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Dated

Contribution Deed

Parties

Inner West Council
ABN 19 488 017 987

Eye Drive Sydney Pty Ltd
ABN 98 007 305 179

Eye Corp Australia Pty Ltd
ABN 62 069 009 614

Nicholas Brunton
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Our ref: 3138768

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KEY DETAILS

Council:	Inner West Council ABN 19 488 017 987 of 2-14 Fisher Street, Petersham NSW 2049 Email: steve.smith@innerwest.nsw.gov.au
Developer:	Eye Drive Sydney Pty Ltd ABN 98 007 305 179 of Level 2, 73 Miller Street North Sydney NSW 2060
Guarantor:	Eye Corp Australia Pty Ltd ABN 62 069 009 614 of Level 2, 73 Miller Street North Sydney NSW 2060
Development:	Signage on Glebe Island Silos on the Land
Term:	For the term of the Consent commencing on the grant of the Consent
Contributions:	\$127,000 per annum (excluding GST) plus GST, increasing annually in accordance with CPI for the duration of the Consent

Deed dated

APAC-#120123836-v1

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Parties

Inner West Council ABN 19 488 017 987
of 2-14 Fisher Street, Petersham NSW 2049
(Council)

Eye Drive Sydney Pty Ltd ABN 98 007 305 179
of Level 2, 73 Miller Street North Sydney NSW 2060
(Developer)

Eye Corp Australia Pty Ltd ABN 62 069 009 614
of Level 2, 73 Miller Street North Sydney NSW 2060
(Guarantor)

Background

- A** The Developer has lodged the Development Application with the Minister for Planning.
- B** As part of the Development Application, the Developer made an offer to enter into an agreement with Council under which the Developer would provide a monetary contribution to Council pursuant to clause 13 of the State Environment Planning Policy No. 64 Advertising and Signage.
- C** The Developer and the Council have agreed that the Developer will make the Contributions in connection with the Development Application in accordance with this Deed.

TERMS

Part 1 – Preliminary

1 Interpretation

1.1 Definitions

In this Deed, unless the contrary intention appears:

- (1) **Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- (2) **Commencement Date** means the date set out in clause 2.1 of this Deed.
- (3) **Consent** means the grant of consent by the Minister for Planning (or his delegate) on terms acceptable to the Developer to the Development Application under section 4.16 of the Act.
- (4) **Contributions** means an annual payment by the Developer to Council of \$127,000 plus GST (if applicable) for the duration of the Consent, paid in accordance with clause 4 and as varied by clause 4.7.
- (5) **Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
- (6) **CPI for Sydney Index Number** means the Consumer Price Index All Groups Index Number for Sydney published from time to time by the Australian Bureau of Statistics (or its successor) or, if that index number is no longer published, its closest substitute as determined by the Council (acting reasonably).

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- (7) **Deed** means this deed and includes any schedules, annexures and appendices to this deed.
- (8) **Development** means the development described in the Development Application.
- (9) **Development Application** means the development application number DA21/13182 lodged by the Developer with the Department of Planning seeking consent to extend the display of advertising signage on the Glebe Island Silos on the Land.
- (10) **Dispute** means a dispute or difference between the Parties under or in relation to this Deed.
- (11) **Glebe Island Silos Signage** means signage on the Glebe Island Silos on the Land.
- (12) **GST** has the same meaning as in the GST Law.
- (13) **GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
- (14) **Key Details** means the section of this agreement headed Key Details.
- (15) **Land** means the part of Folio Identifiers 12/1170710 and 13/1170710 (formerly comprised in Folio Identifier 10/1065973) marked as Lease Area 1, Lease Area 2 and Lease Area 3 as in the Plans set out at **Annexure 1**.
- (16) **Party** means a party to this Deed.
- (17) **Related Body Corporate** has the same meaning as in the *Corporations Act 2001* (Cth).
- (18) **Review Date** means the annual anniversary of the Commencement Date.

1.2 Interpretation

- (1) In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
 - (a) Except as otherwise provided in this Deed, words in this Deed have the same meaning as those words have in the Act;
 - (b) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - (c) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - (d) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - (e) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

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- (f) A reference in this Deed to a \$ value relating to a Contribution is a reference to the value exclusive of GST.
- (g) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (h) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (i) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (j) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (k) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (l) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (m) References to the word 'include' or 'including' are to be construed without limitation.
- (n) A reference to this Deed includes the agreement recorded in this Deed.
- (o) A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- (p) Any schedules, appendices and attachments form part of this Deed.

2 Commencement and termination

- 2.1 This Deed takes effect on the date that the Minister for Planning grants the Consent provided each Party has executed one counterpart of this Deed.
- 2.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.
- 2.3 If any of the following events occur:
 - (1) the Developer withdraws the Development Application; or
 - (2) the Minister for Planning does not grant the Consent; or
 - (3) on appeal, the Land and Environment Court of NSW does not grant the Consent, or
 - (4) the Developer, or a Related Body Corporate of the Developer, ceases to enjoy the benefit of the Development Consent as modified by the granting of Consent, including as a result of:

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- (a) the Developer or its Related Body Corporate ceasing to be the lessee or licensee of the Glebe Island Silos Signage; or
- (b) the expiration of the Development Consent as modified by the granting of Consent,

this deed will terminate on the date that the relevant event occurs and no Contributions will be payable by the Developer to the Council from that date of termination.

3 Warranties

3.1 The Parties warrant to each other that they:

- (1) have full capacity to enter into this Deed, and
- (2) are able to fully comply with their obligations under this Deed.

4 Payment of Contributions

4.1 The Developer is to provide the Contribution to Council to be paid in monthly instalments in the manner specified by Council as follows:

- (1) The first instalment of the Contribution is to be provided within fourteen (14) days of the grant of the Consent; and
- (2) Each subsequent monthly instalment of the Contribution is to be paid in advance until the expiry of the Consent.

4.2 Calculated together, the total number of Contributions to be paid by the Developer under this Deed will not exceed the number of years comprising the term of the Consent.

4.3 In the event GST applies to the payment of the Contributions:

- (1) Council will issue to the Developer a tax invoice for each payment of the Contribution in accordance with clause 4.1 of this Deed; and
- (2) The Contribution is due and payable by the Developer within 14 days of receipt of the tax invoice referred to in clause 4.3(1) above.

4.4 The Council must apply the Contributions made by the Developer under this Deed towards the public purpose specified in Schedule 1 and otherwise in accordance with this Deed.

4.5 Provided that the Developer is not in breach of any of its prior obligations under this Deed, the Developer will be deemed to have satisfied its obligations under this Deed on the payment of the final monthly instalment of the Contributions under this Deed.

4.6 Provided that the Developer is not in breach of any of its prior obligations under this Deed, on final instalment of the Contributions, this Deed will terminate and no party will have any liability to the other in relation to the subject matter of this Deed.

4.7 The Guarantor guarantees the Developer's performance of its obligations under this Deed.

5 Indexation of Contributions

5.1 On each Review Date, the Contributions will be varied in accordance with the following formula:

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$$P = \frac{A \times B}{C}$$

Where:

- (1) "P" is the Contributions payable on the relevant Review Date;
- (2) "A" is the Contributions payable before the relevant Review Date;
- (3) "B" is the CPI for Sydney Index Number last published before the relevant Review Date; and
- (4) "C" is the CPI for Sydney Index Number last published before the Commencement Date or the last Review Date, whichever is the later.

6 Dispute Resolution - Mediation

- 6.1 This clause applies to any Dispute arising in connection with this Deed.
- 6.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 6.3 If a notice is given under clause 6.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 6.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 6.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 6.6 Each Party is to bear its own Costs arising from or in connection with the appointment of a mediator and the mediation.
- 6.7 The Parties are to share equally the Costs of the President, the mediator, and the mediation.

7 Restriction on dealings

- 7.1 The Developer may assign the Developer's rights or obligations under this Deed, or novate this Deed, to a Related Body Corporate of the Developer, at any time and without the consent of Council. The Developer must promptly notify Council of any assignment or novation of this Deed, including the details of the relevant Related Body Corporate, under this clause 8.1.
- 7.2 Except as provided for in clause 7.1, the Developer must not assign the Developer's rights or obligations under this Deed, or novate this Deed to any person unless:
 - (1) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be

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assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council; and

- (2) the Council has given written notice to the Developer stating that it reasonably considers that the transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- (3) the Developer is not in material breach of this Deed.

8 Notices

- 8.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - (1) delivered or posted to that Party at its address set out in the Key Details;
 - (2) emailed to that Party at its email address set out in the Key Details.
- 8.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, Information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 8.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - (1) delivered, when it is left at the relevant address,
 - (2) sent by post, 2 business days after it is posted, or
 - (3) sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 8.4 If any notice, consent, information, application or request is delivered on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

9 Costs

- 9.1 Each party is to pay their own Costs of preparing, negotiating, executing this Deed.

10 Entire Deed

- 10.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 10.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

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11 Further Acts

- 11.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

12 Governing Law and Jurisdiction

- 12.1 This Deed is governed by the law of New South Wales and the Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

13 No Fetter

- 13.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

14 Illegality

- 14.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

15 Severability

- 15.1 If a clause or part of a clause of this Deed 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.
- 15.2 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 Deed, but the rest of this Deed is not affected.

16 Amendment

- 16.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.

17 Waiver

- 17.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 17.2 A waiver by a Party is only effective if it is in writing.
- 17.3 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 waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

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18 GST

18.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

18.2 Subject to clause 18.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

18.3 Clause 18.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

18.4 No additional amount shall be payable by the Council under clause 18.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

18.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the GST Law, the Parties agree:

- (1) to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies; and
- (2) that any amounts payable by the Parties in accordance with clause 18.2 (as limited by clause 18.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

18.6 No payment of any amount pursuant to this clause 18, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

18.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

18.8 This clause continues to apply after expiration or termination of this Deed.

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19 GUARANTEE AND INDEMNITY BY GUARANTOR

- 19.1 The Guarantor guarantees that the Developer will do everything that the Developer is required to do under this Contribution Deed.
- 19.2 The Guarantor will continually indemnify Council against any loss it suffers because the Developer fails to comply with its obligations under this Contribution Deed.
- 19.3 The Guarantor must pay any money Council is entitled to under this guarantee and indemnity within 14 days after Council makes a written demand. The Guarantor must pay interest, calculated daily and compounded monthly, on any money that the Guarantor does not pay on time.

20 SIGNATURE AND EXCHANGE

- 20.1 This Deed may be executed:
 - (a) in any number of counterparts and all the counterparts together shall make one instrument;
 - (b) electronically by both parties using DocuSign, or by affixing electronic signatures, or by exchanging electronic copies of original signatures on this Deed;
- 20.2 This Deed may be validly created and exchanged by counterparts with each party's signature (electronic or otherwise) sent electronically to each other party by email.
- 20.3 The parties acknowledge that the electronic version of this Deed signed by both parties will be the true and original version for the purposes of this transaction and that no other version will be provided unless otherwise agreed between the parties in writing.
- 20.4 The parties agree to be bound by the electronic version of this Deed which has been signed and exchanged in accordance with this clause.
- 20.5 The parties agree that they will be bound by, have complied with and will comply with the *Electronic Transactions Act 2000* (NSW) and any terms and conditions of DocuSign, in relation to the execution of this Deed.

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Schedule 1: Contributions

Application of Contribution towards the Public Purpose

- 1.1 Council will apply the Contributions towards any of the following:
- (a) heritage conservation in the Inner West Local Government Area;
 - (b) improvements in local community services including:
 - (i) Improved traffic safety (road, rail, bicycle and pedestrian);
 - (ii) Improved public transport services;
 - (iii) Improved public amenity within, or adjacent to, the transport corridor;
 - (iv) Support school safety infrastructure and programs; or
 - (iv) Other appropriate community benefits such as free advertising time to promote a service, tourism in the locality, community information, or emergency message.

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Executed as a deed and delivered on the date shown on the first page.

Signed sealed and delivered for and on
behalf of **Inner West Council ABN 19 488**
017 987 by its General Manager pursuant to
Section 683 of the *Local Government Act 1993*

General Manager

Witness Signature

Peter Gainsford

Name of Witness

Electronic Signature of me Peter Gainsford
Affixed by me or at my direction on May 2022

Address of Witness

*The document was signed as an original and
witnessed over audio link in accordance with s14G
of the Electronic Transactions Act 2000*

Signed sealed and delivered by **Eye**
Drive Sydney Pty Ltd ABN 98 007 305

179 hv
DocuSigned by:

Sheila Lines

8464833E1263413...
Signature of director/company secretary

Sheila Lines

Print name
Electronic Signature of me
Affixed by me or at my direction on May 2022
26/5/2022 | 8:01 AM AEST

DocuSigned by:

Chris Roberts


43A166F8B65E4F4...
Signature of director


Chris Roberts

Print name
Electronic Signature of me
Affixed by me or at my direction on May 2022
26/5/2022 | 10:20 AM AEST

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Signed sealed and delivered by **Eye Corp
Australia Pty Ltd ABN 62 069 009 614**

DocuSigned by:

8464833E1263413...
Signature of director/company secretary

DocuSigned by:

43A166F8B65E4F4...
Signature of director

Sheila Lines

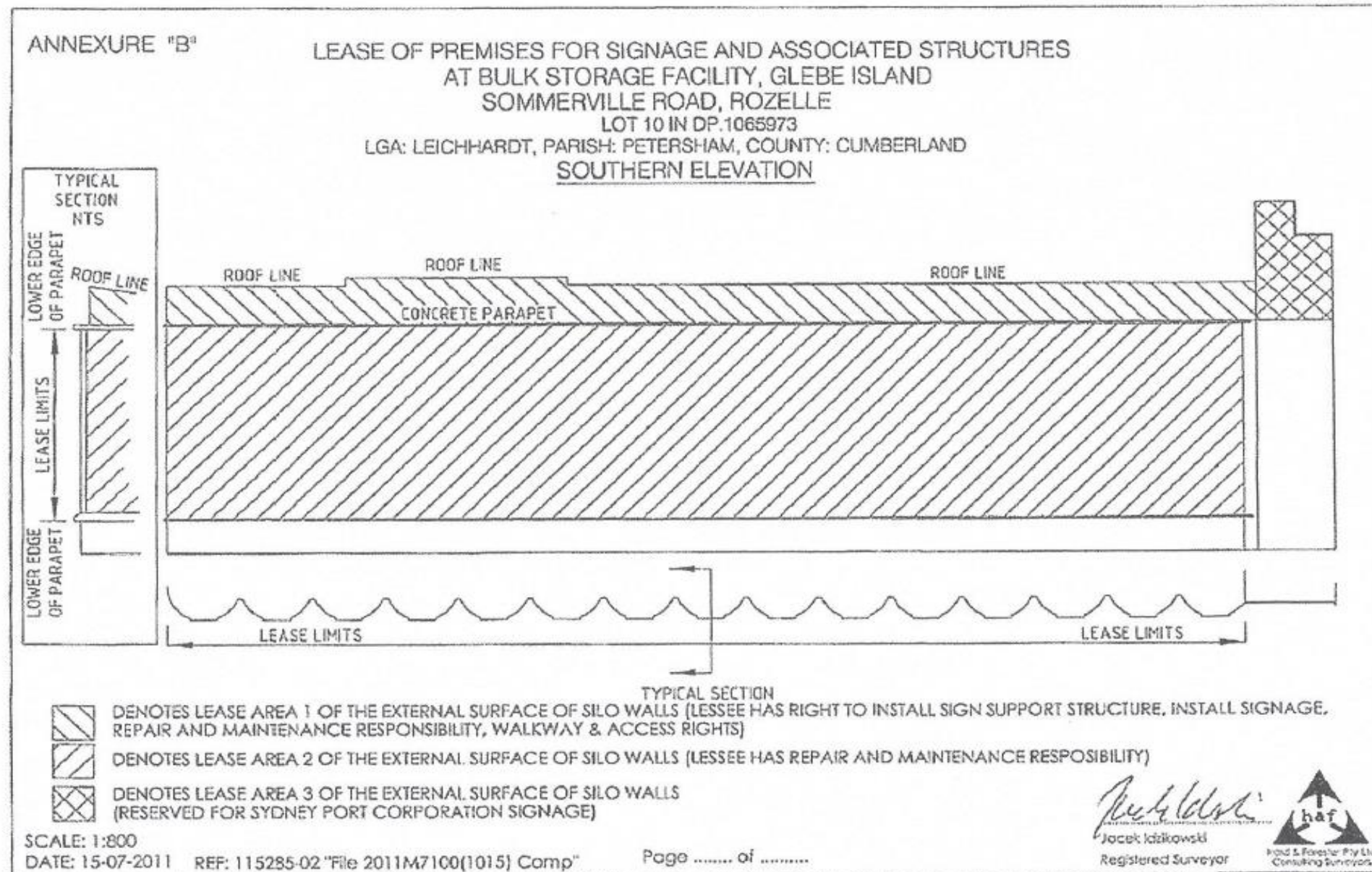
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Affixed by me or at my direction on May 2022
26/5/2022 | 8:01 AM AEST

Chris Roberts

Print name
Electronic Signature of me
Affixed by me or at my direction on May 2022
26/5/2022 | 10:20 AM AEST

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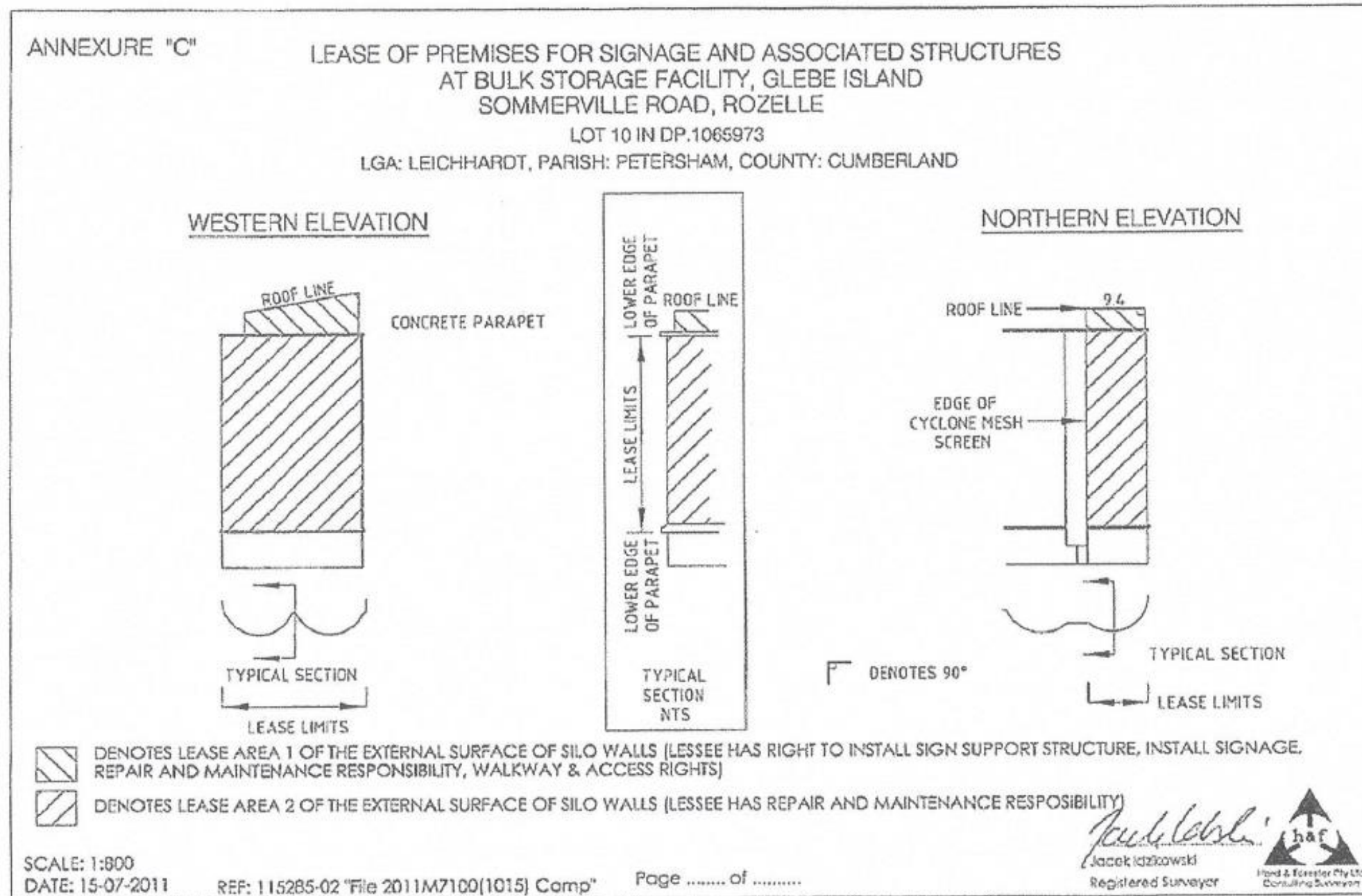
Annexure 1 – Plans



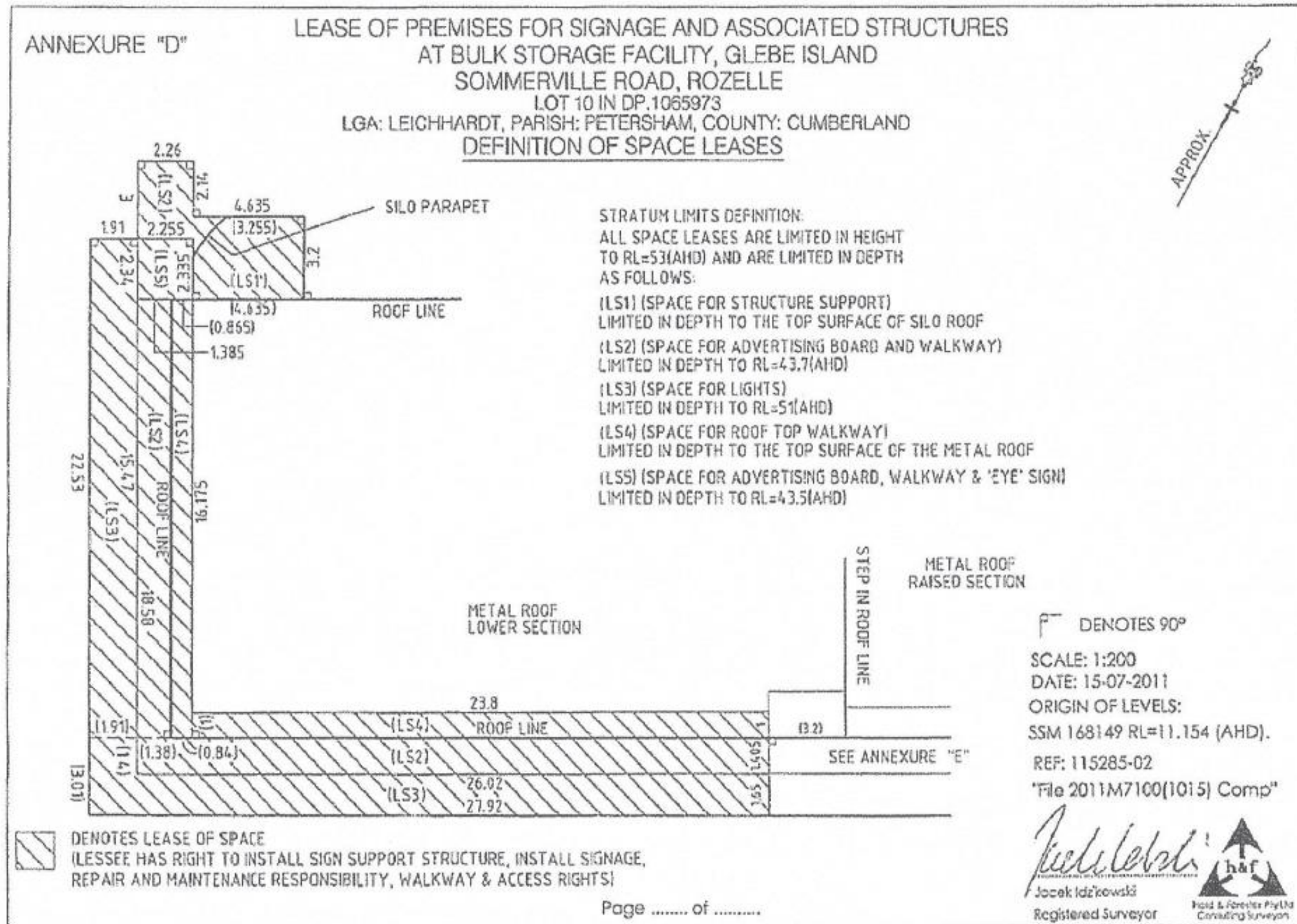
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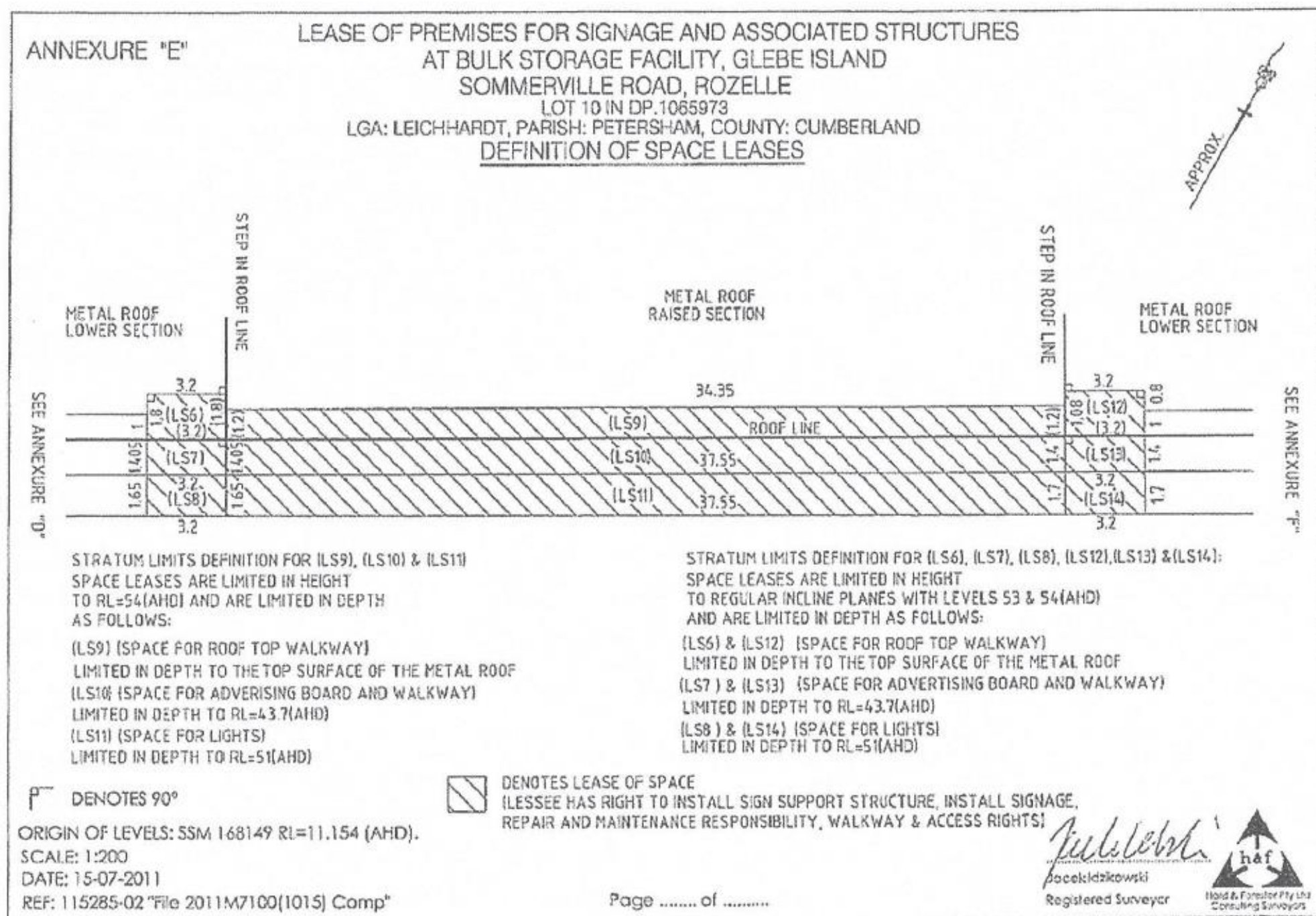
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