

Contract for the sale and purchase of land 2017 edition

TERM	MEANING OF TERM	eCOS ID: 39985726	NSW Duty:
vendor's agent	Mike T Real Estate PO Box 710, Dapto NSW 2530		Phone: 0417 447 500 Fax: N/A
co-agent			Ref: Mike T
vendor	BOTTLEBRUSH PROJECTS PTY LIMITED ACN 613 762 922 AND BERKELEY STORAGE PTY LTD ACN 615 483 602		
vendor's solicitor	Acorn Lawyers 15 Victoria Street Wollongong NSW 2500 PO Box 5488 Wollongong NSW 2520, DX 27821 Wollongong Court		Phone: (02) 4226 5711 Fax: (02) 4226 5755 Ref: AA:EP:2465
date for completion	See clause 38	(clause 15)	Email: elizabeth@acornlawyers.com.au
land	Proposed Lot 117, Part of 13 Warehouse PI Berkeley NSW 2506		
(Address, plan details and title reference)	The area comprising proposed Lot 117as shown on the Draft Plan of Lot 14 in DP 118814 being part of the land in 14/1188144		
FIRB Approval	<input type="checkbox"/> NOT REQUIRED - clause 50.1 applies <input type="checkbox"/> REQUIRED - clauses 50.2 -50.4 applies <input type="checkbox"/> Vacant Possession <input checked="" type="checkbox"/> Subject to existing tenancies		
improvements	<input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input type="checkbox"/> home unit <input type="checkbox"/> carspace <input type="checkbox"/> storage space <input type="checkbox"/> none <input checked="" type="checkbox"/> other: Commercial Strata Storage Unit		
attached copies	<input checked="" type="checkbox"/> documents in the List of Documents as marked or as numbered: <input type="checkbox"/> other documents:		

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

inclusions	<input type="checkbox"/> blinds <input type="checkbox"/> dishwasher <input type="checkbox"/> light fittings <input type="checkbox"/> stove <input type="checkbox"/> built-in wardrobes <input type="checkbox"/> fixed floor coverings <input type="checkbox"/> range hood <input type="checkbox"/> pool equipment <input type="checkbox"/> clothes line <input type="checkbox"/> insect screens <input type="checkbox"/> solar panels <input type="checkbox"/> TV antenna <input type="checkbox"/> curtains <input type="checkbox"/> other:
exclusions	
purchaser	Di Maria Super Invest Pty Ltd (ACN 154 580 239) ATF Di Maria Superannuation Fund (ABN 44 072 073 428) 101 Hibberd Crescent, Ford ACT 2914
purchaser's solicitor	CS Conveyancing PO Box 2012, Tarrawanna NSW 2518 Phone: 04015090269 Fax: Ref: Carol Email: carol@csconveyancingservices.com.au (10% of the price, unless otherwise stated)
price	\$48,970.00 plus GST
deposit	\$ 4,897.00 plus GST
balance	\$44,073.00 plus GST
contract date	(if not stated, the date this contract was made)

buyer's agent

vendor

witness

GST AMOUNT (optional)

The price **excludes**

GST of:

\$4,897.00

purchaser

JOINT TENANTS

tenants in common

in unequal shares

witness

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vendor's solicitor	Acorn Lawyers 15 Victoria Street Wollongong NSW 2500 PO Box 5488 Wollongong NSW 2520, DX 27821 Wollongong Court		Phone: (02) 4226 5711 Fax: (02) 4226 5755 Ref: AA:EP:2465 Email: elizabeth@acornlawyers.com.au
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exclusions	
purchaser	Tony Di Maria 101 Hibberd Crescent, Ford ACT 2914
purchaser's solicitor	CS Conveyancing PO Box 2012, Tarrawanna NSW 2518 Phone: 04015090269 Fax: Ref: Carol Email: carol@cskonveyancingservices.com.au
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in unequal shares

witness

vendor agrees to accept a deposit-bond (clause 3) NO yes
 proposed *electronic transaction* (clause 30) NO yes

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

land tax is adjustable NO yes
 GST: Taxable supply NO yes in full yes to an 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)

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

REFER TO CLAUSE 44

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"/> 29 property certificate for strata common property
<input checked="" type="checkbox"/> 2 plan of the land	<input type="checkbox"/> 30 plan creating strata common property
<input checked="" type="checkbox"/> 3 unregistered plan of the land	<input type="checkbox"/> 31 strata by-laws
<input type="checkbox"/> 4 plan of land to be subdivided	<input type="checkbox"/> 32 strata development contract or statement
<input type="checkbox"/> 5 document that is to be lodged with a relevant plan	<input type="checkbox"/> 33 strata management statement
<input checked="" type="checkbox"/> 6 section 149(2) certificate (Environmental Planning and Assessment Act 1979)	<input type="checkbox"/> 34 leasehold strata - lease of lot and common property
<input checked="" type="checkbox"/> 7 section 149(5) information included in that certificate	<input type="checkbox"/> 35 property certificate for neighbourhood property
<input type="checkbox"/> 8 sewerage infrastructure location diagram (service location diagram)	<input type="checkbox"/> 36 plan creating neighbourhood property
<input checked="" type="checkbox"/> 9 sewer lines location diagram (sewerage service diagram)	<input type="checkbox"/> 37 neighbourhood development contract
<input checked="" type="checkbox"/> 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract	<input type="checkbox"/> 38 neighbourhood management statement
<input checked="" type="checkbox"/> 11 section 88G certificate (positive covenant)	<input type="checkbox"/> 39 property certificate for precinct property
<input type="checkbox"/> 12 survey report	<input type="checkbox"/> 40 plan creating precinct property
<input type="checkbox"/> 13 building certificate given under legislation	<input type="checkbox"/> 41 precinct development contract
<input type="checkbox"/> 14 insurance certificate (Home Building Act 1989)	<input type="checkbox"/> 42 precinct management statement
<input type="checkbox"/> 15 brochure or warning (Home Building Act 1989)	<input type="checkbox"/> 43 property certificate for community property
<input type="checkbox"/> 16 lease (with every relevant memorandum or variation)	<input type="checkbox"/> 44 plan creating community property
<input type="checkbox"/> 17 other document relevant to tenancies	<input type="checkbox"/> 45 community development contract
<input type="checkbox"/> 18 old system document	<input type="checkbox"/> 46 community management statement
<input type="checkbox"/> 19 Crown purchase statement of account	<input type="checkbox"/> 47 document disclosing a change of by-laws
<input type="checkbox"/> 20 building management statement	<input type="checkbox"/> 48 document disclosing a change in a development or management contract or statement
<input type="checkbox"/> 21 form of requisitions	<input type="checkbox"/> 49 document disclosing a change in boundaries
<input type="checkbox"/> 22 <i>clearance certificate</i>	<input type="checkbox"/> 50 information certificate under Strata Schemes Management Act 2015
<input type="checkbox"/> 23 land tax certificate	<input type="checkbox"/> 51 information certificate under Community Land Management Act 1989
Swimming Pools Act 1992	Other
<input type="checkbox"/> 24 certificate of compliance	<input type="checkbox"/> 52
<input type="checkbox"/> 25 evidence of registration	
<input type="checkbox"/> 26 relevant occupation certificate	
<input type="checkbox"/> 27 certificate of non-compliance	
<input type="checkbox"/> 28 detailed reasons of non-compliance	

EXECUTION BY THE VENDOR

Executed by Bottlebrush Projects Pty Limited ACN 613 762 922 in accordance with Section 127(1) of the Corporations Act 2001

Signature of director/secretary

Michael James Perry

Signature of director

Bianca Perry

Executed by Berkeley Storage Pty Ltd ACN 615 483 602 in accordance with Section 127(1) of the Corporations Act 2001

Signature of director/secretary

Gary Ernest Hunt

Signature of director

Adrian James Salter

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.

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—SWIMMING POOLS

An owner of a property on which a swimming pool is situated must ensure that the pool complies with the requirements of the *Swimming Pools Act 1992*. Penalties apply. Before purchasing a property on which a swimming pool is situated, a purchaser is strongly advised to ensure that the swimming pool complies with the requirements of that Act.

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. The purchaser may rescind the contract at any time before 5 p.m. on the fifth business day after the day on which the contract was made, **EXCEPT** in the circumstances listed in paragraph 3.
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 or mediation (for example mediation under the Law Society Mediation Model and Guidelines).

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:

Australian Taxation Office	NSW Fair Trading
Council	NSW Public Works
County Council	Office of Environment and Heritage
Department of Planning and Environment	Owner of adjoining land
Department of Primary Industries	Privacy
East Australian Pipeline Limited	Roads and Maritime Services
Electricity and gas authority	Subsidence Advisory NSW
Land & Housing Corporation	Telecommunications authority
Local Land Services	Transport for NSW
NSW Department of Education	Water, sewerage or drainage authority

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 may become payable 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 stamp 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.

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>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>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>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>remittance amount</i>	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>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid and – <ul style="list-style-type: none"> • issued by a <i>bank</i> and drawn on itself; or • if authorised in writing by the vendor or the vendor's <i>solicitor</i>, some other <i>cheque</i>;
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice <i>served</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 18B of the Swimming Pools Regulation 2008).

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*.
- 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 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

- 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.

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, plus another 20% of that fee.
- 16.6 If a *party serves* a land tax certificate showing a charge on any of the land, on completion the vendor must give the purchaser a land tax certificate showing 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;
- *remittance amount* payable; 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 Part 2, 3, 4 or 5 Landlord and Tenant (Amendment) Act 1948).

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 *servicing* 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 fax to the *party's solicitor*, unless 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 and 2) 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 not disclosed in this contract; or
 - 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; or
- 23.9.3 a change before the contract date or before completion in the scheme or a higher scheme substantially disadvantages the purchaser and is not disclosed in this contract.
- **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) is restricted title land (land that cannot be transferred without consent under *legislation*).
- 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 If the *legislation* is the Western Lands Act 1901 each period in clause 27.6 becomes 90 days.
- 27.8 If the land or part 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 a proposed *electronic transaction*; and
- 30.1.2 the purchaser serves a notice that it is an *electronic transaction within 14 days* of the contract date.
- 30.2 However, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* if, at any time after it has been agreed that it will be conducted as an *electronic transaction*, a *party* serves a notice that it will not be conducted as an *electronic transaction*.
- 30.3 If, because of clause 30.2, 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;
- associated with the agreement under clause 30.1; 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, but only 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*;
- 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 receipt of the purchaser's notice under clause 30.1.2; and
 - before the receipt of a notice given under clause 30.2;
- 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 receipt of the notice under clause 30.1.2 –
- 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; and
- 30.9.2 the vendor must *populate* the *Electronic Workspace* with payment details at least *1 business day* before the date for completion.
- 30.10 At least *1 business day* before the date for 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 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 *Electronic Workspace* allows the *parties* to choose whether financial settlement is to occur despite the computer systems of the *Land Registry* being inoperative for any reason at the *completion time* agreed by the *parties* –
- 30.13.1 normally, the *parties* must choose that financial settlement not occur; however
- 30.13.2 if both *parties* choose that financial settlement is to occur despite such failure and financial settlement occurs –
- 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
 - the vendor shall be taken to have no legal or equitable interest in the *property*.
- 30.14 A *party* who holds a *certificate of title* must act in accordance with any *Prescribed Requirement* in relation to the *certificate of title* but if there is no *Prescribed Requirement*, the vendor must *serve* the *certificate of title* after completion.
- 30.15 If the *parties* do not agree about the delivery before completion of one or more documents or things that cannot be delivered through the *Electronic Workspace*, the *party* required to deliver the documents or things –
- 30.15.1 holds them on completion in escrow for the benefit of; and
- 30.15.2 must immediately after completion deliver the documents or things to, or as directed by; the *party* entitled to them.
- 30.16 In this clause 30, these terms (in any form) mean –
- | | |
|-----------------------------|--|
| <i>adjustment figures</i> | details of the adjustments to be made to the price under clause 14; |
| <i>certificate of title</i> | the paper duplicate of the folio of the register for the land which exists immediately prior to completion and, if more than one, refers to each such paper duplicate; |
| <i>completion time</i> | the time of day on the date for completion when the <i>electronic transaction</i> is to be settled; |

<i>discharging mortgagee</i>	any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a <i>Digitally Signed</i> discharge of mortgage, discharge of charge or withdrawal of caveat is required in order for unencumbered title to the <i>property</i> to be transferred to the purchaser;
<i>ECNL</i>	the Electronic Conveyancing National Law (NSW);
<i>electronic document</i>	a dealing as defined in the Real Property Act 1900 which may be created and <i>Digitally Signed</i> in an <i>Electronic Workspace</i> ;
<i>electronic transfer</i>	a transfer of land under the Real Property Act 1900 for the <i>property</i> to be prepared and <i>Digitally Signed</i> in the <i>Electronic Workspace</i> established for the purposes of the <i>parties' Conveyancing Transaction</i> ;
<i>electronic transaction</i>	a <i>Conveyancing Transaction</i> to be conducted for the <i>parties</i> by their legal representatives as <i>Subscribers</i> using an <i>ELN</i> and in accordance with the <i>ECNL</i> and the <i>participation rules</i> ;
<i>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>ENCL</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 *remittance amount* 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 *remittance amount*.
- 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.

13 Warehouse Place, Berkeley – Special Conditions

32 Defined terms and interpretation

32.1 Definitions in the Dictionary

A term or expression:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in clause 1 of the Printed Form but is not defined in the Dictionary, has the meaning given to it in clause 1 of the Printed Form;
- (c) which is defined in any Strata Legislation has the same meaning as in that legislation;
- (d) which is defined in the GST Act has the same meaning as in that legislation; and
- (e) which is defined in the Corporations Act, but is not defined in the Dictionary or clause 1 of the Printed Form, has the meaning given to it in the Corporations Act.

32.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this Contract.

32.3 Additional clauses

These additional clauses together with the Printed Form and all annexures, attachments, tables, lists and schedules comprise this Contract.

32.4 Vendor discretion

- (a) If any matter in this Contract requires the consent of the Vendor then the Vendor may give or withhold its discretion or may give its consent on conditions, in each case in its absolute discretion, subject to any express provision in this Contract to the contrary.
- (b) Any decision available to the Vendor in respect of or associated with the development of the Strata Scheme may be made by the Vendor in its absolute discretion subject to any express provision in this Contract to the contrary.

33 Printed Form

33.2 Reference to Printed Form

A reference to the Printed Form is a reference to the 2017 Edition of The Law Society of New South Wales and The Real Estate Institute of New South Wales Contract for the Sale and Purchase of Land and clauses 1 to 31 inclusive which form part of this Contract and to which these additional clauses are attached.

33.3 Inconsistency

These additional clauses and the Printed Form are to be read together and as complementary to each other but where there is any inconsistency between the terms of these additional clauses and the Printed Form, these additional clauses shall prevail to the extent of the inconsistency.

33.4 Amendments to Printed Form

The Printed Form is amended as follows:

- (a) clause 3: delete this clause;
- (b) clause 4.1: replace "14 days" with "5 business days";
- (c) clause 5.1: replace with "*The purchaser is deemed to have served the Law Society 2011 version Strata Title (Commercial) Property Requisitions on Title on the date of exchange of this Contract*";
- (d) clause 7.1.1: delete this clause;
- (e) clause 7.1.3: replace "14 days" with "5 business days";
- (f) clause 7.2.1: replace "10% of the purchase price" with "\$20,000";
- (g) clause 7.3: Insert a clause 7.3 as follows:
"The Purchaser may only make a Claim (including a claim under clause 6 or 7 of this Contract) by serving it on the Vendor within 5 business days after the Purchaser or its solicitor or conveyancer is made aware or ought reasonably to have become aware of the circumstances which give rise to the Claim so that if the Purchaser does not serve its Claim on the Vendor within the time specified, then notwithstanding any other provision of this Contract, its entitlement to make the Claim lapses."
- (h) clause 10.1: replace the first line of clause 10.1 with:
"The Purchaser cannot make any Claim, objection, requisition, delay Completion, rescind or terminate this Contract in respect of:"
- (i) clause 10 - insert the following additional clause:
*"10.4 For the purposes of this clause 10:
10.4.1 the Vendor specifically discloses all of the documents attached to this Contract and the material and information disclosed in or referred to in those documents, whether or not specified in the List of Documents table on the page numbered 1 of the printed form or the List of Attachments at Schedule 2 to the Additional Conditions to this Contract; and 10.4.2 the Purchaser accepts and acknowledges that the material and information disclosed by or referred to in the attached documents is clearly described and specifically disclosed in substance or is deemed to have been disclosed in substance in this Contract."*
- (j) clause 13: delete this clause;
- (k) clause 14.4.2: delete this clause;
- (l) clause 16: insert the following clause:
"16.3A Where the property includes personal property subject to a security interest:

- (i) *in this clause personal property, secured party and security interest have the same meanings as in the Personal Property Securities Act 2009 (Cth) (PPS Act);*
- (ii) *to pass legal title free of that interest, it is sufficient for the Vendor to provide on completion a release in the standard form of the secured party or in the form published by the Australian Bankers Association; and*
- (iii) *no release is required where the personal property has a market value of not more than \$5,000 (or such greater amount prescribed under regulations to the PPS Act) and it is to be used for personal, domestic or household purposes (except if it is described by a serial number in the Personal Property Securities Register).*

The Purchaser warrants that the inclusions are to be used for domestic purposes."

(m) clause 16.5: delete the words ", plus another 20% of that fee";

(n) clause 16.6: replace clause 16.6 with the following:

"If a party serves a land tax certificate at least 14 days prior to the Completion Date but not more than 3 months prior to the Completion Date relating to the Land as it was known on 31 December of the year prior to the Completion Date (or relating to the Lot if the Final Plan was registered as at 31 December of the year prior to the Completion Date) and that land tax certificate shows a charge, on or prior to Completion the Vendor must give the Purchaser a land tax certificate showing the charge is no longer effective or provide evidence to the Purchaser that the land tax assessment has been paid.";

(o) clause 16.8: add the words "*which is a bank cheque*" to the end of the clause;

(p) clause 16.11: replace clause 16.11 with the following:

"The Vendor and Purchaser agree that Completion will occur at the venue nominated by the Vendor or the Vendor's mortgagee."

(q) delete clause 22;

(r) delete clauses 23.1 to 23.09 inclusive, and 23.13 to 23.18 inclusive;

(s) delete clauses 24 to 30 inclusive.

(t) clause 31.2.1: replace "5 days" with "5 business days";

(u) clause 31.3: replace clause 31.3 with the following:

"The Vendor cannot refuse to complete if the Purchaser complies with clauses 31.2.1 and 31.2.2 however reserves its right to serve a Variation after being served by the Purchaser under clause 31.2.1. If the Vendor serves a Variation at least 2 business days prior to the Completion Date the Purchaser must revise the Remittance Amount accordingly and pay any difference as the Vendor directs by settlement cheque."

(v) Clause 31.4: replace "7 days" with "2 business days".

34 Investment of Deposit

34.1 No obligation to invest deposit

The Vendor and Purchaser acknowledge and agree that the deposit will not be invested.

35 Deposit

The Purchaser acknowledges that the Vendor has an unconditional right:

- (a) to have a sum equal to 10% of the Purchase Price paid as deposit on the making of this Contract; and
- (b) to keep or recover that sum as set out in clause 9.1, if the Purchaser defaults under this Contract.

36 Bank Guarantee

- (a) In lieu of payment of the cash deposit referred to in clause 35 the Purchaser may discharge its obligations under clause 35 by providing the Vendor's solicitors with a Bank Guarantee on the date of making this Contract.
- (b) If the Purchaser provides a Bank Guarantee in accordance with paragraph (a) then the Vendor will authorise the depositor to release to the Purchaser any amount previously paid by the Purchaser in cash on account of the deposit but only to the extent that the total deposit held by way of cash and Bank Guarantee exceeds 10% of the Purchase Price.
- (c) The Vendor or Vendor's solicitor may make demand under the Bank Guarantee for payment of the sum guaranteed or any part of the sum guaranteed in any circumstances under this Contract in which:
 - (i) the Purchaser would forfeit all or any part of the deposit to the Vendor;
 - (ii) the Vendor would be entitled to retain all or any part of the deposit;
 - (iii) the Vendor would be entitled to payment of all or any part of the deposit;
 - (iv) the Vendor or depositor is authorised by the Purchaser under this Contract to make any payment out the deposit or interest earned on the deposit; or
 - (v) the Purchaser is obliged under this Contract to make a payment to the Vendor and is in default of its obligation to make such payment or has a liability under this Contract to the Vendor which is not satisfied.
- (d) The Vendor or Vendor's solicitor in making demand under the Bank Guarantee, may direct the Acceptable Security Provider which issued the Bank Guarantee that the sum guaranteed or any part of the sum guaranteed be paid directly to the Vendor or as directed by the Vendor.

- (e) The amount payable by the Purchaser on Completion will be the full Purchase Price subject to any adjustment under this Contract and the amount of any Bank Guarantee provided by the Purchaser in lieu of the deposit will not be a credit towards the Purchase Price. On Completion, the Vendor must return the Bank Guarantee to the Purchaser in exchange for payment by the Purchaser to the Vendor of one or more settlement cheques equal to the guaranteed sum, as the Vendor may direct.
 - (f) If Completion does not occur by the date which is 60 days before the expiry date of the existing Bank Guarantee, the Purchaser must provide to the Vendor's solicitor a replacement Bank Guarantee on terms acceptable to the Vendor with an expiry date of at least six months from the date of issue or with the equivalent cash deposit to the depositor in lieu of a replacement Bank Guarantee, at least 30 days before the expiry date of the existing Bank Guarantee and this obligation to provide a replacement Bank Guarantee shall be a continuing obligation of the Purchaser until Completion has occurred.
 - (g) In the event that the Bank Guarantee issuer or underwriter or both the issuer and underwriter are subject to an Insolvency Event, the Purchaser must provide to the Vendor's solicitor a replacement Bank Guarantee on terms acceptable to the Vendor or the equivalent cash deposit to the depositor in lieu of the replacement Bank Guarantee within 10 business days of the Vendor requiring such replacement.
 - (h) If the Purchaser provides an acceptable replacement Bank Guarantee or cash deposit in lieu, the Vendor must return the replaced Bank Guarantee.
 - (i) Clauses 36(f) and 36(g) are each essential conditions and a breach by the Purchaser of either of these clauses will entitle the Vendor to:
 - (i) terminate this Contract, call on the Bank Guarantee under paragraph (c) and clause 9 will apply; or
 - (ii) call on the Bank Guarantee and hold the funds as a cash deposit under this Contract.
 - (j) If this Contract is rescinded the Vendor must return the Bank Guarantee to the Purchaser.
-

37A Contract is Conditional

Project Commencement

- (a) This Contract is subject to Project Commencement occurring by 1 July 2018 (**Project Commencement Date**).
- (b) If Project Commencement has not occurred on or prior to the Project Commencement Date, then either party may rescind this Contract by written notice to the other party and the provisions of clause 19 will apply.
- (c) The right of either party to rescind this Contract under paragraph (b) will expire once Project Commencement occurs.
- (d) The Vendor must promptly provide the Purchaser with notice of Project Commencement which will constitute, and must be accepted by the Purchaser as conclusive evidence of Project Commencement.
- (e) The Purchaser acknowledges that other than the express right to rescind under this clause 37A it is not entitled to make any requisition or Claim, delay Completion or rescind or terminate this Contract because of any matter referred to in this clause 37A.

37B Development Approval

The Purchaser accepts that:

- (a) the Strata Scheme is subject to the Development Approval;
- (b) the Project Documents as at the date of this Contract may not yet have incorporated all the Requirements prescribed by the Development Approval;
- (c) the Vendor may, without limiting clause 40, make alterations to the Project Documents in order to comply with the Development Approval; and
- (d) the Vendor may apply to the Consent Authority to vary the Development Approval and need not notify the Purchaser of any variations to the Development Approval; and
- (e) the Development Approval contains Requirements which may result in Additional Affectations or the restructuring of the Land titles or both,

and is not entitled to make any requisition or Claim, delay Completion or rescind or terminate this Contract because of any matter referred to in this clause or in the Development Approval.

37 Vendor's Obligation

37.1 Vendor to use reasonable endeavours

Subject to clause 38 and any right of the Vendor to rescind or terminate this Contract, the Vendor must use reasonable endeavours, at its own cost and expense:

- (a) to construct the Building, of which the Lot and Common Property form part, in a proper and workmanlike manner substantially in accordance with all Approvals and the Purchaser acknowledges that it will accept the issuance of the Occupation Certificate as conclusive evidence that the Vendor has complied with its obligations under this clause 37.1(a) but without affecting the rights of the Purchaser under clause 49; and
- (b) to satisfy the Conditions Precedent and establish the Strata Scheme by the Scheme Date.

37.2 Delays

If satisfaction of any of the Conditions Precedent is delayed due in whole or in part to any one or more of the following:

- (a) damage by fire, flood, terrorism, explosion, earthquake, lightning, storm, tempest, war, civil commotion or strike, or inclement weather or other naturally occurring events;
- (b) proceedings being taken or threatened by or disputes with adjoining or neighbouring owners to the Land or any Authority;
- (c) delay in the Vendor obtaining any Approval from an Authority necessary for the development of the Strata Scheme, provided the Vendor has taken all reasonable steps to obtain such approvals;
- (d) any appeal by the Vendor or any person to a court or other competent Authority in respect of the Development Approval or any matter arising out of the Development Approval;
- (e) any Requirement;

- (f) any delay to the Vendor's construction program;
- (g) industrial disputes involving any contractor or sub-contractor involved in construction of the Strata Scheme;
- (h) delays to the supply or delivery of materials necessary for the Project; or
- (i) any other cause, matter or thing beyond the control of the Vendor,

AND the Vendor's architect certifies the period of the delay caused, then the Vendor may at any time thereafter and from time to time by written notice to the Purchaser substitute the Scheme Date with another date, provided that the extended date in each case does not extend the previous date by more than the period of the delay certified by the Vendor's architect and, in any event, no extension under this clause 37.2 shall operate so as to extend the date beyond six (6) months after the original Scheme Date as set out in this Contract.

37.3 Vendor's discretion to extend the Scheme Date

In addition to its rights under clause 37.2, the Vendor may, at any time, extend the Scheme Date (or amended Scheme Date) or extend the Project Commencement Date by a maximum period of up to six (6) months in the absolute discretion of the Vendor by written notice to the Purchaser.

38 Completion Date

- (a) When the Conditions Precedent have been satisfied, the Vendor must promptly give notice to the Purchaser of the Completion Date which will be the day that is fourteen (14) business days after the date of that notice or such later date as the Vendor may nominate in the notice, provided it is no later than one (1) month after the date of such notice.
- (b) Completion must occur on the Completion Date.

39 Alterations

39.1 Purchaser's acknowledgement

The Purchaser accepts and acknowledges that:

- (a) the Vendor has not yet prepared a Section 88B Instrument in respect of the Strata Scheme but it will do so in order to comply with its obligations under clause 37.1 and such Section 88B Instrument may include Additional Affectations;
- (b) it is aware that as at the date of this Contract, there may not have been created, entered into or amended all Additional Affectations which the Vendor considers may be necessary or prudent or as may be necessary under any Requirement including as to the provision and location of Services and Services infrastructure, the final nature and location of which are not known as at the date of this Contract;
- (c) the Vendor may create, enter into or amend any Additional Affectation which the Vendor considers to be necessary or prudent or as may be necessary under any Requirement;

- (d) the Draft Plan does not, but the Final Plan will, disclose the unit entitlements in respect of the lots within the Strata Scheme which will be determined by the Vendor acting reasonably in its sole discretion;
- (e) the landscaping of the areas surrounding the Building, and the Common Property generally, may be altered by the Vendor from time to time prior to Completion; and
- (f) the address referred to on the Printed Form attached to this Contract may not be identical to the address referred to on the front page of this Contract, and the final street address of the Lot may differ from each or any of the addresses referred to in this Contract at the front page and on the Printed Form,

and subject to its rights under clause 39.7 the Purchaser must not make any requisition or Claim, delay Completion or rescind or terminate this Contract on the basis of any of the abovementioned matters.

39.2 General Alterations by the Vendor

The Vendor discloses to the Purchaser that the Vendor may (without limiting any other right of the Vendor) make changes to the Strata Scheme, the Buildings and the Lot, including, without limitation changes to:

- (a) the Project Documents, including the Draft Plan each of which the Purchaser acknowledges is provisional only;
 - (b) the name of the Project or Strata Scheme or Buildings (if there is one);
 - (c) the design, location or configuration of the lots in the Strata Scheme or in the Project;
 - (d) the creation of further strata or stratum schemes within the Strata Scheme;
 - (e) the structuring of the Project or the Strata Scheme including the creation of schemes of which the Strata Scheme forms part, the consolidation of the strata schemes on the Land or the further division of the Strata Scheme or Project into separate strata and/or stratum schemes including the designation of separate strata and stratum plans for each residential tower component and the commercial component or components;
 - (f) the exclusion of any lots or Buildings or Common Property from the Strata Scheme (apart from the Lot);
 - (g) the number of lots in the Strata Scheme or the Project;
 - (h) the numbering of the lots in the Strata Scheme or the Project or the reconfiguration or consolidation of lots in the Strata Scheme or the Project;
 - (i) the use of lots in the Strata Scheme or the Project;
 - (j) the size of the Lot;
 - (k) the design or construction of the Buildings or the Project, the Amenities and the Lot;
 - (l) the Fixtures and Finishes, as long as any substituted new item is of at least the same quality; and
 - (m) comply with any Requirement or any recommendation of the Vendor's Consultant;
- and may:
- (n) change or create unit entitlements for lots in the Strata Scheme (including the Lot);

- (o) change or create any lot in the Strata Scheme or Common Property which primarily carries or relates to Services for the Strata Scheme or the Project;
- (p) enter into a lease or licence of any part of the Common Property, including for signage or communication or digital data purposes or related to Services in any way;
- (q) attend to re-definition of boundaries to the Land or minor road re-alignment affecting Common Property areas but not the Lot and may consolidate or subdivide the Land titles;
- (r) relocate, renumber, reclassify, resize and reallocate car spaces and storage spaces within the Strata Scheme and the Project including from or to Common Property;
- (s) elect not to fence the boundary of the Land or elect to erect any boundary fence or wall to a design and of materials as it sees fit in its absolute discretion and does not warrant any such fence will be upon or within the boundary;
- (t) without limitation to its rights under the Strata Legislation, call an extraordinary general meeting of the Owners Corporation or a meeting of the executive committee or building management committee whenever is applicable to consider and approve any matter or thing the Vendor considers necessary for the operation and administration of the Strata Scheme or other strata schemes within the Project including the exercise and performance of the functions of the members of the executive committee of the Owners Corporation and building management committee;
- (u) make an application to the Tribunal under section 182 of the Strata Management Act in respect of a restriction applying in the initial period; and
- (v) subject to the Strata Legislation, cause the Owners Corporation to do anything in relation to any rights under the Strata Legislation or enter into any Project Document to which it is named as a party.

39.3 By-Laws for the Strata Scheme and the Project

The Purchaser acknowledges that the Vendor has not yet prepared By-Laws and may, in its absolute discretion, make or amend any By-Law(s):

- (a) contained in or similar to those contained in any Law;
- (b) which are necessary or prudent to achieve Registration of the Strata Scheme or any strata schemes comprising the Project;
- (c) dealing with the use or provision of any Service or the normal use or administration of the Common Property;
- (d) which prohibits the short-term letting (less than 6 months) of any lot within the Strata Scheme and the Project;
- (e) dealing with responsible pet ownership by residents on such terms as may be appropriate for responsible and proper administration of the Strata Scheme and the Project;
- (f) for the proper administration and benefit of the Strata Scheme and the Project; and
- (g) which are necessary or prudent to satisfy a Requirement.

subject to the Strata Legislation and in particular any limitations on the amendment of by-laws during the initial period.

39.4 Replacement or removal of documents

- (a) At any time before Completion, the Vendor may provide written notice to the Purchaser that the Vendor wishes to remove any document or replace any document attached to or forming part of this Contract, whether as a schedule or annexure or otherwise, with another document, a copy of which must be provided with that notice.
- (b) From and including the date a notice under clause 39.4(a) is served, the removed or replaced document is deemed to be no longer attached to this Contract and the document substituted for it, if any, is deemed to have been attached to this Contract.

39.5 Vendor to notify alterations to Project Documents

If the Vendor creates or changes a Project Document, it may but is not obliged (except as otherwise required by this Contract) to notify the Purchaser of the change and serve the Purchaser with a copy of the newly created Project Document or an updated copy of an existing Project Document. If the Vendor serves on the Purchaser a copy of a Project Document in substitution for an existing Project Document under this clause, then from the date of service that Project Document is deemed to form part of this Contract and replaces the Project Document it amends, if any.

39.6 Purchaser's rights in relation to alterations

Subject to clauses 39.7 and any statutory rights of the Purchaser that cannot be excluded, the Purchaser must not make any requisition or Claim, delay Completion or terminate or rescind this Contract for any of the matters in clauses 39.1, 39.2 39.3, 39.4 or 39.5.

39.7 Rescission by Purchaser

- (a) Notwithstanding clause 39.6, if there is a Significant Change to the Lot, the Purchaser may within the earlier of:
 - (i) 5 business days after the Vendor gives to the Purchaser written notice of such alteration; or
 - (ii) 5 business days after the Vendor's notice of Registration of the Strata Scheme, rescind this Contract by giving written notice to the Vendor setting out the facts and circumstances on which the Purchaser relies in asserting that there has been a Significant Change to the Lot provided that the rescission will only take effect on and from:
 - (iii) the Vendor's notice under paragraph (c)(i) accepting the Purchaser's rescission; or
 - (iv) the determination by an Expert, subject to paragraph (c)(ii) and clause 68, that there is a Significant Change to the Lot.
- (b) The Purchaser's right of rescission will lapse if the Purchaser does not provide the Vendor with a Purchaser Rescission Notice within the time specified in paragraph (a).
- (c) If the Purchaser issues a Purchaser Rescission Notice then the Vendor will within 5 business days after receiving the Purchaser Rescission Notice under paragraph (a):
 - (i) accept the Purchaser's rescission of this Contract by written notice to the Purchaser in which event this Contract will be deemed rescinded as at the date of the Vendor's notice under this paragraph (c) (i) and the provisions of clause 19 will apply; or
 - (ii) deny that the facts and circumstances set out in the Purchaser Rescission Notice constitute a Significant Change to the Lot, in which event the dispute must

promptly, within 10 business days, be referred by the Vendor to an Expert for determination in accordance with clause 68.

- (d) If the Expert determines that there has been a Significant Change to the Lot, then this Contract will be deemed rescinded as at the date of the Expert's determination and the provisions of clause 19 will apply, except as to any costs payable to the Expert by the Purchaser that have not been paid in which case the amount due by the Purchaser to the Expert and not paid will be deducted from the deposit held, if any, and paid by the depositholder to the Expert. The Vendor and the depositholder are irrevocably authorised and directed by the Purchaser to make any such payment to the Expert from the deposit.
- (e) If the Expert determines that there has not been a Significant Change to the Lot, then parties must proceed to complete this Contract in accordance with its terms and if the Completion Date has passed, then:
 - (i) Completion must take place on the fifth business day after the date of the Expert's determination; and
 - (ii) on Completion, the Purchaser must pay the Vendor interest on the balance of Purchase Price at the Rate on and from the day following the Completion Date to and including the date of Completion. The Vendor will not be obliged to complete unless that interest is paid on Completion.
- (f) The respective shares of the cost set out in clause 68(c)(iv) shall be payable by each respective party to this Contract to the Expert within 10 business days of the Expert's determination or on Completion, whichever is earlier. If the parties proceed to Completion, any such amounts not yet paid to the Expert at the Completion Date will be allowed by the respective party and paid at Completion, together with any interest or late payment fees due to the Expert, if applicable.

40 Additional rights of the Vendor to Rescind and Terminate

40.1 Vendor may rescind

Subject to any applicable Law and in addition to any other right to rescind under this Contract the Vendor may rescind this Contract effective immediately by notice in writing to the Purchaser if:

- (a) the Purchaser makes a claim under clause 7 of this Contract and does not waive its claim within 5 business days after the service on the Purchaser of a notice from the Vendor of its intention to rescind this Contract;
- (b) the Development Approval is revoked or varied by the relevant Authority in a manner that is not acceptable to the Vendor; or
- (c) the Purchaser comprises at least one natural person and, before Completion, one or more of those natural persons dies or becomes subject to a mental illness as defined in the *Mental Health Act 1990* (NSW) or otherwise loses the capacity to lawfully contract other than through an Insolvency Event.

40.2 Effect of rescission by Vendor

If the Vendor rescinds the Contract under clause 40.1, the provisions of clause 19 apply.

40.3 Termination by the Vendor

In addition to any other rights of the Vendor to terminate this Contract, the Purchaser acknowledges that it is in breach of an essential condition of this Contract and the Vendor has the right to terminate this Contract if an Insolvency Event occurs in respect of a natural person

or company comprising the Purchaser or any Guarantor. If the Vendor terminates the Contract under this clause by written notice to the Purchaser, the provisions of clause 9 shall apply.

41 Effect of failure to Rescind

If a party fails to exercise a specific right to rescind this Contract within the times specified in this Contract for the exercise of that rescission right (if any), then that party is deemed to have waived its right to rescind this Contract pursuant to that specific right and the parties acknowledge that time is of the essence in respect of any time limit for notification of rescission under this Contract.

42 Rescission Sole Remedy

Notwithstanding any other provision in this Contract, if this Contract expressly provides the parties with a right of rescission, the parties agree that the right of rescission is the only remedy available and neither party may make a Claim against the other in respect of the matter for which the right of rescission is provided except for any breach of warranty on the part of the Purchaser or any indemnity given by the Purchaser.

43 Fixtures and Finishes

43.1 Schedule of Fixtures and Finishes

The Purchaser acknowledges and accepts the Fixtures and Finishes as at Completion subject to clause 49.

43.2 Fixtures Upgrade

- (a) The Purchaser acknowledges and accepts that as at the date of this Contract, there are no Fixtures Upgrades available.
- (b) Prior to Completion, the Vendor may but is not obliged to offer the Purchaser Fixtures Upgrades at the cost of the Purchaser by providing the Purchaser with a Fixtures Upgrade Form.
- (c) If the Vendor has offered the Purchaser Fixtures Upgrades under paragraph (b) then the Purchaser may select one or more of the Fixtures Upgrades by completing and signing the Fixtures Upgrade Form and providing a copy to the Vendor's solicitor. By signing the Fixtures Upgrade Form, the Purchaser accepts the cost of the Fixtures Upgrade.
- (d) If the Purchaser has not provided the Vendor's solicitor with a completed Fixtures Upgrade Form within 10 business days after the Purchaser's receipt of the Fixtures Upgrade form, then the Purchaser waives its right to select any of the Fixture Upgrades under paragraph (c).
- (e) The Vendor may, in its absolute discretion, remove or vary the Fixtures Upgrades at any time regardless of whether the Purchaser has made any selection under paragraph (c).
- (f) Where the Purchaser has selected one or more of the Fixtures Upgrades in accordance with paragraph (c) the Purchaser must pay the Vendor on Completion the cost of all or any upgrades selected as specified on the Fixture Upgrade Form.

43.3 Power Upgrade

- (a) The Purchaser acknowledges and accepts that it may select a Power Upgrade if applicable in accordance with the Power Upgrade Form and attached Power Upgrade Schedule provided at **Annexure G**.

- (b) If the Lot is eligible for a Power Upgrade then the Purchaser may select one Power Upgrade by specifying the upgrade selected and signing the Power Upgrade Form and providing a copy to the Vendor's solicitor.
- (c) If the Purchaser has not provided the Vendor's solicitor with a completed Power Upgrade Form as at the date of this Contract or within 15 business days after the date of this Contract, then the Purchaser waives its right to select a Power Upgrade.
- (d) The Vendor may, in its absolute discretion, remove or vary the Power Upgrade at any time regardless of whether the Purchaser has made any selection under paragraphs (a) or (b). If the Vendor exercises its right under this paragraph (e) and does not substitute the Power Upgrade then an adjustment will be made to the Purchase Price on Completion equivalent to the cost of the selected Power Upgrade shown on the Power Upgrade Form.
- (e) Where the Purchaser has selected one of the Power Upgrades in accordance with paragraph (b) either at the date of this Contract or within 15 days after the date of this Contract, the Purchaser must pay the Vendor on Completion in addition to the Purchase Price the cost of any upgrade selected as specified on the Power Upgrade Form.

43.4 Variations in the Fixtures and Finishes

The Purchaser acknowledges and accepts that:

- (a) some materials used in the Lot, the Building and the Common Property may comprise natural products, for example, stone and timber and these materials may exhibit variations:
 - (i) from the sample exhibited;
 - (ii) between different areas of the finished product; and
 - (iii) in shade, colour, texture, surface, finish, markings or the like and may contain natural fissures, occlusions, lines and indentations;
- (b) the natural materials used in the Lot, the Building and the Common Property may expand, contract, discolour or distort over time as a result of exposure to heat, cold, weather and other natural causes;
- (c) the Fixtures and Finishes and other products used in the Lot, the Building and the Common Property may:
 - (i) be a different model;
 - (ii) exhibit variations in the design or colour; and
 - (iii) be another product of similar or higher quality which has been substituted by the Vendor in its absolute discretion,

from the sample products exhibited or as listed in the schedules to this Contract or any promotional material; and
- (d) the abovementioned matters are not Defects under this Contract and are not matters in respect of which the Purchaser is entitled to make any requisition or Claim, delay Completion or to rescind or terminate this Contract.

43.5 Assignment of manufacturer warranties

The Vendor assigns to the Purchaser, on and from the date of Completion, to the extent possible, the benefit of any manufacturer's warranties given in favour of the Vendor in respect of any Fixtures and Finishes, subject to the terms of such warranties and any applicable Law which may

prohibit or limit such assignment. No further document or act of assignment will be provided or undertaken by the Vendor. Any further acts necessary to perfect any assignment the subject of this clause 43.6 shall be undertaken solely by the Purchaser at the Purchaser's expense.

44 Strata Managing Agent

44.1 Appointment of strata managing agent

Subject to section 113 of the Strata Management Act and any other applicable Law, the Purchaser acknowledges that the Vendor may at its sole discretion cause the Owners Corporation to enter into the following arrangements:

- (a) an agreement with a strata managing agent in accordance with the Strata Management Act and the By-Laws; and
- (b) any other agreement or arrangement to which the Owners Corporation may be a party under the Strata Management Act or the By-Laws;

for the period from the creation of the Strata Scheme up to the date of the first annual general meeting of the Owners Corporation.

44.2 Rights of the Purchaser

Subject to any rights the Purchaser has under the Strata Management Act that cannot be excluded, the Purchaser must not make any requisition or Claim, delay Completion or rescind or terminate this Contract because of any decision made or action taken by the Vendor under clause 44.1. If required by the Vendor, the Purchaser must vote at any meeting of the Owners Corporation to ratify the engagement of any arrangement under clause 44.1.

44.3 Vendor to notify Purchaser of Strata Managing Agent

At least 2 business days prior to the Completion Date, the Vendor shall notify the Purchaser as to the Strata Managing Agent contact details, if any, and of the current Strata Scheme insurance policy details. The Vendor is not required to obtain or serve on the Purchaser a Section 109 Certificate.

45 Draft Plan

The Vendor discloses and the Purchaser accepts that:

- (a) the Draft Plan represents an indicative layout of the Lot as at the date of this Contract and is provisional only;
- (b) the areas shown may not show the actual proposed shape of an area and may be truncated on the Draft Plan;
- (c) any furniture and furnishings depicted on the Draft Plan are for illustration only and are not indicative of the inclusions for the Lot, which are as listed in the Fixtures;
- (d) descriptions of areas on the Draft Plans may be inconsistent with the descriptions of these areas on the Draft Plan and the Final Plan;
- (e) where there is any discrepancy between the size, dimensions, location, shape or other detail of the Lot between the Draft Plan and the Final Plan, then the details contained on the Draft Plan or Final Plan as the case may be, take precedence;

- (f) subject to the Purchaser's right to rescind under clause 40.7 for a Significant Change to the Lot, the internal layout of the Lot on registration of the Final Plan may differ from the Draft Plan; and
- (g) apart from any specific right to rescind otherwise provided, the Purchaser must not make any requisition or Claim, delay Completion or rescind or terminate this Contract because of any matter disclosed in this clause 45.

46 Not used

47 Adjustment of Outgoings

47.1 Where Outgoings have been assessed

Outgoings must be apportioned:

- (a) if they are paid, on the amount actually paid; or
- (b) if they are unpaid on the amount payable disregarding interest, penalties and any discount.

47.2 Where Outgoings have not been assessed

- (a) Where separate assessments in relation to any of the Outgoings have not been issued in respect of the Lot, then this clause 47.2 applies to such of the Outgoings which have not yet been assessed.
- (b) The adjustments under clause 14 are to be made on the following basis:
 - (i) Council rates for the Lot for the current rating year will be adjusted as paid and are deemed to be \$800 per year;
 - (ii) not used.
 - (iii) any expense paid by the Vendor which would normally be payable from the administrative fund of the Owners Corporation and for which the Owners Corporation has not, on Completion, reimbursed the Vendor, such as the insurance premium in respect of the Strata Scheme, shall be adjusted on a unit entitlement basis and the Vendor may notify the Purchaser of such expenses requiring adjustment prior to Completion,
 - (iv) as to any other Outgoings not set out in this clause, on the basis of the following formula: (the Unit Entitlement of the Lot divided by the Aggregate Unit Entitlement of all Lots in respect of the Land (or relevant part) to which the Outgoings relates), multiplied by the Amount of Outgoings for the Land (or that part of the Land to which the Outgoing relates).
- (c) The adjustments pursuant to this clause 47.2 are final and no regard is to be had to the assessment in respect of any actual amount of the Outgoings when issued.
- (d) The Vendor must promptly pay or procure the payment of the actual assessment for any period to which an adjustment under this clause 47.2 relates if and when received.

47.3 Adjustment for strata expenses

- (a) The Purchaser must pay the Vendor, in addition to the Purchase Price and in addition to

the adjustments under clauses 14, 47.1 and 47.2 the following amounts on account of the day to day expenses which may be incurred by the Vendor prior to the determination of administrative fund and sinking levies for the Strata Scheme or pursuant to any By-Law relative to the Project at the first annual general meeting at \$600;

- (b) The Vendor will allocate any amount received under this clause that is in excess of the total day to day expenses incurred by the Vendor prior to the determination of administrative fund and sinking fund levies to the administrative fund of the Strata Scheme within 90 days of the date of determination of administrative fund and sinking fund levies or within 90 days of Completion, whichever is the later. The Purchaser acknowledges that they shall not be entitled to have this or these amount/s set off against future levies for their Lot and that such amounts remitted by the Vendor to the administrative fund of the Strata Scheme shall be for the benefit of the entire Strata Scheme.
- (c) The Purchaser acknowledges that the above amounts are not in any way intended to represent or warrant the future amount of the levies that may be struck in respect of the Lot/s.

47.4 Land Tax in the event of Completion delayed to the next calendar year

Despite any other provision of this Contract, including whether or not land tax is otherwise adjustable under the Contract, and in addition to all other rights and remedies of the Vendor, it is an essential condition that the Purchaser must reimburse the Vendor, by adjusting in favour of the Vendor on Completion, any amount of land tax liability assessed on or to be assessed in respect of or proportionately attributable to the individual Lot that has arisen due to the Purchaser's default in delaying Completion past 31 December in the year that the Completion Date falls due.

48 Not used

49 Defects

49.1 Purchaser may notify the Vendor of Defects

- (a) Notwithstanding anything to the contrary contained in this Contract, the Vendor shall only have the obligation to rectify Defects if the Purchaser serves written notice on the Project Manager on no more than two occasions during the Defects Liability Period, a list of any matters claimed by the Purchaser to be Defects in respect of the Lot.
- (b) If the Purchaser has complied with paragraph (a), the Vendor must, at the Vendor's expense and within a reasonable time after receipt of the Purchaser's notification of Defects, cause the Defects to be rectified.
- (c) The Purchaser must permit the Vendor or the Vendor's employees, agents and contractors access to the Lot, the Building and any part of the Common Property to carry out Defect rectification work. The Vendor or the Vendor's employees, agents and contractors must give the Purchaser reasonable notice of when access is required to the Lot for the purpose of rectifying Defects and will use reasonable endeavours to minimise disturbance to the Purchaser where possible and practicable in carrying out Defect rectification work in or to the Lot or Common Property.
- (d) Any Defect in the Lot not notified by the Purchaser to the Vendor in accordance with paragraph (a) shall be deemed to have been accepted by the Purchaser and the Purchaser shall have no Claim against the Vendor in respect of any such Defect not notified by the Purchaser.
- (e) To the maximum extent permitted by Law, the Purchaser acknowledges and agrees that when the Defect(s) notified to the Vendor by the Purchaser within the Defects Liability Period (if any) in accordance with the requirements of this clause 49.1 have been rectified and the Defects Liability Period has expired:
 - (i) the Vendor's obligations to the Purchaser under this clause 49 shall be wholly discharged; and
 - (ii) the Purchaser is not entitled to make any Claim because of any Defect in respect of the Lot or the Common Property which existed or may appear after Complete;

- (iii) Completion will occur in accordance with this Contract despite the existence of any Defect.

49.2 Acknowledgement by the Purchaser

- (a) The Purchaser acknowledges:
 - (i) that concrete walks, terraces and exposed concrete surfaces may develop minor cracks and other cosmetic imperfections as a result of changes of temperature and normal settling;
 - (ii) the matters set out in clause 43.4and agrees those matters referred to in the preceding paragraphs (i) and (ii) are not Defects and that the Vendor shall be under no duty to remedy or undertake any works in respect of those matters.
- (b) The Vendor is under no liability to inspect and remedy any Defect unless the Purchaser, at the Vendor's request, provides the Vendor or its employee, agent or contractor with suitable access to the Lot in order to perform work which the Vendor considers appropriate to remedy the Defects.
- (c) The Purchaser is not entitled to notify the Vendor of any Defect within the Common Property (however is not prevented from notifying the Owners Corporation of any such Defect) and shall not make any Claim on the Vendor in respect of rectification of a Defect to the Common Property.
- (d) The Purchaser is not entitled to and will not withhold the balance Purchase Price or any part of the Purchase Price on Completion by reason of any Defect or deficiency in any part of the Lot, the Fixtures and Finishes, or the Building including the Common Property and improvements on the Common Property whether due to defective materials, workmanship or other cause whatsoever or to make any Claim if the Vendor fails to make good any Defect in accordance with clause 49 or otherwise in accordance with its obligations under any Law.
- (e) The rights under this clause 49 are personal to the Purchaser and cannot be assigned.

49.3 Strata Legislation

- (a) This clause 49 is subject to any applicable Law, including Strata Legislation and will not apply to the extent a Law applies to the contrary which cannot be excluded or modified by contract.
- (b) Notwithstanding anything else in this clause 49, except to the extent of the Vendor's obligations to rectify defects under clause 49.1(b) the extent of the Vendor's liability in respect of any Defects in the Lot, Common Property or Project is limited to its liability under Part 11 of the Strata Schemes Management Act 2015 and the Purchaser cannot make any further Claim against the Vendor in this respect.
- (c) Any disputes between the Vendor and Purchaser in respect of Defects are to be dealt with in accordance with Part 12 of the Strata Schemes Management Act 2015.

50 FIRB

50.1 Purchaser is not a foreign person

- (a) not used

- (b) The Purchaser warrants that it is not a foreign person for the purposes of the FAT Act.
- (c) Any breach of the warranty in clause 50.1(b) will entitle the Vendor to immediately terminate this Contract under clause 9.
- (d) Clauses 50.2 to 50.4 are not applicable.

50.2 Purchaser is a foreign person

- (a) not used
- (b) The Purchaser warrants that it is a foreign person for the purposes of the FAT Act and has either:
 - (i) obtained independent advice from a lawyer or accountant in respect of whether it may be prohibited by the FIRB from acquiring the Lot; or
 - (ii) made enquiries with the FIRB and/or reviewed the FAT Act,

and is reasonably satisfied that there is no reason why the FIRB may prohibit its acquisition of the Lot and warrants to the Vendor that there are no circumstances of which the Purchaser is aware or ought to be aware which would constitute grounds for the FIRB to prohibit its acquisition of the Lot as at the date of this Contract.

- (c) The Purchaser indemnifies the Vendor against all losses, expenses, Claims and damages, including any consequential loss, which the Vendor suffers as a result of the Vendor having relied on the Purchaser's warranties under clause 50.2(b). This indemnity will not merge on termination, rescission or Completion of this Contract.
- (d) Completion of this Contract is subject to FIRB approval under either clauses 50.2 or 50.4.

50.3 Exemption Certificate

- (a) If an Exemption Certificate is attached to this Contract and entry into this Contract will cause the Purchaser's Interest to exceed \$3 million, then:
 - (i) prior to entering into this Contract, the Purchaser must notify the Vendor of the same;
 - (ii) the Purchaser must apply for FIRB approval in accordance with clause 50.4 and
 - (iii) the balance of this cause 50.3 does not apply.
- (b) If an Exemption Certificate is attached to this Contract and the Purchaser's Interest does not exceed \$3 million, then:
 - (i) the Purchaser must, if requested and on the request of the Vendor, to the extent that the Vendor has not already received it, provide the Vendor with the FIRB Information which will be provided by the Vendor to the FIRB;
 - (ii) the Purchaser will pay to the Vendor the FIRB Fee within ten (10) business days from the date of this Contract by way of bank cheque or solicitor's trust cheque delivered to the Vendor's solicitor;
 - (iii) the Purchaser warrants that, as at the date of this Contract and as at Completion, it is an eligible purchaser under the Exemption Certificate;

- (iv) the Purchaser is not required to apply for FIRB approval in accordance with clause 50.4 and
 - (v) entry into this Contract is unconditional as at the date of this Contract.
- (c) If the Vendor has notified the Purchaser under clause 50.39(c) of its intention to apply for an Exemption Certificate, the Vendor must:
- (i) duly lodge its application to FIRB for an Exemption Certificate; and
 - (ii) promptly provide the Purchaser with a copy of the Exemption Certificate once obtained from FIRB,
- and the Purchaser acknowledges that the FIRB may take between 30 and 90 days to review the Vendor's application.
- (d) If, following receipt of the Exemption Certificate, the Vendor considers, in its absolute direction, that its sale of the Lot to the Purchaser would be prohibited under the conditions of the Exemption Certificate it may:
- (i) rescind this Contract by written notice to the Purchaser within 15 business days of the date of the Exemption Certificate or such greater period of time as the Vendor may notify to the Purchaser during this period; and
 - (ii) if the Purchaser is in breach of a warranty under clause 50.2(b) exercise its rights under clause 50.2(c).
- (e) Within 5 business days of service of the Exemption Certificate on the Purchaser, if there are any reasons why the Purchaser may not reasonably qualify under the Exemption Certificate, the Purchaser must notify the Vendor in writing setting out the reasoning, and clause 50.4 shall apply.
- (f) If no notice is served under paragraphs (e) or (f), this Contract becomes unconditional on expiration of the relevant time period and the Purchaser shall, within 5 business days, of the expiry of the later of the time periods set out in clauses 50.3(e)(i) and 50.3(f) pay to the Vendor the FIRB Fee by way of bank cheque or solicitor's trust account cheque delivered to the Vendor's solicitor.
- (g) If the Vendor receives notice from FIRB that its application for an Exemption Certificate has been rejected, the Vendor shall serve notice on the Purchaser that the Purchaser is to apply to the FIRB for approval for this purchase and the provisions of clause 50.3 shall apply.
- (h) The Purchaser acknowledges and accepts that:
- (i) time is of the essence for payment of the FIRB Fee in accordance with this clause 50.3 so that if the Purchaser fails to pay the FIRB Fee within the required time, the Vendor may terminate this Contract by notice in writing to the Purchaser, in which case, clause 9 shall apply;

- (ii) the FIRB Fee is non-refundable and the Purchaser will not make a Claim or seek a refund in relation to the FIRB Fee if this Contract does not proceed to Completion for any reason and this paragraph will not merge on rescission, termination or Completion; and
- (iii) the Purchaser must, if requested by the Vendor, provide the Vendor with any further FIRB Information which will be provided by the Vendor to the FIRB.

50.4 The Purchaser is to make Application to FIRB

(a) If:

- (i) the Vendor has notified the Purchaser under clause 50.3 that an Exemption Certificate is not being obtained; or
- (ii) the provisions of clause 50.3(a) or (f) apply,

Completion of this Contract is conditional upon the FIRB not objecting to the purchase of the Lot by the Purchaser.

(b) The Purchaser must:

- (i) within 5 business days after the date of either:
 - (A) the Vendor serving written notice under clause 50.3(b) to the effect that a FIRB Exemption Certificate is not being obtained; or
 - (B) the date of this Contract if clause 50.3(a) applies; or
 - (C) the date of the Purchaser serving written notice under clause 50.3(f)
 apply to the FIRB for approval to acquire the Lot;
- (ii) promptly provide the Vendor with a copy of the application referred to in paragraph (i) including any supporting documents;
- (iii) promptly comply with any requirements in connection with any notice that is issued to it by the FIRB;
- (iv) if requested by the Vendor, provide the Vendor with copies of all correspondence between the Purchaser and the FIRB; and
- (v) promptly provide the Vendor with any notice it has received from the FIRB approving or rejecting the Purchaser's application.

(c) The Purchaser is deemed to have satisfied the requirements of this clause when the FIRB gives the Purchaser written advice that there is no objection to the purchase of the Lot by the Purchaser (without conditions, excepting conditions of the kind commonly imposed by the FIRB on proposals like the Purchaser's) and which do not affect Completion in accordance with this Contract and the Purchaser provides a copy of such notice to the Vendor.

(d) If the Purchaser has complied with its obligations under this clause and either the FIRB objects to the Purchaser's application or does not provide its decision to the Purchaser within three (3) months of the date of its application to FIRB then subject to the rights of the Vendor under clause 50.2(c) which are paramount, either party may rescind this Contract in which event clause 19 shall apply.

(e) If the Purchaser has not complied with its obligations under this clause and has not provided the Vendor with confirmation that the FIRB does not object to the purchase of

the Lot by the Purchaser, then the Vendor may terminate the contract by notice in writing to the Purchaser at any time after three (3) months from the date by which the Purchaser was required to make its application for FIRB approval.

51 not used

52 not used

53 Requisitions and Vendor Warranties

53.1 Requisitions Restricted

Despite anything else contained in this Contract and to the extent permitted by Law, the Purchaser is not entitled to and must not make any further requisitions on the Vendor in connection with this Contract (other than those deemed served under clause 5.1) and it will rely entirely on its own enquiries in respect of the subject matter of this Contract and the warranties by the Vendor contained within this Contract or imposed by Law (to the extent that Law cannot be excluded or modified by this Contract).

53.2 Warranties by the Vendor

The Vendor warrants that, except as disclosed in this Contract, each of the following statements is accurate at the time the Vendor executes this Contract:

- (a) the Vendor is not under any legal disability which affects the Vendor's capacity to Contract and to perform its obligations under this Contract;
- (b) there is no unsatisfied judgment, order or writ of execution which affects the Land;
- (c) there is no order of a Court or other Authority affecting the ability of the Vendor to perform this Contract;
- (d) no notice has been issued by an Authority or proceedings instituted in a Court pursuant to any statute whereby the interest of the Vendor in the Lot may be rendered liable to forfeiture to the Crown;
- (e) the Vendor is not in liquidation; and
- (f) the Vendor is not under official management nor has an administrator, controller or manager controller been appointed to the Vendor or in respect of the whole or any part of the Land.

54 Mortgage discharge and caveat withdrawal or consent

54.1 Mortgages and caveats generally

- (a) the Vendor is not obliged to register a discharge of the mortgage or a withdrawal of the caveat before Completion; and
- (b) the Purchaser will accept on Completion a properly executed discharge of mortgage or withdrawal of caveat (excluding tenant's caveats or Purchaser's caveats), as the case requires, in registrable form or in the case of a caveat which records an interest which has been disclosed in this Contract, a consent to registration of the Purchaser's transfer and mortgage documents

54.2 Purchaser must not lodge a Caveat

It is an essential term of this Contract that the Purchaser must not cause any caveat to be recorded on any of the Titles in respect of its interest in the Lot as Purchaser. The Purchaser indemnifies the Vendor from and against all loss and damage, including consequential loss, suffered by the Vendor on account of any caveat lodged by or on behalf of the Purchaser on the Title or the Lot.

55 Late completion

55.1 Cost to re-book Completion

If Completion is delayed and must be re-booked due to the fault of the Purchaser, the Purchaser will pay to the Vendor, \$220.00 inclusive of GST on each occasion Completion must be re-booked. The parties agree that this amount is a genuine pre-estimate of the Vendor's additional legal costs in respect of re-booking Completion.

55.2 Notice to Complete

- (a) For the purposes of clause 15, the parties acknowledge that the period of 10 business days after the date of service of a notice to complete is reasonable and sufficient to make time of the essence of this Contract.
- (b) A party who issues a notice to complete may at any time withdraw a notice to complete without the consent of the other party and without prejudice to that party's continuing right to give a further notice or notices to complete.
- (c) Should the Vendor serve a notice to complete, the Purchaser will at settlement pay the Vendor in addition to other moneys due and payable under this Contract, the sum of \$330.00 inclusive of GST by way of liquidated damages which the parties acknowledge and agree is reasonable compensation for the Vendor's additional legal costs in respect of preparing and issuing the notice.

56 Liquidated damages

- (a) If Completion does not take place on the Completion Date, the Purchaser must pay to the Vendor, on Completion, interest on the unpaid balance of the Purchase Price and on any other money payable by the Purchaser to the Vendor under this Contract:
 - (i) at the Rate;
 - (ii) calculated on a daily basis from and including the Completion Date to and including the date of Completion;
 - (iii) as liquidated damages; and
 - (iv) in addition to any other money payable under this Contract.
- (b) This clause 56:
 - (i) is an essential term of this Contract; and
 - (ii) does not adversely affect any other right or remedy of the Vendor.
- (c) The Purchaser agrees that the amount payable under this clause is a genuine pre-estimate of the loss that would be sustained by the Vendor as a result of the Purchaser's failure to complete on the Completion Date.

- (d) The Vendor is not obliged, and the Purchaser may not require the Vendor, to complete this Contract unless the amount payable under paragraph (a) of this clause is paid to the Vendor on Completion.
- (e) The Vendor cannot require the Purchaser to pay interest for any period during which Completion has been delayed solely by the Vendor.
- (f) The Purchaser agrees that nothing in this clause derogates from, replaces, waives or diminishes any other of the rights or remedies of the Vendor under this Contract or at law, including any right or remedy which arises out of the Purchaser's failure to complete this Contract on the Completion Date or at all.

57 Sales and Marketing

Up to and following Completion, the Vendor and any person authorised by the Vendor may, until the Vendor has sold all of the lots in the Strata Scheme or the Project:

- (a) carry out sales and marketing activities in respect of any of the remaining lots in the Strata Scheme or the Project; and
- (b) place, keep and maintain such marketing signs, office or other similar facilities as the Vendor in its absolute discretion thinks fit in and outside the Building including on the Common Property but not within the Lot.

58 Voting by the Purchaser

58.1 Exercise of voting rights by the Purchaser

If required by the Vendor, the Purchaser must, up to the conclusion of the first Annual General Meeting of the Owner's Corporation:

- (a) vote in favour of any motion (and use all reasonable endeavours to ensure that the Purchaser's mortgagee votes in favour of any motion) for a resolution of the Owners Corporation to implement or give effect to any Project Document to which the Owners Corporation is a party, or other agreement or arrangement deemed necessary by the Vendor (as developer) for completion of the Building or the operation of the Strata Scheme or the Project; and
- (b) vote against any motion (and use all reasonable endeavours to ensure that any Purchaser's mortgagee of the Lot votes against any motion) for a resolution of the Owners Corporation which, if passed, would delay or prevent implementation of the things or matters referred to in clause 58.1(a).

58.2 Exercise of voting rights by transferees

The Purchaser must:

- (a) ensure that a transferee of the Lot from the Purchaser enters into a deed in terms of this clause 58 in such form as the Vendor reasonably requires to ensure compliance with the terms of this clause 58 and the full implementation of the arrangements referred to in it; and
- (b) use all reasonable endeavours to ensure any mortgagee of the Purchaser of the Lot complies with this clause 58.

58.3 Prohibitions of the Purchaser

The Purchaser must not:

- (a) make any Claim or requisition, delay Completion or rescind or terminate because of the Vendor exercising its rights in accordance with this clause 58;
- (b) do anything that would prevent the Vendor under this clause 58 exercising a vote in respect of the Lot; or
- (c) procure or request any person to do anything which may delay or prevent the implementation of or giving effect to any of the matters referred to in clause 58.1 and the Vendor's exercise of its rights under this clause 58 or the other provisions of this Contract or any Project Document.

59 Assignment and Novation

59.1 No Assignment by the Purchaser

The Purchaser may not assign or transfer its rights under this Contract or agree to do so but may on-sell the Lot prior to Completion.

59.2 Novation by the Vendor

- (a) In the event the Vendor sells the Land, the Vendor may provide the Purchaser with written notice that it requires the Purchaser (and any guarantor if clause 66 applies to this Contract) to enter into a Novation Agreement with;
 - (i) the Vendor; and
 - (ii) the purchaser of the Land from the Vendor.
- (b) The Vendor must enclose with the notice issued under clause 59.2(a), the Novation Agreement.
- (c) The Purchaser must sign and return to the Vendor the signed Novation Agreement within 10 business days of the date of the notice issued under clause 59.2(a).
- (d) The Purchaser is not entitled to make any requisition or Claim, delay Completion or rescind or terminate this Contract in respect of the notice issued to it under clause 59.2(a) or the Novation Agreement which the Vendor requires it to sign.
- (e) If clause 66 applies to this Contract, the requirements and restrictions of the Purchaser under this clause extend to any guarantors under the Guarantee.
- (f) If a Bank Guarantee has been accepted by the Vendor in lieu of part or all of the deposit, it is the obligation of the Purchaser to provide the Vendor with a suitable replacement Bank Guarantee, or cash deposit in lieu of a replacement Bank Guarantee, in favour of the purchaser of the Land set out in the Novation Agreement. The replacement Bank Guarantee is required to be on terms acceptable to the Vendor and provided with the delivery of the Novation Agreement to the Vendor under paragraph (c), upon which the Vendor shall release the existing Bank Guarantee to the Purchaser.

59.3 Vendor may grant security interest

- (a) The Vendor may, in its absolute discretion:
 - (i) grant any security interest over its interest in this Contract or the Land; or
 - (ii) assign or transfer its interest in this Contract or the Land,

and the Purchaser is not entitled to make any requisition or Claim, delay Completion or rescind or terminate this Contract if the Vendor elects to do so.

- (b) The Purchaser must, at its cost, promptly enter into any agreement or provide any acknowledgement reasonably required by the Vendor in connection with the Vendor's:
- (i) grant of any security interest over its interest in this Contract; or
 - (ii) assignment or transfer its interest in this Contract.
-

60 Vendor disclosure

- (a) The Purchaser accepts and acknowledges that all matters disclosed or described in this Contract are specifically disclosed and clearly described including:
- (i) anything referred to in or attached or annexed to this Contract; and
 - (ii) anything disclosed by or referred to in any of the documents in the List of Annexures in Schedule 2.
- (b) The Purchaser acknowledges that the Vendor does not represent or warrant the effectiveness or validity or otherwise of any dealing registered on title to the Land including any restriction on the use of land, easement or covenant that may be annexed to this Contract.
- (c) Subject to the Purchaser's rights under section 52A(2)(b) of the *Conveyancing Act 1919* (NSW) and the *Conveyancing (Sale of Land) Regulation 2010* (NSW) but otherwise notwithstanding any other provision of this Contract:
- (i) the Vendor does not warrant the accuracy or completeness of documents from any authority attached to this Contract or the matters set out in those documents; and
 - (ii) the Purchaser cannot make any Claim or requisition or rescind or terminate or delay Completion because:
 - (A) of any matter disclosed or described in this Contract; or
 - (B) any document from any Authority attached to this Contract is incomplete or inaccurate.
- (d) If any provision of this Contract purports to or has the effect of excluding, modifying or restricting the operation of section 52A(2)(b) of the *Conveyancing Act 1919* (NSW) and the *Conveyancing (Sale of Land) Regulation 2010* (NSW), then this Contract is to be read and construed as if that clause, to the extent of the exclusion, modification or restriction, is severed from this Contract and the invalidity of that provision will not affect, invalidate or make unenforceable the remaining provisions of this Contract.
- (e) The Vendor discloses and the Purchaser acknowledges that as at the date of this Contract:
- (i) the Lot has not been created;
 - (ii) the unit entitlement of the respective Lot has not been finalised;
 - (iii) the Strata Scheme of which the Lot forms part has not been created;
 - (iv) the Building have not been constructed;

- (v) the final structure of the Strata Scheme has not been finalised, including the final number and type of strata or stratum schemes to be created;
 - (vi) the future street address of the Lot has not been finalised, and may differ from the address/es on the front page of this Contract and on the Printed Form attached to this Contract;
 - (vii) some of the Project Documents are not yet created; and
 - (viii) the Draft Plan are provisional only.
- (f) The Purchaser further acknowledges and agrees that the Vendor has reserved the rights set out in this Contract to complete and register the Strata Scheme, the Project Documents and Additional Affectations.
- (g) The Purchaser is not entitled to and will not make any requisition or Claim, delay Completion or rescind or terminate this Contract in respect of any rights of the Vendor under this Contract or the exercise of those rights under this Contract by the Vendor unless the Purchaser is exercising a right provided by and expressly set out in this Contract.

61 Purchaser's warranties

61.1 Whole agreement

To the extent permitted by Law, in relation to its subject matter, this Contract:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

61.2 No reliance

The Purchaser warrants that, in entering into this Contract, it has:

- (a) not relied on any statement or representation made by or on behalf of the Vendor, including marketing or promotional material displayed or provided by or on behalf of the Vendor including by the Sales Agent;
- (b) relied entirely upon its own enquiries relating to the Land, the Lot and the Strata Scheme;
- (c) obtained independent legal, financial and taxation advice (or has had the opportunity to obtain that advice but declined to do so) in respect of and is satisfied about:
 - (i) the Purchaser's rights and obligations under the terms of this Contract;
 - (ii) the nature of the Lot, the Strata Scheme and the Project and the purposes for which the Lot may be lawfully used;
 - (iii) the Purchaser's entitlement (if any) to claim income tax deductions under ITAA for depreciation or any plant or equipment or in connection with the costs of construction of the Lot; and
 - (iv) any financial forecasts, returns or feasibility relating directly or indirectly to the purchase of the Lot as an investment.

62 Warranty and indemnity as to agent's commission

- (a) The Purchaser warrants that the Purchaser was not introduced to the Vendor or the Lot by anyone other than the Sales Agent. The Purchaser indemnifies the Vendor from all Claims, including for commission, arising out of a breach of this warranty and including the Vendor's costs of defending any Claim.
- (b) The Vendor has not engaged any agent in respect of the sale of the Lot other than the Sales Agent.

63 Advertising and marketing material

The Vendor does not warrant or represent that any information or statements contained in or referred to in any brochure, advertisement or other document or any electronic media (including any website) made available, operated or provided by or on behalf of the Vendor in connection with this sale or this Contract is accurate or complete including the marketing plan (including the Draft Plan) shown or provided to the Purchaser or that any fixtures, finishes or design of the display suite or set out in any digital or electronic image will be consistent with the Lot or Building on Completion.

64 Privacy

64.1 Purchaser consents to disclosure

The Purchaser consents to the Vendor disclosing Personal Information.

64.2 Who may receive the Personal Information?

Disclosure of Personal Information will only be made if the Vendor is compelled at Law to do so, or is required to disclose the Personal Information to any related party of the Vendor. A related party to the Vendor for the purposes of this clause is any or all of the following:

- (a) a business associate; or
- (b) a financial institution or credit provider; or
- (c) a Services provider; or
- (d) a legal or financial consultant; or
- (e) a potential purchaser of the Project or the Vendor or a part of the Project or the Vendor;
or
- (f) an Authority.

64.3 Compliance with Privacy Act

The Vendor agrees it will, in handling the Personal Information, comply with the *Privacy Act 1988* (Cth). This includes but is not limited to:

- (a) the Vendor permitting the Purchaser to have access to the Personal Information;
- (b) the Vendor taking reasonable steps to keep the Personal Information safe and secure;
- (c) if requested by the Purchaser, the Vendor will supply information to the Purchaser on how and to whom the Personal Information is handled and given out (if at all); and

- (d) the Vendor taking reasonable steps to keep the Personal Information accurate, complete and up to date.
-

65 Information for transfer

For the purposes of clause 4.2, the Purchaser acknowledges that sufficient information for the form of transfer if not disclosed in this Contract shall be available once the Conditions Precedent are satisfied and notification of Registration has been served by the Vendor and the Vendor need not give any further information to the Purchaser.

66 Guarantee

66.1 Corporate Purchaser to provide Guarantee

Where the Purchaser is a corporation (except a corporation included in the official list of ASX) the Purchaser must, on the date of this Contract, deliver to the Vendor the Guarantee executed by all of the directors of the Purchaser as a deed poll.

66.2 Trustee Purchaser to provide Guarantee

Where the Purchaser is a trustee, the Purchaser must, on the date of this Contract, deliver to the Vendor the Guarantee executed by:

- (a) the beneficiaries of the trust, provided that beneficiary is not a corporation;
- (b) a director of the corporate trustee if the trustee is a corporation;
- (c) the trustee if the trustee is not a corporation; or
- (d) such other person as may be acceptable to the Vendor and the Vendor's financier.

66.3 Failure to provide Guarantee

If the Purchaser fails to deliver a Guarantee in accordance with clause 66.1 or clause 66.2, the Vendor may terminate this Contract by giving written notice to the Purchaser and in which event clause 9 will apply.

67 Power of Attorney

- (a) The Purchaser irrevocably, and for valuable consideration, appoints the Vendor as its attorney to do anything, including sign any document:
 - (i) which the Purchaser is obliged to do under this Contract but has not done; or
 - (ii) which enables the removal of any caveat lodged by the Purchaser on the Title or the Lot in contravention of this Contract; or
 - (iii) which is necessary, or would help, to give any effect to any right or power given to Vendor by this Contract.
- (b) The Purchaser ratifies anything done by the Vendor as attorney in accordance with clause 67.

68 Expert Determination

- (a) Without derogating from the right of either party to rescind or terminate this Contract and unless this Contract expressly provides otherwise, any dispute between the parties under this Contract is to be determined by an Expert in accordance with this clause 68.
- (b) Where there is a dispute between the parties in respect of this Contract, and the dispute is not governed by another other provision of this Contract, the parties may appoint an Expert by mutual agreement, failing which, either party may request the Expert be appointed by the President of the Law Society NSW, in which case, and unless the parties expressly agree otherwise, the parties are bound by the Conveyancing Arbitration Rules approved by the Law Society NSW as at the time of the appointment.
- (c) The parties agree that:
 - (i) the Expert makes a determination acting as an expert and not an arbitrator;
 - (ii) the Expert's determination is final and binding on the parties;
 - (iii) the parties may not delay Completion pending the Expert determination which must take place by the Completion Date unless otherwise provided under this Contract; and
 - (iv) the Expert's costs are to be paid equally by the parties.

69 GST

- (a) The parties acknowledge that the Purchase Price (as shown on the front page of this Contract) is exclusive of GST, if any.
- (b) The Purchaser and Vendor agree that if this Contract states that the supply of the Lot is a taxable supply, the margin scheme will, if possible, be applied to this Contract and the Vendor will not be required to provide a tax invoice to the Purchaser in respect of any supply made under this Contract. The Vendor does not warrant that the margin scheme can or will apply and if it can't be applied under the requirements of the GST Act then paragraph (a) of this clause 69 still applies.
- (c) Except for the Purchase Price and unless expressly stated otherwise, any consideration payable or to be provided or amount used in the calculation of a sum payable under this Contract has been determined without regard to GST and must be increased, on account of any GST payable under this clause 69.
- (d) The Purchaser must pay the relevant amount of GST to the Vendor on Completion.
- (e) The recipient must pay any amount it is required to pay under this clause 69 in full on Completion and without deduction, set-off, withholding or counterclaim.
- (f) The Vendor is not obliged to Complete unless the Purchaser complies with this clause 69, which is an essential term of this Contract.

70 Not used

71 Execution under Power of Attorney

- (a) The Purchaser acknowledges that this Contract may be signed on behalf of the Vendor under power of attorney.
- (b) If so, the Purchaser acknowledges and agrees that an attorney exercising its power or function to sign this contract on behalf of the Vendor has no personal liability or obligations under this Contract and no Claim may be made by the Purchaser against the attorney.
- (c) The attorney may rely on this clause and the Law as an effective defence to any Claim against the attorney, and a bar to any Claim made or proceedings commenced against the attorney.

72 Confidentiality

- (a) The Purchaser acknowledges and agrees that:
 - (i) the negotiation and exchange of this Contract;
 - (ii) the terms of this Contract; and
 - (iii) any information given to the Purchaser in relation to the Strata Scheme,is confidential and must not be disclosed by the Purchaser to any other party, other than to the Purchaser's solicitor, agent or any incoming mortgagee (**Associated Person**).
- (b) The Purchaser must procure that any Associated Person(s) complies with the obligation in this paragraph (a).

73 General

73.1 Governing law

This Contract is governed by and must be construed according to the Law applying in New South Wales.

73.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Contract; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within the jurisdiction identified in clause 73.1.

73.3 Severance

If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the Law of any relevant jurisdiction:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Contract; or

- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Contract or any other part of the specific provision,

will not be affected or impaired.

73.4 No merger

- (a) Any clause to which effect is not given by Completion or registration of the transfer of the Lot to the Purchaser and which is capable of taking effect after Completion or registration does not merge on Completion.
- (b) Each warranty (except those implied by Law) and each indemnity in this Contract survives completion or termination.

73.5 Notices

Despite clause 20.6.5, a document is sufficiently served for the purpose of this Contract if

- (a) the document is sent by electronic transmission such as email or fax, in which case, service is deemed to have taken place when transmission has been completed, unless:
 - (i) the sender's machine indicates a malfunction in transmission or in the case of email, the sender receives a "failed to send" or similar message, in which case service is taken not to have taken place; or
 - (ii) the recipient immediately notifies the sender of an incomplete transmission, in which case service is taken not to have taken place; or
 - (iii) the time of dispatch:
 - (A) is a public holiday or a Saturday or Sunday in the place to which the document is sent; or
 - (B) is at or after 5.00 pm (local time in the place to which the document is sent) on a day that is not a bank or public holiday or a Saturday or Sunday,in which case the document is taken to be received at 9.00 am on the next day that is not a public holiday or a Saturday or Sunday; or
- (b) the document is sent by post, in which case, service is deemed to have taken place on the second business day after posting; and
- (c) the document is served in a manner subsequently agreed by the parties in writing.

73.6 Indemnities

- (a) Each indemnity by a party in this Contract is a continuing obligation, separate and independent from that party's other obligations and survives completion, rescission or termination of this Contract.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Contract.

74 Deposit

74.1 Notwithstanding any other provision of this Contract:

- (a) the purchaser acknowledges that the deposit payable to the vendor on exchange of this Contract is an amount equal to 10% of the GST inclusive purchase price; and
 - (b) if the Vendor accepts an amount less than 10% of the GST inclusive purchase price on exchange, the balance of the deposit shall be payable in full by the purchaser to the vendor as follows:
 - (i) immediately on demand by the vendor and the purchaser acknowledges that the vendor can make such demand at any time prior to the completion of this Contract and if the purchaser fails to pay such amount immediately on demand by the vendor, the vendor may recover such amount from the purchaser as a debt; or
 - (ii) if no such demand is made by the vendor, on completion.
-

75 Agreement for Lease

75.1 The Purchaser acknowledges and accepts:

- (a) that the terms as set out in the Agreement for Lease annexed to this Contract as Annexure H are immediately binding and enforceable upon both the Purchaser and Vendor; and
- (b) it must provide a signed copy of the Agreement for Lease to the Vendor's solicitor on or prior to the Contract date, together with any monetary payment due thereunder as lessor in the Agreement for Lease.

75.2 Should the Purchaser fail to satisfy its obligation as required by clause 75.1(b) above, it forfeits any rights and entitlements that it may have otherwise been provided as lessor in this Clause 75 and the Agreement for Lease.

75.3 In consideration for the Purchaser entering into the Agreement for Lease and subject always to the entitlements, obligations and enforceability of the Agreement for Lease (as contemplated under this Clause 75), the Vendor warrants that it will, prior to the Completion Date, authorise the depository holder to:

- (a) hold the total Annual Rent for the Term of the Lease (**Rent Advance**) on trust due and payable on the Completion Date; and
- (b) distribute the Annual Rent to the Lessor on each Rent Day as required under the Agreement for Lease.

75.4 Not used.

For the purposes of clarity, the following definitions – as set out in the Agreement for Lease – apply to this Clause 75, including:

75.5

- (a) **Annual Rent** has the same meaning as prescribed in Item 1 to the Reference Schedule of the Lease annexed as Schedule 3 of the Agreement for Lease;
 - (b) **Lessor** has the same definition as prescribed in Clause 1.1 of the Lease annexed as Schedule 3 of the Agreement for Lease;
 - (c) **Month Day** has the same definition as prescribed in Clause 1.1 of the Lease annexed as Schedule 3 of the Agreement for Lease; and
 - (d) **Term of the Lease** has the same meaning as prescribed in Item 7 to the Reference Schedule of the Lease annexed as Schedule 3 of the Agreement for Lease.
-

Schedule 1 Dictionary

1 Dictionary

In this Contract in addition to the terms defined in clause 1 of the Printed Form, the following terms (in any form) have the following meanings unless contrary to the context.

Acceptable Security Provider means any of Australia and New Zealand Bank Group Limited; Commonwealth Bank; Bankwest; National Australia Bank; Westpac Banking Corporation or St George Bank Ltd.

Additional Affectation means any of the following which may not have been created as at the date of this Contract but which may be created or entered into prior to Completion:

- (a) easements, rights of way, covenants or restrictions appurtenant to or burdening the Land, the Common Property or any lots within the Strata Scheme including the Lot;
- (b) agreements and/or arrangements for the provision of Services to the Land or the Building or the Lot; and
- (c) rights and privileges in respect of the Land, Building or the Lot.

Agreement for Lease means the agreement for lease referred to in Clause 75 and as set out in Annexure H of this Contract.

Amenities means the common areas and amenities for the Strata Scheme and includes the Services.

Approval means, in respect of any matter, any approval, consent, or authorisation granted by or required from an Authority and conditions, orders or terms imposed by an Authority, applying to that matter or required for that matter and includes where relevant a Development Approval, a Construction Certificate and a Subdivision Certificate.

Authority means, in respect of any matter, any Australian, state or local government, statutory, public or other authority or body or any Court in each case having jurisdiction over that matter.

Bank Guarantee means an unconditional and irrevocable undertaking in favour of the Vendor provided by an Acceptable Security Provider:

- (a) for an amount equal to the deposit;
- (b) that has no expiry date or an expiry date which is no earlier than the later of
 - (i) the date 6 months after the Scheme Date; or
 - (ii) 6 months after the date of issue (unless otherwise agreed with the Vendor);
- (c) which guarantees the payment of the deposit to the Vendor and any moneys payable by the Purchaser to the Vendor in accordance with the terms of this Contract; and
- (d) which entitles the Vendor to be paid the whole or any part of the amount of the Bank Guarantee immediately on presentation to the Acceptable Security Provider.

Building means the building the subject of the Strata Scheme and, where the context requires, means the building in the Project.

Building Certificate means a certificate under:

- (a) s149A of the EPA; or
- (b) s109C(1)(a) of the EPA.

business day means a day other than

- (a) a Saturday, Sunday or public holiday in NSW; or
- (b) during the period on and from 24 December to and including 10 January in any year.

By-Laws means the by-laws and any strata management statement, building management statement and similar documents for the regulation, administration and operation of the Strata Scheme and any other matter for which strata by-laws, management statements or Strata Scheme documents may be made.

Claim means a claim or demand for any cost, expense, loss, damage, compensation or liability of any kind or for any matter and includes a claim under clauses 6 and 7 of this Contract.

Common Property means the common property for the Strata Scheme (and where the context requires, the Project) being that area in the Draft Plan or Final Plan, as the case may be, which is not comprised in any lot and includes all improvements, fixtures and fittings erected on or constructed on the Common Property.

Completion means completion of this Contract and „completion‘ as used in the Printed Form has the same meaning.

Completion Date means the date on which Completion must occur the Purchase Price must be paid, as determined under clause 38 and is the same as the expression „date for completion“ used in the Printed Form.

Conditions Precedent means:

- (a) the issue of an Occupation Certificate by the relevant Authority; and
- (b) Registration of the Strata Scheme.

Consent Authority means the Authority having jurisdiction to grant the Development Approval.

Construction Certificate means a certificate under s.109C(1)(b) of the EPA.

Contract means this contract for the sale of the property and includes its recitals, annexures, attachments and schedules (if any).

Corporations Act means *Corporations Act 2001* (Cth).

Council means the local council or in respect of any planning matter, the planning and consent Authority with jurisdiction over the Land.

Court means a court of competent jurisdiction relative to a matter.

Defect means any defect, fault or shrinkage in or to the Lot due to faulty materials or workmanship which is not merely minor shrinkage or settlement cracks or any other minor issue.

Defects Liability Period means the period of three (3) months following Completion.

Development Approval means:

- (a) if already obtained, those documents described in **Annexure F**; or
- (b) if not yet obtained, then the development consent to be obtained from the Consent Authority for the development of the Project on the Land on terms and conditions acceptable to the Vendor in its absolute discretion,

and any amendments or variations approved by the Consent Authority or determined by a Court.

Draft Plan means:

- (a) the proposed plan attached to this Contract as **Annexure C**, containing the Lot, as amended in accordance with the terms of this Contract from time to time; and
- (b) the proposed Section 88B Instrument which at the date of this Contract is not yet prepared but which is to be prepared by the Vendor.

EPA means *the Environmental Planning and Assessment Act 1979* (NSW).

Exemption Certificate means a new dwelling exemption certificate issued by the FIRB to the Vendor evidencing that foreign persons are exempt from being required individually to notify FIRB of their purchase of one or more lots in the Project to a value not exceeding \$3,000,000 (or such revised capped total applicable under the Law at that time) per purchaser.

Expert means a person, independent of both the Vendor and the Purchaser, with at least 8 years of suitable experience to determine the particular dispute between the parties.

FAT Act means:

- (a) *Foreign Acquisitions and Takeovers Act 1975* (Cth);
- (b) the regulations made under the *Foreign Acquisitions and Takeovers Act 1975* (Cth); and
- (c) the policies and guidance notes issued by the FIRB relevant to this Contract.

Final Plan means the final version of the Draft Plan which is registered with the LPI containing such amendments from the Draft Plan as may be required by the Vendor or any Authority or the LPI.

Finishes means the finishes for the Lot set out in **Annexure D**.

FIRB means the Foreign Investment Review Board or the Authority empowered to administer the FAT Act, including the Treasurer and the Australian Taxation Office, as the case may be.

FIRB Fee means the fee payable by the Vendor to the FIRB as a result of the Vendor notifying the FIRB of the sale of the Lot to the Purchaser under this Contract calculated as at the date of this Contract, the date of the Exemption Certificate or the due date for payment of the fee, whichever is appropriate.

FIRB Information means all information relating to the Purchaser which the Vendor is required to provide the FIRB in accordance with the requirements of the Exemption Certificate and FAT Act.

Fixtures means the fixtures which are included in the Lot as set out in **Annexure D**, if any.

Fixtures Upgrade means each and all of the options to upgrade the specified Fixtures:

- (a) as set out in **Annexure E**; or
- (b) if nothing is annexed at **Annexure E**, then the options to upgrade the Fixtures which are later advised by the Vendor prior to Completion, if any.

Fixtures Upgrade Form means the form subsequently provided by the Vendor to the Purchaser specifying any Fixtures Upgrades that are available and the associated cost which must be paid by the Purchaser.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee means the deed of guarantee and indemnity (executed as a deed poll) in favour of the Vendor in the form annexed as Schedule 3.

Guarantor means a guarantor under the Guarantee.

Insolvency Event means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed and, in the case of an application, the application is not withdrawn, struck out or dismissed within 21 days of it being made;
- (b) a liquidator or provisional liquidator is appointed and the appointment is not terminated within 21 days of it being made;
- (c) an Administrator or a Controller is appointed to any of its assets and the appointment is not terminated within 21 days of it being made;
- (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (e) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable Law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (g) it becomes, or states that it is, an Insolvent under Administration or action is taken which could result in that event;
- (h) an order is made, a resolution is passed, proposal put forward or any other action taken, in each case which is preparatory to or could result in any of the matters referred to in paragraphs (a) – (g) inclusive;
- (i) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (j) a notice is issued under sections 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days;
- (k) a writ of execution is levied against it or its property;

- (l) any step is taken by a mortgagee to enter into possession of or dispose of the whole or any part of the other party's assets or business;
- (m) it ceases to carry on business or threatens to do so, other than for reorganisation or restructuring in accordance with the terms of this Contract; or
- (n) anything occurs under the Law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

ITAA means the *Income Tax Assessment Act 1936 (1936 Act)* and the *Income Tax Assessment Act 1997 (1997 Act)*, or if a specific provision is referred to, the Act which contains the provision; however if a specific provision of the 1936 Act is referred to which has been replaced by a provision of the 1997 Act, the reference must be taken to be to the replacement provision.

Land means the land contained in folio identifiers listed in **Annexure A**, being the land the subject of the Project.

Law means in respect of any matter, each and all statutes and common law of:

- (a) New South Wales,
- (b) Australia, or
- (c) any other sovereign nation having extra-territorial application in New South Wales or Australia and jurisdictional application in respect of this Deed,

and includes ordinances, regulations, subordinate legislation, by-laws, industrial awards, development consents, environmental planning instruments and all orders, directions, codes of practice or requirements of any Authority, relative to that matter.

Lot means the proposed lot identified on the Draft Plan and referred to under the item "land" on the front page of this Contract and if this Contract is for the sale of more than one Lot, then each such Lot and where general reference is made to a lot, then it has the meaning as defined in the Strata Legislation.

LPI means NSW Land and Property Information.

Novation Agreement means an agreement for the novation of this Contract (and Guarantee, if applicable) from the Vendor to any entity which purchases the Land from the Vendor which:

- (a) may include all terms necessary or desirable to effect the novation; and
- (b) does not materially affect the Purchaser's rights under this Contract.

Occupation Certificate means an occupation certificate under sections 109C(1)(c) and 109M of the EPA in relation to or which includes the Building to which the Lot relates.

Outgoings means rates, water, sewerage, drainage service and usage charges, land tax, contributions levied under the Strata Management Act and other periodic outgoings in respect of the Lot or Land (as the case requires) and includes any waste services collection fee, charged by an Authority or private contractor.

Owners Corporation means the owners corporation for the body corporate constituted on Registration of the Strata Scheme.

Personal Information means the personal information of the Purchaser that has been disclosed in this Contract or otherwise disclosed by the Purchaser to the Vendor.

Power Upgrade means the options to upgrade the power servicing the Lot, if any, set out in Annexure G.

Power Upgrade Form means the form set out in Annexure G.

Project means the development of the Building and all associated works necessary to construct the Strata Scheme in accordance with the Development Approval and as constructed at the time of Registration of the strata scheme on the Land.

Project Commencement means commencement of construction of the Project and does not include demolition works or site preparation works.

Project Documents means:

- (a) the Draft Plan, including the location plan and schedule of unit entitlements;
- (b) the By-Laws;
- (c) any easement, positive or negative covenant or other affectation affecting the Land or the Lot or the Common Property; and
- (d) other agreements or arrangements in respect of the Land or the Lot or the Common Property which the Vendor may create or require for the Strata Scheme or the Project, or any further division of the Strata Scheme or schemes included in the Project including any of those types of documents that the Owners Corporation may lawfully enter (including at the instigation of the Vendor).

Project Manager means _____ or such other person as the Vendor may notify from time to time.

Purchase Price means the price shown on the front page of this Contract.

Purchaser's Interest means the aggregate value of all lots in the Project which the Purchaser has contracted with the Vendor to purchase.

Purchaser Rescission Notice means a notice in writing given by the Purchaser to the Vendor.

Rate means 10% per annum calculated on daily balances.

Registration means, for the Strata Scheme, the registration with the LPI of:

- (a) the Final Plan;
- (b) the Section 88B instrument; and
- (c) any other dealing or document or instrument under the Strata Legislation lodged with or relevant to the Final Plan including the By-Laws or amended By-Laws.

Requirement means any requirement, direction, order or authorisation of the Vendor's financier, any Authority (including in or part of the Development Approval or any other Approval), Service Provider or Court.

Sales Agent means the Vendor's agent stated on the front page of this Contract.

Scheme Date means 31 December 2018 or such later date as may arise in accordance with clauses 37.2 and 37.3.

Section 88B Instrument means an instrument under section 88B of the *Conveyancing Act 1919* (Cth).

Services means water reticulation or supply, gas reticulation or supply, electricity supply, air-conditioning, telecommunication services, computer data or television or broadcasting or broadband services, sewerage systems, drainage, systems for removal or disposal of garbage or waste or any other system or service designed to improve the amenity or enhance the enjoyment of lots or Common Property in the Strata Scheme.

Significant Change to the Lot means:

- (a) a reduction of the area of the Lot by more than 5%; or
- (b) an alteration to the Lot made under clause 39.2(a), 39.2(c), 39.2(h), or 39.2(m) which, determined objectively:
 - (i) materially and significantly hinders or impedes the normal use of the Lot (other than a By-Law which is made in accordance with clause 39.3); or
 - (ii) constitutes a material, adverse and significant reconfiguration of the as built floor plan for the Lot, as compared with the Draft Plan; or
 - (iii) constitutes a material, adverse and significant relocation of the Lot within the Strata Scheme as compared with the Draft Plan; or
- (c) if an Additional Affectation (other than a By-Law which is made in accordance with clause 30.3) created, entered into or amended under clause 39 materially and significantly hinders or impedes the normal use of the Lot, determined objectively.

Strata Legislation means each of the:

- (a) Strata Schemes (Freehold Development) Act 1973 (NSW);
- (b) Strata Schemes (Leasehold Development) Act 1986 (NSW);
- (c) Strata Schemes Management Act 1996 (NSW);

and regulations and subordinate legislation made under or pursuant to any of those Acts, in each case as may be applicable and in force in the circumstances, and includes, when in force:

- (d) Strata Schemes Development Act 2015 (NSW); and
- (e) Strata Schemes Management Act 2015 (NSW).

Strata Management Act means the *Strata Schemes Management Act 1996* (NSW) and, when applicable the *Strata Schemes Management Act 2015* (NSW) and the regulations made under or pursuant to those Acts.

Strata Scheme means the proposed strata scheme (as defined in the Strata Management Act) of which the Lot forms part, to be created on Registration of the Final Plan.

Subdivision Certificate means a certificate under section 109C(1)(d) of the EPA.

Title means the folio identifiers set out on the front page of this Contract which are the subject of the Draft Plan, Strata Schemes or the Project.

Treasurer means the Treasurer or the Authority empowered to administer the FAT Act from time to time.

Vendor's Consultant means any consultant (at the Vendor's election) appointed by the Vendor to assist in carrying out the development of the Project.

2 Interpretation

In this Contract the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Contract;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words „such as“, „including“, „particularly“ and similar expressions are not used as nor are intended to be interpreted as words of limitation;
- (f) if there is a conflict between these additional clauses and the terms of the Printed Form, these additional clauses prevail;
- (g) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Contract;
 - (vi) this Contract includes all schedules and attachments to it;
 - (vii) a Law is a reference to that Law as amended, consolidated or replaced;
 - (viii) an agreement other than this Contract includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
 - (ix) a monetary amount is in Australian dollars;
- (h) when the day on which something must be done is not a business day, that thing must be done on the following business day.
- (i) in determining the time of day where relevant to this Contract, the relevant time of day is:

- (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this Contract, the time of day in the place where the party required to perform an obligation is located.
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Contract or any part of it;
- (k) rights under this Contract which can apply after completion do not merge on completion; and
- (l) where more than one person constitutes the Purchaser under this Contract then each of those persons will be liable jointly and severally to the Vendor for the obligations or any liability of the Purchaser.

Schedule 2 — List of attachments

A copy of each of the following documents is attached – copies of some documents are required by *legislation*. This List may include documents referred to in the List of Documents set out on page 2 of the Printed Form but to the extent additional documents are listed, then those documents are supplemental to the List of Documents and are incorporated in any reference to the List of Documents or list of attachments and each of the items in this List of Attachments is an attachment to this Contract and is disclosed.

Document	Annexure
Land	Annexure A
Prescribed Documents – Title searches, plans, dealings, <i>section 149(2) and (5) of the Environmental Planning and Assessment Act 1979</i> , sewer service diagram	Annexure B
Draft Plan	Annexure C
Fixtures and Finishes	Annexure D
Fixtures Upgrade Form – not applicable	Annexure E
Development Approval	Annexure F
Power Upgrade Form	Annexure G
Agreement for Lease	Annexure H

Schedule 3 Deed of Guarantee and Indemnity

This deed of guarantee and indemnity is dated the _____ day of _____ 2017

The Parties

This Deed of guarantee and indemnity is entered into between:

..... of
(print name)

..... (*first guarantor*); and
(print address)

..... of
(print name)

..... (*second guarantor*)
(print address)

(*guarantors*); and

Bottlebrush Projects Pty Ltd (Vendor)

1 Guarantee and Indemnity

In consideration of the *Vendor* selling to the *Purchaser* at their request the *Lot* for the *Purchase Price* and upon the terms and conditions of *the Contract* for themselves and their respective executors and administrators, the *guarantors*, jointly and severally:

- (a) guarantee to the *Vendor* the *guaranteed obligations*; and
- (b) as a separate and additional obligation, indemnify the *Vendor* against:
 - (i) all liability, loss, damage, cost and expense which the *Vendor* may sustain or incur; and
 - (ii) all actions, proceedings, claims or demands made against the *Vendor*,

as a result of any default by the *Purchaser* in the payment, performance and observance of the *guaranteed obligations* or *the Contract* or any part of it being or becoming illegal, void, voidable or unenforceable.

3 Nature of the Guarantee and Indemnity

The *guarantors* acknowledge and agree that:

- (a) their obligations under this guarantee and indemnity are continuous, absolute, unconditional and irrevocable; and
- (b) this guarantee and indemnity exists separate from and independent of *the Contract* and is enforceable in its own right in accordance with its terms irrespective of whether or not *the Contract* is terminated for any reason and irrespective of whether any of the circumstances contemplated under paragraph (c) apply; and

- (c) their liability under this guarantee and indemnity extends to and will not be affected by any circumstance, act, omission or thing which, but for this provision, might otherwise affect it at law or in equity including:
 - (ii) the delay or failure by the *Vendor* to exercise any of its rights, powers or remedies conferred on it by law or *the Contract*;
 - (iii) the grant to the *Purchaser* of any time, waiver or other indulgences or concession;
 - (iv) the occurrence of any other circumstance, act, omission or thing, regardless of whether we, the *guarantors*, are aware of or consent to any of these matters;
 - (v) the inability of the *Vendor* to enforce any provisions of *the Contract* for any reason including invalidity or unenforceability; or
 - (vi) the termination or rescission of *the Contract*; and
- (d) each *guarantor* has obtained independent legal advice in respect of its obligations under this guarantee and indemnity or has had the opportunity to obtain independent legal advice and has elected not to do so; and
- (e) the entry into *the Contract* by the *Vendor* with the *Purchaser*, at the request of the *guarantors*, benefits the *guarantors*; and
- (f) If the *Vendor's* interest in *the Contract* is assigned, novated or transferred under Clause 58 of *the Contract* prior to Completion, the *Vendor* may require that its benefit as to the *guaranteed obligations* is similarly assigned, novated or transferred to the respective assignee, transferee or replacement vendor and the *guarantors* will comply with such requirement at their cost.

4 **Payment to the Vendor**

The *guarantors* will pay all money under this guarantee and indemnity on demand to, or as directed by, the *Vendor*.

5 **Dictionary**

In this deed, a term in italics is a defined term and has the following meaning:

guaranteed obligations means the due and punctual payment, performance and observance by the *Purchaser* of all of its liabilities and obligations to the *Vendor* under or in connection with *the Contract* whether monetary or non-monetary, present or future, actual or contingent;

guarantors means the person(s) identified as such in this deed;

Lot has the same meaning as in the *Contract*;

Purchase Price means the price as shown on the front page of *the Contract*;

Purchaser means the Purchaser of the *Lot* under *the Contract*;

the Contract means the Contract for Sale of Land between the *Vendor* and *Purchaser*, dated on or about the date of this deed; and

Vendor means the person being identified as such in this deed, being the Vendor under *the Contract*.

EXECUTED AS A DEED POLL on the

day of

2017

SIGNED, SEALED AND DELIVERED by
the **FIRST GUARANTOR** in the presence of:

Signature of witness

Signature

Name of witness (print)

Address of witness (print)

SIGNED, SEALED AND DELIVERED by
the **SECOND**
GUARANTOR in the
presence of:

Signature of witness

Signature

Name of witness (print)

Address of witness (print)

Annexure A Land

Land Street Address	Folio Identifier
13 Warehouse Place, Berkeley NSW 2506	14/1188144

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 14/1188144

SEARCH DATE	TIME	EDITION NO	DATE
-----	----	-----	----
4/8/2017	4:08 PM	3	6/4/2017

LAND

LOT 14 IN DEPOSITED PLAN 1188144
AT BERKELEY
LOCAL GOVERNMENT AREA WOLLONGONG
PARISH OF WOLLONGONG COUNTY OF CAMDEN
TITLE DIAGRAM DP1188144

FIRST SCHEDULE

BOTTLEBRUSH PROJECTS PTY LIMITED
BERKELEY STORAGE PTY LTD
AS TENANTS IN COMMON IN EQUAL SHARES (T AM288889)

SECOND SCHEDULE (15 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 J517395 EASEMENT FOR PIPELINE APPURTENANT TO THE LAND ABOVE DESCRIBED AFFECTING THE PIECE OF LAND SHOWN IN DP528932
- 3 L284446 COVENANT
- 4 DP1188144 EASEMENT TO DRAIN WATER 1.5 METRE(S) WIDE AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 5 DP1188144 EASEMENT TO DRAIN WATER 1.5 METRE(S) WIDE APPURTENANT TO THE LAND ABOVE DESCRIBED
- 6 DP1188144 EASEMENT FOR DRAINAGE AND DETENTION STORAGE VARIABLE WIDTH APPURTENANT TO THE LAND ABOVE DESCRIBED
- 7 DP1188144 EASEMENT FOR PADMOUNT SUBSTATION 2.75 METRE(S) WIDE AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 8 DP1188144 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND NUMBERED (4) IN THE S.88B INSTRUMENT AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 9 DP1188144 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND NUMBERED (6) IN THE S.88B INSTRUMENT
- 10 DP1188144 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND NUMBERED (7) IN THE S.88B INSTRUMENT
- 11 DP1188144 POSITIVE COVENANT REFERRED TO AND NUMBERED (8) IN THE S.88B INSTRUMENT
- 12 DP1188144 POSITIVE COVENANT REFERRED TO AND NUMBERED (9) IN THE S.88B INSTRUMENT
- 13 DP1188144 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND NUMBERED (10) IN THE S.88B INSTRUMENT
- 14 DP1188144 DRAINAGE EASEMENT VARIABLE WIDTH APPURTENANT TO THE

END OF PAGE 1 - CONTINUED OVER

FOLIO: 14/1188144

PAGE 2

SECOND SCHEDULE (15 NOTIFICATIONS) (CONTINUED)

LAND ABOVE DESCRIBED
15 DP1188144 RESTRICTION(S) ON THE USE OF LAND REFERRED TO AND
NUMBERED (14) IN THE S.88B INSTRUMENT

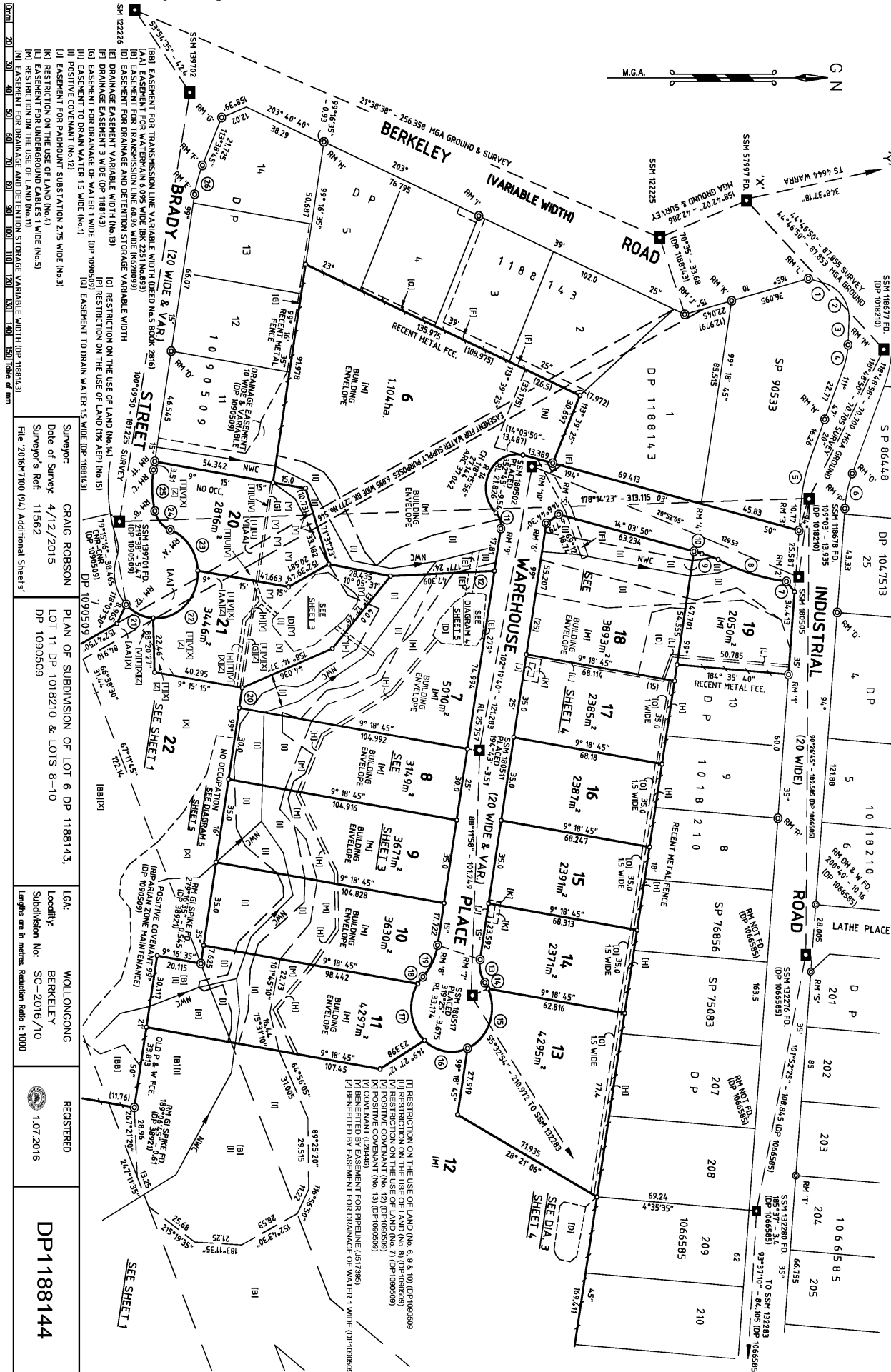
NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION



Scale of 1:1000

Surveyor: CRAIG ROBSON
 Date of Survey: 4/12/2015
 Surveyor's Ref: 11562
 File: 2016/100 (24) Additional Sheets

PLAN OF SUBDIVISION OF LOT 6 DP 1188143,
 LOT 11 DP 1018210 & LOTS 8-10
 DP 1090509

Local: WOLLONGONG
 Locality: BERKELEY
 Subdivision No: SC-2016/10

REGISTERED
 1.07.2016
 DP1188144

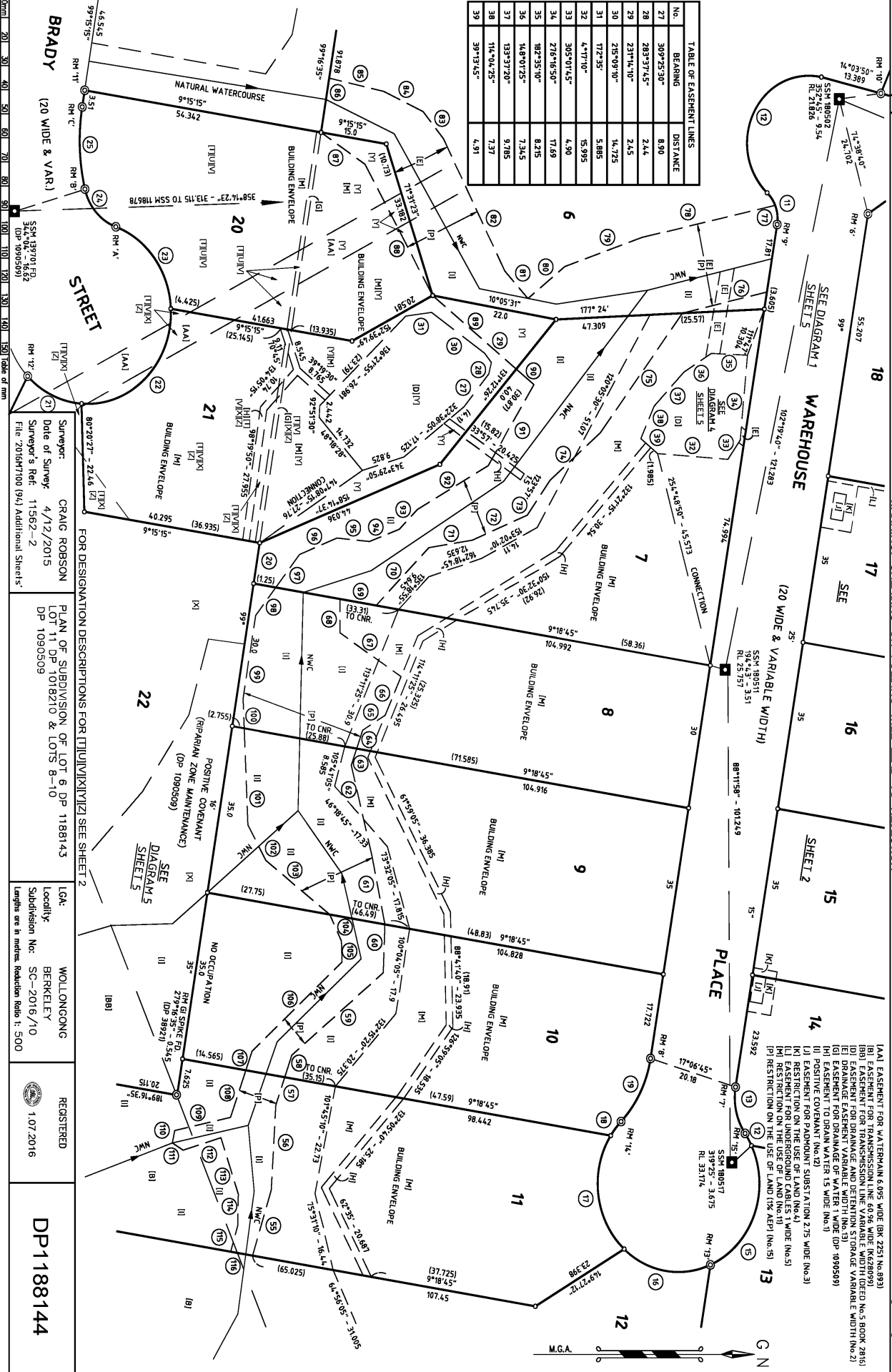
- (I) EASEMENT FOR TRANSMISSION LINE VARIABLE WIDTH (DEED No. 5 Book 2816)
- (IA) EASEMENT FOR WATERMAIN 6.095 WIDE (BK 2251 No.839)
- (IB) EASEMENT FOR TRANSMISSION LINE 60.96 WIDE (K6280091)
- (IC) EASEMENT FOR DRAINAGE AND DETENTION STORAGE VARIABLE WIDTH
- (ID) EASEMENT FOR TRANSMISSION LINE VARIABLE WIDTH
- (IE) DRAINAGE EASEMENT VARIABLE WIDTH (No.31)
- (IF) DRAINAGE EASEMENT VARIABLE WIDTH (No.31)
- (IG) RESTRICTION ON THE USE OF LAND (No.14)
- (IH) RESTRICTION ON THE USE OF LAND (No.14)
- (II) EASEMENT TO DRAIN WATER 1.5 WIDE (No.1)
- (III) POSITIVE COVENANT (No.2)
- (IV) EASEMENT FOR PADMOUNT SUBSTITUTION 2.75 WIDE (No.3)
- (V) RESTRICTION ON THE USE OF LAND (No.6)
- (VI) EASEMENT FOR UNDERGROUND CABLES 1 WIDE (No.5)
- (VII) RESTRICTION ON THE USE OF LAND (No.17)
- (VIII) EASEMENT FOR DRAINAGE AND DETENTION STORAGE VARIABLE WIDTH (DP 1188143)

Lot lengths are in metres. Reduction Ratio: 1:1000

PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REFLECTION

No.	BEARING	DISTANCE
27	309°25'30"	8.90
28	283°37'45"	2.44
29	231°14'00"	2.45
30	215°09'10"	14.725
31	112°35'	5.885
32	4°17'10"	15.995
33	305°01'45"	4.90
34	276°16'50"	17.69
35	182°35'10"	8.215
36	148°01'25"	7.345
37	133°31'20"	9.785
38	114°04'25"	7.37
39	39°13'45"	4.91

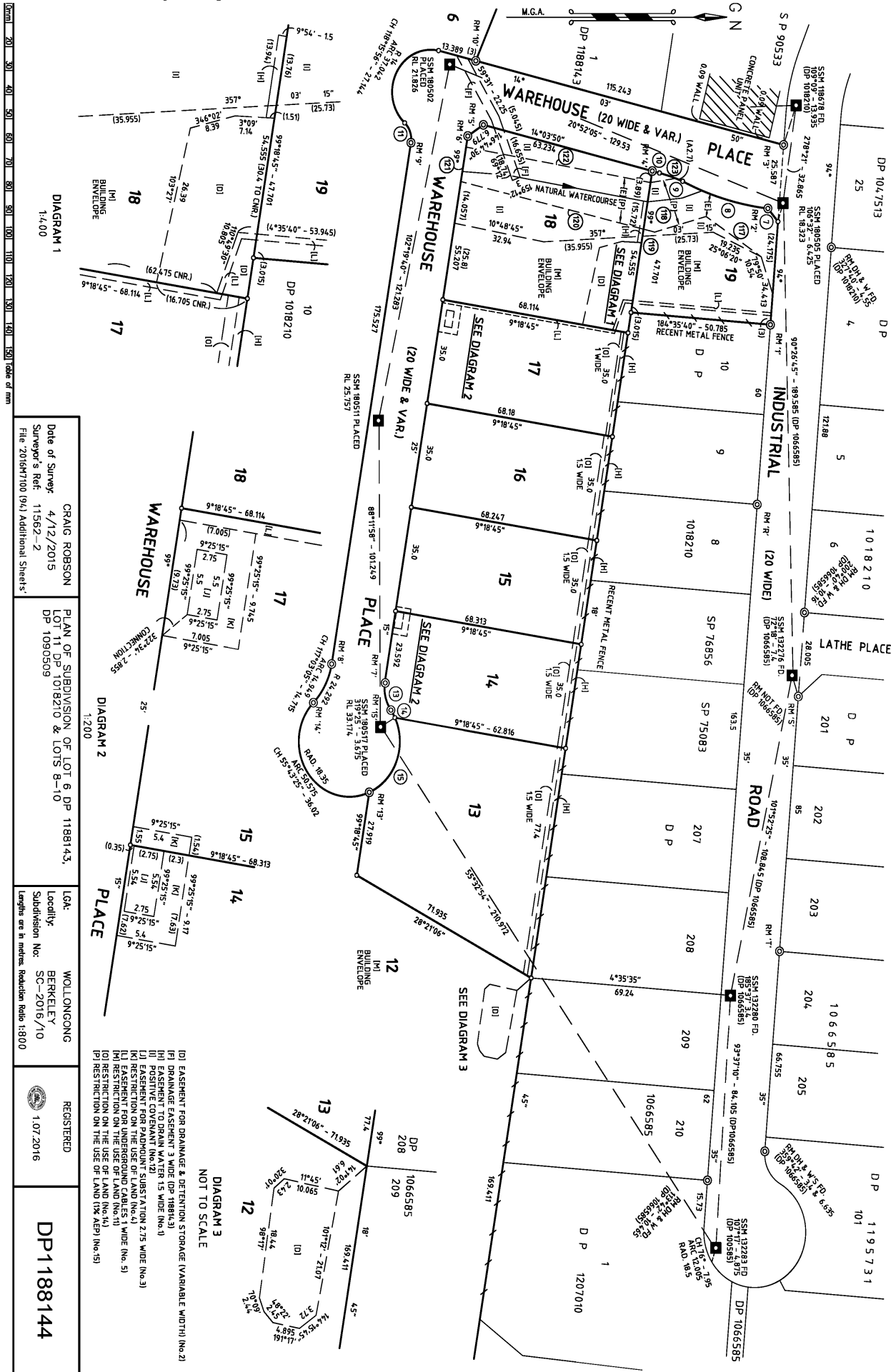


FOR DESIGNATION DESCRIPTIONS FOR [TUV]V[XI]V[ZI] SEE SHEET 2
 SURVEYOR: CRAIG ROBSON
 DATE OF SURVEY: 4/12/2015
 SURVEYOR'S REF: 11562-2
 FILE: 2016R1700 (94) Additional Streets

PLAN OF SUBDIVISION OF LOT 6 DP 1188143
 LOT 11 DP 1018210 & LOTS 8-10
 DP 1090509

WOLLONGONG
 BERKELEY
 REGISTERED
 1.07.2016

DP1188144



<p>DATE OF SURVEY: 4/12/2015 SURVEYOR'S REF: 11562-2 FILE: 2016R1700 (9/1) Additional Sheets</p>	<p>CRAIG ROBSON PLAN OF SUBDIVISION OF LOT 6 DP 1188143, LOT 1 DP 1095009 DP 1095009</p>	<p>WOLLONGONG BERKELEY SC-2016/10</p>	<p>REGISTERED 1.07.2016</p>	<p>DP1188144</p>
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- LEGEND:
- (D) EASEMENT FOR DRAINAGE & DETENTION STORAGE (VARIABLE WIDTH) (No.2)
 - (E) DRAINAGE EASEMENT 3 METER (DP 1188143)
 - (F) EASEMENT TO DRAIN WATER 15 METER (No.1)
 - (G) POSITIVE COVENANT (No.2)
 - (H) EASEMENT FOR PADMOUNT SUBSTATION 2.75 METER (No.3)
 - (I) RESTRICTION ON THE USE OF LAND (No.4)
 - (J) RESTRICTION ON THE USE OF LAND (No.5)
 - (K) RESTRICTION ON THE USE OF LAND (No.6)
 - (L) RESTRICTION ON THE USE OF LAND (No.7)
 - (M) RESTRICTION ON THE USE OF LAND (No.8)
 - (N) RESTRICTION ON THE USE OF LAND (No.9)
 - (O) RESTRICTION ON THE USE OF LAND (No.10)
 - (P) RESTRICTION ON THE USE OF LAND (No.11)
 - (Q) RESTRICTION ON THE USE OF LAND (No.12)
 - (R) RESTRICTION ON THE USE OF LAND (No.13)
 - (S) RESTRICTION ON THE USE OF LAND (No.14)
 - (T) RESTRICTION ON THE USE OF LAND (No.15)

DIAGRAM 1
1:4.00

DIAGRAM 2
1:200

DIAGRAM 3
NOT TO SCALE

PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

No.	BEARING	DISTANCE	ARC	RADIUS
1	15° 01'	7.98		
2	CH 53°45'	18.05	20.575	15
3	92° 28'	10.07	10.15	30
4	CH 102° 28'	20.92	15.005	70
5	CH 103° 12'35"	40.93	13.005	50
6	CH 98° 37'27"	5.68	32.27	32.27
7	CH 44° 47'37"	10.258	10.258	65.05
8	CH 103° 13'	10.258	10.258	65.05
9	CH 103° 13'	10.258	10.258	65.05
10	CH 103° 13'	10.258	10.258	65.05
11	CH 103° 13'	10.258	10.258	65.05
12	CH 103° 13'	10.258	10.258	65.05
13	CH 103° 13'	10.258	10.258	65.05
14	CH 103° 13'	10.258	10.258	65.05
15	CH 103° 13'	10.258	10.258	65.05
16	CH 103° 13'	10.258	10.258	65.05
17	CH 103° 13'	10.258	10.258	65.05
18	CH 103° 13'	10.258	10.258	65.05
19	CH 103° 13'	10.258	10.258	65.05
20	CH 103° 13'	10.258	10.258	65.05
21	CH 103° 13'	10.258	10.258	65.05
22	CH 103° 13'	10.258	10.258	65.05
23	CH 103° 13'	10.258	10.258	65.05
24	CH 103° 13'	10.258	10.258	65.05
25	CH 103° 13'	10.258	10.258	65.05
26	CH 103° 13'	10.258	10.258	65.05

No.	BEARING	DISTANCE
40	7°06'20"	16.32
41	285°41'05"	19.045
42	303°29'10"	16.81
43	313°08'20"	16.81
44	323°47'40"	16.81
45	301°59'45"	6.87
46	274°31'55"	6.945
47	228°32'20"	7.245
48	268°47'30"	15.42
49	287°33'55"	14.48
50	314°43'30"	17.575
51	306°51'55"	13.87
52	274°46'05"	13.485
53	160°40'30"	11.525
54	230°49'25"	11.595

MARK	REFERENCE	ORIGIN
RM A	334°45'20" - 4.0 & 22.555	D.P. 1095039
RM B	345°46' - 3.45 & 17.445	D.P. 1095039
RM C	9°15'55" - 3.865 & 16.61	D.P. 1095039
RM D	9°15'55" - 3.6 & 16.6	D.P. 1095039
RM E	9°15'55" - 3.385 & 16.56	D.P. 1095039
RM F	23°38'45" - 4.425 & 16.605	D.P. 1095039
RM G	29°06'20" - 3.285 & 16.83	D.P. 1095039
RM H	159°48'20" - 25.045	D.P. 1095039
RM I	113°17' - 4.575	D.P. 1095039
RM J	94°25' - 1.05	D.P. 1095039
RM K	86°41' - 1.03	D.P. 1095039
RM L	133°19'25" - 76.385	D.P. 1095039
RM M	205°20' - 3.455	D.P. 1095039
RM N	22°29' - 3.49	D.P. 1095039
RM O	278°14' - 3.555	D.P. 1095039
RM P	22°29' - 3.49	D.P. 1095039
RM Q	42°43' - 4.86	D.P. 1095039
RM R	327°40' - 4.55	D.P. 1095039
RM S	146°02' - 4.855	D.P. 1095039
RM T	347°00' - 3.54 & 17.375	D.P. 1066595
RM U	49°06' - 4.755 & 23.235	D.P. 1066595
RM V	180°21' - 3.365	PLATED
RM W	105°12' - 3.375	PLATED
RM X	202°08' - 3.375	PLATED
RM Y	97°38' - 3.375	PLATED
RM Z	118°02' - 3.36 & 10.539" - 16.505	PLATED
RM 1	340°14' - 3.385 & 3°16' - 16.81	PLATED
RM 2	4°02' - 4.0	PLATED
RM 3	192°35' - 3.355	PLATED
RM 4	189°25'15" - 3.58 & 16.68	PLATED
RM 5	274°10' - 3.305	PLATED
RM 6	352°31' - 3.48	PLATED
RM 7	148°11' - 3.51	PLATED
RM 8	45°21' - 3.68	PLATED
RM 9	179°13' - 4.33	PLATED
RM 10	340°21' - 3.45	PLATED

No.	BEARING	DISTANCE	ARC	RADIUS
1	15° 01'	7.98		
2	CH 53°45'	18.05	20.575	15
3	92° 28'	10.07	10.15	30
4	CH 102° 28'	20.92	15.005	70
5	CH 103° 12'35"	40.93	13.005	50
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16	CH 103° 13'	10.258	10.258	65.05
17	CH 103° 13'	10.258	10.258	65.05
18	CH 103° 13'	10.258	10.258	65.05
19	CH 103° 13'	10.258	10.258	65.05
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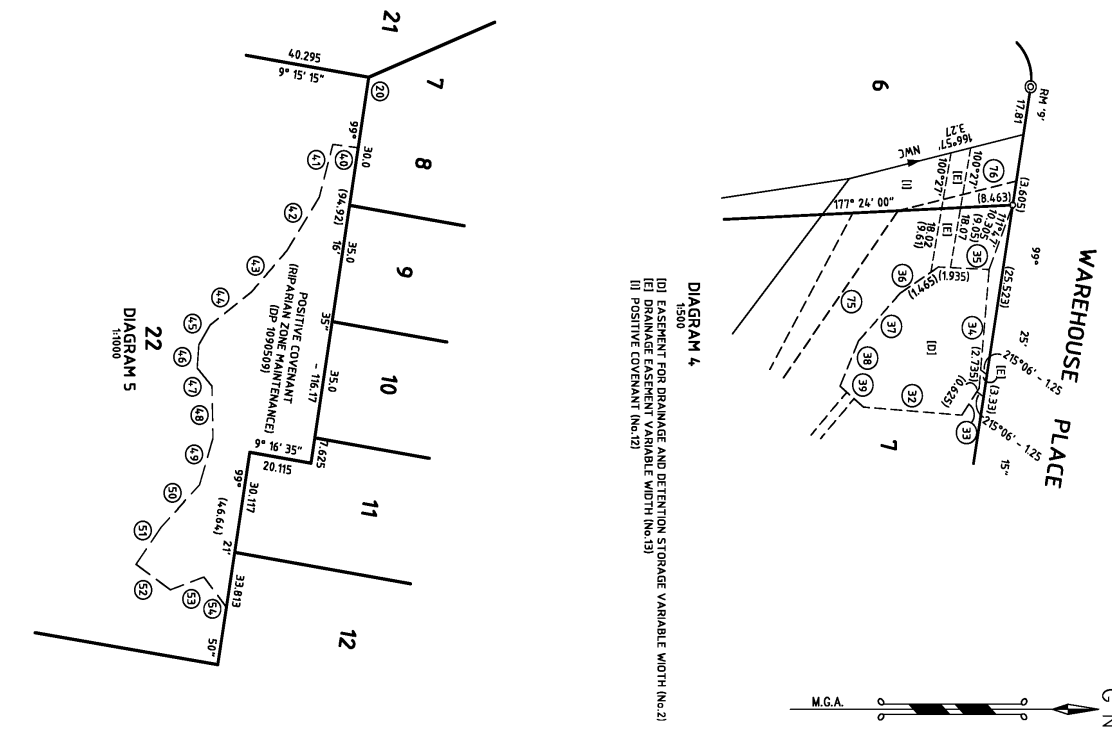
Surveyor: CRAIG ROBSON
 Date of Survey: 4/12/2015
 Surveyor's Ref: 11562-2
 File: 201617100 (94) Additional Sheets

PLAN OF SUBDIVISION OF LOT 6 DP 1188143,
 LOT 11 DP 1095039 & LOTS 8-10
 DP 1095039

WOLLONGONG
 BERKELEY
 SC-2016/10

REGISTERED
 1.07.2016


DP1188144



ePlan

PLAN FORM 6 (2012)

WARNING: Creasing or folding will lead to rejection

DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 1 of 3 sheets
<p style="text-align: right;">Office Use Only</p> <p>Registered:  1.07.2016</p> <p>Title System: TORRENS</p> <p>Purpose: SUBDIVISION</p>	<p style="text-align: right;">Office Use Only</p> <h1 style="text-align: center;">DP1188144</h1>	
<p>PLAN OF SUBDIVISION OF LOT 6 DP 1188143, LOT 11 DP 1018210 & LOTS 8-10 DP 1090509</p>	<p>LGA: WOLLONGONG</p> <p>Locality: BERKELEY</p> <p>Parish: WOLLONGONG</p> <p>County: CAMDEN</p>	
<p style="text-align: center;">Crown Lands NSW/Western Lands Office Approval</p> <p>I, (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given.</p> <p>Signature:</p> <p>Date:</p> <p>File Number:</p> <p>Office:</p>	<p style="text-align: center;">Survey Certificate</p> <p>I, CRAIG ROBSON of C. ROBSON & ASSOCIATES PTY LTD LEVEL 6, 85-87 SMITH STREET WOLLONGONG 2500 a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i>, certify that:</p> <p>*(a) The land shown in the plan was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>, is accurate and the survey was completed on 4-12-2015</p> <p>*(b) The part of the land shown in the plan (being/excluding A lots 5 to 11 & lots 13 to 22) was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>, is accurate and the survey was completed on 4-12-2015. The part not surveyed was compiled in accordance with that Regulation.</p> <p>*(c) The land shown in the plan was compiled in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>.</p> <p>Signature: <u>C. Robson</u> Dated: 10-12-2015</p> <p>Surveyor ID: 2282</p> <p>Datum Line: 'X' - 'Y'</p> <p>Type: *Urban/*Rural</p> <p>The terrain is *Level-Undulating/*Sloped/Mountainous</p> <p><small>* Strike through if inapplicable. *Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.</small></p>	
<p style="text-align: center;">Subdivision Certificate</p> <p>I, <u>HEKS RADICEVIC</u> *Authorised Person/*General Manager/*Accredited Certifier, certify that the provisions of s.109J of the <i>Environmental Planning and Assessment Act 1979</i> have been satisfied in relation to the proposed subdivision, new road or reserve set out herein.</p> <p>Signature: <u>A. Radic</u></p> <p>Accreditation number:</p> <p>Consent Authority: <u>Wollongong City Council</u></p> <p>Date of Endorsement: <u>20/5/2016</u></p> <p>Subdivision Certificate no: <u>SC-2016/10</u></p> <p>File no: <u>DA-2005/2068/C</u></p> <p><small>* Strike through if inapplicable.</small></p>	<p>Statements of intentions to dedicate public roads, public reserves and drainage reserves.</p> <p>IT IS INTENDED TO DEDICATE WAREHOUSE PLACE TO THE PUBLIC AS PUBLIC ROAD SUBJECT TO DRAINAGE EASEMENT 3 WIDE (DP 1188143)</p>	
<p>Plans used in the preparation of survey/compilation</p> <p>DP 1188143 DP 1018210 DP 1090509 DP 1066585 DP 529932</p> <p style="text-align: center;">If space is insufficient continue on PLAN FORM 6A</p>	<p>Signatures, seals and Section 88B Statements should appear on PLAN FORM 6A</p>	
<p>Signatures, seals and Section 88B Statements should appear on PLAN FORM 6A</p>	<p>Surveyor's Reference: 11562-2 File '2016M7100 (94) Additional Sheets'</p>	

PLAN FORM 6A (2012)

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DEPOSITED PLAN ADMINISTRATION SHEET

Sheet 2 of 3 sheets

Registered:  1.07.2016

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R PLAN OF SUBDIVISION OF LOT 6 DP 1188143,
 LOT 11 DP 1018210 & LOTS 8-10 DP 1090509

DP1188144

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

- A schedule of lots and addresses - See 60(c) SSI Regulation 2012
- Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919
- Signatures and seals - see 195D Conveyancing Act 1919
- Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.

Subdivision Certificate No: SC-2016/10

Date of Endorsement: 20/5/2016

PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919, IT IS INTENDED TO CREATE:

1. EASEMENT TO DRAIN WATER 1.5 WIDE [H]
2. EASEMENT FOR DRAINAGE AND DETENTION STORAGE VARIABLE WIDTH [D]
3. EASEMENT FOR PADMOUNT SUBSTATION 2.75 WIDE [J]
4. RESTRICTION ON THE USE OF LAND [K]
5. EASEMENT FOR UNDERGROUND CABLES 1 WIDE [L]
6. RESTRICTION ON THE USE OF LAND
7. RESTRICTION ON THE USE OF LAND
8. POSITIVE COVENANT
9. POSITIVE COVENANT
10. RESTRICTION ON THE USE OF LAND
11. RESTRICTION ON THE USE OF LAND
12. POSITIVE COVENANT [I]
13. DRAINAGE EASEMENT VARIABLE WIDTH [E]
14. RESTRICTION ON THE USE OF LAND [O]
15. RESTRICTION ON THE USE OF LAND [P]

~~IT IS INTENDED TO DEDICATE WAREHOUSE PLACE TO THE PUBLIC AS PUBLIC ROAD
 SUBJECT TO DRAINAGE EASEMENT 3 WIDE (DP 1188143)~~

LOT	STREET NUMBER	STREET NAME	STREET TYPE	LOCALITY
6	8	WAREHOUSE	PLACE	BERKELEY
7	14	WAREHOUSE	PLACE	BERKELEY
8	18	WAREHOUSE	PLACE	BERKELEY
9	20	WAREHOUSE	PLACE	BERKELEY
10	22	WAREHOUSE	PLACE	BERKELEY
11	24	WAREHOUSE	PLACE	BERKELEY
12	26	WAREHOUSE	PLACE	BERKELEY
13	15	WAREHOUSE	PLACE	BERKELEY
14	13	WAREHOUSE	PLACE	BERKELEY
15	11	WAREHOUSE	PLACE	BERKELEY
16	9	WAREHOUSE	PLACE	BERKELEY
17	7	WAREHOUSE	PLACE	BERKELEY
18	3	WAREHOUSE	PLACE	BERKELEY
19	9	INDUSTRIAL	ROAD	BERKELEY
20	10	BRADY	STREET	BERKELEY
21	12	BRADY	STREET	BERKELEY
22	15	BRADY	STREET	BERKELEY

If space is insufficient use additional annexure sheet

Surveyor's Reference: 11562-2 File '2016M7100 (94) Additional Sheets'

PLAN FORM 6A (2012)

WARNING: Creasing or folding will lead to rejection

ePlan

DEPOSITED PLAN ADMINISTRATION SHEET

Sheet 3 of 3 sheets

Registered:



1.07.2016

Office Use Only

Office Use Only

R. PLAN OF SUBDIVISION OF LOT 6 DP 1188143,
LOT 11 DP 1018210 & LOTS 8-10 DP 1090509


DP1188144


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

- A schedule of lots and addresses - See 60(c) SSI Regulation 2012
- Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919
- Signatures and seals - see 195D Conveyancing Act 1919
- Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.

Subdivision Certificate No: SC-2016/10

Date of Endorsement: 20/5/2016


DIRECTOR
GARRY McCRAITH
(PRINT NAME IN CAPITALS)


DIRECTOR
GLEN MURRELL
(PRINT NAME IN CAPITALS)

MURBOL PTY LIMITED
ACN 119 719 032

If space is insufficient use additional annexure sheet

Surveyor's Reference: 11562-2 File '2016M7100 (94) Additional Sheets'

Instrument setting out terms of easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88b Conveyancing Act 1919.

(Sheet 1 of 18 Sheets)

Plan: DP1188144

Plan of Subdivision of Lot 6 DP1188143, Lot 11 DP1018210 covered by Subdivision Certificate No. SC-2016/10 & Lots 8-10 DP1090509

Full name and address of the owner of the land:

Murbol Pty Ltd
 19 Flinders Street
 Wollongong 2500

Part 1 (Creation)

Number of item shown in the intention panel on the plan.	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1	Easement to Drain Water 1.5 Wide [H]	7 8 9 10 11 18 17 16 15 14 13 21	8,9,10,11,12,20,21,22 9,10,11,12, 10,11,12 11,12 12 12,13,14,15,16,17 12,13,14,15,16 12,13,14,15 12,13,14 12,13 12 20,22
2	Easement for Drainage and Detention Storage Variable Width [D]	7 12 18 21	8,9,10,11,12 Wollongong City Council Wollongong City Council 12,13,14,15,16,17 Wollongong City Council 20,22 Wollongong City Council
3	Easement for Padmount Substation 2.75 Wide [J]	14,17	Endeavour Energy
4	Restriction on the Use of Land [K]	Part 14,Part 15,Part 17	Endeavour Energy

Authorised Person
 Wollongong City Council *A. Poole*

GARRY M^CGRATH

(Sheet 2 of 18 Sheets)

R

Plan: **DP1188144**

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP 1018210 &
 covered by Subdivision Certificate LOTS 8-10 DP 1090509
 No. SC-2016/10

Part 1 (Creation)

Number of item shown in the intention panel on the plan.	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
5	Easement for Underground Cables 1 Wide [L]	17,18,19	Endeavour Energy
6	Restriction on the Use of Land	Lots 6 to 22 Inclusive	Wollongong City Council
7	Restriction on the Use of Land	Lots 6 to 22 Inclusive	Wollongong City Council
8	Positive Covenant	Lots 6 to 22 Inclusive	Wollongong City Council
9	Positive Covenant	Lots 6 to 22 Inclusive	Wollongong City Council
10	Restriction on the Use of Land	Each Lot	Every other lot
11	Restriction on the Use of Land [M]	6,7,8,9,10,11,12,18,19	Wollongong City Council
12	Positive Covenant	6,7,8,9,10,11,12,18,19	Wollongong City Council

Authorised Person
 Wollongong City Council *A. De...*

Garry McGrath
 GARRY McGRATH

Plan: DP1188144

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP 1018210 covered by Subdivision Certificate E, LOTS 8-10 DP1090509 No. SC-2016/10

Part 1 (Creation)

Number of item shown in the intention panel on the plan.	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
13	Drainage Easement Variable Width [E]	6 7 18 19 20 21	7,8,9,10,11,12,20,21,22 Wollongong City Council 8,9,10,11,12 Wollongong City Council 12,13,14,15,16,17, Wollongong City Council 12,13,14,15,16,17,18, Wollongong City Council 21,22 22
14	Restriction on the Use of Land [O]	13,14,15,16,17	Wollongong City Council
15	Restriction on the Use of Land [P]	6,7,8,9,10,11, 18,19,20,21	Wollongong City Council

Authorised Person
 Wollongong City Council *A. P. ...*

Garry McGrath
 GARRY MCGRATH

Plan: **DP1188144**

(Sheet 4 of 18 Sheets)

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP1018210
covered by Subdivision Certificate & LOTS 8-10 DP 1090509
No. SC - 2016/10

R

Part 2 (Terms)

1. Terms of Easement to Drain Water 1.5 Wide numbered 1 in the Plan.

The terms set out in Part 3 of Schedule 8 of the Conveyancing Act 1919 (NSW)

Name of body empowered to release vary or modify the Terms of Easement to Drain Water 1.5 Wide numbered 1 in the plan.

2. Terms of Easement for Drainage and Detention Storage Variable Width numbered 2 in the Plan.

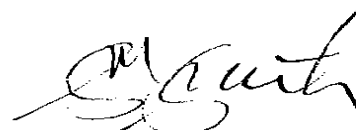
FULL AND FREE RIGHT for the proprietor of each lot benefited by this Grantee”) from time to time and at all times to drain and/or detain water in any quantities within, across and through the site of this easement (“the Site”), together with the right to use, for the purposes of this easement, any line of pipes or other drainage structure already laid within the Site, or any pipe or pipes or other structure in replacement or in substitution thereof and together with the right for the Grantee and every person authorise by the Grantee with any tools, implements, or machinery, necessary for the purpose, to enter upon the Site and such other parts

of each lot burdened by this easement as is necessary for the purpose and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, renewing or modifying the Site or any part thereof or any line of pipes or other structure therein and, for any of the aforesaid purposes, to open the soil of the Site to such extent as may be necessary provided that the Grantee and the persons authorised by it will take all reasonable precautions to ensure as little disturbance and/or damage as possible to the lot or lots burdened by this easement and will restore them as nearly as practicable to their original condition and, in relation to this easement, the registered proprietor of the Site (“The Grantor”) hereby covenants with the Grantee-

- a) That the Grantor will not permit or suffer and act deed matter or thing whereby the Site or any line of pipes or other structure therein will or shall be likely to become injured or damaged or whereby the Grantee shall be prevented from or hampered in exercising the Grantee’s rights pursuant to this easement;
- b) That the Grantor will not interfere with the drainage and/or detention of water within across and through the Site;

Authorised Person

Wollongong City CouncilA.....*Recd:*.....



GARRY M^CGRATH

(Sheet 5 of 18 Sheets)

R

Plan: **DP1188144**

Plan of Subdivision of Lot 6 DP1188143, Lot 11 DP1018210
covered by Subdivision Certificate & LOTS 8-10 DP1090509
No. *SC-2016/10*

Part 2 (Terms)

- c) That if the Grantor shall do permit or suffer and act, deed, matter or thing whereby the said line of pipes or other structure within the Site shall be injured or damaged or shall interfere with the drainage and/or detention of water within, across and through the Site the Grantor shall forthwith at the expense of the Grantor properly and substantially repair and make good all such injury or damage and shall restore the Site to enable the Grantee to exercise the Grantee's rights pursuant to this easement; and
- d) That the Grantor will not without the prior consent and approval in writing of the Grantee first had and obtained or otherwise than in strict compliance and such conditions as the Grantee may impose
- (i) erect, construct or place upon the Site, or permit to be erected constructed or placed thereon, any building or other structure whatever or any pavement; or
 - (ii) make or permit to be made any alteration to the existing surface levels of the Site by any means whatsoever.
 - (iii) remove from the Site any existing drainage structure except where such is to be replaced.

Name of body empowered to release vary or modify the Easement for Drainage and Detention Storage Variable Width numbered 2 in the plan.

Wollongong City Council

3. Terms of Easement for Padmount Substation 2.75 Wide numbered 3 in the plan.

- 1 The authority benefited may
- 1.1 install electrical equipment within the easement site,
 - 1.2 excavate the easement site to install electrical equipment,
 - 1.3 use the electrical equipment for the transmission of electricity,
 - 1.4 enter the lot burdened using the most practical route (with or without vehicles, machinery or materials) at all reasonable times (and at any time in the event of an emergency) and remain there for any reasonable time,

Authorised Person

Wollongong City Council*A.*.....

Garry McGrath
GARRY McGRATH

(Sheet 6 of 18 Sheets)

R

Plan: **DP1188144**

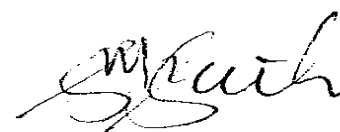
Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP1018210
covered by Subdivision Certificate & LOTS 8-10 DP1090509
No. SC-2016/10

Part 2 (Terms)

- 1.5 trim or remove any vegetation from the lot burdened that interferes with or prevents reasonable access to the easement site or the electrical equipment, and
- 1.6 remove any encroachments from the easement site and recover the costs of carrying out the removal work and repairing any damage done to the electrical equipment by the encroachment.
- 2 In exercising its rights under this easement the authority benefited will take reasonable precautions to minimise disturbance to the lot burdened and will restore the lot burdened as nearly as practicable to its original condition.
- 3 The owner agrees that it will not:
 - 3.1 install or permit to be installed any services or structure within the easement site, or
 - 3.2 alter the surface level of the easement site, or
 - 3.3 do or permit to be done anything that restricts access to the easement site by the authority benefitedwithout the written permission of the authority benefited and in accordance with such conditions as the authority benefited may reasonably impose.
- 4 The authority benefited will not be responsible if the electrical equipment Causes magnetic interference to computer equipment or electronic equipment operated within the lot burdened.
- 5
 - 5.1 **authority benefited** means Endeavour Energy and its successors (who may exercise its rights by any persons authorised by it).
 - 5.2 **easement site** means that part of the lot burdened that is affected by this easement.

Authorised Person

Wollongong City CouncilA.....*R.A.C.H.*.....



GARRY M^CGRATH

R.

(Sheet 7 of 18 Sheets)

Plan: **DP1188144**

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP1018210 covered by Subdivision Certificate E, LOTS 8-10 DP 1090509 No. SC-2016/10

Part 2 (Terms)

- 5.3 **electrical equipment** includes electrical transformer, electrical switch gear, protective housing, concrete plinth, underground electrical cable, duct, underground earthing system and ancillary equipment.
- 5.4 **install** includes construct, repair, replace, maintain, modify, use and remove.
- 5.5 **owner** means the registered proprietor of the lot burdened and its successors (including those claiming under or through the registered proprietor).
- 5.6 **services** includes overhead and underground gas, telephone, communications, water, sewerage and drainage services.
- 5.7 **structure** includes building, wall, retaining wall, carport, swimming pool, driveway, fence and fixed plant equipment; but excludes garden furniture and garden ornament.

The terms implied by s 88A(2A) And Schedule 4A Part 8 of the Conveyancing Act 1919 are excluded.

Name of body empowered to release vary or modify the terms of Easement for Padmount Station 2.75 Wide numbered 3 in the plan.


Endeavour Energy

4. Terms of Restriction on the Use of Land numbered 4 in the Plan.

Terms of Restriction on the Use of Land

- 1.0 No building shall be erected or permitted to remain within the restriction site unless:
 - 1.1 the external surface of the building erected within 1.5 metres from the substation footing has a 120/120/120 fire rating and

Authorised Person
Wollongong City CouncilA...Rad.....


GARRY MCGRATH

(Sheet 8 of 18 Sheets)

Plan: **DP1188144**

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP1018210
covered by Subdivision Certificate *Σ* LOTS 8-10 DP1090509
No. *SC-2016/10*

Part 2 (Terms)

- 1.2 the external surface of the building erected more than 1.5 metres from the Substation footing has a 60/60/60 fire rating
- And the owner provides the authority benefited with an engineer's certificate to this effect
- 2.0 The fire ratings mentioned in clause 1 must be achieved without the use of fire fighting systems such as automatic sprinklers.

3.0 Definitions

- 3.1 "120/120/120 fire rating" and "60/60/60 fire rating" means the fire resistance level of a building expressed as a grading period in minutes for structural adequacy / integrity failure / insulation failure calculated in accordance with Australian Standard 1530.
- 3.2 "building" means a substantial structure with a roof and walls and includes any projections from the external walls,
- 3.3 "erect" includes construct, install, build and maintain.
- 3.4 "restriction site" means that part of the lot burdened affected by the restriction on use of land as shown on the plan as [K].

Name of body empowered to release vary or modify the terms of Restriction on the Use of Land numbered 4 in the plan.

Endeavour Energy

Authorised Person
Wollongong City Council *A. Radt*

Garry McGrath
GARRY McGRATH

R.

(Sheet 9 of 18 Sheets)

Plan: **DP1188144**

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP 1018210
covered by Subdivision Certificate & LOTS 8-10 DP 1090509
No. *2-2016/10*

Part 2 (Terms)

5. Terms of Easement for Underground Cables 1 Wide number 5 in the plan.

- 1. The authority benefited may:
 - 1.1 install electrical equipment within the easement site,
 - 1.2 excavate the easement site to install electrical equipment,
 - 1.3 use the electrical equipment for the transmission of electricity,
 - 1.4 enter the lot burdened using the most practical route (with or without vehicles, machinery or materials) at all reasonable times (and at any time in the event of an emergency) and remain there for any reasonable time,
 - 1.5 trim or remove any vegetation from the lot burdened that interferes with or prevents reasonable access to the easement site or the electrical equipment, and
 - 1.6 remove any encroachments from the easement site and recover the costs of carrying out the removal work and repairing any damage done to the electrical equipment by the encroachment.

2 In exercising its rights under this easement the authority benefited will take reasonable precautions to minimise disturbance to the lot burdened and will restore the lot burdened as nearly as practicable to its original condition.

- 3 The owner agrees that it will not:
 - 3.1 install or permit to be installed any services or structure within the easement site, or
 - 3.2 alter the surface level of the easement site, or
 - 3.3 do or permit to be done anything that restricts access to the easement site by the authority benefited

without the written permission of the authority benefited and in accordance with such conditions as the authority benefited may reasonably impose.

4 The authority benefited will not be responsible if the electrical equipment causes magnetic interference to computer equipment or electronic equipment operated within the lot burdened,

Authorised Person
Wollongong City Council *A. Paul*

Garry McGrath
GARRY M^CGRATH

Plan: **DP1188144**

Plan of Subdivision of Lot 6 DP1188143, Lot 11 DP1018210 &
covered by Subdivision Certificate LATS 8-10 DP 1090509
No. *SC-2016/10*

Part 2 (Terms)

- 5
- 5.1 **authority benefited** means Endeavour Energy and its successors (who may exercise its rights by any persons authorised by it).
 - 5.2 **easement site** means that part of the lot burdened that is affected by this easement.
 - 5.3 **electrical equipment** includes underground electrical cable, duct, service pillar, underground earthing system and ancillary equipment.
 - 5.4 **install** includes construct, repair, replace, maintain, modify, use and remove.
 - 5.6 **owner** means the registered proprietor of the lot burdened and its successors (including those claiming under or through the registered proprietor).
 - 5.7 **services** includes overhead and underground gas, telephone, communications, water, sewerage and drainage services.
 - 5.8 **structure** includes building, wall, retaining wall, carport, swimming pool, driveway and fixed plant equipment; but excludes garden furniture and garden ornament.

The terms implied by s 88A(2A) And Schedule 4A Part 8 of the Conveyancing Act 1919 are excluded.

Name of body empowered to release vary or modify the terms of Easement for Underground Cables 1 Wide numbered 5 in the plan.

Endeavour Energy

Authorised Person

Wollongong City Council *A. Paul*



GARRY McGRATH

(Sheet 11 of 18 Sheets)

Plan: DP1188144

Plan of Subdivision of Lot 6 DP1188143, Lot 11 DP 1018210
covered by Subdivision Certificate & LOTS 8-10 DP 1090509
No. SC-2016/10

Part 2 (Terms)

6. Terms of Restriction on the Use of Land numbered 6 in the Plan.

No building or other structure to remain on the development unless an on-site detention facility has been provided in accordance with Wollongong City Council's on-site detention policy. The on-site detention facility may not be altered, modified or extinguished except with the written approval of Wollongong City Council.

Name of body empowered to release vary or modify the terms of Restriction on the Use of Land numbered 6 in the plan.

Wollongong City Council

7. Terms of Restriction on the Use of Land numbered 7 in the Plan.

No building shall be erected or permitted to remain on the lot hereby burdened which has been filled above its natural or previously excavated level unless the footings and foundations of the building have been erected in accordance with plans and specifications which have been,

- (a) prepared by a suitably qualified Structural and/or Civil Engineer; and
- (b) approved by Wollongong City Council or a Private Certifier as defined in the Environmental Planning and Assessment Act 1979 (as amended).

Name of body empowered to release vary or modify the terms of Restriction on the Use of Land numbered 7 in the plan.

Wollongong City Council

Authorised Person

Wollongong City Council *A. Rad*

Garry McGrath
GARRY MCGRATH

(Sheet 12 of 18 Sheets)

R

Plan: **DP1188144**

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP1018210
covered by Subdivision Certificate & LOTS 8-10 DP 1090509
No. SC - 2014 /10

Part 2 (Terms)

8. Terms of Positive Covenant numbered 8 in the Plan.

The owner for the time being of the lot hereby burdened shall carry out maintenance on the "on-site stormwater detention facility" at least monthly and in addition, after every storm event.

The owner for the time being of the lot hereby burdened is responsible for the maintenance over all drainage infrastructure including pipelines, pits and swales.

Name of body empowered to release vary or modify the terms of Positive Covenant numbered 8 in the plan.

Wollongong City Council

9. Terms of Positive Covenant numbered 9 in the Plan.

Each lot as part of any future development, is required to install a Control Discharge System (CDS) unit as part of the stormwater system to intercept litters, fine to medium size particulates and other contaminants from the subdivision surface runoff prior to discharge into the drainage system.

Size and capacity of the CDS units must calculate on the basis of runoff volume and velocity. Technical details of the units and drawings of the service access to the units must be provided to Council as part of any future Development Application.

Name of body empowered to release vary or modify the terms of Positive Covenant numbered 9 in the plan.

Wollongong City Council

Authorised Person

Wollongong City Council*Paul*.....


GARRY MCGRATH

(Sheet 13 of 18 Sheets)

R

Plan: **DP1188144**

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP1018210
covered by Subdivision Certificate & LOTS 8-10 DP 1090509
No. 8C - 2016/10

Part 2 (Terms)

10. Terms of Restriction on the Use of Land numbered 10 in the Plan.

Notwithstanding the Design Guidelines no fence shall be erected on any lot burdened by this restriction to divide it from any adjoining lot so long as the adjoining lot is owned by Murbol Pty Limited, their successors or assigns without their consent but such consent shall not be withheld if the fence is erected without expense to the said proprietors, their successors or assigns AND in favour of any person dealing with the registered proprietor of any lot referred to herein such consent shall be deemed to have been given in respect of every such fence for the time being erected.

Name of body empowered to release vary or modify the terms of Restriction on the Use of Land numbered 10 in the plan.

Murbol Pty Limited ACN 119 719 032

11. Terms of Restriction on the Use of Land numbered 11 in the plan.

No dwelling erected on lots 6,7,8,9,10,11,18,& 19 shall be erected or permitted to remain outside the area of the building envelope designated "Building Envelope" without the consent of Wollongong City Council.

Name of body empowered to release vary or modify the Terms of Restriction on the Use of Land numbered 11 in the plan.

Wollongong City Council

POSITIVE COVENANT

12. Terms of ~~Restriction on the Use of Land~~ numbered 12 in the plan.

The registered proprietor of the land hereby burdened must maintain the land marked [1] Positive Covenant (Riparian Zone Maintenance) in the plan to the required standard as described in the Vegetation Management Plan prepared by Taylor Brammer Landscape Architects dated 11 April 2005 referenced 04-158W and held in the offices of the Wollongong City Council.

POSITIVE COVENANT

Name of body empowered to release vary or modify the Terms of ~~Restriction on the Use of Land~~ numbered 12 in the plan.

Wollongong City Council Authorised Person

Wollongong City Council*A. Rad...*.....

Garry McGrath
GARRY McGRATH

(Sheet 14 of 18 Sheets)

R

Plan: **DP1188144**

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP 1018210
covered by Subdivision Certificate & LOTS 8-10 DP1090509
No. SC - 2016/10

Part 2 (Terms)

13. Terms of Drainage Easement Variable Width numbered 13 in the plan.

Full and free right for the authority benefited by this easement ("the Council"), and every person authorised by it, from time to time and at all times to drain water (whether rain, storm, spring, soakage or seepage water) in any quantities across and through the site of this easement ("the Site"), together with the right to use, for the purpose of the easement, any line pipes and/or open channel and /or other drainage structure already laid within the site, or any pipe or pipes or other structure in replacement or in substitution therefore and, where no such line of pipes or other structure exists, to lay, place and maintain a line of pipes of sufficient internal diameter or other structure of sufficient dimensions and together with the right for the Council and every person authorised by it, with any tools, implements, or machinery, necessary for the purpose, to enter upon the Site and such other parts of the lots burdened by the easement as is necessary for the purposes, to enter upon the Site and such other parts of the lots burdened by this easement as is necessary for the purpose and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, renewing or modifying such pipe line or other structure or any part thereof and, for any of the aforesaid purposes, to open the soil of the site to such extent as may be necessary and to remove and carry away all or any of the clay, sand, gravel, stones, earth and materials which shall be taken out of the site and/or to use all or any part thereof in the making, laying out, construction and maintenance of a drain and/or to leave the same or any part or parts thereof upon the site, and in relation to this easement, the proprietor of the site ("the Proprietor") hereby covenants with the Council -

- (a) that the Proprietor will not permit or suffer any act, deed, matter or thing whereby the said drain or line of pipes or other structure will or shall be likely to become injured or damaged or whereby the Council shall be prevented from or hampered in exercising its rights pursuant to this easement;
- (b) that the Proprietor will not interfere with the free passage and conveyance of water through the said drain or line of pipes or other structure;

Authorised Person

Wollongong City Council*A. Park*.....

Garry McGrath

GARRY MCGRATH

(Sheet 15 of 18 Sheets)

Plan: DP1188144

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP 1018210
covered by Subdivision Certificate & LOTS 8-10 DP 1090509
No. SC - 2016/10

Part 2 (Terms)

- (c) that if the Proprietor shall do permit or suffer any act, deed, matter or thing whereby the said drain or line of pipes or other structure shall be injured or damaged or shall interfere with the free passage and conveyance of water through the same the Proprietor shall forthwith at the expense of the Proprietor properly and substantially repair and made good all such injury or damage and shall restore the free passage and conveyance of water through the said line of pipes or other structure and do all things necessary or expedient for the said purposes or any of the; and
- (d) that the Proprietor will not without written consent and approval in writing of the Council first had and obtained or otherwise as the Council may impose;
- (i) erect, construct or place upon the Site, or permit to be erected constructed or placed thereon, any building or other structure whatever of any pavement; or
- (ii) make or permit to be made any alteration to the existing surface levels of the Site by any means whatsoever.

Name of body empowered to release vary or modify the Terms of Drainage Easement Variable Width numbered 13 in the plan.

Wollongong City Council

14. Terms of Restriction on the Use of Land numbered 14 in the plan.

No alterations to existing ground levels until an approved building design or approved ground level design has been approved by Wollongong City Council.


This does not preclude the placement of any building or structure or alterations to ground levels over this area once approved by Wollongong City Council.

Name of body empowered to release vary or modify the Terms of Restriction on the Use of Land numbered 14 in the plan.

Wollongong City Council

Authorised Person

Wollongong City Council*A. Road*.....


GARRY MC GRATH

(Sheet 16 of 18 Sheets)

R

Plan: DP1188144

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP1018210
covered by Subdivision Certificate & LOTS 8-10 DP1090509
No. SC - 2016 / 10

15. Terms of Restriction on the Use of Land [P] numbered 15 in the plan.

The registered proprietor shall not construct any structure, fence, pool, ancillary building, the placement of any fill and the planting of any tree in the area designated Restriction on the Use of Land denoted [P].

Lot	Minimum Floor Level AHD
6	RL 25.76
7	RL 23.46
8	Varies RL 27.0 to RL 28.83
9	RL 29.07
10	RL 30.18
11	RL 33.93
18	RL 19.56
19	RL 19.50
20	RL 25.76
21	RL 28.83

AHD denotes Australian Height Datum
All levels 0.5 metres above 1% AEP

The minimum height of all floor levels shall be determined from the construction certificate (CS-2007/31) approved drawing Reference Taylor Thomson Whitting drawing Job 051533 Drawing C504 Revision B.

Name of body empowered to release vary or modify the Terms of Restriction on the Use of Land numbered 15 in the plan.

Wollongong City Council

Authorised Person
Wollongong City CouncilA. P. C.


GARRY McGRATH

R.

Plan: **DP1188144**

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP 1018210
covered by Subdivision Certificate & LOTS 8-10 DP 1090509
No. SC-2016/10

Signed on behalf of Endeavour Energy
ABN 59 253 130 878 by its Attorney
Pursuant to Power of Attorney Book 4693
No 327 in the presence of:



Signature of witness

Deborah Pears

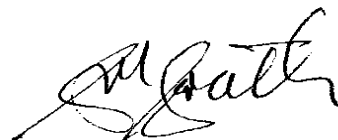
Name of witness

C/- Endeavour Energy
51 Huntingwood Drive
Huntingwood NSW 2148



Signature of Attorney

Name: Helen Smith
Position: Manager Property & Fleet
Date of execution: 21 December 2015
Reference: U150660



GARRY McGRATH

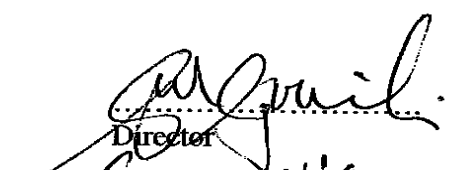


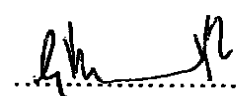
(Sheet 18 of 18 Sheets)

R.

Plan: **DP1188144**

Plan of Subdivision of Lot 6 DP1188143, LOT 11 DP 1018210
covered by Subdivision Certificate E.LOTS 8-10 DP 1090509
No. SC-2016/10


.....
Director
GARRY M'GRATH
.....
(Print Name)


.....
Director
G. MURRELL
.....
(Print Name)
GLEN MURRELL

EXECUTED BY
Murbol Pty Limited
ACN 119 719 032

IN ACCORDANCE WITH SECTION 127 (1) CORPORATIONS ACT 2001


GARRY M'GRATH

And the transferee covenant(s) with the transferor for the benefit of the adjoining land of the Transferor, (namely Lot 3 shown) in the said Deposited Plan number 217590 but only during the ownership thereof by the Transferor his Executors administrators, and assigns other than purchasers on sale that no fence shall be erected on the land hereby transferred to divide it from such adjoining land without the consent of the Transferor or his assigns other than as aforesaid but such consent shall not be withheld if such fence is erected without expense to the Transferor or his assigns other than as aforesaid and in favour of any person dealing with the Transferee or his assigns other than as aforesaid such consent shall have been deemed to have been given in respect of every such fence for the time being erected and this restriction may be released varied or modified by the owner or owners for the time being of such adjoining land.

Strike out if unnecessary, or suitably adjust,
(i) if any easements are to be created or any exceptions to be made; or
(ii) if the statutory covenants implied by the Act are intended to be varied or modified.

Covenants should comply with the provisions of Section 88 of the Conveyancing Act, 1919-1984.

AND the Transferee DOETH HEREBY TRANSFER and grant to the Transferor out of all such its Estate and interest in the land hereby transferred full and free RIGHT as appurtenant to the said adjoining land of the Transferor and every part thereof to lay continue maintain repair and/or replace a water main or pipeline not exceeding 2 inches inside diameter with such valves surface boxes and other equipment as may be necessary for carrying and conducting water over in through or under all that piece of land hereby transferred as comprises the strip three feet (3') wide lying along and within the south eastern boundary and along and within the western boundary for a distance of one thousand one hundred links from the south eastern corner of the land hereby transferred PROVIDED HOWEVER and it is agreed that if the Transferee should at any time and from time to time hereafter notify the Transferor or other the owner or owners of the said dominant tenement that the Transferee desires to remove the said water main or pipeline to another site of like dimensions on the land hereby transferred then the Transferor will upon receiving an appropriate grant of fresh easement in terms similar hereto and being indemnified as to costs and expenses will execute an appropriate release of the easement hereby granted and accept the fresh easement in lieu thereof. AND IT IS AGREED that the area which is subject to the easement hereinbefore referred to shall comprise the strip marked "site of proposed easement for pipeline 3 ft. wide" shown on the plan of Mr. K.F. Williams annexed marked "A" and that the purpose of Section 88 of the Conveyancing Act 1919-1984 is declared that:-

(a) The land which is subject to the burden of the Easement hereby transferred is the land subject of this Transfer.

(b) That the land to which the benefit of this Easement is appurtenant is that piece of land being Lot 3 in Deposited Plan Number 217590 and being the whole of the land comprised in Certificate of Title Volume 9481 Folio 250.

(c) That the persons who have the right to release, vary or modify this Easement are the Transferor his Heirs, Executors, Administrators or Assigns.

ENCUMBRANCES, &c., REFERRED TO.

* A very short note will suffice.

K 1165-2 5:47

N I L

Excepting reservations and conditions in the relevant Certificate of Title

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

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

Execution may be proved where the parties are resident:—
(a) in any part of the British dominions outside the State of New South Wales by signing or acknowledging before the Registrar-General or Recorder of Titles of such Possession, or before any Judge, Notary Public, Justice of the Peace for New South Wales, or Commissioner for taking affidavits for New South Wales, or Mayor or Chief Officer of any municipal or local government corporation of such part, or Justice of the Peace for such part, or the Governor, Government Resident, or Chief Secretary of such part or such other person as the Chief Justice of New South Wales may appoint.

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

(c) in any foreign place by signing or acknowledging before (i) a British Consular Officer (which includes a British Ambassador, Envoy, Minister, Chargé d'Affaires, Secretary of Embassy or Legation, Consul-General, Acting Consul-General, Consul, Acting Consul, Vice-Consul, Acting Vice-Consul, Pro-Consul, Consular Agent and Acting Consular Agent), (ii) an Australian Consular Officer (which includes an Ambassador, High Commissioner, Minister, Head of Mission, Commissioner, Chargé d'Affaires, Counsellor or Secretary at an Embassy, High Commissioner's Office or Legation, Consul-General, Consul, Vice-Consul, Trade Commissioner and Consular Agent), who should affix his seal of office, or the attesting witness may make a declaration of the due execution thereof before one of such persons (who should sign and affix his seal to such declaration), or such other person as the said Chief Justice may appoint.

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

Signed at Wollongong
Signed in my presence by the transferor

WHO IS PERSONALLY KNOWN TO ME
John [unclear]
Deputy
Wollongong

27th day of September 1963.
J. Williams
Transferor.*

~~Signed in my presence by the transferee~~
~~WHO IS PERSONALLY KNOWN TO ME~~

The Common Seal of ALLIED CONSTRUCTIONS PTY. LIMITED was affixed hereto in accordance with the resolution of the Directors of the Company and in the presence of

J. Williams
Transferor
A. Chayes
The Common Seal of ALLIED CONSTRUCTIONS PTY. LIMITED

MEMORANDUM AS TO NON-REVOCATION OF POWER OF ATTORNEY.

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

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

Signed at _____ the _____ day of _____ 19 _____
Signed in the presence of— _____

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

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

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

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

† N.B.—Section 117 requires that the above Certificate be signed by each Transferor or his Solicitor or Conveyancer, and renders any person liable or negligently certifying liable to a penalty of £50; also to damages recoverable by parties injured. Acceptance by the Solicitor or Conveyancer (who must sign his own name, and not that of his firm) is permitted only when the signature of the Transferor cannot be obtained without difficulty, and when the instrument does not impose a liability on the party taking under it. When the instrument contains some special covenant by the Transferee or is subject to a mortgage, encumbrance or lease, the Transferee must accept personally.

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

Form 1

OFFICE USE ONLY

PLAN OF

proposed easement over Lot 1 DP 217590

Men./Shire/City... of Greater Wollongong

Town or Locality... Berkeley

Parish... of Wollongong

County... of Camden

Scale... 3 chains to an inch

Registered:

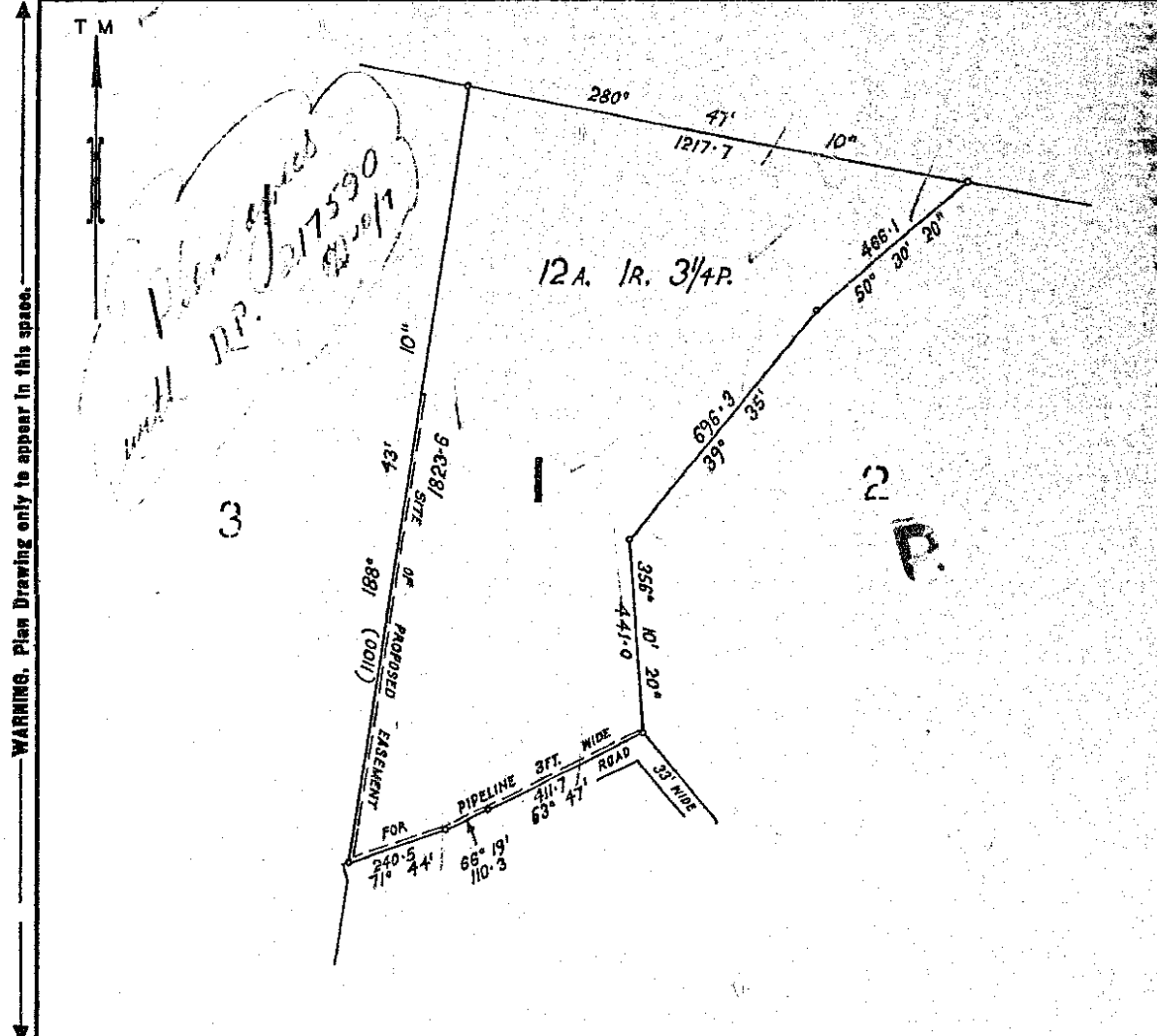
C.A.:

Title System:

Purpose:

Ref. Map:

Last Plan:



WARNING. Plan Drawing only to appear in this space.

Signatures, Seals and Statements of Dedications and Easements.

No survey made
 It is intended to create an easement for pipeline 3 feet wide over part of Lot 1 as shown hereon.

This is the Plan marked "A" referred to in Memorandum of Transfer dated 27th day of September 1963 from JOHN CHARLES LINDSAY to ALLIED CONSTRUCTIONS PTY. LIMITED

SKANDED by my presence by the Transferor
 when it was duly known to me

The Common Seal of ALLIED CONSTRUCTIONS PTY. LIMITED, was affixed hereon in accordance with the resolution of the Directors of the Company and in the presence of

Approved Secretary *William Director*

I certify that this plan has been compiled from the information shown on DP 217590 and is accurate

A surveyor registered under the Surveyors Act, 1920, as amended, hereby certifies that the survey represented in this plan is accurate and has been made (1) by me (2) under my immediate supervision in accordance with the Survey Practice Regulations, 1932 and was completed on 26.9.64

Signature: *R. Williams*
 Surveyor registered under Surveyors Act, 1920 as amended.
 Datum Line of Azimuth: 26.9.64

Approved by Council. I hereby certify that the requirements of the Local Government Act, 1919 (other than the requirements for registration of plans), have been complied with by the applicant in relation to the proposed subdivision and/or new roads set out herein.

Subdivision No. Date

Council Clerk:

SURVEYORS REFERENCE 7217/341



No. **L284446**

'68 DEC 20 PM 12:50



R.P. 13A

John Smith Males

Fees:—
 Lodgment
 Endorsement

MEMORANDUM OF TRANSFER
 (REAL PROPERTY ACT, 1900.)

J. Males

11-20
20/12/68

THE UNION-FIDELITY TRUSTEE COMPANY OF AUSTRALIA LIMITED

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

(Trusts must not be disclosed in the transfer.)

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

All blanks should be ruled up before signing.

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

(herein called transferor)

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

TWENTY THOUSAND DOLLARS
 (\$20,000.00) (the receipt whereof is hereby acknowledged) paid to it by
B. & J. DEVELOPMENTS PTY. LIMITED

do hereby transfer to

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

^b the said B. & J. DEVELOPMENTS PTY. LIMITED a Company duly incorporated under the Companies Act and having its registered office at Suite 2, 3rd Floor, 112 Castlereagh Street, Sydney
 (herein called transferee)

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

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

Unless authorised by Reg. 53, Conveyancing Act Regulations, 1961, a plan may not be annexed to or endorsed on this transfer form.

County	Parish	Reference to Title			Description of Land ^d (if part only)
		Whole or Part	Vol.	Fol.	
Camden	Wollongong	Part	10680	239	Lot 4 as shown in Deposited Plan No. 528932.
		(Now being the whole of the land contained in Certificate of Title Volume 10842 Folio 232)			

And the transferee ~~covenant~~ ~~with the transferor~~ for itself, its successors and assigns covenants with the Transferor its successors and assigns that it shall within six (6) months from the date hereof erect a proper rural stockproof dividing fence along any boundary which may lie between the subject land and any adjoining land for the time being owned by the Transferor its successors and assigns other than purchasers on sale and that pending the erection of such fence or fences of the nature aforesaid the Transferee will not interfere with any existing boundary fence nor will it do any act which might cause or tend to be caused injury to or loss of livestock for the time being lawfully depasturing upon the land hereby transferred.

d Strike out if unnecessary, or suitably adjust.

- (i) if any easements are to be created or any exceptions to be made: or
- (ii) if the statutory covenants implied by the Act are intended to be varied or modified.

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

ENCUMBRANCES, &c., REFERRED TO.

1. Reservations and conditions contained in Crown Grant.
2. Easement for water supply created by Deed Registered Book No. 2277 No. 546 effecting part of the land.
3. Easement for water supply created by Deed Registered Book 2369 No. 188 and Book 2405 No. 981 appurtenant to part of the land.
4. Easement for transmission line created by Resumption No. K628099 effecting part of the land.

e A very short note will suffice.

K 1165—2 5: 437—

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

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

Execution may be proved where the parties are resident:—
(a) in any part of the British dominions outside the State of New South Wales by signing or acknowledging before the Registrar General or Recorder of Titles of such Possession, or before any Judge, Notary Public, Justice of the Peace for New South Wales, or Commissioner for taking affidavits for New South Wales, or Mayor or Chief Officer of any municipal or local government corporation of such part, or Justice of the Peace for such part, or the Governor, Government Resident, or Chief Secretary of such part or a British Consular Officer or Australian Consular Officer exercising his functions in that part or such other person as the Chief Justice of New South Wales may appoint.
(b) in the United Kingdom by signing or acknowledging before the Mayor or Chief Officer of any corporation or a Notary Public.
(c) in any foreign place by signing or acknowledging before (i) a British Consular Officer (which includes a British Ambassador, Envoy, Minister, Charge d'Affaires, Secretary of Embassy or Legation, Consul-General, Acting Consul-General, Consul, Acting Consul, Vice-Consul, Acting Vice-Consul, Pro-Consul, Consular Agent and Acting Consular Agent), (ii) an Australian Consular Officer (which includes an Ambassador, High Commissioner, Minister, Head of Mission, Commissioner, Charge d'Affaires, Counsellor, Secretary at an Embassy, High Commissioner's Office or Legation, Consul-General, Consul, Vice-Consul, Trade Commissioner and Consular Agent and includes a person appointed to hold or act in the office of Counsellor, Official Secretary or Assistant Official Secretary at the Australian Commissioner's Office in Singapore or of Secretary at the Australian Military Mission in Berlin or of Agent General in London of the State of New South Wales or of Secretary, N.S.W. Government Offices, London), who should affix his seal of office, or the attesting witness may make a declaration of the due execution thereof before one of such persons (who should sign and affix his seal to such declaration), or such other person as the said Chief Justice may appoint.

Strike out unnecessary words. Add any other matter necessary to show that the power is effective.
To be signed by Registrar General, Deputy Registrar General, a Notary Public, J.P., Commissioner for Affidavits, or other functionary before whom the attesting witness appears. Not required if the instrument itself be signed or acknowledged before one of these parties.

Signed at Sydney the 26th day of September 1968
~~Signed in my presence by the transferor~~
THE OFFICIAL SEAL for New South Wales of THE UNION FIDELITY TRUSTEE COMPANY OF AUSTRALIA LIMITED was hereunto affixed by order of the Directors and in the presence of:—

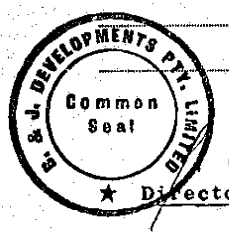
26th day of September 1968

W. G. J. V. [Signature]
A. H. [Signature]
Directors

[Signature]
State Manager

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

~~Signed in my presence by the transferee~~
THE COMMON SEAL of B. & J. DEVELOPMENTS PTY. LIMITED was hereunto affixed by the Authority of the Directors in the presence of:



[Signature]
Secretary

Transferee(s)

MEMORANDUM AS TO NON-REVOCATION OF POWER OF ATTORNEY.

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

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

Signed at _____ the _____ day of _____ 19 _____
Signed in the presence of— _____

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

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

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

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

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

L284446

No. _____

Lodged by _____
 Address _____
 Phone No. _____

NEED, HANIGAN & TORRILL
 LAW STATIONERS
 82 PITT STREET, SYDNEY

PARTIAL DISCHARGE OF MORTGAGE.
 (N.B.—Before execution read marginal note.)

I, _____ mortgagee under Mortgage No. _____
 release and discharge the land comprised in the within transfer from such mortgage and all claims thereunder but without prejudice to my rights and remedies as regards the balance of the land comprised in such mortgage.

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

Dated at _____ this _____ day of _____ 19 _____

Signed in my presence by _____
 who is personally known to me

Mortgagee

M.P.D.

DOCUMENTS LODGED HEREWITH
 To be filled in by person lodging dealing

1. <i>CM</i>	} Received Docs. Nos. Receiving Clerk
2. _____	
3. _____	
4. _____	
5. _____	
6. _____	
7. _____	

LEAVE THESE SPACES FOR DEPARTMENTAL USE.

MEMORANDUM OF TRANSFER


Indexed *[initials]*

Checked by *KPG*

Particulars entered in Register Book
 13-1-1969

Passed (in S.D.B.) by _____ at _____ 10am

Signed by *[Signature]*
 Registrar General



Withdraw _____
 Free from _____

RGX *KE91631* *Not correct*

PROGRESS RECORD

	Initials	Date
Sent to Survey Branch		
Received from Records		
Draft written		
Draft examined		
Diagram prepared		
Diagram examined		
Draft forwarded		
Supt. of Engrossers		
Cancellation Clerk		
Vol. _____		
Fol. _____		



016

Infotrack Pty Ltd
GPO BOX 4029
SYDNEY NSW 2001

CERTIFICATE 201701903

Issued	20 April 2017
Certificate Type	Sections 149(2) & (5)
Fee	\$133.00
Your Reference	00100-BOTTLEBRUSH:128284
Council Property Reference	463015

PLANNING CERTIFICATE

Issued Under Section 149 of the Environmental Planning and Assessment Act 1979

PROPERTY DETAILS	Legal Description	Lot 14 DP 1188144
	Location	13 Warehouse Place BERKELEY NSW 2506

This certificate provides information on how a property (such as land and buildings) may be used and the limits on its development. The certificate contains information Council is aware of through its records and environmental plans, along with data supplied by the State Government.

SECTION 149 (2) DETAILS

As at the date of this certificate, the following prescribed matters under section 149(2) of the Act relate to the abovementioned land:

1. NAMES OF RELEVANT PLANNING INSTRUMENTS & DEVELOPMENT CONTROL PLANS

(1) The name of each environmental planning instrument that applies to the carrying out of development on the land

Wollongong Local Environmental Plan 2009

State Environmental Planning Policies

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Urban Renewal) 2010
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Exempt and Complying Codes) 2008
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
- State Environmental Planning Policy (State Significant Precincts) 2005
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004
- State Environmental Planning Policy No. 71 – Coastal Protection
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development
- State Environmental Planning Policy No. 64 – Advertising and Signage

State Environmental Planning Policy No. 55 – Remediation of Land
State Environmental Planning Policy No. 50 – Canal Estates
State Environmental Planning Policy No. 44 – Koala Habitat Protection
State Environmental Planning Policy No. 36 – Manufactured Home Estates
State Environmental Planning Policy No. 21 – Caravan Parks
State Environmental Planning Policy No. 33 – Hazardous and Offensive Development
State Environmental Planning Policy No. 30 – Intensive Agriculture
State Environmental Planning Policy No. 62 – Sustainable Aquaculture
Paper Subdivisions: Exhibition of draft Environmental Planning & Assessment Amendment
(Subdivision works) Regulation 2013
Draft SEPP Educational Establishments and Childcare Facilities.

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

Draft Coastal Management SEPP 2016 (Part of lot)

(3) The name of each development control plan that applies to the carrying out of development on the land

Wollongong Development Control Plan 2009

Wollongong Development Control Plan 2009, contains detailed development controls which supplement the provisions of Wollongong Local Environmental Plan 2009.

Note: The Wollongong Development Control Plan 2009 should be consulted to ascertain its full effect on the land.

(4) In this clause, proposed environmental planning instrument includes a planning proposal for a Local Environmental Plan or a draft environmental planning instrument.

2. ZONING AND LAND USE UNDER RELEVANT LEPs

Wollongong Local Environmental Plan 2009.

Zones Applying to the Land

IN3 Heavy Industrial

The objectives for and the uses permissible and prohibited by Wollongong Local Environmental Plan 2009

For each environmental planning instrument or proposed instrument referred to in clause 1 (other than a State Environmental Planning Policy or proposed State Environmental Planning Policy) that includes the land in any zone (however described):

- (a) the identity of the zone, whether by reference to a name (such as “Residential Zone” or “Heritage Area”) or by reference to a number (such as “Zone No 2(a)”)**

IN3 – Heavy Industrial

- (b) the purposes for which the instrument provides that development may be carried out within the zone without the need for development consent**

Building identification signs; Business identification signs.

- (c) the purposes for which the instrument provides that development may not be carried out within the zone except with development consent**

Advertising structures; Boat building and repair facilities; Depots; Freight transport facilities; General industries; Hazardous storage establishments; Heavy industrial storage establishments; Heavy industries; Helipads; Industrial retail outlets; Kiosks; Light industries; Offensive storage establishments; Recreation areas; Recreation facilities (indoor); Roads; Rural industries; Service stations; Storage Premises, Take away food and drink premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Water supply systems.

- (d) the purposes for which the instrument provides that development is prohibited within the zone.**

Any development not specified in subclause (2) or (3).

Note: For subdivision consent requirements see Clause 2.6, of Wollongong Local Environmental Plan 2009.

Demolition of a building or work requires consent see Clause 2.6AA, of Wollongong Local Environmental Plan 2009.

Development below the mean high water mark requires consent see Clause 5.7, of Wollongong Local Environmental Plan 2009.

Note: Wollongong Local Environmental Plan 2009 should be consulted to ascertain its full effect on the land.

(e) Whether any development standards applying to the land fix minimum land dimensions for the erection of a dwelling- house on the land, and if so, the minimum land dimensions so fixed

See Clauses 4.1, 4.1AA, 4.1A, 4.2 and 4.2A of the Local Environmental Plan.

(f) Whether the land includes or comprises critical habitat

Nil

(g) Whether the land is in a conservation area (however described)

Nil.

(h) Whether an item of environmental heritage (however described) is situated on the land

Nil.

2A. ZONING AND LAND USE UNDER STATE ENVIRONMENTAL PLANNING POLICY (SYDNEY REGIONAL GROWTH CENTRES) 2006

To the extent that the land is within any zone (however described) under:

- (a) a Precinct Plan (within the meaning of the 2006 SEPP), or
- (b) a Precinct Plan that is or has been the subject of community consultation or on public exhibition under the Act,
- (c) a proposed Precinct Plan that is or has been the subject of community consultation or on public exhibition under the Act,

the particulars referred to in clause 2 (a) – (h) in relation to that land (with a reference to “the instrument” in any of those paragraphs being read as a reference to Part 3 of the 2006 SEPP, or the Precinct Plan or proposed Precinct Plan, as the case requires).

Not Applicable.

3. COMPLYING DEVELOPMENT

(1) The extent to which the land is land on which complying development may be carried out under each of the codes for complying development because of the provisions of clauses 1.17A (1) (c) to (e), (2), (3) and (4), 1.18 (1), (c3) and 1.19 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

(2) The extent to which complying development may not be carried out on that land because of the provisions of clauses 1.17A (1) (c) to (e), (2), (3) and (4) and 1.19 of that Policy and the reasons why it may not be carried out under those clauses.

(3) If the council does not have sufficient information to ascertain the extent to which complying development may or may not be carried out on the land, a statement that a restriction applies to the land, but it may not apply to all of the land, and that council does not have sufficient information to ascertain the extent to which complying development may or may not be carried out on the land.

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

(1) Subject to the terms of each code, and the zoning of the land, complying development **may** be carried out for the following codes to the extent that the land has no affectation.

- General Housing Code
- Rural Housing Code
- Housing Alterations Code
- General Development Code
- Commercial and Industrial (New Buildings and Additions) Code
- Commercial and Industrial (Alterations) Code
- Subdivision Code
- Demolition Code

4. COASTAL PROTECTION

Whether or not the land is affected by the operation of section 38 or 39 of the Coastal Protection Act 1979, but only to the extent that the council has been so notified by the Department of Services, Technology and Administration.

The Department of Services, Technology and Administration has not notified Council that the land is affected by the operation of sections 38 and 39 of the Coastal Protection Act 1979.

4A. CERTAIN INFORMATION RELATING TO BEACHES AND COASTS

(1) In relation to a coastal council – whether an order has been made under Part 4D of the Coastal Protection Act 1979 in relation to temporary coastal protection works (within the meaning of that Act) on the land (or on public land adjacent to that land), except where the council is satisfied that such an order has been fully complied with.

Nil

(2) In relation to a coastal council:

- (a) whether the council has been notified under section 55X of the Coastal Protection Act 1979 that temporary coastal protection works (within the meaning of that Act) have been placed on the land (or on public land adjacent to that land) and,**

Nil

- (b) if works have been so placed – whether the council is satisfied that the works have been removed and the land restored in accordance with that Act.**

Not applicable

4B. ANNUAL CHARGES UNDER LOCAL GOVERNMENT ACT 1993 FOR COASTAL PROTECTION SERVICES THAT RELATE TO EXISTING COASTAL PROTECTION WORKS

In relation to a coastal council- whether the owner (or any previous owner) of the land has consented in writing to the land being subject to annual charges under section 496B of the Local Government Act 1993 for coastal protection services that relate to existing coastal protection works (within the meaning of section 553B of that Act)

Note: “Existing coastal protection works” are works to reduce the impact of coastal hazards on the land (such as seawalls, revetments, groynes and beach nourishment) that existed before the commencement of section 553B of the Local Government Act 1993

Not applicable

5. MINE SUBSIDENCE

Whether or not the land is proclaimed to be a mine subsidence district within the meaning of section 15 of the Mine Subsidence Compensation Act 1961

The land is not 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

Whether or not the land is affected by any road widening or road realignment under:

- (a) Division 2 of Part 3 of the Roads Act 1993 or**
- (b) Any environmental planning instrument or**
- (c) Any resolution of the council**

Council has no record that the land is affected by any Road Widening or Road Realignment under:

- a) Division 2 of Part 3 of the *Roads Act 1993*, or
- b) any environmental planning instrument, or
- c) any resolution of the Council.

7. COUNCIL AND OTHER PUBLIC AUTHORITY POLICIES ON HAZARD RISK RESTRICTIONS

Whether or not the land is affected by a policy:

- a) adopted by the council, or**
- b) adopted by any other public authority and notified to the council for the express purpose of its adoption by that authority being referred to in planning certificates issued by the council, that restricts the development of the land because of the likelihood of land slip, Bushfire, tidal inundation, subsidence, acid sulfate soils or any other risk (other than flooding).**

Council has adopted “Wollongong Development Control Plan 2009 – Chapter E12 Geotechnical Assessment”.

Council has adopted Acid Sulfate Maps, Wollongong Local Environmental Plan 2009 – Clause 7.5 Acid Sulfate Soils.

Council has adopted “Wollongong Development Control Plan 2009 – Chapter E16 Bushfire Management”. The Rural Fire Service has endorsed the Bush Fire Prone Land map.

Unhealthy Building Land Policy, adopted by the Environmental Protection Authority.

Council has adopted Wollongong City Council Coastal Zone Study (Cardno, Lawson, Treloar 2010).
Draft Coastal Management SEPP 2016.

7A. FLOOD RELATED DEVELOPMENT CONTROLS INFORMATION

(1) Whether or not development on that land or part of the land for the purposes of dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (not including development for the purposes of group homes or seniors housing) is subject to flood related development controls.

Development on the land or part of the land for the purposes of dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (not including development for the purposes of group homes or seniors housing) is subject to flood related development controls as contained in Wollongong Development Control Plan 2009 Chapter E13 Floodplain Management and Wollongong Local Environmental Plan 2009 Clause 7.3 Flood Planning.

(2) Whether or not development on that land or part of the land for any other purpose is subject to flood related development controls.

Development on the land or part of the land for any other purpose is subject to flood related development controls as contained in Wollongong Development Control Plan 2009 Chapter E13 Floodplain Management and Wollongong Local Environmental Plan 2009 Clause 7.3 Flood Planning.

(3) Words and expressions in this clause have the same meaning as in the instrument set out in the Schedule to the Standard Instrument (Local Environmental Plans) Order 2006

Further flood information relating to this parcel of land is available by application under section 149(5) of the Environmental Planning & Assessment Act 1979.

8. LAND RESERVED FOR ACQUISITION

Whether or not any environmental planning instrument or proposed environmental planning instrument referred to in clause 1 makes provision in relation to the acquisition of the land by a public authority, as referred to in section 27 of the Act.

Nil.

9. CONTRIBUTION PLANS

The name of each contributions plan applying to the land.

9A. BIODIVERSITY CERTIFIED LAND

If the land is biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995), a statement to that effect.

Nil.

10. BIOBANKING AGREEMENTS

If the land is land to which a biobanking agreement under Part 7A of the Threatened Species Conservation Act 1995 relates, a statement to that effect (but only if the council has been notified of the existence of the agreement by the Director- General of the Department of Environment, Climate Change and Water)

Nil

11. BUSH FIRE PRONE LAND

If any of the land is bush fire prone land (as defined in the Act), a statement that all or, as the case may be, some of the land is bush fire probe land.

If none of the land is bush fire prone land, a statement to that effect.

The land is not recorded in Council's records as bushfire prone land.

12. PROPERTY VEGETATION PLANS

If the land is land to which a property vegetation plan under the Native Vegetation Act 2003 applies, a statement to that effect (but only if the council has been notified of the existence of the plan by the person or body that approved the plan under the Act).

The Southern Rivers Catchment Management Authority has not notified Council that the land is affected by a Property Vegetation Plan issued under the Native Vegetation Act 2003.

13. ORDERS UNDER TREES (DISPUTES BETWEEN NEIGHBOURS) ACT 2006

Whether an order has been made under the Trees (Disputes Between Neighbours) Act 2006 to carry out work in relation to a tree on the land (but only if the council has been notified of the order)

Nil.

14. DIRECTIONS UNDER PART 3A

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

Nil

15. SITE COMPATIBILITY CERTIFICATES AND CONDITIONS FOR SENIORS HOUSING

If the land is land to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies:

(a) statement of whether there is a current site compatibility certificate (seniors housing), of which the council is aware, in respect of proposed development on the land and, if there is a certificate, the statement is to include:

- (i) the period for which the certificate is current, and
- (ii) that a copy may be obtained from the head office of the Department of Planning, and

(b) a statement setting out any terms of a kind referred to in clause 18(2) of that Policy that have been imposed as a condition of consent to a development application granted after 11 October 2007 in respect of the land

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Nil.

16. SITE COMPATIBILITY CERTIFICATE FOR INFRASTRUCTURE

A statement of whether there is a valid site compatibility certificates (infrastructure), of which the council is aware, in respect of proposed development on the land and , if there is a certificate, the statement is to include

- (a) the period for which the certificate is valid, and
- (b) that a copy may be obtained from the head office of the Planning and Infrastructure Agency.

State Environmental Planning Policy (Infrastructure) 2007

Nil.

17. SITE COMPATIBILITY CERTIFICATE AND CONDITIONS FOR AFFORDABLE RENTAL HOUSING

(1) A statement of whether there is a current site compatibility certificate (affordable rental housing), of which the council is aware, in respect of proposed development on the land and, if there is a certificate, the statement is to include

- (a) the period for which the certificate is current, and
- (c) that a copy may be obtained from the head office of the Planning and Infrastructure Agency.

(2) A statement setting out any terms of a kind referred to in clause 17 (1) or 38 (1) of State Environmental Planning Policy (Affordable Rental Housing) 2009 that have been imposed as a condition of consent to a development application in respect of the land.

State Environmental Planning Policy (Affordable Rental Housing) 2009

Nil.

18. PAPER SUBDIVISION INFORMATION

(1) The name of any development plan adopted by a relevant authority that applies to the land or that is proposed to be subject to the consent ballot.

Nil

(2) The date of any subdivision order that applies to the land.

Not applicable

(3) Words and expressions used in this clause have the same meaning as they have in Part 16C of this Regulation.

19. SITE VERIFICATION CERTIFICATES

A statement of whether there is a current site verification certificate, of which the council is aware, in respect of the land and, if there is a certificate, the statement is to include:

(a) the matter certified by the certificate, and

Note: A site verification certificate sets out the Director-General's opinion as to whether the land concerned is or is not biophysical strategic agricultural land or critical industry cluster land-see Division 3 of Part 4AA of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries 2007).

(b) the date on which the certificate ceases to be current (if any), and

(c) that a copy may be obtained from the head office of the Planning and Infrastructure Agency,

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

(a) that the land to which the certificate relates is significantly contaminated land within the meaning of that Act-if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued,

(b) that the land to which the certificate relates is subject to a management order within the meaning of that Act-if it is subject to such an order at the date when the certificate is issued,

(c) that the land to which the certificate relates is the subject of an approved voluntary management proposal within the meaning of that Act-if it is the subject of such an approved proposal at the date when the certificate is issued.

Nil.

20. LOOSE-FILL ASBESTOS INSULATION REGISTER

If the land includes any residential premises (within the meaning of Division 1A and Part 8 of the Home Building Act 1989) that are listed on the register, that is required to be maintained under that Division, a statement to that effect.

Nil.

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

- (a) that the land to which the certificate relates is significantly contaminated within the meaning of that Act- if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued,**
- (b) that the land to which the certificate relates is subject to a management order within the meaning of the Act- if it is subject to such an order at the date when the certificate is issued,**
- (c) that the land to which the certificate relates is the subject of an approved voluntary management proposal within the meaning of that Act – if it is the subject of such an approved proposal at the date when the certificate is issued,**
- (d) that the land to which the certificate relates is subject to an ongoing maintenance order within the meaning of that Act – if it is subject to such an order at the date when the certificate is issued,**
- (e) that the land to which the certificate relates is the subject of a site audit statement within the meaning of the Act – if a copy of such a statement has been provided at any time to the local authority issuing the certificate**

Council has not been advised that:

- a) The land is significantly contaminated land within the meaning of the Contaminated Land Management Act 1997
- b) The land is subject to a management order within the meaning of the Contaminated Land Management Act 1997
- c) The land is subject to an approved voluntary management proposal within the meaning of the Contaminated Land Management Act 1997
- d) The land is subject to an ongoing maintenance order within the meaning of the Contaminated Land Management Act 1997

HOWEVER the land is the subject of a site audit statement within the meaning of the Contaminated Land Management Act 1997.

SECTION 149 (5) DETAILS

As at the date of this certificate, the following additional information, provided in good faith pursuant to section 149 (5) of the Act, relate to the abovementioned land. Council has selected these matters as those most likely to be of concern but they do not comprise an exhaustive list of matters likely to affect the land.

When information pursuant to section 149 (5) is requested the Council is under no obligation to furnish any of the information supplied herein pursuant to that section. Council draws your attention to section 149 (6) which states that a council shall not incur any liability in respect of any advice provided in good faith pursuant to subsection (5). The absence of any reference to any matter

affecting the land shall not imply that the land is not affected by any matter referred to in this certificate.

RESOLUTION TO PREPARE PLANNING PROPOSAL

Nil.

PROPOSED DRAFT DEVELOPMENT CONTROL PLANS

The following plans have been placed on exhibition pursuant to the provisions of section 72 of the Environmental Planning and Assessment Act 1979:

Draft Development Control Plan 2009 Review

The Wollongong Development Control Plan 2009 came into force on 3 March 2010. A review commenced after 6 months of operation. The following chapters are available for public exhibition.

1. D14 Wollongong Innovation Campus 2.

LAND STABILITY

Council's land constraint/stability assessment maps do not show that the land is located in an area where landslip and/or subsidence have occurred, or where land instability is suspected. If you have any doubt as to whether the land is affected by landslip and/or subsidence the services of a suitably qualified engineer should be obtained.

Note: the advice provided by Council in respect of the stability of the land is based on information contained in Council's land constraint maps. The maps have been compiled from data received by Council and considered by Council to be reasonably reliable. Council does not warrant that its land constraint maps contain all information ever received by Council relating to the stability of the land.

FLOOD AND DRAINAGE

1 Classification of Flood Risk

Council records indicate that this property is located within an **Uncategorised Flood Risk** precinct.

However, Council's flood maps show that the land is located in an area where flooding has occurred or is suspected. The services of a suitably qualified engineer should be sought to ascertain the likely effect, if any, on the land.

Note: Advice given by Council relating to the likelihood of land being flooded or the nature or extent of such flooding is based on information contained in Council's flood maps. The maps are compiled from data received by Council and/or studies prepared by Council and considered by Council to be reasonably reliable. Council does not warrant that its flood maps contain all information ever received by Council relating to the likelihood of land being flooded or the nature or extent of any such flooding.

Council has prepared a development control plan known as Wollongong Development Control Plan 2009 that provides details of flood related development controls that may be applicable.

Council on the 30 May 2016 endorsed the WMA Water Review of Conduit Blockage Policy, and agreed to review Council's Flood Studies based on the new policy. The flood study reviews will occur over the following 2 years and may result in a change in flood levels.

ACID SULFATE SOILS

Nil.

CONTAMINATED LAND

Council's records show that because of previous uses the land may be contaminated. The services of a suitably qualified consultant should be sought to ascertain the degree of contamination, if any, on the land, and its likely effect on the land. Council's records are incomplete and there is no certainty that the land is so affected. Council has adopted Wollongong Development Control Plan 2009, which may restrict the development of the land. A site audit statement has been issued in accordance to legislation

STATE SIGNIFICANT DEVELOPMENT

Nil.

BUILDING LINES

Wollongong Development Control Plan 2009 details the setbacks applicable to the land.

OTHER HERITAGE MATTERS KNOWN TO COUNCIL

Aboriginal Heritage

All development within the Wollongong Local Government Area is subject to the Aboriginal Heritage requirements of the National Parks and Wildlife Act 1974. To determine if your property is affected by an Aboriginal Site, it is recommended that an Aboriginal Heritage Information Management System (AHIMS) search be undertaken by contacting the AHIMS Administrator on (02) 9995 5000. Further detail on Council's Aboriginal Heritage requirements for Development is contained within Chapter E10 of the Wollongong Development Control Plan 2009.

DEVELOPMENT HISTORY

Application may be made for a Building Certificate under section 149B of Environmental Planning and Assessment Act 1979 if written certification of existing buildings on the land is required.

The history of development consent approval applicable to the land may be obtained by consulting the Development Consent Register. Enquiries concerning the register may be made at Council's Customer Service Centre, 41 Burelli Street Wollongong during office hours.

LOOSE-FILL ASBESTOS INSULATION REGISTER

Council recommends you 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 also 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.

OTHER INFORMATION

Illawarra Regional Strategy

The Minister for Planning released the Illawarra Regional Strategy on 1 February 2007. The strategy is the NSW Government 25 year land use strategy for the Illawarra Region.

The Department of Planning and Environment released the Illawarra Shoalhaven Regional Plan, November 2015.

GENERAL INFORMATION

The following general information is brought to the attention of land owners.

1. Tree Management Policy

The Wollongong Tree Management Policy allows proper assessment to be made of the environmental importance and viability of trees before they are pruned, removed or damaged in any way. This Policy prohibits the ringbarking, cutting down, topping, lopping, removing, injuring or destruction of any tree except with the prior written consent of Council.

The Tree Management Policy applies to any tree that:

- Is 3 metres or more in height,
- Has a trunk diameter of 200mm or more at a height of 1 metre from the ground, or
- Has a branch spread of 3 metres or more

Please note that:

- A dead/dying tree is subject to the Tree Management Policy
- Pruning of major structural or anchor roots is also subject to the Tree Management Policy

Some trees may be exempt and do not require a permit to prune or remove them. Following is a list of the exempt tree species:

Salix Species	Willow
Erythrina X Sykesii	Coral Tree
Cupressus Macrocarpa “Brunniana”	Golden Cypress
Laganuria Pattersonii	Itchy Pod Tree
Harpephyllum Caffrum	Kaffir Plum
Syagrus Romanzoffina	Cocos Palm
Poplar Species	Poplar
Ficus Elastica “Decora” and hybrids	Ornamental Rubber tree
Ligustrum Lucidum	Large Leafed Privet
Cinnamomum Camphora	Camphor Laurel
Schefflera Actinophylla	Umbrella Tree
False Acacia	Black Locust
Peppercorn	Pepper Tree
Alnus	Alder
Acer negundo	Box Elder

For the full list of other exemptions please refer to the Tree Management Policy document available via Council’s website.

Any person acting on a permit issued under this Policy must comply with all conditions of that permit.

Any person who contravenes, or causes or permits the contravention of this Policy is guilty of an offence under the Environmental Planning and Assessment Act 1979.

Development Consents may contain restrictions relating to trees.

Further information regarding Council’s Tree Management Policy including how to lodge an application can be made by contacting Council’s Customer Service on telephone 4227 7111. Alternatively information can be obtained from Council’s website via the following link <http://www.wollongong.nsw.gov.au/services/household/trees/Pages/Lodgeatmp.aspx>.

2. Termite Management for Buildings

Australian Standards 3660.1-2000 (New Buildings) AS 3660.2-2000 (Existing Buildings) Termite Management, recommends that buildings be inspected and be maintained in order to achieve termite management of buildings. Licensed Pest Control Contractors should be contacted to achieve necessary termite control.

3. Lead Paint and Building Renovations

Your attention is drawn to the hazards associated with lead-based paints during building renovation. Suitable precautions should be taken when removing flaking paint or sanding painted surfaces suspected to have been treated with lead-based paint to prevent contamination of the immediate environment and associated health risk from lead dust.

AS 4361 – Part 2 – Guide to Lead Paint Management – Residential and Commercial.

4. Sewage Management Systems

Where a property has on-site sewage management system (this includes septic tanks, disposal trenches, aerated waste water treatment systems, composting toilets and pump out systems) the new owner must obtain an “Approval to Operate” from Council within 3 months of land ownership being transferred or otherwise conveyed.

5. Asbestos

Exposure to asbestos is a serious health hazard. In Australia, asbestos was gradually phased out of building materials in the 1980s and the supply and installation of asbestos containing goods has been prohibited since 31 December 2003. However, asbestos legacy materials still exist in many homes, buildings and other assets and infrastructure.

Council on the 27 October 2014 adopted an Asbestos policy which states Council’s commitment to and responsibilities for safely managing asbestos, and provides information for Council and the local community on safely managing asbestos. The policy can be viewed on Council’s website: www.wollongong.nsw.gov.au.

This letter is authorised by

Margaret Kampen

LIS Information Officer Section 149 Systems
Wollongong City Council
Telephone (02) 4227 7319

Annexure C Draft Plan



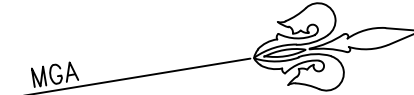
PO BOX 3222,
REDFERN NSW 2016
Ph: 02 8065 1156
Fax: 02 8065 1297
Email: survey@daw-walton.com.au

REVISION: 2
DATED: 10-07-17

LOCATION PLAN

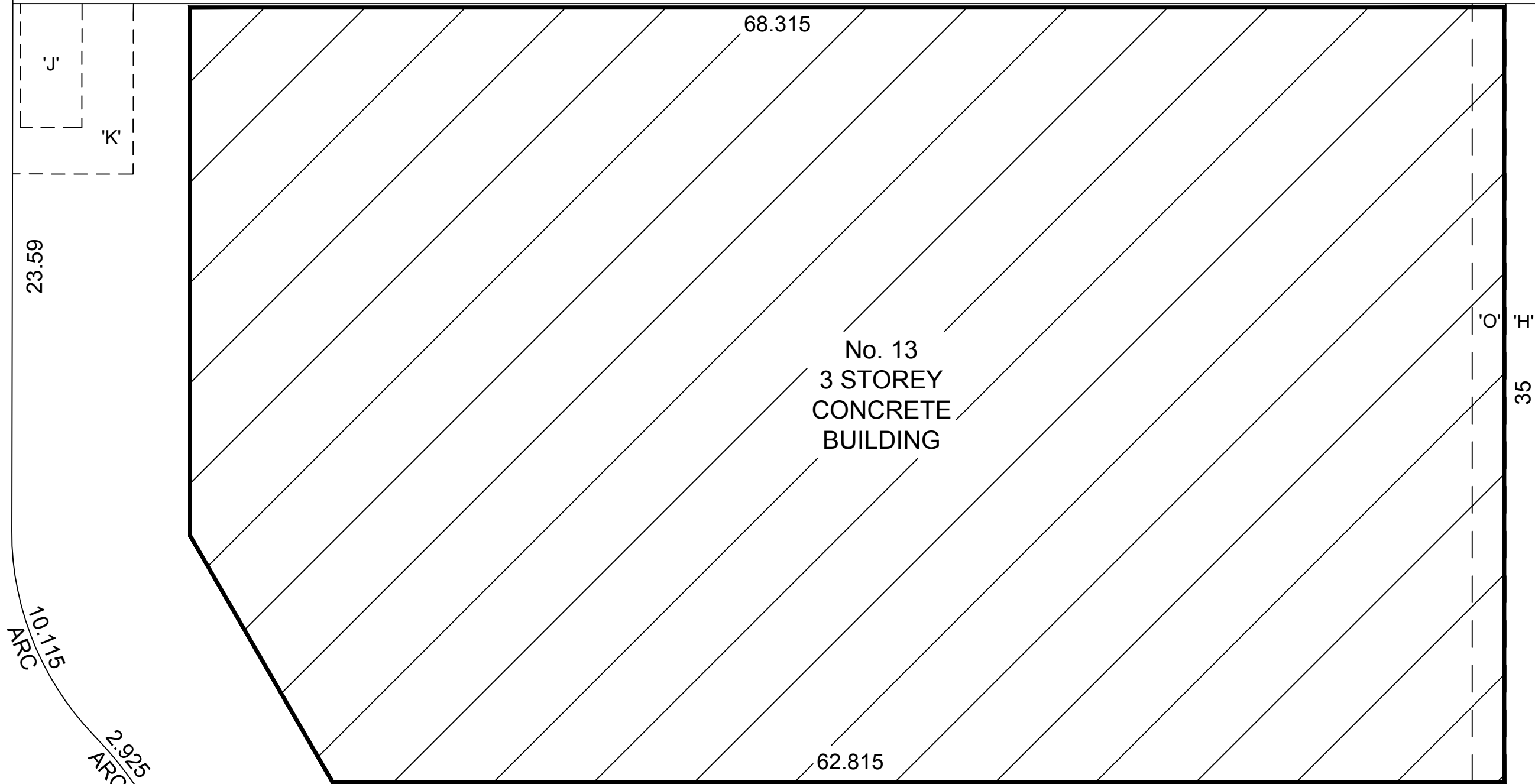
D P 1 1 8 8 1 4 4

15



DRAFT STRATA SUBDIVISION PLAN PREPARED FROM ARCHITECTURAL PLANS
AS PROVIDED BY REGGIES DESIGN, JOB No: 2207, ISSUE: C, DATED: 30-06-17

WAREHOUSE PLACE



D P 1 1 8 8 1 4 4

13

OFFSETS TO EXTERNAL WALLS SUBJECT TO FINAL SURVEY
MINOR ENCROCHMENTS MAY EXIST

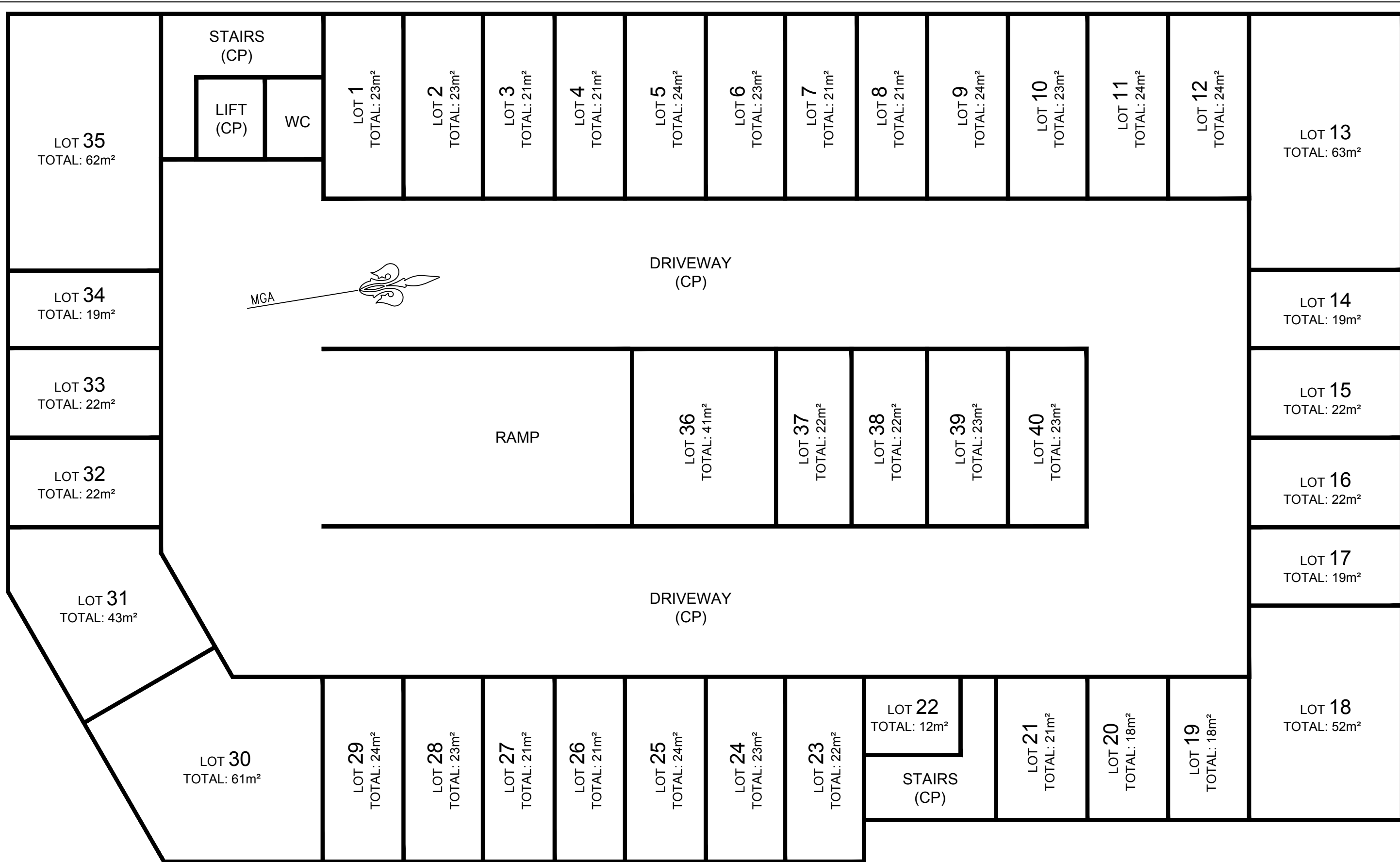
- 'H' DENOTES EASEMENT TO DRAIN WATER 1.5 WIDE (DP1188144)
- 'J' DENOTES EASEMENT FOR PADMOUNT SUBSTATION 2.75 WIDE (DP1188144)
- 'K' DENOTES RESTRICTION ON THE USE OF LAND (DP1188144)
- 'O' DENOTES RESTRICTION ON THE USE OF LAND (DP1188144)

Surveyor: JOHN WALTON
Surveyor's Ref: 3732-17SP
Subdivision No:
Lengths are in metres Reduction Ratio 1 : 200

Registered

SP

10	20	30	40	50	Table of mm	90	100	110	120	130	140	150
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CP DENOTES COMMON PROPERTY

WC DENOTES WATER CLOSET (CP)

ALL DUCTS, CABLES, PIPES, WATERPROOFING MEASURES AND OTHER SERVICES FORM PART OF THE COMMON PROPERTY

ANY SERVICE LINE WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY

LEVEL 1

AREAS ARE APPROXIMATE ONLY SHOWN FOR THE PURPOSES OF THE STRATA SCHEMES DEVELOPMENT ACT 2015

Surveyor: JOHN WALTON

Surveyor's Ref: 3732-17SP

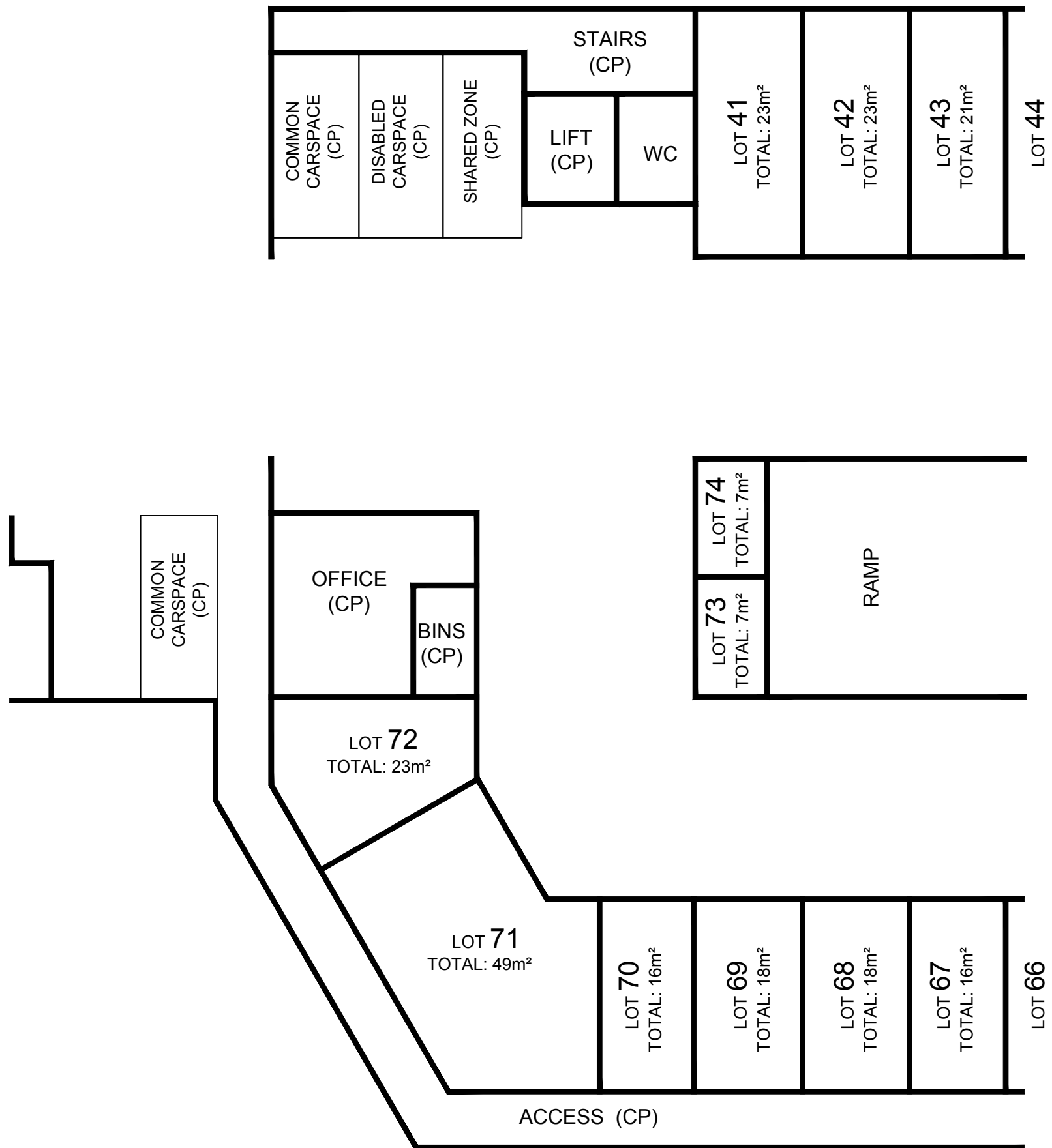
Subdivision No:

Lengths are in metres Reduction Ratio 1 : 150

Registered

SP

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-- JOINS SHEET 4 --

CP DENOTES COMMON PROPERTY

WC DENOTES WATER CLOSET (CP)

ALL DUCTS, CABLES, PIPES, WATERPROOFING MEASURES AND OTHER SERVICES FORM PART OF THE COMMON PROPERTY

ANY SERVICE LINE WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY

LEVEL 2

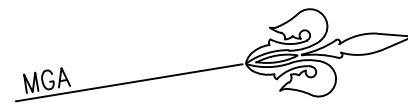
AREAS ARE APPROXIMATE ONLY SHOWN FOR THE PURPOSES OF THE STRATA SCHEMES DEVELOPMENT ACT 2015

Surveyor: JOHN WALTON
 Surveyor's Ref: 3732-17SP
 Subdivision No:
 Lengths are in metres Reduction Ratio 1 : 150

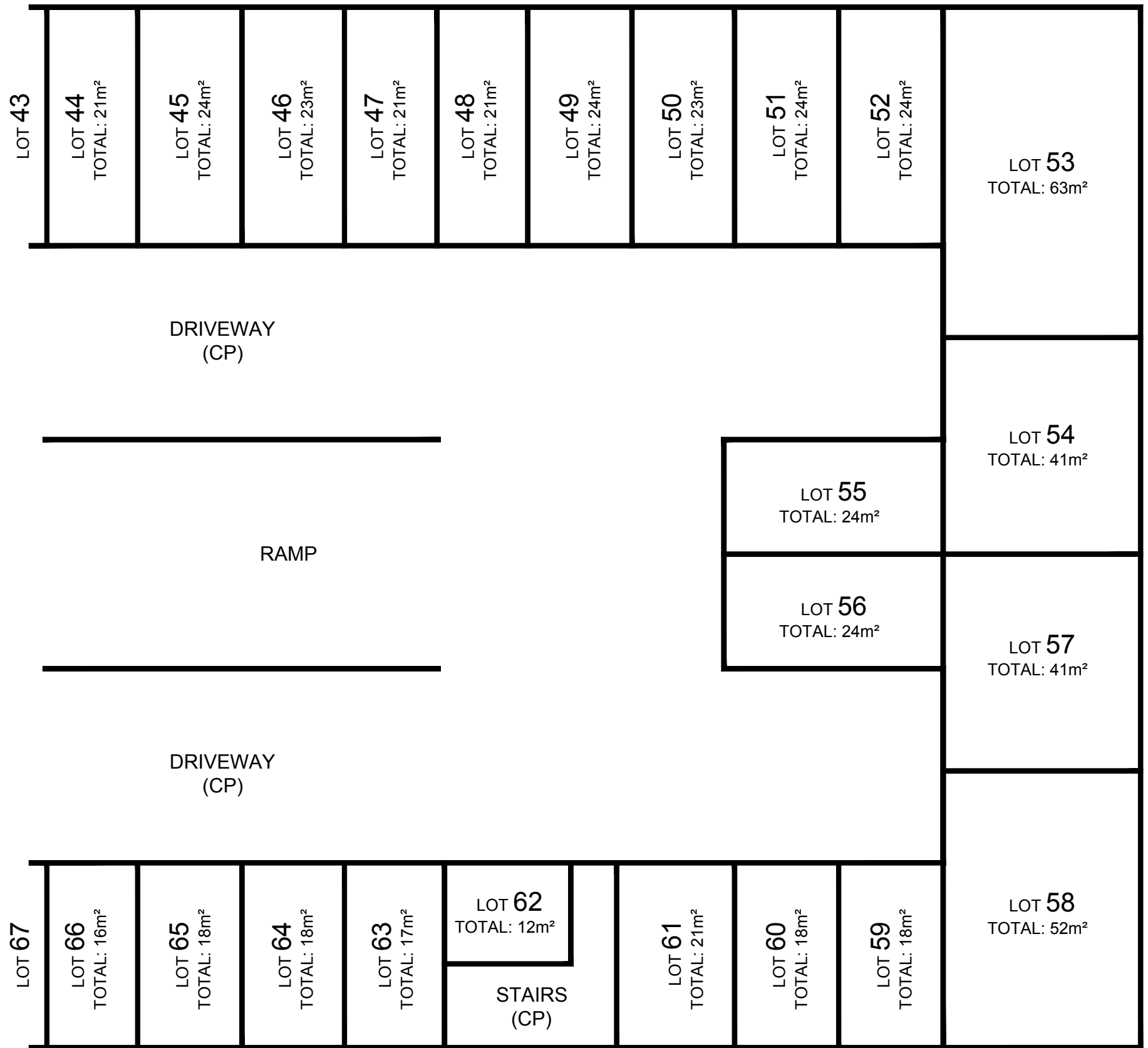
Registered

SP

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-- JOINS SHEET 3 --



AREAS ARE APPROXIMATE ONLY SHOWN FOR THE PURPOSES OF THE STRATA SCHEMES DEVELOPMENT ACT 2015

LEVEL 2

CP DENOTES COMMON PROPERTY

ALL DUCTS, CABLES, PIPES, WATERPROOFING MEASURES AND OTHER SERVICES FORM PART OF THE COMMON PROPERTY

ANY SERVICE LINE WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY

Surveyor: JOHN WALTON
 Surveyor's Ref: 3732-17SP
 Subdivision No:
 Lengths are in metres Reduction Ratio 1 : 150

Registered

SP

10	20	30	40	50	Table of mm	90	100	110	120	130	140	150
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Annexure D

Fixtures

- Light and light switch fittings
- Roller door with door alarm (excluding tumbler padlock)

Annexure E

Fixtures upgrade form

Not applicable

Annexure F Development Approval



008

Bottlebrush Projects Pty Ltd
C/- DDC Architects
3/112 Russell St
EMU PLAINS NSW 2750

APPLICATION	DA-2016/1731
Determination	Conditionally Approved
Approval Authority	Wollongong City Council
Endorsement Date	31 March 2017

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION

Issued under Section 81 of the Environmental Planning and Assessment Act 1979

The development application described below has been determined:

Description	Construction of warehouse and use as self-storage facility with strata subdivision into 186 lots
Location	Lot 14 DP 1188144 13 Warehouse Place, BERKELEY NSW 2506

Consent has been granted subject to the following conditions:

Approved Plans and Specifications

- The development shall be implemented substantially in accordance with the details and specifications set out on
 - Site Plan 16020 DA-010 2 dated 2 December 2016 prepared by ddc Architects
 - Proposed Lower Ground Level Plan 16020 DA-020 3 dated 23 February 2017 prepared by ddc Architects
 - Proposed Ground (Entry) Level Plan 16020 DA-021 3 dated 23 February 2017 prepared by ddc Architects
 - Proposed First Floor Level 16020 DA-022 2 dated 2 December 2016 prepared by ddc Architects
 - Proposed Roof 16020 DA-023 dated 2 December 2016 prepared by ddc Architects
 - North Boundary Elevation 16020 DA-030 3 dated 23 February 2017 prepared by ddc Architects
 - East Boundary Elevation 16020 DA-031 3 dated 23 February 2017 prepared by ddc Architects
 - South Boundary Elevation 16020 DA-032 2 dated 2 December 2016 prepared by ddc Architects
 - West Boundary Elevation 16020 DA-033 3 dated 23 February 2017 prepared by ddc Architects
 - North Elevation 16020 DA-040 3 dated 23 February 2017 prepared by ddc Architects
 - East Elevation 16020 DA-041 3 dated 23 February 2017 prepared by ddc Architects
 - South Elevation 16020 DA-042 2 dated 2 December 2016 prepared by ddc Architects
 - West Elevation 16020 DA-043 3 dated 23 February 2017 prepared by ddc Architects
 - Section A (Ramp) 16020 DA-050 3 dated 23 February 2017 prepared by ddc Architects
 - Section B (Fire Exit) 16020 DA-051 3 dated 23 February 2017 prepared by ddc Architects

CONSENT

Section C 16020 DA-052 2 dated 2 December 2016 prepared by ddc Architects

Section D 16020 DA-053 2 dated 2 December 2016 prepared by ddc Architects

Signage and Materials 16020 DA-061 2 dated 2 December 2016 prepared by ddc Architects

Draft Strata Lower Ground Level 16020 DA-070 3 dated 23 February 2017 prepared by ddc Architects

Draft Strata Ground Level 16020 DA-071 3 dated 23 February 2017 prepared by ddc Architects

Draft Strata First Floor Level 16020 DA-072 2 dated 2 December 2016 prepared by ddc Architects

Landscape Plan L1 D dated 9 November 2016 prepared by Nicholas Bray Landscapes

and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder.

General Matters

- 2) **Building Work - Compliance with the Building Code of Australia**
All building work must be carried out in compliance with the provisions of the Building Code of Australia.
- 3) **Construction Certificate**
A Construction Certificate must be obtained from Council or an Accredited Certifier prior to work commencing.

A Construction Certificate certifies that the provisions of Clauses 139-148 of the Environmental Planning and Assessment Amendment Regulations, 2000 have been satisfied, including compliance with all relevant conditions of Development Consent and the Building Code of Australia.

Note: The submission to Council of two (2) copies of all stamped Construction Certificate plans and supporting documentation is required within **two (2)** days from the date of issue of the Construction Certificate, in the event that the Construction Certificate is not issued by Council.
- 4) **Occupation Certificate**
An Occupation Certificate must be issued by the Principal Certifying Authority prior to occupation or use of the development. In issuing an Occupation Certificate, the Principal Certifying Authority must be satisfied that the requirements of Section 109H of the Environmental Planning and Assessment Act 1979, have been complied with as well as all of the conditions of the Development Consent.

Prior to the Issue of the Construction Certificate

- 5) **Detailed Drainage Design**
A detailed drainage design shall be submitted with the Construction Certificate documentation for the proposed development. This detailed drainage design shall be prepared by a suitably qualified civil engineer in accordance with Chapter E14 of Wollongong City Council's Development Control Plan 2009, conditions listed under this consent, and generally in accordance with the concept drainage plan by Neil Lowry & Associates, Project No. 0814, Drawing No.SC02, issue D dated 3 March 2017.
- 6) **Designated Stormwater Overflow Path**
Details of the stormwater overflow paths located within the building shall be provided with the detailed drainage design. The stormwater overflow paths shall be capable of catering for the 1 in 100 year storm event flows from the contributing catchment area, and where required, direct these flows to the stormwater overland flow swale located within the drainage easement at the rear of the building. The stormwater overflow paths shall be free of any obstructions that are likely to impede natural flow, so there will be no adverse flood impacts upon the subject and or adjoining properties. Full Manning's calculations shall be provided on the capacity of each

overland flow path. These requirements shall be reflected on the Construction Certificate plans and supporting documentation.

7) **Stormwater Drainage System**

The stormwater drainage system for this development shall be gravity based and independent of the sub-soil drainage pump out system. Details of this requirement shall be reflected on the Construction Certificate plans and associated documentation and submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

8) **Drainage Easement Access**

An opening of sufficient size shall be provided at the rear of the building to allow access for machinery to enter the drainage easement at the rear of the building for maintenance of the underground stormwater infrastructure and associated stormwater overland flow swale. Details of this requirement shall be reflected on the Construction Certificate plans and associated documentation and submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.”

9) The construction certificate plans shall show contrasting paving at driveway thresholds.

10) **Structural Engineering Details**

The submission of structural engineering details by a suitably qualified and experienced structural engineer (with appropriate insurance coverage) to the Principal Certifying Authority, prior to the release of the Construction Certificate.

11) **Present Plans to Sydney Water**

Approved plans must be submitted online using Sydney Water Tap, available through www.sydneywater.com.au to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

The Certifying Authority must ensure that Sydney Water has issued an approval receipt prior to the issue of a Construction Certificate.

Visit www.sydneywater.com.au or telephone 13 20 92 for further information.

12) **Car parking and Access**

The development shall make provision for a minimum of 3 car parking spaces, of which one space is to be for staff and two for customers. This requirement shall be reflected on the Construction Certificate plans. All car parking spaces are to remain common property. The approved car parking spaces shall be maintained to the satisfaction of Council, at all times.

13) The parking dimensions, internal circulation, aisle widths, kerb splay corners, head clearance heights, ramp widths and grades of the car parking areas are to be in conformity with the current relevant Australian Standard AS2890.1, except where amended by other conditions of this consent. Details of such compliance are to be reflected on the Construction Certificate plans.

14) The designated loading/unloading facility shall be kept clear for that purpose at all times. The designated loading/unloading facility shall be shown on the Construction Certificate plans.

15) The provision of suitable barriers, line-marking and painted signage delineating vehicular flow movements within the car parking areas. These details shall be reflected on the Construction Certificate plans.

16) Ramps for internal parking areas shall be designed in accordance with the current relevant Australian Standard AS2890.1 - Parking Facilities - Off Street Car Parking. This requirement shall be reflected on the Construction Certificate plans.

17) A minimum 2.2 metre headroom height shall be provided throughout the car parking and manoeuvring area. This requirement shall be reflected on the Construction Certificate plans.

18) Gradients of ramps and access driveways shall be provided in accordance with the current relevant Australian Standard AS2890.1 - Off Street Car Parking. This requirement shall be reflected on the Construction Certificate plans.

- 19) Overflow paths must be provided to allow for flows of water in excess of the capacity of the pipe/drainage system draining the land, as well as from any detention storage on the land. Blocked pipe situations with 1 in 100 year ARI events must be incorporated in the design. Overflow paths must also be provided in low points and depressions. This requirement shall be reflected on the Construction Certificate plans prior to the release of the Construction Certificate.
- 20) The depth and location of all services (i.e. gas, water, sewer, electricity, telephone, etc.) must be ascertained and reflected on the Construction Certificate plans and supporting documentation.
- 21) The submission of certification from a suitably qualified and experienced landscape designer and drainage consultant to the Principal Certifying Authority prior to the release of the Construction Certificate, confirming that the landscape plan and the drainage plan are compatible.
- 22) **Engineering Plans and Specifications - Retaining Wall Structures**
 The submission of engineering plans and supporting documentation of all proposed retaining walls to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate. The retaining walls shall be designed by a suitably qualified and experienced civil and/or structural engineer. The required engineering plans and supporting documentation shall include the following:
- a) A plan of the wall showing location and proximity to property boundaries;
 - b) an elevation of the wall showing ground levels, maximum height of the wall, materials to be used and details of the footing design and longitudinal steps that may be required along the length of the wall;
 - c) details of fencing or handrails to be erected on top of the wall;
 - d) sections of the wall showing wall and footing design, property boundaries and backfill material. Sections shall be provided at sufficient intervals to determine the impact of the wall on existing ground levels. The developer shall note that the retaining wall and footing structure must be contained wholly within the subject property;
 - e) the proposed method of subsurface and surface drainage, including water disposal;
 - f) reinforcing and joining details of the bends in the wall at the passing bay of the accessway;
 - g) the assumed traffic loading used by the engineer for the wall design.
- 23) **Pier and Beam Footings Adjacent to any Drainage Easement**
 Buildings and structures (including brick fences) adjacent to easements shall be supported on pier and beam footings outside the easement. The base of the piers shall be a minimum 900 mm below ground level and shall extend below the invert level of the drainage pipelines within the easement. Structural engineers details are required detailing the size and levels of the existing drainage pipelines and the design levels for the base of the piers adjacent to the easement.
- 24) **Property Addressing Policy Compliance**
 Prior to the issue of any construction certificate, the developer must ensure that any site addressing complies with Council's **Property Addressing Policy** (as amended). Where appropriate, the developer must also lodge a written request to Council's **Infrastructure Systems & Support – Property Addressing** (propertyaddressing@wollongong.nsw.gov.au), for the site addressing prior to the issue of the construction certificate. Enquiries regarding property addressing may be made by calling 4227 8660.
- 25) **Section 94A Levy Contribution**
 The following Section 94A Levy Contribution is required towards the provision of public amenities and services in accordance with the Wollongong City Council Section 94A Development Contributions Plan.
- Pursuant to Section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Wollongong City Council Section 94A Development Contributions Plan, a contribution of 1% of the cost of development (Contribution may be increased to 2% within the City Centre in accordance with Clause 1 of the Plan) amounting to \$52,630.00 shall be paid to Council prior to the release of any associated Construction Certificate.

The amount to be paid will be adjusted at the time of actual payment, in accordance with the provisions of the Wollongong City Council Section 94A Development Contributions Plan. The Consumer Price Index All Group Index Number for Sydney at the time of the development application determination is 110.9. The following formula for indexing contributions is to be used:

$$\text{Contribution at time of payment} = \text{SC} \times (\text{CP2} / \text{CP1})$$

Where:

SC is the original contribution as set out in the Consent

CP1 is the Consumer Price Index (all groups index for Sydney) used in the proceeding indexation calculation

CP2 is the Consumer Price Index (all groups index for Sydney) at the time of indexation

Details of CP1 and CP2 can be found in the Australian Bureau of Statistics website Catalog No. 6401.0 - Consumer Price Index, Australia.

METHOD	HOW	PAYMENT TYPE
Online	http://www.wollongong.nsw.gov.au/applicationpayments Your Payment Reference: 787550	Credit Card
In Person	Wollongong City Council Administration Building Customer Service Centre Ground Floor 41 Burelli Street WOLLONGONG	Cash Credit Card Bank Cheque
PLEASE MAKE CHEQUES PAYABLE TO: Wollongong City Council (Personal Cheques not accepted)		

A copy of the Wollongong City Council Section 94A Development Contributions Plan and accompanying Fact Sheet may be inspected or obtained from the Wollongong City Council Administration Building, 41 Burelli Street, Wollongong during business hours or on Council's web site at www.wollongong.nsw.gov.au.

The reason for Section 94A is to provide high quality and diverse public amenities and services to meet the expectations of the existing and new residents of Wollongong City Council.

Prior to the Commencement of Works

26) Erosion and Sediment Control Measures

Erosion and sediment control devices are to be installed prior to the commencement of any demolition, excavation or construction works upon the site. These devices are to be maintained throughout the entire demolition, excavation and construction phases of the development and for a minimum three (3) month period after the completion of the project, where necessary.

27) Application for Occupation, Use, Disturbance or Work on Footpath/Roadway

Any occupation, use, disturbance or work on the footpath or road reserve for construction purposes, which is likely to cause an interruption to existing pedestrian and / or vehicular traffic flows requires Council consent under Section 138 of the Roads Act 1993. An application must be submitted and approved by Council prior to the works commencing where it is proposed to carry out activities such as, but not limited to, the following:

- (a) Digging or disruption to footpath/road reserve surface;
- (b) Loading or unloading machinery/equipment/deliveries;
- (c) Installation of a fence or hoarding;

- (d) Stand mobile crane/plant/concrete pump/materials/waste storage containers;
- (e) Pumping stormwater from the site to Council's stormwater drains;
- (f) Installation of services, including water, sewer, gas, stormwater, telecommunications and power;
- (g) Construction of new vehicular crossings or footpaths;
- (h) Removal of street trees;
- (i) Carrying out demolition works.

During Demolition, Excavation or Construction

28) Supervision of Engineering Works

All engineering works associated with the development are to be carried out under the supervision of a practicing engineer.

29) No Adverse Run-off Impacts on Adjoining Properties

The design of the development shall ensure there are no adverse effects to adjoining properties or upon the land as a result of flood or stormwater run-off. Attention must be paid to ensure adequate protection for buildings against the ingress of surface run-off.

30) Re-direction or Treatment of Stormwater Run-off

Allowance must be made for surface run-off from adjoining properties. Any redirection or treatment of that run-off must not adversely affect any other property.

Prior to the Issue of the Occupation Certificate

31) Drainage Work As Executed

The developer shall obtain written verification from a suitably qualified civil engineer, stating that all stormwater drainage and related work has been constructed in accordance with the approved plans. This information must be submitted to the Principal certifying Authority prior to the issue of the final occupation certificate.

32) Retaining Wall Certification

The submission of a certificate from a suitably qualified and experienced structural engineer or civil engineer to the Principal Certifying Authority is required, prior to the issue of the Occupation Certificate or commencement of the use. This certification is required to verify the structural adequacy of the retaining walls and that the retaining walls have been constructed in accordance with plans approved by the Principal Certifying Authority.

Prior to Issue Subdivision Certificate/Release of Final Subdivision Plan

33) Occupation Certificate to be Issued Prior to the Release of the Subdivision Certificate

The Occupation Certificate for the approved units on site (DA-2016/1731 or subsequent modification) must be issued prior to the release of the Subdivision Certificate. Evidence that this requirement has been met must form a part of the Subdivision Certificate application.

34) Existing Easements

All existing easements must be acknowledged on the final subdivision plan.

35) Existing Restriction as to Use

All existing restriction on the use of land must be acknowledged on the final subdivision plan.

36) Encroaching Pipes

A minimum one (1) metre wide easement to drain water shall be created over any encroaching drainage pipes.

37) Encroaching Services

A minimum one (1) metre wide easement for services must be created over any encroaching utility service.

38) Final Documentation Required Prior to Issue of Subdivision Certificate

The submission of the following information/documentation to the Principal Certifying Authority, prior to the issue of a Subdivision Certificate:

- a) Completed Subdivision Certificate application form and fees in accordance with Council's fees and charges;
- b) Original Construction Certificates and approved drawings (where issued by an accredited Private Certifying Authority);
- c) Administration sheet and plan of Subdivision prepared by a registered surveyor plus four (4) equivalent size paper copies of the plan;
- d) Section 88B Instrument covering all necessary easements and restrictions on the use of any lot within the subdivision;
- e) Original Subdivider/Developer Compliance Certificate pursuant to Section 73 of the Water Board (Corporatisation) Act 1994 from Sydney Water;
- f) Original Notification of Arrangement from an Endeavour Energy regarding the supply of underground electricity to the proposed allotments;
- g) Original Compliance Certificate from Telstra or another Telecommunications Service Provider which confirms that the developer has consulted with the Provider with regard to the provision of telecommunication services for the development.
- h) Payment of section 94 fees (Pro rata) (if applicable).

Operational Phases of the Development/Use of the Site

39) Drainage Easement Surface Levels

The surface levels of the stormwater swale at the rear of the building must not be altered in any way. The stormwater swale must be kept clear of any vegetation and or obstructions likely to impede natural stormwater flows so there will no adverse flood impacts upon the subject lot and or adjoining properties.

40) Storage of Hazardous Materials Prohibited

No hazardous or dangerous materials are permitted to be stored on the land. This includes inside individual storage units.

41) Office and Bin Room

The unnamed room adjoining the bin room on the ground level is to be used as an office for reception and administrative purposes associated with the premises. This room is to be designated 'office' on the final strata subdivision plan and remain common property. The bin room is also to remain common property.

42) Hours of Operation

The premises are permitted to operate 24 hours a day, seven days a week. Staff are to be on the premises 9am-5pm seven days a week.

Reasons

The reasons for the imposition of the conditions are:

- 1 To minimise any likely adverse environmental impact of the proposed development.
- 2 To ensure the protection of the amenity and character of land adjoining and in the locality.
- 3 To ensure the proposed development complies with the provisions of Environmental Planning Instruments and Council's Codes and Policies.
- 4 To ensure the development does not conflict with the public interest.

Notes

- 1 This consent becomes effective and operates from the date shown as "**Endorsement Date**" on the front page of this notice. This consent will lapse unless development is commenced within five years from the endorsement date shown on this notice.
- 2 Section 97 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within six (6) months from the date of receipt of this notice.
- 3 Section 82A of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right to request the consent authority to review the determination. The request for review of the determination must be made within six (6) months from the date of receipt of this notice. In the absence of a pending appeal before the Land and Environment Court, the request for review, and the review by Council, must all be completed within the abovementioned 6 month time period. Accordingly, applicants are advised to provide Council with sufficient time to complete the review within this period, failing which the determination cannot be reviewed. The request must be accompanied by the fees set by the Environmental Planning and Assessment Regulation. A right of review of determination does not exist for a determination made in respect of a Designated Development or an Integrated Development.
- 4 The holder of a development consent that is being acted upon must also hold a current:
 - a Construction Certificate under the provisions of the Environmental Planning and Assessment Act, 1979.
 - b Strata Subdivision approval under the Strata Titles Act, 1973.
- 5 Where the consent is for building work or subdivision work, no temporary buildings may be placed on the site and no site excavation, filling, removal of trees or other site preparation may be carried out prior to the issue of a Construction Certificate and appointment of a Principal Certifying Authority.
- 6 A Tree Management Order has been proclaimed in the City of Wollongong. Under this order, no tree on the land the subject of this approval may be ringbarked, cut down, topped, lopped or wilfully destroyed except with the prior consent of Council which may be given subject to such conditions as Council considers appropriate. However, unless specified otherwise in this consent, those trees which are specifically designated to be removed on the plans approved under this consent or are within 3 metres of an approved building footprint may be removed, provided that a Construction Certificate has been issued for the development the subject of this consent and a Principal Certifying Authority appointed.
- 7 In this consent the developer means the applicant for development consent and any person or corporation who carries out the development pursuant to that consent.
- 8 Council recommends that NSW Wildlife Information and Rescue Service (WIRES) be contacted for assistance in relocating any native fauna prior to removal of any trees and bushland, authorised by this consent. For wildlife rescue assistance, you must call the Wildlife Rescue Line 1300 094 737 (13 000 WIRES) or visit their website www.wires.org.au for more information.
- 9 Before undertaking renovation or demolition work, or removing materials from site during development works refer to Council's website for further information.
<http://www.wollongong.nsw.gov.au/development/regulations/Pages/Renovations-Demolition.aspx>
<http://www.wollongong.nsw.gov.au/services/household/Pages/chemicalcleanout.aspx>
- 10 **Prolonged Rainfall Events**

The applicant is advised that under existing conditions and during prolonged rainfall events, flooding of the site may occur and it is in the applicant's interest to take all necessary precautions to minimise the risk of property loss and/or damage.

This letter is authorised by

Anne Starr
Senior Development Project Officer
Wollongong City Council
Telephone (02) 4227 7111

Annexure G Power Upgrade

13 Warehouse Place, Berkeley

Power Upgrade Form

Upgrade	Price (inclusive of GST)	Upgrade (yes/no)
Power supply and meter	\$1,000.00	
Embedded network	To be determined by Vendor	

NB. The Price for the Upgrade selected will be payable on Completion in addition to the Purchase Price.

Lot number:

Purchaser name / entity:

Signature:

Date:

Annexure H Agreement for Lease

AGREEMENT FOR LEASE

THIS AGREEMENT is made

BETWEEN: **The party named in Item 1 of Schedule 1** ('the Lessor')

AND: **The party named in Item 2 of Schedule 1** ('the Lessee')

RECITALS

- A. The Lessor wishes to grant and the Lessee wishes to accept the Lease on the terms and conditions specified in this Agreement.
- B. The parties wish to record the terms of their agreement.

AGREED TERMS

1. DEFINITIONS & INTERPRETATION

1.1 In this Agreement, the following definitions will apply:

Agreement includes this document and all schedules to this document;

Bank means a body corporate that is authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;

Commencement Date means the date on which this Agreement is executed by the parties and if executed on different dates, the later of those dates;

Condition Precedent means the condition prescribed in Schedule 2;

Draft Strata Plan means the draft plan annexed in Schedule 4;

GST has the meaning given in GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Land means the land described in Item 3 in Schedule 1;

Lease means a lease of the Premises on substantially the same terms as the lease contained in Schedule 3;

Lessee means the person specified in Item 2 in Schedule 1;

Lessee's Solicitor means the person specified in Item 8 in Schedule 1;

Lessor means the party identified in Item 1 of Schedule 1;

Lessor's Solicitor means the person show in Item 7 in Schedule 1;

Outgoings mean rates, charges and other levies payable to any authority (including rates and charges for the provision or reticulation of water, sewerage and drainage services payable to the local government);

Premises means that part of the Land over which the Lease is to be granted, as specified in Item 4 and as shown on the Draft Strata Plan, and includes all improvements;

Rent has the same meaning given in the Lease;

Settlement Date means that date which is 30 business days after the Lessor notifies the Lessee that Condition Precedent has been satisfied, or such other date agreed in writing by the parties;

Supply has the meaning given in the GST Act;

Tax Invoice has the meaning given in the GST Act;

Term has the same meaning given in the Lease; and

Termination Date means the date that is three (3) years after the Settlement Date.

1.2 In this Agreement:

- (a) words importing a gender include any other gender and words in the singular include the plural and vice versa;
- (b) all monetary amounts refer to Australian currency;
- (c) a reference to legislation includes subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (d) a reference to an individual or person includes a corporation or other legal entity;
- (e) a reference to a clause or schedule means a clause or schedule to this Agreement;
- (f) the headings are included for convenience of reference only and are not intended to affect the meaning of this Agreement;
- (g) if an expression is defined, other grammatical forms of that expression will have corresponding meanings;
- (h) a reference to days or months means calendar days or months;
- (i) if the day on which any act or thing is to be done under this Agreement is a Saturday, Sunday or public holiday in the place where the act or thing is to be done, the act or thing may be done on the next business day in that place;
- (j) if any conflict arises between the clauses in this Agreement and the contents of any schedule, the clauses prevail; and

-
- (k) an obligation on the part of two or more persons binds them jointly and each of them individually.

2. COMMENCEMENT & TERM

2.1 This Agreement commences on the Commencement Date and continues until:

- (a) the Lessor and the Lessee enter into the Lease; or
- (b) this Agreement is terminated under clause 8.

3. NO WARRANTIES

3.1 The Lessee acknowledges that:

- (a) the Premises are being leased in an 'as is' condition;
- (b) the Lessee has had the opportunity to obtain and undertake his/her own independent inspection, searches and enquiries in relation to the Premises; and
- (c) the Premises are being leased with any and all defects (whether latent or patent).

3.2 The Lessee will not:

- (a) make any objection, requisition or claim for loss, damage or compensation because of, or arising out of:
 - (i) the state of repair or condition of the Premises; or
 - (ii) the suitability of the Premises for any particular use or purpose; or
- (b) require the Lessor to carry out any work in respect of the Premises on the grounds that there are latent or patent defects in the Premises.

4. LEASE

4.1 Subject to the provisions of this Agreement, the Lessor agrees to grant and the Lessee agrees to accept the Lease during the Term.

4.2 Prior to the Settlement Date, the Lessor (or the Lessor's Solicitor) must amend the Lease to record the following details:

- (a) the Settlement Date is to be recorded in item G (2) on the front page of the Lease, being the 'commencing date';
- (b) the Termination Date is to be recorded in item G (3) on the front page of the Lease, being the 'terminating date'; and
- (c) any additional amendments required to give validate the terms of this Agreement.

-
- 4.3 The Lease will commence on the Settlement Date and will expire on the Termination Date.
- 4.4 At its cost, the Lessor must deliver the Lease to the Lessee for execution, no later than 20 business days prior to the Settlement Date.
- 4.5 The Lessee must sign the Lease promptly and return the Lease to the Lessor, no later than 10 business days after its receipt.
- 4.6 The Lessor must sign the Lease promptly after it is received from the Lessee and return a signed copy to the Lessee within 14 days following the Settlement Date.

5. LESSOR'S OBLIGATIONS

- 5.1 At the Lessor's cost, the Lessor must:
- (a) register the Lease as soon as practicable following the Settlement Date; and
 - (b) provide the Lessee with a copy of the registration confirmation statement.

6. STATUTORY OBLIGATIONS

- 6.1 The parties must comply with all other statutory obligations to give effect to this Agreement.

7. GST

- 7.1 The parties acknowledge that:
- (a) the Rent and any other payments due by the Lessee to the Lessor in relation to this Agreement and the Lease is inclusive of GST; and
 - (b) GST may be payable on a Supply under this Agreement.
- 7.2 Where GST is payable upon any Supply under this Agreement, the consideration payable by the recipient for the Supply is adjusted in accordance with clauses 7.3 and 7.4.
- 7.3 Subject to the supplier issuing a valid Tax Invoice, the consideration payable by the recipient to the supplier for the Supply is increased by the amount equal to that which the supplier is obliged to remit as GST on the Supply.
- 7.4 If for any reason including:
- (a) any amendment to the GST Act;
 - (b) the issue of a ruling or advice by the Commissioner of Taxation;
 - (c) a refund to the supplier in respect of a Supply made under this Agreement; or
 - (d) a decision of any tribunal or court,

the amount of GST paid by a party under this Agreement differs from the amount of GST paid or payable to the Commissioner of Taxation, then the party making the Supply must issue an appropriate GST adjustment note and the difference must be paid by or to the other party as the case may be.

7.5 The parties agree to exchange with each other such information as may be necessary to enable each party to accurately assess its rights and obligations under this clause 7.

8. TERMINATION

8.1 If the Condition Precedent is not satisfied or waived, then this Agreement will be at an end.

8.2 Termination under clause 8.1 or any other relevant clause in this Agreement will not give rise to any claim for compensation or damages by either party.

9. NOTICES

9.1 Any notice, request, consent or approval under this Agreement must be in writing and may be delivered by hand, by registered mail, by facsimile, or by email to the addresses specified in Item 6 in Schedule 1, or any substitute address as may have been notified by the relevant addressee from time to time or the party's solicitor named in Schedule 1.

9.2 Subject to clause 9.3, notices will be deemed to be given:

- (a) if posted – 5 business days after deposit in the mail with the postage prepaid;
- (b) if delivered – on the date of delivery;
- (c) if faxed – on the date on which an apparently successful transmission is noted by the sender's facsimile machine; or
- (d) if emailed – on the date of the email,

as the case may be.

9.3 An email or facsimile transmission received after 5.00pm on any day will be deemed to be received at the start of the next business day.

9.4 Notices by:

- (a) the Lessor must be on the Lessor's letterhead and signed by an authorised person; and
- (b) the Lessee must be signed by the Lessee.

9.5 Notices may be given by or to a party's solicitor by any of the means specified in clause 9.1.

9.6 A party giving a notice under this Agreement must provide a copy of that notice to the Financier.

10. COSTS

- 10.1 Each party must pay their own costs of and incidental to the negotiation, preparation and execution of this Agreement and the Lease.
- 10.2 The Lessor must pay any stamp duty payable on this Agreement.

11. GENERAL PROVISIONS

- 11.1 This Agreement is to be read and interpreted by the parties as interdependent with the Contract.
- 11.2 Any failure by a party at any time to enforce a clause of this Agreement, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party's rights.
- 11.3 No provision of this Agreement will be deemed to be waived unless the waiver is in writing and signed by the waiving party.
- 11.4 A waiver by a party of a breach of any provision of this Agreement will not operate as a waiver of any subsequent breach of the same provision nor as a waiver of any other provision.
- 11.5 This Agreement is governed by the laws of New South Wales and each party submits to the jurisdiction of the courts of New South Wales.
- 11.6 If any part of this Agreement is determined to be invalid, unlawful or unenforceable for any reason then that part will be severed from the rest of the Agreement to the extent of the invalidity, unlawfulness or unenforceability and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.
- 11.7 A party may not assign or novate their interest in this Agreement, except with the prior written consent of the other party or parties.
- 11.8 This Agreement may only be varied by a written agreement executed by the parties.

Item

8.

Lessee's Solicitor

Acorn Lawyers

15 Victoria Street, Wollongong NSW 2500

PO Box 5488, Wollongong NSW 2520

ATT: Elizabeth Pecipajkovski

elizabeth@acornlawyers.com.au

Telephone: (02) 4226 5711

Facsimile: (02) 4226 5755

SCHEDULE 2

CONDITION PRECEDENT

This Agreement is subject to and conditional upon Completion of the Contract on or prior to the Completion Date as defined in the Contract.

For the purposes of clarity, the following definitions (as prescribed in the Contract) apply in this Schedule 2:

Completion means a date that is fourteen (14) business days after the date which the Lessee gives notice to the Lessor that the completions precedent to the Contract have been satisfied or such later date as the Lessee may nominated in the notice, provided it is no later than one (1) month after the date of such notice; and

Completion Date means the date of which Completion of the Contract must occur as determined under clause 38 of the Contract.

SCHEDULE 3

Lease (attached)

LEASE

New South Wales
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

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

Revenue NSW use only

(A) TORRENS TITLE

Property leased
[insert strata plan folio identifier]

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE L
	Reference: _____	

(C) LESSOR

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

(D)

Encumbrances (if applicable):

(E) LESSEE

Bottlebrush Projects Pty Ltd ACN 613 762 922 and Berkeley Storage Pty Ltd ACN 615 483 602

TENANCY: Tenants in Common in Equal Shares

(G)

- TERM** Three (3) years
- COMMENCING DATE** _____
- TERMINATING DATE** _____
- With an **OPTION TO RENEW** for a period of **N.A.** set out in clause **N.A.** of **N.A.**
- With an **OPTION TO PURCHASE** set out in clause **N.A.** of **N.A.**
- Together with and reserving the **RIGHTS** set out in clause **N.A.** of **N.A.**
- Incorporates the provisions or additional material set out in **ANNEXURE(S) A** hereto.
- Incorporates the provisions set out in **N.A.**
No. **N.A.**
- The **RENT** is set out in item No. **1** of the Reference Schedule in Annexure **A**

DATE _____

(H) I certify I am an eligible witness and that the lessor signed this dealing in my presence. [See note* below].

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

Signature of witness: _____

Signature of lessor: _____

Name of witness: _____

Address of witness: _____

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

Signature: _____

Signatory's name: _____

Signatory's capacity: _____

(I) **STATUTORY DECLARATION***

I _____ solemnly and sincerely declare that—

- 1. The time for the exercise of option to _____ in expired lease No. n/a _____ has ended; and
- 2. The lessee under that lease has not exercised the option.

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

Made and subscribed at _____ in the State of New South Wales on _____ in the presence of _____ of _____,

Justice of the Peace (J.P. Number: _____) Practising Solicitor

Other qualified witness [specify] _____,

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
- 2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID No.]

Signature of witness: _____

Signature of applicant: _____

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

ANNEXURE "A"

This is annexure "A" referred to in the annexed Real Property Act Memorandum of Lease between

as referred to in the said Memorandum and in this annexure as the Lessor on the one part and **Bottlebrush Projects Pty Ltd ACN 613 762 922 and Berkeley Storage Pty Ltd ACN 615 483 602** the entities referred to in the said Memorandum and in this annexure as the Lessee of the second part.

.....
Lessee

.....
Lessor

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1. DEFINITIONS

1.1 These definitions and those outlined in the Schedules to this Lease apply unless they are inconsistent with the context.

'Annual Rent' means the yearly amount specified in **Item 1** of the Reference Schedule as varied under this Lease.

'Authority' means any Local Council or any State or Federal Government Instrumentality.

'Bank Guarantee' means unconditional banker's order or bank guarantee drawn to the Lessor which is in the reasonable opinion of the Lessor acceptable to the Lessor as the Security Deposit.

'Building' means the Building described in **Item 2** of the Reference Schedule. It includes any land and improvements used with or added to the Building and any plant, equipment, fixtures and fittings owned by the Lessor and located in the Building from time to time.

'Car Park' means that part of the Land and the Building (if any) designated by the Lessor from time to time to be used for the parking of motor vehicles.

'Commencement Date' means the date referred to in **Item G(2)** on the front page of this Lease.

'Common Areas' means the Car Park and areas of the Land and/or the Building that the Lessor provides for common use, including footpaths, access ways, entrances, stairs, elevators, toilets, loading docks, lifts, escalators and stairways of the Building where such facilities exist and any areas of the Building that the Lessor may designate from time to time.

'Expiry Date' means the date referred to in **Item G(3)** on the front page of this Lease.

'GST' means goods and services tax under A New Tax System (Goods and Services) Act 1999 (GST Act) and the terms used have the meanings as defined in that Act.

'Guarantor' means a person who gives a guarantee of or a guarantee and indemnity in connection with the Lessee's obligations, including the person or persons named in **Item 3** of the Reference Schedule as the Guarantor and when two or more persons are named a reference to "Guarantor" is a reference to them jointly and each of them severally.

'Item' means the relevant item in the Reference Schedule.

'Land' means the land described on the Real Property Act cover sheet hereof, as the "Property Leased" on which the Building is situated.

'Lease' means, depending on the context:

- (a) this document; or
- (b) the Leasehold estate arising on the signing or registration of this document; or
- (c) any other legal or equitable interest arising from either or both of:
 - (i) entry into possession of the Leased Premises; or
 - (ii) the payment or acceptance of money for the right to occupy and use the Leased

Premises,

(d) any holding-over period created under the terms of **Clause 7** of this document.

'Lease Year' means the period of twelve months commencing on the date of commencement of this Lease and then each succeeding period of twelve months.

'Leased Premises' means the premises referred to in **Item A** on the front page of this Lease.

'Lessee' means the person and/or entity referred to in **Item E** on the front page of this Lease.

'Lessee's Property' means all property in the Leased Premises which are not Lessor's Property.

'Lessor' means _____

'Lessor's Property' means all plant, equipment, fixtures, fittings, partitions furniture and furnishings in the Leased Premises including but not limited to all air conditioning, sprinkler systems, fire hydrants, fire extinguishers, other fire safety equipment, hose reels, security systems, heavy duty electrical systems, carpets and lighting and other property the Lessor provides in the Leased Premises.

'Manager' means any manager the Lessor appoints to manage the Building from time to time and includes the employees and agents of the Manager.

'New Lease' means any new Lease granted under **Clause 23**.

'Notify' means to serve a written notice.

'Rent' includes:

- (a) Annual Rent; and
- (b) the Lessee's Proportion of Outgoings, as set out in **Clause 9** and **Schedule 4**.

'Rent Day' means (except as otherwise provided in this Lease) the Commencement Date and, the first day of each month throughout the Term.

'Rent Free Period' means the period noted in **Item 5** of the Reference Schedule where the Lessee is not obliged to pay Rent to the Lessor under **Clause 5**. The Lessee acknowledges that the Rent Free Period does not affect any Rent Review Date as these dates will be calculated with reference to the Commencement Date. The Lessee also acknowledges that the Rent Free Period will only apply with respect to the initial Lease between the Lessor and Lessee and there will be no Rent Free Period with respect to any option Lease entered into by these parties under **Clause 23**.

'Rent Review Date' means a CPI Review Date, Market Review Date and/or Fixed Percentage Review Date.

'Statute' includes regulation, ordinance, by-law and any other delegated legislation.

'Security Deposit' means the amount specified in **Item 6** of the Reference Schedule, as set out in **Clause 32**.

'Services' means all services to or of the Leased Premises provided by Authorities, other

statutory bodies and/or private / public service providers and/or the Lessor including but not limited to water, sewerage, drainage, electricity, heating, gas, air conditioning and telephone and associated infrastructure.

'Term' means the term stated in **Item 7** of the Reference Schedule being the period from and including the Commencement Date to the including the Expiry Date.

2. INTERPRETATION

2.1 These rules apply unless they are inconsistent with the context:

2.1.1 Clause headings have been included, but the Lease is not to be construed or interpreted by reference to them;

2.1.2 A reference to a Clause is to a Clause of this Lease;

2.1.3 References to corporations include natural persons and vice versa;

2.1.4 References in the singular number include the plural number and vice versa;

2.1.5 References to any gender include any other gender;

2.1.6 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

2.1.7 A reference to any party includes that party's executors, administrators, substitutes, successors and permitted assigns;

2.1.8 A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;

2.1.9 If the Lessor, the Lessee or the Guarantor is more than one person, they are liable together and separately under the Lease;

2.1.10 No statutory obligations are implied in this Lease except those that cannot be contracted out of.

2.1.11 This Lease comprises the following documents:

(a) the front two (2) pages of this Lease (RPA Form 07L) containing particulars of the Leased Premises the land upon which the Building is erected, the parties to the Lease, short references to some of the essential terms of this Lease and the parties execution of the Lease;

(b) the Reference Schedule containing particulars of the items referred to in this Annexure "A";

(c) this Annexure "A" containing particulars of the terms and conditions the parties must comply with over the term of this lease or any extension or renewal;

(d) any memorandum or memoranda of consent by relevant Mortgagee(s);

(e) the contents page and the Schedules.

3. NOTIFICATION AND SERVICE

- 3.1 Where the Lease provides that one party is to notify the other, a notice may be served by any of the following methods:
- 3.1.1 by personal delivery to the person to be served; or
 - 3.1.2 by prepaid post to the person to be served:
 - 3.1.2.1 addressed to the Leased Premises, if to the Lessee; or
 - 3.1.2.2 addressed to the person's last known place of business; or
 - 3.1.2.3 addressed to the registered office or principal place of business or to the care of the managing director, the general manager, the principal administrative officer or at least two directors, if to a corporation; or
 - 3.1.2.4 addressed to the person's last known place of residence, if to a natural person; or
 - 3.1.2.5 to the relevant address specified in **Item 8** of the Reference Schedule.
 - 3.1.3 by being left with any employee of the person to be served who is apparently over the age of 16;
 - 3.1.4 by being left with any member of the family of the person to be served who is apparently over the age of 16; or
 - 3.1.5 by any other authorised method.
- 3.2 Anything sent by post will be taken to have been received in the ordinary course of post, whether or not the person to be served receives it.
- 3.3 Where more than one person has the same interest in the Lease, notification to or by one of them is sufficient notification to or by all of them.

4. GRANT OF LEASE AND TERM

- 4.1 The Lessor grants to the Lessee the right:
- 4.1.1 to possess and use the Leased Premises;
 - 4.1.2 to use the Common Areas in common with the Lessor and all persons the Lessor authorises
 - 4.1.3 to possess and use the Lessor's Property, but only with the use of the Leased Premises; and
 - 4.1.4 the benefit of the rights and liberties comprised in **Item 20** of the Reference Schedule for the Term and under the provisions of the Lease.
- 4.2 The Term begins and ends on the dates stated in **Item 7** of the Reference Schedule and includes each of those dates.
- 4.3 If the Lessee occupies the Leased Premises after the end of the Lease with the Lessor's consent, it will do so as a Lessee from month to month (holding over) in accordance with **Clause 7**.

- 4.4 The Lease binds the Lessor's and the Lessee's personal representatives and assignees, or if either or both of them are corporations, their successors and assignees, as if they were parties to it.

5. RENT

- 5.1 For the right to possess and use the Leased Premises and the Lessor's Property as outlined in **Clause 4.1**, the Lessee must pay to the Lessor the:
- 5.1.1 the Annual Rent; and
 - 5.1.2 the Lessee's Proportion of Outgoings, as set out in **Clause 9** and **Schedule 4**.
- 5.2 The Lessee must pay the amounts stipulated in **Clause 5.1**, whether demanded or not and without any deductions.
- 5.3 In the first year of the Lease, the Annual Rent is the amount referred to in **Item 1** of the Reference Schedule. In the second and following years, Annual Rent shall be varied in accordance with **Clause 6.1**.
- 5.4 The Lessee must pay the Rent by equal monthly instalments in advance on or before each Rent Day direct to the Lessor or as the Lessor otherwise directs the Lessee in writing.
- 5.5 The Lessee acknowledges that if any monies due under this Lease:
- 5.5.1 is received directly by the Lessor's bank later than the time that bank closes on the date of receipt, then that payment is taken to have been received at 9.00am on the next day that the Lessor's bank is open for business; or
 - 5.5.2 is received directly by the Lessor (or any person nominated by the Lessor) later than 2.00pm on the date of receipt, then that payment is taken to have been received at 9.00am on the next day that the Lessor's bank is open for business.
- 5.6 If an instalment is for a period of less than one month, then that instalment is that proportion of one twelfth of the Rent which the number of days in the period bears to the number of days in the month in which that period begins.
- 5.7 The Lessee acknowledges that it must commence paying Annual Rent to the Lessor in accordance with this **Clause 5** on and from the date referred to in **Item 9(a)** of the Reference Schedule.
- 5.8 The Lessee acknowledges that it must commence paying the other amounts due under this Lease (i.e. Outgoings) to the Lessor on and from the date referred to in **Item 9(b)** of the Reference Schedule.

6. RENT REVIEW

- 6.1 The Annual Rent will not be varied or increased for the duration of the Term.

7. HOLDING OVER

- 7.1 If the Lessee continues to occupy the Leased Premises after the Expiry Date with the Lessor's approval, it does so under a monthly tenancy:
- 7.1.1 which either party may terminate on one month's notice ending on any day; and
 - 7.1.2 with the rent payable being the equivalent of the monthly rental payment payable

immediately before the monthly tenancy commences (i.e. 1/12 of the Annual Rent at that time) varied by a [INSERT TYPE OF INCREASE]. In addition, the Lessee must continue to pay the Lessee's Proportion of Outgoings as set out in **Clause 9** and all other monies payable under this Lease.

7.2 Subject to **Clause 7.1**, the monthly tenancy is on the same terms as this Lease except for those changes which:

7.2.1 are necessary to make this Lease appropriate for a monthly tenancy (but any Security Deposit required under this Lease may not be reduced); or

7.2.2 the Lessor requires as a condition of giving its approval to the holding over.

8. HEAD-LEASE CONCURRENT LEASE

8.1 The Lessee must permit any party having an interest in the Land which is superior to or concurrent with the Lessor's interest (for example, a Head Lessor, Concurrent Lessor or Mortgagee) to enter and inspect the Leased Premises and to carry out any repairs, renovations, maintenance and otherwise to exercise their lawful rights with regard to the Leased Premises.

8.2 In the event of any person (for example the Mortgagee) becoming entitled to receive the Rent in place of the Lessor then that person will have the rights and benefits conferred on the Lessor by this Lease including the right to enforce the obligations imposed on the Lessee by this Lease.

8.3 The Lessor for its part agrees that it will fulfil any existing obligations to any person having any such estate in the Land.

9. OUTGOINGS, SERVICES & OTHER PAYMENTS

9.1 Outgoings payable with respect to this Lease will be calculated in accordance with **Schedule 4** of this Lease.

9.2 The Lessee acknowledges that it will be required to pay on demand any amount paid or payable by the Landlord in each Outgoings Year in connection with the Leased Premises (other than the cost of structural works) which are not defined as an Outgoing in this Lease.

9.3 The Lessee also acknowledges that it must pay for everything it must do under the terms of this Lease, including but not limited to all charges payable on account of:

9.3.1 the maintenance, service and repair contracts in accordance with **Clauses 13.3.5 & 13.3.6**;

9.3.2 regular cleaning of the Leased Premises in accordance with the terms of this Lease;

9.3.3 all costs and expenses incurred by the Lessor with organising periodic maintenance and certification of all fire extinguishers in accordance with **Clauses 13.8 & 13.9** of this Lease; and

9.3.4 all costs and expenses incurred by the Lessor with organising periodic pest control inspections, treatments and/or other process in accordance with **Clauses 10.6 & 10.7** of this Lease.

9.4 The Lessee must pay punctually for all utilities and/or Services that are connected to and/or supplied to the Leased Premises.

10. USE OF LEASED PREMISES

- 10.1 The Lessee may use the Leased Premises for the purpose specified in **Item 13** of the Reference Schedule only ("**the Permitted Use**") and must conduct its business on the Leased Premises in a professional manner.
- 10.2 The Lessor warrants:
- 10.2.1 that the Leased Premises are suitable for the Permitted Use;
 - 10.2.2 that the Lessor's Property in the Leased Premises or Services are suitable for the Permitted Use;
 - 10.2.3 that the Leased Premises may lawfully be used for the Permitted Use; and
 - 10.2.4 that the zoning of the Leased Premises or of the Building will allow the Leased Premises to be used for the Permitted Use,
- 10.3 The Lessee must not:
- 10.3.1 use or allow the use of the Leased Premises for living or sleeping;
 - 10.3.2 use or allow the use of the Common Areas, toilets, conveniences and the water, lighting, heating and air conditioning apparatus, and fire sprinkler systems in the Leased Premises or the Building for any purposes other than those for which they were constructed;
 - 10.3.3 cause or allow any loud noise or any other nuisance, disturbance or annoyance to be made in or to emanate from the Leased Premises;
 - 10.3.4 conduct or allow any auction sale, fire sale, warehouse sale or liquidation sale in the Leased Premises;
 - 10.3.5 do anything to overload the facilities or Services of the Leased Premises or use them for anything other than their intended purpose.
- 10.4 The Lessee must at its own cost:
- 10.4.1 comply with any legislation, Statute, strata By-Laws and/or any other rule or regulation affecting the Leased Premises, Building and/or Land;
 - 10.4.2 comply with the requirements of all regulatory bodies having control of trade waste and the Lessee must continually indemnify the Lessor against any liability arising from such requirements with respect to the Leased Premises. Should any relevant Authority require the Lessee to enter into contract with any service provider with respect to any trade waste or pollution requirement then the Lessee must comply forthwith with such requirements and be responsible for any charges with respect to this;
 - 10.4.3 carry out any alterations, additions and repairs to the Leased Premises required by any Statute if necessary because of the Lessee's actions or the Lessee's use of the Leased Premises;
 - 10.4.4 take out and keep current all licences and permits required to carry on the business conducted in the Leased Premises;

- 10.4.5 comply with the weight and positioning requirements that the Lessor prescribes for safes and other heavy articles or goods;
- 10.4.6 keep the Leased Premises tidy and free of vermin and/or pests and comply with the Lessor's reasonable directions about refuse removal;
- 10.4.7 inform the Lessor of damage to the Leased Premises or of a faulty Service immediately it becomes aware of it;
- 10.4.8 promptly, when asked by the Lessor, do everything necessary for the Lessee to do to enable the Lessor to exercise its rights under this Lease;
- 10.4.9 maintain all installations for Services and be responsible for all service supply charges for the Lease Premises. The Lessor is not liable to the Lessee or any other person for interruptions to these services.

11. SUBLETTING

- 11.1 The Lessee may sublet the Leased Premises if, before it sublets:
 - 11.1.1 It has forwarded a written request to consent to subletting to the Lessor with the name and address of the proposed sub-lessee ("**the New Lessee**");
 - 11.1.2 the Lessee and the New Lessee comply with the Lessor's reasonable requirements; and
 - 11.1.3 the Lessor has obtained any consents it has agreed or is required to obtain.

12. DAMAGE TO THE LEASED PREMISES

- 12.1 If the Leased Premises are damaged so that the Lessee's use of the Leased Premises is materially adversely affected, the Lessor must give the Lessee a notice within a reasonable time after the damage occurs either:
 - 12.1.1 terminating this Lease on a date not less than two weeks after the date the Lessor gives the notice; or
 - 12.1.2 stating that the Lessor intends to make the Leased Premises fit for the Lessee's use.
- 12.2 If the Lessor does not make the Leased Premises fit for the Lessee's use within a reasonable time after giving the notice that it intends to do so, the Lessee may give the Lessor a notice stating that the Lessee will terminate this Lease if the Lessor does not make the Leased Premises fit within a reasonable time after the Lessee gives the notice.
- 12.3 The Lessee may reduce its payments under this Lease for the period from and including the date the damage occurs to and including the date this Lease is terminated or to but excluding the date the Leased Premises are made fit for the Lessee's use. Any reduction must be proportionate to the loss of amenity caused by the damage. The Lessor may be liable to pay the Lessee any further compensation or damages arising out of damage to the Leased Premises.
- 12.4 On the first Rent Day after the proportion is agreed or decided, the Lessee must pay the Lessor (or the Lessor must credit the Lessee with) any difference between what the Lessee has paid under this Lease and what the Lessee should have paid for the period from and including the date the damages occurs to but excluding that Rent Day.
- 12.5 The Lessee may not terminate this Lease or reduce payments under this **Clause 12** if:

- 12.5.1 the damage is caused or contributed to by; or
- 12.5.2 rights under an insurance policy in connection with the Leased Premises are prejudiced or a policy is cancelled or payment of a premium or a claim is refused by the insurer because of,

the act, negligence or default of the Lessee or of the Lessee's Employees and Agents. This does not affect rights the Lessor may have in connection with the events specified in this **Clause 12.5**.

- 12.6 This **Clause 12** does not oblige the Lessor to restore or reinstate the Leased Premises.
- 12.7 The Lessee may not terminate this Lease or stop or reduce payments under it because a Service is not available or is interrupted or fails or the Lessor's Property fails.
- 12.8 Any dispute arising out of the provisions of **Clause 12** should be dealt with in accordance with **Clause 29**.

13. LESSEE'S OBLIGATIONS – WORKS, REPAIR, REFURBISHMENT & REDECORATION

Repairs

- 13.1 The Lessee acknowledges that it has made its own appraisal of the suitability of the Leased Premises for the Lessee's business and accepts the Leased Premises in their present state of repair and condition.
- 13.2 The Lessee must maintain, repair and keep the Leased Premises in a state of good repair, bearing in mind the condition of the Leased Premises at the beginning of the Lease, but need not carry out:
 - 13.2.1 any structural work, unless it has become necessary because of any actions, whether negligent or deliberate, of the Lessee or those for whom the Lessee is responsible;
 - 13.2.2 repairs that are necessary because of fair wear and tear; or
 - 13.2.3 repairs that are necessary because of a natural disaster or other serious event that is out of the Lessee's control.
- 13.3 The Lessee must also:
 - 13.3.1 immediately repair any damage to the Leased Premises, the Building or the Land caused by the actions, whether negligent or deliberate of the Lessee or those for whom the Lessee is responsible;
 - 13.3.2 immediately replace broken electric lights in the Leased Premises; and
 - 13.3.3 promptly replace worn or damaged items in or attached to the Leased Premises (including the Lessor's Property, plate glass, Lessee's Property and those floor coverings, furnishings, doors, mechanical door opening equipment, locks, windows, partitions, toilets, pipes, grease traps, water apparatus, fire equipment, gas fittings, conduits, drains, wires and electrical fittings which are part of the Lessor's Property) with items of similar quality.

Redecoration

- 13.4 The Lessee must redecorate the Leased Premises to the Lessor's reasonable satisfaction by:
- 13.4.1 painting or otherwise treating all internal and external surfaces of the Leased Premises as are painted or treated at the Commencement Date; and
 - 13.4.2 replacing any floor coverings as are covered at the Commencement Date and appropriately treating any uncovered flooring by sanding, polishing or other appropriate treatment;

before the end of the Lease or the date that the Lessee ceases to occupy the Leased Premises for any reason (whichever is earlier) and, in the event that the Lessee exercises any option of renewal, before of end of the option term.

Works

- 13.5 The Lessee may carry out works to the Leased Premises (including refurbishment works, redecoration works and any electrical, gas, plumbing and telecommunications work in respect of the Leased Premises) subject to the Lessor's approval in writing which approval must not be unreasonably withheld unless the works are likely to cause damage to the Leased Premises or the Building in which case approval may be withheld in the Lessor's absolute discretion.
- 13.6 The Lessee must ensure that any approved works it does are done:
- 13.6.1 in a proper and workmanlike manner; and
 - 13.6.2 in accordance with any plans, specifications and schedule of finishes required; and
 - 13.6.3 in accordance with all laws and the requirements of authorities; and
 - 13.6.4 in accordance with the Lessor's reasonable requirements and directions.

14. LESSOR'S OBLIGATIONS & RIGHTS

- 14.1 At all reasonable times, the Lessor, its agents or both may enter the Leased Premises to look at its condition and that of any Lessor's Property and Services in the Leased Premises. The Lessor may notify the Lessee of any defects (whether detected during any inspection of the Leased Premises by the Lessor or otherwise) and require it to remedy them with a reasonable time.
- 14.2 At all reasonable times, the Lessor, its agents or both may enter the Leased Premises without causing unnecessary interference with the use of the Leased Premises by the Lessee, to:
- 14.2.1 comply with the terms of any legislation, Statute, strata By-Laws and/or any other rule or regulation affecting the Leased Premises;
 - 14.2.2 carry out any structural work that the Lessor reasonably thinks should be carried out;
 - 14.2.3 install any services such as air conditioning, automatic fire sprinklers, gas pipes, water pipes, drainage pipes, cables or electrical wiring;
 - 14.2.4 carry out any repairs to the Leased Premises the Lessor reasonably thinks should be carried out;

- 14.2.5 carry out any works to any premises adjoining the Leased Premises the Lessor reasonably thinks should be carried out;
 - 14.2.6 take inventories of fittings and accessories;
 - 14.2.7 refurbish the Leased Premises, if the Lessee fails to do so by the date referred to in **Clauses 13.4** and/or redecorate the Leased Premises, if the Lessee fails to do so by the dates referred to in **Clauses 13.7**; and
 - 14.2.8 remedy any defects about which the Lessor has notified the Lessee under **Clause 14.1** (or any other relevant clause in this Lease) and which the Lessee has not remedied within a reasonable time.
- 14.3 If the Lessor carries out any works in the Leased Premises or in the Building that the Lessee should have carried out, the Lessee must pay the Lessor on demand the costs of that work.
- 14.4 After giving reasonable notice, the Lessor may:
- 14.4.1 enter the Leased Premises to show prospective purchasers or Lessees through the Leased Premises; and
 - 14.4.2 display for a reasonable time from the Leased Premises a sign indicating that the Leased Premises are available for purchase or lease.
- 14.5 If the Lessor acting reasonably decides there is an emergency affecting the Leased Premises, the Lessor may at any time and without notice to the Lessee, enter the Leased Premises and/or stop the Lessee from entering the Land.
- 14.6 The Lessee acknowledges and agrees that:
- 14.6.1 It is the Lessee's responsibility to ensure that the Leased Premises and any entrances / exits of the Building that are used by the Lessee are properly secured, which includes securely closing all relevant doors and openings;
 - 14.6.2 The Lessor may enter the Leased Premises for any purpose concerning the security of the Leased Premises;
 - 14.6.3 The Lessee must provide the Lessor with its contact address and telephone number for all emergencies and keep the Lessor informed of any changes.
 - 14.6.4 It must pay for any sets of keys which give access to the Leased Premises and/or the Building over and above the original set provided for the Lessee's use;
 - 14.6.5 It must pay for or reimburse the Lessor for any expense incurred by the Lessor in providing the Lessee with access after-hours;
 - 14.6.6 It must not cause any unauthorised copies of the keys to be made.
- 14.7 The Lessor reserves the sole and exclusive right to:
- 14.7.1 to provide for support of structures erected on land adjacent to the Leased Premises ("**the adjacent land**");
 - 14.7.2 to provide for the provision of services of all descriptions to the Building or to adjacent land;
 - 14.7.3 to enter into any arrangement or agreement with any of the owners, Lessee's or

occupiers of adjacent land or with any public authority.

- 14.8 For the purposes referred to in **Clause 14.7**, the Lessor reserves the right to dedicate, transfer, grant or create easements affecting any part of the Land, the Building or the Leased Premises in favour of such persons and/or authorities and upon such terms and conditions as the Lessor thinks fit. The Lessee agrees that it accepts this Lease subject to any such arrangement. In exercising the Lessor's rights under **Clauses 14.7 and 14.8** the Lessor agrees that it will not enter into any arrangement or agreement in favour of any person (other than the Lessee), which substantially interferes with the Lessee's enjoyment of the Leased Premises under this Lease.

15. INSURANCE

- 15.1 The Lessee must, at its own expense, take out and keep up to date insurance policies as described in **Clause 15.2** over the Leased Premises. The insurance policies must be taken out with an insurance company approved by the Lessor.
- 15.2 The Lessee must take out:
- 15.2.1 a public risk policy in the names of the Lessor and the Lessee that gives a minimum cover for each accident, claim or event of the amount stated in **Item 15** of the Reference Schedule, or if the Lessor notifies the Lessee, any reasonable higher amount. The cover provided under this policy must not be contributory with any policy the Lessor takes out;
 - 15.2.2 a plate glass policy in the names of the Lessor and the Lessee, if there is any plate glass in the Leased Premises;
 - 15.2.3 a policy in the names of the Lessor and the Lessee covering the fittings, accessories and stock in the Leased Premises or associated with the business carried on by the Lessee in the Leased Premises. Insurance cover under this policy must be for the full insurable value of the fittings, accessories and stock against loss or damage because of fire and other risks including water, storm and rainwater damage; and
 - 15.2.4 worker's compensation insurances; and
 - 15.2.5 Industrial Special Risk Insurance Policy for the usual risk and covering all the Lessee's property (excluding that covered by the policy in **Clause 15.2.3**) for its full value.
- 15.3 The Lessee must give copies of the insurance policies of the types described in **Clause 15.2** to the Lessor before taking possession under the Lease. Within seven days of receiving any certificate of renewal or further policy, the Lessee must give a copy of it to the Lessor.
- 15.4 The Lessee must not do anything directly or indirectly that might make any insurance on or relating to the Leased Premises or the Building void or voidable or which might increase the policy premium.
- 15.5 The Lessee must pay any increase in insurance premiums or charges incurred because of the Lessee's use of the Leased Premises.
- 15.6 The Lessee must:
- 15.6.1 comply with the insurance, sprinkler and fire alarm regulations that apply because of the use of the Leased Premises; and

- 15.6.2 comply with the requirements of any insurer of the Leased Premises or of the Building; and
 - 15.6.3 pay for any necessary alterations to the sprinkler or fire alarm installation to ensure compliance.
- 15.7 The Lessee must apply all money received under the plate glass insurance policy towards reinstating the damaged glass. If the money is insufficient to meet the cost of the reinstatement, the Lessee must pay the extra amount to reinstate the damaged glass to the Lessor's satisfaction.

16. EXPIRY OR TERMINATION

- 16.1 The Lessee must vacate the Leased Premises on the earlier of the Expiry Date and the date this Lease is terminated and, subject to **Clause 16.2**, leave them in a condition satisfactory to the Lessor acting reasonably.
- 16.2 The Lessee may not remove Lessee's Property which the Lessor has stated (as a condition of giving approval to works) may not be removed or is part of structural work done by the Lessee to the Leased Premises, unless the Lessor gives the Lessee a notice requiring the Lessee to remove that Lessee's Property.
- 16.3 Subject to **Clauses 16.2 and 16.4**, the Lessee must remove all of the Lessee's Property which it may or must remove from the Leased Premises before the day the Leased Premises must be vacated.
- 16.4 If the Lessee does not remove all of the Lessee's Property in accordance with **Clause 16.3** the Lessor may give the Lessee a notice, stating when and how the Lessee's Property is to be removed from the Leased Premises and by whom.
- 16.5 The Lessor may treat the Lessee's Property as abandoned and deal with it in any way it sees fit at the Lessee's expense if the Lessee does not remove the Lessee's Property in accordance with this **Clause 16** or a notice given under it.
- 16.6 The Lessee's Property is at the Lessee's risk at all times.
- 16.7 The Lessee must promptly make good any damage caused by the Lessee's Property being removed from the Leased Premises.
- 16.8 On the day the Lessee must vacate the Leased Premises, the Lessee must give the Lessor the keys, access cards and similar devices for the Building and the Leased Premises given at any time to the Lessee by the Lessor or as otherwise held by the Lessee and any approved third parties.
- 16.9 If the Lessee remains in occupation of the Leased Premises after the date it is required to vacate them, then the Lessee acknowledges that the Lessor may re-enter the Leased Premises, apply locks to the doors and otherwise exercise the rights which apply in the event of re-entry upon default.

17. MORTGAGEE CONSENT

- 17.1 The Lessee acknowledges that this Lease is subject to the consent of any Mortgagee of the Land irrespective of whether the mortgage is registered or unregistered. The Lessee must assist and sign all documents that may be necessary for this purpose.
- 17.2 The Lessee agrees to pay any fees reasonably incurred by the Lessor in obtaining the consent of any Mortgagee to this Lease or to any subsequent dealing in connection with this

Lease. Such fees may include the mortgagee's reasonable costs and disbursements in connection with any such consent.

18. not used

19. INTEREST

- 19.1 The Lessee must pay interest to the Lessor on any money due under the Lease or on any judgment for the Lessor in an action arising from the Lease, from the date it becomes due for payment until all outstanding money and interest is paid in full.
- 19.2 Interest will accrue and be calculated daily at the rate set by the Lessor's bank as its benchmark rate for overdrafts of \$100,000 or more, if there is no set rate, at the annual rate of 5%.

20. CANCELLATION FOR BREACH

- 20.1 The following Lessee's covenants are essential terms of this Lease:
- 20.1.1 the covenant to pay Rent during the Lease term (**Clause 5**); and
 - 20.1.2 the covenant not to deal with the Lease, or part with possession of the Leased Premises without consent (**Clause 11**); and
 - 20.1.3 the covenant about use of the Leased Premises (**Clause 10**); and
 - 20.1.4 the covenant requiring the Lessee to insure the Leased Premises (**Clause 15**).
- 20.2 The Lessor's acceptance of late payment of any Rent does not waive the essentiality of the Lessee's obligation to pay Rent.
- 20.3 The Lessor may cancel the Lease if:
- 20.3.1 all or part of the Rent or other money due to the Lessor under the Lease remains unpaid for 60 days after it is due, whether formally demanded or not;
 - 20.3.2 the Lessee breaches the Lease, or any rule or regulation made under the Lease;
 - 20.3.3 defects notified under **Clause 14.1** (or any other relevant clause in this Lease) are not remedied within the time specified in the notice;
 - 20.3.4 the Lessee is a company that:
 - 20.3.4.1 stops or threatens to stop carrying on the business which is conducted from the Leased Premises; or
 - 20.3.4.2 goes into liquidation, whether voluntary or not; or
 - 20.3.4.3 is wound up; or
 - 20.3.4.4 is placed under the control of a liquidator or receiver (in both cases whether provisional or otherwise); or
 - 20.3.4.5 is placed under official management under the Corporations Act 2001 (Cth); or
 - 20.3.4.6 enters into a composition or scheme of arrangement;

- 20.3.5 the interest of the Lessee under the Lease is taken in execution under any legal process; or
 - 20.3.6 the Lessee or any person claiming through the Lessee conducts any business from the Leased Premises after the Lessee has committed an act of bankruptcy.
- 20.4 For the purposes of **Clauses 20.1 and 20.3** the Lessor may cancel the Lease by:
- 20.4.1 notifying the Lessee of the cancellation; or
 - 20.4.2 re-entering the Leased Premises, with force if necessary, ejecting the Lessee and all other persons from the Leased Premises and repossessing them; or
 - 20.4.3 doing both.

21. REMOVAL OF THE LESSEE'S PROPERTY

- 21.1 If the Lessor cancels the Lease under **Clause 20**, it may:
- 21.1.1 remove the Lessee's property; and
 - 21.1.2 store it at the Lessee's expense; and
 - 21.1.3 after storing the property for 30 days, dispose of it and apply any proceeds towards:
 - 21.1.3.1 any unpaid Rent or other money; or
 - 21.1.3.2 any loss or damage; or
 - 21.1.3.3 the payment of storage and other expenses,
- without being liable to the Lessee for trespass, detinue, conversion or negligence.

22. PAYMENTS

- 22.1 The Lessee must make payments under this Lease to the Lessor (or to a person nominated by the Lessor in a notice to the Lessee) by the method the Lessor reasonably requires (including by direct bank debit) without set-off, counterclaim, withholding or deduction.
- 22.2 If the Lessee pays an amount and it is found later that the amount was not correct, then even if the Lessor has given the Lessee a receipt, the Lessee must pay the Lessor (or the Lessor must credit the Lessee with) the difference between what the Lessee has paid and what the Lessee should have paid within seven days after either party gives the other a notice about the mistake.
- 22.3 The Lessor need not make demand for any amount payable by the Lessee unless this Lease says that demand must be made.
- 22.4 If the Lessee must pay an amount on the next Rent Day and there is no next Rent Day, then the Lessee must pay that amount within seven days after the Lessor demands it.
- 22.5 Expiry or termination of this Lease does not affect the Lessee's obligations to make payments under this Lease for periods before then.
- 22.6 Each payment by the Lessee must be made with an additional amount equal to any goods and services, consumption, value added or similar tax applying to that payment.

23. OPTION FOR RENEWAL

- 23.1 The Lessor must grant a new Lease under this **Clause 23** on the Expiry Date to commence on the next day only if:
- 23.1.1 the Lessee gives the Lessor a notice stating that it wants a New Lease of the Leased Premises for the term first specified in **Item 16** of the Reference Schedule; and
 - 23.1.2 the Lessor receives that notice within the period from and including the day that is six (6) months before the Expiry Date (being, in respect of the initial term, the date referred to in **Item 17** of the Reference Schedule) to and including the day that is three (3) months before the Expiry Date (being, in respect of the initial term, the date referred to in **Item 18** of the Reference Schedule); and
 - 23.1.3 when the Lessee gives that notice, and on the Expiry Date, the Lessee is not in breach of this Lease; and
 - 23.1.4 the Lessee delivers to the Lessor before the Expiry Date a guarantee of or a guarantee of and an indemnity in connection with the Lessee's obligations under the New Lease by the same person, or another person acceptable to the Lessor, on the same terms as any given in connection with the Lessee's obligations under this Lease.
- 23.2 The New Lease is to be identical with this Lease except that:
- 23.2.1 if the particulars of only one Lease are the only particulars specified in **Item 16** of the Reference Schedule, this **Clause 23** and **Item 16** are deleted; and
 - 23.2.2 If particulars of more than one New Lease are specified in **Item 16** of the Reference Schedule, the particulars of the New Lease first specified are deleted from **Item 16**; and
 - 23.2.3 the Commencement Date, the term, the expiry date, the rent review dates, refurbishment dates, and redecoration requirements and dates are to be those first specified in **Item 16** of the Reference Schedule; and
 - 23.2.4 the Annual Rent from the Commencement Date of the New Lease is to be decided under the Market Review provisions in **Schedule 2** as if that date were a Market Review Date; and
 - 23.2.5 the percentage attributable to Lessee's Proportion of Outgoings Expenses from the Commencement Date of the New Lease is to be the percentage determined by the Lessor in its sole discretion; and
 - 23.2.6 there will be no rent free period under the New Lease and the particulars in **Item 5** of the Reference Schedule will be marked "Not Applicable" and the particulars in **Item 9** of the Reference Schedule will be marked "Commencement Date"; and
 - 23.2.7 the New Lease must reflect any variations to this Lease which become effective during the Term.
- 23.3 If there is a Guarantor of the Lease, the Lessor need not grant a further Lease of the Leased Premises unless the Lessee obtains a further guarantee of the performance of its obligations, either by the Guarantor or by other guarantors acceptable to the Lessee on terms similar to the guarantee in the Lease.

24. NEGOTIATION OF FURTHER TERM

- 24.1 Where no term of years is set out in **Item 16** and if the Lessor has not previously entered into an agreement to renew this Lease, then at least six months (or if this lease be no more than 12 months then three months) before the finish of the Lease the Lessor may tell the Lessee by a notice ("**the Proposal**"):
- 24.1.1 if the Lessor will renew the Lease, and if so upon what terms; or
- 24.1.2 if the Lessor will let the Lessee continue to occupy the Leased Premises on a monthly tenancy basis; or
- 24.1.3 if the Lessor will require the Lessee to vacate the Leased Premises on the date that the Lease finishes.
- 24.2 The Lessee must notify the Lessor in writing within one (1) month of the date the Lessor gives the Lessee the Proposal if the Lessee agrees to renew the Lease and will either accept the Lessor's terms of this renewal or wishes to negotiate different terms. If the Lessee does not respond to the Proposal as outlined in this **Clause 24.2**, or if the Parties do not agree on any terms to renew the Lease, the parties agree that the Lease finishes on its expiry date.
- 24.3 In the event that the Lessor does not serve a Notice under **Clause 24.1**, the parties agree that the Lease finishes on its expiry date.

25. GUARANTEE

- 25.1 If there is a name or names specified in **Item 3** of the Reference Schedule, then this **Clause 25** applies.
- 25.2 The Guarantor gives this guarantee and indemnity in consideration of the Lessor agreeing to enter into this Lease. The Guarantor acknowledges the receipt of valuable consideration from the Lessor for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.
- 25.3 The Guarantor unconditionally and irrevocably guarantees to the Lessor the due and punctual performance and observance by the Lessee of its obligations:
- 25.3.1 under this Lease (including any extension or holding over), whether this Lease is registered or not and even if the Lease is found not to be a Lease or is found to be a Lease for a term less than the Term; and
- 25.3.2 in connection with its occupation of the Leased Premises including the obligations to pay money.
- 25.4 As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Lessor against all liability or loss arising from, and any costs, charges or expenses incurred in connection with a breach by the Lessee of this Lease, including a breach of the obligations to pay money. It is not necessary for the Lessor to incur expense or make payment before enforcing that right of indemnity.
- 25.5 The Guarantor agrees to pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. Accumulated interest is payable at the end of each month. The interest rate to be applied to each daily balance is set out in **Clause 19**.
- 25.6 The Guarantor waives any right it has of first requiring the Lessor to commence proceedings or

enforce any other right against the Lessee or any other person before claiming under this guarantee and indemnity.

- 25.7 This guarantee and indemnity is a continuing security and is not discharged by any one payment.
- 25.8 The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or debtor and the rights of the Lessor under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:
- 25.8.1 the Lessor granting time or other indulgence to, compounding or compromising with or releasing the Lessee;
 - 25.8.2 acquiescence, delay, acts, omissions or mistakes on the part of the Lessor;
 - 25.8.3 any transfer of a right of the Lessor;
 - 25.8.4 any variation, assignment, extension or renewal of the Lease;
 - 25.8.5 the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
 - 25.8.6 any change in the Lessee's occupation of the Leased Premises;
 - 25.8.7 the non registration of this Lease; or
 - 25.8.8 this Lease not being effective as a Lease for the Term.
- 25.9 The Guarantor may not, without the Lessor's approval:
- 25.9.1 raise a set-off or counterclaim available to it or the Lessee against the Lessor in reduction of its liability under this guarantee and indemnity; or
 - 25.9.2 claim to be entitled by way of contribution, indemnity subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Lessor in connection with this Lease; or
 - 25.9.3 make a claim or enforce a right against the Lessee or its property; or
 - 25.9.4 prove in competition with the Lessor if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Lessee or the Lessee is otherwise unable to pay its debts when they fall due,
- until all money payable to the Lessor in connection with the Lease is paid.
- 25.10 If a claim that a payment to the Lessor in connection with this Lease or this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Lessor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and Indemnity if the payment had not occurred.
- 25.11 The Guarantor agrees to pay or reimburse the Lessor on demand for:
- 25.11.1 the Lessor's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity including, but not limited to, legal costs

and expenses on a full indemnity basis; and

25.11.2 all stamp duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transaction contemplated by it.

25.12 Money paid to the Lessor by the Guarantor must be applied first against payment of costs, charges and expenses under **Clause 25.11** then against other obligations under this guarantee and indemnity.

26. INDEMNITIES & RELEASES

26.1 The Lessee agrees that it occupies and uses the Leased Premises at its own risk and responsibility.

26.2 The Lessee is liable for and indemnifies the Lessor and any Manager against damage, liability, loss or injury arising from, and cost incurred in connection with:

26.2.1 the Lessee's use or occupation of the Leased Premises and/or the Building;

26.2.2 any Services to the Leased Premises and/or the Building unless it is caused by the Lessor's direct act or negligence;

26.2.3 water damage;

26.2.4 damage, loss, injury or death caused or contributed to by the act, negligence or default of the Lessee or of the Lessee's Employees and Agents; and

26.2.5 the Lessor doing anything which the Lessee must do under this Lease but has not done or which the Lessor considers the Lessee has not done properly.

26.3 The Lessee releases the Lessor and any Manager from, and agrees that the Lessor and any Manager are not liable for, liability or loss arising from, and cost incurred in connection with:

26.3.1 damage, loss, injury or death unless it is caused by the Lessor's act, negligence or default; and

26.3.2 anything the Lessor is permitted or required to do under this Lease.

27. QUIET ENJOYMENT

27.1 If the Lessee pays the Rent and does not breach the Lease it may use the Leased Premises during the Lease without any interference from the Lessor, its agents or transferees, subject to the Lease terms and the Lessor's rights under it.

27.2 In particular, the Lessor will not (except as provided for in this Lease):

27.2.1 inhibit in any substantial manner the access of the Lessee to the Leased Premises;

27.2.2 take any action that would substantially alter or inhibit the flow of customers to the Leased Premises without the Lessee's consent; or

27.2.3 cause any disruption to trading within the Building (if applicable).

28. COSTS

28.1 In connection with this Lease and any document or matter in connection with it, the Lessee must

pay promptly:

28.1.1 for everything it must do; and

28.1.2 the Lessor's costs, charges and expenses with preparing any New Lease pursuant to **Clause 23** and all registration fees and in respect of this Lease and any New Lease.

29. DISPUTES

29.1 A party may not begin legal proceedings in connection with a dispute under this lease (except a Market Rental Review dispute under **Schedule 2** or because the Lessee has not paid Rent or other money it owes under this lease) unless that dispute has first been decided by person appointed under this **Clause 29**.

29.2 If there is a dispute under this Lease to which this **Clause 29** applies, either party may give the other a notice requiring the dispute to be decided under this **Clause 29**.

29.3 The dispute must be referred to a person agreed on by the parties but if the parties do not agree on a person within seven days after the notice is given, then to a person appropriately qualified to deal with the dispute appointed at the request of either party by the chair of LEADR (Lawyers Engaged in Alternative Dispute Resolution).

29.4 The person referred the dispute in accordance with Clause 29.3 (the "**Person**") acts as an expert and not as an arbitrator and must give a written decision including reasons. Unless there is manifest error, the Person's decision is final and binding.

29.5 The Person may enquire into the dispute as that person thinks fit including hearing representations and taking advice from people that the Person considers appropriate.

29.6 The parties may make submissions and must give every assistance the Person requires, including providing copies of relevant documents.

29.7 Each party must pay its own costs in connection with the dispute. The costs of referring the dispute to the Person and that person's costs and the cost of the enquires must be shared equally.

30. GOODS & SERVICES TAX

30.1 All Rent and other amounts the Lessee is liable to pay to the Lessor as the consideration for the supply expressed in this Lease is inclusive of GST.

30.2 The Lessor agrees to deliver to the Lessee, as required under the GST legislation, tax invoices to allow the Lessee to claim input tax credits relating to the taxable supply.

31. LESSOR'S BUILDING WORKS –TERMINATION

31.1 The parties agree that this Clause will only apply during the term of any New Lease pursuant to the option period outlined in **Clause 23**.

31.2 The Lessor may carry out any repairs, maintenance or other works on or to the Leased Premises, Building and/or Land that it reasonably thinks should be carried out ("**the Building Work**"). These works may include:

31.2.1 demolition of the Building, with or without reconstruction;

31.2.2 enlargement or reduction in Building floor area;

- 31.2.3 renovation or refurbishment of the Building;
 - 31.2.4 changes in layout, design, configuration and access to the Leased Premises, Building and/or Land.
- 31.3 The Lessor will not breach the Lease or be liable in tort for carrying out the Building Works if:
- 31.3.1 reputable contractors or tradespeople carry out the works; and
 - 31.3.2 the works are carried out during daylight hours; and
 - 31.3.3 methods and practices are used that are usual for work of the kind being undertaken.
- 31.4 The Lessor agrees to give the Lessee as much notice as is reasonably possible if the Lessor intends to do any Building work. In carrying out that work the Lessor will endeavour to cause as little disruption to the Lessee's business as is reasonable in the circumstances. However if, despite the Lessor's good faith, anything the Lessor does (within its control) adversely affects the Lessee's use of the Leased Premises, then the Lessor must negotiate with the Lessee in good faith to reasonably compensate the Lessee by rent reduction or other agreeable means.
- 31.5 Notwithstanding **Clause 31.4**, if the Lessor's intention to carry out any Building Work includes the demolition of the Building and in light of this the Lessor (in its sole discretion) considers it necessary for the Lease to be terminated, the Lessor may terminate this Lease provided the Lessor gives the Lessee details of the proposed demolition and at least six (6) months written notice of termination.
- 31.6 If notice of termination under **Clause 31.5** is given to the Lessee, the Lessee may terminate this Lease by giving the Lessor not less than seven (7) days written notice of termination at any time within six (6) months before the termination date notified by the Lessor.

32. SECURITY DEPOSIT

- 32.1 On signing the Lease, the Lessee must give to the Lessor as security for its promises and those of the Guarantor contained herein the Security Deposit either by bank cheque or Bank Guarantee.
- 32.2 If the Lessee fails to pay Rent or other money payable under the Lease or if the Lessor suffers loss or damage because of any other breach of the Lease by the Lessee, the Lessor may pay out an amount from the Security Deposit towards the arrears of Rent or other money, or towards the loss or damage. In doing so, the Lessor does not waive the Lessee's breach and does not waive any other right or remedy arising from the breach. For the purposes of clarity, the Lessor is authorised to use the Security Deposit as described in this **Clause 32.2** by calling upon any Bank Guarantee given by the Lessee on account of the Security Deposit.
- 32.3 If the Lessor does use the Security Deposit as described in **Clause 32.2**, it may notify the Lessee that it has done so. Within 14 days of the notification date, the Lessee must reinstate the Security Deposit by paying to the Lessor the amount applied or extend or renew the Bank Guarantee for the amount applied.
- 32.4 At the end of the Lease, if the Lessee is not indebted to, or otherwise liable to the Lessor for breach of the Lease, the Lessor will refund the Security Deposit or the balance of the Security Deposit then held to the Lessee or will consent to the discharge of the Bank Guarantee.
- 32.5 If the Lessor transfers its interest in the Building or the Leased Premises, it may assign to the transferee any Security Deposit it then holds or (if possible) the benefit of the Bank

Guarantee. After doing so and notifying the Lessee of the fact, it will be discharged from any further liability to the Lessee or any other person for the deposit or the Bank Guarantee.

33. MISCELLANEOUS

- 33.1 If the Lessor has agreed to obtain a person's consent in connection with this Lease, then the Lessor must do everything reasonably necessary to obtain that consent but shall not otherwise be liable in the event that it is unable to do so.
- 33.2 The Lessor may appoint agents or others to exercise any of its rights or perform any of its duties under this Lease. Communications from the Lessor override those from the agents or others if they are inconsistent.
- 33.3 A provision of or a right under this Lease may not be waived or varied except in writing signed by whoever is to be bound.
- 33.4 If the Lessor:
- 33.4.1 accepts Rent or other money under this Lease (before or after termination); or
 - 33.4.2 does not exercise or delays exercising any right under **Clause 20**; or
 - 33.4.3 gives any concession to the Lessee; or
 - 33.4.4 attempts to mitigate its loss,
- it is not a waiver of any breach or of the Lessor's rights under this Lease. An attempt by the Lessor to mitigate its loss is not a surrender of this Lease.
- 33.5 This Lease may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.
- 33.6 Any provision in this Lease which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the validity or enforceability of that provision in any other jurisdiction.

34. THIS LEASE TO OPERATE AS DEED

- 34.1 This Lease is executed as a Deed and operates as such irrespective of registration.

ITEM 15	Amount of public risk cover:	\$10,000,000.00.
ITEM 16	Particulars of New Lease:	Not applicable.
ITEM 17	Notice requirements for Option Period:	Not applicable.
ITEM 18	Notice requirements for Option Period:	Not applicable.
ITEM 19	Normal Trading Hours:	Not applicable.
ITEM 20	Rights & Liberties:	Not applicable.

SCHEDULE 4 - RENT EXCLUSIVE OF OUTGOINGS

- 1.1 The following further definitions apply with respect to this **Schedule 4**:
- 1.1.1 **'Lessee's Proportion of Outgoings'** means the percentage specified in **Item 4** of the Reference Schedule.
- 1.1.2 **'Outgoings'** means all amounts paid or payable by the Lessor for an Outgoings Year in connection with the Leased Premises including:
- (a) Rates and Taxes;
 - (b) charges for utilities and Services supplied to the Building;
 - (c) the cost of all services including but not limited to cleaning, pest control, liquid removal, waste removal, security, fire prevention, air conditioning, lifts and escalators for the Common Areas and Building;
 - (d) repairs to and maintenance of the Leased Premises and/or the Building, including any gardening or landscaping, but excluding structural repairs and other work that is the responsibility of any Lessee or occupant of the Building;
 - (e) providing lifts, escalators, fire detection and extinguishing equipment and security equipment to the Building, including the costs of repairs and maintenance;
 - (f) maintaining and repairing Services in addition to the Lessee's obligations under this Lease;
 - (g) all other insurance premiums or other insurance directly or indirectly related to the Building that the Lessor reasonably thinks should be taken out;
 - (h) costs the Lessor incurs for the provision, maintenance and operation of car parking areas;
 - (i) contributions to a sinking fund for major maintenance of and repairs to the Building or the Leased Premises but excluding structural repairs, that are the responsibility of any Lessee or occupant of the Building;
 - (j) all strata levies or Owners Corporation Levies levied in respect of the Land by the relevant owners corporation;
 - (k) all costs and expenses incurred by the Lessor with organising periodic maintenance and certification of all fire extinguishers in accordance with **Clauses 13.8 & 13.9** of this Lease;
 - (l) all costs and expenses incurred by the Lessor with organising periodic pest control inspections, treatments and/or other process in accordance with **Clauses 10.6 & 10.7** of this Lease;
 - (m) any and all taxes referable to the Rent in the nature of a Goods and Services Tax or a Value Added Tax or the like; and
 - (n) any goods and services tax (GST) or tax of a same or similar nature arising in relation to the other operating expenses detailed above.

For the purpose of clarity, "Outgoings" do not include:

- (a) the expenses due solely to the Lessee's use of the Leased Premises (which cost the Lessee is liable to pay directly), or
- (b) any expenses due solely to any other tenant's use of their premises, or
- (c) costs of structural repairs unless they are the responsibility of the Lessee (which cost the Lessee is liable to pay directly) or any other occupant of the Building; or
- (d) expenses properly chargeable to a capital account, interest on money borrowed by and rent paid by the Lessor for any land comprising any part of the Building.

1.1.3 '**Outgoings Year**' means the 12 month period ending on 30 June in each year or on another day specified in a notice the Lessor gives the Lessee.

1.1.4 '**Rates and Taxes**' means all rates, taxes, charges, duties and fees imposed under any statute on the Building, the Land and/or the Lessor as Lessor of the Leased Premises or as a registered proprietor of the Building or the Land. It includes Council rates, water and sewerage rates and any land tax (based on the amount that is actually due and not on a single holding basis), but excludes any income tax payable by the Lessor on income derived from the Building and any capital gains tax payable in respect of the Building.

1.2 The Lessee must pay the Lessee's Proportion of Outgoings for each Outgoings Year.

1.3 The Lessor must give the Lessee a notice for each Outgoings Year stating:

1.3.1 the Lessor's estimates of the Outgoings; and

1.3.2 the Lessee's Proportion of Outgoings for each Outgoings Year; and

1.3.3 [if requested by the Lessee in writing] reasonable details of how the estimates are arrived at.

1.4 The Lessee must pay the amount due on account of the Lessee's Proportion of Outgoings for each Outgoings Year by equal monthly instalments in advance on or before each Rent Day direct to the Lessor or as the Lessor otherwise directs the Lessee in writing. Each instalment is the Lessor's estimate of Lessee's Proportion of Outgoings for each Outgoings Year divided by the number of Rent Days in that Outgoings Year.

1.5 The Lessee need not pay instalments for the first Outgoings Year until the Lessor gives it a notice in accordance with **Clause 1.3** of this **Schedule 4**. The Lessor may direct the Lessee to pay any outstanding amounts (due to any delay in issuing the notice) on account of the Lessee's Proportion of Outgoings for the first Outgoings Year either:

1.5.1 On the next Rent Day after the Lessee receives the Lessor's notice; or

1.5.2 By additional payments included in the remaining monthly instalments for the Lessee's Proportion of Outgoings for the first Outgoings Year.

1.6 In each Outgoings Year after the first, until the Lessor gives the Lessee a notice in accordance with **Clause 1.3** of this **Schedule 4** for the relevant Outgoings Year, the Lessee must pay on each Rent Day, on account of the Lessee's Proportion of Outgoings, an instalment equal to that payable on the previous Rent Day. On the next Rent Day after the Lessor gives the Lessee

the notice in accordance with **Clause 1.3** of this **Schedule 4**, the Lessee must pay the Lessor (or the Lessor must credit the Lessee with) the difference between the amount paid by the Lessee in accordance with this clause and the amount the Lessee should have paid as stated in the Lessor's notice.

- 1.7 As soon as possible after the end of a Outgoings Year, the Lessor must give the Lessee a notice for that Outgoings Year stating:
 - 1.7.1 the actual Outgoings payable; and
 - 1.7.2 the Lessee's Proportion of Outgoings for that Outgoings Year.
 - 1.8 On the next Rent Day after the Lessor gives the Lessee a notice of the actual Outgoings in accordance with **Clause 1.7** of this **Schedule 4**, the Lessee must pay the Lessor (or the Lessor must credit the Lessee with) the difference between what the Lessee has paid on account of the Lessor's estimates of the Lessee's Proportion of Outgoings for that Outgoings Year in accordance with **Clause 1.3** of this **Schedule 4** and what the notice in accordance with **Clause 1.7** of this **Schedule 4** says is actually payable.
 - 1.9 As an alternative to requiring the Lessee to pay the Lessor's estimate of the Lessee's Proportion of Outgoings in advance, the Lessor may instead elect to submit to the Lessee details of the assessments or receipts in respect of the relevant Outgoings in which event the Lessee must pay its share within fourteen (14) days of the Lessor giving the Lessee the copy of the relevant assessment or receipts.
-

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

EXECUTED AS A DEED

DATED

LESSOR:

SIGNED for and on behalf of

in accordance with Section 127(1) of the)
Corporations Act by:)

.....)
Director/Secretary)

.....)
Director)

OR

SIGNED SEALED and DELIVERED by)
[INSERT] in the presence of:)

.....)
Signature of Witness)

.....)
[INSERT])

.....)
Name of Witness [print])

LESSEE:

Executed by Bottlebrush Projects Pty Limited
ACN 613 762 922 in
accordance with Section 127(1) of the
Corporations Act 2001

Signature of director/secretary

Michael James Perry

Signature of director

Bianca Perry

Executed by Berkeley Storage Pty Ltd ACN
615 483 602 in
accordance with Section 127(1) of the
Corporations Act 2001

Signature of director/secretary

Gary Ernest Hunt

Signature of director

Adrian James Salter

SCHEDULE 4

Draft Strata Plan (attached)



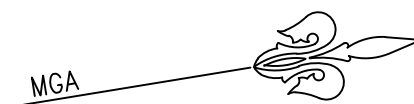
PO BOX 3222,
REDFERN NSW 2016
Ph: 02 8065 1156
Fax: 02 8065 1297
Email: survey@daw-walton.com.au

REVISION: 2
DATED: 10-07-17

LOCATION PLAN

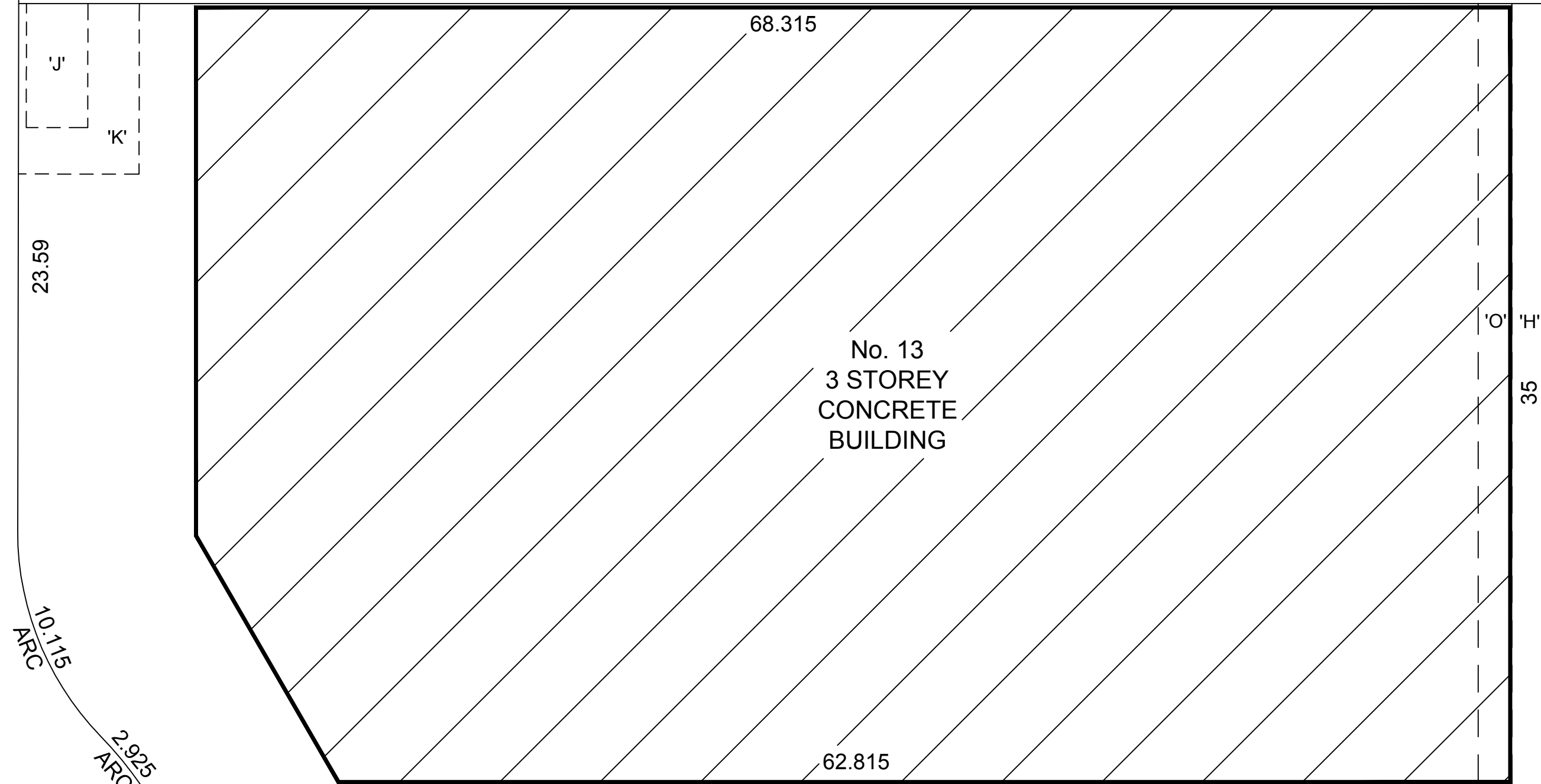
D P 1 1 8 8 1 4 4

15



DRAFT STRATA SUBDIVISION PLAN PREPARED FROM ARCHITECTURAL PLANS
AS PROVIDED BY REGGIES DESIGN, JOB No: 2207, ISSUE: C, DATED: 30-06-17

WAREHOUSE PLACE



No. 13
3 STOREY
CONCRETE
BUILDING

D P 1 1 8 8 1 4 4

13

OFFSETS TO EXTERNAL WALLS SUBJECT TO FINAL SURVEY
MINOR ENCROUCHMENTS MAY EXIST

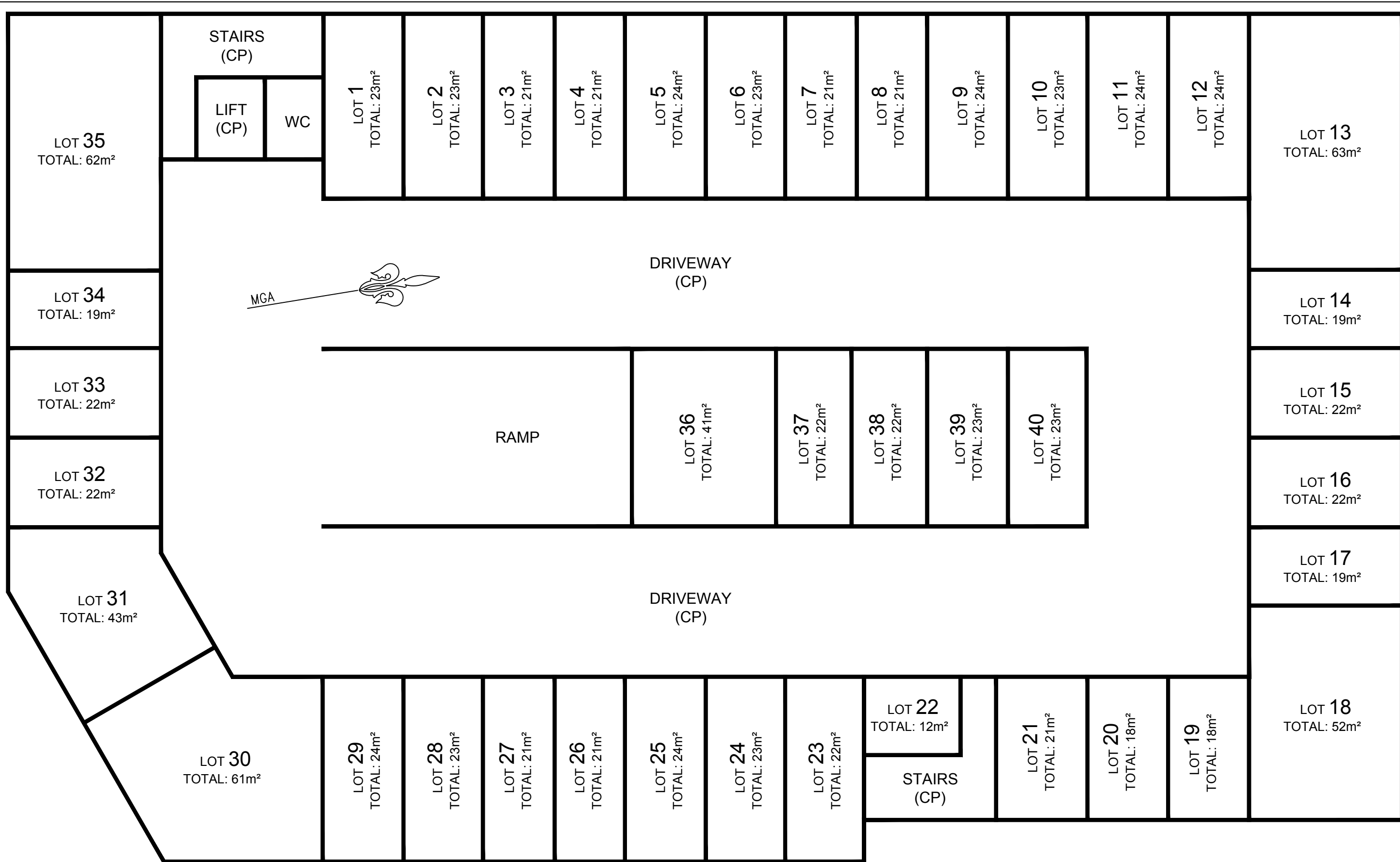
- 'H' DENOTES EASEMENT TO DRAIN WATER 1.5 WIDE (DP1188144)
- 'J' DENOTES EASEMENT FOR PADMOUNT SUBSTATION 2.75 WIDE (DP1188144)
- 'K' DENOTES RESTRICTION ON THE USE OF LAND (DP1188144)
- 'O' DENOTES RESTRICTION ON THE USE OF LAND (DP1188144)

Surveyor: JOHN WALTON
Surveyor's Ref: 3732-17SP
Subdivision No:
Lengths are in metres Reduction Ratio 1 : 200

Registered

SP

10	20	30	40	50	Table of mm	90	100	110	120	130	140	150
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CP DENOTES COMMON PROPERTY

WC DENOTES WATER CLOSET (CP)

ALL DUCTS, CABLES, PIPES, WATERPROOFING MEASURES AND OTHER SERVICES FORM PART OF THE COMMON PROPERTY

ANY SERVICE LINE WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY

LEVEL 1

AREAS ARE APPROXIMATE ONLY SHOWN FOR THE PURPOSES OF THE STRATA SCHEMES DEVELOPMENT ACT 2015

Surveyor: JOHN WALTON

Surveyor's Ref: 3732-17SP

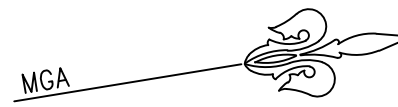
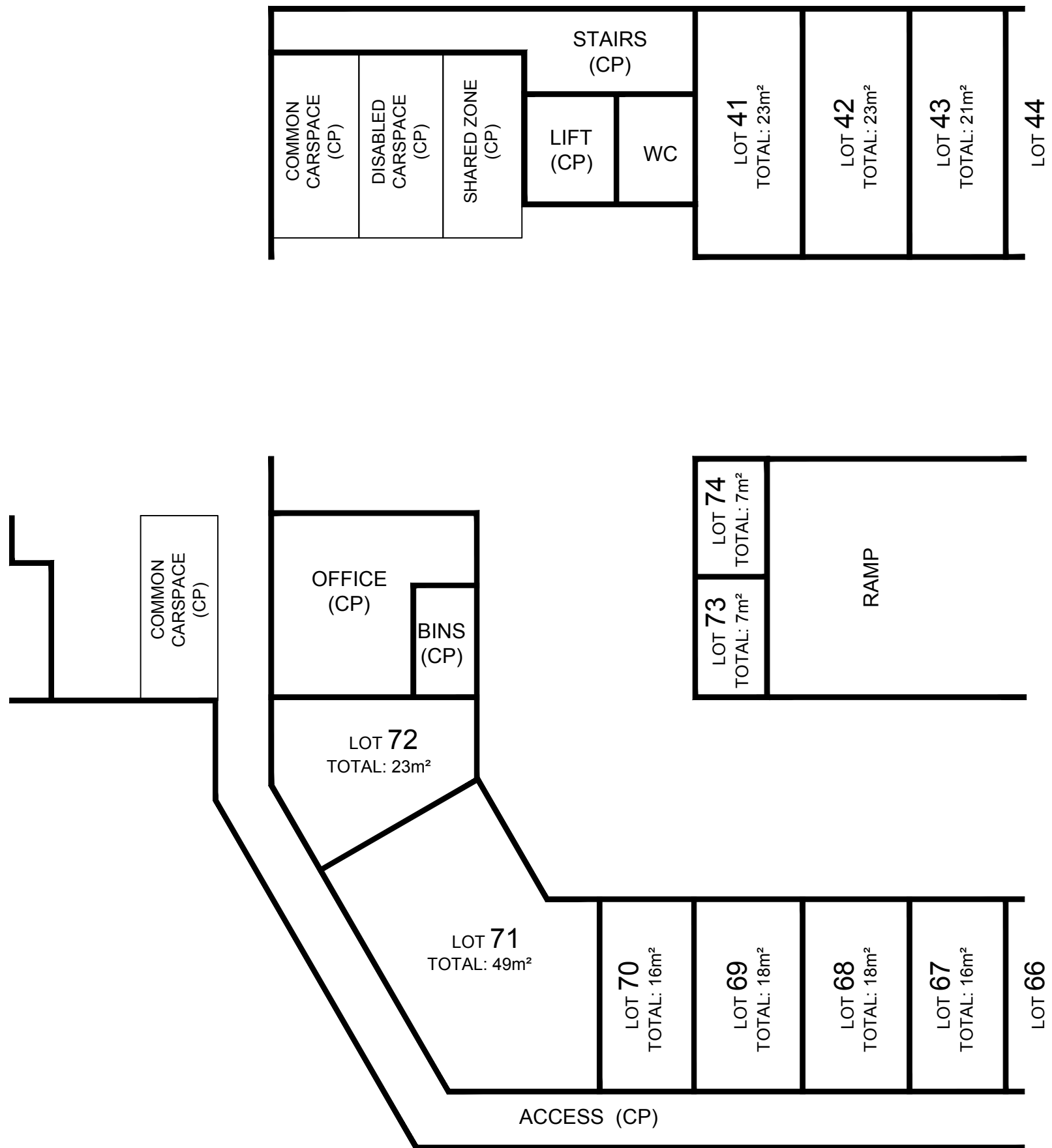
Subdivision No:

Lengths are in metres Reduction Ratio 1 : 150

Registered

SP

10	20	30	40	50	Table of mm	90	100	110	120	130	140	150
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-- JOINS SHEET 4 --

CP DENOTES COMMON PROPERTY

WC DENOTES WATER CLOSET (CP)

ALL DUCTS, CABLES, PIPES, WATERPROOFING MEASURES AND OTHER SERVICES FORM PART OF THE COMMON PROPERTY

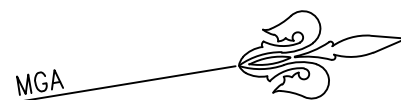
ANY SERVICE LINE WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY

LEVEL 2

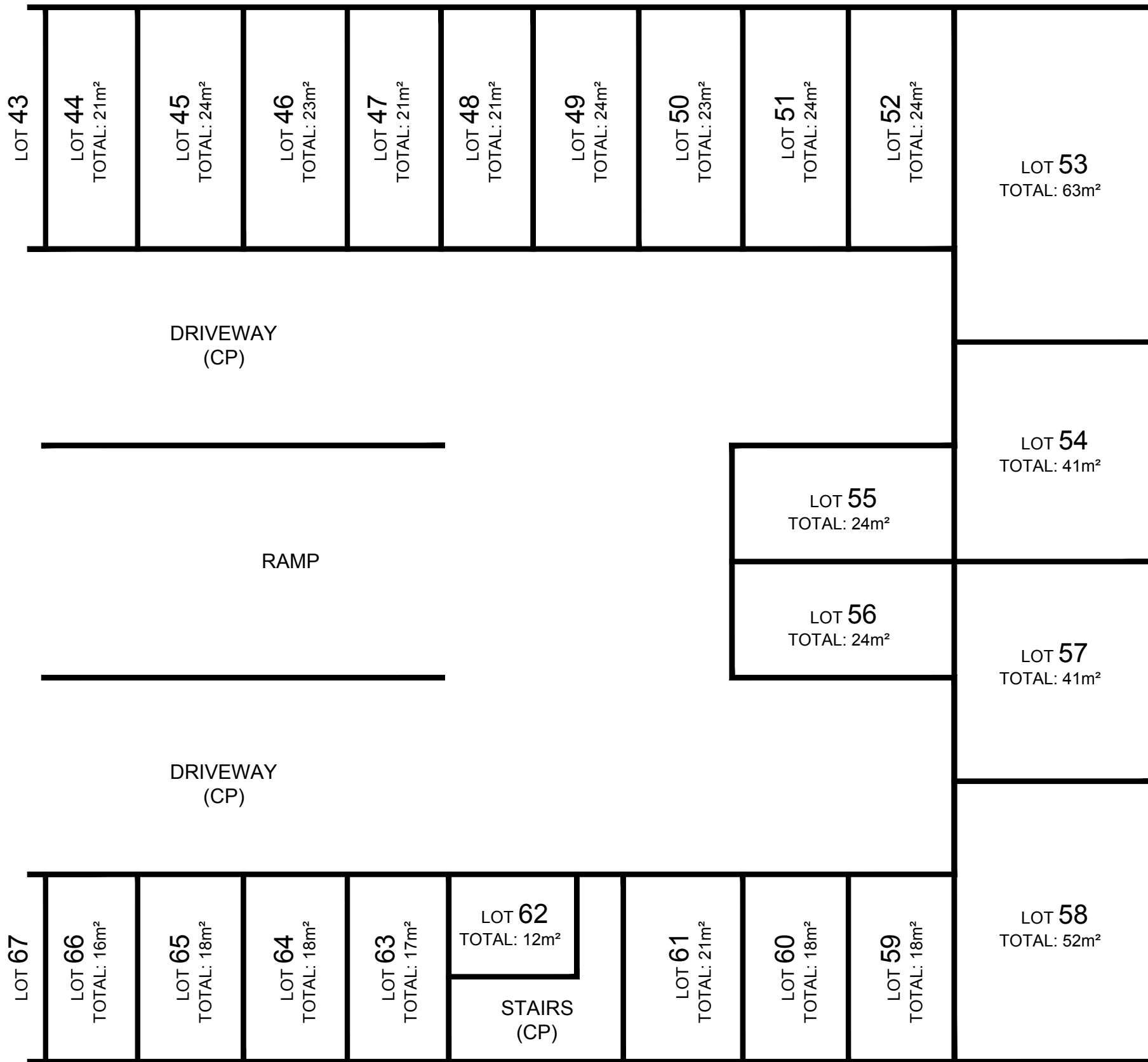
AREAS ARE APPROXIMATE ONLY SHOWN FOR THE PURPOSES OF THE STRATA SCHEMES DEVELOPMENT ACT 2015

Surveyor: JOHN WALTON Surveyor's Ref: 3732-17SP Subdivision No: Lengths are in metres Reduction Ratio 1 : 150	Registered	SP

10	20	30	40	50	Table of mm	90	100	110	120	130	140	150
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-- JOINS SHEET 3 --



AREAS ARE APPROXIMATE ONLY SHOWN FOR THE PURPOSES OF THE STRATA SCHEMES DEVELOPMENT ACT 2015

LEVEL 2

CP DENOTES COMMON PROPERTY

ALL DUCTS, CABLES, PIPES, WATERPROOFING MEASURES AND OTHER SERVICES FORM PART OF THE COMMON PROPERTY

ANY SERVICE LINE WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY

Surveyor: JOHN WALTON Surveyor's Ref: 3732-17SP Subdivision No: Lengths are in metres Reduction Ratio 1 : 150	Registered	SP
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10	20	30	40	50	Table of mm	90	100	110	120	130	140	150
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