

10.5. Proposed Acquisition of Lease by Transport for NSW for construction of Sydney Harbour Bridge Cycleway

AUTHOR	Gary Parsons, Director Open Space & Infrastructure
ENDORSED BY	Therese Cole, Chief Executive Officer
ATTACHMENTS	<ol style="list-style-type: none"> 1. PAN 13 Mar 2024 SHBC North Sydney Council [10.5.1 - 25 pages] 2. Schedule of proposed land transfer NSW Public Works to North Sydney Council [10.5.2 - 3 pages] 3. CONFIDENTIAL - TfNSW Land Acquisition Bradfield Park [10.5.3 - 4 pages] 4. CONFIDENTIAL - Lease offer 15 Mar 2022 Cycleway - Milsons Point - North Sydney Council - S F 2021-314054 [10.5.4 - 3 pages] 5. CONFIDENTIAL - Revised lease offer 5 Aug 2022- Cycleway - Milsons Point - North Sydney Council - S F 2021-314054 [10.5.5 - 2 pages] 6. CONFIDENTIAL - Revised lease offer 5 Dec 2023 - Cycleway - Milsons Point - North Sydney Council - S F 2021-314054 [10.5.6 - 6 pages] 7. CONFIDENTIAL - AVG Valuation Report 24 April 2024- Cycleway Milsons Point [10.5.7 - 47 pages] 8. CONFIDENTIAL - SHL Further Supplementary Opinion 20240422 [10.5.8 - 4 pages] 9. CONFIDENTIAL - Legal Letter of advice - Proposed Compulsory Acquisition - Bradfield Park - 16 03 2022 [10.5.9 - 19 pages]
CSP LINK	<ol style="list-style-type: none"> 2. Our Built Infrastructure 2.1 Infrastructure and assets meet diverse community needs

PURPOSE:

This purpose of this report is to provide Council with an update on the approach by Transport for NSW (TfNSW) to lease land within Bradfield Park for the construction of the Sydney Harbour Bridge Cycleway, and responds to item 1 of the Notice of Motion raised at the Council meeting on the 22 April 2024 regarding the same matter.

EXECUTIVE SUMMARY:

- TfNSW has approached Council to lease land within Bradfield Park for the purpose of constructing the Sydney Harbour Bridge Cycleway.
- Recent legal advice confirms that Council is prohibited from granting a lease to TfNSW for the subject land within Bradfield Park for the construction of the Sydney Harbour Bridge Cycleway. The prohibition results from the application of ss45(2) and 46(1)(b) of the Local Government Act 1993 in conjunction with the Bradfield Park Plan of Management.

- Whilst Council is unable to prevent the compulsory acquisition of the subject land, it can seek compensation under the Land Acquisition (Just Terms Compensation) Act 1991.
- TfNSW have approached Council seeking to enter into arrangements for early access for site investigation and survey works.

Attachments to this report are confidential in accordance with Section 10A (2) of the Local Government Act and the Local Government (General) Regulation 2005 for the reasons listed below:

- (d) commercial information of a confidential nature that would, if disclosed; (i) prejudice the commercial position of the person who supplied it; and*
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.*

RECOMMENDATION:

- 1. THAT** Council note Transport for NSW (TfNSW) has approached Council to lease land within Bradfield Park for the construction of the Sydney Harbour Bridge Cycleway, to be constructed by TfNSW.
- 2. THAT** Council note the legal advice dated 21 April 2024 confirming that Council is prohibited under s45(2) of the Local Government Act from granting a lease to TfNSW for the subject land within Bradfield Park for the construction of the Sydney Harbour Bridge Cycleway.
- 3. THAT** Council note TfNSW's intention to compulsorily acquire land within Bradfield Park for the construction of the Sydney Harbour Bridge Cycleway if it is not able to enter into a lease agreement with Council for the subject land.
- 4. THAT** Council authorise the Council's Chief Executive Officer to complete and submit a claim for compensation in accordance with the Land Acquisition (Just Terms Compensation) Act for the land within Bradfield Park to be compulsorily acquired by TfNSW for the construction of the Sydney Harbour Bridge Cycleway using the independent valuation advice and the recommendations included within the confidential attachment of this report.
- 5. THAT** Council note approaches from TfNSW seeking 'early access' to land within Bradfield Park for site investigation and survey works related to the construction of the Sydney Harbour Bridge Cycleway; and the restrictions on Council's ability to grant a lease or licence for the required access and occupation for these works.

Background

At its meeting on the 22 April 2024 Council resolved as follows;

1. *THAT a report be prepared and presented to the next meeting of Council detailing each:*
 - *contact(s) and arrangement(s) entered into; and*
 - *understanding(s) arrived at**by Council with the NSW Government (including its departments and instrumentalities) concerning Bradfield Park in general and the proposed cycleway in particular since 1 January 2023 and that attached to that report be a copy of each contract and arrangement.*
2. *THAT a report be prepared and presented to the next meeting of Council detailing the actions taken by Council to discharge its obligations with respect to the land that is Bradfield Park as trustee under the trust established by the proclamation dated 19 March 1935.*

The report responds to item 1 of the above Resolution.

On 27 February 2023 Council received a letter from TfNSW seeking landowners' consent to lodge a s60 application under the Heritage Act 1977 for the construction of Sydney Harbour Bridge Cycleway. The letter was the subject of the Extraordinary Meeting of Council on 28 February 2023.

On 5 December 2023, TfNSW wrote to Council proposing a lease to acquire land within Bradfield Park for the purposes of constructing the Sydney Harbour Bridge Cycleway. The proposal was a revised lease based on a previously revised lease offer dated 5 August 2022, which followed an initial lease offer from TfNSW dated 15 March 2022. Copies of this correspondence is provided within the confidential attachments to this report (10.5.4 - 10.5.6).

TfNSW notes in its correspondence that compensation for permanent acquisition would be dealt with upon the completion of the construction of the cycleway, subject to survey.

In February 2024, Council engaged the Australian Valuers Group Pty Ltd (AVG) to assess the rental compensation proposed by TfNSW for the lease of the land. The assessment was prepared having regard to the relevant matters to be considered in Division 1 and under Part 3 of the Land Acquisition (Just Terms Compensation) Act 1991 and Section 2.24 of the Crown Land Management Act 2016.

On 13 March 2024 Council received a Proposed Acquisition Notice (PAN) from TfNSW (dated 8 March 2024), noting that an agreement for the subject land had not been agreed and the intention of TfNSW to commence the compulsory acquisition process of the subject land within Bradfield Park for the construction of the SHB Cycleway.

The correspondence states the following:

Transport for NSW would prefer to reach agreement on terms and conditions for lease of the subject land. However, if this is not achieved by 14 June 2024, a notification of compulsory acquisition (the acquisition notice) will be published in the Government Gazette on or about 21 June 2024.

The acquisition notice will convert your interest into an entitlement to compensation, and any prior offers for lease will be withdrawn. The Valuer General will then determine the amount of compensation for your interest in the land”.

A full copy of this correspondence is attached to this report (10.5.1).

AVG were subsequently requested to revise their report in relation to compensation in response to the PAN received by Council on 13 March 2024. A full copy of this report is provided within the confidential attachments to this report (10.5.7).

On 15 March 2024 Council were contacted by NSW Public Works to investigate revesting of 15 parcels of land within Bradfield Park, which had been resumed by the Minister for Public Works. Council is currently working with NSW Public Works on revesting these lots to Council. A schedule of the proposed land to be transferred is attached to this report (10.5.2).

On 3 April 2024, representatives from TfNSW met with Council officers seeking to enter into arrangements for the site access to conduct site investigation and survey. However, given the legal advice in relation to the restrictions on Council’s ability to grant a lease, TfNSW would need to utilise their statutory powers to achieve the required access and occupation.

Council has received further legal advice dated 21 April 2024. In summary this advice confirms previous advice to Council that:

There was a strong argument available that the development of a publicly accessible cycleway is consistent with the use of the Trust Land for the purposes of public parks and public recreation; and

The Council is not in a position to sell or otherwise dispose of the Trust Land for the purposes of a cycleway because the Trust Land is community land under the Local Government Act 1993 (LG Act) and advises Council to require TfNSW to acquire the land by compulsory acquisition in accordance with the Just Terms Act.

A complete copy of this advice is provided within the confidential attachments to this report (10.5.8).

Report

Given the restrictions in relation to Council’s ability to grant a lease, the subject land would need to be compulsorily acquired by TfNSW.

Whilst acknowledging TfNSW's ability to compulsorily acquire the subject land, there is an option for Council to enter into a negotiated settlement with TfNSW for compensation associated with compulsory acquisition under the s29 of the Land Acquisition (Just Terms Compensation) Act. However, it is noted that this option would be seen as a full and final settlement to Council for the subject land.

The alternative is for Council to submit a compensation claim for the consideration of the NSW Valuer General, leaving TfNSW to compulsorily acquire the land, which would be the process should Council and TfNSW be unable to reach agreement through the negotiation process noted above.

It should be noted that Council would also have the opportunity to appeal the compensation determined by the NSW Valuer General under a submitted compensation claim. This opportunity may not be available to Council should it enter into a negotiated settlement for compensation with TfNSW.



**Transport
for NSW**

TfNSW reference: SF2022/047150; RO SF2021/314054
Julie Connell T. 02 8650 1794

8 March 2024

North Sydney Council
200 Miller Street
NORTH SYDNEY NSW 2060

Proposed acquisition of lease of Lots A to G inclusive in TfNSW Sketch 10378-CA, located at Alfred Street, Milsons Point, from North Sydney Council (registered proprietor) and Indara Infrastructure Pty Limited (formerly known as Axicom Pty Limited), La Capannina Italian Restaurant Pty Limited and Kirribilli Neighbourhood Centre Co-Operative Ltd (lessees) for the Sydney Harbour Bridge Cycleway Project.

Proposed Acquisition Notice

I refer to Transport for NSW's previous correspondence regarding the need to acquire the subject interest in land and to start the compulsory acquisition process if agreement was not reached.

As agreement has not been reached at this time, I am required to give you a proposed acquisition notice and a claim for compensation form in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act). These are enclosed herewith.

The Act also requires Transport for NSW to give a proposed acquisition notice and a claim for compensation form to the owners of other interests in the land. Accordingly, I have given these to Indara Infrastructure Pty Limited (formerly known as Axicom Pty Limited) for its interest in land by lease AQ389180, La Capannina Italian Restaurant Pty Limited for its interest in land by lease AP164031 and to the unregistered lessee, Kirribilli Neighbourhood Centre Co-Operative Ltd.

Transport for NSW would prefer to reach agreement on terms and conditions for lease of the subject land. However, if this is not achieved by 14 June 2024, a notification of compulsory acquisition (the acquisition notice) will be published in the Government Gazette on or about 21 June 2024.

The acquisition notice will convert your interest into an entitlement to compensation, and any prior offers for lease will be withdrawn. The Valuer General will then determine the amount of compensation for your interest in the land. I will write to you again once the Valuer General's determination is made.

To assist in the determination of compensation payable to you, please complete the attached claim for compensation form and return it to the address shown at the bottom of this page by 18 May 2024. If you do not return the claim form, the Valuer General will value your interest without the benefit of your assistance.

1/2

Transport for NSW
4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
W transport.nsw.gov.au | ABN 18 804 239 602

2.

The issue of the proposed acquisition notice does not exclude the possibility of agreement with you for acquisition of the lease of land by negotiated purchase. In this regard, please liaise with Mr Ross Packham, Valuations and Acquisitions Manager on 0438 728 436 or email ross.packham@transport.nsw.gov.au. However, if you would like to discuss the compulsory acquisition process, please contact Julie Connell, Senior Project Officer Statutory Land, on 02 8650 1794.

Yours sincerely



K Durie
Statutory Land Transactions Manager

Form 1

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

SECTION 11

Proposed Acquisition Notice

This is a proposed acquisition notice for the purposes of section 11 of the *Land Acquisition (Just Terms Compensation) Act 1991* ("the Act"), which provides you written notice of the intention of the Acquiring Authority specified below to acquire land by compulsory process.

To: North Sydney Council
200 Miller Street
NORTH SYDNEY NSW 2060

1. Transport for NSW ("the Acquiring Authority") proposes to acquire the land described in the schedule to this notice.
2. The land will be compulsorily acquired as soon as practicable after 90 days from the giving of this notice and, in any event, within 120 days from the giving of this notice, unless you and the Acquiring Authority agree in writing to a longer period (see sections 13 and 14 of the Act). The acquisition will be effected by the publication of an acquisition notice in the NSW Government Gazette.
3. When the acquisition notice is published, the legal effect will be that the interest in the land described in the notice will be vested in the Acquiring Authority and, because your interest in the land will be divested, extinguished or diminished by the acquisition notice, you may be entitled to be paid compensation by the Acquiring Authority.
4. If you wish to claim compensation for the acquisition you are requested to lodge with the Acquiring Authority a claim for compensation. If you wish to lodge a claim for compensation you must lodge it before 18 May 2024.
5. A claim for compensation, should you wish to make one, must be in the form which accompanies this notice and is entitled Claim for Compensation.
6. Compulsory acquisition of land is a significant matter and you may wish to consult a lawyer and consider the terms of the Act as to your rights (a link to a website which has the Act is www.legislation.nsw.gov.au). You may wish to contact the Acquiring Authority for further information and you may find that there is further information publicly available on the website of the Acquiring Authority or at www.propertyacquisition.nsw.gov.au.

SCHEDULE

A lease for a specified period of three years, as described in Memorandum AQ120616 recorded at NSW Land Registry Services, of:

Lots A, B and E in TfNSW Sketch 10378-CA, being part of the land vested in North Sydney Council by notification in Government Gazette No. 66 of 29 March 1935, folios 1346 and 1347;
Lot C in TfNSW Sketch 10378-CA, being the whole of the land in Certificate of Title 3/904848;
Lot D in TfNSW Sketch 10378-CA, being part of the land in Certificate of Title 1/743859;
Lot F in TfNSW Sketch 10378-CA, being part of the land in Certificate of Title 18/54205; and
Lot G in TfNSW Sketch 10378-CA, being part of the land in Certificate of Title 1/873687.



K Durie
Statutory Land Transactions Manager
Transport for NSW
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

8 March 2024

(TfNSW Papers: SF2022/047150; RO SF2021/314054)



LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

CLAIM FOR COMPENSATION

If you wish to claim compensation for the compulsory acquisition of your interest in land, you will need to make a claim for compensation using this form. Compulsory acquisition of land is a significant matter and you may wish to seek legal, valuation or other independent advice when completing this form.

The Proposed Acquisition Notice (PAN) will specify the period of time within which the Acquiring Authority requires you to return this form. You will have a minimum of 60 days from the date you receive the Acquiring Authority's PAN to submit the completed claim for compensation form to the address below, or directly to the Valuer General at Just_Terms@property.nsw.gov.au. A valuer acting for the Valuer General will then contact you to discuss your compensation claim.

If you are entitled to compensation, the Valuer General will determine an amount of compensation for you whether or not you submit a claim (provided that the Acquiring Authority or the Valuer General is aware that you hold an interest in the land). However, making a claim will help to ensure that your views on compensation, including any issues or concerns you have, are considered by the Valuer General.

It is an offence under Part 5A of the *Crimes Act 1900* to make a false or misleading statement in this form.

You are required to complete a Statutory Declaration at the end of this form declaring or affirming that the information you provide in this form is correct. The Statutory Declaration must also be signed by an authorised witness, being a person referred to in section 21(1) of the *Oaths Act 1900*. These persons are the Registrar General, a Deputy Registrar General or any Justice of the Peace, notary public, commissioner of the court for taking affidavits, Australian legal practitioner authorised by section 27(1) of the *Oaths Act 1900* to take and receive any affidavit, or other person by law authorised to administer an oath.

This form consists of the three Parts.

- **Part A** must be completed by the Acquiring Authority.
- **Part B** must be completed by the Acquiring Authority. You should check that the Acquiring Authority has completed Part B correctly and note any corrections on the form.
- **Part C** must be completed by you, the claimant.

PART A

TO BE COMPLETED BY THE ACQUIRING AUTHORITY

This section is to be completed by the Acquiring Authority.

YOUR PROPOSED ACQUISITION
NOTICE IS DATED (DD/MM/YYYY)

8 March 2024

PLEASE SEND YOUR COMPLETED CLAIM
FORM BY (DD/MM/YYYY)

18 May 2024

PLEASE SEND YOUR COMPLETED CLAIM FORM TO

Attention

Statutory Land Transactions Manager

Acquiring Authority

Transport for NSW

ADDRESS

Street number and name

4 Parramatta Square, 12 Darcy Street

Suburb

Parramatta

State

NSW

Postcode

2150

Email

compulsory.acquisition@transport.nsw.gov.au

Telephone

(02) 8650 1794 (Julie Connell)

ALTERNATIVELY YOU CAN SEND THE FORM TO THE VALUER GENERAL NSW

Email: Just_Terms@property.nsw.gov.au

Telephone: 1800 110 038 or (02) 9860 5211

In the event that it is not possible to submit this claim for compensation form for any reason before the date required, please contact the Valuer General as soon as possible.

PART B

TO BE COMPLETED BY THE ACQUIRING AUTHORITY

This section is to be completed by the Acquiring Authority. Claimants should read the information and, if you think any of the information about you is incorrect, please note this on the form.

1. CLAIMANT NAME AND CONTACT ADDRESS

Family/Surname of claimant

Given name of claimant

OR Corporation name and ACN

ADDRESS:

Street number and name

Suburb

State

Postcode

Email

Telephone

2. DESCRIPTION OF LAND AFFECTED BY COMPULSORY ACQUISITION

ADDRESS

Unit number/Street number/Property number (include Lot number, if applicable)

Street name

Suburb

State

Postcode

LAND TITLE DETAILS

Lot number

Lot 3
 Lot 1
 Lot 18
 Lot 1
 Land vested in North Sydney Council by notification in Government Gazette No. 66 of 29 March 1935, folios 1346 and 1347.

Deposited Plan / Strata Plan

Deposited Plan 904848
 Deposited Plan 743859
 Deposited Plan 54205
 Deposited Plan 873687; and
 Land vested in North Sydney Council by notification in Government Gazette No. 66 of 29 March 1935, folios 1346 and 1347.

Title Reference

Certificate of Title 3/904848
 Certificate of Title 1/743859
 Certificate of Title 18/54205
 Certificate of Title 1/873687; and
 Land vested in North Sydney Council by notification in Government Gazette No. 66 of 29 March 1935, folios 1346 and 1347.

INTEREST IN THE LAND IDENTIFIED ABOVE TO BE ACQUIRED (Please tick the appropriate box)

- Acquisition of the whole of the claimant's land or interest in the land
- Acquisition of part of the claimant's land or interest in the land
- Acquisition of a new interest (such as a lease or an easement) that will affect the claimant's land
- Other – Please provide a brief description:

A lease for a specified period of three years, as described in Memorandum AQ120616 recorded at NSW Land Registry Services, of:

Lots A, B and E in TfNSW Sketch 10378-CA, being part of the land vested in North Sydney Council by notification in Government Gazette No. 66 of 29 March 1935, folios 1346 and 1347;

Lot C in TfNSW Sketch 10378-CA, being the whole of the land in Certificate of Title 3/904848;

Lot D in TfNSW Sketch 10378-CA, being part of the land in Certificate of Title 1/743859;

Lot F in TfNSW Sketch 10378-CA, being part of the land in Certificate of Title 18/54205; and

Lot G in TfNSW Sketch 10378-CA, being part of the land in Certificate of Title 1/873687.

PART C

**TO BE COMPLETED BY THE CLAIMANT
(THE PERSON CLAIMING COMPENSATION)**

1. CLAIMANT’S INTEREST IN THE LAND

An “interest” in land is defined in the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act). This includes where a person owns the land and is recorded on the title to the land as the “registered proprietor”. However, there are many other ways a person can have an interest in land, including as the mortgagee of the land (for example, a bank that has lent money to the registered proprietor to buy the land and has a mortgage as security for the loan repayment), as a tenant occupying the land under a lease or as a person with the benefit of an easement (for example, a neighbour with registered access rights over the land).

Please tick the box that describes your interest in the land.

- Registered proprietor of the land**
A registered proprietor is the owner of the land and is recorded on the title to the land.

- Mortgagee**
A mortgagee is a bank, financial institution or other person that has lent money to the registered proprietor of the land (or has refinanced a loan) and has a mortgage as security for the loan repayment.

- Lessee**
A lessee is a person (including a residential tenant) who leases the land or a building on the land from the registered proprietor.

- Licensee**
A licensee is a person (who is not a lessee or residential tenant) with permission under licence or other agreement to occupy or use land. Please note that in most instances a licence is unlikely to be an “interest” in land as defined in the Act.

- Other**
If your interest in the land to be acquired does not fall into the above categories, please outline your interest below.

If you ticked the box “Other” please provide full details of your interest in the land.
For example, you may have an easement for access, the benefit of a restriction on the use of the land, or interest under a Contract for Sale and Purchase of Land.

Is your principal place of residence located on the land?

- Yes No

NOTE that if your interest is not registered on the title to the land, you will need to provide written evidence or other proof of the interest claimed. This evidence may include copies of signed documents to show a legally valid interest.

2. ARE YOU AWARE OF ANY OTHER PERSON WHO HAS AN INTEREST IN THE LAND?

Please note that a "person" may include an individual, a corporation or other entity.

PLEASE TICK THE APPROPRIATE BOX

- Yes. Please proceed to question 3. No. Please proceed to question 4.

Please include details of both registered and unregistered interests in the land to be acquired. Please do not assume the acquiring authority will know of other interests in the land.

For example:

- A purchaser under a signed, but not yet settled contract to purchase the land.
- A person who has agreed to lease the land or a building on the land but does not occupy the land or building until the land is subdivided or building fit-out is completed.
- A person occupying the land or building on the land without a signed lease or agreement, or even if there is a signed document, it is not registered on the title to the land.
- A person with a right to access the land even though it is not registered on the title to the land.
- A person or corporation under a mortgage which is not registered on the title to the land.

3. PLEASE PROVIDE THE NAME AND ADDRESS OF THE PERSON/S.

PERSON 1

Family/Surname

Given name

OR Corporation name and ACN

Interest in the land

Address

Street number and name

Suburb

State

Postcode

Email

Telephone

PERSON 2

Family/Surname

Given name

OR Corporation name and ACN

Interest in the land

Address

Street number and name

Suburb

State

Postcode

Email

Telephone

PERSON 3

Family/Surname

Given name

OR Corporation name and ACN

Interest in the land

Address

Street number and name

Suburb

State

Postcode

Email

Telephone

NOTE If there are additional persons with an interest in the land please include their details as an attachment to the form

4. AMOUNTS CLAIMED

The Valuer General will determine the amount of compensation to be offered to you for the compulsory acquisition of your interest in the land or the acquisition of the new interest in the land.

Section 55 of the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act) sets out the relevant matters to be considered by the Valuer General in determining the amount of compensation*. You should consider each of the following heads of compensation and, where appropriate, indicate the amount claimed.

For more information about each of the heads of compensation, please see sections 55 – 60 of the Act.

A	Market value of the land on the date of the acquisition See section 56 for the definition of market value of land	\$
B	Any special value of the land to the claimant on the date of its acquisition See section 57 for the definition of special value of land	\$
C	Any loss attributable to severance See section 58 for the definition of loss attributable to severance of land	\$
D	Any loss attributable to disturbance See section 59 for the definition of loss attributable to disturbance of land	\$
E	The disadvantage resulting from relocation See section 60 for the definition of disadvantage resulting from relocation Note: Complete this section if the compulsory acquisition will result in the need to relocate your principal place of residence. The maximum statutory amount is \$91,560 (as at 1 July 2023).	\$

F	Any increase or decrease in the value of any other land of the claimant at the date of the acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired	\$
TOTAL COMPENSATION CLAIMED		\$

* Section 55 of the Act does not apply to all compulsory acquisitions (for example, compulsory acquisitions where sections 204 – 206 of the *Roads Act 1993* or section 2.24 of the *Crown Land Management Act 2016* apply).

5. SUPPORTING DOCUMENTS

Please list below descriptions of any documents that supports the amounts claimed as compensation, and attach them to this claim for compensation form.

For example, these may include stamp duty receipts, business records, relocation expense quotes, proof of length of residency, personal statements regarding your non-financial loss as a result of having the land acquired.

Are there any other relevant issues that you wish to raise in support of your claim?

6. PLEASE PROVIDE DETAILS OF YOUR SOLICITOR OR AGENT (if applicable)

Name of Solicitor or Agent

Name of Firm

ADDRESS

Street number and name

Suburb

State

Postcode

Email

Telephone

STATUTORY DECLARATION
OATHS ACT 1900, NSW, NINTH SCHEDULE

I, _____, of _____
[name of declarant] [residence]

do hereby solemnly declare and affirm that the information supplied by me / us in response to questions 1 to 6 above is correct.

And I make this solemn declaration, as to the matters aforesaid, according to the law in this behalf made – and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Declared at: _____ on _____
[place] [date]

[signature of declarant]

in the presence of an authorised witness, who states:

I, _____, a _____
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it: [* please select the text that does apply]

*I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and

*I have known the person for at least 12 months OR *I have confirmed the person's identity using an identification document and the document I relied on was

[describe identification document relied on]

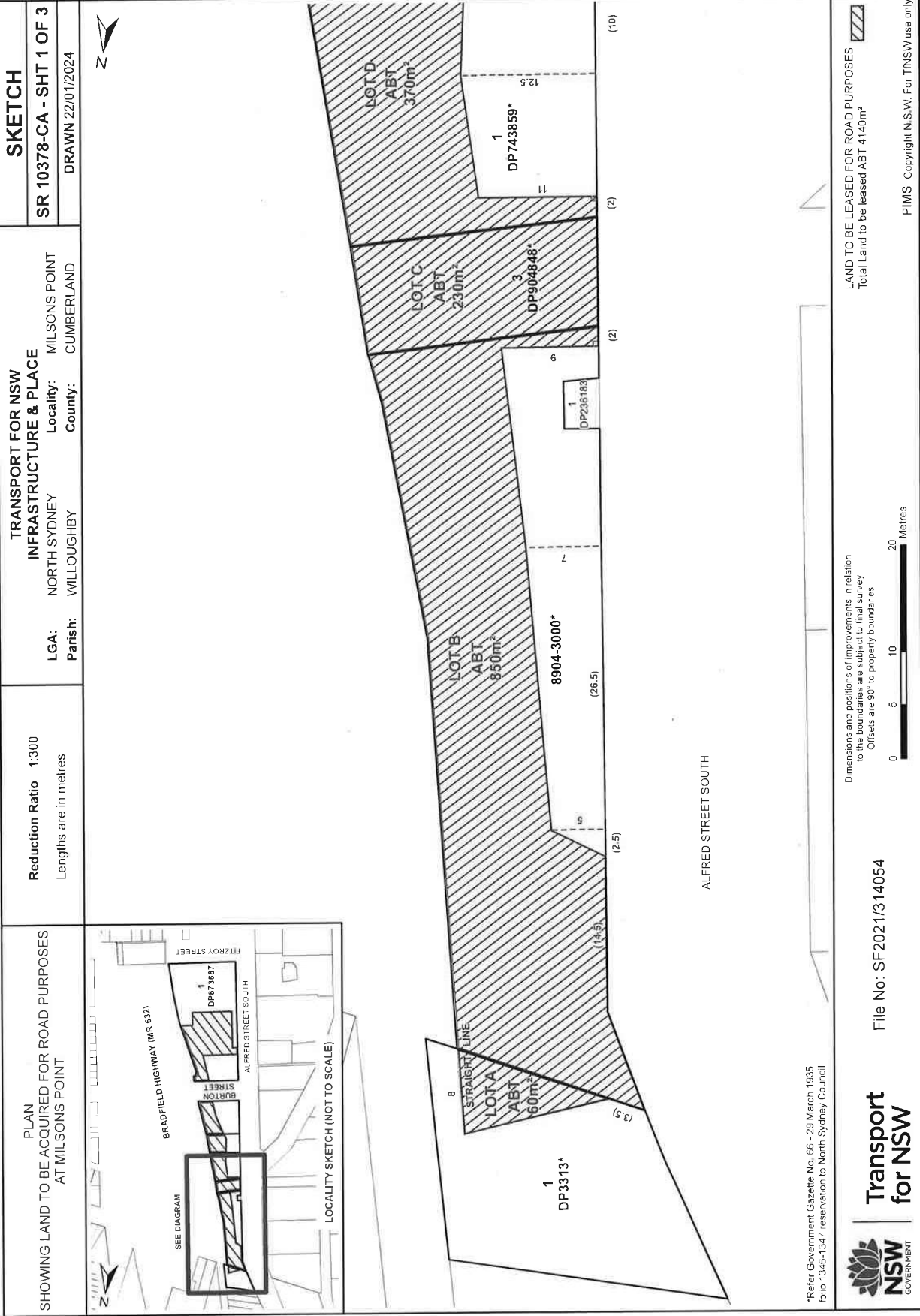
[signature of authorised witness]

PLEASE SEND THIS FORM AND ANY SUPPORTING DOCUMENTS TO:

THE ACQUIRING AUTHORITY

OR

**THE VALUER GENERAL
BY THE DATE LISTED ON PAGE 1 AND TO THE
RELEVANT ADDRESS LISTED ON PAGE 2**

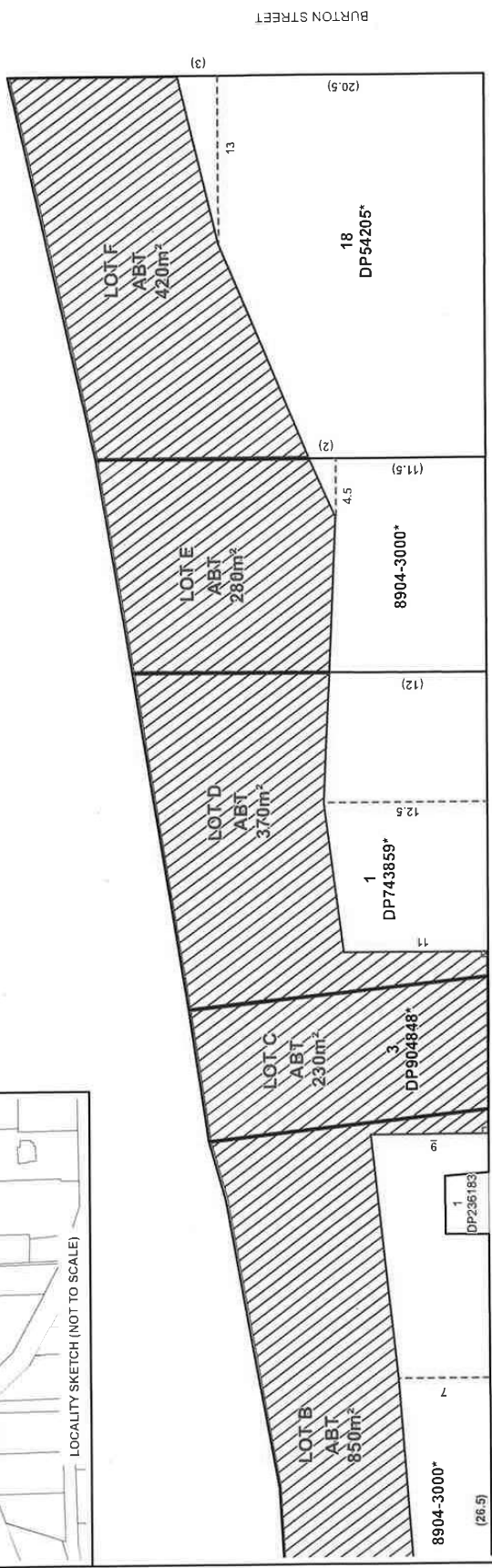
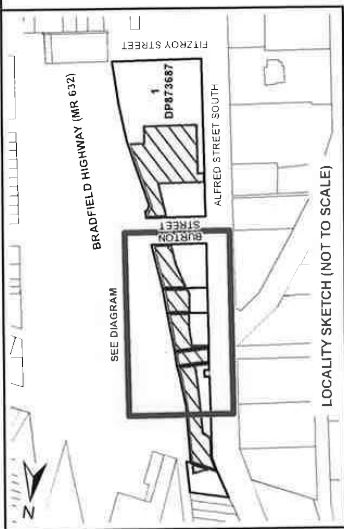


*Refer Government Gazette No. 66 - 23 March 1935 folio 1346-1347 reservation to North Sydney Council



Transport for NSW

<p>SHOWING LAND TO BE ACQUIRED FOR ROAD PURPOSES AT MILSONS POINT</p>	<p>Reduction Ratio 1:300 Lengths are in metres</p>	<p>TRANSPORT FOR NSW INFRASTRUCTURE & PLACE LGA: NORTH SYDNEY Parish: WILLOUGHBY Locality: MILSONS POINT County: CUMBERLAND</p>	<p>SKETCH</p>
			<p>SR 10378-CA - SHT 2 OF 3 DRAWN 22/01/2024</p>



*Refer Government Gazette No. 66 - 29 March 1935 folio 1346-1347 reservation to North Sydney Council



Transport for NSW

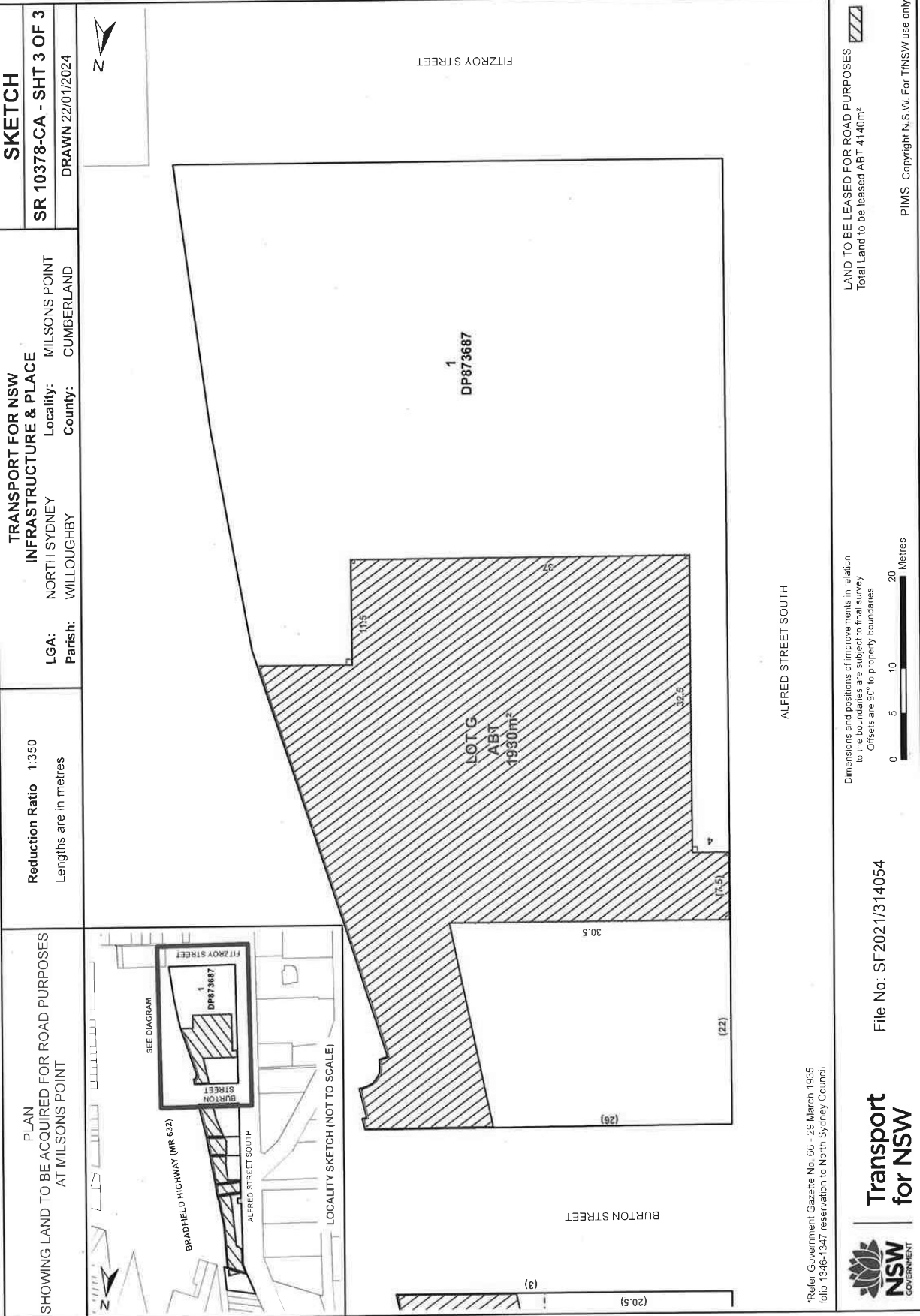
File No: SF2021/314054

Dimensions and positions of improvements in relation to the boundaries are subject to final survey. Offsets are 90° to property boundaries.



LAND TO BE LEASED FOR ROAD PURPOSES
Total Land to be leased ABT 4140m²

PIMS Copyright N.S.W. For TINSW use only



*Refer Government Gazette No. 66 - 29 March 1935 to 10378-1347 reservation to North Sydney Council



Transport for NSW

Form: 16LM
Release: 24

MEMORANDUM

New South Wales
Section 80A Real Property Act 1900



AQ120616L

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(B) LODGED BY

Document Collection Box 556X	Name, Address or DX, Telephone, and Customer Account Number if any		CODES LM CM MM GM BM
	LLPN: 123406G TRANSPORT FOR NSW PO BOX 973 PARRAMATTA CBD NSW 2124		
Reference:		SF2020/053126	

(B) APPLICANT

TRANSPORT FOR NSW

(C) The applicant requests the Registrar General to record this memorandum, comprising 8 pages including this page, which contains provisions deemed to be incorporated in any instrument which refers to it.

- (D) i For option to renew see clause NOT APPLICABLE
- ii For option to purchase see clause NOT APPLICABLE

(E) Signature of applicant's representative:

Name of signatory:

Karen DURIE

Capacity of signatory (if applicable):

Manager, Compulsory Acquisition & Road Dedication
Pursuant to Delegation BK 4623 No 148

Date: 21 May 2020

FOR THE PROVISIONS CONTAINED IN THIS MEMORANDUM SEE ANNEXURE

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ANNEXURE A

MEMORANDUM OF LEASE.

RECITALS

- A The Lessor is the proprietor of the freehold interest in the Land.
- B Transport for NSW (TfNSW) has compulsorily acquired a lease of the Land for the Term and upon the conditions set out in this Lease.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Lease, unless inconsistent with or repugnant to the context, the following words and expressions shall have the respective following meanings:

“Authorised User” means TfNSW and every person authorised by TfNSW, including but not limited to the invitees, contractors, sub-lessees, licensees and the duly authorised employees or representatives of TfNSW or any contractors engaged for or on behalf of TfNSW;

“Authority” means a Commonwealth, State or local government authority or department, a Minister, body, instrumentality, trust or public authority in the exercise of a governmental regulatory function;

“Commencing Date” means the date on which the notice of acquisition as referred to in section 20 of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) is published in the New South Wales Government Gazette;

“Dilapidation Report” means an investigation of the physical condition of the Land as at the Commencing Date, including but not limited to:

- (a) the state of repair of the Land;
- (b) the structural condition of the Land and the sub-surface of the Land and any improvements on the Land; and
- (c) the environmental condition of the Land;

“Land” means any land which is the subject of this Lease;

“Lease” means this lease and includes all annexures, appendices and schedules to this lease;

“Lessor” means each and every person seised of the freehold in the Land;

- “Road” means
- (a) the airspace above the surface of the road, and
 - (b) the soil beneath the surface of the road, and
 - (c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of the road;

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“Services” means all services or any one or more of such services including but not limited to water, irrigation, gas, electricity, telephone, sewerage, drainage, security and monitoring, lighting, optic fibre transmissions, private communications, closed circuit security monitoring, closed circuit television monitoring, video and audio services. “Servicing” will have a comparable meaning;

“Structure” or “Structures” means all structures, erections, improvements, apparatus or any one or more of those things constructed or installed or to be constructed or installed on, over, under or through the Land necessary or appropriate (in the absolute discretion of TfNSW) for the purposes of this Lease including but not limited to, tunnels, ramps, viaducts, roads, support members, channels, cuttings, drains, wires, fibres, cables, pipes, conduits, ducts, pumps, sumps, pits and traps;

“Term” means the period commencing on the Commencing Date and expiring on the Terminating Date;

“Terminating Date” means the date being:

- (a) the date falling a specified period after the commencing date, as agreed between the Lessor and TfNSW in writing prior to the compulsory acquisition of this lease; or
- (b) in the absence of agreement on the term of the lease (in accordance with the preceding subclause (a)) the date falling a specified period after the commencing date, as specified in writing by TfNSW prior to the compulsory acquisition of this lease; or
- (c) such earlier date as TfNSW may, in its absolute discretion, notify the Lessor in writing;

“TfNSW” means Transport for NSW, as constituted by the Transport Administration Act 1988 or as constituted from time to time, and includes its successors and assigns and any administrator thereof or other person appointed by or on behalf of the New South Wales Government or any Minister thereof and any body in which TfNSW is merged or which as at the relevant time substantially fulfils the functions of TfNSW;

“Work” or “Works” means all excavation, erection and other work necessary or desirable (in the absolute discretion of TfNSW) for the purposes of this Lease or to facilitate the proper enjoyment of this Lease or to enable the carrying out of the obligations of TfNSW, including but not limited to laying down, constructing, placing, operating, examining, relaying, removing, altering, renewing, cleaning, repairing, testing and maintaining the Road and using the Structures in any manner.

1.2 Construction

Unless expressed to the contrary;

(a) words importing;

- (i) the singular includes the plural and vice versa;
- (ii) any gender includes the other gender;

(b) if a word or phrase is defined cognate words and phrases have corresponding definitions;

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(c) a reference to;

- (i) a person includes a partnership, joint venture, firm, unincorporated association, corporation and a government or statutory body or authority;
- (ii) a person includes its legal personal representatives, successors and assigns and any persons substituted by novation;
- (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (iv) a right or obligation of TfNSW applies to any Authorised User as if the reference to TfNSW included a reference to any Authorised User;
- (v) a right includes a benefit, remedy, discretion, authority or power;
- (vi) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (vii) provisions or terms of this document or another document, agreement understanding or arrangement include a reference to both express and implied provisions and terms;
- (viii) time is to local time in Sydney;
- (ix) "\$" or "dollars" is a reference to the lawful currency of Australia;
- (x) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
- (xi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission;
- (xii) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (xiii) the word "week" shall mean calendar week; and
- (xiv) "includes" means includes without limitation.

1.3 Headings

Headings do not affect the interpretation of this document.

2. EXCLUSION OF STATUTORY PROVISIONS

2.1 Statutory Provisions Negatived

The covenants, powers and provisions implied in leases by virtue of Sections 84, 84A and 86 of the Conveyancing Act 1919 (NSW) shall not apply to this Lease and are expressly negatived.

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2.2 No Short Form Words

In this Lease any of the forms of words contained in the first column of Part 2 of Schedule 4 to the Conveyancing Act 1919 (NSW) shall not imply any covenant under Section 86 of that Act.

2.3 No Moratorium

To the extent permitted by law the application to this Lease of any moratorium or other relevant legislation whether State or Federal having the effect of extending the term, reducing or postponing the payment of rent, or otherwise affecting the operation of the terms of this Lease is expressly excluded and negated. TfNSW agrees to waive and abandon the benefit of any claim which TfNSW may now or at any time have under any such law.

3. LEASE TERM**3.1 Commencing Date and Terminating Date**

(a) The term of this Lease shall commence on the Commencing Date and expire on the Terminating Date.

(b) Subject to clause 8.3, on the Terminating Date, TfNSW and its Authorised Users must vacate the Land and return it to the Lessor.

4. RENTAL**4.1 Rental**

TfNSW shall pay, as a rental, compensation:

(a) in the amount agreed between the lessor and TfNSW in writing prior to the Commencing Date; or

(b) in the absence of agreement on compensation (in accordance with the preceding subclause (a)), in the amount determined by the Valuer-General pursuant to the provisions of the Land Acquisition (Just Terms Compensation) Act 1991, or, failing subsequent agreement between the lessor and TfNSW as to the amount of compensation, compensation as determined in any proceedings brought by the Lessor in the Land and Environment Court.

5. OUTGOINGS**5.1 Outgoings**

TfNSW shall pay any amounts levied or charged by Sydney Water or any other Authority providing water, drainage or sewerage services to the Land during the Term, provided the amounts levied are related to TfNSW's use of the land.

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6. ASSIGNMENT/SUBLETTING

6.1 Assignment or Sub-Lease

TfNSW may, in its absolute discretion:

- (a) sub-let or assign its interest in this Lease, and/or the Land;
- (b) part with possession of the Land;
- (c) permit any Authorised User to enter into possession of the Land; and/or
- (d) permit any Authorised User to enjoy its rights under this Lease.

7. MAINTENANCE REPAIRS ALTERATIONS AND ADDITIONS

7.1 TfNSW's Discretion as to Maintenance

TfNSW shall take such action as it considers, in its absolute discretion, appropriate for the maintenance and cleaning of the Land.

8. USE OF PREMISES

8.1 Permitted Use

TfNSW may, during the Term, occupy and use the Land for the construction, operation, support, and maintenance of or in connection with a Road, including but not limited to such rights as may, in the absolute discretion of TfNSW, be necessary for:

- (a) the construction, operation, functioning or maintenance of any Structure;
- (b) access to any Structure;
- (c) the conduct of any Works;
- (d) the support of;
 - (i) a construction compound;
 - (ii) the Road;
 - (iii) any Structure;
 - (iv) any land occupied by the Road or any Structure or upon which the Road or any structure relies for support;
- (e) the construction, operation, functioning and maintenance of Services;
- (f) the placing on or stockpiling of materials of any type on the Land for the purposes of the Road or any Structure;

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- (g) the passing and re-passing of vehicles;
- (h) the conduct by TfNSW of its responsibilities and functions under the Roads Act 1993 (NSW); and
- (i) any investigative or preparatory work for the purpose of or in connection with any of the above.

8.2 Alterations to the Land

Subject to Clause 8.3, TfNSW may alter the physical characteristics of the Land, including but not limited to the sub-surface and surface of the Land.

8.3 TfNSW's obligations

- (a) Except where the surface of the Land or any Structure is entitled to remain following the Terminating Date pursuant to any agreement between TfNSW and the Lessor made prior to the Terminating Date or pursuant to some other right benefiting TfNSW, TfNSW shall, prior to the Terminating Date:
 - (i) restore the surface of the Land to its condition as at the Commencing Date;
 - (ii) remove any Structures from the surface of the Land; and
 - (iii) make good any damage (if any) to the Land caused by the carrying out of the Works as identified in the Dilapidation Report.
- (b) TfNSW shall at its own cost remove from the Land prior to the Terminating Date all of its plant and equipment, materials, waste and rubbish unless such plant and equipment, materials, waste and rubbish is entitled to remain following the Terminating Date pursuant to any agreement between TfNSW and the Lessor made prior to the Terminating Date or pursuant to some other right benefiting TfNSW.
- (c) TfNSW will not be required to comply with the obligations imposed by clause 8.3(a) (iii) where any damage to the Land has been caused by an act of the Lessor or its employees, agents, contractors, or any negligence for which the Lessor is responsible.

8.4 Dilapidation Report

TfNSW may, in its absolute discretion, conduct a Dilapidation Report and deliver a copy of the Dilapidation Report to the Lessor. In the event that TfNSW delivers a copy of the Dilapidation Report to the Lessor within six (6) months of the Commencing Date, the Dilapidation Report shall be prima facie evidence of the state of the Land for the purposes of Clause 8.3.



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9. **LESSOR'S COVENANTS**

9.1 **Quiet Enjoyment**

TfNSW may peaceably possess and enjoy the Land during the Term free from any interruption or disturbance from the Lessor.

10 **TERMINATION**

10.1 The Lessor shall not be entitled to terminate this Lease without the prior written consent of TfNSW which may be withheld in its absolute and unfettered discretion.

11 **ENCUMBRANCES**

11.1 TfNSW's interest in the Land created pursuant to this Lease shall not be subject to any prior encumbrance.

12 **INDEMNITY**

12.1 TfNSW acknowledges that it occupies the Land entirely at its risk and TfNSW indemnifies and agrees to keep indemnified the Lessor from and against any claim or for loss or damage, expense or compensation in respect of any harm or injury whatsoever sustained or incurred by any person or caused to any property relating to the use of the Land by TfNSW except in circumstances where any of the foregoing results from the wilful or negligent act or omission of the Lessor or its employees, agents, contractors or a third party.



Attachment 10.5.2

Comments	Folio identifier	Title	Notice of Resumption - Gazette	Certificates of Title	Dealing	Deposited Plans	Other Documents	Other Gazettes	Action Required
The land was acquired by Resumption for the purposes of the Sydney Harbour Bridge.	1/536871	Vol 1217 Fol 148	GG 24 July 1925 Folio 3278	Vol 1217 Fol 148	B256060	DP536871	Title Search Lots 2&4 DP 536871 - owned by TAHE	GG 29 March 1935 Folios 1347-1351 - Vesting GG 10 January 1969 Folio 51 - Resumption for railway purposes	The land was acquired for road purposes. It appears that Lot 3 encroaches onto railway infrastructure. The land was subsequently vested in the Municipality of North Sydney for public roads and highways. The likely owner of Lot 1 is North Sydney Council. Requires an Application to Record a New Registered Proprietor
The land was acquired by Resumption for the purposes of the Sydney Harbour Bridge.	1/59702	Vol 1174 Fol 187	GG 27 February 1925 Folio 1092	Vol 1174 Fol 187	B208850	DP59702	Street View from Broughton and Alfred St Sth	GG 29 March 1939 Folios 1346-1347 - Vesting	The land was acquired for road purposes. The land was subsequently vested in the Municipality of North Sydney for public recreation and parks. The likely owner is North Sydney Council. Requires an Application to Record a New Registered Proprietor
The land was acquired by Resumption for the purposes of the Sydney Harbour Bridge.	1/60327	Vol 1230 Fol 201	GG 27 February 1925 Folio 1092	Vol 1230 Fol 201	B208850	DP60327	Street View from Broughton and Alfred St Sth	GG 29 March 1939 Folios 1346-1347 - Vesting	The land was acquired for road purposes. The land was subsequently vested in the Municipality of North Sydney for public recreation and parks. The likely owner is North Sydney Council. Requires an Application to Record a New Registered Proprietor
The land was acquired by Resumption for the purposes of the Sydney Harbour Bridge.	1/63688	Vol 1696 Fol 61	GG 27 February 1925 Folio 1092	Vol 1696 Fol 61	B208850	DP63688	Street View from Fitzroy and Alfred St Sth	GG 29 March 1939 Folios 1346-1347 - Vesting	The land was acquired for road purposes. The land was subsequently vested in the Municipality of North Sydney for public recreation and parks. The likely owner is North Sydney Council. Requires an Application to Record a New Registered Proprietor
The land was acquired by Resumption for the purposes of the Sydney Harbour Bridge.	1/68325	Vol 2570 Fol 29	GG 1 April 1926 Folios 1536-1537	Vol 2570 Fol 29	B365649	DP68325		GG 29 March 1935 Folios 1346-1347 - Vesting	The land was acquired for road purposes. The land was subsequently vested in the Municipality of North Sydney for public recreation and parks. The likely owner is North Sydney

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The land was acquired by Resumption for the purposes of the Sydney Harbour Bridge.	2/177759	Vol 3786 Fol 187	GG 17 July 1925 Folio 3216	Vol 3786 Fol 187		B264336	DP177759		GG 29 March 1935 Folios 1346-1347 - Vesting	The land was acquired for road purposes. The land was subsequently vested in the Municipality of North Sydney for public recreation and parks. The likely owner is North Sydney Council. Requires an Application to Record a New Registered Proprietor
The land was acquired by Resumption for the purposes of the Sydney Harbour Bridge.	2/70079	Vol 2749 Fol 45	GG 27 November 1925 Folio 5299	Vol 2749 Fol 45		B305215	DP70079		GG 29 March 1935 Folios 1346-1347 - Vesting	The land was acquired for road purposes. The land was subsequently vested in the Municipality of North Sydney for public recreation and parks. The likely owner is North Sydney Council. Requires an Application to Record a New Registered Proprietor
The land was acquired by Resumption for the purposes of the Sydney Harbour Bridge.	B/306357	AC3454-116	GG 8 May 1925 Folio 2093-2094	AC3454-116		B233760	DP306357		GG 29 March 1935 Folios 1347-1351 - Vesting	The land was acquired for road purposes. It appears that Lots B&C encroach onto Alfred St. The land was subsequently vested in the Municipality of North Sydney for public roads and highways. The likely owner is North Sydney Council. Requires an Application to Record a New Registered Proprietor
The land was acquired by Resumption for the purposes of the Sydney Harbour Bridge.	C/306357	AC3454-116	GG 8 May 1925 Folio 2093-2094	AC3454-116		B233760	DP306357		GG 29 March 1935 Folios 1347-1351 - Vesting	The land was acquired for road purposes. It appears that Lots B&C encroach onto Alfred St. The land was subsequently vested in the Municipality of North Sydney for public roads and highways. The likely owner is North Sydney Council. Requires an Application to Record a New Registered Proprietor
The land was acquired by Resumption for the purposes of the Sydney Harbour Bridge.	D/975537	Vol 3518 Fol 125	GG 5 February 1926 Folio 674	Vol 3518 Fol 125		B331773	DP975537		GG 29 March 1935 Folios 1346-1347 - Vesting	The land was acquired for road purposes. The land was subsequently vested in the Municipality of North Sydney for public recreation and parks. The likely owner is North Sydney Council. Requires an Application to Record a New Registered Proprietor