

Date 17 December 2020 2020

LICENCE

BETWEEN

PLANNING AND LAND AUTHORITY

AND

AUSTRALIAN CAPITAL TERRITORY

AND

**CANBERRA ORGANIC GROWERS SOCIETY
INC. ABN 94 417 016 435**

Association Number: A01212

SECTION 303 LICENCE FOR USE OF UNLEASED TERRITORY LAND

SDMS licence ID number: 3256

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PARTIES: **PLANNING AND LAND AUTHORITY**, the body corporate established by section 10 of the *Planning and Development Act 2007* (ACT) for and on behalf of the Commonwealth of Australia (“Authority”)

The entity specified in **Item 2** (“Custodian”)

The person specified in **Item 1** (“Licensee”)

BACKGROUND

- A. The Licensee has applied to the Authority pursuant to section 302 of the *Planning and Development Act 2007* (ACT) for a licence to occupy and use the Land.
- B. The Custodian is the custodian of the Land pursuant to section 333 of the *Planning and Development Act 2007* (ACT).
- C. The Custodian of the Land has given its written consent to the issue of such a licence and has requested the Authority to grant the licence to the Licensee.
- D. The Authority has agreed to grant this licence on the terms and conditions of this licence and the Licensee has agreed to these terms and conditions.
- E. The Authority and the Custodian have agreed that the Custodian will be responsible for the management of this licence.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this licence, unless the context otherwise requires.

Contact Officer means, in relation to each party, the representatives whose names and contact details are specified in **Item 11**, or as notified in writing from time to time by one party to the other.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (C’wlth).

GST has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (C’wlth).

Guarantor	means the person or persons (if any) described in Item 10 of Schedule 1 .
Item	means an item in the Schedule to this licence.
Land	means the unleased Territory land specified in Item 3 .
Leases Act	means the <i>Leases (Commercial and Retail) Act 2001</i> (ACT).
Licence Fee	means the fee specified in Item 6 .
Licence Fee Review Dates	means the dates set out in Schedule 2 .
Outgoings	means any levy, rate, land tax (on a single holding basis only) or other statutory charge imposed on or in respect of the Land or the Building.
Purpose	means that purpose to which the Land is to be put as specified in Item 4 .
Service Charges	means all charges for services provided in respect of the Land or Building and includes but is not limited to charges for electricity, and water.
Special Conditions	means the special conditions at Item 12 .
Term	means the period specified at Item 5 .
Territory	means: <ul style="list-style-type: none"> (1) when used in a geographical sense, the Australian Capital Territory; and (2) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (C'wlth).

1.2 General

In this licence, unless a contrary intention is expressed:

- (1) references to "Licensee" includes any employees, agents or subcontractors of the Licensee;
- (2) references to legislation or to any provision of it include any modification or re-enactment of it, any legislative provisions substituted for it and all regulations and statutory instruments issued under it;
- (3) words importing a gender include the others; words in the singular number include the plural and vice versa; and where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (4) "include" and "including" are not to be construed as words of limitation;
- (5) headings have no effect on the interpretation of the provisions; and
- (6) an obligation imposed by this licence on more than one person binds them jointly and severally.

2. Licence

The Authority grants the Licensee a licence under section 303 of the *Planning and Development Act 2007* (ACT) to occupy and use the Land on the terms and conditions contained in this licence.

3. Term of Licence

This licence will commence and expire on those dates specified in **Item 5**.

4. Purpose

The Licensee will use the Land only for the Purpose.

5. Licence Fee and GST

- 5.1 The Licensee must pay the Licence Fee in the manner described in **Item 6** or as the Custodian otherwise directs in writing.
- 5.2 Notwithstanding any other provision of this licence, the Licensee must pay to the Custodian from time to time in addition to any other payment under this licence, amounts equivalent to the GST payable by the Custodian in respect of anything which is a supply for the purposes of the GST Act under or in connection with this licence.

6. Licence Only

Nothing contained in this licence will create, or is to be construed as creating, any estate or interest in the Land in favour of the Licensee and the rights granted by this licence are personal to the Licensee.

7. Sub-licence or Assignment

- 7.1 Subject to **clause 7.3**, the Licensee must not sublet, licence, assign, transfer or mortgage its rights granted by this licence.
- 7.2 If the Licensee seeks the consent of the Custodian to sub-licence part or all of the Land the Licensee may make a written application to the Custodian and the Custodian may grant its consent, withhold its consent or grant its consent subject to conditions in its absolute discretion.
- 7.3 The Licensee may grant a sub-licence for part or all of the Land only in accordance with the prior written consent of the Custodian.

8. Obligation to Maintain and Repair

8.1 Licensee must Maintain and Repair

The Licensee must at all times during the term of this licence and at no cost to the Authority or the Custodian:

- (1) maintain and repair and keep in repair the Land to the satisfaction of the Custodian; and
- (2) keep the Land clean and tidy and free from debris, dry herbage, rubbish and other unsightly or offensive matter.

8.2 End of Licence

When this licence expires or is terminated, the Licensee must leave the Land and give it up in good repair and clean condition to the satisfaction of the Custodian having regard to its condition at the date of commencement of this licence.

9. Failure to Maintain and Repair

9.1 Custodian may give Notice to Repair

If the Licensee breaches its obligations under **clause 8.1** or **clause 8.2** the Custodian may by written notice to the Licensee require the Licensee to effect the necessary work in accordance with the notice.

9.2 Failure to Comply

If the Licensee fails to comply with either **clause 8.1**, **clause 8.2** or the notice under **clause 9.1**, the Custodian may, at the cost of the Licensee, have the necessary works done and recover the cost of those works from the Licensee as if such cost were arrears in the Licence Fee.

10. Nuisance or Danger

The Licensee must not do or permit to be done any act or omission with respect to the Land that may be or become a nuisance or danger.

11. Insurance

11.1 Public Liability

The Licensee, during the Term and any holding over under this Licence, must keep current a public risk liability policy with a Prescribed Insurer for an amount for any single occurrence of not less than the amount referred to in **Item 9**. The policy must indemnify the Authority and the Custodian against all actions and demands of any kind arising from the use as set out in the Activity Schedule in Attachment "B" to this licence agreement and occupation by the Licensee and the Licensee's employees, agents, contractors and invitees of the Premises. The policy must note the Authority's interest.

11.2. Other Insurance

The Licensee will be responsible for insuring the Licensee's Improvements and all other property of the Licensee in the Premises.

11.3. General obligations not to increase Authority's or Custodian's insurance

The Licensee must not do, or permit to be done, anything that would result in any insurance in relation to the Premises being:

- (1) unenforceable;
- (2) voidable; or
- (3) likely to increase the rate of premium on any insurance taken out by the Authority and/or Custodian (except with the approval of the Custodian in writing).

11.4. Fire regulations

In relation to any Licensee's Improvements, the Licensee must comply with the terms of any insurance policy and any sprinkler and fire regulations.

11.5. Production of policy

The Licensee, in respect of any policy of insurance to be taken out by the Licensee, must, on request, produce to the Custodian either a:

- (1) policy of insurance; or
- (2) certificate of currency for the policy

12. Outgoings and Service Charges

The Licensee must pay all Outgoings and Service Charges in respect of the Land or any part thereof.

13. Services to Land

The Custodian may, at its own expense, and following consultation with the Licensee, relocate any pipes, wires, and other site services to the Land.

14. Obstructions and Hazards

The Licensee must:

- (1) provide adequate signage and hazard protection on the Land to the satisfaction of the Custodian, and ensure all hazards on the Land are illuminated between sunset and sunrise;
- (2) ensure that every stormwater channel on the Land is kept clear of obstruction at all times; and
- (3) ensure, as far as is practicable, that all footpaths and roadways on the Land are kept free from obstruction at all times.

15. Signs

The Licensee must not display or permit to be displayed on the Land any sign, hoarding, or advertisement without the prior written approval of the Custodian or where required by law the prior written consent of the Authority.

16. Management and Compliance with Legislation

The Licensee must:

- (1) manage the Land to the satisfaction of the Custodian; and
- (2) comply with all laws applicable to the Land.

17. Termination

17.1 Breach of Licence

If the Licensee breaches any provision of this licence, and that breach:

- (1) is not capable of remedy; or
- (2) is capable of remedy and the Licensee fails to remedy that breach after the expiry of the time frame specified by the Authority or Custodian in a written notice,

the Authority or Custodian may terminate this licence in whole or in part.

17.2 Termination for Reason Other Than Breach

This licence may be terminated by any party giving the other party six (6) months notice in writing, or such earlier termination as agreed by the parties in writing. No party will have any action against any other in respect of termination of this licence pursuant to this clause. The right to terminate early will not prejudice a claim by a party in respect of any breach of this licence arising prior to termination.

17.3 No Repayment on Termination

The Licensee will not be entitled to repayment of the Licence Fee, or any part of it, or any other fee paid under this licence in the event of termination of this licence.

18. Compensation

At the expiration or termination of this Licence, the Licensee will not be entitled to receive any form of compensation from the Authority or Custodian in respect of any Licensee's Improvements or other property of the Licensee on the Premises.

19. Guarantee and Indemnity

19.1 Guarantee

The Guarantor guarantees to the Authority and/or the Custodian the due payment of all moneys due under this Licence (limited to an amount equal to one month's Licence Fee) and the due performance by the Licensee of all the covenants and terms of this Licence by the Licensee.

19.2. Indemnity

- 19.2.1. The Guarantor indemnifies the Authority and/or the Custodian and agrees to keep the Authority and/or the Custodian indemnified from all damages and all costs, losses and expenses which the Authority and/or the Custodian may suffer or incur from any breach or non-observance by the Licensee of any of the covenants and terms in this Licence.
- 19.2.2. The Guarantor agrees that this indemnity continues and the Guarantor remains liable to the Authority and/or the Custodian notwithstanding that as a consequence of breach or non-observance by the Licensee the Authority and/or the Custodian has exercised any of its rights including its right of re-entry and notwithstanding that the Licensee (being a company) may be wound up or (being a natural person) may be declared bankrupt and notwithstanding that the guarantee now given may for any reason be unenforceable.

19.3. Not affected by time or other indulgence

The liability of the Guarantor is not affected by the granting of time or other indulgence or concessions to the Licensee or by the compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of the Authority and/or the Custodian against the Licensee or by any neglect or omission to enforce such rights or by anything, which under the law relating to sureties would or might but for this clause release the Guarantor from his obligations.

19.4. Continuing guarantee

The guarantee and indemnity now given are to continue until the due performance and observance by the Licensee of all the terms and conditions of this Licence.

19.5. Limitation

Without limiting clause 19.4, where this clause is found to be illegal, void or unenforceable, it is to be read down, if possible to be legal, void or enforceable.

20. Special Conditions

In the event of any inconsistency between any Special Condition and any other provision of this licence then, to the extent of any inconsistency, the Special Condition will prevail.

21. Leases Act

If:

- (1) the Leases Act applies to this licence; and
- (2) there is an inconsistency between the provisions of the Leases Act and the provisions of this licence,

then, to the extent of any inconsistency, the provisions of the Leases Act will prevail.

22. Notices

Any notice, including any other communication, required to be given or sent to either party under this licence must be in writing and given to the relevant Contact Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two days after the date on which it was sent;
- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (4) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

SCHEDULE 1

LICENCE DETAILS

Item 1. Licensee	CANBERRA ORGANIC GROWERS SOCIETY INC. ABN 94 417 016 435 PO BOX 347 DICKSON ACT 2602
Item 2. Custodian	AUSTRALIAN CAPITAL TERRITORY , the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (C'wlth) represented by City Presentation, an administrative unit of the Transport Canberra and City Services Directorate ("Territory").
Item 3. Land	SDMS Licence ID number 3256 <ol style="list-style-type: none">1. Block 28, Section 55 CRACE2. Part Block Rural Block 668, WESTON CREEK3. Part Block Rural Block 1438, BELCONNEN4. Part Block 14, Section 112, CHARNWOOD5. Part Block 23, Section 286, KAMBAH6. Part Block 1, Section 35, MITCHELL7. Part Block 4, 5 and 6, Section 5, OAKS ESTATE8. Part Block 3 Section 47, HOLDER9. Part Block 17 Section 130 WANNIASSA Location of all gardens is attached and marked with as per the shaded area on the plan at "Attachment A".
Item 4. Purpose	To use the land only for community gardens to produce fruit and vegetables for home consumption by plot holders
Item 5. Term of Licence	From the date of this Licence until 30 June 2030
Item 6. Licence Fee (Note: The Licence Fee is additional to the fee charged for applying for the Licence which the Minister determines under the <i>Planning and Development Act 2007</i> (ACT).)	\$1.10 Inserted by custodian (including GST).
Item 7. Manner of Payment	To be paid as and when requested by the Custodian.

Item 8. Licence Fee Review (a) Licence Fee review Dates: N/A
(b) Method of Licence Free review: N/A

Item 9. Insurance Amount \$20 million - (\$20,000.000.00)
All insurance required of it by law.

Item 10. Guarantor/s N/A

Item 11. Contact Officer *For the Planning and Land Authority*

Senior Manager
Lease Administration
Planning Delivery Division
Environment & Planning Directorate
16 Challis Street
DICKSON ACT 2602

GPO Box 158
CANBERRA ACT 2601

Telephone: (02) 6207 1885
Facsimile: (02) 6207 1856

For the Custodian

City Presentation
Transport Canberra and City Services – TCCS
480 Northbourne Avenue
DICKSON ACT 2602
GPO Box 158
Canberra City ACT 2601

Stephen Alegria
Director
Telephone: (02) 6207 9833
Facsimile: (02) 6207 5366

For the Licensee

Canberra Organic Growers Society Inc.
PO Box 347
Dickson ACT 2602

Peter Weddell
0421 474 272

Item 12. Special Conditions

1. Placement of structures may require Building Approval and/or Development Approval. Licensee is to seek all necessary authorisations prior to the placement of any such structures.
2. Surplus produce can be sold for the purposes of fundraising for the organisation but cannot be sold for the personal gain of individual members.
3. Each garden must install its own water meter and fencing at its own expense
4. Licensee is permitted to allow portable lockers for the storage of equipment. Portable lockers are not exceed 1.5m width, 1m depth and 0.5m in height
5. No camping is permitted within the license area.
6. No parking of vehicles/trailers overnight or vehicle/trailer storage permitted within the license area.
7. No storage of materials not specifically related to the community garden is permitted within the license area.
8. The keeping of livestock and poultry is prohibited within the license area.
9. Equipment and Objects located within the fence line do not require illumination as per Section 14(1). If any Equipment or objects are located outside of the license area, they are to be visible by way of illumination.
10. Signage is permitted for the purpose of advertising the Canberra Organic Growers Society Inc. All signage must remain within or on the license boundary. No external advertising is permitted.
11. Fires for the purpose of burning rubbish are not permitted within the license. Fires for the purpose of cooking food or heating of drinks are permitted as long as they are contained within a designated firepit, fires are to be conducted in accordance with relevant warnings and fire bans associated at time of burns.
12. In the event that ACT Housing terminates access to Block 11 Section 130 Wanniasa, the licence over part Block 17 Section 130 Wanniasa will also be terminated.

ATTACHMENT A

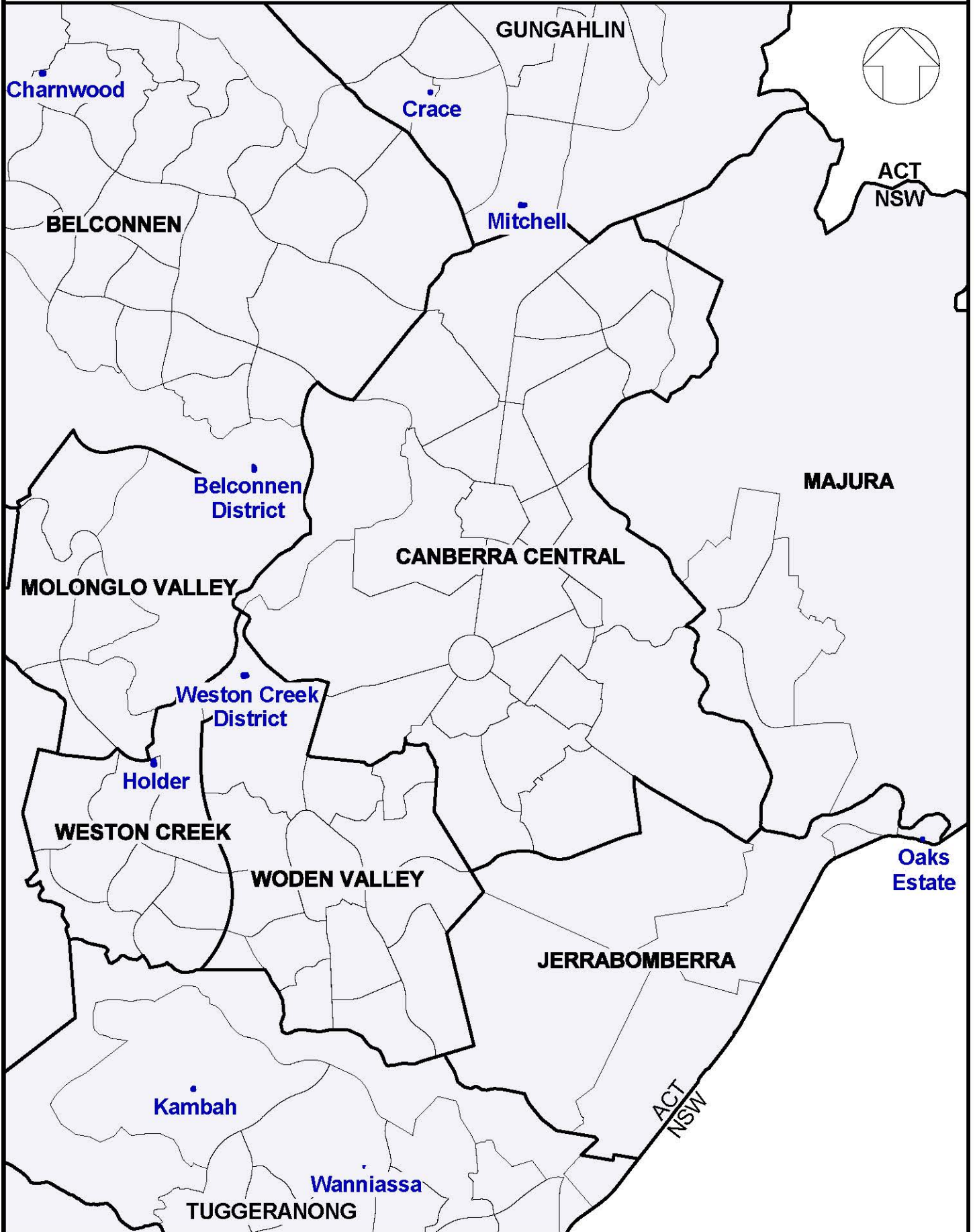
SDMS: 3256

Encroachment Plans – Aerial View

LICENCE : 3256

COMMUNITY GARDENS

DATE: 30/11/2020

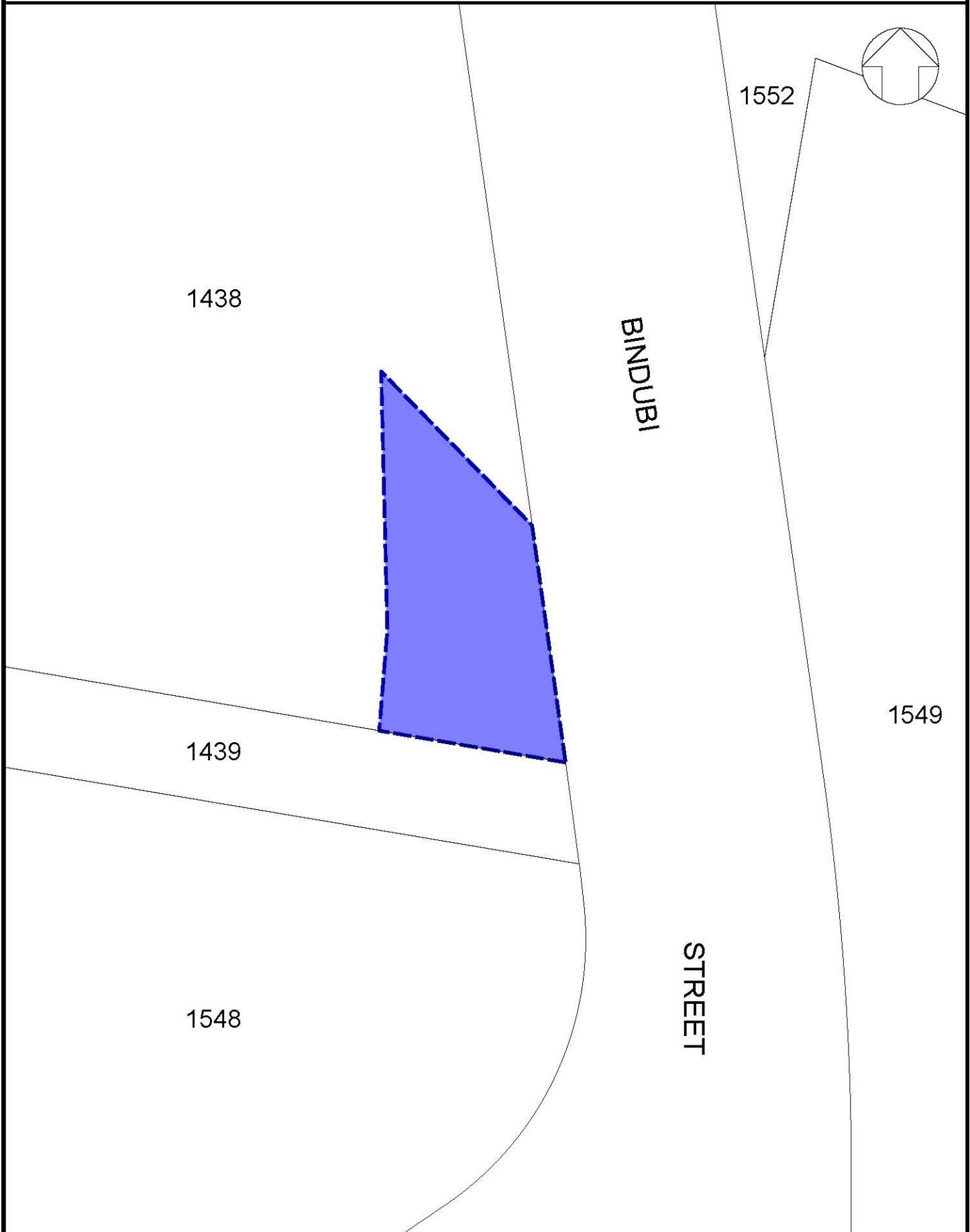


Licence Area

COMMUNITY GARDENS LICENCE

DISTRICT: BELCONNEN

BLOCK NUMBER: 1438 (part)



Licence Area

COMMUNITY GARDENS LICENCE

DISTRICT: BELCONNEN

BLOCK NUMBER: 1438 (part)



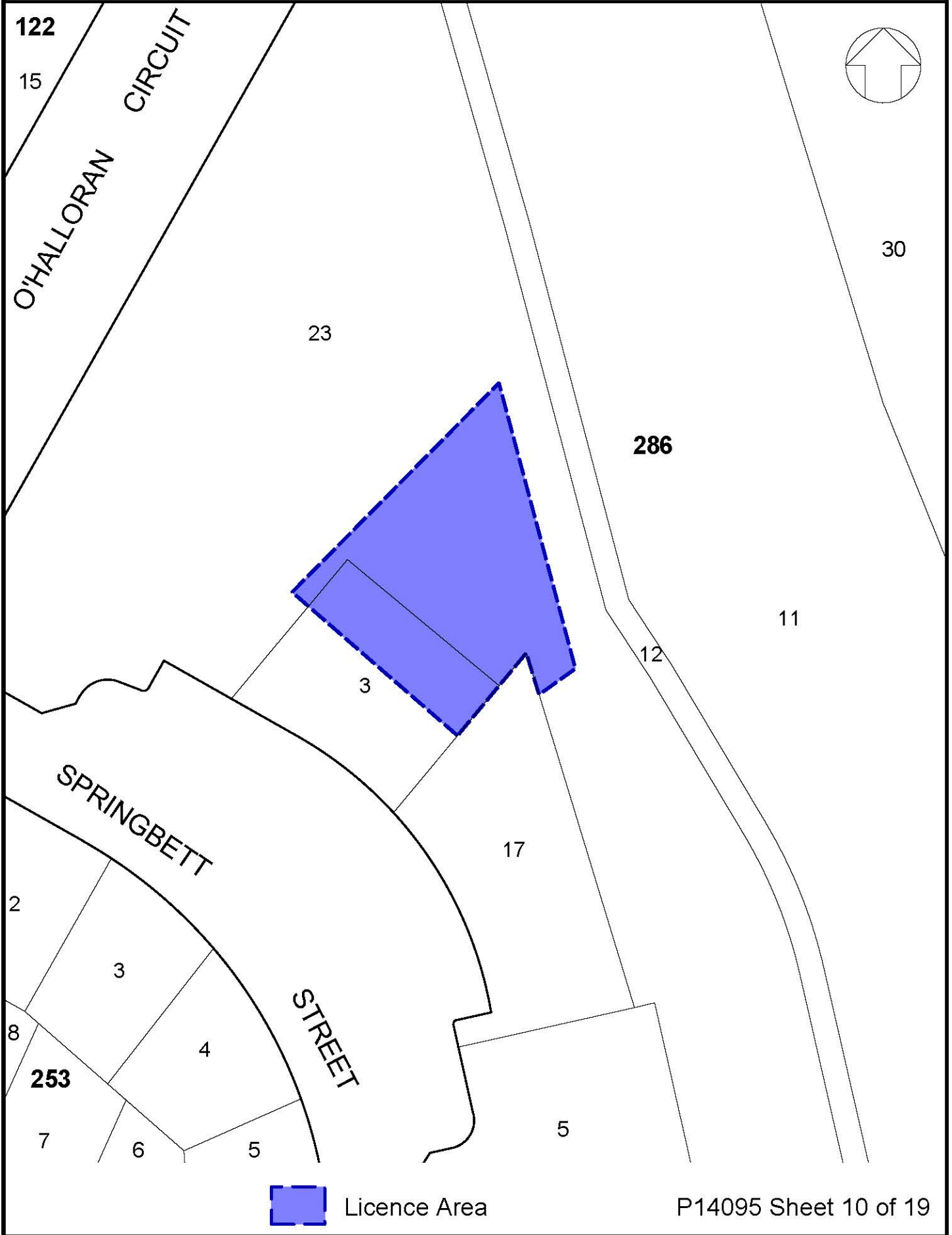
Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: KAMBAH

SECTION NUMBER: 286

BLOCK NUMBERS: 3 & 23 (parts)



 Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: KAMBAH

SECTION NUMBER: 286

BLOCK NUMBERS: 3 & 23 (parts)



 Licence Area

COMMUNITY GARDENS LICENCE

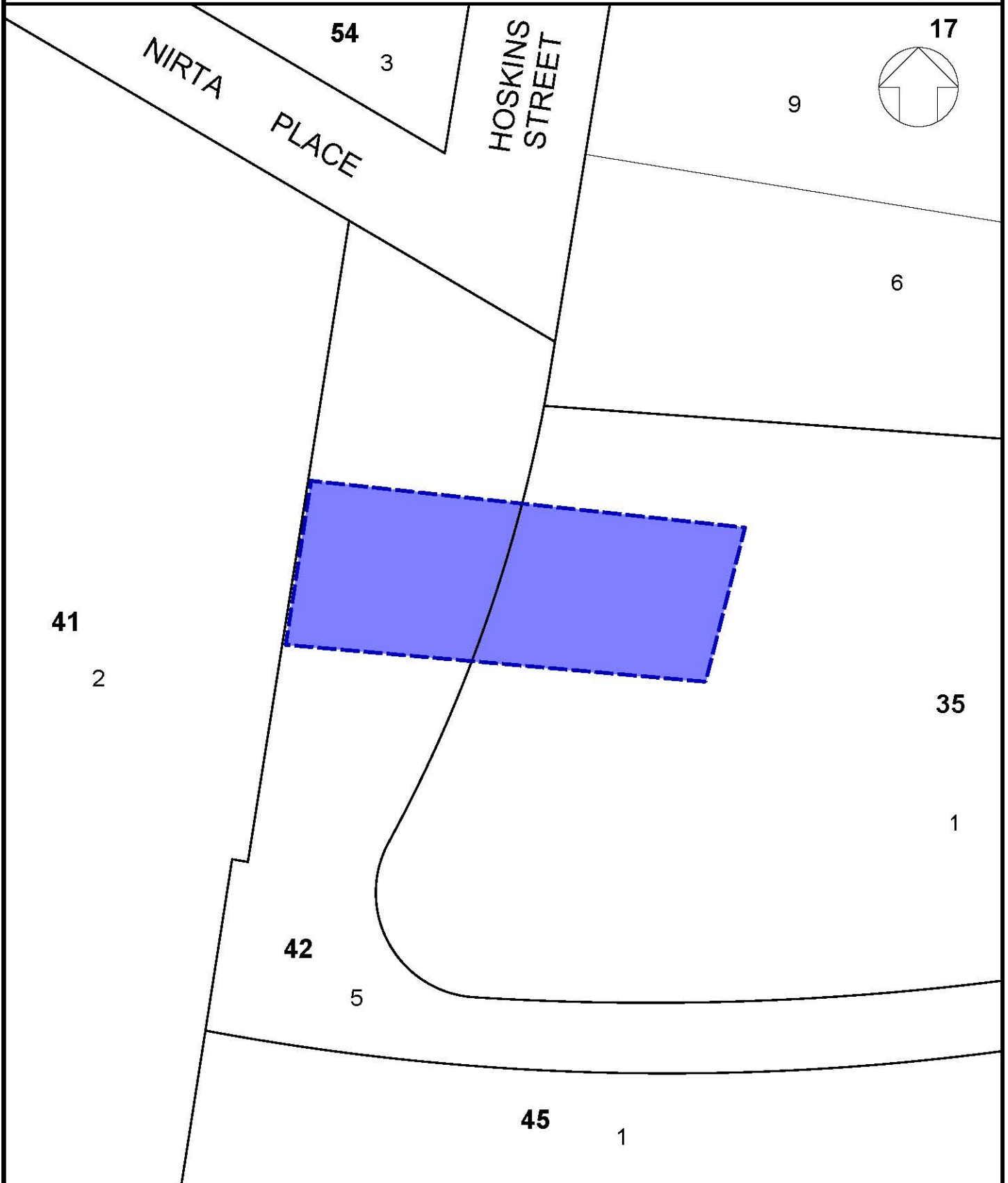
DIVISION: MITCHELL

SECTION NUMBER: 35

BLOCK NUMBER: 1 (part)

SECTION NUMBER: 42

BLOCK NUMBER: 5 (part)



Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: MITCHELL

SECTION NUMBER: 35

BLOCK NUMBER: 1 (part)

SECTION NUMBER: 42

BLOCK NUMBER: 5 (part)



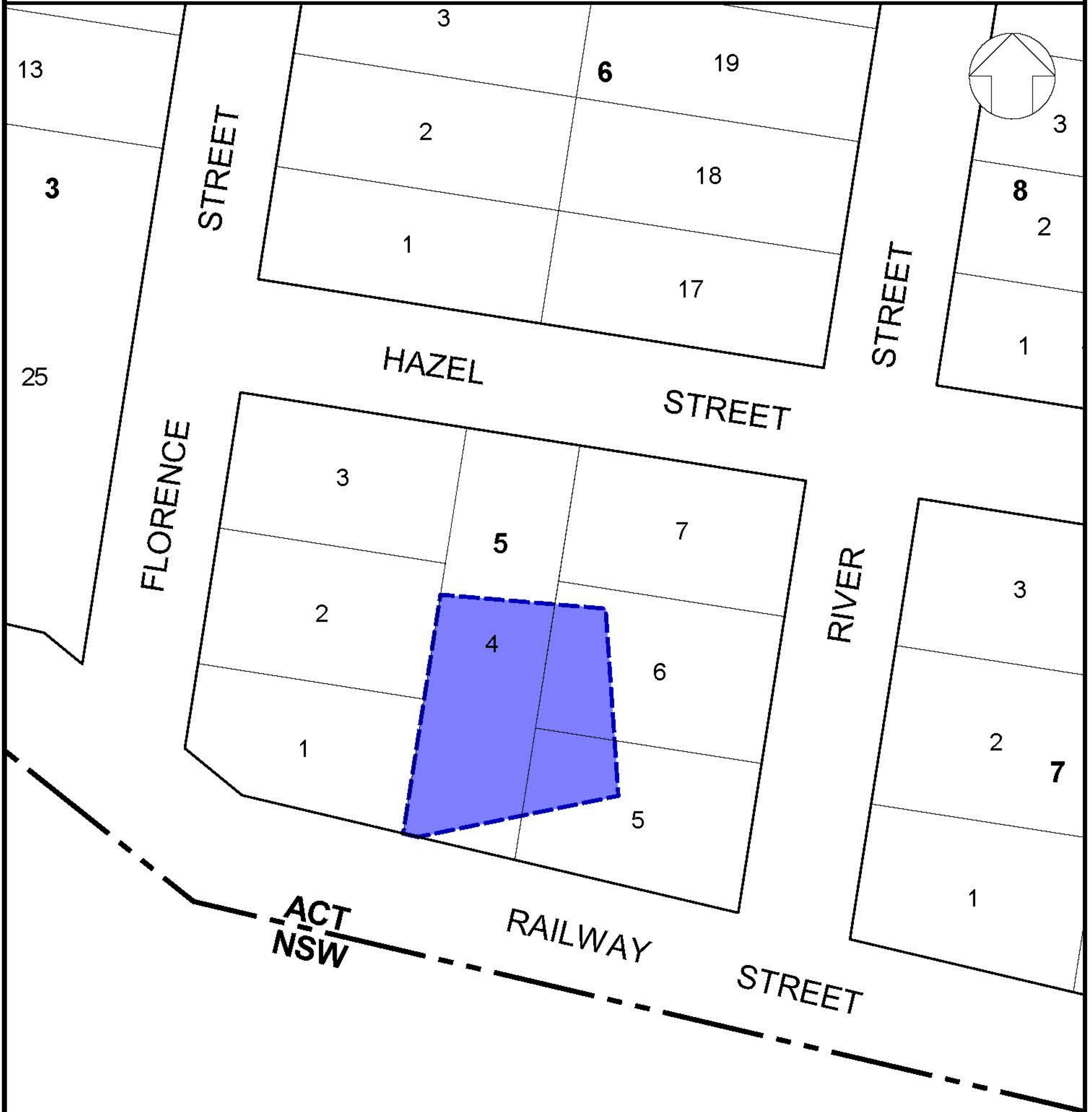
Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: OAKS ESTATE

SECTION NUMBER: 5

BLOCK NUMBERS: 4-6 (parts)



 Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: OAKS ESTATE

SECTION NUMBER: 5

BLOCK NUMBERS: 4-6 (parts)



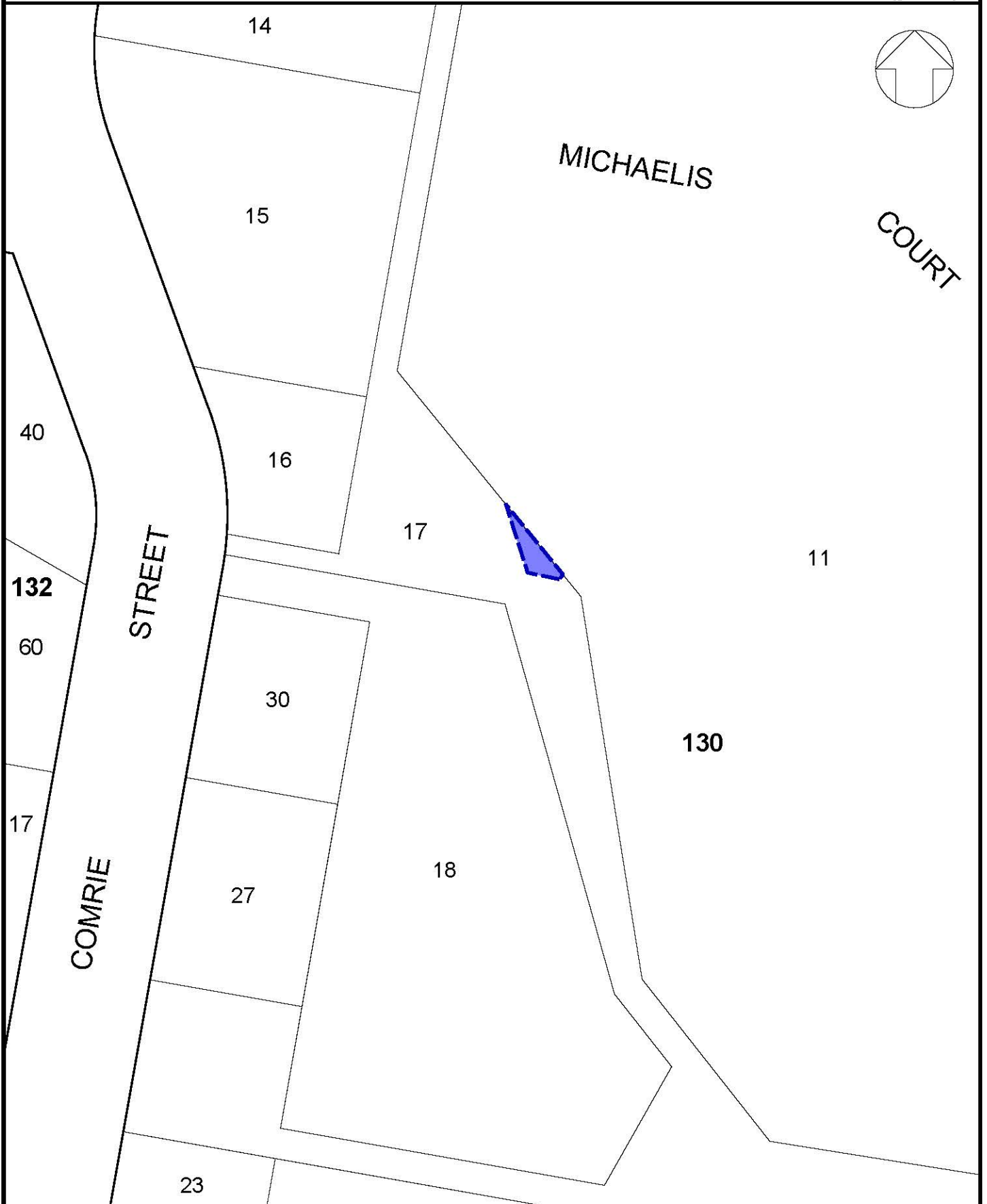
Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: WANNIASSA

SECTION NUMBER: 130

BLOCK NUMBER: 17 (part)



Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: WANNIASSA

SECTION NUMBER: 130

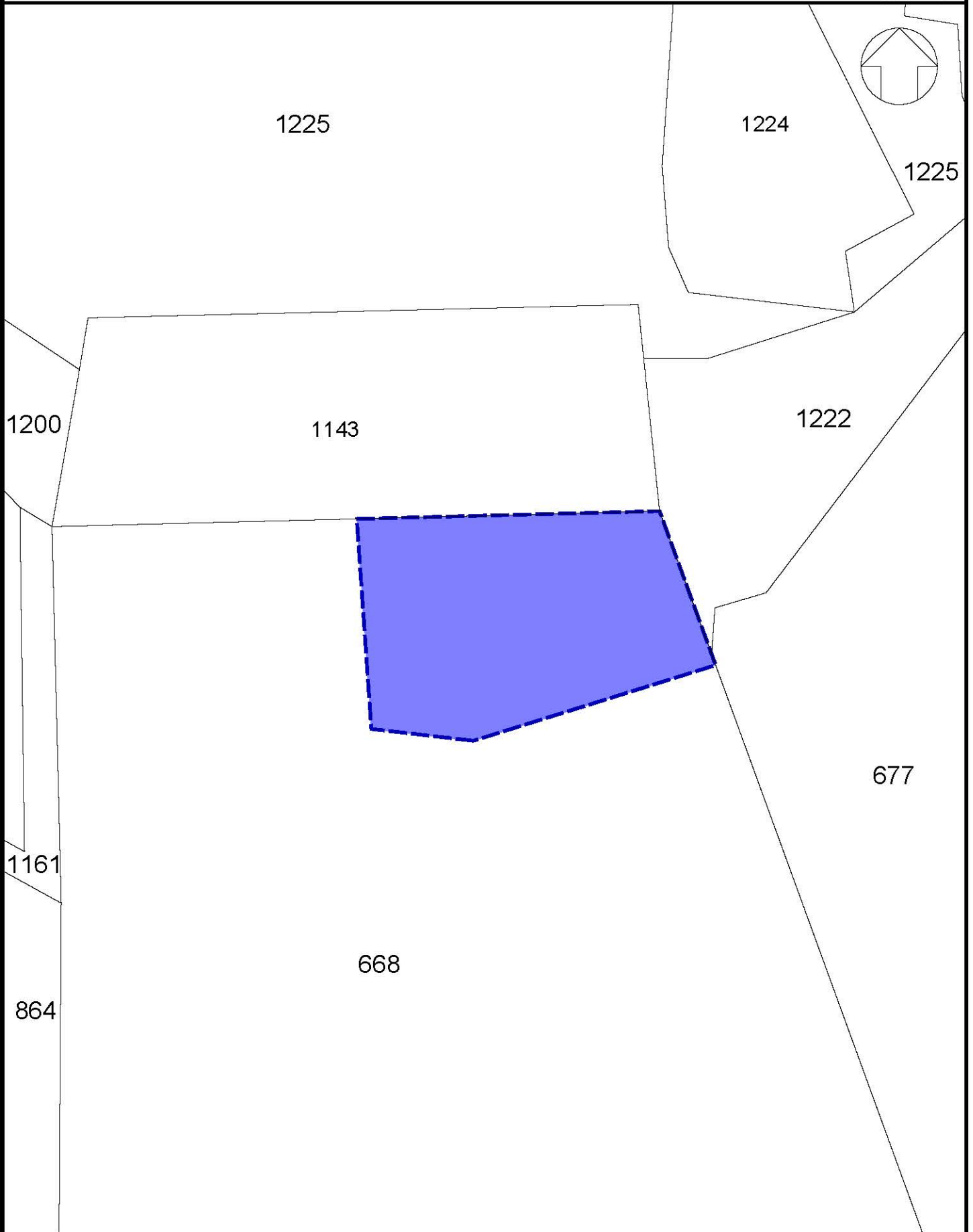
BLOCK NUMBER: 17 (part)



COMMUNITY GARDENS LICENCE

DISTRICT: WESTON CREEK

BLOCK NUMBER: 668 (part)



Licence Area

COMMUNITY GARDENS LICENCE

DISTRICT: WESTON CREEK

BLOCK NUMBER: 668 (part)

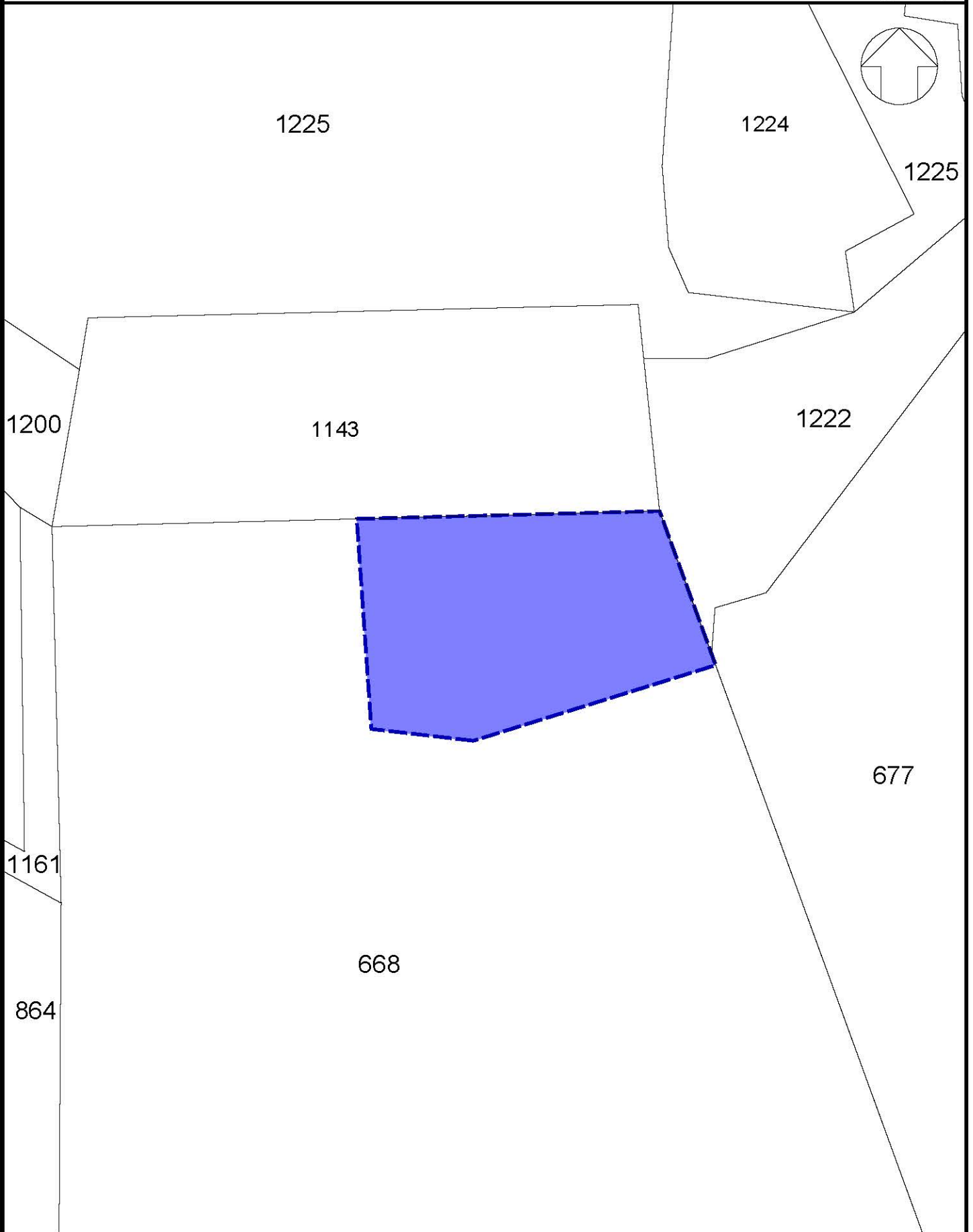


Licence Area

COMMUNITY GARDENS LICENCE

DISTRICT: WESTON CREEK

BLOCK NUMBER: 668 (part)



Licence Area

COMMUNITY GARDENS LICENCE

DISTRICT: WESTON CREEK

BLOCK NUMBER: 668 (part)



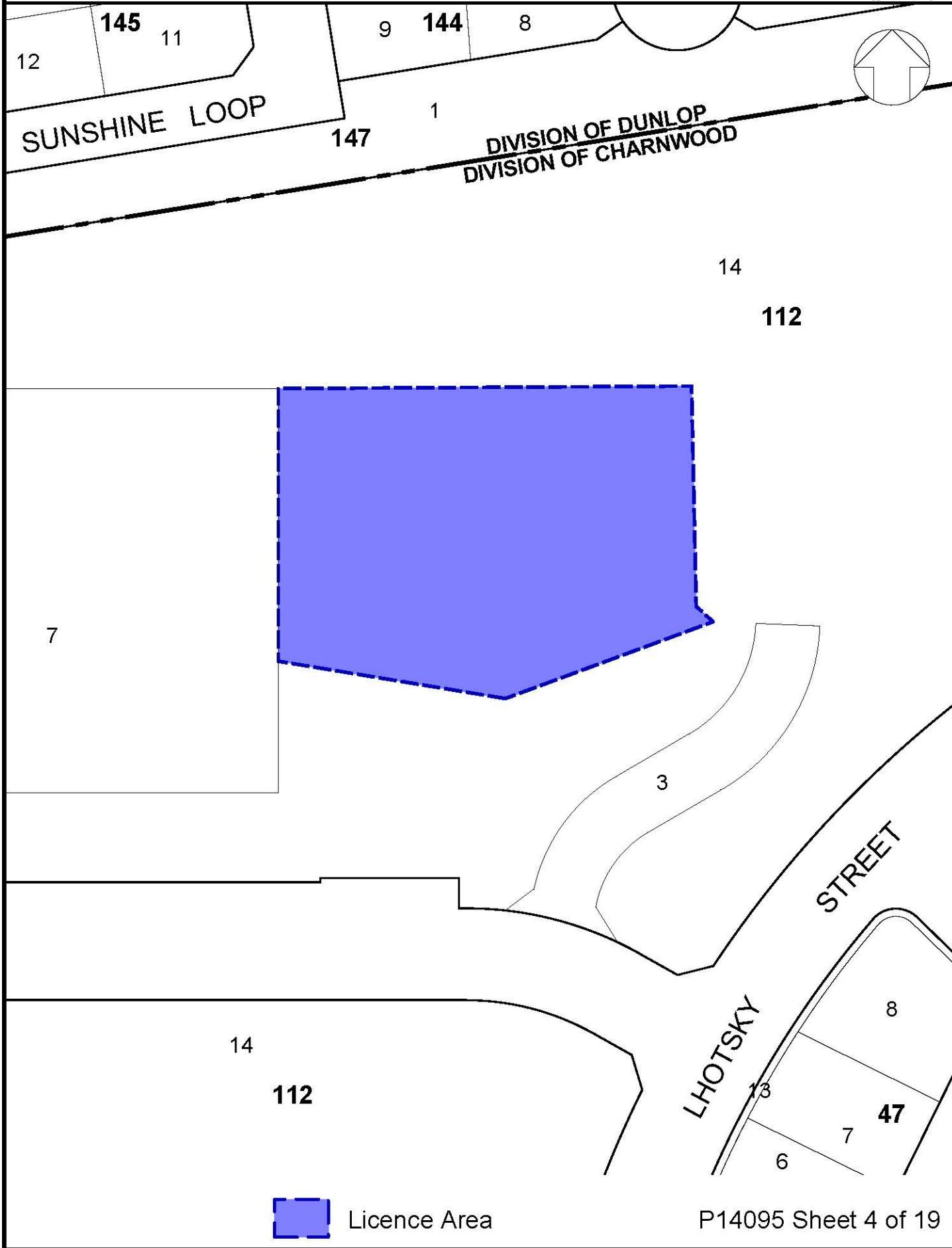
Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: CHARNWOOD

SECTION NUMBER: 112

BLOCK NUMBER: 14 (part)



 Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: CHARNWOOD

SECTION NUMBER: 112

BLOCK NUMBER: 14 (part)



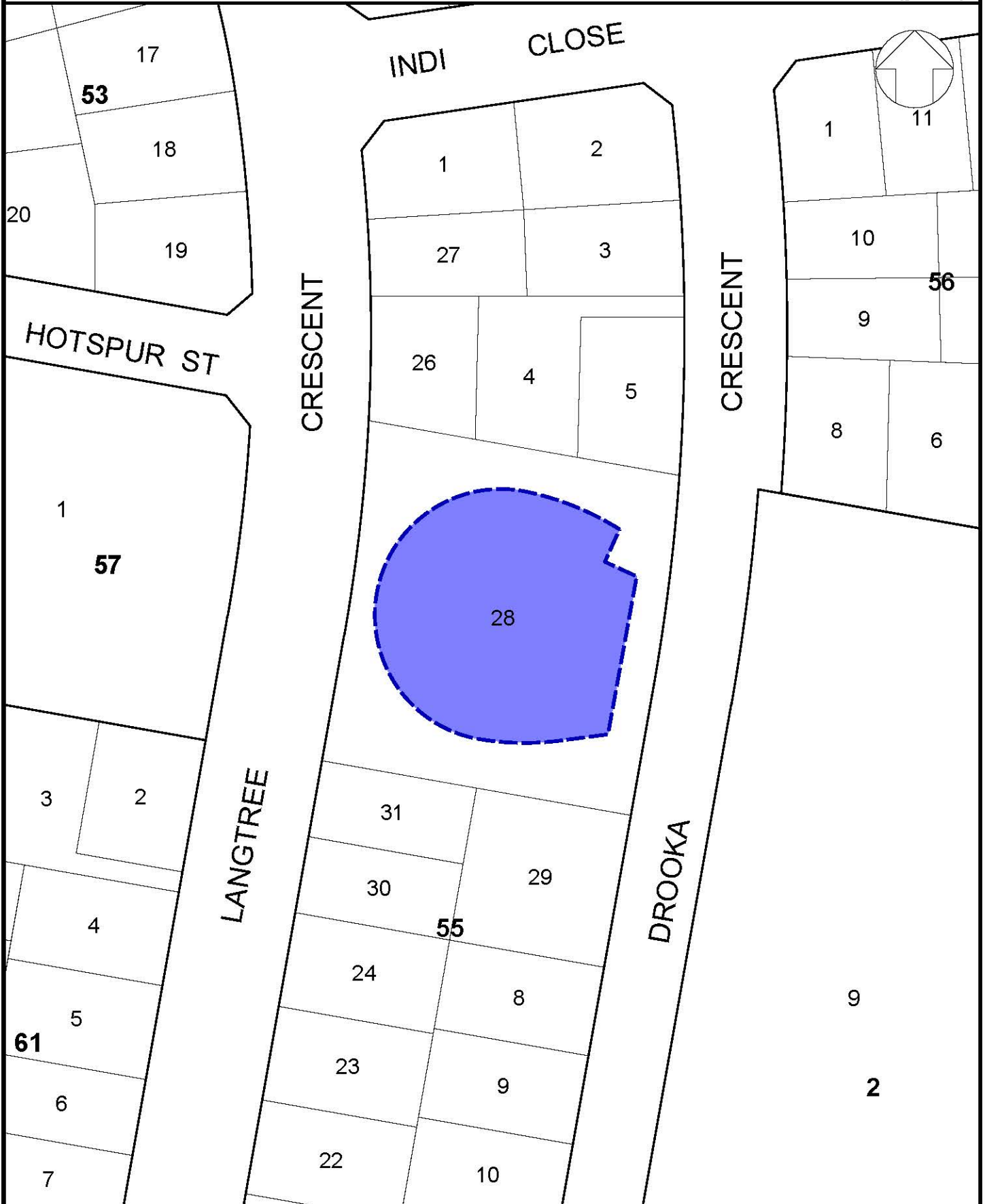
Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: CRACE

SECTION NUMBER: 55

BLOCK NUMBER: 28 (part)



Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: CRACE

SECTION NUMBER: 55

BLOCK NUMBER: 28 (part)



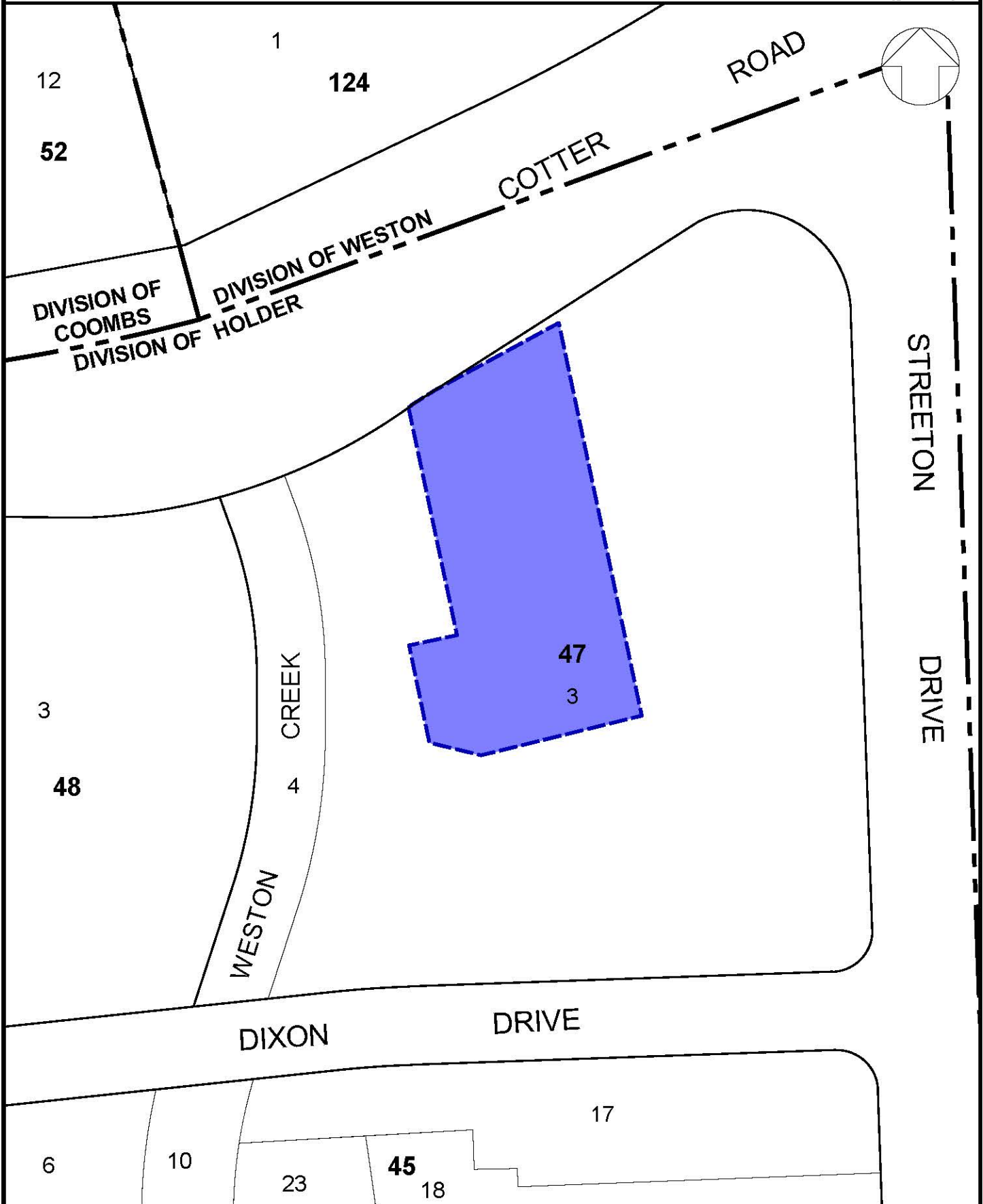
Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: HOLDER

SECTION NUMBER: 47

BLOCK NUMBER: 3 (part)



 Licence Area

COMMUNITY GARDENS LICENCE

DIVISION: HOLDER

SECTION NUMBER: 47

BLOCK NUMBER: 3 (part)



Licence Area

ATTACHMENT B
ACTIVITY SCHEDULE

RISK ANALYSIS

Based on the information you have provided and ACT Insurance Authority your Insurance Risk score is assessed as:

Item	Score
Community Garden	6

Please note that the ratings on this page relate to Public Liability. Other insurance requirements, like professional or medical indemnity, are still on a case by case basis by the ACT Insurance Authority.

Note:

Date: Must be dated on the date the last party signs the Licence or, if signed counterparts of the Licence are exchanged, the date of exchange. Also date the cover page.

Individual: Must be signed by the individual Licensee and witnessed.

Incorporated Association: Must be signed in accordance with the association's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

Company: Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the company's constitution.