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# Contract for the sale and purchase of land 2019 edition

TERM	MEANING OF TERM	eCOS ID: 96045821	NSW DAN:
vendor's agent	New Vision Real Estate Phil Batten		Phone: 02 9160 6475 Fax: Ref:
co-agent			
vendor	TONY MICHAEL ROUPELL 8 Chelsea Road Castle Hill NSW 2154		
vendor's solicitor	Kirby Law Group Pty Ltd T/as Kirby Legal Level 13 111 Elizabeth Street Sydney NSW 2000		Phone: 0404944684 Fax: Ref: 220003
date for completion	42 days after the contract date	(clause 15)	Email: lachlan@kirbylegal.com.au
land	NSW (Address, plan details and title reference) LOT 66 IN STRATA PLAN 93227 66/SP93227		
	<input type="checkbox"/> VACANT POSSESSION	<input checked="" type="checkbox"/> Subject to existing tenancies	
improvements	<input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input checked="" type="checkbox"/> home unit <input checked="" type="checkbox"/> carspace <input checked="" type="checkbox"/> storage space <input type="checkbox"/> none <input type="checkbox"/> other:		
attached copies	<input checked="" type="checkbox"/> documents in the List of Documents as marked or as numbered: <input type="checkbox"/> other documents:		

**A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.**

inclusions	<input type="checkbox"/> blinds	<input type="checkbox"/> dishwasher	<input type="checkbox"/> light fittings	<input type="checkbox"/> stove
	<input type="checkbox"/> built-in wardrobes	<input type="checkbox"/> fixed floor coverings	<input type="checkbox"/> range hood	<input type="checkbox"/> pool equipment
	<input type="checkbox"/> clothes line	<input type="checkbox"/> insect screens	<input type="checkbox"/> solar panels	<input type="checkbox"/> TV antenna
	<input type="checkbox"/> curtains	<input type="checkbox"/> other:		
exclusions				
purchaser				
purchaser's solicitor			Phone:	
			Fax:	
			Ref:	
price	\$		Email:	
deposit	\$		(10% of the price, unless otherwise stated)	
balance	\$			
contract date			(if not stated, the date this contract was made)	

buyer's agent

vendor

witness

**GST AMOUNT** (optional)

The price includes

GST of: \$

purchaser

JOINT TENANTS

tenants in common

in unequal shares

witness

vendor agrees to accept a **deposit-bond** (clause 3)  NO  yes

**Nominated Electronic Lodgment Network (ELN)** (clause 30)

**Electronic transaction** (clause 30)  no  YES

(if no, vendor must provide further details, such as the proposed applicable waiver, in the space below, or *serve within 14 days* of the contract date):

**Tax information (the parties promise this is correct as far as each party is aware)**

**land tax** is adjustable  NO  yes

**GST: Taxable supply**  NO  yes in full  yes to an extent

Margin scheme will be used in making the taxable supply  NO  yes

This sale is not a taxable supply because (one or more of the following may apply) the sale is:

- not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))
- by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))
- GST-free because the sale is the supply of a going concern under section 38-325
- GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-O
- input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

Purchaser must make an *GSTRW payment* (residential withholding payment)  NO  yes (if yes, vendor must provide further details)

If the further details below are not fully completed at the contract date, the vendor must provide all these details in a separate notice *within 14 days* of the contract date.

**GSTRW payment (GST residential withholding payment) – further details**

Frequently the supplier will be the vendor. However, sometimes further information will be required as to which entity is liable for GST, for example, if the supplier is a partnership, a trust, part of a GST group or a participant in a GST joint venture.

Supplier's name:

Supplier's ABN:

Supplier's GST branch number (if applicable):

Supplier's business address:

Supplier's email address:

Supplier's phone number:

Supplier's proportion of *GSTRW payment*: \$

If more than one supplier, provide the above details for each supplier.

Amount purchaser must pay – price multiplied by the *RW rate* (residential withholding rate): \$

Amount must be paid:  AT COMPLETION  at another time (specify):

Is any of the consideration not expressed as an amount in money?  NO  yes

If "yes", the GST inclusive market value of the non-monetary consideration: \$

Other details (including those required by regulation or the ATO forms):

## List of Documents

General	Strata or community title (clause 23 of the contract)
<input checked="" type="checkbox"/> 1 property certificate for the land	<input type="checkbox"/> 32 property certificate for strata common property
<input checked="" type="checkbox"/> 2 plan of the land	<input type="checkbox"/> 33 plan creating strata common property
<input type="checkbox"/> 3 unregistered plan of the land	<input type="checkbox"/> 34 strata by-laws
<input type="checkbox"/> 4 plan of land to be subdivided	<input type="checkbox"/> 35 strata development contract or statement
<input type="checkbox"/> 5 document that is to be lodged with a relevant plan	<input type="checkbox"/> 36 strata management statement
<input checked="" type="checkbox"/> 6 section 10.7(2) planning certificate under Environmental Planning and Assessment Act 1979	<input type="checkbox"/> 37 strata renewal proposal
<input type="checkbox"/> 7 additional information included in that certificate under section 10.7(5)	<input type="checkbox"/> 38 strata renewal plan
<input type="checkbox"/> 8 sewerage infrastructure location diagram (service location diagram)	<input type="checkbox"/> 39 leasehold strata - lease of lot and common property
<input type="checkbox"/> 9 sewer lines location diagram (sewerage service diagram)	<input type="checkbox"/> 40 property certificate for neighbourhood property
<input type="checkbox"/> 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract	<input type="checkbox"/> 41 plan creating neighbourhood property
<input type="checkbox"/> 11 <i>planning agreement</i>	<input type="checkbox"/> 42 neighbourhood development contract
<input type="checkbox"/> 12 section 88G certificate (positive covenant)	<input type="checkbox"/> 43 neighbourhood management statement
<input type="checkbox"/> 13 survey report	<input type="checkbox"/> 44 property certificate for precinct property
<input type="checkbox"/> 14 building information certificate or building certificate given under <i>legislation</i>	<input type="checkbox"/> 45 plan creating precinct property
<input type="checkbox"/> 15 lease (with every relevant memorandum or variation)	<input type="checkbox"/> 46 precinct development contract
<input type="checkbox"/> 16 other document relevant to tenancies	<input type="checkbox"/> 47 precinct management statement
<input type="checkbox"/> 17 licence benefiting the land	<input type="checkbox"/> 48 property certificate for community property
<input type="checkbox"/> 18 old system document	<input type="checkbox"/> 49 plan creating community property
<input type="checkbox"/> 19 Crown purchase statement of account	<input type="checkbox"/> 50 community development contract
<input type="checkbox"/> 20 building management statement	<input type="checkbox"/> 51 community management statement
<input type="checkbox"/> 21 form of requisitions	<input type="checkbox"/> 52 document disclosing a change of by-laws
<input type="checkbox"/> 22 <i>clearance certificate</i>	<input type="checkbox"/> 53 document disclosing a change in a development or management contract or statement
<input type="checkbox"/> 23 land tax certificate	<input type="checkbox"/> 54 document disclosing a change in boundaries
<b>Home Building Act 1989</b>	<input type="checkbox"/> 55 information certificate under Strata Schemes Management Act 2015
<input type="checkbox"/> 24 insurance certificate	<input type="checkbox"/> 56 information certificate under Community Land Management Act 1989
<input type="checkbox"/> 25 brochure or warning	<input type="checkbox"/> 57 disclosure statement - off the plan contract
<input type="checkbox"/> 26 evidence of alternative indemnity cover	<input type="checkbox"/> 58 other document relevant to off the plan contract
<b>Swimming Pools Act 1992</b>	<b>Other</b>
<input type="checkbox"/> 27 certificate of compliance	<input type="checkbox"/> 59
<input type="checkbox"/> 28 evidence of registration	
<input type="checkbox"/> 29 relevant occupation certificate	
<input type="checkbox"/> 30 certificate of non-compliance	
<input type="checkbox"/> 31 detailed reasons of non-compliance	

HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address, email address and telephone number

**IMPORTANT NOTICE TO VENDORS AND PURCHASERS**

Before signing this contract you should ensure that you understand your rights and obligations, some of which are not written in this contract but are implied by law.

**WARNING—SMOKE ALARMS**

The owners of certain types of buildings and strata lots must have smoke alarms (or in certain cases heat alarms) installed in the building or lot in accordance with regulations under the *Environmental Planning and Assessment Act 1979*. It is an offence not to comply. It is also an offence to remove or interfere with a smoke alarm or heat alarm. Penalties apply.

**WARNING—LOOSE-FILL ASBESTOS INSULATION**

Before purchasing land that includes any residential premises (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*) built before 1985, a purchaser is strongly advised to consider the possibility that the premises may contain loose-fill asbestos insulation (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*). In particular, a purchaser should:

- (a) search the Register required to be maintained under Division 1A of Part 8 of the *Home Building Act 1989*, and
- (b) ask the relevant local council whether it holds any records showing that the residential premises contain loose-fill asbestos insulation.

For further information about loose-fill asbestos insulation (including areas in which residential premises have been identified as containing loose-fill asbestos insulation), contact NSW Fair Trading.

### **COOLING OFF PERIOD (PURCHASER'S RIGHTS)**

1. This is the statement required by section 66X of the *Conveyancing Act 1919* and applies to a contract for the sale of residential property.
2. **EXCEPT** in the circumstances listed in paragraph 3, the purchaser may rescind the contract at any time before 5 pm on—
  - (a) the tenth business day after the day on which the contract was made—in the case of an off the plan contract, or
  - (b) the fifth business day after the day on which the contract was made—in any other case.
3. There is **NO COOLING OFF PERIOD**:
  - (a) if, at or before the time the contract is made, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66W of the Act, or
  - (b) if the property is sold by public auction, or
  - (c) if the contract is made on the same day as the property was offered for sale by public auction but passed in, or
  - (d) if the contract is made in consequence of the exercise of an option to purchase the property, other than an option that is void under section 66ZG of the Act.
4. A purchaser exercising the right to cool off by rescinding the contract will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser as a deposit under the contract and the purchaser is entitled to a refund of any balance.

### **DISPUTES**

If you get into a dispute with the other party, the Law Society and Real Estate Institute encourage you to use informal procedures such as negotiation, independent expert appraisal, the Law Society Conveyancing Dispute Resolution Scheme or mediation (for example mediation under the Law Society Mediation Program).

### **AUCTIONS**

Regulations made under the Property, Stock and Business Agents Act 2002 prescribe a number of conditions applying to sales by auction.

## WARNINGS

1. **Various Acts of Parliament and other matters can affect the rights of the parties to this contract. Some important matters are actions, claims, decisions, licences, notices, orders, proposals or rights of way involving:**

<b>APA Group</b> <b>Australian Taxation Office</b> <b>Council</b> <b>County Council</b> <b>Department of Planning, Industry and Environment</b> <b>Department of Primary Industries</b> <b>Electricity and gas</b> <b>Land &amp; Housing Corporation</b> <b>Local Land Services</b>	<b>NSW Department of Education</b> <b>NSW Fair Trading</b> <b>Owner of adjoining land</b> <b>Privacy</b> <b>Public Works Advisory</b> <b>Subsidence Advisory NSW</b> <b>Telecommunications</b> <b>Transport for NSW</b> <b>Water, sewerage or drainage authority</b>
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**If you think that any of these matters affects the property, tell your solicitor.**
2. **A lease may be affected by the Agricultural Tenancies Act 1990, the Residential Tenancies Act 2010 or the Retail Leases Act 1994.**
3. **If any purchase money is owing to the Crown, it will become payable before obtaining consent, or if no consent is needed, when the transfer is registered.**
4. **If a consent to transfer is required under legislation, see clause 27 as to the obligations of the parties.**
5. **The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.**
6. **The purchaser will usually have to pay transfer duty (and sometimes surcharge purchaser duty) on this contract. If duty is not paid on time, a purchaser may incur penalties.**
7. **If the purchaser agrees to the release of deposit, the purchaser's right to recover the deposit may stand behind the rights of others (for example the vendor's mortgagee).**
8. **The purchaser should arrange insurance as appropriate.**
9. **Some transactions involving personal property may be affected by the Personal Property Securities Act 2009.**
10. **A purchaser should be satisfied that finance will be available at the time of completing the purchase.**
11. **Where the market value of the property is at or above a legislated amount, the purchaser may have to comply with a foreign resident capital gains withholding payment obligation (even if the vendor is not a foreign resident). If so, this will affect the amount available to the vendor on completion.**
12. **Purchasers of some residential properties may have to withhold part of the purchase price to be credited towards the GST liability of the vendor. If so, this will also affect the amount available to the vendor. More information is available from the ATO.**

The vendor sells and the purchaser buys the *property* for the price under these provisions instead of Schedule 3 Conveyancing Act 1919, subject to any *legislation* that cannot be excluded.

## 1 Definitions (a term in italics is a defined term)

In this contract, these terms (in any form) mean –

<i>adjustment date</i>	the earlier of the giving of possession to the purchaser or completion;
<i>bank</i>	the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>clearance certificate</i>	a certificate within the meaning of s14-220 of Schedule 1 to the <i>TA Act</i> , that covers one or more days falling within the period from and including the contract date to completion;
<i>deposit-bond</i>	a deposit bond or guarantee from an issuer, with an expiry date and for an amount each approved by the vendor;
<i>depositholder</i>	vendor's agent (or if no vendor's agent is named in this contract, the vendor's <i>solicitor</i> , or if no vendor's <i>solicitor</i> is named in this contract, the buyer's agent);
<i>document of title</i>	document relevant to the title or the passing of title;
<i>FRCGW percentage</i>	the percentage mentioned in s14-200(3)(a) of Schedule 1 to the <i>TA Act</i> (12.5% as at 1 July 2017);
<i>FRCGW remittance</i>	a remittance which the purchaser must make under s14-200 of Schedule 1 to the <i>TA Act</i> , being the lesser of the <i>FRCGW percentage</i> of the price (inclusive of GST, if any) and the amount specified in a <i>variation served by a party</i> ;
<i>GST Act</i>	A New Tax System (Goods and Services Tax) Act 1999;
<i>GST rate</i>	the rate mentioned in s4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
<i>GSTRW payment</i>	a payment which the purchaser must make under s14-250 of Schedule 1 to the <i>TA Act</i> (the price multiplied by the <i>GSTRW rate</i> );
<i>GSTRW rate</i>	the rate determined under ss14-250(6), (8) or (9) of Schedule 1 to the <i>TA Act</i> (as at 1 July 2018, usually 7% of the price if the margin scheme applies, 1/11 <sup>th</sup> if not);
<i>legislation</i>	an Act or a by-law, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the vendor and the purchaser;
<i>property</i>	the land, the improvements, all fixtures and the inclusions, but not the exclusions;
<i>planning agreement</i>	a valid voluntary agreement within the meaning of s7.4 of the Environmental Planning and Assessment Act 1979 entered into in relation to the <i>property</i> ;
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid and – <ul style="list-style-type: none"> <li>● issued by a <i>bank</i> and drawn on itself; or</li> <li>● if authorised in writing by the vendor or the vendor's <i>solicitor</i>, some other <i>cheque</i>;</li> </ul>
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice <i>served by the party</i> ;
<i>TA Act</i>	Taxation Administration Act 1953;
<i>terminate</i>	terminate this contract for breach;
<i>variation</i>	a variation made under s14-235 of Schedule 1 to the <i>TA Act</i> ;
<i>within</i>	in relation to a period, at any time before or during the period; and
<i>work order</i>	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the <i>property</i> or any adjoining footpath or road (but the term does not include a notice under s22E of the Swimming Pools Act 1992 or clause 22 of the Swimming Pools Regulation 2018).

## 2 Deposit and other payments before completion

- 2.1 The purchaser must pay the deposit to the *depositholder* as stakeholder.
- 2.2 *Normally*, the purchaser must pay the deposit on the making of this contract, and this time is essential.
- 2.3 If this contract requires the purchaser to pay any of the deposit by a later time, that time is also essential.
- 2.4 The purchaser can pay any of the deposit by giving cash (up to \$2,000) or by unconditionally giving a *cheque* to the *depositholder* or to the vendor, vendor's agent or vendor's *solicitor* for sending to the *depositholder* or by payment by electronic funds transfer to the *depositholder*.
- 2.5 If any of the deposit is not paid on time or a *cheque* for any of the deposit is not honoured on presentation, the vendor can *terminate*. This right to *terminate* is lost as soon as the deposit is paid in full.
- 2.6 If the vendor accepts a bond or guarantee for the deposit, clauses 2.1 to 2.5 do not apply.

BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION

- 2.7 If the vendor accepts a bond or guarantee for part of the deposit, clauses 2.1 to 2.5 apply only to the balance.
- 2.8 If any of the deposit or of the balance of the price is paid before completion to the vendor or as the vendor directs, it is a charge on the land in favour of the purchaser until *termination* by the vendor or completion, subject to any existing right.
- 2.9 If each *party* tells the *depositholder* that the deposit is to be invested, the *depositholder* is to invest the deposit (at the risk of the *party* who becomes entitled to it) with a *bank*, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the *parties* equally, after deduction of all proper government taxes and financial institution charges and other charges.

### 3 Deposit-bond

- 3.1 This clause applies only if this contract says the vendor has agreed to accept a *deposit-bond* for the deposit (or part of it).
- 3.2 The purchaser must provide the original *deposit-bond* to the vendor's *solicitor* (or if no *solicitor* the *depositholder*) at or before the making of this contract and this time is essential.
- 3.3 If the *deposit-bond* has an expiry date and completion does not occur by the date which is 14 days before the expiry date, the purchaser must *serve* a replacement *deposit-bond* at least 7 days before the expiry date. The time for service is essential.
- 3.4 The vendor must approve a replacement *deposit-bond* if –
- 3.4.1 it is from the same issuer and for the same amount as the earlier *deposit-bond*; and
- 3.4.2 it has an expiry date at least three months after its date of issue.
- 3.5 A breach of clauses 3.2 or 3.3 entitles the vendor to *terminate*. The right to *terminate* is lost as soon as –
- 3.5.1 the purchaser *serves* a replacement *deposit-bond*; or
- 3.5.2 the deposit is paid in full under clause 2.
- 3.6 Clauses 3.3 and 3.4 can operate more than once.
- 3.7 If the purchaser *serves* a replacement *deposit-bond*, the vendor must *serve* the earlier *deposit-bond*.
- 3.8 The amount of any *deposit-bond* does not form part of the price for the purposes of clause 16.7.
- 3.9 The vendor must give the purchaser the *deposit-bond* –
- 3.9.1 on completion; or
- 3.9.2 if this contract is *rescinded*.
- 3.10 If this contract is *terminated* by the vendor –
- 3.10.1 *normally*, the vendor can immediately demand payment from the issuer of the *deposit-bond*; or
- 3.10.2 if the purchaser *serves* prior to *termination* a notice disputing the vendor's right to *terminate*, the vendor must forward the *deposit-bond* (or its proceeds if called up) to the *depositholder* as stakeholder.
- 3.11 If this contract is *terminated* by the purchaser –
- 3.11.1 *normally*, the vendor must give the purchaser the *deposit-bond*; or
- 3.11.2 if the vendor *serves* prior to *termination* a notice disputing the purchaser's right to *terminate*, the vendor must forward the *deposit-bond* (or its proceeds if called up) to the *depositholder* as stakeholder.

### 4 Transfer

- 4.1 *Normally*, the purchaser must *serve* at least 14 days before the date for completion –
- 4.1.1 the form of transfer; and
- 4.1.2 particulars required to register any mortgage or other dealing to be lodged with the transfer by the purchaser or the purchaser's mortgagee.
- 4.2 If any information needed for the form of transfer is not disclosed in this contract, the vendor must *serve* it.
- 4.3 If the purchaser *serves* a form of transfer and the transferee is not the purchaser, the purchaser must give the vendor a direction signed by the purchaser personally for this form of transfer.
- 4.4 The vendor can require the purchaser to include a form of covenant or easement in the transfer only if this contract contains the wording of the proposed covenant or easement, and a description of the land benefited.

### 5 Requisitions

- 5.1 If a form of *requisitions* is attached to this contract, the purchaser is taken to have made those *requisitions*.
- 5.2 If the purchaser is or becomes entitled to make any other *requisition*, the purchaser can make it only by *servicing* it –
- 5.2.1 if it arises out of this contract or it is a general question about the *property* or title - *within* 21 days after the contract date;
- 5.2.2 if it arises out of anything *served* by the vendor - *within* 21 days after the later of the contract date and that *service*; and
- 5.2.3 in any other case - *within* a reasonable time.

### 6 Error or misdescription

- 6.1 *Normally*, the purchaser can (but only before completion) claim compensation for an error or misdescription in this contract (as to the *property*, the title or anything else and whether substantial or not).
- 6.2 This clause applies even if the purchaser did not take notice of or rely on anything in this contract containing or giving rise to the error or misdescription.
- 6.3 However, this clause does not apply to the extent the purchaser knows the true position.

## 7 Claims by purchaser

*Normally*, the purchaser can make a claim (including a claim under clause 6) before completion only by *servicing* it with a statement of the amount claimed, and if the purchaser makes one or more claims before completion –

- 7.1 the vendor can *rescind* if in the case of claims that are not claims for delay –
- 7.1.1 the total amount claimed exceeds 5% of the price;
- 7.1.2 the vendor *serves* notice of intention to *rescind*; and
- 7.1.3 the purchaser does not *serve* notice waiving the claims *within* 14 days after that *service*; and
- 7.2 if the vendor does not *rescind*, the *parties* must complete and if this contract is completed –
- 7.2.1 the lesser of the total amount claimed and 10% of the price must be paid out of the price to and held by the *depositholder* until the claims are finalised or lapse;
- 7.2.2 the amount held is to be invested in accordance with clause 2.9;
- 7.2.3 the claims must be finalised by an arbitrator appointed by the *parties* or, if an appointment is not made *within* 1 month of completion, by an arbitrator appointed by the President of the Law Society at the request of a *party* (in the latter case the *parties* are bound by the terms of the Conveyancing Arbitration Rules approved by the Law Society as at the date of the appointment);
- 7.2.4 the purchaser is not entitled, in respect of the claims, to more than the total amount claimed and the costs of the purchaser;
- 7.2.5 net interest on the amount held must be paid to the *parties* in the same proportion as the amount held is paid; and
- 7.2.6 if the *parties* do not appoint an arbitrator and neither *party* requests the President to appoint an arbitrator *within* 3 months after completion, the claims lapse and the amount belongs to the vendor.

## 8 Vendor's rights and obligations

- 8.1 The vendor can *rescind* if –
- 8.1.1 the vendor is, on reasonable grounds, unable or unwilling to comply with a *requisition*;
- 8.1.2 the vendor *serves* a notice of intention to *rescind* that specifies the *requisition* and those grounds; and
- 8.1.3 the purchaser does not *serve* a notice waiving the *requisition within* 14 days after that *service*.
- 8.2 If the vendor does not comply with this contract (or a notice under or relating to it) in an essential respect, the purchaser can *terminate* by *serving* a notice. After the *termination* –
- 8.2.1 the purchaser can recover the deposit and any other money paid by the purchaser under this contract;
- 8.2.2 the purchaser can sue the vendor to recover damages for breach of contract; and
- 8.2.3 if the purchaser has been in possession a *party* can claim for a reasonable adjustment.

## 9 Purchaser's default

If the purchaser does not comply with this contract (or a notice under or relating to it) in an essential respect, the vendor can *terminate* by *serving* a notice. After the *termination* the vendor can –

- 9.1 keep or recover the deposit (to a maximum of 10% of the price);
- 9.2 hold any other money paid by the purchaser under this contract as security for anything recoverable under this clause –
- 9.2.1 for 12 months after the *termination*; or
- 9.2.2 if the vendor commences proceedings under this clause *within* 12 months, until those proceedings are concluded; and
- 9.3 sue the purchaser either –
- 9.3.1 where the vendor has resold the *property* under a contract made *within* 12 months after the *termination*, to recover –
- the deficiency on resale (with credit for any of the deposit kept or recovered and after allowance for any capital gains tax or goods and services tax payable on anything recovered under this clause); and
  - the reasonable costs and expenses arising out of the purchaser's non-compliance with this contract or the notice and of resale and any attempted resale; or
- 9.3.2 to recover damages for breach of contract.

## 10 Restrictions on rights of purchaser

- 10.1 The purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of –
- 10.1.1 the ownership or location of any fence as defined in the Dividing Fences Act 1991;
- 10.1.2 a service for the *property* being a joint service or passing through another property, or any service for another property passing through the *property* ('service' includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water service);
- 10.1.3 a wall being or not being a party wall in any sense of that term or the *property* being affected by an easement for support or not having the benefit of an easement for support;
- 10.1.4 any change in the *property* due to fair wear and tear before completion;
- 10.1.5 a promise, representation or statement about this contract, the *property* or the title, not set out or referred to in this contract;
- 10.1.6 a condition, exception, reservation or restriction in a Crown grant;

- 10.1.7 the existence of any authority or licence to explore or prospect for gas, minerals or petroleum;
- 10.1.8 any easement or restriction on use the substance of either of which is disclosed in this contract or any non-compliance with the easement or restriction on use; or
- 10.1.9 anything the substance of which is disclosed in this contract (except a caveat, charge, mortgage, priority notice or writ).
- 10.2 The purchaser cannot *rescind* or *terminate* only because of a defect in title to or quality of the inclusions.
- 10.3 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* or require the vendor to change the nature of the title disclosed in this contract (for example, to remove a caution evidencing qualified title, or to lodge a plan of survey as regards limited title).
- 11 Compliance with work orders**
- 11.1 *Normally*, the vendor must by completion comply with a *work order* made on or before the contract date and if this contract is completed the purchaser must comply with any other *work order*.
- 11.2 If the purchaser complies with a *work order*, and this contract is *rescinded* or *terminated*, the vendor must pay the expense of compliance to the purchaser.
- 12 Certificates and inspections**
- The vendor must do everything reasonable to enable the purchaser, subject to the rights of any tenant –
- 12.1 to have the *property* inspected to obtain any certificate or report reasonably required;
- 12.2 to apply (if necessary in the name of the vendor) for –
- 12.2.1 any certificate that can be given in respect of the *property* under *legislation*; or
- 12.2.2 a copy of any approval, certificate, consent, direction, notice or order in respect of the *property* given under *legislation*, even if given after the contract date; and
- 12.3 to make 1 inspection of the *property* in the 3 days before a time appointed for completion.
- 13 Goods and services tax (GST)**
- 13.1 Terms used in this clause which are not defined elsewhere in this contract and have a defined meaning in the *GST Act* have the same meaning in this clause.
- 13.2 *Normally*, if a *party* must pay the price or any other amount to the other *party* under this contract, GST is not to be added to the price or amount.
- 13.3 If under this contract a *party* must make an adjustment or payment for an expense of another party or pay an expense payable by or to a third party (for example, under clauses 14 or 20.7) –
- 13.3.1 the *party* must adjust or pay on completion any GST added to or included in the expense; but
- 13.3.2 the amount of the expense must be reduced to the extent the party receiving the adjustment or payment (or the representative member of a GST group of which that party is a member) is entitled to an input tax credit for the expense; and
- 13.3.3 if the adjustment or payment under this contract is consideration for a taxable supply, an amount for GST must be added at the *GST rate*.
- 13.4 If this contract says this sale is the supply of a going concern –
- 13.4.1 the *parties* agree the supply of the *property* is a supply of a going concern;
- 13.4.2 the vendor must, between the contract date and completion, carry on the enterprise conducted on the land in a proper and business-like way;
- 13.4.3 if the purchaser is not registered by the date for completion, the *parties* must complete and the purchaser must pay on completion, in addition to the price, an amount being the price multiplied by the *GST rate* ("the retention sum"). The retention sum is to be held by the *depositholder* and dealt with as follows –
- if *within* 3 months of completion the purchaser *serves* a letter from the Australian Taxation Office stating the purchaser is registered with a date of effect of registration on or before completion, the *depositholder* is to pay the retention sum to the purchaser; but
  - if the purchaser does not *serve* that letter *within* 3 months of completion, the *depositholder* is to pay the retention sum to the vendor; and
- 13.4.4 if the vendor, despite clause 13.4.1, *serves* a letter from the Australian Taxation Office stating the vendor has to pay GST on the supply, the purchaser must pay to the vendor on demand the amount of GST assessed.
- 13.5 *Normally*, the vendor promises the margin scheme will not apply to the supply of the *property*.
- 13.6 If this contract says the margin scheme is to apply in making the taxable supply, the *parties* agree that the margin scheme is to apply to the sale of the *property*.
- 13.7 If this contract says the sale is not a taxable supply –
- 13.7.1 the purchaser promises that the *property* will not be used and represents that the purchaser does not intend the *property* (or any part of the *property*) to be used in a way that could make the sale a taxable supply to any extent; and
- 13.7.2 the purchaser must pay the vendor on completion in addition to the price an amount calculated by multiplying the price by the *GST rate* if this sale is a taxable supply to any extent because of –
- a breach of clause 13.7.1; or
  - something else known to the purchaser but not the vendor.
- 13.8 If this contract says this sale is a taxable supply in full and does not say the margin scheme applies to the *property*, the vendor must pay the purchaser on completion an amount of one-eleventh of the price if –

- 13.8.1 this sale is not a taxable supply in full; or
- 13.8.2 the margin scheme applies to the *property* (or any part of the *property*).
- 13.9 If this contract says this sale is a taxable supply to an extent –
- 13.9.1 clause 13.7.1 does not apply to any part of the *property* which is identified as being a taxable supply; and
- 13.9.2 the payments mentioned in clauses 13.7 and 13.8 are to be recalculated by multiplying the relevant payment by the proportion of the price which represents the value of that part of the *property* to which the clause applies (the proportion to be expressed as a number between 0 and 1). Any evidence of value must be obtained at the expense of the vendor.
- 13.10 *Normally*, on completion the vendor must give the recipient of the supply a tax invoice for any taxable supply by the vendor by or under this contract.
- 13.11 The vendor does not have to give the purchaser a tax invoice if the margin scheme applies to a taxable supply.
- 13.12 If the vendor is liable for GST on rents or profits due to issuing an invoice or receiving consideration before completion, any adjustment of those amounts must exclude an amount equal to the vendor's GST liability.
- 13.13 If the purchaser must make a *GSTRW payment* the purchaser must –
- 13.13.1 at least 5 days before the date for completion, *serve* evidence of submission of a *GSTRW payment* notification form to the Australian Taxation Office by the purchaser or, if a direction under clause 4.3 has been *served*, by the transferee named in the transfer *served* with that direction;
- 13.13.2 produce on completion a *settlement cheque* for the *GSTRW payment* payable to the Deputy Commissioner of Taxation;
- 13.13.3 forward the *settlement cheque* to the payee immediately after completion; and
- 13.13.4 *serve* evidence of receipt of payment of the *GSTRW payment* and a copy of the settlement date confirmation form submitted to the Australian Taxation Office.

## 14 Adjustments

- 14.1 *Normally*, the vendor is entitled to the rents and profits and will be liable for all rates, water, sewerage and drainage service and usage charges, land tax, levies and all other periodic outgoings up to and including the *adjustment date* after which the purchaser will be entitled and liable.
- 14.2 The *parties* must make any necessary adjustment on completion.
- 14.3 If an amount that is adjustable under this contract has been reduced under *legislation*, the *parties* must on completion adjust the reduced amount.
- 14.4 The *parties* must not adjust surcharge land tax (as defined in the Land Tax Act 1956) but must adjust any other land tax for the year current at the *adjustment date* –
- 14.4.1 only if land tax has been paid or is payable for the year (whether by the vendor or by a predecessor in title) and this contract says that land tax is adjustable;
- 14.4.2 by adjusting the amount that would have been payable if at the start of the year –
- the person who owned the land owned no other land;
  - the land was not subject to a special trust or owned by a non-concessional company; and
  - if the land (or part of it) had no separate taxable value, by calculating its separate taxable value on a proportional area basis.
- 14.5 If any other amount that is adjustable under this contract relates partly to the land and partly to other land, the *parties* must adjust it on a proportional area basis.
- 14.6 *Normally*, the vendor can direct the purchaser to produce a *settlement cheque* on completion to pay an amount adjustable under this contract and if so –
- 14.6.1 the amount is to be treated as if it were paid; and
- 14.6.2 the *cheque* must be forwarded to the payee immediately after completion (by the purchaser if the *cheque* relates only to the *property* or by the vendor in any other case).
- 14.7 If on completion the last bill for a water, sewerage or drainage usage charge is for a period ending before the *adjustment date*, the vendor is liable for an amount calculated by dividing the bill by the number of days in the period then multiplying by the number of unbilled days up to and including the *adjustment date*.
- 14.8 The vendor is liable for any amount recoverable for work started on or before the contract date on the *property* or any adjoining footpath or road.

## 15 Date for completion

The *parties* must complete by the date for completion and, if they do not, a *party* can *serve* a notice to complete if that *party* is otherwise entitled to do so.

## 16 Completion

### • Vendor

- 16.1 On completion the vendor must give the purchaser any *document of title* that relates only to the *property*.
- 16.2 If on completion the vendor has possession or control of a *document of title* that relates also to other property, the vendor must produce it as and where necessary.
- 16.3 *Normally*, on completion the vendor must cause the legal title to the *property* (being an estate in fee simple) to pass to the purchaser free of any mortgage or other interest, subject to any necessary registration.
- 16.4 The legal title to the *property* does not pass before completion.

- 16.5 If the vendor gives the purchaser a document (other than the transfer) that needs to be lodged for registration, the vendor must pay the lodgment fee to the purchaser.
- 16.6 If a *party serves* a land tax certificate showing a charge on any of the land, by completion the vendor must do all things and pay all money required so that the charge is no longer effective against the land.
- **Purchaser**
- 16.7 On completion the purchaser must pay to the vendor, by cash (up to \$2,000) or *settlement cheque* –
- 16.7.1 the price less any:
- deposit paid;
  - *FRCGW remittance* payable;
  - *GSTRW payment*; and
  - amount payable by the vendor to the purchaser under this contract; and
- 16.7.2 any other amount payable by the purchaser under this contract.
- 16.8 If the vendor requires more than 5 *settlement cheques*, the vendor must pay \$10 for each extra *cheque*.
- 16.9 If any of the deposit is not covered by a bond or guarantee, on completion the purchaser must give the vendor an order signed by the purchaser authorising the *depositholder* to account to the vendor for the deposit.
- 16.10 On completion the deposit belongs to the vendor.
- **Place for completion**
- 16.11 *Normally*, the *parties* must complete at the completion address, which is –
- 16.11.1 if a special completion address is stated in this contract - that address; or
- 16.11.2 if none is stated, but a first mortgagee is disclosed in this contract and the mortgagee would usually discharge the mortgage at a particular place - that place; or
- 16.11.3 in any other case - the vendor's *solicitor's* address stated in this contract.
- 16.12 The vendor by reasonable notice can require completion at another place, if it is in NSW, but the vendor must pay the purchaser's additional expenses, including any agency or mortgagee fee.
- 16.13 If the purchaser requests completion at a place that is not the completion address, and the vendor agrees, the purchaser must pay the vendor's additional expenses, including any agency or mortgagee fee.
- 17 Possession**
- 17.1 *Normally*, the vendor must give the purchaser vacant possession of the *property* on completion.
- 17.2 The vendor does not have to give vacant possession if –
- 17.2.1 this contract says that the sale is subject to existing tenancies; and
- 17.2.2 the contract discloses the provisions of the tenancy (for example, by attaching a copy of the lease and any relevant memorandum or variation).
- 17.3 *Normally*, the purchaser can claim compensation (before or after completion) or *rescind* if any of the land is affected by a protected tenancy (a tenancy affected by Schedule 2, Part 7 of the Residential Tenancies Act 2010).
- 18 Possession before completion**
- 18.1 This clause applies only if the vendor gives the purchaser possession of the *property* before completion.
- 18.2 The purchaser must not before completion –
- 18.2.1 let or part with possession of any of the *property*;
- 18.2.2 make any change or structural alteration or addition to the *property*; or
- 18.2.3 contravene any agreement between the *parties* or any direction, document, *legislation*, notice or order affecting the *property*.
- 18.3 The purchaser must until completion –
- 18.3.1 keep the *property* in good condition and repair having regard to its condition at the giving of possession; and
- 18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.
- 18.4 The risk as to damage to the *property* passes to the purchaser immediately after the purchaser enters into possession.
- 18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor –
- 18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and
- 18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate prescribed under s101 Civil Procedure Act 2005.
- 18.6 If this contract is *rescinded* or *terminated* the purchaser must immediately vacate the *property*.
- 18.7 If the *parties* or their *solicitors* on their behalf do not agree in writing to a fee or rent, none is payable.
- 19 Rescission of contract**
- 19.1 If this contract expressly gives a *party* a right to *rescind*, the *party* can exercise the right –
- 19.1.1 only by *-serving* a notice before completion; and
- 19.1.2 in spite of any making of a claim or *requisition*, any attempt to satisfy a claim or *requisition*, any arbitration, litigation, mediation or negotiation or any giving or taking of possession.
- 19.2 *Normally*, if a *party* exercises a right to *rescind* expressly given by this contract or any *legislation* –
- 19.2.1 the deposit and any other money paid by the purchaser under this contract must be refunded;
- 19.2.2 a *party* can claim for a reasonable adjustment if the purchaser has been in possession;
- 19.2.3 a *party* can claim for damages, costs or expenses arising out of a breach of this contract; and
- 19.2.4 a *party* will not otherwise be liable to pay the other *party* any damages, costs or expenses.

**20 Miscellaneous**

- 20.1 The *parties* acknowledge that anything stated in this contract to be attached was attached to this contract by the vendor before the purchaser signed it and is part of this contract.
- 20.2 Anything attached to this contract is part of this contract.
- 20.3 An area, bearing or dimension in this contract is only approximate.
- 20.4 If a *party* consists of 2 or more persons, this contract benefits and binds them separately and together.
- 20.5 A *party's solicitor* can receive any amount payable to the *party* under this contract or direct in writing that it is to be paid to another person.
- 20.6 A document under or relating to this contract is –
- 20.6.1 signed by a *party* if it is signed by the *party* or the *party's solicitor* (apart from a direction under clause 4.3);
- 20.6.2 *served* if it is *served* by the *party* or the *party's solicitor*;
- 20.6.3 *served* if it is *served* on the *party's solicitor*, even if the *party* has died or any of them has died;
- 20.6.4 *served* if it is *served* in any manner provided in s170 of the Conveyancing Act 1919;
- 20.6.5 *served* if it is sent by email or fax to the *party's solicitor*, unless in either case it is not received;
- 20.6.6 *served* on a person if it (or a copy of it) comes into the possession of the person; and
- 20.6.7 *served* at the earliest time it is *served*, if it is *served* more than once.
- 20.7 An obligation to pay an expense of another *party* of doing something is an obligation to pay –
- 20.7.1 if the *party* does the thing personally - the reasonable cost of getting someone else to do it; or
- 20.7.2 if the *party* pays someone else to do the thing - the amount paid, to the extent it is reasonable.
- 20.8 Rights under clauses 11, 13, 14, 17, 24, 30 and 31 continue after completion, whether or not other rights continue.
- 20.9 The vendor does not promise, represent or state that the purchaser has any cooling off rights.
- 20.10 The vendor does not promise, represent or state that any attached survey report is accurate or current.
- 20.11 A reference to any *legislation* (including any percentage or rate specified in *legislation*) is also a reference to any corresponding later *legislation*.
- 20.12 Each *party* must do whatever is necessary after completion to carry out the *party's* obligations under this contract.
- 20.13 Neither taking possession nor *servicing* a transfer of itself implies acceptance of the *property* or the title.
- 20.14 The details and information provided in this contract (for example, on pages 1 - 3) are, to the extent of each *party's* knowledge, true, and are part of this contract.
- 20.15 Where this contract provides for choices, a choice in BLOCK CAPITALS applies unless a different choice is marked.

**21 Time limits in these provisions**

- 21.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.
- 21.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.
- 21.3 The time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.
- 21.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.
- 21.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clauses 2 and 3.2.
- 21.6 *Normally*, the time by which something must be done is fixed but not essential.

**22 Foreign Acquisitions and Takeovers Act 1975**

- 22.1 The purchaser promises that the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer under the Foreign Acquisitions and Takeovers Act 1975.
- 22.2 This promise is essential and a breach of it entitles the vendor to *terminate*.

**23 Strata or community title****• Definitions and modifications**

- 23.1 This clause applies only if the land (or part of it) is a lot in a strata, neighbourhood, precinct or community scheme (or on completion is to be a lot in a scheme of that kind).
- 23.2 In this contract –
- 23.2.1 'change', in relation to a scheme, means –
- a registered or registrable change from by-laws set out in this contract;
  - a change from a development or management contract or statement set out in this contract; or
  - a change in the boundaries of common property;
- 23.2.2 'common property' includes association property for the scheme or any higher scheme;
- 23.2.3 'contribution' includes an amount payable under a by-law;
- 23.2.4 'information certificate' includes a certificate under s184 Strata Schemes Management Act 2015 and s26 Community Land Management Act 1989;
- 23.2.5 'information notice' includes a strata information notice under s22 Strata Schemes Management Act 2015 and a notice under s47 Community Land Management Act 1989;

- 23.2.6 'normal expenses', in relation to an owners corporation for a scheme, means normal operating expenses usually payable from the administrative fund of an owners corporation for a scheme of the same kind;
- 23.2.7 'owners corporation' means the owners corporation or the association for the scheme or any higher scheme;
- 23.2.8 'the *property*' includes any interest in common property for the scheme associated with the lot; and
- 23.2.9 'special expenses', in relation to an owners corporation, means its actual, contingent or expected expenses, except to the extent they are –
- normal expenses;
  - due to fair wear and tear;
  - disclosed in this contract; or
  - covered by moneys held in the capital works fund.
- 23.3 Clauses 11, 14.8 and 18.4 do not apply to an obligation of the owners corporation, or to property insurable by it.
- 23.4 Clauses 14.4.2 and 14.5 apply but on a unit entitlement basis instead of an area basis.
- **Adjustments and liability for expenses**
- 23.5 The *parties* must adjust under clause 14.1 –
- 23.5.1 a regular periodic contribution;
- 23.5.2 a contribution which is not a regular periodic contribution but is disclosed in this contract; and
- 23.5.3 on a unit entitlement basis, any amount paid by the vendor for a normal expense of the owners corporation to the extent the owners corporation has not paid the amount to the vendor.
- 23.6 If a contribution is not a regular periodic contribution and is not disclosed in this contract –
- 23.6.1 the vendor is liable for it if it was determined on or before the contract date, even if it is payable by instalments; and
- 23.6.2 the purchaser is liable for all contributions determined after the contract date.
- 23.7 The vendor must pay or allow to the purchaser on completion the amount of any unpaid contributions for which the vendor is liable under clause 23.6.1.
- 23.8 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of –
- 23.8.1 an existing or future actual, contingent or expected expense of the owners corporation;
- 23.8.2 a proportional unit entitlement of the lot or a relevant lot or former lot, apart from a claim under clause 6; or
- 23.8.3 a past or future change in the scheme or a higher scheme.
- 23.9 However, the purchaser can *rescind* if –
- 23.9.1 the special expenses of the owners corporation at the later of the contract date and the creation of the owners corporation when calculated on a unit entitlement basis (and, if more than one lot or a higher scheme is involved, added together), less any contribution paid by the vendor, are more than 1% of the price;
- 23.9.2 in the case of the lot or a relevant lot or former lot in a higher scheme, a proportional unit entitlement for the lot is disclosed in this contract but the lot has a different proportional unit entitlement at the contract date or at any time before completion;
- 23.9.3 a change before the contract date or before completion in the scheme or a higher scheme materially prejudices the purchaser and is not disclosed in this contract; or
- 23.9.4 a resolution is passed by the owners corporation before the contract date or before completion to give to the owners in the scheme for their consideration a strata renewal plan that has not lapsed at the contract date and there is not attached to this contract a strata renewal proposal or the strata renewal plan.
- **Notices, certificates and inspections**
- 23.10 The purchaser must give the vendor 2 copies of an information notice addressed to the owners corporation and signed by the purchaser.
- 23.11 The vendor must complete and sign 1 copy of the notice and give it to the purchaser on completion.
- 23.12 Each *party* can sign and give the notice as agent for the other.
- 23.13 The vendor must *serve* an information certificate issued after the contract date in relation to the lot, the scheme or any higher scheme at least 7 days before the date for completion.
- 23.14 The purchaser does not have to complete earlier than 7 days after *service* of the certificate and clause 21.3 does not apply to this provision. On completion the purchaser must pay the vendor the prescribed fee for the certificate.
- 23.15 The vendor authorises the purchaser to apply for the purchaser's own certificate.
- 23.16 The vendor authorises the purchaser to apply for and make an inspection of any record or other document in the custody or control of the owners corporation or relating to the scheme or any higher scheme.
- **Meetings of the owners corporation**
- 23.17 If a general meeting of the owners corporation is convened before completion –
- 23.17.1 if the vendor receives notice of it, the vendor must immediately notify the purchaser of it; and
- 23.17.2 after the expiry of any cooling off period, the purchaser can require the vendor to appoint the purchaser (or the purchaser's nominee) to exercise any voting rights of the vendor in respect of the lot at the meeting.

**24 Tenancies**

- 24.1 If a tenant has not made a payment for a period preceding or current at the *adjustment date* –
- 24.1.1 for the purposes of clause 14.2, the amount is to be treated as if it were paid; and
- 24.1.2 the purchaser assigns the debt to the vendor on completion and will if required give a further assignment at the vendor's expense.
- 24.2 If a tenant has paid in advance of the *adjustment date* any periodic payment in addition to rent, it must be adjusted as if it were rent for the period to which it relates.
- 24.3 If the *property* is to be subject to a tenancy on completion or is subject to a tenancy on completion –
- 24.3.1 the vendor authorises the purchaser to have any accounting records relating to the tenancy inspected and audited and to have any other document relating to the tenancy inspected;
- 24.3.2 the vendor must *serve* any information about the tenancy reasonably requested by the purchaser before or after completion; and
- 24.3.3 *normally*, the purchaser can claim compensation (before or after completion) if –
- a disclosure statement required by the Retail Leases Act 1994 was not given when required;
  - such a statement contained information that was materially false or misleading;
  - a provision of the lease is not enforceable because of a non-disclosure in such a statement; or
  - the lease was entered into in contravention of the Retail Leases Act 1994.
- 24.4 If the *property* is subject to a tenancy on completion –
- 24.4.1 the vendor must allow or transfer –
- any remaining bond money or any other security against the tenant's default (to the extent the security is transferable);
  - any money in a fund established under the lease for a purpose and compensation for any money in the fund or interest earned by the fund that has been applied for any other purpose; and
  - any money paid by the tenant for a purpose that has not been applied for that purpose and compensation for any of the money that has been applied for any other purpose;
- 24.4.2 if the security is not transferable, each *party* must do everything reasonable to cause a replacement security to issue for the benefit of the purchaser and the vendor must hold the original security on trust for the benefit of the purchaser until the replacement security issues;
- 24.4.3 the vendor must give to the purchaser –
- a proper notice of the transfer (an attornment notice) addressed to the tenant;
  - any certificate given under the Retail Leases Act 1994 in relation to the tenancy;
  - a copy of any disclosure statement given under the Retail Leases Act 1994;
  - a copy of any document served on the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion; and
  - any document served by the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion;
- 24.4.4 the vendor must comply with any obligation to the tenant under the lease, to the extent it is to be complied with by completion; and
- 24.4.5 the purchaser must comply with any obligation to the tenant under the lease, to the extent that the obligation is disclosed in this contract and is to be complied with after completion.

**25 Qualified title, limited title and old system title**

- 25.1 This clause applies only if the land (or part of it) –
- 25.1.1 is under qualified, limited or old system title; or
- 25.1.2 on completion is to be under one of those titles.
- 25.2 The vendor must *serve* a proper abstract of title *within 7 days* after the contract date.
- 25.3 If an abstract of title or part of an abstract of title is attached to this contract or has been lent by the vendor to the purchaser before the contract date, the abstract or part is *served* on the contract date.
- 25.4 An abstract of title can be or include a list of documents, events and facts arranged (apart from a will or codicil) in date order, if the list in respect of each document –
- 25.4.1 shows its date, general nature, names of parties and any registration number; and
- 25.4.2 has attached a legible photocopy of it or of an official or registration copy of it.
- 25.5 An abstract of title –
- 25.5.1 must start with a good root of title (if the good root of title must be at least 30 years old, this means 30 years old at the contract date);
- 25.5.2 in the case of a leasehold interest, must include an abstract of the lease and any higher lease;
- 25.5.3 *normally*, need not include a Crown grant; and
- 25.5.4 need not include anything evidenced by the Register kept under the Real Property Act 1900.
- 25.6 In the case of land under old system title –
- 25.6.1 in this contract 'transfer' means conveyance;
- 25.6.2 the purchaser does not have to *serve* the form of transfer until after the vendor has *served* a proper abstract of title; and
- 25.6.3 each vendor must give proper covenants for title as regards that vendor's interest.
- 25.7 In the case of land under limited title but not under qualified title –

- 25.7.1 normally, the abstract of title need not include any document which does not show the location, area or dimensions of the land (for example, by including a metes and bounds description or a plan of the land);
- 25.7.2 clause 25.7.1 does not apply to a document which is the good root of title; and
- 25.7.3 the vendor does not have to provide an abstract if this contract contains a delimitation plan (whether in registrable form or not).
- 25.8 The vendor must give a proper covenant to produce where relevant.
- 25.9 The vendor does not have to produce or covenant to produce a document that is not in the possession of the vendor or a mortgagee.
- 25.10 If the vendor is unable to produce an original document in the chain of title, the purchaser will accept a photocopy from the Registrar-General of the registration copy of that document.
- 26 Crown purchase money**
- 26.1 This clause applies only if purchase money is payable to the Crown, whether or not due for payment.
- 26.2 The vendor is liable for the money, except to the extent this contract says the purchaser is liable for it.
- 26.3 To the extent the vendor is liable for it, the vendor is liable for any interest until completion.
- 26.4 To the extent the purchaser is liable for it, the *parties* must adjust any interest under clause 14.1.
- 27 Consent to transfer**
- 27.1 This clause applies only if the land (or part of it) cannot be transferred without consent under *legislation* or a *planning agreement*.
- 27.2 The purchaser must properly complete and then *serve* the purchaser's part of an application for consent to transfer of the land (or part of it) *within 7 days* after the contract date.
- 27.3 The vendor must apply for consent *within 7 days* after *service* of the purchaser's part.
- 27.4 If consent is refused, either *party* can *rescind*.
- 27.5 If consent is given subject to one or more conditions that will substantially disadvantage a *party*, then that *party* can *rescind within 7 days* after receipt by or *service* upon the *party* of written notice of the conditions.
- 27.6 If consent is not given or refused –
- 27.6.1 *within 42 days* after the purchaser *serves* the purchaser's part of the application, the purchaser can *rescind*; or
- 27.6.2 *within 30 days* after the application is made, either *party* can *rescind*.
- 27.7 Each period in clause 27.6 becomes 90 days if the land (or part of it) is –
- 27.7.1 under a *planning agreement*, or
- 27.7.2 in the Western Division.
- 27.8 If the land (or part of it) is described as a lot in an unregistered plan, each time in clause 27.6 becomes the later of the time and 35 days after creation of a separate folio for the lot.
- 27.9 The date for completion becomes the later of the date for completion and 14 days after *service* of the notice granting consent to transfer.
- 28 Unregistered plan**
- 28.1 This clause applies only if some of the land is described as a lot in an unregistered plan.
- 28.2 The vendor must do everything reasonable to have the plan registered *within 6 months* after the contract date, with or without any minor alteration to the plan or any document to be lodged with the plan validly required or made under *legislation*.
- 28.3 If the plan is not registered *within* that time and in that manner –
- 28.3.1 the purchaser can *rescind*; and
- 28.3.2 the vendor can *rescind*, but only if the vendor has complied with clause 28.2 and with any *legislation* governing the rescission.
- 28.4 Either *party* can *serve* notice of the registration of the plan and every relevant lot and plan number.
- 28.5 The date for completion becomes the later of the date for completion and 21 days after *service* of the notice.
- 28.6 Clauses 28.2 and 28.3 apply to another plan that is to be registered before the plan is registered.
- 29 Conditional contract**
- 29.1 This clause applies only if a provision says this contract or completion is conditional on an event.
- 29.2 If the time for the event to happen is not stated, the time is 42 days after the contract date.
- 29.3 If this contract says the provision is for the benefit of a *party*, then it benefits only that *party*.
- 29.4 If anything is necessary to make the event happen, each *party* must do whatever is reasonably necessary to cause the event to happen.
- 29.5 A *party* can *rescind* under this clause only if the *party* has substantially complied with clause 29.4.
- 29.6 If the event involves an approval and the approval is given subject to a condition that will substantially disadvantage a *party* who has the benefit of the provision, the *party* can *rescind within 7 days* after either *party* *serves* notice of the condition.
- 29.7 If the *parties* can lawfully complete without the event happening –
- 29.7.1 if the event does not happen *within* the time for it to happen, a *party* who has the benefit of the provision can *rescind within 7 days* after the end of that time;
- 29.7.2 if the event involves an approval and an application for the approval is refused, a *party* who has the benefit of the provision can *rescind within 7 days* after either *party* *serves* notice of the refusal; and

- 29.7.3 the date for completion becomes the later of the date for completion and 21 days after the earliest of –
- either *party serving* notice of the event happening;
  - every *party* who has the benefit of the provision *serving* notice waiving the provision; or
  - the end of the time for the event to happen.
- 29.8 If the *parties* cannot lawfully complete without the event happening –
- 29.8.1 if the event does not happen *within* the time for it to happen, either *party* can *rescind*;
- 29.8.2 if the event involves an approval and an application for the approval is refused, either *party* can *rescind*;
- 29.8.3 the date for completion becomes the later of the date for completion and 21 days after either *party* *serves* notice of the event happening.
- 29.9 A *party* cannot *rescind* under clauses 29.7 or 29.8 after the event happens.
- 30 Electronic transaction**
- 30.1 This *Conveyancing Transaction* is to be conducted as an *electronic transaction* if –
- 30.1.1 this contract says that it is an *electronic transaction*;
- 30.1.2 the *parties* otherwise agree that it is to be conducted as an *electronic transaction*; or
- 30.1.3 the *conveyancing rules* require it to be conducted as an *electronic transaction*.
- 30.2 However, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 30.2.1 if the land is not *electronically tradeable* or the transfer is not eligible to be lodged electronically; or
- 30.2.2 if, at any time after the *effective date*, but at least 14 days before the date for completion, a *party* *serves* a notice stating a valid reason why it cannot be conducted as an *electronic transaction*.
- 30.3 If, because of clause 30.2.2, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 30.3.1 each *party* must –
- bear equally any disbursements or fees; and
  - otherwise bear that *party's* own costs;
- incurred because this *Conveyancing Transaction* was to be conducted as an *electronic transaction*; and
- 30.3.2 if a *party* has paid all of a disbursement or fee which, by reason of this clause, is to be borne equally by the *parties*, that amount must be adjusted under clause 14.2.
- 30.4 If this *Conveyancing Transaction* is to be conducted as an *electronic transaction* –
- 30.4.1 to the extent that any other provision of this contract is inconsistent with this clause, the provisions of this clause prevail;
- 30.4.2 *normally*, words and phrases used in this clause 30 (italicised and in Title Case, such as *Electronic Workspace* and *Lodgment Case*) have the same meaning which they have in the *participation rules*;
- 30.4.3 the *parties* must conduct the *electronic transaction* –
- in accordance with the *participation rules* and the *ECNL*; and
  - using the nominated *ELN*, unless the *parties* otherwise agree;
- 30.4.4 a *party* must pay the fees and charges payable by that *party* to the *ELNO* and the *Land Registry* as a result of this transaction being an *electronic transaction*;
- 30.4.5 any communication from one *party* to another *party* in the *Electronic Workspace* made –
- after the *effective date*; and
  - before the receipt of a notice given under clause 30.2.2;
- is taken to have been received by that *party* at the time determined by s13A of the *Electronic Transactions Act 2000*; and
- 30.4.6 a document which is an *electronic document* is *served* as soon as it is first *Digitally Signed* in the *Electronic Workspace* on behalf of the *party* required to *serve* it.
- 30.5 *Normally*, the vendor must *within 7 days* of the *effective date* –
- 30.5.1 create an *Electronic Workspace*;
- 30.5.2 *populate* the *Electronic Workspace* with *title data*, the date for completion and, if applicable, *mortgagee details*; and
- 30.5.3 invite the purchaser and any *discharging mortgagee* to the *Electronic Workspace*.
- 30.6 If the vendor has not created an *Electronic Workspace* in accordance with clause 30.5, the purchaser may create an *Electronic Workspace*. If the purchaser creates the *Electronic Workspace* the purchaser must –
- 30.6.1 *populate* the *Electronic Workspace* with *title data*;
- 30.6.2 create and *populate* an *electronic transfer*;
- 30.6.3 *populate* the *Electronic Workspace* with the date for completion and a nominated *completion time*; and
- 30.6.4 invite the vendor and any *incoming mortgagee* to join the *Electronic Workspace*.
- 30.7 *Normally*, *within 7 days* of receiving an invitation from the vendor to join the *Electronic Workspace*, the purchaser must –
- 30.7.1 join the *Electronic Workspace*;
- 30.7.2 create and *populate* an *electronic transfer*;
- 30.7.3 invite any *incoming mortgagee* to join the *Electronic Workspace*; and
- 30.7.4 *populate* the *Electronic Workspace* with a nominated *completion time*.

- 30.8 If the purchaser has created the *Electronic Workspace* the vendor must *within* 7 days of being invited to the *Electronic Workspace* –
- 30.8.1 join the *Electronic Workspace*;
- 30.8.2 *populate* the *Electronic Workspace* with *mortgagee details*, if applicable; and
- 30.8.3 invite any *discharging mortgagee* to join the *Electronic Workspace*.
- 30.9 To complete the financial settlement schedule in the *Electronic Workspace* –
- 30.9.1 the purchaser must provide the vendor with *adjustment figures* at least 2 *business days* before the date for completion;
- 30.9.2 the vendor must confirm the *adjustment figures* at least 1 *business day* before the date for completion; and
- 30.9.3 if the purchaser must make a *GSTRW payment* or an *FRCGW remittance*, the purchaser must *populate* the *Electronic Workspace* with the payment details for the *GSTRW payment* or *FRCGW remittance* payable to the Deputy Commissioner of Taxation at least 2 *business days* before the date for completion.
- 30.10 Before completion, the *parties* must ensure that –
- 30.10.1 all *electronic documents* which a *party* must *Digitally Sign* to complete the *electronic transaction* are *populated* and *Digitally Signed*;
- 30.10.2 all certifications required by the *ECNL* are properly given; and
- 30.10.3 they do everything else in the *Electronic Workspace* which that *party* must do to enable the *electronic transaction* to proceed to completion.
- 30.11 If completion takes place in the *Electronic Workspace* –
- 30.11.1 payment electronically on completion of the price in accordance with clause 16.7 is taken to be payment by a single *settlement cheque*;
- 30.11.2 the completion address in clause 16.11 is the *Electronic Workspace*; and
- 30.11.3 clauses 13.13.2 to 13.13.4, 16.8, 16.12, 16.13 and 31.2.2 to 31.2.4 do not apply.
- 30.12 If the computer systems of any of the *Land Registry*, the *ELNO* or the Reserve Bank of Australia are inoperative for any reason at the *completion time* agreed by the *parties*, a failure to complete this contract for that reason is not a default under this contract on the part of either *party*.
- 30.13 If the computer systems of the *Land Registry* are inoperative for any reason at the *completion time* agreed by the *parties*, and the *parties* choose that financial settlement is to occur despite this, then on financial settlement occurring –
- 30.13.1 all *electronic documents Digitally Signed* by the vendor, the *certificate of title* and any discharge of mortgage, withdrawal of caveat or other *electronic document* forming part of the *Lodgment Case* for the *electronic transaction* shall be taken to have been unconditionally and irrevocably delivered to the purchaser or the purchaser's mortgagee at the time of financial settlement together with the right to deal with the land comprised in the *certificate of title*; and
- 30.13.2 the vendor shall be taken to have no legal or equitable interest in the *property*.
- 30.14 A *party* who holds a *certificate of title* must act in accordance with any *Prescribed Requirement* in relation to the *certificate of title* but if there is no *Prescribed Requirement*, the vendor must *serve* the *certificate of title* after completion.
- 30.15 If the *parties* do not agree about the delivery before completion of one or more documents or things that cannot be delivered through the *Electronic Workspace*, the *party* required to deliver the documents or things –
- 30.15.1 holds them on completion in escrow for the benefit of; and
- 30.15.2 must immediately after completion deliver the documents or things to, or as directed by; the *party* entitled to them.
- 30.16 In this clause 30, these terms (in any form) mean –
- |                              |   |
|------------------------------|---|
| <i>adjustment figures</i>    | details of the adjustments to be made to the price under clause 14;   |
| <i>certificate of title</i>  | the paper duplicate of the folio of the register for the land which exists immediately prior to completion and, if more than one, refers to each such paper duplicate;  |
| <i>completion time</i>       | the time of day on the date for completion when the <i>electronic transaction</i> is to be settled;   |
| <i>conveyancing rules</i>    | the rules made under s12E of the Real Property Act 1900;  |
| <i>discharging mortgagee</i> | any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a <i>Digitally Signed</i> discharge of mortgage, discharge of charge or withdrawal of caveat is required in order for unencumbered title to the <i>property</i> to be transferred to the purchaser; |
| <i>ECNL</i>                  | the Electronic Conveyancing National Law (NSW);   |
| <i>effective date</i>        | the date on which the <i>Conveyancing Transaction</i> is agreed to be an <i>electronic transaction</i> under clause 30.1.2 or, if clauses 30.1.1 or 30.1.3 apply, the contract date;  |
| <i>electronic document</i>   | a dealing as defined in the Real Property Act 1900 which may be created and <i>Digitally Signed</i> in an <i>Electronic Workspace</i> ;   |
| <i>electronic transfer</i>   | a transfer of land under the Real Property Act 1900 for the <i>property</i> to be prepared and <i>Digitally Signed</i> in the <i>Electronic Workspace</i> established for the purposes of the <i>parties' Conveyancing Transaction</i> ;  |

<i>electronic transaction</i>	a <i>Conveyancing Transaction</i> to be conducted for the <i>parties</i> by their legal representatives as <i>Subscribers</i> using an <i>ELN</i> and in accordance with the <i>ECNL</i> and the <i>participation rules</i> ;
<i>electronically tradeable</i>	a land title that is Electronically Tradeable as that term is defined in the <i>conveyancing rules</i> ;
<i>incoming mortgagee</i>	any mortgagee who is to provide finance to the purchaser on the security of the <i>property</i> and to enable the purchaser to pay the whole or part of the price;
<i>mortgagee details</i>	the details which a <i>party</i> to the <i>electronic transaction</i> must provide about any <i>discharging mortgagee</i> of the <i>property</i> as at completion;
<i>participation rules</i>	the participation rules as determined by the <i>ECNL</i> ;
<i>populate</i>	to complete data fields in the <i>Electronic Workspace</i> ; and
<i>title data</i>	the details of the title to the <i>property</i> made available to the <i>Electronic Workspace</i> by the <i>Land Registry</i> .

### 31 Foreign Resident Capital Gains Withholding

- 31.1 This clause applies only if –
- 31.1.1 the sale is not an excluded transaction within the meaning of s14-215 of Schedule 1 to the *TA Act*, and
- 31.1.2 a *clearance certificate* in respect of every vendor is not attached to this contract.
- 31.2 The purchaser must –
- 31.2.1 at least 5 days before the date for completion, *serve* evidence of submission of a purchaser payment notification to the Australian Taxation Office by the purchaser or, if a direction under clause 4.3 has been *served*, by the transferee named in the transfer *served* with that direction;
- 31.2.2 produce on completion a *settlement cheque* for the *FRCGW remittance* payable to the Deputy Commissioner of Taxation;
- 31.2.3 forward the *settlement cheque* to the payee immediately after completion; and
- 31.2.4 *serve* evidence of receipt of payment of the *FRCGW remittance*.
- 31.3 The vendor cannot refuse to complete if the purchaser complies with clauses 31.2.1 and 31.2.2.
- 31.4 If the vendor *serves* any *clearance certificate* or *variation*, the purchaser does not have to complete earlier than 7 days after that *service* and clause 21.3 does not apply to this provision.
- 31.5 If the vendor *serves* in respect of every vendor either a *clearance certificate* or a *variation* to 0.00 percent, clauses 31.2 and 31.3 do not apply.

### 32 Residential off the plan contract

- 32.1 This clause applies if this contract is an off the plan contract within the meaning of Division 10 of Part 4 of the Conveyancing Act 1919 (the Division).
- 32.2 No provision of this contract has the effect of excluding, modifying or restricting the operation of the Division.
- 32.3 If the purchaser makes a claim for compensation under the terms prescribed by clause 6A of the Conveyancing (Sale of Land) Regulation 2017 –
- 32.3.1 the purchaser cannot make a claim under this contract about the same subject matter, including a claim under clauses 6 or 7; and
- 32.3.2 the claim for compensation is not a claim under this contract.
- 32.4 This clause does not apply to a contract made before the commencement of the amendments to the Division under the Conveyancing Legislation Amendment Act 2018.



LAND  
REGISTRY  
SERVICES

Title Search



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 66/SP93227

SEARCH DATE	TIME	EDITION NO	DATE
9/3/2022	12:47 PM	4	1/9/2018

LAND

LOT 66 IN STRATA PLAN 93227  
AT KELLYVILLE  
LOCAL GOVERNMENT AREA THE HILLS SHIRE

FIRST SCHEDULE

TONY MICHAEL ROUPELL (T AM341269)

SECOND SCHEDULE (2 NOTIFICATIONS)

- 1 INTERESTS RECORDED ON REGISTER FOLIO CP/SP93227
- 2 AM341270 MORTGAGE TO AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

NOTATIONS

UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*

formally recorded in the Register. InfoTrack an approved NSW Information Broker hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with Section 96B(2) of the Real Property Act 1900.

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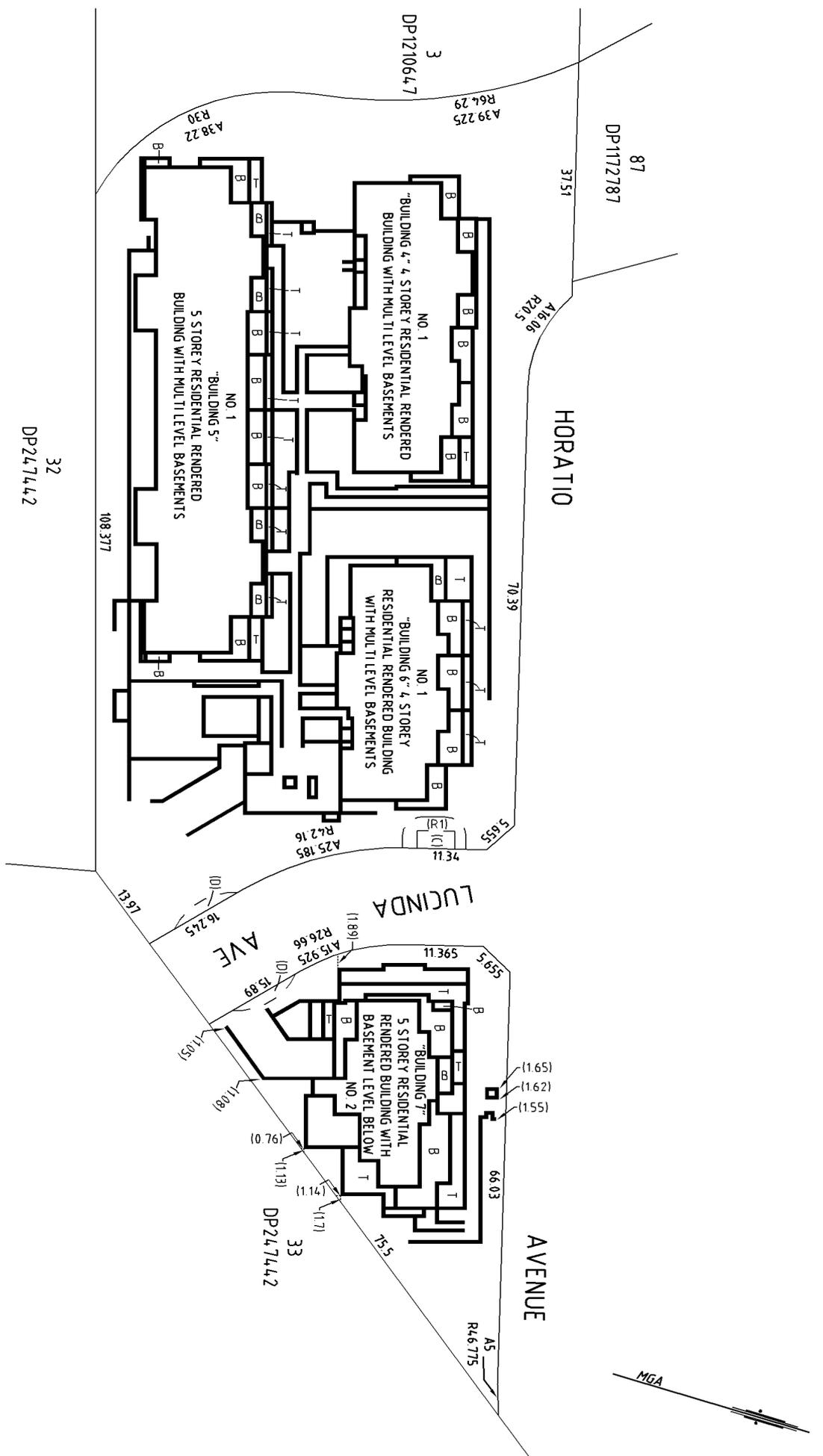
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FOR LEGIBILITY NOT ALL COMMON PROPERTY STRUCTURES, DUCTS AND COLUMNS ARE SHOWN

- (C) EASEMENT FOR PADMOUNT SUBSTATION 5.5 WIDE (VIDE DP1210647)
- (D) RIGHT OF PUBLIC ACCESS VARIABLE WIDTH (VIDE DP1210647)
- (R1) RESTRICTION ON THE USE OF LAND (VIDE DP1210647)

LOCATION PLAN



LEGEND  
 B DENOTES BALCONY  
 T DENOTES TERRACE

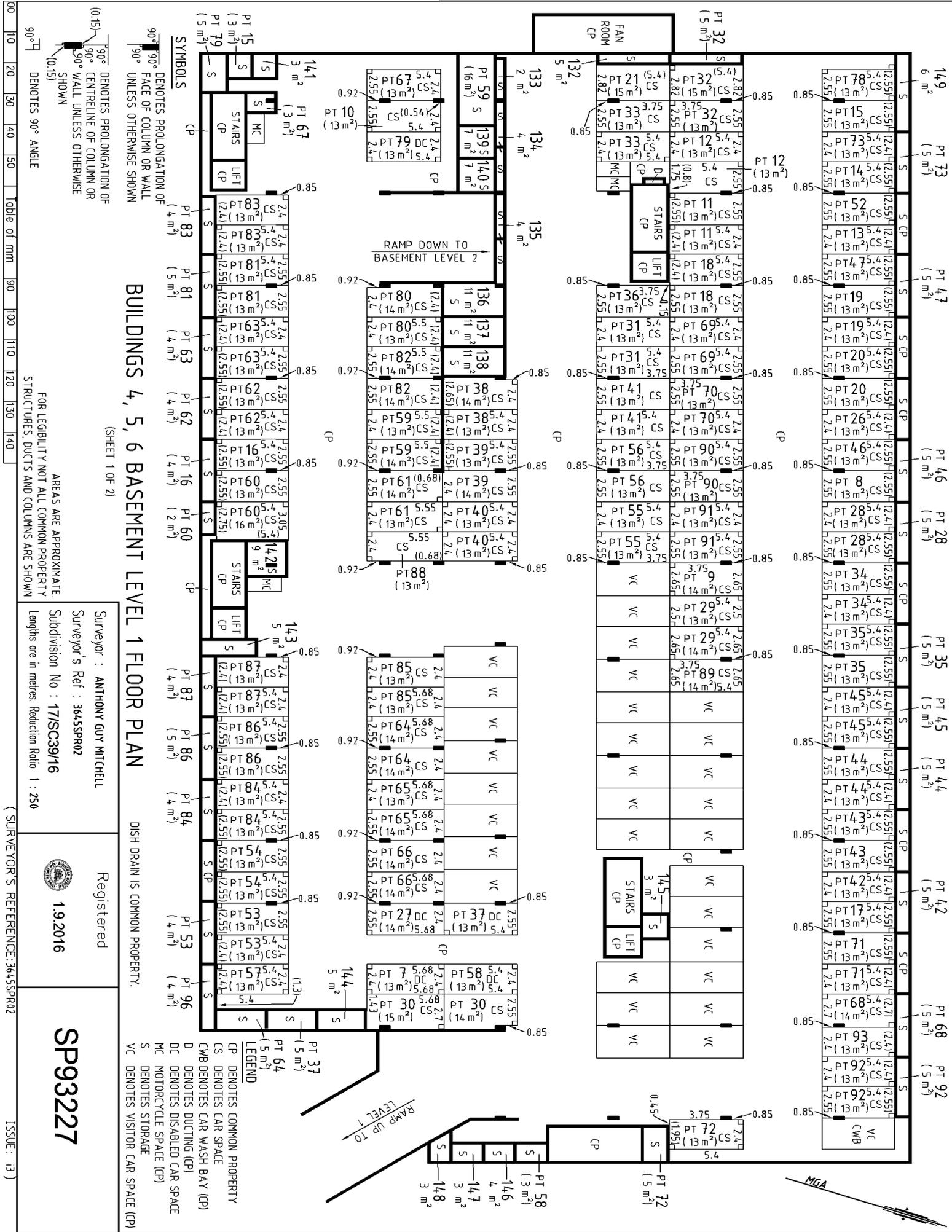
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 Lengths are in metres. Reduction Ratio 1 : 500

Registered  
 1.9.2016

SP93227

( SURVEYOR'S REFERENCE:3645SPR02 )  
 ISSUE:13 )





**BUILDINGS 4, 5, 6 BASEMENT LEVEL 1 FLOOR PLAN**

(SHEET 1 OF 2)

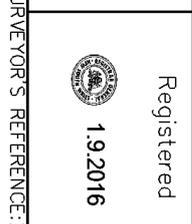
DISH DRAIN IS COMMON PROPERTY.

- LEGEND**
- CP DENOTES COMMON PROPERTY
  - D DENOTES DUCTING (CP)
  - DC DENOTES DISABLED CAR SPACE
  - MC MOTORCYCLE SPACE (CP)
  - S DENOTES STORAGE
  - VC DENOTES VISITOR CAR SPACE (CP)
  - CWB DENOTES CAR WASH BAY (CP)
  - CS DENOTES CAR SPACE

- SYMBOLS**
- 90° DENOTES PROLONGATION OF FACE OF COLUMN OR WALL UNLESS OTHERWISE SHOWN
  - 90° DENOTES CENTRELINE OF COLUMN OR WALL UNLESS OTHERWISE SHOWN
  - 90° DENOTES 90° ANGLE

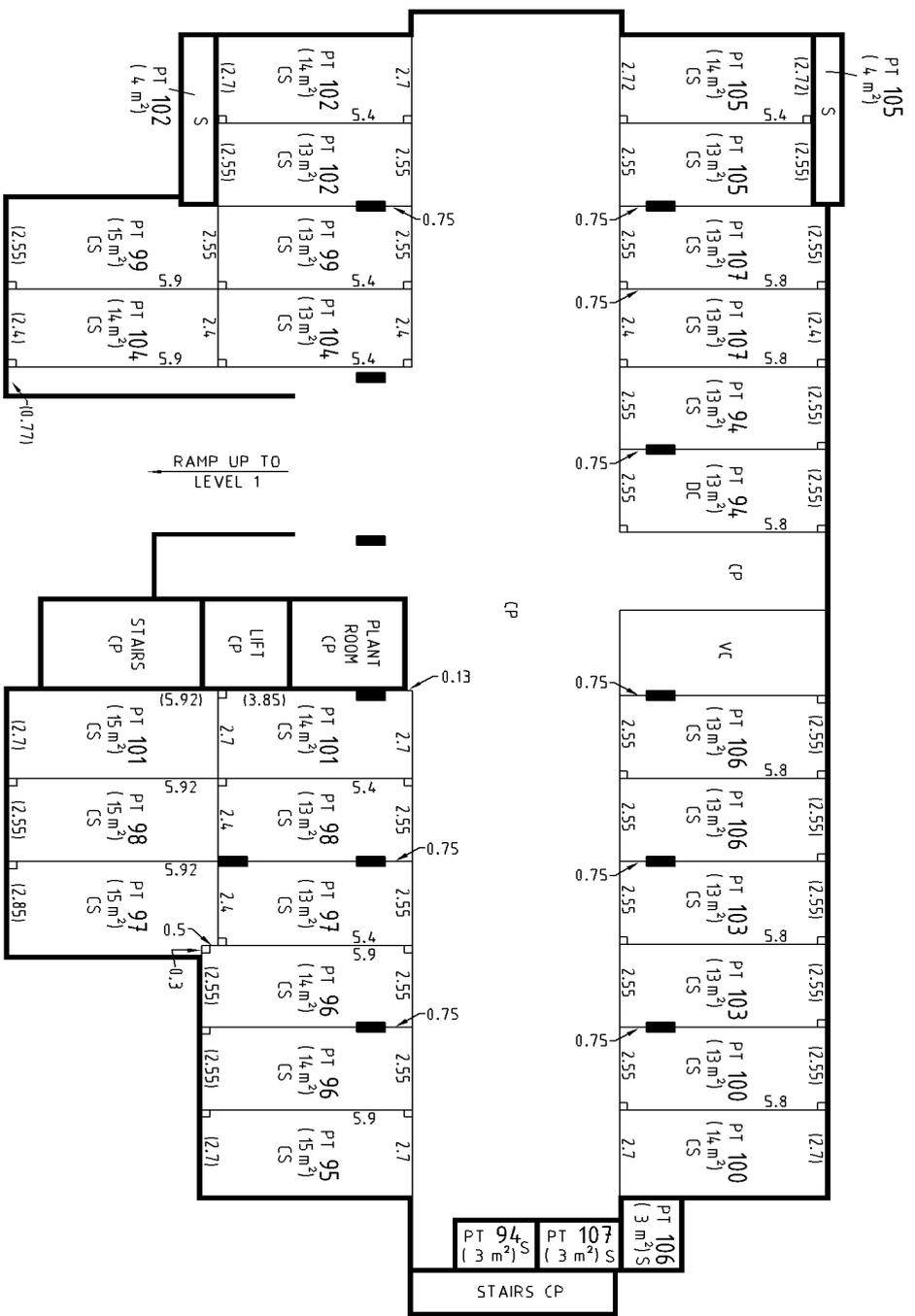
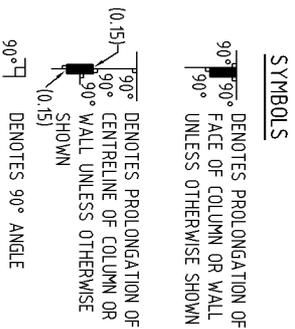
AREAS ARE APPROXIMATE  
 STRUCTURES, DUCTS AND COLUMNS ARE SHOWN  
 FOR LEGIBILITY NOT ALL COMMON PROPERTY

Surveyor: ANTHONY GUY MITCHELL  
 Surveyor's Ref: 3645SPR02  
 Subdivision No: 177/SC939/16  
 Lengths are in metres. Reduction Ratio 1: 250



**SP93227**

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**BUILDING 7 BASEMENT LEVEL 1 FLOOR PLAN**  
 (SHEET 2 OF 2)

DISH DRAIN IS COMMON PROPERTY.

- LEGEND**
- CP DENOTES COMMON PROPERTY
  - CS DENOTES CAR SPACE
  - DC DENOTES DISABLED CAR SPACE
  - DC DENOTES STORAGE
  - VC DENOTES VISITOR CAR SPACE (CP)

AREAS ARE APPROXIMATE  
 FOR LEGIBILITY NOT ALL COMMON PROPERTY  
 STRUCTURES, DUCTS AND COLUMNS ARE SHOWN

Surveyor : **ANTHONY GUY MITCHELL**  
 Surveyor's Ref : 3645SPR02  
 Subdivision No : 17/SC39/16  
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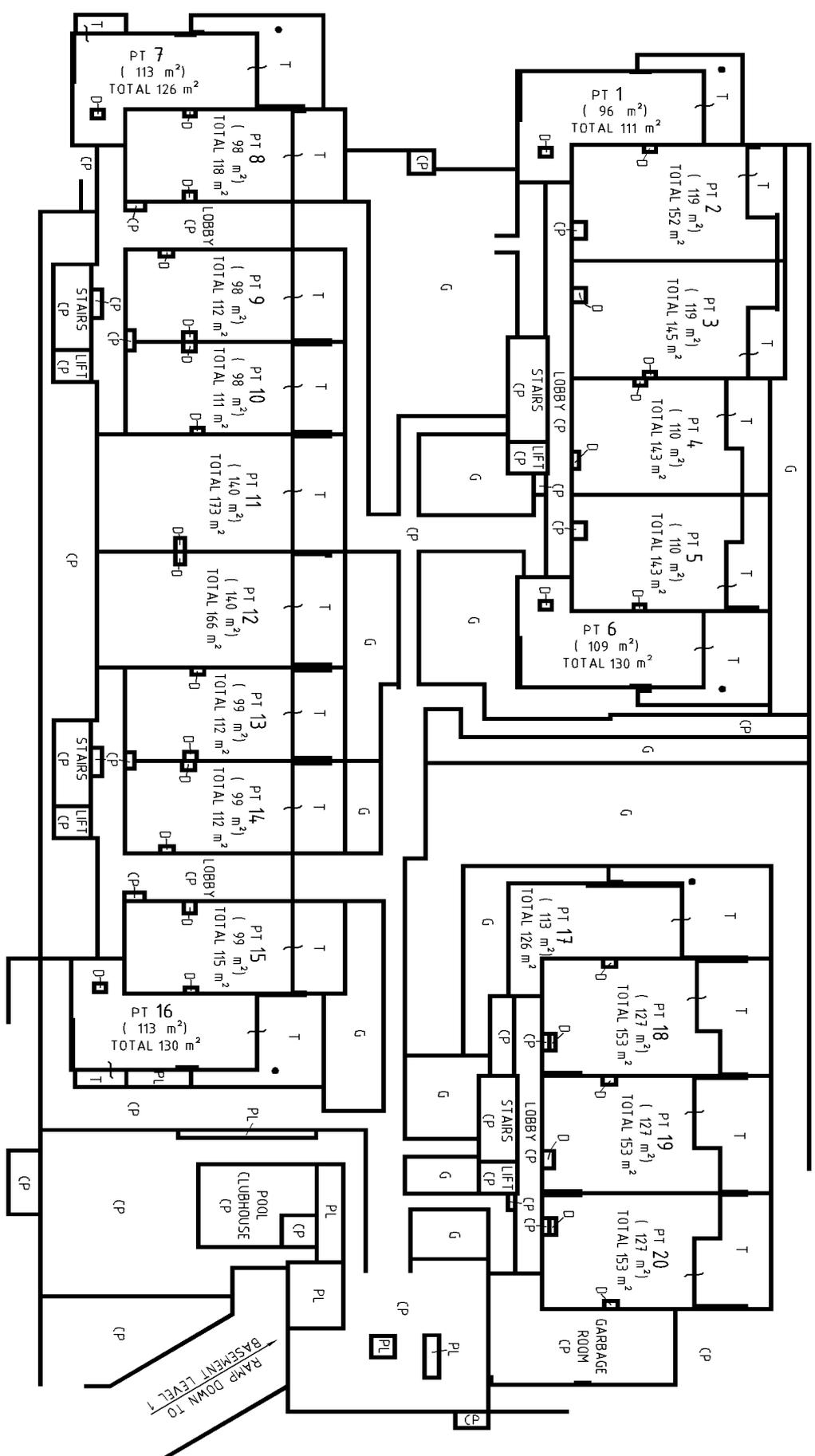
Registered  
 1.9.2016

**SP93227**

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THE STRATUM OF A TERRACE IS LIMITED IN HEIGHT TO 2.3 METRES ABOVE THE UPPER SURFACE OF ITS RESPECTIVE LOTS MAIN FLOOR SURFACE EXCEPT WHERE COVERED WITHIN THE LIMIT.  
 METAL BALUSTRADE AND THEIR ASSOCIATED STRUCTURES ARE COMMON PROPERTY.

### BUILDINGS 4, 5, 6 LEVEL 1 FLOOR PLAN



- LEGEND**
- CP DENOTES COMMON PROPERTY
  - D DENOTES DUCTING (CP)
  - G DENOTES GARDEN AND/OR GRASSSED AREA (CP)
  - PL DENOTES PLANTER (CP)
  - T DENOTES TERRACE

AREAS ARE APPROXIMATE.  
 FOR LEGIBILITY NOT ALL COMMON PROPERTY STRUCTURES, DUCTS AND COLUMNS ARE SHOWN

Surveyor : ANTHONY GUY MITCHELL  
 Surveyor's Ref : 3645SPR02  
 Subdivision No : 17/SC39/16  
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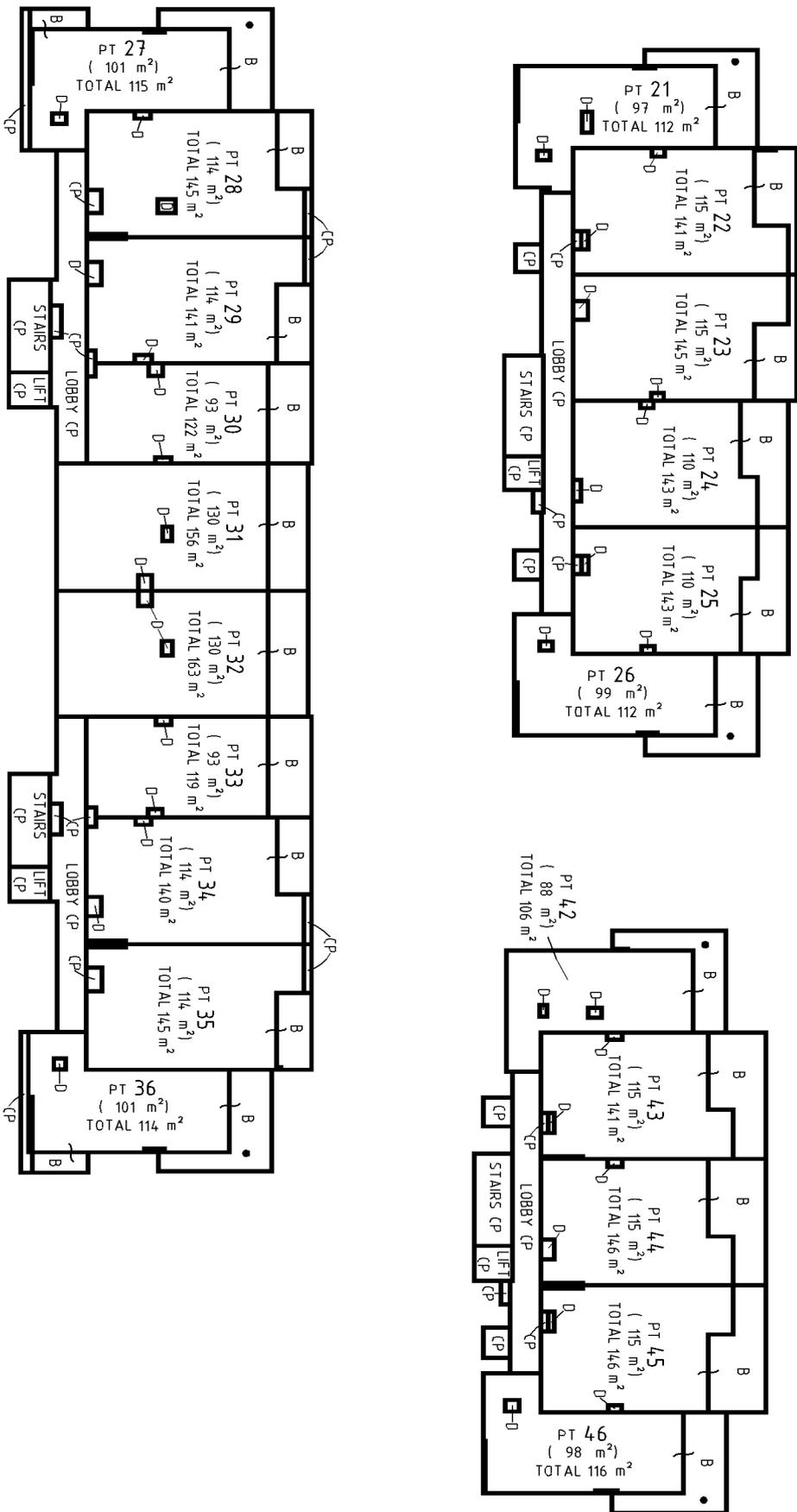
Registered  
 1.9.2016

**SP93227**

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THE STRATUM OF A BALCONY IS LIMITED IN HEIGHT TO 2.3 METRES ABOVE THE UPPER SURFACE OF ITS RESPECTIVE LOTS'S MAIN FLOOR SURFACE EXCEPT WHERE COVERED WITHIN THE LIMIT.

### BUILDINGS 4, 5, 6 LEVEL 2 FLOOR PLAN



**LEGEND**  
 B DENOTES BALCONY  
 CP DENOTES COMMON PROPERTY  
 D DENOTES DUCTING (CP)

AREAS ARE APPROXIMATE FOR LEGIBILITY NOT ALL COMMON PROPERTY STRUCTURES, DUCTS AND COLUMNS ARE SHOWN

Surveyor : ANTHONY GUY MITCHELL  
 Surveyor's Ref : 3645SPR02  
 Subdivision No : 17/SC39/16  
 Lengths are in metres. Reduction Ratio 1 : 300

Registered  
 1.9.2016

SP93227

(SURVEYOR'S REFERENCE:3645SPR02) ISSUE: (3)

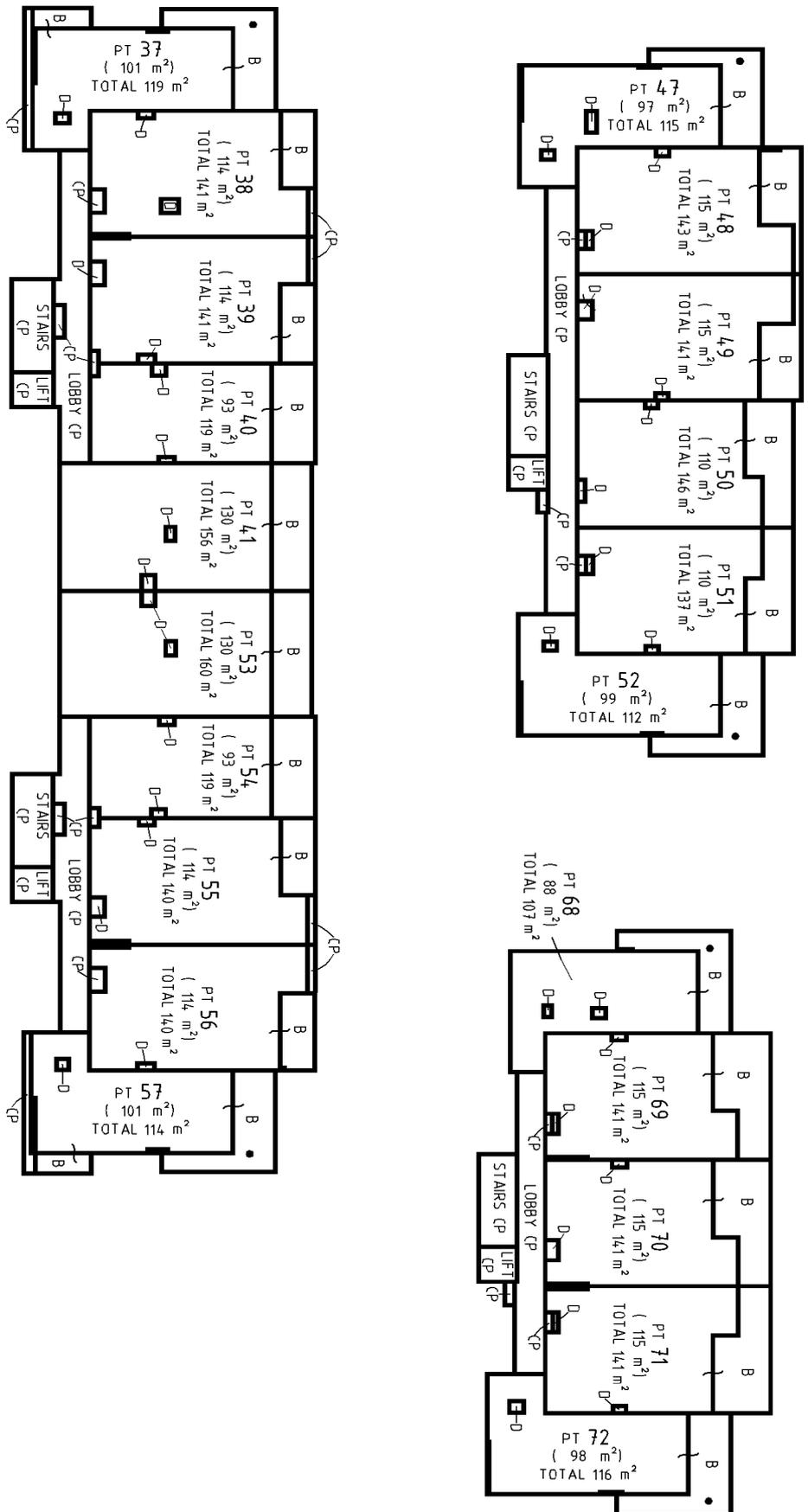
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AREAS ARE APPROXIMATE  
 FOR LEGIBILITY NOT ALL COMMON PROPERTY  
 STRUCTURES, DUCTS AND COLUMNS ARE SHOWN

THE STRATUM OF A BALCONY IS LIMITED IN HEIGHT TO 2.3 METRES ABOVE THE  
 UPPER SURFACE OF ITS RESPECTIVE LOTS MAIN FLOOR SURFACE EXCEPT WHERE  
 COVERED WITHIN THE LIMIT.

SHADE LOUVERS AND THEIR ASSOCIATED STRUCTURES ARE COMMON PROPERTY.

### BUILDINGS 4, 5, 6 LEVEL 3 FLOOR PLAN



**LEGEND**  
 B DENOTES BALCONY  
 CP DENOTES COMMON PROPERTY  
 D DENOTES DUCTING (CP)

Surveyor : ANTHONY GUY MITCHELL  
 Surveyor's Ref : 3645SPR02  
 Subdivision No : 177/SC39/16  
 Lengths are in metres. Reduction Ratio 1 : 300

Registered  
 1.9.2016

SP93227

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AREAS ARE APPROXIMATE  
 FOR LEGIBILITY NOT ALL COMMON PROPERTY  
 STRUCTURES, DUCTS AND COLUMNS ARE SHOWN

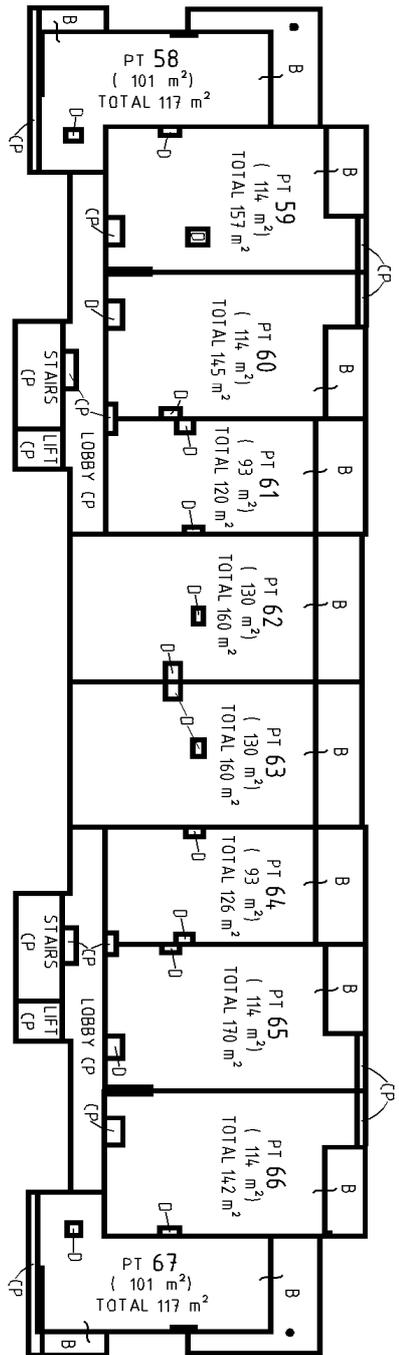
Surveyor : ANTHONY GUY MITCHELL  
 Surveyor's Ref : 3645SPR02  
 Subdivision No : 177/SC39/16  
 Lengths are in metres. Reduction Ratio 1 : 300

Registered  
 1.9.2016

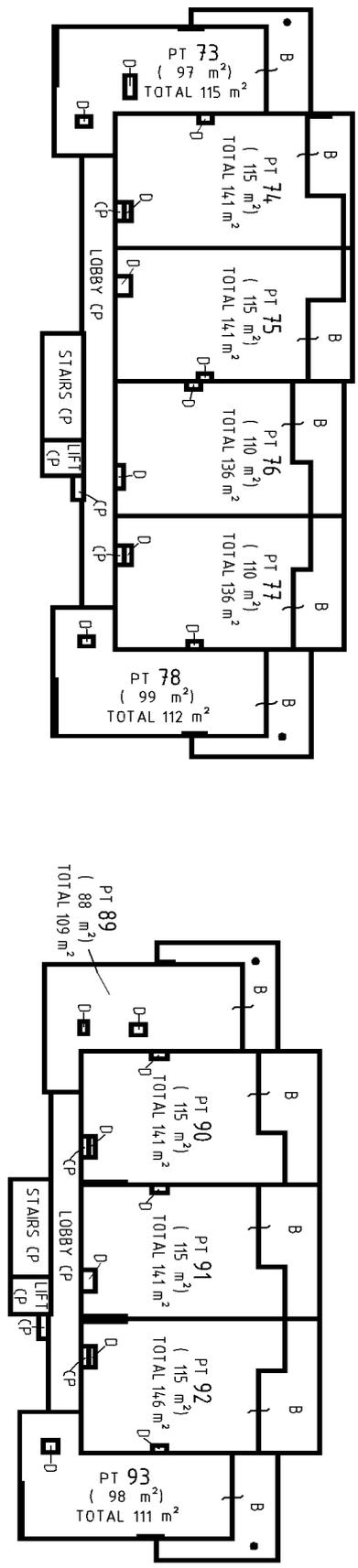
SP93227  
 (SURVEYOR'S REFERENCE:3645SPR02)  
 ISSUE: (3)

THE STRATUM OF A BALCONY IS LIMITED IN HEIGHT TO 2.3 METRES ABOVE THE UPPER SURFACE OF ITS RESPECTIVE LOTS MAIN FLOOR SURFACE EXCEPT WHERE COVERED WITHIN THE LIMIT.  
 SHADE LOUVERS AND THEIR ASSOCIATED STRUCTURES ARE COMMON PROPERTY.

### BUILDINGS 4, 5, 6 LEVEL 4 FLOOR PLAN



**LEGEND**  
 B DENOTES BALCONY  
 CP DENOTES COMMON PROPERTY  
 D DENOTES DUCTING (COMMON PROPERTY)



CHINA TOWER UNIT 1 & UNIT 2 (70)  
 BUILDING 4, 5, 6 LEVEL 4 FLOOR PLAN  
 BUILDING 73, 74, 75, 76, 77, 78, 89, 90, 91, 92, 93 FLOOR PLAN

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Table of mm

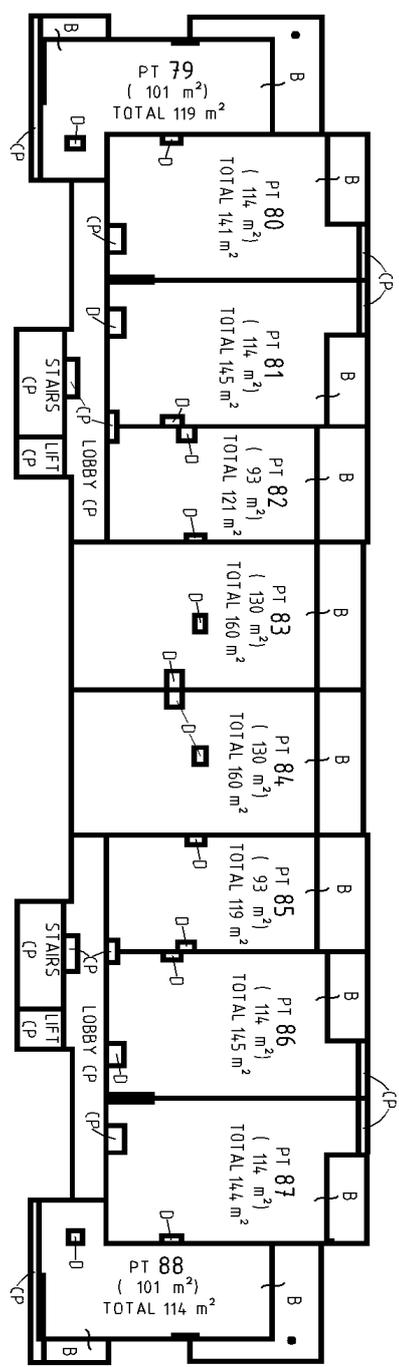
FOR LEGIBILITY NOT ALL COMMON PROPERTY STRUCTURES, DUCTS AND COLUMNS ARE SHOWN

AREAS ARE APPROXIMATE

(SURVEYOR'S REFERENCE:3645SPR02) (ISSUE: 13)

THE STRATUM OF A BALCONY IS LIMITED IN HEIGHT TO 2.3 METRES ABOVE THE UPPER SURFACE OF ITS RESPECTIVE LOTS MAIN FLOOR SURFACE EXCEPT WHERE COVERED WITHIN THE LIMIT.  
 SHADE LOUVERS AND THEIR ASSOCIATED STRUCTURES ARE COMMON PROPERTY.

### BUILDING 5 LEVEL 5 FLOOR PLAN



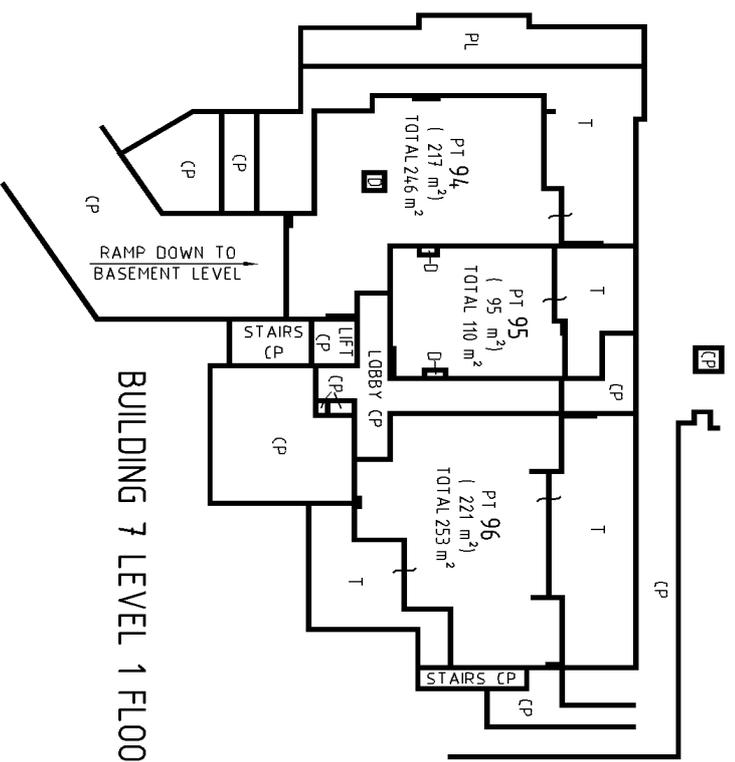
**LEGEND**  
 B DENOTES BALCONY  
 CP DENOTES COMMON PROPERTY  
 D DENOTES DUCTING (COMMON PROPERTY)



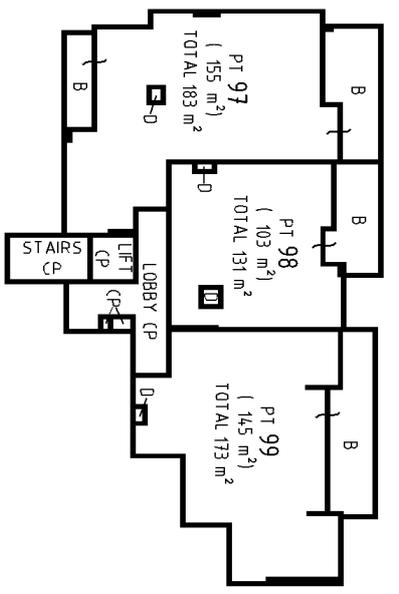
Surveyor : ANTHONY GUY MITCHELL  
 Surveyor's Ref : 3645SPR02  
 Subdivision No : 17/SC39/16  
 Lengths are in metres. Reduction Ratio 1 : 300

Registered  
 1.9.2016

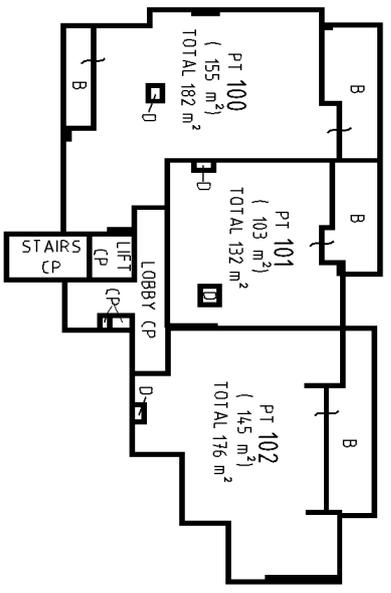
**SP93227**



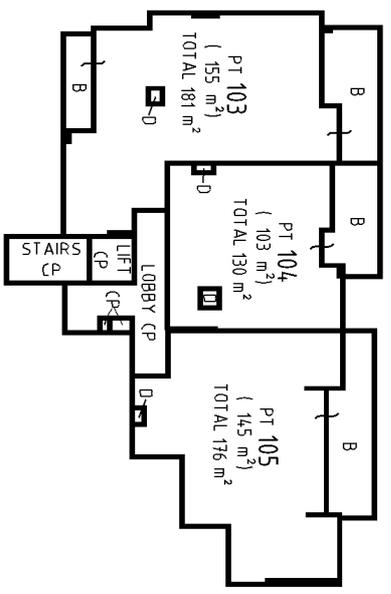
BUILDING 7 LEVEL 1 FLOOR PLAN



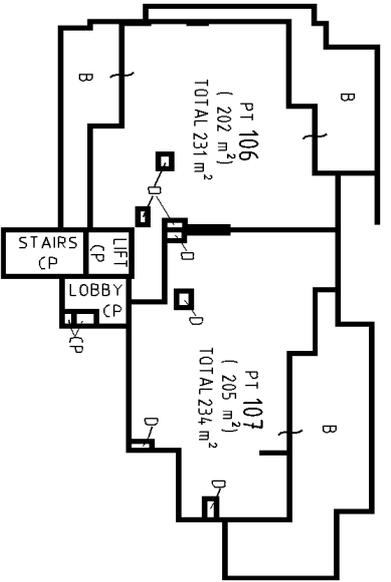
BUILDING 7 LEVEL 2 FLOOR PLAN



BUILDING 7 LEVEL 3 FLOOR PLAN



BUILDING 7 LEVEL 4 FLOOR PLAN



BUILDING 7 LEVEL 5 FLOOR PLAN

- LEGEND**
- B DENOTES BALCONY
  - CP DENOTES COMMON PROPERTY
  - D DENOTES DUCTING (CP)
  - PL DENOTES PLANTER (GP)
  - T DENOTES TERRACE

THE STRATUM OF A BALCONY IS LIMITED IN HEIGHT TO 2.3 METRES ABOVE THE UPPER SURFACE OF ITS RESPECTIVE LOTS MAIN FLOOR SURFACE EXCEPT WHERE COVERED WITHIN THE LIMIT.

THE STRATUM OF A TERRACE IS LIMITED IN HEIGHT TO 2.3 METRES ABOVE THE UPPER SURFACE OF ITS RESPECTIVE LOTS MAIN FLOOR SURFACE EXCEPT WHERE COVERED WITHIN THE LIMIT.

AREAS ARE APPROXIMATE  
 FOR LEGIBILITY NOT ALL COMMON PROPERTY  
 STRUCTURES, DUCTS AND COLUMNS ARE SHOWN

00	10	20	30	40	50	Table of mm	90	100	110	120	130	140
----	----	----	----	----	----	-------------	----	-----	-----	-----	-----	-----

Surveyor : ANTHONY GUY MITCHELL  
 Surveyor's Ref : 3645SPR03  
 Subdivision No : 17/SC39/16  
 Lengths are in metres. Reduction Ratio 1 : 300



**SP93227**

STRATA PLAN ADMINISTRATION SHEET

Sheet 1 of 6 sheet(s)

Office Use Only

Registered:  1.9.2016

Purpose: STRATA PLAN

Office Use Only

**SP93227**

PLAN OF SUBDIVISION OF LOT 1 IN  
 DP1210647

LGA: THE HILLS SHIRE  
 Locality: KELLYVILLE  
 Parish: CASTLE HILL  
 County: CUMBERLAND

**Strata Certificate (Approved Form 5)**

(1) \*The Council of .....  
 \*The Accredited Certifier CARRY RYAN  
 Accreditation No. BPB0365

has made the required inspections and is satisfied that the requirements of;

\*(a) Section 37 or 37A Strata Schemes (Freehold Development) Act 1973 and clause 30 Strata Schemes (Freehold Development) Regulation 2012,  
 \*(b) ~~Section 66 or 66A Strata Schemes (Leasehold Development) Act 1986 and clause 31 of the Strata Schemes (Leasehold Development) Regulation 2012,~~

have been complied with and approves of the proposed strata plan illustrated in the plan with this certificate.

\*(2) The Accredited Certifier is satisfied that the plan is consistent with a relevant development consent in force, and that all conditions of the development consent that by its terms are required to be complied with before a strata certificate may be issued, have been complied with.

Name of, and address for service of notices on, the Owners Corporation. (Address required on original strata plan only)

The Owners - Strata Plan No  
 No. 1-2 LUCINDA AVENUE  
 KELLYVILLE, N.S.W. 2155

\*(3) ~~The strata plan is part of a development scheme. The council or accredited certifier is satisfied that the plan is consistent with any applicable conditions of the relevant development consent and that the plan gives effect to the stage of the strata development contract to which it relates.~~

\*(4) ~~The building encroaches on a public place and;~~

\*(a) ~~The Council does not object to the encroachment of the building beyond the alignment of .....~~

\*(b) ~~The Accredited Certifier is satisfied that the building complies with the relevant development consent which is in force and allows the encroachment.~~

\*(5) This approval is given on the condition that lot(s) 108 - 149 are created as utility lots in accordance with section 39 of the Strata Schemes (Freehold Development) Act 1973 or section 68 of the Strata Schemes (Leasehold Development) Act 1986.

Date: 11/9/2016

Subdivision Number: 23/2016

Relevant Development Consent Number: CDC8/2016

Issued by: CARRY RYAN

Signature: Garry Ryan  
 Authorised Person / General Manager / Accredited Certifier

\* Strike through if inapplicable. ^ Insert lot numbers of proposed utility lots.

The adopted by-laws for the scheme are:

\*~~RESIDENTIAL Model By-laws~~  
 \*together with, Keeping of animals: Option \*A/\*B/\*C  
 \*By-laws in 1 sheets filed with plan

\*Strike out whichever is inapplicable

**Surveyor's Certificate (Approved Form 3)**

I. ANTHONY GUY MITCHELL  
 Of Stratasurv PO Box 305 FIVE DOCK NSW 2046

a surveyor registered under the Surveying and Spatial Information Act 2002, hereby certify that:

(1) Each applicable requirement of  
 \*Schedule 1A of the Strata Schemes (Freehold Development) Act 1973 has been met  
 \*~~Schedule 1A of the Strata Schemes (Leasehold Development) Act 1986 has been met;~~

\*(2) \*(a) ~~the building encroaches on a public place;~~  
 \*(b) ~~the building encroaches on land (other than a public place), and an appropriate easement has been created by~~  
 ^ ~~to permit the encroachment to remain.~~

\*(3) the survey information recorded in the accompanying location plan is accurate.

Signature: [Signature]  
 Date: 26/7/16

\* Strike through if inapplicable.  
 ^ Insert the Deposited Plan Number or Dealing Number of the instrument that created the easement

SURVEYOR'S REFERENCE: 3645SPR02

## STRATA PLAN ADMINISTRATION SHEET

Sheet 2 of 6 sheet(s)

Office Use Only

Office Use Only

Registered:  1.9.2016

# SP93227

PLAN OF SUBDIVISION OF LOT 1 IN  
DP1210647

This sheet is for the provision of the following information as required:

- A Schedule of Unit Entitlements.
- Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919.
- Signatures & seals-see 195D Conveyancing Act 1919.
- Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.

Strata Certificate Number: 23/2016

Date of Endorsement: 11/8/2016

### SCHEDULE OF UNIT ENTITLEMENT

*(if insufficient space use additional annexure sheet)*

LOT No.	ENTITLEMENT						
1	744	21	758	41	995	61	839
2	947	22	947	42	735	62	1017
3	934	23	947	43	949	63	1018
4	861	24	934	44	959	64	839
5	861	25	934	45	959	65	1030
6	766	26	752	46	748	66	988
7	773	27	765	47	781	67	805
8	772	28	971	48	961	68	734
9	758	29	961	49	961	69	963
10	758	30	812	50	974	70	963
11	1008	31	982	51	934	71	963
12	995	32	991	52	766	72	762
13	758	33	812	53	1005	73	793
14	758	34	961	54	835	74	974
15	765	35	970	55	975	75	974
16	778	36	771	56	975	76	974
17	724	37	788	57	785	77	947
18	936	38	975	58	799	78	780
19	936	39	975	59	1010	79	818
20	936	40	825	60	991	80	997

SEE SHEET 3 FOR CONTINUATION

Signatures, seals and statements of intention to create easements, restrictions on the use of land or positive covenants  
*(if insufficient space use additional annexure sheet)*

## STRATA PLAN ADMINISTRATION SHEET

Sheet 3 of 6 sheet(s)

Office Use Only

Office Use Only

Registered:  1.9.2016

# SP93227

PLAN OF SUBDIVISION OF LOT 1 IN  
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- Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.

Strata Certificate Number: 23/2016

Date of Endorsement: 11/8/2016

### SCHEDULE OF UNIT ENTITLEMENT

*(if insufficient space use additional annexure sheet)*

LOT No.	ENTITLEMENT	LOT No.	ENTITLEMENT
81	1009	121	14
82	853	122	18
83	1030	123	14
84	1030	124	14
85	853	125	14
86	1013	126	14
87	1010	127	14
88	814	128	14
89	750	129	14
90	976	130	14
91	976	131	14
92	995	132	10
93	766	133	5
94	1287	134	8
95	744	135	8
96	1296	136	16
97	1219	137	16
98	907	138	16
99	1212	139	14
100	1232	140	14
101	921	141	7
102	1234	142	16
103	1246	143	9
104	934	144	9
105	1275	145	7
106	1494	146	8
107	1521	147	7
108	14	148	7
109	14	149	12
110	14	<b>TOTAL</b>	<b>100000</b>
111	14		
112	14		
113	14		
114	14		
115	14		
116	14		
117	14		
118	14		
119	14		
120	14		

### STRATA PLAN ADMINISTRATION SHEET

Sheet 4 of 6 sheet(s)

Office Use Only

Office Use Only\*

Registered:  1.9.2016

# SP93227

## PLAN OF SUBDIVISION OF LOT 1 IN DP1210647

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- Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919.
- Signatures & seals-see 195D Conveyancing Act 1919.
- Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.

Strata Certificate Number: 23/2016

Date of Endorsement: 11/8/2016

SIGNED by ARDEN CH (NSW) PTY LTD (ACN: 155 939 423) in accordance with section 127 of the Corporations Act 2001 and in the presence of:



.....  
Sole Director/Secretary

.....  
~~Director~~

DEREK WILLIAMS  
.....  
Print Name

.....  
~~Print Name~~

\*OFFICE USE ONLY

STRATA PLAN ADMINISTRATION SHEET

Sheet 5 of 6 sheet(s)

Office Use Only

Office Use Only\*

Registered:  1.9.2016

SP93227

PLAN OF SUBDIVISION OF LOT 1 IN DP1210647

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• A Schedule of Unit Entitlements.  
• Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919.  
• Signatures & seals-see 195D Conveyancing Act 1919.  
• Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.

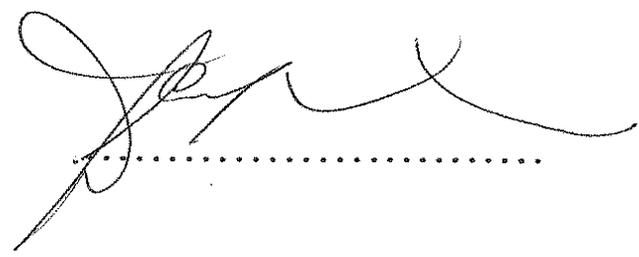
Strata Certificate Number: 23/2016

Date of Endorsement: 11/8/2016

EXECUTION BY HARBURG NOMINEES PTY LTD & HARBURG INVESTMENTS PTY LTD:

Consent under Mortgage No. AI919764

EXECUTED by HARBURG NOMINEES PTY LTD )  
ACN 103 245 923 by its duly )  
constituted Attorney DAVID CRANSTON )  
McEACHERN under Power of Attorney No. )  
BK 4708 No. 197 in the presence of: )

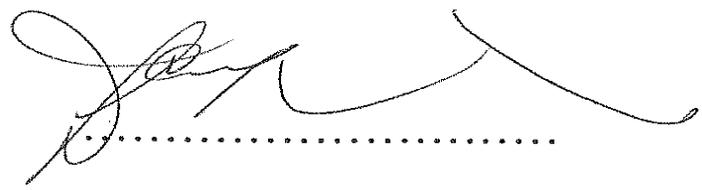


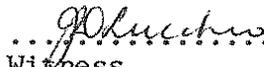
  
Witness

Giovanna Antonietta Di Lucchio  
Name of Witness

2/9 Denman Street, Alderley QLD 4051  
Address

EXECUTED by HARBURG INVESTMENTS PTY )  
LTD ACN 010 279 884 by its duly )  
constituted Attorney DAVID CRANSTON )  
McEACHERN under Power of Attorney No. )  
BK 4708 No. 198 in the presence of: )



  
Witness

Giovanna Antonietta Di Lucchio  
Name of Witness

2/9 Denman Street, Alderley QLD 4051  
Address

\*OFFICE USE ONLY

STRATA PLAN ADMINISTRATION SHEET

Sheet 6 of 6 sheet(s)

Office Use Only

Office Use Only\*

Registered:  1.9.2016

SP93227

PLAN OF SUBDIVISION OF LOT 1 IN DP1210647

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- A Schedule of Unit Entitlements.
- Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919.
- Signatures & seals-see 195D Conveyancing Act 1919.
- Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.

Strata Certificate Number: 23/2016

Date of Endorsement: 11/9/2016

EXECUTION BY WESTPAC BANKING CORPORATION:

Westpac Banking Corporation

ABN 33 007 457 141

being the Mortgagee under Mortgage number

AK31795 hereby consents to this Lease/Linen plan a

✓

I certify that I am an eligible witness and that the attorney whose signature appears opposite signed this instrument in my presence. [See \* below]

Signature of witness:



Name of witness:

AVERIL JOY KLEIN

Address of witness:

1 King Street Concord West NSW 1718/2016

Certified correct for the purposes of the Real Property Act 1900 by the ~~MORTGAGEE~~ SIGNED by JENINE BAIRD as attorney for Westpac Banking Corporation under power of attorney registered Book 4299 no. 332

(Signature)

Tier Three Attorney

By executing this instrument the attorney states that the attorney has received no notice of the revocation of the power of attorney

\*s117RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation

\* OFFICE USE ONLY



FOLIO: CP/SP93227

SEARCH DATE	TIME	EDITION NO	DATE
9/3/2022	12:52 PM	5	13/1/2022

LAND

THE COMMON PROPERTY IN THE STRATA SCHEME BASED ON STRATA PLAN 93227  
WITHIN THE PARCEL SHOWN IN THE TITLE DIAGRAM

AT KELLYVILLE  
LOCAL GOVERNMENT AREA THE HILLS SHIRE  
PARISH OF CASTLE HILL COUNTY OF CUMBERLAND  
TITLE DIAGRAM SP93227

FIRST SCHEDULE

THE OWNERS - STRATA PLAN NO. 93227  
ADDRESS FOR SERVICE OF DOCUMENTS:  
C/- BEAUMONT STRATA MANAGEMENT PTY LTD  
PO BOX 7601  
BAULKHAM HILLS BC NSW 2153

SECOND SCHEDULE (14 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 BK 2587 NO 211 RIGHT OF CARRIAGEWAY APPURTENANT TO THE LAND ABOVE  
DESCRIBED AFFECTING THE LAND SHOWN AS "RIGHT OF WAY  
20.115 WIDE" IN DP247442
- 3 BK 2589 NO 212 COVENANT
- 4 DP247442 RESTRICTION(S) ON THE USE OF LAND
- 5 DP1210647 RIGHT OF PUBLIC ACCESS VARIABLE WIDTH AFFECTING THE  
PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 6 DP1210647 EASEMENT FOR PADMOUNT SUBSTATION 5.5 METRE(S) WIDE  
AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE  
DIAGRAM
- 7 DP1210647 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND  
NUMBERED (3) IN THE S.88B INSTRUMENT AFFECTING THE  
PART DESIGNATED (R1) IN THE TITLE DIAGRAM
- 8 DP1210647 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND  
NUMBERED (4) IN THE S.88B INSTRUMENT
- 9 DP1210647 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND  
NUMBERED (5) IN THE S.88B INSTRUMENT
- 10 DP1210647 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND  
NUMBERED (6) IN THE S.88B INSTRUMENT
- 11 DP1210647 POSITIVE COVENANT REFERRED TO AND NUMBERED (7) IN THE  
S.88B INSTRUMENT
- 12 DP1210647 POSITIVE COVENANT REFERRED TO AND NUMBERED (8) IN THE

END OF PAGE 1 - CONTINUED OVER

NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: CP/SP93227

PAGE 2

SECOND SCHEDULE (14 NOTIFICATIONS) (CONTINUED)

S.88B INSTRUMENT

- 13 AM911475 INITIAL PERIOD EXPIRED
- 14 AR788377 CONSOLIDATION OF REGISTERED BY-LAWS

SCHEDULE OF UNIT ENTITLEMENT (AGGREGATE: 100000)

STRATA PLAN 93227

LOT	ENT	LOT	ENT	LOT	ENT	LOT	ENT
1	- 744	2	- 947	3	- 934	4	- 861
5	- 861	6	- 766	7	- 773	8	- 772
9	- 758	10	- 758	11	- 1008	12	- 995
13	- 758	14	- 758	15	- 765	16	- 778
17	- 724	18	- 936	19	- 936	20	- 936
21	- 758	22	- 947	23	- 947	24	- 934
25	- 934	26	- 752	27	- 765	28	- 971
29	- 961	30	- 812	31	- 982	32	- 991
33	- 812	34	- 961	35	- 970	36	- 771
37	- 788	38	- 975	39	- 975	40	- 825
41	- 995	42	- 735	43	- 949	44	- 959
45	- 959	46	- 748	47	- 781	48	- 961
49	- 961	50	- 974	51	- 934	52	- 766
53	- 1005	54	- 835	55	- 975	56	- 975
57	- 785	58	- 799	59	- 1010	60	- 991
61	- 839	62	- 1017	63	- 1018	64	- 839
65	- 1030	66	- 988	67	- 805	68	- 734
69	- 963	70	- 963	71	- 963	72	- 762
73	- 793	74	- 974	75	- 974	76	- 974
77	- 947	78	- 780	79	- 818	80	- 997
81	- 1009	82	- 853	83	- 1030	84	- 1030
85	- 853	86	- 1013	87	- 1010	88	- 814
89	- 750	90	- 976	91	- 976	92	- 995
93	- 766	94	- 1287	95	- 744	96	- 1296
97	- 1219	98	- 907	99	- 1212	100	- 1232
101	- 921	102	- 1234	103	- 1246	104	- 934
105	- 1275	106	- 1494	107	- 1521	108	- 14
109	- 14	110	- 14	111	- 14	112	- 14
113	- 14	114	- 14	115	- 14	116	- 14
117	- 14	118	- 14	119	- 14	120	- 14
121	- 14	122	- 14	123	- 18	124	- 14
125	- 14	126	- 14	127	- 14	128	- 14
129	- 14	130	- 14	131	- 14	132	- 10
133	- 5	134	- 8	135	- 8	136	- 16
137	- 16	138	- 16	139	- 14	140	- 14
141	- 7	142	- 16	143	- 9	144	- 9
145	- 7	146	- 8	147	- 7	148	- 7
149	- 12						

END OF PAGE 2 - CONTINUED OVER

NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH  
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FOLIO: CP/SP93227  
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PAGE 3

NOTATIONS  
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DP1106269 NOTE: PLAN OF PROPOSED ACQUISITION

DP1198944 NOTE: PLAN OF ACQUISITION

UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*

220003

PRINTED ON 9/3/2022

\* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register. InfoTrack an approved NSW Information Broker hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with Section 96B(2) of the Real Property Act 1900.



Fair  
Trading

Attn. the Proper Officer  
Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust  
(ACN 205 786 373)  
Unit 3.02, 184 Bourke Road  
Alexandria NSW 2015

Service: By registered post and by email

01 March 2022

# Building Work Rectification Order

## Section 33 of the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020

Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust (ACN 205 786 373) is being given this Building Work Rectification Order (“Order”) in relation to ‘Oakmont’, 1- 2 Lucinda Ave, Norwest (Lot 31 and DP 247442) (“the Building”).

Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust is required to cause building work to be carried out to remediate the potential serious defects as set out in paragraph 9 of this Order.

Failure to comply with this Order is a criminal offence.

### Background

1. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (**the Act**).
2. Under section 33 of the Act, if the Secretary of the Department or their authorised delegate has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to rectify building work to remediate the serious defect or potential defect.
3. Mr Matthew Whitton is an authorised delegate of the Secretary of the Department.
4. Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust (ACN 205 786 373) (**Arden**) is the developer of the residential apartment building known as ‘Oakmont’, 1- 2 Lucinda Ave, Norwest (Lot 31 and DP 247442) (**the Building**) for the purposes of section 4(a) of the Act.
5. On 27<sup>th</sup> January 2022 a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Certifier, Owners Corporation and Registrar-General. The Local Council, Certifier and Registrar-General were invited to provide submissions to the

Department relating to the Order by the 3<sup>rd</sup> February 2022. The Developer was initially invited to provide submissions to the Department relating to the Order by the 4<sup>th</sup> February 2022 but sought, and was granted, an extension of time. The Owner's Corporation SP93227 was invited to provide submissions to the Department relating to the Order by the 17<sup>th</sup> February 2022. On the 8<sup>th</sup> February 2022 submissions were received from the Owners Corporation SP93227. On the 9<sup>th</sup> February 2022 submissions were received from the Developer. No submissions were received by the date of this Order from the Registrar General, Local Council or Certifier.

6. Under section 3 of the Act a serious Defect in relation to a building, means –
- a. a defect in a building element that is attributable to a failure to comply with the performance requirements of the *Building Code of Australia*, the relevant Australian Standards or the relevant approved plans, or
  - b. a defect in a building product or building element that
    - i. is attributable to defective design, defective or faulty workmanship or defective materials, and
    - ii. causes or is likely to cause—
      - (A) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
      - (B) the destruction of the building or any part of the building, or
      - (C) a threat of collapse of the building or any part of the building, or
  - c. a defect of a kind that is prescribed by the regulations as a serious defect, or
  - d. the use of a building product (within the meaning of the *Building Products (Safety) Act 2017*) in contravention of that Act.

7. Under s6 of the *Design and Building Practitioners Act 2020* a Building element is

- (1) For the purposes of this Act, **building element** means any of the following—
  - a. the fire safety systems for a building within the meaning of the *Building Code of Australia*,
  - b. waterproofing,
  - c. an internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it (including but not limited to in-ground and other foundations and footings, floors, walls, roofs, columns and beams),
  - d. a component of a building that is part of the building enclosure,
  - e. those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the *Building Code of Australia*,
  - f. other things prescribed by the regulations for the purposes of this section
- (2) The regulations may exclude things from being building elements for the purposes of this Act.

### **Decision to issue a building work rectification order**

8. I, Matthew Whitton, am the decision maker for this Building Work Rectification Order (**the Order**). I have decided to issue the Order to Arden because I have formed a reasonable belief under s 33(1) of the Act that building work was carried out in a manner that could result in serious defects in the Building as set out in this Order.

## Description of serious defect

### 9. Defect 1 – The installation of waterproofing which permits water to penetrate into linings and concealed spaces.

On 7<sup>th</sup> and 13<sup>th</sup> December 2021, authorised officers of the Department conducted inspections pursuant to s 20 of the Act in the bathrooms of the Building. It was observed in units 8, 20, 108, 211, and 318 that the adjoining wall to the bathrooms had water damage and was damp, indicating water penetration into the linings and concealed space from the adjoining bathroom. In addition, it was observed that there was corrosion at the base of the bathroom door jambs indicating the failure to continue the perimeter flashing at the water stop at the base of the door opening. This is a serious defect because it is a defect in a building element that is attributable to a failure to comply with the following **Performance requirement of the Building Code of Australia (BCA): NCC2014 BCA Volume 1, Section F Health and Amenity, Part F1 Damp and weatherproofing, Performance Requirements FP1.7** which states:

*“To protect the structure of the building and to maintain the amenity of the occupants, water must be prevented from penetrating -*

*(a) Behind fittings and linings; and*

*(b) Into concealed spaces.*

and

**Clause 3.9.1.2(a) of AS 3740-2010** which states:

*“A water stop that has a vertical leg finishing flush with the top of the finished floor level shall be installed at floor level openings. The floor membrane shall be terminated to create a waterproof seal to the water stop and to the perimeter flashing”.*

### Defect 2 – The installation of substrate with an inadequate fall, allowing water to be reattained on the finished surface, the installation of substrate with protrusions and voids and the installation of waterproofing membrane which permits water penetration.

On 12th January 2021, 7th, 12th and 13th December 2021, authorised officers of the Department conducted inspections pursuant to s 20 of the Act of the rooftops of all buildings. It was observed that there was ponding of water on the roof indicating inadequate fall of the roof to allow water to dissipate. In addition it was observed that the structural substrate preparation was inadequate, specifically that it was not suitably smooth, had protrusions and voids and was not free of contamination. The defective substrate preparation was evident by the detached / de bonded coating throughout the roof areas and at the perimeter hobs which is a waterproofing element. It was also observed that in unit 404 and 405 that the ceilings have significant water damage This is a serious defect because it is a defect in a building element that is attributable to a failure to comply with the Building Code of Australia and the Australian Standards as follows: **Australian Standard 4654.2-2012 Waterproofing membranes for external above-ground use – Part 2: Design and installation, Section 2 Design and installation, 2.5 Substrate** which states:

#### 2.5.2 Falls

*“Falls in finishes shall ensure water drains to the drainage outlet. Water shall not be retained on the finished surface with the exception of residual water remaining due to surface tension.*

*The fall shall be in the structural substrate or formed by a screed over the structural substrate.*

And

## 2.5.3 Types of substrates

### ***“2.5.3.1 Fully bonded or liquid-applied***

*The preparation of the substrate for fully bonded or liquid-applied membranes shall result in the surface of the substrate being smooth, without protrusions, voids or formwork distortions, and clean, dry, and free from dust and combination.*

**BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:**

*“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-*

- (a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and*
- (b) undue dampness or deterioration of building elements.”*

## **Building Work to be Carried Out**

10. Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust must carry out building work, or cause building work to be carried out, to:

- a. Remediate Defect 1 in the bathrooms of units 8, 20, 108, 211, and 318 the following
  - i. Remove shower screen, fixtures and fittings.
  - ii. Remove the wall and floor tiles to the bathroom.
  - iii. Remove tile screed and wall adhesive
  - iv. Repair and prepare substrate to receive new waterproofing application
  - v. Install waterproofing system in accordance with manufacturers specifications and Australian Standard requirements
  - vi. Reinstall tile screed, install wall and floor tiles, install waterproof silicone sealant and reinstall shower screen, fixtures and finishes.
  - vii. Make good consequential damage.

in accordance with BCA Volume 1 AS 3740, AS 3958.1 and approved plans.

- b. Remediate Defect 2 on all roofs of the Buildings by
  - i. Adjust plant, equipment and ancillary fittings to ensure continued operation throughout the remedial works.
  - ii. Survey the roof top substrates to determine high / low spots.
  - iii. Prepare the substrate by abrasive means to remove contaminants and promote a compliant surface for adhesion.
  - iv. Top low spots and locally grind to ensure the substrate directs surface water to drainage outlets.
  - v. Prepare the substrate and apply new waterproofing system including all termination detailing, angles, flashings, capping, etc.

- vi. Re – position and secure the roof top plant, equipment and ancillary fittings and re-commission to original condition.
- vii. Make good any consequential damage.

in accordance with the BCA Volume One BCA Volume 1 AS4654.2 and approved plans.

#### **Period for Compliance with Order**

- 11. The work specified in paragraph 10 of this Order must be completed within 150 days of the date of this Order.

#### **Conditions of this Order**

- 12. Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust must notify Greg O'Mara, Principal Compliance Officer, in writing, by email sent to [ocaudits@customerservice.nsw.gov.au](mailto:ocaudits@customerservice.nsw.gov.au) within 2 business days of the work required by this Order being completed.

#### **Duration of this Order**

- 13. This Order remains in force until it is revoked by the Secretary.



Matthew Whitton  
**Director**  
**Building Construction & Compliance**  
**NSW Fair Trading Department of Customer Service**

## REASONS FOR THE ORDER

### Reasonable belief and serious defects

1. I, Matthew Whitton, an authorised delegate of the Secretary of the Department, have formed a reasonable belief for the purposes of s 33(1) of the Act in relation to Defects 1 to 2 in the Order, that building work was carried out in a manner that could result in a serious defect.
2. Defect 1 - The installation of waterproofing which permits water to penetrate into linings and concealed spaces as described above in paragraph 8 of the Order, is a serious defect in a building element (waterproofing systems of the Building) that are required to achieve compliance with the Building Code of Australia and is a failure to comply with the following: NCC2014 BCA Volume 1, Section F Health and Amenity, Part F1 Damp and weatherproofing, Performance Requirements FP1.7 and AS3740:2010. I have formed this belief on reviewing the recommendation to the authorised delegate of the Secretary of the Department dated 14 December 2021. In this report I viewed photos of the skirtings which contained water staining in the room adjoining the bathrooms. In addition, there was visible water staining to the carpet, underlay and corrosion to the metal frame at the doorway indicating the penetration of water from the bathroom into the adjoining room. I am therefore of the belief that this is a serious defect in the waterproofing system of the Building.
3. Defect 2 – The installation of substrate with an inadequate fall, allowing water to be reattained on the finished surface, the installation of substrate with protrusions and voids and the installation of waterproofing membrane which permits water penetration as described above in paragraph 8 of the Order, is a serious defect in a building element (waterproofing systems of the Building) that are required to achieve compliance with the Australian Standard 4654.2-2012 Waterproofing membranes for external above-ground use – Part 2: Design and installation, Section 2 Design and installation, 2.5.2 falls, 2.5.3.1 substrates and BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4. I have formed this belief on reviewing the recommendation to the authorised delegate of the Secretary of the Department dated 14 December 2021. In this report I reviewed the observations of the authorised officer and photos of water damage to the ceiling of unit 405. In addition, I observed for myself at the inspection on the 12<sup>th</sup> January 2021 that there was evidence of ponding in areas on the roof and areas where the membrane coating had detached /de bonded. I am therefore of the belief that this is a serious defect in the waterproofing system of the Building.

### Period for compliance

4. I am of the view that a period of 150 days is a reasonable period for compliance in all the circumstances for the rectification work required by the Order to be carried out. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to give effect to the rectification work. I am aware that there are residents occupying this location as the Building is completed which will delay rectification work. I am of the view that 150 days is sufficient to conduct the following works
  - a. Defect 1
    - i. Remove shower screen, fixtures and fittings.
    - ii. Remove the wall and floor tiles to the bathroom.
    - iii. Remove tile screed and wall adhesive
    - iv. Repair and prepare substrate to receive new waterproofing application

- v. Install waterproofing system in accordance with manufacturers specifications and Australian Standard requirements
- vi. Reinstall tile screed, install wall and floor tiles, install waterproof silicone sealant and reinstall shower screen, fixtures and finishes.
- vii. Make good consequential damage

Remedial works (i) – (vii) should take 60 days.

b. Defect 2

- i. Adjust plant, equipment and ancillary fittings to ensure continued operation throughout the remedial works.
- ii. Survey the roof top substrates to determine high / low spots.
- iii. Prepare the substrate by abrasive means to remove contaminants and promote a compliant surface for adhesion.
- iv. Top low spots and locally grind to ensure the substrate directs surface water to drainage outlets.
- v. Prepare the substrate and apply new waterproofing system including all termination detailing, angles, flashings, capping, etc.
- vi. Re – position and secure the roof top plant, equipment and ancillary fittings and re-commission to original condition.
- vii. Make good any consequential damage.

Remedial works (i)-(vii) should take 90 days to remediate all roofs.

### Consideration of written representations

5. On 27<sup>th</sup> January 2022 a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Certifier, Owners Corporation and Registrar-General. The Local Council, Certifier and Registrar-General were invited to provide submissions to the Department relating to the Order by the 3<sup>rd</sup> February 2022. The Developer was initially invited to provide submissions to the Department relating to the Order by the 4<sup>th</sup> February 2022 but sought, and was granted, an extension of time. The Owner's Corporation was invited to provide submissions to the Department relating to the Order by the 17<sup>th</sup> February 2022. On the 8<sup>th</sup> February 2022 submissions were received from the Owners Corporation. On the 9<sup>th</sup> February 2022 submissions were received from the Developer. No submissions were received by the date of this Order from the Registrar General, Local Council or Certifier.
6. The Owners Corporation SP93227 provided me with submissions on the 8<sup>th</sup> February 2022 which included the following information (**Owners Corporation Representations**).
  - a. Agreement to the draft Order
  - b. The Developer will need to appoint a consultant, site coordinator and contractor to attend to the Order
  - c. There were a number of units not listed in Defect 1 that have defects.
  - d. Concerns in relation to Fire Safety and Rescue not relevant to the issues raised in this Order.
7. I have reviewed the Owners Corporation Representations. In relation to the issues

raised in the Owners Corporation Representations, I make the following observations:

- a. The Owners Corporation supports issuing of the Order
  - b. The Owners Corporation raised concern that not all units that had been raised as concerns were contained in the Order. I note this Order can only be made in respect of the units identified in the draft order provided to the various stakeholders for comment.
  - c. No representations were made in relation to Defect 2
  - d. The other issues raised, such as the issues with Fire and Rescue, were not relevant to the issuing of this order.
8. The Developer provided me with submissions on the 9<sup>th</sup> February 2022 which included the following information (**Developers Representations**).
- a. A report from “Rooftop Waterproofing Specification by Noviion Engineering Ref: DP247442:1-2 Lucinda Avenue Norwest NSW 2155 dated 8 June 2021.” (**The Noviion Report**) which outlines a scope of works relating to Defect 2
  - b. There has been ongoing communication with the Owner’s Corporation about the recommencement of the Roof Works and the current forecast date for on site works to begin was the 16<sup>th</sup> February 2022.
9. I have reviewed the Developers Representations. In relation to the issues raised in the Developers Representations, I make the following observations:
- a. There were no representations made by the Developer in relation to Defect 1 relating to the installation of waterproofing which permits water to penetrate into linings and concealed spaces.
  - b. The Developer does not dispute that there is a serious defect relating to the installation of substrate with an inadequate fall, allowing water to be reattained on the finished surface, the installation of substrate with protrusions and voids and the installation of waterproofing membrane which permits water penetration
  - c. The Developer has provided the Noviion Report which outlines a scope of works to address Defect 2. The scope of works contained in this report is in alignment with the required Building Work set out at paragraph 10.
10. Upon review of both the Developers and Owners Corporations Representations I remain satisfied in the absence of any submissions made by the Developer or Owners Corporation to the contrary that Defects 1 and 2 are serious defects which do not comply with the relevant BCA and Australian Standards for the reasons set out at paragraphs 2 and 3 above respectively. No representations from either the Developer or Owners Corporation were received in relation to the proposed remediation in respect of Defect 1.
11. The Developers Representations containing the Noviion Report align with the Building Work required to be carried out in respect of Defect 2 by paragraph 10 of the Order and the timeframe for compliance set out in paragraph 11 of the Order.
12. For those reasons, I am satisfied that both the Building Work and period for compliance identified in the Order are appropriate.

#### **Why is it appropriate to give the Building Work Rectification Order?**

13. I have considered all of the circumstances. I accept that the order requires considerable further construction work that is likely to be costly, and I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the

occupiers of the unit in having the building constructed to the approved plan and to the BCA so as to prevent in respect of:

- a. Defect 1; the ongoing ingress of water and continuing degradation to affected areas
- b. Defect 2; the ongoing and future ingress of water and resulting degradation to affected areas

14. Considering these potential consequences as outlined in this order, I give greater weight to the seriousness of the defect and failure to adhere to the Australian Standards and BCA, and the benefits arising from remediating them and I find that it is appropriate, in the exercise of my discretion, to require Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust to carry out the building work described in paragraph 9 of the Order within the period specified in paragraph 10 of the Order.