

# Contract for the sale and purchase of land 2019 edition

|   |  |  |   |
|---|--|--|---|
| <b>TERM</b>   | <b>MEANING OF TERM</b>   |  | <b>NSW Duty:</b>  |
| vendor's agent  | <b>David Ayliffe</b><br>Altitude Real Estate Pty Ltd<br>66-68 Medcalf St, Warners Bay NSW 2282   | <b>Phone:</b><br><b>Email:</b><br><b>Ref:</b>                | 02 4903 8228<br>sales@altituderealestate.com.au<br>David Ayliffe          |
| co-agent<br>vendor  | <b>Delwyn Ann Richards</b>   |  |   |
| vendor's solicitor  | <b>DWF (Australia)</b><br>Level 6, 18 Honeysuckle Drive, Newcastle<br>NSW 2300<br>PO Box 2277, Dangar NSW 2309   | <b>Phone:</b><br><b>Fax:</b><br><b>Email:</b><br><b>Ref:</b> | +61 2 4088 8600<br>+61 2 4088 8688<br>Craig.Doyle@dwf.law<br>CD/2035063-1 |
| date for completion<br>land<br>(Address, plan details<br>And title reference) | <b>42 days after the contract date</b><br><b>23 Frederick Street, Dudley NSW 2290</b><br>Lot 5 in Section J in Deposited Plan 2657 and Lot 6 in Section J in Deposited Plan 2657<br>Being Folio Identifier 5/J/2657 and 6/J/2657 |  |   |

improvements  VACANT POSSESSION  subject to existing tenancies  
 HOUSE  garage  carport  home unit  carspace  
 none  other:

attached copies  documents in the List of Documents as marked or numbered:  
 other documents:

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

inclusions  blinds  dishwasher  light fittings  stove  
 built-in-wardrobes  fixed floor coverings  range hood  pool equipment  
 clothes line  insect screens  solar panels  TV antenna  
 curtains  other:

exclusions

purchaser

purchaser's  
solicitor

**Phone:**  
**Fax:**  
**Email:**  
**Ref:**

price \$  
deposit \$  
balance \$

(10% of the price, unless otherwise stated)

contract date

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

buyer's agent

\_\_\_\_\_  
vendor

\_\_\_\_\_  
witness

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

\_\_\_\_\_  
purchaser  JOINT TENANTS  tenants in common  in unequal shares

\_\_\_\_\_  
witness

## Choices

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

Purchaser must make an RW payment  NO  yes (if yes, vendor must provide further details)  
(Residential withholding payment)

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

**RW payment (residential withholding payment) – further details**

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

Supplier's name:

Supplier's ABN:

Supplier's business address:

Supplier's email address:

Supplier's phone number:

Supplier's proportion of RW payment:

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

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

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

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

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

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

## List of Documents

|  |  |
|--|--|
| <p><b>General</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> 1 property certificate for the land</li> <li><input checked="" type="checkbox"/> 2 plan of the land</li> <li><input type="checkbox"/> 3 unregistered plan of the land</li> <li><input type="checkbox"/> 4 plan of land to be subdivided</li> <li><input type="checkbox"/> 5 document that is to be lodged with a relevant plan</li> <li><input checked="" type="checkbox"/> 6 section 10.7(2) certificate (Environmental Planning and Assessment Act 1979)</li> <li><input checked="" type="checkbox"/> 7 section 10.7(5) information included in that certificate</li> <li><input checked="" type="checkbox"/> 8 sewerage infrastructure location diagram (service location diagram)</li> <li><input type="checkbox"/> 9 sewer lines location diagram (sewerage service diagram)</li> <li><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</li> <li><input type="checkbox"/> 11 section 88G certificate (positive covenant)</li> <li><input type="checkbox"/> 12 survey report</li> <li><input type="checkbox"/> 13 building certificate given under <i>legislation</i></li> <li><input type="checkbox"/> 14 insurance certificate (Home Building Act 1989)</li> <li><input type="checkbox"/> 15 brochure or warning (Home Building Act 1989)</li> <li><input type="checkbox"/> 16 lease (with every relevant memorandum or variation)</li> <li><input type="checkbox"/> 17 other document relevant to tenancies</li> <li><input type="checkbox"/> 18 old system document</li> <li><input type="checkbox"/> 19 Crown purchase statement of account</li> <li><input type="checkbox"/> 20 building management statement</li> <li><input type="checkbox"/> 21 form of requisitions</li> <li><input type="checkbox"/> 22 <i>clearance certificate</i></li> <li><input type="checkbox"/> 23 land tax certificate</li> </ul> <p><b>Home Building Act 189</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 24 insurance certificate</li> <li><input type="checkbox"/> 25 brochure or warning</li> <li><input type="checkbox"/> 26 evidence of alternative indemnity cover</li> </ul> <p><b>Swimming Pools Act 1992</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 27 certificate of compliance</li> <li><input type="checkbox"/> 28 evidence of registration</li> <li><input type="checkbox"/> 29 relevant occupation certificate</li> <li><input type="checkbox"/> 30 certificate of non-compliance</li> <li><input type="checkbox"/> 31 detailed reasons of non-compliance</li> </ul> | <p><b>Strata or community title (clause 23 of the contract)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 32 property certificate for strata common property</li> <li><input type="checkbox"/> 33 plan creating strata common property</li> <li><input type="checkbox"/> 34 strata by-laws</li> <li><input type="checkbox"/> 35 strata development contract or statement</li> <li><input type="checkbox"/> 36 strata management statement</li> <li><input type="checkbox"/> 37 strata renewal proposal</li> <li><input type="checkbox"/> 38 strata renewal plan</li> <li><input type="checkbox"/> 40 leasehold strata - lease of lot and common property</li> <li><input type="checkbox"/> 41 property certificate for neighbourhood property</li> <li><input type="checkbox"/> 42 plan creating neighbourhood property</li> <li><input type="checkbox"/> 43 neighbourhood development contract</li> <li><input type="checkbox"/> 44 neighbourhood management statement</li> <li><input type="checkbox"/> 45 property certificate for precinct property</li> <li><input type="checkbox"/> 46 plan creating precinct property</li> <li><input type="checkbox"/> 47 precinct development contract</li> <li><input type="checkbox"/> 48 precinct management statement</li> <li><input type="checkbox"/> 49 property certificate for community property</li> <li><input type="checkbox"/> 50 plan creating community property</li> <li><input type="checkbox"/> 51 community development contract</li> <li><input type="checkbox"/> 52 community management statement</li> <li><input type="checkbox"/> 53 document disclosing a change of by-laws</li> <li><input type="checkbox"/> 54 document disclosing a change in a development or management contract or statement</li> <li><input type="checkbox"/> 55 document disclosing a change in boundaries</li> <li><input type="checkbox"/> 56 information certificate under Strata Schemes Management Act 2015</li> <li><input type="checkbox"/> 57 information certificate under Community Land Management Act 1989</li> </ul> <p><b>Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 58</li> </ul> |
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**HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address and telephone number**

**IMPORTANT NOTICE TO VENDORS AND PURCHASERS**

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

**WARNING—SMOKE ALARMS**

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

**WARNING—LOOSE-FILL ASBESTOS INSULATION**

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

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

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

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

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

### **DISPUTES**

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

### **AUCTIONS**

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

### WARNINGS

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

|   |  |
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| <b>APA Group</b><br><b>Australian Taxation Office</b><br><b>Council</b><br><b>County Council</b><br><b>Department of Planning, Industry and Environment</b><br><b>Department of Primary Industries</b><br><b>Electricity and gas</b><br><b>Land &amp; Housing Corporation</b><br><b>Local Land Services</b> | <b>NSW Department of Education</b><br><b>NSW Fair Trading</b><br><b>Owner of adjoining land</b><br><b>Privacy</b><br><b>Public Works Advisory</b><br><b>Subsidence Advisory NSW</b><br><b>Telecommunications</b><br><b>Transport for NSW</b><br><b>Water, sewerage or drainage authority</b> |
|---|--|

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

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

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

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

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

## 2 Deposit and other payments before completion

2.1 The purchaser must pay the deposit to the *depositholder* as stakeholder.

2.2 *Normally*, the purchaser must pay the deposit on the making of this contract, and this time is essential.

2.3 If this contract requires the purchaser to pay any of the deposit by a later time, that time is also essential.

2.4 The purchaser can pay any of the deposit by giving cash (up to \$2,000) or by unconditionally giving a *cheque* to the *depositholder* or to the vendor, vendor's agent or vendor's *solicitor* for sending to the *depositholder* or by payment by electronic funds transfer to the *depositholder*.

2.5 If any of the deposit is not paid on time or a *cheque* for any of the deposit is not honoured on presentation, the vendor can *terminate*. This right to *terminate* is lost as soon as the deposit is paid in full.

2.6 If the vendor accepts a bond or guarantee for the deposit, clauses 2.1 to 2.5 do not apply.

BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION

- 2.7 If the vendor accepts a bond or guarantee for part of the deposit, clauses 2.1 to 2.5 apply only to the balance.
- 2.8 If any of the deposit or of the balance of the price is paid before completion to the vendor or as the vendor directs, it is a charge on the land in favour of the purchaser until *termination* by the vendor or completion, subject to any existing right.
- 2.9 If each *party* tells the *depositholder* that the deposit is to be invested, the *depositholder* is to invest the deposit (at the risk of the *party* who becomes entitled to it) with a *bank*, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the *parties* equally, after deduction of all proper government taxes and financial institution charges and other charges.
- 3 Deposit-bond**
- 3.1 This clause applies only if this contract says the vendor has agreed to accept a *deposit-bond* for the deposit (or part of it).
- 3.2 The purchaser must provide the original *deposit-bond* to the vendor's *solicitor* (or if no *solicitor* the *depositholder*) at or before the making of this contract and this time is essential.
- 3.3 If the *deposit-bond* has an expiry date and completion does not occur by the date which is 14 days before the expiry date, the purchaser must *serve* a replacement *deposit-bond* at least 7 days before the expiry date. The time for service is essential.
- 3.4 The vendor must approve a replacement *deposit-bond* if –
- 3.4.1 it is from the same issuer and for the same amount as the earlier *deposit-bond*; and
- 3.4.2 it has an expiry date at least three months after its date of issue.
- 3.5 A breach of clauses 3.2 or 3.3 entitles the vendor to *terminate*. The right to *terminate* is lost as soon as –
- 3.5.1 the purchaser *serves* a replacement *deposit-bond*; or
- 3.5.2 the deposit is paid in full under clause 2.
- 3.6 Clauses 3.3 and 3.4 can operate more than once.
- 3.7 If the purchaser *serves* a replacement *deposit-bond*, the vendor must *serve* the earlier *deposit-bond*.
- 3.8 The amount of any *deposit-bond* does not form part of the price for the purposes of clause 16.7.
- 3.9 The vendor must give the purchaser the *deposit-bond* –
- 3.9.1 on completion; or
- 3.9.2 if this contract is *rescinded*.
- 3.10 If this contract is *terminated* by the vendor –
- 3.10.1 *normally*, the vendor can immediately demand payment from the issuer of the *deposit-bond*; or
- 3.10.2 if the purchaser *serves* prior to *termination* a notice disputing the vendor's right to *terminate*, the vendor must forward the *deposit-bond* (or its proceeds if called up) to the *depositholder* as stakeholder.
- 3.11 If this contract is *terminated* by the purchaser –
- 3.11.1 *normally*, the vendor must give the purchaser the *deposit-bond*; or
- 3.11.2 if the vendor *serves* prior to *termination* a notice disputing the purchaser's right to *terminate*, the vendor must forward the *deposit-bond* (or its proceeds if called up) to the *depositholder* as stakeholder.
- 4 Transfer**
- 4.1 *Normally*, the purchaser must *serve* at least 14 days before the date for completion –
- 4.1.1 the form of transfer; and
- 4.1.2 particulars required to register any mortgage or other dealing to be lodged with the transfer by the purchaser or the purchaser's mortgagee.
- 4.2 If any information needed for the form of transfer is not disclosed in this contract, the vendor must *serve* it.
- 4.3 If the purchaser *serves* a form of transfer and the transferee is not the purchaser, the purchaser must give the vendor a direction signed by the purchaser personally for this form of transfer.
- 4.4 The vendor can require the purchaser to include a form of covenant or easement in the transfer only if this contract contains the wording of the proposed covenant or easement, and a description of the land benefited.
- 5 Requisitions**
- 5.1 If a form of *requisitions* is attached to this contract, the purchaser is taken to have made those *requisitions*.
- 5.2 If the purchaser is or becomes entitled to make any other *requisition*, the purchaser can make it only by *serving* it –
- 5.2.1 if it arises out of this contract or it is a general question about the *property* or title - *within* 21 days after the contract date;
- 5.2.2 if it arises out of anything *served* by the vendor - *within* 21 days after the later of the contract date and that *service*; and
- 5.2.3 in any other case - *within* a reasonable time.
- 6 Error or misdescription**
- 6.1 *Normally*, the purchaser can (but only before completion) claim compensation for an error or misdescription in this contract (as to the *property*, the title or anything else and whether substantial or not).
- 6.2 This clause applies even if the purchaser did not take notice of or rely on anything in this contract containing or giving rise to the error or misdescription.
- 6.3 However, this clause does not apply to the extent the purchaser knows the true position.



## 7 Claims by purchaser

- Normally*, the purchaser can make a claim (including a claim under clause 6) before completion only by *servicing* it with a statement of the amount claimed, and if the purchaser makes one or more claims before completion –
- 7.1 the vendor can *rescind* if in the case of claims that are not claims for delay –
- 7.1.1 the total amount claimed exceeds 5% of the price;
- 7.1.2 the vendor *serves* notice of intention to *rescind*; and
- 7.1.3 the purchaser does not *serve* notice waiving the claims *within* 14 days after that *service*; and
- 7.2 if the vendor does not *rescind*, the *parties* must complete and if this contract is completed –
- 7.2.1 the lesser of the total amount claimed and 10% of the price must be paid out of the price to and held by the *depositholder* until the claims are finalised or lapse;
- 7.2.2 the amount held is to be invested in accordance with clause 2.9;
- 7.2.3 the claims must be finalised by an arbitrator appointed by the *parties* or, if an appointment is not made *within* 1 month of completion, by an arbitrator appointed by the President of the Law Society at the request of a *party* (in the latter case the *parties* are bound by the terms of the Conveyancing Arbitration Rules approved by the Law Society as at the date of the appointment);
- 7.2.4 the purchaser is not entitled, in respect of the claims, to more than the total amount claimed and the costs of the purchaser;
- 7.2.5 net interest on the amount held must be paid to the *parties* in the same proportion as the amount held is paid; and
- 7.2.6 if the *parties* do not appoint an arbitrator and neither *party* requests the President to appoint an arbitrator *within* 3 months after completion, the claims lapse and the amount belongs to the vendor.

## 8 Vendor's rights and obligations

- 8.1 The vendor can *rescind* if –
- 8.1.1 the vendor is, on reasonable grounds, unable or unwilling to comply with a *requisition*;
- 8.1.2 the vendor *serves* a notice of intention to *rescind* that specifies the *requisition* and those grounds; and
- 8.1.3 the purchaser does not *serve* a notice waiving the *requisition within* 14 days after that *service*.
- 8.2 If the vendor does not comply with this contract (or a notice under or relating to it) in an essential respect, the purchaser can *terminate* by *servicing* a notice. After the *termination* –
- 8.2.1 the purchaser can recover the deposit and any other money paid by the purchaser under this contract;
- 8.2.2 the purchaser can sue the vendor to recover damages for breach of contract; and
- 8.2.3 if the purchaser has been in possession a *party* can claim for a reasonable adjustment.

## 9 Purchaser's default

- If the purchaser does not comply with this contract (or a notice under or relating to it) in an essential respect, the vendor can *terminate* by *servicing* a notice. After the *termination* the vendor can –
- 9.1 keep or recover the deposit (to a maximum of 10% of the price);
- 9.2 hold any other money paid by the purchaser under this contract as security for anything recoverable under this clause –
- 9.2.1 for 12 months after the *termination*; or
- 9.2.2 if the vendor commences proceedings under this clause *within* 12 months, until those proceedings are concluded; and
- 9.3 sue the purchaser either –
- 9.3.1 where the vendor has resold the *property* under a contract made *within* 12 months after the *termination*, to recover –
- the deficiency on resale (with credit for any of the deposit kept or recovered and after allowance for any capital gains tax or goods and services tax payable on anything recovered under this clause); and
  - the reasonable costs and expenses arising out of the purchaser's non-compliance with this contract or the notice and of resale and any attempted resale; or
- 9.3.2 to recover damages for breach of contract.

## 10 Restrictions on rights of purchaser

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

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

- 13.8.1 this sale is not a taxable supply in full; or  
 13.8.2 the margin scheme applies to the *property* (or any part of the *property*).
- 13.9 If this contract says this sale is a taxable supply to an extent –  
 13.9.1 clause 13.7.1 does not apply to any part of the *property* which is identified as being a taxable supply; and  
 13.9.2 the payments mentioned in clauses 13.7 and 13.8 are to be recalculated by multiplying the relevant payment by the proportion of the price which represents the value of that part of the *property* to which the clause applies (the proportion to be expressed as a number between 0 and 1). Any evidence of value must be obtained at the expense of the vendor.
- 13.10 *Normally*, on completion the vendor must give the recipient of the supply a tax invoice for any taxable supply by the vendor by or under this contract.
- 13.11 The vendor does not have to give the purchaser a tax invoice if the margin scheme applies to a taxable supply.
- 13.12 If the vendor is liable for GST on rents or profits due to issuing an invoice or receiving consideration before completion, any adjustment of those amounts must exclude an amount equal to the vendor's GST liability.
- 13.13 If the purchaser must make a *GSTRW payment* the purchaser must –  
 13.13.1 at least 5 days before the date for completion, *serve* evidence of submission of a *GSTRW payment* notification form to the Australian Taxation Office by the purchaser or, if a direction under clause 4.3 has been *served*, by the transferee named in the transfer *served* with that direction;  
 13.13.2 produce on completion a *settlement cheque* for the *GSTRW payment* payable to the Deputy Commissioner of Taxation;  
 13.13.3 forward the *settlement cheque* to the payee immediately after completion; and  
 13.13.4 *serve* evidence of receipt of payment of the *GSTRW payment* and a copy of the settlement date confirmation form submitted to the Australian Taxation Office.
- 14 Adjustments**
- 14.1 *Normally*, the vendor is entitled to the rents and profits and will be liable for all rates, water, sewerage and drainage service and usage charges, land tax, levies and all other periodic outgoings up to and including the *adjustment date* after which the purchaser will be entitled and liable.
- 14.2 The *parties* must make any necessary adjustment on completion.
- 14.3 If an amount that is adjustable under this contract has been reduced under *legislation*, the *parties* must on completion adjust the reduced amount.
- 14.4 The *parties* must not adjust surcharge land tax (as defined in the Land Tax Act 1956) but must adjust any other land tax for the year current at the *adjustment date* –  
 14.4.1 only if land tax has been paid or is payable for the year (whether by the vendor or by a predecessor in title) and this contract says that land tax is adjustable;  
 14.4.2 by adjusting the amount that would have been payable if at the start of the year –  
 • the person who owned the land owned no other land;  
 • the land was not subject to a special trust or owned by a non-concessional company; and  
 • if the land (or part of it) had no separate taxable value, by calculating its separate taxable value on a proportional area basis.
- 14.5 If any other amount that is adjustable under this contract relates partly to the land and partly to other land, the *parties* must adjust it on a proportional area basis.
- 14.6 *Normally*, the vendor can direct the purchaser to produce a *settlement cheque* on completion to pay an amount adjustable under this contract and if so –  
 14.6.1 the amount is to be treated as if it were paid; and  
 14.6.2 the *cheque* must be forwarded to the payee immediately after completion (by the purchaser if the *cheque* relates only to the *property* or by the vendor in any other case).
- 14.7 If on completion the last bill for a water, sewerage or drainage usage charge is for a period ending before the *adjustment date*, the vendor is liable for an amount calculated by dividing the bill by the number of days in the period then multiplying by the number of unbilled days up to and including the *adjustment date*.
- 14.8 The vendor is liable for any amount recoverable for work started on or before the contract date on the *property* or any adjoining footpath or road.
- 15 Date for completion**  
 The *parties* must complete by the date for completion and, if they do not, a *party* can *serve* a notice to complete if that *party* is otherwise entitled to do so.
- 16 Completion**  
 • **Vendor**
- 16.1 On completion the vendor must give the purchaser any *document of title* that relates only to the *property*.  
 16.2 If on completion the vendor has possession or control of a *document of title* that relates also to other property, the vendor must produce it as and where necessary.  
 16.3 *Normally*, on completion the vendor must cause the legal title to the *property* (being an estate in fee simple) to pass to the purchaser free of any mortgage or other interest, subject to any necessary registration.  
 16.4 The legal title to the *property* does not pass before completion.

- 16.5 If the vendor gives the purchaser a document (other than the transfer) that needs to be lodged for registration, the vendor must pay the lodgment fee to the purchaser.
- 16.6 If a *party serves* a land tax certificate showing a charge on any of the land, by completion the vendor must do all things and pay all money required so that the charge is no longer effective against the land.
- **Purchaser**
- 16.7 On completion the purchaser must pay to the vendor, by cash (up to \$2,000) or *settlement cheque* –
- 16.7.1 the price less any:
- deposit paid;
  - *FRCGW remittance* payable;
  - *GSTRW payment*; and
  - amount payable by the vendor to the purchaser under this contract; and
- 16.7.2 any other amount payable by the purchaser under this contract.
- 16.8 If the vendor requires more than 5 *settlement cheques*, the vendor must pay \$10 for each extra *cheque*.
- 16.9 If any of the deposit is not covered by a bond or guarantee, on completion the purchaser must give the vendor an order signed by the purchaser authorising the *depositholder* to account to the vendor for the deposit.
- 16.10 On completion the deposit belongs to the vendor.
- **Place for completion**
- 16.11 *Normally*, the *parties* must complete at the completion address, which is –
- 16.11.1 if a special completion address is stated in this contract - that address; or
- 16.11.2 if none is stated, but a first mortgagee is disclosed in this contract and the mortgagee would usually discharge the mortgage at a particular place - that place; or
- 16.11.3 in any other case - the vendor's *solicitor's* address stated in this contract.
- 16.12 The vendor by reasonable notice can require completion at another place, if it is in NSW, but the vendor must pay the purchaser's additional expenses, including any agency or mortgagee fee.
- 16.13 If the purchaser requests completion at a place that is not the completion address, and the vendor agrees, the purchaser must pay the vendor's additional expenses, including any agency or mortgagee fee.
- 17 Possession**
- 17.1 *Normally*, the vendor must give the purchaser vacant possession of the *property* on completion.
- 17.2 The vendor does not have to give vacant possession if –
- 17.2.1 this contract says that the sale is subject to existing tenancies; and
- 17.2.2 the contract discloses the provisions of the tenancy (for example, by attaching a copy of the lease and any relevant memorandum or variation).
- 17.3 *Normally*, the purchaser can claim compensation (before or after completion) or *rescind* if any of the land is affected by a protected tenancy (a tenancy affected by Schedule 2, Part 7 of the Residential Tenancies Act 2010).
- 18 Possession before completion**
- 18.1 This clause applies only if the vendor gives the purchaser possession of the *property* before completion.
- 18.2 The purchaser must not before completion –
- 18.2.1 let or part with possession of any of the *property*;
- 18.2.2 make any change or structural alteration or addition to the *property*; or
- 18.2.3 contravene any agreement between the *parties* or any direction, document, *legislation*, notice or order affecting the *property*.
- 18.3 The purchaser must until completion –
- 18.3.1 keep the *property* in good condition and repair having regard to its condition at the giving of possession; and
- 18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.
- 18.4 The risk as to damage to the *property* passes to the purchaser immediately after the purchaser enters into possession.
- 18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor –
- 18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and
- 18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate prescribed under s101 Civil Procedure Act 2005.
- 18.6 If this contract is *rescinded* or *terminated* the purchaser must immediately vacate the *property*.
- 18.7 If the *parties* or their *solicitors* on their behalf do not agree in writing to a fee or rent, none is payable.
- 19 Rescission of contract**
- 19.1 If this contract expressly gives a *party* a right to *rescind*, the *party* can exercise the right –
- 19.1.1 only by *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 email or fax to the *party's solicitor*, unless in either case it is not received;
- 20.6.6 *served* on a person if it (or a copy of it) comes into the possession of the person; and
- 20.6.7 *served* at the earliest time it is *served*, if it is *served* more than once.
- 20.7 An obligation to pay an expense of another *party* of doing something is an obligation to pay –
- 20.7.1 if the *party* does the thing personally - the reasonable cost of getting someone else to do it; or
- 20.7.2 if the *party* pays someone else to do the thing - the amount paid, to the extent it is reasonable.
- 20.8 Rights under clauses 11, 13, 14, 17, 24, 30 and 31 continue after completion, whether or not other rights continue.
- 20.9 The vendor does not promise, represent or state that the purchaser has any cooling off rights.
- 20.10 The vendor does not promise, represent or state that any attached survey report is accurate or current.
- 20.11 A reference to any *legislation* (including any percentage or rate specified in *legislation*) is also a reference to any corresponding later *legislation*.
- 20.12 Each *party* must do whatever is necessary after completion to carry out the *party's* obligations under this contract.
- 20.13 Neither taking possession nor *servicing* a transfer of itself implies acceptance of the *property* or the title.
- 20.14 The details and information provided in this contract (for example, on pages 1 - 3) are, to the extent of each *party's* knowledge, true, and are part of this contract.
- 20.15 Where this contract provides for choices, a choice in BLOCK CAPITALS applies unless a different choice is marked.

**21 Time limits in these provisions**

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

**22 Foreign Acquisitions and Takeovers Act 1975**

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

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

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

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

**24 Tenancies**

- 24.1 If a tenant has not made a payment for a period preceding or current at the *adjustment date* –
- 24.1.1 for the purposes of clause 14.2, the amount is to be treated as if it were paid; and
- 24.1.2 the purchaser assigns the debt to the vendor on completion and will if required give a further assignment at the vendor's expense.
- 24.2 If a tenant has paid in advance of the *adjustment date* any periodic payment in addition to rent, it must be adjusted as if it were rent for the period to which it relates.
- 24.3 If the *property* is to be subject to a tenancy on completion or is subject to a tenancy on **completion** –
- 24.3.1 the vendor authorises the purchaser to have any accounting records relating to the tenancy inspected and audited and to have any other document relating to the tenancy inspected;
- 24.3.2 the vendor must *serve* any information about the tenancy reasonably requested by the purchaser before or after completion; and
- 24.3.3 *normally*, the purchaser can claim compensation (before or after completion) if –
- a disclosure statement required by the Retail Leases Act 1994 was not given when required;
  - such a statement contained information that was materially false or misleading;
  - a provision of the lease is not enforceable because of a non-disclosure in such a statement; or
  - the lease was entered into in contravention of the Retail Leases Act 1994.
- 24.4 If the *property* is subject to a tenancy on completion –
- 24.4.1 the vendor must allow or transfer –
- any remaining bond money or any other security against the tenant's default (to the extent the security is transferable);
  - any money in a fund established under the lease for a purpose and compensation for any money in the fund or interest earned by the fund that has been applied for any other purpose; and
  - any money paid by the tenant for a purpose that has not been applied for that purpose and compensation for any of the money that has been applied for any other purpose;
- 24.4.2 if the security is not transferable, each *party* must do everything reasonable to cause a replacement security to issue for the benefit of the purchaser and the vendor must hold the original security on trust for the benefit of the purchaser until the replacement security issues;
- 24.4.3 the vendor must give to the purchaser –
- a proper notice of the transfer (an attornment notice) addressed to the tenant;
  - any certificate given under the Retail Leases Act 1994 in relation to the tenancy;
  - a copy of any disclosure statement given under the Retail Leases Act 1994;
  - a copy of any document served on the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion; and
  - any document served by the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion;
- 24.4.4 the vendor must comply with any obligation to the tenant under the lease, to the extent it is to be complied with by completion; and
- 24.4.5 the purchaser must comply with any obligation to the tenant under the lease, to the extent that the obligation is disclosed in this contract and is to be complied with after completion.
- 25 Qualified title, limited title and old system title**
- 25.1 This clause applies only if the land (or part of it) –
- 25.1.1 is under qualified, limited or old system title; or
- 25.1.2 on completion is to be under one of those titles.
- 25.2 The vendor must *serve* a proper abstract of title *within 7 days* after the contract date.
- 25.3 If an abstract of title or part of an abstract of title is attached to this contract or has been lent by the vendor to the purchaser before the contract date, the abstract or part is *served* on the contract date.
- 25.4 An abstract of title can be or include a list of documents, events and facts arranged (apart from a will or codicil) in date order, if the list in respect of each document –
- 25.4.1 shows its date, general nature, names of parties and any registration number; and
- 25.4.2 has attached a legible photocopy of it or of an official or registration copy of it.
- 25.5 An abstract of title –
- 25.5.1 must start with a good root of title (if the good root of title must be at least 30 years old, this means 30 years old at the contract date);
- 25.5.2 in the case of a leasehold interest, must include an abstract of the lease and any higher lease;
- 25.5.3 *normally*, need not include a Crown grant; and
- 25.5.4 need not include anything evidenced by the Register kept under the Real Property Act 1900.
- 25.6 In the case of land under old system title –
- 25.6.1 in this contract 'transfer' means conveyance;
- 25.6.2 the purchaser does not have to *serve* the form of transfer until after the vendor has *served* a proper abstract of title; and
- 25.6.3 each vendor must give proper covenants for title as regards that vendor's interest.
- 25.7 In the case of land under limited title but not under qualified title –

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



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

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

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

### 31 Foreign Resident Capital Gains Withholding

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

### 32 Residential off the plan contract

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

## SPECIAL CONDITIONS

Land: 23 Frederick Street, Dudley

### 33. Conditions to prevail

The parties agree that in the case of any inconsistency the terms and conditions from clause 34 onwards will prevail.

### 34. Amendments

The terms of clauses 1 to 32 are amended as follows:

- |       |               |   |
|-------|---------------|---|
| 34.1  | Clause 1      | definition of " <b>depositholder</b> " is amended by replacing the words "buyer's agent" with "the purchaser's solicitor";  |
| 34.2  | Clause 1      | definition of "deposit-bond" is deleted entirely.   |
| 34.3  | Clause 2.9    | insert at the end of this clause "if this contract is completed, and otherwise to the party entitled to the deposit";   |
| 34.4  | Clause 3.5    | is amended by deleting the second sentence and clauses 3.5.1 and 3.5.2;   |
| 34.5  | Clause 5.1    | is amended by including at the end of the clause "and the purchaser must not raise any other form of requisitions";   |
| 34.6  | Clause 7      | delete clause 7.1.1 and in clause 7.2.4 delete the words "and the costs of the purchaser";  |
| 34.7  | Clause 8.1    | delete the words "on reasonable grounds" in the first line of clause 8.1.1 and delete the words "and those grounds" in the first line of clause 8.1.2;  |
| 34.8  | Clause 8.2.2  | is deleted entirely;  |
| 34.9  | Clause 14.4.2 | delete and replace with "by adjusting the amount actually payable by the vendor";   |
| 34.10 | Clause 16.8   | add the words "which is a bank cheque" to the end of the clause;  |
| 34.11 | Clause 19     | insert the following additional clause:<br><br>"19.3<br>Despite clause 19.2.3, the purchaser's only remedy for a breach of warranty prescribed by the Conveyancing (Sale of Land) Regulation 2017 is the remedy prescribed by that regulation"; |
| 34.12 | Clause 21.4   | in the second line delete the words "the month" and in lieu insert "that month";  |
| 34.13 | Clause 23.13  | delete entirely;  |
| 34.14 | Clause 23.14  | delete entirely;  |

- 34.15 Clause 23.17.2 delete entirely;
- 34.16 Clause 23.18 insert the following additional clause:  
 "The purchaser must obtain an information certificate and if required the vendor will provide a written authority to the purchaser for this purpose."
- 34.17 Clause 24 is deleted entirely;
- 34.18 Clause 25.1.1 delete the word "limited"; and
- 34.19 Clause 26 to 29 are deleted entirely;
- 34.20 Clause 31.2 is amended by including at the start the words "Subject to clause 31.5";
- 34.21 Clause 31.2.1 is amended by replacing the words "date for completion" with "date of Completion";
- 34.22 Clause 31.4 is amended by replacing "7 days" with "two business days".

35. **Definitions and interpretation**

35.1 In this contract, unless the context requires otherwise:

- "Action"** make any objection, requisition, Claim for compensation or exercise any right to rescind or terminate this contract or seek to delay Completion;
- "Building Certificate"** a building certificate issued under s 317A of the *Local Government Act 1919* (NSW), s 317AE of the *Local Government Act 1919* (NSW), s 172 of the *Local Government Act 1993* (NSW) or ss 6.24, 6.25 and 6.26 of the *Environmental Planning and Assessment Act 1979* (NSW) (as amended);
- "Claim"** includes any claim, demand, suit, proceedings or other legal action;
- "Completion"** completion of this contract;
- "Contaminant"** a solid, liquid, gas, odour, temperature, sound, vibration or radiation of substance that makes or may make the property:
- (a) unfit or unsafe for habitation or occupation by humans or animals;

|                              |   |
|------------------------------|---|
|                              | (b) degraded in its capacity to support plant life;   |
|                              | (c) otherwise environmentally degraded; or  |
|                              | (d) not comply with any Environmental Law;  |
| <b>"Contamination"</b>       | the presence of any Contaminant which any authority has or may require the removal of or in respect of which any restoration, rehabilitation or remediation has or may be required; |
| <b>"Dealing"</b>             | a mortgage or other interest required to be removed from the title of the property for the vendor to comply with clause 16.3;   |
| <b>"Discharge"</b>           | a registrable discharge, surrender or withdrawal of a Dealing;  |
| <b>"Disclosure Material"</b> | all documents attached to this contract and any documents provided to the purchaser in relation to the property;  |
| <b>"Environment"</b>         | has the same meaning as under the <i>Protection of the Environment Administration Act 1991</i> (NSW);   |
| <b>"Environmental Law"</b>   | any law, regulation, ordinance or directive in connection with the Environment;   |
| <b>"Guarantor"</b>           | the party or parties identified as such on page 1 of this contract, both jointly and severally;   |
| <b>"Report"</b>              | a Survey Report and/or a Building Certificate;  |
| <b>"Survey Report"</b>       | an identification survey report for the property prepared by a surveyor.  |

35.2 In this contract unless the context requires otherwise:

35.2.1 the singular includes the plural and vice versa;

35.2.2 a gender includes the other genders;

35.2.3 headings are used for convenience only and do not affect the interpretation of this contract;

35.2.4 a reference to a document includes the document as modified from time to time and any document replacing it;

35.2.5 **"person"** includes a natural person and any body or entity whether incorporated or not;

- 35.2.6 **"month"** means calendar month and **"year"** means 12 months;
- 35.2.7 **"in writing"** includes any communication sent by letter, facsimile transmission or email;
- 35.2.8 **"including"** and similar expressions are not words of limitation;
- 35.2.9 money amounts are stated in Australian currency unless otherwise specified; and
- 35.2.10 a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**"defunct body"**), means the agency or body which performs most closely the functions of the defunct body.

36. **Real estate agent**

The purchaser warrants that the purchaser was not introduced to the vendor or the property by any real estate agent other than the vendor's agent, if any, named on the front page of this contract. The purchaser agrees to indemnify the vendor against any claim for commission (including the vendor's costs of defending any Claim) arising out of a breach of this warranty.

37. **FIRB**

37.1 **Warranty**

The purchaser warrants that the provisions of *the Foreign Acquisitions and Takeovers Act 1975* (Cth) do not apply to the purchaser or to this purchase.

37.2 **Indemnity**

In the event of breach of the warranty in clause 37.1, the purchaser will indemnify the vendor against any penalties, fines, legal costs, Claims, loss or damage suffered by the vendor in connection with that breach.

38. **Fittings, plant and equipment**

38.1 **Inclusions**

The purchaser acknowledges that any fittings or chattels on the land not noted as an inclusion on page 1 is not included as part of this sale.

38.2 **State of repair**

To the extent that this sale includes any fixtures, fittings or chattels, the vendor does not warrant the state of repair or condition of any fixtures, fittings or chattels or that they are in working order. The fixtures, fittings and chattels are sold on a "walk in, walk out" basis and must be accepted by the purchaser as they stand and with all defects and defaults as at the date for completion except damage caused by the negligent act of the vendor after the contract date.

**38.3 After date of contract**

The purchaser agrees that the vendor is not liable for and releases the vendor from liability or loss, costs, charges or expenses incurred in connection with damage, mechanical breakdown or due to fair wear and tear of any fixtures, fittings or chattels included in the sale which occur after the contract date.

**38.4 No formal delivery**

The vendor need not give formal delivery of title of any fixtures, fittings or chattels included in the sale but must leave them on the property on Completion.

**38.5 Abandoned fittings and chattels**

The parties agree that any fittings or chattels not otherwise considered by this contract remaining on the property on Completion shall be deemed abandoned by the vendor and all legal title shall pass to the purchaser.

**39. Property matters**

**39.1 Property sold in present condition**

39.1.1 Subject to s52A of the *Conveyancing Act 1919* (NSW) and the *Conveyancing (Sale of Land) Regulation 2017* (NSW), the property and the services to the property, if any, are sold in their present condition and state of repair, subject to reasonable wear and tear and to all faults and defects, both latent or patent and the vendor is not required to make any alteration or repair to them.

39.1.2 The vendor makes no warranty to the purchaser about the existence, non-existence or otherwise of any Contamination on the property or on any adjoining property and the purchaser has relied on its own enquiries as to the existence or the presence of any Contamination.

39.1.3 To the maximum extent permitted by law, the purchaser releases the vendor from all Claims and agrees not to make any Claim or take any Action in respect of any Contamination affecting the property or any breach or non-compliance by the vendor of any Environmental Law affecting the property.

39.1.4 The purchaser agrees that from the contract date it will comply with any work order, notice or order issued by any Authority requiring the vendor or the purchaser to remove, remediate or clean up any Contamination affecting or emanating from the property.

**39.2 No Action**

Subject to s 52A of the *Conveyancing Act 1919* (NSW) and the *Conveyancing (Sale of Land) Regulation 2017* (NSW), the purchaser must not take any Action in respect of, or by reason of, any of the following matters:

39.2.1 the state of repair or condition of the property;

39.2.2 the state of repair, condition or availability of any service to or on the property;



39.2.3 the presence or location of any sewer, sewer line, manhole or vent on the property;

39.2.4 any latent or patent defect to the property; or

39.2.5 any Contamination or other environmental damage to the property.

**39.3 Purchaser warranties**

39.3.1 The purchaser warrants with the vendor that:

39.3.1.1 the purchaser has inspected or has had adequate opportunity to inspect the property;

39.3.1.2 the purchaser has relied entirely on its own inspection of, and its own enquiries and due diligence relating to, the property, including:

(a) the use to which the property may be put (including any restrictions);

(b) any financial return or income derived or to be derived from the property;

(c) any services to the property;

(d) any improvements on the land;

(e) any fixtures, fittings or chattels passing with the land; and

(f) all other inspections and enquiries which a prudent purchaser would make in respect of the property;

39.3.1.3 the purchaser has inspected or has had adequate opportunity to inspect the Disclosure Material;

39.3.1.4 in entering into this contract and proceeding to Completion neither the vendor nor any person on its behalf has made or given, nor has the purchaser relied on any representation, warranty, promise or forecast including in any marketing material;

39.3.1.5 the purchaser has relied entirely on its own enquiries relating to the property;

39.3.1.6 no other statements or representations:

(a) have induced or influenced it to enter into this contract or to agree to any or all of its terms;

(b) have been relied on by it in any way as being accurate for those purposes; or

(c) have been warranted to it as being true.

39.3.2 The purchaser must not take any Action in respect any matter considered by this clause.

**39.4 Section 10.7 Certificate**

39.4.1 The purchaser acknowledges the vendor's disclosure in the attached planning certificate issued under section 10.7 of the *Environmental Planning and Assessment Act 1979* (NSW).

39.4.2 The purchaser warrants it has satisfied itself in relation to:

39.4.2.1 the manner in which the property is affected by any environmental planning instrument (actual or deemed) under the *Environmental Planning and Assessment Act 1979* (NSW) (as amended from time to time);

39.4.2.2 any restriction or prohibition whether statutory or otherwise relating to the zoning of the property or development on the property;

39.4.2.3 the use to which the property may be put; and

39.4.2.4 any existing proposals for realignment, widening or siting of a road by any authority.

39.4.3 The purchaser must not take any Action by reason of any matters set out in this clause.

**39.5 Reports**

39.5.1 Subject to section 52A of the *Conveyancing Act 1919* (NSW) and the *Conveyancing (Sale of Land) Regulation 2017* (NSW), the purchaser agrees that the vendor is not required to provide the purchaser with a Report for the property and the purchaser must not take any Action on account of any matter or thing that may have been disclosed in any such Report.

39.5.2 If a Report is attached to this contract, the vendor specifically discloses all matters referred to in that Report. Subject to section 52A of the *Conveyancing Act 1919* (NSW) and the *Conveyancing (Sale of Land) Regulation 2017* (NSW) the purchaser must not take any Action on account of any matter or thing disclosed in the Report.

**40. Dealings**

40.1 If any Dealing is noted on the certificate of title for the land and this contract is not stated as being subject to that Dealing then on Completion the vendor must provide to the purchaser a duly executed Discharge which will remove the Dealing, together with the applicable registration fee.

40.2 After Completion the vendor must, if requested by the purchaser, provide all information and documents reasonably necessary to assist the purchaser in removing the Dealing.

40.3 Subject to clauses 40.1 and 40.2, the vendor is regarded as having given the purchaser a transfer of the land free from the Dealing when the vendor gives the purchaser the Discharge.

41. **Mine Subsidence**

The Purchaser may rescind this Contract of the Property is within a proclaimed Mine Subsidence District and the owner of the improvements on the Property is not entitled as at the date of this Contract to claim compensation from Subsidence Advisory NSW in respect of any damage to the Property or improvements arising from mine subsidence.

42. **Completion**

42.1 **Date for completion**

Completion must take place on or before 4:30pm on the date for Completion.

42.2 **Notice to complete**

If this contract is not completed on or by the date for Completion, the party not in default will be entitled by notice in writing to the other to fix a date for Completion and in this regard making time for Completion essential.

42.3 **Reasonable time for notice**

42.3.1 It is agreed between the parties that 14 days between (but excluding) the date of service of a notice under clause 42.2 and the date for Completion specified in the notice is reasonable and adequate time for the insertion in any notice served by one party on the other requiring Completion even though the period includes days which are not business days.

42.3.2 The party that served the notice may at any time withdraw the notice without prejudice to the continuing right of that party to give any further notice.

42.3.3 If the vendor serves a notice to complete then the purchaser must pay to the vendor's solicitor an amount of \$220.00 on account of the reasonable legal costs of issuing the notice, payment of which must be made on Completion.

42.4 **Liquidated damages**

42.4.1 If Completion does not take place on or before the date for completion for any reason not attributable to the vendor, then without prejudice to all other remedies of the vendor, the purchaser must pay on Completion to the vendor by way of liquidated damages, interest on the price less the deposit at the rate of 8% per annum calculated daily from the date for Completion until the date for Completion.

42.4.2 The purchaser is not entitled to require the vendor to complete this contract unless the payments under clause 42.3.3 and clause 42.4.1 are paid to the vendor on Completion.

43. **Insolvency, Death or Bankruptcy**

43.1 **Insolvency**

Without in any manner negating, limiting or restricting any rights or remedies which would have been available to a party ("**First Party**") at law or in equity, if:

43.1.1 the other party resolves to enter into liquidation or provisional liquidation;

43.1.2 a summons is presented for the winding-up of the other party;

43.1.3 the other party enters into any scheme of arrangement with its creditors under Part 5.1 of the *Corporations Act 2001* (Cth);

43.1.4 any liquidator, provisional liquidator, receiver, receiver and manager, controller or administrator is appointed in respect of the other party or in respect of any asset of the other party; or

43.1.5 an application for bankruptcy is made against the other party,

then the First Party may terminate this contract by notice in writing to the other party at any time.

43.2 **Death, etc. of purchaser**

If a party (and if that party is constituted by more than one person then if any of those persons constituting that party) dies or becomes mentally incapable before Completion, then the other party may rescind this contract by notice in writing to the first party and clause 19 will apply.

44. **General**

44.1 **Counterparts**

This contract may be executed in any number of counterparts. Each counterpart is deemed an original and all the counterparts together constitute the one instrument.

44.2 **Nature of obligations**

Any provision in this contract which binds more than one person binds all of those persons jointly and each of them individually. Each obligation imposed on a party by this contract in favour of another is a separate obligation.

44.3 **Entire agreement**

44.3.1 This contract contains the entire understanding between the parties concerning the subject matter of this contract and supersedes all prior communications between the parties.

44.3.2 Each party acknowledges that, except as expressly stated in this contract, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this contract.

**44.4 No waiver**

A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this contract does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this contract. A waiver of a breach does not operate as a waiver of any other breach.

**44.5 Severability**

If any provision of this contract offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

44.5.1 where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and

44.5.2 in any other case the offending provision must be severed from this contract and the remaining provisions of this contract operate as if the severed provision had not been included.

**44.6 Successors and assigns**

This contract binds and benefits the parties and their respective successors and permitted assigns.

**44.7 No assignment**

A party cannot assign or otherwise transfer the benefit of this contract without the prior written consent of the other party in the absolute discretion of that party.

**44.8 No variation**

This contract cannot be amended or varied except in writing signed by the parties.

**44.9 Costs**

Each party must pay its own legal costs of and incidental to the preparation, negotiation and completion of this contract.

**44.10 Non-merger**

A term or condition of, or act done in connection with this contract does not operate as a merger of any of the rights or remedies of the parties under this contract and those rights and remedies continue unchanged. Without limiting the provisions of this clause, the following clauses do not merge upon Completion 33, 35, 36 and 37.

**44.11 No adverse construction**

This contract is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

#### 44.12 **Governing law and jurisdiction**

This contract is governed by and must be construed in accordance with the laws of the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the Courts of that State and the Commonwealth of Australia in respect of all matters or things arising out of this contract.

#### 44.13 **Stamp duty**

All stamp duty (including fines and penalties, if any) payable in respect of this contract or any instrument created in connection with it must be borne by the purchaser. The purchaser indemnifies the vendor against all liability relating to the stamp duty, fines and penalties.

#### 44.14 **Electronic Transaction**

For the purposes of the *Electronic Transactions Act 2000* (NSW) and the *Electronic Transactions Act 1999* (Cth), each party consents to the electronic exchange and completion of this contract and any notices to be served or received under this contract.

### 45. **Conditions of Sale by Auction**

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

Bidders record means the bidders record to be kept pursuant to regulation 18 of the *Property, Stock and Business Agents Regulation 2003* (NSW) and section 68 of the *Property, Stock and Business Agents Act 2002* (NSW):

- 45.1 The following conditions are prescribed as applicable to and in respect of the sale by auction of land or livestock:
  - 45.1.1 the principal's reserve price must be given in writing to the auctioneer before the auction commences;
  - 45.1.2 a bid for the vendor cannot be made unless the auctioneer has, before the commencement of the auction, announced clearly and precisely the number of bids that may be made by or on behalf of the vendor;
  - 45.1.3 the highest bidder is the purchaser, subject to any reserve price;
  - 45.1.4 in the event of a disputed bid, the auctioneer is the sole arbitrator and the auctioneer's decision is final;
  - 45.1.5 the auctioneer may refuse to accept any bid that, in the auctioneer's opinion, is not in the best interests of the vendor;
  - 45.1.6 a bidder is taken to be a principal unless, before bidding, the bidder has given to the auctioneer a copy of a written authority to bid for or on behalf of another person;
  - 45.1.7 a bid cannot be made or accepted after the fall of the hammer; and

- 45.1.8 as soon as practicable after the fall of the hammer the purchaser is to sign this contract.
- 45.2 The following conditions, in addition to those prescribed by clause 45.1, are prescribed as applicable to and in respect of the sale by auction of residential property or rural land:
- 45.2.1 all bidders must be registered in the bidders record and display an identifying number when making a bid;
- 45.2.2 subject to clause 45.2.3, the auctioneer may make only one vendor bid at an auction for the sale of residential property or rural land and no other vendor bid may be made by the auctioneer or any other person; and
- 45.2.3 immediately before making a vendor bid the auctioneer must announce that the bid is made on behalf of the vendor or announces 'vendor bid'.
- 45.3 The following conditions, in addition to those prescribed by clauses 45.1 and 45.2 are prescribed as applicable to and in respect of the sale by auction of co-owned residential property or rural land or the sale of such land by a vendor as executor or administrator:
- 45.3.1 more than one vendor bid may be made to purchase interest of co-owner;
- 45.3.2 a bid by or on behalf of an executor or administrator may be made to purchase in that capacity;
- 45.3.3 before the commencement of the auction, the auctioneer must announce that bids to purchase the interest of another co-owner or to purchase as executor or administrator may be made by or on behalf of the vendor; and
- 45.3.4 before the commencement of the auction, the auctioneer must announce the bidder registration number of any co-owner, executor or administrator or any person registered to bid on behalf of any co-owner, executor or administrator.
- 45.4 The following condition, in addition to those prescribed by 45.2, is prescribed as applicable to and in respect of the sale by auction of livestock. The purchaser of livestock must pay the stock and station agent who conducted the auction, or under whose immediate and direct supervision the auction was conducted, or the vendor the full amount of the purchase price:
- 45.4.1 If that amount can reasonably be determined immediately after fall of hammer – before the close of the next business day following the auction; or
- 45.4.2 If that amount cannot reasonably be determined immediately after the fall of the hammer – before the close of the next business day following determination of that amount,

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



FOLIO: AUTO CONSOL 5142-224

| SEARCH DATE | TIME    | EDITION NO | DATE     |
|-------------|---------|------------|----------|
| 12/4/2021   | 9:50 AM | 3          | 8/9/2018 |

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

LAND

LAND DESCRIBED IN SCHEDULE OF PARCELS  
AT DUDLEY  
LOCAL GOVERNMENT AREA LAKE MACQUARIE  
PARISH OF KAHIBAH COUNTY OF NORTHUMBERLAND  
TITLE DIAGRAM DP2657

FIRST SCHEDULE

DELWYN ANN RICHARDS (T AF409314)

SECOND SCHEDULE (3 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 C900979 LAND EXCLUDES MINERALS AND IS SUBJECT TO RIGHTS TO MINE
- 3 AF409315 MORTGAGE TO WESTPAC BANKING CORPORATION

NOTATIONS

UNREGISTERED DEALINGS: NIL

SCHEDULE OF PARCELS

LOTS 5-6 SEC. J IN DP2657.

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





FOLIO: AUTO CONSOL 5142-224

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|-------------|---------|------------|----------|
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\*\*\* END OF SEARCH \*\*\*



Collo's Park Street



S.A. 11-7-98

7"

DP2657

57  
18491

2657

of a second subdivision of

# SOUTH BURWOOD

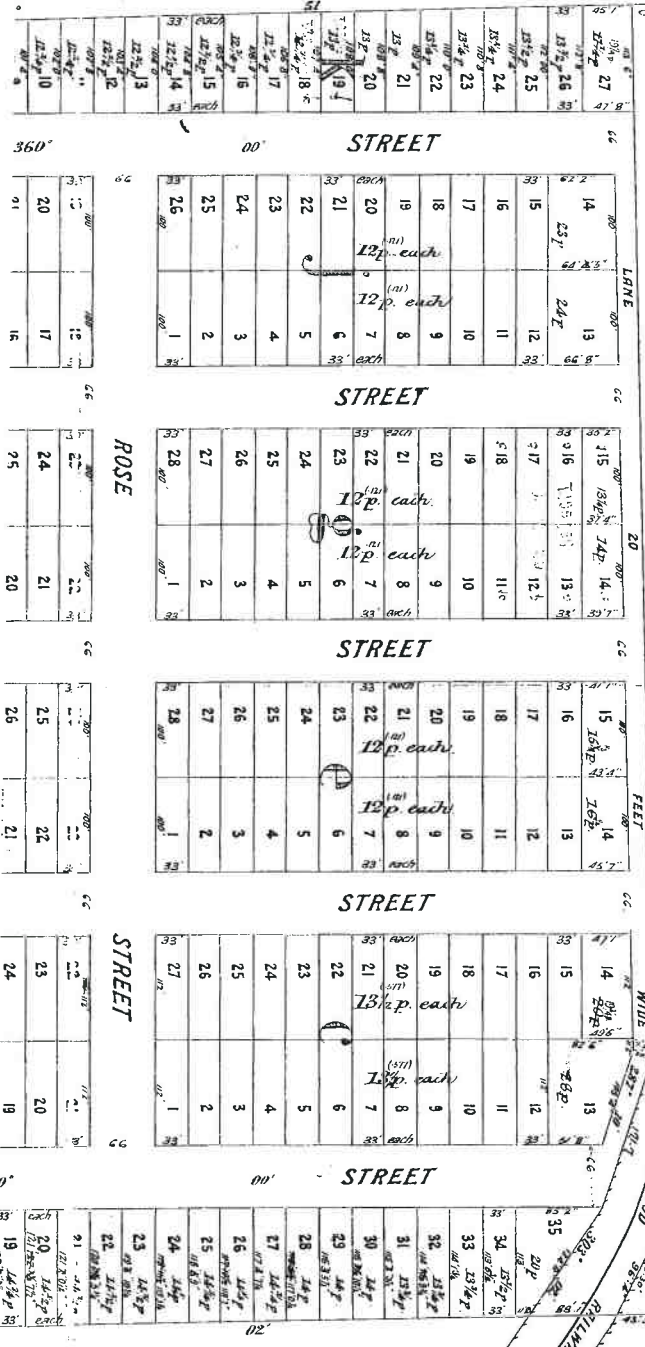
Parish of Kahibah County of Northumberland

being Portion No 65 of 40 acres

SCALE 100 FEET TO AN INCH

Portion 65 Grant to Thomas Gervase Alcock 24th Nov 1851

Map of 1851

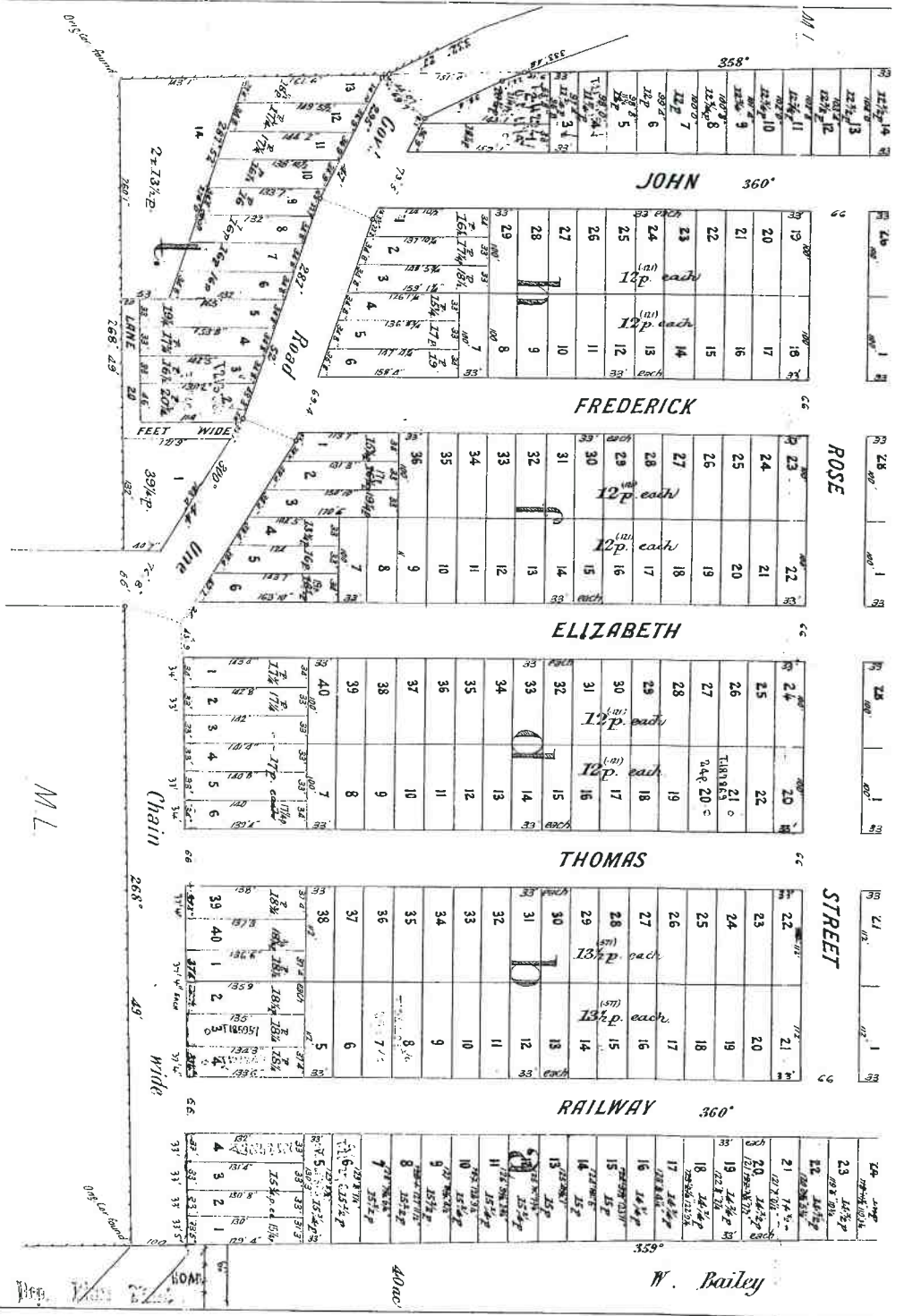


56

56

DP2657

DP 2657 (E)



This is the Plan marked & referred to in my declaration of 7<sup>th</sup> July 1891

*James Williamson*  
 Licensed Surveyor

PP 601 105

SHIRE OF LAKE MACQUARIE

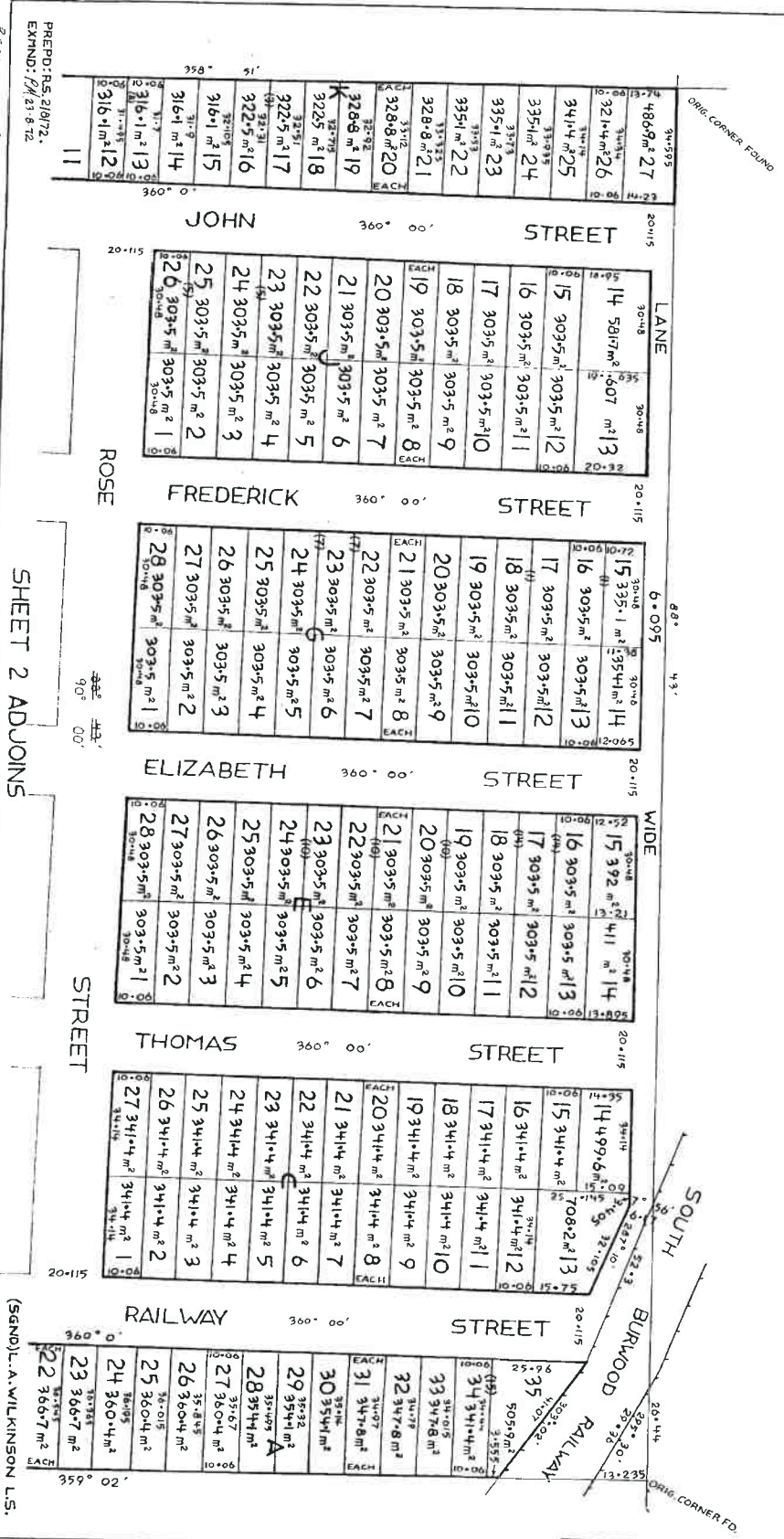
SOUTH BURWOOD SECOND SUBDN.

DUDLEY

PH. OF KAHIBAH CO OF NORTHUMBERLAND

LENGTHS ARE IN METRES  
 REDUCTION RATIO 1:1000

D.P. 2657  
 SHEET 1/2



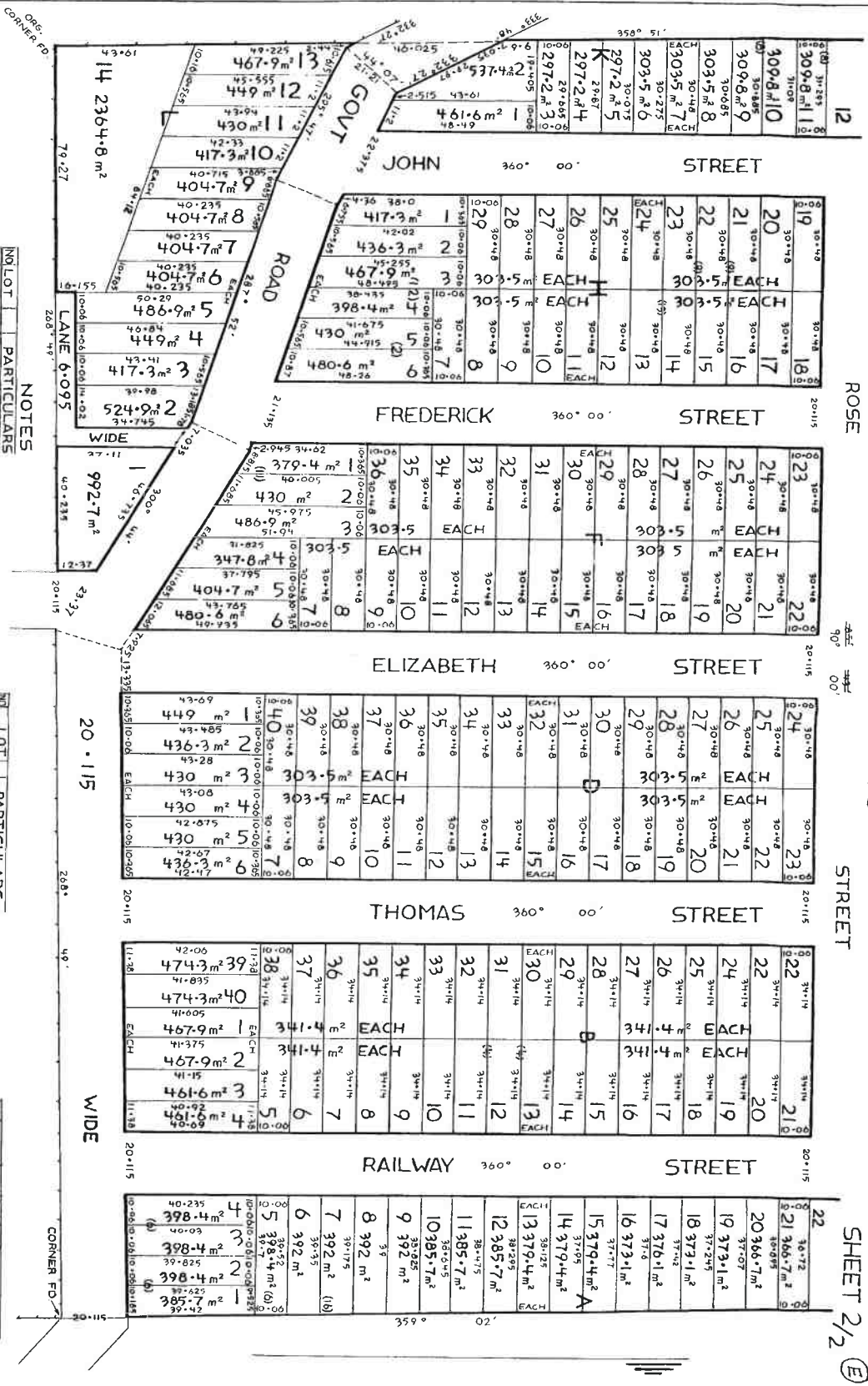
SHEET 2 ADJOINS

STATION 25 ROSE ST. ADJACENT IN REE SEU DRIVE.  
 VUE 1975V 228.5 49 91.19m2

SHIRE OF LAKE MACQUARIE

SHEET 1 ADJUNGS

D.P. 2657  
 SHEET 2/2



NOTES

| NO  | LOT        | PARTICULARS      |
|-----|------------|------------------|
| (1) | 15-18      | F.P.31739        |
| (2) | 5 & 6      | F.P.31435        |
| (3) | 16 & 17    | F.P.37477        |
| (4) | 11-13      | F.P.37970        |
| (5) | 23-24      | F.P.41922 (SUR)  |
| (6) | 1-9        | F.P.41915 (COMP) |
| (7) | 22, 23, 24 | D.P.523125 (SUR) |

NOTES

| NO   | LOT         | PARTICULARS                               |
|------|-------------|---|
| (8)  | 9-13        | D.P.52370 (SUR)                           |
| (9)  | 21, 22, 23  | D.P.525104 (SUR)                          |
| (10) | 19-24       | D.P.529365 (SUR)                          |
| (11) | PT. 1 & 2   | D.P.544823 (SUR) PROP. RD-WIDE N/R M51210 |
| (12) | PT. 3 & 4   | RESMD. BY COUNCIL GAZ. 10/9/71 FO.3580    |
| (13) | PT. 13 & 14 | D.P.54921 RD (SUR)                        |
| (14) | PT. 13 & 14 | D.P.550312 (SUR) EASMT.                   |

NOTES

| NO   | LOT     | PARTICULARS |
|------|---------|-------------|
| (15) | 16-18   | D.P.505725  |
| (16) | 34 & 35 | D.P.516079  |
| (17) | 7       | A           |
| (18) | 7       | 18 179256   |

BEARING OF ACES ST. ANCHORED IN FEG. PLAN CORNER  
 VICE 1975 M 2665  
 1/11/1976

PREP. R.S. 2/18/72.  
 EXHIBIT: 1/11/1976





**MEMORANDUM OF TRANSFER**  
 (REAL PROPERTY ACT, 1906)

C900979

I, The Dudley Land and Coal Company Limited

(herein called transferors)

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 fourteen pounds

(£14 0 0) (the receipt whereof is hereby acknowledged) paid to me by

J. H. R. Parsons of Bolton, First Labourer and in consideration of One hundred and twenty pounds (£120 0 0) the receipt whereof is hereby acknowledged paid to the said J. H. R. Parsons by Thomas Davidson McBrindle of Dudley, Proprietor of the Dudley Land and Coal Company Limited at the request and by the direction of the said J. H. R. Parsons

(herein called transferee)

do hereby transfer to the said transferee Thomas Davidson McBrindle (herein called transferee) ALL such Estate and Interest in ALL the land mentioned in the schedule following :-

| County.               | Parish.        | Reference to Title (c) |             |           | Description of Land (if part only). (d)   |
|-----------------------|----------------|------------------------|-------------|-----------|---|
|                       |                | Whols or Part.         | Vol.        | Fol.      |   |
| <u>Northumberland</u> | <u>Habitak</u> | <u>part</u>            | <u>1330</u> | <u>14</u> | <u>Lot 5 &amp; 6 Section J.D.P. 2657.</u> |

And the transferee covenants with the transferor  
 Reserving unto the said transferors all mines and minerals lying and being in and under the said land and all strata containing mines and minerals including coal in or under the said land hereby transferred and in and under the strata and lands and ways comprising in and under the said land and also to carry away all such minerals but so that no injury be done nor any work be done on the said strata or upon the surface of the land hereby transferred.

**ENCUMBRANCES, &c., REFERRED TO!**

Reservations of all mines and minerals in favour of all mines and lands dated 27/4/1880 No 143079 from Frank Gardner and Frederick Moffatt to the Dudley Burnwood Coal Company Limited  
 In witness whereof the common Seal of the Dudley Land and Coal Company Limited was hereunto affixed  
 Signed at Newcastle  
 the fourth day of April 1940

Signed in my presence by the transferor  
J. H. R. Parsons  
 who is personally known to me  
 Signed in my presence by the transferee  
Thomas Davidson McBrindle  
 who is personally known to me

Mary Ann Parsons  
 Transferor  
J. Parsons  
 Transferee

Horace Dickles  
 J.P.  
 Signed in my presence by the transferee  
 WHO IS PERSONALLY KNOWN TO ME  
J. D. McBrindle  
John J. Spence  
John J. Spence

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

(Trusts must not be disclosed the transfer.)  
 If a lease estate, strike out *fee simple*, and interline required alteration.

- If to two or more, state whether as joint tenants or tenants in common.
- If all the references cannot be conveniently inserted, a form of annexure (obtainable at L.T.O.) may be added. Any annexure must be signed by the parties and their signatures witnessed.
- If part only of the land comprised in a Certificate or Certificates of Title is to be transferred and being lot sec., D.P., or "being the land shown on the plan annexed to the land in certificate of grant registered Val. For. Where the consent of the local council is required to a subdivision the certificate and plan mentioned in the L.G.A. 1919, should accompany the transfer.
- Strike out if unnecessary. Covenants should comply with Section 88 of the Conveyancing Act, 1919-1935. Here also should be set forth any right-of-way or easement or exception. Any provision in addition to or modification of the covenants implied by the Act may also be inserted. If the space provided is insufficient a form of annexure should be used.
- A very short note will suffice.

- If executed in the State this instrument should be 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 must appear before one of the above functionaries to make a declaration in the form overleaf. As to instruments executed elsewhere, see page 2.
- Repeat attestation if necessary.
- 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."

\* If signed by virtue of any power of attorney, the original power must be registered, and produced with each dealing, and the memorandum of non-avocation on page 2 signed by the attorney.  
 † N.B.—Section 117 requires that the above Certificate be signed by Transferor or his Solicitor, and renders any person falsely or negligently certifying liable to a penalty of £50; also to damages recoverable by parties injured. If the Solicitor signs he must sign his own name and not that of his firm.  
 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 noted in the attestation.

THIS SPACE TO BE LEFT FREE FROM NOTATION.

Contract made in the Dudley Land and Coal Company Limited. See page 12/13/14/15

Sydney

CONSENT OF MORTGAGEE.

I, *John David McBurnie*, mortgagee under Mortgage No. *5142*,  
 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.

Dated at *Sydney* this *27* day of *May* 19 *1940* } Mortgagee.  
 Signed in my presence by *John David McBurnie*  
 who is personally known to me.

MEMORANDUM AS TO NON-REVOCATION OF POWER OF ATTORNEY.

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

Memorandum whereby the undersigned states that he has no notice of the revocation of the Power  
 of Attorney registered No. *5142* Miscellaneous Register under the authority of which he has  
 just executed the within transfer.

Signed at *Sydney* the *27* day of *May* 19 *1940*.  
 Signed at the place and on the date above-  
 mentioned, in the presence of *John David McBurnie*

i This form is not appropriate in cases of delegation by trustees.

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

FORM OF DECLARATION BY ATTESTING WITNESS.

Appeared before me at *Sydney* the *27* day of *May*, one thousand  
 nine hundred and *forty* the attesting witness to this instrument,  
 and declared that he personally knew *John David McBurnie* the person  
 signing the same, and whose signature thereto he has attested; and that the name purporting to be such  
 signature of the said *John David McBurnie* is *John David McBurnie* own handwriting, and  
 that *John David McBurnie* he was of sound mind and freely and voluntarily signed the same.

k May be made before either Registrar-General, Deputy Registrar-General, a Notary Public, J.P., or Commissioner for Affidavits. Not required if the instrument itself be made or acknowledged before one of these parties.

INDEXED  
 28 MAY 1940  
 CHECKED BY *g.d.*

MEMORANDUM OF TRANSFER of

Acres. roods. perches.

*Lots 5 & 6 Sec 1 D.P. 2657*  
*(Frederick St.) at Dudley*  
 Shire *Lake Macquarie*  
 Municipality  
 Parish *Kahibate* County *Northumberland*  
*(reserving mines etc.)*  
*John David McBurnie* Transferee.

DOCUMENTS LODGED HEREWITH.

To be filled in by person lodging dealing.

| Nature. | No. | Reg'd Propr. M'tgor, etc. |
|---------|-----|---------------------------|
|         |     |                           |
|         |     |                           |
|         |     |                           |

LEAVE THESE SPACES FOR DEPARTMENTAL USE.

Particulars entered in Register Book, Vol. 1330 Fol. 14

the *27* day of *May* 19*40*.  
 at *11* minutes *11* o'clock in the *forenoon*.

*John David McBurnie*  
 Registrar-General



PROGRESS RECORD.

|                                      | Initials  | Date         |
|--------------------------------------|-----------|--------------|
| Sent to Survey Branch...             | <i>CD</i> | <i>25-40</i> |
| Received from Records...             |           |              |
| Draft written ...                    | <i>CD</i> | <i>15-40</i> |
| Draft examined...                    | <i>CD</i> | <i>17-40</i> |
| Diagram prepared                     | <i>CD</i> | <i>20-40</i> |
| Diagram examined                     | <i>CD</i> | <i>22-40</i> |
| Draft forwarded                      | <i>CD</i> | <i>23-40</i> |
| Supt. of Engrs. & Cancellation Clerk | <i>CD</i> | <i>27-40</i> |
| VOL. <i>5142</i> Fol. <i>224</i>     |           |              |
| Diagram Fees                         |           |              |
| Additional Folios                    |           |              |

If the parties be resident without the State, but in any other part of the British Dominions, the instrument must be signed or acknowledged 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, of the Mayor or Chief Officer of any municipal or local government corporation of 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.

If resident in the United Kingdom then before the Mayor or Chief Officer of any corporation or a Notary Public.

If resident at any foreign place, then the parties should sign or acknowledge before a British Minister, Ambassador, Envoy, Minister Charge d'Affaires, Secretary of the Embassy or Legation, Consul-General, Consul, Vice-Consul, Acting-Consul, Pro-Consul, or 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.

The fees are:—Lodgment fee 12/6 (includes endorsement on first certificate), and 2/6 for each additional certificate included in the Transfer, and 1/1 for every new Certificate of Title issuing upon a Transfer on sale for a consideration of not more than £1,000, and 1/6 for a new Certificate of Title in every other case. Additional fees, however, may be necessary in cases involving more than a simple diagram or more than six folios of engrossing.

Tenants in common must receive separate Certificates.

If part only of the land is transferred a new Certificate must issue, but the old Certificate may remain in the Office, or the Transferee may take out a new Certificate for the residue.





INFOTRACK PTY LTD  
DX 578  
SYDNEY

Our Ref:140918  
Your Ref:  
CD/2035063-1:116937  
ABN 81 065 027 868

13 April 2021

**PLANNING CERTIFICATE UNDER THE  
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

Fee Paid: 53.00  
Receipt No: 11478943  
Receipt Date: 12 April 2021

**DESCRIPTION OF LAND**

**Address:** 23 Frederick Street, DUDLEY NSW 2290  
**Lot Details:** Lot 5 Sec J DP 2657  
**Parish:** Kahibah  
**County:** Northumberland

For: MORVEN CAMERON  
GENERAL MANAGER

A handwritten signature in cursive script, appearing to read "J. Hayes".

126 – 138 Main Road T 02 4921 0333  
Speers Point NSW 2284 E council@lakemac.nsw.gov.au  
BOX 1906 HRMC NSW 2310 W lakemac.com.au

lakemac lakemacity ourlakemac

ABN: 81 065 027 868

**ADVICE PROVIDED IN ACCORDANCE WITH SUBSECTION (2)**

**1 Names of Relevant Planning Instruments and Development Control Plans**

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

Lake Macquarie Local Environmental Plan 2014

State Environmental Planning Policy - (Housing for Seniors or People with a Disability) 2004 (This SEPP applies to the land to the extent provided by Clause 4 of the SEPP)

State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Concurrences) 2018

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

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

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Koala Habitat Protection) 2021

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

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

State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State Significant Precincts) 2005

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

State Environmental Planning Policy No. 19 – Bushland in Urban Areas

State Environmental Planning Policy No. 21 – Caravan Parks

State Environmental Planning Policy No. 33 – Hazardous and Offensive Development

State Environmental Planning Policy No. 50 – Canal Estate Development

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 64 – Advertising and Signage

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)

- (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 Secretary has notified the council that the making of the proposed instrument has been deferred indefinitely or has not been approved).

Nil

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

Lake Macquarie Development Control Plan 2014

- (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 Local Environmental Plans**

- (1) The following answers (a) to (h) relate to the instrument (see 1(1) above).

- (a) (i) The identity of the zone applying to the land.

R2 Low Density Residential

under Lake Macquarie Local Environmental Plan 2014

- (ii) The purposes for which the Instrument provides that development may be carried out within the zone without the need for development consent.

Exempt development as provided in Schedule 2; Home-based child care; Home occupations

- (iii) The purposes for which the Instrument provides that development may not be carried out within the zone except with development consent.

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Hostels; Kiosks; Neighbourhood shops; Places of public worship; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Sewage reticulation systems; Sewage treatment plants; Shop top housing; Water recreation structures; Water recycling facilities; Water supply systems

- (iv) The purposes for which the Instrument provides that development is prohibited within the zone.

Any other development not specified in item (ii) or (iii)

**NOTE: The advice in sections (a) above relates only to restrictions that apply by virtue of the zones indicated. The Lake Macquarie LEP 2014 includes additional provisions that require development consent for particular types of development, or in particular circumstances, irrespective of zoning.**

- (b) 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.

There are no development standards applying to the land that fix minimum land dimensions for the erection of a dwelling house.

- (c) Whether the land includes or comprises critical habitat.

No

- (d) Whether the land is in a conservation area (however described).

No

- (e) Whether an item of environmental heritage (however described) is situated on the land.

**Local Environmental Plan 2014 Schedule 5 Part 1 Heritage Items**

There are no items listed for this land under Local Environmental Plan 2014 Schedule 5 Part 1 Heritage items.

**Local Environmental Plan 2014 Schedule 5 Part 2 Heritage conservation areas**

There are no items listed for this land under Local Environmental Plan 2014 Schedule 5 Part 2 Heritage conservation areas.

**Local Environmental Plan 2014 Schedule 5 Part 3 Archaeological sites**

There are no items listed for this land under Local Environmental Plan 2014 Schedule 5 Part 3 Archaeological sites.

**Local Environmental Plan 2014 Schedule 5 Part 4 Landscape Items**

There are no items listed for this land under Local Environmental Plan 2014 Schedule 5 Part 4 Landscape items.

**Local Environmental Plan 2004 Schedule 4 Part 1 Heritage Items**

There are no heritage items listed for this land within Local Environmental Plan 2004 Schedule 4 Part 1.

**Local Environmental Plan 2004 Part 11 Clause 150 Environmental Heritage**

There are no heritage items listed for this land within Local Environmental Plan 2004

Part 11 Clause 150 – South Wallarah Peninsula.

**NOTE:** An item of environmental heritage, namely Aboriginal heritage, listed within the Aboriginal Heritage Information Management System (AHIMS), may affect the land. Aboriginal objects are protected under the National Parks and Wildlife Act 1974. If Aboriginal objects are found during development, works are to stop and the Office of Environment and Heritage (OEH) contacted immediately. For further information and to access the AHIMS registrar, refer to <http://www.environment.nsw.gov.au>

- (2) The following answers relate to the Draft Instrument (see 1(2) above).
- (a) Nil

**NOTE:** The advice in section (a) above relates only to restrictions that apply by virtue of the zones indicated. The Draft instrument may include additional provisions that require development consent for particular types of development, or in particular circumstances, irrespective of zoning.

- (b) 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.

There are no development standards applying to the land that fix minimum land dimensions for the erection of a dwelling house.

- (c) Whether the land includes or comprises critical habitat.  
No
- (d) Whether the land is in a conservation area (however described).  
No
- (e) Whether an item of environmental heritage (however described) is situated on the land.  
No

**3 Complying development**

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), and 1.18 (1) (c3) and 1.19 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

**Housing Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

**Low Rise Housing Diversity Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

**Housing Alterations Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

**Commercial and Industrial Alterations Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

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

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

**Subdivisions Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

**Rural Housing Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

**Greenfield Housing Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

**General Development Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

**Demolition Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

**Fire Safety Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

**Container Recycling Facilities Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

**4 Coastal Protection**  
(Repealed 3 April 2018)

**4A Information relating to beaches and coasts**

(Repealed 3 April 2018)

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

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).

Nil

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

**5 Mine subsidence**

Whether or not the land is proclaimed to be a mine subsidence district within the meaning of section 20 of the Coal Mine Subsidence Compensation Act 2017.

The land IS WITHIN a declared Mine Subsidence District under section 20 of the *Coal Mine Subsidence Compensation Act 2017*. Development in a Mine Subsidence District requires approval from Subsidence Advisory NSW. Subsidence Advisory NSW provides compensation to property owners for mine subsidence damage. To be eligible for compensation, development must be constructed in accordance with Subsidence Advisory NSW approval. Subsidence Advisory NSW has set surface development guidelines for properties in Mine Subsidence Districts that specify building requirements to help prevent potential damage from coal mine subsidence.

**NOTE: The advice in section (5) above relates only to a Mine Subsidence District. Further information relating to underground mining which may occur outside Mine Subsidence Districts should be sought. Underground mining information can be found on the Subsidence Advisory NSW website.**

**6 Road widening and road realignment**

Whether the land is affected by any road widening or realignment under:

- (a) Division 2 of Part 3 of the Roads Act 1993.

No

- (b) any environmental planning instrument.

No



- (c) any resolution of the Council.

No, other road widening proposals may affect this land and if so, will be noted on the Section 10.7 Subsection (5) certificate.

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

Whether or not the land is affected by a policy:

- (i) adopted by the Council, or  
(ii) 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:

- (a) land slip or subsidence

Yes

Relevant sections of Lake Macquarie Development Control Plan 2014 and Lake Macquarie Development Control Plan No.1 apply when development is proposed on land covered by Council's geotechnical areas map. The map is available for viewing at the Council. If you require any further clarification on the policy and how it may affect any possible development contact the Council on 02 4921 0333.

- (b) bushfire

No

- (c) tidal inundation

No

- (d) acid sulfate soils

Yes

Relevant sections of Lake Macquarie Development Control Plan 2014 and Lake Macquarie Development Control Plan No.1 apply when development is proposed on land covered by the Acid Sulfate Soils Map. If you require any further clarification on the policy and how it may affect any possible development contact the Council on 02 4921 0333.

- (e) contaminated or potentially contaminated land

Yes

Council has adopted a policy that may restrict the development of Contaminated or Potentially Contaminated land. This policy is implemented when zoning, development, or land use changes are proposed. Council does not hold sufficient information about previous

use of the land to determine whether the land is contaminated.  
Consideration of Council's adopted Policy located in the applicable DCP noted in Clause 1(3) above, and the application of provisions under relevant State legislation is recommended.

- (f) any other risk (other than flooding).  
No

**NOTE:** The absence of a council policy restricting development of the land by reason of a particular natural hazard does not mean that the risk from that hazard is non-existent.

**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.  
No
- (2) Whether or not development on that land or part of the land for any other purpose is subject to flood related development controls.  
No
- (3) Words and expressions in this clause have the same meanings as in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

**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 3.15 of the Act.

No

**9 Contributions Plans**

The name of each contributions plan applying to the land.

Lake Macquarie City Council Development Contributions Plan - Charlestown  
Contributions Catchment - 2015

The Lake Macquarie City Council Section 7.12 Contributions Plan – Citywide 2019

**9A Biodiversity Certified Land**

This land is not biodiversity certified land under Part 8 of the Biodiversity Conservation Act 2016.

**10 Biodiversity stewardship sites**

The land is not a biodiversity stewardship site under a biodiversity stewardship agreement under Part 5 of the Biodiversity Conservation Act 2016.

**10A Native vegetation clearing set asides**

The land does not contain a set aside area under section 60ZC of the Local Land Services Act 2013.

**11 Bush Fire Prone Land**

**Note:** If a lot is not specifically listed in this section then, **NONE** of that lot is bush fire prone land.

**12 Property Vegetation Plans**

The land IS NOT subject to a property vegetation plan approved under Part 4 of the Native Vegetation Act 2003 (and that continues in force).

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

Has an order 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).

The land IS NOT subject to an order made under the Trees (Disputes Between Neighbours) Act 2006 to carry out work in relation to a tree on the land.

**14 Directions under Part 3A**

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**

- (a) Whether there is a current site compatibility certificate (seniors housing), of which the council is aware, in respect of proposed development on the land.

Council is not aware of any site capability certificate for any proposed development on the land.

- (b) Any terms of a kind referred to in clause 18 (2) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 that have been imposed as a condition of consent to a development application granted after 11 October 2007 in respect of the land.

Nil

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

Whether there is a valid site compatibility certificate (infrastructure, schools or TAFE establishments), of which the council is aware, in respect of proposed development on the land.

Council is not aware of any site capability certificate for any proposed development on the land.

**17 Site compatibility certificates and conditions for affordable rental housing**

- (1) 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.

Council is not aware of any site capability certificate for any proposed development on the land.

- (2) 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.

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 a consent ballot.

Nil

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

Not Applicable

**Note:** Words and expressions used in this clause have the same meaning as they have in Part 16C of Environmental Planning and Assessment Regulation 2000.

**19 Site verification certificates**

Whether there is a current site verification certificate, of which the council is aware, in respect of the land.

No

- (a) The matter certified by the certificate

Not Applicable

- (b) The date on which the certificate ceases to be current

Not Applicable

- (c) A copy of the certificate (if any) may be obtained from the head office of the Department of Planning and Infrastructure.

**Note:** A site verification certificate sets out the Secretary'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.

**20 Loose-fill asbestos insulation**

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

No. Council **has not** been notified that a residential premises erected on this land has been identified in the NSW Fair Trading Loose-Fill Asbestos Insulation Register as containing loose-fill asbestos ceiling insulation.

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

- (1) Whether there is any affected building notice of which the council is aware that is in force in respect of the land.

No, Council **has not** been notified that an affected building notice is in force in respect of this land.

- (2) (a) Whether there is any building product rectification order of which the council is aware that is in force in respect of the land and has not been fully complied with, and

A building rectification order **is not** in force in respect of this land.

- (b) Whether any notice of intention to make a building product rectification order of which the council is aware has been given in respect of the land and is outstanding.

A notice of intention to make a building product rectification order **has not** been given in respect of this land.

- (3) In this clause:

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

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

**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:**

**Matters arising under the Contaminated Land Management Act 1997 (s59 (2))**

- (a) 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,  
No
  
- (b) 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,  
No
  
- (c) 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,  
No
  
- (d) 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,  
No
  
- (e) The land to which the certificate relates is the subject of a site audit statement within the meaning of that Act - if a copy of such a statement has been provided at any time to the local authority issuing the certificate.  
No



INFOTRACK PTY LTD  
DX 578  
SYDNEY

Our Ref:140919  
Your Ref:  
CD/2035063-1:116938  
ABN 81 065 027 868

13 April 2021

**PLANNING CERTIFICATE UNDER THE  
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

Fee Paid: 53.00  
Receipt No: 11478944  
Receipt Date: 12 April 2021

**DESCRIPTION OF LAND**

**Address:** 23 Frederick Street, DUDLEY NSW 2290  
**Lot Details:** Lots 6 Sec J DP 2657  
**Parish:** Kahibah  
**County:** Northumberland

For: MORVEN CAMERON  
GENERAL MANAGER

A handwritten signature in cursive script, appearing to read "J. Hayes".

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**ADVICE PROVIDED IN ACCORDANCE WITH SUBSECTION (2)**

**1 Names of Relevant Planning Instruments and Development Control Plans**

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

Lake Macquarie Local Environmental Plan 2014

State Environmental Planning Policy - (Housing for Seniors or People with a Disability) 2004 (This SEPP applies to the land to the extent provided by Clause 4 of the SEPP)

State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Concurrences) 2018

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

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

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State Environmental Planning Policy (Koala Habitat Protection) 2021

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

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State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)

- (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 Secretary has notified the council that the making of the proposed instrument has been deferred indefinitely or has not been approved).

Nil

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

Lake Macquarie Development Control Plan 2014

- (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 Local Environmental Plans**

- (1) The following answers (a) to (h) relate to the instrument (see 1(1) above).

- (a) (i) The identity of the zone applying to the land.

R2 Low Density Residential

under Lake Macquarie Local Environmental Plan 2014

- (ii) The purposes for which the Instrument provides that development may be carried out within the zone without the need for development consent.

Exempt development as provided in Schedule 2; Home-based child care; Home occupations

- (iii) The purposes for which the Instrument provides that development may not be carried out within the zone except with development consent.

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Hostels; Kiosks; Neighbourhood shops; Places of public worship; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Sewage reticulation systems; Sewage treatment plants; Shop top housing; Water recreation structures; Water recycling facilities; Water supply systems

- (iv) The purposes for which the Instrument provides that development is prohibited within the zone.

Any other development not specified in item (ii) or (iii)

**NOTE: The advice in sections (a) above relates only to restrictions that apply by virtue of the zones indicated. The Lake Macquarie LEP 2014 includes additional provisions that require development consent for particular types of development, or in particular circumstances, irrespective of zoning.**

- (b) 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.

There are no development standards applying to the land that fix minimum land dimensions for the erection of a dwelling house.

- (c) Whether the land includes or comprises critical habitat.

No

- (d) Whether the land is in a conservation area (however described).

No

- (e) Whether an item of environmental heritage (however described) is situated on the land.

**Local Environmental Plan 2014 Schedule 5 Part 1 Heritage Items**

There are no items listed for this land under Local Environmental Plan 2014 Schedule 5 Part 1 Heritage items.

**Local Environmental Plan 2014 Schedule 5 Part 2 Heritage conservation areas**

There are no items listed for this land under Local Environmental Plan 2014 Schedule 5 Part 2 Heritage conservation areas.

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There are no items listed for this land under Local Environmental Plan 2014 Schedule 5 Part 3 Archaeological sites.

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There are no heritage items listed for this land within Local Environmental Plan 2004 Schedule 4 Part 1.

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There are no heritage items listed for this land within Local Environmental Plan 2004

Part 11 Clause 150 – South Wallarah Peninsula.

**NOTE:** An item of environmental heritage, namely Aboriginal heritage, listed within the Aboriginal Heritage Information Management System (AHIMS), may affect the land. Aboriginal objects are protected under the National Parks and Wildlife Act 1974. If Aboriginal objects are found during development, works are to stop and the Office of Environment and Heritage (OEH) contacted immediately. For further information and to access the AHIMS registrar, refer to <http://www.environment.nsw.gov.au>

- (2) The following answers relate to the Draft Instrument (see 1(2) above).
- (a) Nil

**NOTE:** The advice in section (a) above relates only to restrictions that apply by virtue of the zones indicated. The Draft instrument may include additional provisions that require development consent for particular types of development, or in particular circumstances, irrespective of zoning.

- (b) 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.

There are no development standards applying to the land that fix minimum land dimensions for the erection of a dwelling house.

- (c) Whether the land includes or comprises critical habitat.  
No
- (d) Whether the land is in a conservation area (however described).  
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- (e) Whether an item of environmental heritage (however described) is situated on the land.  
No

### 3 Complying development

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), and 1.18 (1) (c3) and 1.19 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

#### **Housing Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

#### **Low Rise Housing Diversity Code**

**Note:** If a lot is not specifically listed in this section then, complying development under this Code **MAY** be carried out on any part of that lot.

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(Repealed 3 April 2018)

**4A Information relating to beaches and coasts**

(Repealed 3 April 2018)

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

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).

Nil

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

**5 Mine subsidence**

Whether or not the land is proclaimed to be a mine subsidence district within the meaning of section 20 of the Coal Mine Subsidence Compensation Act 2017.

The land IS WITHIN a declared Mine Subsidence District under section 20 of the *Coal Mine Subsidence Compensation Act 2017*. Development in a Mine Subsidence District requires approval from Subsidence Advisory NSW. Subsidence Advisory NSW provides compensation to property owners for mine subsidence damage. To be eligible for compensation, development must be constructed in accordance with Subsidence Advisory NSW approval. Subsidence Advisory NSW has set surface development guidelines for properties in Mine Subsidence Districts that specify building requirements to help prevent potential damage from coal mine subsidence.

**NOTE:** The advice in section (5) above relates only to a Mine Subsidence District. Further information relating to underground mining which may occur outside Mine Subsidence Districts should be sought. Underground mining information can be found on the Subsidence Advisory NSW website.

**6 Road widening and road realignment**

Whether the land is affected by any road widening or realignment under:

(a) Division 2 of Part 3 of the Roads Act 1993.

No

(b) any environmental planning instrument.

No

- (c) any resolution of the Council.

No, other road widening proposals may affect this land and if so, will be noted on the Section 10.7 Subsection (5) certificate.

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

Whether or not the land is affected by a policy:

- (i) adopted by the Council, or  
(ii) 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:

- (a) land slip or subsidence

Yes

Relevant sections of Lake Macquarie Development Control Plan 2014 and Lake Macquarie Development Control Plan No.1 apply when development is proposed on land covered by Council's geotechnical areas map. The map is available for viewing at the Council. If you require any further clarification on the policy and how it may affect any possible development contact the Council on 02 4921 0333.

- (b) bushfire

No

- (c) tidal inundation

No

- (d) acid sulfate soils

Yes

Relevant sections of Lake Macquarie Development Control Plan 2014 and Lake Macquarie Development Control Plan No.1 apply when development is proposed on land covered by the Acid Sulfate Soils Map. If you require any further clarification on the policy and how it may affect any possible development contact the Council on 02 4921 0333.

- (e) contaminated or potentially contaminated land

Yes

Council has adopted a policy that may restrict the development of Contaminated or Potentially Contaminated land. This policy is implemented when zoning, development, or land use changes are proposed. Council does not hold sufficient information about previous



use of the land to determine whether the land is contaminated. Consideration of Council's adopted Policy located in the applicable DCP noted in Clause 1(3) above, and the application of provisions under relevant State legislation is recommended.

- (f) any other risk (other than flooding).  
No

**NOTE:** The absence of a council policy restricting development of the land by reason of a particular natural hazard does not mean that the risk from that hazard is non-existent.

**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.  
No
- (2) Whether or not development on that land or part of the land for any other purpose is subject to flood related development controls.  
No
- (3) Words and expressions in this clause have the same meanings as in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

**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 3.15 of the Act.

No

**9 Contributions Plans**

The name of each contributions plan applying to the land.

Lake Macquarie City Council Development Contributions Plan - Charlestown  
Contributions Catchment - 2015

The Lake Macquarie City Council Section 7.12 Contributions Plan – Citywide 2019

**9A Biodiversity Certified Land**

This land is not biodiversity certified land under Part 8 of the Biodiversity Conservation Act 2016.

**10 Biodiversity stewardship sites**

The land is not a biodiversity stewardship site under a biodiversity stewardship agreement under Part 5 of the Biodiversity Conservation Act 2016.

**10A Native vegetation clearing set asides**

The land does not contain a set aside area under section 60ZC of the Local Land Services Act 2013.

**11 Bush Fire Prone Land**

**Note:** If a lot is not specifically listed in this section then, **NONE** of that lot is bush fire prone land.

**12 Property Vegetation Plans**

The land IS NOT subject to a property vegetation plan approved under Part 4 of the Native Vegetation Act 2003 (and that continues in force).

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

Has an order 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).

The land IS NOT subject to an order made under the Trees (Disputes Between Neighbours) Act 2006 to carry out work in relation to a tree on the land.

**14 Directions under Part 3A**

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**

(a) Whether there is a current site compatibility certificate (seniors housing), of which the council is aware, in respect of proposed development on the land.

Council is not aware of any site capability certificate for any proposed development on the land.

(b) Any terms of a kind referred to in clause 18 (2) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 that have been imposed as a condition of consent to a development application granted after 11 October 2007 in respect of the land.

Nil

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

Whether there is a valid site compatibility certificate (infrastructure, schools or TAFE establishments), of which the council is aware, in respect of proposed development on the land.

Council is not aware of any site capability certificate for any proposed development on the land.

**17 Site compatibility certificates and conditions for affordable rental housing**

- (1) 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.

Council is not aware of any site capability certificate for any proposed development on the land.

- (2) 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.

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 a consent ballot.

Nil

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

Not Applicable

**Note:** Words and expressions used in this clause have the same meaning as they have in Part 16C of Environmental Planning and Assessment Regulation 2000.

**19 Site verification certificates**

Whether there is a current site verification certificate, of which the council is aware, in respect of the land.

No

- (a) The matter certified by the certificate

Not Applicable

- (b) The date on which the certificate ceases to be current

Not Applicable

- (c) A copy of the certificate (if any) may be obtained from the head office of the Department of Planning and Infrastructure.

**Note:** A site verification certificate sets out the Secretary'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.

**20 Loose-fill asbestos insulation**

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

No. Council **has not** been notified that a residential premises erected on this land has been identified in the NSW Fair Trading Loose-Fill Asbestos Insulation Register as containing loose-fill asbestos ceiling insulation.

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

- (1) Whether there is any affected building notice of which the council is aware that is in force in respect of the land.

No, Council **has not** been notified that an affected building notice is in force in respect of this land.

- (2) (a) Whether there is any building product rectification order of which the council is aware that is in force in respect of the land and has not been fully complied with, and

A building rectification order **is not** in force in respect of this land.

- (b) Whether any notice of intention to make a building product rectification order of which the council is aware has been given in respect of the land and is outstanding.

A notice of intention to make a building product rectification order **has not been** given in respect of this land.

- (3) In this clause:

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

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

**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:**

**Matters arising under the Contaminated Land Management Act 1997 (s59 (2))**

- (a) 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,  
No
  
- (b) 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,  
No
  
- (c) 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,  
No
  
- (d) 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,  
No
  
- (e) The land to which the certificate relates is the subject of a site audit statement within the meaning of that Act - if a copy of such a statement has been provided at any time to the local authority issuing the certificate.  
No



# HUNTER WATER CORPORATION

A.B.N. 46 228 513 446

## SERVICE LOCATION PLAN

Enquiries: 1300 657 657

### APPLICANT'S DETAILS

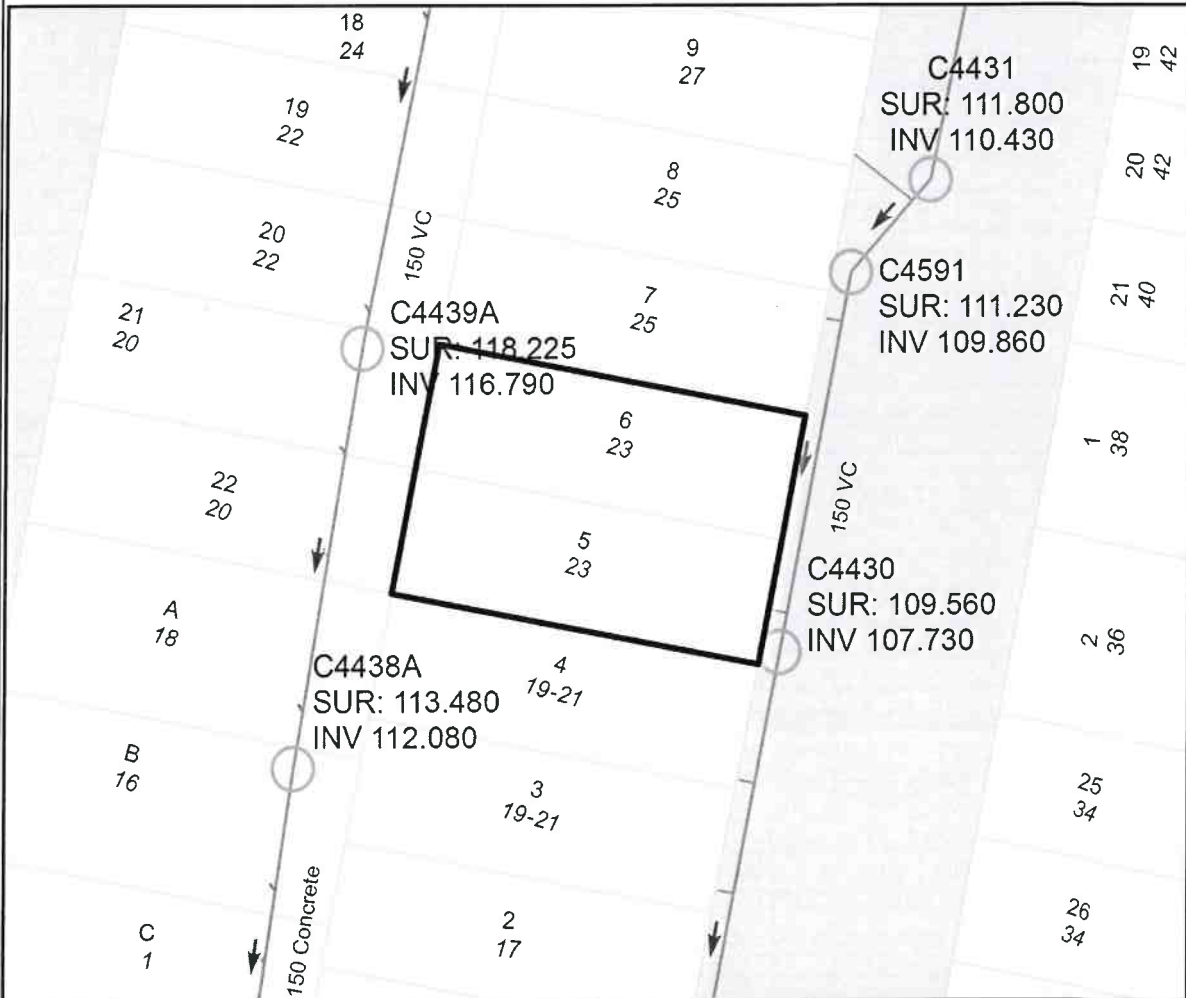


InfoTrack  
23 FREDERICK  
DUDLEY NSW

APPLICATION NO.: 1377383  
APPLICANT REF: M CD/2035063-1  
RATEABLE PREMISE NO.: 2176500712

PROPERTY ADDRESS: 23 FREDERICK ST DUDLEY 2290

LOT/SECTION/DP:SP: ALL//DP



SEWER POSITION APPROXIMATE ONLY.  
SUBJECT PROPERTY BOLDED.  
ALL MEASUREMENTS ARE METRIC.

IF A SEWERMAIN IS LAID WITHIN THE BOUNDARIES OF THE LOT, SPECIAL REQUIREMENTS FOR THE PROTECTION OF THE SEWERMAIN APPLY IF DEVELOPMENT IS UNDERTAKEN. IN THESE CASES, IT IS RECOMMENDED THAT YOU SEEK ADVICE ON THE SPECIAL REQUIREMENTS PRIOR TO PURCHASE. PHONE 1300 657 657, FOR MORE INFORMATION.

#### IMPORTANT:

IF THIS PLAN INDICATES A SEWER CONNECTION IS AVAILABLE OR PROPOSED FOR THE SUBJECT PROPERTY, IT IS THE INTENDING OWNERS RESPONSIBILITY TO DETERMINE WHETHER IT IS PRACTICABLE TO DISCHARGE WASTEWATER FROM ALL PARTS OF THE PROPERTY TO THAT CONNECTION.

ANY INFORMATION ON THIS PLAN MAY NOT BE UP TO DATE AND THE CORPORATION ACCEPTS NO RESPONSIBILITY FOR ITS ACCURACY.

Date: 12/04/2021

Scale at A4: 1:500

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InfoTrack

23 FREDERICK

DUDLEY NSW

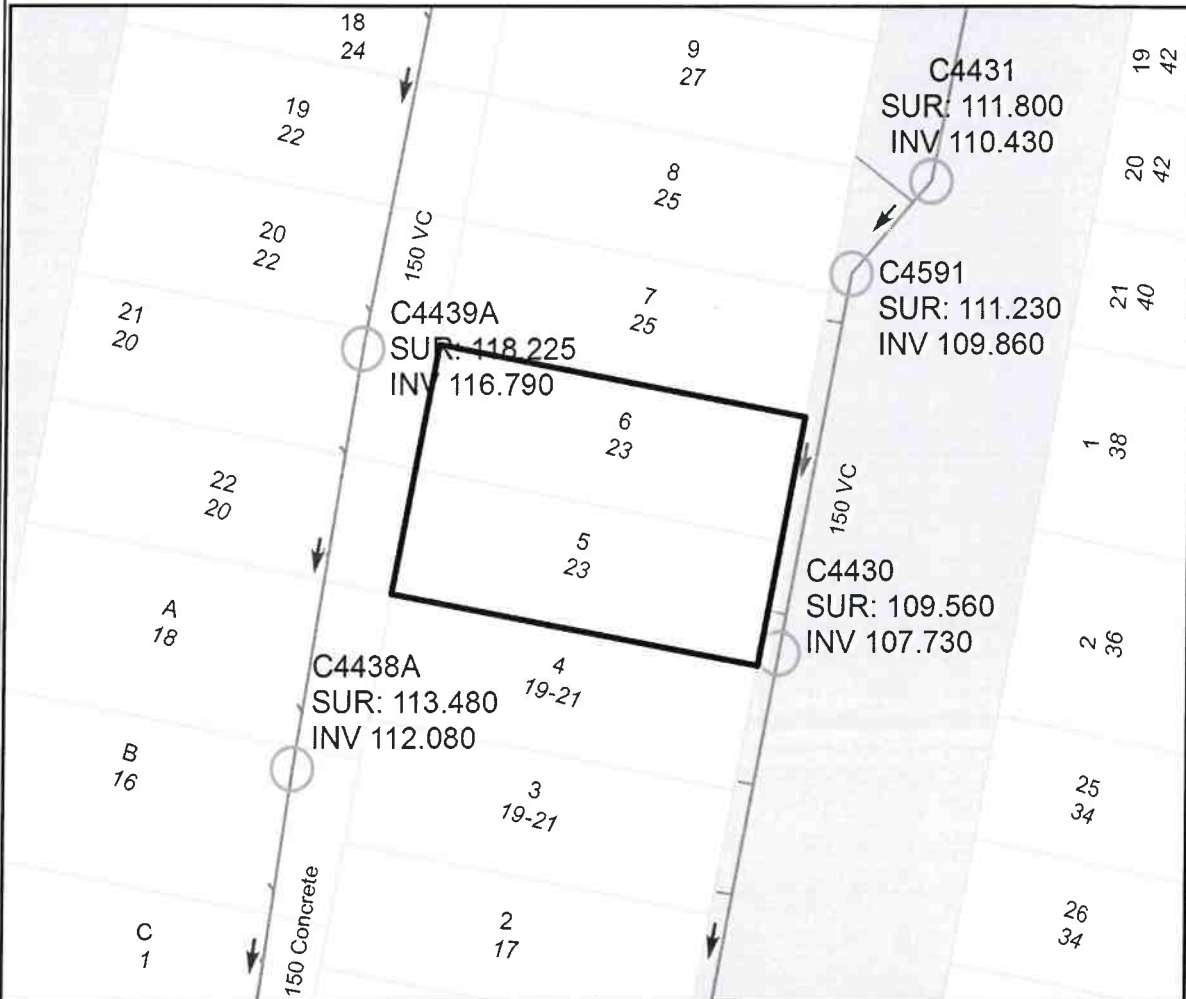
APPLICATION NO.: 1377385

APPLICANT REF: M CD/2035063-1

RATEABLE PREMISE NO.: 2176500712

PROPERTY ADDRESS: 23 FREDERICK ST DUDLEY 2290

LOT/SECTION/DP:SP: ALL/DP



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