

# Planning Agreement

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Ku-ring-gai Council

Roseville Returned Servicemen's Memorial Club  
Limited



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Sydney NSW 2000  
Australia

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Ref 3368628

## Contents

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1. Defined meanings	1
2. Status of this Agreement	2
3. Application of other development contribution provisions	3
4. Development Contributions	3
5. Creating interests in land as a Development Contribution	3
6. Risk and warranties in relation to land	3
7. Variations to Development Contributions	4
8. Option Deed	4
9. Registration	4
10. Transfer, assignment or novation	5
11. Enforcement in relation to the creation of interests in land	7
12. Termination	8
13. Breach of obligations	8
14. Dispute resolution	9
15. Costs	10
16. General provisions	11
17. Definitions and interpretation	15
 Schedule 1 – Development Contributions	 19
Schedule 2 – Drawings	21
 Annexure A – Draft Deed of Novation	 
Annexure B – Put and Call Option Deed	
Annexure C -Draft 88B Instrument	

# Planning Agreement

Dated

## Parties

1. **Ku-ring-gai Council** of 818 Pacific Highway Gordon (**the Council**)
2. **Roseville Returned Servicemen's Memorial Club Limited** (ACN 001 071 138) of 64 Pacific Highway, Roseville (**the Developer**)

## Background

- A. The Developer is the registered proprietor of the Land.
- B. The Council is the registered proprietor of the Acquisition Land.
- C. The Developer and the Council will enter into an Option Deed that will give the Developer an interest in the Acquisition Land.
- D. The Developer has made the Development Application to the Council.
- E. In general terms, the Development Application is for the:
  - demolition of existing structures;
  - subdivision of the site and construction of a six-storey shop-top housing development with three levels of basement car parking; and
  - the provision of a club on the ground floor and thirty-three residential dwellings above.
- F. If Development Consent is granted the Developer is prepared to make the Development Contributions in accordance with this Agreement.
- G. The Development Contributions are to be used for or applied towards a public purpose.
- H. The Development Contributions are interests in the Acquisition Land.

## Operative provisions

### 1. Defined meanings

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Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

## **2. Status of this Agreement**

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### **2.1 Planning Agreement**

This Agreement is a planning agreement within the meaning of section 7.4(1) of the Act.

### **2.2 Application of Agreement**

This Agreement applies to:

- (a) the Development;
- (b) the Land; and
- (c) the Acquisition Land.

### **2.3 Operation of this Agreement**

- (a) The Agreement commences on and from the date it is executed by all parties.
- (b) Despite any other provision of this Agreement, the Developer is under no obligation or responsibility in accordance with this Agreement until any Development Consent is granted.
- (c) This Agreement will remain in force until the earlier of:
  - (i) when it is terminated by operation of law;
  - (ii) when all obligations under the Agreement are performed or satisfied; or
  - (iii) when any Development Consent obtained by the Developer to carry out the Development has lapsed, been surrendered or otherwise ceases to be in force.
- (d) Despite clause 2.3(c)(iii), this Agreement will remain in force in the event that the Developer has made a further Development Application at that time, unless one of the parties has exercised its right to terminate this Agreement in accordance with clause 12.1.

### **2.4 Security**

The Council is satisfied this Agreement provides the enforcement of this Agreement by a suitable means in the event of a breach of this Agreement by the Developer, particularly by:

- (a) the ability for an Occupation Certificate to be withheld by reason of section 109H(2) (section 6.10(2) from 1 September 2019) of the Act when read in conjunction with clause 4.1(a);
- (b) the ability for a Subdivision Certificate to be withheld by reason of section 109J(1)(c1) (section 6.15(1)(d) from 1 September 2019) of the Act when read in conjunction with clause 4.1(a);
- (c) the provisions of clause 9 (Registration) and clause 10 (Transfer, assignment or novation); and
- (d) the provisions of clause 11 (Enforcement in relation to the creation of interests in land).



### **3. Application of other development contribution provisions**

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#### **3.1 Local infrastructure contributions - general**

This Agreement does not exclude the application of section 7.11 of the Act.

#### **3.2 Local infrastructure contributions - fixed levies**

This Agreement does not exclude the application of section 7.12 of the Act.

#### **3.3 Special infrastructure contributions**

This Agreement does not exclude the application of section 7.24 of the Act.

#### **3.4 Benefits not to be taken into consideration under section 7.11**

The benefits under this Agreement are not to be taken into consideration under section 7.11 in its application to the Development.

### **4. Development Contributions**

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#### **4.1 Nature, extent and timing**

- (a) The Developer must make each Development Contribution in Column 3 of the Table at the point in time set out in Column 5 of the Table.
- (b) Nothing in this Agreement prevents the Developer from electing to make a Development Contribution earlier than it is required to do so.

#### **4.2 Public purpose of the Development Contributions**

Each Development Contribution must be used for or applied towards the relevant public purpose set out in Column 4 of the Table.

### **5. Creating interests in land as a Development Contribution**

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#### **5.1 When an interest in land is created**

Each Development Contribution is taken to have been made, free of cost to the Council, when the interest is registered by the Registrar-General in the relevant folio of the Register.

#### **5.2 Ancillary obligations of the parties in relation to the dedication of land**

The Council must, in response to a reasonable request of the Developer, take such action that is reasonably necessary to facilitate efforts by the Developer to achieve the registration of an instrument creating an interest in land under clause 5.1.

### **6. Risk and warranties in relation to land**

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The parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation in relation to the Acquisition Land unless:

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

## **7. Variations to Development Contributions**

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### **7.1 Variation may be requested and agreed to**

The Developer may, in its absolute discretion, request that the Council approve a variation to the Development Contributions (that is, a change to any of the provisions in Schedule 1).

### **7.2 Council discretion to variation request**

The Council may, in the Council's absolute discretion, agree to a variation of the Development Contributions, provided that the variation is generally consistent with the intended objectives and outcomes of this Agreement. Noting public notice must be given for any variation to the Agreement in accordance with section 7.5(1)-(2) of the Act and any variation inconsistent with the intended objectives and outcomes of this Agreement may require revocation and replacement of this Agreement.

## **8. Option Deed**

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The Developer and the Council agree that they will execute the Option Deed upon the execution of this Agreement.

## **9. Registration**

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### **9.1 Developer agreement to registration**

The Developer agrees to the registration of this Agreement under section 7.6 of the Act in relation to the Land on execution of this Agreement.

### **9.2 Registration of this Agreement**

- (a) The Developer must give the Council a copy of the relevant folio of the Register and a copy of the registered dealing within 21 Business Days of registration of this Agreement on the Land and the Acquisition Land. The Council to facilitate the registration of the Agreement by the Developer
- (b) The Council must, in response to a reasonable request of the Developer, take such action that is reasonably necessary to facilitate efforts by the Developer to achieve Registration on Title.

### **9.3 Release and discharge of this Agreement**

The parties agree to do all things reasonably required by the other party to promptly release and discharge this Agreement with respect to:

- (a) any Final Lot or a Service Lot, upon its creation (provided that, in relation to any given Final Lot, the requirements that must be met under this Agreement for the issue of an Occupation Certificate have been met in relation to that lot);
- (b) all parts of the Land, upon this Agreement being discharged or terminated.

## **10. Transfer, assignment or novation**

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### **10.1 Consent for transfer of Land**

- (a) The Developer must not transfer the Land or any part of the Land to any person without the consent of the Council.
- (b) This clause 10.1 does not apply to:
  - (i) the creation of any interests in land that are required under this Agreement or any Development Consent;
  - (ii) to the conversion of any part of the Land into common property (within the meaning of the *Strata Schemes Management Act 2015*); or
  - (iii) the transfer of a Service Lot or Final Lot.

### **10.2 Consent for assignment or novation of this Agreement**

- (a) The Developer must not assign or novate to any person its rights or obligations under this Agreement without the consent of the Council.
- (b) For avoidance of doubt, this clause 10.2 does not preclude the transfer of any part of (or any interest in) the Land.

### **10.3 The giving of consent by the Council**

- (a) The Council must give its consent under clause 10.1(a) or clause 10.2(a) if:
  - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom:
    - (A) the land will be transferred; or
    - (B) the rights or obligations under this Agreement are to be assigned or novated,a deed of novation on reasonable terms (being a deed generally in terms of the Novation Deed); and
  - (ii) reasonable evidence has been produced to show that the transferee, assignee or novatee is reasonably capable of performing its obligations under this Agreement; and
  - (iii) either:
    - (A) there is no current Material Breach of this Agreement by the Developer;
    - (B) there is a current Material Breach of this Agreement, but the Developer has compensated the Council such that the Council is in the same financial position as it would have been had the breach not taken place; or
    - (C) there is a current Material Breach of this Agreement and it is incapable of being remedied, but the breach has not had and is unlikely to have any adverse impact on the Council's financial position.

- (b) The Council, on giving consent under clause 10.3(a) must enter into the deed of novation referred to in clause 10.3(a)(i).
- (c) In this clause 10.3 **Material Breach** means either or both of the following
  - (i) a breach of a significant obligation of a party under this Agreement;
  - (ii) a breach of substantial import or consequence to a party by the other party.

#### 10.4 **No requirement for consent when Agreement is registered**

Clause 10.1 and clause 10.2 do not apply in connection with the transfer of the whole or any part of the Land (or any interest in the Land) if this Agreement is, at the time of transfer, Registered on Title.

#### 10.5 **Transfer of rights and obligations when Agreement is registered**

If the whole or any part of the Land is transferred without a Novation Deed being entered into (**Transferred Land**), and this Agreement is registered on the title to the Land, then this Agreement is deemed to include the provisions of the Novation Deed as if it had been entered into:

- (a) by the person who has ceased to own the Transferred Land (who is taken to be the Existing Developer in the Novation Deed);
- (b) by the person who has become the owner of the Transferred Land (who is taken to be the New Developer in the Novation Deed); and
- (c) by the Council,

on the basis that:

- (d) the Effective Date is either:
  - (i) if the New Developer was not a party to the Agreement until the transfer of the Transferred Land, the date that the New Developer become a Party under section 7.6(3) of the Act; or
  - (ii) if the New Developer was a party prior to the transfer of the Transferred Land, the date that the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the Transferred Land from the Existing Developer to the New Developer.

#### 10.6 **Land may be used for finance, sales contracts may be exchanged and agreements for lease entered into**

- (a) This clause 10.6 takes precedence over the other provisions in this clause 10.
- (b) For the avoidance of doubt:
  - (i) the Developer may mortgage, charge, encumber and/or grant a security interest (however defined or described) over or in respect of all or any of the Developer's right, powers, title, benefit and/or interest in, to, under or derived from the Land, this Agreement and/or any other asset or property of the Developer to or in favour of any financier or creditor of the Developer (or to or in favour of any agent or trustee of or for any such financier or creditor) (any such person being a **Mortgagee**); and

- (ii) the Developer may enter into any agreement to sell, transfer, option or lease which, if exercised, may result in the formation of an agreement to sell, transfer or lease any Final Lot comprised in or forming part of the Development.

## **11. Enforcement in relation to the creation of interests in land**

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### **11.1 Agreement under the Just Terms Act — Acquisition Land**

- (a) Subject to clause 11.2, if the Developer does not make the Development Contribution, and the Acquisition Land is no longer in Council ownership, the Developer consents to the Council compulsorily acquiring the Acquisition Land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (b) Clause 11.1(a) is an agreement for the purposes of section 30 of the Just Terms Act.

### **11.2 Limitations on that agreement**

The Council may only acquire land under to clause 11.1 if to do so is reasonable having regard to the circumstances surrounding the failure by the Developer to provide the Development Contributions under this Agreement.

### **11.3 Ancillary obligations**

- (a) If, as a result of the acquisition referred to in clause 11.1 the Council must pay compensation to any person other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council.
- (b) The Developer indemnifies and keeps indemnified, the Council against all claims made against the Council under the Just Terms Act as a result of any acquisition by the Council of the whole or any part of the Acquisition Land under clause 11.1(a).
- (c) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 11, including:
  - (i) signing any documents or forms;
  - (ii) producing certificates of title to the Registrar-General under the Real Property Act; and
  - (iii) paying the Council's reasonable costs arising under this clause 11.

## **12. Termination**

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### **12.1 Termination of this Agreement — when there is no Development Consent**

The Developer or the Council may terminate this Agreement by giving written notice to the other party if any of the following circumstances arise:

- (a) any Development Consent has not been granted and the party who wishes to terminate the Agreement, acting reasonably, forms the opinion that any Development Consent is unlikely to be granted in the immediate future; or

- (b) an Occupation Certificate and Subdivision Certificate have not been issued in relation to any Development Consent and all Development Consents:
  - (i) have been surrendered in accordance with clause 97 of the *Environmental Planning and Assessment Regulation 2000*; or
  - (ii) are declared by a Court to be void; or
  - (iii) lapse; or
  - (iv) otherwise cease to have effect,and, for the avoidance of doubt, termination under this clause 12.1(b) cannot occur in circumstances where any Development Consent continues to have effect; or
- (c) (if the party who wishes to terminate the Agreement is the Council) the passing of 5 years from the execution of this Agreement.

#### 12.2 Termination of this Agreement — on the completion of obligations

One party may terminate this Agreement by giving written notice to the other party but only when the Developer has completed all of its obligations under this Agreement including remedying any breaches of this Agreement.

#### 12.3 On termination of this Agreement

If either party terminates this Agreement in accordance with this clause 12 then:

- (a) the Developer must take all steps reasonably necessary to minimise any loss that each party may suffer as a result of the termination of this document; and
- (b) the Council will, at the Developer's cost, do all things reasonably required to remove the registration of this Agreement from the relevant folio of the Register.

#### 12.4 Consequences of the termination of this Agreement

- (a) If this Agreement is terminated under this clause 12 the parties are released and discharged from their obligations under this Agreement.
- (b) Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

### 13. Breach of obligations

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#### 13.1 Breach notice

If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice (**Breach Notice**) to the Developer:

- (a) specifying the nature and extent of the breach;
- (b) requiring the Developer to either:
  - (i) rectify the breach if it reasonably considers it is capable of rectification; or

- (ii) if the Developer reasonably considers the breach is not capable of rectification, pay a reasonable amount in compensation to the Council in lieu of rectifying the breach,

specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

- (c) For the purposes of clause 13.1(b) any period is not reasonable in the circumstances if it is less than 30 Business Days after the later to occur of either of the following:
  - (i) the Council giving the Breach Notice to the Developer;
  - (ii) the Council giving the corresponding Breach Notice any then existing Mortgagee of which the Council is aware;
- (d) To the extent permitted by law, Council agrees with the Developer not to exercise any rights it may have at law or in equity in relation to a breach of this Agreement by the Developer unless:
  - (i) the Council has given a corresponding Breach Notice to the Developer and a copy of the corresponding Breach Notice to any then existing Mortgagee of which the Council is aware; and
  - (ii) the rectification period corresponding to that breach has ended without either the breach being rectified or reasonable compensation being paid to Council in lieu of rectifying the breach.

#### **13.2 Costs of remedying a breach**

- (a) Any reasonable costs incurred by the Council in remedying a breach in accordance with clause 13.1 may be recovered by the Council as a debt due in a court of competent jurisdiction, but only if there has been an actual breach by the Developer of the obligations under this Agreement that were the subject of the Breach Notice.
- (b) For the purpose of this clause 13.2, the Council's costs of remedying a breach the subject of a Breach Notice include, but are not limited to:
  - (i) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
  - (ii) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and
  - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- (c) Nothing in this clause 13 (other than clause 13.1(d)) prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Agreement by the Developer, including but not limited to seeking relief in an appropriate court.

## **14. Dispute resolution**

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### **14.1 Determination of disputes**

If there is any dispute, difference of opinion or failure to agree relating to or arising from this Agreement (**Dispute**) that dispute must be the subject of the process as set out under this clause 14.

### **14.2 No legal proceedings**

- (a) The parties must not bring or maintain any action on any Dispute until it has been the subject of the process as provided in this clause 14.
- (b) Clause 14.2(a) does not prevent class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*) being commenced, maintained and concluded.
- (c) Clause 14.2(a) does not prevent legal proceeding being commenced, maintained and concluded in connection with Council exercising its regulatory functions under the Act or any other legislation.

### **14.3 Notice of disputes**

A party may provide written notice of a Dispute to the other parties (**Dispute Notice**) which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.

### **14.4 Negotiated resolution and selection of expert**

- (a) On service of the Dispute Notice, the receiving parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within seven days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour, within the following seven-day period, to appoint a senior officer with sufficient authority to determine the Dispute. Those senior officers must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within twenty one days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each senior officer. By agreement, the senior officers may employ the services of a mediator to assist them in resolving the Dispute.
- (c) If the parties are unable to resolve the Dispute within twenty one days of the Dispute Notice, the parties may commence legal proceedings.

### **14.5 Continual performance**

Each party must continue to perform its obligations under this Agreement while any Dispute is being determined under this clause 14.



## **15. Costs**

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### **15.1 Council costs**

- (a) The Developer is to pay the Council's reasonable costs and disbursements of and incidental to:
  - (i) negotiating, preparing and executing this Agreement; and
  - (ii) monitoring and enforcing Agreement.

The above may include costs relating to legal advice, independent consultants, facilitators, land valuers, quantity surveyors, dispute resolution under clause 14, and so on.

- (b) Costs incurred by the Council, up to and including the date of execution of this Agreement, will be paid by the Developer prior to the Council executing this Agreement. In any event, costs incurred by the Council will be borne by the Developer at the time the cost is incurred.

### **15.2 Developer costs**

The Developer is responsible for any other reasonable costs relating to the planning agreement, including the costs of any Plan of Subdivision.

## **16. General provisions**

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### **16.1 GST**

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this Agreement, the recipient must pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause 16.1 is subject to any other specific agreement regarding the payment of GST on supplies.

### **16.2 Duties**

The party at law to pay stamp duty, must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Agreement, or any agreement or document executed or effected under this Agreement.

### **16.3 Assignment**

A party must not transfer any right or liability under this Agreement without the prior consent of each other party, except where this Agreement provides otherwise.

#### 16.4 Notices

- (a) Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

Addresses or numbers for notices:

##### **The Council**

Ku-ring-gai Council  
818 Pacific Highway Gordon  
Fax: 02 9424 0001

##### **The Developer**

Roseville Returned Servicemen's Memorial Club Limited  
C/- Hyecorp Property Group  
Level 1, 5-7 Havilah St, Chatswood  
Fax: Not applicable

- (c) Any notice is effective for the purposes of this Agreement upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.
- (d) A notice to the Developer must be given in relation to each of the persons who are identified as the Developer in clause 16.4(b).
- (e) In the instance where the Developer performs a transfer, assignment or novation under clause 10, the Developer will provide written notice of the updated address or number of the party who is taken to be the New Developer in the Novation Deed for the purposes of clause 16.4(b).

#### 16.5 Governing law and jurisdiction

- (a) This Agreement is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

#### 16.6 Amendments

This Agreement may be amended or revoked by further agreement in writing signed by the parties (including by means of a further planning agreement).

#### 16.7 Third parties

This Agreement confers rights only upon a person expressed to be a party and not upon any other person.

#### **16.8 Pre-contractual negotiation**

This Agreement:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

#### **16.9 Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this Agreement, whether before or after performance of this Agreement.

#### **16.10 Continuing performance**

- (a) The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.
- (b) Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance of this Agreement.
- (c) Any indemnity agreed by any party under this Agreement:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
  - (ii) survives and continues after performance of this Agreement.

#### **16.11 Waivers**

Any failure by any party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

#### **16.12 Remedies**

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.

#### **16.13 Severability**

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

#### **16.14 Party acting as trustee**

If a party enters into this Agreement as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Agreement in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Agreement:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;

- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Agreement on behalf of the trust and that this Agreement is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of, or lien over, the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.
- (d) Where more than one person is bound by this Agreement as the Developer any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.

#### **16.15 Where more than one person is the Developer**

- (a) Where more than one person is bound by this Agreement as the Developer, any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.
- (b) Clause 16.15(a) does not apply to a right that may be exercised by:
  - (i) a Developer; or
  - (ii) two or more persons who are each a Developer (but not all persons who are a Developer) acting jointly,
 without any prejudice to the other persons who are a Developer.
- (c) The provisions of clause 16.15(a) and clause 16.15(b) have effect subject to:
  - (i) any written agreement between the parties concerned (which may be in the form of a deed under clause 10.3(a)(i)); and
  - (ii) clause 14.
- (d) This clause 16.15 does not prevent the Council from taking action against any person who is a Developer under this Agreement in respect of any breach of this Agreement.

#### **16.16 Annual reporting**

- (a) The Developer is to provide to the Council (no later than each anniversary of the date on which this Agreement is entered into) a report outlining the performance of its obligations under this Agreement.
- (b) The report under this clause 16.16 is to be in such a form and to address such matters as reasonably required by the Council from time to time.
- (c) This clause 16.16 has no effect unless a Development Consent has been granted and a Construction Certificate has been issued under a Development Consent..

#### **16.17 Review of this Agreement**

- (a) The parties may review or modify this Agreement. Any review or modification of this Agreement will be conducted in the circumstances and in the manner as determined and agreed between the parties.

- (b) No review or modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.
- (c) A party is not in breach of this Agreement if it does not agree to an amendment of this Agreement requested by a party in, or as a consequence of, a review, and is not able to be dealt with under clause 14.

## 17. Definitions and interpretation

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### 17.1 Definitions

In this Agreement unless the context otherwise requires:

**Act** means the *Environmental Planning and Assessment Act 1979*;

**Acquisition Land** means the land shown as 'Lot 3' in the draft 'Plan of subdivision of Lot 2 DP202148' dated 8 July 2019, as set out in Sheet 3 of Schedule 2;

**Agreement** or **this Agreement** means this deed and includes any schedules, annexures and appendices to this deed;

**Approval** includes approval, consent, licence, permission or the like;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

**Claims** includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses;

**Construction Certificate** has the same meaning as in the Act;

**Development** means any development authorised by a Development Consent;

**Development Application** means:

- (a) development application DA0134/18 made to the Council on or around 12 April 2018;
- (b) any development application that seeks to modify any development approved by a development consent granted to development application DA0134/18 under section 4.55 of the Act;
- (c) any development application that is made after the date of execution of this Agreement for the:
  - (i) demolition of existing structures;
  - (ii) subdivision of the site and construction of a shop-top housing development with basement car parking;
  - (iii) the provision of a club on the ground floor and residential dwellings above; and
  - (iv) the provision of works on the Acquisition Land, including a walkway, to facilitate the rights as set out in Schedule 1 of this Agreement,

and including any development application that seeks to modify any such development which is approved.

**Development Consent** means any development consent (within the meaning of the Act) granted on the determination of a Development Application;

**Development Contribution** means any of the following:

- (a) a monetary contribution;
- (b) a dedication of land free of cost; or
- (c) the provision of any other material public benefit,

only as described in Schedule 1, notwithstanding any separate requirement for the Developer to make other development contributions as described in clause 3 of this Agreement;

**Effective Date** — see the Novation Deed and clause 10.5;

**Final Lot** means a lot created for separate occupation and disposition which is not intended to be further subdivided (by any means including strata subdivision) for the purposes of the Development, but does not include a Service Lot;

**GST** has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act (1999)* (Cth);

**Item** means the relevant or indicated item in the Table;

**Just Terms Act** means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW);

**Land** means Lot 1 DP 202148 and Lot 2 DP 505371 as set out in Sheet 1 and Sheet 2 respectively of Schedule 2;

**Mortgagee** — see clause 10.6;

**Material Breach** — see clause 10.3(c);

**Novation Deed** means the draft deed in Annexure A;

**Occupation Certificate** has the same meaning as in the Act;

**Option Deed** means the draft put and call option deed in Annexure B;

**Real Property Act** means the *Real Property Act 1900*;

**Registration on Title** means the registration of this Agreement under section 7.6 of the Act in the folio of the Register kept under the Real Property Act in relation to the Land, and **Registered on Title** refers to the state of the Agreement being so registered;

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*;

**Service Lot** means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to the Council;
- (b) for any public utility undertaking (within the meaning of the Standard Instrument);

- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management,

but does not include a lot which is intended to be further subdivided by or on behalf of the Developer but does include association property within the meaning of the *Community Land Development Act 1989* used for a purpose mentioned in (c) above;

**Subdivision Certificate** has the same meaning as in the Act;

**Table** means the table set out in Schedule 1;

**Transferred Land** — see clause 10.5.

## 17.2 Interpretation

- (a) In this Agreement unless the context otherwise requires:
  - (i) clause and subclause headings are for reference purposes only;
  - (ii) the singular includes the plural and vice versa;
  - (iii) words denoting any gender include all genders;
  - (iv) reference to a person includes any other entity recognised by law and vice versa;
  - (v) a reference to a party means a party to this Agreement, including their successors and assigns and a person bound by the Agreement under section 7.63) of the Act;
  - (vi) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
  - (vii) any reference to any agreement or document includes that agreement or document as amended at any time;
  - (viii) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
  - (ix) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
  - (x) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
  - (xi) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
  - (xii) any ambiguities in the interpretation of this Agreement shall not be construed against the drafting party.
  - (xiii) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Agreement;
  - (xiv) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Agreement means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;

- (xv) when a thing is required to be done or money required to be paid under this Agreement on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (xvi) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.
- (b) Nothing in this Agreement is to be taken to require the Council to do anything that would cause it to be in breach of any of its statutory obligations.
- (c) Nothing in this Agreement requires the Developer to produce any or a particular number of Final Lots, or produce the Final Lots (or a subdivision stage) in any particular order.

### **17.3 No joint venture, etc**

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

### **17.4 No obligation to grant or modify a Development Consent**

- (a) This Agreement does not impose an obligation on any public authority to grant or modify any Development Consent.
- (b) For avoidance of doubt, clause 16.4(a) does not affect any obligation of a consent authority (under section 4.15(1)(a)(iii) of the Act) to take this Agreement into consideration.

### **17.5 No breach, etc of a Development Consent**

Despite any other provision of this Agreement, this Agreement does not require, allow or preclude anything from being done if by so doing it would cause the Developer to:

- (a) be in breach; or
  - (b) not fulfil a requirement,
- of a Development Consent or Approval.

### **17.6 Explanatory Note**

In accordance with clause 25E(7) of the Regulation the explanatory note must not be used to assist in construing this Agreement.



## Schedule 1 – Development Contributions

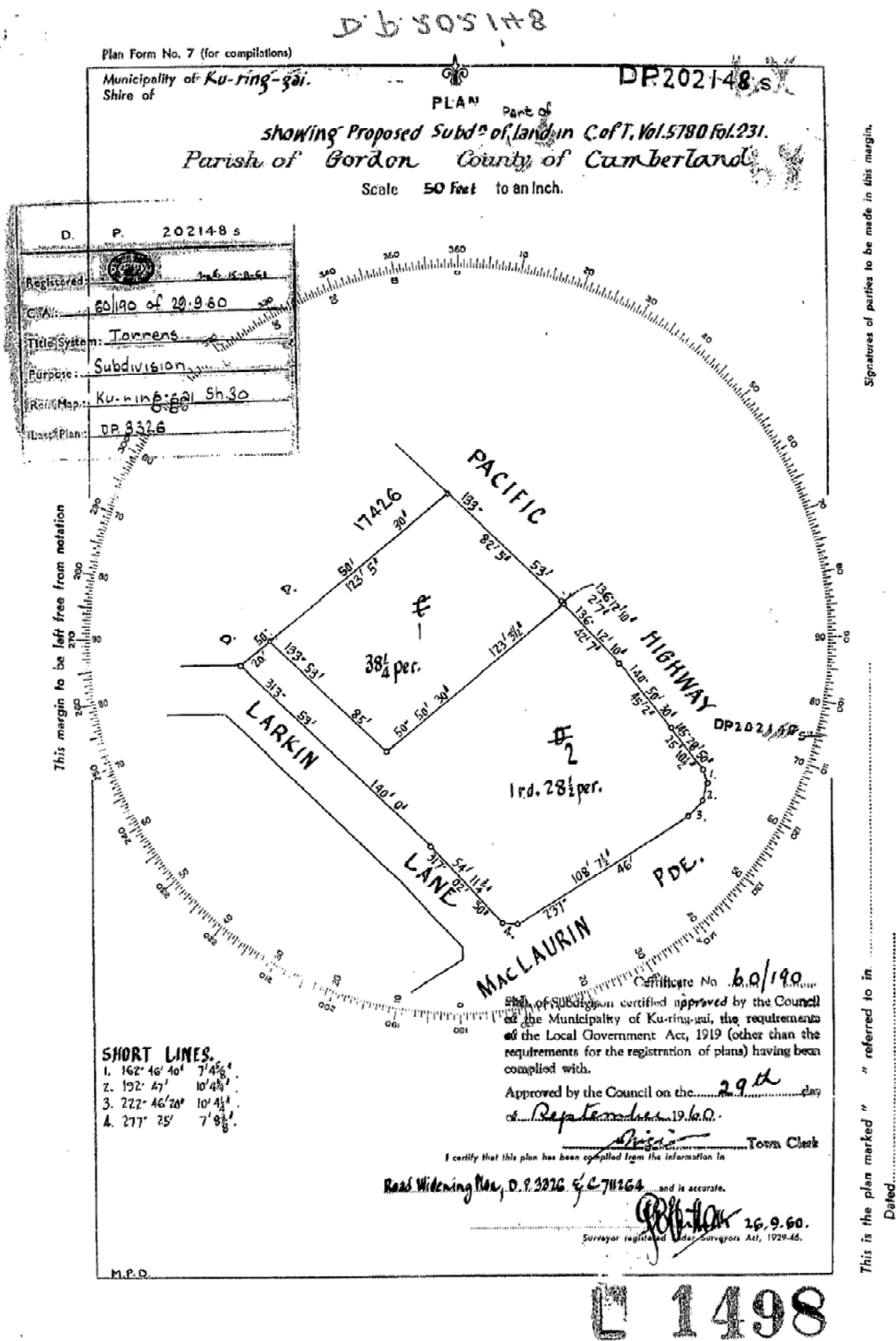
Table

Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Name	Description	Public purpose	When contribution is required
1	Right of footway	<p>A right of footway granting full and free right to the Council and every person authorised by it including any member of the public, to go, pass and repass on foot at all times and for all purposes without animals or vehicles over the Acquisition Land shown in Sheet 3 of Schedule 2.</p> <p>The right of footway must be an easement in gross in favour of the Council in accordance with the provisions of the section 88A of the <i>Conveyancing Act 1919</i>.</p> <p>The owner of the easement land will be required to:</p> <ul style="list-style-type: none"> <li>maintain and repair the walkway area to the reasonable satisfaction of the Council in accordance with section 88BA of the <i>Conveyancing Act 1919</i>; and</li> <li>maintain sufficient public liability insurance covering the use of the walkway as reasonably required by the Council in accordance with section 88BA of the of the <i>Conveyancing Act 1919</i>.</li> <li>This easement can only be modified or released with the consent of Ku-ring-gai Council</li> </ul>	Transport, public recreation	Concurrently at the time of the registration of the subdivision of land as shown and described in Sheet 3 of Schedule 2 and Annexure C.

Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Name	Description	Public purpose	When contribution is required
		and the landowner.		
2	Right of carriageway	<p>A right of carriageway granting full and free right to the Council and every person authorised by it including any member of the public to go, pass and repass at all times and for all purposes with or without animals or vehicles or both over the Acquisition Land shown in Sheet 3 of Schedule 2.</p> <p>The right of carriageway must be an easement in gross in favour of the Council in accordance with the provisions of the section 88A of the <i>Conveyancing Act 1919</i>.</p> <p>The owner of the easement land will be required to:</p> <ul style="list-style-type: none"> <li>• maintain and repair the walkway area to the reasonable satisfaction of the Council in accordance with section 88BA of the <i>Conveyancing Act 1919</i>; and</li> <li>• maintain sufficient public liability insurance covering the use of the walkway as reasonably required by the Council in accordance with section 88BA of the of the <i>Conveyancing Act 1919</i>.</li> <li>• This easement can only be modified or released with the consent of Ku-ring-gai Council and the landowner.</li> </ul>	Transport, public recreation	Concurrently at the time of the registration of the subdivision of land as shown and described in Sheet 3 of Schedule 2 and Annexure C.

## Schedule 2 – Drawings

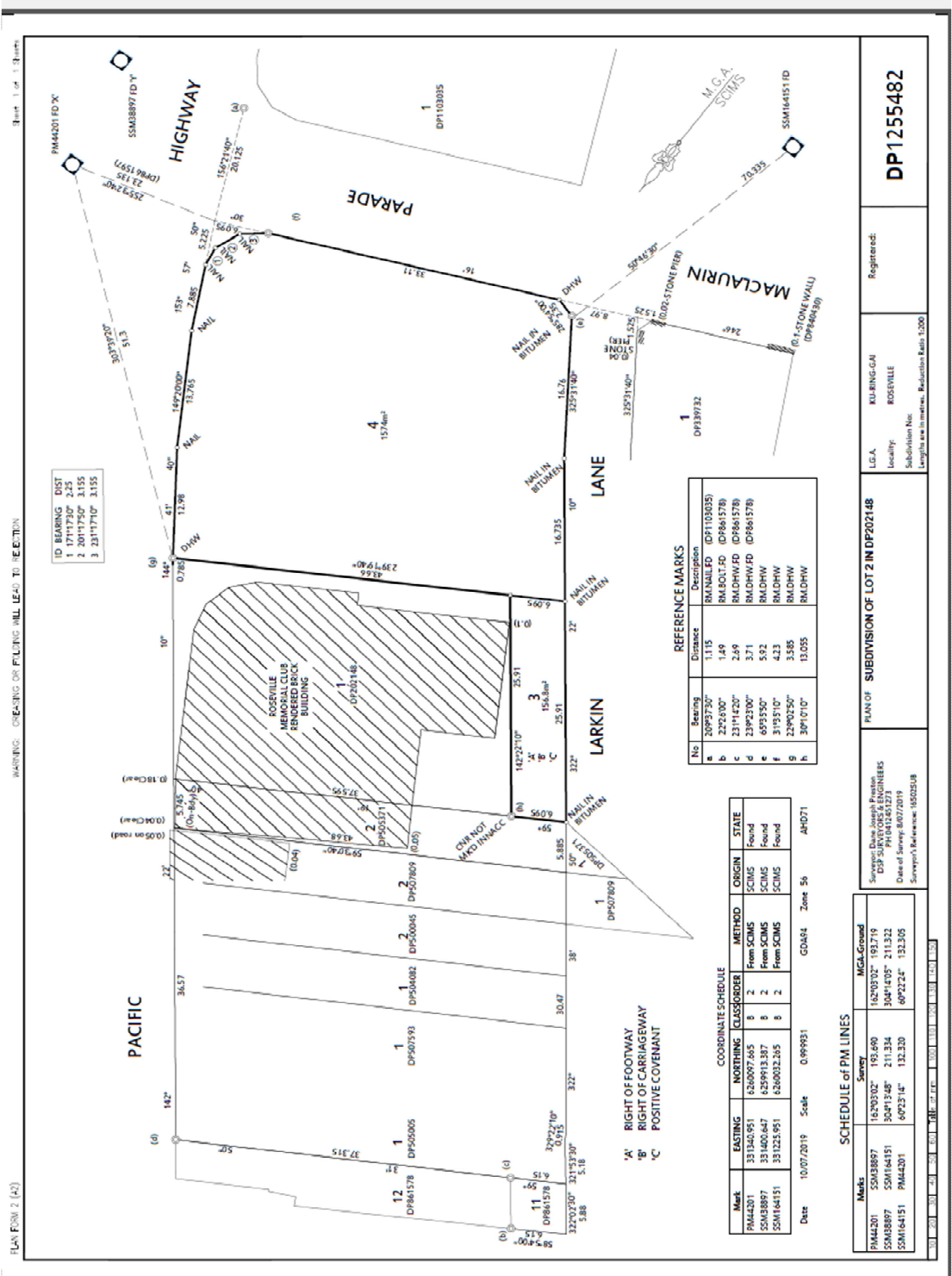
### Sheet 1: The Land (Lot 1)



# Sheet 2: The Land (Lot 2)

Form 1		OFFICE USE ONLY	
<b>PLAN OF SUBDIVISION</b> OF LAND COMPRISED IN CERT. OF TITLE VOL. 5037 FOL. 122 BEING PART OF LOT 7 D.P. 17426		<b>DP 505371</b>	
Mun./Shire/City. <u>KU-RING-GAI</u> ..... Town or Locality. <u>ROSEVILLE</u> ..... Parish. <u>GORDON</u> ..... County. <u>CUMBERLAND</u> .....		Registered: <u>25-9-63</u> ..... C.A. N° <u>6/196</u> of <u>13/10/61</u> ..... Title System: <u>Torrens</u> ..... Purpose: <u>Subdivision</u> ..... Ref. Maps: <u>Ku-ring-gai Sh 30</u> ..... Last Plan: <u>D.P. 14716</u> .....	
Scale: <u>40 feet to an inch</u> .....			
Signatures, Seals and Statements of Dedications and Easements.		<b>COMPILED FROM D.P. 17426 &amp; C.T. 11264</b> I, <u>Robert Boyd Cheesman</u> a surveyor registered under the Surveyors Act, 1929, as amended, hereby certify that the survey represented in this plan is accurate and has been made (1) by me (2) under my immediate supervision in accordance with the Survey Practice Regulations, 1933, as amended on ..... Signature: <u>[Signature]</u> Surveyor registered under Surveyors Act, 1929 as amended. Deput. Sec. of Govt. Approved by Council. I hereby certify that the require- ments of the Local Government Act, 1919 (other than the requirements for registration of plans), have been complied with by the applicant in relation to the proposed subdivision and/or new roads set out herein. Subdivision No. <u>61/196</u> Date <u>13-10-1961</u> Council Clerk: <u>[Signature]</u>	
M.P.D. N.P.D.		* Strike out either (1) or (2). # Insert date of survey. <u>17520290</u> <u>L1553 (BULK)</u>	

Sheet 3: Plan of subdivision



## Executed as a deed.

**Executed** on behalf of **Ku-ring-gai Council** by affixing the seal in accordance with a resolution passed at a duly convened meeting held on in the presence of:

---

Signature of Witness

Name:

---

John McKee, General Manager

---

Signature of Witness

Name:

---

Jennifer Anderson, Mayor

**Executed** on behalf of **Roseville Returned Servicemen's Memorial Club Limited** (ACN 001 071 138) in accordance with s127(1) of the *Corporations Act 2001* (Cth) by:

---

Secretary/Director

---

Print name

---

Director

---

Print name

## **Deed of Novation**

---

Ku-ring-gai Council

[Insert name of existing developer]

[Insert name of new developer]

# Deed of Novation

Dated

## Parties

1. **Ku-ring-gai Council of 818 Pacific Highway Gordon (the Council)**
2. **[Insert name of existing developer] ACN [insert ACN] of [insert address] (the Existing Developer)**
3. **[Insert name of new developer] ACN [insert ACN] of [insert address] (the New Developer)**

## Background

- A. The Council and the Existing Developer have entered into the Agreement.
- B. The Existing Developer intends to transfer **[Insert title reference(s)]** to the New Developer.

**[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]**

- C. The Existing Developer has agreed to transfer the Rights and Obligations to the New Developer.
- D. The Council has consented to the transfer of the Existing Developer's Rights and Obligations to the New Developer and the parties have agreed to enter into this Deed to give effect to their common intentions.

**[If, as a result of the transfer, the Existing Developer will still own part of the Land:]**

- C. The New Developer has agreed to accept the Rights and Obligations as a Developer under the Agreement.
- D. The Council has consented to the transfer of the relevant land to the New Developer and the inclusion of the New Developer as a Developer party to the Agreement and the parties have agreed to enter into this Deed to give effect to their common intentions.

## Operative provisions

### 1. Defined meanings

---

Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.



## **2. Novation**

---

### **[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]**

With effect on and from the Effective Date:

- (a) The New Developer is substituted for the Existing Developer under the Agreement as if the New Developer had originally been a party to the Agreement instead of the Existing Developer and all references in the Agreement to the Existing Developer in any capacity must be read and construed as if they were references to the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Existing Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Existing Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

### **[If, as a result of the transfer, the Existing Developer will still own part of the Land:]**

With effect on and from the Effective Date:

- (a) The New Developer is taken to be a party to the Agreement and the definition of Developer in clause 16.1 of the Agreement is taken to include the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the of Agreement and the obligations imposed on the Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

## **3. Consent**

---

### **[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]**

With effect on and from the Effective Date, the Council:

- (a) consents to the New Developer being substituted for Existing Developer on the terms outlined at clause 2 of this Deed;
- (b) accepts the assumptions by the New Developer of all the liabilities of the Existing Developer under the Agreement instead of those liabilities being liabilities of the Existing Developer; and
- (c) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement instead of the Existing Developer.

### **[If, as a result of the transfer, the Existing Developer will still own part of the Land:]**

With effect on and from the Effective Date, the Council:

- (d) consents to the New Developer becoming a Developer under the terms of the Agreement as outlined at clause 2 of this Deed;
- (e) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement.

## **4. Release and Indemnity**

---

**[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]**

### **4.1 Release and Discharge (the Council)**

On and from the Effective Date, the Council releases the Existing Developer from all Rights and Obligations and from all Claims that it may have against the Existing Developer under or in respect of the Agreement.

### **4.2 Release and Discharge (the Existing Developer)**

On and from the Effective Date, the Existing Developer releases the Council from all its obligations under the Agreement and from all Claims that it may have against the Council under or in respect of the Agreement.

### **4.3 Indemnity**

On and from the Effective Date, the New Developer indemnifies the Existing Developer from and against all Liabilities and Claims that it may have against the Existing Developer in respect of the Agreement.

**[Omit clause 4 if, as a result of the transfer, the Existing Developer will still own part of the Land]**

## **5. Representations and Warranties**

---

### **5.1 Power**

Both of the Existing Developer and the New Developer represent and warrant to the Council and to each other that:

- (a) it is an individual or corporation validly existing under the laws of Australia;
- (b) if it is a corporation – that it has the corporate power to enter into and perform its obligations under this Deed and has taken all necessary corporate action to authorise execution, delivery and performance of this Deed;
- (c) this Deed is valid and binding upon it and is enforceable against it in accordance with its terms; and
- (d) if it is a corporation – that no application or order has been made for the winding up or liquidation of it, no action has been taken to seize or take possession of any of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as and when they come due and payable.

### **5.2 Reliance by the Council**

The Existing Developer and the New Developer each acknowledge that the Council has entered into this Deed in reliance on the representations and warranties detailed in clause 5.1.

## **6. General provisions**

---

### **6.1 Developer Costs**

The Existing Developer and the New Developer must pay their own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising, under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

### **6.2 The Council's Costs**

The Existing Developer and the New Developer are jointly and severally responsible for Council's reasonable costs in relation to this Deed.

### **6.3 GST**

If any payment made by one party to any other party under or relating to this Deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

### **6.4 Duties**

- (a) The New Developer must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Deed, or any agreement or document executed or effected under this Deed.
- (b) The New Developer indemnifies Council and the Existing Developer against any loss incurred by any other party in relation to any duty specified in this provision, whether through default by the New Developer under this provision or otherwise.

### **6.5 Assignment**

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

### **6.6 Notices**

- (a) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

**[Insert address for notices for each of the parties]**

- (b) Any notice to or by a party under this Deed must be in writing and signed by either:
  - (i) the sender or, if a corporate party, an authorised officer of the sender; or
  - (ii) the party's solicitor.

- (c) Any notice is effective for the purposes of this Deed upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

#### **6.7 Governing law and jurisdiction**

- (a) This Deed is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

#### **6.8 Amendments**

Any amendment to this Deed has no force or effect, unless effected by a document executed by the parties.

#### **6.9 Third parties**

This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

#### **6.10 Pre-contractual negotiation**

This Deed:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

#### **6.11 Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.

#### **6.12 Continuing performance**

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- (b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (c) Any indemnity agreed by any party under this Deed:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
  - (ii) survives and continues after performance of this Deed,

#### 6.13 **Waivers**

Any failure by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

#### 6.14 **Remedies**

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

#### 6.15 **Severability**

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

#### 6.16 **Party acting as trustee**

If a party enters into this Deed as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Deed in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Deed:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Deed on behalf of the trust and that this Deed is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

### **7. Definitions and interpretation**

---

#### 7.1 **Definitions**

In this Deed unless the context otherwise requires:

**Claims** includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

**Agreement** means the voluntary planning agreement between the Council and the Existing Developer dated [insert date], a copy of which is annexed to this Deed as Annexure **A**.

**Deed** means this Deed and includes any Annexures to this Deed.

**Effective Date** means the date upon which the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the land from the Existing Developer to the New Developer.

**GST** means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

**Liabilities** include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

**Rights and Obligations** means all of the rights, benefits and obligations imposed or conferred on the Existing Developer by the Agreement.

## 7.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Deed includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (l) any ambiguities in the interpretation of this Deed shall not be construed against the drafting party; and
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed.

**Executed** as a deed.

**[Insert relevant attestation clauses]**

**[Insert the executed planning agreement that is the subject of the novation as Annexure A]**

## **Annexure B – Put and Call Option Deed**

---

# Deed of Put & Call Option

## **BETWEEN**

Ku-ring-gai Municipal Council

## **AND**

Roseville Returned Serviceman's Memorial  
Club Limited (ACN 001 071 138)

## **MILLS OAKLEY LAWYERS**

Level 12, 400 George Street  
SYDNEY NSW 2000

Telephone: +61 2 8289 5800

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DX 13025, SYDNEY, MARKET STREET

[www.millsoakley.com.au](http://www.millsoakley.com.au)

Ref: TXLS/3370736



## Table of Contents

<b>1</b>	<b>Definitions and Interpretation.....</b>	<b>1</b>
1.1	Definitions.....	1
1.2	Interpretation .....	3
<b>2</b>	<b>Grant of Call Option .....</b>	<b>4</b>
<b>3</b>	<b>Exercise of Call Option .....</b>	<b>4</b>
<b>4</b>	<b>Effect of Exercise of Call Option .....</b>	<b>4</b>
<b>5</b>	<b>Grant of Put Option .....</b>	<b>5</b>
<b>6</b>	<b>Exercise of Put Option .....</b>	<b>5</b>
<b>7</b>	<b>Effect of Exercise of Put Option .....</b>	<b>5</b>
<b>8</b>	<b>Development Application .....</b>	<b>6</b>
<b>9</b>	<b>Condition Precedent to exercise of Call Option or Put Option .....</b>	<b>6</b>
9.1	Condition precedent.....	6
9.2	Obligations to satisfy the Condition Precedent.....	6
9.3	Planning Agreement .....	6
<b>10</b>	<b>Subdivision.....</b>	<b>6</b>
<b>11</b>	<b>Put Option and Call Option distinct .....</b>	<b>7</b>
<b>12</b>	<b>Option Fee .....</b>	<b>7</b>
12.1	Call Option Fee.....	7
12.2	Put Option Fee .....	7
12.3	Prepayment of deposit.....	7
<b>13</b>	<b>Access .....</b>	<b>7</b>
<b>14</b>	<b>Vendor's Warranties .....</b>	<b>8</b>
<b>15</b>	<b>Vendor's additional obligations .....</b>	<b>8</b>
<b>16</b>	<b>Residency Declaration –Foreign Resident Capital Gains Withholding .....</b>	<b>8</b>
<b>17</b>	<b>Not used.....</b>	<b>9</b>
<b>18</b>	<b>Disposal of property.....</b>	<b>9</b>
<b>19</b>	<b>Prohibition against assignment .....</b>	<b>9</b>
<b>20</b>	<b>Nominee.....</b>	<b>9</b>
<b>21</b>	<b>Non Merger .....</b>	<b>9</b>
<b>22</b>	<b>Vendor Warranties .....</b>	<b>9</b>
<b>23</b>	<b>Goods and Services Tax.....</b>	<b>10</b>
23.1	Recovery of GST on supplies and adjustments under this deed .....	10
23.2	Other GST matters .....	10
<b>24</b>	<b>Notices .....</b>	<b>10</b>
24.1	Giving notices .....	10
24.2	Vendor.....	11
24.3	Purchaser .....	11

24.4	Change of address or fax number or email address.....	11
24.5	Time notice is given .....	11
<b>25</b>	<b>Miscellaneous.....</b>	<b>12</b>
25.1	Approvals and consents.....	12
25.2	Assignments and transfers .....	12
25.3	Costs .....	12
25.4	Entire agreement .....	12
25.5	Execution of separate documents.....	12
25.6	Further acts .....	12
25.7	Governing law and jurisdiction .....	12
25.8	Joint and individual liability and benefits .....	12
25.9	Severability .....	12
25.10	Variation .....	13
25.11	Waivers .....	13
<b>Execution Page .....</b>		<b>14</b>
<b>Schedule 1</b>	<b>Call Option Notice.....</b>	<b>15</b>
<b>Schedule 2</b>	<b>Nomination Notice .....</b>	<b>16</b>
<b>Schedule 3</b>	<b>Put Option Notice .....</b>	<b>17</b>
<b>Schedule 4</b>	<b>Contract.....</b>	<b>18</b>
<b>Schedule 5</b>	<b>Draft Plan.....</b>	<b>19</b>

## Parties

**Ku-ring-gai Municipal Council**  
of 818 Pacific Highway, Gordon NSW 2072

(Vendor)

**Roseville Returned Serviceman's Memorial Club Limited** (ACN 001 071 138)  
of 64 Pacific Highway, Roseville NSW 2069

(Purchaser)

## Background

- A. The Vendor owns the Property.
- B. The Vendor has agreed to grant to the Purchaser the Call Option over the Property for the consideration and in the manner set out in this deed.
- C. The Purchaser has agreed to grant to the Vendor the Put Option for the consideration and the manner set out in this deed.

## Terms and Conditions

### 1 Definitions and Interpretation

In this Deed unless the context otherwise requires:

#### 1.1 Definitions

**Act** means the *Conveyancing Act 1919* (NSW).

**Authority** means the crown, a minister, a government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court and any officer or agent of any of the foregoing acting as such and includes Council.

**Call Option** means the option for the Purchaser to purchase the Property from the Vendor.

**Call Option Exercise Date** means 9.00 am on the date of this deed.

**Call Option Exercise Period** means the period commencing on the Call Option Exercise Date and ending on the Call Option Expiry Date.

**Call Option Expiry Date** means 5.00 pm on the day that is 14 days after:

- (a) the date Development Consent is granted to the Developer and the Development has physically commenced; and
- (b) registration of the Draft Plan of Subdivision.

**Call Option Fee** means \$1.00 excluding GST.

**Call Option Notice** means an option notice substantially in the form of the notice annexed to this deed as Schedule 1.

**Conditions Precedent** means the conditions precedent in clause 8.

**Contract** means the contract for the sale of land annexed to this deed as Schedule 4.

**Council** means Ku-ring-gai Municipal Council.

**Deposit** means the deposit payable under the Contract.

**Deposit Holder** means the deposit holder as defined in the Contract.

**Development** means the Purchaser's proposed development of part 62, 64-66 Pacific Highway, Roseville NSW 2069.

**Development Application** means:

- (a) development application DA0134/18 made to the Council on or around 12 April 2018;
- (b) any development application that seeks to modify any development approved by a development consent granted to development application DA0134/18 under section 4.55 of the Act;
- (c) any development application that is made after the date of execution of this Agreement for the:
  - (i) demolition of existing structures;
  - (ii) subdivision of the site and construction of a shop-top housing development with basement car parking;
  - (iii) the provision of a club on the ground floor and residential dwellings above; and
  - (iv) the provision of works on the Acquisition Land, including a walkway, to facilitate the rights as set out in Schedule 1 of this Agreement,and including any development application that seeks to modify any such development which is approved.

**Development Consent** means a consent granted by Council or the relevant Authority to the Development Application on conditions which are acceptable to the Purchaser in its absolute discretion.

**Draft Plan** means the draft plan of subdivision to effect the subdivision of the Land so as to create a new lot in respect of the Property (a copy of which is at Schedule 5) [and if applicable, includes an instrument created pursuant to S88B of the Act as required by an Authority or the Vendor].

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

**Land** means the land contained in Folio Identifier 2/202148.

**LRS** means Land Registry Services, NSW.

**Nomination Notice** means a notice substantially in the form of the nomination notice annexed to this deed as Schedule 2.

**Nominee** means a nominee of the Purchaser nominated in writing by the Purchaser to the Vendor by way of the Nomination Notice.

**Planning Agreement** means the planning agreement entered into by the Vendor and Purchaser in respect of the Development Application dated the same date as this deed.

**Price** means the purchase price as defined at clause 46 of the Contract.

**Property** means the part of Lot 2 in Deposited Plan 202148 as identified in the Draft Plan as being proposed Lot 3.

**Put Option Fee** means \$1.00 excluding GST.

**Put Option Notice** means an option notice substantially in the form of the notice annexed to this deed as Schedule 3.

**Put Option** means the option for the Vendor to sell the Property to the Purchaser.

**Put Option Exercise Date** means 9.00 am on the day that is the date after the Call Option Expiry Date.

**Put Option Exercise Period** means the period commencing on the Put Option Exercise Date and ending on the Put Option Expiry Date.

**Put Option Expiry Date** means 5:00pm on the day that is 7 days after the Put Option Exercise Date.

**Registrar General** means the Registrar General of Land and Property Information NSW.

**Regulation** means the *Conveyancing (Sale of Land) Regulation 2005* (NSW).

**Subdivision** means the subdivision of the Land substantially as depicted in the Draft Plan.

## **1.2 Interpretation**

In the interpretation of this deed, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this deed.
- (b) A reference in this deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in **Sydney, New South Wales**.
- (c) If the day on which any act, matter or thing is to be done under this deed is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this deed to **dollars** or **\$** means Australian dollars and all amounts payable under this deed are payable in Australian dollars.
- (e) A reference in this deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this deed to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this deed.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
- (k) A reference to the word "include" or "including" is to be interpreted without limitation.

- (l) Any schedules and attachments form part of this deed.

---

## **2 Grant of Call Option**

---

In consideration of the Call Option Fee paid by the Purchaser to the Vendor, the Vendor grants the Call Option to the Purchaser and its Nominee.

---

## **3 Exercise of Call Option**

---

- (a) The Call Option may be exercised by the Purchaser in the manner provided in this deed at any time during the Call Option Exercise Period.
- (b) If the Call Option is not exercised by the Call Option Expiry Date the rights of the Purchaser under this deed immediately end, subject to both of the following:
  - (i) Vendor's rights under clause 5; or
  - (ii) any rights in relation to any existing breach of this deed by the Vendor.
- (c) To be effectively and validly exercised, the Call Option must be exercised by service on the Vendor of any of the following:
  - (i) Call Option Notice properly executed by the following person:
    - (A) if the Purchaser exercises the Call Option, the Purchaser; or
    - (B) if the Nominee exercises the Call Option, the Nominee;
  - (ii) if the Nominee exercises the Call Option, a Nomination Notice properly executed by the Purchaser;
  - (iii) cheque for the Deposit (less the Call Option Fee) in favour of the Deposit Holder;
  - (iv) contract executed by the Purchaser, or the Nominee (as the case may be), and completed by the insertion of all the following:
    - (A) name, facsimile number, ABN and address of the Purchaser or Nominee (as the case may be) as purchaser;
    - (B) date of the exercise of the Call Option as the date of the Contract;
    - (C) the folio identifier details for the Property following registration of the Draft Plan of Subdivision on the front page of the Contract;
    - (D) the title search for the Property following registration of Draft Plan of Subdivision; and
    - (E) any other documents required to give effect to the Contract;
  - (v) counterpart copy of the Contract; and
  - (vi) copy of any power of attorney under which the notice of exercise of option or the Contract is executed (if applicable).

---

## **4 Effect of Exercise of Call Option**

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- (a) On the date of valid exercise of the Call Option under this deed the Vendor (as vendor) and the Purchaser (or the Nominee as the case may be) (as purchaser) will for all purposes be deemed to have entered into a binding and enforceable

agreement for the respective sale and purchase of the Property subject to and upon the terms and conditions of the Contract.

- (b) Within five Business Days after the date of a valid exercise of the Call Option the Vendor must execute the counterpart of the Contract and return it to the Purchaser.

---

## **5 Grant of Put Option**

In consideration of the Put Option Fee paid by the Vendor to the Purchaser (the receipt of which is hereby acknowledged) the Purchaser, grants the Put Option to the Vendor.

---

## **6 Exercise of Put Option**

- (a) The Put Option may be exercised by the Vendor in the manner provided in this deed at any time during the Put Option Exercise Period.
- (b) If the Put Option is not exercised by the Put Option Expiry Date the rights of the Vendor under this deed must immediately end, subject to any rights in relation to any existing breach of this deed by the Purchaser.
- (c) The Put Option may be exercised by the Vendor serving on the Purchaser all of the following:
  - (i) Put Option Notice duly executed by the Vendor;
  - (ii) Contract executed by the Vendor and completed by the insertion of all the following:
    - (A) name, facsimile number, ABN and address of the Purchaser as purchaser; or
    - (B) date of the exercise of the Put Option as the date of the Contract;
  - (iii) counterpart copy of the Contract; and
  - (iv) copy of any power of attorney under which the notice of exercise of option or the Contract is executed (if applicable).

---

## **7 Effect of Exercise of Put Option**

- (a) On the date of valid exercise of the Put Option under this deed the Vendor (as vendor) and the Purchaser (as purchaser) will for all purposes be deemed to have entered into a binding and enforceable agreement for the respective sale and purchase of the Property subject to and upon the terms and conditions of the Contract.
- (b) Within five Business Days after the date of a valid exercise of the Put Option, the Purchaser must do each of the following:
  - (i) ensure that the counterpart of the Contract is executed by it and returned to the Vendor, together with a copy of the power of attorney under which the Contract is executed (if applicable); and
  - (ii) pay the Deposit (less the Call Option Fee) to the Vendor.



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## **8 Development Application**

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- (a) As at the date of this deed, the Purchaser has lodged DA0134/18 with Council and is authorised, at its own cost, to prepare any further Development Application for the Development and lodge with Council to obtain Development Consent.
- (b) The Vendor:
  - (i) must sign the consents required for the Purchaser (or its Nominee) to make a Development Application within 10 business days after receipt of a Development Application from the Purchaser (or its Nominee);
  - (ii) consents to the erection on the Property of any notice required in connection with the Development Application or Development Consent; and
  - (iii) consents to the Purchaser making and pursuing any appeal in connection with the Development Application or Development Consent.

---

## **9 Condition Precedent to exercise of Call Option or Put Option**

---

### **9.1 Condition precedent**

The Call Option or the Put Option may not be exercised unless each of the following conditions is fulfilled:

- (a) The Purchaser gives written notice to the Vendor that it has obtained Development Consent from Council in relation to the Development, including consent for the Subdivision; and
- (b) registration of the Draft Plan of Subdivision.

### **9.2 Obligations to satisfy the Condition Precedent**

The Purchaser must use all reasonable endeavours to satisfy the Condition Precedent in clause 9.1(a).

### **9.3 Planning Agreement**

Despite any other provision in this deed, the parties agree that this deed will not be entered into until the parties have executed the Planning Agreement in relation to the Development Application.

---

## **10 Subdivision**

---

- (a) The Purchaser must at its own cost, use all reasonable endeavours to:
  - (i) obtain a subdivision approval in respect of the Subdivision as part of the Development Consent; and
  - (ii) procure that the Draft Plan is registered at LRS, as soon as reasonably practicable.
- (b) The Vendor must:
  - (i) sign the all consents required for the Purchaser (or its Nominee) to make procure registration of the Draft Plan; and



- (ii) must take all necessary steps as owner of the Land required by the Purchaser to assist with lodgement and registration of the Draft Plan with LRS including production of the title for the Land.

---

## **11 Put Option and Call Option distinct**

---

To avoid doubt both the following apply:

- (i) The Vendor cannot exercise the Put Option during the Call Option Exercise Period.
- (ii) The Purchaser cannot exercise the Call Option during the Put Option Exercise Period.

---

## **12 Option Fee**

---

### **12.1 Call Option Fee**

The Call Option Fee must be paid on the date of this deed (and is acknowledged as paid) for the Call Option Fee to the Vendor or the Vendor's legal representative.

### **12.2 Put Option Fee**

The Put Option Fee must be paid on the date of this deed (and is acknowledged as paid) for the Put Option Fee to the Purchaser or Purchaser's legal representative.

### **12.3 Prepayment of deposit**

For the avoidance of doubt, upon a valid exercise of either the Put Option or Call Option, the Call Option Fee will be deemed to be a prepayment of, and will be credited against, the Deposit.

---

## **13 Access**

---

- (a) The Vendor must allow the Purchaser (or its Nominee) and its officers, servants, agents, consultants, and employees access to the Property (with or without necessary equipment) at all reasonable times on reasonable notice for the purposes of the following:
  - (i) preparing the Development Application; or
  - (ii) obtaining geotechnical, survey, environmental or other reports in relation to the Property.
- (b) When accessing the Property the Purchaser must and must procure that its Nominee cause minimal disruption to the Vendor or any occupiers of the Property.
- (c) The Vendor or the Vendor's officers, servants, agents, consultants and employees must not do the following:
  - (i) object to the Purchaser's (or its Nominee's) proposed Development or to the Development Application; or
  - (ii) hinder the Purchaser (or its Nominee), and its officers, servants, agents, consultants, and employees in the exercise of its rights under clause 13(a).

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## **14 Vendor's Warranties**

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Without limiting the rights of the Purchaser under the *Real Property Act 1900* (NSW), the Vendor warrants to the Purchaser that (subject to any specific provisions to the contrary in this deed) the Vendor has and will at all times during the currency of this agreement have the full legal right capacity and ability to sell the Property and that the Vendor is not aware of any act matter or thing which will or may prevent it from selling the Property.

## **15 Vendor's additional obligations**

---

The Vendor must, before exercise of the Call Option or the Put Option (as the case may be) cooperate and communicate with the Purchaser on all matters relating to the Property which may affect the Purchaser's rights and obligations under this deed, including advising of any litigation affecting the Property.

## **16 Residency Declaration –Foreign Resident Capital Gains Withholding**

---

### **16.1** In this clause:

#### **Option Payment:**

- (a) means any payment made to the Vendor under this Deed including, without limitation, an instalment of the Call Option Fee, inclusive of Goods and Services Tax; and
- (b) does not include:
  - (i) any part of the Deposit paid to the Depositholder on exercise of the Call Option or Put Option, or
  - (ii) any amount held as a security deposit under this Deed which becomes part of the Deposit on exercise of the Call Option or Put Option.

**Remittance Amount** means 10% of an Option Payment.

### **16.2** The Vendor declares that, on the date of this Deed, the Vendor is an Australian resident for tax purposes.

### **16.3** Clause 16.5 does not apply to any Option Payment made on or within six months after the date of a declaration by the Vendor, that the Vendor is an Australian resident for tax purposes, that has been served on the Purchaser.

### **16.4** If the Vendor serves any declaration referred to in clause 16.3, the due date for payment of the next Option Payment is the later of:

- (a) five Business Days after the Vendor serves the declaration; and
- (b) the date for that Option Payment determined without reference to this clause 16.4.

### **16.5** When making an Option Payment to which this clause 16.5 applies, the Purchaser must:

- (a) pay the Vendor the Option Payment less the Remittance Amount;
- (b) serve on the Vendor evidence of the Purchaser's submission of a purchaser payment notification to the Australian Taxation Office in respect of the Option Payment;

- (c) pay the Remittance Amount to the Deputy Commissioner of Taxation on the next Business Day after making the Option Payment; and
- (d) serve, within a reasonable time after payment of the Option Payment, evidence of receipt of the Remittance Amount.

**16.6** Compliance by the Purchaser with clause 16.5 will not amount to a breach by the Purchaser of the Purchaser's obligation to make the Option Payment to which clause 16.5 applies.

---

## **17 Not used**

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## **18 Disposal of property**

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During the term of this Deed, the Vendor must not dispose of all, or part of, the Property, encumber the Property or deal with any other party in relation to the Property.

## **19 Prohibition against assignment**

---

The Purchaser must not sell transfer or otherwise alienate any of its interest, obligations, powers or rights contained in this deed during the currency of this deed unless permitted under clause 20.

## **20 Nominee**

---

- (a) The Call Option may be exercised by a nominee of the Purchaser if (and as a condition precedent to an effective and valid exercise of the Call Option) at the same time as the Call Option Notice is served on the Vendor the Nomination Notice executed by the Purchaser is also served on the Vendor.
- (b) Any exercise of the Call Option by a nominee of the Purchaser will not be effective and complete unless the conditions set out in clause 3(a) have been satisfied.
- (c) If the Nominee exercises the Call Option and the Nominee is the custodian of a managed investment scheme, or a trustee of a trust, the Contract will be deemed to include the custodian's or trustee's standard limitation of liability clause.

## **21 Non Merger**

---

If any provision of this deed confers rights to or obligations on any party that are capable of continuing after completion, each party agrees that such provision does not merge on completion.

## **22 Vendor Warranties**

---

The Vendor and the Purchaser agree that for the purposes of Section 52A(2)(a) of the Act and Regulation, the warranties contained in, and the documents annexed to the Contract are deemed to be contained in and annexed to this deed.

---

## 23 Goods and Services Tax

---

### 23.1 Recovery of GST on supplies and adjustments under this deed

- (a) All consideration provided under this deed is exclusive of GST, unless it is expressed to be GST-inclusive.
- (b) Where a party (**Supplier**) makes a taxable supply to another party (**Recipient**) under or in connection with this deed, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for that taxable supply is expressed to include GST). The additional amount must be paid by the Recipient at the later of the following dates:
  - (i) date when any consideration for the taxable supply is first paid or provided; or
  - (ii) date when the Supplier issues a tax invoice to the Recipient.
- (c) If, under or in connection with this deed, the Supplier has an adjustment for a supply under the GST law which varies the amount of GST payable by the Supplier, the Supplier will adjust the amount payable by the Recipient to take account of the varied GST amount. The Supplier must issue an adjustment note to the Recipient within 28 days of becoming aware of the adjustment.

### 23.2 Other GST matters

- (a) If a party is entitled to be reimbursed or indemnified under this deed, the amount to be reimbursed or indemnified is reduced by the amount of GST for which there is an entitlement to claim an input tax credit on an acquisition associated with the reimbursement or indemnity. The reduction is to be made before any increase under clause 23.1(b). An entity is assumed to be entitled to a full input tax credit on an acquisition associated with the reimbursement or indemnity unless it demonstrates otherwise before the date the reimbursement or indemnity is made.
- (b) Any reference in this deed to sales, revenue, income, value or similar amount (**Revenue**) is a reference to that Revenue exclusive of GST (unless that Revenue is expressed to be GST-inclusive).
- (c) Any reference in this deed to cost, expense, liability or similar amount (**Expense**) is a reference to that Expense exclusive of GST (unless that Expense is expressed to be GST-inclusive).
- (d) This clause will not merge on completion and will survive the termination of this deed by any party.
- (e) Terms used in this clause that are not otherwise defined in this deed have the meanings given to them in the GST Act.

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## 24 Notices

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### 24.1 Giving notices

Any notice or communication given to a party under this deed is only given if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out below;

- (b) faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out below; and
- (c) electronic mail (email) to that party at its email address and marked for the attention of the relevant department or officer (if any) set out below:

**24.2 Vendor**

Name: Ku-ring-gai Municipal Council  
Address: 818 Pacific Highway, Gordon NSW 2072  
Fax number: (02) 9424 0000  
Email address: kmc@kmc.nsw.gov.au  
Attention: The General Manager, for the attention of Manager, Property

**24.3 Purchaser**

Name: Mills Oakley  
Address: Level 7, 151 Clarence Street, Sydney NSW 2000  
Fax number: (02) 9247 1315  
Email address: tlorange@millsoakley.com.au  
Attention: Tim L'Orange

**24.4 Change of address or fax number or email address**

If a party gives the other party three business days' notice of a change of its address, or fax number or email address, any notice or communication is only given by that other party if it is delivered, posted, faxed or emailed to the latest address, fax number or email address.

**24.5 Time notice is given**

- (a) Any notice or communication is to be treated as given at the following time:
  - (i) If it is delivered, when it is left at the relevant address.
  - (ii) If it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) business days after it is posted.
  - (iii) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
  - (iv) If it is sent by email, it will be treated as received on the day of sending the email unless the sender is notified by the mail delivery system that the email has not be delivered to the recipient or within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or illegible form.
- (b) However, if any notice or communication is given, on a day that is not a business day or after 5.00 pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

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**25 Miscellaneous**

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**25.1 Approvals and consents**

- (a) Unless this deed expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.
- (b) Where this deed refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

**25.2 Assignments and transfers**

A party must not assign or transfer any of its rights or obligations under this deed without the prior written consent of each of the other parties.

**25.3 Costs**

Except as otherwise set out in this deed, each party must pay its own costs and expenses for preparing, negotiating, executing and completing this deed and any document related to this deed.

**25.4 Entire agreement**

This deed contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this deed was executed.

**25.5 Execution of separate documents**

This deed is properly executed if each party executes either this deed or an identical document. In the latter case, this deed takes effect when the separately executed documents are exchanged between the parties.

**25.6 Further acts**

Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this deed and all transactions incidental to it.

**25.7 Governing law and jurisdiction**

This deed is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

**25.8 Joint and individual liability and benefits**

Except as otherwise set out in this deed, any covenant, agreement, representation or warranty under this deed by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

**25.9 Severability**

Each provision of this deed is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this deed in the relevant jurisdiction, but the rest of this deed will not be affected. The

legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

**25.10 Variation**

No variation of this deed will be of any force or effect unless it is in writing and signed by each party to this deed.

**25.11 Waivers**

- (a) A waiver of any right, power or remedy under this deed must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this deed does not amount to a waiver.

## Execution Page

**EXECUTED** as Deed on

2019

**THE COMMON SEAL of KU-RING-GAI** )  
**MUNICIPAL COUNCIL** was hereto affixed in the )  
presence of:

.....  
Councillor

.....  
Chief Executive Officer

**EXECUTED by ROSEVILLE RETURNED** )  
**SERVICEMAN'S MEMORIAL CLUB** )  
**LIMITED (ACN 001 071 138)** )  
in accordance with section 127(1) of the )  
Corporations Act 2001

.....  
Signature of Director

.....  
Signature of Director / Company Secretary  
(delete as applicable)

.....  
Name of Director  
(Please print)

.....  
Name of Director / Company Secretary  
(Please print)



## Schedule 1      Call Option Notice

To:      Ku-ring-gai Municipal Council

Roseville Returned Serviceman's Memorial Club Limited (ACN 001 071 138) (or nominee) hereby exercises the Call Option granted to it pursuant to the Deed of Put and Call Option dated **[insert date]** made between Ku-ring-gai Municipal Council (**Vendor**) and Roseville Returned Serviceman's Memorial Club Limited (ACN 001 071 138) (**Purchaser**) in relation to the Property defined in the Deed of Put and Call Option.

**EXECUTED by Roseville Returned**      )  
**Serviceman's Memorial Club Limited (ACN**      )  
**001 071 138)**      )  
in accordance with section 127(1) of the      )  
Corporations Act 2001

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director / Company Secretary  
(delete as applicable)

\_\_\_\_\_  
Name of Director  
(Please print)

\_\_\_\_\_  
Name of Director / Company Secretary  
(Please print)

## Schedule 2      Nomination Notice

To:      Ku-ring-gai Municipal Council

Roseville Returned Serviceman's Memorial Club Limited (ACN 001 071 138) hereby nominates **[insert name]** of **[insert address]** as its nominee to exercise the Call Option/ Put Option granted pursuant to the Deed of Put and Call Option dated **[insert date]** made between Ku-ring-gai Municipal Council (**Vendor**) and Roseville Returned Serviceman's Memorial Club Limited (ACN 001 071 138) (**Purchaser**) in relation to the Property defined in the Deed of Put and Call Option.

**EXECUTED by Roseville Returned**      )  
**Serviceman's Memorial Club Limited (ACN**      )  
**001 071 138)** in accordance with section      )  
127(1) of the Corporations Act 2001      )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director / Company Secretary  
(delete as applicable)

\_\_\_\_\_  
Name of Director  
(Please print)

\_\_\_\_\_  
Name of Director / Company Secretary  
(Please print)

## Schedule 3 Put Option Notice

To: Roseville Returned Serviceman's Memorial Club Limited (ACN 001 071 138)

Ku-ring-gai Municipal Council hereby exercises the Put Option granted to it pursuant to the Deed of Put and Call Option dated **[insert date]** made between Ku-ring-gai Municipal Council (**Vendor**) and Roseville Returned Serviceman's Memorial Club Limited (ACN 001 071 138) (**Purchaser**) in relation to the Property defined in the Deed of Put and Call Option.

Dated:

THE COMMON SEAL of KU-RING-GAI )  
MUNICIPAL COUNCIL was hereto affixed in the )  
presence of:

.....  
Councillor

.....  
Chief Executive Officer  
.....

## **Schedule 4      Contract**

# Contract for the Sale of Land

## PROPERTY

Lot 3, 62 Pacific Highway, Roseville NSW 2069,  
being lot 3 in the Plan Deposited Plan [insert]  
being Folio Identifier 3/[insert]

## BETWEEN

**Ku-ring-gai Municipal Council**

and

**Roseville Returned Serviceman's Memorial  
Club Limited (ACN 001 071 138)**

## MILLS OAKLEY

Level 12, 400 George Street  
SYDNEY NSW 2000

Telephone: +61 2 8289 5800

Facsimile: +61 2 9247 1315

DX 13025, SYDNEY, MARKET STREET

[www.millsoakley.com.au](http://www.millsoakley.com.au)

Ref: TXLS/3370736



### 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* (residential withholding payment) ☐ NO ☐ yes (if yes, vendor must provide further details)

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

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



## Execution Page

**Executed as an agreement**

**Date:**

**Executed by the Vendor:**

THE COMMON SEAL of KU-RING-GAI )  
MUNICIPAL COUNCIL was hereto affixed in the )  
presence of:

.....  
Councillor

.....  
Chief Executive Officer

**Executed by the Purchaser:**

EXECUTED by ROSEVILLE RETURNED )  
SERVICEMAN'S MEMORIAL CLUB )  
LIMITED (ACN 001 071 138) )  
in accordance with section 127(1) of the )  
Corporations Act 2001

.....  
Signature of Director

.....  
Signature of Director / Company Secretary  
(delete as applicable)

.....  
Name of Director  
(Please print)

.....  
Name of Director / Company Secretary  
(Please print)

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

### **DISPUTES**

If you get into a dispute with the other party, the Law Society and Real Estate Institute encourage you to use informal procedures such as negotiation, independent expert appraisal, 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:

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

If you think that any of these matters affects the property, tell your solicitor.

2. A lease may be affected by the Agricultural Tenancies Act 1990, the Residential Tenancies Act 2010 or the Retail Leases Act 1994.
3. If any purchase money is owing to the Crown, it 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 stamp duty (and sometimes surcharge purchaser duty) on this contract. If duty is not paid on time, a purchaser may incur penalties.
7. If the purchaser agrees to the release of deposit, the purchaser's right to recover the deposit may stand behind the rights of others (for example the vendor's mortgagee).
8. The purchaser should arrange insurance as appropriate.
9. Some transactions involving personal property may be affected by the Personal Property Securities Act 2009.
10. A purchaser should be satisfied that finance will be available at the time of completing the purchase.
11. Where the market value of the property is at or above a legislated amount, the purchaser may have to comply with a foreign resident capital gains withholding payment obligation (even if the vendor is not a foreign resident). If so, this will affect the amount available to the vendor on completion.
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.

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

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

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

<i>adjustment date</i>	the earlier of the giving of possession to the purchaser or completion;
<i>bank</i>	the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>clearance certificate</i>	a certificate within the meaning of s14-220 of Schedule 1 to the <i>TA Act</i> , that covers one or more days falling within the period from and including the contract date to completion;
<i>deposit-bond</i>	a deposit bond or guarantee from an issuer, with an expiry date and for an amount each approved by the vendor;
<i>depositholder</i>	vendor's agent (or if no vendor's agent is named in this contract, the vendor's <i>solicitor</i> , or if no vendor's <i>solicitor</i> is named in this contract, the buyer's agent);
<i>document of title</i>	document relevant to the title or the passing of title;
<i>FRCGW percentage</i>	the percentage mentioned in s14-200(3)(a) of Schedule 1 to the <i>TA Act</i> (12.5% as at 1 July 2017);
<i>GST Act</i>	A New Tax System (Goods and Services Tax) Act 1999;
<i>GST rate</i>	the rate mentioned in s4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
<i>legislation</i>	an Act or a by-law, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the vendor and the purchaser;
<i>property</i>	the land, the improvements, all fixtures and the inclusions, but not the exclusions;
<i>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>remittance amount</i>	the lesser of the <i>FRCGW percentage</i> of the price (inclusive of GST, if any) and the amount specified in a <i>variation served by a party</i> ;
<i>rescind</i>	rescind this contract from the beginning;
<i>RW 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>RW rate</i> );
<i>RW 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>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid and – <ul style="list-style-type: none"> <li>• issued by a <i>bank</i> and drawn on itself; or</li> <li>• if authorised in writing by the vendor or the vendor's <i>solicitor</i>, some other <i>cheque</i>;</li> </ul>
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice <i>served by the party</i> ;
<i>TA Act</i>	Taxation Administration Act 1953;
<i>terminate</i>	terminate this contract for breach;
<i>variation</i>	a variation made under s14-235 of Schedule 1 to the <i>TA Act</i> ;
<i>within</i>	in relation to a period, at any time before or during the period; and
<i>work order</i>	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the <i>property</i> or any adjoining footpath or road (but the term does not include a notice under s22E of the Swimming Pools Act 1992 or clause 18B of the Swimming Pools Regulation 2008).

## 2 Deposit and other payments before completion

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

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

### 3 Deposit-bond

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

### 4 Transfer

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

### 5 Requisitions

- 5.1 If a form of *requisitions* is attached to this contract, the purchaser is taken to have made those *requisitions*.
- 5.2 If the purchaser is or becomes entitled to make any other *requisition*, the purchaser can make it only by *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 The purchaser can (but only before completion) claim compensation for an error or misdescription in this contract (as to the *property*, the title or anything else and whether substantial or not).
- 6.2 This clause applies even if the purchaser did not take notice of or rely on anything in this contract containing or giving rise to the error or misdescription.
- 6.3 However, this clause does not apply to the extent the purchaser knows the true position.



## 7 Claims by purchaser

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

7.1 the vendor can *rescind* if in the case of claims that are not claims for delay –

7.1.1 the total amount claimed exceeds 5% of the price;

7.1.2 the vendor *serves* notice of intention to *rescind*; and

7.1.3 the purchaser does not *serve* notice waiving the claims *within* 14 days after that *service*; and

7.2 if the vendor does not *rescind*, the *parties* must complete and if this contract is completed –

7.2.1 the lesser of the total amount claimed and 10% of the price must be paid out of the price to and held by the *depositholder* until the claims are finalised or lapse;

7.2.2 the amount held is to be invested in accordance with clause 2.9;

7.2.3 the claims must be finalised by an arbitrator appointed by the *parties* or, if an appointment is not made *within* 1 month of completion, by an arbitrator appointed by the President of the Law Society at the request of a *party* (in the latter case the *parties* are bound by the terms of the Conveyancing Arbitration Rules approved by the Law Society as at the date of the appointment);

7.2.4 the purchaser is not entitled, in respect of the claims, to more than the total amount claimed and the costs of the purchaser;

7.2.5 net interest on the amount held must be paid to the *parties* in the same proportion as the amount held is paid; and

7.2.6 if the *parties* do not appoint an arbitrator and neither *party* requests the President to appoint an arbitrator *within* 3 months after completion, the claims lapse and the amount belongs to the vendor.

## 8 Vendor's rights and obligations

8.1 The vendor can *rescind* if –

8.1.1 the vendor is, on reasonable grounds, unable or unwilling to comply with a *requisition*;

8.1.2 the vendor *serves* a notice of intention to *rescind* that specifies the *requisition* and those grounds; and

8.1.3 the purchaser does not *serve* a notice waiving the *requisition within* 14 days after that *service*.

8.2 If the vendor does not comply with this contract (or a notice under or relating to it) in an essential respect, the purchaser can *terminate* by *serving* a notice. After the *termination* –

8.2.1 the purchaser can recover the deposit and any other money paid by the purchaser under this contract;

8.2.2 the purchaser can sue the vendor to recover damages for breach of contract; and

8.2.3 if the purchaser has been in possession a *party* can claim for a reasonable adjustment.

## 9 Purchaser's default

If the purchaser does not comply with this contract (or a notice under or relating to it) in an essential respect, the vendor can *terminate* by *serving* a notice. After the *termination* the vendor can –

9.1 keep or recover the deposit (to a maximum of 10% of the price);

9.2 hold any other money paid by the purchaser under this contract as security for anything recoverable under this clause –

9.2.1 for 12 months after the *termination*; or

9.2.2 if the vendor commences proceedings under this clause *within* 12 months, until those proceedings are concluded; and

9.3 sue the purchaser either –

9.3.1 where the vendor has resold the *property* under a contract made *within* 12 months after the *termination*, to recover –

- the deficiency on resale (with credit for any of the deposit kept or recovered and after allowance for any capital gains tax or goods and services tax payable on anything recovered under this clause); and
- the reasonable costs and expenses arising out of the purchaser's non-compliance with this contract or the notice and of resale and any attempted resale; or

9.3.2 to recover damages for breach of contract.

## 10 Restrictions on rights of purchaser

10.1 The purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of –

10.1.1 the ownership or location of any fence as defined in the Dividing Fences Act 1991;

10.1.2 a service for the *property* being a joint service or passing through another property, or any service for another property passing through the *property* ('service' includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water service);

10.1.3 a wall being or not being a party wall in any sense of that term or the *property* being affected by an easement for support or not having the benefit of an easement for support;

10.1.4 any change in the *property* due to fair wear and tear before completion;

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



- 13.7.2 the purchaser must pay the vendor on completion in addition to the price an amount calculated by multiplying the price by the *GST rate* if this sale is a taxable supply to any extent because of –
- a breach of clause 13.7.1; or
  - something else known to the purchaser but not the vendor.
- 13.8 If this contract says this sale is a taxable supply in full and does not say the margin scheme applies to the *property*, the vendor must pay the purchaser on completion an amount of one-eleventh of the price if –
- 13.8.1 this sale is not a taxable supply in full; or
- 13.8.2 the margin scheme applies to the *property* (or any part of the *property*).
- 13.9 If this contract says this sale is a taxable supply to an extent –
- 13.9.1 clause 13.7.1 does not apply to any part of the *property* which is identified as being a taxable supply; and
- 13.9.2 the payments mentioned in clauses 13.7 and 13.8 are to be recalculated by multiplying the relevant payment by the proportion of the price which represents the value of that part of the *property* to which the clause applies (the proportion to be expressed as a number between 0 and 1). Any evidence of value must be obtained at the expense of the vendor.
- 13.10 *Normally*, on completion the vendor must give the recipient of the supply a tax invoice for any taxable supply by the vendor by or under this contract.
- 13.11 The vendor does not have to give the purchaser a tax invoice if the margin scheme applies to a taxable supply.
- 13.12 If the vendor is liable for GST on rents or profits due to issuing an invoice or receiving consideration before completion, any adjustment of those amounts must exclude an amount equal to the vendor's GST liability.
- 13.13 If the purchaser must make an *RW payment* the purchaser must –
- 13.13.1 at least 5 days before the date for completion, *serve* evidence of submission of an *RW 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 *RW 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 *RW payment*.

## 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 lodgement fee to the purchaser, plus another 20% of that fee.
- 16.6 If a *party* serves a land tax certificate showing a charge on any of the land, on completion the vendor must give the purchaser a land tax certificate showing the charge is no longer effective against the land.

**• Purchaser**

- 16.7 On completion the purchaser must pay to the vendor, by cash (up to \$2,000) or *settlement cheque* –
- 16.7.1 the price less any:
- deposit paid;
  - *remittance amount* payable;
  - *RW 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 Part 2, 3, 4 or 5 Landlord and Tenant (Amendment) Act 1948).

**18 Possession before completion**

- 18.1 This clause applies only if the vendor gives the purchaser possession of the *property* before completion.
- 18.2 The purchaser must not before completion –
- 18.2.1 let or part with possession of any of the *property*;
- 18.2.2 make any change or structural alteration or addition to the *property*; or
- 18.2.3 contravene any agreement between the *parties* or any direction, document, *legislation*, notice or order affecting the *property*.
- 18.3 The purchaser must until completion –
- 18.3.1 keep the *property* in good condition and repair having regard to its condition at the giving of possession; and
- 18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.
- 18.4 The risk as to damage to the *property* passes to the purchaser immediately after the purchaser enters into possession.
- 18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor –
- 18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and

18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate prescribed under s101 Civil Procedure Act 2005.

18.6 If this contract is *rescinded* or *terminated* the purchaser must immediately vacate the *property*.

18.7 If the *parties* or their *solicitors* on their behalf do not agree in writing to a fee or rent, none is payable.

## 19 Rescission of contract

19.1 If this contract expressly gives a *party* a right to *rescind*, the *party* can exercise the right –

19.1.1 only by *serving* a notice before completion; and

19.1.2 in spite of any making of a claim or *requisition*, any attempt to satisfy a claim or *requisition*, any arbitration, litigation, mediation or negotiation or any giving or taking of possession.

19.2 *Normally*, if a *party* exercises a right to *rescind* expressly given by this contract or any *legislation* –

19.2.1 the deposit and any other money paid by the purchaser under this contract must be refunded;

19.2.2 a *party* can claim for a reasonable adjustment if the purchaser has been in possession;

19.2.3 a *party* can claim for damages, costs or expenses arising out of a breach of this contract; and

19.2.4 a *party* will not otherwise be liable to pay the other *party* any damages, costs or expenses.

## 20 Miscellaneous

20.1 The *parties* acknowledge that anything stated in this contract to be attached was attached to this contract by the vendor before the purchaser signed it and is part of this contract.

20.2 Anything attached to this contract is part of this contract.

20.3 An area, bearing or dimension in this contract is only approximate.

20.4 If a *party* consists of 2 or more persons, this contract benefits and binds them separately and together.

20.5 A *party's solicitor* can receive any amount payable to the *party* under this contract or direct in writing that it is to be paid to another person.

20.6 A document under or relating to this contract is –

20.6.1 signed by a *party* if it is signed by the *party* or the *party's solicitor* (apart from a direction under clause 4.3);

20.6.2 *served* if it is *served* by the *party* or the *party's solicitor*;

20.6.3 *served* if it is *served* on the *party's solicitor*, even if the *party* has died or any of them has died;

20.6.4 *served* if it is *served* in any manner provided in s170 of the Conveyancing Act 1919;

20.6.5 *served* if it is sent by email or fax to the *party's solicitor*, unless in either case it is not received;

20.6.6 *served* on a person if it (or a copy of it) comes into the possession of the person; and

20.6.7 *served* at the earliest time it is *served*, if it is *served* more than once.

20.7 An obligation to pay an expense of another *party* of doing something is an obligation to pay –

20.7.1 if the *party* does the thing personally - the reasonable cost of getting someone else to do it; or

20.7.2 if the *party* pays someone else to do the thing - the amount paid, to the extent it is reasonable.

20.8 Rights under clauses 11, 13, 14, 17, 24, 30 and 31 continue after completion, whether or not other rights continue.

20.9 The vendor does not promise, represent or state that the purchaser has any cooling off rights.

20.10 The vendor does not promise, represent or state that any attached survey report is accurate or current.

20.11 A reference to any *legislation* (including any percentage or rate specified in *legislation*) is also a reference to any corresponding later *legislation*.

20.12 Each *party* must do whatever is necessary after completion to carry out the *party's* obligations under this contract.

20.13 Neither taking possession nor *serving* a transfer of itself implies acceptance of the *property* or the title.

20.14 The details and information provided in this contract (for example, on pages 1 - 3) are, to the extent of each *party's* knowledge, true, and are part of this contract.

20.15 Where this contract provides for choices, a choice in BLOCK CAPITALS applies unless a different choice is marked.

## 21 Time limits in these provisions

21.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.

21.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.

21.3 The time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.

21.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.

21.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clauses 2 and 3.2.

21.6 *Normally*, the time by which something must be done is fixed but not essential.

## 22 Foreign Acquisitions and Takeovers Act 1975

22.1 The purchaser promises that the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer under the Foreign Acquisitions and Takeovers Act 1975.

22.2 This promise is essential and a breach of it entitles the vendor to *terminate*.

## 23 Strata or community title

### • Definitions and modifications

- 23.1 This clause applies only if the land (or part of it) is a lot in a strata, neighbourhood, precinct or community scheme (or on completion is to be a lot in a scheme of that kind).
- 23.2 In this contract –
- 23.2.1 'change', in relation to a scheme, means –
- a registered or registrable change from by-laws set out in this contract;
  - a change from a development or management contract or statement set out in this contract; or
  - a change in the boundaries of common property;
- 23.2.2 'common property' includes association property for the scheme or any higher scheme;
- 23.2.3 'contribution' includes an amount payable under a by-law;
- 23.2.4 'information certificate' includes a certificate under s184 Strata Schemes Management Act 2015 and s26 Community Land Management Act 1989;
- 23.2.5 'information notice' includes a strata information notice under s22 Strata Schemes Management Act 2015 and a notice under s47 Community Land Management Act 1989;
- 23.2.6 'normal expenses', in relation to an owners corporation for a scheme, means normal operating expenses usually payable from the administrative fund of an owners corporation for a scheme of the same kind;
- 23.2.7 'owners corporation' means the owners corporation or the association for the scheme or any higher scheme;
- 23.2.8 'the *property*' includes any interest in common property for the scheme associated with the lot; and
- 23.2.9 'special expenses', in relation to an owners corporation, means its actual, contingent or expected expenses, except to the extent they are –
- normal expenses;
  - due to fair wear and tear;
  - disclosed in this contract; or
  - covered by moneys held in the capital works fund.
- 23.3 Clauses 11, 14.8 and 18.4 do not apply to an obligation of the owners corporation, or to property insurable by it.
- 23.4 Clauses 14.4.2 and 14.5 apply but on a unit entitlement basis instead of an area basis.
- ### • Adjustments and liability for expenses
- 23.5 The *parties* must adjust under clause 14.1 –
- 23.5.1 a regular periodic contribution;
- 23.5.2 a contribution which is not a regular periodic contribution but is disclosed in this contract; and
- 23.5.3 on a unit entitlement basis, any amount paid by the vendor for a normal expense of the owners corporation to the extent the owners corporation has not paid the amount to the vendor.
- 23.6 If a contribution is not a regular periodic contribution and is not disclosed in this contract –
- 23.6.1 the vendor is liable for it if it was determined on or before the contract date, even if it is payable by instalments; and
- 23.6.2 the purchaser is liable for all contributions determined after the contract date.
- 23.7 The vendor must pay or allow to the purchaser on completion the amount of any unpaid contributions for which the vendor is liable under clause 23.6.1.
- 23.8 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of –
- 23.8.1 an existing or future actual, contingent or expected expense of the owners corporation;
- 23.8.2 a proportional unit entitlement of the lot or a relevant lot or former lot, apart from a claim under clause 6; or
- 23.8.3 a past or future change in the scheme or a higher scheme.
- 23.9 However, the purchaser can *rescind* if –
- 23.9.1 the special expenses of the owners corporation at the later of the contract date and the creation of the owners corporation when calculated on a unit entitlement basis (and, if more than one lot or a higher scheme is involved, added together), less any contribution paid by the vendor, are more than 1% of the price;
- 23.9.2 in the case of the lot or a relevant lot or former lot in a higher scheme –
- a proportional unit entitlement for the lot is not disclosed in this contract; or
  - a proportional unit entitlement for the lot is disclosed in this contract but the lot has a different proportional unit entitlement at the contract date or at any time before completion;
- 23.9.3 a change before the contract date or before completion in the scheme or a higher scheme substantially disadvantages the purchaser and is not disclosed in this contract; or



- 23.9.4 a resolution is passed by the owners corporation before the contract date or before completion to give a strata renewal plan to the owners in the scheme for their consideration 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 a proposed *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 it has been agreed that it will be conducted as an *electronic transaction*, a *party* *serves* a notice that it will not be conducted as an *electronic transaction*.
- 30.3 If, because of clause 30.2.2, 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, but only to the extent, that any other provision of this contract is inconsistent with this clause, the provisions of this clause prevail;
- 30.4.2 *normally*, words and phrases used in this clause 30 (italicised and in Title Case, such as *Electronic Workspace* and *Lodgement Case*) have the same meaning which they have in the *participation rules*;
- 30.4.3 the *parties* must conduct the *electronic transaction* in accordance with the *participation rules* and the *ECNL*;
- 30.4.4 a *party* must pay the fees and charges payable by that *party* to the *ELNO* and the *Land Registry* as a result of this transaction being an *electronic transaction*;
- 30.4.5 any communication from one *party* to another *party* in the *Electronic Workspace* made –
- after 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; and
- 30.9.2 the vendor must *populate* the *Electronic Workspace* with payment details at least 1 *business day* before the date for completion.
- 30.10 At least 1 *business day* before the date for completion, the *parties* must ensure that –
- 30.10.1 all *electronic documents* which a *party* must *Digitally Sign* to complete the *electronic transaction* are *populated* and *Digitally Signed*;
- 30.10.2 all certifications required by the *ECNL* are properly given; and
- 30.10.3 they do everything else in the *Electronic Workspace* which that *party* must do to enable the *electronic transaction* to proceed to completion.
- 30.11 If completion takes place in the *Electronic Workspace* –
- 30.11.1 payment electronically on completion of the price in accordance with clause 16.7 is taken to be payment by a single *settlement cheque*;
- 30.11.2 the completion address in clause 16.11 is the *Electronic Workspace*; and
- 30.11.3 clauses 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 *Electronic Workspace* allows the *parties* to choose whether financial settlement is to occur despite the computer systems of the *Land Registry* being inoperative for any reason at the *completion time* agreed by the *parties* –
- 30.13.1 *normally*, the *parties* must choose that financial settlement not occur; however



- 30.13.2 if both *parties* choose that financial settlement is to occur despite such failure and financial settlement occurs –
- all *electronic documents Digitally Signed* by the vendor, the *certificate of title* and any discharge of mortgage, withdrawal of caveat or other *electronic document* forming part of the *Lodgement Case* for the *electronic transaction* shall be taken to have been unconditionally and irrevocably delivered to the purchaser or the purchaser's mortgagee at the time of financial settlement together with the right to deal with the land comprised in the *certificate of title*; and
  - the vendor shall be taken to have no legal or equitable interest in the *property*.
- 30.14 A *party* who holds a *certificate of title* must act in accordance with any *Prescribed Requirement* in relation to the *certificate of title* but if there is no *Prescribed Requirement*, the vendor must *serve* the *certificate of title* after completion.
- 30.15 If the *parties* do not agree about the delivery before completion of one or more documents or things that cannot be delivered through the *Electronic Workspace*, the *party* required to deliver the documents or things –
- 30.15.1 holds them on completion in escrow for the benefit of; and
- 30.15.2 must immediately after completion deliver the documents or things to, or as directed by; the *party* entitled to them.
- 30.16 In this clause 30, these terms (in any form) mean –
- |                                 |   |
|---------------------------------|---|
| <i>adjustment figures</i>       | details of the adjustments to be made to the price under clause 14;   |
| <i>certificate of title</i>     | the paper duplicate of the folio of the register for the land which exists immediately prior to completion and, if more than one, refers to each such paper duplicate;  |
| <i>completion time</i>          | the time of day on the date for completion when the <i>electronic transaction</i> is to be settled;   |
| <i>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' 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>ENCL</i> ;  |
| <i>populate</i>                 | to complete data fields in the <i>Electronic Workspace</i> ; and  |
| <i>title data</i>               | the details of the title to the <i>property</i> made available to the <i>Electronic Workspace</i> by the <i>Land Registry</i> .   |

### 31 Foreign Resident Capital Gains Withholding

- 31.1 This clause applies only if –
- 31.1.1 the sale is not an excluded transaction within the meaning of s14-215 of Schedule 1 to the *TA Act*; and
- 31.1.2 a *clearance certificate* in respect of every vendor is not attached to this contract.
- 31.2 The purchaser must –
- 31.2.1 at least 5 days before the date for completion, *serve* evidence of submission of a purchaser payment notification to the Australian Taxation Office by the purchaser or, if a direction under clause 4.3 has been *served*, by the transferee named in the transfer *served* with that direction;
- 31.2.2 produce on completion a *settlement cheque* for the *remittance amount* payable to the Deputy Commissioner of Taxation;
- 31.2.3 forward the *settlement cheque* to the payee immediately after completion; and

- 31.2.4      serve evidence of receipt of payment of the *remittance amount*.
- 31.3      The vendor cannot refuse to complete if the purchaser complies with clauses 31.2.1 and 31.2.2.
- 31.4      If the vendor *serves* any *clearance certificate* or *variation*, the purchaser does not have to complete earlier than 7 days after that *service* and clause 21.3 does not apply to this provision.
- 31.5      If the vendor *serves* in respect of every vendor either a *clearance certificate* or a *variation* to 0.00 percent, clauses 31.2 and 31.3 do not apply.

62 PACIFIC HIGHWAY, ROSEVILLE NSW 2069

# **SPECIAL CONDITIONS FOR STANDARD TORRENS TITLE CONVEYANCE ANNEXURE A**

## **PROPERTY**

Lot 3, 62 Pacific Highway, Roseville NSW 2069,  
being lot [insert] in Deposited Plan [insert] being  
Folio Identifier 3/[insert]

## **BETWEEN**

Ku-ring-gai Municipal Council

## **AND**

Roseville Returned Serviceman's Memorial  
Club Limited (ACN 001 071 138)

## **MILLS OAKLEY LAWYERS**

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Ref: TXLS/3370736

## Table of Contents

32	Definitions.....	1
33	Interpretation .....	2
34	Amendments to Standard Form .....	3
35	Entire Agreement .....	3
36	Interest on Delayed Completion .....	3
37	Notice to Complete.....	3
38	Death and Incapacity.....	4
39	Encumbrances and Charges .....	4
40	Call Option Fee .....	4
41	Clearance Certificate.....	4
42	Land Tax .....	4
43	Council, water and sewerage rates and land tax .....	5
44	GST.....	5
45	Provisions of Put and Call Option Deed incorporated.....	7
46	Price .....	7
Schedule 1	Title Search .....	9
Schedule 2	Deposited Plan.....	10
Schedule 3	Registered Dealings .....	11
Schedule 4	Section 10.7 Certificate .....	12
Schedule 5	Drainage Diagram and Sewer Reference Sheet.....	13
Schedule 6	Clearance Certificate .....	14
Schedule 7	Land Tax Certificate .....	15
Schedule 8	Rates.....	16

## Special Conditions

**Between:** Ku-ring-gai Municipal Council  
of 818 Pacific Highway, Gordon NSW 2072 (**Vendor**)

**And:** Roseville Returned Serviceman's Memorial Club Limited (ACN 001 071 138)  
of 64 Pacific Highway, Roseville NSW 2069 (**Purchaser**)

**Property:** Lot 3, 62 Pacific Highway, Roseville NSW 2069, being lot [insert] in Deposited Plan [insert] being Folio Identifier 3/[insert]

**Dated:** [insert date]

## 32 Definitions

The following words have these meanings in this contract unless the contrary intention appears:

**Act** means the *Conveyancing Act 1919*;

**Authority** means the crown, a minister, a government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court and any officer or agent of any of the foregoing acting as such and includes Council, and all references in this document apply to both state and federal jurisdictions;

**Bank** means an authorised deposit taking institution as defined in the *Banking Act 1959*;

**Call Option Fee** has the same meaning given in the Put and Call Option Deed;

**Contract** means this contract for sale of land;

**Contract Date** means the date shown in the reference schedule of the Standard Form being the date on which this Contract is made;

**Council means** Ku-ring-gai Municipal Council;

**Defaults** means that the purchaser has failed to comply with a term or condition of the contract;

**Deposit** means 10% of the Price;

**Discharge** means a registrable discharge, surrender or withdrawal of an Encumbrance;

**Encumbrance** includes a mortgage, lease or caveat;

**Particulars of Sale** means the particulars of sale in this Contract set out on Reference Schedule of the Standard Form;

**Price** is defined at clause 46;

**Put and Call Option Deed** means the Put and Call Option Deed dated [insert date] made between the Vendor and the Purchaser;

**Regulation** means the *Conveyancing (Sale of Land) Regulation 2017*;

**Special Conditions** means the conditions contained in this Annexure A; and

**Standard Form** means the standard form Contract for Sale of Land – 2018 Edition.

### **33 Interpretation**

- (a) In this contract unless the contrary intention appears:
  - (i) headings are for convenience only and do not affect interpretation;
  - (ii) the singular includes the plural and vice versa;
  - (iii) a gender includes any gender;
  - (iv) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
  - (v) a reference to person includes:
    - (A) a body corporate, an unincorporated body or other entity;
    - (B) a reference to that person's executors, administrators, successors, permitted assigns and substitutes; and
    - (C) a person to whom this contract is novated;
  - (vi) a reference to a clause, is to a clause of this contract;
  - (vii) a reference to a schedule or annexure is to a schedule or annexure to this contract;
  - (viii) a reference to a specific document is to that document as amended, novated, supplemented, varied or replaced;
  - (ix) a reference to a thing, including but not limited to a right, includes a reference to a part of that thing;
  - (x) a reference to legislation includes but is not limited to a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument under it;
  - (xi) a reference to conduct, includes but is not limited to, an omission, statement or undertaking whether or not in writing;
  - (xii) an agreement, representation or warranty in favour of two or more people is for the benefit of them jointly and severally;
  - (xiii) an agreement, representation or warranty on the part of two or more people binds them jointly and severally;
  - (xiv) subject to this contract, if a period of time runs to or from a given date, act or event, then the time is calculated exclusive of the date, act or event;
  - (xv) a reference to a business day is a reference to a period of time commencing at midnight and ending 24 hours later; and
  - (xvi) a reference to time is a reference to Sydney time.
- (b) The provisions of this contract, which are intended to have application after completion, continue to apply from completion.

- (c) If there is an inconsistency between the Standard Form and the Special Conditions, then the Special Conditions prevail.

---

### **34 Amendments to Standard Form**

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The following clauses in the Standard Form are amended:

- (a) clause 16.5 is amended by deleting “*plus another 20% of that fee*”.

---

### **35 Entire Agreement**

---

- (a) This Contract and the Put and Call Option Deed constitute the entire agreement of the parties about the sale of the property.
- (b) This Contract and the Put and Call Option Deed supersede all previous agreements, understandings and negotiations on the sale of the property.
- (c) In entering into this Contract and the Put and Call Option Deed, the Purchaser relies only on the representations and warranties in this contract and the Put and Call Option Deed.

---

### **36 Interest on Delayed Completion**

---

- (a) If the Purchaser completes this Contract but does not do so on or before the completion date, then on the actual date of completion, the Purchaser must pay interest on:
  - (i) the balance of the Purchase Price; and
  - (ii) any other amount that the Purchaser must pay to the Vendor under this Contract.
- (b) The Purchaser must pay the interest calculated at a rate of 8% per annum daily for the period from and including the day after the completion date, up to and excluding the actual date of completion.
- (c) Despite Standard Form, clause 14, the parties must make adjustments at the earlier of completion date, the date possession is given to the Purchaser and the actual date of completion.
- (d) Payment of the interest under this clause 36, is an essential term of this Contract.
- (e) The Purchaser need not pay interest for as long as the Purchaser is ready, willing and able to complete but completion cannot take place because the Vendor cannot complete.

---

### **37 Notice to Complete**

---

- (a) A party entitled to serve a notice to complete may serve a notice requiring completion to occur on a day being not less than 14 days after the date of service of the notice. The notice will be (both at law and in equity) sufficient and reasonable notice to make time of the essence of this Contract even if the party serving the notice has not made any previous request or demand for completion.
- (b) A notice to complete may be withdrawn at any time by the party that served it without prejudice to its rights to serve a further notice under this clause 37.
- (c) This clause 37 is an essential term of this contract.

**38 Death and Incapacity**

---

- (a) Either party may rescind this Contract, if the other party is an individual who:
  - (i) dies; or
  - (ii) becomes unsound of mind and as a result is unable to manage their own affairs.
- (b) Either party may terminate this Contract if the other party is a company, which:
  - (i) resolves to go into liquidation;
  - (ii) has a petition for its winding-up presented and not withdrawn within 30 days of presentation;
  - (iii) enters into a scheme of arrangement with its creditors under the *Corporations Act 2001* or similar legislation; or
  - (iv) has a liquidator, provisional liquidator, administrator, receiver or receiver and manager of it appointed.
- (c) If anything in clause 38(b) occurs, then the defaulting party has failed to comply with an essential provision of this Contract.
- (d) The party not in default may rescind or terminate this Contract under this clause 38, without affecting any of its other rights.

**39 Encumbrances and Charges**

---

- (a) If an Encumbrance is noted on the folio identifier for the property on completion and the parties have not made the sale subject to that Encumbrance, then:
  - (i) the Purchaser must accept a duly executed (and, if necessary, electronic) Discharge, which removes the Encumbrance; and
  - (ii) the Vendor must give the Purchaser the applicable registration fee.

**40 Call Option Fee**

---

- (a) On the date of this Contract, the amount of the Call Option Fee paid to the Vendor under the Put and Call Option Deed will be part of and be credited against the Deposit payable by the Purchaser to the Vendor under this Contract.
- (b) If this Contract is terminated in accordance with its terms due to an act or omission of the Vendor which causes the Vendor to default, the Call Option Fee paid to the Vendor under the Put and Call Option Deed as at the date of termination will be promptly refunded to the Purchaser.

**41 Clearance Certificate**

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The Purchaser acknowledges that for the purposes of clause 31 and section 14-210(2) of Schedule 1 of the TA Act, a clearance certificate is attached to this contract as Schedule 6.

**42 Land Tax**

---

The purchaser acknowledges that for the purposes of Schedule 2 to the Conveyancing (Sale of Land) Regulation 2017 (NSW) a land tax certificate is attached to this Contract as Schedule 7.



**43 Council, water and sewerage rates and land tax**

---

- (a) If, at completion, a separate assessment for Council rates in respect of the property for the year current at completion has not been issued, no regard is to be had to the actual separate assessment if and when it issues and:
  - (i) the Vendor must pay or procure the payment of the actual separate assessment if and when it issues for the year current at completion; and
  - (ii) on completion the Purchaser must adjust the amount referred to in Item 1 of Schedule 8 in accordance with clause 14.
- (b) If, at completion, a separate assessment for water and sewerage rates in respect of the property for the quarter current at completion has not been issued, no regard is to be had to the actual separate assessment if and when it issues and:
  - (i) the Vendor must pay or procure the payment of the actual separate assessment if and when it issues for the quarter current at completion; and
  - (ii) on completion the Purchaser must adjust the amount referred to in Item 2 of Schedule 8 in accordance with clause 14.
- (c) The Vendor requires a land tax adjustment for the year current at completion as follows:
  - (i) on completion the Purchaser must adjust the amount referred to in Item 3 of Schedule 8 in accordance with clause 14; and
  - (ii) no regard is to be had to any actual assessment for any land which includes the property or for the property, which is issued for the year current at completion.
- (d) The Vendor must, before completion, pay or procure the payment of:
  - (i) the assessment for Council rates;
  - (ii) any assessment for water and sewerage rates; and
  - (iii) any assessment of land tax,

issued before completion for any land which includes the property or for the property, either in full or to the extent necessary to free the property from any charge for payment of rates.

**44 GST**

---

- (a) In this clause:
  - (i) **“Australian Property Institute”** means the property institute of that name.
  - (ii) **“Certified Practising Valuer”** means a person who is a member of and has been accredited by the Australian Property Institute as being qualified to perform a valuation of real property.

- (iii) **“Chartered Valuation Surveyor”** means a person who is a member of and has been accredited by the Royal Institution of Chartered Surveyors as being a qualified property specialist.
- (iv) **“Commissioner of Taxation”** has the meaning given to it in the GST Act.
- (v) **“GST”** refers to goods and services tax under A New Tax System (Goods and Services Tax) Act 1999 (**“GST Act”**) and the terms used have the meanings as defined in the GST Act.
- (vi) **“GST Regulations”** mean any applicable regulation in relation to the GST Act.
- (vii) **“Professional Valuer”** means:
  - (A) a person registered or licensed to carry out real property valuations under a Commonwealth, a State or a Territory law; or
  - (B) a person who carries on a business as a valuer in a State or a Territory where that person is not required to be licensed or registered to carry on a business as a valuer; or
  - (C) a person who is:
    - (1) a member of the Australian Property Institute and accredited as a Certified Practicing Valuer; or
    - (2) a member of the Royal Institution of Chartered Surveyors and accredited as a Chartered Valuation Surveyor; or
    - (3) a member of the Australian Valuers Institute and accredited as a Certified Practicing Valuer.
- (viii) **“Royal Institution of Chartered Surveyors”** means the global professional body of that name.
- (b) It is agreed that the price for the sale covered by this Contract is exclusive of the Vendor’s liability for GST.
- (c) If GST is payable on the sale, then on completion:
  - (i) the Purchaser will pay to the Vendor, in addition to the Price, the amount payable by the Vendor as GST on the taxable supply made by the Vendor under this Contract.
  - (ii) The Vendor shall deliver to the Purchaser a tax invoice for the supply in a form which complies with the GST Act and the GST Regulations.
- (d) The Vendor will not utilise the margin scheme in working out the amount of GST on the taxable supply under this contract unless a request in writing is made by the Purchaser.
- (e) If the Purchaser within seven (14) days of the date of this Contract requests in writing that the Vendor apply the margin scheme, the Vendor will agree to that request subject to the following:
  - (i) the parties agree that the margin scheme is to apply in working out the amount of GST on the sale of the property;
  - (ii) the Vendor will obtain before completion a valuation of the property as at 1 July 2000 by a Professional Valuer which valuation complies with the relevant requirements of the GST Act and of the Commissioner of Taxation and which is

expressed to be for the application of the margin scheme to the sale of the property;

- (iii) the Vendor will provide a copy of the valuation to the Purchaser;
  - (iv) the Purchaser will on or before completion pay to the Vendor an amount that will reimburse the Vendor for the reasonable costs incurred by the Vendor in obtaining the expert taxation advice and the valuation;
  - (v) the Purchaser will on or before completion pay to the Vendor in addition to the Price the amount of the GST worked out under the margin scheme based on that valuation;
  - (vi) if the valuation proves not to be an approved valuation as determined by the Commissioner of Taxation then the Purchaser will pay to the Vendor on demand in writing from the Vendor any extra GST for which the Vendor is liable and also any general interest charge, additional tax or penalty (however described) that arises to the Vendor under the GST Law as a result of the valuation not being an approved valuation;
  - (vii) a certificate signed by the accountant or solicitor acting for the Vendor stating the amount of any extra GST and of any general interest charge, additional tax or penalty or legal or accountancy fee shall, subject to the purchaser's entitlement under any relevant law to have those costs independently assessed, be sufficient evidence for the Vendor to establish its right to make the demand for payment.
- (f) This clause shall not merge on completion.

## **45 Provisions of Put and Call Option Deed incorporated**

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The following conditions contained in the Put and Call Option Deed are incorporated in and form part of this Contract, and for the purposes of this Contract will apply as if the date of the Put and Call Option Deed as defined in the Put and Call Option Deed, were the date of this Contract:

- (a) Clause 12 – Access

## **46 Price**

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The Price means:

- (a) the purchase price set out in the Particulars of Sale; or
- (b) the market value of the Property as determined by a further valuation which may only be undertaken at the election of the Vendor after 12 months of the signing of the planning agreement dated [insert date] between the Purchaser and the Council.

With respect to any further valuation, it is required that:

- (c) the Vendor write to the Purchaser to notify the Purchaser that the Vendor elects to have a further valuation undertaken on the Property;
- (d) the Purchaser must pay the Vendor's reasonable costs for any further valuation; and

- (e) any further valuation is to be undertaken in accordance with the Ku-ring-gai Council Acquisition and Divestment of Land Policy adopted on 10 June 2014, and as modified and varied from time to time.

## **Schedule 1      Title Search**

## NSW LRS - Title Search

NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH  
-----FOLIO: 2/202148  
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SEARCH DATE	TIME	EDITION NO	DATE
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18/3/2019	4:04 PM	-	-

VOL 9013 FOL 231 IS THE CURRENT CERTIFICATE OF TITLE

LAND  
----LOT 2 IN DEPOSITED PLAN 202148  
LOCAL GOVERNMENT AREA KU-RING-GAI  
PARISH OF GORDON COUNTY OF CUMBERLAND  
TITLE DIAGRAM DP202148FIRST SCHEDULE  
-----

THE COUNCIL OF THE MUNICIPALITY OF KU-RING-GAI

SECOND SCHEDULE (2 NOTIFICATIONS)  
-----

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 LAND EXCLUDES MINERALS (S.141 PUBLIC WORKS ACT, 1912)

NOTATIONS  
-----

UNREGISTERED DEALINGS: NIL

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

PRINTED ON 18/3/2019

## **Schedule 2      Deposited Plan**

PLAN IN REGISTRAR GENERAL'S OFFICE	Table of measures 1/16 1/8 1/4 1/2 3/4 1 1 1/2 2 3 4 5 6 8 10 12 16 20 24 30 36 40 48 60 72 80 96 120 144 180 240 360 480 720 960 1440 1920 2880 3840 5760 7680 11520 15360 23040 30720 46080 61440 92160 122880 184320 245760 368640 491520 737280 983040 1474560 1966080 2949120 3932160 5898240 7864320 11796480 15728640 23592960 31457280 47185920 62914560 94371840 125829120 188743680 251658240 377486720 503315200 754972800 1006630400 1509945600 2013260800 3019891200 4026521600 6039782400 8053043200 12079296000 16105548800 24158323200 32211097600 48316646400 64422195200 96633292800 128844288000 193266432000 257688576000 386532864000 515377152000 773066720000 1030756288000 1546134400000 2061512512000 3092268800000 4123024000000 6184537600000 8246051200000 12369075200000 16492100800000 24738150400000 32984199200000 49476298400000 65968397600000 98952595200000 131936792800000 197905184000000 263873576000000 395811168000000 527748760000000 791623104000000 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2267717292624000 3401516732624000 4535316172624000 6803115612624000 9070915052624000 13606719452624000 18142523852624000 27218318252624000 36294112652624000 54432097052624000 72570081452624000 108856025452624000 145141969452624000 217717913452624000 290293857452624000 435439801452624000 580585745452624000 865731689452624000 1150877633452624000 1726023577452624000 2301169521452624000 3451628961452624000 4602088401452624000 6903547841452624000 9205007281452624000 13807466721452624000 184099261614526240000000
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## **Schedule 3      Registered Dealings**

**Schedule 4      Section 10.7 Certificate**

# PLANNING CERTIFICATE

818 Pacific Highway, Gordon NSW 2072  
Locked Bag 1006, Gordon NSW 2072  
T 02 9424 0000 F 02 9424 0001  
DX 8703 Gordon TTY 02 9424 0875  
E [kmc@kmc.nsw.gov.au](mailto:kmc@kmc.nsw.gov.au)  
W [www.kmc.nsw.gov.au](http://www.kmc.nsw.gov.au)  
ABN 86 408 856 411



UNDER SECTION 10.7 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

## PROPERTY DETAILS

**Address:** 62 Pacific Highway ROSEVILLE NSW 2069

**Lot Description:** Lot 2 DP 202148

## CERTIFICATE DETAILS

**Certificate No:** ePC0773/19 **Certificate Date:** 19/03/2019

**Certificate Type:** Section 10.7(2) & (5)

## APPLICANT DETAILS

**REF:** 55998306

S Property  
P O Box 447  
SOUTHBANK VIC 3205

## BACKGROUND INFORMATION

This certificate provides information on how a property (such as land, a house, a commercial building, etc.) may be used and the limits on its development. The certificate contains information Council is aware of through its records and environmental plans with data supplied by the State Government. The details contained in this certificate are limited to that required by Section 10.7 of the Environmental Planning and Assessment Act.

**THE FOLLOWING INFORMATION IS ISSUED UNDER SECTION 10.7(2)  
OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

**MATTERS AFFECTING THE LAND AS PRESCRIBED BY SCHEDULE 4 –  
ENVIRONMENTAL PLANNING & ASSESSMENT ACT REGULATION, 2000.**

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

**(1) *Which environmental planning instruments apply to the carrying out of development on this land?***

Ku-ring-gai Local Environmental Plan (Local Centres) 2012 as published on the NSW Legislation Website on 25 January 2013.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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 & Offensive Development.

State Environmental Planning Policy No.44 - Koala Habitat Protection.

State Environmental Planning Policy No.55 - Remediation of Land.

State Environmental Planning Policy No.62 - Sustainable Aquaculture.

State Environmental Planning Policy No.64 - Advertising and Signage.

State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development.

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

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

State Environmental Planning Policy (State Significant Precincts) 2005.

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

State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007.

State Environmental Planning Policy (Infrastructure) 2007.

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

State Environmental Planning Policy (Affordable Rental Housing) 2009.

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

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

State Environmental Planning Policy (Coastal Management) 2018.

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

**(2) *Which proposed environmental planning instruments apply to the carrying out of development on this land?* (Including planning proposals and proposed environmental planning instruments that are or have been the subject of community consultation or on public exhibition under the E. P. & A. Act).**

There are no proposed environmental planning instruments that apply to this land.

**(3) Which development control plans apply to the carrying out of development on this land?**

Ku-ring-gai Local Centres Development Control Plan

***SPECIAL NOTE:** A development control plan adds further detail to local environmental plans and may address issues such as building design, car parking, landscaping etc. Copies of the Plans are available from Council.*

**2. Zoning and land use under relevant local environmental plans (other than a SEPP or proposed SEPP)**

**(a) What is the zoning of this property and the relevant environmental planning instrument?**

Part B2 Local Centre and part RE1 Public Recreation under the provisions of Ku-ring-gai Local Environmental Plan (Local Centres) 2012.

**(b) What does not require development consent under the above environmental planning instrument?**

For that part zoned B2 Local Centre - Home occupations.

For that part zoned RE1 Public Recreation - Environmental facilities; Environmental protection works; Roads.

For that part zoned SP2 Infrastructure (Classified Road) - Nil.

Note: Please refer to the provisions for Exempt and Complying Development as described in Part 3 of Ku-ring-gai Local Environmental Plan (Local Centres) 2012.

**(c) What does require development consent under the above environmental planning instrument?**

For that part zoned B2 Local Centre - Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Group homes (permanent); Hostels; Information and education facilities; Light industries; Medical centres; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Seniors housing; Service stations; Shop top housing; Tourist and visitor accommodation; Water reticulation systems; Any other development not specified in item (b) or (d).

For that part zoned RE1 Public Recreation - Animal boarding or training establishments; Bee keeping; Camping grounds; Car parks; Caravan parks; Centre-based child care facilities; Community facilities; Emergency services facilities; Flood mitigation works; Food and drink premises; Forestry; Information and education facilities; Kiosks; Markets; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Roadside stalls; Signage; Water recycling facilities; Water supply systems.

For that part zoned SP2 Infrastructure (Classified Road) - Classified Road, including any development that is ordinarily incidental or ancillary to development for that purpose; Environmental protection works; Flood mitigation works; Recreation areas; Roads.



**(d) *What is prohibited under the above environmental planning instrument?***

For that part zoned B2 Local Centre - Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Residential accommodation; Rural industries; Sewage treatment plants; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies.

For that part zoned RE1 Public Recreation - Any development not specified in item (b) or (c).

For that part zoned SP2 Infrastructure (Classified Road) - Any development not specified in item (b) or (c).

**(e) *What is the proposed zoning of this property and the relevant proposed environmental planning instrument?***

Not applicable. There are no proposed environmental planning instruments that relate to this matter.

**(f) *What does not require development consent under the above proposed environmental planning instrument?***

Not applicable. There are no proposed environmental planning instruments that relate to this matter.

**(g) *What does require development consent under the above proposed environmental planning instrument?***

Not applicable. There are no proposed environmental planning instruments that relate to this matter.

**(h) *What is prohibited under the above proposed environmental planning instrument?***

Not applicable. There are no proposed environmental planning instruments that relate to this matter.

**(i) *Do any development standards applying to the land fix minimum land dimensions for the erection of a dwelling-house on the land?***

There are no provisions in Ku-ring-gai Local Environmental Plan (Local Centres) 2012

that regulate minimum dimension sizes for the erection of a dwelling house on this property.

**(j) Does the land include or comprise critical habitat?**

No.

**(k) Is the land in a conservation area?**

No.

**SPECIAL NOTE:** A conservation area is a place of historic and aesthetic value to the community. It contains a number of elements of significance, such as a historic subdivision layout, a pattern of building "footprints" within each street block, buildings of historic and architectural importance, road alignments, trees, gutters and kerb edges which all combine to create a sense of place that is worth keeping. Council's Heritage Planner can provide you with more information on this matter.

**(l) Is an item of environmental heritage situated on the land?**

No.

**SPECIAL NOTE:** You are advised that the consent authority may, before granting consent to any development: (a) on land on which a heritage item is located, or (b) on land that is within a heritage conservation area, or (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

### **3. Complying development**

**The extent to which the land is land on which complying development may or may not be carried out under each of the codes for complying development because of the provisions of clauses 1.17A(1)(c) to (e), (2), (3) and (4), 1.18(1)(c3) and 1.19 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and if complying development may not be carried out on that land the reason why it may not be carried out under those clauses?**

**(Special Note:** It is your responsibility to ensure that you comply with any other general requirements of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Failure to do so may mean that a Complying Development Certificate issued under the provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 is invalid).

#### **Container Recycling Facilities Code**

Complying development under the Container Recycling Facilities Code **may** be carried out on the land.

### **Commercial and Industrial Alterations Code**

Complying development under the Commercial and Industrial Alterations Code **may** be carried out on the land.

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

Complying development under the Commercial and Industrial (New Buildings and Additions) Code **may not** be carried out on the land. The land is affected by the following general exemptions and/or land based exclusions:

- ☐ Part of the land is land that is reserved for a public purpose in an environmental planning instrument. This exclusion applies only to the part of the land that is described and mapped on that instrument.

### **Demolition Code**

Complying development under the Demolition Code **may** be carried out on the land.

### **Fire Safety Code**

Complying development under the Fire Safety Code **may** be carried out on the land.

### **General Development Code**

Complying development under the General Development Code **may** be carried out on the land.

### **Housing Code**

Complying development under the Housing Code **may not** be carried out on the land. The land is affected by the following general exemptions and/or land based exclusions:

- ☐ Part of the land is land that is reserved for a public purpose in an environmental planning instrument. This exclusion applies only to the part of the land that is described and mapped on that instrument.

### **Housing Alterations Code**

Complying development under the Housing Alterations Code **may** be carried out on the land.



## Low Rise Medium Density Housing Code

Complying development under the Low Rise Medium Density Housing Code **may not** be carried out on the land. The land is affected by the following general exemptions and/or land based exclusions:

- ☐ Part of the land is land that is reserved for a public purpose in an environmental planning instrument. This exclusion applies only to the part of the land that is described and mapped on that instrument.

## Subdivision Code

Complying development under the Subdivision Code **may** be carried out on the land.

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

Not applicable. This matter does not apply to land within Ku-ring-gai Local Government Area.

## 5. Mine subsidence

***Is the land proclaimed to be a mine subsidence district within the meaning of section 15 of the Mine Subsidence Compensation Act 1961?***

No. Council has not been notified that the land is subject to such a proclamation.

## 6. Road widening and road realignment

***Is the land affected by any road widening or road realignment under the Roads Act, any environmental planning instrument or any resolution of council?***

YES. The land or part of the land is identified as Classified Road on the Ku-ring-gai Local Environmental Plan (Local Centres) 2012 - Land Reservation Acquisition Map. Please refer to clause 5.1 of Ku-ring-gai Local Environmental Plan (Local Centres) 2012 for the relevant acquisition authority.

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

***Is the land affected by a policy adopted by council, or by any other public authority required to be referred to in a planning certificate, that restricts the development of the land because of the likelihood of land slip, bushfire, tidal inundation, subsidence, contamination, acid sulphate soils or other risk (other than flooding)?***

No.

Note: A review of Council's readily available records has been conducted to identify previous land uses that may have caused land contamination. This review did not reveal any reason for contamination of this property. However, prior to urban settlement, sizeable areas of Ku-ring-gai were covered by agricultural and horticultural activities. These uses are listed in the Managing Land Contamination Planning Guidelines as activities that may cause contamination. If you are concerned about possible contamination of the site you should make your own investigations regarding the condition of this property.

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

***Is development on the land or part of the land affected by a policy adopted by council, or by any other public authority required to be referred to in a planning certificate, subject to flood related development controls?***

No.

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

***Do any environmental planning instruments or proposed environmental planning instruments referred to in clause 1 make provision in relation to the acquisition of the land by a public authority, as referred to in section 3.15 of the Act?***

YES. The land or part of the land is identified as Classified Road on the Ku-ring-gai Local Environmental Plan (Local Centres) 2012 - Land Reservation Acquisition Map. Please refer to clause 5.1 of Ku-ring-gai Local Environmental Plan (Local Centres) 2012 for the relevant acquisition authority.

## 9. Contribution plans

### ***Which contribution plans apply if this land is developed?***

Ku-ring-gai Contributions Plan 2010.  
Ku-ring-gai s94A Contributions Plan 2015.

**SPECIAL NOTE:** A contribution plan, commonly known as a section 94 plan, outlines the financial costs Council charges if land is developed and Council believes the development will require additional services such as parks, roads etc. Copies of the contribution plans are available from Council.

## 9A. Biodiversity certified land

### ***Is the land, land that is biodiversity certified land under Part 8 of the Biodiversity Conservation Act 2016?***

Council has not been notified that the land is biodiversity certified land.

**SPECIAL NOTE:** Biodiversity certified land includes land certified under Part 7AA of the Threatened Species Conservation Act 1995 that is taken to be certified under Part 8 of the Biodiversity Conservation Act 2016.

## 10. Biodiversity stewardship sites

### ***Is the land, land that is a biodiversity stewardship site under a biodiversity stewardship agreement under part 5 of the Biodiversity Conservation Act 2016?***

Council has not been notified that the land is biodiversity stewardship land.

**SPECIAL NOTE:** Biodiversity stewardship agreements include biobanking agreements under Part 7A of the Threatened Species Conservation Act 1995 that are taken to be biodiversity stewardship agreements under Part 5 of the Biodiversity Conservation Act 2016.

## 10A. Native vegetation clearing set asides

### ***Is the land, land that contains a set aside area under section 60ZC of the Local Land Services Act 2013?***

Council has not been notified that the land contains a set aside area.

## 11. Bush fire prone land

### ***Is the land bush fire prone land?***

No.

**SPECIAL NOTE:** Bush fire prone land is defined in section 4 of the Environmental Planning and Assessment Act 1979 as meaning "land recorded for the time being as bushfire prone land on a bush fire prone land map for the area". The "area" is the local government area of Ku-ring-gai.

## **12. Property vegetation plans**

***Is the land, land to which a property vegetation plan under Native Vegetation Act 2003 applies?***

Council has not been notified that the land is subject to an approved property vegetation plan.

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

***Is the land, subject to an order under the Tree (Disputes between neighbours) Act 2006 to carry out work in relation to a tree on the land?***

Council has not been notified that the land is subject to such an order.

## **14. Directions under Part 3A**

***Is the land, land subject to a direction under Part 3A Section 75P(2)(c1) of the Environmental Planning and Assessment Act 1979 No.203?***

No.

## **15. Site Compatibility certificates and conditions for seniors housing**

***Is there a current site compatibility certificate (seniors housing), of which council is aware, in respect of proposed development on the land issued under clause 24 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004?***

The land is not subject to such a current site compatibility certificate (seniors housing) of which Council is aware.

## **16. Site Compatibility certificates for infrastructure, schools or TAFE establishments**

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

The land is not subject to such a valid site compatibility certificate (infrastructure) of which Council is aware.



## 17. Site Compatibility certificates and conditions for affordable rental housing

***Is there a current site compatibility certificate (affordable rental housing), of which council is aware, in respect of proposed development on the land issued under clause 37 of State Environmental Planning Policy (Affordable Rental Housing) 2009?***

The land is not subject to such a current site compatibility certificate (affordable rental housing) of which Council is aware.

## 18. Paper subdivision information

***Is the land, land subject to a development plan adopted by a relevant authority, land proposed to be subject to a consent ballot or land subject to a subdivision order?***

Not applicable.

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

## 19. Site verification certificate

***Is there a current site verification certificate, of which council is aware, in respect of the land issued under clause 17C of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007?***

The land is not subject to a current site verification certificate of which Council is aware.

***SPECIAL 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

***Does the land include 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?***

NSW Fair Trading has not provided Council with written confirmation that this property is listed on the Loose-Fill Asbestos Insulation Register.

**SPECIAL NOTE:** Some residential homes located in the Ku-ring-gai Local Government Area have been identified as containing loose-fill asbestos insulation, for example in the roof space. NSW Fair Trading maintains a Register of homes that are affected by loose-fill asbestos insulation.

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

For further information about the Loose-fill asbestos Public Register contact NSW Fair Trading. Tel: 13 32 20 or [www.loosefillasbestos.nsw.gov.au](http://www.loosefillasbestos.nsw.gov.au).

## 21. Affected building notices and building product rectification orders

***(1) Is there any affected building notice of which council is aware that is in force in respect of the land?***

No.

***(2) Is there any building product rectification order of which council is aware that is in force in respect of the land and has not been fully complied with?***

No.

***(3) Has any notice of intention to make a building product rectification order of which council is aware has been given in respect of the land and is outstanding?***

No.

**SPECIAL NOTE:** The terms "affected building notice" and "building product rectification order" have the same meaning as in the Building Products (Safety) Act 2017.

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

- (a) *Is the land to which this certificate relates significantly contaminated land within the meaning of that Act?***

No.

- (b) *Is the land to which this certificate relates subject to a management order within the meaning of that Act?***

No.

- (c) *Is the land to which this certificate relates subject to an approved voluntary management proposal within the meaning of that Act?***

No.

- (d) *Is the land to which this certificate relates subject to an ongoing maintenance order within the meaning of that Act?***

No.

- (e) *Is the land of which this certificate relates subject to a site audit statement within the meaning of the Act?***

No.

**SPECIAL NOTE:** If you have any concerns about land contamination beyond the information described in this certificate, you should contact the NSW Environmental Protection Authority. Tel: 131 555 or email [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au).

## THE FOLLOWING INFORMATION IS ISSUED UNDER SECTION 10.7(5) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

### ***Land Slip or Subsidence:***

Council records do not have sufficient information to indicate land slip or subsidence is likely to restrict development on this land. However, some lots in Ku-ring-gai Local Government Area contain filling and/or road batters which may be subject to settlement and require special consideration in the design of foundations.

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### ***Flooding:***

Some properties in the Ku-ring-gai Local Government area contain or adjoin natural drainage paths, pipelines, watercourses and depressions. During major rainfall or blockage of the drainage system surface water may affect the site or restrict future development.

**SPECIAL NOTE:** The Department of Planning and Environment and the Department of Commerce have not indicated any private property which may be affected by flooding of major rivers or creeks in the Ku-ring-gai Local Government Area.

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### ***Loose-fill asbestos insulation:***

Some residential homes located in the Ku-ring-gai Local Government Area have been identified as containing loose-fill asbestos insulation, for example in the roof space. NSW Fair Trading maintains a Register of homes that are affected by loose-fill asbestos insulation.

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

For further information about the Loose-fill asbestos Public Register please contact NSW Fair Trading. Tel: 13 32 20 or [www.loosefillasbestos.nsw.gov.au](http://www.loosefillasbestos.nsw.gov.au).

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### ***Contamination:***

Council has been advised that the land to which this certificate relates has been the subject of a Stage 1 - Preliminary Site Investigation prepared by SLR Global Environmental Solutions dated 19 September 2014. Report ID: 610.14210-R2. Further details can be obtained from Council.

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### ***Threatened species, populations and ecological communities:***

This land may contain threatened species, populations and ecological communities listed under the *Biodiversity Conservation Act 2016 (NSW)* and or the *Environment Protection Biodiversity Conservation Act 1999* (Commonwealth). For more information contact NSW Office of Environment and Heritage Tel: 131 555 or the Australian Government Department of Environment and Energy Tel: 1800 803 772.

This land may contain one or more of the following endangered or critically endangered

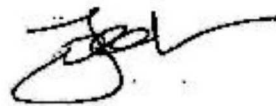


ecological communities listed under Schedule 2 of the *Biodiversity Conservation Act 2016* (NSW):

Blue Gum High Forest in the Sydney Basin Bioregion,  
Coastal Saltmarsh in the New South Wales North Coast, Sydney Basin and South East  
Corner Bioregions,  
Coastal Upland Swamp in the Sydney Basin Bioregion,  
Duffys Forest Ecological Community in the Sydney Basin Bioregion,  
Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and  
South East Corner Bioregions,  
Sydney Turpentine Ironbark Forest.

For more information contact NSW Department of Environment & Heritage. Tel:131 555 or email  
[info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au) <<mailto:info@environment.nsw.gov.au>>

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**John McKee**  
General Manager

## **Schedule 5      Drainage Diagram and Sewer Reference Sheet**

# DIAGRAM OF SANITARY DRAINAGE

Municipality of *Ku-Ring-Gai* SEWER AVAILABLE  
(Roseville)

Diagram No. 370591

R.S.L

**SYMBOLS AND ABBREVIATIONS**

□ Boundary Trap  
 ■ Pit  
 ■ Grease Interceptor  
 ■ Gully  
 ■ RT. P. Trap  
 ■ Reflux Sink

■ RV Reflux Valve  
 ○ VERT. Cleaning Eye  
 ○ V.P. Vent Pipe  
 ○ S.V.P. Soil Vent Pipe  
 ○ D.C.C. Down Cast Cowl

I.P. Induct Pipe  
 M.F. Mica Flap  
 Tuba  
 K.S. Kitchen Sink  
 W.C. Water Closet  
 B.W. Bath Waste

Ben. Basin  
 Sh. Shower  
 W.I.P. Wrought Iron Pipe  
 C.I.P. Cast Iron Pipe  
 F.W. Floor Waste  
 W.M. Washing Machine

Existing drainage shown by black lines Scale: 40 Feet to an inch

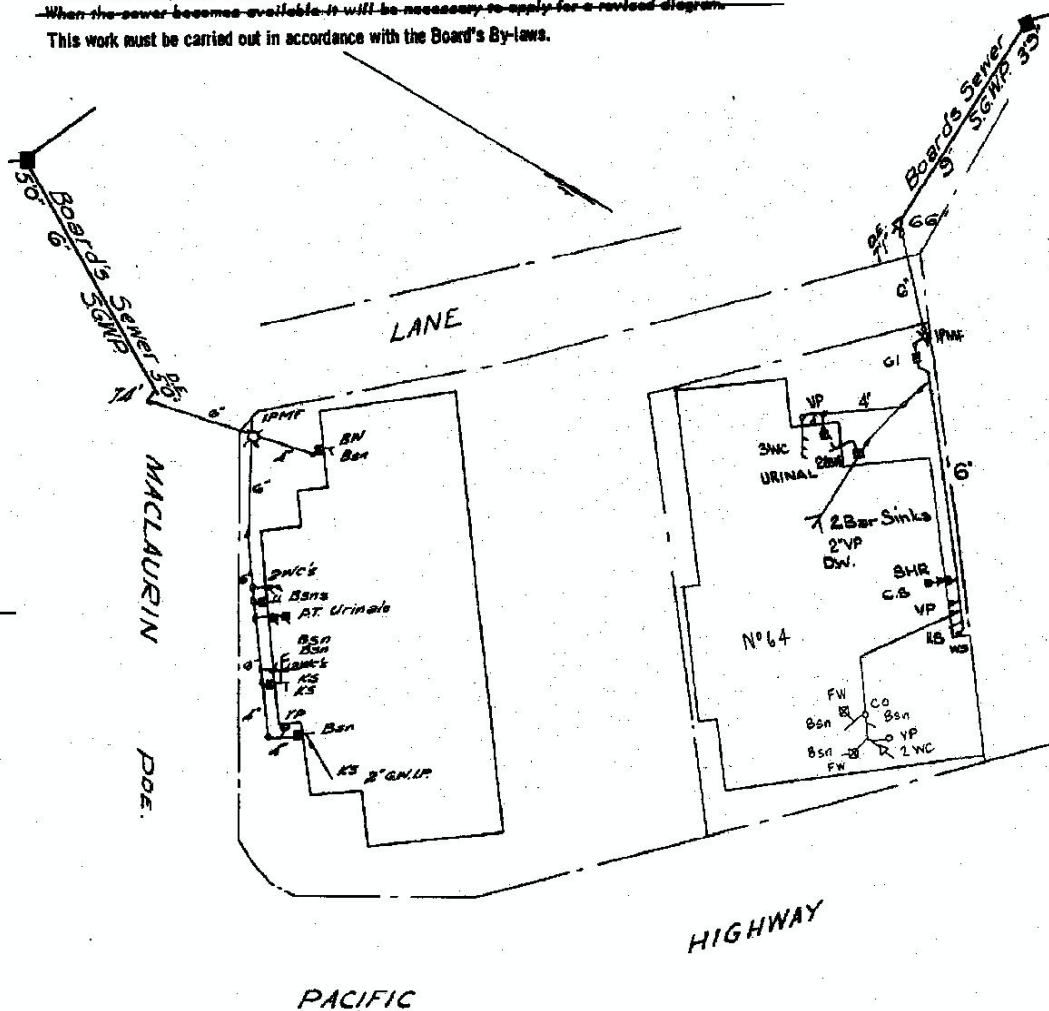
Proposed new drainage shown by full blue lines.

This diagram is the property of the Owner and is to be returned to him on completion of the work.

Subject to application, certificates for drainage and sanitary plumbing will be issued to the owner when the work is completed and passed by the Board's Inspector.

The Board accepts no responsibility for the suitability of the diagram in relation to the eventual position of the Board's sewer. When the sewer becomes available it will be necessary to apply for a revised diagram.

This work must be carried out in accordance with the Board's By-laws.



SHEET No. 2036

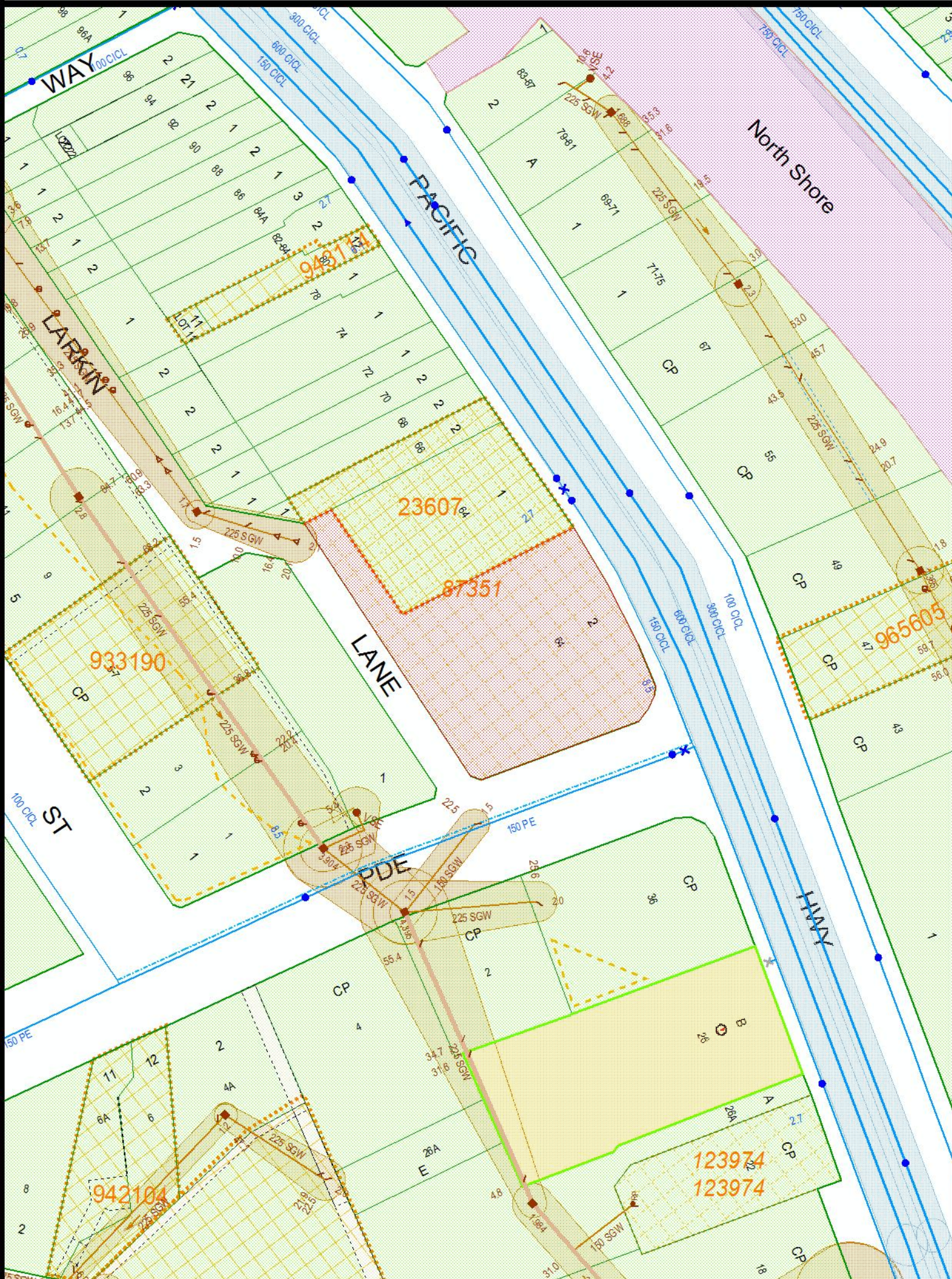
19  
FOR ENGINEER-IN-CHIEF

OFFICE USE ONLY			
W.C.	Designed by	DATE	Inspector
Bth	Inspector	/ /	
Shr			
Bsn	Examined by	/ /	Date
K.S.			Outfall
T	Chief Inspector	/ /	Drainer
Pig			Boundary Trap
Dge.Int.	DESIGN		is required.
Dge.Ext.			
		FIRST VISIT SUPERVISOR PASSED DATE Inspector Checked 213 305 488 089	

## Disclaimer

The information in this diagram shows the private wastewater pipes on this property. It may not be accurate or to scale and may not show our pipes, structures or all property boundaries. If you'd like to see these, please buy a Service location print.





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



## **Schedule 6      Clearance Certificate**

## **Schedule 7      Land Tax Certificate**

SAI GLOBAL PROPERTY DIVISION PTY LTD  
GPO Box 5420  
SYDNEY NSW 2001

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

This information is based on data held by Revenue NSW.

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Land ID	Land address	Taxable land value
D202148/2	62 PACIFIC HWY ROSEVILLE 2069	\$411 333

There is **no land tax** (including surcharge land tax) charged on the land up to and including the 2019 tax year.

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Yours sincerely,



Stephen R Brady

Chief Commissioner of State Revenue

## Important information

### Who is protected by a clearance certificate?

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

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

A certificate may be issued as 'clear' if:

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

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

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

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

### How do I clear a certificate?

The outstanding tax must be paid to clear a certificate. To do this, follow the steps shown on the certificate or contact Revenue NSW. Please allow 10 working days for your request to be processed.

### How do I get an updated certificate?

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

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

### Land value, tax rates and thresholds

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

## Contact details



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



1300 139 816\*



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



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

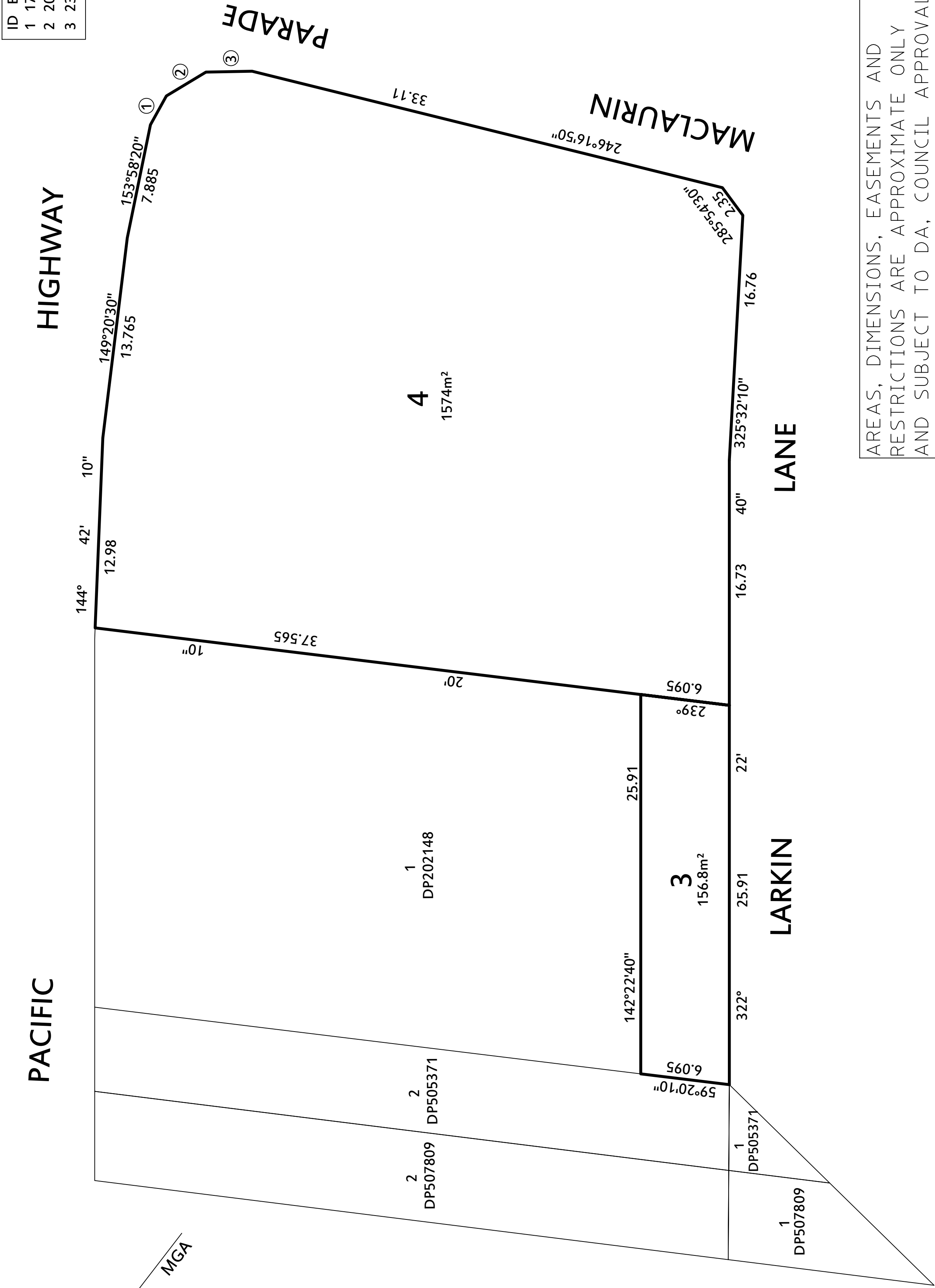
\* Overseas customers call +61 2 9761 4956  
Help in community languages is available.



## **Schedule 8      Rates**

1.    Item 1      Council Rates – \$[##] per annum.
2.    Item 2      Water Rates – \$[##] per quarter.
3.    Item 3      Land Tax – \$[##] per annum.

## **Schedule 5     Draft Plan**



AREAS, DIMENSIONS, EASEMENTS AND RESTRICTIONS ARE APPROXIMATE ONLY AND SUBJECT TO DA, COUNCIL APPROVAL, FINAL SURVEY AND REGISTRATION OF TITLES WITH LAND REGISTRY SERVICES NSW.

Surveyor: Dane Joseph Preston PRO POSITION SURVEYORS PH 94564609 Date of Survey: Surveyor's Reference:16502PACIFIC64	PLAN OF SUBDIVISION OF LOT 2 IN DP202148	L.G.A. Locality: Subdivision No: Lengths are in metres. Reduction Ratio 1:200	Registered:	DP DRAFT 6/4/2018
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## **Annexure C – Draft 88B Instrument**

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**Plan:**

**SUBDIVISION OF LOT 2 IN DP202148**

**Full name and address of the  
owner of the land**

**3/[DP number to be inserted]**

**Ku-ring-gai Council**  
818 Pacific Highway  
Gordon NSW 2072

**Part 1 (Creation)**

<b>Number of item shown in the intention panel on the Plan</b>	<b>Identity of the easement, profit a prendre, restriction or positive covenant to be created and referred to in the Plan</b>	<b>Burdened Lot(s) or parcel(s)</b>	<b>Benefited Lot(s), road(s), bodies or Prescribed Authorities</b>
1.	Right of footway	3/[DP number to be inserted]	Ku-ring-gai Council
2.	Right of carriageway	3/[DP number to be inserted]	Ku-ring-gai Council
3.	Positive Covenant	3/[DP number to be inserted]	Ku-ring-gai Council

Plan:

SUBDIVISION OF LOT 2 IN DP202148

## Part 2 (Terms)

### 1 **DICTIONARY**

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In this instrument:

- (a) **Act** means the *Conveyancing Act 1919* as amended from time to time.
- (b) **Council** means Ku-ring-gai Council.
- (c) **Grantor** means the owner of the Lot Burdened and includes the owners corporation of any strata scheme registered in respect of the Lot Burdened.
- (d) **Lot Burdened** means a lot burdened by an easement, positive covenant or restriction in this instrument.

### 2 **Terms of the right of footway**

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#### 2.1 **Easement**

- (a) Full and free right for the Council, and every person authorised by it, including any member of the public, to go, pass and repass on foot at all times and for all purposes without animals or vehicles over the land indicated herein as the Lot Burdened.
- (b) The operation of term 2.1(a) may be temporarily suspended by the Grantor for a reasonable period so that it may carry out construction works authorised by (and in accordance with) a development consent (within the meaning of the *Environmental Planning and Assessment Act 1979*).
- (c) Any temporary suspension under term 2.1(b) must first be the subject of reasonable notice, in writing, to the Council.

#### 2.2 **Release, etc.**

Name of person empowered to release vary or modify restriction of this easement:

The Grantor and the Ku-ring-gai Council jointly.

### 3 **Terms of the right of carriageway**

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#### 3.1 **Easement**

- (a) Full and free right for the Council, and every person authorised by it, including any member of the public, to go, pass and repass at all times and for all purposes with or without animals or vehicles or both over the land indicated herein as the Lot Burdened.
- (b) The operation of term 3.1(a) may be temporarily suspended by the Grantor for a reasonable period so that it may carry out construction works authorised by (and in accordance with) a development consent (within the meaning of the *Environmental Planning and Assessment Act 1979*).

- (c) Any temporary suspension under term 3.1(b) must first be the subject of reasonable notice, in writing, to the Council.

**3.2 Release, etc.**

Name of person empowered to release vary or modify restriction of this easement:  
The Grantor and the Ku-ring-gai Council jointly.

**4 Terms of Positive Covenant**

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**4.1 Positive covenant**

For the purposes of section 88BA of the Act, the Grantor covenants that it must:

- (a) maintain and repair any works on the Burdened Land, including any walkway constructed on the Burdened Land, to the reasonable satisfaction to of the Council; and
- (b) maintain sufficient public liability insurance covering the use of the Burdened Land, including any walkway constructed on the Burdened Land, as reasonably required by the Council; and
- (c) not place any structures, fixtures or articles (unless approved by Council) that might serve to impede access.

**4.2 Release, etc.**

Name of the person empowered to release vary or modify restriction of this positive covenant:

The Grantor and the Ku-ring-gai Council jointly.

**Executed by owner of Lot 2 in Deposited Plan 202148**

**EXECUTED by** Ku-ring-gai Council by its )  
authorised delegate pursuant to s 378 *Local* )  
*Government Act 1993* )

\_\_\_\_\_  
Name of Delegate

I certify that I am an eligible witness and )  
delegate signed in my presence )  
)

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Address of Witness



**Executed by the Council as Prescribed Authority**

**EXECUTED by** Ku-ring-gai Council by its )  
authorised delegate pursuant to s 378 *Local* )  
*Government Act* 1993 )

\_\_\_\_\_  
Name of Delegate

I certify that I am an eligible witness )  
 )  
 )

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Address of Witness