

# Contract for the sale and purchase of land 2019 edition

TERM	MEANING OF TERM	NSW DAN:
vendor's agent	<b>UPSTATE REALTY DEE WHY</b> Suite 15, Level 1, 888 Pittwater Road Dee Why NSW 2099	phone 9971 9000 / 0424 194 465 fax ref Kim Adams
co-agent	Not Applicable	phone fax ref
vendor	<b>NICHOLAS MURDOCCA</b>	
vendor's solicitor	<b>MATTHEWS FOLBIGG PTY LTD</b> "The Barrington" Level 7, 10-14 Smith Street, Parramatta NSW 2150 PO Box 248, Parramatta NSW 2124 email: TerryD@matthewsfolbigg.com.au	phone 9635 7966 fax 9689 3494 ref TJD:220550
date for completion	42nd day after the contract date (clause 15)	
land (address, plan details and title reference)	<b>9/36-40 OLD PITTWATER ROAD, BROOKVALE NSW 2100</b> Registered Plan: Lot 9 in Strata Plan 73368 <b>Folio Identifier 9/SP73368</b> <input checked="" type="checkbox"/> VACANT POSSESSION <input 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 type="checkbox"/> carspace <input 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 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 checked="" type="checkbox"/> built-in wardrobes <input type="checkbox"/> clothes line <input checked="" type="checkbox"/> curtains	<input checked="" type="checkbox"/> dishwasher <input checked="" type="checkbox"/> fixed floor coverings <input checked="" type="checkbox"/> insect screens <input type="checkbox"/> other:	<input checked="" type="checkbox"/> light fittings <input type="checkbox"/> range hood <input type="checkbox"/> solar panels	<input checked="" type="checkbox"/> stove <input type="checkbox"/> pool equipment <input type="checkbox"/> TV antenna
exclusions				
purchaser				
purchaser's <input type="checkbox"/> solicitor <input type="checkbox"/> conveyancer	email:		phone fax ref	
price	\$			
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

**Choices**Vendor agrees to accept a **deposit bond** (clause 3) ☒ NO ☐ yes**Nominated Electronic Lodgment Network (ELN)** (clause 30) PEXA**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):

Parties agree that the deposit be invested (clause 2.9) ☒ NO ☐ yes**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 extentMargin 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 **GSTRW 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

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

LAMB &amp; WALTERS

19-23 Bridge St Pymble, NSW 2073

Tel: (02) 9449 8855

Email: [hello@lambandwalters.com.au](mailto:hello@lambandwalters.com.au)

**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:
 

APA Group Australian Taxation Office Council County Council Department of Planning, Industry and Environment Department of Primary Industries Electricity and gas Land & Housing Corporation Local Land Services	NSW Department of Education NSW Fair Trading Owner of adjoining land Privacy Public Works Advisory Subsidence Advisory NSW Telecommunications Transport for NSW Water, sewerage or drainage authority
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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 *serving* 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 serving 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 *serving* 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 –
- adjustment figures* details of the adjustments to be made to the price under clause 14;
  - certificate of title* 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;
  - completion time* the time of day on the date for completion when the *electronic transaction* is to be settled;
  - conveyancing rules* the rules made under s12E of the Real Property Act 1900;
  - discharging mortgagee* any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a *Digitally Signed* discharge of mortgage, discharge of charge or withdrawal of caveat is required in order for unencumbered title to the *property* to be transferred to the purchaser;
  - ECNL* the Electronic Conveyancing National Law (NSW);
  - effective date* the date on which the *Conveyancing Transaction* is agreed to be an *electronic transaction* under clause 30.1.2 or, if clauses 30.1.1 or 30.1.3 apply, the contract date;
  - electronic document* a dealing as defined in the Real Property Act 1900 which may be created and *Digitally Signed* in an *Electronic Workspace*;
  - electronic transfer* a transfer of land under the Real Property Act 1900 for the *property* to be prepared and *Digitally Signed* in the *Electronic Workspace* established for the purposes of the parties' *Conveyancing Transaction*;

<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*.

These are Additional Conditions to the Contract for the sale of land between

NICHOLAS MURDOCCA

as vendor and

as purchaser

Made the                      day of                      2022

### **Additional Conditions**

#### **33. AMENDMENTS TO STANDARD PROVISIONS**

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33.1 The following amendments apply to this contract:

- (a) Clause 6.1 is amended by deletion of the words "or anything else and".
- (b) Clause 7 is amended by deleting the words "(including a claim under clause 6)" and inserting "(for compensation for error or misdescription)".
- (c) Clause 7.1.1 is deleted.
- (d) Clause 8.1 is amended by deleting the words "on reasonable grounds".
- (e) Clause 8.1.2 is amended by deleting the words "and those grounds".
- (f) Clause 14.4.2 is amended by deleting the line "the person who owned the land owned no other land;".
- (g) Clause 23.5.2 is amended by adding after the word "contract" the words "or which was shown in the records of the owners corporation at the date of this contract".
- (h) Clause 23.6 is amended by adding after the word "contract" the words " the purchaser is liable for any such contributions which are payable after the date of completion".
- (i) Clause 23.6.1 and 23.6.2 are deleted.

#### **34. NO WARRANTY**

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The purchaser hereby acknowledges that any furnishings and chattels included in this sale are used goods and are sold without any warranty as to condition and fitness and that the vendor shall not be liable for any fair wear and tear of any such furnishings and chattels as from the date of this contract.

#### **35. STATE OF REPAIR**

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35.1 The purchaser hereby acknowledges that he is purchasing the property in its present condition and state of repair subject to all defects latent and patent subject to any

infestations and dilapidations and subject to all existing services and further, as the result of his own enquiries and inspections and not as to the result of any representation made by or on behalf of the vendor, AND subject to the rights of the purchaser pursuant to section 52A(2)(b) of the *Conveyancing Act, 1919*, the purchaser shall not make any objection requisition or claim for compensation arising out of any of the matters referred to in this condition.

35.2 The purchaser must not make any requisition or claim, delay completion of, or rescind or terminate this contract because of anything in connection with:

- (a) the suitability of the property for any purpose; or
- (b) loss, damage, dilapidation, infestation, mechanical breakdown or reasonable wear and tear which may affect the property between the date of this contract and completion; or
- (c) the roof or surface water drainage from the property being connected to a sewerage service; or
- (d) the zoning and planning controls and restrictions applying to the property and the use to which the property may be put and the development of the property (including all approvals, permits and consents concerning the development or use of the property and the conditions of them); or
- (e) any matter disclosed in this contract.

### **36. RESCISSION ON DEATH/LIQUIDATION**

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36.1 Without in any way negating limiting or restricting any rights or remedies which would have been available to either party at law or in equity had this clause not been included herein, should the purchaser (and in the event that the purchaser is made up of more than one entity then any one of that party) prior to completion:

- (a) die or become mentally ill; or
- (b) being a company, resolve to go into liquidation or have a petition for winding up presented, or enter into any scheme of arrangement with its creditors under Part 5.1 of the *Corporations Act 2001* or should any Receiver, Liquidator (provisional or otherwise), Receiver and Manager or Official Manager be appointed in respect of that party;

then the vendor may serve a notice and by that notice rescind and the provisions of clause 19 hereof shall apply to such rescission.

### **37. NOTICE TO COMPLETE**

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37.1 In the event that this contract is not completed by the time stipulated as the completion date on the front page of this contract, either party shall be entitled to issue a Notice to Complete fixing a time for completion which time shall be of the

essence of this contract and such Notice shall be deemed to be sufficient as to time if a period of not less than fourteen (14) days from the date of such notice, time being of the essence.

- 37.2 The purchaser expressly acknowledges that where a Notice to Complete is issued by or on behalf of the vendor, the purchaser shall pay to the vendor by way of adjustment on settlement the sum of \$330.00 (including GST) being a genuine pre-estimate of the damages payable for breach of this contract to reimburse the vendor for additional legal costs payable by the vendor in respect to the preparation and service of the Notice to Complete. The payment of such amount is an essential term of this contract and must be paid on or by completion.

#### **38. NOT USED**

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#### **39. SERVICE OF NOTICES**

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For the purposes of the service of any notice, letter, document or plan which is required to be so served pursuant to this contract, where such notice is served by security post or delivery post such notice shall be deemed to have been served on the date which is two days after the date of such posting delivery. If such notice is served by facsimile then such notice shall be deemed to have been served on the date which such facsimile is transmitted to the party required to be served.

#### **40. INTEREST**

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It is an essential term of this contract that in the event that completion does not take place within the time stipulated herein then the purchaser shall pay to the vendor on completion in addition to the balance of purchase moneys and any other moneys payable to the vendor interest on the balance of purchase price at the rate of 8% per annum calculated at a daily rate from the date due for completion to the actual date of completion. The payment of such interest by the purchaser is a genuine pre-estimate of damages of additional expenses incurred by the vendor and shall be an essential term of this contract.

#### **41. REPRESENTATION**

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The purchaser acknowledges that he has not been induced to enter into this contract as a result of any representation, warranty or promise whatsoever made to him by or on behalf of the vendor other than as contained herein or required to be made pursuant to the *Conveyancing Act, 1919*, as amended.

Without limiting the foregoing, the purchaser acknowledges that the purchaser is not relying on any representations by any persons including any warranties or representations as to whether the subject property complies with the requirements of the relevant Council and/or any other statutory bodies.

#### **42. NOT USED**

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#### **43. SWIMMING POOL**

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- 43.1 This clause shall apply if there is a swimming pool on the land.
- 43.2 The purchaser warrants it has made and relied upon its own enquiries and agrees that no objection, requisition or claim for compensation shall be made in relation to any Occupation Certificate or Certificate of Compliance or Certificate of Non-Compliance attached to this Contract or any matter disclosed or referred to in any such certificate.
- 43.3 The purchaser shall accept the swimming pool and surrounds and fencing, if any, in its present state of repair and will not make any objection, requisition or claim for compensation in relation thereto or as to compliance or otherwise with the *Swimming Pools Amendment Act, 2012*, *Swimming Pools Act, 1992*, *Swimming Pools Regulation, 2008*, and/or *Local Government Act, 1993* or any other relevant legislation and the vendor shall not be required to undertake any work or do anything in respect of the swimming pool or surrounds.

#### **44. SURVEY AND/OR BUILDING CERTIFICATE**

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The vendor does not hold an up to date Survey Report and/or Building Certificate. Should the purchaser obtain a Survey Report and/or Building Certificate, the purchaser shall make no objection, requisition or claim for compensation in relation to any matter disclosed in such survey or building certificate.

#### **45. REQUISITIONS ON TITLE**

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For the purposes of clause 5 of the contract, the vendor shall have complied with its obligations if it furnishes to the purchaser replies to the requisitions annexed to this Contract.

#### **46. PURCHASER'S AGENT INDEMNITY**

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The purchaser warrants to the vendor that the purchaser has not been introduced to the property by any estate agent or agency (other than the vendor's Agent (if any) nominated in this contract and hereby agrees to indemnify the vendor against any claim by any estate agent or agency or other persons due to the purchaser's breach of this warranty to the intent that all damages costs and expenses on a solicitor and client basis which may be incurred by the vendor in respect of any such claim or alleged claim shall be paid by the purchaser to the vendor. The provisions of this clause shall not merge on completion but shall operate thereafter for the benefit of the vendor.

## **47. RESCHEDULING OF SETTLEMENT**

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If settlement does not take effect on the scheduled time and is re-scheduled for another date due to the fault of the purchaser or the purchaser's mortgagee, then, in addition to any other moneys payable by the purchaser on completion of this contract, the purchaser must pay the sum of \$220 (inclusive of GST) on settlement to the vendor to cover legal costs and other expenses incurred by him as a consequence of the delay and the purchaser acknowledges that it is a genuine pre-estimate of those additional expenses and not a penalty.

## **48. CONDITIONS OF SALE BY AUCTION**

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48.1 If the property is or is intended to be sold at auction:

*Bidders Record means the Bidders Record to be kept pursuant to Clause 18 of the Property, Stock and Business Agents Regulation 2003 and Section 68 of the Property, Stock and Business Agents Act 2002:*

- (a) The following conditions are prescribed as applicable to and in respect of the sale by auction of land:
- (b) The principal's reserve price must be given in writing to the auctioneer before the auction commences.
- (c) A bid for the seller cannot be made unless the auctioneer has, before the commencement of the auction, announced clearly and precisely the number of bids that may be made by or on behalf of the seller.
- (d) The highest bidder is the purchaser, subject to any reserve price.
- (e) In the event of a disputed bid, the auctioneer is the sole arbitrator and the auctioneer's decision is final.
- (f) The auctioneer may refuse to accept any bid that, in the auctioneer's opinion, is not in the best interest of the seller.
- (g) A bidder is taken to be a principal unless, before bidding, the bidder has given to the auctioneer a copy of a written authority to bid for or on behalf of another person.
- (h) A bid cannot be made or accepted after the fall of the hammer.
- (i) As soon as practicable after the fall of the hammer the purchaser is to sign the agreement (if any) for sale.

48.2 The following conditions, in addition to those prescribed by subclause (1), are prescribed as applicable to and in respect of the sale by auction of residential property or rural land:



- (a) All bidders must be registered in the Bidders Record and display an identifying number when making a bid.
- (b) One bid only may be made by or on behalf of the seller. This includes a bid made by the auctioneer on behalf of the seller.
- (c) When making a bid on behalf of the seller or accepting a bid made by or on behalf of the seller, the auctioneer must clearly state that the bid was made by or on behalf of the seller or auctioneer.

#### **49. ORDER ON THE AGENT – ELECTRONIC TRANSACTION**

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- 49.1 The Purchaser agrees to upload the 'Order on the Agent' onto the Electronic Workspace at least 1 business day before the date of completion to be held in escrow by the vendor's solicitor until the matter has completed electronically. Each party agrees that once the Electronic Workspace states the matter has 'completed and disbursed' the Order on the Agent shall be automatically issued to the depositholder by the vendor without any further authorisation from the purchaser or purchaser's solicitor.

*'Order on the Agent'* means a signed written authority authorising the depositholder to release the deposit.

#### **50. ELECTRONIC SIGNATURE AND EXCHANGE**

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- 50.1 This Contract maybe executed:

- (a) in any number of counterparts and all the counterparts together shall make one instrument;
- (b) electronically by both parties using Docusign or by exchanging electronic copies of original signatures on this Contract;

- 50.2 This Contract may be validly created and exchanged by counterparts with each party's signature (electronic or otherwise) sent electronically to each other party by email or facsimile;

- 50.3 The parties acknowledge that the electronic version of this Contract signed by both parties will be the true and original version for the purposes of this transaction and that no other version will be provided unless otherwise agreed between the parties in writing.

- 50.4 The parties agree to be bound by the electronic version of this Contract which has been signed and exchanged in accordance with this clause and the purchaser may not object to or delay settlement because of anything contained in this clause.

- 50.5 The parties agree that they will be bound by, have complied with and will comply with the Electronic Transactions Act 2000 (NSW) and any terms and conditions of Docusign, in relation to the execution of this Contract.

50.6 For the purposes of this clause, Docusign means the signature software and platform located at [www.docusign.com](http://www.docusign.com).

## **51. SALE OF STRATA LOT**

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51.1 The purchaser additionally acknowledges and agrees for the benefit of the vendor that the purchaser:

- (a) has made and relied upon its own independent and complete investigations and inquires with respect to all matter or thing arising out of or in connection with the property, in particular, that being a strata lot within the strata plan and scheme as thereby disclosed on the front page of this contract;
- (b) had reasonable opportunity to inspect the books and records of the strata scheme directly with the relevant holder of those records, and had reasonable opportunity to seek for the necessary authority from the vendor to make those necessary and independent inspection;
- (c) is entirely satisfied with and accepts the property, any and all item(s) or work(s) within the property and in connection or adjoining thereto (and also that of the strata scheme and building(s) that contain the property) in all respects whatsoever on an as-is where-is basis as at the date of this contract including without limitation any applicable requirement, approval, compliance or non-compliance issue of or in connection with the strata scheme, the owners corporation, the governing legislation for the strata scheme, the applicable planning laws and regulations, any need to obtain development consent or Council approval, any and all laws and by-laws applicable to the property, and any and all non-regular contribution, special levy and/or special expense that may be applicable to the property notwithstanding standard provisions 23.5, 23.6, 23.8, 23.9 and 23.17.2; and
- (d) must not rescind or terminate this contract nor make any requisition, objection, claim for adjustment or compensation or delay completion arising out of or in connection with any of the matters referred to in this Additional Condition and must not prejudice the vendor's rights to the property pending settlement in connection with a matter under clause 23.17.2.

## STRATA TITLE (RESIDENTIAL) PROPERTY REQUISITIONS ON TITLE

Vendor: Nicholas Murdocca  
Purchaser:  
Property: 9/36-40 Old Pittwater Road, Brookvale NSW 2100  
Dated:

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1. Vacant possession of the Property must be given on completion unless the Contract provides otherwise.
2. Is anyone in adverse possession of the Property or any part of it?
3.
  - (a) What are the nature and provisions of any tenancy or occupancy?
  - (b) If they are in writing, all relevant documentation should be produced, found in order and handed over on completion with notices of attornment.
  - (c) Please specify any existing breaches.
  - (d) All rent should be paid up to or beyond the date of completion.
  - (e) Please provide details of any bond together with the Rental Bond Board's reference number.
  - (f) If any bond money is held by the Rental Bond Board, the appropriate transfer documentation duly signed should be handed over on completion.
4. Is the Property affected by a protected tenancy (tenancy affected by Schedule 2, Part 7 of the *Residential Tenancies Act 2010* (NSW))? If so, please provide details.
5. If the tenancy is subject to the *Residential Tenancies Act 2010* (NSW):
  - (a) has either the vendor or any predecessor or the tenant applied to the NSW Civil and Administrative Tribunal for an order?
  - (b) have any orders been made by the NSW Civil and Administrative Tribunal? If so, please provide details.

### Title

6. Subject to the Contract, on completion the vendor should be registered as proprietor in fee simple of the Property free from all encumbrances and notations and recorded as the owner of the Property on the strata roll, free from all other interests.
7. On or before completion, any mortgage, caveat, writ or priority notice must be discharged, withdrawn, cancelled or removed as the case may be or, in the case of a mortgage, caveat or priority notice, an executed discharge or withdrawal or removal handed over on completion together with a notice under Section 22 of the *Strata Schemes Management Act 2015* (NSW) (Act).
8. Are there any proceedings pending or concluded that could result in the recording of any writ on the title to the Property or in the General Register of Deeds? If so, full details should be provided at least 14 days prior to completion.
9. When and where may the title documents be inspected?
10. Are any chattels or fixtures subject to any hiring or leasing agreement or charge or to any security interest under the *Personal Property Securities Act 2009* (Cth)? If so, details must be given and all indebtedness cleared and title transferred unencumbered to the vendor prior to completion.

### Adjustments

11. All outgoings referred to in clause 14.1 and 23.5 to 23.7 (inclusive) of the Contract must be paid up to and including the date of completion.
12. Is the vendor liable to pay land tax or is the Property otherwise charged or liable to be charged with land tax? If so:
  - (a) to what year has a return been made?
  - (b) what is the taxable value of the Property for land tax purposes for the current year?
13. If any land tax certificate shows a charge for land tax on the land, the vendor must produce evidence at completion that the charge is no longer effective against the land.

### Survey and building

14. Subject to the Contract, the survey should be satisfactory and show that the whole of the Property and the common property is available, that there are no encroachments by or upon the Property or the common property.
15. Is the vendor in possession of a survey report? If so, please produce a copy for inspection prior to completion. The original should be handed over on completion.
16. In respect of the Property and the common property:
  - (a) Have the provisions of the *Local Government Act 1993* (NSW), the *Environmental Planning and Assessment Act 1979* (NSW) and their regulations been complied with?
  - (b) Is there any matter that could justify the making of an upgrading or demolition order in respect of any building or structure?
  - (c) Has the vendor a Building Information Certificate or a Building Certificate which relates to all current buildings or structures on the Property? If so, it should be handed over on completion. Please provide a copy in advance.
  - (d) Has the vendor a Final Occupation Certificate (as referred to in the former Section 109C of the *Environmental Planning and Assessment Act 1979* (NSW)) or an Occupation Certificate as referred to in Section 6.4 of the *Environmental Planning and Assessment Act 1979* (NSW) for

- (ii) any work done or intended to be done on them or the adjacent street which may create a charge on them or the cost of which might be or become recoverable from the purchaser?
  - (iii) any sum due to any local or public authority recoverable from the purchaser? If so, it must be paid prior to completion.
  - (iv) any realignment or proposed realignment of any road adjoining them?
  - (v) the existence of any contamination including, but not limited to, materials or substances dangerous to health such as asbestos and fibreglass or polyethylene or other flammable or combustible material such as cladding?
  - (e) If the Property or common property is a building or part of a building to which external combustible cladding has been applied, has the owner provided to the Planning Secretary details of the building and the external combustible cladding and is the building recorded in the Register maintained by the Secretary?
- 22.
- (a) If a licence benefits the Property please provide a copy and indicate:
    - (i) whether there are any existing breaches by any party to it;
    - (ii) whether there are any matters in dispute; and
    - (iii) whether the licensor holds any deposit, bond or guarantee.
  - (b) In relation to such licence:
    - (i) All licence fees and other moneys payable should be paid up to and beyond the date of completion;
    - (ii) The vendor must comply with all requirements to allow the benefit to pass to the purchaser.

#### **Applications, Orders etc**

23. Are there any applications made, proposed or threatened, whether by an owner of a lot or the Owners Corporation, to the NSW Civil and Administrative Tribunal, any Court or to the Registrar General for orders relating to the strata scheme, the Property or the common property (including orders to vary the strata scheme consequent upon damage or destruction or to terminate the strata scheme) which are yet to be determined? If so, please provide particulars.
24. Are there any mediations currently being conducted by the Commissioner of Fair Trading, Department of Finance Services and Innovation in relation to the Property or the common property which involve the vendor or the Owners Corporation? If so, please provide particulars.
25. Are there any:
- (a) orders of the Tribunal;
  - (b) notices of or investigations by the Owners Corporation;
  - (c) notices or orders issued by any Court; or
  - (d) notices or orders issued by the Council or any public authority or water authority, affecting the Property or the common property not yet complied with? In so far as they impose an obligation on the vendor they should be complied with by the vendor before completion.
26. Have any orders been made by any Court or Tribunal that money (including costs) payable by the Owners Corporation be paid from contributions levied in relation to the Property? If so, please provide particulars.
27. Has the vendor made any complaints or been the subject of any complaints arising out of noise affecting the Property or emanating from the Property?
28. Has any proposal been given by any person or entity to the Owners Corporation or to the Vendor for:
- (a) a collective sale of the strata scheme; or
  - (b) a redevelopment of the strata scheme (including a strata renewal proposal)?
- If so, please provide particulars of the proposal and the steps taken and decisions made in relation to the proposal to the present time.

#### **Owners Corporation management**

29. Has the initial period expired?
30. Are any actions proposed to be taken or have any been taken by the Owners Corporation in the initial period which would be in breach of its powers without an order authorising them?
31. If the Property includes a utility lot, please specify the restrictions.
32. Do any special expenses (as defined in clause 23.2 of the Contract, including any liabilities of the Owners Corporation) exceed 1% of the price?
33. Has an appointment of a strata managing agent and/or a building manager been made? If so:
- (a) who has been appointed to each role;
  - (b) when does the term of each appointment expire; and
  - (c) what functions have been delegated to the strata managing agent and/or the building manager.
34. Has the Owners Corporation entered into any agreement to provide amenities or services to the Property? If so, please provide particulars.
35. Has a resolution been passed for the distribution of surplus money from the administrative fund or the capital works fund? If so, please provide particulars.
36. Have the by-laws adopted a common property memorandum as prescribed by the regulations for the purposes of Section 107 of the *Strata Schemes Management Act 2015* (NSW)? If so, has the memorandum been modified? Please provide particulars.

37. Is there a registered building management statement pursuant to Section 108 of the *Strata Schemes Development Act 2015* (NSW)? If so, are there any proposals to amend the registered building management statement?
38. If the strata scheme was in existence at 30 November 2016, has the Owners Corporation taken steps to review the by-laws that were current at that date and have they been consolidated? If so, please provide particulars.
39. Are there any pending proposals to amend or repeal the current by-laws or to add to them?
40. Are there any proposals, policies or by-laws in relation to the conferral of common property rights or which deal with short term rental accommodation arrangements?
41. If not attached to the Contract, a strata information certificate under Section 184 of the *Strata Schemes Management Act 2015* (NSW) should be served on the purchaser at least 7 days prior to completion.
42. Has the Owners Corporation met all of its obligations under the *Strata Schemes Management Act 2015* (NSW) relating to:
  - (a) insurances;
  - (b) fire safety;
  - (c) occupational health and safety;
  - (d) building defects and rectification in relation to any applicable warranties under the *Home Building Act 1989* (NSW);
  - (e) the preparation and review of the 10 year plan for the capital works fund; and
  - (f) repair and maintenance.
43. Is the secretary (NSW Fair Trading) in receipt of a building bond for any building work on a building that is part of the Property or the common property? If so, has any application to claim or realise any amount of it been made?
44. Has an internal dispute resolution process been established? If so, what are its terms?
45. Has the Owners Corporation complied with its obligation to lodge tax returns with the Australian Taxation Office and has all tax liability been paid?

#### **Capacity**

46. If the Contract discloses that the vendor is a trustee, evidence should be produced to establish the trustee's power of sale.

#### **Requisitions and transfer**

47. If not attached to the Contract and the transaction is not an excluded transaction, any *clearance certificate* under Section 14-220 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) should be served on the purchaser at least 7 days prior to completion.
48. The vendor should furnish completed details within the time specified in the contract, sufficient to enable the purchaser to make any *GSTRW* payment.
49. If any document required for completion is executed pursuant to a power of attorney, then at least 7 days prior to completion a copy of the registered power of attorney should be produced and found in order.
50. If the vendor holds a certificate of title, it must be delivered to the purchaser immediately after completion or as directed by the purchaser, in accordance with the Contract.
51. Searches, surveys, enquiries and inspection of title deeds must prove satisfactory.
52. The purchaser reserves the right to make further requisitions prior to completion.
53. Unless we are advised by you to the contrary prior to completion, it will be assumed that your replies to these requisitions remain unchanged as at the completion date.

#### **Off the plan contract**

54. If the Contract is an off the plan contract:
  - (a) Is the vendor aware of any inaccuracy in the disclosure statement attached to the Contract? If so, please provide particulars.
  - (b) Has any developer provided to the Secretary of the Department of Customer Services an expected completion notice under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW) for all the buildings in the strata plan? If so, when was it made?
  - (c) The vendor should before completion serve on the purchaser a copy of the registered plan and any document that was registered with the plan.
  - (d) Please provide details, if not already given, of the holding of the deposit or any instalment as trust or controlled monies by a real estate agent, licensed conveyancer or law practice.



LAND  
REGISTRY  
SERVICES

## Title Search



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 9/SP73368

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SEARCH DATE

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19/5/2022

TIME

-----

9:50 AM

EDITION NO

-----

4

DATE

-----

8/9/2018

LAND

-----

LOT 9 IN STRATA PLAN 73368

AT BROOKVALE

LOCAL GOVERNMENT AREA NORTHERN BEACHES

FIRST SCHEDULE

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NICHOLAS MURDOCCA

(T AB689852)

SECOND SCHEDULE (4 NOTIFICATIONS)

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- 1 INTERESTS RECORDED ON REGISTER FOLIO CP/SP73368
- 2 SP73368 POSITIVE COVENANT
- 3 SP73368 RESTRICTION(S) ON THE USE OF LAND
- 4 AG295392 MORTGAGE TO WESTPAC BANKING CORPORATION

NOTATIONS

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UNREGISTERED DEALINGS: NIL

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

220550

PRINTED ON 19/5/2022

\* 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.



LAND  
REGISTRY  
SERVICES

# Title Search



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: CP/SP73368

SEARCH DATE	TIME	EDITION NO	DATE
19/5/2022	9:51 AM	5	5/2/2019

LAND

THE COMMON PROPERTY IN THE STRATA SCHEME BASED ON STRATA PLAN 73368  
WITHIN THE PARCEL SHOWN IN THE TITLE DIAGRAM

AT BROOKVALE  
LOCAL GOVERNMENT AREA NORTHERN BEACHES  
PARISH OF MANLY COVE COUNTY OF CUMBERLAND  
TITLE DIAGRAM SP73368

FIRST SCHEDULE

THE OWNERS - STRATA PLAN NO. 73368  
ADDRESS FOR SERVICE OF DOCUMENTS:  
36-40 OLD PITTWATER ROAD  
BROOKVALE 2100

SECOND SCHEDULE (5 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 SP73368 POSITIVE COVENANT
- 3 SP73368 RESTRICTION(S) ON THE USE OF LAND
- 4 AP13334 CONSOLIDATION OF REGISTERED BY-LAWS
- 5 AP13334 INITIAL PERIOD EXPIRED

SCHEDULE OF UNIT ENTITLEMENT (AGGREGATE: 1000)

STRATA PLAN 73368

LOT	ENT	LOT	ENT	LOT	ENT	LOT	ENT
1	- 48	2	- 40	3	- 37	4	- 37
5	- 40	6	- 48	7	- 48	8	- 40
9	- 37	10	- 37	11	- 40	12	- 48
13	- 48	14	- 40	15	- 37	16	- 37
17	- 40	18	- 48	19	- 48	20	- 40
21	- 37	22	- 37	23	- 40	24	- 48

NOTATIONS

UNREGISTERED DEALINGS: NIL

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

220550

PRINTED ON 19/5/2022

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STRATA PLAN FORM 1

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

OFFICE USE ONLY

STRATA CERTIFICATE

Name of Owner/ Accredited Certifier: **LYAL, DY**  
Being satisfied that the requirements of the Strata Schemes  
(Freehold Development) Act 1973 or Strata Schemes  
(Leasehold Development) Act 1973 have been complied with, approval of the  
process:

illustrated in the strata certificate.  
The accredited certifier is satisfied that the plan is consistent with  
a relevant development consent in force, and that all conditions of  
the consent that by its terms are required to be complied with  
before a strata certificate may be issued, have been  
complied with.

The Council does not object to the anticipated use of the building  
beyond the alignment of the building.

The Accredited Certifier is satisfied that the building complies  
with a relevant development consent in force that allows the  
encroachment.

This approval is given on the condition that the use of (lots)  
(being utility lots) designed to be used primarily for the  
storage or accommodation of boats, motor vehicles or goods and  
not for human occupation as a residence, office, shop or (the) is  
restricted to the proprietor or occupier of a lot or proposed lot (not  
being subject to the subject of the strata scheme  
concerned, as referred to in section 38 of the Strata Schemes  
(Leasehold Development) Act 1973 or section 68 of the Strata  
(Freehold Development) Act 1973).

Date: **24/05/04**  
Subdivision No: **39/04**

Accreditation No: **302,851**  
Relevant Development Consent No: **2093, 1/2004**  
Issued by: **LYAL, DY**

Complete, or delete if applicable.  
The strata certificate is issued by an Accredited Certifier

SURVEYOR'S CERTIFICATE

PHILIP C.K.HOOI  
of  
PHILIP C.K.HOOI PTY LTD  
20 JARRETT ST. LEICHHARDT 2040  
a surveyor registered under the Surveying Act 2002, hereby  
certify that:

(1) each applicable requirement of  
Schedule 1A to the Strata Schemes (Freehold  
Development) Act 1973  
Schedule 1A to the Strata Schemes (Leasehold  
Development) Act 1973 has been met.

(2) (a) the building encroaches on a public place;  
(b) the building encroaches on land (other than a public  
place), in respect of which encroachment an appropriate  
assessment:  
has been created by registered:  
is to be created under section 88B of the Conveyancing Act  
1919

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

Signature: **Philip C.K.HOOI**  
Date: **11 May 2004**

\* Delete if inapplicable.  
\* State whether dealing or plan, and quote registered number:  
THIS IS SHEET 1 OF MY PLAN IN 6 SHEETS.

\* RESIDENTIAL Model By-laws adopted for the  
scheme.  
\* Keeping of Animals: Option **B**  
\* Schedule of By-laws in streets filed with plan  
\* No By-laws apply  
\* Strike out whichever is inapplicable

SCHEDULE OF UNIT ENTITLEMENT

SCHEDULE OF UNIT ENTITLEMENTS	12	48
LOT No:	13	48
UNIT ENTITLEMENT	14	40
1	15	37
2	16	37
3	17	40
4	18	48
5	19	48
6	20	40
7	21	37
8	22	37
9	23	40
10	24	48
11		
AGGREGATE	1000	

PLAN OF SUBDIVISION OF LOT 501 IN D.P. 107225b

L.G.A.: **WARRINGAH**

Suburb/ Locality: **BROOKVALE**

Parish: **MANLY COVE** County: **CUMBERLAND**

Name of, and address for  
services of notices on, the  
owners corporation.  
(Address required on  
original strata plan only)

"THE OWNERS" STRATA PLAN No. 73368  
Nos. 36-40 OLD PITWATER RD., BROOKVALE, N.S.W., 2100

FOR LOCATION PLAN SEE SHEET 2

Signatures, seals and statements of intention to create easements, restrictions on the use of land or positive covenants.

PURSUANT TO SEC. 88B OF THE CONVEYANCING ACT 1919-64  
AND SEC. 7 (3) OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT), ACT 1973  
IT IS INTENDED TO CREATE:

1. POSITIVE COVENANT
2. RESTRICTION AS TO USER

The Common Seal of Fort Street Pty Ltd who have to be affixed in the presence of:

**N. MURDOCCA**  
Director

**C.N. NICOLA**  
Director

**M. GINGIS-DAVOUND**  
Secretary



The Common Seal of Gings and Bisbara Pty Ltd who have to be affixed in the presence of:

**S. Bisbara**  
Director

**M. GINGIS-DAVOUND**  
Secretary





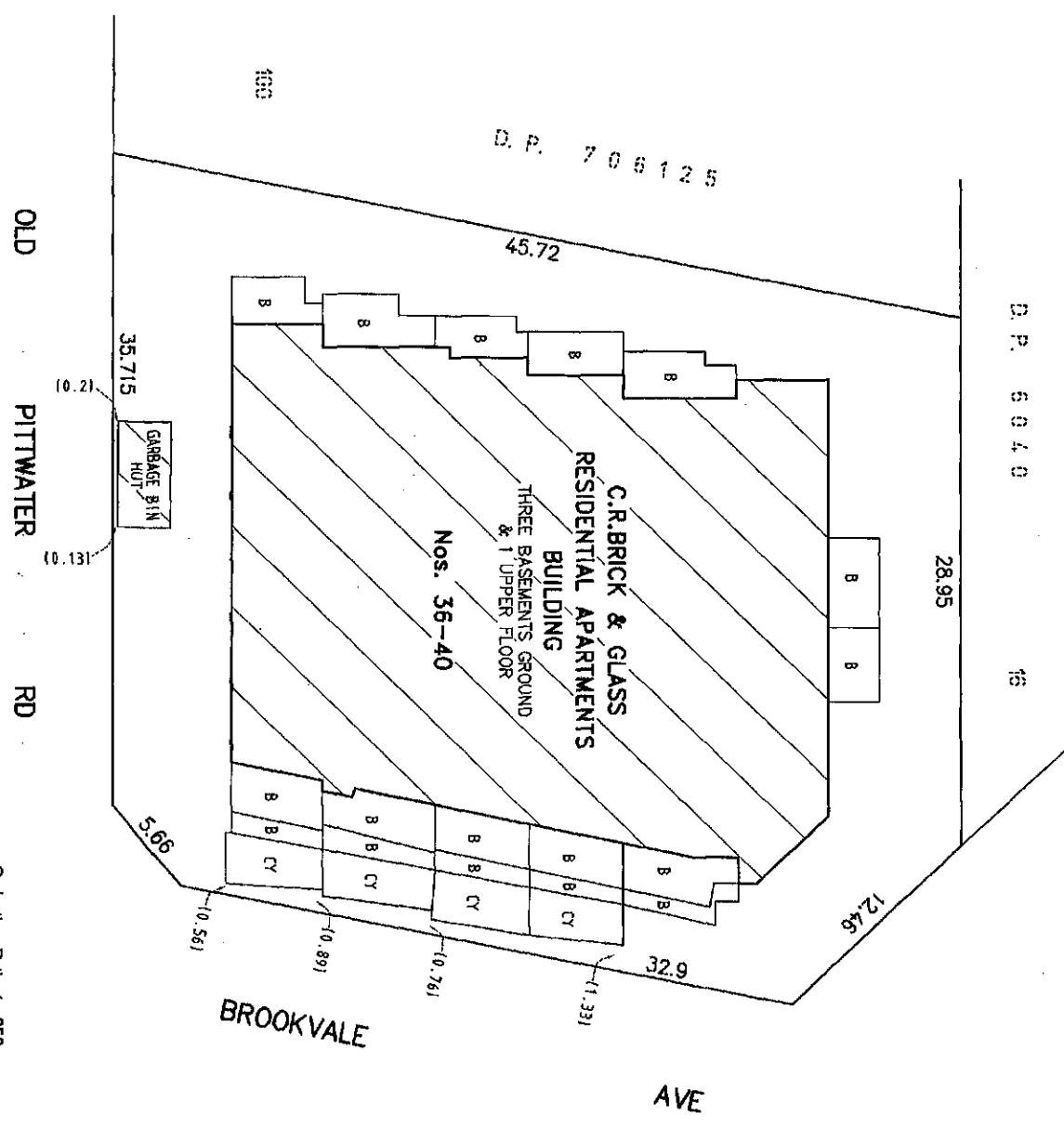
STRATA PLAN FORM 2

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet No. 2 of 6 Sheets

LOCATION PLAN

SP73368



Reduction Ratio 1 : 250

Lengths are in metres

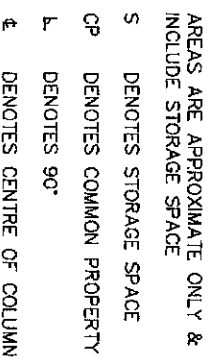
*Richard*  
11/05/04  
Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE: 0191-SP



SP73368

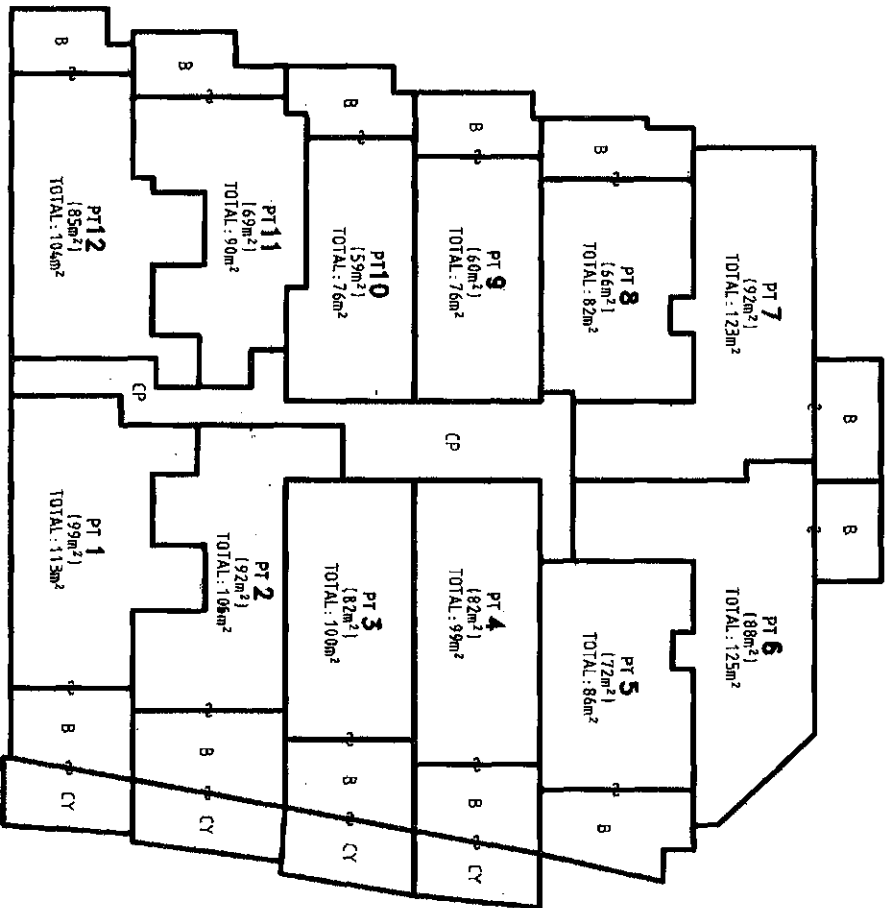


**Lengths are in metres**

Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE: 0191-SP

GROUND FLOOR



SP73368

- AREAS ARE APPROXIMATE ONLY & INCLUDE BALCONIES & COURTYARDS WHERE SHOWN.
- B DENOTES BALCONY LIMITED IN HEIGHT TO 2.5 ABOVE THE UPPER SURFACE OF ITS TILED FLOOR WHERE NOT ROOFED OVER.
- CY DENOTES COURTYARD LIMITED IN HEIGHT TO 2.5 ABOVE & IN DEPTH TO 1 BELOW THE UPPER SURFACE OF THE TILED FLOOR OF THE BALCONY NEXT TO IT WHERE NOT ROOFED OVER & WHERE NOT PAVED.
- CP DENOTES COMMON PROPERTY

Reduction Ratio 1 : 200

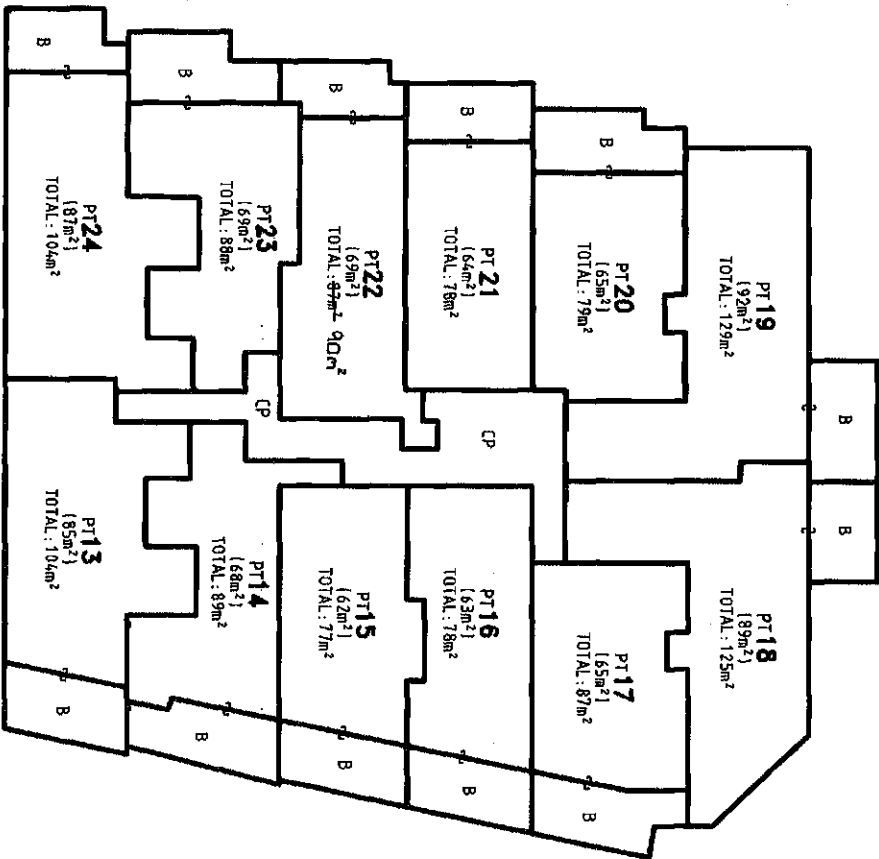
Lengths are in metres



*David R. B. B.*  
Registered Surveyor 11/05/04

Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE: 0191-SP

**FIRST FLOOR**

SP73368

AREAS ARE APPROXIMATE ONLY & INCLUDE BALCONIES WHERE SHOWN.

B DENOTES BALCONY LIMITED IN HEIGHT TO 2.5 ABOVE THE UPPER SURFACE OF ITS TILED FLOOR WHERE NOT ROOFED OVER.

CP DENOTES COMMON PROPERTY

Reduction Ratio 1:200

Lengths are in metres



*Paul R. B. 11/05/04*  
Registered Surveyor

Authorised Person/General Manager/Accredited Certifier

SURVEYOR'S REFERENCE: 0191-SP

**INSTRUMENT SETTING OUT TERMS OF POSITIVE COVENANT AND  
RESTRICTION(S) AS TO USER INTENDED TO BE CREATED PURSUANT TO  
SECTION 88B CONVEYANCING ACT 1919 AS AMENDED**

Lengths are in metres

(Sheet 1 of 7 sheets)

**SP73368**

**PART 1**

Plan

Subdivision of Lot 501 in  
DP covered by Council  
Clerk's Certificate No:  
2002/1201DA

Full Name and Address of  
Proprietor of the Land:

Forterock Pty Ltd *MAGED FARMY GIBBS-DANNO*  
ABN 43 071 947 852 *NICHOLAS MURDOCCA*  
c/- P.O. Box 4560 *MANOTK PTY LIMITED*  
*ACN 003806599*  
NORTH ROCKS NSW 2151 *GIBBS & KISHARA PTY LTD*  
*ACN 002 935 828*

1. Identity of Easement  
firstly referred to in  
the abovementioned Plan

Positive Covenant

Schedule of Lots, etc. affected

Lots Burdened

Name of Authority Benefited

1 to 24 inclusive and  
Common Property

Warringah Council

2. Identity of Easement  
Secondly referred to in  
the abovementioned Plan

Restriction as to user

Lots Burdened

Name of Authority Benefited

1 to 24 inclusive and  
the Common Property

Warringah Council

**WARRINGAH COUNCIL**

*[Signature]*  
Authorised Person

*[Signature]*

INSTRUMENT SETTING OUT TERMS OF POSITIVE COVENANT AND  
RESTRICTION(S) AS TO USER INTENDED TO BE CREATED PURSUANT TO  
SECTION 88B CONVEYANCING ACT 1919 AS AMENDED

**PART 2**

Lengths are in metres

(Sheet 2 of <sup>7</sup> 8 Sheets)

Plan

Subdivision of Lot 501 in  
DP covered by Council  
Clerk's Certificate No:  
2002/1201DA

**SP73368**

TERMS OF POSITIVE COVENANT FIRSTLY REFERRED TO IN ABOVEMENTIONED  
PLAN

The registered proprietors covenant with the Warringah Council (Council) that they will maintain and repair the structure and works on the land in accordance with the following terms and conditions:

1. The registered proprietor will:
  1. keep the structure and works clean and free from silt, rubbish and debris
  11. maintain and repair at the sole expense of the registered proprietors the whole of the structure and works so that it functions in a safe and efficient manner.
11. For the purpose of ensuring observance of the covenant the Council may by its servants or agents at any reasonable time of the day and upon giving to the person against whom the covenant is enforceable not less than two days notice (but at any time without notice in the case of an emergency) enter the land and view the condition of the land and the state of construction maintenance or repair of the structure and works on the land.
111. By written notice the Council may require the registered proprietors to attend to any matter and to carry out such work within such time as the Council may require to ensure the proper and efficient performance of the structure and works and to that extent section 88F(2) (a) of the Act is hereby agreed to be amended accordingly.
- 1V. Pursuant to section 88F(3) of the Act the authority shall have the following additional powers pursuant to this covenant:
  1. In the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all



**WARRINGAH COUNCIL**  
  
**Authorised Person**

INSTRUMENT SETTING OUT TERMS OF POSITIVE COVENANT AND  
RESTRICTION (S) AS TO USER INTENDED TO BE CREATED PURSUANT TO  
SECTION 88B CONVEYANCING ACT 1919 AS AMENDED

PART 2

Lengths are in metres

(Sheet 3 of 7 sheets)

Subdivision of Lot 501 in  
DP covered by Council  
Clerk's Certificate No.  
2002/1201DA

**SP73368**

necessary equipment and carry out any work which the Council in its discretion considers reasonable to Comply with the said notice referred to in 1 hereof.

11. The Council may recover from the registered Proprietor in a Court of competent jurisdiction:
- (a) Any expense reasonably incurred by it in exercising its powers under sub-paragraph 1 hereof. Such expense shall include reasonable wages for the Council's own employees engaged in effecting the said work, supervising the said work and administering the said work together with costs, reasonably estimated by the Council, for the use of machinery, tools and equipment in conjunction with the said work.
  - (b) Legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act.

111. This covenant shall bind all persons who claim under the Registered proprietors as stipulated in section 88E(5) of The Act.

For the purposes of this covenant:

Structure and Works shall mean the on-site stormwater detention system constructed on the land as set out in the plan annexed hereto and marked with the letter "A" (or alternatively as detailed on the plans approved by Council No© including all gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater on the land.

The Act means the Conveyancing Act 1919.



WARRINGAH COUNCIL  
  
Authorised Person



INSTRUMENT SETTING OUT TERMS OF POSITIVE COVENANT AND  
RESTRICTION(S) AS TO USER INTENDED TO BE CREATED PURSUANT TO  
SECTION 88B CONVEYANCING ACT 1919 AS AMENDED

PART 2

Lengths are in metres

(Sheet 4 of <sup>7</sup>~~6~~ Sheets)

**SP73368**

Subdivision of Lot 501 in  
DP covered by Council  
Clerk's Certificate No:  
2002/1201DA

TERMS OF RESTRICTION AS TO USER SECONDLY REFERRED TO IN THE  
ABOVEMENTIONED PLAN.

The registered proprietor covenant with the Warringah Council (Council) in respect to the structure erected on the land described as "on-site stormwater detention system" (which expression includes all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater) shown on plans approved by the Council No. (hereinafter called "the system").

The registered proprietors covenant with the Warringah Council (Council) that they will not:

1. Do any act, matter or thing which would prevent the Structure and works from operating in an efficient manner.
111. Make any alterations or additions to the structure and works or allow any development within the meaning of the Environmental Planning and Assessment Act 1979 to encroach upon the structure and works without the express written consent of the authority.
111. This covenant shall bind all persons who claim under the registered proprietors as stipulated in section 88E(5) of the Act.

For the purposes of this covenant:

Structure and Works shall mean the on-site stormwater detention system constructed on the land as set out in



WARRINGAH COUNCIL  
  
Authorised Person

INSTRUMENT SETTING OUT TERMS OF POSITIVE COVENANT AND  
RESTRICTION(S) AS TO USER INTENDED TO BE CREATED PURSUANT TO  
SECTION 88B CONVEYANCING ACT 1919 AS AMENDED

PART 2

Lengths are in metres

(Sheet 5 of <sup>7</sup> 8 sheets)

Plan

Subdivision of Lot 501 in  
DP covered by Council  
Clerk's Certificate No:  
2002/1201DA

**SP73368**

the plan annexed hereto and marked with the letter "A" (or alternatively as detailed on the plans approved by Council No:) including all gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater on the land.

The Act shall mean the Conveyancing Act 1919.

NAME OF AUTHORITY EMPOWERED TO VARY MODIFY OR RELEASE THE ABOVE  
TERMS OF REFERENCE IN THE ABOVEMENTIONED PLAN

Warringah Council



WARRINGAH COUNCIL  
  
Authorised Person

**INSTRUMENT SETTING OUT TERMS OF POSITIVE COVENANT AND  
RESTRICTION(S) AS TO USER INTENDED TO BE CREATED PURSUANT TO  
SECTION 88B CONVEYANCING ACT 1919 AS AMENDED**

Lengths are in metres

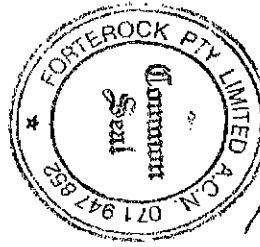
(Sheet 6 of <sup>7</sup>8 sheets)

Plan

Subdivision of Lot 501 in  
DP covered by Council  
Clerk's Certificate No:  
2002/1201DA

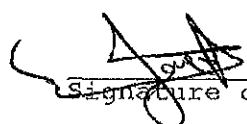
**SP73368**

Signed in presence by:  
Forterock Pty Ltd  
ABN 43 071 947 852  
P.O. Box 4560  
NORTH ROCKS NSW 2151



  
Director

  
Secretary

  
Signature of Witness

JIM GIBBIS 7/17-19 SINCLAIR AV. BLACKTOWN - NSW  
Name and address of Witness (Block Letters)

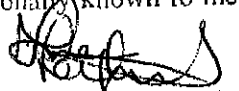
Inspected on behalf of  
Warringah Council

**WARRINGAH COUNCIL**

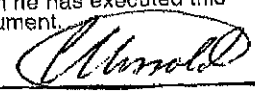
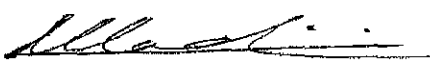
  
**Authorised Person**

Authorised Officer

SIGNED SEALED AND DELIVERED )  
for and on behalf of ARAB BANK )  
AUSTRALIA LIMITED by )  
CHRIS CUSACK AND ANNA MADDON )  
its duly constituted Attorneys who are )  
personally known to me: )

  
WITNESS: DARINA EL-MERAWI

ARAB BANK AUSTRALIA LTD  
BY ITS ATTORNEY who hereby  
states he has no notice of  
revocation of the Power of  
Attorney registered in the office of  
the Registrar General No. 665  
Book 4418 under the authority of  
which he has executed this  
instrument.



**INSTRUMENT SETTING OUT TERMS OF POSITIVE COVENANT AND  
RESTRICTION AS TO USER INTENDED TO BE CREATED PURSUANT TO  
SECTION 88B CONVEYANCING ACT 1919 AS AMENDED**

(Sheet 7 of 7 sheets)

Lengths are in metres

Subdivision of Lot 501 in DP  
covered by Council Clerk's Certificate  
No. 2002/1201DA

**SP73368**

SIGNED by Maged Fahmy Girgis-Dawoud )  
as Executor of the Estate of NASHAT ADEEB )  
YASSA YOUSSEF in the presence of: )

.....  
Witness

.....  
Maged Fahmy Girgis-Dawoud  
EXECUTOR  
PROBATE NO. 112441/04

SIGNED by the said NICHOLAS )  
MURDOCCA in the presence of: )

.....  
Witness

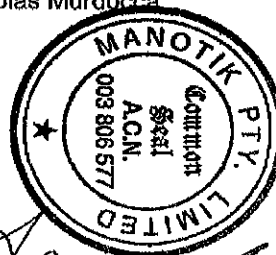
.....  
Nicholas Murdochca

The COMMON SEAL of )  
MANOTIK PTY LIMITED )  
was hereunto affixed in accordance )  
with its constitution in the )  
presence of: )

.....  
Signature of Director

CÉCILE N. NICOLA

Print Name



.....  
Signature of Secretary

SABHY JEAN NICOLA

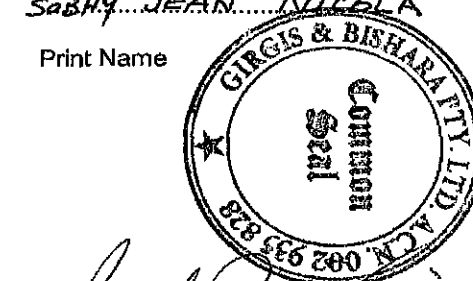
Print Name

The COMMON SEAL of )  
GIRGIS & BISHARA PTY LIMITED )  
was hereunto affixed in accordance )  
with its constitution in the )  
presence of: )

.....  
Signature of Director

Suzan Bishara

Print Name



.....  
Signature of Secretary  
Maged F. Girgis-Dawoud  
Print Name

Form: 15CH  
Release: 2.1

**CONSOLIDATION/  
CHANGE OF BY-LAWS**

New South Wales  
Strata Schemes Management Act 2015  
Real Property Act 1900



**AP13334U**

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

(A) **TORRENS TITLE**

For the common property  
CP/SP73368

(B) **LODGED BY**

Document  
Collection  
Box

**379T**

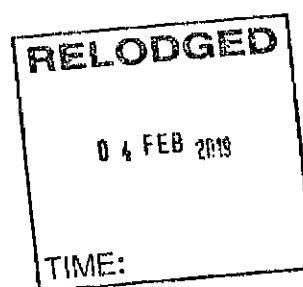
Name, Address or DX, Telephone, and Customer Account Number if any  
LLPN 135495M Bylaw Plus  
PO Box 6594  
North Ryde NSW 2113 Mobile 0409973052

Reference: LWSM1165

CODE

**CH**

- (C) The Owners-Strata Plan No. 73368 certify that a special resolution was passed on 22/11/2018
- (D) pursuant to the requirements of section 141 of the Strata Schemes Management Act 2015, by which the by-laws were changed as follows—
- (E) Repealed by-law No. NOT APPLICABLE  
Added by-law No. Special Bylaw 6 and 7  
Amended by-law No. NOT APPLICABLE  
as fully set out below:  
See attached Annexure 'A'



- (F) A consolidated list of by-laws affecting the above mentioned strata scheme and incorporating the change referred to at Note (E) is annexed hereto and marked as Annexure 'A'
- (G) The seal of The Owners-Strata Plan No. 73368 was affixed on 18.12.18 in the presence of the following person(s) authorised by section 273 Strata Schemes Management Act 2015 to attest the affixing of the seal:

Signature:

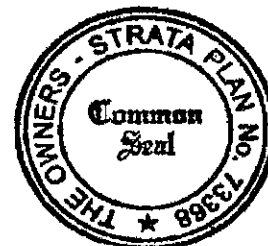
Name: Nikki Hopkins

Authority: Strata Manager

Signature:

Name:

Authority:



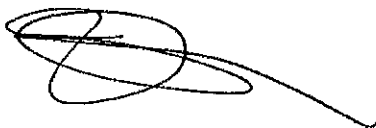
## Annexure 'A'

SP73368

### **Special Bylaw 6 – Window Safety Devices**

1. For the purposes of this by-law:

- 1.1. "Act" means the *Strata Schemes Management Act 2015* (NSW) as amended from time to time;
- 1.2. "Building" means the building and improvements on the land located at 36-40 Old Pittwater Road, Brookvale NSW 2100.
- 1.3. "Common Property" means the common property in the Strata Plan;
- 1.4. "Costs" means all professional and trade costs/fees/disbursements;
- 1.5. "Direction" means a written direction from the Owners Corporation to the Owner relating to Remedial Works;
- 1.6. "Indemnify" means the Owner indemnifying the Owners Corporation in respect of the Remedial Works or anything arising from the Remedial Works, including, but not limited to the following:
  - 1.6.1. all actions, proceedings, claims, demands, costs, damages and expenses which may be incurred by, brought or made against the Owners Corporation;
  - 1.6.2. any sum payable by way of increased premiums; and
  - 1.6.3. any costs or damages for which the Owners Corporation is or becomes liable;
- 1.7. "Lot" means a lot in the Strata Plan used for residential purposes;
- 1.8. "Occupier" means the legal occupier(s) of a Lot;
- 1.9. "Owner" means the owner(s) of the Lot from time to time;
- 1.10. "Owners Corporation" means the owners corporation known as The Owners - Strata Plan No. 73368, and where the context permits, includes its agents, contractors or employees;
- 1.11. "Penalty" means the penalty or fine under section 118(1) of the Act;
- 1.12. "Remedial Works" means repair, maintenance, removal or replacement of the Window Safety Device and any other items installed as part of the Works, and/or Common Property affected by the Works;
- 1.13. "Residential Tenancy Agreement" means an agreement under which an Owner or Occupier leases, sublets or licenses a Lot on a commercial basis for a period of greater than 3 consecutive months;
- 1.14. "Strata Plan" means registered strata plan number 73368;
- 1.15. "Window" means the following:



- 1.15.1. a Common Property window in a Lot that can be opened; and
- 1.15.2. the lowest level of the window opening is less than 1.7m above the surface of any internal floor of the Lot; and
- 1.15.3. that internal floor is 2m or more above the external surface of the ground below the window.

[An illustration of this definition is **attached to this by-law and marked with the letter 'A'**]

- 1.16. **"Window Safety Device"** means a device meeting the following description that is capable of resisting an outward horizontal action of 250 newtons (or 25.5 kilogram-force):
  - 1.16.1. a child safety device that limits the maximum Window opening to 12.5cm or bars or grills that have gaps no bigger than 12.5cm; and
  - 1.16.2. the device is robust and childproof; and
  - 1.16.3. excludes ordinary flyscreens.
- 1.17. **"Works"** means the installation or affixing of a Window Safety Device on a Window in accordance with the Office of Fair Trading Window Safety Device Requirements Fact Sheet **attached to this by-law and marked with the letter 'B'**.

- 2. Where any terms in this by-law are not defined, they will have the same meaning those words are attributed under the Act.
- 3. If this by-law empowers the Owners Corporation to take action, it may or may not take such action in its reasonable discretion.

#### **Works**

- 4. The Owners Corporation is responsible for carrying out the Works at a Lot and will pay the Costs of carrying out the Works.
- 5. An Owner and/or Occupier of a Lot must grant the Owners Corporation access to the Lot for the purpose of carrying out the Works, or determining if the Works are required to be carried out at a Lot.
- 6. In the event the Owner or Occupier has agreed with the Owners Corporation on a day and time for access, and the Owners Corporation cannot gain access to the Lot on that agreed day and time due to any action or inaction of the Owner or Occupier, the relevant Owner or Occupier is responsible for any Costs incurred by the Owners Corporation for re-arranging the access.
- 7. Upon completion of the Works at a Lot, the Owner or Occupier of that Lot must sign a written acknowledgement form provided by the Owners Corporation for the purpose of confirming that Works have been carried out at the Lot.
- 8. Prior to providing the written acknowledgement form as referred to in clause 7 above, the Owners Corporation may request an Occupier to provide a copy of their Residential Tenancy Agreement and proof of identity, such as a driver's licence or passport, as evidence that they are the tenant(s) identified in the Residential Tenancy Agreement.

#### **Remedial Works**

- 9. The Owner is responsible for and must carry out Remedial Works when and where necessary, including by Direction.

10. The Remedial Works must be carried out and completed:

- 10.1. In a proper workmanlike manner and by licensed and/or accredited contractors;
- 10.2. with due skill and care using proper materials;
- 10.3. In compliance with the Building Code of Australia, any other Australian Standards, as applicable;
- 10.4. in keeping with the appearance of the Building in its style, colour, materials and overall design;
- 10.5. in a way so as to not unreasonably interfere with the enjoyment of other Common Property areas or access to lots in the strata scheme by other persons by building materials, tools, machines, debris or motor vehicles;
- 10.6. In a way which minimises the disturbance to other Owners including but not limited to vibration, noise, dust and dirt;
- 10.7. in compliance with all local council consents and requirements (if any);
- 10.8. ensuring that the security of the Building is maintained throughout the performance of the Remedial Works;
- 10.9. promptly and completely removing all rubbish from the Building resulting from the Remedial Works;
- 10.10. keeping all areas of the Building as clean and tidy as possible;
- 10.11. promptly repairing any damage to any part of the Building caused by the Remedial Works;
- 10.12. in compliance with all reasonable requirements of the Owners Corporation, including any requirements relating to access and egress of tradespersons, building materials, tools and debris; and
- 10.13. in a way that will protect all areas of the Building outside the Lot from any damage caused by the Remedial Works, for example by the transportation of construction materials, equipment and debris.

11. The Owner is responsible for the Cost of Remedial Works.

**Damage and Direction**

12. In the event lot(s) or Common Property is/are damaged because of the Remedial Works, the Owner will pay the Costs of rectifying the damage.
13. The Owners Corporation reserves the right to direct the Owner to remove, repair or replace any items installed as a part of the Remedial Works in the event they do not comply with the requirements of this by-law.
14. If the Owner fails to comply with Clause 13 above within 2 months of a Direction to the Owner, then the Owners Corporation may:
  - 14.1. enter upon any part of the Lot to carry out the work;
  - 14.2. carry out all work necessary to perform that obligation; and
  - 14.3. recover from the Owner any Costs relating to their carrying out of that work, including charging those Costs to the Owner's lot account as if those Costs were a contribution under the Act.



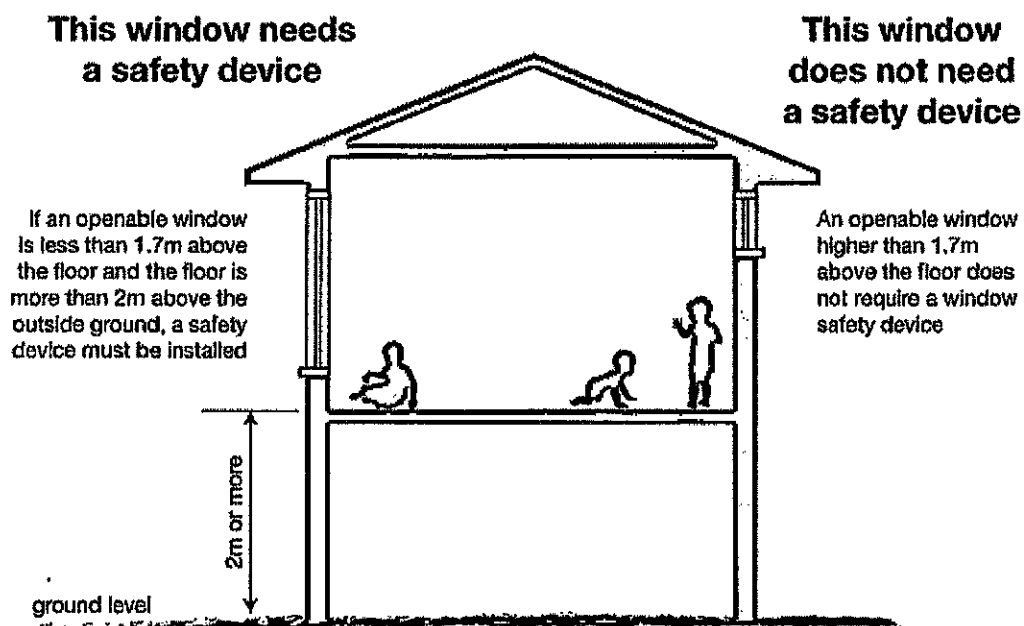
### Costs

15. Subject to clause 4, the Owner is responsible for, and will bear all Costs.
16. Where the Owners Corporation has incurred Costs on behalf of an Owner (including Costs referred to in clause 6), the Owners Corporation may recover those Costs from the Owner, including charging those Costs to the Owner's lot account as if they were a contribution under the Act, with all the same rights of recovery to apply.
17. If the Owners Corporation receives a Penalty, the Owner of the Lot to which the Penalty relates is responsible for the Penalty in full and any Costs associated with the Penalty.
18. In the event the Owner responsible for the Penalty does not reimburse the Penalty and Costs to the Owners Corporation within 28 days of receiving written notice of the charges from the Owners Corporation, the Owners Corporation may charge the amount to the Owner's lot account, as if it were a contribution under Act, with all associated rights of recovery under the Act.

### General obligations

19. Owners and Occupiers will sign all documents and do all things necessary to facilitate the matters the subject of this by-law.
20. Owners and Occupiers will not claim upon the Owners Corporation's insurance in respect of anything arising out of the Remedial Works.
21. The Owner will Indemnify and will keep indemnified the Owners Corporation.

‘A’



## 'B'

FACT SHEET

September 2016

# Window safety device requirements

In strata schemes

To prevent children falling from windows, all strata buildings in NSW must be fitted with devices that enable their windows to be locked at 12.5cm when the devices are engaged. Owners corporations must have devices installed on all common property windows above the ground floor by 13 March 2018. The safety devices must be robust and childproof.

Residents will still be able to open their windows. However, they will have the security of knowing that when the locks are engaged, children will be protected.

**Did you know?** Similar laws in New York resulted in a 96 per cent decrease in hospitalisations due to falls from windows.

### Are there any alternatives to locks?

The alternative is security screens, such as bars or grills on the windows so long as they have gaps no bigger than 12.5cm. Flyscreens do not comply unless they are the reinforced security type and capable of resisting the very strong outward pressure which would prevent a child falling through.

For a handy window safety product guide, visit the Kids Don't Fly page on the Kids Health website at [www.kidshealth.schn.health.nsw.gov.au](http://www.kidshealth.schn.health.nsw.gov.au). Information is provided in 11 languages.

### Which windows does this apply to?

The laws apply to openable windows more than 2m above the ground floor outside and within a child's reach (less than 1.7m above the inside floor) – see the diagram below.

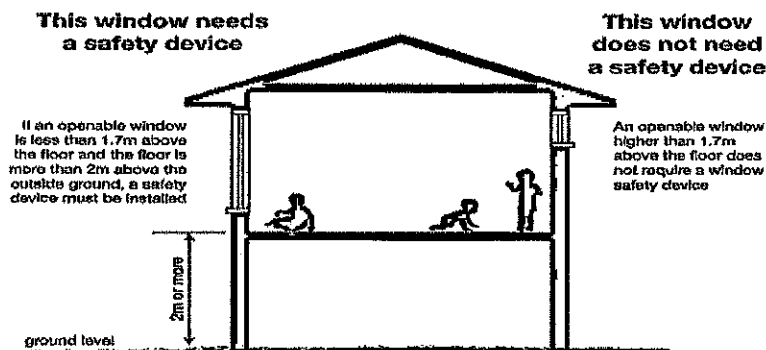
The details are explained in the Strata Schemes Management Regulation 2010.

### When do the locks need to be installed?

If the window safety requirements are not met by 13 March 2018, owners corporations face fines. Leaving it to the last minute places your scheme at risk of not complying by the due date and leaves young children vulnerable to falls from windows in your scheme.

Lot owners may install a window safety device in their property at any time, letting the owners corporation know. Tenants must get written permission from their landlord before installing locks that require drilling. Landlords cannot refuse a tenant's request unless they have a very good reason.

Watch our 'Window locks and your rights' video for details on your rights and obligations as a tenant, landlord or strata owner when it comes to installing locks, available from our website and YouTube channel.



[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)



Fair Trading

## 'B'

FACT SHEET

September 2015

### **Will this mean the windows will never be able to open?**

No. A window lock that allows the window to be fully opened, fully closed and also locked at 12.5cm complies with the legislation. When children are in the apartment, or on all common access areas such as stair landings, it makes sense to engage the locks at 12.5cm or less at all times to prevent falls.

### **How can we arrange for locks in our scheme that won't cost a fortune?**

Window safety devices can be easy and cheap to install. It is not necessary to hire a consultant to do an initial assessment. Owners corporations may simply get quotes from a range of appropriately qualified tradespeople and then choose the best one. Refer to our short 'Window locks save lives' video series including a step-by-step DIY video 'How to install window locks', available from our website and YouTube channel.

### **If the windows have grills over them, do they still need locks?**

If the grills or bars over the windows are no more than 12.5cm apart in width then they may comply with the regulation. The law requires the window safety devices to be robust and childproof. Remember, ordinary flyscreens do not comply as they are not strong enough to stop a child falling through a window and can provide a false sense of security.

### **Will the safety devices be included in the Tenancy Condition Report?**

Landlords and tenants entering into a new tenancy agreement must use an up-to-date Residential Tenancy Condition Report which lists window safety devices. You can download the new condition report from the Forms page.

### **Where can I get more information?**

**If you are a tenant**, go to the Asking to make an alteration page for information about making minor changes to your home including installing window locks.

**If you are a landlord**, go to the Alteration requests from your tenant page for more information.

**If you own a strata unit**, more information about your rights and responsibilities is available from the Repairs and maintenance in a strata scheme page.

**If you need more details about the laws**, please refer to the *Strata Schemes Management Act 1996* No 138 or call us on 13 32 20.

www.fairtrading.nsw.gov.au  
Fair Trading enquiries 13 32 20  
TTY 1300 723 404  
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)



### **Special Bylaw 7 - Minor Renovations Rights**

1. On the conditions set out in this by-law and with the prior written approval of the strata committee each Owner has the authority to carry out Minor Renovations to the common property in connection with the Owner's lot and, once installed, to maintain the approved Minor Renovations.
2. The owners corporation delegates its power to approve Minor Renovations to the strata committee.
3. The strata committee, when considering an Owner's proposal to conduct Minor Renovations may impose conditions on any approval and must not unreasonably withhold their approval.

### **Definitions**

4. In this by-law, the following terms are defined to mean:
  - a. "**Act**" means the *Strata Schemes Management Act 2015* (NSW);
  - b. "**Building**" means the building located at 36-40 Old Pittwater Road, Brookvale NSW 2100;
  - c. "**Minor Renovations**" includes work for the purposes of the following:
    - i. renovating a kitchen,
    - ii. changing recessed light fittings,
    - iii. installing or replacing wood or other hard floors,
    - iv. installing or replacing wiring or cabling or power or access points,
    - v. works involving con-figuring walls.
    - vi. installing a rainwater tank,
    - vii. removing carpet or other soft floor coverings to expose underlying wooden or other hard floors.
    - viii. installing a clothesline,
    - ix. installing a reverse cycle split system air conditioner,
    - x. installing double or triple glazed windows,
    - xi. installing a heat pump,
    - xii. installing ceiling insulation.but does not include works set out in section 110(7) of the Act such as work involving structural changes, waterproofing, changes to the external appearance of a lot or requiring consent or other approval under any other statute, regulation or the like. :
  - d. "**Owner**" means an owner of a lot from time to time in the strata scheme;
5. Where any terms used in this by-law are defined in the Act, they will have the same meaning as those words are attributed under the Act.

6. Words importing:

- a. the singular include the plural and vice versa; and
  - b. a gender includes any gender.
7. A reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

**Prior to Conducting the Minor Renovations**

8. An Owner must make an application to the owners corporation for its approval to conduct the Minor Renovations by giving written notice of their proposed works to the owners corporation with the notice to include:
- a. details of the work, including copies of any plans,
  - b. the expected duration and times of the works,
  - c. details of the persons carrying out the work including that person's qualifications to carry out the work, and
  - d. arrangements to manage any resulting rubbish or debris.
9. Prior to conducting the Minor Renovations, the Owner and/or the tradesperson appointed by the Owner to carry out the Works must effect, and provide the owners corporation with certificates of, the following insurances:
- a. contractor's all risk insurance (where applicable);
  - b. workers compensation insurance (where applicable);
  - c. home owners warranty Insurance (where applicable); and
  - d. public liability insurance in the amount of \$10,000,000 including for and in respect of equipment located and/or utilised on common property in execution of the Minor Renovations.

**Performance of the Works**

10. In carrying out or maintaining the Minor Renovations the Owner must:
- a. ensure that the works are completed in a competent and proper manner and in accordance with the Building Code of Australia and relevant Australian Standards;
  - b. transport each item including but not limited to construction materials, equipment and debris in the manner reasonably directed by the owners corporation;
  - c. protect all areas of the Building both internal and external to the lot in a manner reasonably acceptable to the owners corporation;
  - d. keep all areas of the common property outside the lot clean and tidy;
  - e. only perform Minor Renovations at times approved by the owners corporation;
  - f. not create noise which causes discomfort, disturbance, obstruction or interference with the activities of any other occupier of the Building;

- g. immediately remove all debris or waste resulting from the Minor Renovations from the Building and the common property;
- h. not vary or replace the Minor Renovations, as agreed to by the strata committee, without the prior written approval of the strata committee; and
- i. ensure that the Minor Renovations do not interfere with or damage the common property, or any lot or property of any other lot owner or occupier (other than as approved in by the strata committee) and if this happens the Owner must rectify that interference or damage within a reasonable period of time.

#### **Maintenance of the Minor Renovations**

- 11. The Owner must properly maintain and keep the Minor Renovations and the common property to which they are attached in a state of good and serviceable repair.

#### **Liability and Indemnity**

- 12. The Owner is liable for any damage caused to any part of the common property, and any lot (including their lot), or other property arising from the Minor Renovations and will make good that damage immediately after it has occurred.
- 13. The Owner indemnifies the owners corporation against any legal liability, loss, damage, claim or proceedings that relates to the installation, performance, maintenance, replacement or removal of the Minor Renovations on or from the common property including but not limited to any liability under section 122(6) of the Act in respect of any property of the Owner.

#### **Owner's Fixtures**

- 14. The Minor Renovations shall remain the Owner's fixture.

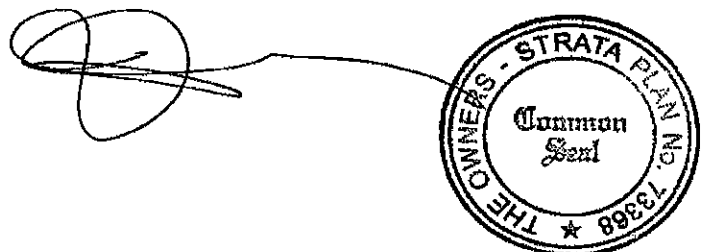
#### **Cost and Risk of the Works**

- 15. The Minor Renovations (including their replacement or removal) are undertaken at the cost and risk of the Owner.

#### **Right to Remedy Upon Default**

- 16. If an Owner fails to comply with any obligation under this by-law, then the owners corporation may:
  - a. carry out all work necessary to perform that obligation;
  - b. in accordance with the provisions of the Act enter upon any part of the parcel to carry out that work;
  - c. recover the costs of carrying out that work from the Owner.
- 17. The costs referred to in paragraph 16(c) of this by-law may include any costs incurred by the owners corporation in carrying out any building repair work, security call-out charges, after hours building management or agency fees, administrative and legal costs to issue correspondence or any notices pursuant to this by-law and any other reasonable cost expended by the owners corporation in rectifying any damage occasioned to the common property by the respective Owner or in enforcing the terms of this by-law against the Owner of the lot.

18. If the costs referred to in paragraph 16(c) of this by-law are not paid at the end of one month after becoming due and payable they shall bear, until paid, simple interest at an annual rate of 10% and the owners corporation may recover as a debt any costs payable by the Owner pursuant to this by-law, not paid at the end of one month after they become due and payable, together with any interest payable and the expenses of the Owners Corporation incurred in recovering those amounts.



# Lamb & Walters

Strata Management

Consolidation Bylaws for SP73368  
36-40 Old Pittwater Road  
Brookvale NSW 2100

## 1 Noise

An owner or occupier of a lot must not create any noise on a lot or the common property likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or of any person lawfully using common property.

## 2 Vehicles

An owner or occupier of a lot must not park or stand any motor or other vehicle on common property except with the prior written approval of the owners corporation.

## 3 Obstruction of common property

An owner or occupier of a lot must not obstruct lawful use of common property by any person except on a temporary and non-recurring basis.

## 4 Damage to lawns and plants on common property

An owner or occupier of a lot must not, except with the prior written approval of the owners corporation:

(a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated on common property, or

(b) use for his or her own purposes as a garden any portion of the common property.

## 5 Damage to common property

Repealed Bylaw 5 on 17 September 2010 – see Special Bylaw 4

## 6 Behaviour of owners and occupiers

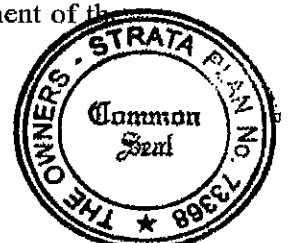
An owner or occupier of a lot when on common property must be adequately clothed and must not use language or behave in a manner likely to cause offence or embarrassment to the owner or occupier of another lot or to any person lawfully using common property.

## 7 Children playing on common property in building

An owner or occupier of a lot must not permit any child of whom the owner or occupier has control to play on common property within the building or, unless accompanied by an adult exercising effective control, to be or to remain on common property comprising a laundry, car parking area or other area of possible danger or hazard to children.

## 8 Behaviour of invitees

An owner or occupier of a lot must take all reasonable steps to ensure that invitees of the owner or occupier do not behave in a manner likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or any person lawfully using common property.





## **9 Depositing rubbish and other material on common property**

An owner or occupier of a lot must not deposit or throw on the common property any rubbish, dirt, dust or other material or discarded item except with the prior written approval of the owners corporation.

## **10 Drying of laundry items**

An owner or occupier of a lot must not, except with the prior written approval of the owners corporation, hang any washing, towel, bedding, clothing or other article on any part of the parcel in such a way as to be visible from outside the building other than on any lines provided by the owners corporation for the purpose and there only for a reasonable period.

## **11 Cleaning windows and doors**

An owner or occupier of a lot must keep clean all exterior surfaces of glass in windows and doors on the boundary of the lot, including so much as is common property, unless:

- (a) the owners corporation resolves that it will keep the glass or specified part of the glass clean, or
- (b) that glass or part of the glass cannot be accessed by the owner or occupier of the lot safely or at all.

## **12 Storage of inflammable liquids and other substances and materials**

(1) An owner or occupier of a lot must not, except with the prior written approval of the owners corporation, use or store on the lot or on the common property any inflammable chemical, liquid or gas or other inflammable material.

(2) This by-law does not apply to chemicals, liquids, gases or other material used or intended to be used for domestic purposes, or any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

## **13 Moving furniture and other objects on or through common property**

(1) An owner or occupier of a lot must not transport any furniture or large object through or on common property within the building unless sufficient notice has first been given to the executive committee so as to enable the executive committee to arrange for its nominee to be present at the time when the owner or occupier does so.

(2) An owners corporation may resolve that furniture or large objects are to be transported through or on the common property (whether in the building or not) in a specified manner.

(3) If the owners corporation has specified, by resolution, the manner in which furniture or large objects are to be transported, an owner or occupier of a lot must not transport any furniture or large object through or on common property except in accordance with that resolution.

## **14 Floor coverings**

(1) An owner of a lot must ensure that all floor space within the lot is covered or otherwise treated to an extent sufficient to prevent the transmission from the floor space of noise likely to disturb the peaceful enjoyment of the owner or occupier of another lot.

(2) This by-law does not apply to floor space comprising a kitchen, laundry, lavatory or bathroom.

## **15 Garbage disposal**

(1) An owner or occupier of a lot in a strata scheme that does not have shared receptacles for garbage, recyclable material or waste:

(a) must maintain such receptacles within the lot, or on such part of the common property as may be authorised by the owners corporation, in clean and dry condition and (except in the case of receptacles for recyclable material) adequately covered, and

(b) must ensure that before refuse, recyclable material or waste is placed in the receptacles it is, in the case of refuse, securely wrapped or, in the case of tins or other containers, completely drained, or, in the case of recyclable material or waste, separated and prepared in accordance with the applicable recycling guidelines, and

(c) for the purpose of having the garbage, recyclable material or waste collected, must place the receptacles within an area designated for that purpose by the owners corporation and at a time not more than 12 hours before the time at which garbage, recyclable material or waste is normally collected, and

(d) when the garbage, recyclable material or waste has been collected, must promptly return the receptacles to the lot or other area referred to in paragraph (a),

(e) must not place anything in the receptacles of the owner or occupier of any other lot except with the permission of that owner or occupier, and

(f) must promptly remove any thing which the owner, occupier or garbage or recycling collector may have spilled from the receptacles and must take such action as may be necessary to clean the area within which that thing was spilled.

(2) An owner or occupier of a lot in a strata scheme that has shared receptacles for garbage, recyclable material or waste:

(a) must ensure that before refuse, recyclable material or waste is placed in the receptacles it is, in the case of refuse, securely wrapped or, in the case of tins or other containers, completely drained, or, in the case of recyclable material or waste, separated and prepared in accordance with the applicable recycling guidelines, and

(b) must promptly remove any thing which the owner, occupier or garbage or recycling collector may have spilled in the area of the receptacles and must take such action as may be necessary to clean the area within which that thing was spilled.

## **16 Keeping of animals (Option B has been adopted)**

### **Option B (1)**

Subject to section 49 (4), an owner or occupier of a lot must not, without the prior written approval of the owners corporation, keep any animal (except a cat, a small dog or a small caged bird, or fish kept in a secure aquarium on the lot) on the lot or the common property.

### **Option B (2)**

The owners corporation must not unreasonably withhold its approval of the keeping of an animal on a lot or the common property.

### **Option B (3)**

If an owner or occupier of a lot keeps a cat, small dog or small caged bird on the lot then the owner or occupier must:

(a) notify the owners corporation that the animal is being kept on the lot, and

(b) keep the animal within the lot, and

(c) carry the animal when it is on the common property, and

(d) take such action as may be necessary to clean all areas of the lot or the common property that are soiled by the animal.

#### **17 Appearance of lot**

(1) The owner or occupier of a lot must not, without the prior written approval of the owners corporation, maintain within the lot anything visible from outside the lot that, viewed from outside the lot, is not in keeping with the rest of the building.

(2) This by-law does not apply to the hanging of any washing, towel, bedding, clothing or other article as referred to in by-law 10.

#### **18 Change in use of lot to be notified**

An occupier of a lot must notify the owners corporation if the occupier changes the existing use of the lot in a way that may affect the insurance premiums for the strata scheme (for example, if the change of use results in a hazardous activity being carried out on the lot, or results in the lot being used for commercial or industrial purposes rather than residential purposes).

#### **19 Provision of amenities or services**

(1) The owners corporation may, by special resolution, determine to enter into arrangements for the provision of the following amenities or services to one or more of the lots, or to the owners or occupiers of one or more of the lots:

- (a) window cleaning,
- (b) garbage disposal and recycling services,
- (c) electricity, water or gas supply,
- (d) telecommunication services (for example, cable television).

(2) If the owners corporation makes a resolution referred to in subclause (1) to provide an amenity or service to a lot or to the owner or occupier of a lot, it must indicate in the resolution the amount for which, or the conditions on which, it will provide the amenity or service.

**Note.**

Section 111 of the Act provides that an owners corporation may enter into an agreement with an owner or occupier of a lot for the provision of amenities or services by it to the lot or to the owner or occupier.

#### **Special Bylaw 1 – Keeping Of Animals**

1. For the purposes of this bylaw:

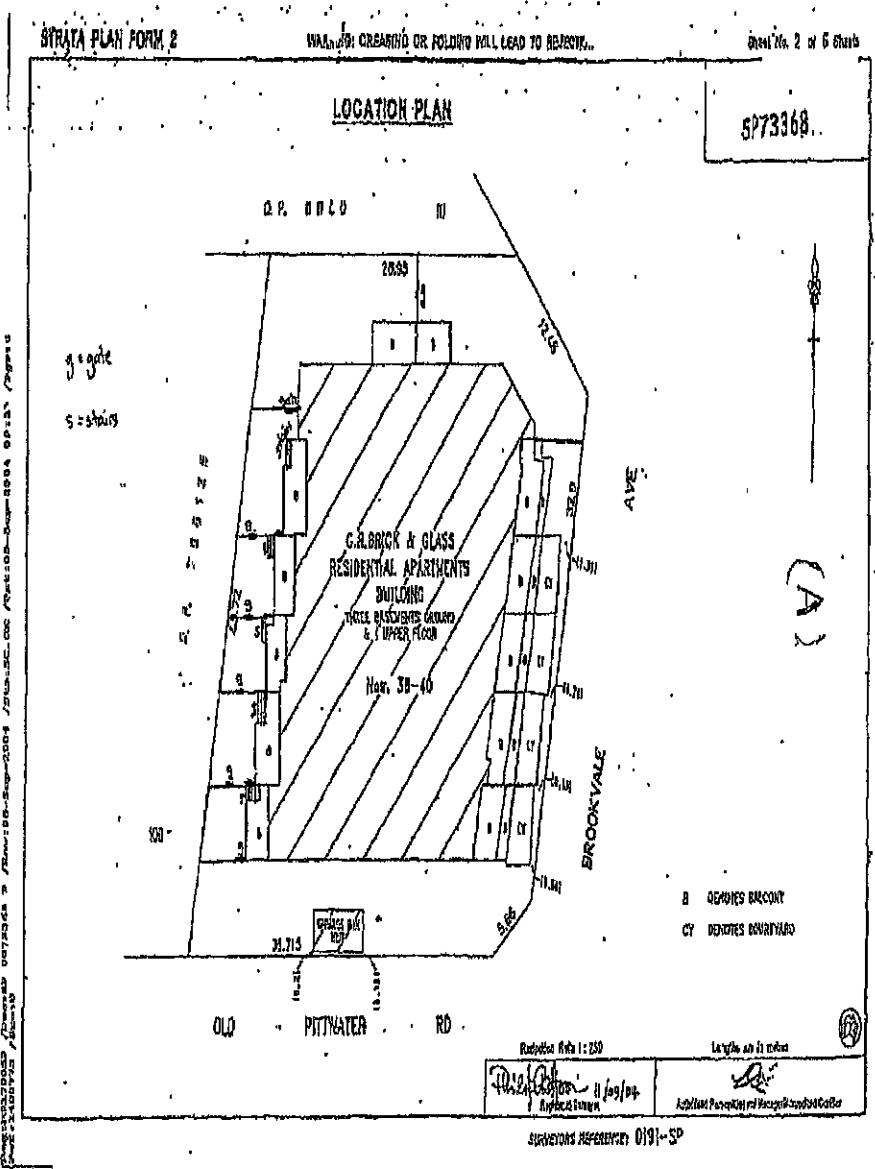
- 1.1 “Owners” means the owners or occupiers of lots in Strata Plan 73368;
- 1.2 “Owners Corporation” means the owners corporation of Strata Plan 73368;
- 1.3 “Common Property” means the common property of Strata Plan 73368;
- 1.4 “Regulation” means Option C of Section 16, Schedule 1, Strata Schemes Management Regulation 2005.

- 2. Subject to Clause 3 below and in accordance with the Regulation, Owners must not keep any animal on their lot or on the common property.
- 3. Owners are permitted to keep a guide or hearing dog on their lot if they are visually or hearing impaired.

4. In the event that an owner is in breach of this bylaw the owners corporation may, in its absolute discretion, direct that the animal/s be permanently removed from the lot and may take all reasonable steps to enforce its direction.

**Special Bylaw 2 – Lots 5 – 12 Exclusive Use**

1. For the purpose of this bylaw:
  - 1.1 “Owners” means the owners or occupiers of lots in Strata Plan 73368;
  - 1.2 “Owners Corporation” means the owners corporation of Strata Plan 73368;
  - 1.3 “Lots” means lots 5,6,7,8,9,10,11 and 12 in Strata Plan 73368;
  - 1.4 “Owners” means the owners of the Lots;
  - 1.5 “Front Exclusive Use Area” means that part of the common property from the front of Lot 5 to the boundary fence, as indicated on the sketch plan attached and marked ‘A’;
  - 1.6 “Rear Exclusive Use Area” means that part of the common property from the rear of Lots 6,7,8,9,10,11 and 12 (Respectively) to the boundary fence, as indicated on the sketch plan attached and marked ‘A’;
2. Where any terms used in this bylaw are defined in the Act, they will have the same meaning as those words that are attributed under the Act.
3. The owners corporation consents to the owner of Lot 5 using the front exclusive use area subject to the conditions of this bylaw.
4. The owners corporation consents to the owners of Lots 6,7,8,9,10,11 and 12 using the rear exclusive use area subject to the conditions of this bylaw.
5. The owners are responsible for the maintenance of their respective exclusive use area and will bear the cost of such maintenance.
6. The owners corporation will arrange for the regular cutting of the grass within the exclusive use areas. The owners must grant access to their respective exclusive use area at the request of the owners corporation in order to facilitate the carrying out of such maintenance.
7. In relation to Clause 6 above, to ensure the uniformity of the grounds, the owners are required to use only the owners corporation’s contracted grass cutter/gardener. The owner making use of the grass cutter/gardener for the maintenance of their exclusive use area is to pay all costs associated with such use.
8. Costs payable by an owner to the owners corporation under Clause 6 above may be deemed by the owners corporation, in its absolute discretion and through the executive committee, to be a contribution under the Act and may be charged to the respective owner’s lot account. All the powers of recovery of contributions under the Act shall apply.

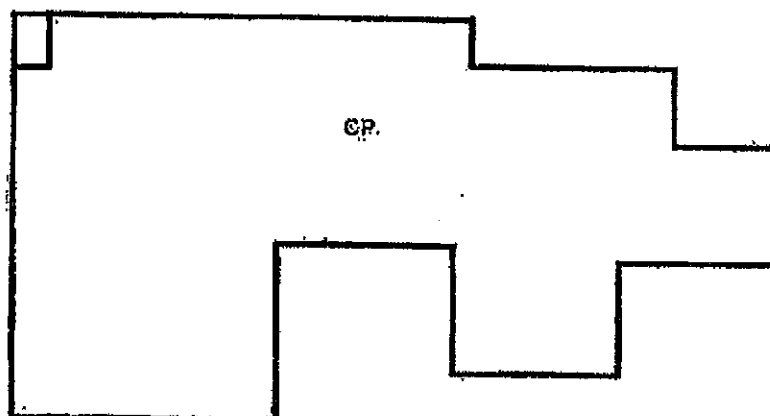


**Special Bylaw 3 – Lot 23 – Exclusive Use**

1. For the purposes of this bylaw:
  - 1.1 “Owners Corporation” means the owners corporation of Strata Plan 73368;
  - 1.2 “Common Property” means the common property of the Strata Plan 73368;
  - 1.3 “Lot” means Lot 23 in Strata Plan 73368;
  - 1.4 “Owners” means the owners of the Lot;
  - 1.5 “Loft Area” means the existing upper floor level of Lot 23, as indicated on the sketch plan attached and marked Annexure ‘A’.

2. Where any terms used in this bylaw are defined in the Act, they will have the same meaning as those words that are attributed under the Act.
3. The owners corporation consent to the owners of Lot 23 for the exclusive use of the loft area, subject to the conditions of this bylaw.
4. The owners are responsible for maintenance of the common walls in the loft area and will bear the cost of such maintenance.

**Annexure A – Loft Area Plan for Special By-law No. 22: LOT 23 - Exclusive Use**



**Special Bylaw 4 – Damage To Common Property**

- a) An owner or occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property without the approval in writing of the owners corporation.
- b) An approval given by the owners corporation under subclause (1) cannot authorise any additions to the common property.
- c) This bylaw does not prevent an owner or person authorised by an owner from installing:
  - a) any locking or other safety device for protection of the owner's lot against intruders, or
  - b) any screen or other device to prevent entry of animals or insects on the lot, or
  - c) any structure or device to prevent harm to children.
- d) Any such locking or safety device, screen, other device or structure must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with the appearance of the rest of the building.
- e) Despite Section 62, the owner of a lot must maintain and keep in a state of good and serviceable repair any installation or structure referred to in subclause (3) that forms part of the common property and that services the lot.

## Part 1 – Definitions and Interpretation

### 1.1 In this bylaw:

- (a) Authority means any government, semi government, statutory, public or other authority having any jurisdiction over the lot.
- (b) Compliance costs means the costs incurred by the owners corporation to remediate the common property to comply with the fire safety requirements.
- (c) Fire alarm means a fire alarm within a lot.
- (d) Fire safety inspector means the person, company or contractor engaged to provide the annual fire safety statement or similar requirement to a government authority.
- (e) Fire safety requirements means the fire safety requirement set by an authority for the strata scheme from time to time.
- (f) Lot means a lot in strata scheme 73368.
- (g) Managing agent costs means the sum of \$180.00 including GST.
- (h) Occupier means the occupier of the lot from time to time.
- (i) Owner means the owner of the lot from time to time.
- (j) Owners corporation means the owners corporation created by the registration of strata plan registration number 73368.

### 1.2 In this bylaw a word which denotes:

- (a) the singular includes plural and vice versa;
- (b) any gender includes the other genders;
- (c) any terms in the bylaw will have the same meaning as those defined in the Strata Scheme Management Act 1996; and
- (d) references to legislation includes references to amending and replacing legislation.

## Part 2 – Grant of Rights

- 2.1 An owner or occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property without the approval in writing of the owners corporation.
- 2.2 An approval given by the owners corporation under subclause (1) cannot authorise any additions to the common property.
- 2.3 This bylaw does not prevent an owner or person authorised by an owner from installing;
  - a) any locking or other safety device for protection of the owner's lot against intruders, or
  - (b) any screen or other device to prevent entry of animals or insect on the lot, or

(c) any structure or device to prevent harm to children.

- 2.4 Any such locking or safety device, screen, other device or structure must be installed in a competent and proper manner, comply with the fire safety requirements and must have an appearance, after it has been installed, in keeping with the appearances of the rest of the building.
- 2.5 Despite Section 62, the owner of a lot must maintain and keep in a state of good and serviceable repair any installation or structure referred to in subclause (3) that forms part of the common property and that services the lot.

### Part 3 – Fire Alarms

- 3.1 For the sake of clarity, fire alarms are lot property and the owner is responsible for the costs of replacing the batteries and ensuring the fire alarm complies with the fire safety requirements.

### Part 4 – Failure To Comply

- 4.1 Without prejudice to any and all other claims the owners corporation may have under this bylaw if an owner or occupier fails to comply with this bylaw that owner or occupier must indemnify the owners corporation:
- (a) if a strata managing agent is appointed at that time, the managing agent's costs which all owners and occupiers acknowledge is a genuine pre-estimate of the liquidated damages incurred by the owners corporation as a cost of the strata managing agent attending to the non-compliance; and
  - (b) the compliance costs; and
  - (c) any additional costs of the fire safety inspector to conduct another inspection, however, such amount is to be apportioned between the non-complying lots which caused the need for a further inspection.

## **Special Bylaw 5 – Security Bond**

### Part 1 – Powers and Duties of owners corporation

1. In addition to the powers, authorities, duties and functions conferred or imposed on the owners corporation pursuant to the Act, the owners corporation shall have the additional powers, authorities, duties and functions as follows:
- (a) the power to charge the security bond;
  - (b) the power to vary the amount of the security bond;
  - (c) the power to retain and apply the security bond under this bylaw;
  - (d) the power to collect the security bond before moving in or out commence;
  - (e) the duty to refund the security bond, less any bank fees and charges, if no damage to lot or common property has been caused by the moving in or out;
  - (f) the authority to delegate to a person nominated by the executive committee the function of assessing the extent of damage (if any) to the lot or common property caused by the moving in or out;



- (g) the power to withhold all or any part of the security bond from the owner or occupier if the executive committee has assessed that damage to the lot or common property has occurred due to the moving in or out;
- (h) the authority to apply so much of the security bond as is required to rectify the damage to the lot or common property that (in the reasonable opinion of the executive committee) has been caused by the moving in or out;
- (i) the power to enter on to any part of the parcel to carry out the rectifications pursuant to this bylaw;
- (j) the power to demand from the owner or occupier any shortfall in the funds required to rectify the damage to the lot or common property in accordance with this bylaw; and
- (k) the power to recover any sum due to it pursuant to this bylaw as a debt due.

#### Part 2 – This Bylaw to Prevail

If there is any inconsistency between this bylaw and the bylaws registered with the scheme, then the provisions of this bylaw shall prevail to the extent of that inconsistency.

#### Part 3 – Definitions and Interpretations

##### 3.1 Definitions

In this bylaw, unless the context otherwise requires or permits:

- (a) Act means the Strata Schemes Management Act 1996 (NSW).
- (b) Building means the building situated at 36-40 Old Pittwater Road, Brookvale.
- (c) Damage means any damage including but not restricted to the dumping of rubbish, defacing common property, marking common property etc.
- (d) Lot means any lot in strata plan number 73368.
- (e) Owner means the owner of the lot.
- (f) Owners corporation means the owners corporation created by the registration of strata plan registration number 73368.
- (g) Security bond means the refundable security bond in the amount of \$150 (or such other amount determined by the owners corporation from time to time) payable from time to time to the owners – strata plan number 73368 pursuant to this bylaw.

##### 3.2 Interpretation

In this bylaw, unless the context otherwise requires:

- (a) the singular includes plural and vice versa;
- (b) any gender includes the other genders;
- (c) any terms in the bylaw will have the same meaning as those defined in the Act; and

- (d) references to legislation include references to amending and replacing legislation.

#### Part 4 – Conditions

- 4.1 An owner or occupier intending on moving in or out of the building must provide to the owners corporation the security bond.
- 4.2 The security bond required under Clause 4.1 must be paid by the owner or occupier before moving in or out.
- 4.3 Any security bond paid will be refunded to the owner or the occupier at the conclusion of the moving out, as the case may require, less any amounts required to rectify any damage caused to lot or common property as a result of the moving in or out.
- 4.4 An owner or occupier moving in or out indemnifies and shall keep indemnified the owners corporation against any loss or damage whatsoever and any personal injury or death arising from or in connection with:
- (a) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss of any kind whatsoever caused or contributed to by the moving in or out by the respective owner or occupier or any contractor engaged by the respective owner or occupier;
  - (b) any negligence or wilful act or omission by the owner or occupier or any contractor engaged by the owner or occupier for or in connection with the moving in or out;
  - (c) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by any person and used in the moving in or out; and
  - (d) any legal or strata management costs and expenses incurred by the owners corporation for or in connection with the moving in or out.

#### **Special Bylaw 6 – Window Safety Devices**

1. For the purposes of this by-law:

- 1.1. **"Act"** means the *Strata Schemes Management Act 2015* (NSW) as amended from time to time;
- 1.2. **"Building"** means the building and improvements on the land located at 36-40 Old Pittwater Road, Brookvale NSW 2100.
- 1.3. **"Common Property"** means the common property in the Strata Plan;
- 1.4. **"Costs"** means all professional and trade costs/fees/disbursements;
- 1.5. **"Direction"** means a written direction from the Owners Corporation to the Owner relating to Remedial Works;
- 1.6. **"Indemnify"** means the Owner indemnifying the Owners Corporation in respect of the Remedial Works or anything arising from the Remedial Works, including, but not limited to the following:

- 1.6.1. all actions, proceedings, claims, demands, costs, damages and expenses which may be incurred by, brought or made against the Owners Corporation;
- 1.6.2. any sum payable by way of increased premiums; and
- 1.6.3. any costs or damages for which the Owners Corporation is or becomes liable;
- 1.7. **"Lot"** means a lot in the Strata Plan used for residential purposes;
- 1.8. **"Occupier"** means the legal occupier(s) of a Lot;
- 1.9. **"Owner"** means the owner(s) of the Lot from time to time;
- 1.10. **"Owners Corporation"** means the owners corporation known as The Owners - Strata Plan No. 73368, and where the context permits, includes its agents, contractors or employees;
- 1.11. **"Penalty"** means the penalty or fine under section 118(1) of the Act;
- 1.12. **"Remedial Works"** means repair, maintenance, removal or replacement of the Window Safety Device and any other items installed as part of the Works, and/or Common Property affected by the Works;
- 1.13. **"Residential Tenancy Agreement"** means an agreement under which an Owner or Occupier leases, sublets or licenses a Lot on a commercial basis for a period of greater than 3 consecutive months;
- 1.14. **"Strata Plan"** means registered strata plan number 73368;
- 1.15. **"Window"** means the following:
  - 1.15.1. a Common Property window in a Lot that can be opened; and
  - 1.15.2. the lowest level of the window opening is less than 1.7m above the surface of any internal floor of the Lot; and
  - 1.15.3. that internal floor is 2m or more above the external surface of the ground below the window.

[An illustration of this definition is **attached to this by-law and marked with the letter 'A'**]
- 1.16. **"Window Safety Device"** means a device meeting the following description that is capable of resisting an outward horizontal action of 250 newtons (or 25.5 kilogram-force):
  - 1.16.1. a child safety device that limits the maximum Window opening to 12.5cm or bars or grills that have gaps no bigger than 12.5cm; and
  - 1.16.2. the device is robust and childproof; and
  - 1.16.3. excludes ordinary flyscreens.
- 1.17. **"Works"** means the installation or affixing of a Window Safety Device on a Window in accordance with the Office of Fair Trading Window Safety

**Device Requirements Fact Sheet attached to this by-law and marked with the letter 'B'.**

2. Where any terms in this by-law are not defined, they will have the same meaning those words are attributed under the Act.
3. If this by-law empowers the Owners Corporation to take action, it may or may not take such action in its reasonable discretion.

**Works**

4. The Owners Corporation is responsible for carrying out the Works at a Lot and will pay the Costs of carrying out the Works.
5. An Owner and/or Occupier of a Lot must grant the Owners Corporation access to the Lot for the purpose of carrying out the Works, or determining if the Works are required to be carried out at a Lot.
6. In the event the Owner or Occupier has agreed with the Owners Corporation on a day and time for access, and the Owners Corporation cannot gain access to the Lot on that agreed day and time due to any action or inaction of the Owner or Occupier, the relevant Owner or Occupier is responsible for any Costs incurred by the Owners Corporation for re-arranging the access.
7. Upon completion of the Works at a Lot, the Owner or Occupier of that Lot must sign a written acknowledgement form provided by the Owners Corporation for the purpose of confirming that Works have been carried out at the Lot.
8. Prior to providing the written acknowledgement form as referred to in clause 7 above, the Owners Corporation may request an Occupier to provide a copy of their Residential Tenancy Agreement and proof of identity, such as a driver's licence or passport, as evidence that they are the tenant(s) identified in the Residential Tenancy Agreement.

**Remedial Works**

9. The Owner is responsible for and must carry out Remedial Works when and where necessary, including by Direction.
10. The Remedial Works must be carried out and completed:
  - 10.1. in a proper workmanlike manner and by licensed and/or accredited contractors;
  - 10.2. with due skill and care using proper materials;
  - 10.3. in compliance with the Building Code of Australia, any other Australian Standards, as applicable;
  - 10.4. in keeping with the appearance of the Building in its style, colour, materials and overall design;
  - 10.5. in a way so as to not unreasonably interfere with the enjoyment of other Common Property areas or access to lots in the strata scheme by other persons by building materials, tools, machines, debris or motor vehicles;
  - 10.6. in a way which minimises the disturbance to other Owners including but not limited to vibration, noise, dust and dirt;
  - 10.7. in compliance with all local council consents and requirements (if any);

- 10.8. ensuring that the security of the Building is maintained throughout the performance of the Remedial Works;
  - 10.9. promptly and completely removing all rubbish from the Building resulting from the Remedial Works;
  - 10.10. keeping all areas of the Building as clean and tidy as possible;
  - 10.11. promptly repairing any damage to any part of the Building caused by the Remedial Works;
  - 10.12. in compliance with all reasonable requirements of the Owners Corporation, including any requirements relating to access and egress of tradespersons, building materials, tools and debris; and
  - 10.13. in a way that will protect all areas of the Building outside the Lot from any damage caused by the Remedial Works, for example by the transportation of construction materials, equipment and debris.
11. The Owner is responsible for the Cost of Remedial Works.

**Damage and Direction**

12. In the event lot(s) or Common Property is/are damaged because of the Remedial Works, the Owner will pay the Costs of rectifying the damage.
13. The Owners Corporation reserves the right to direct the Owner to remove, repair or replace any items installed as a part of the Remedial Works in the event they do not comply with the requirements of this by-law.
14. If the Owner fails to comply with Clause 13 above within 2 months of a Direction to the Owner, then the Owners Corporation may:
- 14.1. enter upon any part of the Lot to carry out the work;
  - 14.2. carry out all work necessary to perform that obligation; and
  - 14.3. recover from the Owner any Costs relating to their carrying out of that work, including charging those Costs to the Owner's lot account as if those Costs were a contribution under the Act.

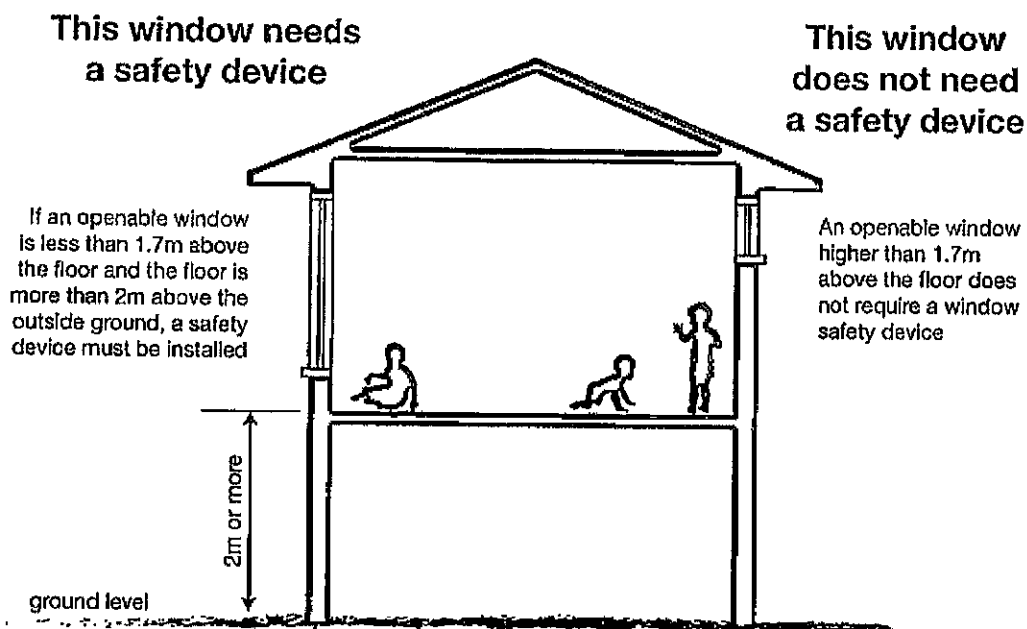
**Costs**

15. Subject to clause 4, the Owner is responsible for, and will bear all Costs.
16. Where the Owners Corporation has incurred Costs on behalf of an Owner (including Costs referred to in clause 6), the Owners Corporation may recover those Costs from the Owner, including charging those Costs to the Owner's lot account as if they were a contribution under the Act, with all the same rights of recovery to apply.
17. If the Owners Corporation receives a Penalty, the Owner of the Lot to which the Penalty relates is responsible for the Penalty in full and any Costs associated with the Penalty.
18. In the event the Owner responsible for the Penalty does not reimburse the Penalty and Costs to the Owners Corporation within 28 days of receiving written notice of the charges from the Owners Corporation, the Owners Corporation may charge the amount to the Owner's lot account, as if it were a contribution under Act, with all associated rights of recovery under the Act.

### General obligations

19. Owners and Occupiers will sign all documents and do all things necessary to facilitate the matters the subject of this by-law.
20. Owners and Occupiers will not claim upon the Owners Corporation's insurance in respect of anything arising out of the Remedial Works.
21. The Owner will Indemnify and will keep indemnified the Owners Corporation.

'A'



## 'B'

FACT SHEET

September 2015

# Window safety device requirements

In strata schemes

To prevent children falling from windows, all strata buildings in NSW must be fitted with devices that enable their windows to be locked at 12.5cm when the devices are engaged. Owners corporations must have devices installed on all common property windows above the ground floor by 13 March 2018. The safety devices must be robust and childproof.

Residents will still be able to open their windows. However, they will have the security of knowing that when the locks are engaged, children will be protected.

Did you know? Similar laws in New York resulted in a 96 per cent decrease in hospitalisations due to falls from windows.

### Are there any alternatives to locks?

The alternative is security screens, such as bars or grills on the windows so long as they have gaps no bigger than 12.5cm. Flyscreens do not comply unless they are the reinforced security type and capable of resisting the very strong outward pressure which would prevent a child falling through.

For a handy window safety product guide, visit the Kids Don't Fly page on the Kids Health website at [www.kidshealth.schn.health.nsw.gov.au](http://www.kidshealth.schn.health.nsw.gov.au). Information is provided in 11 languages.

### Which windows does this apply to?

The laws apply to openable windows more than 2m above the ground floor outside and within a child's reach (less than 1.7m above the inside floor) – see the diagram below.

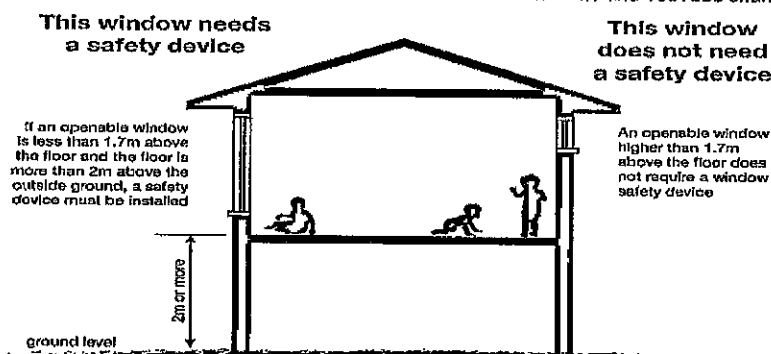
The details are explained in the Strata Schemes Management Regulation 2010.

### When do the locks need to be installed?

If the window safety requirements are not met by 13 March 2018, owners corporations face fines. Leaving it to the last minute places your scheme at risk of not complying by the due date and leaves young children vulnerable to falls from windows in your scheme.

Lot owners may install a window safety device in their property at any time, letting the owners corporation know. Tenants must get written permission from their landlord before installing locks that require drilling. Landlords cannot refuse a tenant's request unless they have a very good reason.

Watch our 'Window locks and your rights' video for details on your rights and obligations as a tenant, landlord or strata owner when it comes to installing locks, available from our website and YouTube channel.



[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)



Fair  
Trading

## 'B'

FACT SHEET

September 2015

### Will this mean the windows will never be able to open?

No. A window lock that allows the window to be fully opened, fully closed and also locked at 12.5cm complies with the legislation. When children are in the apartment, or on all common access areas such as stair landings, it makes sense to engage the locks at 12.5cm or less at all times to prevent falls.

### How can we arrange for locks in our scheme that won't cost a fortune?

Window safety devices can be easy and cheap to install. It is not necessary to hire a consultant to do an initial assessment. Owners corporations may simply get quotes from a range of appropriately qualified tradespeople and then choose the best one. Refer to our short 'Window locks save lives' video series including a step-by-step DIY video 'How to install window locks', available from our website and YouTube channel.

### If the windows have grills over them, do they still need locks?

If the grills or bars over the windows are no more than 12.5cm apart in width then they may comply with the regulation. The law requires the window safety devices to be robust and childproof. Remember, ordinary flyscreens do not comply as they are not strong enough to stop a child falling through a window and can provide a false sense of security.

### Will the safety devices be included in the Tenancy Condition Report?

Landlords and tenants entering into a new tenancy agreement must use an up-to-date Residential Tenancy Condition Report which lists window safety devices. You can download the new condition report from the Forms page.

### Where can I get more information?

If you are a **tenant**, go to the Asking to make an alteration page for information about making minor changes to your home including installing window locks.

If you are a **landlord**, go to the Alteration requests from your tenant page for more information.

If you own a strata unit, more information about your rights and responsibilities is available from the Repairs and maintenance in a strata scheme page.

If you need more details about the laws, please refer to the *Strata Schemes Management Act 1996* No 138 or call us on 13 32 20.

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)  
Fair Trading enquiries 13 32 20  
TTY 1300 723 404  
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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### **Special Bylaw 7 - Minor Renovations Rights**

1. On the conditions set out in this by-law and with the prior written approval of the strata committee each Owner has the authority to carry out Minor Renovations to the common property in connection with the Owner's lot and, once installed, to maintain the approved Minor Renovations.
2. The owners corporation delegates its power to approve Minor Renovations to the strata committee.
3. The strata committee, when considering an Owner's proposal to conduct Minor Renovations may impose conditions on any approval and must not unreasonably withhold their approval.

#### **Definitions**

4. In this by-law, the following terms are defined to mean:
  - a. "**Act**" means the *Strata Schemes Management Act 2015* (NSW);
  - b. "**Building**" means the building located at 36-40 Old Pittwater Road, Brookvale NSW 2100;
  - c. "**Minor Renovations**" includes work for the purposes of the following:
    - i. renovating a kitchen,
    - ii. changing recessed light fittings,
    - iii. installing or replacing wood or other hard floors,
    - iv. installing or replacing wiring or cabling or power or access points,
    - v. works involving con-figuring walls.
    - vi. installing a rainwater tank,
    - vii. removing carpet or other soft floor coverings to expose underlying wooden or other hard floors.
    - viii. installing a clothesline,
    - ix. installing a reverse cycle split system air conditioner,
    - x. installing double or triple glazed windows,
    - xi. installing a heat pump,
    - xii. installing ceiling insulation.

but does not include works set out in section 110(7) of the Act such as work involving structural changes, waterproofing, changes to the external appearance of a lot or requiring consent or other approval under any other statute, regulation or the like. :

- d. "**Owner**" means an owner of a lot from time to time in the strata scheme;

5. Where any terms used in this by-law are defined in the Act, they will have the same meaning as those words are attributed under the Act.
6. Words importing:
  - a. the singular include the plural and vice versa; and
  - b. a gender includes any gender.
7. A reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

#### **Prior to Conducting the Minor Renovations**

8. An Owner must make an application to the owners corporation for its approval to conduct the Minor Renovations by giving written notice of their proposed works to the owners corporation with the notice to include:
  - a. details of the work, including copies of any plans,
  - b. the expected duration and times of the works,
  - c. details of the persons carrying out the work including that person's qualifications to carry out the work, and
  - d. arrangements to manage any resulting rubbish or debris.
9. Prior to conducting the Minor Renovations, the Owner and/or the tradesperson appointed by the Owner to carry out the Works must effect, and provide the owners corporation with certificates of, the following insurances:
  - a. contractor's all risk insurance (where applicable);
  - b. workers compensation insurance (where applicable);
  - c. home owners warranty Insurance (where applicable); and
  - d. public liability insurance in the amount of \$10,000,000 including for and in respect of equipment located and/or utilised on common property in execution of the Minor Renovations.

#### **Performance of the Works**

10. In carrying out or maintaining the Minor Renovations the Owner must:
  - a. ensure that the works are completed in a competent and proper manner and in accordance with the Building Code of Australia and relevant Australian Standards;
  - b. transport each item including but not limited to construction materials, equipment and debris in the manner reasonably directed by the owners corporation;
  - c. protect all areas of the Building both internal and external to the lot in a manner reasonably acceptable to the owners corporation;

- d. keep all areas of the common property outside the lot clean and tidy;
- e. only perform Minor Renovations at times approved by the owners corporation;
- f. not create noise which causes discomfort, disturbance, obstruction or interference with the activities of any other occupier of the Building;
- g. immediately remove all debris or waste resulting from the Minor Renovations from the Building and the common property;
- h. not vary or replace the Minor Renovations, as agreed to by the strata committee, without the prior written approval of the strata committee; and
- i. ensure that the Minor Renovations do not interfere with or damage the common property, or any lot or property of any other lot owner or occupier (other than as approved in by the strata committee) and if this happens the Owner must rectify that interference or damage within a reasonable period of time.

#### **Maintenance of the Minor Renovations**

- 11. The Owner must properly maintain and keep the Minor Renovations and the common property to which they are attached in a state of good and serviceable repair.

#### **Liability and Indemnity**

- 12. The Owner is liable for any damage caused to any part of the common property, and any lot (including their lot), or other property arising from the Minor Renovations and will make good that damage immediately after it has occurred.
- 13. The Owner indemnifies the owners corporation against any legal liability, loss, damage, claim or proceedings that relates to the installation, performance, maintenance, replacement or removal of the Minor Renovations on or from the common property including but not limited to any liability under section 122(6) of the Act in respect of any property of the Owner.

#### **Owner's Fixtures**

- 14. The Minor Renovations shall remain the Owner's fixture.

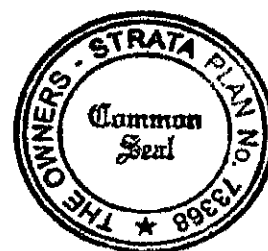
#### **Cost and Risk of the Works**

- 15. The Minor Renovations (including their replacement or removal) are undertaken at the cost and risk of the Owner.

#### **Right to Remedy Upon Default**

- 16. If an Owner fails to comply with any obligation under this by-law, then the owners corporation may:
  - a. carry out all work necessary to perform that obligation;
  - b. in accordance with the provisions of the Act enter upon any part of the parcel to carry out that work;
  - c. recover the costs of carrying out that work from the Owner.

17. The costs referred to in paragraph 16(c) of this by-law may include any costs incurred by the owners corporation in carrying out any building repair work, security call-out charges, after hours building management or agency fees, administrative and legal costs to issue correspondence or any notices pursuant to this by-law and any other reasonable cost expended by the owners corporation in rectifying any damage occasioned to the common property by the respective Owner or in enforcing the terms of this by-law against the Owner of the lot.
18. If the costs referred to in paragraph 16(c) of this by-law are not paid at the end of one month after becoming due and payable they shall bear, until paid, simple interest at an annual rate of 10% and the owners corporation may recover as a debt any costs payable by the Owner pursuant to this by-law, not paid at the end of one month after they become due and payable, together with any interest payable and the expenses of the Owners Corporation incurred in recovering those amounts.



## Approved Form 10

### Certificate re Initial Period

The owners corporation certifies that in respect of the strata scheme:

\*that the initial period has expired.

~~\*the original proprietor owns all of the lots in the strata scheme and any purchaser under an exchanged contract for the purchase of a lot in the scheme has consented to any plan or dealing being lodged with this certificate.~~

The seal of The Owners - Strata Plan No 73368 was affixed on ^ 18.12.2018 in the presence of the following person(s) authorised by section 273 *Strata Schemes Management Act 2015* to attest the affixing of the seal.

Signature:  Name: Nikki Hopkins Authority: Strata Manager

Signature: ..... Name: ..... Authority: .....

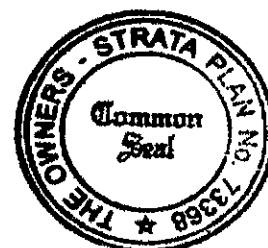
^ Insert appropriate date

\* Strike through if inapplicable.

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Text below this line is part of the instructions and should not be reproduced as part of a final document.

1. This form must be provided in its entirety as shown above.
2. Any inapplicable parts should be struck through.
3. This certificate is required to accompany any document which proposes action not permitted during the initial period and when the common property title does not have a notification indicating the initial period has been expired.



## Northern Beaches Council Planning Certificate – Part 2

**Applicant:** InfoTrack  
GPO Box 4029  
SYDNEY NSW 2001

**Reference:** 220550  
**Date:** 19/05/2022  
**Certificate No.** ePLC2022/03471

**Address of Property:** 9/36-40 Old Pittwater Road BROOKVALE NSW 2100  
**Description of Property:** Lot 9 SP 73368

### Planning Certificate – Part 2

The following certificate is issued under the provisions of Section 10.7(2) of the *Environmental Planning and Assessment Act 1979* (as amended – formerly Section 149). The information applicable to the land is accurate as at the above date.

#### **1. Relevant planning instruments and Development Control Plans**

**1.1 The name of each environmental planning instrument that applies to the carrying out of development on the land:**

**1.1a) Local Environmental Plan**

Warringah Local Environmental Plan 2011

**1.1b) State Environmental Planning Policies and Regional Environmental Plans**

State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Primary Production) 2021  
Chapters 1,2

State Environmental Planning Policy (Resources and Energy) 2021  
Chapters 1, 2

State Environmental Planning Policy (Resilience and Hazards) 2021  
Chapters 1, 3, 4

State Environmental Planning Policy (Industry and Employment) 2021  
Chapters 1, 3

State Environmental Planning Policy (Transport and Infrastructure) 2021  
Chapters 1, 2, 3

State Environmental Planning Policy (Biodiversity and Conservation) 2021  
Chapters 1, 2, 3, 4, 6, 7

State Environmental Planning Policy (Planning Systems) 2021  
Chapters 1, 2

State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021  
Chapters 1, 2

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

SEPP 65 – Design Quality of Residential Apartment Development

SEPP (Building Sustainability Index: BASIX)

State Environmental Planning Policy (Biodiversity and Conservation) 2021  
Chapters 9, 10

State Environmental Planning Policy Amendment (Frenchs Forest Precinct) 2021

## **1.2 Draft Environmental Planning Instruments**

The name of each proposed environmental planning instrument that will apply to the carrying out of development on the land and that is or has been subject of community consultation or on public exhibition under the Act (unless the Secretary has notified the Council that the making of the proposed instrument has been deferred indefinitely or has not been approved):

### **1.2 a) Draft State Environmental Planning Policies**

Draft State Environmental Planning Policy (Environment)

Draft State Environmental Planning Policy (Short-term Rental Accommodation) 2019

Amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Draft Remediation of Land State Environmental Planning Policy (intended to replace State Environmental Planning Policy 55)

### **1.2 b) Draft Local Environmental Plans**

#### **Planning Proposal - Pittwater Road and Albert Street, Narrabeen**

**Applies to:** 1294 - 1300 Pittwater Road and 2 - 4 Albert Street, Narrabeen

**Outline:** Amends WLEP 2011 to:

- Amend Warringah LEP 2011 Height of Buildings Map from 8.5m to 12m at 1298 and 1300 Pittwater Rd and from 8.5 to 11m at 1294, 1296 Pittwater Road and 4 Albert St Narrabeen.
- Amend Schedule 1 to allow 'medical centre', 'commercial premises' and 'shop top housing' as additional permitted uses at 1298 and 1300 Pittwater Rd Narrabeen.
- To implement Council's adopted Affordable Housing Contributions Scheme and to amend Warringah DCP 2011 for the subject site. at 2 Albert Street and 1294 Pittwater Road Narrabeen

## **1.3 Development Control Plans**

The name of each development control plan that applies to the carrying out of development on the land:

## **2. Zoning and land use under relevant Local Environmental Plans**

For each environmental planning instrument or proposed instrument referred to in Clause 1 (other than a SEPP or proposed SEPP) that includes the land in any zone (however described):

### **2.1 Zoning and land use under relevant Local Environmental Plans**

#### **2.1 (a), (b), (c) & (d)**

The following information identifies the purposes for which development may be carried out with or without development consent and the purposes for which the carrying out of development is prohibited, for all zones (however described) affecting the land to which the relevant Local Environmental Plan applies.

#### **EXTRACT FROM WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

#### **Zone R3 Medium Density Residential**

##### **1 Objectives of zone**

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.
- To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.

##### **2 Permitted without consent**

Home-based child care; Home occupations

##### **3 Permitted with consent**

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Home businesses; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Secondary dwellings; Seniors housing; Veterinary hospitals

##### **4 Prohibited**

Any other development not specified in item 2 or 3

##### **Additional permitted uses**

Additional permitted uses, if any, for which development is permissible with development consent pursuant to Clause 2.5 and Schedule 1 of the relevant Local Environmental Plan:

Nil



### **(e) Minimum land dimensions**

The *Warringah Local Environmental Plan 2011* contains no development standard that fixes minimum land dimensions for the erection of a dwelling house on the land.

### **(f) Critical habitat**

The land does not include or comprise critical habitat.

### **(g) Conservation areas**

The land is not in a heritage conservation area.

### **(h) Item of environmental heritage**

The land does not contain an item of environmental heritage.

## **2.2 Draft Local Environmental Plan - if any**

For any proposed changes to zoning and land use, see Part 1.2 b)

Please contact Council's Strategic and Place Planning unit with enquiries on 1300 434 434.

## **2A. Zoning and land use under State Environmental Planning Policy (Sydney Region Growth Centres) 2006**

The *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* does not apply to the land.

## **3. Complying Development**

The extent to which the land is land on which complying development may or may not be carried out under each of the codes for complying development because of the provisions of clauses 1.17A (1) (c) to (e), (2), (3) and (4), 1.18 (1) (c3) and 1.19 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

### **a) Housing Code**

Complying Development under the Housing Code may be carried out on all of the land.

### **b) Rural Housing Code**

Complying Development under the Rural Housing Code may be carried out on all of the land.

### **c) Low Rise Housing Diversity Code**

Complying Development under the Low Rise Housing Diversity Code may be carried out on all of the land.

### **d) Greenfield Housing Code**

Complying Development under the Greenfield Housing Code may not be carried out on all of the land.

**e) Housing Alterations Code**

Complying Development under the Housing Alterations Code may be carried out on all of the land.

**f) General Development Code**

Complying Development under the General Development Code may be carried out on all of the land.

**g) Commercial and Industrial Alterations Code**

Complying Development under the Commercial and Industrial Alterations Code may be carried out on all of the land.

**h) Commercial and Industrial (New Buildings and Additions) Code**

Complying Development under the Commercial and Industrial (New Buildings and Additions) Code may be carried out on all of the land.

**i) Container Recycling Facilities Code**

Complying Development under the Container Recycling Facilities Code may be carried out on all of the land.

**j) Subdivisions Code**

Complying Development under the Subdivisions Code may be carried out on all of the land.

**k) Demolition Code**

Complying Development under the Demolition Code may be carried out on all of the land.

**l) Fire Safety Code**

Complying Development under the Fire Safety Code may be carried out on all of the land.

**m) Inland Code**

Complying Development under the Inland Code does not apply to the land.

**Note:** Pursuant to clause 3D.1 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, the Inland Code only applies to 'inland local government areas'. Northern Beaches local government area is not defined as an 'inland local government area' by *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

**4. 4A (Repealed)**

**4B. Annual charges under Local Government Act 1993 for coastal protection services that relate to existing coastal protection works**

The owner of the land (or any previous owner) has not consented in writing to the land being subject to annual charges under section 496B of the *Local Government Act 1993* for coastal

protection services that relate to existing coastal protection works (within the meaning of section 553B of that Act).

## **5. Mine Subsidence**

The land has not been proclaimed to be a mine Subsidence (Mine Subsidence) district within the meaning of section 15 of the *Mine Subsidence (Mine Subsidence) Compensation Act, 1961*.

## **6. Road widening and road realignment**

- (a) The land is not affected by a road widening or re-alignment proposal under Division 2 of Part 3 of the *Roads Act 1993*.
- (b) The land is not affected by a road widening or re-alignment proposal under an environmental planning instrument.
- (c) The land is not affected by a road widening or re-alignment proposal under a resolution of Council.

## **7. Council and other public authority policies on hazard risk restriction**

- (a) Council has adopted a number of policies with regard to various hazards or risks which may restrict development on this land. The identified hazard or risk and the respective Council policies which affect the property, if any, are listed below (other than flooding – see 7A):

Nil

- (b) The following information applies to any policy as adopted by any other public authority and notified to the Council for the express purpose of its adoption by that authority being referred to in a planning certificate issued by the Council. The identified hazard or risk and the respective Policy which affect the property, if any, are listed below:

Nil

## **7A. Flood related development control Information**

- (1) The land is not within the flood planning area and subject to flood related development controls.
- (2) The land or part of the land is not between the flood planning area and the probable maximum flood and subject to flood related development controls.
- (3) In this clause—

**flood planning area** has the same meaning as in the Floodplain Development Manual.

**Floodplain Development Manual** means the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

**probable maximum flood** has the same meaning as in the Floodplain Development Manual.

## **8. Land reserved for acquisition**

Environmental planning instrument referred to in Clause 1 does not make provision in relation to the acquisition of the land by a public authority, as referred to in section 3.15 of the Act.

## **9. Contribution plans**

The following applies to the land:

### **Northern Beaches Section 7.12 Contributions Plan 2019**

## **9A. Biodiversity certified land**

The land is not biodiversity certified land under Part 8 of the *Biodiversity Conservation Act 2016* (includes land certified under Part 7AA of the repealed *Threatened Species Conservation Act 1995*).

## **10. Biodiversity Stewardship Sites**

The Council has not been notified by the Chief Executive of the Office of Environment and Heritage that the land is a biodiversity stewardship site under a biodiversity stewardship agreement under Part 5 of the *Biodiversity Conservation Act 2016* (includes land to which a biobanking agreement under Part 7A of the repealed *Threatened Species Conservation Act 1995* relates).

## **10A. Native vegetation clearing set asides**

Council has not been notified by Local Land Services of the existence of a set aside area under section 60ZC of the *Local Land Services Act 2013*.

## **11. Bush fire prone land**

### **Bush Fire Prone Land**

The land is not bush fire prone land.

## **12. Property vegetation plans**

The Council has not been notified that the land is land to which a vegetation plan under the *Native Vegetation Act 2003* applies.

## **13. Orders under Trees (Disputes Between Neighbours) Act 2006**

Council has not been notified of the existence of an order made under the *Trees (Disputes Between Neighbours) Act 2006* to carry out work in relation to a tree on the land.

## **14. Directions under Part 3A**

There is not a direction by the Minister in force under section 75P(2) (c1) of the Act that a provision of an environmental planning instrument prohibiting or restricting the carrying out of a project or a stage of a project on the land under Part 4 of the Act does not have effect.

## **15. Site compatibility certificates and conditions for seniors housing**

- (a) There is not a current site compatibility certificate (seniors housing), of which the council is aware, in respect of proposed development on the land.
- (b) No condition of consent applies to the property that limits the kind of people who may occupy the premises/ development. This refers only to consents granted after 11 October 2007 with

conditions made in accordance with clause 18(2) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

## **16. Site compatibility certificates for infrastructure, schools or TAFE establishments**

There is not a valid site compatibility certificate (infrastructure) or site compatibility certificate (schools or TAFE establishments), of which the council is aware, in respect of proposed development on the land.

## **17. Site compatibility certificate and conditions for affordable rental housing**

- (a) There is not a current site compatibility certificate (affordable rental housing), of which the council is aware, in respect of proposed development on the land.
- (b) There are not terms of a kind referred to in clause 21(1) or 40(1) of *State Environmental Planning Policy (Housing) 2021* that have been imposed as a condition of consent to a development application in respect of the land.

## **18. Paper subdivision information**

There is no current paper subdivision, of which council is aware, in respect of this land according to Part 16C of the *Environmental Planning and Assessment Regulation 2000*.

## **19. Site verification certificates**

There is no current site verification certificate, of which council is aware, in respect of the land according to Part 4AA of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

## **20. Loose-fill asbestos insulation**

The residential dwelling erected on this land has not been identified in the Loose-Fill Asbestos Insulation Register as containing loose-fill asbestos ceiling insulation.

This clause applies to residential premises (within the meaning of Division 1A of part 8 of the Home Building Act 1989) that are listed in the register that is required to be maintained under that Division.

Contact NSW Fair Trading for more information.

## **21 Affected building notices and building product rectification orders**

- 1) There is not an affected building notice of which the council is aware that is in force in respect of the land.
- 2) There is not a building product rectification order of which the council is aware that is in force in respect of the land and has not been fully complied with, and

- 3) There is not a notice of intention to make a building product rectification order of which the council is aware has been given in respect of the land and is outstanding.

In this clause:

**affected building notice** has the same meaning as in Part 4 of the *Building Products (Safety) Act 2017*.

**building product rectification order** has the same meaning as in the *Building Products (Safety) Act 2017*.

### **Additional matters under the Contaminated Land Management Act 1997**

Note. The following matters are prescribed by section 59 (2) of the *Contaminated Land Management Act 1997* as additional matters to be specified in a planning certificate:

- (a) the land to which the certificate relates is not significantly contaminated land within the meaning of that Act
- (b) the land to which the certificate relates is not subject to a management order within the meaning of that Act
- (c) the land to which the certificate relates is not the subject of an approved voluntary management proposal within the meaning of that Act
- (d) the land to which the certificate relates is not subject to an ongoing maintenance order within the meaning of that Act
- (e) the land to which the certificate relates is not the subject of a site audit statement

If contamination is identified above please contact the Environmental Protection Authority (EPA) for further information.

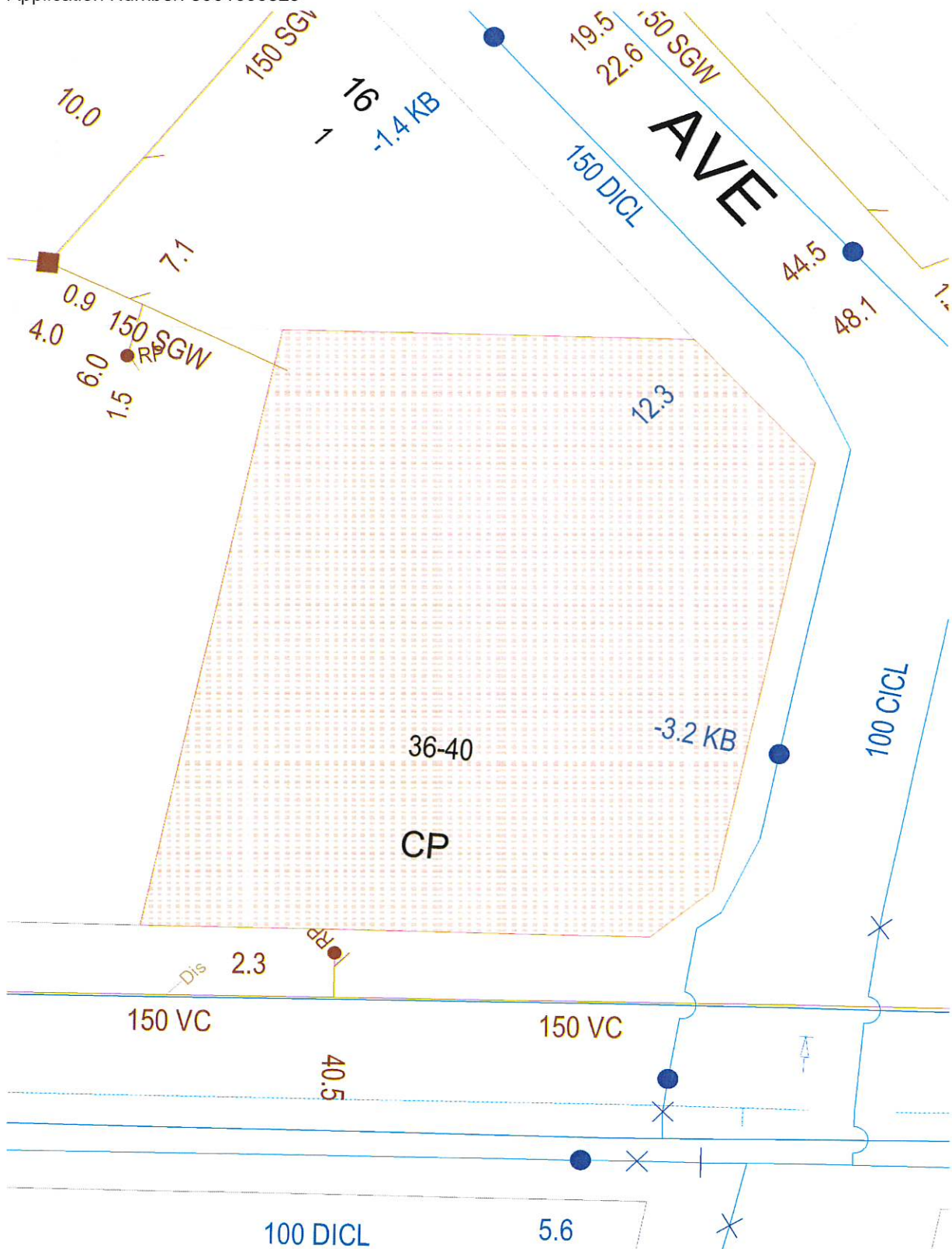


**Ray Brownlee PSM**  
**Chief Executive Officer**

**19/05/2022**



**Service Location Print**  
Application Number: 8001666829



Document generated at 19-05-2022 10:01:03 AM

**Disclaimer**

The information on this print shows if we provide any water, wastewater or stormwater services to this property. It may not be accurate or to scale. If you'd like to see the location of private wastewater pipes on the property, please buy a **Sewer service diagram**.



# Asset Information

## Legend

Sewer		Property Details	
Sewer Main (with flow arrow & size type text)		Boundary Line	
Disused Main		Easement Line	
Rising Main		House Number	
Maintenance Hole (with upstream depth to invert)		Lot Number	
Sub-surface chamber		Proposed Land	
Maintenance Hole with Overflow chamber		Sydney Water Heritage Site (please call 132 092 and ask for the Heritage Unit)	
Ventshaft EDUCT			
Ventshaft INDUCT			
Property Connection Point (with chainage to downstream MH)			
Concrete Encased Section			
Terminal Maintenance Shaft			
Maintenance Shaft			
Rodding Point			
Lamphole			
Vertical			
Pumping Station			
Sewer Rehabilitation			
Pressure Sewer		Water	
Pressure Sewer Main		WaterMain - Potable (with size type text)	
Pump Unit (Alarm, Electrical Cable, Pump Unit)		Disconnected Main - Potable	
Property Valve Boundary Assembly		Proposed Main - Potable	
Stop Valve		Water Main - Recycled	
Reducer / Taper		Special Supply Conditions - Potable	
Flushing Point		Special Supply Conditions - Recycled	
Vacuum Sewer		Restrained Joints - Potable	
Pressure Sewer Main		Restrained Joints - Recycled	
Division Valve		Hydrant	
Vacuum Chamber		Maintenance Hole	
Clean Out Point		Stop Valve	
Stormwater		Stop Valve with By-pass	
Stormwater Pipe		Stop Valve with Tapers	
Stormwater Channel		Closed Stop Valve	
Stormwater Gully		Air Valve	
Stormwater Maintenance Hole		Valve	
		Scour	
		Reducer / Taper	
		Vertical Bends	
		Reservoir	
		Recycled Water is shown as per Potable above. Colour as Indicated	
Private Mains		Potable Water Main	
		Recycled Water Main	
		Sewer Main	
		Symbols for Private Mains shown grey	

### Disclaimer

The information on this print shows if we provide any water, wastewater or stormwater services to this property. It may not be accurate or to scale. If you'd like to see the location of private wastewater pipes on the property, please buy a **Sewer service diagram**.

## Pipe Types

<b>ABS</b>	Acrylonitrile Butadiene Styrene	<b>AC</b>	Asbestos Cement
<b>BRICK</b>	Brick	<b>CI</b>	Cast Iron
<b>CICL</b>	Cast Iron Cement Lined	<b>CONC</b>	Concrete
<b>COPPER</b>	Copper	<b>DI</b>	Ductile Iron
<b>DICL</b>	Ductile Iron Cement (mortar) Lined	<b>DIPL</b>	Ductile Iron Polymeric Lined
<b>EW</b>	Earthenware	<b>FIBG</b>	Fibreglass
<b>FL BAR</b>	Forged Locking Bar	<b>GI</b>	Galvanised Iron
<b>GRP</b>	Glass Reinforced Plastics	<b>HDPE</b>	High Density Polyethylene
<b>MS</b>	Mild Steel	<b>MSCL</b>	Mild Steel Cement Lined
<b>PE</b>	Polyethylene	<b>PC</b>	Polymer Concrete
<b>PP</b>	Polypropylene	<b>PVC</b>	Polyvinylchloride
<b>PVC - M</b>	Polyvinylchloride, Modified	<b>PVC - O</b>	Polyvinylchloride, Oriented
<b>PVC - U</b>	Polyvinylchloride, Unplasticised	<b>RC</b>	Reinforced Concrete
<b>RC-PL</b>	Reinforced Concrete Plastics Lined	<b>S</b>	Steel
<b>SCL</b>	Steel Cement (mortar) Lined	<b>SCL IBL</b>	Steel Cement Lined Internal Bitumen Lined
<b>SGW</b>	Salt Glazed Ware	<b>SPL</b>	Steel Polymeric Lined
<b>SS</b>	Stainless Steel	<b>STONE</b>	Stone
<b>VC</b>	Vitrified Clay	<b>WI</b>	Wrought Iron
<b>WS</b>	Woodstave		

## Further Information

Please consult the Dial Before You Dig enquiries page on the Sydney Water website.

For general enquiries please call the Customer Contact Centre on 132 092

**In an emergency, or to notify Sydney Water of damage or threats to its structures, call 13 20 90 (24 hours, 7 days)**

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Revenue

Enquiry ID	3727041
Agent ID	81429403
Issue Date	19 May 2022
Correspondence ID	1746516085
Your reference	220550

INFOTRACK PTY LIMITED  
GPO Box 4029  
SYDNEY NSW 2001

**Land Tax Certificate under section 47 of the *Land Tax Management Act, 1956*.**

This information is based on data held by Revenue NSW.

Land ID	Land address	Taxable land value
S73368/9	Unit 9, 36-40 OLD PITTWATER RD BROOKVALE 2100	\$172 667

There is **no land tax** (including surcharge land tax) charged on the land up to and including the 2022 tax year.

Yours sincerely,

Scott Johnston

Chief Commissioner of State Revenue

## Important information

### Who is protected by a clearance certificate?

A clearance certificate states whether there is any land tax (including surcharge land tax) owing on a property. The certificate protects a purchaser from outstanding land tax liability by a previous owner, however it does not provide protection to the owner of the land.

### When is a certificate clear from land tax?

A certificate may be issued as 'clear' if:

- the land is not liable or is exempt from land tax
- the land tax has been paid
- Revenue NSW is satisfied payment of the tax is not at risk, or
- the owner of the land failed to lodge a land tax return when it was due, and the liability was not detected at the time the certificate was issued.

**Note:** A clear certificate does not mean that land tax was not payable, or that there is no land tax adjustment to be made on settlement if the contract for sale allows for it.

### When is a certificate not clear from land tax?

Under section 47 of the *Land Tax Management Act 1956*, land tax is a charge on land owned in NSW at midnight on 31 December of each year. The charge applies from the taxing date and does not depend on the issue of a land tax assessment notice. Land tax is an annual tax so a new charge may occur on the taxing date each year.

### How do I clear a certificate?

A charge is removed for this property when the outstanding land tax amount is processed and paid in full. Payment can be made during settlement via an accepted Electronic Lodgement Network or at an approved settlement room.

To determine the land tax amount payable, you must use one of the following approved supporting documents:

- Current year land tax assessment notice. This can only be used if the settlement date is no later than the first instalment date listed on the notice. If payment is made after this date interest may apply.
- Clearance quote or settlement letter which shows the amount to clear.

The charge on the land will be considered removed upon payment of the amount shown on these documents

### How do I get an updated certificate?

A certificate can be updated by re-processing the certificate through your Client Service Provider (CSP), or online at [www.revenue.nsw.gov.au/taxes/land/clearance](http://www.revenue.nsw.gov.au/taxes/land/clearance).

Please allow sufficient time for any payment to be processed prior to requesting a new version of the clearance certificate.

### Land value, tax rates and thresholds

The taxable land value shown on the clearance certificate is the value used by Revenue NSW when assessing land tax. Details on land tax rates and thresholds are available at [www.revenue.nsw.gov.au](http://www.revenue.nsw.gov.au).

## Contact details



Read more about Land Tax and use our online service at [www.revenue.nsw.gov.au](http://www.revenue.nsw.gov.au)



1300 139 816\*



Phone enquiries  
8:30 am - 5:00 pm, Mon. to Fri.

\* Overseas customers call +61 2 7808 6906  
Help in community languages is available.