreement affects the Land.

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15 Notices

15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

(a) must be in writing and signed by a person duly authorised by the sender;

(b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this agreement:

(i)	to Strathfield Municipal Council:	65 Homebush Road, Strathfield NSW 2135 Fax: Email: Attention: General Manager
(ii)	to 3 - 5 Bridge Road Homebush West Pty Ltd:	Suite 210, 43 Majors Bay Road, Concord NSW 2137 Fax: Email: Attention: The Director

(c) is taken to be given or made:

(i) in the case of hand delivery, when delivered;

(ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and

(iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and

(d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 Notices sent by email:

(a) A party may serve a Notice by email if the Notice:

(i) includes a signature block specifying:

(A) the name of the person sending the Notice; and

(B) the sender's position within the relevant party;

(ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;

(iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;

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(iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:

(A)	to Strathfield Municipal Council:	Attention: General Manager Email:
(B)	to 3 - 5 Bridge Road Homebush West Pty Ltd:	Attention: The Director Email:

(b) The recipient of a Notice served under this clause 15.2 must:

(i) promptly acknowledge receipt of the Notice; and

(ii) keep an electronic copy of the Notice,

(c) Failure to comply with clause 15.2 does not invalidate service of a Notice under this clause.

15.3 Receipt of Notices sent by email

(a) A Notice sent under clause 15.2 is taken to be given or made:

(i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;

(ii) when the Notice enters an information system controlled by the recipient; or

(iii) when the Notice is first opened or read by the recipient,

whichever occurs first.

(b) If under clause 15.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 Relationship between parties

(a) Nothing in this agreement:

(i) constitutes a partnership between the parties; or

(ii) except as expressly provided, makes a party an agent of another party for any purpose.

(b) A party cannot in any way or for any purpose:

(i) bind another party; or

(ii) contract in the name of another party.

(c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

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16.2 Time for doing acts

(a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 Joint and individual liability and benefits

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

16.5 Variations and Amendments

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.6 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.7 Legal expenses and stamp duty

(a) The Developer must pay the Council's legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs.

(b) The Developer agrees to pay or reimburse the costs and expenses incurred by Council in connection with the advertising and exhibition of this agreement in accordance with the Act.

(c) The Developer agrees to pay Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this agreement.

16.8 Entire agreement

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 Representations and warranties

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

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16.10 Severability

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

16.11 Invalidity

(a) A word or provision must be read down if:

(i) this agreement is void, voidable, or unenforceable if it is not read down;

(ii) this agreement will not be void, voidable or unenforceable if it is read down; and

(iii) the provision is capable of being read down.

(b) A word or provision must be severed if:

(i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and

(ii) this agreement will be void, voidable or unenforceable if it is not severed.

(c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 Waiver

(a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

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

16.13 GST

(a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.

(b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.

(c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

(d) If the Council is obliged to pay any GST on any supply made under or in accordance with this agreement, the Developer indemnifies the Council for the amount of any such payment is required to make.

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16.14 Governing law and jurisdiction

(a) The laws applicable in New South Wales govern this agreement.

(b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

16.15 Electronic signature

(a) In this clause 16.15 , **electronic signature** means a digital signature or other visual representation of a person's handwritten signature or mark placed or typed on a copy of this agreement by electronic or mechanical means (including by using DocuSign or other electronic signing platform agreed between the parties) and **electronically signed** has a corresponding meaning.

(b) The parties consent to this agreement being signed by or on behalf of a party by electronic signature.

(c) Where this agreement is electronically signed by or on behalf of a party, the party warrants and agrees that the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by this agreement.

(d) This agreement may be physically or electronically signed in any number of counterparts which together will constitute one document.

(e) Each party consents to the exchange of counterparts of this agreement by delivery by email to the party or its legal representative or other electronic means of exchange as the parties may agree.

(f) On request, each party must deliver a physical counterpart of this agreement with the handwritten signature or signatures of the party and any written evidence of the authority of a person signing on their behalf, but a failure to comply with this request will not affect the validity of this agreement.

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Schedule 1 Works

The Developer is to construct a footpath, kerb and road, pursuant to the plan showing Works contained in Annexure C, pursuant to the Detailed Design. The Developer and Council acknowledge and agree that the Works are limited to the boundary of the Dedication Land (being the areas cross hatched in blue and yellow in the plan contained in Annexure B).

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Schedule 2 Construction terms

1 Interpretation

For the purposes of this Schedule 2, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply and, unless context indicates a contrary intention:

Builder means any entity contracted under the Construction Contract to carry out the Works.

Construction Contract means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

Defects Liability Period means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Works.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 5.2 of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development.

Superintendent means the Superintendent appointed under any Construction Contract.

2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

(a) any requirements or conditions of any Development Consent; and

(b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.

2.3 The Developer must ensure that the Works carried out under this agreement are carried out:

(a) in accordance with the Development Consent (Current) and any relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and

(b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

3 Costs of Works

All costs of the Works must be borne by the Developer.

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4 Project Management and Contractor Engagement

4.1 The Developer will be responsible for managing the Works.

4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to:

(a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and

(b) request a Council representative to be present at each on-site meeting attended by the Superintendent and to ensure the Council representative is present at the meeting.

5 Design Development and Approvals

5.1 Concept Design

Council and the Developer have worked in consultation with each other to prepare and agree the concept plans for the Works contained in Annexure C.

5.2 Detailed Design

(a) Prior to Works commencing the Developer must provide a copy of the draft Detailed Design to the Council for approval.

(b) Within 28 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.

(c) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.

(d) If the Detailed Design is not completed and agreed within 28 Business Days of Council providing its suggested amendments in accordance with clause 5.2(b) of this Schedule 2, to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:

(i) is consistent with the obligation to carry out the Works and dedicate the Dedication Land under this agreement; and

(ii) is consistent with the Development Consent (Current) and any relevant Development Consent for the Works; and

(iii) does not materially and adversely affect the Development; and

(iv) is not unreasonable.

5.3 Any acceptance by the Council of the Detailed Design under this clause 5 of Schedule 2 is not to be taken as approval of or to any Construction Certificate for the Works.

5.4 Good faith

The parties must act promptly and in good faith to consult in relation to the Detailed Design.

6 Carrying out of Works

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6.1 **Communication**

The Developer must keep Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

6.2 **Standard of Works**

(a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper and tradesman like workmanship when carrying out the Works.

(b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:

(i) Any relevant Australian Standard; and

(ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.

(c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 6.2(b)(ii) of this Schedule 2 from Council if the Council fails to deliver them to the Developer.

(d) The Developer may but is not obliged to reinstate any Works where damage or destruction is as a result of:

(i) Any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this agreement; or

(ii) The use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

6.3 **Damage to people, property & utilities**

(a) The Developer is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this agreement:

(i) all necessary measures are taken to protect people and property;

(ii) unnecessary interference with the passage of people and vehicles is avoided; and

(iii) nuisances and unreasonable noise and disturbances are prevented.

(b) Without limiting clause 6.3(a) of this Schedule, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

7 Inspection

(a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the

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Council does not provide the Inspection Schedule, the Developer must request the Inspection Schedule from the Council prior to the Works commencing.

(b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).

(c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.

(d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:

(i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);

(ii) giving reasonable notice to the Developer;

(iii) complying with all reasonable directions of the Developer; and

(iv) being accompanied by the Developer or a nominee, or as otherwise agreed.

(e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 7(c) or 7(d) of this Schedule 2), notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:

(i) removal of defective or non-complying material;

(ii) demolishing defective or non-complying work;

(iii) reconstructing, replacing or correcting any defective or non-complying work; and

(iv) not delivering any defective or non-complying material to the site of the Works.

(f) If the Developer is issued a direction to carry out further work under clause 7(e) of this Schedule 2, the Developer must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.

(g) If the Developer fails to comply with a direction to carry out work given under 7(e) of this Schedule 2, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.

(h) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under 7(e) of this Schedule 2 does not constitute:

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(i) acceptance by the Council that the Works comply with all Approvals and Laws; or

(ii) an Approval by the Council in respect of the Works; or

(iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

8 Completion

8.1 Practical Completion

(a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.

(b) Within 10 Business Days of receipt of the notice under clause 8.1(a) of this Schedule 2, the Council will carry out an inspection of the Works and will, acting reasonably, either:

(i) provide written certification to the Developer that the Works have been completed; or

(ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.

(c) If the Developer is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule 2, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 8.1(a) of this Schedule 2 for written certification that the Works have been completed.

(d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

8.2 Delivery of documents

(a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of:

(i) all “as built” full-sized drawings, specifications and relevant operation and service manuals;

(ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and

(iii) copies of all Approvals required for use of the land subject to the Works.

(b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land

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subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

8.3 **Assignment of Warranties and Causes of Action**

(a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.

(b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

8.4 **Defects Liability Period**

(a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:

(i) action required to be undertaken by the Developer to rectify that defect (**Rectification Works**); and

(ii) the date on which the defect must be rectified (**Rectification Date**).

(b) The Developer must comply with the Rectification Notice by:

(i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;

(ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and

(iii) carrying out the Rectification Works.

(c) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.

(d) When the Developer considers that the Rectification Works are complete, either the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.

(e) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under clause 8.4(d) of this Schedule 2 and, acting reasonably:

(i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or

(ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.

(f) The Developer must meet all costs of and incidental to rectification of defects under this clause 8.4.

(g) If the Developer fail to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:

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(i) call upon any Bond or Bank Guarantee provided to the Council under clause 8.5 of this Schedule 2 to meet its costs of carrying out Rectification Works; and

(ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.

(h) The Developer must request that Council inspect the Works 28 days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Developer and before to the end of the Defects Liability Period.

(i) If, prior to the end of the Defects Liability Period:

(i) the Developer fails to request the inspection, or

(ii) the Council does not carry out the inspection,

the Council may extend the Defects Liability Period so that the inspection may be carried out.

8.5 **Security for Defects Liability**

(a) Prior to the issue of a Certificate of Practical Completion for each item of the Works the Developer must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 2.5% of the construction costs for the particular item of Works.

(b) The Developer advises, and the Council acknowledges its awareness, that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:

(i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this agreement; and

(ii) the Developer procure an agreement from the Builder that the Council will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.

(c) Within 10 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in clause 8.5(a) of this Schedule 2 for that item of Works (or any remaining balance of it) to the Developer.

(d) Notwithstanding clause 8.4(c) of this Schedule 2, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that defect has been rectified.

(e) Subject to in clause 8.5(d) of this Schedule 2, the Council must deliver the balance of any Bond or Bank Guarantee for the Defects Liability Period to the Developer within 14 days after the Defects Liability Period has ended.

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9 Risk

The Developer undertakes the Works entirely at its own risk.

10 Insurance

(a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):

(i) construction works insurance for the value of the Works;

(ii) public risk insurance for at least $20 million; and

(iii) workers compensation insurance as required by Law.

(b) The Developer must provide evidence of currency of insurance required by clause 10(a) of this Schedule 2 upon request by the Council, acting reasonably, throughout the term of this agreement.

11 Indemnities

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

12 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer have or receive intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

13 Risk of contamination

(a) The Developer acknowledges and agrees:

(i) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;

(ii) it will attend to any necessary remediation at its own costs; and

(iii) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.

(b) Prior to the dedication of any part of the Land to Council, the Developer must provide to Council's reasonable satisfaction, certification by a qualified person, that the land is not contaminated and is suitable for the proposed use.

14 Plans

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The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:

(a) matters affecting Works not capable of identification on or before the date of this agreement; or

(b) by agreement between the parties.

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Schedule 3 Not used

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Schedule 4 Summary of requirements (section 7.4 of the Act)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application – Section 7.4(1) of the Act The Developer has: (a) Sought a change to an environmental planning instrument (b) Made, or propose to make a Development Application (c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies	 ☐ Yes x No x Yes ☐ No ☐ Yes x No
Description of the Development (application)	Development consent DA2016/170/2 involves the demolition of existing structures and construction of a part 3 storey and part 11 storey residential flat building containing 77 units over 3 levels of basement parking.
Description of the land to which the planning Agreement applies – Section 7.4(3)(a) of the Act	the land comprised in certificate of title auto consol 2697-136 (Lots 29-30 in Section 16 in DP477) and known as 3 Bridge Road, Homebush West, NSW together with 23 / 9481 and known as 5 Bridge Road, Homebush West, NSW.
The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(b)	Clause 6 and Schedule 2 of this agreement.
Applicability of sections 7.11 and 7.12 of the Act – Section 7.4(3)(d)	The application of sections 7.11 and 7.12 of the Act is not excluded.
Applicability of section 7.24 of the Act – Section 7.4(3)(d)	The application of section 7.24 of the Act is not excluded.
Mechanism for dispute resolution – Section 7.4(3)(f)	Clause 10 of this agreement.
Enforcement of the Planning Agreement – Section 7.4(3)(g)	Clause 11 and Schedule 2 of this agreement.
Registration of the Planning Agreement – Section 7.4(3)(g)	Clause 8 of this agreement.

Draft

No obligation to grant consent or exercise functions – Section 7.4(9)	Clause 14 of this agreement.

Draft

Executed as an agreement

Executed by **Strathfield Municipal Council** by its duly authorised representative in the presence of:

.....	.....
Signature of witness	Signature of authorised representative
.....	.....
Name of witness *(please print)*	Name of authorised representative *(please print)*

EXECUTED by **3-5 Bridge Road Homebush West Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by:

.....

Signature of sole director

.....

Name of sole director *(please print)*

Draft

Annexure A Plan showing Land

This Annexure A contains DP 477 and DP 9481 that show the Land

Draft

InfoTrack

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CONVERSION TABLE ADDED IN REGISTRAR GENERAL'S DEPARTMENT

DP 477

FEET	INCHES	METRES
5	5 1/2	1.665
5	6 7/8	1.7
5	9	1.755
10	11	3.325
13	-	3.96
15	10	4.825
16	9	5.105
17	6	5.335
23	-	7.01
24	-	7.315
24	8	7.52
31	6	9.6
34	3	10.44
41	-	12.495
41	6	12.65
42	7	12.98
43	-	13.105
43	2	13.155
45	7	13.895
46	9	14.25
47	-	14.325
47	5	14.455
49	-	14.935
49	9	15.165
49	10	15.19
50	-	15.24
50	1	15.265
50	2	15.29
50	5	15.365
50	6	15.39
50	7	15.42
50	8	15.445
51	3	15.62
51	9	15.775
52	2	15.9
53	3	16.23
54	-	16.46
54	5	16.585
54	8	16.66
55	-	16.765
55	7	16.94
55	9	16.995
56	-	17.07
56	6	17.22
56	7	17.245
57	9	17.6
58	2	17.73
58	6	17.83
62	9	19.125
64	3	19.585
66	-	20.115
66	7	20.295
67	-	20.42
68	3	20.805
68	8	20.93
70	6	21.49
70	11	21.615
73	4	22.35
74	10	22.81
77	9	23.7
78	1	23.8
78	6	23.925
80	-	24.385
81	3	24.765
81	5	24.815
84	3	25.68
84	6	25.755
85	9	26.135
88	-	26.82
91	8	27.94
91	10	27.99
93	9	28.575
95	-	28.955
97	8	29.77
98	7	30.05
99	-	30.175
100	-	30.48

CONVERSION TABLE ADDED IN REGISTRAR GENERAL'S DEPARTMENT

DP 477 CONTINUED

FEET	INCHES	METRES
112	6	34.29
116	11	35.635
117	3	35.74
118	1	35.99
118	7	36.145
119	10	36.525
124	8	38
127	9	38.94
129	10	39.575
132	-	40.235
132	7	40.41
133	-	40.54
134	-	40.845
136	6	41.605
138	11	42.34
142	6	43.435
144	9	44.12
148	6	45.265
148	7	45.29
149	10	45.67
152	-	46.33
154	8	47.14
159	8	48.665
160	-	48.77
160	4	48.87
160	9	48.995
161	6	49.225
162	-	49.38
162	2	49.43
162	8	49.58
163	10	49.935
164	-	49.985
165	-	50.29
166	4	50.7
167	8	51.1
167	9	51.13
169	-	51.51
170	4	51.92
170	6	51.97
172	-	52.43
172	4	52.53
174	11	53.31
175	-	53.34
177	3	54.03
178	3	54.33
178	8	54.46
178	11	54.53
179	1	54.58
179	2	54.61
179	5	54.69
179	8	54.76
179	10	54.81
180	-	54.86
181	4	55.27
182	-	55.47
182	8	55.68
182	10	55.73
184	1	56.11
184	8	56.29
185	-	56.39
185	1	56.41
185	5	56.52
185	8	56.59
185	11	56.67
186	9	56.92
188	2	57.35
188	2 3/8	57.36
188	6	57.45
188	10	57.56
189	5	57.73
190	8	58.12
190	11	58.19
191	4	58.32
192	1	58.55
192	7	58.7
192	8	58.72
193	7	59

CONVERSION TABLE ADDED IN REGISTRAR GENERAL'S DEPARTMENT

DP 477 CONTINUED

FEET	INCHES	METRES
193	9	59.06
194	2	59.18
194	9	59.36
195	4	59.54
195	5	59.56
196	4	59.84
196	9	59.97
197	-	60.05
197	5	60.17
197	7	60.22
199	1	60.68
199	10	60.91
200	-	60.96
200	1	60.99
200	8	61.16
201	-	61.26
201	4	61.37
201	6	61.47
201	10	61.52
202	8	61.77
204	3	62.26
205	6	62.64
205	9	62.71
205	11	62.76
207	5	63.22
208	4	63.5
209	6	63.86
210	11	64.29
211	1	64.34
217	5	66.27
218	9	66.68
219	6	66.9
222	8	67.87
225	-	68.58
225	3	68.66
226	8	69.09
227	8	69.39
232	7	70.89
234	6	71.48
241	2	73.51
242	10	74.02
244	6	74.52
246	9	75.21
247	10	75.54
251	2	76.56
254	1	77.44
254	6	77.57
261	2	79.6
264	8	80.67
267	10	81.64
268	8	81.89
273	8	83.41
274	6	83.67
276	9	84.35
279	9	85.27
280	5	85.47
281	2	85.7
282	4	86.06
284	6	86.72
285	1	86.89
287	7	87.66
287	9	87.71
299	-	91.14
306	10	93.52
315	-	96.01
322	6	98.3
325	9	99.29
326	8	99.57
328	6	100.13
337	2	102.77
341	5	104.06
342	5	104.37
392	-	119.48
416	2	126.85
446	10	136.19
489	11	149.33
501	8	152.91

CONVERSION TABLE ADDED IN REGISTRAR GENERAL'S DEPARTMENT

DP 477 CONTINUED

FEET	INCHES	METRES
502	7	153.19
546	-	166.42
573	-	174.65
579	-	176.48
607	6	185.17
620	-	188.98
632	-	192.63
635	-	193.55
643	9	196.22
661	-	201.47
673	-	205.13
675	-	205.74
689	-	210.01
699	-	213.06
716	-	218.24
813	-	247.8
819	-	249.63
851	-	259.38
868	3	264.64
875	-	266.7

AC	RD	P	SQ M
-	-	3/4	19
-	-	19 1/2	493.2
-	-	25 3/4	651.3
-	-	26 1/2	670.3
-	-	28 1/4	714.5
-	-	29 1/4	739.8
-	-	29 1/2	746.1
-	-	30 1/4	765.1
-	-	30 1/2	771.4
-	-	30 3/4	777.8
-	-	31	784.1
-	-	31 1/4	790.4
-	-	32	809.4
-	-	32 1/4	815.7
-	-	32 3/4	828.3
-	-	33	834.7
-	-	33 1/4	841
-	-	33 3/4	853.6
-	-	34 1/4	866.3
-	-	34 1/2	872.6
-	-	34 3/4	878.9
-	-	35	885.2
-	-	35 1/4	891.6
-	-	35 1/2	897.9
-	-	35 3/4	904.2
-	-	36	910.5
-	-	36.2	915.6
-	-	36 1/4	916.9
-	-	36 1/2	923.2
-	-	36 3/4	929.5
-	-	37	935.8
-	-	37 1/2	948.5
-	-	38	961.1
-	-	38 1/4	967.5
-	-	38 1/2	973.8
-	-	38 3/4	980.1
-	-	39	986.4
-	-	39 1/4	992.7
-	-	39 1/2	999.1
-	-	39 3/4	1005
-	1	1/4	1018
-	1	1/2	1024
-	1	3/4	1031
-	1	1	1037
-	1	2 1/4	1069
-	1	2 3/4	1081
-	1	3 1/2	1100
-	1	4	1113
-	1	4 1/4	1119
-	1	4 3/4	1132
-	1	6	1163
-	1	7 1/4	1195
-	1	7 1/2	1201
-	1	8 1/2	1227

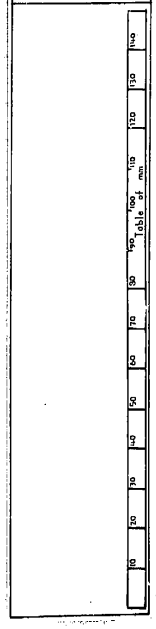
CONVERSION TABLE ADDED IN REGISTRAR GENERAL'S DEPARTMENT

DP 477 CONTINUED

AC	RD	P	SQ M
-	1	9	1239
-	1	9 3/4	1258
-	1	11	1290
-	1	12	1315
-	1	12 1/4	1322
-	1	13 3/4	1359
-	1	14 3/4	1385
-	1	16 1/2	1429
-	1	18	1467
-	1	22	1568
-	1	24 3/4	1638
-	1	34	1872
-	1	35	1897
-	1	35 3/4	1916
-	1	36 1/4	1929
-	2	4	2125
-	2	5 1/2	2163
-	2	8 1/4	2232
-	2	11 1/2	2314
-	2	11 3/4	2321
-	2	15 1/2	2415
-	2	21 1/2	2567
-	2	29 3/4	2776
-	2	34 3/4	2902
-	3	4 3/4	3155
1	-	18	4502
1	1	35	5944
1	2	23 1/2	6665
1	2	37 1/4	7012
1	3	1	7107
1	3	14 1/4	7442
1	3	27	7763
1	3	30 1/2	7853
1	3	30 3/4	7860
1	3	39	8068
2	-	1/2	8106
2	-	5 1/2	8233
2	-	16 3/4	8517
2	-	17 1/4	8530
2	-	23	8675
2	1	32	9915

AC	RD	P	HA
2	2	4 1/2	1.023
3	-	20	1.265
3	-	20 1/2	1.266
5	-	1/2	2.025

I, Bruce Richard Davies, Registrar General for New South Wales, certify that this negative is a photograph made as a permanent record of a document in my custody this 29th day of May, 1979



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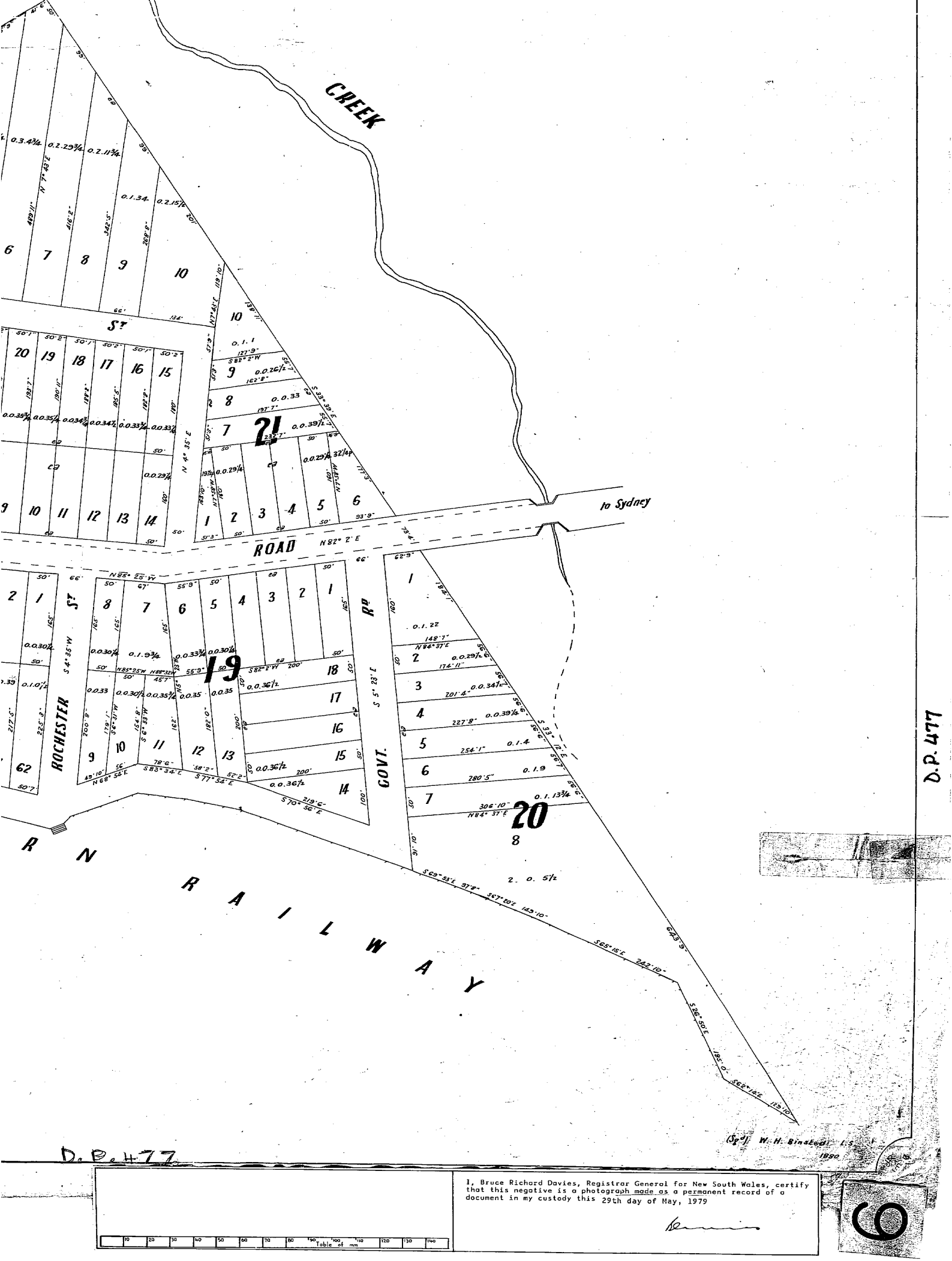

I, Bruce Richard Davies, Registrar General for New South Wales, certify that this negative is a photograph made as a permanent record of a document in my custody this 29th day of May, 1979

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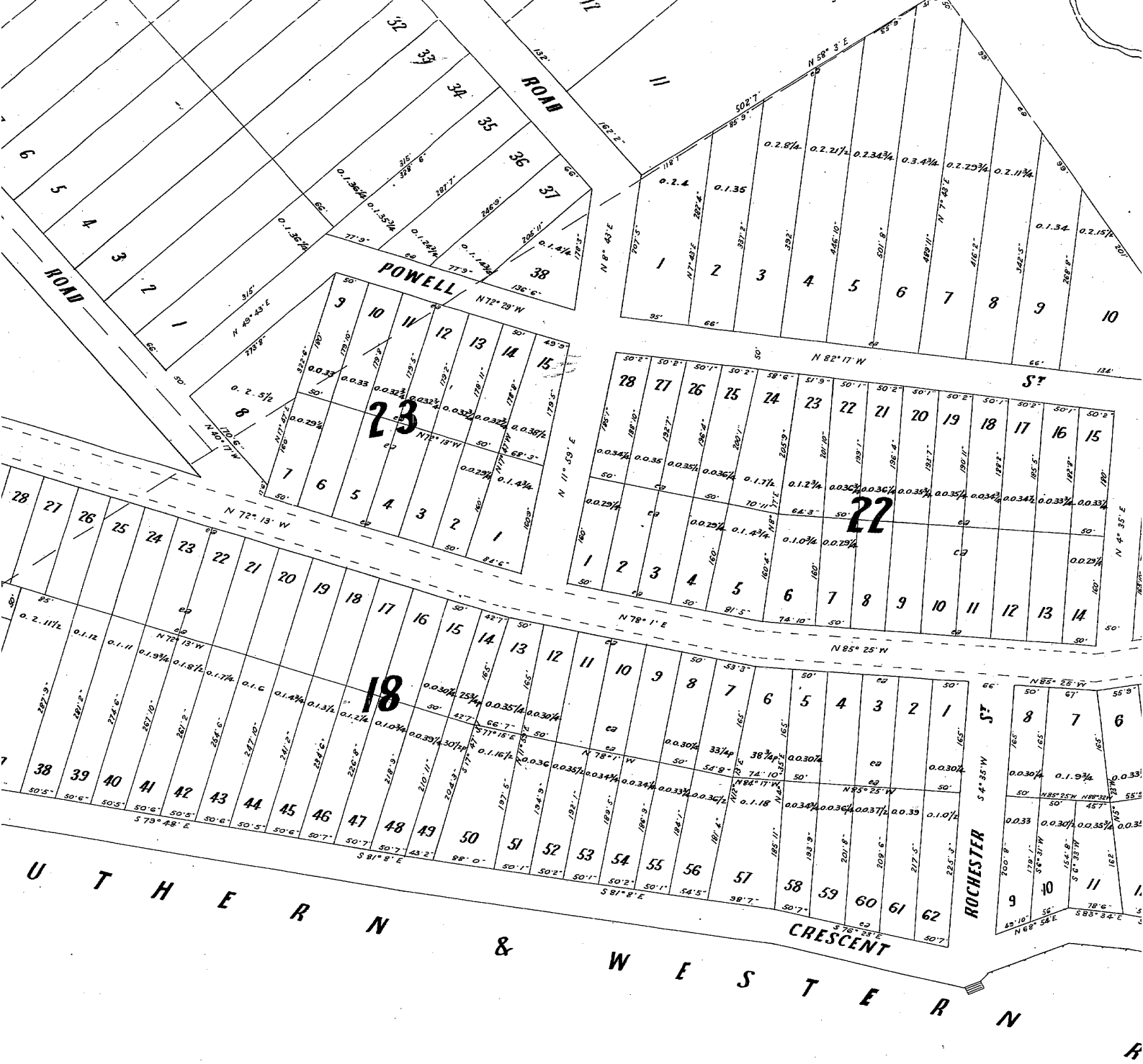

D.P. 477

D.P. 477

I, Bruce Richard Davies, Registrar General for New South Wales, certify that this negative is a photograph made as a permanent record of a document in my custody this 29th day of May, 1979

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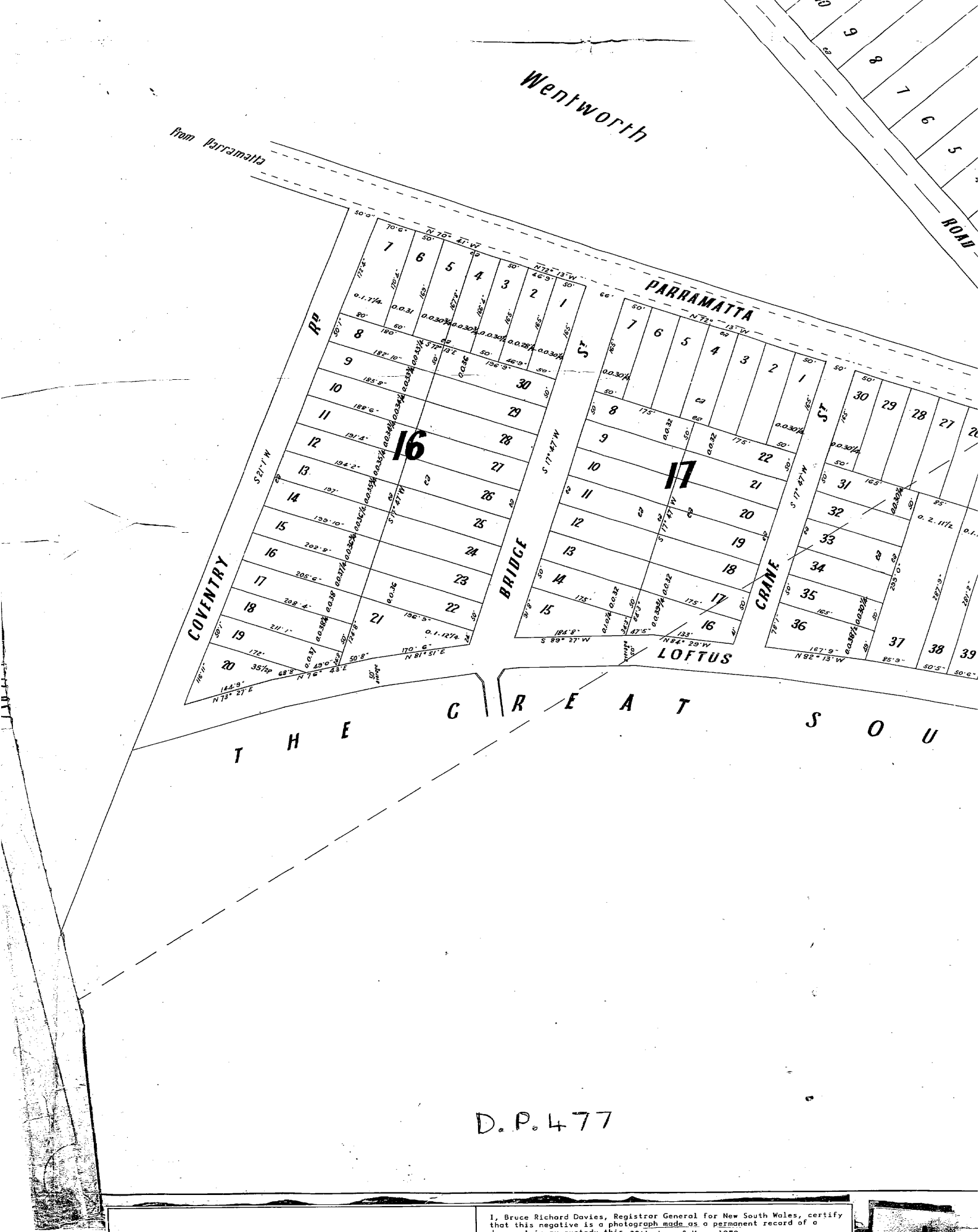

I, Bruce Richard Davies, Registrar General for New South Wales, certify that this negative is a photograph made as a permanent record of a document in my custody this 29th day of May, 1979

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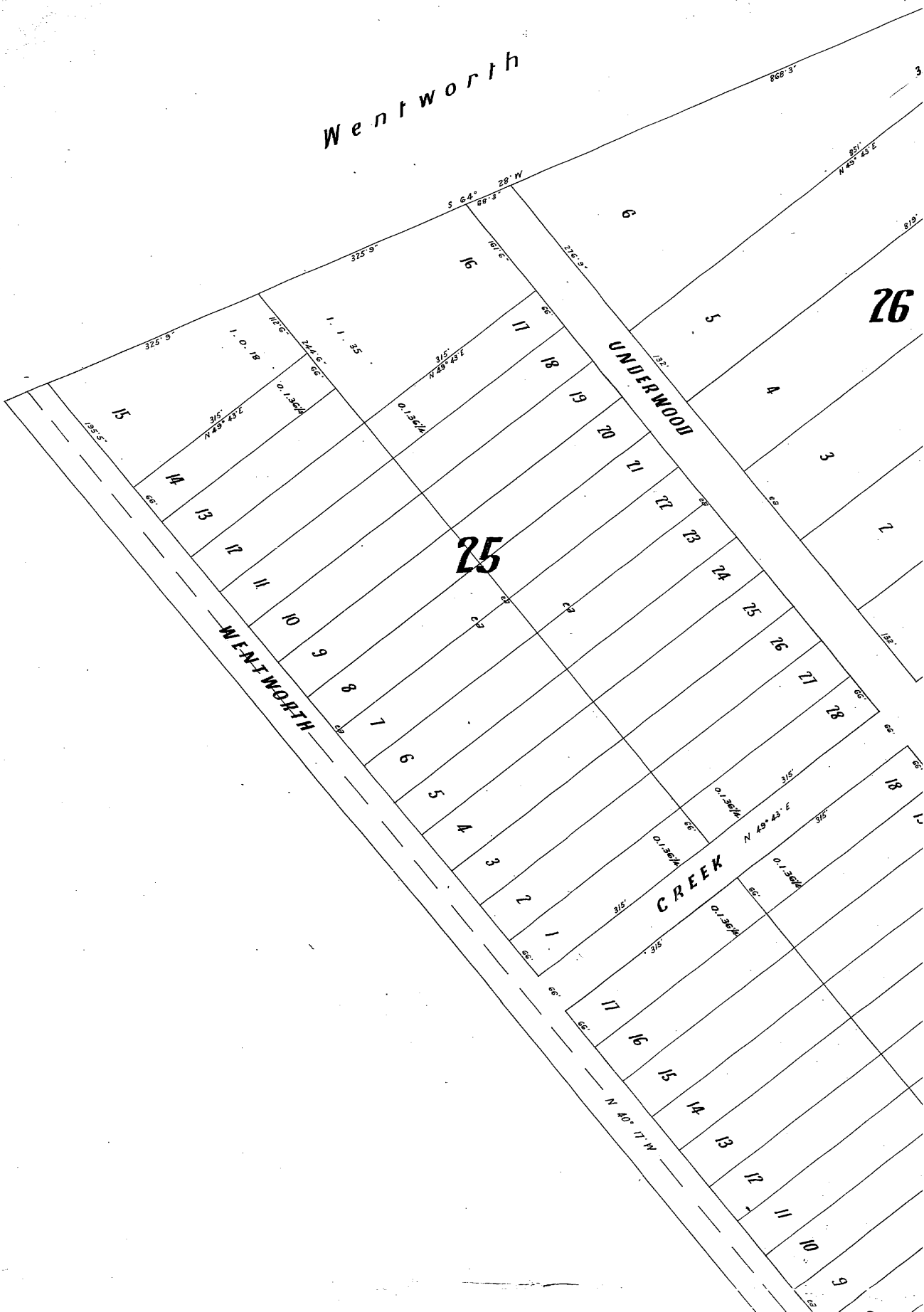
I, Bruce Richard Davies, registered surveyor of New South Wales, certify that this negative is a photograph made as a permanent record of a document in my custody this 29th day of May, 1979

	10	20	30	40	50	60	70	80	90	100	110

Table of mm

D.P. 477

D. P. 477



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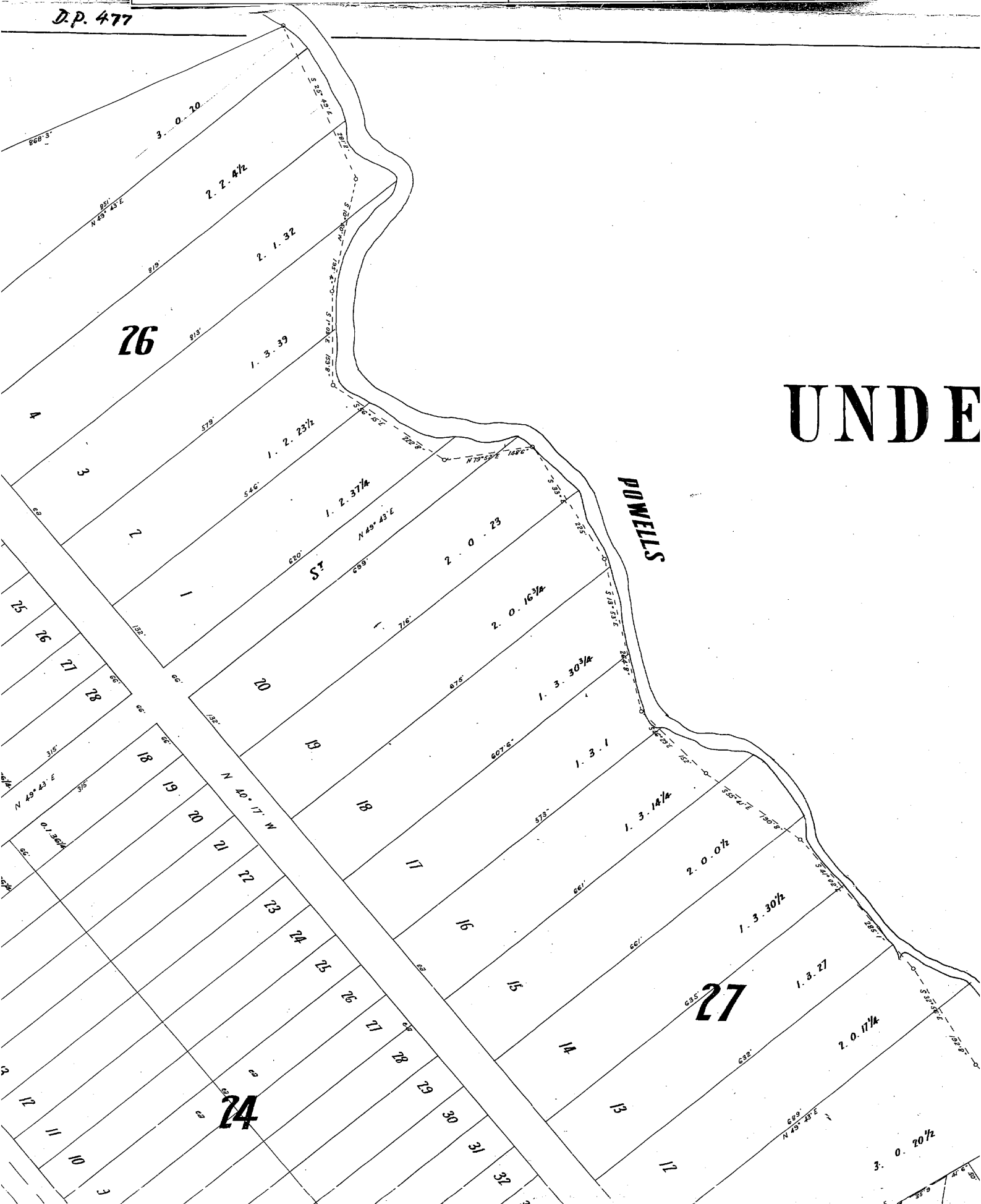
I, Bruce Richard Davies, Registrar General for New South Wales, certify that this negative is a photograph made as a permanent record of a document in my custody this 29th day of May, 1979

D.P. 477



UNDE

Req:R838785 /Doc:DP 0000477 P /Rev:21-Jul-1992 /NSW LRS /Pgs:ALL /Prt:17-May-2022 16:14 /Seq:7 of 7
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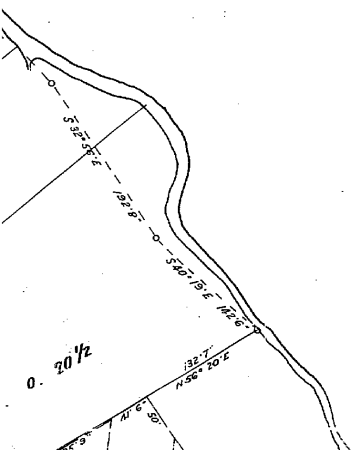
D.P. 477

SUBDIVISION
OF THE
DERWOOD ESTATE
AT
HOME BUSH

Parish of Concord

Scale 100 Feet to an Inch



Req:R850327 /Doc:DP 0009481 P /Rev:19-Feb-2019 /NSW LRS /Prt:19-May-2022 10:55 /Seq:1 of 3
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Municipality of Homebush

A447176. 17.3.19

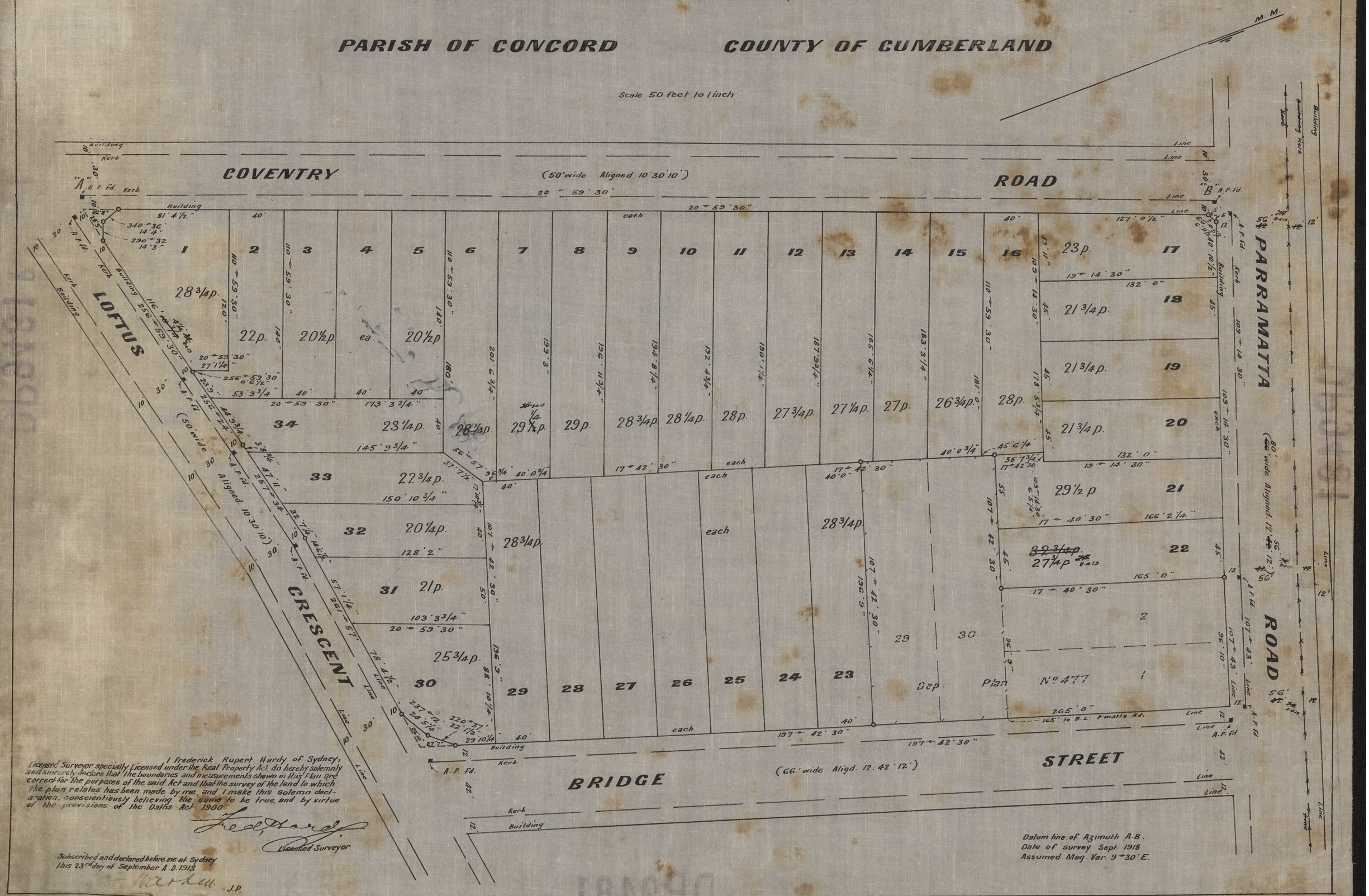
PLAN

DP 9481

of re-subdivision of lots 3 to 28 inclusive, Sec 16 of Deposited Plan No 477

PARISH OF CONCORD COUNTY OF CUMBERLAND

Scale 50 feet to 1 inch



Licensed Surveyor specially licensed I Frederick Rupert Hardy of Sydney, and sincerely declare that the boundaries and measurements shown in this Plan are correct for the purposes of the said Act and that the survey of the land to which the plan relates has been made by me, and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Fred Hardy
Licensed Surveyor

Subscribed and declared before me at Sydney this 23rd day of September A.D. 1918

J.P.

Datum line of Azimuth A.B.
Date of survey Sept 1918
Assumed Mag. Var. 9°30' E.

Req:R850327 /Doc:DP 0009481 P /Rev:19-Feb-2019 /NSW LRS /Prt:19-May-2022 10:55 /Seq:2 of 3
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CONVERSION TABLE ADDED IN
REGISTRAR GENERAL'S DEPARTMENT

DP 9481

FEET	INCHES	METRES
-	6 1/2	0.165
3	3 3/4	1.01
3	8 3/4	1.135
4	6 1/2	1.385
6	-	1.83
6	5 1/4	1.96
6	11 1/2	2.12
7	10 3/4	2.405
7	11	2.415
9	6 3/4	2.915
10	-	3.05
12	-	3.66
14	3	4.345
14	4	4.37
14	6 1/2	4.43
17	10 3/4	5.455
22	1 1/2	6.745
23	9	7.24
24	5 1/4	7.45
26	8	8.13
26	10	8.18
27	1 1/4	8.26
27	7	8.405
28	2	8.585
28	5	8.66
29	10 1/4	9.1
30	-	9.145
32	7 1/4	9.94
35	7 3/4	10.865
37	7 1/2	11.47
40	-	12.19
40	0 3/4	12.21
40	10 1/2	12.46
42	-	12.8
44	9 3/4	13.66
45	-	13.715
45	6 1/4	13.875
47	11	14.605
49	11	15.215
50	-	15.24
50	10 3/4	15.515
53	3 3/4	16.25
55	-	16.765
56	-	17.07
57	1 1/4	17.405
66	-	20.115
78	4 1/2	23.89
80	-	24.385
81	4 1/2	24.805
87	9 3/4	26.765
88	10 1/4	27.085
90	1 1/4	27.465
96	9	29.49
96	10	29.515
96	11 3/4	29.56
103	3 3/4	31.49
112	-	34.14
114	4	34.85
116	4 1/4	35.465
120	-	36.575
127	0 1/2	38.72
128	2	39.065
132	-	40.235
140	-	42.67
145	9 3/4	44.445
150	10 3/4	45.995
165	-	50.29
166	2 1/4	50.65
173	3 3/4	52.83
178	5 3/4	54.4
180	-	54.86
181	-	55.17
183	3 1/4	55.86
185	6 1/4	56.55
187	9 3/4	57.25
190	1 1/4	57.94
192	4 3/4	58.64

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CONVERSION TABLE ADDED IN
REGISTRAR GENERAL'S DEPARTMENT

DP 9481 CONTINUED

FEET	INCHES	METRES
194	8 1/4	59.34
196	6	59.89
196	9	59.97
196	11 3/4	60.04
199	3	60.73
201	6 3/4	61.44
226	10	69.14
265	-	80.77
330	-	100.58
1145	9 3/4	349.24
1192	4 3/4	363.44
1199	3	365.53

AC	RD	P	SQ M
-	-	20 1/4	512.2
-	-	20 1/2	518.5
-	-	21	531.1
-	-	21 3/4	550.1
-	-	22	556.4
-	-	22 3/4	575.4
-	-	23	581.7
-	-	23 1/4	588.1
-	-	25 3/4	651.3
-	-	26 3/4	676.6
-	-	27	682.9
-	-	27 1/4	689.2
-	-	27 3/4	701.9
-	-	28	708.2
-	-	28 1/4	714.5
-	-	28 3/4	727.2
-	-	29	733.5
-	-	29 1/4	739.8
-	-	29 1/2	746.1

Annexure B Plan showing Dedication Land

The Dedication Land means part of the land cross hatched in yellow and blue as shown on the plan below.

Draft

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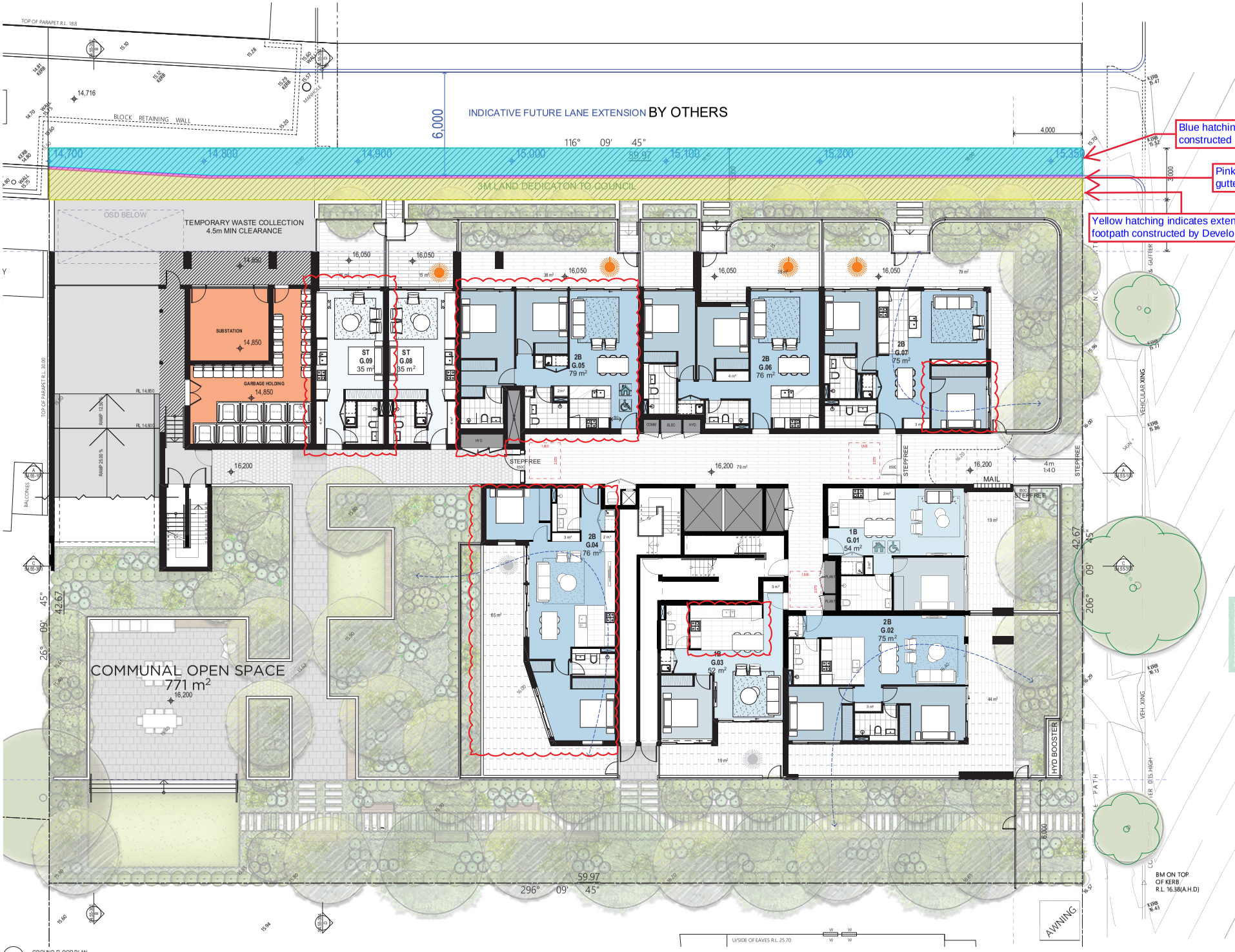
Notes
1. CONTRACTOR MUST VERIFY ALL DIMENSIONS ON SITE BEFORE COMMENCING WORK OR PREPARING SHOP DRAWINGS.
2. DO NOT SCALE DRAWINGS.
3. CONTRACTOR TO CHECK UNDERGROUND SERVICES BEFORE COMMENCING WORKS BY CONTACTING DIAL BEFORE YOU DIG. IF DIAL BEFORE YOU DIG INFORMATION IS PROVIDED WITH THIS DOCUMENTATION IT SHALL BE ASSUMED NOT TO BE CURRENT AND CONTRACTOR SHALL MAKE THEIR OWN ENQUIRES.



1 GROUND FLOOR PLAN
SCALE 1:100

0005263570 28 Jun 2021
Assessor John Boutros
Accreditation No. DMN/16/1763
Address 3-5 Bridge Rd, Homebush, NSW, 2140
5.7 Average star rating
NATIONWIDE HOUSE ENERGY RATING
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Rev	Description	Date	App'd
C	ISSUE FOR S4.55 SUBMSSION	26.05.21	GJ
B	POST DRP MEETING	21.01.21	GJ
A	ISSUE FOR S4.55 SUBMISSION	02.10.20	GJ

Project
3-5 BRIDGE ROAD, HOMEBUSH
3-5 BRIDGE ROAD
HOMEBUSH NSW Australia

URBAN LINK
Business Address:
Level 10, 11-15 Deane Street, Burwood NSW 2134
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Phone Number: +61 2 9745 2014
Nominated Architects:
Zaid Baumelhem Reg no 8008
Youssef El Khawaja Reg no 8933
Nicolas Taubia Reg no 9336

Drawing Title
FLOOR PLANS
GROUND FLOOR

Checked/Approved
G.J

Scale
1:100
@ A1 Sheet Size

Project Number
20-056

Drawing Number
S4.55-101

Revision
C

Status
S4.55 MODIFICATION

Annexure C Plans showing Works

Draft

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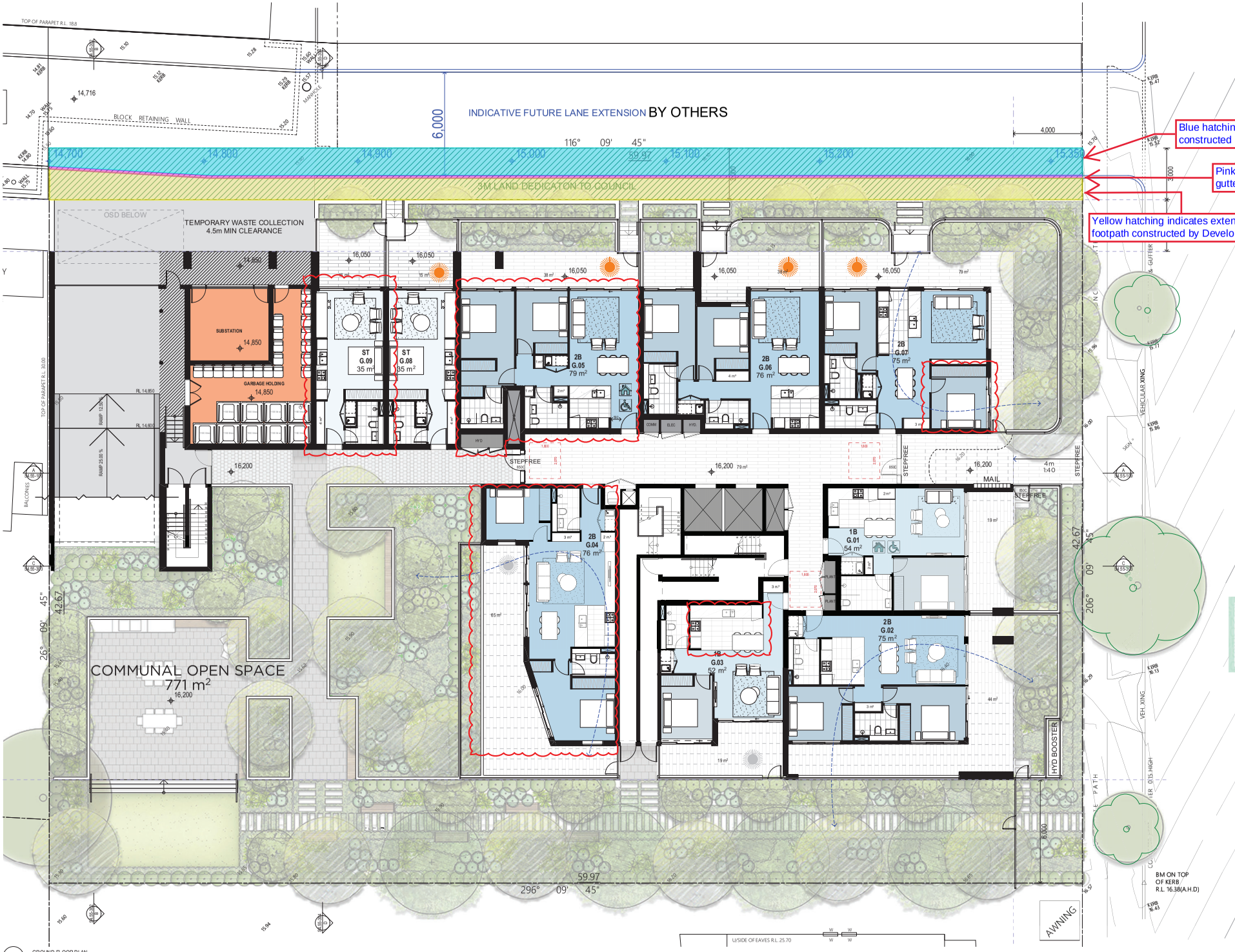

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