

Contract for the sale and purchase of land 2016 edition

TERM	MEANING OF TERM	NSW Duty:
vendor's agent		phone fax ref
vendor	DORWARD DEVELOPMENTS PTY LTD ACN 095 331 463 AS TRUSTEE FOR THE DORWARD PROPERTY TRUST ABN 69 620 193 742 PO Box 652, Echuca VIC 3564	
vendor's solicitor	DAWES & VARY RIORDAN PTY LTD 201 Hare Street, Echuca 3564 PO Box 378, Echuca 3564 DX 62501 Echuca email: HMelville@dvrlawyers.com.au	phone 03 5482 2555 fax 03 5482 5739 ref HJSM:JLM:20164933
date for completion	Refer to Further Provision 32	
land (address, plan details and title reference)	Lot on the attached proposed plan of subdivision (unregistered) which is part of Lot 9 in Deposited Plan 1213161 Folio Identifier 9/1213161 <input checked="" type="checkbox"/> VACANT POSSESSION <input type="checkbox"/> subject to existing tenancies	
improvements	<input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input type="checkbox"/> home unit <input type="checkbox"/> carspace <input type="checkbox"/> storage space <input checked="" type="checkbox"/> none <input type="checkbox"/> other:	
attached copies	<input checked="" type="checkbox"/> documents in the List of Documents as marked or numbered: <input type="checkbox"/> other documents:	

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

inclusions	<input type="checkbox"/> blinds	<input type="checkbox"/> dishwasher	<input type="checkbox"/> light fittings	<input type="checkbox"/> stove
	<input type="checkbox"/> built-in wardrobes	<input type="checkbox"/> fixed floor coverings	<input type="checkbox"/> range hood	<input type="checkbox"/> pool equipment
	<input type="checkbox"/> clothes line	<input type="checkbox"/> insect screens	<input type="checkbox"/> solar panels	<input type="checkbox"/> TV antenna
	<input type="checkbox"/> curtains	<input type="checkbox"/> other:		

exclusions

purchaser

purchaser's
 solicitor
 conveyancer

phone
fax
ref

price \$ _____

deposit \$ _____

balance \$ _____

exclusive of GST
(10% of the price, unless otherwise stated)

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

buyer's agent

vendor

witness

GST AMOUNT (optional)

The price includes

GST of: \$ _____

purchaser

JOINT TENANTS tenants in common in unequal shares

witness

Choices

- vendor agrees to accept a **deposit bond** (clause 3) NO yes
- proposed electronic transaction** (clause 30) NO yes
- parties agree that the deposit be invested (clause 2.9) NO yes

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

- land tax is adjustable NO yes
- GST: Taxable supply NO yes in full yes to an extent
- margin scheme will be used in making the taxable supply NO yes
- This sale is not a taxable supply because (one or more of the following may apply) the sale is:
- not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))
- by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))
- GST-free because the sale is the supply of a going concern under section 38-325
- GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-O
- input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

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

List of Documents

General	Strata or community title (clause 23 of the contract)
<input checked="" type="checkbox"/> 1 property certificate for the land	<input type="checkbox"/> 29 property certificate for strata common property
<input checked="" type="checkbox"/> 2 plan of the land	<input type="checkbox"/> 30 plan creating strata common property
<input checked="" type="checkbox"/> 3 unregistered plan of the land	<input type="checkbox"/> 31 strata by-laws not set out in <i>legislation</i>
<input checked="" type="checkbox"/> 4 plan of land to be subdivided	<input type="checkbox"/> 32 strata development contract or statement
<input checked="" type="checkbox"/> 5 document that is to be lodged with a relevant plan	<input type="checkbox"/> 33 strata management statement
<input checked="" type="checkbox"/> 6 section 149(2) certificate (Environmental Planning and Assessment Act 1979)	<input type="checkbox"/> 34 leasehold strata - lease of lot and common property
<input type="checkbox"/> 7 section 149(5) information included in that certificate	<input checked="" type="checkbox"/> 35 property certificate for neighbourhood property
<input type="checkbox"/> 8 service location diagram (pipes)	<input type="checkbox"/> 36 plan creating neighbourhood property
<input type="checkbox"/> 9 sewerage service diagram (property sewerage diagram)	<input type="checkbox"/> 37 neighbourhood development contract
<input type="checkbox"/> 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract	<input type="checkbox"/> 38 neighbourhood management statement
<input type="checkbox"/> 11 section 88G certificate (positive covenant)	<input type="checkbox"/> 39 property certificate for precinct property
<input type="checkbox"/> 12 survey report	<input type="checkbox"/> 40 plan creating precinct property
<input type="checkbox"/> 13 building certificate given under <i>legislation</i>	<input type="checkbox"/> 41 precinct development contract
<input type="checkbox"/> 14 insurance certificate (Home Building Act 1989)	<input type="checkbox"/> 42 precinct management statement
<input type="checkbox"/> 15 brochure or warning (Home Building Act 1989)	<input type="checkbox"/> 43 property certificate for community property
<input type="checkbox"/> 16 lease (with every relevant memorandum or variation)	<input type="checkbox"/> 44 plan creating community property
<input type="checkbox"/> 17 other document relevant to tenancies	<input type="checkbox"/> 45 community development contract
<input type="checkbox"/> 18 old system document	<input type="checkbox"/> 46 community management statement
<input type="checkbox"/> 19 Crown purchase statement of account	<input type="checkbox"/> 47 document disclosing a change of by-laws
<input type="checkbox"/> 20 building management statement	<input type="checkbox"/> 48 document disclosing a change in a development or management contract or statement
<input type="checkbox"/> 21 form of requisitions	<input type="checkbox"/> 49 document disclosing a change in boundaries
<input type="checkbox"/> 22 <i>clearance certificate</i>	<input type="checkbox"/> 50 certificate under Management Act – section 109 (Strata Schemes)
<input checked="" type="checkbox"/> 23 land tax certificate	<input type="checkbox"/> 51 certificate under Management Act – section 26 (Community Land)
Swimming Pools Act 1992	Other
<input type="checkbox"/> 24 certificate of compliance	<input type="checkbox"/> 52 Other:
<input type="checkbox"/> 25 evidence of registration	
<input type="checkbox"/> 26 relevant occupation certificate	
<input type="checkbox"/> 27 certificate of non-compliance	
<input type="checkbox"/> 28 detailed reasons of non-compliance	

WARNING— SWIMMING POOLS

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

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.

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.

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.

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

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

2. A lease may be affected by the Agricultural Tenancies Act 1990, the Residential Tenancies Act 2010 or the Retail Leases Act 1994.
3. If any purchase money is owing to the Crown, it may become payable when the transfer is registered.
4. If a consent to transfer is required under legislation, see clause 27 as to the obligations of the parties.
5. The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.
6. The purchaser will usually have to pay stamp duty 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 \$2 million or more, 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.

DISPUTES

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

AUCTIONS

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

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>GST Act</i>	A New Tax System (Goods and Services Tax) Act 1999;
<i>GST rate</i>	the rate mentioned in s4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
<i>legislation</i>	an Act or a by-law, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the vendor and the purchaser;
<i>property</i>	the land, the improvements, all fixtures and the inclusions, but not the exclusions;
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>remittance amount</i>	the lesser of 10% of the price (inclusive of GST, if any) and the amount specified in a <i>variation served by a party</i> ;
<i>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid and – <ul style="list-style-type: none"> • issued by a <i>bank</i> and drawn on itself; or • if authorised in writing by the vendor or the vendor's <i>solicitor</i>, some other <i>cheque</i>;
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice <i>served 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 *servicing* it –
- 5.2.1 if it arises out of this contract or it is a general question about the *property* or title - *within* 21 days after the contract date;
 - 5.2.2 if it arises out of anything *served* by the vendor - *within* 21 days after the later of the contract date and that *service*; and
 - 5.2.3 in any other case - *within* a reasonable time.

6 Error or misdescription

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

7 Claims by purchaser

- The purchaser can make a claim (including a claim under clause 6) before completion only by *servicing* it with a statement of the amount claimed, and if the purchaser makes one or more claims before completion –
- 7.1 the vendor can *rescind* if in the case of claims that are not claims for delay –
- 7.1.1 the total amount claimed exceeds 5% of the price;

- 7.1.2 the vendor *serves* notice of intention to *rescind*; and
- 7.1.3 the purchaser does not *serve* notice waiving the claims *within* 14 days after that *service*; and
- 7.2 if the vendor does not *rescind*, the *parties* must complete and if this contract is completed –
- 7.2.1 the lesser of the total amount claimed and 10% of the price must be paid out of the price to and held by the *depositholder* until the claims are finalised or lapse;
- 7.2.2 the amount held is to be invested in accordance with clause 2.9;
- 7.2.3 the claims must be finalised by an arbitrator appointed by the *parties* or, if an appointment is not made *within* 1 month of completion, by an arbitrator appointed by the President of the Law Society at the request of a *party* (in the latter case the *parties* are bound by the terms of the Conveyancing Arbitration Rules approved by the Law Society as at the date of the appointment);
- 7.2.4 the purchaser is not entitled, in respect of the claims, to more than the total amount claimed and the costs of the purchaser;
- 7.2.5 net interest on the amount held must be paid to the *parties* in the same proportion as the amount held; 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.

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 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 In this clause, enterprise, input tax credit, margin scheme, supply of a going concern, tax invoice and taxable supply have the same meanings as in the *GST Act*.
- 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, pay an expense of another party or pay an amount 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 amount; but
- 13.3.2 if this contract says this sale is a taxable supply, and payment would entitle the *party* to an input tax credit, the adjustment or payment is to be worked out by deducting any input tax credit to which the party receiving the adjustment is or was entitled and adding 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, 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.

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

15 Date for completion

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

16 Completion

• Vendor

- 16.1 On completion the vendor must give the purchaser any *document of title* that relates only to the *property*.
- 16.2 If on completion the vendor has possession or control of a *document of title* that relates also to other property, the vendor must produce it as and where necessary.

- 16.3 *Normally*, on completion the vendor must cause the legal title to the *property* (being an estate in fee simple) to pass to the purchaser free of any mortgage or other interest, subject to any necessary registration.
- 16.4 The legal title to the *property* does not pass before completion.
- 16.5 If the vendor gives the purchaser a document (other than the transfer) that needs to be lodged for registration, the vendor must pay the lodgment fee to the purchaser, plus another 20% of that fee.
- 16.6 If a *party* serves a land tax certificate showing a charge on any of the land, on completion the vendor must give the purchaser a land tax certificate showing the charge is no longer effective against the land.
- **Purchaser**
- 16.7 On completion the purchaser must pay to the vendor, by cash (up to \$2,000) or *settlement cheque* –
- 16.7.1 the price less:
- any deposit paid;
 - if clause 31 applies, the *remittance amount*; and
 - any amount payable by the vendor to the purchaser under this contract; and
- 16.7.2 any other amount payable by the purchaser under this contract.
- 16.8 If the vendor requires more than 5 *settlement cheques*, the vendor must pay \$10 for each extra *cheque*.
- 16.9 If any of the deposit is not covered by a bond or guarantee, on completion the purchaser must give the vendor an order signed by the purchaser authorising the *depositholder* to account to the vendor for the deposit.
- 16.10 On completion the deposit belongs to the vendor.
- **Place for completion**
- 16.11 *Normally*, the *parties* must complete at the completion address, which is –
- 16.11.1 if a special completion address is stated in this contract - that address; or
- 16.11.2 if none is stated, but a first mortgagee is disclosed in this contract and the mortgagee would usually discharge the mortgage at a particular place - that place; or
- 16.11.3 in any other case - the vendor's *solicitor's* address stated in this contract.
- 16.12 The vendor by reasonable notice can require completion at another place, if it is in NSW, but the vendor must pay the purchaser's additional expenses, including any agency or mortgagee fee.
- 16.13 If the purchaser requests completion at a place that is not the completion address, and the vendor agrees, the purchaser must pay the vendor's additional expenses, including any agency or mortgagee fee.
- 17 Possession**
- 17.1 *Normally*, the vendor must give the purchaser vacant possession of the *property* on completion.
- 17.2 The vendor does not have to give vacant possession if –
- 17.2.1 this contract says that the sale is subject to existing tenancies; and
- 17.2.2 the contract discloses the provisions of the tenancy (for example, by attaching a copy of the lease and any relevant memorandum or variation).
- 17.3 *Normally*, the purchaser can claim compensation (before or after completion) or *rescind* if any of the land is affected by a protected tenancy (a tenancy affected by Part 2, 3, 4 or 5 Landlord and Tenant (Amendment) Act 1948).
- 18 Possession before completion**
- 18.1 This clause applies only if the vendor gives the purchaser possession of the *property* before completion.
- 18.2 The purchaser must not before completion –
- 18.2.1 let or part with possession of any of the *property*;
- 18.2.2 make any change or structural alteration or addition to the *property*; or
- 18.2.3 contravene any agreement between the *parties* or any direction, document, *legislation*, notice or order affecting the *property*.
- 18.3 The purchaser must until completion –
- 18.3.1 keep the *property* in good condition and repair having regard to its condition at the giving of possession; and
- 18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.
- 18.4 The risk as to damage to the *property* passes to the purchaser immediately after the purchaser enters into possession.
- 18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor –
- 18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and
- 18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate prescribed under s101 Civil Procedure Act 2005.
- 18.6 If this contract is *rescinded* or *terminated* the purchaser must immediately vacate the *property*.
- 18.7 If the *parties* or their *solicitors* on their behalf do not agree in writing to a fee or rent, none is payable.

19 Rescission of contract

- 19.1 If this contract expressly gives a *party* a right to *rescind*, the *party* can exercise the right –
- 19.1.1 only by *servicing* a notice before completion; and
- 19.1.2 in spite of any making of a claim or *requisition*, any attempt to satisfy a claim or *requisition*, any arbitration, litigation, mediation or negotiation or any giving or taking of possession.
- 19.2 *Normally*, if a *party* exercises a right to *rescind* expressly given by this contract or any *legislation* –
- 19.2.1 the deposit and any other money paid by the purchaser under this contract must be refunded;
- 19.2.2 a *party* can claim for a reasonable adjustment if the purchaser has been in possession;
- 19.2.3 a *party* can claim for damages, costs or expenses arising out of a breach of this contract; and
- 19.2.4 a *party* will not otherwise be liable to pay the other *party* any damages, costs or expenses.

20 Miscellaneous

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

21 Time limits in these provisions

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

22 Foreign Acquisitions and Takeovers Act 1975

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

23 Strata or community title

- 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 –
'change', in relation to a scheme, means –
- a registered or registrable change from by-laws set out in this contract or set out in *legislation* and specified 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;
- 'common property' includes association property for the scheme or any higher scheme;
'contribution' includes an amount payable under a by-law;
'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;
'owners corporation' means the owners corporation or the association for the scheme or any higher scheme;
'the *property*' includes any interest in common property for the scheme associated with the lot;
'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 sinking 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.
- 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 levied before the contract date (unless it relates to work not started by that date), even if it is payable by instalments;
- 23.6.2 the vendor is also liable for it to the extent it relates to work started by the owners corporation before the contract date; and
- 23.6.3 the purchaser is liable for all other contributions levied 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.
- 23.8 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of –
- 23.8.1 an existing or future actual, contingent or expected expense of the owners corporation;
- 23.8.2 a proportional unit entitlement of the lot or a relevant lot or former lot, apart from a claim under clause 6; or
- 23.8.3 a past or future change in the scheme or a higher scheme.
- 23.9 However, the purchaser can *rescind* if –
- 23.9.1 the special expenses of the owners corporation at the later of the contract date and the creation of the owners corporation when calculated on a unit entitlement basis (and, if more than one lot or a higher scheme is involved, added together), less any contribution paid by the vendor, are more than 1% of the price;
- 23.9.2 in the case of the lot or a relevant lot or former lot in a higher scheme –
- a proportional unit entitlement for the lot is not disclosed in this contract; or
 - a proportional unit entitlement for the lot is disclosed in this contract but the lot has a different proportional unit entitlement at the contract date or at any time before completion; or
- 23.9.3 a change before the contract date or before completion in the scheme or a higher scheme substantially disadvantages the purchaser and is not disclosed in this contract.
- 23.10 The purchaser must give the vendor 2 copies of a proper form of notice of the transfer of the lot 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* a certificate under s109 Strata Schemes Management Act 1996 or s26 Community Land Management Act 1989 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.

- 23.15 On completion the purchaser must pay the vendor the prescribed fee for the certificate.
- 23.16 The vendor authorises the purchaser to apply for the purchaser's own certificate.
- 23.17 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.
- 23.18 If a general meeting of the owners corporation is convened before completion –
- 23.18.1 if the vendor receives notice of it, the vendor must immediately notify the purchaser of it; and
- 23.18.2 after the expiry of any cooling off period, the purchaser can require the vendor to appoint the purchaser (or the purchaser's nominee) to exercise any voting rights of the vendor in respect of the lot at the meeting.

24 Tenancies

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

25 Qualified title, limited title and old system title

- 25.1 This clause applies only if the land (or part of it) –
- 25.1.1 is under qualified, limited or old system title; or
- 25.1.2 on completion is to be under one of those titles.
- 25.2 The vendor must *serve* a proper abstract of title *within 7 days* after the contract date.
- 25.3 If an abstract of title or part of an abstract of title is attached to this contract or has been lent by the vendor to the purchaser before the contract date, the abstract or part is *served* on the contract date.

- 25.4 An abstract of title can be or include a list of documents, events and facts arranged (apart from a will or codicil) in date order, if the list in respect of each document –
- 25.4.1 shows its date, general nature, names of parties and any registration number; and
- 25.4.2 has attached a legible photocopy of it or of an official or registration copy of it.
- 25.5 An abstract of title –
- 25.5.1 must start with a good root of title (if the good root of title must be at least 30 years old, this means 30 years old at the contract date);
- 25.5.2 in the case of a leasehold interest, must include an abstract of the lease and any higher lease;
- 25.5.3 *normally*, need not include a Crown grant; and
- 25.5.4 need not include anything evidenced by the Register kept under the Real Property Act 1900.
- 25.6 In the case of land under old system title –
- 25.6.1 in this contract 'transfer' means conveyance;
- 25.6.2 the purchaser does not have to *serve* the form of transfer until after the vendor has *served* a proper abstract of title; and
- 25.6.3 each vendor must give proper covenants for title as regards that vendor's interest.
- 25.7 In the case of land under limited title but not under qualified title –
- 25.7.1 *normally*, the abstract of title need not include any document which does not show the location, area or dimensions of the land (for example, by including a metes and bounds description or a plan of the land);
- 25.7.2 clause 25.7.1 does not apply to a document which is the good root of title; and
- 25.7.3 the vendor does not have to provide an abstract if this contract contains a delimitation plan (whether in registrable form or not).
- 25.8 The vendor must give a proper covenant to produce where relevant.
- 25.9 The vendor does not have to produce or covenant to produce a document that is not in the possession of the vendor or a mortgagee.
- 25.10 If the vendor is unable to produce an original document in the chain of title, the purchaser will accept a photocopy from the Registrar-General of the registration copy of that document.

26 Crown purchase money

- 26.1 This clause applies only if purchase money is payable to the Crown, whether or not due for payment.
- 26.2 The vendor is liable for the money, except to the extent this contract says the purchaser is liable for it.
- 26.3 To the extent the vendor is liable for it, the vendor is liable for any interest until completion.
- 26.4 To the extent the purchaser is liable for it, the *parties* must adjust any interest under clause 14.1.

27 Consent to transfer

- 27.1 This clause applies only if the land (or part of it) is restricted title land (land that cannot be transferred without consent under *legislation*).
- 27.2 The purchaser must properly complete and then *serve* the purchaser's part of an application for consent to transfer of the land (or part of it) *within 7 days* after the contract date.
- 27.3 The vendor must apply for consent *within 7 days* after *service* of the purchaser's part.
- 27.4 If consent is refused, either *party* can *rescind*.
- 27.5 If consent is given subject to one or more conditions that will substantially disadvantage a *party*, then that *party* can *rescind within 7 days* after receipt by or *service* upon the *party* of written notice of the conditions.
- 27.6 If consent is not given or refused –
- 27.6.1 *within 42 days* after the purchaser *serves* the purchaser's part of the application, the purchaser can *rescind*; or
- 27.6.2 *within 30 days* after the application is made, either *party* can *rescind*.
- 27.7 If the *legislation* is the Western Lands Act 1901 each period in clause 27.6 becomes 90 days.
- 27.8 If the land or part is described as a lot in an unregistered plan, each time in clause 27.6 becomes the later of the time and 35 days after creation of a separate folio for the lot.
- 27.9 The date for completion becomes the later of the date for completion and 14 days after *service* of the notice granting consent to transfer.

28 Unregistered plan

- 28.1 This clause applies only if some of the land is described as a lot in an unregistered plan.
- 28.2 The vendor must do everything reasonable to have the plan registered *within 6 months* after the contract date, with or without any minor alteration to the plan or any document to be lodged with the plan validly required or made under *legislation*.
- 28.3 If the plan is not registered *within* that time and in that manner –
- 28.3.1 the purchaser can *rescind*; and
- 28.3.2 the vendor can *rescind*, but only if the vendor has complied with clause 28.2 and with any *legislation* governing the rescission.
- 28.4 Either *party* can *serve* notice of the registration of the plan and every relevant lot and plan number.
- 28.5 The date for completion becomes the later of the date for completion and 21 days after *service* of the notice.

28.6 Clauses 28.2 and 28.3 apply to another plan that is to be registered before the plan is registered.

29 Conditional contract

29.1 This clause applies only if a provision says this contract or completion is conditional on an event.

29.2 If the time for the event to happen is not stated, the time is 42 days after the contract date.

29.3 If this contract says the provision is for the benefit of a *party*, then it benefits only that *party*.

29.4 If anything is necessary to make the event happen, each *party* must do whatever is reasonably necessary to cause the event to happen.

29.5 A *party* can *rescind* under this clause only if the *party* has substantially complied with clause 29.4.

29.6 If the event involves an approval and the approval is given subject to a condition that will substantially disadvantage a *party* who has the benefit of the provision, the *party* can *rescind* within 7 days after either *party* serves notice of the condition.

29.7 If the *parties* can lawfully complete without the event happening –

29.7.1 if the event does not happen *within* the time for it to happen, a *party* who has the benefit of the provision can *rescind* within 7 days after the end of that time;

29.7.2 if the event involves an approval and an application for the approval is refused, a *party* who has the benefit of the provision can *rescind* within 7 days after either *party* serves notice of the refusal; and

29.7.3 the date for completion becomes the later of the date for completion and 21 days after the earliest of –

- either *party* serving notice of the event happening;
- every *party* who has the benefit of the provision serving notice waiving the provision; or
- the end of the time for the event to happen.

29.8 If the *parties* cannot lawfully complete without the event happening –

29.8.1 if the event does not happen *within* the time for it to happen, either *party* can *rescind*;

29.8.2 if the event involves an approval and an application for the approval is refused, either *party* can *rescind*;

29.8.3 the date for completion becomes the later of the date for completion and 21 days after either *party* serves notice of the event happening.

29.9 A *party* cannot *rescind* under clauses 29.7 or 29.8 after the event happens.

30 Electronic transaction

30.1 This *Conveyancing Transaction* is to be conducted as an *electronic transaction* if –

30.1.1 this contract says that it is a proposed *electronic transaction*; and

30.1.2 the purchaser serves a notice that it is an *electronic transaction* within 14 days of the contract date.

30.2 However, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* if, at any time after it has been agreed that it will be conducted as an *electronic transaction*, a *party* serves a notice that it will not be conducted as an *electronic transaction*.

30.3 If, because of clause 30.2, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –

30.3.1 each *party* must –

- bear equally any disbursements or fees; and
- otherwise bear that *party's* own costs;

associated with the agreement under clause 30.1; and

30.3.2 if a *party* has paid all of a disbursement or fee which, by reason of this clause, is to be borne equally by the *parties*, that amount must be adjusted under clause 14.2.

30.4 If this *Conveyancing Transaction* is to be conducted as an *electronic transaction* –

30.4.1 to the extent, but only to the extent, that any other provision of this contract is inconsistent with this clause, the provisions of this clause prevail;

30.4.2 *normally*, words and phrases used in this clause 30 (italicised and in Title Case, such as *Electronic Workspace* and *Lodgment Case*) have the same meaning which they have in the *participation rules*;

30.4.3 the *parties* must conduct the *electronic transaction* in accordance with the *participation rules* and the *ECNL*;

30.4.4 a *party* must pay the fees and charges payable by that *party* to the *ELNO* and the *Land Registry* as a result of this transaction being an *electronic transaction*;

- 30.4.5 any communication from one *party* to another *party* in the *Electronic Workspace* made –
- after receipt of the purchaser's notice under clause 30.1.2; and
 - before the receipt of a notice given under clause 30.2;
- is taken to have been received by that *party* at the time determined by s13A of the Electronic Transactions Act 2000; and
- 30.4.6 a document which is an *electronic document* is served as soon as it is first *Digitally Signed* in the *Electronic Workspace* on behalf of the *party* required to serve it.
- 30.5 Normally, the vendor must *within 7* days of receipt of the notice under clause 30.1.2 –
- 30.5.1 create an *Electronic Workspace*;
- 30.5.2 *populate* the *Electronic Workspace* with *title data*, the date for completion and, if applicable, *mortgagee details*; and
- 30.5.3 invite the purchaser and any *discharging mortgagee* to the *Electronic Workspace*.
- 30.6 If the vendor has not created an *Electronic Workspace* in accordance with clause 30.5, the purchaser may create an *Electronic Workspace*. If the purchaser creates the *Electronic Workspace* the purchaser must –
- 30.6.1 *populate* the *Electronic Workspace* with *title data*;
- 30.6.2 create and *populate* an *electronic transfer*;
- 30.6.3 *populate* the *Electronic Workspace* with the date for completion and a nominated *completion time*; and
- 30.6.4 invite the vendor and any *incoming mortgagee* to join the *Electronic Workspace*.
- 30.7 Normally, *within 7* days of receiving an invitation from the vendor to join the *Electronic Workspace*, the purchaser must –
- 30.7.1 join the *Electronic Workspace*;
- 30.7.2 create and *populate* an *electronic transfer*;
- 30.7.3 invite any *incoming mortgagee* to join the *Electronic Workspace*; and
- 30.7.4 *populate* the *Electronic Workspace* with a nominated *completion time*.
- 30.8 If the purchaser has created the *Electronic Workspace* the vendor must *within 7* days of being invited to the *Electronic Workspace* –
- 30.8.1 join the *Electronic Workspace*;
- 30.8.2 *populate* the *Electronic Workspace* with *mortgagee details*, if applicable; and
- 30.8.3 invite any *discharging mortgagee* to join the *Electronic Workspace*.
- 30.9 To complete the financial settlement schedule in the *Electronic Workspace* –
- 30.9.1 the purchaser must provide the vendor with *adjustment figures* at least *2 business days* before the date for completion; and
- 30.9.2 the vendor must *populate* the *Electronic Workspace* with payment details at least *1 business day* before the date for completion.
- 30.10 At least *1 business day* before the date for completion, the *parties* must ensure that –
- 30.10.1 all *electronic documents* which a *party* must *Digitally Sign* to complete the *electronic transaction* are *populated* and *Digitally Signed*;
- 30.10.2 all certifications required by the ECNL are properly given; and
- 30.10.3 they do everything else in the *Electronic Workspace* which that *party* must do to enable the *electronic transaction* to proceed to completion.
- 30.11 If completion takes place in the *Electronic Workspace* –
- 30.11.1 payment electronically on completion of the price in accordance with clause 16.7 is taken to be payment by a single *settlement cheque*;
- 30.11.2 the completion address in clause 16.11 is the *Electronic Workspace*; and
- 30.11.3 clauses 16.8, 16.12, 16.13, 31.2.2 and 31.2.3 do not apply.
- 30.12 If the computer systems of any of the *Land Registry*, the *ELNO* or the Reserve Bank of Australia are inoperative for any reason at the *completion time* agreed by the *parties*, a failure to complete this contract for that reason is not a default under this contract on the part of either *party*.
- 30.13 If the *Electronic Workspace* allows the *parties* to choose whether financial settlement is to occur despite the computer systems of the *Land Registry* being inoperative for any reason at the *completion time* agreed by the *parties* –
- 30.13.1 normally, the *parties* must choose that financial settlement not occur; however

- 30.13.2 if both *parties* choose that financial settlement is to occur despite such failure and financial settlement occurs –
- all *electronic documents Digitally Signed* by the vendor, the *certificate of title* and any discharge of mortgage, withdrawal of caveat or other *electronic document* forming part of the *Lodgment Case* for the *electronic transaction* shall be taken to have been unconditionally and irrevocably delivered to the purchaser or the purchaser's mortgagee at the time of financial settlement together with the right to deal with the land comprised in the *certificate of title*; and
 - the vendor shall be taken to have no legal or equitable interest in the *property*.
- 30.14 A *party* who holds a *certificate of title* must act in accordance with any *Prescribed Requirement* in relation to the *certificate of title* but if there is no *Prescribed Requirement*, the vendor must *serve* the *certificate of title* after completion.
- 30.15 If the *parties* do not agree about the delivery before completion of one or more documents or things that cannot be delivered through the *Electronic Workspace*, the *party* required to deliver the documents or things –
- 30.15.1 holds them on completion in escrow for the benefit of; and
- 30.15.2 must immediately after completion deliver the documents or things to, or as directed by; the *party* entitled to them.
- 30.16 In this clause 30, these terms (in any form) mean –
- | | |
|-------------------------------|---|
| <i>adjustment figures</i> | details of the adjustments to be made to the price under clause 14; |
| <i>certificate of title</i> | the paper duplicate of the folio of the register for the land which exists immediately prior to completion and, if more than one, refers to each such paper duplicate; |
| <i>completion time</i> | the time of day on the date for completion when the <i>electronic transaction</i> is to be settled; |
| <i>discharging mortgagee</i> | any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a <i>Digitally Signed</i> discharge of mortgage, discharge of charge or withdrawal of caveat is required in order for unencumbered title to the <i>property</i> to be transferred to the purchaser; |
| <i>ECNL</i> | the Electronic Conveyancing National Law (NSW); |
| <i>electronic document</i> | a dealing as defined in the Real Property Act 1900 which may be created and <i>Digitally Signed</i> in an <i>Electronic Workspace</i> ; |
| <i>electronic transfer</i> | a transfer of land under the Real Property Act 1900 for the <i>property</i> to be prepared and <i>Digitally Signed</i> in the <i>Electronic Workspace</i> established for the purposes of the <i>parties'</i> <i>Conveyancing Transaction</i> ; |
| <i>electronic transaction</i> | a <i>Conveyancing Transaction</i> to be conducted for the <i>parties</i> by their legal representatives as <i>Subscribers</i> using an <i>ELN</i> and in accordance with the <i>ECNL</i> and the <i>participation rules</i> ; |
| <i>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 to contracts made on or after 1 July 2016 but 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 the purchaser's submission of a purchaser payment notification to the Australian Taxation Office;
- 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* a *clearance certificate* in respect of every vendor, clauses 31.2 and 31.3 do not apply.

FURTHER PROVISIONS

32. COMPLETION DATE

The completion date of this Contract is twenty one (21) days from the date the Vendor's Solicitor notifies the Purchaser's Solicitor, in writing, of the registration of the Documents at the Land and Property Information, NSW ("LPI, NSW") referred to in Further Provision 39.

33. FAILURE TO COMPLETE

If the parties do not complete the contract by the completion date the Purchaser must pay to the Vendor on completion, in addition to the price, an amount calculated at 12.3% p.a. interest on the balance of the price at a daily rate from the completion date until the date of actual completion (both inclusive). This amount is a genuine pre-estimate of the Vendor's loss. The Purchaser does not have to pay interest in respect of any period where the Vendor is in default.

34. CORPORATION IN DEFAULT

If either party is a corporation and should that party prior to completion resolve to go into liquidation or enter a scheme of arrangement with its creditors under the Corporations Law (or any successor to the Corporations Law) or should any liquidator, receiver or official manager be appointed in respect of the party (or should a petition or other Court proceeding be instituted for such appointment), then that party is in default in an essential respect of this contract.

35. TIME OF THE ESSENCE

If either party ("the defaulting party") is unable or unwilling to complete by the completion date, the other party shall be entitled at any time after the completion date to serve a notice making time to complete essential. The notice shall give not less than 14 days notice after the date immediately following the day on which that notice is received (or is reasonably deemed to have been received) by the defaulting party. The parties agree that a notice to complete of such duration is considered by the parties to be reasonable and sufficient to render the time for completion essential.

36. DEFAULT COSTS

Without limiting any rights which the Vendor may have pursuant to this Contract, if the Purchaser is unable to complete on the date fixed for completion of this Contract and the Vendor incurs additional legal costs in dealing with the default, then the Vendor can recover from the Purchaser at completion an amount equal to the legal costs incurred because of the default by adding such costs from the amount due at completion.

37. COMPANY'S GUARANTEE

If the Purchaser is a corporation the Purchaser shall at the time of execution of this Contract deliver to the Vendor an enforceable guarantee and indemnity for the full observance and performance by the Purchaser of every obligation of the Purchaser under this Contract duly executed by each and every director of the Purchaser and any other person or corporation as may reasonably be required by the Vendor.

The guarantee and indemnity will be in the form of the Deed of Guarantee and Indemnity annexed ("the Guarantee").

FURTHER PROVISIONS

If the duly executed Guarantee is not delivered to the Vendor on the Day of Sale the Purchaser will be deemed to be in default under this Contract.

38. NO REPRESENTATION

The Vendor makes no representation that the improvements on the land as at the day of sale comply with the requirements of relevant Building Regulations, the requirements of the Local Council or the requirements of any Statute or of any Statutory Authority. The Purchaser will not make any objection, requisition or claim nor rescind or terminate because of any alleged failure to comply with such requirements nor call upon the Vendor to bear all or any or the costs of complying with them.

39. PLAN OF SUBDIVISION

39.1 This Contract of Sale is subject to and conditional upon the Vendor procuring the registration of the proposed Deposited Plan and Section 88B Instrument ("the Documents") at the LPI, NSW (a copy of which is annexed hereto). The Vendor shall do all things reasonably within its power to procure prompt registration of the Documents. If the Documents have not been registered prior to the expiration of twelve (12) months from the date of this Contract, then either party may thereafter avoid this Contract before the Documents are registered by giving written notice to that effect to the other party and upon the giving of such notice this Contract shall be at an end and of no further effect, and any deposit paid shall be refunded without deduction.

39.2 Should the Vendor or the Murray River Council or the LPI, NSW require amendment to the Documents, or additional works for certification, the Vendor shall be entitled to effect such amendment or additional works and the Purchaser shall not make any requisition, objection or claim for compensation in respect thereof.

39.3 The Purchaser shall not make any requisition, objection or make any claim for compensation in respect of the inclusion or deletion of any easements in the Plan or any variation in the location or the terms of any easements.

39.4 Until the Documents have been registered the Purchaser will not lodge, permit or cause to be lodged at the LPI, NSW any Caveat on his behalf in respect of his interest in the land hereby sold and the Purchaser will indemnify and keep indemnified the Vendor against any loss or damage which the Vendor may suffer or incur in consequence of any breach by the Purchaser of this provision.

39.5 The Purchaser buys subject to the said Section 88B Instrument (copy of which is annexed hereto).

40. APPORTIONMENT OF RATES

For the purposes of clause 14 in the event of separate assessments of rates and taxes not being issued by the relevant statutory authorities as at the date of completion in respect of the property, all necessary adjustments between the parties shall be made on the basis that the property is liable to that proportion of rates and taxes levied or assessed against the whole of the land as the area of the property bears to the area of the whole of the land.

41. DEVELOPMENT CONSENT RESTRICTIONS

41.1 The Purchaser purchases the Lot subject to any Restrictions in Development Application No 079/14 and shall be bound by and comply with them and any variation and amendment at all times.

FURTHER PROVISIONS

- 41.2 The Vendor gives no warranty and makes no representation as to the fitness of the Lot for construction thereof of any particular style, type or model of dwelling in respect of which the Purchaser must satisfy himself. Any representation or advice in respect of any such fitness (if given) will have been given without the authority or knowledge of the Vendor and the Vendor will not be bound by it and the Purchaser must not rely upon any such representation and/or advice.
- 41.3 The Vendor reserves the right to modify the restrictions if such modification is required to cause such restrictions to comply with any decision or requirement of any relevant government, semi government authority having power to make any such decision or requirement or if such modification is necessary due to amendments to the Plan of Subdivision required by Council or by any Authority.

42. RESTRICTIVE COVENANT

- 42.1 The Purchaser shall in the Transfer to him of the land hereby sold covenant to the effect of the proposed Restrictive Covenant attached hereto ("the Restrictive Covenant").
- 42.2 The Purchaser agrees that the Restrictive Covenant shall be completed prior to Completion Date by inserting the registration number of the Deposited Plan referred to in Further Provision 39 and in accordance with the preamble to Clause 1 of the Restrictive Covenant.
- 42.3 The Purchaser hereby agrees that prior to taking a transfer of the land hereby sold he shall not permit suffer or cause to be done in respect of the land hereby sold or any part thereof anything which would not be permitted pursuant to the Restrictive Covenant after he had taken a transfer of the land hereby sold.
- 42.4 The parties acknowledge that General Condition 4.1 shall not apply and the Vendor's Solicitor will prepare the Transfer of Land document to include the Restrictive Covenant and provide it to the Purchaser after exchange of Contracts. The Transfer of Land document must be delivered by the Purchaser or the Purchaser's Solicitor to the Vendor's Solicitor not less than **seven (7)** days before the completion date. The Vendor is not obliged to complete this Contract and the Purchaser is deemed to have defaulted in payment of the balance of the price and must pay interest from the completion date until the expiry of the period of **seven (7)** days from delivery of the instrument of transfer.
- 42.5 The Purchaser acknowledges that pursuant to the Local Environment Plan, Council or any other relevant Authority may modify or remove all or any part of the Restrictive Covenant in respect of the land hereby sold or in respect of any other land burdened or to be burdened by the Restrictive Covenant from time to time prior to completion of this Contract.
- 42.6 Should the Restrictive Covenant be so modified or removed, then the Purchaser further acknowledges that the Purchaser shall have no right of action, claim or demand against the Vendor under this Contract in respect of such modification or removal.

43. EXISTING SERVICES AND UTILITIES

The Purchaser acknowledges that the land is sold and the Purchaser shall take title thereto subject to all existing water, sewerage and drainage, gas and electricity, telephone or other

FURTHER PROVISIONS

installations, services and utilities (if any). The Purchaser shall not make any requisition, objection or claim for compensation in respect of any of the following:

- 43.1 the nature, location availability or non-availability of any such installations, services and utilities;
- 43.2 if any such service is a joint service with any other land or building;
- 43.3 if any such service for any other property or building or any parts or connections therefore pass through the property;
- 43.4 if any sewer or water main or connection passes through in or over the property;
- 43.5 if there is a man hole or vent on the property; or
- 43.6 if because of or arising out of any such installations, services and utilities the property may be subject to or have the benefit of any rights or easements in respect of any such installation service or utility.

44. EXCLUSION OF WARRANTIES

The Purchaser acknowledges and agrees that the land together with any improvements is purchased by the Purchaser:

- 44.1 as a result of the independent exercise of the Purchaser's own skill and judgement after due inspection and investigation; and
- 44.2 in its present condition and state of repair with all existing patent and latent defects, infestations, contamination and dilapidation;
- 44.3 and that no representation or warranty has been made or given by the Vendor or by any persons acting on behalf of the Vendor to the Purchaser or to any person acting on behalf of the Purchaser as to:
 - 44.3.1 the merchantability, quality or fitness for any purpose of the land or the improvements;
 - 44.3.2 the freedom of the land from defects, infestations, contamination or dilapidation;
 - 44.3.3 the use to which the land or the improvements can lawfully be put;
 - 44.3.4 whether development of any description may be carried out on the land; or
 - 44.3.5 whether the improvements on the land have been built or placed there in accordance with each approval required by law for the building or placement of the same.

45. WARRANTIES IN LIEU OF REQUISITIONS

The Purchaser shall not be entitled to deliver any requisitions or inquiries to the Vendor in relation to the title to the property or the subject matter of the Contract. Instead, the Vendor makes the following warranties in relation to the title and the property:-

- 45.1 The Vendor has, or will be entitled to custody of the title to the property on or before the completion date.

FURTHER PROVISIONS

- 45.2 The Vendor is, or will be entitled to possession of the property on or before the completion date.
- 45.3 The property is not subject to any encumbrances not disclosed in the Contract of Sale, or any encumbrances on title not disclosed will be discharged on or before the completion date.
- 45.4 The Vendor is the absolute owner of all fixtures and chattels included in the Contract.
- 45.5 The Vendor has not received any notices.
- 45.6 The property is not subject to or affected by any legal proceedings.
- 45.7 The Vendor is not under any legal disability.
- 45.8 The Vendor will provide the relevant documentation as required by the Office of State Revenue on completion.
- 45.9 The margin scheme applies to the supply of the property made under this Contract but does not apply to the supply of any chattels or other supplies under this Contract.

46. LOT NUMBERING

The Vendor advises and the Purchaser acknowledges that the lot numbering on the plans annexed to the Development Application 079/14 may differ to the lot numbering in the Documents referred to in Special Condition 39 which is to be followed under this Contract as opposed to the lot numbering in the plans annexed to the Development Application.

GUARANTEE AND INDEMNITY

TO: The withinnamed and described Vendor
(hereinafter called "the Vendor")

IN CONSIDERATION of the Vendor having at the request of the person or persons whose name address and description are set forth in the Schedule hereto (hereinafter called "the Guarantor") agreed to sell the land described in the within Contract of Sale to the withinnamed Purchaser (hereinafter called "the Purchaser") the Guarantor HEREBY GUARANTEES to the Vendor the due and punctual payment by the Purchaser of the purchase money and interest payable thereon as detailed in the said Contract of Sale and all other monies that are payable or may become payable pursuant thereto (hereinafter called "the monies hereby secured") AND ALSO the due performance and observance by the Purchaser of all and singular the covenants provisions and stipulations contained or implied in the said Contract of Sale and on the part of the Purchaser to be performed and observed AND THE GUARANTOR HEREBY EXPRESSLY ACKNOWLEDGES AND DECLARES that the Guarantor has examined the said Contract of Sale and has access to a copy thereof and further that this Guarantee is given upon and subject to the following conditions:-

- A. THAT in the event of the Purchaser failing to pay the Vendor as and when due the monies referred to in the within Contract the Guarantor will immediately pay such monies to the Vendor.
- B. THAT in the event of the Purchaser failing to carry out or perform any of its obligations under the said Contract the Guarantor will immediately carry out and perform the same.
- C. THE Guarantor shall be deemed to be jointly and severally liable with the Purchaser (in lieu of being merely a surety for it) for the payment of the purchase moneys interest and all other monies if any payable pursuant to the within Contract in the performance of the obligations herein contained and it shall not be necessary for the Vendor to make any claim or demand on or to take any action or proceedings against the Purchaser before calling on the Guarantor to pay the moneys or to carry out and perform the obligations herein contained.
- D. THAT no time or other indulgence whatsoever that may be granted by the Vendor to the Purchaser shall in any manner whatsoever affect a liability of the Guarantor hereunder and the liability of the Guarantor shall continue to remain in full force and effect until all monies owing to the Vendor have been paid and all obligations have been performed.

FOR the consideration aforesaid and as a separate and convertible covenant the Guarantor HEREBY AGREES to indemnify the Vendor not only in respect of the non-payment by the Purchaser of all monies payable or that may become payable under the said Contract of Sale but also in respect of all costs charges and expenses whatsoever which the Vendor may incur by reason of any default on the part of the Purchaser in relation to the said Contract of Sale.

If the Guarantor comprises more than one person, then each of those persons shall be jointly and severally liable hereunder.

FURTHER PROVISIONS

SCHEDULE

Vendor: **DORWARD DEVELOPMENTS PTY LTD ACN 095 331 463 AS TRUSTEE
FOR THE DORWARD PROPERTY TRUST ABN 69 620 193 742** of PO
Box 652, Echuca VIC 3564

Purchaser:

of

Guarantor:

of

EXECUTED AS A DEED

IN WITNESS whereof the said Guarantors have set their hands and seals this

day of 201

SIGNED SEALED AND DELIVERED by the said)
Guarantor in (state
or territory) in the presence of:)

RESTRICTIVE COVENANT

The Purchaser shall in the Transfer to him of the land hereby transferred covenant to the following effect:

1. The Transferee for himself his heirs executors administrators and transferees hereby covenants with the Transferor its successors and transferees the registered proprietor or proprietors for the time being of ALL THOSE pieces of land being Lots to inclusive (but excluding the land hereby transferred) on Deposited Plan No ("the Deposited Plan") and each and every part thereof ("the land benefited") that he shall not without the previous consent in writing of the Transferor:
 - 1.1 Erect or cause or allow to be erected on the land hereby transferred and each and every part thereof any dwelling house that shall:
 - (a) be set back less than 6 metres from the primary street frontage (as defined in clauses 2, 3 and 4) and less than 3.5 metres from any other street frontage;
 - (b) be situated less than 1 metre from one non-street side boundary and less than 3 metres from the other non-street side boundary;
 - (c) have the floor level of any habitable room below the 95.54 Australian Height Datum;
 - (d) have a garage that is not an enclosed double garage attached to and built with the same materials as the dwelling house;
 - (e) have a driveway that is not the same width as the garage;
 - (f) have a garage set back less than 7 metres from any street frontage;
 - (g) if it is to be erected on any of lot 6, or lots 16 to 18 inclusive, be other than a single dwelling house;
 - (h) if it is to be erected on any of lots 19 to 31 inclusive, be other than a single storey dwelling;
 - (i) if it is to be a single dwelling house to be erected, have a floor area of less than 180 square metres excluding eaves, verandah, patio and garage;
 - (j) if it is to be one of two dwelling houses thereon, have a floor area of less than 120 square metres excluding eaves, verandah, patio and garage;
 - (k) if it is to be one of two dwelling houses thereon, not have a garage located between that dwelling house and the other dwelling house;
 - (l) include in its construction:
 - (i) any relocated or relocatable structures;
 - (ii) second hand materials;
 - (iii) any weatherboard or fibrocement sheeting that is not painted or rendered; or
 - (iv) any reflective materials.
 - 1.2 Erect or allow to be erected on the land hereby transferred and each and every part thereof any internal or boundary fencing consisting of:
 - (a) second hand materials; or
 - (b) any reflective materials
 - 1.3 Erect or allow to be erected on the land hereby transferred and each and every part thereof:

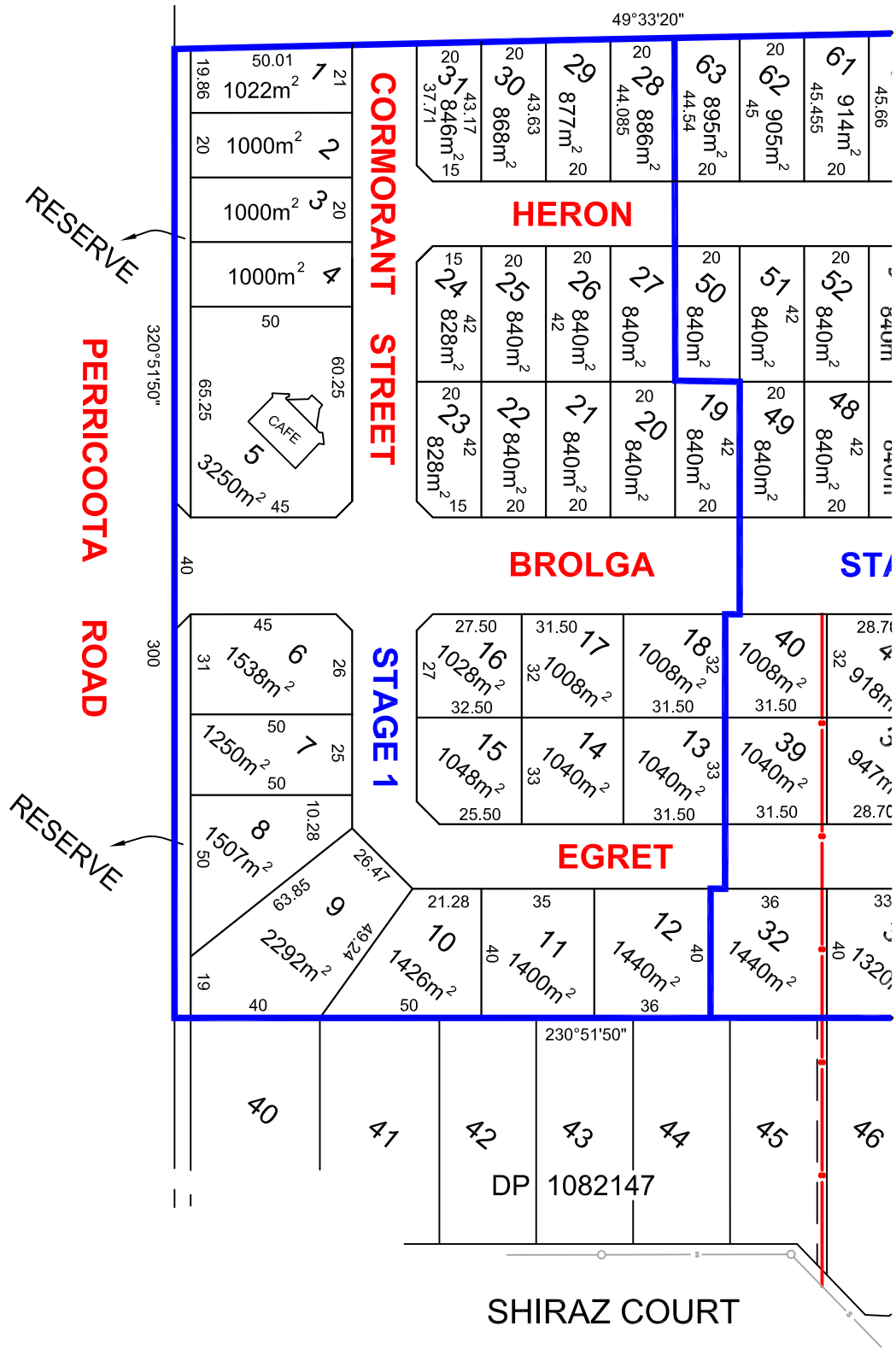
RESTRICTIVE COVENANT

- (a) a fence on the street frontage boundary;
 - (b) a side boundary fence (other than the street frontage boundary) between the street and the building line of the dwelling house consisting of:
 - (i) a height greater than 900 millimetres; and
 - (ii) being made if other than post and wire or swimming pool enclosure fencing materials.
 - (c) a fence of a height greater than 1.8 metres measured from ground level to the top of the fence.
- 1.4 Erect or allow to be erected on the land hereby transferred and each and every part thereof any outbuilding:
- (a) That is greater than 100 square metres with a height greater than 3.8 meters;
 - (b) that is situated closer to the street frontage than the halfway point between the street frontage and the opposite boundary;
 - (c) which includes in its construction any second hand materials; or
 - (d) which includes in its construction any reflective materials.
- 1.5 Use or allow to be used on the land hereby transferred and each and every part thereof any outbuilding, mobile home, caravan, tent or other moveable structure for living or residential accommodation.
- 1.6 Allow the land hereby transferred and each and every part thereof and any structures thereon to become a fire hazard or to be of a nature or in a condition which is likely to have a detrimental effect on the amenity of the neighbourhood.
- 1.7 Allow any plant, machinery, recreational or commercial vehicle, caravan, boat, or trailer to be left or parked on the roadway, nature strip or footpath adjacent to the land hereby transferred or on the land hereby transferred and each and every part thereof between the front building line or the proposed front building line and the street frontage boundary of the land and which is not behind a 1.8 metre solid fence or gate.
- 1.8 Allow that part of the land hereby transferred and each and every part thereof between the front building line and the roadway to remain un-landscaped for a period of more than 4 months from the date of issue of a Final Occupation Certificate in respect of the dwelling house constructed on the land hereby transferred.
2. No dwelling is to be used for a purpose other than as a private residence (other than a display home). Dwellings cannot be used as tourist accommodation.
3. With respect to lot 15 the primary street frontage is the south-eastern boundary.
4. With respect to lot 16 the primary street frontage is the north-western boundary.
5. With respect to lot 6 the primary street frontage is the north-eastern boundary and the only street access is via the primary street frontage.
6. The Transferor reserves the right to sell lease or otherwise deal with any lot on the Deposited Plan either subject to the conditions, stipulations and restrictions hereinbefore set out or any one of them or not and subject to any waiver, modification, alteration or amendment or full release thereof as the Transferor in its absolute discretion thinks fit. The exercise of this right by the Transferor in relation to any lot shall not release the Transferee of any other lot from any of the conditions stipulations or covenants effected or imposed upon such other lot or give to the Transferee of any other lot any right of action claim or demand against the Transferor or any other person or persons.

RESTRICTIVE COVENANT

7. Should the Transferee of the land hereby transferred and each and every part thereof seek the consent in writing of the Transferor to any release, waiver, modification, alteration, or amendment to any of the conditions, stipulations and restrictions hereinbefore set out, the Transferor shall have absolute discretion in deciding whether to deny consent, grant consent or grant consent on certain conditions, and the Transferee shall have no right of action claim or demand against the Transferor in respect of any denial of consent, or imposition of any conditions required for consent.
8. In addition to the Transferor's rights pursuant to clauses 6 and 7, the Transferee acknowledges that an amendment to the Local Environment Plan or similar mechanism, or a change in the local Council policy or policy of any other relevant Authority may negate the terms of these covenants as they apply to the land hereby transferred and each and every part thereof or any other land forming part of the land burdened, and the Transferee shall have no right of action, claim or demand against the Transferor in respect of any such event.
9. Part or all of any clause of these covenants that are illegal or unenforceable will be severed from these covenants and will not affect the continued operation of the remaining provisions of these covenants.

The benefit of the foregoing covenants shall be appurtenant to the land referred to as being so benefited and the burden of the foregoing covenants shall be upon the land hereby transferred and each and every part thereof.



MURRAY RIVER COUNCIL

Postal Address: PO Box 21 Mathoura NSW 2710

Phone: 1300 087 004

Web: www.murrayriver.nsw.gov.au

NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

Issued under the *Environmental Planning and
Assessment Act 1979 Section 81(1)(a)*

APPLICATION No.:	079/14 – Amendment Four
ASSESSMENT NO.:	1812-30310-3, 1812-30900-1
DEVELOPMENT APPLICATION DETAILS	
Applicant Name	North East Survey Design
Applicant Address	Rick Shorland PO Box 2223 ECHUCA VIC 3564
Land to be Developed	Lot No: 1, 9 & 10 DP: 285511
Address of Land	RAN 290 Perricoota Road MOAMA NSW 2731
Owners Name	GR & GA Robinson Pty Ltd, BG Clarke
Proposed Development	94 lot residential subdivision (Stages 1 to 3) including civil and demolition works. (<i>excludes the waiving of Section 94 Public Open Space and Road Upgrade Contributions</i>)
Amendment Four (4) - Partial Approval Section 96(1A)	Amendment to the layout and lot design of the subdivision, reduce the of lots from 95 to 94, reduce the number of roads linking to Lot 11 DP 285511 from 3 down to 2, and waive the requirement to pay Section 94 Stormwater Development Contributions
Amendment Three (3) Section 96(1)	Correct error in Condition 44.
Amendment Two (2) Section 96(1A)	Decrease from 97 allotments to 95 allotments, amendment to Condition 1 regarding size of open space/drainage reserve, amendment to details regarding stormwater discharge into the Murray River, earthworks to increase the height of various allotments within the northern section of the land
Amendment One (1) Section 96(1A)	Increase to 97 Lot Subdivision, Decrease of Stages from Seven (7) to Three (3), Layout Amended

Customer Service Centres:

Barham | p 03 5453 3200 | e mail@murrayriver.nsw.gov.au | a 15 Murray Street, Barham NSW 2732

Mathoura | p 03 5880 3500 | e admin@murrayriver.nsw.gov.au | a 21-25 Conargo Street, Mathoura NSW 2710

Moama | p 03 5481 0900 | e admin@murrayriver.nsw.gov.au | a 6 Meninya Street, Moama NSW 2731

Moulamein | p 03 5887 5007 | e mail@murrayriver.nsw.gov.au | a Tualka Terrace, Moulamein NSW 2733

MURRAY RIVER COUNCIL

Postal Address: PO Box 21 Mathoura NSW 2710

Phone: 1300 087 004

Web: www.murrayriver.nsw.gov.au

Integrated Approval Bodies	NSW Rural Fire Service
DETERMINATION	
Consent granted subject to conditions described on the following pages	
Approval Date	15 April 2014
Amendment Four (4) Consent to Operate from (date)	13 December 2016
Consent to Operate from (date)	7 April 2016
Consent to Lapse on (date)	15 April 2019
Attachments	Consent Conditions

OTHER APPROVALS

Approvals granted under Section 68 of the *Local Government Act 1993*:

- N/A

RIGHT OF APPEAL

If you are dissatisfied with this decision Section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.



Glenn Bulmer
Manager, Planning and Building

COB/ki

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THE CONDITIONS OF CONSENT AND THE REASONS FOR THE IMPOSITION OF THE CONDITIONS ARE SET OUT AS FOLLOWS:

IN ACCORDANCE WITH SECTION 80(4)(C) OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

This partial consent (Amendment Four) only approves the following:

- Amendment to the layout and lot design of the subdivision, reduce the of lots from 95 to 94, reduce the number of roads linking to Lot 11 DP 285511 from 3 down to 2, and waive the requirement to pay Section 94 Stormwater Development Contributions

The request to waive the requirement to pay Section 94 Road Upgrade Development Contributions was ***REFUSED***. The reasons for refusal are as follows:

- This request is contrary to the former Murray Shire Council Section 94 Development Contributions Plan. Large scale residential subdivisions are required to provide road infrastructure in addition to applicable Section 94 Development Contributions for Road Upgrades.
- There are no applicable Ministerial Directions which exempt the developer from the requirement to provide Road Upgrade Section 94 Development Contributions.
- The proposal has the potential to compromise the funding arrangements of the Works Program detailed in Schedule 1 of the former Murray Shire Council Section 94 Development Contributions Plan.

(A) Erection of signs

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the PRINCIPAL CERTIFYING AUTHORITY for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the work site is prohibited.

Any such sign must be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

This condition does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

This condition does not apply in relation to Crown building work that is certified, in accordance with section 109R of the Act, to comply with the technical provisions of the State's building laws.

Reason: Prescribed by the Environmental Planning and Assessment Regulation 2000.

(B) Compliance with Building Code of Australia.

The subdivision must be carried not contravene the requirements of the *Building Code of Australia*.

Note: Reference to the *Building Code of Australia* is a reference to that Code as in force on the date the application is made for the relevant construction certificate.

Reason: Prescribed by the Environmental Planning and Assessment Regulation 2000.

PURSUANT TO SECTION 80(3) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 THIS IS A 'DEFERRED COMMENCEMENT' CONSENT SUBJECT TO COMPLIANCE WITH THE FOLLOWING CONDITION OF CONSENT

1. An amended 'drainage plan' and 'overall development plan' must be prepared and submitted to Council indicating the location of the open space/drainage reserve. The amended plan must:-
 - be generally consistent with the Overall Development Plan (Reference number M3163 Version 6 prepared by North East Survey Design and dated 15/09/2016) submitted as part of the development application
 - be consistent with the principles for 'drainage and natural features' and 'open space' contained within the Moama North West Master Plan
 - reflect the natural topography of the land
 - have a minimum area of 26,000m²

The amended plans must be approved by Council prior to the commencement of this consent.

Reason: To ensure the location of the public open space / drainage reserve is determined prior to the commencement of the consent.

Note: The requirements of this deferred commencement condition were satisfied on 7 April 2016.

CONDITIONS THAT MUST BE FULFILLED PRIOR TO THE RELEASE OF THE CONSTRUCTION CERTIFICATE

2. Full Engineering plans in respect to the provision of the following services must be submitted with the Construction Certificate for the civil works for each stage of the residential subdivision;
 - Road Design
 - Proposed intersection with Perricoota Road
 - Sewer
 - Filtered Water
 - Raw Water

These plans must be generally in accordance with the Overall Development Plan (Reference number M3163 prepared by North East Survey Design and dated 15/09/2016) submitted and considered as part of the development application except where amendments are required to be made in accordance with conditions of consent.

The plans must be prepared in accordance with Council's 'Guidelines for Subdivisions and Development Standards' and be consistent with conditions of this consent.

Road design must consider the comments of NSW Roads and Maritime Services. The standard of treatment for the intersection of the proposed new road with Perricoota Road must be located, designed and constructed in accordance with relevant standards including the Austroads publications and Australian Standards. These plans must be approved by Council prior to the release of the Construction Certificate.

Reason: To ensure the development is appropriately serviced.

3. The developer must prepare and submit a Stormwater Management Plan to Council with the application for a Construction Certificate prior to Stage 1 of the residential subdivision. This Stormwater Management Plan must provide a suitable stormwater disposal system to service the area and provide details as to the staging of the development of this system. The plan must be consistent with the Moama West Infrastructure Study and the requirements of Council's Engineering Department.

The plan must incorporate Water Sensitive Urban Design techniques and be consistent with 'The Blue Book: Managing Urban Stormwater' produced by LANDCOM. All infrastructure proposed as part of the plan as well as any required upgrades to existing infrastructure must be fully funded by the developer. The plan must be consistent with the required Landscape Plan. The proposed stormwater disposal must incorporate an appropriate Gross Pollutant Trap prior to discharge into the Murray River. These plans must be approved by Council's Engineering Department prior to the release of the Construction Certificate.

Reason: To ensure that stormwater from the subdivision is managed and disposed of in an acceptable manner.

4. The proponent must prepare and implement a Landscape Plan for the development prepared by a suitably qualified person to the satisfaction of Council. A Landscape Plan must be submitted and approved by Council prior to the release of the Construction Certificate for Stage 1 of the residential subdivision.

This plan must provide for;

- detail proposed landscaping within the road reserves of the new internal road network.
- detail proposed landscaping and fencing for within the widened Perricoota Road reserve.
- detail the proposed landscaping/native vegetation plantings within the drainage/open space corridor and the staging of this reserve.
- provide for a combined walking/cycling path through the drainage corridor and public open space network.
- detail proposed infrastructure to be erected within the reserve such as; barbecue, shelters, benches etc.
- provide details of proposed plants relating to size, numbers, planting regime and similar.

The drainage/public open space reserve must be staged so that it commences in an early stage of the development and is fully completed prior to the release of the Subdivision Certificate for the final stage of this consent. The development of this reserve must be consistent with the principles of the Moama North West Master Plan and advice from Council.

Once approved, the developer is responsible for the funding and completion of required landscaping in accordance with the approved plan. All required landscaping and associated works must be completed prior to the release of the Subdivision Certificate for the relevant stage.

The developer is responsible for the maintenance and care, including replacement with similar species / age plants of all landscaping for a period of three (3) years from release of the Subdivision Certificate.

Reason: To ensure the development is satisfactorily landscaped.

5. An Erosion and Sediment Control Plan must be prepared and submitted to Council with the application for a Construction Certificate. Exposed surface soil should be stabilised as soon as possible to avoid potential erosion and dust issue. This plan must be approved by Council prior to the release of the Construction Certificate for each stage.

Reason: To ensure the erosion and sediment is appropriately managed during construction.

6. A 'Remedial Action Plan' must be developed consistent with the recommendation of the Preliminary Site Investigation Studies' undertaken on Lot 9 DP 285511 and Lot 10 DP 285511 and NSW Environmental Protection Authority guidelines. This plan must be submitted with the application for a Construction Certificate and actions within the plan completed prior to the release of a Subdivision Certificate for affected land.

Reason: To comply with State Environmental Planning Policy No 55—Remediation of Land and ensure that the land is suitable to be used for residential purposes.

7. Engineering Supervision and Plan Checking Fees must be paid prior to the issue of a Construction Certificate for each stage. This fee is 2% of the Construction Cost of roads, drainage, water, sewer and any other required infrastructure.

Reason: To comply with Council's Management Plan.

- 7A. Public access roads must comply with Section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

Reason: To comply with NSW Rural Fire Service requirements.

CONDITIONS THAT MUST BE FULFILLED PRIOR TO THE COMMENCEMENT OF ANY WORKS

8. A Construction Certificate must be submitted to, and approved by Council prior to any works taking place on the property.

Reason: To comply with the *Environmental Planning and Assessment Act 1979*.

9. Erosion and sedimentation control must be installed and maintained on site in accordance with the approved plan for the duration of construction works. Erosion and sediment controls must be installed in accordance with the NSW Department of Environment and Conservation "Erosion and Sediment Control – A Resource Guide for Local Councils".

Reason: To minimise erosion of the site and prevent deposition of silt within the waterways, creeks and wetlands.

- 9A. A temporary water closet accommodation must be provided onsite during construction. This facility must be located onsite so as to not create a nuisance to any adjoining properties.

Reason: To ensure suitable facilities are provided for workers during construction and to comply with requirements for Work Health and Safety on worksites.

- 9B. Prior to the commencement of any stormwater discharge into the Murray River traversing NSW Crown Land Reserve 751159 (Lot 7304 DP 1148876), NSW Crown Licence No. 553251 must be appropriately amended to allow an **additional purpose** (stormwater discharge or similar) to this existing licence, or alternatively NSW Crown Licence No. 553251 is to be revoked and a new NSW Crown Licence approved which approves all required works including stormwater discharge. The proponent must provide Council with a copy of an amended NSW Crown Licence No. 553251 / new NSW Crown Licence prior to the commencement of any stormwater discharge into the Murray River.

Reason: To comply with NSW DPI Lands requirements.

- 9C. Prior to the installation of any Liquid Trade Waste Pre-Treatment equipment to service the existing café business on current Lot 10 DP 285511 (currently known as Three Black Sheep Café), a Liquid Trade Waste Approval must be obtained from Murray River Council. This Liquid Trade Waste Approval must include details of all proposed liquid trade waste pre-treatment equipment.

Reason: To ensure that the proposed development can be appropriately serviced and to comply with Section 68 Part C (4) of the Local Government Act 1993.

GENERAL CONDITIONS THAT MUST BE FULFILLED

10. The subdivision must be carried out in accordance with the plans;
- M3163 Overall Development Plan, prepared by North East Survey Design and dated 15/09/2016 (Version 6) as amended by Condition 1 and information submitted to and approved by Council except where Council has been notified and consented to any amendments.

Reason: To ensure that the development is carried out as assessed.

- 10A. Vehicles must be clean and free of debris prior to leaving the site during construction. Deposited material may be ordered to be removed at the Applicant/operator's expense.

Reason: To ensure that sediment is not trafficked onto Council's road network.

11. The developer must comply with Council's 'Guidelines for Subdivisions and Development Standards' in conjunction with the advice from Council Engineering Department.

Reason: To ensure that the subdivision is carried out in accordance with Council's Subdivision Development Requirements.

12. All conditions of consent must be fulfilled to the standard of Council and at the expense of the developer.

Reason: To ensure the development is carried out in accordance with Council's standards.

13. During construction the proponent must undertake measures to minimise dust and noise and ensure that the impact on neighbouring properties is minimised.

Reason: To minimise environmental and amenity impacts in respect to construction of the development.

14. The Applicant is to be made aware that if any Aboriginal sites/relics/remains are discovered on site that the proponent must;
- not further harm the Aboriginal object
 - immediately cease all work at the particular location
 - secure the area so as to avoid further harm to Aboriginal object
 - notify NSW OEH as soon as practical by telephoning 131 555 and the Moama Aboriginal Land Council on (03) 5482 6071, providing any details of the Aboriginal object and location
 - not recommence works at the particular location unless authorised in writing by the NSW OEH.

In the event that human/skeletal remains are unexpectedly encountered during the activity, all work must stop immediately, the area must be secured to prevent unauthorised access, and NSW Police and NSW OEH must be contacted.

All reasonable precautions must be taken to prevent damage to Aboriginal objects.

For more information please refer to the NSW Department of Environment, Climate Change and Water (NSW OEH) document entitled: *Due diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*, available:

<http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>.

Reason: To protect Aboriginal heritage.

- 14A. Consent is not required for the removal of three Sugar Gums (*Eucalyptus cladocalyx*) contained within the south western corner of Lot 9 DP 285511 (which are not native to the locality). There must be no clearing of any native vegetation other than that approved by the NSW Murray Local Land Services or in accordance with the provisions of the *Native Vegetation Act 2003*.

Reason: To comply with the *Native Vegetation Act 2003*.

14B. The development must be in accordance with the relevant provisions and Regulations of the *Native Vegetation Act 2003*, the *Threatened Species Conservation Act 1995*, the *National Parks and Wildlife Act 1974*, and all other applicable legislation.

Reason: To comply with relevant legislation.

14C. Water supply work or sewerage work that is plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011* must comply with that Act and the regulations under that Act. Any water supply work or sewerage work that is not plumbing and drainage work under that Act, and any stormwater drainage work, must comply with the Plumbing Code of Australia.

Reason: Council and Statutory requirement of Local Government (General) Regulation 2005.

14D. Any damage or deterioration to any portion of the footpath and/or kerb and guttering or other Council property including road reserves, during construction must be reinstated to its original condition at the owner's expense to the satisfaction of Council.

Reason: To maintain safe access for pedestrians and to protect the amenity of the adjoining area.

14E. All stormwater discharge pipes (and associated infrastructure) relating to the subject subdivision must be located on the pontoon approved under DA 142/15 and NSW Crown Land Licence No. 553251. (as required by Condition 9B)

Reason: To protect the natural environment.

CONDITIONS THAT MUST BE FULFILLED PRIOR TO THE RELEASE OF THE SUBDIVISION CERTIFICATE

15. An application for Subdivision Certificate with formal subdivision plans must be made to Council for each stage of the development. Easements must be shown over all services located on private property. Please note that a Subdivision Certificate application fee is applicable. The application fee will be charged in accordance with the fee schedule applicable at the time the application for Subdivision Certificate is lodged to Council. A minimum of four (4) copies of the formal subdivision plans, Administration Sheet and 88B Instrument Sheet (if applicable) must be provided to Council. All four (4) copies of the Administration Sheet and 88B Instrument Sheet (if applicable) must contain original signatures. Executed copies will not be accepted. Necessary alterations to the existing Neighbourhood Association as part of the application for the re-subdivision of the existing Neighbourhood Plan of Subdivision DP 285511 must be made.

Reason: To comply with the *Environmental Planning and Assessment Act 1979*.

- 15A. The Applicant must submit a copy of any instrument prepared in accordance with the *Conveyancing Act 1919*, with the application for a Subdivision Certificate for Council's endorsement for each respective stage.

The instrument must contain the following:-

- A restrictive covenant on all proposed residential lots requiring that the floor level of all habitable rooms be constructed at least the height of the Flood Planning Level of 95.54m (500mm above the 1 in 100 flood event level of 95.04m).

Reason: To ensure that a copy of any instrument is provided to Council for review and endorsement.

16. All lots must be able to be accessed from the internal road network. No lot is to directly access Perricoota Road. An application to Council's Engineering Department must be made for the construction of any new accesses or any alteration to the existing access. All new accesses are to be constructed at the Applicant's expense to Council's standards and in accordance with Council's policy.

The intersection with Perricoota Road must be completed in accordance with the approved plan prior to the release of the Subdivision Certificate for Stage 1 of the residential subdivision.

Reason: To ensure that all allotments have adequate access.

17. The public open space/drainage corridor must be completed in accordance with the approved Landscape Plan, Drainage Plan and Stormwater Management Plan prior to the release of the Subdivision Certificate for each applicable stage of the residential subdivision. The developer must fund the construction of a pedestrian/cycle path for the length of the development through the open/space drainage corridor in accordance with the staging approved as part of the approved plans.

Reason: To provide for open space and drainage to service the development.

18. The developer must provide filtered and raw water supply to each new lot prior to the release of the Subdivision Certificate for each stage of the residential subdivision. This must be provided in accordance with the approved design and must be fully funded by the developer. It is noted that separate filtered and raw water meters are not required to be installed prior to the release of the Subdivision Certificate.

In respect to raw water the developer must provide for a secondary pump on the 3 mile reserve pontoon for supply to the Perricoota Run raw water supply system. Existing viticulture can continue to be supplied through their existing supply. The developer must also provide a contribution to be determined by Council in respect to the provision of a booster pump within the Perricoota Run raw water supply system to cater for the additional demand placed on this system by the proposed development.

Reason: To satisfactorily service the lots created and to ensure that separate billing of newly created lots is possible.

18A. In respect to raw water the developer must provide for a secondary pump on the 3 mile reserve pontoon for supply to the Perricoota Run raw water supply system. Existing viticulture can continue to be supplied through their existing supply. The developer must also provide a contribution of \$18,000 (plus GST) in respect to the provision of a booster pump within the Perricoota Run raw water supply system to cater for the additional demand placed on this system by the proposed development.

Reason: To satisfactorily service the lots created.

19. The developer must connect each allotment with Council's sewerage system prior to the release of the Subdivision Certificate for each stage, in accordance with the approved plans.

Reason: To satisfactorily service the lots created.

20. The developer must provide all allotments with underground electricity, at their own cost. The developer must consult with the relevant electricity provider and must obtain suitable written correspondence/evidence from this provider stating that underground electricity has been provided to each allotment, or alternatively that final agreement has been made between the underground electricity provider and the developer to provide underground electricity to each allotment. This written correspondence must be to the satisfaction of Council.

Reason: To satisfactorily service the lots created.

21. The developer must provide all allotments with telecommunication connection, at their own cost. The developer must consult with the relevant telecommunications carrier and must obtain suitable written correspondence/evidence from this carrier stating that telecommunication services have been provided to each allotment, or alternatively that final agreement has been met between the telecommunications carrier and the developer to provide telecommunications services to each allotment. This written correspondence must be to the satisfaction of Council.

Reason: To satisfactorily service the lots created.

22. The developer must provide all allotments with natural gas, at their own cost. The developer must consult with the relevant natural gas provider and must obtain suitable written correspondence/evidence from this provider stating that natural gas services have been provided to each allotment, or alternatively that final agreement has been met between the natural gas provider and the developer to provide natural gas services to each allotment. This written correspondence/evidence must be to the satisfaction of Council.

Reason: To satisfactorily service the lots created.

23. Street lights and street name plates must be provided by the developer prior to the release of the Subdivision Certificate for each stage. The developer must submit a list of proposed street names for Council's consideration prior to lodgement of subdivision plans.

Reason: To satisfactorily service the lots created and to ensure that the development has appropriate street names.

24. Section 94 Development Contributions and Section 64 Sewerage and Water headworks charges must be paid to Council prior to release of the Subdivision Certificate for each stage of the residential subdivision. Charges are applicable for the additional allotments being created that will create additional demand on Council's infrastructure. These charges are;

Section 64 Servicing Charges

Existing approved additional 92 lots (2013/2014 rate)

	Contribution Rate (% of ET)	Contribution Amount	
		Sewer	Water
Development			
Conventional Lot	100%	\$1,156 per lot x 92	\$2,442 per lot x 92
Total = \$331,016		\$106,352	\$224,664

Section 94 Development Contributions

Existing approved additional 92 lots (2013/2014 rate)

	Contribution Rate (% of ET)	Contribution Amount			
		Road Upgrade	Open Space	Community Facilities	Waste
Development					
Conventional Lot	100%	\$1,500 per lot x 92	\$450 per lot x 92	\$150 per lot x 92	\$300 per lot x 92
Total = \$220,800		\$138,000	\$41,400	\$13,800	\$27,600

The Applicant may apply to Council under Section 96 of the *Environmental Planning and Assessment Act* 1979 to modify this condition in respect to the payment of Section 94 road and public open space Development Contributions to reflect "in kind" contributions made by the developer as part of this development as per Section 2.9 of Council's Section 94 Development Contributions Plan 2011. The subject Section 94 Development Contributions are imposed under Council's Section 94 Development Contributions Plan 2011, of which is available for inspection at Murray River Council's office, 21-25 Conargo Street, Mathoura NSW 2710.

Reason: To comply with Council's Section 94 Development Contributions Plan and Council's Section 64 Water and Sewer Development Servicing Plans.

25. The Applicant must provide Council with evidence that the required volume of high security water has been allocated to each allotment or transferred to Council in accordance with Council Policy for the provision of water by developments.

In the event that the developer is to directly provide each allotment with the required volume of high security, the following rates apply:-

- 500kL per lot less than 1000m²
- 750kL per lot 1001-1500m²
- 1000kL per lot 1501-2000m²
- 1250kL per lot 2001-2500m²
- 1500kL per lot 2501 – 3000m²
- 1750kL per lot 3001- 3500m²

Should the developer be unable to secure the amount of water required to be provided to Council for their development, then they must provide the equivalent current market value (\$) for that volume.

These details must be submitted to and approved by Council prior to the release of the Subdivision Certificate for each stage.

Reason: To comply with Council's Policy for the provision of water by developers.

26. Works As Executed (WAE) plans of all infrastructure and services must be provided to Council in both hard and electronic format (i.e. PDF and AutoCAD .dwg formats). The submitted WAE plans must be to the satisfaction of Council and must contain the true and correct locations and details of all installed infrastructure. The Applicant must also provide Council with an asset value for all installed infrastructure that will be transferred to and/or managed by Council.

Reason: To ensure Council receives true and correct details/location for all installed infrastructure and services in the form of Works As Executed plans.

26A. Prior to the release of the applicable Subdivision Certificate, the proponent must supply Council with an appropriate survey detailing that applicable proposed lots (66-69 (inclusive) and 91-97 (inclusive)) have been constructed to a height of 95.24m AHD (i.e. 200mm above the 1:100 ARI flood event).

Reason: To ensure development is protected from flood events.

26B. Prior to the release of the applicable Subdivision Certificate, the developer must provide appropriate evidence that the entirety of the applicable proposed lots (66-69 (inclusive) and 91-97 (inclusive)) have been filled and compacted to the relevant Australian Standards. This evidence must be to the satisfaction of Council's Engineering Department.

Reason: To ensure that the existing dam on site is filled and compacted.

26C. Flood mitigation works constructed to protect new urban development must be designed and maintained to meet the technical specifications of NSW DPI Water and the State Government's Floodplain Development Manual (2005).

Reason: To ensure development is protected from flood events.

26D. A Liquid Trade Waste Approval must be obtained from Council to service the existing Café on current Lot 1 DP 285511. This approval must be obtained prior to the release of the Subdivision Certificate for Stage 1.

Reason: To ensure that the existing café can be appropriately serviced and to comply with Section 68 Part C (4) of the Local Government Act 1993.

26E. The proposed excess stormwater disposal must incorporate a Gross Pollutant Trap prior to discharge into the Murray River. No untreated stormwater is permitted to be discharged into the Murray River at any time.

Reason: To ensure that stormwater from the subdivision is managed and disposed of in an acceptable manner.

27. The Subdivision Certificate is not released prior to all conditions of consent applicable to the Subdivision Certificate for each stage of the development being complied with to the satisfaction of Council.

Reason: To ensure all conditions are complied with.

NSW RURAL FIRE SERVICE (RFS) CONDITIONS THAT MUST BE FULFILLED

28. The development proposal must comply with the subdivision layout identified on the drawing prepared by North East Survey Design numbered M3163, dated 15 September 2016.

Reason: To comply with NSW Rural Fire Service requirements.

29. *Deleted.*

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions apply:

30. Water, electricity and gas must comply with Section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Reason: To comply with NSW Rural Fire Service requirements.

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions apply:

31. Public access road must comply with Section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

Reason: To comply with NSW Rural Fire Service requirements.

32. *Deleted.*

NSW RFS ADVICE TO APPLICANT

This development consent is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the 'Building Code of Australia' must be subject to separate application under Section 79BA of the Environmental Planning and Assessment Act 1979 and address the requirements of 'Planning for Bush Fire Protection 2006'.

NSW ENVIRONMENTAL PROTECTION AUTHORITY (EPA) CONDITIONS THAT MUST BE FULFILLED

32A. The proponent must take all necessary precautions and implement measures to prevent pollution of waterways during the proposed works.

Reason: To comply with NSW EPA requirements.

32B. The proponent must be aware that under Section 120 of the *Protection of the Environment Operations Act 1997* it is an offence to pollute waters.

Reason: To comply with NSW EPA requirements.

DEMOLITION CONDITIONS THAT MUST BE FULFILLED

CONDITIONS THAT MUST BE FULFILLED PRIOR TO THE COMMENCEMENT OF ANY DEMOLITION WORKS

33. Any essential service (e.g. water supply, sewer, gas, electricity) must be disconnected / capped from the structure being demolished or removed in accordance with the requirements of the relevant authority.

Reason: To ensure all services are properly disconnected and protected.

34. A temporary hoarding or temporary construction site fence must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of works if the works:

- (a) could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
- (b) could cause damage to adjoining lands by falling objects, or
- (c) involve the enclosure of a public place or part of a public place.

Note: See the entry in the General Exempt Development Code for scaffolding, hoardings and temporary construction site fences.

Reason: To comply with legislative requirements.

35. Toilet Facilities

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet must:

- (a) be a standard flushing toilet connected to a public sewer, or

- (b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
- (c) be a temporary chemical closet approved under the *Local Government Act 1993*.

Reason: To ensure suitable facilities are provided for workers during construction and to comply with requirements for Work Health and Safety on worksites.

36. Garbage receptacle

A garbage receptacle must be provided at the work site before works begin and must be maintained until the works are completed. The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.

Reason: To comply with the *Protection of the Environment Operations Act 1997*, and to preserve the environmental health and amenity of the adjoining area.

37. Development involving bonded asbestos material and friable asbestos material

- a. work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence as required under Clause 458 of the Work Health and Safety Regulation 2011.
- b. the person having the benefit of the consent must provide Council with a copy of a signed contract with such a person before any development pursuant to the certificate commences.
- c. any such contract must indicate whether any bonded asbestos material or friable asbestos material will be removed, and if so, must specify the landfill site (that may lawfully receive asbestos) to which the bonded asbestos material or friable asbestos material is to be delivered.
- d. if the contract indicates that bonded asbestos material or friable asbestos material will be removed to a specified landfill site, the person having the benefit of the development application must give Council a copy of a receipt from the operator of the landfill site stating that all the asbestos material referred to in the contract has been received by the operator.

Note 1. Removal work refers to work in which the bonded asbestos material or friable asbestos material is removed, repaired or disturbed.

Note 2. The effect of (a) is that development will be a workplace to which the Work Health and Safety Regulation 2011 applies while removal work involving bonded asbestos material or friable asbestos material is being undertaken.

Note 3. Information on the removal and disposal of asbestos to landfill sites licensed to accept this waste is available from the NSW EPA.

Note 4. Demolition undertaken in relation this consent must be carried out in accordance with Australian Standard AS 2601—2001, Demolition of structures.

Reason: To clarify the requirements of the Work Health and Safety Regulation 2011.

CONDITIONS THAT APPLY DURING THE WORKS THAT MUST BE FULFILLED

Note: The Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Noise Control) Regulation 2008 contain provisions relating to noise.

38. Hours for demolition

Demolition may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no demolition is to be carried out at any time on a Sunday or a public holiday.

Reason: To comply with the *Protection of the Environment Operations Act 1997*, Regulations and Council Policy.

39. Compliance with plans

Works must be carried out in accordance with the plans and specifications to which this consent relates.

Reason: To ensure that the development is carried out as assessed and approved by Council.

40. Sedimentation and erosion controls

Run-off and erosion controls must be effectively maintained until the site has been stabilised and landscaped.

Reason: To prevent water pollution and protect the amenity of the adjoining area, and to comply with the *Protection of the Environment Operations Act 1997* and Council Policy.

41. Maintenance of site

Demolition materials and equipment must be stored wholly within the work site unless an consent to store them elsewhere is held. Demolition materials and waste materials must be disposed of at a waste management facility. The work site must be left clear of waste and debris at the completion of the works.

Reason: To comply with the *Protection of the Environment Operations Act 1997*, and to preserve the environmental health and amenity of the adjoining area.

LIQUID TRADE WASTE CONDITIONS THAT MUST BE FULFILLED

42. A Liquid Trade Waste Approval must be obtained from Council to service the existing café business on current Lot 10 DP 285511 (currently known as Three Black Sheep Café). The Liquid Trade Waste Approval must be approved prior to the installation of any liquid trade waste pre-treatment equipment.

This Liquid Trade Waste Approval must include details of all proposed liquid trade waste pre-treatment equipment.

Reason: To ensure that the proposed development can be appropriately serviced and to comply with Section 68 Part C (4) of the Local Government Act 1993.

43. The Applicant must obtain a final Certificate of Compliance from Council prior to any liquid trade waste being discharged into Council's sewerage system.

Reason: To ensure the integrity of the pre-treatment installation and compliance with the Conditions of the Liquid Trade Waste Approval.

NSW DPI Lands Condition that must be fulfilled

44. Prior to the commencement of any stormwater discharge works on NSW Crown Land Reserve 751159 (Lot 7304 DP 1148876), NSW Crown Licence No. 553251 must be appropriately amended to allow an **additional purpose** (stormwater discharge or similar) to this existing licence or alternatively NSW Crown Licence No. 553251 is to be revoked and a new NSW Crown Licence approved which approves all required works including stormwater discharge. The proponent must provide Council with a copy of the amended NSW Crown Licence No. 553251 / new NSW Crown Licence prior to the commencement of any stormwater discharge into the Murray River.

Reason: To comply with NSW DPI Lands requirements.

ADVICE TO APPLICANT

The land subject to this consent may have restrictive covenants applying to it. It is the responsibility of the owner and developer to ensure that covenants are adhered to. Council does not enforce or regulate covenants and therefore accepts no responsibility for checking the compliance of development with such covenants.

Reason: To ensure compliance with the *Environmental Planning and Assessment Act 1979*.

It is noted that it is the responsibility of the Applicant to ensure that the development is consistent with the NSW Department of Environment, Climate Change and Water (NSW OEH) document entitled: *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*, available:

<http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>.

Reason: To ensure compliance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects*.

The land labelled 'proposed future drainage/open space reserve (30m wide)' on the stamped plans has not been assessed as part of this development application, and will require future assessment with any new development application affecting the most northern section of the subject land.

Reason: To ensure that the development is carried out as assessed.

OTHER APPROVALS

Approvals granted under Section 68 of the *Local Government Act 1993*:

- N/A

RIGHT OF APPEAL

If you are dissatisfied with this decision Section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.



Glenn Bulmer
Manager, Planning and Building

COB/ki

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 9/1213161

SEARCH DATE	TIME	EDITION NO	DATE
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15/2/2017	6:34 PM	1	17/1/2017

LAND

LOT 9 IN DEPOSITED PLAN 1213161
AT MOAMA
LOCAL GOVERNMENT AREA MURRAY RIVER
PARISH OF TATAILA COUNTY OF CADELL
TITLE DIAGRAM DP1213161

FIRST SCHEDULE

DORWARD DEVELOPMENTS PTY LTD

SECOND SCHEDULE (2 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 DP285511 EASEMENT FOR WATER SUPPLY 5 METRE(S) WIDE REFERRED TO AND NUMBERED (5) IN THE S.88B INSTRUMENT AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

