



# *Government Gazette*

of the State of

New South Wales

**Number 132**

**Monday, 3 December 2018**

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The New South Wales Government Gazette is the permanent public record of official NSW Government notices. It also contains local council, private and other notices.

From 1 January 2018, each notice in the Government Gazette has a unique identifier that appears in square brackets at the end of the notice and that can be used as a reference for that notice (for example, [n2018-14]).

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**TRANSPORT ADMINISTRATION ACT 1988**

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

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

Sydney Metro by its delegate declares, with the approval of His Excellency the Governor, that the construction lease described in Schedule 1 below is acquired by compulsory process under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* as authorised by section 38C of the *Transport Administration Act 1988* for the purposes of the *Transport Administration Act 1988*.

Ivan Glavinic  
Executive Director, Place making & Project Development  
Sydney Metro

**SCHEDULE 1**

A construction lease on the terms set out in Schedule 2 commencing on the date of this notice and expiring on 31 December 2021 over the land situated at Marrickville, in the Local Government Area of Inner West, Parish of Petersham and County of Cumberland which is shown as Lot 5 in Deposited Plan 1245223 set out in Schedule 3.

**SCHEDULE 2**

**Terms of Construction Lease**

# Construction Lease

**Sydney Metro**

ABN 12 354 063 515

and

**Inner West Council**

ABN 19 488 017 987

## CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION .....	5
1.1 Definitions .....	5
1.2 Interpretation.....	7
1.3 Business Day .....	7
1.4 Excluding liability .....	8
1.5 Exclusion of implied covenants and powers .....	8
2. SYDNEY METRO'S OBLIGATIONS.....	8
2.1 Permitted Use.....	8
2.2 Utilities and services .....	8
2.3 Handover obligations.....	8
3. COMPLIANCE WITH LEGISLATIVE AND WHS REQUIREMENTS .....	9
3.1 Compliance with Laws .....	9
3.2 Principal Contractor.....	9
3.3 Work Health and Safety .....	10
4. QUIET ENJOYMENT AND RIGHTS OF INSPECTION .....	10
5. RISK AND INDEMNITY .....	10
6. GST .....	11
6.1 Payment of GST.....	11
6.2 Tax invoice/adjustment note .....	11
6.3 Change in the GST Law.....	11
6.4 Indemnities and reimbursement .....	11
7. FURTHER LEASE .....	11
7.1 Parties to negotiate .....	11
7.2 Holding over.....	12
8. TERMINATION .....	12
9. GENERAL .....	12
9.1 Governing law .....	12
9.2 Sydney Metro and the Landlord as public authorities .....	12
10. COMMUNICATION OF THE PROJECT .....	12
10.1 Public Notification .....	12
10.2 Contact Details .....	13
10.3 Adjoining Property Owner .....	13

**PARTIES:**

- (1) **Inner West Council** ABN 19 488 017 987, the owner of the Premises (**Landlord**); and
- (2) **Sydney Metro** ABN 12 354 063 515 (**Sydney Metro**).

**RECITALS**

- (A) Sydney Metro requires access to the Premises for the Permitted Use for the purposes of the Project.
- (B) Sydney Metro has compulsorily acquired a lease on the terms of this document from the Landlord by agreement in accordance with section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions apply in this document:

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

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales or 27, 28, 29, 30 or 31 December.

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

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

**Commencing Date** means the commencing date set out in the Acquisition Notice.

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

**Dilapidation Report** means the report prepared by Sydney Metro prior to Sydney Metro accessing the Premises pursuant to this lease that details the condition of the Premises as at that date and includes all Landscaping and Infrastructure within the Premises.

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

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

**Infrastructure** means the Landlord's infrastructure located on the Premises and includes kerb, guttering, footpaths, storm water drainage and road pavement as identified in the Dilapidation Report.

**Landscaping** means those plantings, shrubs and trees located on the Premises as identified in the Dilapidation Report.

**Law** means

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

**Permitted Use** means investigation, design, construction, testing, commissioning, completion and access in accordance with the consent granted to Sydney Metro under the *Environmental Planning and Assessment Act 1979* (NSW) for the purpose of carrying out the Project.

**Premises** means that part of Burrows Avenue, Sydenham with legal description Lot 5 on DP1245223.

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

**Sydney Metro's Agents** means:

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

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

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

**Terminating Date** means 31 December 2021.

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

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

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

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

**Works** means any Project works carried out on the Premises by Sydney Metro or its Contractors in accordance with consents and approvals granted to Sydney Metro under the *Environmental Planning and Assessment Act 1979* (NSW).

## 1.2 Interpretation

In this lease:

- (a) headings are for convenience only and do not affect interpretation; and
- (b) the following rules apply in interpreting this lease unless the context makes clear a rule is not intended to apply:
  - (i) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
  - (ii) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (iii) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
  - (iv) a reference to a document (including this lease) is to that document as varied, novated, ratified or replaced from time to time;
  - (v) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
  - (vi) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (vii) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this lease, and a reference to this lease includes all schedules, exhibits, attachments and annexures to it;
  - (viii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (ix) **includes** in any form is not a word of limitation;
  - (x) a reference to **\$** or **dollar** is to Australian currency; and
  - (xi) terms defined in the GST Law have the same meaning in this document unless the context otherwise requires.
  - (xii) if a party is a member of a GST group, references to GST which the party must pay and to input tax credits which the party is entitled to claim include GST which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled.

## 1.3 Business Day

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



#### 1.4 **Excluding liability**

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

#### 1.5 **Exclusion of implied covenants and powers**

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

### 2. **SYDNEY METRO'S OBLIGATIONS**

#### 2.1 **Permitted Use**

Sydney Metro must :

- (a) use the Premises only for the Permitted Use;
- (b) maintain pedestrian access between Hogan Avenue and George Street, Sydenham at all times during the lease term; and
- (c) prior to undertaking any Works in the Premises consult with the Landlord concerning the proposed traffic and pedestrian management details and traffic control plan.

#### 2.2 **Utilities and services**

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

#### 2.3 **Handover obligations**

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

- (ii) the act or omission of a third party, unless that third party is one of Sydney Metro's Agents.
- (d) The Landlord and Sydney Metro acknowledge and agree that:
- (i) the Infrastructure and Landscaping located on the Premises at the Commencing Date will be demolished and/or removed by Sydney Metro; and
  - (ii) unless otherwise agreed in writing between the parties, Sydney Metro will:
    - (A) in respect of any tree which is removed by Sydney Metro, plant a replacement tree, the size of which will be determined in consultation with the Landlord; and
    - (B) otherwise reinstate the Infrastructure and Landscaping in a condition equivalent to the condition detailed in the Dilapidation Report and in consultation with the Landlord,

when this lease ends.

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

#### 3.1 **Compliance with Laws**

Sydney Metro must, and must procure that the Contractor will, at all times fully comply with all Laws in any way affecting or applicable to the Works.

#### 3.2 **Principal Contractor**

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

- (c) and the Contractor's engagement and authorisation as a principal contractor will continue:
  - (i) subject to clause 3.2(c)(ii), until completion of the Works (unless sooner revoked by Sydney Metro); and
  - (ii) in respect of any rectification of defects that is construction work, during the period any such work is carried out.

### 3.3 **Work Health and Safety**

Sydney Metro must carry out the Works on the Premises;

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

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

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

## 5. **RISK AND INDEMNITY**

- (a) Sydney Metro enters, occupies, uses and keeps the Premises, and Sydney Metro's Agents are permitted to access, occupy, use and keep the Premises, at the risk of Sydney Metro.
- (b) Sydney Metro must indemnify the Landlord against:
  - (i) the loss, destruction or damage of any of the Landlord's real or personal property; or
  - (ii) any Claim against the Landlord or liability the Landlord may have to third parties in respect of or arising out of or in connection with:
    - (A) any illness, personal injury to, or death of, any person; or
    - (B) the loss, destruction or damage of any real or personal property,to the extent caused by, arising out of, or in any way in connection with, the construction of the Works or any failure by Sydney Metro to comply with its obligations under this lease, except to the extent caused or contributed to by the act or omission of the Landlord or the Landlord's employees, agents, contractors or officers.
- (c) Sydney Metro has no liability, nor will the Landlord be entitled to make any Claim against Sydney Metro or Sydney Metro's Agents in respect of:
  - (i) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect); or
  - (ii) direct or indirect financing costs,

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

## **6. GST**

### **6.1 Payment of GST**

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

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

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

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

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

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

### **6.4 Indemnities and reimbursement**

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

## **7. FURTHER LEASE**

### **7.1 Parties to negotiate**

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

## 7.2 **Holding over**

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

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

## 8. **TERMINATION**

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

## 9. **GENERAL**

### 9.1 **Governing law**

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

### 9.2 **Sydney Metro and the Landlord as public authorities**

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

## 10. **COMMUNICATION OF THE PROJECT**

### 10.1 **Public Notification**

Sydney Metro will notify the public and surrounding properties of its use of the Premises by:

- (a) community and stakeholder notifications in writing; and
- (b) advertisements in local newspapers concerning the Works,

and may, but will not be required to, notify the public and surrounding properties of its use of the Premises by:

(c) quarterly construction update newsletters; or

(d) community emails.

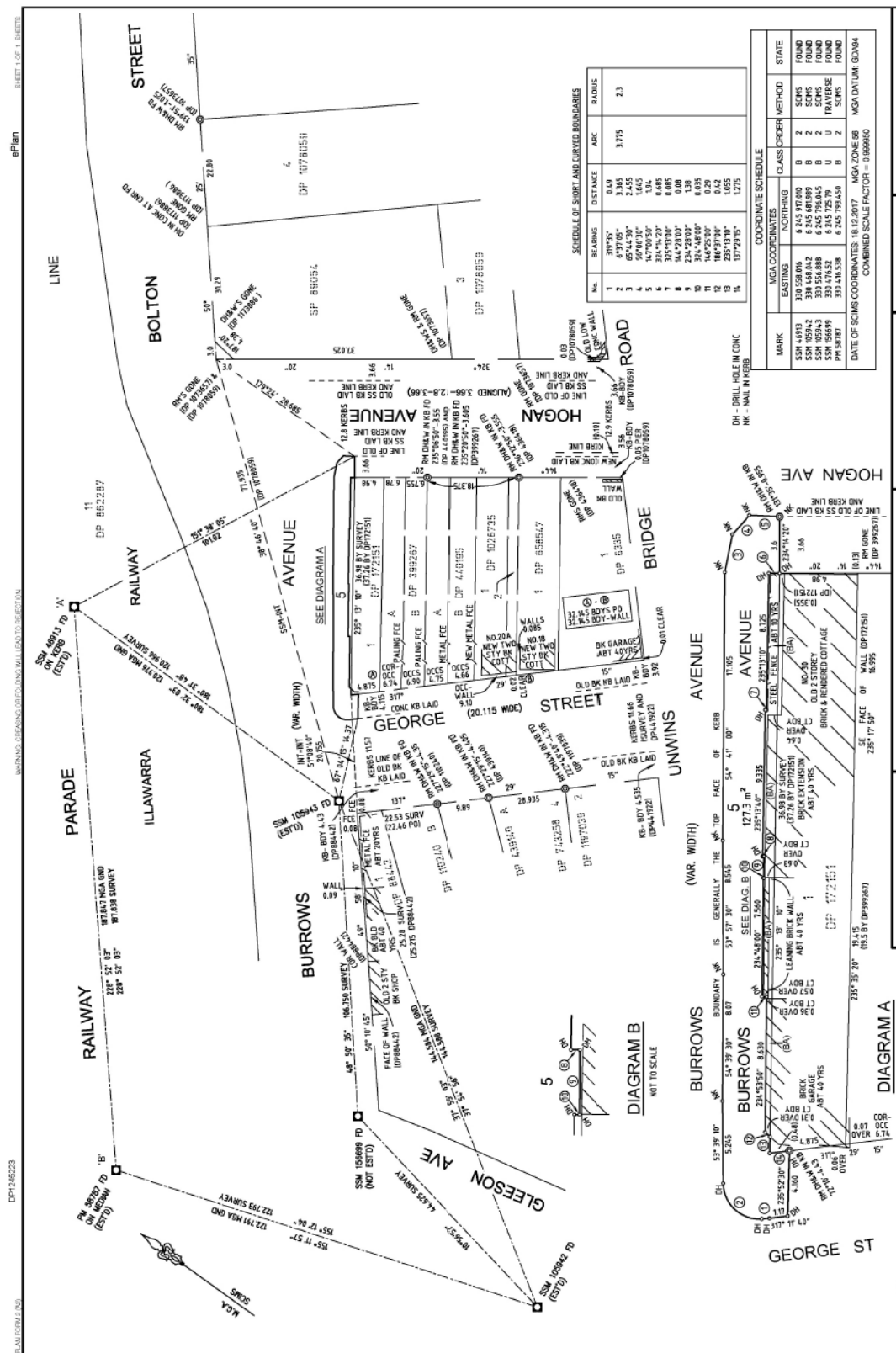
#### 10.2 **Contact Details**

Sydney Metro will provide the Landlord with contact details of its representative for all public enquires to be redirected to the Sydney Metro concerning the Project.

#### 10.3 **Adjoining Property Owner**

Sydney Metro must ensure the adjoining property owner / occupier at 30 Hogan Avenue, Sydenham is directly contacted prior to the commencement of the Works and updated for the duration of the Works.

# SCHEDULE 3



**SCHEDULE OF SHORT AND CURVED BOUNDARIES**

No.	Bearing	Distance	Arc	Radius
1	31°25'	3.68		
2	4°37'05"	3.36	3.715	2.3
3	65°44'30"	2.455		
4	9°40'30"	1.645		
5	30°15'20"	0.685		
6	32°13'30"	1.085		
7	23°28'00"	1.08		
8	23°28'00"	1.08		
9	33°48'00"	0.935		
10	46°25'30"	0.29		
11	23°13'10"	1.65		
12	23°13'10"	1.65		
13	23°13'10"	1.65		
14	137°29'15"	1.275		

**COORDINATE SCHEDULE**

MARK	MGA COORDINATES	CLASS	ORDER	METHOD	STATE
SSM 4083	6 245 970.00	B	2	SCPS	FOUND
SSM 55018	6 245 970.00	B	2	SCPS	FOUND
SSM 05543	6 245 794.65	B	2	SCPS	FOUND
SSM 05543	6 245 794.65	B	2	SCPS	FOUND
SSM 55699	6 245 725.79	U	U	TRAVELER	FOUND
PM 58787	6 245 725.79	U	U	TRAVELER	FOUND

DATE OF SCAMS COORDINATES: 18/12/2017 MGA ZONE 96 MGA DATUM: GD494  
COMBINED SCALE FACTOR: 0.99990

PLAN OF ACQUISITION  
BEING PART OF CONVEYANCE BOOK 17 No. 397,  
BOOK 243 No. 217 AND BOOK 304 No. 773

SUPPLICANT: CHRISTOPHER JOHN MOYCE  
Date: 31.01.2018  
Reference: P1124856-129-C5  
REPORT

REGISTERED  
16.11.2018

L.G.A.: INNER WEST  
Locality: STODENHAM  
Reduction Ratio: 1: 400  
Lengths are in metres

DP1245223

Reg: R59767 / Doc: DP 1245223 P / Rev: 16-Nov-2018 / Sta: SCOK / Pgs: ALL / Pct: 19-Nov-2018 03:30 / Seg: 1 of 3  
Ref: lrs: eplan-epian FOR SURVEYORS USE ONLY / Sec: W  
PLAN: C1291220 DP1245223

Sydney Metro Document Number: SM18/0000557  
SM-18-00104553

[n2018-4121]