

# Contract for the sale and purchase of land 2019 edition

TERM	MEANING OF TERM	NSW DAN:
vendor's agent	Upstate Level 1, 888 Pittwater Road, Dee Why NSW 2099	Phone: 9971 9000 Ref: Geoff Pickering E: Geoff.p@upstate.com.au
co-agent		
vendor	Carolyn Talbot-Sapsford 12/122 Ocean Street, Narrabeen NSW 2101	
vendor's solicitor	CONVEYANCING MONA VALE PO Box 208, Mona Vale NSW1660 DX 9002 MONA VALE	Phone: 02 9997 3255 Ref: Shantal Rose20136 E: cmv@conveymv.com.au
date for completion land (address, plan details and title reference)	42nd day after the contract date (clause 15) 313/637-641 Pittwater Road, Dee Why NSW 2099 Being Lot 90 in Strata Plan 64946 Folio Identifier 90/SP64946	
improvements	<input type="checkbox"/> VACANT POSSESSION <input checked="" type="checkbox"/> subject to existing tenancies <input type="checkbox"/> HOUSE <input checked="" 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 type="checkbox"/> documents in the List of Documents as marked or as numbered: <input type="checkbox"/> other documents:	
<b>A real estate agent is permitted by <i>legislation</i> to fill up the items in this box in a sale of residential property.</b>		
inclusions	<input type="checkbox"/> blinds <input checked="" type="checkbox"/> dishwasher <input checked="" type="checkbox"/> light fittings <input checked="" type="checkbox"/> stove <input checked="" type="checkbox"/> built-in wardrobes <input checked="" type="checkbox"/> fixed floor coverings <input checked="" type="checkbox"/> range hood <input type="checkbox"/> pool equipment <input type="checkbox"/> clothes line <input type="checkbox"/> insect screens <input type="checkbox"/> solar panels <input type="checkbox"/> TV antenna <input type="checkbox"/> curtains <input type="checkbox"/> other:	
exclusions		
purchaser		
purchaser's solicitor		Phone: Ref: E:
price	\$	
deposit	\$	(10% of the price, unless otherwise stated)
balance	\$	
contract date		(if not stated, the date this contract was made)

<b>Vendor</b>	<b>GST AMOUNT</b> (optional) The price includes GST of: \$0.00	<b>witness</b>
<b>purchaser</b>	<input type="checkbox"/> JOINT TENANTS <input type="checkbox"/> Tenants in Common <input type="checkbox"/> In Equal Shares	<b>witness</b>

## Choices

Vendor agrees to accept a **deposit-bond** (clause 3)

☒ NO ☐ yes

**Nominated Electronic Lodgement Network (ELN)** (clause 30):

**PEXA**

**Electronic transaction**

☐ 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 contract date):

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

**Land tax** is adjustable

☒ NO ☐ yes

**GST:** Taxable supply

☒ NO ☐ yes in full ☐ yes to an extent

Margin scheme will be used in making the taxable supply

☒ NO ☐ yes

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

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

Purchaser must make an *GSTRW payment*

☒ NO ☐ yes (if yes, vendor must provide further details)

(residential withholding payment)

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 (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 vendor is part of a GST group or a participant in a GST joint venture or a partnership, or a trust.

Supplier's name:

Supplier's ABN:

Supplier's GST branch number:

Supplier's business address:

Supplier's email address:

Supplier's phone number:

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

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

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

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

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

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

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

## List of Documents

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

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

Robinson Strata Management 9907 5050

**IMPORTANT NOTICE TO VENDORS AND PURCHASERS**

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

**WARNING—SMOKE ALARMS**

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

**WARNING—LOOSE-FILL ASBESTOS INSULATION**

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

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

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

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

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

### **DISPUTES**

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

### **AUCTIONS**

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

**WARNINGS**

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

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

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

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

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

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

## 2 Deposit and other payments before completion

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

BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION

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

### 3 Deposit-bond

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

### 4 Transfer

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

### 5 Requisitions

- 5.1 If a form of *requisitions* is attached to this contract, the purchaser is taken to have made those *requisitions*.
- 5.2 If the purchaser is or becomes entitled to make any other *requisition*, the purchaser can make it only by *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*.

## SPECIAL CONDITIONS FOR 2019 EDITION OF CONTRACT

### Interpretation

33. The parties agree that the interpretation and enforcement of this contract shall be on the basis that:
- (a) Headings are for ease of reference only and do not affect the interpretation of this Contract.
  - (b) If there is any inconsistency between these Special Conditions and the printed conditions or any annexure hereto, these Special Conditions shall apply.
  - (c) Each clause and subclause of these conditions of this Contract shall be severable from each other clause and subclause and the circumstance that for any reason any clause or subclause is invalid or unenforceable shall not prejudice or in any way affect the validity or enforceability of any other clause or subclause.

### Alterations to Standard Contract Conditions

34. The following changes are made to the standard conditions of this Contract and shall be read accordingly:
- (a) Replace "5%" in clause 7.1.1 with "0.25%";
  - (b) Replace "14 days" in clause 7.1.3 with "7 days";
  - (c) Delete in clause 10.1.9 "substance" and replace with "existence";
  - (d) Delete in clause 16.5 the words "plus another 20% of that fee"
  - (e) Delete from clause 16.7 the words "cash (up to \$2,000) or";
  - (f) Delete clause 16.8;
  - (g) Replace "Vendor" with "Purchaser" in clauses 23.13 and add the following words to the end of that clause "and the Vendor hereby authorizes the Purchaser's solicitor or conveyancer to obtain such certificate directly from the Owners Corporation or Strata Manager."
  - (h) Delete clause 23.14.

### Restriction on Right to Object

35. Subject only to Section 52A(2)(b) of the Conveyancing Act, 1919 and to the Regulations under that Act including the Conveyancing (Sale of Land) Regulation 2017, the Purchaser may not make any objection, requisition or claim for compensation or delay completion by reason of:
- (a) any matter disclosed or referred to in Documents List (page 2 of the General Conditions); or
  - (b) any document attached and forming part of this Contract; or
  - (c) anything acknowledged by the Purchaser herein.

### Requisitions and Claims for Compensation

36. Any requisition or objection made by the purchaser which:
- (a) requires the Vendor to incur a cost greater than 0.25% of the purchase price; or
  - (b) would delay completion by more than 7 days;
- in order to satisfy or comply with that requisition or objection shall at the Vendor's election be deemed to be an objection to title and shall entitle the Vendor to give written notice that they intend to rescind the Contract;

## **SPECIAL CONDITIONS FOR 2019 EDITION OF CONTRACT**

37. In the event that Purchasers do not agree to waive or withdraw such requisition or objection referred to in the previous clause within 7 days of having been notified of the Vendors intention to rescind, the Vendor shall be entitled to rescind and clause 19 shall apply.

### **Deposit always 10% of the contract price**

38. Should the vendor agree in writing to accept at exchange (or at the expiry of a cooling-off period) an amount less than 10% of the contract price, that amount is agreed to be only a part-payment only of the deposit (which is agreed to always be 10% of the purchase price) and the balance of the deposit is payable to the Vendor on the date appointed for completion by this contract. For the avoidance of any doubt, the balance of the deposit shall be due and payable on the date appointed for completion regardless of whether settlement actually occurs on that date or whether the contract is terminated prior to that date. Further, the parties agree that 10% of the purchase price is a fair and reasonable amount to demonstrate that the purchaser is in earnest in wishing to enter and complete the contract and represents a fair estimation of the vendor's loss should the purchaser be unable to complete the contract.

### **Investment of Deposit**

39. The parties agree that:
- (a) the deposit or any part-payment of the deposit not otherwise released to the Vendor shall be invested by the Vendor's Agent pursuant to clause 2.9 of the Contract;
  - (b) In the event that the Vendor has agreed to accept a part payment of the deposit pursuant to the preceding special condition, Clause 2.9 is amended so that the word "vendor" is to replace the words "parties equally" in clause 2.9 of the general conditions, to the effect that the vendor is to receive the whole of the interest in those circumstances.
  - (c) Unless both parties have advised the Vendor's Agent of their respective tax file numbers within 48 hours of entering this contract, the parties acknowledge that any deposit invested by the Vendor's Agent shall attract withholding tax and neither party may make any objection, requisition or claim for compensation against the other nor against the Vendor's Solicitor or the Vendor's Agent for any withholding tax so deducted from the interest that may be owed to that party.
  - (d) In the event the Vendor does not have an agent acting the deposit shall be held by the Vendor's solicitor in its general trust account and no interest shall be earned on that deposit.

### **Release of Deposit**

40. In the event that the Vendor wishes to purchase another real estate property within Australia prior to completion of this contract:
- (a) the Purchaser agrees to release to the Vendor the deposit or so much of the deposit as is required for the use by the Vendor as a deposit on the purchase of the other property or for the payment of Stamp Duty with respect to that purchase;

## **SPECIAL CONDITIONS FOR 2019 EDITION OF CONTRACT**

- (b) the Vendor shall advise the Purchaser of the particulars of the property they are purchasing and the details of the solicitor or conveyancer acting for the vendor of that other property; and
- (c) The Vendor warrants that upon release of a portion of the deposit in accordance with this clause that such deposit will be paid only to the Trust Account of a Licensed Real Estate Agent, Legal Practitioner or Licensed Conveyancer or in respect of Stamp Duty to the relevant State's Revenue Office.

### **Condition of Property & Improvements**

41. The Purchaser acknowledges that:

- (a) the Purchaser is purchasing the property as a result of the Purchaser's own inspection and enquiries and, if the improvements on the property have been completed, in its present condition and state of repair and subject to all faults and defects both latent and patent; and
- (b) the Vendor has not nor has anyone on the Vendor's behalf made any warranty or representation in respect of the property or any improvements erected or to be erected thereon that are not specifically mentioned herein.
- (c) The Purchaser must satisfy himself on all matters relating to the approvals for the improvements to the property;
- (d) The Vendor does not warrant that they have a current Building Certificate and the Contract is not subject to the issue of a Building Certificate in respect of the whole or any part of the property.
- (e) The Purchaser is not entitled to and must not require the Vendor to make application for or do anything towards obtaining such a Certificate or otherwise to comply with the requirements of the local Council relating to the issue of such a Certificate;
- (f) The Purchaser is not entitled to and must not make any claim or seek any remedy against the Vendor including under Clause 7 in respect of the unavailability of the Building Certificate or the existence of any illegally erected improvements or the demolition of any improvements or otherwise.

### **Real Estate Agent**

- 42. The Vendor warrants that it has not signed any agency agreement in respect of the sale of the property with any Real Estate Agent other than the Vendor's agent named on the front page of this contract. This warranty shall not merge on completion.
- 43. The Purchaser warrants that he has not been introduced to the Vendor or to the property by any Real Estate Agent other than the Vendor's agent named on the front page of this Contract and hereby indemnifies the Vendor against any valid claim for commission made by any other Real Estate Agent who claims to have introduced the Purchaser to the property. This warranty shall not merge on completion.

## SPECIAL CONDITIONS FOR 2019 EDITION OF CONTRACT

### Completion & Interest

44. For the purposes of Clause 15, either party may by serving upon the other at the time after the Completion Date, a notice requiring completion not less than 14 days after service of such notice making time of the essence of this Contract in the terms of such notice.
45. The Vendor is not obliged to remove any charge on the property for any rate, tax or outgoing until the time when completion of this Contract occurs and may serve a Notice to Complete on the Purchaser notwithstanding that, at the time such notice is issued or at any time thereafter, there is a charge on the property for any rate, tax or outgoing.
46. If for any reason not solely attributed to the Vendor, the balance of the purchase monies are not paid by the Purchaser by the Completion Date, then the Purchaser shall as an essential condition of completion pay on completion liquidated damages equivalent to seven percent (7%) per annum (calculated to a daily rate) on the balance of purchase monies from the Completion Date until actual completion.

### Goods and Services Tax (GST)

47. In the event that this contract states the sale is not a taxable supply, but either party subsequently becomes aware that the sale is in fact a taxable supply in whole or part to which the margin scheme does not apply:
  - (a) the purchase price of the front page of this contract shall be deemed not to include any amount of Good and Services Tax (GST);
  - (b) the purchaser agrees to pay the vendor on completion the amount of the GST confirmed by reasonable enquiries with the relevant taxation authority to be applicable to the sale; and
  - (c) the vendor agrees to provide the purchaser with a valid tax invoice in respect of any such taxable supply, permitting the purchaser to seek an input tax credit for the amount of GST;
  - (d) the purchaser shall pay any additional stamp duty arising from the increase in purchase price;

and this clause shall not merge on completion.

### Error in Adjustments

48. If in the 90 days following completion it is discovered by a party that there has been a significant error in the calculation of any outgoing adjusted at settlement or that a particular outgoing was omitted altogether from the settlement adjustments, then that party may serve a notice on the other party outlining the error in calculation together with sufficient supporting documents to evidence the error. Unless the party served with the notice can demonstrate that the previous adjustments were in fact correct, the party served with the notice must reimburse the party who has suffered the loss as a result of the previous error within 14 days of receiving that notice. This clause does not merge on completion.

## **SPECIAL CONDITIONS FOR 2019 EDITION OF CONTRACT**

### **Survey**

49. If a survey report is annexed to this contract, no objection, requisition or claim for compensation shall be made by the Purchaser in respect of any matters disclosed in that Survey Report.

### **Deceased Estate**

50. In the event that vendor is not yet the registered proprietor shown on the title search annexed to this contract for the reason that the registered proprietor is deceased:
- (a) This contract is conditional upon the property being transmitted to the Vendor within 3 months of the date of this contract and the completion date shall be 7 days after the vendor provides the purchaser with an updated title search (or electronic title particulars using PEXA) showing the vendor as the registered proprietor;
  - (b) If the property is not transmitted to the Vendor within 3 months of the date of this contract, then either party may rescind the contract provided that written notice of such rescission is given prior to the property actually being transmitted to the Vendor and in that case the deposit shall be refunded to the Purchaser in accordance with Clause 19 of this Contract.

### **Guarantee if Purchaser a Company**

51. In consideration of the vendor contracting with a corporate purchaser:
- (a) the person or persons who sign this contract on behalf of the corporate purchaser (the guarantors), as evidenced by the guarantors execution of the front page of this contract jointly and severally guarantee the performance by the purchaser of all of the purchaser's obligations under the contract and indemnify the vendor against any cost or loss whatsoever arising as a result of the default by the purchaser in performing its obligations under this contract;
  - (b) The vendor may seek to recover any loss from the guarantors before seeking recovery from the purchaser and any settlement or compromise with the purchaser will not release the guarantors from the obligation to pay any balance that may be owing to the vendor; and
  - (c) This guarantee is binding on the guarantors, their executors, administrators and assigns and the benefit of the guarantee is available to any assignee of the benefit of this contract by the vendor.

### **Conditions of sale of land by auction**

52. If the property is or is intended to be sold at auction:
- (a) Bidders record means the bidders record to be kept pursuant to clause 13 of the Property, Stock and Business Agents Regulation 2014 and section 68 of the Property, Stock and Business Agents Act 2002;
  - (b) The following conditions are prescribed as applicable to and in respect of the sale by auction of land or livestock:
    - (i) The vendor's reserve price must be given in writing to the auctioneer before the auction commences;



## SPECIAL CONDITIONS FOR 2019 EDITION OF CONTRACT

- (ii) A bid for the vendor 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 vendor;
- (iii) The highest bidder is the purchaser, subject to any reserve price;
- (iv) In the event of a disputed bid, the auctioneer is the sole arbitrator and the auctioneer's decision is final;
- (v) The auctioneer may refuse to accept any bid that, in the auctioneer's opinion, is not in the best interests of the vendor;
- (vi) 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;
- (vii) A bid cannot be made or accepted after the fall of the hammer;
- (viii) As soon as practicable after the fall of the hammer the purchaser is to sign the agreement (if any) for sale.
- (c) The following conditions, in addition to those prescribed by subclause (b), are prescribed as applicable to and in respect of the sale by auction of residential property or rural land:
  - (i) All bidders must be registered in the bidders record and display an identifying number when making a bid;
  - (ii) Subject to subclause (d), the auctioneer may make only one vendor bid at an auction for the sale of residential property or rural land and no other vendor bid may be made by the auctioneer or any other person; and
  - (iii) Immediately before making a vendor bid the auctioneer must announce that the bid is made on behalf of the seller or announces 'vendor bid'.
- (d) The following conditions, in addition to those prescribed by subclauses (b) and (c) are prescribed as applicable to and in respect of the sale by auction of co-owned residential property or rural land or the sale of such land by a seller as executor or administrator:
  - (i) More than one vendor bid may be made to purchase interest of a co-owner;
  - (ii) A bid by or on behalf of an executor or administrator may be made to purchase in that capacity;
  - (iii) Before the commencement of the auction, the auctioneer must announce that bids to purchase the interest of another co-owner or to purchase as executor or administrator may be made by or on behalf of the seller;
  - (iv) Before the commencement of the auction, the auctioneer must announce the bidder registration number of any co-owner, executor or administrator or any person registered to bid on behalf of any co-owner, executor or administrator.



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 90/SP64946

SEARCH DATE	TIME	EDITION NO	DATE
24/3/2020	6:20 PM	4	8/9/2018

NO CERTIFICATE OF TITLE HAS ISSUED FOR THE CURRENT EDITION OF THIS FOLIO.  
CONTROL OF THE RIGHT TO DEAL IS HELD BY WESTPAC BANKING CORPORATION.

LAND

LOT 90 IN STRATA PLAN 64946  
AT DEE WHY  
LOCAL GOVERNMENT AREA NORTHERN BEACHES

FIRST SCHEDULE

CAROLYN JANE TALBOT-SAPSFORD (T 7775409)

SECOND SCHEDULE (2 NOTIFICATIONS)

- 1 INTERESTS RECORDED ON REGISTER FOLIO CP/SP64946
- 2 AB986310 MORTGAGE TO WESTPAC BANKING CORPORATION

NOTATIONS

UNREGISTERED DEALINGS: NIL

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

mc1270000206

PRINTED ON 24/3/2020



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: CP/SP64946

SEARCH DATE	TIME	EDITION NO	DATE
24/3/2020	6:20 PM	10	18/10/2019

LAND

THE COMMON PROPERTY IN THE STRATA SCHEME BASED ON STRATA PLAN 64946  
WITHIN THE PARCEL SHOWN IN THE TITLE DIAGRAM

AT DEE WHY  
LOCAL GOVERNMENT AREA NORTHERN BEACHES  
PARISH OF MANLY COVE COUNTY OF CUMBERLAND  
TITLE DIAGRAM SP64946

FIRST SCHEDULE

THE OWNERS - STRATA PLAN NO. 64946  
ADDRESS FOR SERVICE OF DOCUMENTS:  
C/- BRIGHT & DUGGAN  
PO BOX 281  
CROWS NEST  
NSW 1585

SECOND SCHEDULE (6 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 L344662 RIGHT OF WAY APPURTENANT TO THE LAND ABOVE  
DESCRIBED AFFECTING THE PART OF LOT 100 IN DP595110  
SHOWN SO BURDENED IN DP610295
- 3 7431852 POSITIVE COVENANT
- 4 8309916 LEASE TO AUSGRID (SEE AJ106995) OF SUBSTATION NO  
16722 TOGETHER WITH RIGHT OF WAY & EASEMENT FOR  
ELECTRICITY 1.005 WIDE & VARIABLE AFFECTING THE SITE  
DESIGNATED (C) AS SHOWN IN PLAN WITH 8309916. EXPIRES:  
30/11/2100.  
AK971351 LEASE OF LEASE 8309916 TO BLUE ASSET PARTNER PTY  
LTD, ERIC ALPHA ASSET CORPORATION 1 PTY LTD, ERIC  
ALPHA ASSET CORPORATION 2 PTY LTD, ERIC ALPHA  
ASSET CORPORATION 3 PTY LTD & ERIC ALPHA ASSET  
CORPORATION 4 PTY LTD EXPIRES: SEE DEALING. CLAUSE  
2.3 (b) (ii).  
AK971352 LEASE OF LEASE AK971351 TO BLUE OP PARTNER PTY  
LTD, ERIC ALPHA OPERATOR CORPORATION 1 PTY LTD,  
ERIC ALPHA OPERATOR CORPORATION 2 PTY LTD, ERIC  
ALPHA OPERATOR CORPORATION 3 PTY LTD & ERIC ALPHA  
OPERATOR CORPORATION 4 PTY LTD EXPIRES: SEE  
DEALING. CLAUSE 12.1

END OF PAGE 1 - CONTINUED OVER

mc1270000206

PRINTED ON 24/3/2020

NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: CP/SP64946

PAGE 2

SECOND SCHEDULE (6 NOTIFICATIONS) (CONTINUED)

AK971502 MORTGAGE OF LEASE AK971351 TO ANZ FIDUCIARY  
SERVICES PTY LTD  
AK971571 CHANGE OF NAME AFFECTING LEASE 8309916 LESSEE  
NOW ALPHA DISTRIBUTION MINISTERIAL HOLDING  
CORPORATION

5 INITIAL PERIOD EXPIRED

6 AP618593 CONSOLIDATION OF REGISTERED BY-LAWS

SCHEDULE OF UNIT ENTITLEMENT (AGGREGATE: 100000)

STRATA PLAN 64946

LOT	ENT	LOT	ENT	LOT	ENT	LOT	ENT
1	- 1111	2	- 1187	3	- 1055	4	- 1016
5	- 1050	6	- 879	7	- 1055	8	- 1005
9	- 1055	10	- 993	11	- 1055	12	- 959
13	- 1050	14	- 952	15	- 1104	16	- 654
17	- 693	18	- 675	19	- 1010	20	- 1121
21	- 1177	22	- 952	23	- 1175	24	- 958
25	- 1144	26	- 879	27	- 1175	28	- 968
29	- 1099	30	- 978	31	- 1265	32	- 1076
33	- 652	34	- 607	35	- 652	36	- 1223
37	- 1158	38	- 1167	39	- 944	40	- 1167
41	- 854	42	- 1167	43	- 935	44	- 1167
45	- 929	46	- 1167	47	- 953	48	- 1167
49	- 914	50	- 1217	51	- 669	52	- 687
53	- 1045	54	- 1210	55	- 603	56	- 1220
57	- 912	58	- 1256	59	- 920	60	- 1256
61	- 828	62	- 1218	63	- 953	64	- 1203
65	- 945	66	- 1144	67	- 1022	68	- 669
69	- 669	70	- 652	71	- 823	72	- 1324
73	- 993	74	- 1048	75	- 993	76	- 894
77	- 993	78	- 1043	79	- 993	80	- 1010
81	- 993	82	- 1324	83	- 993	84	- 853
85	- 921	86	- 920	87	- 877	88	- 993
89	- 993	90	- 993	91	- 1449	92	- 2312
93	- 2194	94	- 2279	95	- 504	96	- 804
97	- 838						

NOTATIONS

UNREGISTERED DEALINGS: NIL

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

mc1270000206

PRINTED ON 24/3/2020



# LOCATION PLAN

D 6 5 1 1

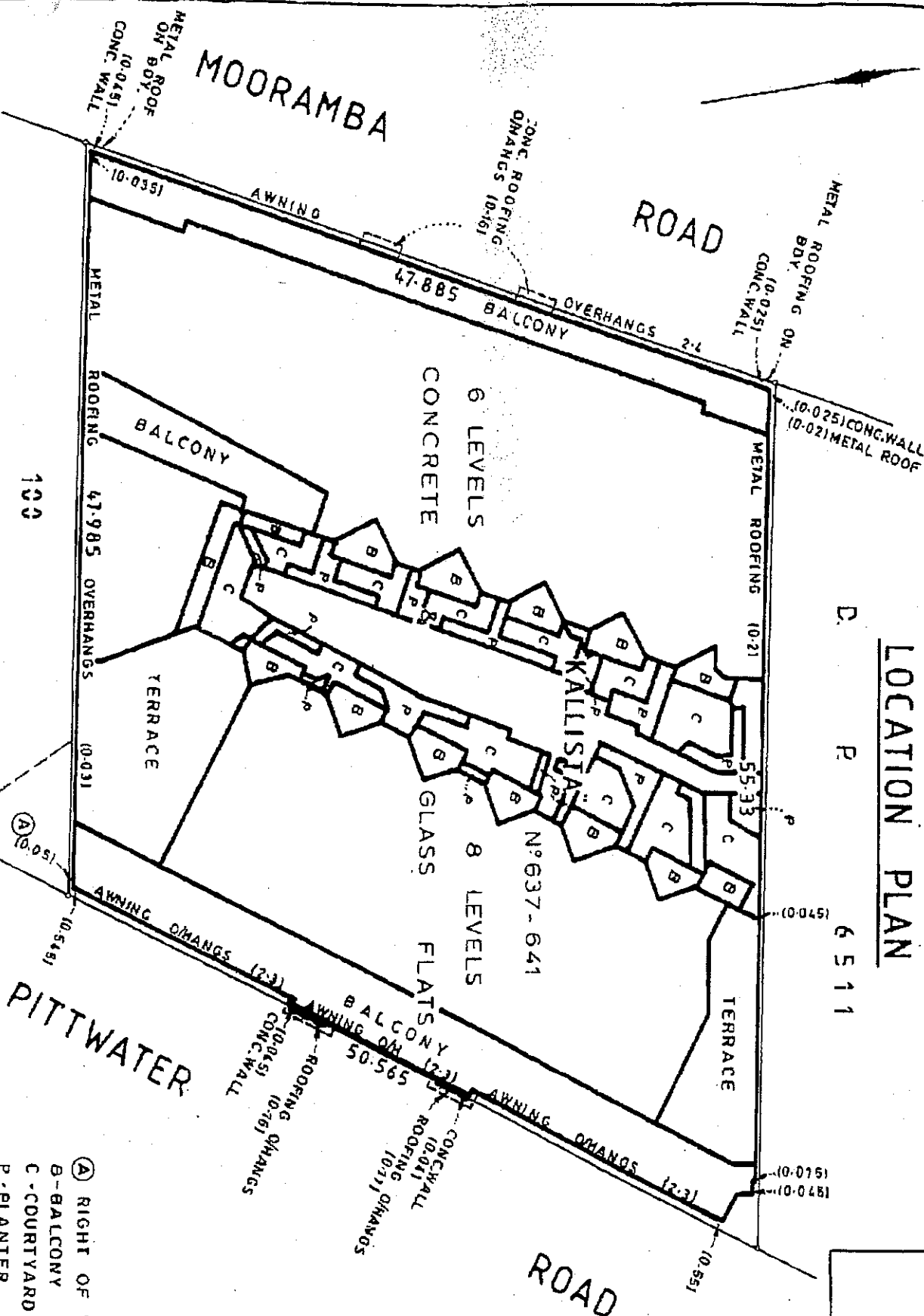
SP64946

D 5 9 5 1 1 0

Reduction Ratio 1 : 250

Lengths are in metres

- ① RIGHT OF WAY IL346621
- B-BALCONY
- C-COURTYARD
- P-PLANTER

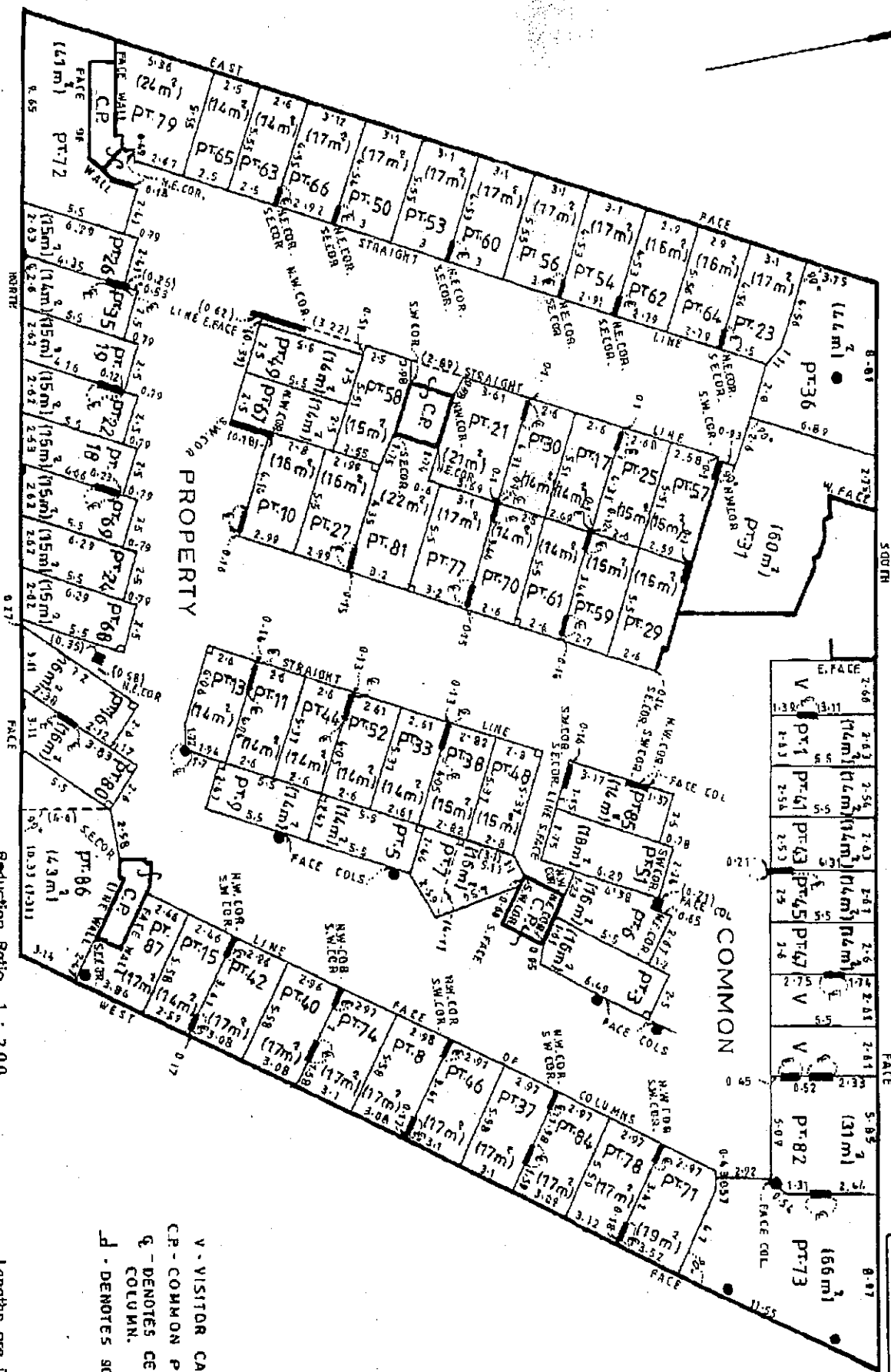


M. S. Andrew

Authorised Person/Personnel/Registered/Chartered

SP64946

SP64946



BASEMENT

Reduction Ratio 1 : 200

Lengths are in metres

V - VISITOR CAR SPACE  
 CP - COMMON PROPERTY  
 Q - DENOTES CENTRE OF FACE OF COLUMN.  
 D - DENOTES 90°

STRATA PLAN REFERENCE: 990607 SP

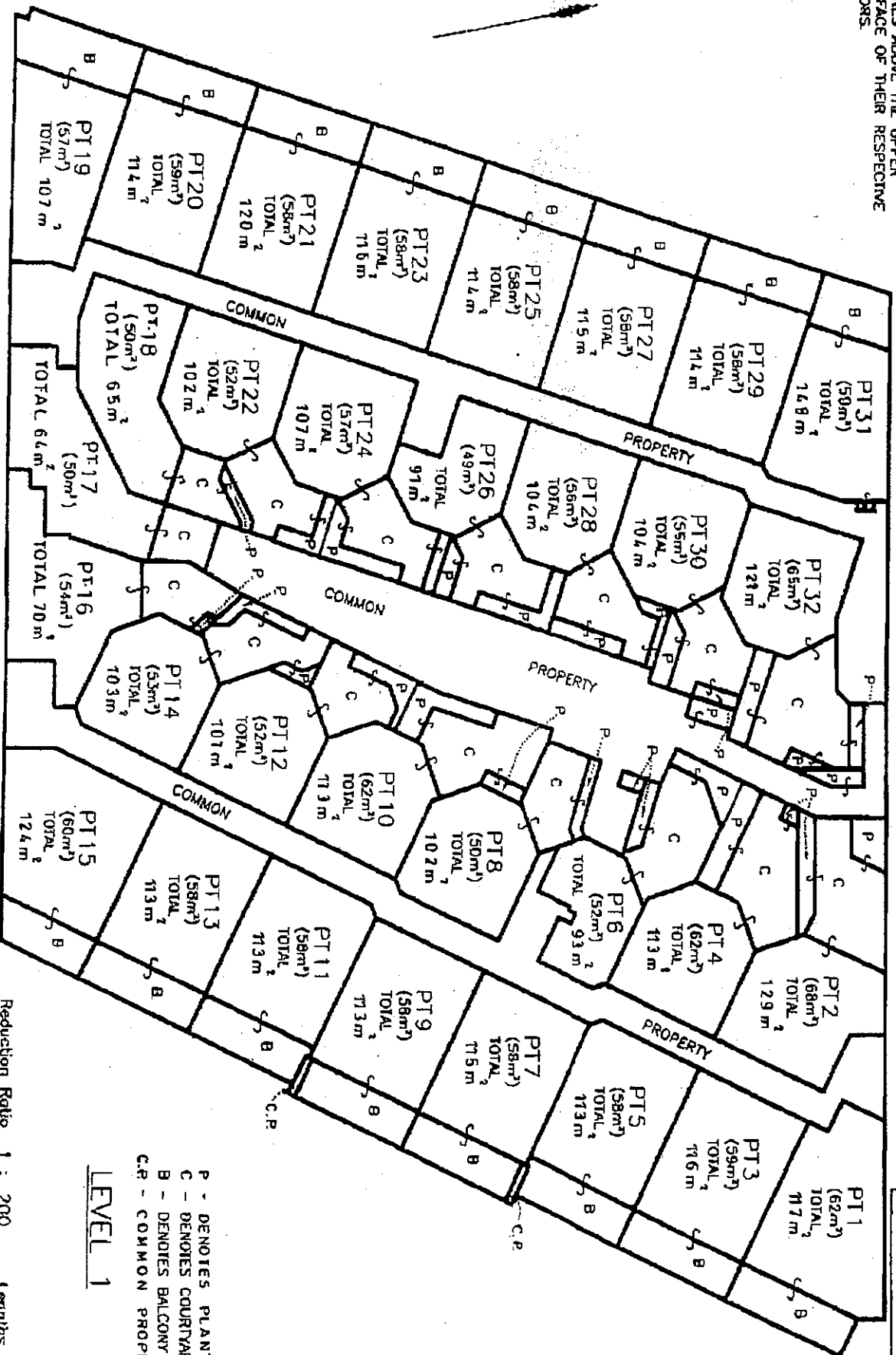


Y - VISITOR CARSPACE  
C - DENOTES CENTRE OF FACE OF COLUMN  
C.R. - COMMON PROPERTY  
C - COURTYARD



THE STRATUM OF THE BALCONES, COURTYARDS AND PLANTERS WHERE NOT COVERED IS LIMITED TO 2.5 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE FLOORS.

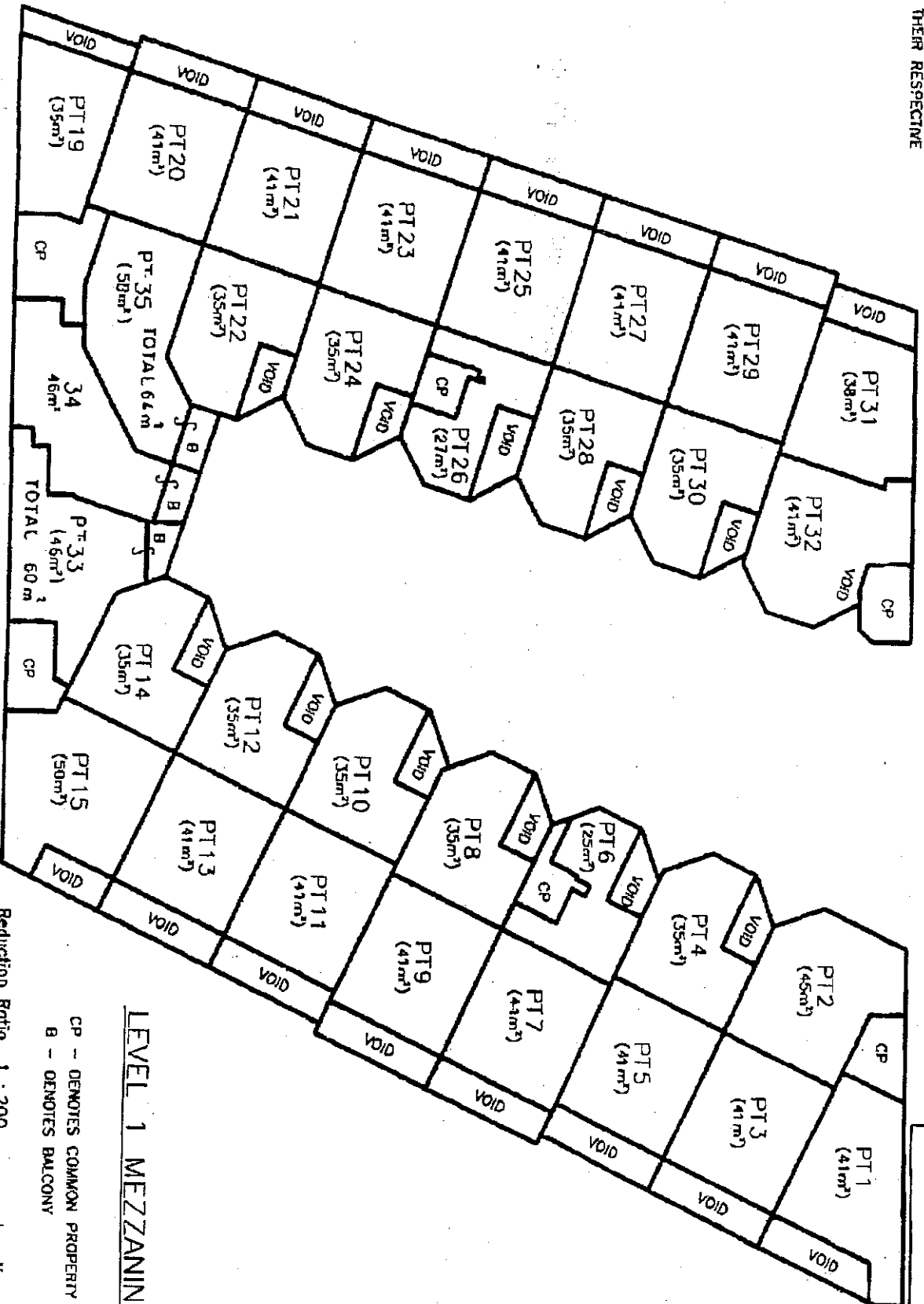
SP64946



M.S. S. S. S.

Authorised Person/Personnel/Personnel/Personnel

THE STRATUM OF THE BALCONIES  
WHERE NOT COVERED IS LIMITED  
TO 2.3 METRES ABOVE THE UPPER  
SURFACE OF THEIR RESPECTIVE  
FLOORS.



SP64946

## LEVEL 1 MEZZANINE

CP - DENOTES COMMON PROPERTY  
B - DENOTES BALCONY

Reduction Ratio 1 : 200

Lengths are in metres

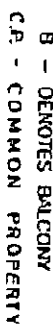
X:\VICTORIA\KIRBY\970607\VALLEYA.DEC-98\00-11-05\A-115.DWG

Approved Stamp

SIGNATURE'S REFERENCE : 970607

Authorised Person/Owner/Manager/Professional Officer

SP64946

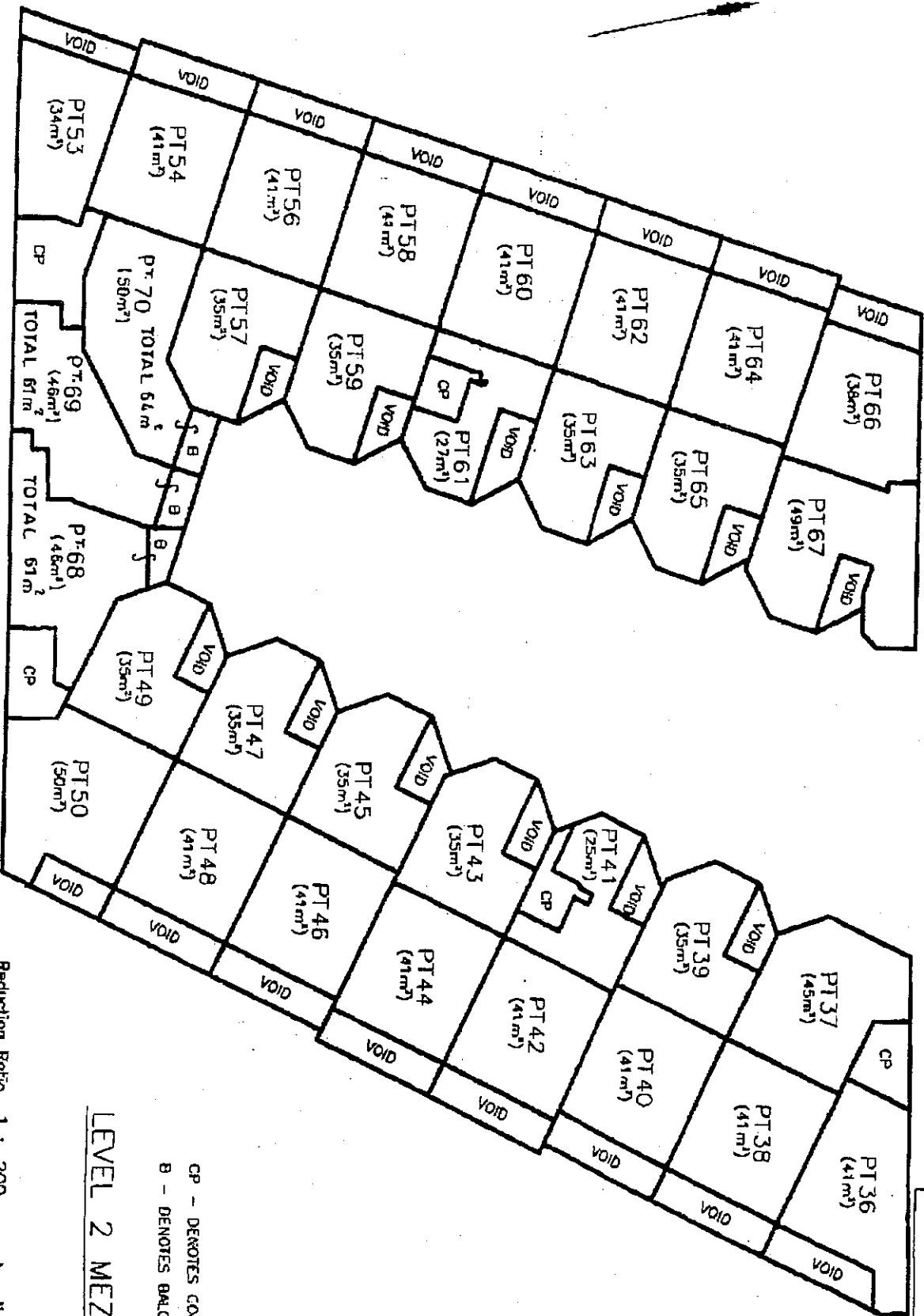


**Lengths are in metres**

Authorized Person/Contract Manager/Approved Credit:

THE STRATUM OF THE BALCONIES WHERE NOT COVERED IS LIMITED TO 2.3 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE FLOORS.

SP64946



**LEVEL 2 MEZZANINE**

CP - DENOTES COMMON PROPERTY  
B - DENOTES BALCONY

Reduction Ratio 1 : 200

Lengths are in metres

Registered Surveyor  
*M. S. Stedman*

Authorised Person/Deputy Surveyor/Deputy Registrar  
*[Signature]*

STRATA PLAN REFERENCE: 970607

B - DENOTES BALCONY  
V - DENOTES VOID  
CP - DENOTES COMMON PROPERTY



Authorized Personnel Only



L344662

69 FEB 27 AM 11 52 69 FEB 25 AM 11 52

NEW SOUTH WALES

New South Wales

STAMP DUTY

## MEMORANDUM OF TRANSFER

(REAL PROPERTY ACT, 1900.)

Fees:-  
Lodgment  
Endorsement116 08  
27/2/69

This form may be used where new restrictive covenants are imposed or easements created or where the simple transfer form is unsuitable.

(Trusts must not be disclosed in the transfer.)

Typing or handwriting in this instrument should not extend into any margin. Handwriting should be clear and legible and in permanent black non-copying ink.

All blanks should be ruled up before signing.

If the estate, strike out "in fee simple" and interline the required alteration.

I, AMPOL PETROLEUM LIMITED of Mansfield Street, Balmain  
a duly incorporated Company having its registered office at  
84 Pacific Highway, North Sydney

(Herein called transferor)

being registered as the proprietor of an estate in fee simple\* in the land hereinafter described, subject, however, to such encumbrances, liens and interests as are notified hereunder, in consideration of the sum of TWENTY FIVE THOUSAND DOLLARS

(\$25,000.00) (the receipt whereof is hereby acknowledged) paid to it by  
HERO'S DRIVE-INS PTY. LIMITED.

do hereby transfer to

Show in BLOCK LETTERS the full name, postal address and description of the persons taking, and if more than one, whether they hold as joint tenants or tenants in common.

HERO'S DRIVE-INS PTY. LIMITED A COMPANY DULY INCORPORATED

AND HAVING ITS REGISTERED OFFICE AT SUITE 201 ALDERSON BUILDING,  
PACIFIC HIGHWAY, CROWS NEST

(herein called transferee)

ALL such its Estate and Interest in ALL the land mentioned in the schedule following:—

The description may refer to the defined residue of the land in a certificate or grant (e.g. "And being residue after transfer number 1") or may refer to parcels shown in Town or Parish Maps issued by the Department of Lands or shown in plans filed in the Office of the Registrar General (e.g. "and being Lot Section D.F. 2").

Unless authorised by Reg. 33, Conveyancing Act Regulations, 1961, a plan may not be annexed to or endorsed on this transfer form.

County	Parish	Reference to Title			Description of Land (if part only)
		Whole or Part	Vol.	Fol.	
CUMBERLAND	MANLY COVE	PART	5101	95	Being the residue of the land comprised in Certificate of Title Volume 5101 Folio 96 after Notice of Resumption No. F135697

And the transferee covenant(s) with the transferor

RESERVING from the land hereby transferred as appurtenant to the land comprised in Certificates of Title Volume 3113 Folio 235, Volume 2732 Folio 119, Volume 4356 Folio 15 and Volume 4356 Folio 26 and to every part thereof (which land is hereinafter called "the Dominant tenement") over the land shown as "proposed right of way (variable width)" in Deposited Plan No. 532153 being part of the land comprised in Certificate of Title Volume 5101 Folio 96 FULL AND FREE RIGHT AND LIBERTY for the Transferor and for every other person who is at any time entitled to an estate or interest in possession in the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and for every person authorised by the Transferor or by such other person, to go pass and repass at all times and for all purposes with or without animals or vehicles or both to and from the said dominant tenement or any such part thereof.

AND the Transferee COVENANTS with the Transferor that no building or other structure of any description or any part of any such building or structure or any obstruction whatsoever shall at any time hereafter be erected or placed upon or be over that part of the land hereby transferred shown as "proposed right of way (variable width)" in Deposited Plan No. 532153 AND for the purpose of Section 88 of the Conveyancing Act, 1919 (as amended) it is hereby agreed and declared that -

The land to which the benefit of this restriction is appurtenant is the land comprised in Certificates of Title Volume 3113 Folio 235, Volume 2732 Folio 119, Volume 4356 Folio 15 and Volume 4356 Folio 26 and any part thereof.

The land which is subject to the burden of this restriction is that part of the land hereby transferred shown as "proposed right of way (variable width)" in Deposited Plan No. 532153 and any part thereof being part of the land comprised in Certificate of Title Volume 5101 Folio 96.

This restriction may be released varied or modified by Ampol Petroleum Limited.

AND the Transferee FURTHER COVENANTS with the Transferor as follows -

1. That no petrol service station or motor garage shall be erected on the land hereby transferred or on any part thereof.
2. That the land hereby transferred or any part thereof will not be used for the purpose in any way connected with the carrying on thereon of a business of a petrol service station or of a motor garage or of the sale of motor fuels oils or other petroleum products.
3. That no building or other structure of any description or any part of such building or structure shall at any time hereafter be erected or placed upon or be over the land hereby transferred within a distance of fifteen (15) feet from the alignment of Pittwater Road.
4. That no fence shall be erected on the land hereby transferred to divide it from any adjoining land owned by the Transferor without the consent of the Transferor but such consent shall not be withheld if such fence is erected without expense to the Transferor and in favour of any person dealing with the Transferee such consent shall be deemed to have been given in respect of every fence for the time being erected provided however that this covenant (so far only as it concerns fencing) shall be binding on the Transferee only during the ownership of the said adjoining land by the Transferor.

AND for the purpose of Section 88 of the Conveyancing Act 1919 (as amended) it is hereby agreed and declared that -

The land to which the benefit of these restrictions is appurtenant is the land comprised in Certificates of Title Volume 3113 Folio 235, Volume 2732 Folio 119, Volume 4356 Folio 15 and Volume 4356 Folio 26 and any part thereof.

The land which is subject to the burden of these restrictions is the land hereby transferred.

These restrictions may be released varied or modified by Ampol Petroleum Limited.

#### ENCUMBRANCES, &c., REFERRED TO:

1. Reservations and conditions contained in the original Crown Grant including reservation of all ~~rights~~ of gold and of silver.
2. Right of Drainage reserved by Transfer No. A617810.
3. Subject to the provisions of Section 604 of the Local Government Act 1919 (as amended).

d Strike out if unnecessary, or suitably adjust.

(i) If any encumbrances are to be created or any exceptions to be made:

or  
(ii) If the statutory covenants implied by the Act are intended to be varied or modified.

Covenants should comply with the provisions of Section 88 of the Conveyancing Act, 1919.

\* A very short note will suffice.

X 1112-1 3: 07-1

If the Transferor or Transferee signs by a mark, the attestation must state that the instrument was read over and explained to him, and that he appeared fully to understand the same.

Execution in New South Wales may be proved if this instrument is signed or acknowledged before the Registrar General, or a Deputy Registrar, a J.P., or Commissioner for Affidavits, to whom the Transferor is known, otherwise the attesting witness should appear before one of the above functionaries who having received an affirmative answer to each of the questions set out in Sec. 108 (1) (b) of the Real Property Act should sign the certificate at the foot of this page.

Execution may be proved where the parties are resident:—

(a) in any part of the British dominions outside the State of New South Wales by signing or acknowledging before the Registrar General or Recorder of Titles of such Possession, or before any Judge, Notary Public, Justice of the Peace for New South Wales, or Commissioner for taking affidavits for New South Wales, or Mayor or Chief Officer of any municipal or local government corporation of such part, or Justice of the Peace for such part, or the Governor, Government Resident, or Chief Secretary of such part or a British Consular Officer or Australian Consular Officer exercising his functions in that part or such other person as the Chief Justice of New South Wales may appoint.

(b) in the United Kingdom by signing or acknowledging before the Mayor or Chief Officer of any corporation or a Notary Public.

(c) in any foreign place by signing or acknowledging before (i) a British Consular Officer (which includes a British Ambassador, Envoy, Minister, Charge d'Affaires, Secretary of Embassy or Legation, Consul-General, Acting Consul-General, Consul, Acting Consul, Vice-Consul, Acting Vice-Consul, Pro-Consul, Consular Agent and Acting Consular Agent), (ii) an Australian Consular Officer (which includes an Ambassador, High Commissioner, Minister, Head of Mission, Commissioner, Charge d'Affaires, Counsellor or Secretary at an Embassy, High Commissioner's Office or Legation, Consul-General, Consul, Vice-Consul, Trade Commissioner and Consular Agent) and includes a person appointed to hold or act in the office of Counsellor, Official Secretary or Assistant Official Secretary at the Australian Consulate-General in Singapore or of Secretary at the Australian Military Mission in Berlin or of Agent General in London of the State of New South Wales or of Secretary, N.S.W. Government Office, London, who should affix his seal of office, or the attesting witness may make a declaration of the due execution thereof before one of such persons (who should sign and affix his seal) to such declaration, or such other person as the said Chief Justice may appoint.

Strikes out unnecessary words. Add any other matter necessary to show that the power is effective.

To be signed by Registrar General, Deputy Registrar General, a Notary Public, J.P., Commissioner for Affidavits, or other functionary before whom the attesting witness appears. Not required if the instrument itself is signed or acknowledged before one of those parties.

To be signed by Registrar General, Deputy Registrar General, a Notary Public, J.P., Commissioner for Affidavits, or other functionary before whom the attesting witness appears. Not required if the instrument itself is signed or acknowledged before one of those parties.

To be signed by Registrar General, Deputy Registrar General, a Notary Public, J.P., Commissioner for Affidavits, or other functionary before whom the attesting witness appears. Not required if the instrument itself is signed or acknowledged before one of those parties.

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To be signed by Registrar General, Deputy Registrar General, a Notary Public, J.P., Commissioner for Affidavits, or other functionary before whom the attesting witness appears. Not required if the instrument itself is signed or acknowledged before one of those parties.

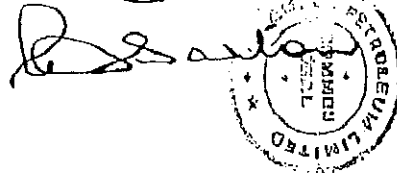
Signed at North Sydney the thirteenth day of February 1969

Signed in my presence by the transferor  
THE COMMON SEAL of AMPOL  
WHO IS PERSONALLY KNOWN TO ME  
PETROLEUM LIMITED was hereunto  
duly affixed by the authority of  
the Board of Directors in the  
presence of:

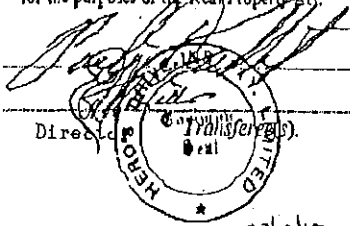
[Signature]  
General Secretary



Transferor's Mark



I Accepted, and I hereby certify this Transfer to be correct  
for the purposes of the Real Property Act.



THE COMMON SEAL of HERO'S  
SIGNED in my presence by the transferee  
DRIVE-INS PTY. LIMITED was  
WHO IS PERSONALLY KNOWN TO ME  
hereunto affixed by authority  
of the Board of Directors in the  
presence of:

[Signature]  
Secretary

### MEMORANDUM AS TO NON-REVOCATION OF POWER OF ATTORNEY.

(To be signed at the time of executing the within instrument.)

Memorandum where by the undersigned states that he has no notice of the revocation of the Power of Attorney registered No. \_\_\_\_\_ Miscellaneous Register under the authority of which he has just executed the within transfer.

Signed at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
Signed in the presence of—

### CERTIFICATE OF J.P., &c., TAKING DECLARATION OF ATTESTING WITNESS.\*

Appeared before me, at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, one thousand \_\_\_\_\_ and declared that he personally knew \_\_\_\_\_ the person signing the same, and whose signature thereto he has attested, and that the name purporting to be such signature of the said \_\_\_\_\_ is \_\_\_\_\_ own handwriting, and that \_\_\_\_\_ he was of sound mind, and freely and voluntarily signed the same.

\* If signed by virtue of any power of attorney, the original power must be registered in the Miscellaneous Register, and produced with each dealing, and the memorandum of non-revocation on back of form signed by the attorney before a witness.

† N.B.—Section 117 requires that the above Certificate be signed by each Transferor or his Solicitor or Conveyancer, and renders any person falsely or negligently certifying liable to a penalty, also to damages recoverable by parties injured. Acceptance by the Solicitor or Conveyancer (who must sign his own name, and not that of his firm) is permitted only when the signature of the Transferor cannot be obtained without difficulty, and when the instrument does not impose a liability on the party taking under it. When the instrument contains some special covenant by the Transferor or is subject to a mortgage, encumbrance or lease, the Transferor must accept personally.

No alterations should be made by erasure. The words rejected should be scored through with the pen, and those substituted written over them, the alteration being verified by signature or initials in the margin, or noticed in the attestation.



No. \_\_\_\_\_

Address

M. M. ALLEN & CO.  
 LEGAL SEARCHERS  
 77 KING ST., SYDNEY  
 PHONE 29-3787

(N.B.—Before execution read marginal note.)

 $\mathbb{I}_i$ 

This discharge is appropriate to a transfer of part of the land in the Mortgage. The mortgagee should execute a formal discharge where the land transferred is the whole of or the residue of the land in the Certificate of Title or Crown Grant or is the whole of the land in the mortgage.

who is personally known to me

*Morigugee.*

To be filled in by person lodging dealing

1.	<div style="text-align: center;"> <p>26.01.19</p> <p><i>M. S. S. S.</i></p> </div>	Received Docs.
2.		Nos.
3.		
4.		
5.		
6.		
7.		Receiving Clerk

Indexed	MEMORANDUM OF TRANSFER <i>Int. creating Right of Way &amp; Conveyance</i>
Checked by	Particulars entered in Register Book  <i>23<sup>rd</sup> April 1969</i>
Passed (in S.D.B.) by	at <i>12 o'clock</i>
Signed by	<i>Joubert</i> Registrar General

### PROGRESS RECORD

PROGRESS RECORD		
	Initials	Date
Sent to Survey Branch		
Received from Records		
Draft written		
Draft examined		
Diagram prepared		
Diagram examined		
Draft forwarded		
Supl. of Engineers		
Cancellation Cert.		

VOL. \_\_\_\_\_
FOL. \_\_\_\_\_

**IS FOR DEPARTMENTAL USE.**

**EXTRA FEES**

42894

8100—2 8101—

**WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION**

OFFICE USE ONLY

1. Duane Richard Dowds, Registrar General for New South Wales, certify that the above is a true and correct copy of the present record of a document in my custody this 2nd day of July, 1980

*h*\_\_\_\_\_

# REQUEST

New South Wales  
Real Property Act 1900

7431852N



(A) **STAMP DUTY**  
If applicable:

Office of State Revenue use only

(B) **TITLE**

Folio Identifier  
11/1015244

(C) **REGISTERED DEALING**  
If applicable:

(D) **LODGED BY**

LTO Box

927N

Name, Address or DX and Telephone

WOOD MARSHALL WILLIAMS, Solicitors  
Level 2 69696 Pittwater Road, Brookvale, 2100  
DX 626 S SYDNEY Tel: (02)9938 2444  
Reference (15 d 5 character max):

Dealing Code

R

(E) **APPLICANT**

WARRINGAH COUNCIL  
of 725 Pittwater Road, D Dee Why, 2099, NSW

REGISTERED PROPRIETOR:  
CHANTAL HOLDINGS PTY LTD - ACN 070 009 380  
of 2035 Pittwater Road, 11, Bayview NSW 2104

(F) **REQUEST**

POSITIVE COVENANT:

PURSUANT TO SECTION 88E (3) CONVEYANCING ACT 1919 REAL PROPERTY ACT 1900

Warringah Council of 725 Pittwater Road, Dee Why in the State of New South Wales a prescribed authority within the meaning of S88E(1) of the Conveyancing Act 1919, hereby imposes on the land above and in accordance with the terms of Annexure "A" hereto the Positive Covenant, and applies to have such covenant recorded in the Register.

PC

WARRINGAH COUNCIL

Authorised Person

**ANNEXURE "A"**

**TERMS OF POSITIVE COVENANT**

This is Annexure "A" to the Positive Covenant imposed by Warringham Council on the land comprised in Folio Identifier 11/1015244.

The Registered Proprietor covenants with the Warringham Council ("Council") that they will maintain and repair the structure and works on the land in accordance with the following terms and conditions:

- I. The Registered Proprietor will
  - i) Keep the structure and works clean and free from silt, rubbish and debris;
  - ii) Maintain and repair at the sole expense of the registered proprietor the whole of the structure and works so that it functions in a safe and efficient manner.
- II. For the purpose of ensuring observance of the covenant the Council may by its servants and 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.
- III. 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.
- IV. Pursuant to Section 88F(3) of the Act the authority shall have the following additional powers pursuant to this covenant:
  - i) In the event that the registered proprietor fails to comply with the terms of written notice issued by the Council as set out above the Council or its authorised agent may enter the land with all necessary equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in III hereof.
  - ii) The Council may recover from the registered proprietor or in a Court of competent jurisdiction:
    - (a) Any expense reasonably incurred by it in exercising its powers under sub paragraph (i) 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
- V. This covenant shall bind all persons who claim under the registered proprietors as stipulated in Section 88E(5) of the Act.

**FOR THE PURPOSE OF THIS COVENANT:**

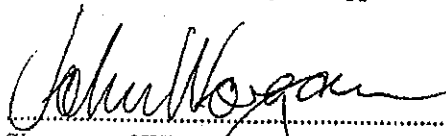
Structure and Works shall mean the on-site storm water or detention system constructed on the land as detailed on the plans approved by Warringham Council numbers C02D a) and C03B, including all gutters, pipes, drains, walls curbs, pits, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater on the land.

The Act means the Conveyancing Act 1919.

**WARRINGAH COUNCIL**  
  
Authorised Person

(G) Certified correct for the purposes of the Real Property Act 190000. DATE 16/02/01

Signed in my presence by the Applicant who is personally known to me

  
Signature of Witness

John Morgan  
Name of Witness (Block Letters)

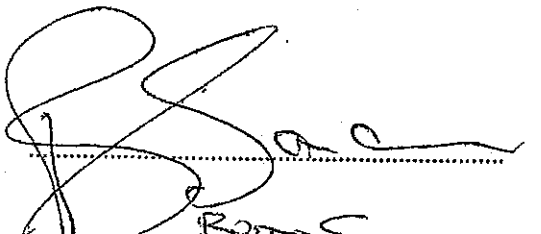
17, 16 O'Connell St Sydney  
Address of Witness

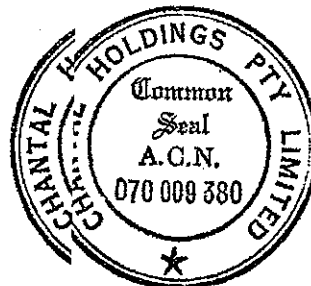
WARRINGGAH COUNCIL  
  
Authorised Person

WARRINGGAH COUNCIL Authorised Person

ROBERT BARISUTO  
Print Name ne of Authorised Person

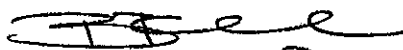
The Registered Proprietor hereby consents:

  
BRETT SANDROSS



DIRECTOR  
CHANTAL HOLDINGS P/L

Witnessed by:

  
Belinda Palmer

ING BANK N.V. ARBN 280 178 196  
by its attorneys

under Power of Attorney dated 2nd April  
1998 registered Book 4197 No. 891 who  
certify that at the time of the execution by  
them of this instrument that they have no  
notice of the revocation of the said Power  
of Attorney

MARK MULLINGTON

ROYAL LESLIE MOORE

Form: 07L  
Release: 1.1  
www.lpi.nsw.gov.au

**LEASE**  
New South Wales  
Real Property Act 1901



**8309916W**

PRIVACY NOTE: this information is legally required and

**STAMP DUTY**

Office of State Revenue use only

NEW SOUTH WALES DUTY  
29-01-2002 0000876187-001  
SECTION 179-ORIGINAL  
NO DUTY PAYABLE

**(A) TORRENS TITLE**

Property leased: if appropriate, specify the part or premises

Certificate of Title CP/SP64946

PART being the premises shown on the plan heretofore annexed marked "A" and thereon described as "Substation Premises No. 16722 'Pittwater Sturdee'" hereafter referred to as the "demised premises" together with the right of way and easement referred to in clauses 1 and 2 of Annexure "B"

**(B) LODGED BY**

Delivery Name, Address or DX and Telephone

Box **CITYLINK & LEGALITIS**

**481 REF**

Reference: BP/PVC.02.0094

*Bartiers  
Peter Cahill*

CODE

**L**

**(C) LESSOR**

THE OWNERS - STRATA PLAN NO. 64946  
ABN:

The lessor leases to the lessee the property referred to above.

**(D)**

Encumbrances (if applicable):

**(B) LESSEE**

ENERGYAUSTRALIA  
ABN 67 505 337 385

**(F)**

**TENANCY:**

- (G) 1. TERM:** Ninety nine (99) years at a rental of 10 cents per annum if demanded
- 2. COMMENCING DATE:** 1 December 2001
- 3. TERMINATING DATE:** 30 November 2100
- 4. With an OPTION TO RENEW** for a period of    set out in clause    of
- 5. With an OPTION TO PURCHASE** set out in clause    of
- 6. Together with and reserving the RIGHTS** set out in clause s 1 & 2 of Annexure "B"
- 7. Incorporates the provisions set out in ANNEXURE "B"** hereto.
- 8. Incorporates the provisions set out in MEMORANDUM** filed at Land and Property Information New South Wales as No. W578000
- 9. The RENT** is set out in    No.    of

All handwriting must be in block capitals.

Total Pages (office use only)   

Page 1 of 1

LAND AND PROPERTY INFORMATION NSW

DATE

24 JANUARY 2002



(H)

Certified correct for the purposes of the Real Property Act 1900 by the corporation named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below.

Corporation: The Owners - Strata Plan No. 64946

Authority: Section 238 of the Strata Schemes Management Act 1996

Signature of authorised person:

Signature of authorised person:

Name of authorised person: M L M Carmack

Name of authorised person:

Office held: STRATA MANAGER

Office held:

I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the person(s) named below who signed this instrument pursuant to the power of attorney specified.

Signature of witness:

Signature of attorney:

Name of witness: GARY SMITH  
Address of witness: CI- ENERGY AUSTRALIA  
570 GEORGE STREET, SYDNEY

Attorney's name: GRANT KENNETH GREENE SMITH  
Signing on behalf of: EnergyAustralia  
Power of attorney-Book: 4290  
-No.: 806

(I) **STATUTORY DECLARATION**

I,  
solemnly and sincerely declare that—

1. The time for the exercise of option to \_\_\_\_\_ in expired lease No. \_\_\_\_\_ has ended;
2. The lessee under that lease has not exercised the option

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at \_\_\_\_\_ in the State of New South Wales

on \_\_\_\_\_  
in the presence of—

Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:

Qualification of witness:



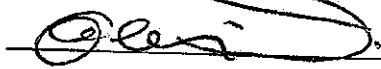


**ANNEXURE "B" TO MEMORANDUM OF LEASE**  
**MADE THE 24<sup>TH</sup> DAY OF JANUARY 2002**  
**BETWEEN THE OWNERS - STRATA PLAN NO. 64946 AS LESSOR**  
**and ENERGIAUSTRALIA AS LESSEE**

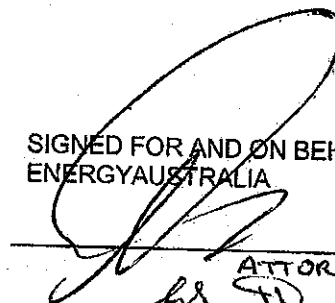
The Lessee shall have the benefit of the following rights and liberties;

1. The Lessee shall have full right and liberty for its officers servants workmen agents and contractors with or without tools materials plant and other apparatus and vehicles to pass and repass at all times of the day or night during the term hereby created over the land marked "Right of Way and Easement for Electricity (1.005 Wide & Variable Width)" on the plan hereto annexed marked "A" (hereinafter referred to as "right of way") and during such times as the Lessee considers necessary to park vehicles upon the said right of way PROVIDED HOWEVER that access for the Lessor its agents tenants or licensees is not unnecessarily impeded.
2. The Lessee shall have full right liberty and licence for its officers servants workmen agents and contractors during the term hereby created to construct lay down dismantle replace repair renew and maintain underground/overhead electricity cables through beneath or over the land marked "Right of Way and Easement for Electricity (1.005 Wide & Variable Width)" on the plan hereto annexed marked "A" (hereinafter referred to as "easement") AND ALSO free and uninterrupted passage of electricity through the cables within the said easement.
3. Clause 5 of Memorandum W578000 is deleted and replaced by the following words:-  
  
"The Lessee shall have the right to use the substation installation and easement for the purpose of supplying other customers of the Lessee. In approving the connection of other electrical loads to the substation the Lessee will give priority to electrical loads which are located within the premises. If required by the Lessor, the Lessee will exclusively supply the Lessor from the substation installation upon the Lessor paying the Lessee's costs (which shall be determined in the Lessee's absolute discretion) for making alternate supply arrangements for any other customers of the Lessee supplied by the substation installation."

SIGNED FOR AND ON BEHALF OF  
THE OWNERS - STRATA PLAN NO. 64946



SIGNED FOR AND ON BEHALF OF  
ENERGIAUSTRALIA



ATTORNEY  
WITNESS

**Certificate of Owners Corporation  
(dealing or plan dedication of road or reserve)**

**Approved Form 9**

**CI.25(1)(F)/CI.26(1)(L)**

**Strata Schemes (Freehold Development) Act 1973**

**Strata Schemes (Leasehold Development) Act 1986**

**Certificate of Owners Corporation**

In pursuance of the \* Strata Schemes (Freehold Development) Act 1973, or \* Strata Schemes (Leasehold Development) Act 1986, The Owners - Strata Plan No. 64946 hereby certifies that:

1. the \* dealing \* ~~plan~~ <sup>†</sup> *Lease to EnergyAustralia* was \* ~~executed~~ \* ~~accepted~~ \* sealed by it pursuant to a special resolution passed in accordance with the requirements of the above Act;
2. the requirements of section 28(3)(a)(ii) or section 32(3)(a)(ii) of the above Act have been complied with in respect of the said \*dealing \* ~~plan~~.

The common seal of the Owners - Strata Plan No. 64946 was affixed hereto on 16 January 2002 in the presence of Michael M Cormack being the person(s) authorised by section 238 of the Strata Schemes Management Act 1996 to attest the affixing of the seal.



Signature

Signature

M. L. M. Cormack  
Print Name and Capacity  
STRATA MANAGER

Print Name and Capacity

Date

\* Strike out whichever is inapplicable.

† Set out sufficient particulars to identify positively the transfer or lease to which the certificate relates.

**Certificate re Initial Period Expired**

**Approved Form 10**

CI.25(1)(F)/CI.26(1)(L)

**Strata Schemes (Freehold Development) Act 1973**

**Strata Schemes (Leasehold Development) Act 1986**

**Certificate re Initial Period**

In pursuance of the \* Strata Schemes (Freehold Development) Act 1973, \* Strata Schemes (Leasehold Development) Act 1986, The Owners - Strata Plan No. 64946 hereby certifies that in respect of the strata scheme based on Strata Plan No. 64946:

\*(a) the initial period, as defined by that Act, expired before:

- \* issue by the \*local council/\* accredited certifier on ..... of a certificate referred to in \* section 9(3)(b) \* section 11(2)(b).
- \* issue by the \*local council/\* accredited certifier on ..... of a certificate referred to in \* section 13(2)(a) \* section 16(2)(a).
- \* issue by the owners corporation on 16 January 2002 ..... of a certificate referred to in section 28(4)(a) ~~\*section 32(4)(a).~~

\*(b) at the date of issue of a certificate referred to in section \* 9(3)(b); \* 13 (2)(a) or \* 28(4)(a) \* section 11(2)(b); \* 16(2)(a) or \* 32(4)(a) the original proprietor owned all of the lots in the strata scheme and any purchaser under an exchanged contract for purchase of a lot in the strata scheme consented to any plan or dealing that is being lodged along with this certificate.

The common seal of the Owners - Strata Plan No. 64946 was hereunto affixed on 16 January 2002 ..... in the presence of Michael M. Carmack ..... being the person(s) authorised by section 238 of the Strata Schemes Management Act 1996 to attest the affixing of the seal.



[Signature]  
Signature

.....  
Signature

M.L.M. Carmack  
Print Name and Capacity  
STRATA MANAGER

.....  
Print Name and Capacity

\* Strike out whichever is inapplicable.

## Northern Beaches Council Planning Certificate – Part 2

**Applicant:** The Search People  
GPO Box 1585  
SYDNEY NSW 2001

**Reference:** 2000N-39581  
**Date:** 25/03/2020  
**Certificate No.** ePLC2020/2049

**Address of Property:** 313/637-641 Pittwater Road DEE WHY NSW 2099  
**Description of Property:** Lot 90 SP 64946

---

## 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 19 – Bushland in Urban Areas  
State Environmental Planning Policy 21 – Caravan Parks  
State Environmental Planning Policy 33 – Hazardous and Offensive Development  
State Environmental Planning Policy 50 – Canal Estate Development  
State Environmental Planning Policy 55 – Remediation of Land  
State Environmental Planning Policy 64 – Advertising and Signage  
State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development  
State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)  
State Environmental Planning Policy (Affordable Rental Housing) 2009  
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004  
State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017  
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008  
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004  
State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State Significant Precincts) 2005

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Primary Production and Rural Development) 2019

State Environmental Planning Policy (Koala Habitat Protection) 2019

Sydney Regional Environmental Plan No 20-Hawkesbury-Nepean River (No 2-1997)

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Sydney Regional Environmental Plan No 9-Extractive Industry (No 2-1995)

## **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 - Manly Creek Riparian Lands, Manly Vale (in the vicinity of “Mermaid Pool”)**

**Applies to: Crown Land:**

- Part Lot 7370 DP1165551 being land adjoining 102 King Street, Manly Vale
- Part Lot 7369 DP1165551 Wandella Road, Allambie Heights, south of Jenna Close, Allambie heights
- Lot 7371 DP1165577
- Part unmade road at the southern end of Wandella Road, King Street, Manly Vale

**Outline:** Proposed amendment to WLEP 2011 to:

- Amend Land Zoning Map to change the zoning from R2 (Low Density Residential) to RE1 (Public Recreation).
- Amend Height of Building Map and Minimum Lot Size Map to remove the residential development standards for height and minimum lot size from all of the subject lots.

**Council resolution:** 27 November 2018

**Gateway Determination:** 9 August 2019

**Planning Proposal - Freshwater Village Carpark Reclassification**

**Applies to land:** Oliver Street carpark and Lawrence Street carpark, Freshwater

**Outline:** Amends WLEP 2011 to:

- Amend Schedule 4 Part 1 to include reference to the land
- Amend LZN\_010 map to change the zoning from RE1 - Public Recreation to SP2 - Infrastructure
- Amend HOB\_010 map to implement a maximum height of building of 3 metres.

**Council resolution:** 27 November 2018

**Gateway determination:** 23 September 2019

### **1.3 Development Control Plans**

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

Warringah Development Control Plan 2011

## **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 B4 Mixed Use**

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

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To reinforce the role of Dee Why as the major centre in the sub-region by the treatment of public spaces, the scale and intensity of development, the focus of civic activity and the arrangement of land uses.
- To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as being comfortable, interesting and safe.
- To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.
- To encourage site amalgamations to facilitate new development and to facilitate the provision of car parking below ground.

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

Home-based child care; Home occupations

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

Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Medical centres; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Shop top housing; Any other development not specified in item 2 or 4

#### **4 Prohibited**

Advertising structures; Agriculture; Air transport facilities; Animal boarding or training establishments; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Environmental facilities; Exhibition villages; Extractive industries; Forestry; Freight transport facilities; Heavy industrial storage establishments; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Marinas; Mooring pens; Moorings; Open cut mining; Port facilities; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Residential accommodation; Rural industries; Service stations; Sex services premises; Storage premises; Transport depots; Vehicle body repair workshops; Vehicle repair stations; Waste or resource management facilities; Water recreation structures; Wharf or boating facilities; Wholesale supplies

#### **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 Medium Density Code**

Complying Development under the Low Rise Medium Density Code may not be carried out on all the land.

**Note:** Pursuant to clause 3B.63 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, all land in Northern Beaches Council is a 'deferred area' meaning that the Low Rise Medium Density Code does not apply until 1 July 2020.

#### **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) Development on the land or part of the land for the purposes of dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (not including development for the purposes of group homes or seniors housing) is subject to flood related development controls.
- (2) Development on the land or part of the land for any other purpose is subject to flood related development controls.

## **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:

### **Dee Why Town Centre Contributions Plan - in force 13 July 2019**

This Plan was approved to fund the delivery of local infrastructure to support growth in the Dee Why Town Centre.

## **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.

### **Draft Northern Beaches Bush Fire Prone Land Map 2018**

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 17 (1) or 38 (1) of *State Environmental Planning Policy (Affordable Rental Housing) 2009* 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.

A handwritten signature in black ink, appearing to read 'Ray Brownlee', with a long horizontal stroke extending to the right.

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

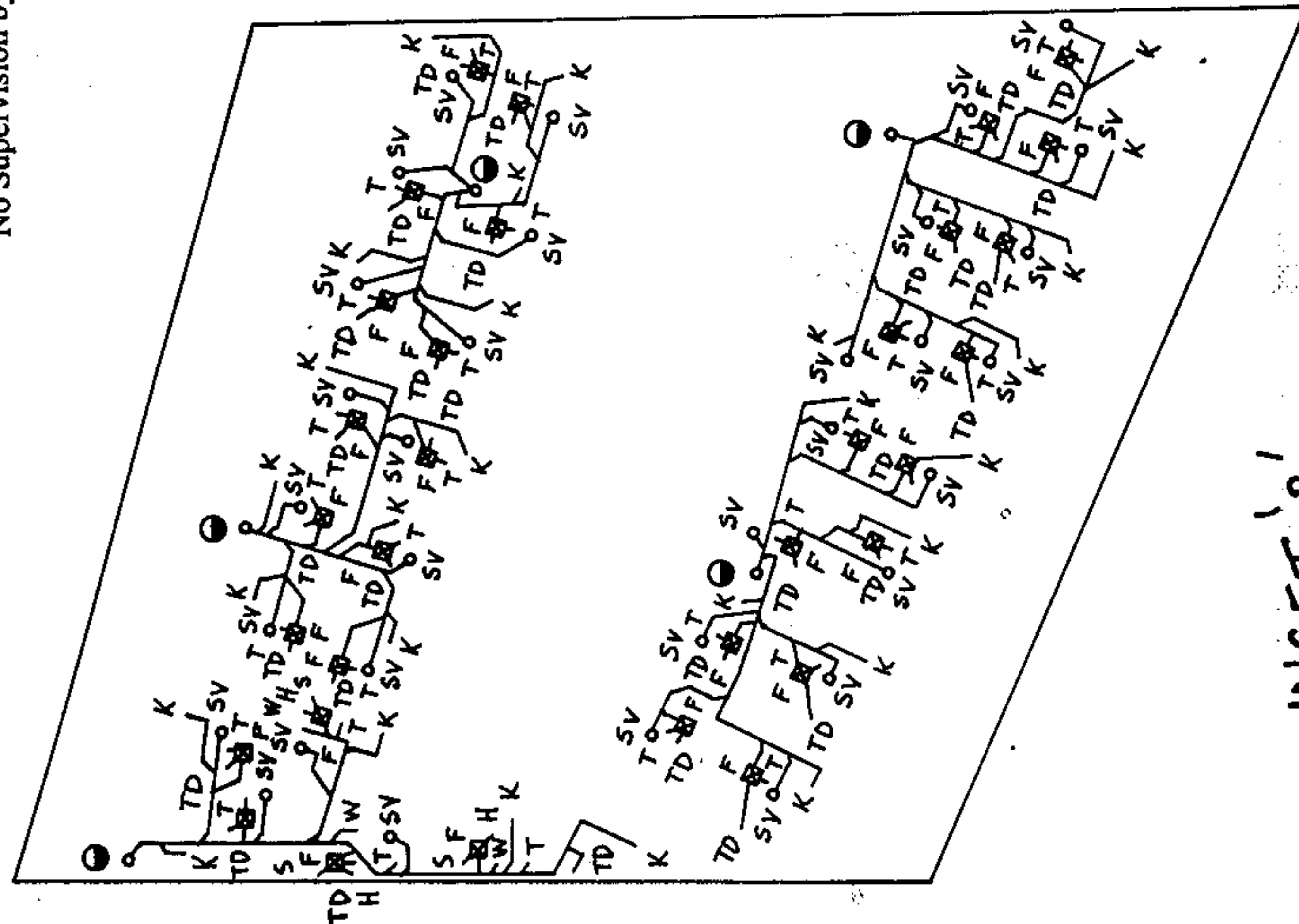
**25/03/2020**



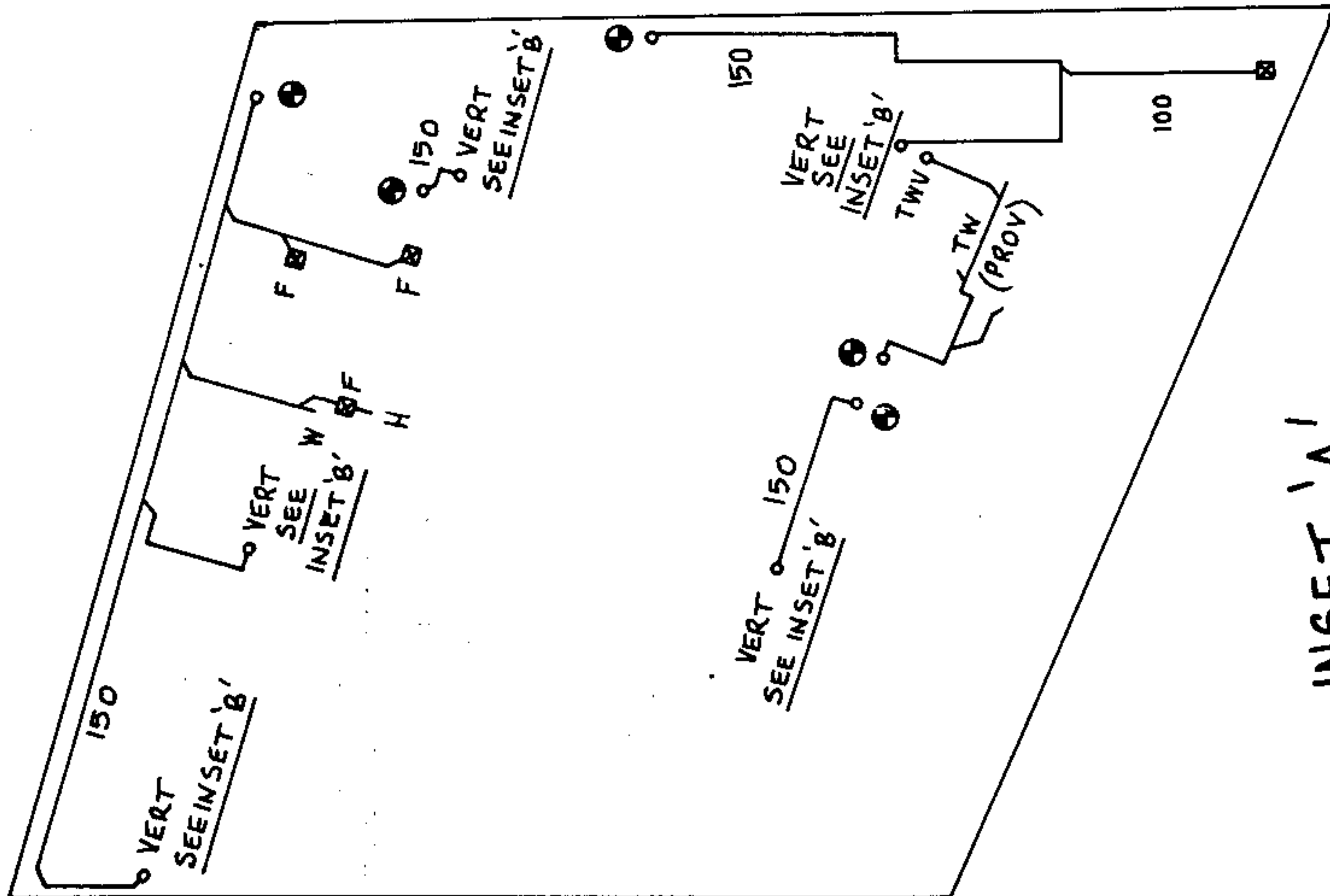
**NOTE**  
Internal, External Drainage to fixtures ~~is~~  
~~Assumed, and~~ was drawn from details  
submitted by Licensed Plumber/Drainer  
No Supervision by Sydney Water

**NOTE**

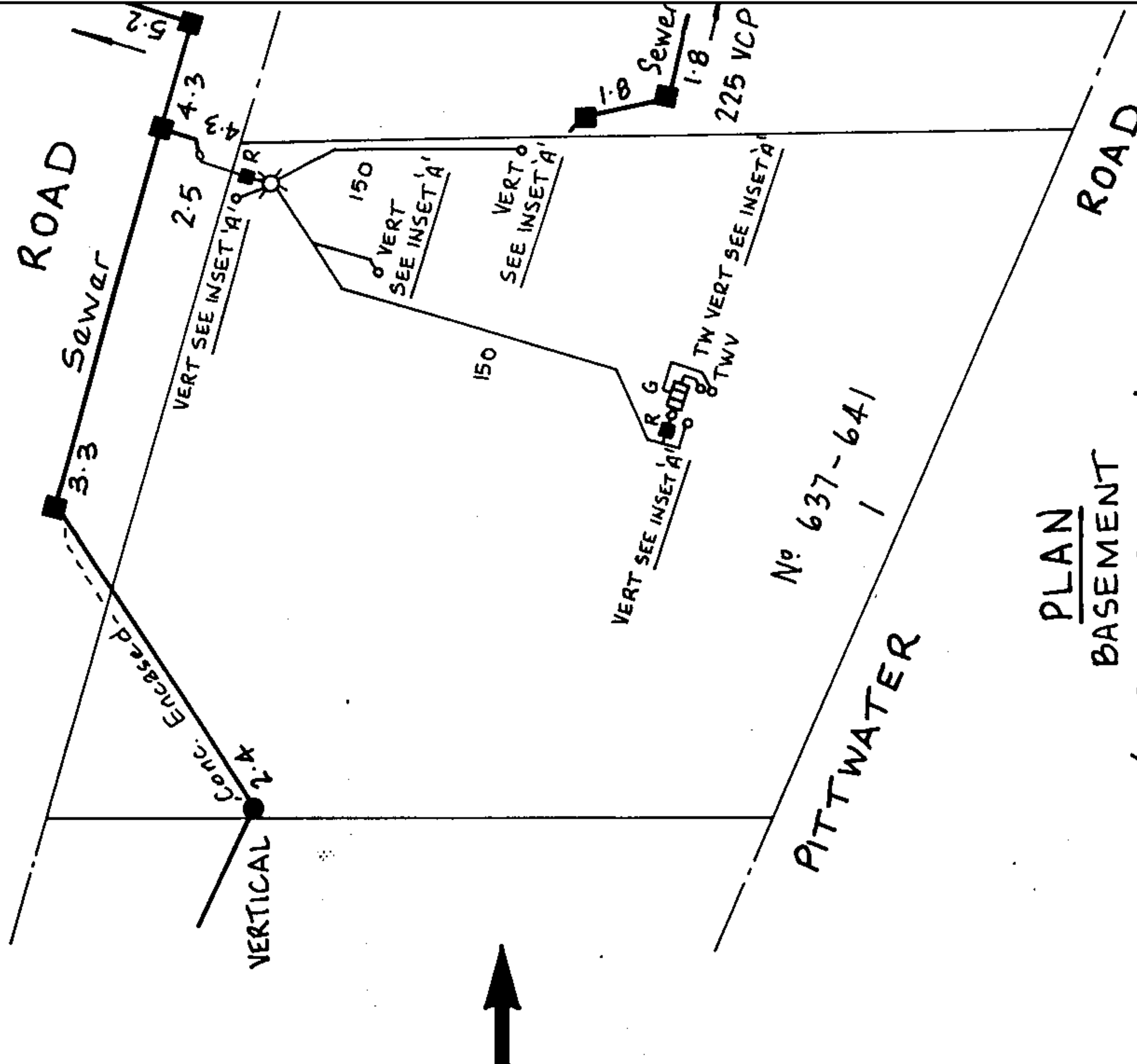
# A3 SIZE DIAGRAM



INSET 'B'  
GROUND FLOOR  
(Aerial Drainage)



INSET 'A'  
BASEMENT  
(Aerial Drains)



PLAN  
BASEMENT  
(In Ground Drainage)

⊕ VERTICAL - SEE PLAN  
FOR CONTINUATION

⊖ VERTICAL-SEE INSET 'A'  
FOR CONTINUATION

P.N. 3445930

**M.W.S. & D.B.**  
**SEWERAGE SERVICE DIAGRAM**

**M.W.S. & D.B.**

MUNICIPALITY OF WARRINGAH SUBURB OF Dee Why

**Scale:** Approx. 1:500

## PLUMBING Inspected

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red by

\_\_\_\_\_

ink ink

Bath Water:

W

1

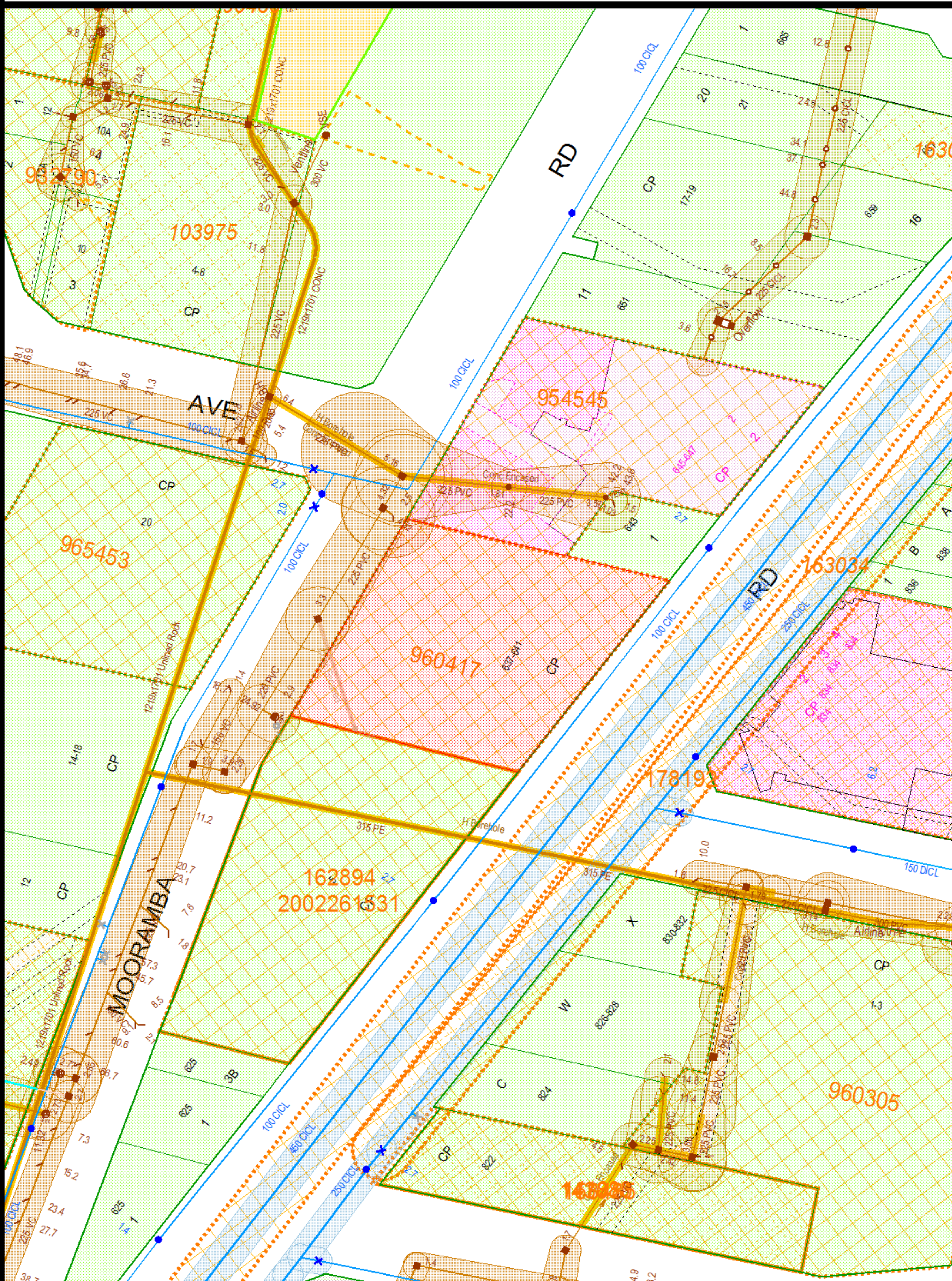
As the sewer is not available and a special inspection is involved the Board accepts no responsibility for the suitability of the drainage in relation to the eventual position of the Board's sewer. The existence and position of the Board's sewers, stormwater channels, pipes, mains and structures should be ascertained by inspection of records available at the Board's Business Offices. (Section 33 Of Board's Act). Position of structures, boundaries, sewers and sewerage service shown hereon are approximate only and the actual outlines of buildings may have been drawn from initial building plans submitted to the Board. Discrepancies in outline can occur from amendment to these plans. Discrepancies in position and type of drainage lines and fittings can be due to unnotified work. Before building work is commenced location of drainage lines is recommended. It is required to submit to the Board a Certificate Of Compliance as not all work may have been supervised.

**F:** This diagram only indicates availability of a sewer and any sewerage service shown as existing in Board's records (By-Law 8, Clause 3). See is required to submit to the Board a Certificate Of Compliance as not all work may have been supervised.

## Action

**Date:**





NOTE This diagram only indicates availability of a sewer and any sewerage service shown as existing in Sydney Water's records. The existence and position of Sydney Water's sewers, stormwater channels, pipes, mains and structures should be ascertained by inspection of maps available at any of Sydney Water's Customer Centres. Position of structures, boundaries, sewers and sewerage services shown hereon are approximately only.