

Contract for the sale and purchase of land 2019 edition

TERM	MEANING OF TERM	eCOS ID: 75701520	NSW DAN:
vendor's agent	Drake Real Estate 18-20 Waterloo Street NARRABEEN NSW 2101		Phone: 9913 2101 Fax: Ref: John Drake
co-agent			
vendor	Simon Robert Vincent 9 / 20 Musgrave Street MOSMAN NSW 2088		
vendor's solicitor	Uther Webster & Evans Level 2 235 Clarence Street Sydney NSW 2000		Phone: (02) 9290 1177 Fax: (02) 9290 1181 Ref: JA:KP:35717
date for completion	42 days after the contract date	(clause 15)	Email: kpearce@uwe.com.au
land	24/18-20 Waterloo Street NARRABEEN NSW 2101 (Address, plan details and title reference) Lot 24 in Strata Plan 65833 24/SP65833		
	<input type="checkbox"/> VACANT POSSESSION <input checked="" type="checkbox"/> Subject to existing tenancies		
improvements	<input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input checked="" type="checkbox"/> home unit <input checked="" type="checkbox"/> carspace <input type="checkbox"/> storage space <input type="checkbox"/> none <input type="checkbox"/> other:		
attached copies	<input checked="" type="checkbox"/> documents in the List of Documents as marked or as numbered: <input type="checkbox"/> other documents:		

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

inclusions	<input checked="" 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 checked="" type="checkbox"/> insect screens <input type="checkbox"/> solar panels <input type="checkbox"/> TV antenna <input type="checkbox"/> curtains <input type="checkbox"/> other:	
exclusions		
purchaser		
purchaser's solicitor		Phone: Fax: Ref: Email:
price	\$	
deposit	\$	(10% of the price, unless otherwise stated)
balance	\$	
contract date		(if not stated, the date this contract was made)

buyer's agent

vendor

witness

GST AMOUNT (optional)

The price includes

GST of: \$

purchaser

☐ JOINT TENANTS

☐ tenants in common

☐ in unequal shares

witness

BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION

35717

75701520

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

☒ NO ☐ yes

Nominated Electronic Lodgment Network (ELN) (clause 30)

PEXA

Electronic transaction (clause 30)

☐ no ☒ YES

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

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

land tax is adjustable

☒ NO ☐ yes

GST: Taxable supply

☒ NO ☐ yes in full ☐ yes to an extent

Margin scheme will be used in making the taxable supply

☒ NO ☐ yes

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

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

Purchaser must make an *GSTRW payment*
(residential withholding payment)

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

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

GSTRW payment (GST residential withholding payment) – further details

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

Supplier's name:

Supplier's ABN:

Supplier's GST branch number (if applicable):

Supplier's business address:

Supplier's email address:

Supplier's phone number:

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

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

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

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

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

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

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

List of Documents

General	Strata or community title (clause 23 of the contract)
<input checked="" type="checkbox"/> 1 property certificate for the land	<input 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 checked="" 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 checked="" 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 checked="" 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 checked="" type="checkbox"/> 23 land tax certificate	<input type="checkbox"/> 54 document disclosing a change in boundaries
Home Building Act 1989	<input type="checkbox"/> 55 information certificate under Strata Schemes Management Act 2015
<input type="checkbox"/> 24 insurance certificate	<input type="checkbox"/> 56 information certificate under Community Land Management Act 1989
<input type="checkbox"/> 25 brochure or warning	<input type="checkbox"/> 57 disclosure statement - off the plan contract
<input type="checkbox"/> 26 evidence of alternative indemnity cover	<input type="checkbox"/> 58 other document relevant to off the plan contract
Swimming Pools Act 1992	Other
<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

Mason & Brophy

13/818 Pittwater Road, Dee Why NSW 2099

Tel: 8978 3000

SECTION 66W CERTIFICATE

I, _____ of _____,
certify as follows:

1. I am a _____ currently admitted to practise in New South Wales;
2. I am giving this certificate in accordance with section 66W of the Conveyancing Act 1919 with reference to a contract for the sale of property at **24/18-20 Waterloo Street, Narrabeen**, from **Simon Robert Vincent** to _____ in order that there is no cooling off period in relation to that contract;
3. I do not act for **Simon Robert Vincent** and am not employed in the legal practice of a solicitor acting for **Simon Robert Vincent** nor am I a member or employee of a firm of which a solicitor acting for **Simon Robert Vincent** is a member or employee; and
4. I have explained to :
 - (a) The effect of the contract for the purchase of that property;
 - (b) The nature of this certificate; and
 - (c) The effect of giving this certificate to the vendor, i.e. that there is no cooling off period in relation to the contract.

Dated: _____

CONDITIONS OF SALE BY AUCTION

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

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

- (1) The following conditions are prescribed as applicable to and in respect of the sale by auction of land or livestock:
 - (a) The principal's reserve price must be given in writing to the auctioneer before the auction commences.
 - (b) A bid for the seller cannot be made unless the auctioneer has, before the commencement of the auction, announced clearly and precisely the number of bids that may be made by or on behalf of the seller.
 - (c) The highest bidder is the purchaser, subject to any reserve price.
 - (d) In the event of a disputed bid, the auctioneer is the sole arbitrator and the auctioneer's decision is final.
 - (e) The auctioneer may refuse to accept any bid that, in the auctioneer's opinion, is not in the best interests of the seller.
 - (f) 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.
 - (g) A bid cannot be made or accepted after the fall of the hammer.
 - (h) As soon as practicable after the fall of the hammer the purchaser is to sign the agreement (if any) for sale.
- (2) The following conditions, in addition to those prescribed by subclause (1), are prescribed as applicable to and in respect of the sale by auction of residential property or rural land:
 - (a) All bidders must be registered in the Bidders Record and display an identifying number when making a bid.
 - (b) Subject to subclause (2A), 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.
 - (c) Immediately before making a vendor bid the auctioneer must announce that the bid is made on behalf of the seller or announce "vendor bid".
- (2A) The following conditions, in addition to those prescribed by subclauses (1) and (2), 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:
 - (a) More than one vendor bid may be made to purchase the interest of a co-owner.
 - (b) A bid by or on behalf of an executor or administrator may be made to purchase in that capacity.
 - (c) 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.
 - (d) 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.
- (3) The following condition, in addition to those prescribed by subclause (1), is prescribed as applicable to and in respect of the sale by auction of livestock:

The purchaser of livestock must pay the stock and station agent who conducted the auction (or under whose immediate and direct supervision the auction was conducted) or the vendor the full amount of the purchase price:

 - (a) if that amount can reasonably be determined immediately after the fall of the hammer – before the close of the next business day following the auction, or
 - (b) if that amount cannot reasonably be determined immediately after the fall of the hammer – before the close of the next business day following determination of that amount,

unless some other time for payment is specified in a written agreement between the purchaser and the agent or the purchaser and the vendor made before the fall of the hammer.

IMPORTANT NOTICE TO VENDORS AND PURCHASERS

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

WARNING—SMOKE ALARMS

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

WARNING—LOOSE-FILL ASBESTOS INSULATION

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

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

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

COOLING OFF PERIOD (PURCHASER'S RIGHTS)

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

DISPUTES

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

AUCTIONS

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

WARNINGS

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

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

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

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

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

<i>adjustment date</i>	the earlier of the giving of possession to the purchaser or completion;
<i>bank</i>	the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>clearance certificate</i>	a certificate within the meaning of s14-220 of Schedule 1 to the <i>TA Act</i> , that covers one or more days falling within the period from and including the contract date to completion;
<i>deposit-bond</i>	a deposit bond or guarantee from an issuer, with an expiry date and for an amount each approved by the vendor;
<i>depositholder</i>	vendor's agent (or if no vendor's agent is named in this contract, the vendor's <i>solicitor</i> , or if no vendor's <i>solicitor</i> is named in this contract, the buyer's agent);
<i>document of title</i>	document relevant to the title or the passing of title;
<i>FRCGW percentage</i>	the percentage mentioned in s14-200(3)(a) of Schedule 1 to the <i>TA Act</i> (12.5% as at 1 July 2017);
<i>FRCGW remittance</i>	a remittance which the purchaser must make under s14-200 of Schedule 1 to the <i>TA Act</i> , being the lesser of the <i>FRCGW percentage</i> of the price (inclusive of GST, if any) and the amount specified in a <i>variation served by a party</i> ;
<i>GST Act</i>	A New Tax System (Goods and Services Tax) Act 1999;
<i>GST rate</i>	the rate mentioned in s4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
<i>GSTRW payment</i>	a payment which the purchaser must make under s14-250 of Schedule 1 to the <i>TA Act</i> (the price multiplied by the <i>GSTRW rate</i>);
<i>GSTRW rate</i>	the rate determined under ss14-250(6), (8) or (9) of Schedule 1 to the <i>TA Act</i> (as at 1 July 2018, usually 7% of the price if the margin scheme applies, 1/11 th 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"> • issued by a <i>bank</i> and drawn on itself; or • if authorised in writing by the vendor or the vendor's <i>solicitor</i>, some other <i>cheque</i>;
<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.

- 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 –
- | | |
|------------------------------|---|
| <i>adjustment figures</i> | details of the adjustments to be made to the price under clause 14; |
| <i>certificate of title</i> | the paper duplicate of the folio of the register for the land which exists immediately prior to completion and, if more than one, refers to each such paper duplicate; |
| <i>completion time</i> | the time of day on the date for completion when the <i>electronic transaction</i> is to be settled; |
| <i>conveyancing rules</i> | the rules made under s12E of the Real Property Act 1900; |
| <i>discharging mortgagee</i> | any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a <i>Digitally Signed</i> discharge of mortgage, discharge of charge or withdrawal of caveat is required in order for unencumbered title to the <i>property</i> to be transferred to the purchaser; |
| <i>ECNL</i> | the Electronic Conveyancing National Law (NSW); |
| <i>effective date</i> | the date on which the <i>Conveyancing Transaction</i> is agreed to be an <i>electronic transaction</i> under clause 30.1.2 or, if clauses 30.1.1 or 30.1.3 apply, the contract date; |
| <i>electronic document</i> | a dealing as defined in the Real Property Act 1900 which may be created and <i>Digitally Signed</i> in an <i>Electronic Workspace</i> ; |
| <i>electronic transfer</i> | a transfer of land under the Real Property Act 1900 for the <i>property</i> to be prepared and <i>Digitally Signed</i> in the <i>Electronic Workspace</i> established for the purposes of the <i>parties'</i> <i>Conveyancing Transaction</i> ; |

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

31 Foreign Resident Capital Gains Withholding

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

32 Residential off the plan contract

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

ADDITIONAL CLAUSES FORMING PART OF THIS CONTRACT

Dated:

between: **Simon Robert Vincent** ("vendor")

and: ("purchaser")

33. Agent Warranty

The purchaser was not introduced to the property or the vendor by any real estate agent or other person entitled to claim commission as a result of this sale (other than the vendor's agent, if any, specified in this contract). The purchaser will indemnify the vendor against any claim for commission by any real estate agent or other person arising out of an introduction of the purchaser and against all claims and expenses for the defence and determination of such a claim made against the vendor. This right continues after completion.

34. Notice to Complete

34.1. Despite any rule of law or equity to the contrary, the vendor and the purchaser agree that any notice to complete given by the vendor to the purchaser under this contract shall be reasonable as to time if a period of 14 days from the date of service of the notice is allowed for completion.

34.2. Should the Vendor become entitled to serve a Notice to Complete, the Purchaser at settlement must pay to the vendor in addition to all other moneys due under this Contract the sum of two hundred and seventy-five dollars (\$275.00) by way of liquidated damage to compensate the Vendor for legal costs in respect of the issue and service of the notice and the Purchaser acknowledges this to be a reasonable sum.

35. The purchaser accepts the property in its present condition and state of repair with all faults latent and patent subject to fair wear and tear as provided in clause 10.1.4 and the purchaser cannot make a claim or requisition or rescind or terminate in this regard.

36. Death / Insolvency

36.1 Without in any way limiting, negating or restricting any rights or remedies which would have been available to either party at law or in equity had this clause not been included, if either party (and if more than one person comprises that first party then any one of them) prior to completion:

36.1.1 dies or becomes mentally ill, then either party may rescind this contract by written notice to the first party's solicitor and thereupon this contract will be at an end and the provisions of clause 19 apply; or

36.1.2 being a company has a petition for its winding up presented or enters into any scheme of arrangement with its creditors or has a liquidator receiver or official manager of it appointed, then the first party will be in default under this contract.

37. Stamp Duty

The purchaser must pay all stamp duties (including penalties and fines) which are payable in connection with this contract and indemnifies the vendor against any liability which results from default, delay or omission to pay those duties or failure to make proper disclosures to the Office of State Revenue in relation to those duties. This right continues after completion.

38. Additional Purchase Price

Provided that the vendor is ready, willing and able to give title to the purchaser, if this contract is not completed for any reason (other than the vendor's default) on or before the Completion date then in addition to any other right which the vendor may have under this contract or otherwise the purchaser will on completion (which will in this clause include rescission or termination) of this contract pay to the vendor interest on the balance of the purchase price at the rate of 10% per annum calculated on daily balances, commencing on the Completion date and continuing until completion of this contract. This interest is a genuine pre-estimate of liquidated damages and will be deemed to be part of the balance of purchase money due and payable on completion.

39. No certificate

- (a) The vendor does not hold a building information certificate under the provisions of the Environmental Planning & Assessment Act 979 in respect of the Property and the vendor does not authorise the purchaser to have the Property inspected in order for the purchaser to apply for a building information certificate prior to Completion.
- (b) Before Completion, the purchaser must not apply to any Authority for a building information certificate in respect of the Property and must not require the Vendor to carry out any work at the Property or to take any other steps which may be required in order for the purchaser to obtain a building information certificate in respect of the Property.
- (c) The Purchaser shall comply with any work order issued after the date of the Contract.
- (d) Clause 11 of the printed clauses is deleted.

40. No warranty by the vendor as to use of the property

- 40.1 The purchaser must satisfy itself on all matters relating to the use of the property because the vendor gives no warranty as to the use to which the property may be put.
- 40.2 The purchaser will be deemed to have entered into this Contract with full knowledge of and subject to any prohibition or restriction upon the use of the property, whether under any Act, Ordinance, Regulation, By-law, Town Planning Scheme, Interim Development Order, Order of Court, or otherwise.
- 40.3 If the use to which the vendor has put the property is permissible only with the consent of any authority under any Act, Ordinance, Regulation, By-law, Town Planning Scheme, Interim Development Order, Order of Court or otherwise, the purchaser must obtain consent at the purchaser's own expense.

- 40.4 Completion of this Contract will not be conditional or dependent upon any matter referred to in this clause.

41. Purchaser Finance

- 41.1 The Purchaser warrants that they have sufficient finance to complete the purchase and will not require a loan for this purpose OR have obtained a loan approval sufficient to complete the purchase and warrant that they do not rely on the provisions of the Consumer Credit Code, which the parties agree do not apply to this agreement.

42. Notwithstanding any rule of law or equity to the contrary each party hereby authorises their solicitor or licensed conveyancer or any employee thereof to make any alterations to this contract after it is signed by such party but prior to exchange of this contract, and any alterations shall be binding on that party so authorising as if such alteration had been made at the time this contract was signed by them.

43. Own Inspections

The Purchaser represents and warrants to the Vendor that, because of the Purchaser's own inspection and enquiries, the Purchaser:

- (a) is satisfied as to the nature, quality, condition and state of repair of the property;
- (b) accepts the property as it is and subject to all defects (latent or patent) and all dilapidation and infestation; and
- (c) is satisfied about the purposes for which the property may be used and about all restrictions and prohibitions on its development.

44. Entire Agreement

- 44.1 This Contract constitutes the entire agreement between the Vendor and the Purchaser relating to the sale of the property.

- 44.2 The parties have not entered into and are not bound by any collateral or other agreement apart from this Contract.

- 44.3 The parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation unless:

- (a) that warranty, representation, agreement or term is contained in the express terms of this contract; or
- (b) it is an implied term or warranty imposed by statute which is mandatory and cannot be executed by the parties' agreement.

- 44.4 The Purchaser acknowledges that the Purchaser, when entering into this Contract, relied exclusively on the following matters independently of any statements, inducements or representations made by or on behalf of the Vendor (including by any estate agent acting on behalf of the Vendor):

- (a) the inspection of and investigations relating to the land made by or on behalf of the Purchaser;

- (b) the warranties and representations expressly contained in the Contract;
- (c) the skill and judgment of the Purchaser, its consultants and representatives;
- (d) opinions or advice obtained by the Purchaser independently of the Vendor or of the Vendor's agents or employees.

45. The Purchaser acknowledges that no representations, inducements or warranties have been made by the Vendor or its agents or representatives relating to the suitability of the property for the purposes of the Purchaser or any contamination relating to, caused by, or affecting the property.

46. For the purposes of this clause property includes the common property in the strata scheme of which the property forms part.

47. Building Certificates

Subject to any Legislation, which cannot be excluded, the Purchaser acknowledges that this Contract is not conditional upon the issue by the Local Council or any other authority of any certificate and should the Purchaser apply for any certificate prior to, at the date of this Contract or after the date hereof, and the Council or authority issues a notice, refuses to issue any certificate for any reason or requires work to be done before it will issue any certificate, the Purchaser shall not be entitled to rescind, make a claim or requisition or terminate and shall not require the Vendor to comply with any notice, remedy the reason, or do the work, and such compliance, remedy or work shall be undertaken by the Purchaser at his expense.

48. Requisitions on Title

For the purposes of clause 5.1, the requisitions or general questions about the property or the title must be in the form of the Requisitions on Title annexed to this contract and the vendor will only supply answers based on those requisitions.

49. Electronic Execution

49.1 This contract may be executed by any and all parties by way of electronic signature, and if so, must be considered an original. This contract may be executed and delivered by email and the parties agree that such scanned execution and email delivery must have the same force and effect as delivery of an original document with original signatures, and that each party may use such scanned signatures as evidence of the execution and delivery of this contract by all parties to the same extent that an original signature could be used.

50. Guarantee

Execution and Delivery

50.1 If the Purchaser is a company which is not listed on the main board of an Australian Stock Exchange, it is an essential provision of this Contract that the Purchaser must deliver to the Vendor on the date of this Contract the guarantee and indemnity attached, properly completed where necessary with all relevant details and properly executed by the directors (and any parent company) of the Purchasers as guarantors.

Purchaser's default

- 50.2 If the Guarantee is not delivered to the Vendor in accordance with special condition 50.1 the Vendor may (at its absolute discretion) terminate this Contract by written notice to the Purchaser.

DEED OF GUARANTEE AND INDEMNITY made this day of, 2021

Parties

of

of

(collectively known as **Guarantor**)

SIMON ROBERT VINCENT

(**Vendor**)

Recitals

A At the request of Guarantor the Vendor entered into the Contract.

B In consideration of the Vendor entering into the Contract the Guarantor agreed to give this guarantee and indemnity.

Operative provisions

1 Definitions and interpretation

Definitions

1.1 Where commencing with a capital letter:

Price means the price stated in the Contract for the purchase of the Property.

Contract means the Contract for sale of land between the Vendor (as Vendor) and the Purchaser (as Purchaser) for the sale of the Property at the Price.

Obligations means each and all of the obligations of the Purchaser under the Contract both in law and in equity, express or implied, including the due and punctual payment of the Price and any other amount payable by the Purchaser under the Contract and the due performance, observance and fulfilment by the Purchaser of all the provisions of the Contract.

Property means the land, improvements and any other assets stated in the Contract.

Purchaser means _____ PTY LIMITED ACN _____

Interpretation

1.2 Where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

- 1.3 In this Deed unless the context otherwise requires, a reference to:-
- 1.3.1 one gender includes a reference to the other genders and each of them;
 - 1.3.2 a person includes a reference to a corporation or firm and vice versa; and
 - 1.3.3 the singular denotes the plural and vice versa.

Joint and Several

- 1.4 When two or more persons comprise a party to this Deed, all the covenants, conditions, terms and restrictions bind the persons jointly and each of them severally and also bind the respective personal representatives, assigns and successors in title of each of them jointly and severally.

2 Guarantee

- 2.1 The Guarantor guarantees to the Vendor that the Purchaser will perform all of the Obligations and in default of the performance by the Purchaser of any of the Obligations the Guarantor covenants with the Vendor to perform the Obligations or cause them to be performed as if the Obligations were primarily the responsibility of the Guarantor.
- 2.2 If the Purchaser defaults in the payment of any money under the Contract, the Guarantor will on demand by the Vendor pay the money to the Vendor.
- 2.3 If the Purchaser fails to comply with any of the Obligations the Guarantor will on demand:
- 2.3.1 perform any such Obligation; and
 - 2.3.2 pay to the Vendor damages, expenses and costs; and
 - 2.3.3 reimburse the Vendor for all losses;
 - 2.3.4 which the Vendor has incurred or suffered whether or not the Vendor has exercised or exhausted its remedies for recovery from the Purchaser.

3 Continuing guarantee

- 3.1 This guarantee and indemnity is a continuing guarantee and indemnity and will not be considered as wholly or partly satisfied or discharged by the payment or liquidation at any time after the date of this Deed of any money due to the Vendor under the Contract or any settlement of account or any other matter or thing and will extend to cover all money at any time due to the Vendor notwithstanding any special payment, liquidation or settlement of account or other matter or thing.
- 3.2 This guarantee and indemnity will not be prejudiced or discharged or in any way affected by:

- 3.2.1 any transaction or arrangement that may take place between the Vendor and the Purchaser or the Guarantor or any other person;
- 3.2.2 any compromise, release, abandonment, waiver, variation, renewal or relinquishment of any of the rights of the Vendor against the Purchaser, the Guarantor or any other person;
- 3.2.3 the winding up or bankruptcy of the Purchaser, the Guarantor or any other person;
- 3.2.4 any failure or omission by the Purchaser, the Vendor or any other person to give notice to the Guarantor of any default by the Purchaser under the Contract or under any other agreement or arrangement with the Purchaser;
- 3.2.5 any laches, acts, omissions or mistakes on the part of the Vendor;
- 3.2.6 the Vendor obtaining judgment against the Purchaser, the Guarantor or any other person for the payment of the Price or other money or for the performance or otherwise of any act, matter of thing which the Purchaser by the Contract has agreed to pay, do or not to do;
- 3.2.7 any settlement of account or act, matter or thing; or
- 3.2.8 the Contract being unenforceable, void or voidable.
- 3.3 This guarantee and indemnity will continue and remain in full force and effect until the Purchaser has performed all of the Obligations.
- 3.4 The liability of the Guarantor under this Deed will not be prejudiced, discharged or in any way affected by the termination of the Contract for non-payment of the Price or other money. The Guarantor guarantees the payment to the Vendor of all money which may be payable by the Purchaser whether damages or otherwise following upon termination of the Contract.

4 Vendor may vary contract

- 4.1 The Vendor and the Purchaser may amend or vary the Contract or agree to any amendment, variation or replacement of any other agreements or arrangements now or in the future in force between the Vendor and the Purchaser and without notice to or consent by the Guarantor being necessary.
- 4.2 The liability of the Guarantor under this Deed will not be prejudiced discharged or in any way affected by any of the matters referred to in clause 4.1 and will extend to cover the Contract, any variations and any other agreements and arrangements in force between the Vendor and the Purchaser.

5 Vendor may grant indulgence or refrain

5.1 The Vendor may:

- 5.1.1 grant any time or other indulgence or consideration or concession to the Purchaser or the Guarantor or any other person, firm or corporation;
- 5.1.2 compound, compromise with or release the Purchaser or any other person and assent to any assignment or trust deed for the benefit of creditors or any scheme or deed of arrangement by the Purchaser or any other person and whether with or without the winding up or sequestration of the estate of the Purchaser or of the other person;
- 5.1.3 release or discharge the Purchaser in respect of the payment of money or otherwise; or
- 5.1.4 forebear to require the Purchaser to pay any money or to do or refrain from doing any act, matter or thing which the Purchaser by the Contract has agreed to pay or do or not to do,

without prejudicing or discharging or in any way affecting the liability of the Guarantor under this Deed.

- 5.2 The Vendor may exercise or refrain from exercising any of the powers or discretions conferred on the Vendor by law or by the Contract or any other arrangement or agreement with the Purchaser, the Guarantor or any other person without the consent of the Guarantor and without prejudicing, discharging or in any way affecting the liability of the Guarantor under this Deed.

6 Waiver by Guarantor

- 6.1 The Guarantor waives in favour of the Vendor so far as may be necessary to give effect to anything contained or implied in this Deed all rights whatever against the Vendor, the Purchaser and any other person or any estate or asset including rights of subrogation, contribution and marshalling.
- 6.2 If the Purchaser makes any arrangement, assignment or composition for the benefit of creditors, becomes bankrupt or goes into liquidation the Guarantor will not prove in competition with the Vendor. The Guarantor authorises the Vendor to prove for all money which the Guarantor has paid under this Deed and to appropriate any money so received until the Vendor has received all money due to the Vendor in respect of the indebtedness or liabilities of the Purchaser under or arising out of the Contract.
- 6.3 If the Guarantor makes any arrangement, assignment or composition for the benefit of creditors, becomes bankrupt or goes into liquidation the Vendor will be entitled to prove for the money guaranteed by this Deed and all other money payable under this Deed

whether due under this Deed or not up to the limit (if any) of the liability of the Guarantor under this Deed.

7 Indemnity

7.1 The Guarantor agrees with the Vendor that notwithstanding:

- 7.1.1 anything contained or implied in this Deed;
- 7.1.2 the money guaranteed by this Deed may not be recoverable or not presently recoverable from the Purchaser for any reason or circumstance whatever; or
- 7.1.3 any other act, matter or thing by which the Obligations are not enforceable on the footing of this guarantee;

the Guarantor as a separate and additional liability indemnifies and will keep indemnified the Vendor in respect of all the Obligations and as a principal debtor agrees to pay to the Vendor on demand in writing a sum of money equal to any loss, damage, cost, charge or expense which if the payment were not made would otherwise be suffered or incurred by the Vendor as a result of default in performance by the Purchaser of any of the Obligations and the provisions of this Deed shall apply mutatis mutandis to this indemnity.

8 Stamp duty

8.1 The Guarantor will on demand by the Vendor pay any stamp duty on or in connection with this Deed.

9 Notices

9.1 A notice or other communication in connection with this Deed must be in writing, must be given by a method prescribed in clause 9.2 and must be given to the party to whom it is addressed or directed at the address shown for that party on the front page of this Deed.

9.2 Any notice or other communication must be served as follows:

- 9.2.1 if the parties' principal place of business is within Australia - either delivery by a courier service which maintains evidence of receipt and delivery or by hand;
- 9.2.2 if the parties' place of business is outside Australia - either delivery by an internationally recognised air courier service which records evidence of receipt and delivery or by hand.

9.3 A notice or other communication given under clause 9.2 is taken to be received:

- 9.3.1 if sent by a domestically or internationally recognised courier service, at the time in the location at which such delivery takes place, as shown in the courier's record of delivery;

9.3.2 if sent by hand, at the time of actual delivery, as shown by the deliverer's record or testimony.

9.4 If the time of delivery referred to in clause 9.3 is after the recipient's normal business hours (which, until written notice to the contrary is given by such recipient shall be deemed to be 9.00 a.m. to 5.00 p.m. on a business day in the location of the recipient) the notice, approval, consent or other communication is taken to be received at 9.00 a.m. on the recipient's next business day.

Executed as a Deed

Signed, sealed and delivered by the Guarantor in the presence of:

.....
Signature of Witness

.....
Signature of Guarantor

.....
Name of Witness

.....
Address of Witness

.....
Occupation of Witness

.....
Signature of Guarantor



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 24/SP65833

SEARCH DATE	TIME	EDITION NO	DATE
8/12/2020	5:22 PM	8	1/9/2018

NO CERTIFICATE OF TITLE HAS ISSUED FOR THE CURRENT EDITION OF THIS FOLIO.
CONTROL OF THE RIGHT TO DEAL IS HELD BY AUSTRALIA AND NEW ZEALAND BANKING
GROUP LIMITED.

LAND

LOT 24 IN STRATA PLAN 65833
AT NARRABEEN
LOCAL GOVERNMENT AREA NORTHERN BEACHES

FIRST SCHEDULE

SIMON ROBERT VINCENT (TZ AM159797)

SECOND SCHEDULE (3 NOTIFICATIONS)

- 1 INTERESTS RECORDED ON REGISTER FOLIO CP/SP65833
- 2 SP65833 POSITIVE COVENANT
- 3 AM159798 MORTGAGE TO AUSTRALIA AND NEW ZEALAND BANKING GROUP
LIMITED

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: CP/SP65833

SEARCH DATE	TIME	EDITION NO	DATE
8/12/2020	5:22 PM	7	29/8/2018

LAND

THE COMMON PROPERTY IN THE STRATA SCHEME BASED ON STRATA PLAN 65833
WITHIN THE PARCEL SHOWN IN THE TITLE DIAGRAM

AT NARRABEEN
LOCAL GOVERNMENT AREA NORTHERN BEACHES
PARISH OF MANLY COVE COUNTY OF CUMBERLAND
TITLE DIAGRAM SP65833

FIRST SCHEDULE

THE OWNERS - STRATA PLAN NO. 65833
ADDRESS FOR SERVICE OF DOCUMENTS:
18-20 WATERLOO ST
NARRABEEN 2101

SECOND SCHEDULE (4 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 AB186365 ORDER OF CONSUMER, TRADER & TENANCY TRIBUNAL
- 3 AM772137 INITIAL PERIOD EXPIRED
- 4 AN539703 CONSOLIDATION OF REGISTERED BY-LAWS

SCHEDULE OF UNIT ENTITLEMENT (AGGREGATE: 2000)

STRATA PLAN 65833

LOT	ENT	LOT	ENT	LOT	ENT	LOT	ENT
1 - 37		2 - 30		3 - 30		4 - 29	
5 - 28		6 - 35		7 - 40		8 - 42	
9 - 57		10 - 39		11 - 32		12 - 32	
13 - 31		14 - 31		15 - 36		16 - 40	
17 - 42		18 - 43		19 - 48		20 - 54	
21 - 47		22 - 46		23 - 48		24 - 49	
25 - 50		26 - 75		27 - 67		28 - 42	
29 - 41		30 - 40		31 - 39		32 - 38	
33 - 36		34 - 37		35 - 38		36 - 39	
37 - 40		38 - 41		39 - 78		40 - 87	
41 - 52		42 - 55		43 - 40		44 - 119	

NOTATIONS

FOLIO: CP/SP65833

PAGE 2

NOTATIONS (CONTINUED)

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

35717

PRINTED ON 8/12/2020

Strata Certificate

WARRINGAH (Name of Council)
having satisfied itself that the requirements of the * Strata Schemes
(Freehold Development) Act 1973 or * Strata Schemes (Leasehold
Development) Act 1986 have been complied with, approves of
the proposal.
* Strata plan
* ~~Leasehold development~~
Illustrated in the annexure to the certificate.

Surveyors Certificate

PAUL BARRY BYRNE
of **63 WATERLOO STREET NARRABEEN 2101**
a surveyor registered under the Surveyors Act 1929, hereby
certify that:
(i) each applicable requirement of
* Schedule 1A to the Strata Schemes (Freehold Development)
Act 1973
* Schedule 4A to the Strata Schemes (Leasehold Development)
Act 1986
has been met;
(ii) ~~for the building encroaches on a public place~~
* (b) the building encroaches on land (being) held a public
place in respect of which encroachment an
appropriate easement;
* has been created by registered ~~1~~
* is of the created under section 88B of the
Conveyancing Act 1999
(3) the survey information recorded in the accompanying
location plan is accurate.
Signature: *Paul Barry Byrne*
Date: *4/5/01*
* Delete if inapplicable
† State whether dealing or plan and quote registered number.
This is sheet 1 of my plan in 7 sheets

* This approval is given on the condition that the use of hotel
being utility lot/1 designed to be used primarily for
the storage or accommodation of boats, motor vehicles or goods
and not for human occupation as a residence, office, shop or the like
is restricted to the proprietor or occupier of a lot or proposed lot
not being such a utility lot the subject of the strata scheme
concerning as referred to in * section 39 of the Strata Schemes
(Freehold Development) Act 1973 or * section 68 of the Strata
Schemes (Leasehold Development) Act 1986.

Date *12.6.2001*
Subdivision No *1706/2001*
Paul Barry Byrne
Authorised Person

* Complete, or delete if inapplicable

SCHEDULE OF UNIT ENTITLEMENT

LOT NUMBER	UNIT ENTITLEMENT	LOT NUMBER	UNIT ENTITLEMENT	LOT NUMBER	UNIT ENTITLEMENT	LOT NUMBER	UNIT ENTITLEMENT
1	37	12	32	23	48	34	37
2	30	13	31	24	49	35	38
3	30	14	31	25	50	36	39
4	29	15	36	26	75	37	40
5	28	16	40	27	67	38	41
6	35	17	42	28	42	39	78
7	40	18	43	29	41	40	87
8	42	19	48	30	40	41	52
9	57	20	54	31	39	42	55
10	39	21	47	32	38	43	40
11	32	22	46	33	36	44	119
AGGREGATE							2000

PLAN OF SUBDIVISION OF LOT 1 IN DP1030421

L.G.A.: **WARRINGAH** Suburb/Locality: **NARRABEEN**

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

Name of, and address for
service of notices on, the
owner's corporation.
THE OWNERS
STRATA PLAN NO. **65833**
Nos. 18-20 WATERLOO STREET
NARRABEEN N.S.W. 2101
(address required on
original strata plan only)

FOR LOCATION PLAN SEE SHEET 2

Signatures, seals and statements of intention to create easements, restrictions on the use of land or positive covenants.
PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919 AND SECTION 7(3) OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT)
ACT 1973 IT IS INTENDED TO CREATE:-

1. POSITIVE COVENANT

Executed by *Bank of Western Australia Ltd*
A.C.N. 005 494 494 by *WARRINGAH COUNCIL*
and *its duly*
constituted *Attorney under Power of Attorney*
dated *4.11.98* and registered
No. *451, No. 491* who at the date hereof
had no notice of revocation of such Power of
Attorney in the presence of:
Robert M. HENDERSON
(Witness)

ELDONNIE PTY LTD
ACN 086 500 016 by
its Attorney Kenneth
Bruce Henderson duly
authorised pursuant to
Power of Attorney Register
Book 42443 No 186 in
respect of whom no
notice of revocation
has been received in
the presence of:
Kenneth Henderson
(K.B. HENDERSON)
A. COX
(A. COX)

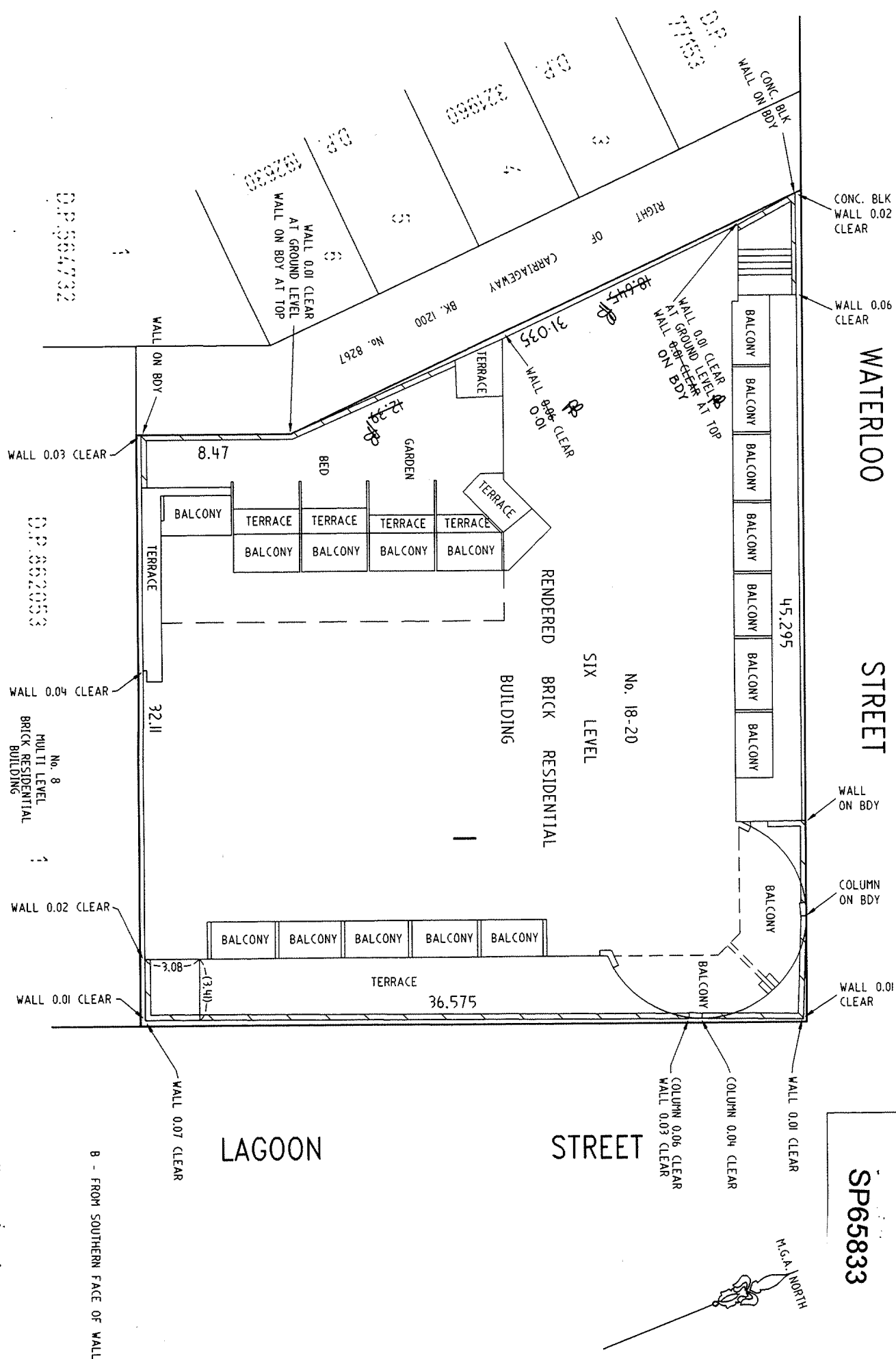
SP65833

Registered *29.6.2001*

Purpose: **STRATA PLAN**

Ref Map: **V2767-17***

Last Plan: **DP1030421**



B - FROM SOUTHERN FACE OF WALL

Reduction Ratio 1: 200

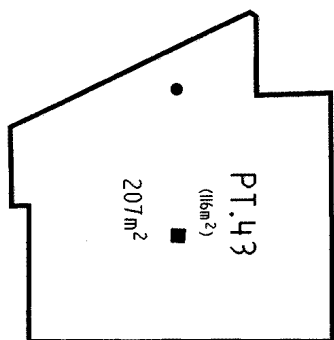
Lengths are in metres

Registered Surveyor

~~Authorized Person/General Manager/Accredited Certification~~

SURVEYOR'S REFERENCE: 8478 S ISSUE 8

SP65833



NOTE:
AREAS SHOWN HEREON ARE APPROXIMATE AND ARE FOR THE
PURPOSES OF THE STRATA TITLES ACT ONLY

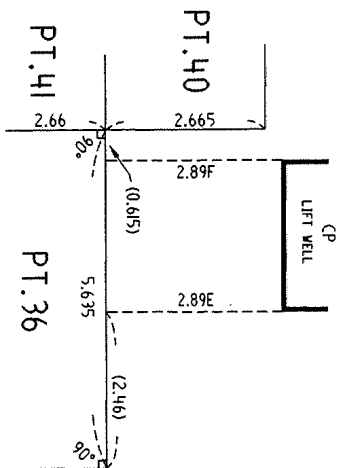
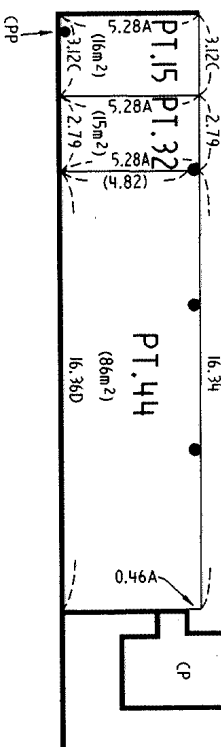
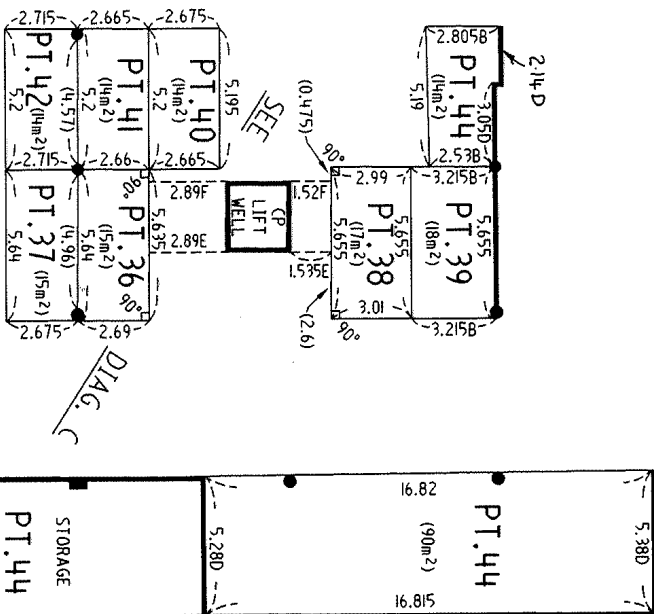


DIAGRAM C
NOT TO SCALE



LEVEL 2

- A - FROM NORTHERN FACE OF WALL
- B - FROM SOUTHERN FACE OF WALL
- C - FROM EASTERN FACE OF WALL
- D - FROM WESTERN FACE OF WALL
- E - PROLONGATION OF EASTERN FACE OF WALL
- F - PROLONGATION OF WESTERN FACE OF WALL

CP - DENOTES COMMON PROPERTY DRAINAGE PIPE
CP - DENOTES COMMON PROPERTY

100° - DENOTES 90°

M.G.A. NORTH

Reduction Ratio 1: 200

Lengths are in metres

Registered Surveyor

Authorised Person/General Manager/Associate/Assistant

SURVEYOR'S REFERENCE: 8478 S ISSUE B

SP65833

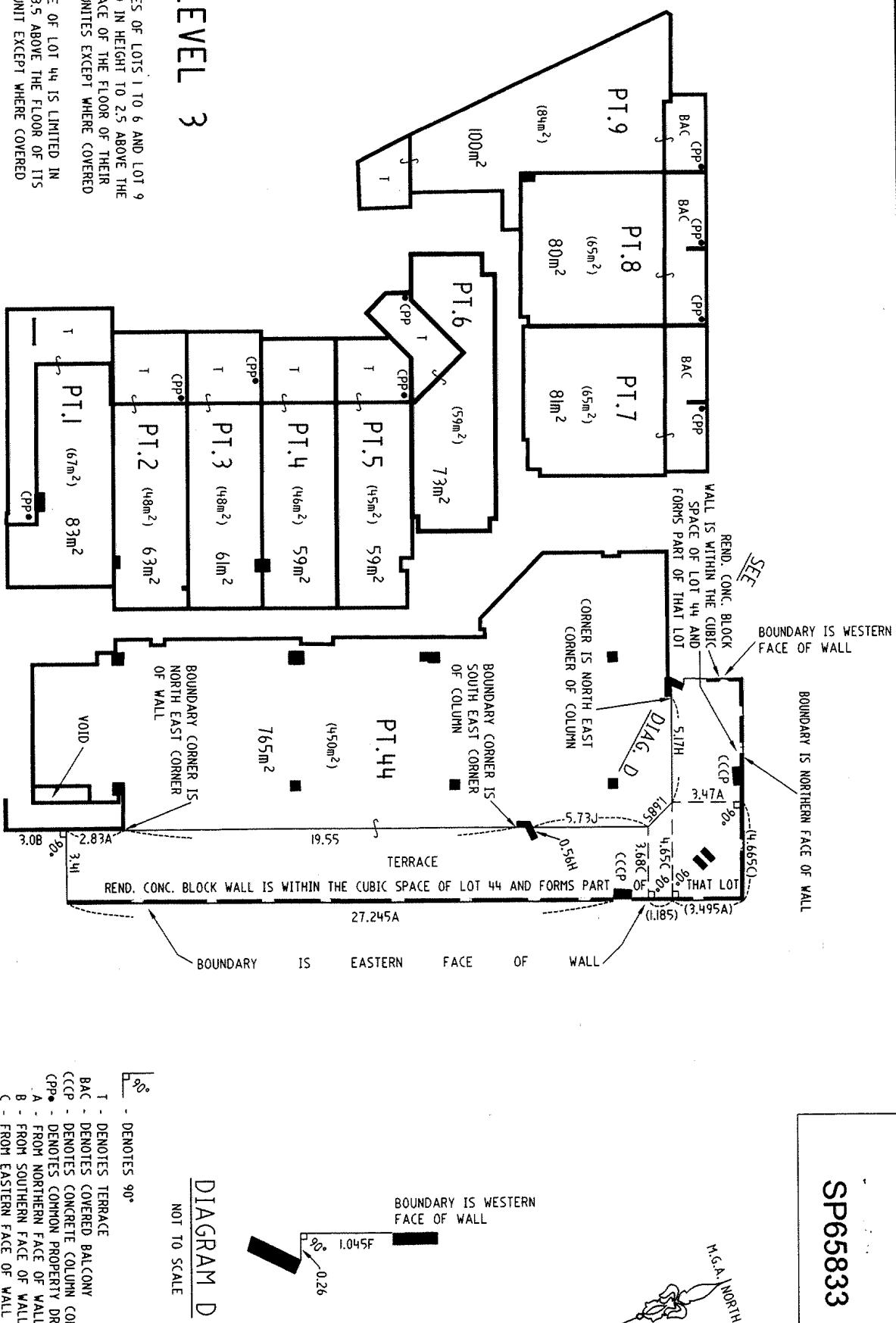


DIAGRAM D
NOT TO SCALE

NOT TO SCALE

 - DENOTES 90°

- 1 - DENOTES TERRACE
- BAC - DENOTES COVERED BALCONY
- CCP - DENOTES CONCRETE COLUMN COMMON PROPERTY
- CP - DENOTES COMMON PROPERTY DRAINAGE PIPE
 - A - FROM NORTHERN FACE OF WALL
 - B - FROM SOUTHERN FACE OF WALL
 - C - FROM EASTERN FACE OF WALL
 - F - PROLONGATION OF WESTERN FACE OF WALL
 - H - FROM NORTH EASTERN CORNER OF COLUMN
 - J - FROM NORTH FACE OF COLUMN

Reduction Ratio 1: 200

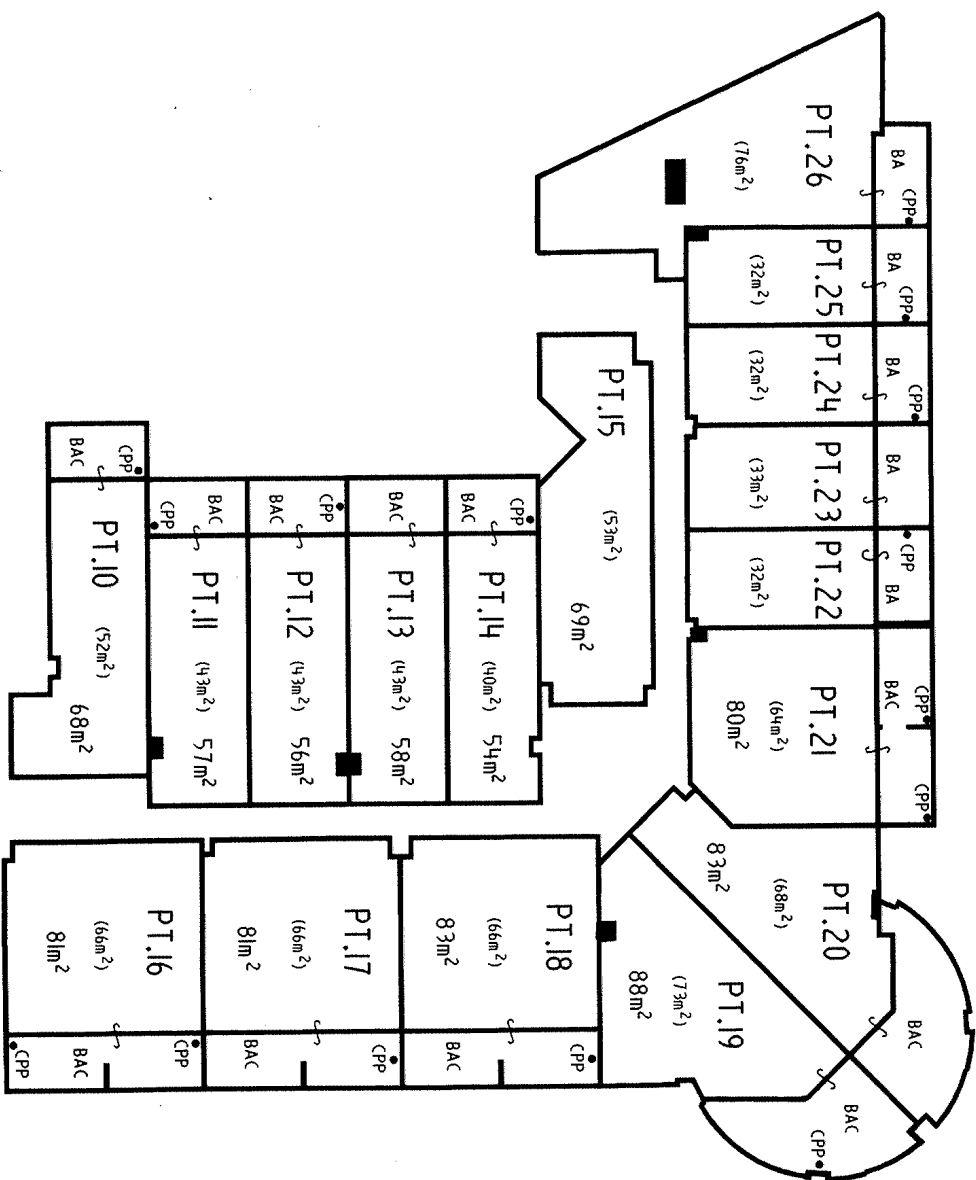
Lengths are in metres

NOTE:
AREAS SHOWN HEREON ARE APPROXIMATE AND ARE
FOR THE PURPOSES OF THE STRAITS TILES ACT ONLY

LEVEL 3

THE TERRACE OF LOT 44 IS LIMITED IN HEIGHT TO 3.5 ABOVE THE FLOOR OF ITS ADJOINING UNIT EXCEPT WHERE COVERED

SP65833



LEVEL 4

BALCONIES ARE LIMITED IN HEIGHT TO 2 ABOVE THE UPPER SURFACE OF THE FLOOR OF THEIR ADJOINING UNIT EXCEPT WHERE COVERED

BA - DENOTES BALCONY
BAC - DENOTES COVERED BALCONY
CPP - DENOTES COMMON PROPERTY DRAINAGE PIPE

NOTE:
AREAS SHOWN HEREON ARE APPROXIMATE AND ARE FOR THE PURPOSES OF THE STRATA TITLES ACT ONLY

Reduction Ratio 1: 200

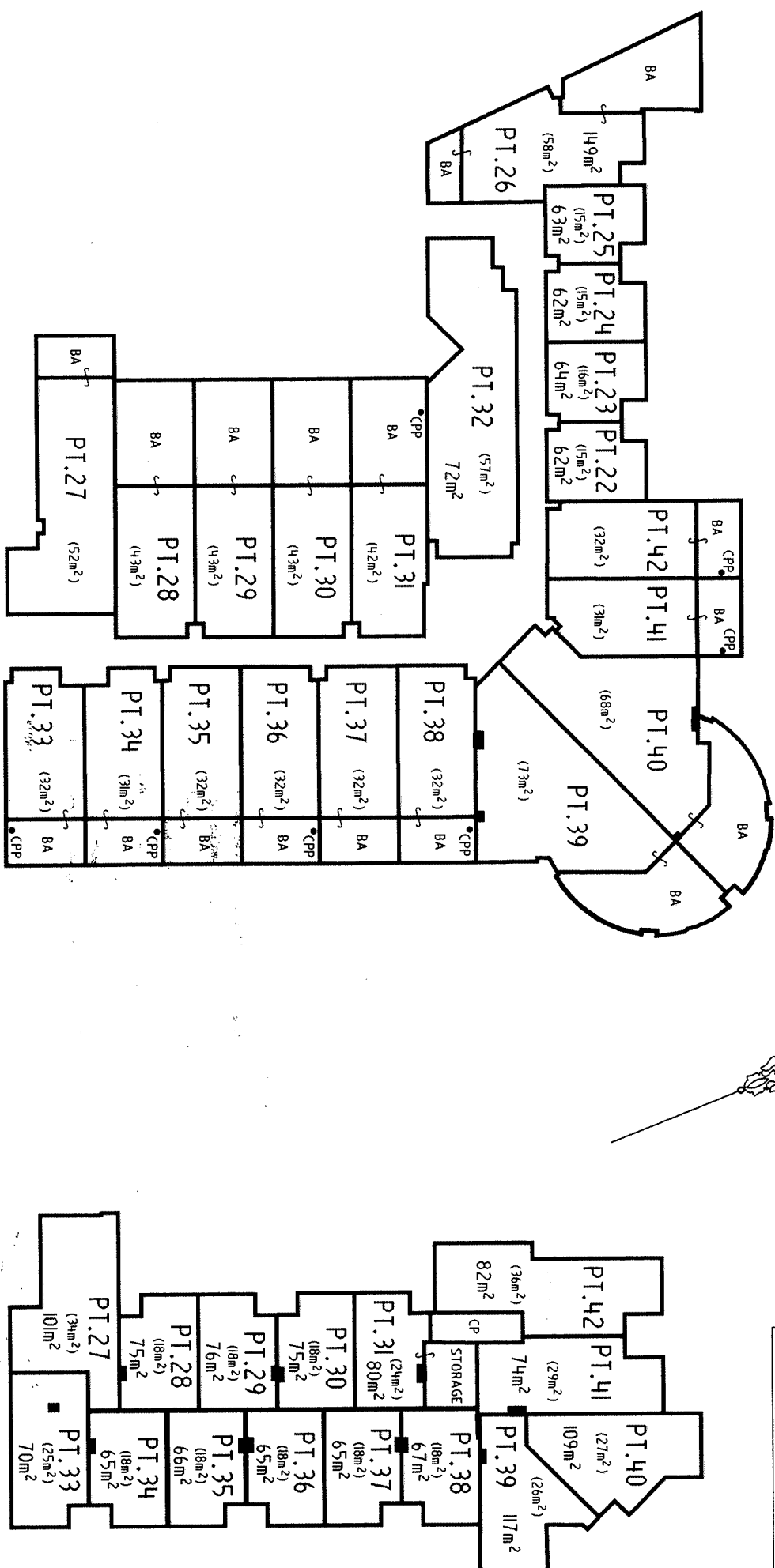
Lengths are in metres

Registered Surveyor

Authorised Person/Manager/Deceased/Co-owner

SURVEYOR'S REFERENCE: 8478 S ISSUE B

SP65833



**INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTIONS
AS TO USER INTENDED TO BE CREATED PURSUANT TO SECTION 7(3)
OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT, 1977
AND SECTION 88B OF THE CONVEYANCING ACT, 1919**

(Sheet 1 of 3 sheets)

SP65833

Subdivision of Lot 1 in
Deposited Plan
covered by Council
Certificate No.

PART 1

Full name and address of
the proprietor of the land:

Eldonne Pty Limited
c/o No. 8 Yuruga Road,
DURAL NSW 2158

1. Identity of Positive Covenant
Firstly Referred
to in abovementioned Plan:

Positive Covenant

Schedule of Lots etc. Affected

Lots Burdened
Each Lot

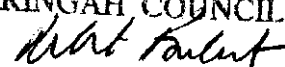
Lots, Name of Road or Authority Benefited
Warringah Council

PART 2

**1. TERMS OF POSITIVE COVENANT FIRSTLY REFERRED TO
IN THE ABOVEMENTIONED PLAN**

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

1. The registered proprietor will:
 - (a) keep the structure and works clean and free from silt, rubbish and debris
 - (b) maintain and repair at the sole expense of the registered proprietors the whole of the structure and works so that it functions in a safe and efficient manner.
2. For the purpose of ensuring observance of the covenant the Council may by its servants or agents at any reasonable time of the day and upon giving to the person against whom the covenant is enforceable not less than two days notice (but at any time without notice in the case of an emergency) enter the land and view the condition of the land and the state of construction maintenance or repair of the structure and works on the land.
3. 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.

WARRINGAH COUNCIL

.....
Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTIONS
AS TO USER INTENDED TO BE CREATED PURSUANT TO SECTION 7(3)
OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT, 1977
AND SECTION 88B OF THE CONVEYANCING ACT, 1919**

(Sheet 2 of 3 sheets)

SP65833

Subdivision of Lot 1 in
Deposited Plan
covered by Council
Certificate No.

PART 2 cont.

4. 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 any written notice issued by the Council as set out above the Council or its authorised agents 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 3 hereof
 - (ii) The Council may recover from the registered proprietor in a Court of competent jurisdiction:
 - (a) Any expense reasonable 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, reasonable 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.
5. This covenant shall bind all persons who claim under the registered proprietors as stipulated in Section 88E(5) of the Act.

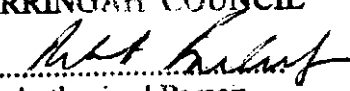
For the purposes of this covenant:

Structure and Works shall mean the on-site stormwater detention system constructed on the land as set out in the plan annexed hereto and marked with the letter "A" (or alternatively as detailed on the plans approved by Council No: **DA97/122**) including all gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater on the land.

The Act means the Conveyancing Act 1919.

The Authority empowered to release, vary or modify the positive covenant created hereby shall be Warringah Council.

WARRINGAH COUNCIL


Authorised Person

INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTIONS
AS TO USER INTENDED TO BE CREATED PURSUANT TO SECTION 7(3)
OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT, 1977
AND SECTION 88B OF THE CONVEYANCING ACT, 1919

(Sheet 3 of 3 sheets)

SP65833

Subdivision of Lot 1 in
Deposited Plan
covered by Council
Certificate No.

THE COMMON SEAL of
ELDONNE PTY LIMITED

was hereunto affixed by authority of
the Directors previously given and in
the presence of:

)
)
)
)
)

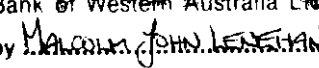




.....
SECRETARY


.....
DIRECTOR

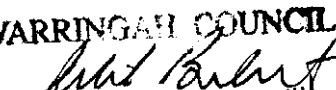
Approved by Warringah Council

.....
The General Manager/ Authorised Person

Executed by Bank of Western Australia Ltd
A.C.N. 050 494 454 by 
and..... its duly
constituted Attorneys under Power of Attorney
dated 4.11.96 and registered
book 4151 No. 491 who at the date hereof
had no notice of revocation of such Power of
Attorney in the presence of:

 MARY HOANG CHAN
.....
(Witness)



WARRINGAH COUNCIL

.....
Authorised Person

Form: 15SO
Release: 1
www.lpi.nsw.gov.au

**ORDER BY THE
STRATA SCHEMES BOARD**

New South Wales
Sections 157, 158, 159 or 183
Strata Schemes Management Act 1996



AB186365N

PRIVACY NOTE: this information is legally required and will become part of the public record

(A) TORRENS TITLE

For the common property CP/SP65833

(B) LODGED BY

Delivery Box 1W	Name, Address or DX and Telephone Cochranes Lawyers Locked Bag 4 CROYDON 2132 PH. 9797 1950 Reference: 04.1454	CODE SO
----------------------------------	--	-----------------------

(C) APPLICANT

The Owners Strata Plan No. 65833

**(D) STRATA PLAN
NUMBER**

65833

- (E) The applicant requests the Registrar General to give effect to the order made under section 158 of the Strata Schemes Management Act 1996 by the Strata Schemes Board sitting at Sydney, a copy of which certified to be a true copy by the Adjudicator or the Strata Schemes Board, is annexed hereto marked "A"

DATE 23 December 2004

(F)

Certified correct for the purposes of the Real Property Act 1900 by the person whose signature appears below.

Signature:

Signatory's name: Graham Cochrane
Signatory's capacity: Applicants' solicitor

A

CONSUMER, TRADER & TENANCY TRIBUNAL Strata and Community Schemes Division

APPLICATION NO: SCS 04/36030
STRATA SCHEME: SP 65833
PREMISES: 18-20 Waterloo Street Narrabeen NSW 2101
APPLICANT: Drake Real Estate Pty. Ltd.
RESPONDENT: Owners' Corporation SP 65833
LEGISLATION: *Strata Schemes Management Act 1996*
KEYWORDS: Amendment of Exclusive Rights By-Law, pursuant to Section 158.

ORDERS



The Application for an order under Section 158 is granted.

1. Pursuant to Section 158 of the Act, Special By-Law 22, "Right to erect signs", is amended as follows:

Sub-paragraphs (d)(i) and (d)(iv) are varied to provide:

(d)(i) Signage shall contain no more than the trading name of the occupier, the telephone number of the occupier, the description of the business to be conducted in the Retail Premises and any insignia of the name or business of the occupier.

(iv) If the signage is illuminated, the Signage shall be internally or back illuminated.
2. Pursuant to Section 207 of the Act, the terms of Order 1 are taken to have effect as a resolution of the Owners Corporation.
3. Owners Corporation SP 65833 must cause the terms of these orders to be recorded in its minute book on receipt of a copy of the orders served on the Owners Corporation by the Registrar.
4. The Owners Corporation SP 65833 is to register the amendment to the Special By-law with the Registrar-General on or before 31 December 2004.

D. House
.....
For Registrar
Date: 25/11/04

5. The Applicant is to pay the costs of the Owners Corporation incurred in registering the change to the Special By-law.

REASONS FOR DECISION

APPLICATION

By application filed on 27 July 2004, the Applicant seeks the following order:

"An order providing consent to erect signage as proposed."

JURISDICTION

Section 158 of the *Strata Schemes Management Act 1996*, ("the Act") relevantly provides:



Order with respect to by-laws conferring exclusive rights or privileges over common property

- (1) An Adjudicator may make an order prescribing the making, amendment or repeal, in terms of the order, of a by-law if the Adjudicator finds:
 - (a) On application made by an owner, that the owners corporation has unreasonably refused to make a by-law of the kind referred to in section 51.
- (2) In considering whether to make an order under this section, an Adjudicator must have regard to:
 - (a) The interests of all owners in the use and enjoyment of their lots and common property, and
 - (b) The rights and reasonable expectations of any owner deriving or anticipating a benefit under a by-law of the kind referred to in section 51.
- (5) An order under this section, when recorded under section 209, has effect as if its terms were a by-law (but subject to any relevant order of a superior court).

Section 51 of the Act relevantly provides:

51 Application of Division

- (1) This Division applies to a by-law conferring on the owner of a lot specified in the by-law, or the owners of several lots so specified:
 - (a) A right of exclusive use and enjoyment of the whole or any specified part of the common property, or
 - (b) Special privileges in respect of the whole or any specified part of the common property, and to a by-law that amends or repeals such a by-law.

The Applicant seeks an order that the Owners Corporation amend By-law 22, which confers on the Applicants a right of exclusive use and enjoyment of a specified part of the common property of the strata scheme.

In accordance with Section 158, a Strata Schemes Adjudicator has jurisdiction to make the order sought.

SUBMISSIONS

Submission on behalf of the Applicant:

The Applicant is the owner of Lot 43 in SP 65833.

The Applicant specified the following reasons for applying for an order by a Strata Schemes Adjudicator:

"Owners Corporation have declined mediation. Owners Corporation have declined consent unreasonably, as outlined in substantive application. Owners Corporation has protracted matter unreasonably through their inaction. I have grave concerns about the detrimental affect this dispute is having on our business and our livelihood."

The Applicant attached the following documents in support of the making of the order sought:

1. Letter dated 1 July 2004 from Renting and Strata Services concerning attempt at mediation.
2. Copy of Special By-law 22.
3. Copy of Strata Plan 65833.
4. Copy of Plan of Lot 43.
5. Photographs.
6. Submission regarding major points of dispute.
7. Chronology of events.
8. Closing argument.
9. Folder of e-mail communication.
10. Folder of faxes, letters and other documents.

On 7 September 2004 and 13 September 2004, the Applicant filed further submissions in support of the making of the order sought in the application.



Submission on behalf of the Respondent:

The Respondent is the Owners Corporation SP 65833.

On 7 September 2004, the Secretary of the Owners Corporation SP 65833 filed a submission, opposing the making of the order sought in the application. The submission included numerous documents and photographs.

Submission on behalf of Other Interested Persons:

No other interested persons made a submission in relation to the application.

FINDINGS

1. The Applicant is the owner of Lot 43 in SP 65833.
2. The Respondent is the Owners Corporation SP 65833.
3. The *Strata Schemes Management Act, 1996* ("the Act") applies.
4. Mediation has been attempted but was unsuccessful. The requirements of Section 125 of the Act have been met.
5. The application for an order by an Adjudicator was made by an interested person, namely the owner of a lot in the strata scheme.
6. The application is correctly brought against the Respondent.

THE DECISION

Strata Plan 65833 is comprised of 44 lots, namely 42 residential lots and 2 lots used for commercial purposes.

Lot 43 is one of the commercial lots. It is owned by the Applicant, Drake Real Estate Pty. Limited, whose business is operated from Lot 43.

Special By-law 22 confers a special privilege, namely a right to erect signs, on the owner of Lot 43.



Special By-law 22 provides:

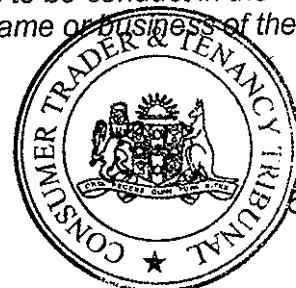
22. **Right to erect signs**

The Proprietor for the time being of retail or commercial lot on the ground floor of the Building (the "Retail Premises") is conferred with the special privilege of having the exclusive use and enjoyment of that part of the Common Property directly outside the Proprietor's Retail Premises including the undersign of the awning directly outside the Retail Premises as is reasonably necessary for the purpose of erecting and keeping an awning sign/ and/or a sign thereon (the "Signage") (such Signage to be of reasonable size and character) and also the special privilege of altering that part of the Common Property directly outside the Retail Premises as aforesaid which is necessary for the purposes of erecting the Signage and effecting structural work or installation or power connection associated therewith subject to the following conditions:

- (a) the Proprietor shall be solely responsible at its cost and expense for the proper maintenance and keeping in a state of good and/or repair the part of the Common Property as altered and the Signage erected by such Proprietor.
- (b) all necessary permits, licences or consents required by the consent authority or any other statutory or lawful authority for the installation of the Signage must be obtained before the Signage is carried out and the Owners Corporation will not unreasonably withhold its consent to any application by the Proprietor for approval to any such Signage by the consent authority or other statutory or lawful authority as aforesaid.
- (c) The Proprietor must not do or suffer to be done in or to the Common Property any act or thing by reason of which any increase or actual premium may become payable for the insurance thereof and the proprietors shall from time to time on demand by the Owners corporation pay to the Owners Corporation all extra or excess premiums and other charges (if any) for insurances effected by the Owners Corporation payable on account of the extra risk caused by any matter or thing arising out of the Signage of the Proprietor or its occupier or the use of the Common Property by the Proprietor of(sic.) its occupier.
- (d) The Proprietor shall be responsible, at its sole cost and expense, for making good any damage caused to the Common Property directly or indirectly as a result of the installation of the Signage and shall indemnify and keep indemnified the Owners Corporation in respect of any damage to the Common Property arising out of the Signage being or having been installed.

Notwithstanding the foregoing provisions of Additional By-law 4, the Signage of the Proprietor or occupier shall comply with the following criteria:-

- (i) Signage shall contain no more than the trading name of the occupier, the description of the business to be conducted in the Retail Premise and any insignia of the name or business of the occupier; and



- (ii) *Signage shall be of a standard and quality in keeping with the design and nature of the Building; and*
- (iii) *The position size and nature of the Signage shall be in keeping with the design and nature of the Building; and*
- (iv) *The Signage shall be internally or back illuminated.*

Without derogating from the generality of the foregoing, the approval of the Owners Corporation shall not be deemed unreasonably withheld in the case of Signage which is:-

- (i) *made from paper or cardboard; or*
 - (ii) *cut-out unedged letter; or*
 - (iii) *exposed wiring or ballasts; or*
 - (iv) *exposed fittings; or*
 - (v) *moving or flashing; or*
 - (vi) *animated.*
- (e) *the Proprietor shall be the owner of the Signage and in the event that the Signage has to be removed by order of the relevant authority the Proprietor of the Retail Premises, at its sole cost and expense must:-*
- (i) *do so, and*
 - (ii) *make good any damage to the Common Property as a result of such removal.*

The Applicant wants to display two signs directly outside its commercial premises. Both signs will be in black lettering.

It is proposed that the first sign be displayed on the fascia above the windows of Lot 43 and read "DRAKE REAL ESTATE 9913 3733".

It is proposed that the second sign will consist of the Applicant's logo and be situated on the wall next to the stairs servicing Lot 43.

A copy of the proposed signs is attached to this adjudication.

By a majority of 8 to 2, the Executive Committee of Owners Corporation SP 65833 opposes the signage proposed by the Applicant on the following grounds:

- The building is predominantly residential, being 42 residential units and 2 commercial shops. The Applicant's premises takes up 207 square metres of the building, compared with the residential units' 3,104 square metres.
- The location of the proposed signage will appear to show ownership and dominance of the building.
- The location of the proposed signage will cause confusion.
- The proposed signage is not in compliance with Special By-law 22.
- The proposed signage is not in compliance with the requirements of Warringah Council.
- The proprietors of 16 of the 44 lots have signed a petition disapproving the proposed signage.



The Executive Committee does not wish to deny the Applicant the right to display signage. However, it opposes the location of the signage as presently proposed.

The Executive Committee submits that the proposed signage will breach Special By-law 22. Specifically:

- The By-law does not specifically allow for signage to be placed on the fascia.
- Clause (d)(i) provides that the signage shall contain no more than the trading name of the occupier, the description of the business to be conducted in the Retail Premises and any insignia of the name or business of the occupier. The inclusion of a telephone number is not permitted.
- Clause (d)(ii) provides that signage shall be of a standard and quality in keeping with the design and nature of the Building. As the building is predominant residential, the proposed signage is not in keeping with the nature of the Building.
- Clause (d)(iii) provides that the position, size and nature of the Signage shall be in keeping with the design and nature of the building. As the building is predominantly residential, the proposed signage is not in keeping with the nature of the building.
- Clause (d)(iv) provides that the Signage shall be internally or back illuminated. The proposed signage is not illuminated.

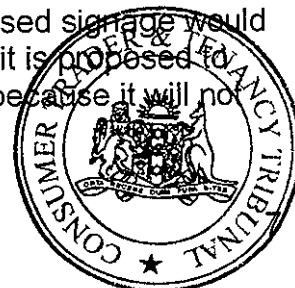
The By-law allows the Applicant to have the exclusive use and enjoyment of that part of the common property directly outside the Proprietor's Retail Premises, **including**, the undersign (sic.) of the awning directly outside the Retail Premises, (emphasis added). There is no awning directly outside the retail premises.

The fascia above the windows of Lot 43 is part of the common property directly outside the Proprietor's Retail Premises. The erection of a sign on the fascia above the windows of Lot 43 would not breach the terms of Special By-law 22.

I am not satisfied on the balance of probabilities that the proposed signage is not in keeping with the design and nature of the building. The building comprises both residential and commercial lots. The use of two of the lots for commercial purposes has always been in the contemplation of the owners of the residential lots.

The Proprietor of the commercial lot on the ground floor of the building has a right to erect signage, as long as it complies with Special By-law 22.

I am satisfied on the balance of probabilities that the proposed signage would breach Special By-law 22 on two grounds: firstly, because it is proposed to display the Applicant's telephone number, and, secondly, because it will not be illuminated.



The Executive Committee of the Owners Corporation agree with the Applicant that an illuminated sign is not desirable. The Executive Committee are currently in the process of having the By-law re-written to omit this requirement.

There appears to be no specific objection or argument to the Applicant's telephone number being included on the sign.

It is the location of the sign that is contentious.

The Executive Committee appear to have been labouring under the misconception that the signage had to be erected on the underside of a non-existent awning. Special By-law 22 contains no such limitation. The reference to the awning is inclusive. The Applicant is entitled to erect signage directly outside its retail premises, including on the fascia above Lot 43's windows, as long as the signage complies with the conditions set out in the By-law.

The Executive Committee submits that the proposed signage is in breach of Warringah Local Environment Plan 2000 in that:

- The sign above the windows is incompatible with the design, scale and architectural character of a predominantly residential building;
- Schedule 1, Exempt Development – Real Estate Signs provides that one sign per site is permissible, maximum area 1.1m². The Applicant is proposing 2 signs. The fascia sign is 1.5m² and the logo sign is 1.5m².
- In addition to the two proposed signs, the Applicant currently has a "sandwich board" sign at the front of the building. A-frame and temporary signs located on public land are prohibited by Schedule 4, Clause 10.

Special By-law 22 provides that the Applicant must obtain all necessary permits, licences or consents required by the consent authority, or any other statutory or lawful authority, for the installation of the signage, before the signage is carried out.

If the consent of Warringah Council is required, the Applicant is obliged to obtain that consent before the signage is erected. It is not appropriate for a Strata Schemes Adjudicator to determine whether or not such consent is required, it is a matter for Warringah Council.

I am not satisfied on the balance of probabilities that the proposed signage will show ownership and dominance of the building, or create confusion. The signage will be directly outside the Applicant's commercial premises. I am not satisfied on the balance of probabilities that signs should not be permitted on the fascia above the Applicant's windows, and on the wall next to the stairs to the Applicant's office, because the building is predominantly used for residential purposes. It has always been envisaged that two of the forty



four lots would be used for commercial purposes. Lot 43 has always been entitled to signage in accordance with the provisions of By-law 22.

The Executive Committee circulated a petition concerning the proposed signage. The petition asked lot owners to sign if they disapproved of the signage on the fascia area. Sixteen of the forty-four lot owners signed the petition.

The Owners Corporation SP 65833 held its Annual General Meeting on 6 September 2004.

Motion 11 was put to the meeting in the following terms:

Motion 11 MOTION REQUIRING A SPECIAL RESOLUTION

The Owners Corporation Strata Plan 65833 specially resolve to amend by law 22 "Right to Erect Signs" with the following:

*Paragraph (d)(i) by inserting the words, "**the telephone number of the occupier**", after the words "The signage shall contain no more than the trading name of the occupier", and before the words "the description of the business to be conducted in the Retail Premises and any insignia of the name or business of the occupier; and".*

*Paragraph (d)(iv) by inserting the words, "**If the signage is illuminated**", before the words "the signage shall be internally or back illuminated."*

Twenty-five lot owners voted on the motion, personally or by proxy. Fifteen lot owners voted in favour of the motion. Ten lot owners voted against the motion.

At the Annual General Meeting, three of the lot owners who had signed the petition against the fascia sign changed their minds and voted in favour of the motion.

Lot 21's proxy in favour of the motion was received three days after the meeting.

Section 52 of the Act provides:

Conditions for making, amending or repealing by-laws

- (1) An owners corporation may make, amend or repeal a by-law to which this Division applies, but only:*
 - (a) with the written consent of the owner or owners of the lot or lots concerned and, in the case of a strata leasehold scheme, the lessor of the scheme, and*
 - (b) in accordance with a special resolution.*



The Division applies to by-laws conferring a right of exclusive use and enjoyment, or special privileges, of the whole or any specified part the common property.

A special resolution means a resolution which is passed at a duly convened meeting of an owners corporation, and against which votes of not more than one-quarter in value are cast.

Ten votes, out of a total of 25, were cast against the motion for the amendment of By-law 22 at the Annual General Meeting of Owners Corporation SP 65833. The votes against amounted to 40%, and therefore exceeded one-quarter in value.

In accordance with the provisions of Section 158 of the Act, an Adjudicator may make an order prescribing the amendment of an exclusive use By-law if the Adjudicator finds that the Owners Corporation has unreasonably refused to make an amendment to the By-law.

In considering whether or not to make the amendment to the By-law, an Adjudicator must have regard to the interests of all owners in the use and enjoyment of their lots and common property, and the rights and reasonable expectations of the lot owner deriving the benefit under the By-law.

I am satisfied on the balance of probabilities that the interests of all owners in the use and enjoyment of their lots and common property will not be adversely affected by the amendment of Special By-law 22, to allow permission for the inclusion of the Applicant's telephone number on signage, and to delete the requirement for illumination of signage.

I am also satisfied on the balance of probabilities that the amendment of Special By-law 22, to give the Applicant the right to display non-illuminated signage, including its telephone number, is reasonable to ensure the Applicant's rights and expectations in the strata scheme.

The question now for my determination is whether the Owners Corporation SP 65833 unreasonably refused its consent to the amendment of Special By-law 22 as proposed by the Applicant.

The Macquarie Dictionary (Third Edition) defines "unreasonable" as:

"Not reasonable; not endowed with reason, not guided by reason or good sense, not agreeable to or willing to listen to reason, not based on reason or in accordance with reason or sound judgment, exceeding the bounds of reason, immoderate, exorbitant."

The Shorter Oxford English Dictionary (Third Edition) defines "unreasonable" as:



"Not having the faculty of reason, irrational, not acting in accordance with reason or good sense, claiming or expecting more than is reasonable, not based on reason or good sense, going beyond what is reasonable or equitable, excessive."

The Owners Corporation SP 65833 does not oppose the deletion of the requirement for signage to be illuminated.

The Owners Corporation SP 65833 has advanced no argument as to why the Applicant's telephone number should not be allowed to be included in the signage.

I consider that the decision to refuse consent to the amendment of the By-law, to delete the requirement for illumination and to permit the inclusion of the Applicant's telephone number, was not guided by good sense or sound judgment.

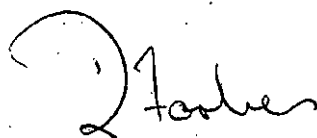
The Owners Corporation SP 65833 refused to consent to the above amendments because it opposed the location of the sign on the fascia above Lot 43's windows. However, the Applicant is entitled to have a sign displayed on the fascia above its windows, without any amendment to Special By-law 22 being required. The real issue in this matter then, is whether or not the By-law should be amended to allow the display of the Applicant's telephone number.

The decision to refuse to amend the By-law to allow the Applicant to display its telephone number on its signage was not based on good reason. In fact, no reasons have been proffered by the Owners Corporation on this point.

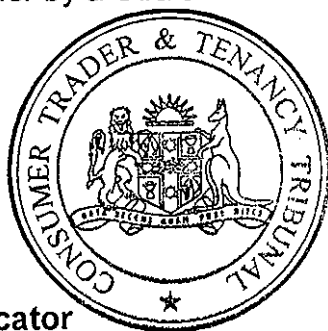
I am satisfied on the balance of probabilities that the Owners Corporation SP 65833 has unreasonably refused its consent to the amendment of Special By-law 22 as proposed by the Applicant.

The grounds for making an order under Section 158 have been established.

The application for an order by a Strata Schemes Adjudicator is granted.



D. Forbes
Strata Schemes Adjudicator
Consumer, Trader & Tenancy Tribunal



21 October 2004

Form: 15CH
Release: 2.1

**CONSOLIDATION/
CHANGE OF BY-LAWS**

New South Wales

Strata Schemes Management Act
Real Property Act 1900



AM772137K

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

(A) TORRENS TITLE	For the common property CP/SP65833		
(B) LODGED BY	Document Collection Box W	Name, Address or DX, Telephone, and Customer Account Number if any JLawyers Pty Limited PO Box 341 EDGECLIFF NSW 2027 tel: 9199 5023 Reference: 20170821	CODE CH

- (C) The Owners-Strata Plan No. 65833 certify that a special resolution was passed on 11/9/2017
- (D) pursuant to the requirements of section 141 of the Strata Schemes Management Act 2015, by which the by-laws were changed as follows—
- (E) Repealed by-law No. NOT APPLICABLE
Added by-law No. SPECIAL BY-LAW NO 4
Amended by-law No. NOT APPLICABLE
as fully set out below:

PLEASE SEE ANNEXURE "A" HERETO

- (F) A consolidated list of by-laws affecting the above mentioned strata scheme and incorporating the change referred to at Note (E) is annexed hereto and marked as Annexure B
- (G) The seal of The Owners-Strata Plan No. 65833 was affixed on 18/9/2017 in the presence of the following person(s) authorised by section 273 Strata Schemes Management Act 2015 to attest the affixing of the seal:

Signature: Chris Miller

Name: CHRIS MILLER

Authority: STRATA MANAGING AGENT

Signature: _____

Name: _____

Authority: _____



ANNEXURE "A" TO CONSOLIDATION/CHANGE OF BY-LAWS THE OWNERS – STRATA PLAN NO 65833

The Owners – Strata Plan No 65833 SPECIALLY RESOLVED pursuant to Section 141 of the *Strata Schemes Management Act, 2015* (NSW) to change the by-laws applicable to the scheme by adding the by-law the subject of the next succeeding motion.

The Owners – Strata Plan No 65833 SPECIALLY RESOLVED pursuant to Section 136 of the *Strata Schemes Management Act, 2015* (NSW) for the purposes of the management, administration, control, use or enjoyment of the lots and common property, to make an additional by-law in the following terms:

SPECIAL BY-LAW NO 4	Penetrations to External Walls & Flooring
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1. Introduction

1.1 In addition to the powers, authorities, duties and functions conferred by or imposed on the Owners Corporation pursuant to the Act, the Owners Corporation shall have the additional powers, authorities, duties and functions to:

- (a) REGULATE Owners and occupiers' penetrations to external walls and flooring to ensure common property waterproofing systems are preserved at the Strata Scheme;
- (b) ENFORCE compliance with this by-law; and
- (c) INDEMNIFY the Owners Corporation.

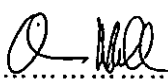
2. Definitions & Interpretation

2.1 Definitions

2.2 In this by-law:

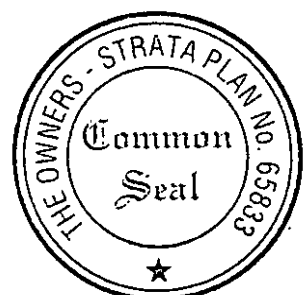
- (a) "Act" means the *Strata Schemes Management Act, 2015* (NSW).
- (b) "Building" means the building situated at 18 - 20 Waterloo Street, NARRABEEN NSW 2101.
- (c) "Claims" means any and all claims, demands, causes of action (whether based in contract, equity, tort or statute and including loss or abatement of rent), suits, arbitration, mediation and all losses (including loss of income and other consequential losses), liabilities, costs, compensation, damages or expenses (including legal expenses) whatsoever arising out of or in any way connected with the Works which may be claimed against the Owners Corporation.
- (d) "Guidelines" means:
 - (i) Most air conditioners require an external unit to be installed on the balcony, with pipes joining to an internal air outlet. The following

THE COMMON SEAL of THE OWNERS – STRATA PLAN NO 65833 was affixed on 18th September 2017 in the presence of the following person(s) authorised by Section 273 of the *Strata Schemes Management Act, 2015* (NSW) to attest the affixing of the seal:

Signature(s) 

Name(s): Chris Miller

Authority: Strata Managing Agent



ANNEXURE "A" TO CONSOLIDATION/CHANGE OF BY-LAWS THE OWNERS – STRATA PLAN NO 65833

details what is required to ensure the waterproof state of the building is retained and not damaged.

- i. Owners Corporation's recommended solution: Put hole through door/window fixed glass panel. This is the preferred option as it will not compromise any of the Building's material e.g. wall. The Owner is responsible to replace glass if at any time it breaks e.g. during contractor doing the work and any time after that.
- ii. Solution prohibited by the Owners Corporation: drilling through door hob, window lintel or window will. Under no circumstances is it permitted to penetrate through the balcony sliding door hob or window lintel and/or window will. An Owner who carries out the prohibited solution will be liable to remedy the breach ie remove all windows and doors and redo the membrane at the direction of the Owners Corporation.
- iii. Alternate Solution: Put hole in any part of the Building's external walls. Not preferred but can be done if required due to installation conditions.
- iv. An Owner is responsible to follow the below process as outlined by RHM Consultants:
 1. At any time after the work is complete if it is found that the work has caused water penetration into the Building the Owner is responsible to remedy the issue.
 2. Process to be followed for any penetration in common external walls:
 - a. Any chase or penetration in the external Rapidwall panel will need to be render patched with normal sand and cement render.
 - b. The pipe/conduit penetration will need to be properly sealed with Ardex CA 20 P polyurethane sealant (or similar approved);
 - c. The affected section of wall will need to be texture coated with Wattyl Gronopatch as required;
 - d. The entire Rapid wall panel (to architectural breaks) should then be recoated, with Ardex WPM 330 Façade Coating. Surface paint to then be colour matched to existing colours and made good.

(e) "Lot" means any and all lots in the Strata Scheme.

THE COMMON SEAL of THE OWNERS – STRATA PLAN NO 65833 was affixed on 18th September 2017 in the presence of the following person(s) authorised by Section 273 of the *Strata Schemes Management Act, 2015* (NSW) to attest the affixing of the seal:

Signature(s) 

Name(s): Chris Miller

Authority: Strata Managing Agent



ANNEXURE "A" TO CONSOLIDATION/CHANGE OF BY-LAWS

THE OWNERS - STRATA PLAN NO 65833

- (f) **"Owner"** means the owner of the Lot.
- (g) **"Owners Corporation"** means the owners corporation created on registration of the Strata Scheme.
- (h) **"Strata Scheme"** means the strata scheme created upon registration of strata plan no 65833.

2.2 Interpretation

In this by-law:

- (a) headings are for reference only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (e) any reference to an Owner or the Owners Corporation in this by-law includes their successors and permitted assigns;
- (f) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it;
- (g) reference to any statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
- (h) any terms in this by-law which are not defined will have the same meaning as those defined in Act or the *Strata Schemes Development Act, 2015* (NSW) ("**SSDA 2015**") respectively;
- (i) if any one or more of the provisions contained in this by-law shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this by-law will not be affected or impaired thereby and the invalid, illegal or unenforceable provision(s) shall be deemed severed or modified to the extent which is necessary to make the remainder of the provisions of this by-law enforceable;
- (j) if there is any inconsistency between any by-laws applicable to the Strata Scheme and this by-law, the provisions of this by-law shall prevail to the extent of the inconsistency;
- (k) where a specific number of a Lot is identified, reference is made to that specific Lot and corresponding Owner in the Strata Scheme; and
- (l) in case of a corporate Owner or occupier of a Lot, any director or shareholder of that corporate Owner or occupier shall be an occupier of that Lot if he or she resides in the Lot.

3. Preservation of waterproofing systems at the Strata Scheme

Notwithstanding any by-law applicable to the Strata Scheme, Owners and occupiers must ensure that any penetration proposed to be undertaken to or carried out through

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Signature(s) Chris Miller

Name(s): Chris Miller

Authority: Strata Managing Agent



ANNEXURE "A" TO CONSOLIDATION/CHANGE OF BY-LAWS

THE OWNERS – STRATA PLAN NO 65833

an external wall and/or flooring within the internal or balcony areas of the Lot does not compromise the integrity of the common property waterproofing systems and;

- (a) is certified as such by a duly qualified expert, a copy of such certificate to be provided to the Owners Corporation within seven (7) days of the completion of the penetration;
- (b) is performed by duly licensed and insured employees, contractors and/or agents;
- (c) complies with the requirements of any governmental authority and the Owners Corporation (including its agents/employees/strata committee);
- (d) complies with the current Australian Building Codes and Standards and work, health and safety laws;
- (e) is carried out expeditiously with a minimum of disruption;
- (f) is conducted in a proper and workmanlike manner; and
- (g) in case of installation of a split-system air-conditioning unit, shall also comply with the Guidelines

4.4 Access

An Owner or occupier shall provide to the Owners Corporation or its nominated representative(s) and any governmental authority access to inspect the Lot within twenty-four (24) hours of any request from time to time to assess compliance with this by-law and/or for the purposes of carrying out repair, maintenance, certification or registration of the common property comprised within the Lot or which may be affected under this by-law.

4.5 Owner liable

An Owner remains liable for any loss or damage to any lot or common property or other property (including the Lot) arising howsoever out of or in connection with any penetration(s) carried out by the Owner or occupier to the Lot and whether or not the Owner or occupier has complied with the Guidelines. For clarity, adhering to the Guidelines does not absolve the Owner from their duty of care to ensure that the Building waterproofing is not compromised. The Guidelines are for guidance only and only to be used if an Owner is required to penetrate any common property wall.

4.6 Indemnity

The Owner indemnifies and shall keep indemnified and save harmless the Owners Corporation against any Claims whatsoever and whether in respect of waterproofing, common or other property or personal injury or death arising out of or in connection with any penetration(s) carried out to the Lot.

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THE OWNERS – STRATA PLAN NO 65833**

5. Breach of this by-law

If an Owner or occupier breaches any term or condition of this by-law, the Owners Corporation may, without prejudice to its other rights and remedies, recover:

- (a) the costs of rectifying a respective Owner's or occupier's breach of this by-law;
- (b) the costs of enforcement of this by-law from the Owner or occupier as a debt due; and
- (c) from the Owner or occupier the amount of any fine or fee which may be charged to the Owners Corporation.

6. Applicability

- 6.1 Nothing in this by-law operates to relieve an Owner or occupier from obtaining the requisite approvals under the Act from the Owners Corporation in relation to any penetration or other proposed or completed works.
- 6.2 Owners and occupiers are responsible for the Owner's/occupiers employees, contractors and/or agents compliance with the requirements of this by-law.
- 6.3 This by-law binds and enures to the benefit of any and all future Owners and occupiers.

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ANNEXURE "B" TO CONSOLIDATION/CHANGE OF BY-LAWS
THE OWNERS – STRATA PLAN NO 65833

CONSOLIDATED BY-LAWS as at 18th September 2017

SP65833

CONTENTS –

- 1 Noise
- 2 Vehicles
- 3 Obstruction of common property
- 4 Damage to lawns and plants on common property
- 5 Damage to common property
- 6 Behaviour of owners and occupiers
- 7 Children playing on common property in building
- 8 Behaviour of invitees
- 9 Depositing rubbish and other material on common property
- 10 Drying of laundry items
- 11 Cleaning windows and doors
- 12 Storage of inflammable liquids and other substances and materials
- 13 Moving furniture and other objects on or through common property
- 14 Floor coverings
- 15 Garbage disposal
- 16 Keeping of animals - Note: Option A selected
- 17 Appearance of lot
- 18 Change in use of lot to be notified
- 19 Provision of amenities or services
- 20 Notice-board
- 21 Retail Use
- 22 Right to Erect Signs (As amended by AB186365)

Special By-law No 1 – Air Conditioners – Registered Dealing No. AB120786 passed
06.09.2004 (as amended by AB447626)

Special By-law No 2 – Keeping of Animals - Registered Dealing No. AB120786 passed
06.09.2004

Special By-law No 3 – Key Deposit - Registered Dealing No. AD266263 passed
09.08.2006

Special By-law No 4 – Penetrations to External Walls & Flooring

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ANNEXURE "B" TO CONSOLIDATION/CHANGE OF BY-LAWS THE OWNERS – STRATA PLAN NO 65833

1. Noise

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

2. Vehicles

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

3. Obstruction of common property

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

4. Damage to lawns and plants on common property

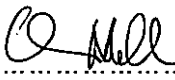
An owner or occupier of a lot must not:

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated on common property, or
- (b) use for his or her own purposes as a garden any portion of the common property.

5. Damage to common property

- (1) An owner or occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the prior written approval of the owners corporation.
- (2) An approval given by the owners corporation under subclause (1) cannot authorise any additions to the common property.
- (3) This by-law does not prevent an owner or person authorised by an owner from installing:
 - (a) any locking or other safety device for protection of the owner's lot against intruders or to improve safety within the owner's lot, or

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- (b) any screen or other device to prevent entry of animals or insects on the lot, or
 - (c) any structure or device to prevent harm to children, or
 - (d) any device used to affix decorative items to the internal surfaces of walls in the owner's lot.
- (4) Any such locking or safety device, screen, other device or structure must be installed in a competent and proper manner and must have an appearance after it has been installed, in keeping with the appearance of the rest of the building.
- (5) Despite section 62, the owner of a lot must:
- (a) maintain and keep in a state of good and serviceable repair any installation or structure referred to in subclause (3) that forms part of the common property and that services the lot, and
 - (b) repair any damage caused to any part of the common property by the installation or removal of any locking or safety device, screen, other device or structure referred to in subclause (3) that forms part of the common property and that services the lot.

6. Behaviour of owners and occupiers

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

7. Children playing on common property in building

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

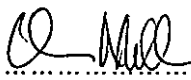
8. Behaviour of invitees

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

9. Depositing rubbish and other material on common property

An owner or occupier of a lot must not deposit or throw on the common property any rubbish, dirt, dust or other material or discarded item.

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10. Drying of laundry items

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

11. Cleaning windows and doors

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

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

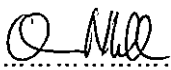
12. Storage of inflammable liquids and other substances and materials

- (1) An owner or occupier of a lot must not, except with the prior written approval of the owners corporation, use or store on the lot or on the common property any inflammable chemical, liquid or gas or other inflammable material.
(2) This by-law does not apply to chemicals, liquids, gases or other material used or intended to be used for domestic purposes, or any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

13. Moving furniture and other objects on or through common property

- (1) An owner or occupier of a lot must not transport any furniture or large object through or on common property within the building unless sufficient notice has first been given to the executive committee so as to enable the executive committee to arrange for its nominee to be present at the time when the owner or occupier does so.
(2) An owners corporation may resolve that furniture or large objects are to be transported through or on the common property (whether in the building or not) in a specified manner.
(3) If the owners corporation has specified, by resolution, the manner in which furniture or large objects are to be transported, an owner or occupier of a lot must not transport any furniture or large object through or on common property except in accordance with that resolution.

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14. Floor coverings.

- (1) An owner of a lot must ensure that all floor space within the lot is covered or otherwise treated to any extent sufficient to prevent the transmission from the floor space of noise likely to disturb the peaceful enjoyment of the owner or occupier of another lot.
- (2) This by-law does not apply to floor space comprising a kitchen, laundry, lavatory or bathroom.

15. Garbage disposal

- (1) An owner or occupier of a lot in a strata scheme that does not have shared receptacles for garbage and recyclable materials or waste:
 - (a) must maintain such receptacles within the lot, or on such part of the common property as may be authorised by the owners corporation, in clean and dry condition and (except in the case of receptacles for recyclable material) adequately covered, and
 - (b) must ensure that before refuse and recyclable materials or waste are placed in the receptacles it is, in the case of refuse, securely wrapped or, in the case of tins or other containers, completely drained, or in the case of recyclable materials or waste separated and prepared in accordance with the applicable recycling guidelines, and
 - (c) for the purpose of having the garbage, recyclable materials or waste collected, must place the receptacles within an area designated for that purpose by the owners corporation and at a time not more than 12 hours before the time at which garbage, recyclable materials or waste is normally collected, and
 - (d) when the garbage, recyclable materials or waste has been collected, must promptly return the receptacles to the lot or other area referred to in paragraph (a),
 - (e) must not place anything in the receptacles of the owner or occupier of any other lot except with the permission of that owner or occupier, and
 - (f) must promptly remove anything which the owner, occupier or garbage or recycling collector may have spilled from the receptacles and must take such action as may be necessary to clean the area within which that thing was spilled.
- (2) An owner or occupier of a lot in a strata scheme that has shared receptacles for garbage and recyclable materials or waste:

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- (a) must ensure that before refuse, recyclable materials or waste is placed in the receptacles it is in the case of refuse securely wrapped or, in the case of tins or other containers, completely drained, or in the case of recyclable materials or waste, separated and prepared in accordance with the applicable recycling guidelines, and
- (b) must promptly remove anything which the owner, occupier or garbage or recycling collector may have spilled in the area of the receptacles and must take such action as may be necessary to clean the area within which that thing was spilled.

16. Keeping of animals

- (1) Subject to section 49(4), an owner or occupier of a lot must not, without the prior written approval of the owners corporation, keep any animal (except fish kept in a secure aquarium on the lot) on the lot or the common property.
- (2) The owners corporation must not unreasonably withhold its approval of the keeping of an animal on a lot or the common property.

17. Appearance of lot

- (1) the owner or occupier of a lot must not, without the prior written approval of the owners corporation, maintain within the lot anything visible from outside the lot that, viewed from outside the lot, is not in keeping with the rest of the building.
- (2) This by-law does not apply to the hanging of any washing, towel, bedding, clothing, or other article as referred to in By-law 10.

18. Change in use of lot to be notified

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

19. Provision of amenities or services

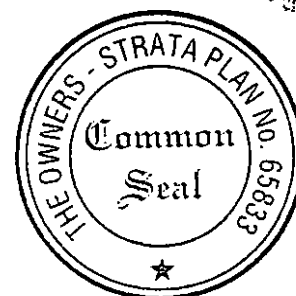
- (1) The owners corporation may, by special resolution, determine to enter into arrangements for the provision of the following amenities or services to one or more of the lots, or to the owners or occupiers of one or more of the lots.
 - (a) window cleaning,
 - (b) garbage disposal and recycling services,

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THE OWNERS – STRATA PLAN NO 65833**

- (c) electricity, water or gas supply,
 - (d) telecommunication services (for example, cable television).
- (2) If the owners corporation makes a resolution referred to in subclause (1) to provide an amenity or service to a lot or to the owner or occupier of a lot, it must indicate in the resolution the amount for which, or the conditions on which, it will provide the amenity or service.

20. Notice-board

An owners corporation must cause a notice-board to be affixed to some part of the common property.

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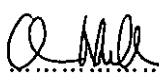
THE OWNERS – STRATA PLAN NO 65833

21 RETAIL USE

The Proprietor or occupier for the time being of a retail or commercial lot on the ground floor of the Building (the "Retail Premises") shall have the right to use the Retail Premises for retail or commercial purposes subject to the following conditions:-

- (i) compliance with all relevant planning laws imposed by any governmental authority and the obtaining by the Proprietor or occupier of all relevant consents to the proposed use of the Retail Premises from all relevant consent authorities;
- (ii) the Proprietor shall from time to time pay on demand by the Owners Corporation to the Owners Corporation all extra or excess premiums and other charges (if any) for insurances effected by the Owners Corporation payable on account of the extra risk caused by the use to which the Retail Premises are put by the Proprietor or its occupier;
- (iii) the Proprietor or occupier will not at any time do or suffer to be done or allow any act matter or thing upon the Retail Premises or bring or keep anything therein whereby any insurance relating to the Retail Premises against damage by fire and other risks may be rendered void or voidable or whereby the rate of premium on such insurance shall be liable to be increased and where the Owners Corporation shall approve in writing of any proposal of the Proprietor or its occupier to increase the risk of fire the Proprietor shall pay all additional premiums of insurance (if any) required on account of the additional risk caused by the use to which the Premises are put by the Proprietor with the approval aforesaid;
- (iv) the Proprietor must not bring or cause to be brought into or upon the Retail Premises or any part thereof any dangerous noxious toxic volatile explosive or flammable substance or compound whatsoever whether in solid liquid or gaseous form without the prior written approval of the Owners Corporation first having obtained (and which consent the Owners Corporation may withhold in its absolute discretion or grant subject to conditions);
- (v) the Proprietor or occupier shall observe the maximum floor loading weights nominated by the Owners Corporation and shall not permit the floors of the Retail Premises to be broken strained or damaged by the overloading;
- (vi) the Proprietor or occupier shall not obstruct or permit to be obstructed by its employees, suppliers and others over whom it may have control any part of the Common Property including without limitation the vestibules, entrances, passageways and stairways therein by leaving or placing therein any article, thing or by any meeting of persons;
- (vii) the Proprietor or occupier shall prohibit its employees, suppliers and others over whom it may have control from parking motor vehicles in driveways during loading or unloading or otherwise obstructing in any manner the entrances, exits and driveways in

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and to the Building;

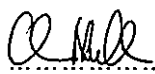
- (viii) the Proprietor shall make good any breakage defect or damage to the Common Property or any facility thereof occasioned by want of care misuse or abuse on the part of the Proprietor or its occupier;
- (ix) the Proprietor or occupier shall not solicit business nor distribute pamphlets or other advertising material in the Common Property.
- (x) the Proprietor of the Retail Premises shall provide at its own expense a receptacle for the storage of garbage and refuse (to be placed on an area of the Common Property designated by resolution to the Owners Corporation for that purpose) and shall, likewise at its own expense arrange for such receptacle to be emptied duly and otherwise in accordance with any requirements from time to time of the consent authority.

22 RIGHT TO ERECT SIGNS

The Proprietor for the time being of retail or commercial lot on the ground floor of the Building (the "Retail Premises") is conferred with the special privilege of having the exclusive use and enjoyment of that part of the Common Property directly outside the Proprietor's Retail Premises including the undersign of the awning directly outside the Retail Premises as is reasonably necessary for the purposes of erecting and keeping an awning sign and/or a sign thereon (the "Signage") (such Signage to be of reasonable size and character) and also the special privilege of altering that part of the Common Property directly outside the Retail Premises as aforesaid which is necessary for the purposes of erecting the Signage and effecting structural work or installation or power connection associated therewith subject to the following conditions:-

- (a) the Proprietor shall be solely responsible at its cost and expense for the proper maintenance and keeping in a state of good service and/or repair the part of the Common Property as altered and the Signage erected by such Proprietor;
- (b) all necessary permits, licences or consents required by the consent authority or any other statutory or lawful authority for the installation of the Signage must be obtained before the Signage is carried out and the Owners Corporation will not unreasonably withhold its consent to any application by the Proprietor for approval to any such Signage by the consent authority or other statutory or lawful authority as aforesaid;
- (c) the Proprietor must not do or suffer to be done in or to the Common Property any act or thing by reason of which any increase or actual premium may become payable for the insurance thereof and the proprietors shall from time to time on demand by the Owners Corporation pay to the Owners Corporation all extra or excess premiums and other charges (if any) for insurances effected by the Owners Corporation payable on account of the extra risk causes by any matter or thing arising out of the Signage of the Proprietor or its occupier or the use of the Common Property by the Proprietor of its

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occupier.

- (d) the Proprietor shall be responsible, at its sole cost and expense, for making good any damage caused to the Common Property directly or indirectly as a result of the installation of the Signage and shall indemnify and keep indemnified the Owners Corporation in respect of any damage to the Common Property arising out of the Signage being or having been installed.


Notwithstanding the foregoing provisions of Additional By-Law 4, the Signage of the Proprietor or occupier shall comply with the following criteria:-

- (d) the Proprietor shall be responsible, at its sole cost and expense, for making good any damage caused to the Common Property directly or indirectly as a result of the installation of the Signage and shall indemnify and keep indemnified the Owners Corporation in respect of any damage to the Common Property arising out of the Signage being or having been installed.

Notwithstanding the foregoing provisions of Additional By-Law 4, the Signage of the Proprietor or occupier shall comply with the following criteria:-

- (d)(i) Signage shall contain no more than the trading name of the occupier, the telephone number of the occupier, the description of the business to be conducted in the Retail Premises and any insignia of the name or business of the occupier.
- (ii) Signage shall be of a standard and quality in keeping with the design and nature of the Building; and
- (iii) the position size and nature of the Signage shall be in keeping with the design and nature of the Building; and
- (iv) If the signage is illuminated, the Signage shall be internally or back illuminated.

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Without derogating from the generality of the foregoing, the approval of the Owners Corporation shall not be deemed unreasonably withheld in the case of Signage which is:-

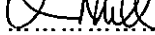
- (i) made from paper or cardboard; or
 - (ii) cut-out unedged letters; or
 - (iii) exposed wiring or ballasts; or
 - (iv) exposed fittings; or
 - (v) moving or flashing; or
 - (vi) animated.
- (e) the Proprietor shall be the owner of the Signage and in the event that the Signage has to be removed by order of the relevant authority the Proprietor of the Retail Premises, at its sole cost and expense must:-
- (i) do so; and
 - (ii) make good any damage to the Common Property as a result of such removal.

23 NON EXCLUSIVE USE – Greasetrap

The Proprietor for the time being of Commercial Premises is for food purposes is conferred with the permanent non-exclusive right to the use and enjoyment of that part of the Common Property wherein is located the greasetrap subject to the following conditions:-

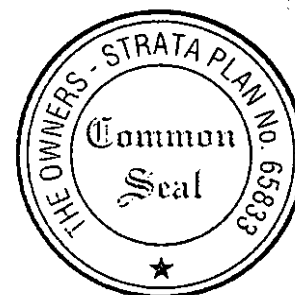
- (a) not to do or suffer to be done in or in respect of such part of the Common Property any act or thing by reason of which any increase or extra premium may become payable for the insurance of the Common Property or any part thereof and the proprietors shall from time to time on demand by the Owners Corporation pay to the Owners Corporation all extra or excess premiums and other charges (if any) for insurances effected by the Owners Corporation payable on account of the extra risk causes by any matter or thing arising out of this Additional By-Law; and
- (b) the Proprietor shall be responsible at its sole cost and expense for making good any damage caused to the greasetrap and/or the Common Property directly or indirectly as a result of the use of the greasetrap hereby granted and shall indemnify and keep indemnified the Owners Corporation in respect of any damage to the Common Property including the greasetrap caused by the Proprietor or occupier and any lessee, licensee or invitee of them.

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Signature(s) 

Name(s): Chris Miller

Authority: Strata Managing Agent



ANNEXURE "B" TO CONSOLIDATION/CHANGE OF BY-LAWS
THE OWNERS – STRATA PLAN NO 65833

SPECIAL BY-LAW 1 - AIR CONDITIONERS

The existing condensers located on:

- a. the roof and belonging to lot 15,
- b. the roof and belonging to of lot 32,
- c. the roof and belonging to of lot 42¹,
- "d. the ceiling of the street level car park and which belongs to lot 43"

are exempt from clauses 1 to 3 of this Special By-Law.

An owner of any lot may install an air-conditioning unit ("unit") to serve their lot in accordance with the following terms and conditions:

Terms & Conditions:

1. The unit must be of a "split system" design, with the condenser located on the balcony floor of the lot. The condenser must not be mounted on the wall.
 2. When installing the unit the owner must:
 - a. where the balcony faces East or North i.e. Lagoon St or Waterloo St,
-
1. Lot 42 retains this right for as long as its existing condenser is operational. In the event, at some future time, that this existing condenser is replaced the owner of Lot 42 will, at his/hers own expense, be required to reposition any new or replacement condenser on the balcony of Lot 42, in accordance with the terms of this Special By-law.
 2. The positioning of the condenser should not be any further than 300 mm from the outside face of sliding door accessing the balcony.

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ANNEXURE "B" TO CONSOLIDATION/CHANGE OF BY-LAWS THE OWNERS – STRATA PLAN NO 65833

- ensure that 'split system' condenser is located on the left hand, back corner², of the balcony floor of the lot, away from the balcony railing;
- b. ensure that the 'split system' condenser does not exceed the maximum dimensions, as follows: Height 700 mm x Width 900 mm x Depth 300mm;
 - c. comply with all conditions of approval of the Owners Corporation, where approval is necessary;
 - d. obtain all necessary permits, licenses or consents required by any local authority or other statutory or lawful authority for such installation;
 - e. comply with the manufacturer's specifications; and
 - f. carry out the installation in a proper, workmanlike and skilful manner.
3. Where an owner is unable to comply with the requirements of clauses 1 or 2, above, or any other requirements in this Special By-law, the owner must obtain from the Owners Corporation its written approval to the location and manner of installation of the unit and for this purpose the owner must present drawings and specifications of the proposed installation to the Owners Corporation.
 4. The unit shall at all times be the sole property of the owner for the time being of the lot.
 5. The owner must conceal electrical and coolant lines from view, as far as possible.
 6. The owner must ensure that condensation and run-off are drained through lines to existing drains or pipes.
 7. The owner must not use the units if its use generates noise or vibration that interferes unreasonably with the use and enjoyment of another lot by the owner or occupier of it, or of the common property by any person entitled to use it.
 8. The unit must not expel any effluent or exhaust any air in such a way that interferes unreasonably with the use and enjoyment of another lot by the owner or occupier of it, or of the common property by any person entitled to use it.

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ANNEXURE "B" TO CONSOLIDATION/CHANGE OF BY-LAWS THE OWNERS – STRATA PLAN NO 65833

9. The owner must maintain the unit in a state of good and serviceable repair and appearance, and must renew or replace it whenever necessary.
10. The owner at his own cost must repair any damage to the common property occurring in the installation, maintenance, replacement, repair or renewal of the unit.
11. The owner must indemnify the Owners Corporation against any liability or expense that would not have been incurred if the unit had not been installed.
12. In the event that an owner of a lot to which the unit is installed, after notice, fails to comply with any of these terms and conditions the Owners Corporation may terminate the right of the owner to install the air-conditioner.

SPECIAL BY-LAW 2 - KEEPING OF ANIMALS

With the exception of the existing animals being kept by the current owners or occupiers of Lot 13 and 42.

Subject to Section 49 (4), an owner or occupier of a residential lot must not keep any animal on the lot or common property.

Terms & Conditions:

The exception applying to the current owners of Lots 13 and 42 is only in regard to their existing animals for which they have previously obtained written consent from the Executive Committee. For the avoidance of doubt, this exception does not extend to any other animals and in the event of loss or death of the existing animal, the replacement of those animals.

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ANNEXURE "B" TO CONSOLIDATION/CHANGE OF BY-LAWS THE OWNERS – STRATA PLAN NO 65833


SPECIAL BY-LAW 3 - Key Deposit

Definitions:

For the purposes of this by-law, "key" means mechanical keys and electronic keys including but not limited to swipe cards.

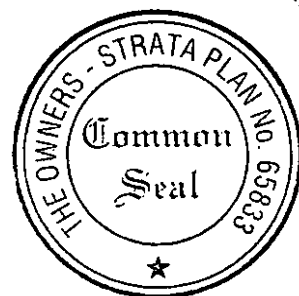
1. In addition to those functions conferred or imposed on the owners corporation by the Strata Schemes Management Act 1996 or other Act, the owners corporation shall have the power and the authority to manage and control the issue of keys for the benefit of all owners.
2. To these ends the owners corporation may:
 - a. fit and alter locking devices to any and all doors leading:
 - i. to and from the parcel; and
 - ii. from one part of the common property to another;so that entry to and egress requires a key, and the executive committee is hereby authorised to determine from time to time when and where such alterations shall occur;
 - b. limit issue of keys to, for example, owners, occupiers and service providers, and limit the number of keys so issued to any person or group of persons, that limitation to be determined from time to time by the executive committee;
 - c. require payment of a deposit upon issue of a key, at a rate to be determined from time to time by the executive committee;
 - d. refuse refund of a deposit if a key is either not returned, or returned in a damaged or defective state, but if a key is returned without damage or defect the owners corporation must reimburse the person returning the key within seven days of the return;
 - e. apply all or any part of the deposit to replace a missing key, or to repair or replace a damaged or defective key.

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ANNEXURE "B" TO CONSOLIDATION/CHANGE OF BY-LAWS
THE OWNERS – STRATA PLAN NO 65833

SPECIAL BY-LAW NO 4

Penetrations to External Walls & Flooring

1. Introduction

1.1 In addition to the powers, authorities, duties and functions conferred by or imposed on the Owners Corporation pursuant to the Act, the Owners Corporation shall have the additional powers, authorities, duties and functions to:

- (a) REGULATE Owners and occupiers' penetrations to external walls and flooring to ensure common property waterproofing systems are preserved at the Strata Scheme;
- (b) ENFORCE compliance with this by-law; and
- (c) INDEMNIFY the Owners Corporation.

2. Definitions & Interpretation

2.1 Definitions

2.2 In this by-law:

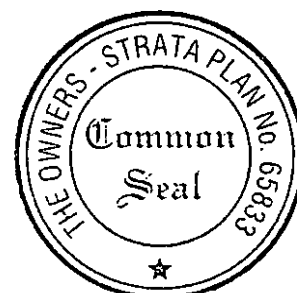
- (a) "Act" means the *Strata Schemes Management Act, 2015* (NSW).
- (b) "Building" means the building situated at 18 - 20 Waterloo Street, NARRABEEN NSW 2101.
- (c) "Claims" means any and all claims, demands, causes of action (whether based in contract, equity, tort or statute and including loss or abatement of rent), suits, arbitration, mediation and all losses (including loss of income and other consequential losses), liabilities, costs, compensation, damages or expenses (including legal expenses) whatsoever arising out of or in any way connected with the Works which may be claimed against the Owners Corporation.
- (d) "Guidelines" means:
 - (i) Most air conditioners require an external unit to be installed on the balcony, with pipes joining to an internal air outlet. The following details what is required to ensure the waterproof state of the building is retained and not damaged.
 - i. Owners Corporation's recommended solution: Put hole through door/window fixed glass panel. This is the preferred option as it will not compromise any of the Building's material e.g. wall. The Owner is responsible to replace glass if at any time it breaks e.g. during contractor doing the work and any time after that.
 - ii. Solution prohibited by the Owners Corporation: drilling through door hob, window lintel or window will. Under no circumstances

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ANNEXURE "B" TO CONSOLIDATION/CHANGE OF BY-LAWS

THE OWNERS – STRATA PLAN NO 65833

is it permitted to penetrate through the balcony sliding door hob or window lintel and/or window will. An Owner who carries out the prohibited solution will be liable to remedy the breach ie remove all windows and doors and redo the membrane at the direction of the Owners Corporation.


- iii. Alternate Solution: Put hole in any part of the Building's external walls. Not preferred but can be done if required due to installation conditions.
 - iv. An Owner is responsible to follow the below process as outlined by RHM Consultants:
 1. At any time after the work is complete if it is found that the work has caused water penetration into the Building the Owner is responsible to remedy the issue.
 2. Process to be followed for any penetration in common external walls:
 - a. Any chase or penetration in the external Rapidwall panel will need to be render patched with normal sand and cement render.
 - b. The pipe/conduit penetration will need to be properly sealed with Ardex CA 20 P polyurethane sealant (or similar approved);
 - c. The affected section of wall will need to be texture coated with Wattyl Gronopatch as required;
 - d. The entire Rapid wall panel (to architectural breaks) should then be recoated, with Ardex WPM 330 Façade Coating. Surface paint to then be colour matched to existing colours and made good.
- (e) "Lot" means any and all lots in the Strata Scheme.
- (f) "Owner" means the owner of the Lot.
- (g) "Owners Corporation" means the owners corporation created on registration of the Strata Scheme.
- (h) "Strata Scheme" means the strata scheme created upon registration of strata plan no 65833.

2.2 Interpretation

In this by-law:

- (a) headings are for reference only;
- (b) the singular includes the plural and vice versa;

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THE OWNERS – STRATA PLAN NO 65833

- (c) words denoting any gender include all genders;
- (d) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (e) any reference to an Owner or the Owners Corporation in this by-law includes their successors and permitted assigns;
- (f) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it;
- (g) reference to any statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
- (h) any terms in this by-law which are not defined will have the same meaning as those defined in Act or the *Strata Schemes Development Act, 2015* (NSW) ("**SSDA 2015**") respectively;
- (i) if any one or more of the provisions contained in this by-law shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this by-law will not be affected or impaired thereby and the invalid, illegal or unenforceable provision(s) shall be deemed severed or modified to the extent which is necessary to make the remainder of the provisions of this by-law enforceable;
- (j) if there is any inconsistency between any by-laws applicable to the Strata Scheme and this by-law, the provisions of this by-law shall prevail to the extent of the inconsistency;
- (k) where a specific number of a Lot is identified, reference is made to that specific Lot and corresponding Owner in the Strata Scheme; and
- (l) in case of a corporate Owner or occupier of a Lot, any director or shareholder of that corporate Owner or occupier shall be an occupier of that Lot if he or she resides in the Lot.

3. Preservation of waterproofing systems at the Strata Scheme

Notwithstanding any by-law applicable to the Strata Scheme, Owners and occupiers must ensure that any penetration proposed to be undertaken to or carried out through an external wall and/or flooring within the internal or balcony areas of the Lot does not compromise the integrity of the common property waterproofing systems and;

- (a) is certified as such by a duly qualified expert, a copy of such certificate to be provided to the Owners Corporation within seven (7) days of the completion of the penetration;
- (b) is performed by duly licensed and insured employees, contractors and/or agents;
- (c) complies with the requirements of any governmental authority and the Owners Corporation (including its agents/employees/strata committee);
- (d) complies with the current Australian Building Codes and Standards and work, health and safety laws;
- (e) is carried out expeditiously with a minimum of disruption;
- (f) is conducted in a proper and workmanlike manner; and

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- (g) in case of installation of a split-system air-conditioning unit, shall also comply with the Guidelines

4.4 Access

An Owner or occupier shall provide to the Owners Corporation or its nominated representative(s) and any governmental authority access to inspect the Lot within twenty-four (24) hours of any request from time to time to assess compliance with this by-law and/or for the purposes of carrying out repair, maintenance, certification or registration of the common property comprised within the Lot or which may be affected under this by-law.

4.5 Owner liable

An Owner remains liable for any loss or damage to any lot or common property or other property (including the Lot) arising howsoever out of or in connection with any penetration(s) carried out by the Owner or occupier to the Lot and whether or not the Owner or occupier has complied with the Guidelines. For clarity, adhering to the Guidelines does not absolve the Owner from their duty of care to ensure that the Building waterproofing is not compromised. The Guidelines are for guidance only and only to be used if an Owner is required to penetrate any common property wall.

4.6 Indemnity

The Owner indemnifies and shall keep indemnified and save harmless the Owners Corporation against any Claims whatsoever and whether in respect of waterproofing, common or other property or personal injury or death arising out of or in connection with any penetration(s) carried out to the Lot.

5. Breach of this by-law

If an Owner or occupier breaches any term or condition of this by-law, the Owners Corporation may, without prejudice to its other rights and remedies, recover:

- (a) the costs of rectifying a respective Owner's or occupier's breach of this by-law;
- (b) the costs of enforcement of this by-law from the Owner or occupier as a debt due; and
- (c) from the Owner or occupier the amount of any fine or fee which may be charged to the Owners Corporation.

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6. **Applicability**

- 6.1 Nothing in this by-law operates to relieve an Owner or occupier from obtaining the requisite approvals under the Act from the Owners Corporation in relation to any penetration or other proposed or completed works.
- 6.2 Owners and occupiers are responsible for the Owner's/occupiers employees, contractors and/or agents compliance with the requirements of this by-law.
- 6.3 This by-law binds and enures to the benefit of any and all future Owners and occupiers.

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Name(s): Chris Miller

Authority: Strata Managing Agent



Approved Form 10


Certificate re Initial Period

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

*that the initial period has expired.

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

The seal of The Owners - Strata Plan No 65833 was affixed on 18th September 2017 in the presence of the following person(s) authorised by section 273 Strata Schemes Management Act 2015 to attest the affixing of the seal.

Signature: 

Name: Chris Miller

Authority: Strata Managing Agent





Form: 15CH
Edition: 1705

**CONSOLIDATION/
CHANGE OF BY-LAW**

AN539703F

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

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

(A) TORRENS TITLE	For the common property CP/SP65833				
(B) LODGED BY	<table border="1"><tr><td>Document Collection Box 12</td><td>Name, Address or DX, Telephone, and Customer Account Number if any C/- Chambers Russell Lawyers GPO Box 7100 SYDNEY NSW 2001 P (02) 8248 2800 Reference (optional): 180030</td></tr></table>	Document Collection Box 12	Name, Address or DX, Telephone, and Customer Account Number if any C/- Chambers Russell Lawyers GPO Box 7100 SYDNEY NSW 2001 P (02) 8248 2800 Reference (optional): 180030	<table border="1"><tr><td>CODE CH</td></tr></table>	CODE CH
Document Collection Box 12	Name, Address or DX, Telephone, and Customer Account Number if any C/- Chambers Russell Lawyers GPO Box 7100 SYDNEY NSW 2001 P (02) 8248 2800 Reference (optional): 180030				
CODE CH					

- (C) The Owners-Strata Plan No. 65833 certify that a special resolution was passed on 20 March 2018
- (D) pursuant to the requirements of section 141 of the Strata Schemes Management Act 2015, by which the by-laws were changed as follows—
- (E) Repealed by-law No. 8-9; SPECIAL BY-LAW 2
- Added by-law No. 19-20, 24-26; SPECIAL BY-LAWS 5, 6
- Amended by-law No. 1-2, 4-6, 10-20; SPECIAL BY-LAW 3

as fully set out below:

See Schedule 1 of Annexure A.

OFF CDBL AM 772137
ON CDBL

- (F) A consolidated list of by-laws affecting the abovementioned strata scheme and incorporating the change referred to at Note (E) is annexed hereto and marked as Annexure. A

- (G) The seal of The Owners-Strata Plan No. 65833 was affixed on 13 July 2018 in the presence of the following person(s) authorised by section 273 Strata Schemes Management Act 2015 to attest the affixing of the seal:

Signature Q Miller

Name CHAD MILLER

Authority STRATA MANAGEMENT AGENT

MASON AND GORRY STRATA MANAGEMENT PTY LTD

Signature

Name

Authority

