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# Contract for the sale and purchase of land 2019 edition

<b>TERM</b>	<b>MEANING OF TERM</b>	<b>eCOS ID: 70986102</b>	<b>NSW DAN: 9 839 596-001</b>
vendor's agent	NORTONS since 1960 Pty Ltd PO Box 19, Round Corner NSW 2158		Phone: 02 9654 2099 Fax: Ref: Chris Norton
co-agent			
vendor	NELSON YU-ZEE WU 16 Ingleburn Road Ingleburn NSW 2565		
vendor's solicitor	Dettmann Longworth Lawyers Suite 85, 47 Neridah Street Chatswood NSW 2067		Phone: 02 9412 4500 Fax: 02 9415 2093 Ref: 200052
date for completion	56 days after the contract date	(clause 15)	Email: pa1@dettmanns.com

land 15 MARY ST BLACKTOWN NSW 2148  
(Address, plan details and title reference) LOT 4 IN DEPOSITED PLAN 31854  
4/31854

VACANT POSSESSION     Subject to existing tenancies  
 improvements     HOUSE     garage     carport     home unit     carspace     storage space  
 none     other: childcare centre, outdoor storage shed  
 attached copies     documents in the List of Documents as marked or as numbered:  
 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 type="checkbox"/> built-in wardrobes	<input checked="" type="checkbox"/> fixed floor coverings	<input checked="" type="checkbox"/> range hood	<input type="checkbox"/> pool equipment
	<input checked="" type="checkbox"/> clothes line	<input checked="" type="checkbox"/> insect screens	<input type="checkbox"/> solar panels	<input checked="" type="checkbox"/> TV antenna
	<input checked="" type="checkbox"/> curtains	<input checked="" type="checkbox"/> other: split system air conditioner		

exclusions

purchaser ENR PROPERTY 1 PTY LTD (ACN 642 812 306)

Unit 52, 50 Village Drive Breakfast Point NSW 2137

purchaser's solicitor

KWL Lawyers

Level 16 55 Clarence Street Sydney NSW 2000

Phone: 02 9384 0100

Fax: 02 8583 3373

Ref: Benjamin Chung

Email: benjamin@kwllawyers.com.au

price

\$ 1,480,000.00

deposit

\$ 148,000.00

(10% of the price, unless otherwise stated)

balance

\$ 1,332,000.00

contract date

28/08/2020

(if not stated, the date this contract was made)

buyer's agent

vendor

Executed pursuant to  
Section 127(1) of the  
Corporations Act 2001 (Cth)

*Lin* Gina Hong  
Director  
*Ju Hong* Ju Hong Hong  
Director

GST AMOUNT (optional)

The price includes

GST of: \$

witness

purchaser

JOINT TENANTS

tenants in common

In unequal shares

witness

BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION

200052

70986102

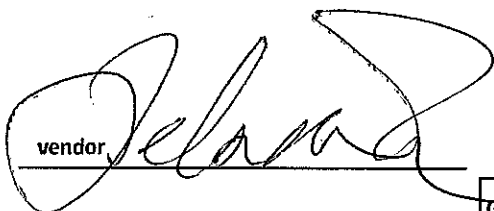
# Contract for the sale and purchase of land 2019 edition

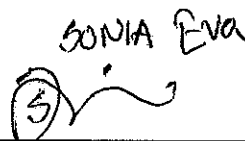
TERM	MEANING OF TERM	eCOS ID: 70986102	NSW DAN:
vendor's agent	NORTONS since 1960 Pty Ltd PO Box 19, Round Corner NSW 2158		Phone: 02 9654 2099 Fax:
co-agent			Ref: Chris Norton
vendor	NELSON YU-ZEE WU 16 Ingleburn Road Ingleburn NSW 2565		
vendor's solicitor	Dettmann Longworth Lawyers Suite 85, 47 Neridah Street Chatswood NSW 2067		Phone: 02 9412 4500 Fax: 02 9415 2093 Ref: 200052
date for completion	56 days after the contract date	(clause 15)	Email: pa1@dettmanns.com
land	15 MARY ST BLACKTOWN NSW 2148 (Address, plan details and title reference) LOT 4 IN DEPOSITED PLAN 31854 4/31854		
improvements	<input type="checkbox"/> VACANT POSSESSION <input checked="" type="checkbox"/> Subject to existing tenancies <input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input type="checkbox"/> home unit <input checked="" type="checkbox"/> carspace <input type="checkbox"/> storage space <input type="checkbox"/> none <input checked="" type="checkbox"/> other: childcare centre, outdoor storage shed		
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 type="checkbox"/> built-in wardrobes <input checked="" type="checkbox"/> fixed floor coverings <input checked="" type="checkbox"/> range hood <input type="checkbox"/> pool equipment <input checked="" type="checkbox"/> clothes line <input checked="" type="checkbox"/> insect screens <input type="checkbox"/> solar panels <input checked="" type="checkbox"/> TV antenna <input checked="" type="checkbox"/> curtains <input checked="" type="checkbox"/> other: split system air conditioner	
exclusions		
purchaser	ENR PROPERTY 1 PTY LTD (ACN 642 812 306) Unit 52, 50 Village Drive Breakfast Point NSW 2137	
purchaser's solicitor	KWL Lawyers Level 16 55 Clarence Street Sydney NSW 2000	Phone: 02 9384 0100 Fax: 02 8583 3373 Ref: Benjamin Chung Email: benjamin@kwllawyers.com.au
price	\$ 1,480,000.00	
deposit	\$ 148,000.00	(10% of the price, unless otherwise stated)
balance	\$ 1,332,000.00	
contract date	28 August 2020	(if not stated, the date this contract was made)

buyer's agent

vendor 

SONIA EVA  


witness

GST AMOUNT (optional)  
The price includes  
GST of: \$

purchaser     JOINT TENANTS     tenants in common     in unequal shares    witness

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

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

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

**IMPORTANT NOTICE TO VENDORS AND PURCHASERS**

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

**WARNING—SMOKE ALARMS**

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

**WARNING—LOOSE-FILL ASBESTOS INSULATION**

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

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

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

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

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

### DISPUTES

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

### AUCTIONS

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

**WARNINGS**

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

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

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

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

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

<i>adjustment date</i>	the earlier of the giving of possession to the purchaser or completion;
<i>bank</i>	the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>clearance certificate</i>	a certificate within the meaning of s14-220 of Schedule 1 to the <i>TA Act</i> , that covers one or more days falling within the period from and including the contract date to completion;
<i>deposit-bond</i>	a deposit bond or guarantee from an issuer, with an expiry date and for an amount each approved by the vendor;
<i>depositholder</i>	vendor's agent (or if no vendor's agent is named in this contract, the vendor's <i>solicitor</i> , or if no vendor's <i>solicitor</i> is named in this contract, the buyer's agent);
<i>document of title</i>	document relevant to the title or the passing of title;
<i>FRCGW percentage</i>	the percentage mentioned in s14-200(3)(a) of Schedule 1 to the <i>TA Act</i> (12.5% as at 1 July 2017);
<i>FRCGW remittance</i>	a remittance which the purchaser must make under s14-200 of Schedule 1 to the <i>TA Act</i> , being the lesser of the <i>FRCGW percentage</i> of the price (inclusive of GST, if any) and the amount specified in a <i>variation served by a party</i> ;
<i>GST Act</i>	A New Tax System (Goods and Services Tax) Act 1999;
<i>GST rate</i>	the rate mentioned in s4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
<i>GSTRW payment</i>	a payment which the purchaser must make under s14-250 of Schedule 1 to the <i>TA Act</i> (the price multiplied by the <i>GSTRW rate</i> );
<i>GSTRW rate</i>	the rate determined under ss14-250(6), (8) or (9) of Schedule 1 to the <i>TA Act</i> (as at 1 July 2018, usually 7% of the price if the margin scheme applies, 1/11 <sup>th</sup> if not);
<i>legislation</i>	an Act or a by-law, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the vendor and the purchaser;
<i>property</i>	the land, the improvements, all fixtures and the inclusions, but not the exclusions;
<i>planning agreement</i>	a valid voluntary agreement within the meaning of s7.4 of the Environmental Planning and Assessment Act 1979 entered into in relation to the <i>property</i> ;
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid and – <ul style="list-style-type: none"> <li>• issued by a <i>bank</i> and drawn on itself; or</li> <li>• if authorised in writing by the vendor or the vendor's <i>solicitor</i>, some other <i>cheque</i>;</li> </ul>
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice <i>served</i> by the <i>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 *servicing* it –
- 5.2.1 if it arises out of this contract or it is a general question about the *property* or title - *within* 21 days after the contract date;
  - 5.2.2 if it arises out of anything *served* by the vendor - *within* 21 days after the later of the contract date and that *service*; and
  - 5.2.3 in any other case - *within* a reasonable time.

### 6 Error or misdescription

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

## 7 Claims by purchaser

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

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

## 8 Vendor's rights and obligations

- 8.1 The vendor can *rescind* if –
- 8.1.1 the vendor is, on reasonable grounds, unable or unwilling to comply with a *requisition*;
  - 8.1.2 the vendor *serves* a notice of intention to *rescind* that specifies the *requisition* and those grounds; and
  - 8.1.3 the purchaser does not *serve* a notice waiving the *requisition within* 14 days after that *service*.
- 8.2 If the vendor does not comply with this contract (or a notice under or relating to it) in an essential respect, the purchaser can *terminate* by *servicing* 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 *servicing* a notice. After the *termination* the vendor can –

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

## 10 Restrictions on rights of purchaser

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

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

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

#### 14 Adjustments

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

#### 15 Date for completion

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

#### 16 Completion

##### • Vendor

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

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

**20 Miscellaneous**

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

**21 Time limits in these provisions**

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

**22 Foreign Acquisitions and Takeovers Act 1975**

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

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

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

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



**24 Tenancies**

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

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

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



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

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

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

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

### 31 Foreign Resident Capital Gains Withholding

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

### 32 Residential off the plan contract

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

## **Special Conditions**

### **33. Amendments to Printed Provisions**

Despite any other provision of this Contract, the printed provisions shall be amended as follows:

- 33.1 Clause 7.1.1 deleted;
- 33.2 Clause 7.1.3 substituting "7 days" in place of "14 days";
- 33.3 Clause 7.2.1 substituting "1%" in place of "10%";
- 33.4 Clause 8.1.1 is amended by deleting the words "on reasonable grounds";
- 33.5 Clause 8.1.2 is amended by deleting the words "and those grounds";
- 33.6 Clause 8.1.3 substituting "7 days" in place of "14 days";
- 33.7 Clause 16.8 is deleted;
- 33.8 Clause 16.12 is amended by deleting the words: ", but the vendor must pay the purchaser's additional expenses, including any agency or mortgagee fee."
- 33.9 Clause 19.2.3 is deleted.

### **34. Deposit**

The purchaser must pay the deposit to the depositholder as stakeholder pursuant to Clause 2 hereof and if the vendor and the purchaser agree that the deposit is to be invested by the depositholder each party is to inform the depositholder accordingly. The deposit is then to be invested by the depositholder pursuant to Clause 2.9 hereof.

### **35. Representations**

The purchaser acknowledges that the purchaser has not relied on any representation by the vendor, the vendor's agent or any other person or persons or corporation in or about entering into this agreement other than as set out herein and that the terms and conditions hereof constitute the only agreement between the purchaser and the vendor.

### **36. Present Condition and State of Repair**

The purchaser acknowledges that the purchaser is purchasing the property in its present condition and state of repair and subject to all faults and defects both latent and patent and the purchaser acknowledges that the vendor has not, nor any person on the vendor's behalf, made any warranty or representation in relation to any matters mentioned herein.

### **37. Capacity**

If a party before completion:

- (i) if a natural person - commits an act of bankruptcy, is declared bankrupt or enters into a scheme or makes an assignment for the benefit of creditors; or
- (ii) if a company - resolves to go into liquidation, has a summons or application presented or an order made for its winding up, has an official manager or receiver appointed over the whole or part of its assets or undertaking, or enters into a deed of arrangement, assignment or composition for the benefit of creditors;

then such party will be deemed to be in default and the other party may terminate this contract by serving a notice and the provisions of clause 9 will apply.

### **38. Notice to Complete**

If either party is unable or unwilling to complete by the completion date, the other party shall be entitled at any time after the completion date to serve a notice to complete making the time for completion essential. Such a notice shall give not less than 14 days' notice after the day on which that notice is received by the recipient of the notice. A

notice to complete of such duration is considered by the parties to be reasonable and sufficient to render the time for completion essential.

**39. Agent's Commission**

The purchaser acknowledges and warrants to the vendor that it was not introduced directly or indirectly to either the vendor or the property by any person or agent other than the vendors' agent named on page one of this contract and the purchaser agrees to indemnify and keep indemnified the vendor for and against any claim or demand for commission or remuneration by any person and against all costs and expenses incidental to defending any such claim arising out of breach of this warranty. This additional condition shall not merge on completion.

**40. Delay**

In addition to any of the rights, powers and remedies available to the vendor hereunder, if for any reason other than the default of the vendor the balance of the purchase price is not paid by the purchaser to the vendor on or before the completion date, the purchaser shall on completion pay to the vendor in addition to all other monies payable hereunder an amount calculated at the rate of 6% per annum on the balance of the purchase price for the period from the completion date until the date on which completion actually takes place. The purchaser acknowledges that the said amount represents a fair and reasonable estimate of the vendor's loss occasioned by delay in completion and that it is recoverable by way of liquidated damages. The purchaser shall not be entitled to require the vendor to complete this agreement unless any interest as hereinbefore provided is paid to the vendor by the purchaser on completion as part of the adjusted balance purchase monies payable on completion. If any amount payable by the purchaser to the vendor pursuant to this clause is not paid upon completion of this agreement, the vendor's entitlement to receive payment does not merge in the assurance on completion, but shall continue for the benefit of the vendor.

**41. Guarantee**

- 41.1 This clause applies if the Purchaser is a corporation but does not apply to a corporation listed on an Australian Stock Exchange. This clause is an essential term of this contract.
- 41.2 The word "*guarantor*" means the directors of the Purchaser as at the date of this agreement.
- 41.3 If the guarantor has not signed this clause, the vendor may terminate this contract by serving a notice, but only within 14 days after the Contract Date.
- 41.4 In consideration of the Vendor entering into this contract at the guarantor's request, the guarantor guarantees to the vendor:
- (i) payment of all money payable by the purchaser under this Contract; and
  - (ii) the performance of all of the Purchaser's other obligations under this Contract.
- 41.5 The guarantor:
- (i) indemnifies the Vendor against any claim, action, loss, damage, cost, liability, expense or payment incurred by the Vendor in connection with or arising from any breach or default by the Purchaser of its obligations under this Contract; and

(ii) must pay on demand any money due to the Vendor under this indemnity.

41.6 The guarantor is jointly and severally liable with the Purchaser to the Vendor for:

- (i) the performance by the Purchaser of its obligations under this Contract; and
- (ii) any damage incurred by the Vendor as a result of the Purchaser's failure to perform its obligations under this Contract or the termination of this Contract by the Vendor.

41.7 The guarantor must pay to the Vendor on written demand by the Vendor all expenses incurred by the Vendor in respect of the Vendor's exercise or attempted exercise of any right under this clause.

41.8 If the Vendor assigns or transfers the benefit of this Contract, the transferee receives the benefit of the guarantor's obligations under this clause.

41.9 The guarantor's obligations under this clause are not released, discharged or otherwise affected by:

- (i) the granting of any time, waiver, covenant not to sue or other indulgence;
- (ii) the release or discharge of any person;
- (iii) an arrangement, composition or compromise entered into by the Vendor, the Purchaser, the guarantor or any other person;
- (iv) any moratorium or other suspension of the right, power, authority, discretion or remedy conferred on the Vendor by this Contract, a statute, a Court or otherwise;
- (v) payment to the Vendor, including payment which at or after the payment date is illegal, void, voidable, avoidable or unenforceable; or
- (vi) the winding up of the purchaser.

41.10 This clause binds the guarantor and the executors, administrators and assigns of the guarantor.

41.11 This clause operates as a Deed between the Vendor and the guarantor.

EXECUTED as a Deed.

SIGNED SEALED AND DELIVERED )  
by \_\_\_\_\_ in the presence of ) .....

.....  
Witness

.....  
Name of Witness (print)

SIGNED SEALED AND DELIVERED )  
by \_\_\_\_\_ in the presence of ) .....

.....  
Witness

.....  
Name of Witness (print)

**42. Severability**

42.1 In case any one or more of the provisions herein contained or any part thereof should be invalid, illegal or unenforceable in any respect, the validity legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

42.2 In the event of any conflict between the provisions of these additional conditions and those contained in the printed conditions to this Contract, these additional conditions shall prevail.

**43. Consumer Credit Code**

43.1 The purchaser warrants that:

- (i) The purchaser does not require finance to purchase this property: or
- (ii) The purchaser has obtained approval for such finance as is required to purchase this property.

43.2 The purchaser acknowledges that as a result of making this disclosure under the above additional condition 43.1(i) and 43.1(ii), the Purchaser cannot terminate this Contract pursuant to the Consumer Credit Code.



**44. Payment of Deposit**

44.1 Despite any other provision of this contract, the parties agree that the deposit, being 10% of the price, is payable as follows:

- (i) On or before the date of the contract: the sum of \$88,800.00;
- (ii) On or before the date that is 7 days after the contract date: the sum of \$59,200.00 ("Deposit Balance") and in this respect time is of the essence.

44.2 Should the vendor be entitled to terminate this contract by reason of the purchaser's default then the Deposit Balance shall be forthwith due and payable by the purchaser to the vendor and in default of payment thereof, the vendor shall be entitled to recover such amount as a liquidated debt and in addition, the vendor may exercise such other rights under this contract as may be available to him either at law or in equity.



FOLIO: 4/31854

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SEARCH DATE	TIME	EDITION NO	DATE
31/7/2020	10:45 AM	5	9/9/2018

NO CERTIFICATE OF TITLE HAS ISSUED FOR THE CURRENT EDITION OF THIS FOLIO.  
CONTROL OF THE RIGHT TO DEAL IS HELD BY NATIONAL AUSTRALIA BANK LIMITED.

LAND

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LOT 4 IN DEPOSITED PLAN 31854  
LOCAL GOVERNMENT AREA BLACKTOWN  
PARISH OF PROSPECT COUNTY OF CUMBERLAND  
TITLE DIAGRAM DP31854

FIRST SCHEDULE

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NELSON YU-ZEE WU (T V496467)

SECOND SCHEDULE (3 NOTIFICATIONS)

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- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 W41208 MORTGAGE TO NATIONAL AUSTRALIA BANK LIMITED
- 3 AF770525 LEASE TO ENR GROUP PTY LTD EXPIRES: 20/6/2020.  
OPTION OF RENEWAL: 2 TERMS OF 5 YEARS.

NOTATIONS

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UNREGISTERED DEALINGS: NIL

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

OFFICE USE ONLY

D P 31854

Prepared: *[Signature]*  
 Date: 31/07/19  
 Title System: *[Signature]*  
 Purpose: Subdivision  
 Ref. Map: SSC 375  
 Use Plan: *[Signature]*

PLAN OF proposed subdivision  
 of lot A on MPS (OS)  
 19235.

Scale: 40 feet to an inch  
 Map, Shifs  
 City: Blacktown  
 Locality: Blacktown  
 Parish: PROSPECT  
 County: CUMBERLAND

Locality: *[Signature]*  
 Date: *[Signature]*  
 Signature of the Registrar-General  
 Section 14 of the Land Act 1976

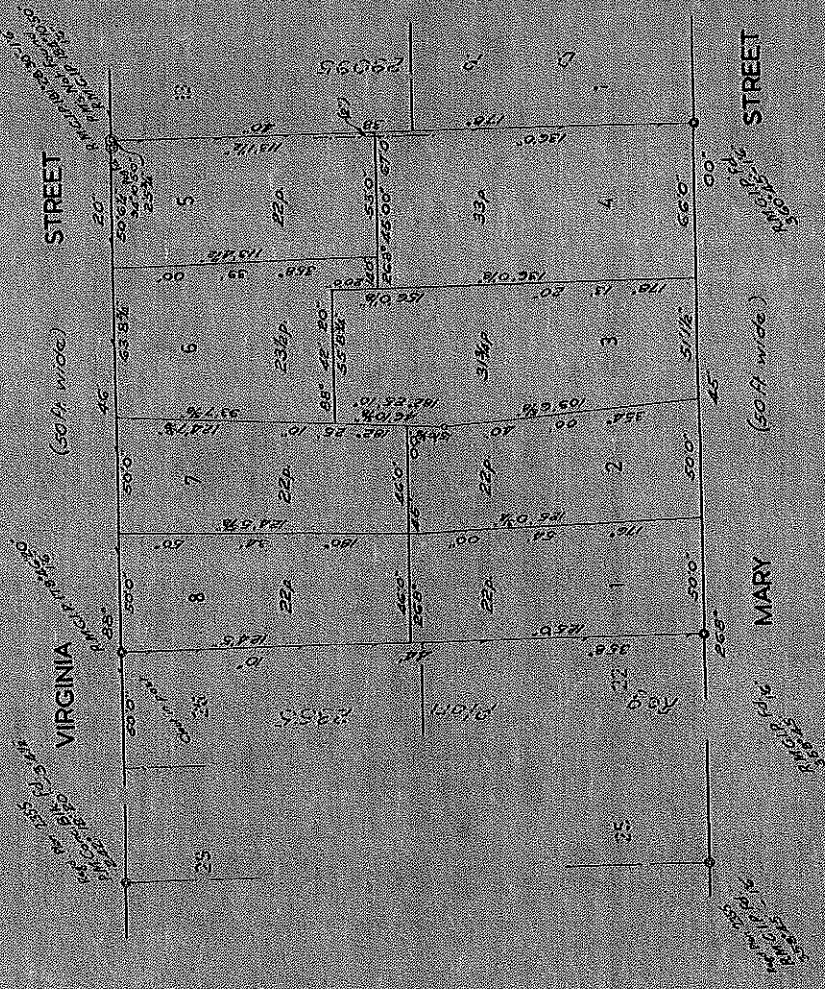
Statement of Proposed Subdivision

Approved by the Council and Sealed in accordance with the  
 provisions of Section 137 of the Local Government Act 1995  
 Date: 21/08/2019  
 LGA: 988  
*[Signature]*  
 Mayor/Clerk

Scale: 40 feet to an inch

Form 2 - This form must NOT be used where any Deductions, Drains, Reserves or Public Gardens and Recreation Space is provided. See Form 3. WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION.

H 694445 3/16/



WARNING: Plan Drawing only to appear in this space.

WARNING: Plan Drawing only to appear in this space.

M.P.D.

CONVERSION TABLE ADDED IN  
 REGISTRAR GENERAL'S DEPARTMENT  
 DP 31854

FEET INCHES	METRES
1	0.051
2	0.152
3	0.457
4	0.756
5	1.023
6	2.911
7	4.267
8	4.836
9	6.096
10	14.021
11	15.240
12	15.393
13	15.583
14	16.150
15	16.986
16	19.425
17	20.117
18	20.420
19	25.540
20	33.591
21	34.981
22	34.557
23	37.922
24	37.936
25	37.989
26	38.100
27	38.319
28	37.453
29	41.652
30	47.352
AC RD P	SO M
1	556.4
2	594.7
3	603.7
4	634.7

Form: 07L  
 Licence: 01-05-028  
 Licensee: LEAP Legal Software Pty Limited  
 Form name: Puleo Lawyers

**LEASE**



**AF770525L**

New South Wales  
 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.

**STAMP DUTY**

Office of State Revenue use only

**A) TORRENS TITLE**

Property leased: if appropriate, specify the part or premises  
**FOLIO IDENTIFIER 4/31854**

**B) LODGED BY**

Delivery Box	Name, Address or DX and Telephone LLPN:	CODE
10412	Puleo Lawyers DX 18519 Castle Hill Tel: (02) 9634 6500	L
Reference (optional): JJP:JP:2009456		

**C) LESSOR**

**NELSON YU-ZEE WU**

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

**D)**

Encumbrances (if applicable):

**E) LESSEE**

(MARY STREET EARLY LEARNING CENTRE PTY LTD ACN )  
**ENR GROUP PTY LTD**

TENANCY:

**F)**

- G) 1. TERM: TEN (10) YEARS**
- 2. COMMENCING DATE: 2010 21 June 2010**
- 3. TERMINATING DATE: 2020 20 June 2020**
- 4. With an OPTION TO RENEW for a period of 2 X 5 YEARS set out in Item/Clause 8 of ANNEXURE hereto.**
- 5. With an OPTION TO PURCHASE set out in N/A**
- 6. Together with and reserving the RIGHTS set out in N/A**
- 7. Incorporates the provisions set out in ANNEXURE(S) hereto.**
- 8. Incorporates the provisions set out in N/A in the Department of Lands, Land and Property Information Division as No. N/A**
- 9. The RENT is set out in item/clause 3 of ANNEXURE hereto.**

OFF L A3361568

CT PROD BY  
 45A ON 18/8/10

DATE:   /  /  

(H)

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

Signature of witness:

Name of witness:

Address of witness:

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appears(s) below pursuant to the authority specified.

Corporation: ENR Group Pty Ltd

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Name of authorised person:

Office held: Director

Certified correct for the purposes of the Real Property Act 1900 by the Lessor.

Signature of Lessor:

See Annexure "A"

Signature of authorised person:

Name of authorised person:

Office held: Director

See Annexure "A"

(I) STATUTORY DECLARATION


I Nelson Yu-Zee Wu

solemnly and sincerely declare that—

1. The time for the exercise of option to renew/option to purchase in expired lease No. AB361568 has ended;
2. The lessee under that lease has not exercised the option.

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

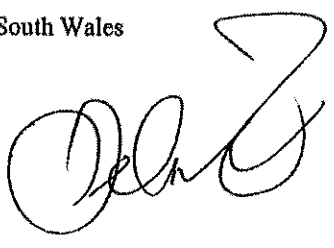
Made and subscribed at   Hghburn   in the State of New South Wales  
on   2 September 2010   in the presence of—

Signature of witness: 

Name of witness:   FRANK HONG  

Address of witness:   3 EASTGATE AVE    
  KILLARA 2071  

Qualification of witness:   JP 157174  

Signature of lessor: 



ANNEXURE REFERRED TO IN MEMORANDUM OF LEASE DATED THE  
 DAY OF 21 June 2010 BETWEEN NELSON YU-ZEE WU AS  
 LESSOR AND (MARY STREET EARLY LEARNING CENTRE PTY LTD)  
 AS LESSEE. ENR GROUP PTY LTD

## 1. INTERPRETATION

In the interpretation of this Lease except to the extent that such interpretation shall be excluded by or be repugnant to the context when used herein:-

- a. "Lessor" shall mean and include the Lessor, its successors and assigns and if the Lessor so directs shall also include the managing agent.
- b. "Lessee" shall mean and include the Lessee or the Lessees and where there is only one Lessee, his executors, administrators, successors and permitted assigns and when there are two or more Lessees shall mean and include the Lessees of each and every one of them and each and every one of their executors, administrators, successors and permitted assigns.
- c. "Building" shall mean and include the building erected or standing upon the land comprised in the Certificate of Title mentioned in the Lease of which the premises forms part.
- d. "Premises" shall mean the part of the building hereby demised to the Lessee with all rights hereby granted and subject to every covenant, power and provision herein contained or implied and if the premises are vacant then that vacant land.
- e. "Common Areas" shall mean and include the forecourt entrance, vestibules, corridors, passages, stairways, landings, toilets and tea rooms in the building and all lift areas.
- f. "Managing Agent" shall mean the person or persons for the time being appointed by the Lessor to manage the building on behalf of the Lessor.
- g. "Person" shall be deemed to include a corporation or a firm.
- h. "Rent" shall be deemed to include the Lessee's due percentage of the outgoings as referred to in Clause 5 herein and **Item 6** of the Schedule to the Lease, if any.
- i. All references to Statutes herein shall include all Statutes amending, consolidating or replacing the Statutes referred to.

*Handwritten signatures and notes:*  
 \* *Guindano*  
 \* *July Hong 31/22*  
 \* *[Signature]*  
 \* *[Signature]*

- j. Words importing the singular or plural shall be deemed to include the plural or singular number respectively and words importing the masculine gender only shall include the feminine or neuter gender and vice versa as the case may require.
- k. When two or more persons are Lessees or Guarantors pursuant to this Lease all covenants, agreements, restrictions, conditions and provisions shall bind the Lessees or the Guarantors and any two or greater number of them jointly and each of them severally and shall also bind the executors, administrators and successors of them and each of them and every two or greater number of them jointly and severally.

## 2. EXCLUSION OF STATUTORY PROVISIONS

The covenants, powers and provisions implied in leases by virtue of Sections 84 and 85 of the Conveyancing Act, 1919, as amended, are hereby expressly negated.

## 3. TERM

This lease shall be for an initial term and shall commence on the date set out in **Item 1** of the Schedule and shall terminate on the date set out in **Item 2** of the Schedule.

## 4. RENT

- (a) The Lessee covenants with the Lessor to pay at such places in Sydney as the Lessor may from time to time specify to the Lessor or to the managing agent during the term of this Lease Rent at the rate per annum set out in **Item 3** of the Schedule and subject to increases calculated in accordance with this Clause 4 and Clause 5 herein.
- (b) The Lessee is to pay the rent by equal monthly instalments in advance. The first instalment is to be paid on the date of commencement of the Lease and each subsequent instalment is to be paid on the first of each subsequent month. If the Lease does not commence on the first day of the month, the first and last instalments will be adjusted proportionally.
- (c) The Lessee acknowledges that the Minimum Rent for the Premises is agreed and is not dependent or conditional upon the area of the Premises. The Lessee further acknowledges that all payments pursuant to this Lease are nett of goods and services tax or any similar impost or tax and the Lessee must pay for any such tax in respect of anything supplied by the Lessor to the Lessee under or in connection with this Lease or in connection with the grant, assignment or surrender of this Lease and on the basis that the nett amount received by the Lessor remains the same

Y Guindan

X  JP

4/32

X Johnny Wong





whether the Lessor is liable to pay goods and services tax or not. For the purposes of calculating any goods and services tax liability of the Lessee, any entitlement the Lessor may receive or be entitled to receive in the nature of input tax credits or other credits or reimbursements (however described) in respect of any GST paid or payable, whether arising under or in connection with this Lease or otherwise, is to be excluded.

## **5. REVIEW OF RENT**

A. The rent referred to in **Item 3** of the Schedule shall be reviewed and varied on the first day of the month following the first anniversary of the date of commencement of this Lease, and thereafter on each following anniversary ("the review date as referred to in **Item 4** of the Schedule") in the following manner or by 3% whichever shall be the greater and the increased annual rent shall then be paid in accordance with Clause 4.

a. By multiplying the annual rent then payable at the review date by the fraction.

$$\frac{N1}{B1}$$

Where N1 refers to the Consumer Price Index for Sydney (All Groups) published by the Australian Bureau of Statistics in respect of the quarter immediately preceding the particular review date and B1 is the Consumer Price Index for Sydney (All Groups) published by that Bureau in respect of the quarter immediately preceding the last review date and in the case of the first review the Index in respect of the quarter immediately preceding the commencement date of this Lease.

- b. In the event that at any time during the term of this Lease the Bureau shall update the reference base of that Index the required conversion shall be made to preserve the intended continuity of the calculations by making the appropriate arithmetical adjustment to make the updated index number correspond in reference base to the index number at the review date.
- c. In the event that it is not possible to make an arithmetical adjustment as specified in b. above or if there is a change of the basis of assessment in that Index where its calculation has been suspended or discontinued, then the Lessor shall be entitled to have the rent determined at any review date by valuation as specified in clause 5B hereof.
- d. i. Each rent review shall be made within three (3) months after the review date
- ii. The Lessor shall notify the Lessee in writing of the Lessor's calculation of the increase in rent claimed since the review date and the calculation of the new instalments in rent.

- iii. The Lessee shall not be entitled to any reduction in rent in the event of a decrease of the Index Number since the previous rent review.
- iv. The Lessee shall pay the increased rent from the last review date within fourteen (14) days after service of the Lessor's notice.
- v. If the Lessee objects to the Lessor's calculations he shall notify the Lessor of the objection and the Lessee's calculation of increased rent.
- vi. The Lessee shall pay the rent as calculated by the Lessor until the parties resolve the difference in their calculations or until it is determined by litigation.
- vii. If the Lessee has paid rent in excess of the correct amount due because of the Lessor's excessive claim the Lessor shall repay the excess within seven (7) days of the correct amount being determined.
- viii. If the Lessor has failed to apply for a rent review in respect of any review date he shall be entitled to apply for a rent review at any time during the continuance of the term of this Lease. A late application cannot be made by the Lessor after the expiry or of the termination of the Lease, and in this respect time is of the essence.
- ix. The annual rent calculated from any review date shall be payable by the calendar monthly instalments calculated to the nearest cent by dividing the annual rent by twelve and the references in this lease to monthly rental shall be varied accordingly.

#### **REVIEW TO CURRENT MARKET RENT**

- B. a. Notwithstanding the provisions of 5A hereof the annual rent shall be reviewed to a current market rent on the dates referred to in **Item 5** of the Schedule referred to as the Market Review Date.
- b. The Lessor shall, at a date not less than seventy (70) days prior to the Market Review Date, serve on the Lessee written notice of its intention to increase the yearly rent from the Market Review Date and of the Lessor's assessment of the current market rent of the premises from the Market Review Date.
- c. The Lessee may accept the Lessor's assessment and in that event the assessment amount shall be the rent from the Market Review Date.
- d. If the Lessee fails or refuses to accept the Lessor's assessment within 28 days after service of the assessment or if they are unable to agree within that period on some other amount as the current market rent at the Market Review Date, the current market rent shall be determined in accordance with paragraphs e. - k. of this clause. If the parties agree on the current market rent after it shall have been referred for determination in accordance with paragraph f. of this clause, that determination shall cease and the valuer shall cease to have any further functions under this clause.

- e. "Current Market Rent" means the best annual rent that can be reasonably obtained for the premises by taking into account and on the basis;
- i. That the premises are available for leasing with vacant possession by a willing Lessor to a willing Lessee for the whole of this lease (and option for renewal) at the Market Review Date;
  - ii. The terms and conditions contained in this Lease (other than the amount of rent reserve in the lease, but including the provisions for rent review);
  - iii. That the Lessee's lease covenants and obligations shall have been fully performed at the Market Review Date;
  - iv. The rental values of comparable premises within a radius of 5 kilometres of the premises;
  - v. Calculated without taking into account;
    - a. Any improvements or fixtures erected or installed at the Lessee's expense which the Lessee is permitted or required to remove at the termination of the Lease (except for permanent structural improvements to the premises installed at the Lessee's expense which the Lessee is not permitted to remove at the termination of the Lease) which shall be taken into account;
    - b. Any goodwill attributed to the premises through the Lessee's business activities;
    - c. Any premium or inducement paid by or to the Lessee in relation to the grant of this Lease;
    - d. Any relocation costs which would be incurred by the Lessee when moving to other premises;
    - e. Any incentives offered to Lessees of comparable premises;
- f. Either party may apply to the President or principal officer for the time being of the Australian Institute of Valuers and Land Economists (NSW Division) ["the Nominator"] to nominate a person who is a licensed valuer and:
- i. Has practised as a valuer for not less than five (5) years;
  - ii. Is a member of the Australian Institute of Valuers and Land Economists;
  - iii. Is Licensed to practice as a valuer of the kind of premises for rent review of which is required under this Lease to determine the current market rent at the market review date ("the Nominee").

- g. The Nominee shall act as an expert and not as an arbitrator. Each party may submit to the nominee written valuations and submissions within twenty one (21) days after the nominee has accepted the nominations to act, but may not make oral submissions or adduce any evidence. At the time of making any written submissions or forwarding to the nominee any written valuations, that party shall forward to the other party a copy of all written material submitted to the nominee. Within thirty five (35) days after the nominee has accepted the nomination to act, each party may forward to the nominee written comments on the other party's written valuations and submissions. The nominee shall take into consideration any written submissions received within those periods, but is not vetted by them and shall determine the current market rent in accordance with his own judgement and the opinion which he forms. The nominee's determination is final and is binding on the parties.
- h. The Nominee shall conclude his determination and shall inform the parties of it within sixty (60) days after having accepted the nomination to act.
- i. If the Nominee:-
- i. Fails to accept the nomination to act;
  - ii. Fails to determine the current market rent within sixty (60) days after accepting the nomination to act;
  - iii. Becomes incapacitated or dies;
  - iv. Resigns as the nominee;
- Then either party may request the nominator to appoint another nominee in accordance with paragraph f) hereof;
- j. The parties shall bear equally the total costs of the rent determined pursuant to sub-clauses f. - i. of this clause at each Market Review Date including the costs of any aborted rent review. Each party shall bear his own costs of legal representation and the fees of any experts for giving evidence and for making valuations for the purpose of written submissions.
- k. If the nominee determines the rent at an amount which is less than the rent that was payable at the relevant Market Review Date shall be identical to the rent payable immediately prior to such date.
- l. i. Except as provided in paragraph ii, of this sub-clause 1. the market review may be determined from a Market Review Date even if the review shall be instituted after that date.
- ii. In the event of the parties having failed to institute a review to determine the rent for a Market Review Date in any of the situations specified in this subclause, then the existing rent shall continue to be the rent for that

- review period, and thereafter neither party may have the current market rent determined for that period;
  - a. after a later date has arrived;
  - b. after the expiry of the lease term, in respect of any Market Review Date within that term;
  - c. during the last six (6) calendar months of the lease term, in respect of the last review date within that lease term.
- m. If the Current Market Rent from a review date shall not be determined until after that review date:-
- i. The Lessee shall continue to pay the current instalments of rent due until the new rent has been determined;
  - ii. When the new rent has been determined, the Lessee shall pay the additional amount, if any, calculated from the review date on the next rent due date;
  - iii. In addition to the amount referred to in ii. above the Lessee shall pay to the Lessor interest at the rate of two per centum per annum (2% pa) above the rate then published by the Commonwealth Bank of Australia or its successors for business overdrafts of \$100,000-00 and above from the review date calculated monthly on the additional amount, if any, due to the date of payment.
- n. i. In the event of a surrender of lease occurring during a rent review period for which a rent review has been implemented but without a rent determination having been made, when the rent is determined the former Lessee shall be liable to pay any additional rent or interest, from the review date to the date of surrender, unless at the time of surrender the parties shall have agreed in writing to vary that liability;
- ii. In the event of a transfer of Lease occurring during a rent review period if a rent determination has not been made (when the review has been implemented or is not concluded the following provisions shall apply:-
- a. The assignor and the assignee of the Lease shall be jointly and severally liable to pay to the Lessor any additional rent payable from the review date to the date of the transfer and in addition interest calculated in accordance with paragraph (m);
  - b. As a condition of obtaining the Lessor's consent to the transfer, the assignor, at the time of the transfer, shall deposit in a trust account held by the Lessor's solicitor as stakeholder an amount equal to

fifteen per cent (15%) of the total rent payable under paragraph (m) from the review date to the date of transfer in order to provide security for an additional liability for rent during that period. The stakeholder shall invest that sum in an interest bearing deposit with a bank, building society, financial institution, interest accumulating to the credit of the Assignor. When the rent has been determined, the stakeholder shall disburse the trust fund in accordance with that determination.

- c. In respect of the rent review the assignor's conduct before the date of the transfer of Lease binds the assignee and thereafter the assignee's conduct binds the assignor;
- d. The assignor shall pay to the Lessor the balance due in excess of the amount held under paragraph (b) of this subclause within thirty (30) days after the determination of the rent.
- o. The parties each agree to act reasonably and to co-operate in implementing and conducting any rent review under this clause.

### OUTGOINGS

- C. In addition to the annual rent and in addition to the charges stipulated in Clause 4 hereof, the Lessee covenants with the Lessor that it shall in respect to each year or part of a year reimburse and pay the Lessor's outgoings contribution set out in **Item 6** of the Schedule. For the purpose of this clause, "Outgoings" means:-
  - (a) All rates, taxes (other than income tax but including any goods and services tax or any other tax of that or similar value) with respect to the premises, assessed or charged including without limitation:
    - i. Land tax (or other taxes on land) computed on the taxable nature of the land on the basis that it is the only land owned by the Lessor as at the relevant date for the assessment of land tax.
    - ii. All charges, assessments, duties and fees whether municipal, local, governmental, statutory or otherwise; and
    - iii. All strata unit levies (if any).
    - iv. All water usage charges, trade waste, greasy waste and processing charges.
  - (b) All insurance payment and without limitation premiums in respect of:
    - i. insurance of the building to the full insurable reinstatement value against all usual risks;

- ii. public liability insurance.
- iii. interruption or loss of rent.

## **6. USE OF THE PREMISES**

### **A. The Lessee shall:-**

- a. Use the premises for the purposes of conducting the business set out in **Item 7** of the Schedule hereto or such other purpose as the Lessor may approve in writing such approval not being unreasonably withheld.
- b. Use the premises with due diligence and efficiently and in a proper and businesslike manner and shall only trade there under the terms of this lease.
- c. Conduct its business in the premises and keep the same open during regular customary days and hours for such type of business.
- d. Keep and maintain the premises as an attractive area in its physical characteristics and appearance.
- e. Warehouse, store and/or stock in the premises only such goods and merchandise as are necessary of use in the business referred to in **Item 7** of the Schedule.
- f. Keep on foot all licences and permits required for the carrying on of any business conducted by it or upon the premises.
- g. Keep the premises in a thorough state of cleanliness and will not allow any accumulation of useless property or rubbish thereon.
- h. Take all steps which are reasonably necessary to ensure that the floors of the building and/or any part thereof shall not be broken, strained or damaged by overloading of floors or from any cause whatsoever and in this regard the Lessee agrees that the Lessor shall retain and have power to prescribe the height and proper position of any safes or other heavy articles or goods.
- i. Be solely responsible for and shall promptly pay all charges for garbage clearance, water usage, gas, electricity, telephone and all other utilities and services including any trade waste greasy waste processing charges used in or charged against in respect of the premises during the term of this lease.
- j. Take all proper precautions to keep the premises free of rodents and vermin and shall as and when required by the Lessor but at the Lessee's expense employ pest exterminators for that purpose.

- k. In the event of any infectious disease happening on the premises which may require notification by virtue of any Statute or Regulation or Ordinance give all necessary notices and any other information which may be required relative thereto in writing to the proper authorities and to the Lessor respectively and will thoroughly fumigate and disinfect the premises at its own expense and to the satisfaction of the Local Health Officer.
  - l. Comply with and observe at its own expense all present and future legislation, regulations, by laws and orders of any competent authority effecting the use of the premises by the Lessee and with all notices received either by the Lessor or the Lessee from any Statutory or Public Authority including notices as requiring the carrying out of any repairs, alterations or works. The foregoing shall not include structural repairs, alterations or works unless the same are required by reason of the business carried on at the premises by the Lessee or by reason of the sex or number of employees using the premises or by reason of some act, neglect or default by the Lessee, its contractors, agents, employees, customers, or any other person or persons using or upon the premises. In default of such compliance by the Lessee the Lessor may with agents and all necessary materials and appliances enter upon the premises for the purpose of complying therewith and any expense incurred by the Lessor in so doing shall constitute a liquidated debt and be payable to the Lessor by the Lessee on demand.
  - m. Allow inspection at any time during the last three (3) months of the term of this lease for any intending tenants and their agents and will allow during the said months the display of a "To Lease" Notice in a conspicuous position on the premises or at any time during the term of this lease exhibit at any time during the term of this lease exhibit "For Sale" notices with the name and address of the Lessor and/or its Agent and the Lessee will not remove any such notices without the written consent of the Lessor first had and obtained.
  - n. When requested execute an order on the Bank of the Lessee requesting that Bank to make payments to the account of the Lessor at a Bank and Branch nominated by the Lessor.
  - o. Participate in any reasonable window cleaning program that may be effected by the Lessor.
  - p. Keep at all times all glass property cleansed both inside and out.
- B. The Lessee shall not:-
- a. Use or permit or suffer to be used chemical, burning fluids, acetylene gas or alcohol in heating, cooling or lighting the premises.
  - b. Permit or suffer the premises to be used for anything which in the reasonable opinion of the Lessor may be or become a nuisance, disturbance or cause of



- damage to the Lessor or the tenants or occupiers of adjoining premises.
- c. Use, exercise or carry on or permit or suffer to be used, exercised or carried in or upon the premises or any part thereof any noxious, noisome, criminal immoral or offensive act, trade, business, occupation or calling.
  - d. Without the written consent of the Lessor interfere with any drainage or water supply facilities to or upon the premises or with any of the appurtenances thereto and the Lessee shall to the reasonable satisfaction of the Lessor keep in a clean, clear and free flowing condition any drains which pass through the premises.
  - e. Use any water closets, lavatories, grease traps and other sanitary appliances for the time being in the building or premises for any purpose other than that for which they were constructed and no sweepings, rubbish, rags, ashes or other substance shall be thrown therein. Any costs of repairing or making good any damage resulting to any such appliances by misuse be borne by the Lessee.
  - f. Use or permit the use of the premises as a dwelling house or a sleeping place.
  - g. Conduct or permit to be conducted any auction sale on the premises or any part thereof.
  - h. Do or permit to be done anything which may render any increased premium payable for the insurance of the premises or the building, plant, fittings, fixtures, equipment, furniture, furnishings and other items therein or thereat of the Lessor or which may make void or voidable any policy for insurance. The Lessee agrees to pay to the Lessor on demand the amount of all increases in insurance premiums payable by the Lessor in respect of any insurances effected by the Lessor shall pay because of the use of the premises or any part thereof for any purpose stated in this Lease agreed to by the Lessor.
  - i. Use or permit the Common Areas of the premises to be used for any news stand or for the sale or display of goods, wares, merchandise or for any other business, occupation or undertaking.
  - j. If applicable, wilfully obstruct or interfere with or disturb or trespass upon the rights of the Lessees, tenants or occupiers of any other room, floor or part of the building of the Lessor which would affect the quiet and uninterrupted occupation and enjoyment of such other Lessees, tenants or occupiers of the premises, to or occupied by such other tenants or Lessees.
  - k. Install or use or permit to be installed or used in the premises any engine or machine including any air conditioning unit which causes or will or may cause or be likely to cause noise or vibration without the written consent of the Lessor first

- had and obtained which shall not be unreasonably withheld.
- l. Allow noise to emanate from the premises so as to cause disturbance to adjoining landowners or if applicable, other Lessees tenants or occupiers of the building.
- m. Install an incinerator or by any other means burn refuse or other material in or about the premises or the building.

## **7. CLEANING, ALTERATIONS AND REPAIRS**

### **A. The Lessee shall not:-**

- a. Make or cause to be made any alterations or improvements or install or cause to be installed any trade fixtures, exterior or interior signs, floor coverings, interior or exterior lighting, plumbing fixtures, shades or awnings or make any changes to the shop front without first obtaining the written approval of the Lessor which approval shall not be unreasonably withheld. The Lessee shall present to the Lessor plans and specifications for such work at the time of approval is sought. The Lessor shall be entitled to obtain the advice of its architects in respect thereof and any reasonable fees payable by the Lessor to such architects shall be paid by the Lessee to the Lessor on demand. The Lessee will not commence such works until it furnishes the Lessor with copies of all necessary statutory approvals.
- b. Paint, inscribe or affix on any exterior door, wall or window of the premises any television or wireless antenna or mast or other apparatus or any sign, awning or canopy, or advertising matter or other thing of any kind and will not place or maintain any decoration, lettering or advertising matter of a permanent or semi-permanent nature on the glass of any window or door of the premises without first obtaining the written approval of the Lessor which approval shall not be unreasonably withheld. The Lessee shall maintain any such awning, canopy, decoration, lettering advertising matter or other thing as may be approved in good condition and repair at all times.
- c. Mark, paint, drill, write upon or in any other way deface any wall, ceiling, floor, wood, stone or iron work.
- d. Install any exterior lighting or plumbing facilities, amplifiers or similar devices or use any advertising medium which can be heard or experienced outside the premises such as loudspeakers, phonographs or television or radio broadcasts.

- B. It is agreed between the Lessee and the Lessor that the Lessor shall have the power by its agents, architects, and workmen with all necessary materials and/or appliances to enter upon the premises at all times on reasonable notice except in the case of an emergency when no notice shall be required and so as to cause as little inconvenience to the Lessee as possible:-

- a. To view the state of repair of the premises or building and serve upon the Lessee a notice in writing of any defects requiring it to repair the same in accordance with any covenant herein contained. In default of the Lessee repairing any defect in accordance with the notice given within fourteen (14) days of the date of such notice the Lessor may by its agents and workmen and/or any person authorised by the Lessor with all necessary materials and appliances enter the premises and execute all or any of the required repairs as the Lessor shall think fit and in addition to the Lessor's other remedies the Lessor may recover from the Lessee the costs of such repairs as the Lessee ought to have effected PROVIDED HOWEVER that nothing herein contained shall require the Lessee to carry out works on the premises of a structural nature.
  - b. To carry out any repairs which in the opinion of the Lessor are of any emergency nature. In the event that the Lessor shall pursuant to this power carry out any repairs which should in accordance with the covenants of the Lease herein contained be carried out by the Lessee then the cost of such repairs shall be paid by the Lessee to the Lessor on demand being made for payment of the same.
  - c. For the purpose of complying with terms of any present or future legislation affecting the premises and of any notices served upon the Lessor or the Lessee by the relevant Council or other competent authority involving the carrying out of any repairs, alterations or works of a structural nature which the Lessee may or be bound or if bound may neglect to do and also for the purpose of exercising the powers and authorities of the Lessor under the Lease.
- C. The Lessee shall at all times during the term of this Lease at its own expense keep the premises and any part thereof and any additions thereto including exterior and interior entrances, shop fronts, door coverings, glass and show windows and plate glass and all partitions, doors, fixtures, equipment and appurtenances (including lighting, heating, and gas and plumbing fixtures), fittings, installations and facilities, lifts, escalators, machinery, plant and air conditioning system (if any) in good, substantial tenable repair and condition, having regard to their condition at the commencement of the Lease, damage by fire, storm, lightning, flood and tempest and fair wear and tear excepted and shall at least once in every three (3) years of the said term and where the Lease is for a longer period than three (3) years then on every third anniversary of the first occupation and on vacation of the premises have any carpets in the premises shampooed by a reputable carpet shampoo specialist and repaint or repaper the inside of the premises one such repainting or repapering to be carried out during the last six (6) months of each three (3) year period in a proper and workmanlike manner with the materials used being approved by the Lessor and shall once in every three (3) years paint or otherwise appropriately treat the outside of the premises PROVIDED HOWEVER that the outside of the premises shall not be painted or otherwise treated until the specifications and details of such proposed painting or treatment have first been submitted or approved of in writing by the

Lessor.

- D. At the termination of this Lease by effluxion of time or otherwise the Lessee shall deliver up possession of the premises to the Lessor in as good condition and state of repair as the premises were in upon delivery of possession thereof to the Lessee damage by fire, storm, lightning, flood and tempest and fair wear and tear excepted and shall surrender all keys for the premises to the Lessor at the place then fixed for payment of rent and shall inform the Lessor of all combination on locks, safes, vaults, if any, in the premises. The Lessee shall paint out or otherwise remove to the satisfaction of the Lessor all of its signs before delivering up possession of the premises to the Lessor as aforesaid and shall repair any damage to the premises caused thereby.

### **8. INSURANCE AND INDEMNITY**

- A. The Lessee shall indemnify and keep indemnified the Lessor from and against all:-
- a. Loss and damage to the premises and the building and all property therein caused by the acts, omissions or negligence of the Lessee or any clerk, servant, workman, licensee, invitee, employee, agent, client, customer or visitor of the Lessee and in particular but without limiting in any way the generality of the foregoing by reason of the negligent or careless use or misuse, waste or abuse of water, gas, electricity, or faulty fittings and fixtures of the Lessee.
  - b. Damages, costs, charges, expenses, actions, claims and demands which may be sustained or suffered or recovered or made against the Lessor by any person for any injury which such person may sustain when using or entering or near any portion of the building or premises whether in the occupation of the Lessor or of the Lessee or any other person as a result of the creation of some dangerous thing or state of affairs by the Lessee or any clerk, servant, workman, licensee, invitee, employee, agent, client, customer or visitor of the Lessee and whether the existence of such dangerous thing or state of affairs was or ought to have been known to the Lessor or not.
- B. The Lessee shall:-
- a. During the term of this Lease keep in full force and effect a policy of public risk insurance with respect to the premises and the business or businesses carried on in the premises in which the amount which may be paid arising out of any one single accident or event shall not be less than TWENTY MILLION DOLLARS (\$20,000,000-00). The policy shall extend to cover death or injury to any such persons sustained when such person is using or entering or near any entrance, passage, vestibule or display window to, into or of the premises. The policy shall note the Lessor as owner, (or otherwise keep the Lessor indemnified) or any person designated by the Lessor, and the Lessee as insured and shall if possible, contain a clause that the insurer will not cancel or change the insurance without

- first giving the Lessor (10) days prior written notice. The insurance policy shall be with a reputable insurance company and a copy of the policy or certificate of insurance shall be delivered to the Lessor within seven (7) days of effecting such insurance or renewal thereof.
- b. Insure and keep insured all additions to the premises carried out by the Lessee and all the Lessee's contents, trade or tenants fixtures against loss or damage by fire, lightning, flood, storm, tempest, explosion and other usual and necessary risks against which a Lessee can and does ordinarily insure in the full replacement value thereof.
  - c. At all times in its use of the premises comply with the requirements of the Board of Fire Commissioners of New South Wales, the Laws and Regulations for the time being relating to fires and the provision of every relevant Statute, Regulation and Ordinance. If the Lessee shall do or permit to be done any act, matter or thing which has the effect of invalidating or voiding any policy of insurance taken out by the Lessor then the Lessee shall be responsible for any damage or loss which the Lessor may suffer or incur as a result thereof.
  - d. At all times during the continuance of this Lease effect and keep current an insurance policy noting the Lessor as owner (or otherwise keep the Lessor indemnified) against breakage and damage from any cause whatsoever of all glass in and upon the premises. The insurance policy shall be with a reputable insurance company and a copy of the policy or a Certificate of Insurance shall be delivered to the Lessor within seven (7) days of such insurance or renewal being effected.

## 9. SUB-LETTING

The Lessee shall not:-

- A. Assign, transfer, demise, sub-let, license or part with possession of the premises or any part thereof or procure the same to be assigned, transferred, demised, sub-let, licensed unto or put into possession of any person without the consent of the Lessor such consent shall not be unreasonably withheld where the Lessee not being in default in the covenants and agreement on the Lessee's part herein contained proposes to assign or sub-lease or transferee who proves to the satisfaction of the Lessor that he is a respectable, responsible and solvent person capable of adequately carrying on the business previously carried on by the Lessee or such other business as the Lessor may otherwise approve in writing which approval shall not be unreasonably withheld PROVIDED THAT as a pre-condition to any such approval:-
  - a. The onus of proving that the proposed assignee, sub-lessee or transferee is a respectable, responsible, solvent, fit and suitable person shall be upon the Lessee.

- b. The Lessee shall procure the execution by such assignee, sub-lessee or transferee of an Assignment, Deed of sub-lease or Transfer of these presents to which the Lessor is a party in such form as the Lessor and its Solicitors shall approve and if the terms of this Lease are guaranteed by a Guarantor (s) procure signature Guarantors acceptable to the Lessor to guarantee the covenants of such Assignment, Deed of Sub-lease or Transfer in the form as provided for in Clause 24 hereof.
  - c. All rent then due or payable shall have been paid and there shall not then be any existing unremedied breach of the covenants, conditions and agreements herein contained, but breaches which have been waived by the Lessor shall not be deemed to be unremedied breaches for the purpose of this sub-clause.
  - d. Such assignment, Deed of sub-lease or Transfer contains a covenant by the assignee, sub-lessee or transferee with the Lessor that the assignee, sub-lessee or transferee will at all times during the continuance of the term hereby granted duly guarantee the payment of rent reserved at the times and in the manner herein mentioned and guarantee performance and observance of all the covenants, conditions and agreements of this Lease on the part of the Lessee to be performed and observed.
  - e. The Lessee pays to the Lessor all costs charges and expenses incurred by the Lessor of or incidental to the giving of its consent to such assignment, sub-lease or transfer.
  - f. Such assignment, sub-lease or transfer contains a covenant by the Lessee with the Lessor that the Lessee will at all times during the continuance of the term hereby granted duly guarantee the payment of rent reserved at the times and in the manner mentioned and guarantee performance and observance of all the covenants, conditions and agreements of this Lease on the part of the assignee, sub-lease or transferee to be performed and observed such covenant to be in such form as the Lessor and its solicitor shall approve.
  - g. Where the proposed assignee, sub-lease or transferee is a corporation the Lessor may require that the covenants contained in this Lease on the part of the Lessee and the covenant referred to in sub-clause d of this clause on the part of the assignee, sub-lessee or transferee shall be guaranteed by the Directors and/or principal shareholders of such company AND any change in the principal shareholding altering effective control of the Lessee (whether the original Lessee or an assignee) (if a company) shall be deemed an assignment of this Lease and will require the consent of the Lessor as aforesaid.
- B. Grant concessions or licences for the operation of any part of the business which the Lessee is permitted to conduct on the premises.

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## **10. DAMAGE TO OR DESTRUCTION OF PREMISES**

The Lessor and the Lessee agree that:-

- a. If during the term of this Lease the whole or any part of the premises shall be destroyed or damaged by fire, flood, lightning, storm, tempest or other inevitable accident or as the result directly or indirectly of action by the Queen's enemies by sea, land or air from acts of defence against such enemies then the Lessor or the Lessee shall be at liberty by fourteen (14) days notice in writing to terminate this Lease and the term hereby granted without right or claims by the Lessee for damage by reason of such termination but without prejudice to the rights of either party for any antecedent breach of covenant or agreement and the Lessee further acknowledges that there shall be no obligation on the Lessor to rebuild or reinstate the premises.
- b. If the Building or any part of it including the premises shall during the term of this Lease be destroyed or damaged as aforesaid so as to render same unfit for occupation and use and the Lessee and the Lessor shall not elect to terminate this Lease pursuant to sub-clause a. of this clause then so often as the same shall happen the rent hereby reserved or a fair and just proportion thereof according to the nature and extent of the damage sustained shall abate until the premises are repaired or made fit for the occupation and use of the Lessee but so that nothing herein contained shall make it obligatory on the Lessor to rebuild, repair or re-instate the said Building or the Premises. If any dispute shall arise under this sub-clause as to whether a case for abatement of rent has arisen or as to the proportion of rent to be abated or the time during which such abatement shall continue or any other matter or thing under this provision the same shall be referred to arbitration under the provisions of the Commercial Arbitration Act, 1984 or such other laws for the time being in force in the State of New South Wales.
- c. The provisions of sub-clauses a. and b. of this clause insofar as they confer rights on the Lessee shall not apply in the case of destruction or damage caused by the negligent act or omission of the Lessee or any clerk, servant, invitee, licensee, workman, employee, client, agent, customer or visitor of the Lessee.
- d. If any merchandise or other property of the Lessee which may be in or about the premises or the building during the same term shall be injured, destroyed or damaged by water, heat, fire, vermin or otherwise howsoever no part of the loss of damage occasioned thereby shall be borne by the Lessor except where the same shall occur by reason of any defect in the construction of the premises or building or any fittings or apparatus therein or otherwise howsoever.

## **11. LESSOR'S COVENANTS**

The Lessor agrees with the Lessee that:-

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- a. Provided the Lessee pays the rent hereby reserved and performs the covenants, agreements and conditions herein contained or implied the Lessee may peaceably possess and enjoy the premises for the term hereby granted without any interruption or disturbance from the Lessor or any other person or persons on its behalf except as provided for herein.
- b. The Lessee may upon the expiration of this Lease remove any and all equipment, machinery, containers, fittings, good and merchandise belonging to the Lessee and placed or installed by the Lessee upon the premises PROVIDED THAT there shall be no structural damage caused by such removal AND FURTHER PROVIDED THAT any disfigurement caused by such removal shall be rectified by the Lessee and to the reasonable satisfaction of the Lessor.
- c. The Lessor shall pay all rates, taxes and assessments charged upon or in respect of the premises except those which the Lessee has covenanted to pay.
- d. In the event that the Lessor provides a common sign at the front of the property, then in such case the Lessee can insert its own signage at its own cost. No signage will be put on the common sign board unless such signage is approved of by the Lessor which approval will not be unreasonably withheld.

## **12. DEFAULT OF LESSEE DETERMINATION**

- A. If the Lessee shall fail to pay any monies or charges as required hereunder to any person other than the Lessor or if the Lessee shall fail to perform any affirmative covenant on the part of the Lessee hereunder the Lessor may at its option as the agent of the Lessee make any such payment or do such acts and things and incur such expenses as may be necessary to perform made or expenses incurred shall constitute a liquidated debt due and owing by the Lessee to the Lessor and shall be paid by the Lessee to the Lessor on demand by the Lessor.
- B. In any of the following circumstances namely:
  - a. Rent in arrears: the rent reserved or any part thereof shall be unpaid and in arrears for fourteen (14) days after the same shall have become due whether any formal or other demand therefore shall have been made or not; or
  - b. Fail to pay monies: any monies payable by the Lessee to the Lessor hereunder on demand shall not have been paid within fourteen (14) days of the making of demand therefore or if any other monies payable by the Lessee to the Lessor shall not have been paid by the due date therefore; or
  - c. Failure to effect repairs: The Lessee shall not commence effecting the repairs required by any notice given by the Lessor and which the Lessee is obliged to

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perform under this Lease within a reasonable time after giving of such notice; or

- d. Breach of covenants: The Lessee shall fail within a reasonable time after receiving notice from the terms covenants, conditions and restrictions herein contained on the part of the Lessee whether positive or negative;

The Lessee shall be deemed to have made default.

- C. If the Lessee shall have made default as aforesaid the Lessor may (after first giving prior notice where required by law) at its option:-

- a. Determination by re-entry Without any prior demand or notice re-enter into and take possession of the whole (by force if necessary) and eject the Lessee and all other persons therefrom and repossess and enjoy the same as of its first and former estate therein and thereupon the Lease shall be absolutely determined; or
- b. Determination by notice: By notice in writing to the Lessee determine the Lease and from the date of giving such notice the Lease shall be absolutely determined; or
- c. Conversion to monthly tenancies: By notice in writing to the Lessee elect to convert the term into a tenancy from month to month in which event the Lease shall be determined as from the giving of such notice and thereafter the Lessee shall hold the premises from the Lessor as a tenant from month to month at a monthly rent equal to the aggregate of the monthly instalments on account of the rent and outgoings payable hereunder and any other amounts payable hereunder at the date of giving such notice (such rental being payable monthly in advance) but otherwise on the terms and conditions of the lease so far as they can be applied to a monthly tenancy.

- D. It is hereby expressly agreed and declared that the covenants and agreements on the part of the Lessee contained or implied in:-

- a. Clause 4 relating to the payment of rent;
- b. Clause 6 relating to the use of the premises;
- c. Clause 7 relating to cleaning alterations and repairs;
- d. Clause 8B relating to insurances;
- e. Clause 9 relating to the assignment, subletting or other dealings with the premises;

are essential and fundamental terms of the lease and breach, non - observance or non performance of any one or more of such covenants, terms and conditions, shall be deemed to be a fundamental breach of the provisions of the lease on the part of the Lessee to be observed and performed PROVIDED THAT the presence of this clause in the Lease shall not mean or be construed as meaning that there

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are no other fundamental and/or essential terms in this Lease. Should the Lessor terminate the Lease by whatever means following any such fundamental breach then without prejudice to any other right or remedy of the Lessor herein contained or implied it is EXPRESSELY AGREED AND DECLARED that the Lessor shall be entitled to recover from the Lessee (or the Guarantor as the case may be) as and by way of liquidated damages for such breach the aggregate of the rent and outgoings and other monies which but for such determination would have been payable by the Lessee for the unexpired residue of the term being the period from the date of such determination to the expiration date of the term or, as the case may be, the amount of such aggregate (including agents fees and advertising costs) less the aggregate of the several rentals, outgoings and other monies which the Lessor by taking reasonable steps to re-let the premises should obtain by re-letting the premises for the unexpired residue of the term.

- E. Demand or acceptance of the rent by the Lessor after default by the Lessee under the Lease shall be without prejudice to the exercise by the Lessor of the powers conferred upon it under the Lease and shall not operate as an election by the Lessor whether to exercise or not to exercise any of such rights, powers of privileges.
- F. No consent waiver express or implied by the Lessor to or of any breach of any term or condition of the Lessee shall be construed as a consent or waiver to or any other breach of the same or any other term or condition.

### 13. HOLDING OVER

Should the Lessee continue to occupy the premises beyond the expiration of the term hereof with the consent of the Lessor it shall do so hereunder as a monthly tenant at a monthly rent as agreed upon or that being equal to one twelfth ( $1/12^{\text{th}}$ ) of the total of the rent payable by it for the last year of the term, such tenancy being determinable by on (1) months notice in writing given by either party to the other.

### 14. MAINTENANCE OF THE BUILDING BY THE LESSOR

The Lessee agrees that:-

- A. The Lessor reserves unto itself at all reasonable times:-
- a. The right with agents and others and with all necessary materials and appliances to enter upon and to erect, place, make, excavate, lay, carry or install in, or, over or under the premises any poles, masts, posts, drains, pipes, cables, electric or any other wires or any other things requisite for any existing or future service to the Lessor or any other tenants of the Lessor.

- b. The right in the manner aforesaid to enter upon the premises for the purpose of inspecting, removing, maintaining, altering or adding to any such existing or future service or any other service which is now or should at anytime be adjacent to the premises, and
  - c. The right in the manner aforesaid to enter upon the premises for the purposes of installing and maintaining or permitting of the installation and maintenance now or at any future time of any water or other service which may be required by the Lessor or any tenants of the Lessor.
- B. The Lessor reserves unto itself the right to add to and to do additional building work on the building containing the premises and no such additions or work shall form part of the premises. The Lessee further agrees that the Lessor also reserves unto itself the right to construct, alter or remove buildings or improvements on the common areas.

### **15. WARRANTIES**

The Lessee acknowledges that it has examined and knows the condition of the premises and acknowledges that it has received the same in good order and repair and that no representations as to the condition or repair thereof or that the same are suitable for the purposes of the Lessee have been made by the Lessor or any person representing the Lessor.

### **16. NOTICE**

Any notice or any document in writing to be served, delivered or given hereunder may be served, delivered or given in any manner mentioned in Section 170 of the Conveyancing Act, 1991, as amended, and in addition thereto may be served, delivered or given to the Lessee or the Lessor by enclosing in an envelope addressed to the Lessee or the Lessor (as the case may be) at its registered office for the time in the State of New South Wales and delivered there or placed (such envelope being properly stamped) in a receptacle provided for that purpose, postage by the postal authority for the time being and any such notice or other document or writing shall when served, delivered or given by post be deemed to have been served, delivered or given on the day following the day of placing in such receptacle.

### **17. CONSTRUCTION**

All agreements of the Lessee herein contained and all obligations imposed on or undertaken by the Lessee hereunder however expressed are intended to be and shall be deemed to be for all purposes covenants by the Lessee and all agreements of the Lessor herein contained and all obligations imposed on or undertaken by the Lessor hereunder however expressed are intended to be and shall be deemed to be for all purposes covenants by the Lessor.

### **18. TENANT'S FIXTURES**

- A. All fixtures, fittings, plant, machinery, utensils, shelving, counters, safes and other material or articles brought onto the premises by the Lessee shall be trade or tenant's fixtures and subject to the tenant's rights. The Lessee may, and shall if required by the Lessor so to do, at or prior to the expiration of the Lease remove the trade or tenant's fixtures from the premises. If the Lessee fails to remove the trade or tenant's fixtures or any stock in trade at or prior to the expiration of the Lease then the Lessor if it does not elect as provided in the following sub-clause B may do so and store them in a public warehouse or elsewhere at the Lessee's risk and at the cost of and for the account of the Lessee and the Lessor shall not be deemed guilty of conversion or become liable for any loss or damage occasioned by such removal. The Lessee shall forthwith make good any damage which may be occasioned to the premises by the removal of the trade or tenant's fixtures and the Lessee shall re-instate the premises as aforesaid within a reasonable time then the Lessor may do so and all the Lessor's costs and expenses whatsoever of so doing shall be paid by the Lessee to the Lessor upon demand.
- B. In the event of the termination of this Lease by effluxion of time or otherwise any of the Lessee's trade or tenants fixtures or stock in trade as aforesaid as are not removed by the Lessee shall, if the Lessor shall so elect, be deemed to be abandoned by the Lessee and the Lessee agrees that title shall pass to the Lessor. The Lessee releases and indemnifies the Lessor from all liability in respect of the Lessee's trade or tenants fixtures or stock in trade as aforesaid that are for the purposes of this clause abandoned by the Lessee.

### **19. INTEREST ON UNPAID RENT**

The Lessee agrees to pay interest at the rate of Twelve per cent per annum (12%) where the rent or any part thereof or any part otherwise due under this Lease is due and remains unpaid for a period of fourteen (14) days after the date appointed for payment thereof under the terms of this Lease such interest is to be paid and to be recoverable with the expenses in like manner as rent in arrears is under the term of this Lease.

### **20. LEGAL COSTS**

The Lessee agrees to pay the Lessor's costs and disbursements, stamp duty, registration fees and all charges and expenses of and incidental to the preparation, completion, stamping and registration of this Lease and any renewal thereof and of any Surrender and other termination thereof otherwise than by effluxion of time and in respect of the consent of the Lessor's mortgagee or mortgagees (if any) and any calculation of an increased rental pursuant to the terms hereof, and in the case of default by the Lessee in performing or observing any covenants herein contained or implied the Lessee shall pay to the Lessor all legal costs, charges, disbursements and expenses for which the Lessor shall become liable in consequence or in connection with such default.

## **21. VACATING PREMISES**

The Lessee agrees in addition to its other obligations herein contained that on vacating the premises:-

- a. The Lessee shall cleanse all walls and remove all rubbish prior to vacating;
- b. The Lessee shall return to the Lessor upon the termination of the Lease the keys of all doors forming part of or attached to any part of the Premises or of the Building of the Lessor.

## **22. UNENFORCEABLE PROVISIONS**

The parties agree that should it be held that any clause or sub-clause contained in the within Lease should be voidable or unenforceable then that clause or sub-clause shall be deemed to be deleted from the Lease and the remaining clauses and sub-clauses shall be binding in all respects.

## **23. FIRST OPTION PERIOD**

The Lessor and the Lessee agree that should the Lessee desire to take a new Lease of the premises for a further term as referred to in **Item 8** of the Schedule hereto from the expiration of the term of this lease and shall give to the Lessor not less than three (3) calendar months and not more than six (6) months notice in writing of such desire and shall in the meantime duly and punctually pay the rent reserved by this Lease at the times herein before appointed for the payment and shall duly perform and observe the covenants and conditions by and on the part of the Lessee herein contained up to the expiration of the term hereby granted and if the Terms of this Lease are Guaranteed by a Guarantor(s) procure substitute Guarantors acceptable to the Lessor to guarantee the covenants of the new Lease in the form as provided for in **Clause 24** hereof the Lessor shall demise to the Lessee the premises and for the term referred to in **Item 8** of the Schedule hereto and the said renewed Lease shall be subject to the same terms and conditions, agreement and restrictions as are contained in this Lease, except this present covenant, and the appropriate items in the Schedule. The rent payable at the commencement of such new term shall be the current market rent as agreed by the parties and in default of agreement at the current market rent determined in accordance with the provisions of Clause 5B (e) - (k) hereof.

## **24. GUARANTEE AND INDEMNITY**

In consideration of the Lessor agreeing to grant this Lease to the Lessee at the request of the Guarantor(s) referred to in **Item 9** of the Schedule the Guarantor(s) enter(s) into this guarantee in favour of the Lessor on the following terms:-

- i. The Guarantor(s) agrees to guarantee the payment of rent and the observance and performance of all Lessee's obligations as specified in the lease throughout the lease term, including during holding over as periodical tenant after the expiry of the lease term.
- ii. This guarantee covers the whole period whilst the Lessee occupies or is entitled to occupy the leased premises as the lessee, or whilst holding an equitable interest over the premises under an agreement for lease or as a periodical tenant.
- iii. This guarantee is in favour of the Lessor and its successors and assigns being the owner of the premises from time to time during the lease term.
- iv. This guarantee extends to claims by Lessor for damages for breaches of lease covenants, for breaches of any essential terms of the lease and for repudiation of the lease or agreement for lease and to the Lessor's reasonable legal and other expenses of seeking to enforce those obligations against the Lessee or of recovering possession and of terminating the lease.
- v. This guarantee extends to the Lessor's loss or damage in the event of the Lessee abandoning or vacating the leased premises and also in the event of the Lessor electing to re-enter or to terminate the lease, including for the Lessee's repudiation of the lease.
- vi. The Lessor shall be entitled to require the Guarantor(s) under this guarantee to pay to the Lessor any outstanding rent or other amount or to compensate the Lessor for any loss or damage under the lease without the Lessor being required to institute any proceedings against the Lessee in respect of such claims or breaches.
- vii. The Lessor's rights against the Guarantor(s) are not affected by any of the following:-
  - a. Any indulgence or extension of time by the Lessor to the Lessee or to the Guarantor(s);
  - b. The death or bankruptcy or winding up of the Lessee or the Guarantor(s);
  - c. The Lessee's liability under this Lease, or the lease, being or becoming invalid, illegal, or unenforceable, through any act, omission or legislation.
- viii. In the event of the lease being terminated by disclaimer by a trustee or liquidator of the Lessee the Guarantor(s) agrees that upon being required by the Lessor within 90 days after the date of the disclaimed to do so, the Guarantor(s) will enter into a lease of the leased premises for a term commencing from the date of the disclaimer to the end of the lease term at the cost of the lease but without containing any provision for a guarantee of that lease.

- ix. In the event of fresh guarantors being substituted for the Guarantor(s) under the lease, the liability of the Guarantor(s) shall cease in respect of any loss or damage occurring after the date of assignment of the lease or the expiry of this lease, whichever event shall occur.

### **25. BANK GUARANTEE**

The Lessee shall prior to execution arrange for a bank guarantee in favour of the Lessor with a recognised bank of the Lessee's choice for a value not less than that shown in **Item 10** ("the bank guarantee"). The bank guarantee shall be kept in force throughout the term of the Lease. The Lessor shall be entitled to call upon the bank guarantee in the event of a default by the Lessee arising from the non-payment of rent or any other sum which is or may become payable by the Lessee to the Lessor, and as security for the due and punctual performance of all of the covenants and obligations on the Lessee's part herein contained.

### **26. GOVERNING LAWS**

The Parties agree that this Lease is made in and is subject to the Laws of New South Wales.


### **27. GENERAL**

The Lessee shall duly observe the Rules and Regulations for the Lessors Building and premises from time to time by notice in writing to the Lessee.

SCHEDULE

<u>ITEM 1:</u>	<u>Commencement Date</u>	<u>Cl 3</u>
	Term: Ten (10) years 21 June 2010	
<u>ITEM 2:</u>	<u>Termination Date</u>	<u>Cl 3</u>
	20 June 2020	
<u>ITEM 3:</u>	<u>Rent at commencement of Term</u>	<u>Cl 4</u>
	\$57,000.00 per annum plus GST	
<u>ITEM 4:</u>	<u>Review of Rent</u>	<u>Cl 5</u>
	CPI from the first and each subsequent anniversary thereafter.	
<u>ITEM 5:</u>	<u>Review to Current Market Rent</u>	<u>Cl 5B</u>
	On the sixth anniversary and on exercise of options.	
<u>ITEM 6:</u>	<u>Lessee's percentage of Outgoings</u>	<u>Cl 5 C</u>
	100%.	
<u>ITEM 7:</u>	<u>Use of the Premises</u>	<u>Cl 6</u>
	Child Care Centre	
<u>ITEM 8:</u>	<u>First Option Period</u>	<u>Cl 23</u>
	Five (5) years from 20 June 2020	
	<u>Second Option Period</u>	
	Five (5) years from 20 June 2025	
<u>ITEM 9:</u>	<u>Guarantor (s)</u>	<u>Cl 24</u>
	<del>(Dora Nilda Palacios Vazquez and Christian Palacios)</del>	
	JU HYUNG HONG and GINA HONG	

X *Gina Hong*  
 X *Julie Hong*  
 X *28/32*

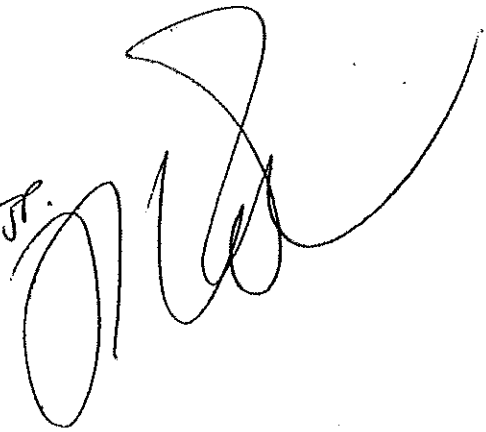


ITEM 10: Bank Guarantee

CI 25

**\$9,500.00 (Two months rent)**

X *Gibbs*  
X *Callahan Jr.*  
X *Tony Mong* 2/9/32



"A"

This and the preceding 29 pages form the Annexure to the Lease between Nelson Yu-Zee Wu as Lessor and ~~Mary Street Early Learning Centre Pty Ltd~~ as Lessee.

*J G A W*  
ENR GROUP PTY LTD

We certify this dealing correct for the purposes of the Real Property Act, 1900.

**SIGNED SEALED AND DELIVERED**

By NELSON YU-ZEE WU in the

*Nelson Yu-Zee Wu*  
.....  
Nelson Yu-Zee Wu

Presence of: *R Paduano*

REGINA PADUANO  
.....  
Witness

39 DICKSON RD LEPPINGTON  
.....  
Address of Witness 2179.

*J G A W*  
Executed by ~~MARY STREET EARLY LEARNING CENTRE PTY LTD~~  
in accordance in Section 127 of  
the Corporations Act 2001

ENR GROUP PTY LTD

CHRIS NORTON  
.....  
Witness

*Chris Norton*

*Gina Hong*  
.....  
~~Dora Nilda Palacios Vazquez~~  
(Director)  
Gina Hong

174 Kerthust Rd  
.....  
Address of Witness  
Kerthust

*J G A W*  
Ju Hyung Hong  
.....  
~~Christian Palacios~~  
(Director)  
Ju Hyung Hong

**SIGNED SEALED AND DELIVERED**

*20/32*

31  
Gina Hong  
by ~~(DORA NILDA PALACIOS VAZQUEZ)~~

in the presence of:

CHRIS NORRAN  
.....  
Witness

*[Signature]*  
JR

*[Signature]*  
.....  
(Dora Nilda Palacios Vazquez)  
(Guarantor)  
Gina Hong  
*[Signature]*

174 Kenhurst Rd  
.....  
Address of Witness Kenhurst

**SIGNED SEALED AND DELIVERED**

~~(CHRISTIAN PALACIOS)~~

In the presence of:

CHRIS NORRAN  
.....  
Witness

*[Signature]*  
JR

JU Hyung Hong  
.....  
(Christian Palacios)  
(Guarantor)  
JU Hyung Hong

174 Kenhurst Rd  
.....  
Address of Witness Kenhurst



National Australia Bank Limited  
ABN 12 004 044 937

Annexure to Lease

FROM Nelson Yu-Zee Wu  
TO ENR Group Pty Ltd ACN 138 302 575  
DATED  
FOLIO IDENTIFIER: 4/31854

National Australia Bank Limited ABN 12 004 044 937 as Mortgagee under W41208 hereby consents to the within Lease subject to and without in any way limiting abridging affecting or prejudicing the rights powers and remedies of the Mortgagee under the said Mortgage/s (or any of them) which rights powers and remedies shall remain in full force and effect as if this consent had not been given Save and Except that so long as the covenants conditions and provisions of the within Lease are duly observed and performed the Mortgagee will in the event of the exercise of the power of sale or other power or remedy of the Mortgagee on default under the said Mortgage/s (or any of them) exercise the same subject to the then subsisting rights of the Lessee/s under the within Lease And this limited consent is also given on the express condition that the consent of the Mortgagee is procured in all cases where the consent of the Lessor/s is necessary under the within Lease that the Mortgagee shall not be obliged to perform any covenant or agreement by the Lessor/s contained in the within Lease and that all rights powers and remedies of the Lessor/s under the within Lease shall absolutely vest in and be exercisable and enforceable by the Mortgagee immediately upon the Mortgagee giving notice to the Lessee/s of demand to enter into receipt of the rents and profits of the leased premises.

Signed at ST. LEONARDS this 10<sup>th</sup> day of AUGUST 2010  
(day) (month) (year - cyy)

SIGNED SEALED AND DELIVERED for and on )  
behalf of NATIONAL AUSTRALIA BANK )  
LIMITED )  
ABN 12 004 044 937 by its Attorney )  
\_\_\_\_\_)  
who holds the position of )  
Level 3 Attorney under )  
Power of Attorney Registered No. 39 Book 4512 )  
in the presence of: )

Witness Signature Imran Ashraf

Print Name IMRAN ASHRAF  
ASSOCIATE

Attorney Signature Craig Raymond Giles

Print Name CRAG RAYMOND GILES

METROPOLITAN WATER SEWERAGE AND DRAINAGE BOARD

# SEWERAGE SERVICE DIAGRAM

*JALVA 10/11*  
*ARMY*  
No. 832122

Municipality of *Blacktown*  
(Blacktown)

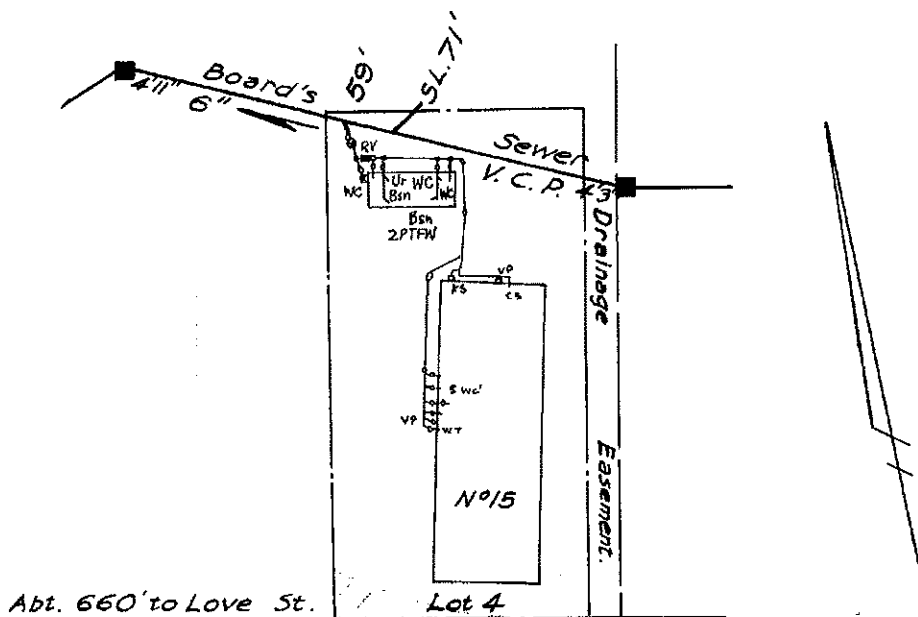
SYMBOLS AND ABBREVIATIONS

- |                           |                          |                   |                          |
|---------------------------|--------------------------|-------------------|--------------------------|
| □ Boundary Trap           | ■ R.V. Reflex Valve      | I.P. Induct Pipe  | Bsn. Basin               |
| ■ Pit                     | → Cleaning Eye           | M.F. Mica Flap    | Shr. Shower              |
| ▣ G.I. Grease Interceptor | ○ Vert. Vertical Pipe    | T. Tubs           | W.I.P. Wrought Iron Pipe |
| ▣ Gully                   | ○ V.P. Vent. Pipe        | K.S. Kitchen Sink | C.I.P. Cast Iron Pipe    |
| ▣ P.T. P. Trap            | ○ S.V.P. Soil Vent. Pipe | W.C. Water Closet | F.W. Floor Waste         |
| ▣ R.S. Reflex Sink        | D.C.C. Down Cast Cowl    | B.W. Bath Waste   | W.M. Washing Machine     |

Scale: 40 Feet To An Inch

SEWER AVAILABLE

Where the sewer is not available and a special inspection is involved the Board accepts no responsibility for the suitability of the drainage in relation to the eventual position of the Board's Sewer

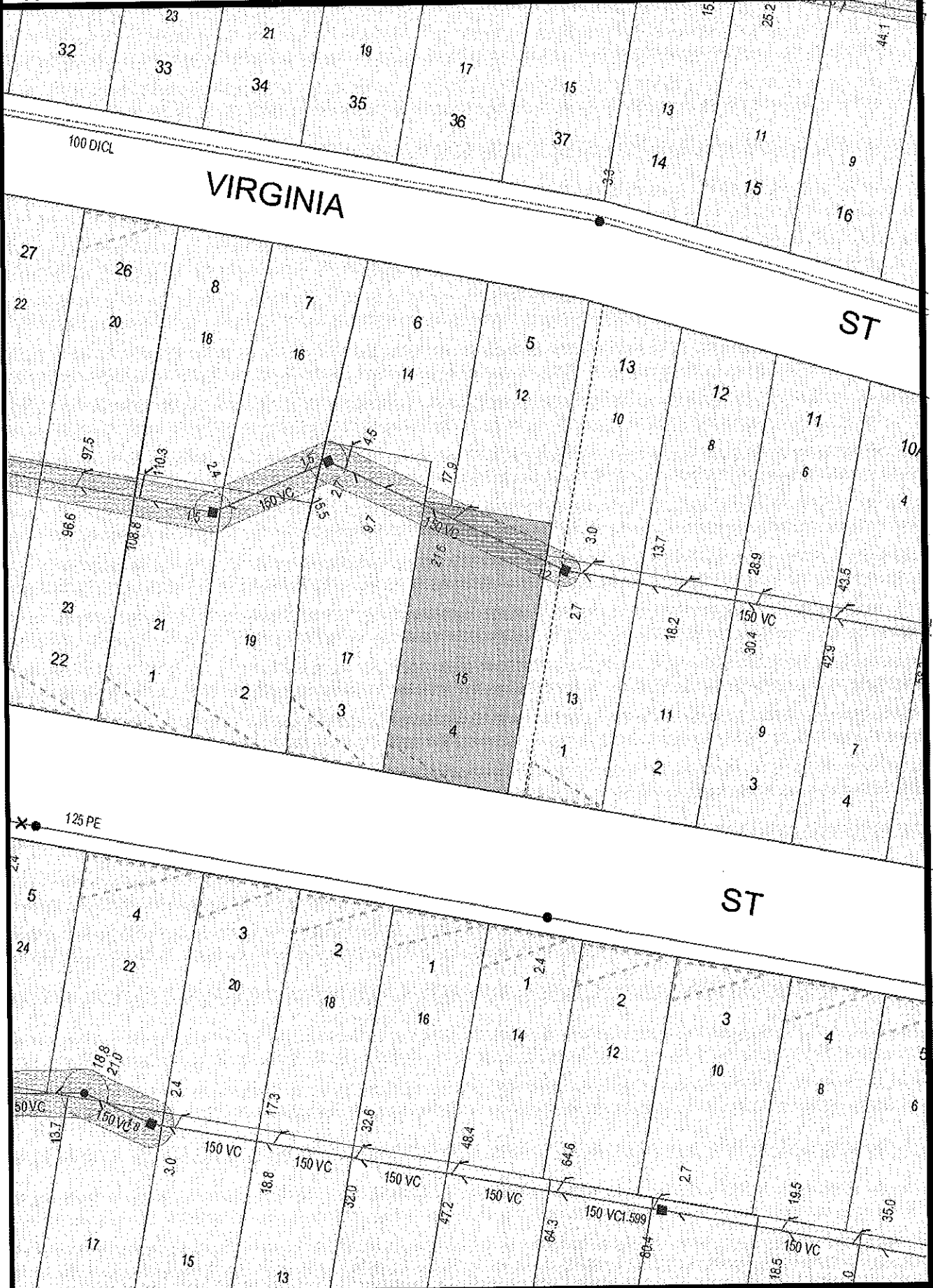


MARY ST.

RATE No. \_\_\_\_\_ W.C.s. 3 U.C.s. \_\_\_\_\_ 19\_\_\_\_  
SHEET No. 10116 OFFICE USE ONLY For Engineer House Services

DRAINAGE			PLUMBING		
W.C.	Supervised by	Date	BRANCH OFFICE	Supervised by	Date
Bth.	Inspector	/ /	Date / /	Inspector	/ /
Shr.					
Bsn.	Examined by	/ /	Outfall _____ HL LL	1192 540	/ /
K.S.			Drainer _____		
T.	Chief Inspector	/ /	Plumber _____		
Plg.			Boundary Trap		
Dge. Int.					

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



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

## Applicant Details

Your reference 200052

D DETTMANN LONGWORTH LAWYERS  
SUITE 85, 47 NERIDAH STREET  
CHATSWOOD NSW 2067

## Certificate Details

Certificate no.	PL2020/09857	Fee: \$133.00
Date issued	03 August 2020	Urgency fee: N/A
Receipt no.	ePay Ref 93187	

## Property information

Property ID	150128	Land ID	150128
Legal description	LOT 4 DP 31854		
Address	15 MARY STREET BLACKTOWN NSW 2148		
County	CUMBERLAND	Parish	PROSPECT

## PLANNING CERTIFICATE (Section 10.7(2 & 5))

Blacktown City Council prepared this Planning Certificate under Section 10.7 of the *Environmental Planning and Assessment Act 1979*. The form and content of the Certificate is consistent with *Environmental Planning and Assessment Regulation 2000*.

## Disclaimer

Blacktown City Council gives notice and points out to all users of the information supplied herein, that the information herein has been compiled by Council from sources outside of Council's control. While the information herein is provided with all due care and in good faith, it is provided on the basis that Council will not accept any responsibility for and will not be liable for its contents or for any consequence arising from its use, and every user of such information is advised to make all necessary enquiries from the appropriate organisations, institutions and the like. Blacktown City Council also gives notice to all users of the information supplied herein, wherever any particular enquiry herein remains unanswered or has not been elaborated upon, such silence should not be interpreted as meaning or inferring either a negative or a positive response as the case may be.

**Council Chambers** • 62 Flushcombe Road • Blacktown NSW 2148  
**Telephone:** (02) 9839 6000 • **Facsimile:** (02) 9831-1961 • DX 8117 Blacktown  
**Email:** s10.7certificates@blacktown.nsw.gov.au • **Website:** www.blacktown.nsw.gov.au  
**All correspondence to:** The General Manager • PO Box 63 • Blacktown NSW 2148

## **Section 10.7(2)**

The following information is provided under Section 10.7(2) of the *Environmental Planning and Assessment Act 1979*. The information relates to the subject land at the date of this Certificate.

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### **1. Names of relevant planning instruments and development control plans**

#### **1.1 Environmental Planning Instrument**

*Blacktown Local Environmental Plan 2015* applies to the subject land.

#### **1.2 Proposed Local Environmental Plans**

Not applicable.

#### **1.3 Other Applicable State Environmental Planning Policies**

Attachment 1 contains a list of State Environmental Planning Policies that may apply to the carrying out of development on the subject land.

#### **1.4 Proposed State Environmental Planning Policies**

Council is not aware of any proposed State Environmental Planning Policy that is or has been the subject of community consultation or on public exhibition under the Act, applying to the subject land.

#### **1.5 Development control plans**

*Blacktown Development Control Plan 2015* applies to the subject land.

### **2. Zoning and land use under relevant environmental planning instruments**

*The following information will assist in determining how the subject land may be developed. It is recommended that you read this section in conjunction with a full copy of any relevant environmental planning instrument as there may be additional provisions that affect how the land may be developed.*



## 2.1 Zoning

Under *Blacktown Local Environmental Plan 2015*, the land is zoned:

### **Zone R2 Low Density Residential**

The following is an extract from *Blacktown Local Environmental Plan 2015* outlining the types of development that may or may not be carried out in the above zone

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

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To enable certain activities to be carried out within the zone that do not adversely affect the amenity of the neighbourhood.*

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

*Home occupations*

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

*Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Public administration buildings; Recreation areas; Respite day care centres; Roads; Seniors housing; Tank-based aquaculture; Veterinary hospitals; Water reticulation systems*

#### **4 Prohibited**

*Any development not specified in item 2 or 3*

## 2.2 Minimum land dimensions for the erection of a dwelling house

Not applicable

### **2.3 Critical habitat**

The land does not include or comprise a critical habitat.

Note: Critical habitat registers are kept by the National Parks and Wildlife Service under the *Threatened Species Conservation Act 1995* and the Department of Fisheries under the *Fisheries Management Act 1994*.

### **2.4 Conservation areas**

The land is not within a conservation area.

### **2.5 Environmental Heritage**

The land does not contain an item of environmental heritage under the protection of Blacktown Local Environmental Plan 2015

## **3. Complying development**

Complying development may or may not be carried out on the subject land under an Environmental Planning Policy. Council does not have sufficient information to determine the extent to which specific complying development may or may not be carried out.

## **4. Coastal protection**

The subject land is not affected by the operation of Sections 38 or 39 of the *Coastal Protection Act, 1979*.

## **5. Mine subsidence**

The subject land has not been proclaimed to be a mine subsidence district within the meaning of Section 15 of the *Mine Subsidence Compensation Act 1961*.

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

The subject land is not affected by road widening or road realignment under an environmental planning instrument.

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

### **7.1 Contaminated Lands Policy and Asbestos Policy Schedule 6**

Council has adopted a Contaminated Lands Policy and an Asbestos Policy which may restrict development on the subject land.

The Land Contamination Policy applies when zoning or land use changes are proposed on land which has previously been used for certain purposes or has the potential to be affected by such purposes undertaken on nearby lands. The Asbestos Policy applies where land contains, or is likely to have contained in the past, buildings or structures that were erected

prior to the banning of asbestos. Both policies should be considered in the context of relevant State legislation and guidelines.

Council's records may not be sufficient to determine all previous uses on the land, or determine activities that may have taken place on this land.

## **7.2 Other policies on hazard risk restrictions**

Council has not adopted any other policies to restrict the development of the subject land by reason of the likelihood of landslip, bushfire, tidal inundation, subsidence or the occurrence of acid sulphate soils.

Note: Although Council has not adopted a specific policy to restrict development bushfire prone land, it is bound by state-wide bushfire legislation that may restrict development on the subject land. Additional information relating to bushfire prone land is provided at point 11 below.

## **7a. Flood related development controls information**

There are currently no mainstream or backwater flood-related development controls adopted by Council that apply to the land subject to this Certificate

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

Blacktown Local Environmental Plan 2015 makes provision for land included on the Land Reservation Acquisition Map to be acquired by a public authority.

## **9. Contributions plans**

Council currently levies contributions under Section 7.11 of the *Environmental Planning & Assessment Act 1979* for facilities and services. The further development of the subject land may incur such contributions.

*Contributions Plan No. 19 - Blacktown Growth Precinct applies to the subject land.*  
*Contributions Plan No. 3 - Open Space in Established Residential Areas applies to the subject land.*

## **9a. Biodiversity certified land**

The land is not biodiversity certified land as defined by Part 7AA of the *Threatened Species Conservation Act 1995*.

## **10. Biobanking agreements**

The land is not subject to any biobanking agreement under Part 7A of the *Threatened Species Conservation Act 1995*.

## **11. Bushfire prone land**

The Rural Fires and Environmental Assessment Legislation Amendment Act 2002, which came into force on 1 August 2002, introduced development provisions for bush fire prone land as shown on a Bush Fire Prone Land Map. "Bush fire prone land" is land that has been designated by the Commissioner of the NSW Rural Fire Service as being bush fire prone due to characteristics of vegetation and topography. The land the subject of this certificate has been identified on Council's Bush Fire Prone Land Map as being:

Clear of any bush fire prone land

On land that is bush fire prone, certain development may require further consideration under Section 4.14 or Section 4.46 of the *Environmental Planning & Assessment Act 1979* and under Section 100B of the *Rural Fires Act 1997*.

## **12. Property vegetation plans**

The subject land is not affected by a property vegetation plan under the *Native Vegetation Act 2003*. The Blacktown local government area is excluded from the operation of the *Native Vegetation Act 2003* (refer Schedule 1 Part 3 of that Act).

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

No. Council has not been notified of any order made under the *Trees (Disputes Between Neighbours) Act 2006* in relation to the subject land.

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

Land to which this Certificate applies is not subject to the above.

## **15. Site compatibility certificates for infrastructure**

Land to which this Certificate applies is not subject to the above.

## **16. Site compatibility certificates and conditions for affordable rental housing**

Land to which this Certificate applies is not subject to the above.

## **17. Paper subdivision information**

Not applicable

## **18. Site verification certificates**

Council is not aware of any site verification certificate applying to the subject land.

*Under the Contaminated Land Management Act 1997 and Contaminated Land Management Amendment Act 2008*

- (a) The land to which this certificate relates has not been declared to be significantly contaminated land at the date when the certificate was issued
- (b) The land to which the certificate relates is not subject to a management order at the date when the certificate was issued
- (c) The land to which this certificate relates is not the subject of an approved voluntary management proposal at the date when the certificate was issued
- (d) The land to which this certificate relates is not subject to an ongoing maintenance order as at the date when the certificate was issued
- (e) The land to which this certificate relates is not the subject of a site audit statement provided to the Council.

## **19. Affected building notices and building product rectification orders**

### **19.1 Affected building notices**

Council is not aware of any affected building notice in force for the subject land.

### **19.2 Building product rectification orders**

- (a) Council is not aware of any building product rectification order in force for the subject land.
- (b) Council is not aware of any notice of intention to make a building product rectification order being given for the subject land.

## Section 10.7(5)

The following information is provided under Section 10.7(5) of the *Environmental Planning & Assessment Act 1979*. As per section 10.7(6) of the Act, Council shall not incur any liability in respect of any advice provided in good faith under section 10.7(5). The absence of any reference to any matter affecting the land shall not imply that the land is not affected by any matter not referred to in this Certificate.

---

### Planning Instruments and Covenants

The provisions of any covenant, agreement or instrument applying to this land that restrict or prohibit certain development may be inconsistent with the provisions of an environmental planning instrument. In such cases, the provisions of any such covenant, agreement or instrument may be overridden.

### Loose-filled Asbestos Insulation

Some residential homes located in the Blacktown Local Government Area may potentially contain loose-fill asbestos insulation, for example in the roof space. NSW Fair Trading maintains a Register of homes that are affected by loose-fill asbestos insulation.

You should make your own enquiries as to the age of the buildings on the land to which this certificate relates and, if it contains a building constructed prior to 1980, the council strongly recommends that any potential purchaser obtain advice from a licensed asbestos assessor to determine whether loose-fill asbestos is present in any building on the land and, if so, the health risks (if any) this may pose for the building's occupants.

Contact NSW Fair Trading for further information

### Biodiversity and Threatened Species Conservation

The land is affected by a tree preservation control under Clause 5.9 of the Blacktown Local Environmental Plan 2015. A person shall not ringbark, cut down, lop, top, remove, injure or wilfully destroy any tree, or cause any tree to be ringbarked, cut down, topped, lopped, injured or wilfully destroyed, except with the consent of the Council.

The provisions of any covenant, agreement or instrument applying to this land purporting to restrict or prohibit certain development may be inconsistent with the provisions of a Regional Environmental Plan, State Environmental Planning Policy or Blacktown Local Environmental Plan 2015, in which case the provisions of any such covenant, agreement or instrument may be overridden.

The *Threatened Species Conservation Act 1995* provides for the conservation of threatened species, populations and ecological communities of animals and plants.

The *Threatened Species Conservation Act 1995* amended the *Environmental Planning and Assessment Act 1979* to require, amongst other things, that:

- (a) A critical habitat (as defined in the *Threatened Species Conservation Act 1995*) be identified in environmental planning instruments, and
- (b) Consent authorities and determining authorities must, when considering proposed development or an activity, assess whether it is likely to significantly affect threatened species, populations and ecological communities, or their habitats, and, if a significant effect is likely, to require the preparation of a species impact statement in accordance with the requirements of the *Threatened Species Conservation Act 1995*, and
- (c) Consent authorities and determining authorities must, when considering proposed development or an activity, have regard to the relevant recovery plans and threat abatement plans.

The *Environment Protection and Biodiversity Conservation Act 1999* provides protection for items of national significance. Items of national environmental significance include nationally threatened animal and plant species and ecological communities.

The Act requires a separate Commonwealth approval to be obtained where an action is likely to have significant impacts on items of national environmental significance.

For further information on this matter, please contact the Australian Government's Department of the Environment.

## **Attachment 1 – State Environmental Planning Policies**

In addition to the principal environmental planning instrument identified in section 2.1 of this Certificate, the following State Environmental Planning Policies may also affect development on the subject land.

### **SEPP (Affordable Rental Housing) 2009**

This policy aims to facilitate the increased supply and diversity of affordable rental and social housing in NSW and covers housing types including in-fill affordable housing, along with secondary dwellings (granny flats), boarding houses, group homes, social housing and supportive accommodation. Part 3 of the policy provides for the retention of existing affordable rental housing stock. Development applications to demolish, alter or add, change the use of, or strata subdivide existing low cost rental dwellings may require a contribution towards the provision of alternative affordable housing.

### **SEPP (Building Sustainability Index: BASIX) 2004**

This policy aims to ensure consistency in the implementation of the BASIX scheme throughout the State by overriding provisions of other environmental planning instruments and development control plans that would otherwise add to, subtract from or modify any obligations arising under the BASIX scheme.

### **SEPP (Exempt and Complying Development Codes) 2008**

This policy is also known as the Codes SEPP and includes a number of Codes that allow for certain types of development to be undertaken without the need for council approval as either Exempt Development or approved under a fast track system known as Complying Development, if the relevant standards are met.

### **SEPP (Sydney Region Growth Centres) 2006**

This policy provides for the coordinated release of land for residential, employment and other urban development in the North West Growth Centre, the South West Growth Centre and the Wilton Growth Area. It provides development controls to enable the establishment of vibrant, sustainable and liveable neighbourhoods that provide for community well-being and high quality local amenity.

### **SEPP (Housing for Seniors or People with a Disability) 2004**

This policy is also known as Seniors Housing SEPP and encourages the development of high quality and well-designed housing for older people and people with disabilities, while ensuring that it is in keeping with neighbourhood character. In October 2018, an amendment was made to change some



rules for site compatibility certificates and to make the relevant planning panel the determining authority for site compatibility certificates issued under the Seniors Housing SEPP.

#### **SEPP (Infrastructure) 2007**

This policy assists the NSW Government, private infrastructure providers, local councils and the communities they support by simplifying the process for providing infrastructure like hospitals, roads, railways, emergency services, water supply and electricity delivery, while ensuring appropriate levels of environmental assessment and consultation are undertaken. Recent changes introduce new provisions for correctional services, emergency and police services facilities and bushfire hazard reduction, ports and roads infrastructure, including facilities for electric vehicles, and other operational and housekeeping improvements.

#### **SEPP (Miscellaneous Consent Provisions) 2007**

This policy contains provisions for the erection of temporary structures, subdivision, the demolition of a building or work, certain change of use and fire alarm communication links.

#### **SEPP (State Significant Precincts) 2005**

The purpose of this Policy is to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of those State significant precincts for the benefit of the State. It also aims to facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes.

#### **SEPP (Mining, Petroleum Production and Extractive Industries) 2007**

This policy is also known as the Mining SEPP and governs the way that mining, petroleum production and extractive material resource proposals are assessed and developed in NSW.

#### **SEPP No 1 - Development Standards**

This policy provides flexibility in the application of development standards and allows Council to approve a development that does not comply with a development standard where it can be shown that the development standard is unreasonable or unnecessary.

#### **SEPP No 19 - Bushland in Urban Areas**

This policy protects and preserves bushland within urban areas because of its natural heritage, its aesthetic value and its value for recreational, educational or scientific purposes. The policy aims to protect bushland areas in public open space zones and reservations and ensures that bushland

preservation is given priority when local environmental plans are prepared.

### **SEPP No 21 - Caravan Parks**

This policy applies to development for the purpose of caravan parks and camping grounds. The policy ensures that development consent is required for new caravan parks and camping grounds and for additional long term sites in existing caravan parks. It also requires that development consent be obtained from Council for the subdivision of land for lease purposes under the Local Government Act.

### **SEPP No. 30 - Intensive Agriculture**

Requires development consent for cattle feedlots having a capacity of 50 or more cattle or piggeries having a capacity of 200 or more pigs. The policy sets out information and public notification requirements to ensure there are effective planning control over this export-driven rural industry. The policy does not alter if, and where, such development is permitted, or the functions of the consent authority.

### **SEPP No. 32 - Urban Consolidation**

States the Government's intention to ensure that urban consolidation objectives are met in all urban areas throughout the State. The policy focuses on the redevelopment of urban land that is no longer required for the purpose it is currently zoned or used, and encourages local councils to pursue their own urban consolidation strategies to help implement the aims and objectives of the policy. Councils will continue to be responsible for the majority of rezonings. The policy sets out guidelines for the Minister to follow when considering whether to initiate a regional environmental plan (REP) to make particular sites available for consolidated urban redevelopment. Where a site is rezoned by an REP, the Minister will be the consent authority.

### **SEPP No 33 - Hazardous and Offensive Development**

This policy applies to development defined as 'potentially hazardous industry' or 'potentially offensive industry'. The policy ensures that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account.

### **SEPP No 55 - Remediation of Land**

This policy promotes the remediation of contaminated land for the purpose of reducing risk of harm to human health. The policy includes considerations that are relevant in rezoning land and in determining development applications where remediation of land is required.

**SEPP No. 62 - Sustainable Aquaculture**

Encourages the sustainable expansion of the industry in NSW. The policy implements the regional strategies already developed by creating a simple approach to identify and categorise aquaculture development on the basis of its potential environmental impact. The SEPP also identifies aquaculture development as a designated development only where there are potential environmental risks.

**SEPP No 64 - Advertising and Signage**

This policy sets out planning controls for advertising and signage in NSW and requires signage to be compatible with the future character of an area, provide effective communication in suitable locations and be of high quality design and finish. The policy also bans advertisements on parked trailers on roads, road shoulders, footpaths and nature strips, excluding advertising associated with the primary use of the trailer.

**SEPP No 65 - Design Quality of Residential Apartment Development**

This policy aims to improve the design quality of residential apartment development through the application of 9 design quality principles. The policy also provides requirements for a constituted design review panel to provide independent expert advice to council on the merit of residential flat developments. A design review panel is not mandatory.

**Sydney Regional Environmental Plan No 30 - St Marys**

This plan provides the planning framework for the planning and development of land known as Australian Defence Industries (ADI) site at St Marys.

**SEPP (Western Sydney Employment Area) 2009**

This policy aims to protect and enhance land in the Western Sydney Employment Area for employment purposes and to promote economic development and the creations of employment opportunities in Western Sydney. The policy provides for a coordinated approach to the planning, development and rezoning of land within the Western Sydney Employment Area and includes controls to ensure that development occurs in a logical, environmentally sensitive and cost-effective manner.

**SEPP (Western Sydney Parklands) 2009**

This policy provides the framework to enable the Western Sydney Parklands Trust to develop the Western Parklands into a multi-use urban parkland to meet a range of community needs and interests, including those that promote health and well-being in the community for Western Sydney.

**SEPP (Western Sydney Recreation Area)**

This policy enables development to be carried out for recreational, sporting and cultural purposes within the Western Sydney Recreation Area, including the development of a recreation area of state significance.

Authorised by Blacktown City Council  
Proforma ID: 824989

End of Certificate



Revenue

Enquiry ID 3299015  
Agent ID 81429403  
Issue Date 31 Jul 2020  
Correspondence ID 1710544923  
Your reference 200052

INFOTRACK PTY LIMITED  
DX Box 578  
SYDNEY

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

This information is based on data held by Revenue NSW.

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Land ID	Land address	Taxable land value
D31854/4	15 MARY ST BLACKTOWN 2148	\$473 000

There is no **land tax** (including surcharge land tax) charged on the land up to and including the 2020 tax year.

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Yours sincerely,

Scott Johnston  
Chief Commissioner of State Revenue

**Who is protected by a clearance certificate?**

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

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

A certificate may be issued as 'clear' if:

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

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

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

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

**How do I clear a certificate?**

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

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

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

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

**How do I get an updated certificate?**

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

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

**Land value, tax rates and thresholds**

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



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



1300 139 816\*



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



[landtax@revenue.nsw.gov.au](mailto:landtax@revenue.nsw.gov.au)

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