

Contract for the sale and purchase of land 2019 edition

TERM	MEANING OF TERM	NSW DAN:
vendor's agent	Richardson & Wrench North Sydney 66 Berry Street, North Sydney NSW 2060	Phone 02-9929 8944 Fax Ref Tim O'Halloran
Vendor	Frank M Mason & Co Pty Ltd atf The Mason Unit Trust & Andrew Philip Mason & Alison Louise Welinski as Executors of the Estate of the Late Bryan Maxwell Mason	
vendor's solicitor	Andrew P Mason, Solicitor PO Box 56, Milsons Point NSW 1565	Phone 02-9954 3042 Email andrew@mason.net.au Ref 20410:AM
date for completion	42 nd subject to Special Condition No. 46	day after the contract date (clause 15)
land (address, plan details and title reference)	2-4 Winslow Street & 32 Willoughby Street, Kirribilli NSW 2061, being Lot1 DP932077 And being the land in Folio 1/932077	
improvements	<input type="checkbox"/> VACANT POSSESSION <input checked="" type="checkbox"/> subject to existing tenancies <input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input type="checkbox"/> home unit <input type="checkbox"/> carspace <input type="checkbox"/> storage space <input type="checkbox"/> none <input checked="" type="checkbox"/> other: Two Semidetached offices and detached office building	
attached copies	documents in the List of Documents as marked or numbered: other documents:	

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

inclusions	<input checked="" type="checkbox"/> blinds	<input type="checkbox"/> dishwasher	<input checked="" type="checkbox"/> light fittings	<input type="checkbox"/> stove
	<input type="checkbox"/> built-in wardrobes	<input checked="" 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			Phone	
			Email	
			Ref	
price	\$			
deposit	\$			(10% of the price, unless otherwise stated)
balance	\$			
contract date				(if not stated, the date this contract was made)

buyer's agent

purchaser's co-ownership JOINT TENANTS tenants in common in unequal shares

deposit INVESTED not invested

guarantor name and address:
name and address:

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

FOR EXECUTION SEE PAGE 2A

Choices

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

Nominated Electronic Lodgment Network (ELN) (clause 30): _____

Electronic transaction (clause 30) no YES
(if no, vendor must provide further details, such as the proposed applicable waiver, in the space below, or serve within 14 days of the contract date):

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

Land tax is adjustable NO yes
GST: Taxable supply NO yes in full yes to an extent
 Margin scheme will be used in making the taxable supply NO yes

This sale is not a taxable supply because (one or more of the following may apply) the sale is:

- not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))
- by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))
- GST-free because the sale is the supply of a going concern under section 38-325
- GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-O
- input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

Purchaser must make an *GSTRW payment*. NO yes (if yes, vendor must provide further details)
(GST residential withholding payment)

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

GSTRW payment (GST residential withholding payment) – further details

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

Supplier's name:

Supplier's ABN:

Supplier's GST branch number (if applicable):

Supplier's business address:

Supplier's email address:

Supplier's phone number:

Supplier's proportion of *GSTRW payment*. \$

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

Amount purchaser must pay – price multiplied by the *GSTRW rate* (residential withholding rate): \$

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

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

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

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

List of Documents

<p>General</p> <p><input checked="" type="checkbox"/> 1 property certificate for the land</p> <p><input checked="" type="checkbox"/> 2 plan of the land</p> <p><input type="checkbox"/> 3 unregistered plan of the land</p> <p><input type="checkbox"/> 4 plan of land to be subdivided</p> <p><input type="checkbox"/> 5 document to be lodged with a relevant plan</p> <p><input checked="" type="checkbox"/> 6 section 10.7(2) planning certificate under Environmental Planning and Assessment Act 1979</p> <p><input checked="" type="checkbox"/> 7 additional information included in that certificate under section 10.7(5)</p> <p><input checked="" type="checkbox"/> 8 sewerage infrastructure location diagram (service location diagram)</p> <p><input checked="" type="checkbox"/> 9 sewer lines location diagram (sewerage service diagram)</p> <p><input type="checkbox"/> 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract</p> <p><input type="checkbox"/> 11 <i>planning agreement</i></p> <p><input type="checkbox"/> 12 section 88G certificate (positive covenant)</p> <p><input type="checkbox"/> 13 survey report</p> <p><input type="checkbox"/> 14 building information certificate or building certificate given under <i>legislation</i></p> <p><input checked="" type="checkbox"/> 15 lease (with every relevant memorandum or variation)</p> <p><input type="checkbox"/> 16 other document relevant to tenancies</p> <p><input type="checkbox"/> 17 licence benefiting the land</p> <p><input type="checkbox"/> 18 old system document</p> <p><input type="checkbox"/> 19 Crown purchase statement of account</p> <p><input type="checkbox"/> 20 building management statement</p> <p><input type="checkbox"/> 21 form of requisitions</p> <p><input type="checkbox"/> 22 <i>clearance certificate</i></p> <p><input type="checkbox"/> 23 land tax certificate</p> <p>Home Building Act 1989</p> <p><input type="checkbox"/> 24 insurance certificate</p> <p><input type="checkbox"/> 25 brochure or warning</p> <p><input type="checkbox"/> 26 evidence of alternative indemnity cover</p> <p>Swimming Pools Act 1992</p> <p><input type="checkbox"/> 27 certificate of compliance</p> <p><input type="checkbox"/> 28 evidence of registration</p> <p><input type="checkbox"/> 29 relevant occupation certificate</p> <p><input type="checkbox"/> 30 certificate of non-compliance</p> <p><input type="checkbox"/> 31 detailed reasons of non-compliance</p>	<p>Strata or community title (clause 23 of the contract)</p> <p><input type="checkbox"/> 32 property certificate for strata common property</p> <p><input type="checkbox"/> 33 plan creating strata common property</p> <p><input type="checkbox"/> 34 strata by-laws</p> <p><input type="checkbox"/> 35 strata development contract or statement</p> <p><input type="checkbox"/> 36 strata management statement</p> <p><input type="checkbox"/> 37 strata renewal proposal</p> <p><input type="checkbox"/> 38 strata renewal plan</p> <p><input type="checkbox"/> 39 leasehold strata - lease of lot and common property</p> <p><input type="checkbox"/> 40 property certificate for neighbourhood property</p> <p><input type="checkbox"/> 41 plan creating neighbourhood property</p> <p><input type="checkbox"/> 42 neighbourhood development contract</p> <p><input type="checkbox"/> 43 neighbourhood management statement</p> <p><input type="checkbox"/> 44 property certificate for precinct property</p> <p><input type="checkbox"/> 45 plan creating precinct property</p> <p><input type="checkbox"/> 46 precinct development contract</p> <p><input type="checkbox"/> 47 precinct management statement</p> <p><input type="checkbox"/> 48 property certificate for community property</p> <p><input type="checkbox"/> 49 plan creating community property</p> <p><input type="checkbox"/> 50 community development contract</p> <p><input type="checkbox"/> 51 community management statement</p> <p><input type="checkbox"/> 52 document disclosing a change of by-laws</p> <p><input type="checkbox"/> 53 document disclosing a change in a development or management contract or statement</p> <p><input type="checkbox"/> 54 document disclosing a change in boundaries</p> <p><input type="checkbox"/> 55 information certificate under Strata Schemes Management Act 2015</p> <p><input type="checkbox"/> 56 information certificate under Community Land Management Act 1989</p> <p><input type="checkbox"/> 57 disclosure statement – off the plan contract</p> <p><input type="checkbox"/> 58 other document relevant to off the plan contract</p> <p>Other</p> <p><input checked="" type="checkbox"/> 59 Proposed Transfer Granting Easement</p>
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HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address, email address and telephone number

Cooling-off certificate

I, _____

of _____

in the State of New South Wales, Solicitor/Barrister certify as follows:

- (a) I am a Solicitor/Barrister currently admitted to practise in New South Wales.
- (b) I am giving this certificate in accordance with Section 66W of the *Conveyancing Act 1919* with reference to a contract for the sale of property known as 2-4 Winslow Street & 32 Willoughby Street, Kirribilli NSW 2061 from Frank M Mason & Co Pty Ltd, Andrew Philip Mason & Alison Louise Welinski as vendors to

as purchaser in order that there is no cooling-off period in relation to that contract.

- (c) I do not act for the vendor and am not employed in the legal practice of a solicitor acting for the vendor nor am I a member or employee of a firm of which a solicitor acting for the vendor is a member or employee.
- (d) I have explained to _____

the purchaser / an officer of the purchaser corporation or a person involved in the management of its affairs:

- (i) the effect of the contract for the purchase of that property;
- (ii) the nature of this certificate;
- (iii) the effect of giving this certificate to the vendor, that is, there is no cooling-off period in relation to the contract.

Dated:

Signed: _____

Execution by Frank M Mason & Co Pty Ltd. Pursuant to Sec. 127 of the Corporations Act 2001,

.....
Andrew Philip Mason, Director

.....
Kenneth James Holder, Director

SIGNED SEALED & DELIVERED by
Andrew Philip Mason

in the presence of:

Signature of Witness

Signature

Name of Witness

Address of Witness

SIGNED SEALED & DELIVERED by
Alison Louise Welinski

in the presence of:

Signature of Witness

Signature

Name of Witness

Address of Witness

Execution by purchaser

SIGNED SEALED & DELIVERED by

in the presence of:

Signature of Witness

Signature

Name of Witness

Address of Witness

Execution by guarantor

SIGNED SEALED & DELIVERED by

in the presence of:

Signature of Witness

Signature

Name of Witness

Address of Witness

SIGNED SEALED & DELIVERED by

in the presence of:

Signature of Witness

Signature

Name of Witness

Address of Witness

IMPORTANT NOTICE TO VENDORS AND PURCHASERS

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

WARNING—SMOKE ALARMS

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

WARNING—LOOSE-FILL ASBESTOS INSULATION

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

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

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

COOLING OFF PERIOD (PURCHASER'S RIGHTS)

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

DISPUTES

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

AUCTIONS

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

WARNINGS

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

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

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

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

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

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

2 Deposit and other payments before completion

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

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

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

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

- 2.5 If any of the deposit is not paid on time or a *cheque* for any of the deposit is not honoured on presentation, the vendor can *terminate*. This right to *terminate* is lost as soon as the deposit is paid in full.
- 2.6 If the vendor accepts a bond or guarantee for the deposit, clauses 2.1 to 2.5 do not apply.
- 2.7 If the vendor accepts a bond or guarantee for part of the deposit, clauses 2.1 to 2.5 apply only to the balance.
- 2.8 If any of the deposit or of the balance of the price is paid before completion to the vendor or as the vendor directs, it is a charge on the land in favour of the purchaser until *termination* by the vendor or completion, subject to any existing right.
- 2.9 If each *party* tells the *depositholder* that the deposit is to be invested, the *depositholder* is to invest the deposit (at the risk of the *party* who becomes entitled to it) with a *bank*, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the *parties* equally, after deduction of all proper government taxes and financial institution charges and other charges.

3 Deposit-bond

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

4 Transfer

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

5 Requisitions

- 5.1 If a form of *requisitions* is attached to this contract, the purchaser is taken to have made those *requisitions*.
- 5.2 If the purchaser is or becomes entitled to make any other *requisition*, the purchaser can make it only by *serving* it –
- 5.2.1 if it arises out of this contract or it is a general question about the *property* or title - *within* 21 days after the contract date;
- 5.2.2 if it arises out of anything *served* by the vendor - *within* 21 days after the later of the contract date and that *service*; and
- 5.2.3 in any other case - *within* a reasonable time.

6 Error or misdescription

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

7 Claims by purchaser

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

8 Vendor's rights and obligations

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

9 Purchaser's default

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

10 Restrictions on rights of purchaser

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

- 10.1.1 the ownership or location of any fence as defined in the Dividing Fences Act 1991;
- 10.1.2 a service for the *property* being a joint service or passing through another property, or any service for another property passing through the *property* ('service' includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water service);
- 10.1.3 a wall being or not being a party wall in any sense of that term or the *property* being affected by an easement for support or not having the benefit of an easement for support;
- 10.1.4 any change in the *property* due to fair wear and tear before completion;
- 10.1.5 a promise, representation or statement about this contract, the *property* or the title, not set out or referred to in this contract;
- 10.1.6 a condition, exception, reservation or restriction in a Crown grant;
- 10.1.7 the existence of any authority or licence to explore or prospect for gas, minerals or petroleum;
- 10.1.8 any easement or restriction on use the substance of either of which is disclosed in this contract or any non-compliance with the easement or restriction on use; or
- 10.1.9 anything the substance of which is disclosed in this contract (except a caveat, charge, mortgage, priority notice or writ).
- 10.2 The purchaser cannot *rescind* or *terminate* only because of a defect in title to or quality of the inclusions.
- 10.3 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* or require the vendor to change the nature of the title disclosed in this contract (for example, to remove a caution evidencing qualified title, or to lodge a plan of survey as regards limited title).
- 11 Compliance with work orders**
- 11.1 *Normally*, the vendor must by completion comply with a *work order* made on or before the contract date and if this contract is completed the purchaser must comply with any other *work order*.
- 11.2 If the purchaser complies with a *work order*, and this contract is *rescinded* or *terminated*, the vendor must pay the expense of compliance to the purchaser.
- 12 Certificates and inspections**
- The vendor must do everything reasonable to enable the purchaser, subject to the rights of any tenant –
- 12.1 to have the *property* inspected to obtain any certificate or report reasonably required;
- 12.2 to apply (if necessary in the name of the vendor) for –
- 12.2.1 any certificate that can be given in respect of the *property* under *legislation*; or
- 12.2.2 a copy of any approval, certificate, consent, direction, notice or order in respect of the *property* given under *legislation*, even if given after the contract date; and
- 12.3 to make 1 inspection of the *property* in the 3 days before a time appointed for completion.
- 13 Goods and services tax (GST)**
- 13.1 Terms used in this clause which are not defined elsewhere in this contract and have a defined meaning in the *GST Act* have the same meaning in this clause.
- 13.2 *Normally*, if a *party* must pay the price or any other amount to the other *party* under this contract, GST is not to be added to the price or amount.
- 13.3 If under this contract a *party* must make an adjustment or payment for an expense of another party or pay an expense payable by or to a third party (for example, under clauses 14 or 20.7) –
- 13.3.1 the *party* must adjust or pay on completion any GST added to or included in the expense; but
- 13.3.2 the amount of the expense must be reduced to the extent the party receiving the adjustment or payment (or the representative member of a GST group of which that party is a member) is entitled to an input tax credit for the expense; and
- 13.3.3 if the adjustment or payment under this contract is consideration for a taxable supply, an amount for GST must be added at the *GST rate*.
- 13.4 If this contract says this sale is the supply of a going concern –
- 13.4.1 the *parties* agree the supply of the *property* is a supply of a going concern;
- 13.4.2 the vendor must, between the contract date and completion, carry on the enterprise conducted on the land in a proper and business-like way;
- 13.4.3 if the purchaser is not registered by the date for completion, the *parties* must complete and the purchaser must pay on completion, in addition to the price, an amount being the price multiplied by the *GST rate* ("the retention sum"). The retention sum is to be held by the *depositholder* and dealt with as follows –
- if *within* 3 months of completion the purchaser *serves* a letter from the Australian Taxation Office stating the purchaser is registered with a date of effect of registration on or before completion, the *depositholder* is to pay the retention sum to the purchaser; but
 - if the purchaser does not *serve* that letter *within* 3 months of completion, the *depositholder* is to pay the retention sum to the vendor; and
- 13.4.4 if the vendor, despite clause 13.4.1, *serves* a letter from the Australian Taxation Office stating the vendor has to pay GST on the supply, the purchaser must pay to the vendor on demand the amount of GST assessed.
- 13.5 *Normally*, the vendor promises the margin scheme will not apply to the supply of the *property*.

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

14.8 The vendor is liable for any amount recoverable for work started on or before the contract date on the *property* or any adjoining footpath or road.

15 Date for completion

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

16 Completion

• Vendor

- 16.1 On completion the vendor must give the purchaser any *document of title* that relates only to the *property*.
- 16.2 If on completion the vendor has possession or control of a *document of title* that relates also to other property, the vendor must produce it as and where necessary.
- 16.3 *Normally*, on completion the vendor must cause the legal title to the *property* (being an estate in fee simple) to pass to the purchaser free of any mortgage or other interest, subject to any necessary registration.
- 16.4 The legal title to the *property* does not pass before completion.
- 16.5 If the vendor gives the purchaser a document (other than the transfer) that needs to be lodged for registration, the vendor must pay the lodgment fee to the purchaser.
- 16.6 If a *party* serves a land tax certificate showing a charge on any of the land, by completion the vendor must do all things and pay all money required so that the charge is no longer effective against the land.

• Purchaser

- 16.7 On completion the purchaser must pay to the vendor, by cash (up to \$2,000) or *settlement cheque* –
- 16.7.1 the price less any:
- deposit paid;
 - *FRCGW remittance* payable;
 - *GSTRW payment*; and
 - amount payable by the vendor to the purchaser under this contract; and
- 16.7.2 any other amount payable by the purchaser under this contract.
- 16.8 If the vendor requires more than 5 *settlement cheques*, the vendor must pay \$10 for each extra *cheque*.
- 16.9 If any of the deposit is not covered by a bond or guarantee, on completion the purchaser must give the vendor an order signed by the purchaser authorising the *depositholder* to account to the vendor for the deposit.
- 16.10 On completion the deposit belongs to the vendor.
- ### • Place for completion
- 16.11 *Normally*, the *parties* must complete at the completion address, which is –
- 16.11.1 if a special completion address is stated in this contract - that address; or
- 16.11.2 if none is stated, but a first mortgagee is disclosed in this contract and the mortgagee would usually discharge the mortgage at a particular place - that place; or
- 16.11.3 in any other case - the vendor's *solicitor's* address stated in this contract.
- 16.12 The vendor by reasonable notice can require completion at another place, if it is in NSW, but the vendor must pay the purchaser's additional expenses, including any agency or mortgagee fee.
- 16.13 If the purchaser requests completion at a place that is not the completion address, and the vendor agrees, the purchaser must pay the vendor's additional expenses, including any agency or mortgagee fee.

17 Possession

- 17.1 *Normally*, the vendor must give the purchaser vacant possession of the *property* on completion.
- 17.2 The vendor does not have to give vacant possession if –
- 17.2.1 this contract says that the sale is subject to existing tenancies; and
- 17.2.2 the contract discloses the provisions of the tenancy (for example, by attaching a copy of the lease and any relevant memorandum or variation).
- 17.3 *Normally*, the purchaser can claim compensation (before or after completion) or *rescind* if any of the land is affected by a protected tenancy (a tenancy affected by Schedule 2, Part 7 of the Residential Tenancies Act 2010).

18 Possession before completion

- 18.1 This clause applies only if the vendor gives the purchaser possession of the *property* before completion.
- 18.2 The purchaser must not before completion –
- 18.2.1 let or part with possession of any of the *property*;
- 18.2.2 make any change or structural alteration or addition to the *property*; or
- 18.2.3 contravene any agreement between the *parties* or any direction, document, *legislation*, notice or order affecting the *property*.
- 18.3 The purchaser must until completion –
- 18.3.1 keep the *property* in good condition and repair having regard to its condition at the giving of possession; and
- 18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.

- 18.4 The risk as to damage to the *property* passes to the purchaser immediately after the purchaser enters into possession.
- 18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor –
- 18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and
- 18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate prescribed under s101 Civil Procedure Act 2005.
- 18.6 If this contract is *rescinded* or *terminated* the purchaser must immediately vacate the *property*.
- 18.7 If the *parties* or their *solicitors* on their behalf do not agree in writing to a fee or rent, none is payable.

19 Rescission of contract

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

20 Miscellaneous

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

21 Time limits in these provisions

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

22 Foreign Acquisitions and Takeovers Act 1975

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

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

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

23.9.4 a resolution is passed by the owners corporation before the contract date or before completion to give to the owners in the scheme for their consideration a strata renewal plan that has not lapsed at the contract date and there is not attached to this contract a strata renewal proposal or the strata renewal plan.

• **Notices, certificates and inspections**

- 23.10 The purchaser must give the vendor 2 copies of an information notice addressed to the owners corporation and signed by the purchaser.
- 23.11 The vendor must complete and sign 1 copy of the notice and give it to the purchaser on completion.
- 23.12 Each *party* can sign and give the notice as agent for the other.
- 23.13 The vendor must *serve* an information certificate issued after the contract date in relation to the lot, the scheme or any higher scheme at least 7 days before the date for completion.
- 23.14 The purchaser does not have to complete earlier than 7 days after *service* of the certificate and clause 21.3 does not apply to this provision. On completion the purchaser must pay the vendor the prescribed fee for the certificate.
- 23.15 The vendor authorises the purchaser to apply for the purchaser's own certificate.
- 23.16 The vendor authorises the purchaser to apply for and make an inspection of any record or other document in the custody or control of the owners corporation or relating to the scheme or any higher scheme.

• **Meetings of the owners corporation**

- 23.17 If a general meeting of the owners corporation is convened before completion –
- 23.17.1 if the vendor receives notice of it, the vendor must immediately notify the purchaser of it; and
- 23.17.2 after the expiry of any cooling off period, the purchaser can require the vendor to appoint the purchaser (or the purchaser's nominee) to exercise any voting rights of the vendor in respect of the lot at the meeting.

24 Tenancies

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

- 24.4.5 the purchaser must comply with any obligation to the tenant under the lease, to the extent that the obligation is disclosed in this contract and is to be complied with after completion.

25 Qualified title, limited title and old system title

- 25.1 This clause applies only if the land (or part of it) –
- 25.1.1 is under qualified, limited or old system title; or
- 25.1.2 on completion is to be under one of those titles.
- 25.2 The vendor must *serve* a proper abstract of title *within 7* days after the contract date.
- 25.3 If an abstract of title or part of an abstract of title is attached to this contract or has been lent by the vendor to the purchaser before the contract date, the abstract or part is *served* on the contract date.
- 25.4 An abstract of title can be or include a list of documents, events and facts arranged (apart from a will or codicil) in date order, if the list in respect of each document –
- 25.4.1 shows its date, general nature, names of parties and any registration number; and
- 25.4.2 has attached a legible photocopy of it or of an official or registration copy of it.
- 25.5 An abstract of title –
- 25.5.1 must start with a good root of title (if the good root of title must be at least 30 years old, this means 30 years old at the contract date);
- 25.5.2 in the case of a leasehold interest, must include an abstract of the lease and any higher lease;
- 25.5.3 *normally*, need not include a Crown grant; and
- 25.5.4 need not include anything evidenced by the Register kept under the Real Property Act 1900.
- 25.6 In the case of land under old system title –
- 25.6.1 in this contract 'transfer' means conveyance;
- 25.6.2 the purchaser does not have to *serve* the form of transfer until after the vendor has *served* a proper abstract of title; and
- 25.6.3 each vendor must give proper covenants for title as regards that vendor's interest.
- 25.7 In the case of land under limited title but not under qualified title –
- 25.7.1 *normally*, the abstract of title need not include any document which does not show the location, area or dimensions of the land (for example, by including a metes and bounds description or a plan of the land);
- 25.7.2 clause 25.7.1 does not apply to a document which is the good root of title; and
- 25.7.3 the vendor does not have to provide an abstract if this contract contains a delimitation plan (whether in registrable form or not).
- 25.8 The vendor must give a proper covenant to produce where relevant.
- 25.9 The vendor does not have to produce or covenant to produce a document that is not in the possession of the vendor or a mortgagee.
- 25.10 If the vendor is unable to produce an original document in the chain of title, the purchaser will accept a photocopy from the Registrar-General of the registration copy of that document.

26 Crown purchase money

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

27 Consent to transfer

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

28 Unregistered plan

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

29 Conditional contract

- 29.1 This clause applies only if a provision says this contract or completion is conditional on an event.
- 29.2 If the time for the event to happen is not stated, the time is 42 days after the contract date.
- 29.3 If this contract says the provision is for the benefit of a *party*, then it benefits only that *party*.
- 29.4 If anything is necessary to make the event happen, each *party* must do whatever is reasonably necessary to cause the event to happen.
- 29.5 A *party* can *rescind* under this clause only if the *party* has substantially complied with clause 29.4.
- 29.6 If the event involves an approval and the approval is given subject to a condition that will substantially disadvantage a *party* who has the benefit of the provision, the *party* can *rescind within* 7 days after either *party* *serves* notice of the condition.
- 29.7 If the *parties* can lawfully complete without the event happening –
- 29.7.1 if the event does not happen *within* the time for it to happen, a *party* who has the benefit of the provision can *rescind within* 7 days after the end of that time;
- 29.7.2 if the event involves an approval and an application for the approval is refused, a *party* who has the benefit of the provision can *rescind within* 7 days after either *party* *serves* notice of the refusal; and
- 29.7.3 the date for completion becomes the later of the date for completion and 21 days after the earliest of –
- either *party* *serving* notice of the event happening;
 - every *party* who has the benefit of the provision *serving* notice waiving the provision; or
 - the end of the time for the event to happen.
- 29.8 If the *parties* cannot lawfully complete without the event happening –
- 29.8.1 if the event does not happen *within* the time for it to happen, either *party* can *rescind*;
- 29.8.2 if the event involves an approval and an application for the approval is refused, either *party* can *rescind*;
- 29.8.3 the date for completion becomes the later of the date for completion and 21 days after either *party* *serves* notice of the event happening.
- 29.9 A *party* cannot *rescind* under clauses 29.7 or 29.8 after the event happens.

30 Electronic transaction

- 30.1 This *Conveyancing Transaction* is to be conducted as an *electronic transaction* if –
- 30.1.1 this contract says that it is an *electronic transaction*;
- 30.1.2 the *parties* otherwise agree that it is to be conducted as an *electronic transaction*; or
- 30.1.3 the *conveyancing rules* require it to be conducted as an *electronic transaction*.
- 30.2 However, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 30.2.1 if the land is not *electronically tradeable* or the transfer is not eligible to be lodged electronically; or
- 30.2.2 if, at any time after the *effective date*, but at least 14 days before the date for completion, a *party* *serves* a notice stating a valid reason why it cannot be conducted as an *electronic transaction*.
- 30.3 If, because of clause 30.2.2, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 30.3.1 each *party* must –
- bear equally any disbursements or fees; and
 - otherwise bear that *party's* own costs;
- incurred because this *Conveyancing Transaction* was to be conducted as an *electronic transaction*; and
- 30.3.2 if a *party* has paid all of a disbursement or fee which, by reason of this clause, is to be borne equally by the *parties*, that amount must be adjusted under clause 14.2.
- 30.4 If this *Conveyancing Transaction* is to be conducted as an *electronic transaction* –
- 30.4.1 to the extent that any other provision of this contract is inconsistent with this clause, the provisions of this clause prevail;

- 30.4.2 *normally*, words and phrases used in this clause 30 (italicised and in Title Case, such as *Electronic Workspace* and *Lodgment Case*) have the same meaning which they have in the *participation rules*;
- 30.4.3 the *parties* must conduct the *electronic transaction* –
- in accordance with the *participation rules* and the *ECNL*; and
 - using the nominated *ELN*, unless the *parties* otherwise agree;
- 30.4.4 a *party* must pay the fees and charges payable by that *party* to the *ELNO* and the *Land Registry* as a result of this transaction being an *electronic transaction*;
- 30.4.5 any communication from one *party* to another *party* in the *Electronic Workspace* made –
- after the *effective date*; and
 - before the receipt of a notice given under clause 30.2.2;
- is taken to have been received by that *party* at the time determined by s13A of the *Electronic Transactions Act 2000*; and
- 30.4.6 a document which is an *electronic document* is served as soon as it is first *Digitally Signed* in the *Electronic Workspace* on behalf of the *party* required to serve it.
- 30.5 *Normally*, the vendor must *within 7 days* of the *effective date* –
- 30.5.1 create an *Electronic Workspace*;
- 30.5.2 populate the *Electronic Workspace* with *title data*, the date for completion and, if applicable, *mortgagee details*; and
- 30.5.3 invite the purchaser and any *discharging mortgagee* to the *Electronic Workspace*.
- 30.6 If the vendor has not created an *Electronic Workspace* in accordance with clause 30.5, the purchaser may create an *Electronic Workspace*. If the purchaser creates the *Electronic Workspace* the purchaser must –
- 30.6.1 populate the *Electronic Workspace* with *title data*;
- 30.6.2 create and populate an *electronic transfer*;
- 30.6.3 populate the *Electronic Workspace* with the date for completion and a nominated *completion time*; and
- 30.6.4 invite the vendor and any *incoming mortgagee* to join the *Electronic Workspace*.
- 30.7 *Normally*, *within 7 days* of receiving an invitation from the vendor to join the *Electronic Workspace*, the purchaser must –
- 30.7.1 join the *Electronic Workspace*;
- 30.7.2 create and populate an *electronic transfer*;
- 30.7.3 invite any *incoming mortgagee* to join the *Electronic Workspace*; and
- 30.7.4 populate the *Electronic Workspace* with a nominated *completion time*.
- 30.8 If the purchaser has created the *Electronic Workspace* the vendor must *within 7 days* of being invited to the *Electronic Workspace* –
- 30.8.1 join the *Electronic Workspace*;
- 30.8.2 populate the *Electronic Workspace* with *mortgagee details*, if applicable; and
- 30.8.3 invite any *discharging mortgagee* to join the *Electronic Workspace*.
- 30.9 To complete the financial settlement schedule in the *Electronic Workspace* –
- 30.9.1 the purchaser must provide the vendor with *adjustment figures* at least *2 business days* before the date for completion;
- 30.9.2 the vendor must confirm the *adjustment figures* at least *1 business day* before the date for completion; and
- 30.9.3 if the purchaser must make a *GSTRW payment* or an *FRCGW remittance*, the purchaser must populate the *Electronic Workspace* with the payment details for the *GSTRW payment* or *FRCGW remittance* payable to the Deputy Commissioner of Taxation at least *2 business days* before the date for completion.
- 30.10 Before completion, the *parties* must ensure that –
- 30.10.1 all *electronic documents* which a *party* must *Digitally Sign* to complete the *electronic transaction* are populated and *Digitally Signed*;
- 30.10.2 all certifications required by the *ECNL* are properly given; and
- 30.10.3 they do everything else in the *Electronic Workspace* which that *party* must do to enable the *electronic transaction* to proceed to completion.
- 30.11 If completion takes place in the *Electronic Workspace* –
- 30.11.1 payment electronically on completion of the price in accordance with clause 16.7 is taken to be payment by a single *settlement cheque*;
- 30.11.2 the completion address in clause 16.11 is the *Electronic Workspace*; and
- 30.11.3 clauses 13.13.2 to 13.13.4, 16.8, 16.12, 16.13 and 31.2.2 to 31.2.4 do not apply.
- 30.12 If the computer systems of any of the *Land Registry*, the *ELNO* or the Reserve Bank of Australia are inoperative for any reason at the *completion time* agreed by the *parties*, a failure to complete this contract for that reason is not a default under this contract on the part of either *party*.

- 30.13 If the computer systems of the *Land Registry* are inoperative for any reason at the *completion time* agreed by the *parties*, and the *parties* choose that financial settlement is to occur despite this, then on financial settlement occurring –
- 30.13.1 all *electronic documents Digitally Signed* by the vendor, the *certificate of title* and any discharge of mortgage, withdrawal of caveat or other *electronic document* forming part of the *Lodgment Case* for the *electronic transaction* shall be taken to have been unconditionally and irrevocably delivered to the purchaser or the purchaser's mortgagee at the time of financial settlement together with the right to deal with the land comprised in the *certificate of title*; and
- 30.13.2 the vendor shall be taken to have no legal or equitable interest in the *property*.
- 30.14 A *party* who holds a *certificate of title* must act in accordance with any *Prescribed Requirement* in relation to the *certificate of title* but if there is no *Prescribed Requirement*, the vendor must serve the *certificate of title* after completion.
- 30.15 If the *parties* do not agree about the delivery before completion of one or more documents or things that cannot be delivered through the *Electronic Workspace*, the *party* required to deliver the documents or things –
- 30.15.1 holds them on completion in escrow for the benefit of; and
- 30.15.2 must immediately after completion deliver the documents or things to, or as directed by; the *party* entitled to them.
- 30.16 In this clause 30, these terms (in any form) mean –
- | | |
|---------------------------------|---|
| <i>adjustment figures</i> | details of the adjustments to be made to the price under clause 14; |
| <i>certificate of title</i> | the paper duplicate of the folio of the register for the land which exists immediately prior to completion and, if more than one, refers to each such paper duplicate; |
| <i>completion time</i> | the time of day on the date for completion when the <i>electronic transaction</i> is to be settled; |
| <i>conveyancing rules</i> | the rules made under s12E of the Real Property Act 1900; |
| <i>discharging mortgagee</i> | any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a <i>Digitally Signed</i> discharge of mortgage, discharge of charge or withdrawal of caveat is required in order for unencumbered title to the <i>property</i> to be transferred to the purchaser; |
| <i>ECNL</i> | the Electronic Conveyancing National Law (NSW); |
| <i>effective date</i> | the date on which the <i>Conveyancing Transaction</i> is agreed to be an <i>electronic transaction</i> under clause 30.1.2 or, if clauses 30.1.1 or 30.1.3 apply, the contract date; |
| <i>electronic document</i> | a dealing as defined in the Real Property Act 1900 which may be created and <i>Digitally Signed</i> in an <i>Electronic Workspace</i> ; |
| <i>electronic transfer</i> | a transfer of land under the Real Property Act 1900 for the <i>property</i> to be prepared and <i>Digitally Signed</i> in the <i>Electronic Workspace</i> established for the purposes of the <i>parties'</i> <i>Conveyancing Transaction</i> ; |
| <i>electronic transaction</i> | a <i>Conveyancing Transaction</i> to be conducted for the <i>parties</i> by their legal representatives as <i>Subscribers</i> using an <i>ELN</i> and in accordance with the <i>ECNL</i> and the <i>participation rules</i> ; |
| <i>electronically tradeable</i> | a land title that is Electronically Tradeable as that term is defined in the <i>conveyancing rules</i> ; |
| <i>incoming mortgagee</i> | any mortgagee who is to provide finance to the purchaser on the security of the <i>property</i> and to enable the purchaser to pay the whole or part of the price; |
| <i>mortgagee details</i> | the details which a <i>party</i> to the <i>electronic transaction</i> must provide about any <i>discharging mortgagee</i> of the <i>property</i> as at completion; |
| <i>participation rules</i> | the participation rules as determined by the <i>ECNL</i> ; |
| <i>populate</i> | to complete data fields in the <i>Electronic Workspace</i> ; and |
| <i>title data</i> | the details of the title to the <i>property</i> made available to the <i>Electronic Workspace</i> by the <i>Land Registry</i> . |

31 Foreign Resident Capital Gains Withholding

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

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

32 Residential off the plan contract

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

Lot / 2-4 Winslow Street KIRRIBILLI NSW 2061

Additional clauses forming part of this contract for the sale and purchase of 2-4 Winslow Street & 32 Willoughby Street, Kirribilli

33 STANDARD FORM CONTRACT

33.1 Amendments to standard form contract

The following printed clauses are amended as follows:

33.1.1 **clause 1:** insert the following additional definition:

~~'option date means the date of the option deed, being ;';~~

~~'option deed means the put and call option deed between the vendor as grantor and the purchaser as grantee in respect of the property dated the option date;'; and~~

~~'restricted action means make any objection, requisition, claim for compensation, withhold any money or exercise any right to rescind or terminate this contract or seek to delay completion;';~~

33.1.2 **clause 2.9:**

- (a) replace the words 'If each party tells the *depositholder* that the deposit is to be invested' with 'If this contract says the deposit is to be invested'; and
- (b) insert at the end of the clause 'if this contract is completed, and otherwise to the party entitled to the deposit';

33.1.3 **clause 4:** insert the following additional clause:

'4.5 The purchaser cannot nominate an alternative transferee, assign or otherwise transfer the benefit of this contract without the prior written consent of the vendor.'

33.1.4 **clause 5.1:** insert the words 'and they are the only form of *requisitions* the purchaser may make and clause 5.2.1 is taken to be deleted' at the end of the clause;

33.1.5 **clause 7.1.1:** replace '5%' with '1%';

33.1.6 **clause 7.2.4:** delete the words 'and the costs of the purchaser';

33.1.7 **clause 8.1.1:** delete the words 'on reasonable grounds';

33.1.8 **clause 8.1.2:** delete the words 'that specifies the *requisition* and those grounds';

33.1.9 **clause 10.1.8:** replace the word 'substance' with the word 'existence';

33.1.10 **clause 10.1.9:** replace the word 'substance' with the word 'existence';

33.1.11 **clause 11:** replace 'contract date' with 'option date';

33.1.12 **clause 12:** insert the following at the end of the clause:

'In this clause *certificate* does not include a building information certificate or building certificate under any legislation. The purchaser must not apply for a building information certificate or building certificate under any legislation without the prior written consent of the vendor.'

33.1.13 **clause 14.4:** replace the words 'not adjust surcharge land tax (as defined in the *Land Tax Act 1956*) but must adjust any other' with the word 'adjust';

33.1.14 **clause 14.4.2:** replace the clause with:

'by adjusting the amount of land tax determined by applying the average rate of land tax including, if applicable, surcharge land tax (as defined in the *Land Tax Act 1956*) payable by the vendor or any predecessor in title for the year to the taxable value of the property';

33.1.15 **clause 14.8:** delete the clause;

33.1.16 **clause 16:** insert the following additional clause:

'16.3A Where the *property* includes personal property subject to a security interest:

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

The purchaser warrants that the inclusions are to be used for domestic purposes.'

33.1.17 **clause 16.6:** replace 'If' with 'If at least 7 days before the date for completion';

33.1.18 **clause 16.8:** delete the clause;

- 33.1.19 **clause 16.12:** delete ‘, but the vendor must pay the purchaser's additional expenses, including any agency or mortgagee fee’;
- 33.1.20 **clause 19:** insert the following additional clause:
- ‘19.3 Despite clause 19.2.3, the purchaser’s only remedy for a breach of warranty prescribed by the *Conveyancing (Sale of Land) Regulation 2017 (NSW)* is the remedy prescribed by that regulation.’;
- 33.1.21 **clause 20.6.4:** insert the words ‘provided however that such documents served by post will be deemed received by the other party 2 business days after the date the document is sent by post’ at the end of the clause;
- 33.1.22 **clause 20.7.2:** insert the words ‘and in the case of the vendor the actual cost’ at the end of the clause;
- 33.1.23 **clause 20:** insert the following additional clause:
- ‘20.16 In this contract, unless the context requires otherwise:
- 20.16.1 *in writing* includes any communication sent by letter, fax or email; and
- 20.16.2 *including* and similar expressions are not words of limitation.’;
- 33.1.24 **clause 23.5.1:** insert the words ‘which includes levies for special expenses payable by instalments (where the adjustment period is the period of the instalments)’ to the end of the clause;
- 33.1.25 **clause 23.6:** replace the clause with:
- ‘If a contribution is not a regular periodic contribution and is not disclosed in this contract and is not a levy for special expenses payable by instalments then the vendor is liable for it if it is payable prior to the contract date and otherwise it is payable by the purchaser’;
- 33.1.26 **clause 23.9.3:** delete the words ‘or before completion’;
- 33.1.27 **clause 23.9.4:** delete the words ‘or before completion’;
- 33.1.28 **clause 23.13:** delete the words ‘at least 7 days’;
- 33.1.29 **clause 23.14:** delete the clause;
- 33.1.30 **clause 23.17.2:** delete the clause;
- 33.1.31 **clause 28:** delete the clause;

33.1.32 **clause 29:** delete the clause;

33.1.33 **clause 30.5:** insert the words and 'if clause 30.1 applies,' after '*Normally,*' replace the words '7 days of the *effective date*' with the words '14 days of the *effective date*'.

33.2 **Terms defined in printed form contract**

Unless the context requires otherwise, terms defined in clause 1 have the meanings given to them in clause 1 when used (in any form) in these additional clauses even though they are not italicised or capitalised in these additional clauses.

34 **NOTICE TO COMPLETE**

34.1 **Issue of notice to complete**

If a party is entitled to serve a notice to complete, then the party may:

34.1.1 at any time serve a notice requiring completion on a specified date (being not less than 14 days after the date of service of that notice); and

34.1.2 specify a time of day between 11am and 4pm as the time for completion.

34.2 **Reasonable period**

The parties agree that 14 days is a reasonable and proper period to specify in any notice to complete.

34.3 **Preservation of rights**

The party serving a notice to complete reserves the right to:

34.3.1 withdraw the notice; and

34.3.2 issue further notices to complete.

35 **DELAY INTEREST**

35.1 **Payment of interest**

If completion does not occur on or before the date for completion, the purchaser must pay to the vendor on completion interest calculated daily and compounded on the last day of each calendar month:

35.1.1 at the rate of 10% per annum; and

35.1.2 on the balance of the purchase price payable under this contract,

in respect of the period commencing on the day following the date for completion and ending on completion.

35.2 **Delay by vendor**

Clause 35.1 does not apply in respect of any period during which completion has been delayed solely due to the fault of the vendor.

35.3 **Essential term**

The purchaser may not require the vendor to complete this contract unless interest payable under this contract is paid to the vendor on completion. It is an essential term of this contract that the interest due is paid on completion. Interest payable pursuant to this condition is a genuine pre-estimate of the vendor's loss as a result of the purchaser's failure to complete on or before the date for completion.

36 **REAL ESTATE AGENT**

The purchaser warrants to the vendor that it has not been introduced to the property through or by any agent other than the estate agent referred to on the front page of this contract (if any). The purchaser indemnifies the vendor against any claim for commission, charges, costs or expenses in relation to the sale of the property caused by a breach of this warranty. The vendor's rights under this clause continue after completion.

37 **PRESENT CONDITION**

Subject to Section 52A of the *Conveyancing Act 1919 (NSW)* and the *Conveyancing (Sale of Land) Regulation 2017 (NSW)*, the purchaser acknowledges that it is purchasing the property as a result of its own inspections and inquiries and in the condition and state of repair as at the date of this contract and cannot take any restricted action in respect of:

37.1.1 the condition, state of repair, dilapidation or infestation (if any) of the property;

37.1.2 any latent or patent defect in the property;

37.1.3 any environmental hazard or contamination;

37.1.4 the nature, location, availability or non-availability of any water, sewerage (except sewers belonging to a registered sewerage authority), drainage, gas, electricity, telephone and other installations (*Services*) or defects in the *Services*;

37.1.5 whether or not the property is subject to or has the benefit of any rights or easements in respect of the *Services*;

37.1.6 any underground or surface stormwater drain passing through or over the property or any manhole vent on the property;

- 37.1.7 any rainwater downpipe being connected to the sewer;
- 37.1.8 any failure to comply with the *Swimming Pools Act 1992 (NSW)*; or
- 37.1.9 whether or not the property complies with the regulations under the *Environmental Planning and Assessment Act 1979 (NSW)* relating to the installation of smoke alarms.

The vendor is not required to clean the property or remove existing rubbish, materials, debris or other items from the property prior to completion.

38 PURCHASER'S WARRANTIES

38.1 Purchaser's warranties

The purchaser represents and warrants that:

- 38.1.1 the purchaser has not relied on or been induced to enter into this contract by any representation or warranty, including those concerning the potential or present use or development of the property (made by the vendor, its agent or solicitor);
- 38.1.2 the purchaser has relied entirely on its own independent investigations and enquiries about the property in entering into this contract; and
- 38.1.3 the purchaser has obtained its own independent professional advice on the nature of the property and its permitted uses and the purchaser's rights and obligations under this contract.

38.2 Purchaser's indemnities

- 38.2.1 The purchaser indemnifies and will keep indemnified the vendor from and against all actions, claims, demands, suits and/or proceedings and any loss, damages, compensation, costs (including solicitor and client costs), charges and expenses to which the vendor shall or may become liable with respect to or arising from or in connection with the breach by the purchaser of the purchaser's obligations under clause 13.13 of this contract which indemnity shall not merge on completion.
- 38.2.2 The liability of the purchaser under this clause is reduced to the extent that the negligence or wilful default of the vendor caused or contributed to any actions, claims, demands, suits and/or proceedings and any loss, damages, compensation, costs (including solicitor and client costs), charges and expenses referred to in this clause.*

38.3 Acknowledgements

The purchaser acknowledges that in entering into this contract the vendor has relied on the warranties given by the purchaser in this clause 38.

39 **INSOLVENCY ETC OF PURCHASER**

If the purchaser is a company, should the purchaser (or any one of them if there be more than one purchaser) prior to completion:

- 39.1 resolve to enter into liquidation or provisional liquidation;
- 39.2 have a summons presented for its winding-up;
- 39.3 enter into any scheme of arrangement with its creditors under Part 5.1 of the *Corporations Act 2001 (Cth)*; or
- 39.4 have any liquidator, provisional liquidator, receiver, receiver and manager, controller or administrator appointed in respect of the purchaser or any of its assets,

then, without in any manner negating, limiting or restricting any rights or remedies which would have been available to the vendor at law or in equity had this clause not been included, the vendor may terminate this contract by serving a notice and the provisions of clause 9 will apply.

~~40~~ ~~**SURVEY REPORT**~~

~~40.1~~ ~~**Survey Report**~~

~~In the Schedule of Documents is a copy of a survey report including accompanying plan prepared by dated for the property (*Survey Report*). The vendor does not warrant the currency, accuracy or completeness of the Survey Report. The purchaser cannot take any *restricted action* in respect of anything disclosed in the Survey Report. In particular, the vendor discloses that:~~

41 GUARANTEE

- 41.1 This clause applies if the purchaser is a corporation but does not apply to a corporation listed on an Australian Stock Exchange. This clause is an essential term of this contract.
- 41.2 The word *guarantor* means each director of the purchaser as at the date of this contract.
- 41.3 If each director of the purchaser has not signed this contract as a guarantor, the vendor may terminate this contract by serving a notice, but only within 14 days after the contract date.
- 41.4 In consideration of the vendor entering into this contract at the guarantor's request, the guarantor guarantees to the vendor:
- 41.4.1 payment of all money payable by the purchaser under this contract; and
 - 41.4.2 the performance of all of the purchaser's other obligations under this contract.
- 41.5 The guarantor:
- 41.5.1 indemnifies the vendor against any claim, action, loss, damage, cost, liability, expense or payment incurred by the vendor in connection with or arising from any breach or default by the purchaser of its obligations under this contract; and
 - 41.5.2 must pay on demand any money due to the vendor under this indemnity.
- 41.6 The guarantor is jointly and separately liable with the purchaser to the vendor for:
- 41.6.1 the performance by the purchaser of its obligations under this contract; and
 - 41.6.2 any damage incurred by the vendor as a result of the purchaser's failure to perform its obligations under this contract or the termination of this contract by the vendor.
- 41.7 The guarantor must pay to the vendor on written demand by the vendor all expenses incurred by the vendor in respect of the vendor's exercise or attempted exercise of any right under this clause.
- 41.8 If the vendor assigns or transfers the benefit of this contract, the transferee receives the benefit of the guarantor's obligations under this clause.
- 41.9 The guarantor's obligations under this clause are not released, discharged or otherwise affected by:
- 41.9.1 the granting of any time, waiver, covenant not to sue or other indulgence;
 - 41.9.2 the release or discharge of any person;
 - 41.9.3 an arrangement, composition or compromise entered into by the vendor, the purchaser, the guarantor or any other person;

41.9.4 any moratorium or other suspension of the right, power, authority, discretion or remedy conferred on the vendor by this contract, a statute, a Court or otherwise;

41.9.5 payment to the vendor, including payment which at or after the payment date is illegal, void, voidable, avoided or unenforceable; or

41.9.6 the winding up of the purchaser.

41.10 The deed constituted by this clause binds each party who signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

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

41.12 This clause operates as a deed between the vendor and the guarantor.

EXECUTED as a Deed.

SIGNED SEALED & DELIVERED by

in the presence of:

Signature of Witness

Signature of guarantor

Name of Witness

Address of Witness

SIGNED SEALED & DELIVERED by

in the presence of:

Signature of Witness

Signature of guarantor

Name of Witness

Address of Witness

42 No warranty by the vendor as to use of the *property*

- 42.1 The purchaser must satisfy itself on all matters relating to the use of the *property* because the vendor makes no representations about the use to which the *property* may be put.
- 42.2 The purchaser will be deemed to have entered into this contract with full knowledge of and subject to any prohibition or restriction upon the use of the *property*, whether under any Act, Ordinance, Regulation, By-law, Town Planning Scheme, Interim Development Order, Order of Court, or otherwise.
- 42.3 If the use to which the vendor has put the *property* is permissible only with the consent of any authority under any Act, Ordinance, Regulation, By-law, Town Planning Scheme, Interim Development Order, Order of Court or otherwise, the purchaser must obtain consent at the purchaser's own expense.
- 42.4 Completion of this contract will not be conditional or dependent upon any matter referred to in this clause.

43 Sale by Trustee

- 43.1 One of the vendors enters into this contract in its capacity as Trustee of the Mason Unit Trust (*Trust*) and in no other capacity.
- 43.2 Where a *party* makes a claim or pursues a remedy against the vendor in respect of any cause of action, claim or loss arising:
 - 43.2.1 under or in connection with this contract;
 - 43.2.2 in connection with any transaction, conduct or other agreement contemplated by this contract;
 - 43.2.3 in connection with any secured obligations;
 - 43.2.4 under or in connection with (to the extent permitted by law) any representation or undertaking given in connection with this contract;that *party*:
 - 43.2.5 will only be entitled to recover an amount of damages which does not exceed the amount which the vendor actually recovers from the assets of the Trust by exercising its rights of indemnity; and
 - 43.2.6 will not be entitled to pursue a remedy which would require the vendor to expend money in excess of the amount which the vendor (taking into account all other liabilities of the Trust) is able and entitled to recover from the assets of the Trust.
- 43.3 Without limiting any other provision of this clause, each *party* agrees and acknowledges that it will not:
 - 43.3.1 seek to appoint an administrator or liquidator to the vendor;
 - 43.3.2 commence the winding-up, dissolution, official management or administration of the vendor; or
 - 43.3.3 appoint a receiver, receiver and manager, administrative receiver or similar officer to all or any of the assets of the vendor except to the extent that the steps taken affect only the assets of the Trust and nothing else.
- 43.4 Clauses 43.2 and 43.3 will not apply where the vendor has acted negligently with wilful misconduct or in breach of trust.

44 Services etc

- 44.1 The purchaser takes title subject to the existing water, sewerage, drainage, gas, electricity and telephone installations, lines, posts, services and connections, if any, servicing the property or any other property.

- 44.2 The purchaser cannot make a claim or *requisition* or *rescind* in respect of such installations, lines, posts, services and connections because:
- 44.2.1 any of them pass through the property or any other property;
 - 44.2.2 no rights or easements exist in respect of them and none can be obtained; or
 - 44.2.3 of any defects or damage to such installations, lines, posts, services and connections.
- 44.3 The purchaser cannot make a claim or *requisition* or *rescind* because:
- 44.3.1 of any road, water or sewerage main, underground or surface stormwater drain or gas, electricity or telephone installations, posts, lines, pumps and services passing through over or under the property; or
 - 44.3.2 there is a manhole, substation, public letter box, public telephone, traffic safety or guide rails, bus stop, street parking, traffic signs or vent on the property.

45 **Tenancy - commercial**

- 45.1 The *property* is sold subject to the Leases (*Leases*) copies of which are annexed and marked A, B and C.
- 45.2 The current total gross rental for the property is \$86,607.72, excluding GST.
- 45.3 The purchaser has satisfied itself about the existing Leases and cannot make a claim or *requisition* or *rescind* or *terminate* in respect of them.
- 45.4 The vendor does not promise that any of the Leases will be in force at the completion date.
- 45.5 The purchaser cannot make a claim or *requisition* or *rescind* or *terminate* because any one or more of the tenants vacates the premises occupied by them at the contract date before completion:
- 45.5.1 on expiry of the Leases;
 - 45.5.2 following lawful termination of the Leases by the tenant or by the vendor with the purchaser's consent;
 - 45.5.3 by abandoning the premises in repudiation of the Leases.
- 45.6 The vendor will not grant any new Lease in respect of any part of the *property* which is vacant at the contract date or which has become vacant before completion, except with the prior written consent of the purchaser which is not to be unreasonably withheld.
- 45.7 Excluded from the sale are any Tenants' fixtures and fittings and the purchaser acknowledges that it relies entirely on its own inquiries in identifying them and cannot make a claim or *requisition* or *rescind* or *terminate* in relation to such items.
- 45.8 The vendor will be entitled to call upon any Security Deposits or Bank Guarantees in satisfaction of any amount owing to the vendor and in that event:
- 45.8.1 the vendor will notify the purchaser of the amount due to the vendor and the amount claimed by the vendor from the Security Deposits or Bank Guarantee; and
 - 45.8.2 the purchaser cannot make a claim or *requisition* or *rescind* or *terminate*.

46 **Time limits**

- 46.1 The completion date will be the later of:
- 46.1.1 the 42nd day after the contract date; and
 - 46.1.2 the 14th day after the date on which the vendor notifies the purchaser in writing that the Transfer Granting Easement annexed to this Contract has been registered at the NSW Land Registry Service.
- 46.2 If by the 30 June 2020, the Transfer Granting Easement has not been registered at the NSW Land registry Service, the purchaser will be entitled to *rescind* this contract by notice in writing. This right of rescission must

be exercised (notwithstanding clause 19.1.1) by serving notice *within* 7 days of the right of rescission accruing and time in this regard will be of the essence. If this right of rescission is not exercised *within* 7 days of the right of rescission accruing and time in this regard will be of the essence, this right of rescission will lapse.

47 Unregistered vendor (deceased estate)

- 47.1 Two of the vendors are selling as executors of the Will of the late Bryan Maxwell Mason, deceased and are not yet the registered proprietor of the *property*. The vendor will use its best endeavours to become the registered proprietor by transmission.
- 47.2 The completion date will be the later of:
- 47.2.1 the 42nd day after the contract date; and
 - 47.2.2 the 14th day after the date on which the vendor notifies the purchaser in writing that registration of the Transmission Application has taken place.
- 47.3 If the vendor has not become the registered proprietor by transmission by the 30 June 2020 then either *party* may *rescind* this contract by giving written notice to the other *party* and the provisions of clause 19 will apply.

48 Vendor as executor

- 48.1 The parties agree that two of the vendors are entering into this contract as the executors of the Estate of the late Bryan Maxwell Mason (*Estate*) and in no other capacity. A liability arising under or in connection with this contract is limited to and can be enforced against these vendors as executor only to the extent to which it can be satisfied out of property of the Estate out of which the vendors as executors are actually indemnified for the liability. This limitation of the vendor's liability as executors applies despite any other provision of this contract and extends to all liabilities and obligations of the vendors in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this contract.
- 48.2 The purchaser may not sue these vendors personally or in any capacity other than as executors of the Estate and may not seek the appointment of a receiver (except in relation to property of the Estate), a liquidator, an administrator or any similar person to these vendors or prove in any liquidation, administration or arrangement of or affecting these vendors (except in relation to property of the Estate).
- 48.3 The provisions of this clause 48 do not apply to any obligation or liability of these vendors to the extent that it is not satisfied because under the instrument establishing the Estate or by operation of law there is a reduction in the extent of the vendor's indemnification as executors out of the assets of the Estate, as a result of the vendor's fraud, negligence or breach of trust.

NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 1/932077

SEARCH DATE	TIME	EDITION NO	DATE
11/3/2020	12:23 PM	5	5/12/2007

LAND

LOT 1 IN DEPOSITED PLAN 932077
LOCAL GOVERNMENT AREA NORTH SYDNEY
PARISH OF WILLOUGHBY COUNTY OF CUMBERLAND
TITLE DIAGRAM DP932077

FIRST SCHEDULE

BRYAN MAXWELL MASON
FRANK M MASON & CO PTY LIMITED
AS TENANTS IN COMMON IN EQUAL SHARES (T AD615048)

SECOND SCHEDULE (2 NOTIFICATIONS)

1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2 AB148054 LEASE TO ODD COUPLE PRODUCTIONS PTY LIMITED LEVEL 1,
32 WILLOUGHBY ST, MILSONS POINT. EXPIRES: 31/10/2007.
OPTION OF RENEWAL: 2 YEARS.

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

20409

PRINTED ON 11/3/2020

Search Date/Time: 11/03/2020 12:23PM

LEGALSTREAM AUSTRALIA - hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with section 96B(2) of the Real Property Act 1900.

* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register.



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all correspondence General Manager North Sydney Council
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DX10587

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internet www.northsydney.nsw.gov.au

ABN 32 353 260 317

Applicant:

InfoTrack Pty Ltd
DX 578
Sydney
NSW 2001

**PLANNING CERTIFICATE UNDER
SECTION 10.7 ENVIRONMENTAL PLANNING
AND ASSESSMENT ACT 1979**

Cert. No.: 75511/02
Page No.: 1 of 9

Parcel No: 23980

Date: 02/03/2020

Receipt No.:

Your REF:

19391

Property Description:

2 Winslow Street KIRRIBILLI NSW 2061

LOT: 1 DP: 932077

Owner (as recorded by council):

**Bryan Maxwell Mason & Frank M Mason &
Co Pty Ltd**

**13 Cherrywood Cre
BATHURST NSW 2795**

The Title information shown on this Certificate has been obtained from the Land and Property Information NSW, therefore Council cannot guarantee accuracy.

The information required to be disclosed in this planning certificate is that prescribed by Schedule 4 of the Environmental Planning and Assessment Regulation 2000. If no response is provided in this planning certificate for an item listed in Schedule 4, that matter has been considered and determined as not applying to the land to which this certificate relates.

**AS AT THE DATE OF THE CERTIFICATE THE FOLLOWING MATTERS APPLY TO THE ABOVE
MENTIONED LAND.**

PLANNING INSTRUMENT:

North Sydney Local Environmental Plan 2013, published on the NSW legislation website on 2 August 2013 and came into force on 13 September 2013, as amended.

Zone: R2 - Low Density Residential

Permitted without consent

Environmental protection works; Home occupations

Permitted with consent

Boarding Houses; Centre-based childcare facilities; Dual occupancies (attached); Dwelling houses; Group homes; Health consulting rooms; Home-based child care; Information and education facilities; Medical centres; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Semi-detached dwellings; Tank-based aquaculture

Prohibited

Any development, other than a development specified above, is prohibited in the zone.

Exempt Development

Development for the purposes set out in clause 3.1 of *North Sydney Local Environmental Plan 2013* is exempt development, which may be carried out within the zone without the need for development consent.



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Complying Development

Development for the purposes set out in clause 3.2 of *North Sydney Local Environmental Plan 2013* is complying development, which may be carried out within the zone without the need for development consent, provided that a complying development certificate is obtained.

DRAFT PLANNING INSTRUMENTS:

Planning Proposal 7/15 to amend North Sydney Local Environmental Plan 2013 – 575-583 Pacific Highway, St Leonards

This Planning Proposal seeks to amend the planning controls to *North Sydney Local Environmental Plan 2013* for land at 575-583 Pacific Highway, St Leonards. In particular, the proposed amendments include:

- increasing the maximum building height from 26m to 56m; and
- applying a whole of site maximum Floor Space Ratio of 7:1.

Accompanying the Planning Proposal is a draft Voluntary Planning Agreement (VPA) that proposes a monetary contribution of \$4,095,803 to assist Council in providing public open space in the area as envisaged by the *St Leonards/Crows Nest Planning Study for Precinct 1*.

The Planning Proposal and VPA will be on public exhibition from Thursday 8 March 2018 to Thursday 12 April 2018.

Planning Proposal 6/16 to amend North Sydney Local Environmental Plan 2013 – 100 Christie Street, St Leonards

This Planning Proposal seeks to amend the planning controls to *North Sydney Local Environmental Plan 2013* for land at 100 Christie Street, St Leonards. In particular, the proposed amendments include:

- increasing the maximum building height from 49m to 132m;
- introducing a maximum floor space ratio (FSR) of 18:1;
- introducing a minimum non-residential FSR of 4.25:1;
- adding a clause to Schedule 1 – *Additional Permitted Uses* such that “shop top housing” is permissible with consent on the subject site;
- adding a clause to Part 6 – *Local Provisions* such that basement parking may be constructed under 50% of the lot containing Christie Street Reserve; and
- amending Clause 4.6 to exclude the use of Clause 4.6 to vary the development standard proposed above under Part 6.

Accompanying the Planning Proposal is a draft Voluntary Planning Agreement (VPA) which seeks to provide Council with a material public benefit in the form of two floors of co-working commercial office space within the building podium, embellishment and dedication of the Christie Street Reserve to Council in perpetuity, upgrade of Chandos Street and Sergeants Lane and a monetary contribution of \$100,000 to Council for the purpose of a bike hub in the area.

The Planning Proposal and VPA will be on public exhibition from Thursday 8 November 2018 to Thursday 6 December 2018.

Planning Proposal 1/18 to amend North Sydney Local Environmental Plan 2013 – 23 – 35 Atchison Street, St Leonards



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The Planning Proposal seeks to amend *North Sydney Local Environmental Plan 2013* to amend the planning controls for land at 23-35 Atchison Street, St Leonards. In particular, the proposed amendments include:

- increasing the maximum building height from 20m to 56m (equivalent to 16 storeys);
- increasing the minimum non-residential floor space ratio from 0.6:1 to 1.5:1; and
- imposing a maximum floor space ratio of 6.3:1

Accompanying the Planning Proposal is a draft Voluntary Planning Agreement (VPA) that proposes the dedication of a 5-metre wide strip for the purpose of a linear park along Oxley Street, the provision of a publically accessible 6-metre wide laneway from Atchison Street to Albany Lane along the western boundary of the site, and a monetary contribution of \$2,800,000 towards the upgrade of Hume Street Park or public open space within the North Sydney Local Government Area.

In addition, Council resolved to place an associated draft amendment to *North Sydney Development Control Plan 2013* (NSDCP 2013) on public exhibition concurrently with the Planning Proposal that seeks to introduce a 6m ground level setback control along the Atchison Street portion of the site.

The Planning Proposal, VPA and associated draft DCP amendment will be on public exhibition from Thursday 4 April 2019 to Thursday 2 May 2019.

Planning Proposal 5/19 to amend North Sydney Local Environmental Plan 2013 – 6 Hayes Street, Neutral Bay

The Planning Proposal seeks to amend *North Sydney Local Environmental Plan 2013* to identify 6 Hayes Street, Neutral Bay, as an item of local heritage significance.

The Planning Proposal, will be on public exhibition from Thursday 10 October 2019 to Wednesday 6 November 2019.

DEVELOPMENT CONTROL PLANS:

North Sydney Development Control Plan 2013

North Sydney Development Control Plan 2013 applies to all land to which *North Sydney Local Environmental Plan 2013* applies. The Development Control Plan was adopted by Council on 2 September 2013 and came into effect on 13 September 2013. Amended 20/02/14. Amended 08/01/2015. Amended 26/03/2015. Amended 6/08/2015. Amended 5/11/2015. Amended 7/07/2016. Amended 13/10/2016. Amended 19/07/2017. Amended 16/11/2017. Amended 7/12/2017. Amended 15/03/2018.

Draft Amendments North Sydney DCP 2013 (8 Hayes Street)

On 22 July 2019, Council resolved to place a draft amendment to the *North Sydney Development Control Plan 2013* on public exhibition, to identify 8 Hayes Street, Neutral Bay, as a “contributory item” recognising its contribution to the Kurraba Point Conservation Area. This DCP amendment is being publically exhibited concurrently with the Planning Proposal relating to land at 6 Hayes Street, Neutral Bay.

Public exhibition of the draft amendment to NSDCP 2013 will take place from Thursday 10 October 2019 to Wednesday 6 November 2019.

INFRASTRUCTURE CONTRIBUTION PLANS:



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North Sydney Section 94 Contributions Plan. Local infrastructure contributions plan made under Section 7.11 of the Environmental Planning and Assessment Act 1979, applying to all development in the North Sydney local government area. Effective from 20 June 2013.

HERITAGE CONTROLS:

The whole or part of the subject land IS WITHIN A CONSERVATION AREA, under clause 5.10 - Heritage Conservation to *North Sydney Local Environmental Plan 2013*. Development consent is required for demolition (including partial demolition), alteration of the exterior or any change to the property, for construction of a building on, or for subdivision of, the land. Council may refuse consent to demolish a building within a conservation area.

The subject land IS NOT identified as containing A HERITAGE ITEM, under clause 5.10 - Heritage Conservation to *North Sydney Local Environmental Plan 2013*.

The subject land IS NOT identified as containing a HERITAGE ITEM under *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

OTHER CONTROLS:

The subject land is NOT PROCLAIMED as a MINE SUBSIDENCE DISTRICT within the meaning of the *Coal Mine Subsidence Compensation Act 2017*.

The subject land is NOT AFFECTED by any ROAD WIDENING OR ROAD REALIGNMENT under the *Roads Act 1993*.

The subject land is NOT AFFECTED by any ROAD WIDENING OR ROAD REALIGNMENT under any environmental planning instrument.

The subject land is NOT AFFECTED by any ROAD WIDENING OR ROAD REALIGNMENT under any Council resolution.

The subject land is NOT IDENTIFIED as BUSHFIRE PRONE LAND on Council's Bushfire Prone Land Map as certified by the NSW Rural Fire Service Commissioner dated 22 June 2018 pursuant to the requirements under the of the *Rural Fires Act 1997* and *Environmental Planning and Assessment Act 1979*.

The subject land is NOT SUBJECT to any reservation for LAND ACQUISITION by a public authority for any purpose under any environmental planning instrument applying to the land as set out in this certificate.

Council is NOT AWARE of the subject land being subject to an ORDER issued under the *Trees (Disputes Between Neighbours) Act 2006*.

Loose-fill Asbestos Insulation

Council has no record of the subject land being identified on the NSW Fair Trading's *Loose-Fill Asbestos Insulation Register* as containing a residential building containing loose-fill asbestos insulation, (sometimes called "Mr Fluffy" insulation). Loose-fill asbestos is easy to disturb and can become airborne and it is then easily inhaled. Inhaling asbestos fibres can result in serious illness including asbestosis, lung cancer and mesothelioma.



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You are advised to contact NSW Fair Trading for more information:

<https://www.fairtrading.nsw.gov.au/housing-and-property/loose-fill-asbestos-insulation>

Note: Nothing in this statement relates to information about the presence of bonded asbestos materials such as asbestos cement sheeting which may have been used at this site.

Council is not aware of any *Affected Building Notice*, *Building Product Rectification Order* or *Intention to make a Building Product Rectification Order* made under the *Building Products (Safety) Act 2017* applying to the subject land.

The subject land is NOT AFFECTED by a policy, adopted by the Council or adopted by any other public authority and notified to the Council for the express purpose of its adoption by that authority being referred to in planning certificates issued by the Council, that restricts the development of the land by reason of the likelihood of landslip, bushfire, flooding, tidal inundation, subsidence, acid sulphate soils or any other risk.

THE FOLLOWING STATE ENVIRONMENTAL PLANNING POLICIES AND REGIONAL ENVIRONMENTAL PLANS APPLY:

State Environmental Planning Policies (SEPPs)

SEPP No. 1 – Development Standards
SEPP No. 19 - Bushland in urban areas
SEPP No. 33 - Hazardous and offensive development
SEPP No. 50 - Canal estate development
SEPP No. 55 - Remediation of land
SEPP No. 64 - Advertising and signage
SEPP No. 65 - Design Quality of Residential Apartment Development
SEPP No. 70 – Affordable Housing (Revised Schemes)
SEPP (Affordable Rental Housing) 2009
SEPP (Building Sustainability Index: BASIX) 2004
SEPP (Concurrences) 2018
SEPP (Educational Establishments & Child Care Facilities) 2017
SEPP (Exempt and Complying Development Codes) 2008
SEPP (Housing for Seniors or People with a Disability) 2004 - *formerly SEPP (Seniors Living) 2004*
SEPP (Infrastructure) 2007
SEPP (Primary Production and Rural Development) 2019
SEPP (State Significant Precincts) 2005 - *formerly SEPP Major Development, SEPP Major Projects & SEPP State Significant Development*
SEPP (Mining, Petroleum Production and Extractive Industries) 2007
SEPP (Miscellaneous Consent Provisions) 2007 - *formerly SEPP (Temporary Structures) 2007*
SEPP (State and Regional Development) 2011
SEPP (Vegetation in Non-Rural Areas) 2017

Regional Environmental Plans (REPs) (Deemed SEPPs)

Sydney REP (Sydney Harbour Catchment) 2005

Note: summaries of the SEPPs and deemed SEPPs are provided on the Department of Planning's website at:

www.planning.nsw.gov.au

Draft State Environmental Planning Policies (SEPPs)

Draft SEPP No. 66 - Integration of Land Use and Transport
Draft SEPP (Application of Development Standards) 2004



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Draft SEPP (Competition) 2010
Draft SEPP (Environment) 2017
Draft SEPP (Remediation of Land) 2018
Draft SEPP (Short-term Rental Accommodation) 2019

Note: summaries of the draft SEPPs are provided on the Department of Planning's website at:
www.planning.nsw.gov.au

FOR THE PURPOSE OF SECTION 10.7(2) AND CLAUSE 3 TO SCHEDULE 4 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000, THE FOLLOWING INFORMATION IS PROVIDED:

Housing Code

Complying development types specified within the Housing Code under Part 3 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CANNOT BE UNDERTAKEN ON THE SUBJECT LAND, as the subject land is:

- Wholly identified as being within a heritage conservation area or a draft heritage conservation area, unless the development is only for a detached outbuilding, detached development (other than a detached studio) or swimming pool.

Rural Housing Code

Complying development types specified within the Rural Housing Code under Part 3A of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CANNOT BE UNDERTAKEN ON THE SUBJECT LAND, as the subject land is:

- Wholly identified as being within a heritage conservation area or a draft heritage conservation area, unless the development is only for a detached outbuilding, detached development (other than a detached studio) or swimming pool.

Housing Alterations Code

Complying development types specified within the Housing Alterations Code under Part 4 *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CAN BE UNDERTAKEN ON THE SUBJECT LAND.

General Development Code

Complying development types specified within the General Development Code under Part 4A *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CAN BE UNDERTAKEN ON THE SUBJECT LAND.

Commercial and Industrial Alterations Code

Complying development types specified within the Commercial and Industrial Alterations Code under Part 5 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CAN BE UNDERTAKEN ON THE SUBJECT LAND.

Commercial and Industrial (New Buildings and Additions) Code



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Complying development types specified within the Commercial and Industrial (New Buildings and Additions) Code under Part 5A of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CANNOT BE UNDERTAKEN ON THE SUBJECT LAND, as the subject land is:

- Wholly identified as being within a heritage conservation area or a draft heritage conservation area.

Subdivisions Code

Complying development types specified within the Subdivisions Code under Part 6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CAN BE UNDERTAKEN ON THE SUBJECT LAND.

Demolition Code

Complying development types specified within the Demolition Code under Part 7 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CAN BE UNDERTAKEN ON THE SUBJECT LAND.

Fire Safety Code

Complying development types specified within the Fire Safety Code under Part 8 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CAN BE UNDERTAKEN ON THE SUBJECT LAND.

Container Recycling Facilities Code

Complying development types specified within the Container Recycling Facilities Code under Part 5B of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CAN BE UNDERTAKEN ON THE SUBJECT LAND.

Low Rise Medium Density Housing Code

Complying development types specified within the Low Rise Medium Density Housing Code under Part 3B of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CANNOT BE UNDERTAKEN ON THE SUBJECT LAND, as the subject land is:

- Wholly identified as being within a heritage conservation area or a draft heritage conservation area, unless the development is only for a detached outbuilding, detached development (other than a detached studio) or swimming pool.

Greenfield Housing Code

Complying development types specified within the Greenfield Housing Code under Part 3C of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* CANNOT BE UNDERTAKEN ON THE SUBJECT LAND, as the subject land is:

- Wholly identified as being within a heritage conservation area or a draft heritage conservation area, unless the development is only for a detached outbuilding, detached development (other than a detached studio) or swimming pool.

Note. This part of the Planning Certificate only addresses matters raised in Clauses 1.17A(c)-(e), (2), (3) and (4), 1.18 (1)(c3) and 1.19 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. It is your responsibility to ensure that you comply with any other relevant requirements of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Failure to comply with these provisions may mean that a Complying Development Certificate issued under the provisions of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* is invalid.



address 200 Miller Street North Sydney NSW 2060

telephone (02) 9936 8100

all correspondence General Manager North Sydney Council
PO Box 12 North Sydney NSW 2059
DX10587

facsimile (02) 9936 8177

email council@northsydney.nsw.gov.au

internet www.northsydney.nsw.gov.au

ABN 32 353 260 317

**FOR THE PURPOSE OF SECTION 59(2) OF THE CONTAMINATED LAND MANAGEMENT ACT 1997,
THE FOLLOWING INFORMATION IS PROVIDED:**

Council is NOT AWARE of the land (or part of the land) being declared SIGNIFICANTLY CONTAMINATED land, as defined under Section 11 of the Contaminated Land Management Act, 1997.

Council is NOT AWARE of the land (or part of the land) being subject to a management order, as defined under Section 14(1) of the Contaminated Land Management Act, 1997.

Council is NOT AWARE of the land (or part of the land) being the subject of an approved voluntary management proposal, as defined under Section 17(1) of the Contaminated Land Management Act, 1997.

Council is NOT AWARE of the land (or part of the land) being subject to an ongoing maintenance order, as defined under Section 28(2) of the Contaminated Land Management Act, 1997.

Council is NOT AWARE of the land (or part of the land) being the subject of a site audit statement, as defined under Part 4 of the Contaminated Land Management Act, 1997.

FOR THE PURPOSE OF SECTION 10.7(5) THE FOLLOWING INFORMATION IS PROVIDED:

MAXIMUM BUILDING HEIGHT:

The whole or part of the subject site is identified under *North Sydney Local Environmental Plan 2013* as having a maximum building height of 8.5m.

The whole or part of the subject land comprises a CONTRIBUTORY ITEM under Section 13 – *Heritage & Conservation* to Part B of *North Sydney Development Control Plan 2013*.

The subject land IS NOT LISTED in the Register of the National Trust of NSW.

The subject land is NOT AFFECTED by the *HERITAGE ACT, 1977*.

A Tree Preservation Order applies throughout the North Sydney Council area. Contact Council for details.

Information regarding loose-fill asbestos insulation

NSW Fair Trading have identified that some residential buildings in the North Sydney LGA may contain loose-fill asbestos insulation (sometimes called “Mr Fluffy” insulation), for example in the roof space of the building. Loose-fill asbestos is easy to disturb and can become airborne and it is then easily inhaled. Inhaling asbestos fibres can result in serious illness including asbestosis, lung cancer and mesothelioma. The use of loose-fill asbestos insulation was banned in 1980.

NSW Fair Trading maintains a Register of homes that are affected by loose-fill asbestos insulation.

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



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internet www.northsydney.nsw.gov.au

ABN 32 353 260 317

Contact NSW Fair Trading for further information as follows: <https://www.fairtrading.nsw.gov.au/housing-and-property/loose-fill-asbestos-insulation>.

Note: Nothing in this statement relates to information about the presence of bonded asbestos materials such as asbestos cement sheeting which may have been used at this site.

FLOODING INFORMATION:

Council is in the possession of a flood study that covers the catchment in which this subject land is located. The *North Sydney LGA Flood Study* (prepared by WMA Water and dated February 2017) was adopted by Council on 20 February 2017. The *Flood Study* does not establish any flood related development controls, which are to be determined at the completion of the North Sydney Floodplain Risk Management Study and Plan. You should make you own enquiries as to whether the subject land to which this Certificate relates is affected by flooding and overland flow. Copies of the Flood Study are available for inspection at the Council if required.

For further information, please contact Council's
DIVISION OF CITY STRATEGY

KEN GOULDTHORP
GENERAL MANAGER

*Electronically generated certificate
– no signature required*

COMMERCIAL LEASE

Suitable for small office buildings, factories and shop premises which are not the subject of the *Retail Leases Act 1994* where the term of the lease (including the period of any option) does not exceed three years.

This Lease is made in duplicate on _____ / _____ / _____
 at Kirribilli _____ in the State of New South Wales.

PARTIES

Between Bryan Maxwell Mason & Frank M Mason & Co Pty Ltd (ABN 70 003 142 _____) Landlord
 836) as trustee for the Mason Unit Trust, 2 Winslow Street, Kirribilli NSW
(Name, address and ABN)

whose agent is Not Applicable _____ Agent
(Name, business address and ABN)

and Frank M Mason & Co Pty Ltd ABN 70 003 142 836 _____ Tenant
 2 Winslow Street, Kirribilli NSW 20621
(Name, business address and ABN)

_____ Guarantor
(Name, business address and ABN)

GST REGISTRATION

The Landlord is registered for GST. Yes No

The Tenant is registered for GST. Yes No

PREMISES

The Landlord leases the premises known as _____ & Grd Floor, 32 Willoughby St Kirribilli (the Premises)
 including all fixtures listed in the inventory which is signed by all parties and attached as part of this lease.

PERMITTED USE

The Premises shall be used only as _____ Offices & Garage _____.

RENT

Except as otherwise provided the rent shall be \$ 40,000.00 _____ (incl GST)
 per _____ Year _____ commencing on _____ 14 / 07 / 2018
 and payable in advance by the Tenant on the _____ First _____ day of every _____ Month
 to the Landlord/Agent at the above address or at any other reasonable place as the Landlord/Agent notifies in writing.

TERM

The term of the lease shall be _____ 4 years _____
 commencing on _____ 01 / 07 / 2018 _____ and ending on _____ 30 / 06 2021 _____.

OPTION

Subject to Clause 29 of this lease the Landlord/Agent offers a renewal of this lease for a further term of _____ years.

HOLDING OVER

Unless either party gives the other written notice of termination in accordance with Clause 30a, the lease shall continue as a periodic lease from month to month at the same rent or at a rent to which both parties agree.

OUTGOINGS (tick applicable box)

The Tenant's percentage of outgoings to be paid in accordance with Clause 17a is _____ 0.0 _____ %

OR

The Tenant's percentage of any increases in outgoings to be paid in accordance with Clause 17b is _____ 0.0 _____ %

BASE YEARS

Municipal Rates: _____ N/A _____

Water and Sewerage Rates: _____ N/A _____ / _____

Land Tax: _____ N/A _____

INSURANCE

The amount of cover for public liability referred to in Clause 15e is \$ _____ 10,000,000.00 _____

CONDITIONS

The parties agree to the conditions set out above and on the following pages and also to those conditions implied by Sections 84 and 85 of the *Conveyancing Act 1919*, which are not expressly negated or modified by this lease.

NOTE It is advisable for the Tenant to insure the Tenant's own property

THE LANDLORD AGREES

Possession

1. To give possession of the Premises to the Tenant on the day on which the term of the lease commences.

Condition of Premises

2. To ensure that the Premises are in a reasonably fit condition for use at the commencement of the lease.

Security

3. To ensure that the external doors and windows contain locks and catches in working order at the commencement of the lease.

Insurance

4. To insure the Premises against damage arising from fire, lightning and explosion and other hazards (including earthquake, storm and tempest, water damage, impact, aircraft, riots/civil commotions and malicious damage).

Use of Premises

5. To allow the Tenant to use and occupy the Premises without unreasonable interference by the Landlord or their Agent.

Rates and Taxes

6. To pay council, water and sewerage rates, land tax and other levies promptly.

Lease Copy

7. To provide the Tenant within one (1) month after:
 - a notice of mortgage consent, if required;
 - b execution of the lease; and
 - c stamping, if applicablewith a copy of the lease.

Tax Receipts and Tax Invoices

8. To issue rent receipts and tax invoices (where applicable) showing the Tenant's name, the address of the Premises, the ABN of the parties, the amount received, the date of payment and the period for which the payment was made, and other such requirements as determined by the Australian Taxation Office.

THE TENANT AGREES

Rent

9. To pay the rent promptly and in advance and in the manner that the Landlord may direct from time to time.

Consents

10. To obtain at their own expense all necessary consents that may be required from local government or other authorities to carry on their proposed business at the Premises (being the use and/or fit-out for which the Premises are leased).

Charges

11. To pay all charges for gas, electricity and telephone and any water usage, garbage or sanitary rates or charges, relating to the Tenant's use of the Premises.

Care of Premises

12. To take care of the Premises and to keep them in a clean condition, and in particular:
 - a To make no alterations or additions to the Premises, including the erection of any sign or antenna, without the prior written consent of the Landlord.
 - b To do no decorating that involves marking, defacing or painting any part of the Premises, without the prior written consent of the Landlord.
 - c To put nothing down any sink, toilet or drain likely to cause obstruction or damage.
 - d To keep no animals or birds on the Premises, without the prior written consent of the Landlord.
 - e To ensure that rubbish is not accumulated on the Premises and to cause all trade refuse to be removed regularly and in a manner acceptable to the Landlord.
 - f To ensure that nothing is done that might prejudice any insurance policy which the Landlord has in relation to the Premises.
 - g To notify the Landlord promptly of any loss, damage or defect in the Premises.
 - h To notify the Landlord promptly of any infectious disease, or the presence of rats, cockroaches or similar pests.

Permitted Use and Occupation

13.
 - a To use the Premises for the purpose stated on the front page of this lease and not for any other purpose.
 - b Not to sleep or permit anyone to sleep on the Premises unless the Premises or a portion of the Premises is zoned for residential use.

Rules and Regulations

14. To ensure that the Tenant, the Tenant's employees, licensees and agents observe, obey and perform the rules and regulations forming part of this lease and such further rules and regulations as the Landlord may from time to time make and communicate to the Tenant (not being inconsistent with this lease) for the safety, care and cleanliness of the Premises and of the building.

Insurance

15. a To do nothing in the building or keep anything therein that would increase the insurance premium payable by the Landlord on the building except with the prior written consent of the Landlord.
- b To do nothing which would make any insurance policy void.
- c To insure all external fixed glass and window frames for which the Tenant is responsible.
- d To pay any insurance premiums payable by the Landlord increased as a result of the Tenant's actions.
- e To insure for public risk covering liability in respect of bodily injury, property damage, product liability and contractual liability arising from the occupation and use of the Premises by the Tenant for the minimum amount as noted on the front page of the lease.

Indemnity

16. a To compensate and meet all claims of:
 - i the landlord for the loss of or damage to part or whole of the Premises,
 - ii any person for the loss of or damage to their personal property, and
 - iii any person for personal injury or death as a result of any accident or neglect or a deliberate or careless act on the Premises or a breach of any conditions of the lease by the Tenant, their employees or agents or any person present on the Premises with the consent of the Tenant, their employees or agents.
- b In such circumstances the Tenant shall meet all claims whether they are made directly against them or against the Landlord. Any resultant repairs to the Premises or to any other parts of the building shall be carried out at the expense of the Tenant by a builder or tradesperson approved by the Landlord.

Outgoings

17. a To reimburse the Landlord immediately, when requested, for the Tenant's percentage of outgoings noted on the front page of this lease for all local government rates, water, garbage and sewerage rates, land tax, insurance premiums, waste disposal costs, car park levies and such other outgoings relating to the property. Land tax shall be calculated on the basis that the land on which the building is situated was the only land owned by the Landlord.

OR

17. b To reimburse the Landlord immediately, when requested, for the agreed percentage of all increases in local government rates, water, garbage and sewerage rates, land tax, insurance premiums, waste disposal costs, car park levies immediately preceding the commencement of the lease. Land tax shall be calculated on the basis that the land on which the building is situated was the only land owned by the Landlord.

BOTH PARTIES AGREE THAT

Unforeseen Event

18. If something happens to the Premises so that the whole or a substantial part can no longer be occupied and the parties are in no way responsible, then either party shall have the right to terminate the lease on the giving of seven (7) days notice in writing.

Inspections

19. The Landlord or Agent shall inspect the Premises at the commencement of the lease and on its termination and take note of the condition of the Premises including the state of cleanliness, state of repair and working order of appliances.

Repairs

20. a The Tenant shall have repaired in a proper manner any damage to the Premises resulting from neglect or a deliberate or careless act or a breach of any condition of the lease by the Tenant or any person on the Premises with their consent.
- b Except as in Clause 20a, the Landlord shall carry out without delay all reasonable repairs necessary for the Tenant's ordinary use and occupation of the Premises, having regard to the condition of the Premises at the commencement of the lease and having regard for fair wear and tear.

Access

21. a The Landlord shall respect the Tenant's right to privacy.
- b The Tenant shall allow access to the Landlord or Agent:
 - i when it is reasonable that they or either of them should view the condition of the Premises or to carry out repairs, or
 - ii to erect 'to let' signs and to show the Premises to prospective tenants after notice terminating the lease has been given, or
 - iii to erect 'for sale' signs and to show the Premises to prospective purchasers, after the Landlord has given reasonable notice to the Tenant of their intention to sell.
- c The Landlord shall give the Tenant reasonable notice of the time and date for such access. As far as possible it shall be convenient for both parties.
- d The Landlord or Agent may have access to the Premises at any time on reasonable notice to the Tenant or without notice in the case of an emergency or to carry out urgent repairs.

Costs

22. a The Tenant shall pay their own legal costs and the reasonable legal costs of the Landlord in relation to the preparation of this lease.
- b The Tenant shall pay the stamp duty and registration fees (if any) payable in connection with this lease.
- c The Landlord shall provide the Tenant with a copy of any account presented to the Landlord in respect of any costs referred to in Clause 22a.

GST

- 23 Any amounts, including rent and outgoings, referred to in this lease which are payable by the Tenant to the Landlord, or on behalf of the Landlord, under this lease, are expressed inclusive of the Goods and Services Tax ("GST"), (if any), at the rate of 10% (the current rate). If the current rate is increased or decreased, the parties agree that any amounts referred to in this lease will be varied accordingly.

Statutes

- 24 Each party shall observe as applicable to themselves all relevant statutes, statutory regulations and by-laws relating to health, safety, noise and other standards with respect to the Premises.

Notices

25. Any written notice required or authorised by the lease:
- Shall be served on the Tenant personally, or by pre-paid post or facsimile transmission to the Premises or by being left there in the post box, if any, at the Premises.
 - Shall be served on the Landlord or Agent personally or by pre-paid post or by facsimile transmission to their address as shown in the lease or as notified in writing or by being left in the post box, if any, at that address.
 - Shall be deemed to be served on the second business day after posting where it has been sent by pre-paid post.
 - May take effect on any day of the month if it relates to the termination of a periodic lease provided it gives the required length of notice.

Mitigation

- 26 Where there has been a breach of any of the conditions of the lease by either party, the other party shall take all reasonable steps to minimise any resultant loss or damage.

Disputes

27. In any dispute or proceedings between the parties, both parties shall act reasonably and without delay and make all admissions necessary to enable the real issues to be decided.

Notice

- 28 a After a notice terminating the lease or demanding immediate possession has been given, any acceptance of or demand for rent or money by the Landlord shall not of itself be evidence of a new lease with the Tenant nor alter the legal effect of the notice.
- b Where the Tenant unlawfully remains in possession after the termination of the lease, the Landlord shall be entitled, in addition to any other claim, to payments equal to the rent as compensation for the Tenant's use and occupation of the Premises.

Renewal

29. a The Tenant shall give to the Landlord or the Agent not more than six (6) months and not less than three (3) months prior to the expiration of the term granted in this lease notice in writing if the Tenant wishes to take a renewal of the lease for the further term offered. Provided the Tenant has duly and punctually paid the rent and shall have duly performed and observed on the Tenant's part all the conditions and agreements contained in this lease up to the expiration of the term granted, then the Landlord will at the cost of the Tenant grant the Tenant the further term at a rent which would at such time be current market rental of the Premises.
- b If any dispute between the Landlord and the Tenant arises as to the current market rent then it shall be determined by the President of the Real Estate Institute of New South Wales or his/her appointee. The rent in the future term is not to be less than the market rent payable in the previous term just prior to the expiration of this lease and the lease shall be subject to all other conditions as are contained in this lease with the exception of the Option Condition. The costs of such rental determination shall be borne in equal shares by the parties unless otherwise agreed.

Termination

30. a Upon the expiry of the lease term or where the lease has become a periodic lease from Month to Month, either party may terminate it by giving one (1) Month's written notice to the other party.
- b The Landlord shall have the right to re-enter the Premises peacefully or to continue the lease as a periodic lease from week to week:
- where the Tenant has failed to pay rent for a period in excess of fourteen (14) days, whether formally demanded or not;
 - where the Tenant has seriously or persistently breached any of the conditions of the lease; or
 - upon the Tenant and/or Guarantor being declared bankrupt or insolvent according to the law or making any assignment for the benefit of creditors or taking the benefit of any Act now or hereafter to be in force for the relief of bankrupts or insolvents. (Section 85 (1) (d) of the *Conveyancing Act 1919*, as amended, is hereby varied accordingly.)
- c If the Landlord intends to exercise their right to continue to lease as a periodic lease from week to week, they shall serve the Tenant with a written notice stating the reason and informing the Tenant of the variation to the lease. Upon serving of the notice, the lease shall continue with all its conditions, except for the term and holding over conditions, as a periodic lease from week to week which may be terminated by seven (7) days written notice from either party.
- d The Landlord shall have the right to re-enter the Premises without giving notice if there are reasonable grounds to believe the Premises have been abandoned.
- e The Tenant shall have the right to terminate the lease if the Landlord has seriously or persistently breached any of its conditions. The Tenant shall give the Landlord written notice of a reasonable period, of no less than fourteen (14) days indicating at the same time the nature of the breach.
- f Any action by the Landlord or the Tenant in accordance with Clause 30 b., c., d. or e., shall not affect any claim for damages in respect of a breach of a condition of the lease.
- g Upon termination or expiry of the lease the Tenant must remove their own fixtures and shall remove their signs provided that any damage or defacement occasioned to any part of the Premises in the course of such removal shall be remedied by the Tenant immediately or, if they fail to do so, by the Landlord and at the Tenant's expense.
- h Upon the termination or expiry of the lease for any reason the Tenant shall promptly and peacefully give the Landlord vacant possession of the Premises in the condition and state of repair required by clauses 12 and 20 a. of the lease and shall, at the same time, hand over all keys.

Parting With Possession

31. a The Tenant shall not assign or sub-let or part with possession of the Premises or any part thereof except with the written consent of the Landlord.
- b The Landlord shall not withhold consent unreasonably, provided that the Tenant gives the Landlord fourteen days notice and the Tenant pays any reasonable expenses involved in the Landlord giving consent.

Cleaning

32. a The Landlord will employ the caretaker or any other person or persons the Landlord may think fit to clean all or any of the offices or rooms in the building of which the Premises form part.
- b The Tenant will from time to time pay to the Landlord the sums demanded by the Landlord for cleaning the Premises and such sums shall be added to the rent and be paid at the same time and in the same manner as the rent and be recovered in the same manner as the rent is recoverable.
- c The Landlord shall not be responsible to the Tenant for any loss of property from the Premises however occurring or for any damage done to the furniture or other effects of any Tenant by the caretaker or any employees of the Landlord or by any other person or persons whomsoever.

Strata Title Conversion

33. The Landlord may register a strata plan insofar as the same relates to the building or any part of it. The Landlord will if required by law request the consent of the Tenant to the registration of the strata plan such consent must not be unreasonably withheld by the Tenant and if requested the Tenant will provide their written consent to the strata plan to the Department of Lands or any other government authority. After registration of the strata plan the Tenant will comply with any by-laws which are not inconsistent with the terms of this lease.

Interpretation

34. a 'Agent' in context with 'Landlord' includes the Landlord's estate agent or managing agent and any other person authorised to act on behalf of the Landlord.
- b 'Landlord' includes the heirs, executors, administrators and assigns of the Landlord, and where the context permits includes the Landlord's Agent.
- c 'Tenant' includes the executors, administrators and permitted assigns of the Tenant.
- d 'Fixtures' includes fittings, furniture, furnishings, appliances, plant, machinery and equipment.
- e 'Month' means calendar month.
- f 'Term' means the term of this lease.
- g Where the context permits, words expressed in the singular include the plural and vice versa and words referring to a person include a company.
- h Where two or more Tenants or Landlords are parties, the terms and conditions of the lease shall bind them jointly and severally.
- i When this lease is signed by both parties and witnessed, it shall operate as a deed at law from that time.
- j Headings in bold have been inserted to assist the parties but they do not form a legal part of the lease.

Guarantor's Liability

35. In consideration of the Landlord leasing the Premises to the Tenant in accordance with this lease, the Guarantors for themselves and each of them and each of their executors and administrators unconditionally agree that they and each of them will be (with the Tenant) jointly and severally liable to the Landlord for the payment of the rent and all other monies payable by the Tenant, and also for the due performance and observance of all the terms and conditions on the part of the Tenant contained or implied. **AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED that the Landlord may grant to the Tenant any time or indulgence and may compound or compromise or release the Tenant without realising or affecting the liability of the Guarantors.**

SPECIAL CONDITIONS

Special conditions forming part of this lease are to be signed by both parties and attached.

RULES AND REGULATIONS

1. No sign, advertisement or notice shall be inscribed or painted or affixed on any part of the outside or the inside of the Premises except of such colour, size and style and in such place upon or in the building as are approved in writing by the Landlord. Upon request by the Tenant, interior signs on glass doors and on the directory tablets will be provided for the Tenant and at the Tenant's expense by the Landlord.
2. The Tenant shall not obstruct the entrance passages, halls, staircases, or fire escapes of the Premises or use them or any part of them for any purpose other than for going in and out of the Premises.
3. The Tenant will not obstruct or interfere with the rights of other Tenants or in any way injure or annoy them or conflict with the regulations of any public authority or with the terms of any insurance policy upon the building or its contents.
4. The Tenant shall not install or position any heavy equipment or article without first obtaining the written consent of the Landlord, such consent may prescribe the maximum weight and the position in which such heavy equipment or article may be placed or secured; the Tenant shall make good at the Tenant's expense all damage caused to the building or any part of it by the introduction, installation, presence or removal of any heavy equipment or article of which the Tenant has ownership, custody or control. Before any safe or heavy article is moved into the building due notice must be given to the Landlord and the moving of it in and about the building shall only be done under the supervision of the Landlord or Agent.
5. In the event of any emergency or other eventuality whereby the toilets or washrooms on any floor are not available for use the Landlord may temporarily withdraw the right of exclusive use of all or any of the toilet or washroom areas and services not affected so as to ensure availability of these facilities to all occupants of the building, and no rental adjustment will be made during such temporary arrangements.
6. In carrying goods or furniture in the lifts priority shall at all times be given to passenger traffic.
7. All doors and windows of the Premises shall be securely fastened on all occasions when the Premises are left unoccupied. The Landlord reserves the right for the Landlord's Agents, employees, servants and workmen to enter and fasten them if they are left unfastened or insecurely fastened.

PLEASE READ THIS LEASE THROUGH CAREFULLY BEFORE AND AFTER SIGNATURE

We hereby enter into this lease and agree to all its conditions.


SIGNED BY THE LANDLORD

in the presence of: _____
 Name of Witness

_____ 
 Signature of Landlord

SIGNED BY THE TENANT

in the presence of: _____
 Name of Witness

_____ 
 Signature of Tenant



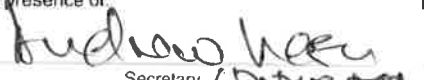
SIGNED BY THE GUARANTOR

in the presence of: _____
 Name of Witness

_____ 
 Signature of Guarantor

THE COMMON SEAL of Frank M Mason & Co Pty Ltd

was hereunto affixed by the authority of the the Board of Directors and in the presence of:


 Secretary

THE COMMON SEAL of

was hereunto affixed by the authority of the the Board of Directors and in the presence of:

Secretary

THE COMMON SEAL of

was hereunto affixed by the authority of the the Board of Directors and in the presence of:

Secretary



FORM OF SURRENDER OF LEASE

In consideration of \$ _____ (the receipt of which is hereby acknowledged), I _____
 surrender and convey to the Landlord the lease to the intent that the residue of the term of the lease term shall merge in the reversion and be extinguished contemporaneously with the execution of this agreement.

Signed _____ Date / /

Witnessed _____ Date / /

**REINSW**REAL ESTATE INSTITUTE
OF NEW SOUTH WALES

COMMERCIAL LEASE



Suitable for small office buildings, factories and shop premises which are not the subject of the *Retail Leases Act 1994* where the term of the lease (including the period of any option) does not exceed three years.

This Lease is made in duplicate on 3 / 2 / 2020,
at 66 Berry Street, North Sydney 2060 in the State of New South Wales.

PARTIES

Between The Estate of BM Mason (ABN: 40-255-392-178) & Frank M Mason & Co Pty Ltd (ABN: 75-658-689-462)	Landlord
(Name, address and ABN) C/O - Richardson & Wrench North Sydney, 66 Berry Street, North Sydney 2060	
whose agent is Peter Hill Real Estate Limited T/As Richardson & Wrench North Sydney	Agent
(Name, business address and ABN) Ground Floor, 66 Berry Street, North Sydney 2060 ABN: 18 003 039 754	
and Surveying Solutions Pty Ltd	Tenant
(Name, business address and ABN) ABN : 24 104 748 263	
NIL	Guarantor
(Name, business address and ABN) NIL	

GST REGISTRATION

The Landlord is registered for GST. Yes No

The Tenant is registered for GST. Yes No

PREMISES

The Landlord leases the premises known as 1st Floor, 32 Willoughby Road Kirribilli NSW 2061 (the Premises) including all fixtures listed in the inventory which is signed by all parties and attached as part of this lease.

PERMITTED USE

The Premises shall be used only as Commercial Office.

RENT

Except as otherwise provided the rent shall be \$ 2,269.04 (incl GST) per month commencing on 23 / 04 / 2020, and payable in advance by the Tenant on the 1st day of every month to the Landlord / Agent at the above address or at any other reasonable place as the Landlord / Agent notifies in writing.

TERM

The term of the lease shall be Fourteen (14) months & One (1) week commencing on 23 / 04 / 2020 and ending on 30 / 06 / 2021.

OPTION

Subject to Clause 29 of this lease the Landlord / Agent offers a renewal of this lease for a further term of NIL years.

HOLDING OVER

Unless either party gives the other written notice of termination in accordance with Clause 30a, the lease shall continue as a periodic lease from month to month at the same rent or at a rent to which both parties agree.

OUTGOINGS (tick applicable box)

The Tenant's percentage of outgoings to be paid in accordance with Clause 17a is NIL %.

OR

The Tenant's percentage of any increases in outgoings to be paid in accordance with Clause 17b is NIL %.

BASE YEARS

Municipal Rates: _____

Water and Sewerage Rates: _____ / _____

Land Tax: _____

INSURANCE

The amount of cover for public liability referred to in Clause 15e is \$ 20,000,000.

CONDITIONS

The parties agree to the conditions set out above and on the following pages and also to those conditions implied by Sections 84 and 85 of the *Conveyancing Act 1919*, which are not expressly negated or modified by this lease.

NOTE It is advisable for the Tenant to insure the Tenant's own property

THE LANDLORD AGREES

Possession

1. To give possession of the Premises to the Tenant on the day on which the term of the lease commences.

Condition of Premises

2. To ensure that the Premises are in a reasonably fit condition for use at the commencement of the lease.

Security

3. To ensure that the external doors and windows contain locks and catches in working order at the commencement of the lease.

Insurance

4. To insure the Premises against damage arising from fire, lightning and explosion and other hazards (including earthquake, storm and tempest, water damage, impact, aircraft, riots / civil commotions and malicious damage).

Use of Premises

5. To allow the Tenant to use and occupy the Premises without unreasonable interference by the Landlord or their Agent.

Rates and Taxes

6. To pay council, water and sewerage rates, land tax and other levies promptly.

Lease Copy

7. To provide the Tenant within one (1) month after:
 - a notice of mortgage consent, if required;
 - b execution of the lease; and
 - c stamping, if applicablewith a copy of the lease.

Tax Receipts and Tax Invoices

8. To issue rent receipts and tax invoices (where applicable) showing the Tenant's name, the address of the Premises, the ABN of the parties, the amount received, the date of payment and the period for which the payment was made, and other such requirements as determined by the Australian Taxation Office.

THE TENANT AGREES

Rent

9. To pay the rent promptly and in advance and in the manner that the Landlord may direct from time to time.

Consents

10. To obtain at their own expense all necessary consents that may be required from local government or other authorities to carry on their proposed business at the Premises (being the use and/or fit-out for which the Premises are leased).

Charges

11. To pay all charges for gas, electricity and telephone and any water usage, garbage or sanitary rates or charges, relating to the Tenant's use of the Premises.

Care of Premises

12. To take care of the Premises and to keep them in a clean condition, and in particular:
 - a To make no alterations or additions to the Premises, including the erection of any sign or antenna, without the prior written consent of the Landlord.
 - b To do no decorating that involves marking, defacing or painting any part of the Premises, without the prior written consent of the Landlord.
 - c To put nothing down any sink, toilet or drain likely to cause obstruction or damage.
 - d To keep no animals or birds on the Premises, without the prior written consent of the Landlord.
 - e To ensure that rubbish is not accumulated on the Premises and to cause all trade refuse to be removed regularly and in a manner acceptable to the Landlord.
 - f To ensure that nothing is done that might prejudice any insurance policy which the Landlord has in relation to the Premises.
 - g To notify the Landlord promptly of any loss, damage or defect in the Premises.
 - h To notify the Landlord promptly of any infectious disease, or the presence of rats, cockroaches or similar pests.

Permitted Use and Occupation

13.
 - a To use the Premises for the purpose stated on the front page of this lease and not for any other purpose.
 - b Not to sleep or permit anyone to sleep on the Premises unless the Premises or a portion of the Premises is zoned for residential use.

Rules and Regulations

14. To ensure that the Tenant, the Tenant's employees, licensees and agents observe, obey and perform the rules and regulations forming part of this lease and such further rules and regulations as the Landlord may from time to time make and communicate to the Tenant (not being inconsistent with this lease) for the safety, care and cleanliness of the Premises and of the building.

Insurance

15. a To do nothing in the building or keep anything therein that would increase the insurance premium payable by the Landlord on the building except with the prior written consent of the Landlord.
- b To do nothing which would make any insurance policy void.
- c To insure all external fixed glass and window frames for which the Tenant is responsible.
- d To pay any insurance premiums payable by the Landlord increased as a result of the Tenant's actions.
- e To insure for public risk covering liability in respect of bodily injury, property damage, product liability and contractual liability arising from the occupation and use of the Premises by the Tenant for the minimum amount as noted on the front page of the lease.

Indemnity

16. a To compensate and meet all claims of:
- i the landlord for the loss of or damage to part or whole of the Premises,
 - ii any person for the loss of or damage to their personal property, and
 - iii any person for personal injury or death as a result of any accident or neglect or a deliberate or careless act on the Premises or a breach of any conditions of the lease by the Tenant, their employees or agents or any person present on the Premises with the consent of the Tenant, their employees or agents.
- b In such circumstances the Tenant shall meet all claims whether they are made directly against them or against the Landlord. Any resultant repairs to the Premises or to any other parts of the building shall be carried out at the expense of the Tenant by a builder or tradesperson approved by the Landlord.

Outgoings *[Cross out the sub-clause below that is not applicable and ensure that both parties initial the change]*

~~17. a To reimburse the Landlord immediately, when requested, for the Tenant's percentage of outgoings noted on the front page of this lease for all local government rates, water, garbage and sewerage rates, land tax, insurance premiums, waste disposal costs, car park levies and such other outgoings relating to the property. Land tax shall be calculated on the basis that the land on which the building is situated was the only land owned by the Landlord.~~

OR

~~17. b To reimburse the Landlord immediately, when requested, for the agreed percentage of all increases in local government rates, water, garbage and sewerage rates, land tax, insurance premiums, waste disposal costs, car park levies immediately preceding the commencement of the lease. Land tax shall be calculated on the basis that the land on which the building is situated was the only land owned by the Landlord.~~

BOTH PARTIES AGREE THAT

Unforeseen Event

18. If something happens to the Premises so that the whole or a substantial part can no longer be occupied and the parties are in no way responsible, then either party shall have the right to terminate the lease on the giving of seven (7) days notice in writing.

Inspections

19. The Landlord or Agent shall inspect the Premises at the commencement of the lease and on its termination and take note of the condition of the Premises including the state of cleanliness, state of repair and working order of appliances.

Repairs

20. a The Tenant shall have repaired in a proper manner any damage to the Premises resulting from neglect or a deliberate or careless act or a breach of any condition of the lease by the Tenant or any person on the Premises with their consent.
- b Except as in Clause 20a, the Landlord shall carry out without delay all reasonable repairs necessary for the Tenant's ordinary use and occupation of the Premises, having regard to the condition of the Premises at the commencement of the lease and having regard for fair wear and tear.

Access

21. a The Landlord shall respect the Tenant's right to privacy.
- b The Tenant shall allow access to the Landlord or Agent:
- i when it is reasonable that they or either of them should view the condition of the Premises or to carry out repairs, or
 - ii to erect 'to let' signs and to show the Premises to prospective tenants after notice terminating the lease has been given, or
 - iii to erect 'for sale' signs and to show the Premises to prospective purchasers, after the Landlord has given reasonable notice to the Tenant of their intention to sell.
- c The Landlord shall give the Tenant reasonable notice of the time and date for such access. As far as possible it shall be convenient for both parties.
- d The Landlord or Agent may have access to the Premises at any time on reasonable notice to the Tenant or without notice in the case of an emergency or to carry out urgent repairs.

Costs

22. a The Tenant shall pay their own legal costs and the reasonable legal costs of the Landlord in relation to the preparation of this lease.
- b The Tenant shall pay the stamp duty and registration fees (if any) payable in connection with this lease.
- c The Landlord shall provide the Tenant with a copy of any account presented to the Landlord in respect of any costs referred to in Clause 22a.

GST

23. Any amounts, including rent and outgoings, referred to in this lease which are payable by the Tenant to the Landlord, or on behalf of the Landlord, under this lease, are expressed inclusive of the Goods and Services Tax ("GST"), (if any), at the rate of 10% (the current rate). If the current rate is increased or decreased, the parties agree that any amounts referred to in this lease will be varied accordingly.

Statutes

24. Each party shall observe as applicable to themselves all relevant statutes, statutory regulations and by-laws relating to health, safety, noise and other standards with respect to the Premises.

Notices

25. Any written notice required or authorised by the lease:
- Shall be served on the Tenant personally, or by pre-paid post or facsimile transmission to the Premises or by being left there in the post box, if any, at the Premises.
 - Shall be served on the Landlord or Agent personally or by pre-paid post or by facsimile transmission to their address as shown in the lease or as notified in writing or by being left in the post box, if any, at that address.
 - Shall be deemed to be served on the second business day after posting where it has been sent by pre-paid post.
 - May take effect on any day of the month if it relates to the termination of a periodic lease provided it gives the required length of notice.

Mitigation

26. Where there has been a breach of any of the conditions of the lease by either party, the other party shall take all reasonable steps to minimise any resultant loss or damage.

Disputes

27. In any dispute or proceedings between the parties, both parties shall act reasonably and without delay and make all admissions necessary to enable the real issues to be decided.

Notice

28. a After a notice terminating the lease or demanding immediate possession has been given, any acceptance of or demand for rent or money by the Landlord shall not of itself be evidence of a new lease with the Tenant nor alter the legal effect of the notice.
- b Where the Tenant unlawfully remains in possession after the termination of the lease, the Landlord shall be entitled, in addition to any other claim, to payments equal to the rent as compensation for the Tenant's use and occupation of the Premises.

Renewal

29. a The Tenant shall give to the Landlord or the Agent not more than six (6) months and not less than three (3) months prior to the expiration of the term granted in this lease notice in writing if the Tenant wishes to take a renewal of the lease for the further term offered. Provided the Tenant has duly and punctually paid the rent and shall have duly performed and observed on the Tenant's part all the conditions and agreements contained in this lease up to the expiration of the term granted, then the Landlord will at the cost of the Tenant grant the Tenant the further term at a rent which would at such time be current market rental of the Premises.
- b If any dispute between the Landlord and the Tenant arises as to the current market rent then it shall be determined by the President of the Real Estate Institute of New South Wales or his/her appointee. The rent in the future term is not to be less than the market rent payable in the previous term just prior to the expiration of this lease and the lease shall be subject to all other conditions as are contained in this lease with the exception of the Option Condition. The costs of such rental determination shall be borne in equal shares by the parties unless otherwise agreed.

Termination

30. a Upon the expiry of the lease term or where the lease has become a periodic lease from Month to Month, either party may terminate it by giving one (1) Month's written notice to the other party.
- b The Landlord shall have the right to re-enter the Premises peacefully or to continue the lease as a periodic lease from week to week:
- where the Tenant has failed to pay rent for a period in excess of fourteen (14) days, whether formally demanded or not;
 - where the Tenant has seriously or persistently breached any of the conditions of the lease; or
 - upon the Tenant and/or Guarantor being declared bankrupt or insolvent according to the law or making any assignment for the benefit of creditors or taking the benefit of any Act now or hereafter to be in force for the relief of bankrupts or insolvents. (Section 85 (1) (d) of the *Conveyancing Act 1919*, as amended, is hereby varied accordingly.)
- c If the Landlord intends to exercise their right to continue to lease as a periodic lease from week to week, they shall serve the Tenant with a written notice stating the reason and informing the Tenant of the variation to the lease. Upon serving of the notice, the lease shall continue with all its conditions, except for the term and holding over conditions, as a periodic lease from week to week which may be terminated by seven (7) days written notice from either party.
- d The Landlord shall have the right to re-enter the Premises without giving notice if there are reasonable grounds to believe the Premises have been abandoned.
- e The Tenant shall have the right to terminate the lease if the Landlord has seriously or persistently breached any of its conditions. The Tenant shall give the Landlord written notice of a reasonable period, of no less than fourteen (14) days indicating at the same time the nature of the breach.
- f Any action by the Landlord or the Tenant in accordance with Clause 30 b, c, d. or e., shall not affect any claim for damages in respect of a breach of a condition of the lease.
- g Upon termination or expiry of the lease the Tenant must remove their own fixtures and shall remove their signs provided that any damage or defacement occasioned to any part of the Premises in the course of such removal shall be remedied by the Tenant immediately or, if they fail to do so, by the Landlord and at the Tenant's expense.
- h Upon the termination or expiry of the lease for any reason the Tenant shall promptly and peacefully give the Landlord vacant possession of the Premises in the condition and state of repair required by clauses 12 and 20 a. of the lease and shall, at the same time, hand over all keys.

Parting With Possession

31. a The Tenant shall not assign or sub-let or part with possession of the Premises or any part thereof except with the written consent of the Landlord.
- b The Landlord shall not withhold consent unreasonably, provided that the Tenant gives the Landlord fourteen days notice and the Tenant pays any reasonable expenses involved in the Landlord giving consent.

Cleaning

32. a The Landlord will employ the caretaker or any other person or persons the Landlord may think fit to clean all or any of the offices or rooms in the building of which the Premises form part.
- b The Tenant will from time to time pay to the Landlord the sums demanded by the Landlord for cleaning the Premises and such sums shall be added to the rent and be paid at the same time and in the same manner as the rent and be recovered in the same manner as the rent is recoverable.
- c The Landlord shall not be responsible to the Tenant for any loss of property from the Premises however occurring or for any damage done to the furniture or other effects of any Tenant by the caretaker or any employees of the Landlord or by any other person or persons whomsoever.

Strata Title Conversion

33. The Landlord may register a strata plan insofar as the same relates to the building or any part of it. The Landlord will if required by law request the consent of the Tenant to the registration of the strata plan such consent must not be unreasonably withheld by the Tenant and if requested the Tenant will provide their written consent to the strata plan to the Department of Lands or any other government authority. After registration of the strata plan the Tenant will comply with any by-laws which are not inconsistent with the terms of this lease.

Interpretation

34. a 'Agent' in context with 'Landlord' includes the Landlord's estate agent or managing agent and any other person authorised to act on behalf of the Landlord.
- b 'Landlord' includes the heirs, executors, administrators and assigns of the Landlord, and where the context permits includes the Landlord's Agent.
- c 'Tenant' includes the executors, administrators and permitted assigns of the Tenant.
- d 'Fixtures' includes fittings, furniture, furnishings, appliances, plant, machinery and equipment.
- e 'Month' means calendar month.
- f 'Term' means the term of this lease.
- g Where the context permits, words expressed in the singular include the plural and vice versa and words referring to a person include a company.
- h Where two or more Tenants or Landlords are parties, the terms and conditions of the lease shall bind them jointly and severally.
- i When this lease is signed by both parties and witnessed, it shall operate as a deed at law from that time.
- j Headings in bold have been inserted to assist the parties but they do not form a legal part of the lease.

Guarantor's Liability

35. In consideration of the Landlord leasing the Premises to the Tenant in accordance with this lease, the Guarantors for themselves and each of them and each of their executors and administrators unconditionally agree that they and each of them will be (with the Tenant) jointly and severally liable to the Landlord for the payment of the rent and all other monies payable by the Tenant, and also for the due performance and observance of all the terms and conditions on the part of the Tenant contained or implied. AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED that the Landlord may grant to the Tenant any time or indulgence and may compound or compromise or release the Tenant without realising or affecting the liability of the Guarantors.

**Special Conditions
Commercial Lease
1st Floor, 32 Willoughby Road Kirribilli**

Lessee	Company: Surveying Solutions Pty Ltd
ABN	24 104 748 263
Premises	1st Floor, 32 Willoughby Road Kirribilli NSW 2061
Lease Type	Commercial Office
Lease Term	Fourteen (14) months & One (1) week
Lease Commencement	23 rd of April 2020
Rent	Rent for the Year 1 of this lease will be \$24,753.23 per annum gross + GST equivalent to \$2,269.04 per month including GST
Reviews	By CPI as at 23 rd of April 2021 and on each anniversary date of the lease
Outgoings	NIL
Parking	NIL
Makegood	Left in a clean and tidy state.
Additional Costs	NIL
Cleaning	Lessee to make their own arrangement in relation to both internal cleaning of the suite and garbage removal at their own cost.
Lease Costs	\$330.00 (includes GST on the basis of a 1 to 2-year lease only) NOT APPLICABLE Under these circumstances the plain English in house lease will be used. The wording in this format of lease cannot be altered. Alternatively, a solicitor prepared lease can be used + disbursements and mortgagee consent fees if applicable at the cost of the Lessee
Lease Guarantee	The Lessee has provided a Lease Guarantee equivalent to \$6325.00 being held in an interest baring account with National Australia Bank. This amount represents 3 months Gross Rent including GST. The Lease Guarantee is payable to the Lessor by way of Bank Cheque, electronic transfer to the Agent's account (details available on request) or unconditional Bank Guarantee. The Bank Guarantee must not have an expiry date
Insurance	The Lessee is to keep current during the term of the lease a Public Liability Insurance Policy in the sum of \$20 Million. The Certificate of Currency must state the address of the premises as well as the Lessor's interest.

Surveying Solutions Pty Ltd

Signature

Date

For and on Behalf of The Executors of the Estate of BM Mason & Frank M Mason & Co Pty Ltd

Signature

Date

Signature

Date

SPECIAL CONDITIONS

Special conditions forming part of this lease are to be signed by both parties and attached.

RULES AND REGULATIONS

1. No sign, advertisement or notice shall be inscribed or painted or affixed on any part of the outside or the inside of the Premises except of such colour, size and style and in such place upon or in the building as are approved in writing by the Landlord. Upon request by the Tenant, interior signs on glass doors and on the directory tablets will be provided for the Tenant and at the Tenant's expense by the Landlord.
2. The Tenant shall not obstruct the entrance passages, halls, staircases, or fire escapes of the Premises or use them or any part of them for any purpose other than for going in and out of the Premises.
3. The Tenant will not obstruct or interfere with the rights of other Tenants or in any way injure or annoy them or conflict with the regulations of any public authority or with the terms of any insurance policy upon the building or its contents.
4. The Tenant shall not install or position any heavy equipment or article without first obtaining the written consent of the Landlord, such consent may prescribe the maximum weight and the position in which such heavy equipment or article may be placed or secured; the Tenant shall make good at the Tenant's expense all damage caused to the building or any part of it by the introduction, installation, presence or removal of any heavy equipment or article of which the Tenant has ownership, custody or control. Before any safe or heavy article is moved into the building due notice must be given to the Landlord and the moving of it in and about the building shall only be done under the supervision of the Landlord or Agent.
5. In the event of any emergency or other eventuality whereby the toilets or washrooms on any floor are not available for use the Landlord may temporarily withdraw the right of exclusive use of all or any of the toilet or washroom areas and services not affected so as to ensure availability of these facilities to all occupants of the building, and no rental adjustment will be made during such temporary arrangements.
6. In carrying goods or furniture in the lifts priority shall at all times be given to passenger traffic.
7. All doors and windows of the Premises shall be securely fastened on all occasions when the Premises are left unoccupied. The Landlord reserves the right for the Landlord's Agents, employees, servants and workmen to enter and fasten them if they are left unfastened or insecurely fastened.

PLEASE READ THIS LEASE THROUGH CAREFULLY BEFORE AND AFTER SIGNATURE

We hereby enter into this lease and agree to all its conditions.

SIGNED BY THE LANDLORD

in the presence of: _____

Name of Witness

Signature of Witness

Signature of Landlord

SIGNED BY THE TENANT

in the presence of: _____

Name of Witness

Signature of Witness

Signature of Tenant

SIGNED BY THE GUARANTOR

in the presence of: _____

Name of Witness

Signature of Witness

Signature of Guarantor

<p>THE COMMON SEAL of</p> <p>was hereunto affixed by the authority of the the Board of Directors and in the presence of:</p> <p>_____</p> <p style="text-align: center;">Secretary</p>	<p>THE COMMON SEAL of</p> <p>was hereunto affixed by the authority of the the Board of Directors and in the presence of:</p> <p>_____</p> <p style="text-align: center;">Secretary</p>	<p>THE COMMON SEAL of</p> <p>was hereunto affixed by the authority of the the Board of Directors and in the presence of:</p> <p>_____</p> <p style="text-align: center;">Secretary</p>
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FORM OF SURRENDER OF LEASE

In consideration of \$ _____ (the receipt of which is hereby acknowledged), I _____ surrender and convey to the Landlord the lease to the intent that the residue of the term of the lease term shall merge in the reversion and be extinguished contemporaneously with the execution of this agreement.

Signed _____ Date / /

Witnessed _____ Date / /

COMMERCIAL LEASE AGREEMENT

Item

Item Schedule

1. AGREEMENT

Clause 1(1)

THIS AGREEMENT is made on / / at 245 Pacific Highway, North Sydney

N.S.W.

Between the Landlord and the Tenant.

2. LANDLORD

Name: Mr B M Mason & FRANK M. MASON / G P L ATF MASON OBIT TRUST

Address: C/- First National North Sydney

ACN:

245 Pacific Highway, North Sydney

ABN: 40-255-392-178

Phone:

Fax:

Mobile:

Email:

Licence No.:

GST Registered: Yes / No

3. LANDLORD'S AGENT

Clause 21

Name: Peter Hill Real Estate Pty Limited T/As First National Real Estate North Sydney

Address: 245 Pacific Highway

ACN:

North Sydney, NSW, 2060

ABN: 18 003 039 754

Phone: (02) 9929 8944

Fax: (02) 9955 9529

Mobile:

Email:

mail@firstnationalns.com.au

Licence No.: 83 99 85

4. TENANT

Name/s: Kenneth Anderson Architect (ABN 97 268 669 792), Fiona Mitchell Architect (ABN 71 806 621 707), 2RKS Architecture Pty Ltd (ABN 82 315 757 363)

Address: Rooms 6-11, 2-4 Winslow Street, Milsons Point, NSW, 2060

ABN: as above

Phone: (02) 9959 5242

Fax: (02) 9959 5283

Mobile: 0402 424 995

Email:

ka-arch@bigpond.net.au

GST Registered: Yes / No

5. GUARANTOR/S If more than (2) Guarantors, attach additional names as a schedule to the Special Conditions

Clause 31

(1) Name:

Address:

ACN:

ABN:

Phone:

Fax:

Mobile:

Email:

(2) Name:

Address:

ACN:

ABN:

Phone:

Fax:

Mobile:

Email:

6. PREMISES

Clause 1(11)

Address: Rooms 6-11, 2-4 Winslow Street, Milsons Point, NSW, 2060

(Includes all Landlord's fitting and fixtures)

Area of Premises: m² (approx.)

7. RENT

Clauses 1(6), 1(12), 4 & 22

Rent Payable year one: \$24,335.05 excluding / including / plus GST per annum

\$2,027.92 payable weekly / fortnightly / monthly / quarterly in advance on the: first day of each month

Other Information:

Rent Review Type: CPI / Other (if other, see Special Conditions)

Date of Initial Rent Review: On the first anniversary of the commencement date of the Lease

And thereafter: annually

(e.g. annually)

7. RENT (Continued)

Clauses 1(6), 1(12), 4 & 22

Payable:

- (a) as directed from time to time by the Landlord or the Landlord's Agent; or
- (b) into the following account

Bank: **National Australia Bank** Branch: **Mosman Junction** BSB: **0 | 8 | 2 | 2 | 9 | 9**
 Account Name: **First National North Sydney Trust Account** Account Number: **4 | 5 | 7 | 6 | 6 | 7 | 3 | 1 | 5**
 or any other account nominated by the Landlord.

8. SECURITY BOND

Clause 17

Bank Guarantee / Security Bond payable by the Tenant: \$ **0.00** or equivalent to _____ months rent.

9. TERM

Clauses 1(9) & 3.1

Lease Commencement Date: **01 / 07 / 2012** Lease End Date: **30 / 06 / 2014**
 Lease Term: **Two (2) years**

10. OPTION TO RENEW

Clause 5

(Note: it is advised that the Tenant obtain professional legal advice regarding the registration of a renewed lease)

10.1 Option to renew given: Yes No **FM KQA**

10.2 Option Details: (1) Term: **TWO (2) YEARS FM KQA**

(2) Rental Yr one: Tick **ONE** only
 Market Review (see Clause 5.4) Other (e.g. CPI) (insert as a Special Condition)

10.3 Period in which to exercise the option: (If no period is specified, notice shall be given no more than 6 and no less than 3 months from the date of expiry of the term.)

Empty box for option exercise period.

11. TENANT'S INSURANCE

Clauses 8.1(12) - 8.1(16)

Public Liability cover: **\$10,000,000**

Other:

Empty box for other insurance details.

12. PERMITTED USE

Clause 6.1

Commercial Offices

13. OUTGOINGS

Clauses 1(2), 1(10) & 8.1(5)

Payable by Tenant: Yes No

Outgoings in addition to those specified in Clause 1(10): (1) _____

Tenant's % of Outgoings: Tick **ONE** only

_____ % of Outgoings

OR

_____ % of increases in Outgoings above the Base Year Outgoings where Base Year is 20

14. OVERDUE MONIES

Clause 29

Interest charged: Yes No Interest Rate: **12** % per annum.

15. SPECIAL CONDITIONS

Clause 28

Annual rent review to be set at 4%
Security bond of \$5,198.20 already held by Owner/Agent from initial Lease

16. SIGNATURES

The Landlord and Tenant agree to be bound by this Agreement which also includes conditions implied by Section 84 and Section 85 of the Conveyancing Act 1919 unless modified or amended by this Agreement.

Landlord: *[Signature]*

Witness: _____

Tenant(s): *[Signature]*

Witness(es): _____

Guarantor(s): _____

Witness(es): _____

17. IF EXECUTED BY A CORPORATION (to be completed where the Landlord &/or Tenant is a corporation)

Note: A common seal need not be affixed.

Executed in accordance with Section 127 of the Corporations Act 2001.

Director: _____

SIGNED FOR AND ON BEHALF OF KENNETH ANDERSON ARCHITECTS
ABN: 97-268-689-792

Director/Secretary: *[Signature]*

Print Name: _____

Print Name: KENNETH ANDERSON

Date: *1 1*

Date: 29/6/2012

Director: _____

SIGNED FOR AND ON BEHALF OF FIONA MITCHELL ARCHITECT
ABN: 71-801-511-707

Director/Secretary: *[Signature]*

Print Name: _____

Print Name: FIONA MITCHELL

Date: *1 1*

Date: 29/6/2012

Director: _____

SIGNED FOR AND ON BEHALF OF 2RKS ARCHITECTURE P/L
ABN: 92-815-757-365

Director/Secretary: *[Signature]*

Print Name: _____

Print Name: RICHARD SALMAN

Date: *1 1*

Date: 29/6/2012

Surrender of Lease

NOTICE

In consideration of \$0.00, receipt of which hereby acknowledged, the Tenant surrenders all the Tenant's estate and interest in the Lease and the Landlord accepts a surrender of the Lease such that the residue of the unexpired term will merge in the freehold reversion and be extinguished on the signing of this surrender.

SIGNATURES

Dated this _____ day of _____ 20____

Landlord: _____

Witness: _____

Tenant: _____

Witness: _____

Commercial Lease Agreement - Terms of Agreement - Pursuant to the Conveyancing Act 1919

1. Definitions

In this Schedule the following mean:

- (1) **Agreement:** this Commercial Lease Agreement consisting of the Item Schedule, the Terms of Agreement and any attached Schedule.
- (2) **Base Year Outgoings:** the Outgoings payable in the Base Year Item (13).
- (3) **Business Day:** Any day other than a Saturday, Sunday or public holiday under the *Public Holidays Act 2010* in the State of New South Wales.
- (4) **Commercial Building:** means the building or buildings used for carrying on commercial activities of which the Premises are a part.
- (5) **Common Areas:** Includes:
 - (1) entrances and exits
 - (2) pathways, escalators and elevators
 - (3) malls and walkways
 - (4) parking areas
 - (5) toilets and rest rooms; and
 any areas of the Commercial Building which the Landlord may from time to time designate.
- (6) **Consumer Price Index (CPI):** is the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Statistician.
- (7) **GST:** has the same meaning used in the *A New Tax System (Goods & Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (8) **Land:** the Land upon which the Commercial Building is constructed.
- (9) **Lease Term:** the period of time set out in Item (9) of the Item Schedule.
- (10) **Outgoings:** include:
 - (1) all state and local government rates and charges on the Land and Commercial Building (including land tax) including water and sewerage rates and general rates.
 - (2) periodic charges and levies including insurance premiums and fire protection services.
 - (3) repair, maintenance and cleaning (excluding structural matters and major repairs)
 - (4) those things (if any) specified in Item (13) of the Item Schedule
- (11) **Premises:** the premises referred to in Item (6) of the Item Schedule.
- (12) **Rent Review Date:** the date the rental amount charged to the Tenant is reviewed (as provided in Item (7) of the Item Schedule)
- (13) **Rules:** rules made by the Landlord from time to time for operating the Commercial Building.
- (14) **Tenant's Chattels:** The Tenant's items of personal property.
- (15) **Valuer:** a Valuer registered in accordance with the provisions of the *Valuers Act 2003* and who is able to carry out rental determinations as may be required under this Agreement.

2. Interpretation

2.1 In this Agreement, unless the contrary intention appears:

- (1) the singular includes the plural and vice versa.
- (2) 'person' includes a firm, a body corporate.
- (3) an agreement, representation or warranty:
 - (1) in favour of two or more persons is for the benefit of them jointly and severally.
 - (2) on the part of two or more persons binds them jointly and severally.

- (4) a reference to:
 - (1) an item number is a reference to an item in the Item Schedule.
 - (2) a person includes the person's executors, administrators, successors and assigns.
 - (3) a document includes any variation to that document.
 - (4) any law includes all regulations and other instruments under it and amendments or replacements of any of them.
- (5) Column notes in the Item Schedule form part of this Agreement.
- (6) any party signing as trustee contracts personally and as trustee
- (7) headings do not form part of this Agreement

2.2 A reference to month or monthly means a calendar month or calendar monthly.

3. Holding Over

- 3.1 At the Lease End Date stated in Item (9) the Tenant may continue but only with the Landlord's prior written consent to occupy the Premises and shall do so as a monthly Tenant subject to the provisions of this Agreement.
- 3.2 A monthly tenancy may be terminated by either party giving to the other, not less than one month's notice.
- 3.3 To remain in occupation after the Lease End Date the Tenant must obtain the Landlord's consent not less than one month prior to that date.

4. Rent

- 4.1 The Tenant agrees to pay the Rent in advance as specified in Item (7).
- 4.2 Rent for any broken period of less than a month will be apportioned on a daily basis.
- 4.3 If specified in Item (7) that the Rent amount is to be reviewed in accordance with the CPI then the Rent shall be adjusted in accordance with the following formula:

$$R = A \times \frac{B}{C}$$

Where:

R represents the CPI adjusted Rent.
A is the Rent payable immediately prior to the Review Date
B is the CPI for the quarter immediately prior to the relevant Review Date in Item (7).
C is the CPI published for the quarter ending one year prior to the quarter in **B**.

- 4.4 If the CPI is suspended or discontinued, the Index used for the formula in Clause 4.3 will be that which is substituted by the Australian Statistician.

5. Option/s to extend Lease Period

- 5.1 If an option to extend the Lease Term of the Agreement is given in Item (10) the Tenant must exercise the option in writing in accordance with the exercise period in Item (10).
- 5.2 An option to extend the Lease Term of the Agreement shall only be granted by the Landlord if the Tenant has complied with the Terms and Conditions of this Agreement.
- 5.3 The Tenant having complied with Clause 5.1 & 5.2 the Landlord will grant a further lease of the Premises to the Tenant on the same terms and conditions as this Agreement subject to Clause 5.4, excluding Item (10) of the Item Schedule and this Clause and otherwise varying Item (9) of the Item Schedule as to the Lease Commencement and Lease End Date.

5.4 Rental for the further term will be:

- (a) as agreed between the parties
- Or failing agreement:
- (b) as provided in Item (10.2)
 - (c) where the rental is to be determined by market review the current market rent will be determined by a Valuer within a reasonable time (not less than two months) prior to expiration of the current Term.

- (d) in any case market rent or other, the rental shall not be less than the rental charged at the expiration of the prior term.
- (e) once determined, the rental for the future term will be payable from the commencement date of the new term.
- 5.5 The Landlord and the Tenant shall equally share any costs incurred relating to a rental determination under Clause 5.4.
- 5.6 No failure by the Tenant to comply with the Terms and Conditions of this Agreement precludes the Tenant's entitlement to the option unless notice has been served in compliance with Section 133(E) of the *Conveyancing Act 1919* and the Tenants rights are thereby extinguished.
- 6. Tenant's permitted use of the Premises**
- 6.1 The use of the Premises, by the Tenant, shall be for the Permitted Use (Item 12) only.
- 6.2 The Tenant must obtain all the necessary approvals from any statutory, public or other competent authorities regarding the use of the Premises.
- 6.3 The Tenant and/or the Tenant's employees must not:
- (a) install any equipment in the Premises that may overload any Services; or
- (b) carry on any illegal activities or interfere with the rights of other tenants; or
- (c) do or neglect to do anything to or upon the Premises which may make void or increase the premium of any insurance on the Premises or any property in them; or
- (d) use the fixtures and fitting within the Premises for any use other than that for which they are intended; or
- (e) not keep pets on the Premises and notify the presence of infectious diseases or vermin.
- 6.4 In common with other persons authorised by the Landlord, the Tenant and the Tenant's Employees may use the Common Areas and the fixtures and fittings within those areas for the purposes for which they were designed or intended.
- 6.5 The Tenant must comply with the Rules and all reasonable directions given to it by the Landlord relating to conduct in the Common Areas.
- 6.6 The Tenant and its employees must not interfere with or impede other persons using the Common Areas or facilities servicing same.
- 6.7 The Tenant acknowledges the Landlord has given no warranty regarding the suitability of the Premises for the use permitted under this Agreement. (See Item (12)). The Tenant occupies the Premises at the Tenant's own risk.
- 7. Building Works and Other Alterations**
- The Tenant must not carry out any building works or other alterations including the erection, painting, writing or attachment of any sign to the Premises without:
- (1) obtaining written approval from the Landlord (and if required from the relevant authorities).
- (2) submitting to the Landlord the necessary specifications and plans for the proposed works
- 8. Tenant's Responsibilities**
- 8.1 The Tenant will:
- (1) maintain the Premises and all fixtures and fittings in a reasonable state of repair without damage or loss. (fair wear and tear excepted). Provided however, the Tenant shall not be required to carry out any structural work unless it has become necessary because of any actions (negligent or deliberate) of the Tenant.
- (2) keep the Premises and immediate surrounds clean and tidy
- (3) make repairs in respect to damage caused by the Tenant
- (4) carry out works on the Premises in accordance with notice given by the Landlord under Clause 10.2 (4).
- (5) immediately on receipt of notice pay to the Landlord, Outgoings in accordance with Item (13) of the Item Schedule and Stamp Duty under Clause 19.
- (6) inform the Landlord, within a reasonable period of time, of any defect or damage in or to the Premises.
- (7) keep the Premises free of rodents, termites, cockroaches, and other vermin.
- (8) adhere to the terms of this Agreement.
- (9) pay to the Landlord any amounts relating to increases in the Landlord's insurance premiums due to the Tenant's failure to act in accordance with Clause 6.3 (c).
- (10) not install any heavy equipment except as approved and subject to the conditions set out by the Landlord in writing. Any damage occasioned thereby will be rectified by the Tenant at its cost.
- (11) with respect to the Premises, ensure that charges for:
- (1) electricity
- (2) gas
- (3) excess water
- (4) excess of garbage
- (5) sanitary
- (6) telephone
- are paid.
- ~~(12) insure all property situated in the Premises belonging to the Tenant, or for which the Tenant is legally liable, from fire with standard coverage in the joint names of the Landlord and the Tenant.~~ *ADL* *FM KCC*
- (13) maintain public liability insurance in accordance with Item (11) of the Item Schedule.
- ~~(14) insure its own plant, equipment and stock in trade.~~
- (15) insure all plate glass in the Premises. *FM KCC*
- (16) insure for any other form of insurance the Landlord may from time to time reasonably require. (see Item 11) *ADL*
- (17) not to carry on any offensive trade within the Premises.
- (18) keep the Premises secure at all times
- (19) carry on its business in a fit and proper manner during the term of the Lease or any extension.
- (20) maintain the appropriate licenses or permits, if any, relating to the Tenant's business and comply with statutes, orders and by-laws relating to the Tenant's use and occupation of the Premises and Building and promptly notify the Landlord on receipt of any notices or orders in relation to or affecting the Premises.
- 8.2 At the end of the Lease, unless otherwise agreed, the Tenant must vacate the Premises and:
- (1) remove all Tenant's Chattels
- (2) remove all Tenant's fittings and fixtures as directed or required by the Landlord.
- (3) repair any damage caused by the removal of chattels, fittings and fixtures as provided for in Clauses 8.2(1) and 8.2(2).
- (4) leave the Premises including fixtures and fittings in a clean and reasonable state of repair
- (5) return all keys and other devices and codes for access to the Landlord or the Landlord's Agent.
- 8.3 If the Tenant fails to remove the Tenant's Chattels as required by Clause 8.2 the Landlord may:
- (a) remove and store the Tenant's Chattels at the Tenant's risk and expense; or
- (b) treat the Tenant's Chattels as if the Tenant had abandoned its interest in it and the Tenant's Chattels has become the Landlord's property and may deal with it as the Landlord thinks fit without being liable to account to the Tenant.
- 8.4 After Termination or the expiry of the Lease the Tenant remains liable for payments in respect of periods prior to such Termination or expiry.
- 8.5 The Tenant will ensure that its employees, invitees, agents and licensees comply with the terms of this Agreement and any Rules relating to it.

8.6 For the purpose of Clause 8.1(5) land tax will be calculated as if the Land was the only land owned by the Landlord in New South Wales.

9. Quiet Enjoyment

The Tenant performing its obligations under this Agreement may use the Premises without interruption or disturbance from the Landlord or persons claiming through or under the Landlord.

10. Landlord's Rights and Responsibilities

10.1 On delivery of possession of the Premises the Landlord will ensure the Premises are:

- (1) safe and fit to occupy.
- (2) clean
- (3) in compliance with state and local authority building regulations
- (4) insured as part of the Commercial Building against all reasonable insurable contingencies in broad cover form (including public liability) such policies are to be maintained for the Lease Term of this Agreement.

10.2 It is the Landlord's responsibility to:

- (1) provide to the Tenant, at the start of the Lease Term, a stamped copy of this Agreement duly signed by both parties.
- (2) promptly carry out repairs of a structural nature except where such repairs have become necessary as a result of the actions of the Tenant. (refer Clause 8.1(1))
- (3) maintain services for the Premises including services used in common with the Landlord and other Tenants
- (4) serve upon the Tenant written notice of any defect, requiring the Tenant to make repairs in accordance with any covenant expressed or implied in this Agreement.
- (5) issue to the Tenant all relevant tax invoices for receipt of payments made by the Tenant throughout the Lease Term that may be reasonably required to be held for tax purposes by the Australian Tax Office.
- (6) make payment of all costs relating to the Landlord's management of the Premises.

10.3 On the giving of 2 days notice to the Tenant, the Landlord may at reasonable times enter the Premises for the purposes of:

- (1) viewing the state of repair of the Premises
- (2) performing any building and other repair work in accordance with Clause 10.2 (2) and 10.2 (3) or those works that the Tenant has failed to complete in accordance with Clause 8.1 (4)
- (3) carrying out requirements of state, local or other competent authorities.

10.4 In the case of a proposed sale or reletting of the Premises the Landlord may at all reasonable times access the Premises with prospective purchasers or tenants.

10.5 The Landlord may in cases of:

- (a) Emergency; or
- (b) if reasonable evidence suggests the Premises has been abandoned

enter the Premises without first giving notice to the Tenant.

10.6 If the Tenant fails to carry out any of its obligations hereunder the Landlord may after giving notice in accordance with Section 129 of the *Conveyancing Act 1919* rectify such breach and recover any expenditure from the Tenant.

11. Strata Plan

11.1 If during the Lease Term the Landlord determines to register a Strata Plan in relation to, or affecting the Premises, the Tenant will consent if requested by the Landlord to the Strata Plan.

11.2 Subsequent to registration of the Strata Plan, compliance by the Landlord with the Strata Plan will not amount to default by the Landlord under this Agreement.

11.3 The Landlord will comply with by-laws except in so far as such compliance would be contrary to the terms of this Agreement.

11.4 If required by the Landlord the Tenant will, at the cost of the Landlord, surrender the existing Agreement and enter into a new Agreement on the same Terms and Conditions as this Agreement save as follows:

- (1) the new Agreement shall commence from the date of surrender and terminate on the date this Agreement would have otherwise expired.
- (2) the provisions of the Agreement will be altered to the extent necessary to enable compliance with the Strata Plan.
- (3) Outgoings will include levies payable by the Landlord in accordance with the Strata Plan.

12. Damage or Destruction

12.1 Where the Premises becomes wholly or partially unfit for the Tenant to occupy due to damage or destruction, not caused by the Tenant or the Tenant's Employees, the Landlord will adjust the Rent and other amounts payable by the Tenant in accordance with the degree of damage or destruction until the Premises are restored and made fit for the Tenant to occupy.

12.2 The Landlord is not required to restore the Premises. However should the Landlord not notify the Tenant of its intention to restore the Premises within one month of the date of damage or destruction either party may give one month's notice terminating the Tenancy.

12.3 Termination under this Clause is without prejudice to the rights of either party for any antecedent breach or non observance of any provision of this Agreement.

12.4 Should the damage or destruction have been caused or contributed to by the Tenant or its employees or should the Tenant or Tenant's employees actions result in the Landlord's insurer refusing to indemnify, Clause 12.1 and 12.2 will not apply.

12.5 In the case of any dispute arising under Clause 12, the same shall be referred to arbitration under the provisions of the *Commercial Arbitration Act 2010*.

13. Joint Obligation

In the case of a breach of this Agreement the parties shall take reasonable steps to mitigate damages. Provided however, if the Tenant fails to notify the Landlord in accordance with Clause 8.1 (6) the Landlord will not be liable for damages suffered by the Tenant.

14. Assignment or Subletting

14.1 The Tenant will not assign or sublet without the Landlord's consent.

14.2 The Landlord will not, in the case of suitable assigns, unreasonably refuse to grant the Tenant's requests where the Tenant is not in default.

14.3 The Tenant will pay the Landlord's costs in relation to any assignment or subletting.

14.4 The proposed assignee shall:

- (1) provide suitable references
- (2) enter into a written agreement agreeing to comply with the terms of this Agreement.

15. Dealings

The Tenant is not entitled to deal with the Lease or other assets of the business on, in or from the leased Premises by way of security without first having obtained the Landlord's consent, which consent, is at the sole discretion of the Landlord and may be granted upon such terms and conditions as the Landlord considers reasonable.

16. Indemnity

16.1 The Tenant indemnifies the Landlord from and against all claims including legal actions during or after this agreement arising from;

- (a) neglect or default by the Tenant or Tenant's employees; or

- (b) Tenant's failure to give notice of damage or defect to the Premises; or
- (c) damage to person or property caused or contributed to by the Tenant or Tenant's employees; or
- (d) anything the Landlord is required to do under this Agreement unless arising from negligence of the Landlord or its employees
- 16.2 By signing this Agreement the Tenant for itself and its employees agrees that use and occupancy of the Premises will be at the Tenant's own risk.
- 17. Security Bond**
- 17.1 The Tenant must:
- (a) give to the Landlord a Security Bond in the amount provided for in Item (8); or
- (b) arrange for the issue of an unconditional bank guarantee, in favour of the Landlord
- for the purpose of securing the performance by the Tenant of its obligations under this Agreement.
- 17.2 On the sale or the transfer of the Building the Landlord may assign the Security Bond to the purchaser and upon notifying the Tenant the Landlord will be released from all obligations in relation to the Security Bond. Where the bank guarantee is not assignable the Tenant will cause a replacement guarantee to be issued in favour of the purchaser.
- 17.3 The Landlord may apply the Tenant's Security Bond as compensation for any loss or damage incurred or sustained by the Landlord due to the Tenant's failure to comply with any of its obligations under this Agreement.
- 17.4 The Landlord's exercise of its rights with respect to the Security Bond do not prejudice any other rights of the Landlord arising from a breach of the terms of the Agreement.
- 17.5 The Landlord will at the end of the Lease Term or any extension of the Lease Term cause to be released, subject to any unsatisfied claim under Clause 17.3, the Security Bond to the Tenant.
- 17.6 The amount of the Security Bond shall be adjusted in each year of the lease, subsequent to the first year, by using the same method as that used for Rent Reviews.
- 18. Tenant's Default**
- 18.1 The following events are considered an act of default by the Tenant:
- (a) the Tenant's failure to pay the Rent or any other monies payable under this Agreement for any period in excess of 7 days after such monies have become due, whether any formal demand is made or not. (Section 85 (1) (d) of the *Conveyancing Act 1919* is modified accordingly); or
- (b) repairs required by any notice are not carried out by the Tenant within the time specified in the notice; or
- (c) the Tenant fails to perform or observe any of its covenants or obligations under this Agreement; or
- (d) the Tenant commits an act of bankruptcy or an act allowing the Tenant's property to become liable to be taken in execution; or
- (e) the Tenant, being a corporation, has an administrator, liquidator, or receiver appointed (accept for the purposes of reconstruction).
- 18.2 If the act of default by the Tenant in Clause 18.1 (a) is not resolved forthwith or any of the acts of default by the Tenant in 18.1 (b) to 18.1 (d) are not resolved by the Tenant in accordance with notice from the Landlord under the provisions of Section 129 of the *Conveyancing Act 1919*, the Landlord may without limiting other remedies, including action for damages and/or specific performance:
- (1) terminate this Agreement in accordance with Clause 26.1
- (2) resume possession of the Premises
- (3) claim the loss, if any, incurred by the Landlord
- (4) continue the Agreement on a periodic basis.
- 19. Stamp Duty**
Payment of Stamp Duty and/or all other taxes, levies or fees in relation to this Agreement are the responsibility of the Tenant.
- 20. Professional Fees**
All professional fees incurred by the Landlord in relation to this Agreement shall be paid by the Tenant.
- 21. Landlord's Agent**
The parties agree that the Landlord may appoint an Agent to administer this Agreement.
- 22. GST**
- 22.1 The Tenant is required to pay to the Landlord the GST amount for a taxable supply made to the Tenant under this Agreement on provision by the Landlord of a valid tax invoice.
- 22.2 Unless otherwise expressly stated, all monies payable by the Tenant to the Landlord under this Agreement are expressed exclusive of GST.
- 23. Invoices**
- 23.1 The Landlord will issue tax invoices when necessary in respect of all monies owing by the Tenant to the Landlord.
- 23.2 Invoices or statements (original or substituted) given to the Tenant detailing the amounts that the Tenant or the Guarantor (if applicable) must pay to the Landlord under this Agreement are presumed correct when issued.
- 24. Time**
- 24.1 Time shall be of the essence regarding the carrying out of either party's obligations under this Agreement.
- 24.2 Any event that must occur on or before a specified date, in respect to this Agreement, which date does not fall on a Business Day shall be extended to the next Business Day following the specified date.
- 25. Notice of Dispute**
In case of disputes either party may serve on the other a notice containing full details of the dispute in which case both parties will use their best endeavors to settle the dispute without recourse to litigation.
- 26. Termination**
- 26.1 The Landlord may give notice terminating this Agreement if:
- (a) the Tenant fails to remedy a default; or
- (b) the Premises is permanently unfit for the Tenant to occupy in accordance with Clause 12.
- 26.2 If the Tenant fails to vacate the Premises upon receiving notice in accordance with Clause 26.1 the Tenant is liable to pay compensation to the Landlord for any loss occasioned by the Landlord resultant upon that failure and the receipt of funds by the Landlord shall not create a new Tenancy.
- 26.3 In the case of default, and the tenancy under this Agreement continuing (in accordance with notice given by the Landlord) on a periodic basis, the Tenant may continue to occupy the Premises on a periodic basis on the terms and conditions determined by the Landlord, but without prejudice to any rights accruing to the Landlord under this Agreement.
- 26.4 Should the Landlord be in breach of its provisions of this Agreement the Tenant may give to the Landlord notice in writing to remedy such breach. If within 14 days after receipt of such notice the Landlord has not taken steps to remedy the breach the Tenant may terminate this Agreement by giving 30 days notice in writing to the Landlord.
- 27. Entire Agreement**
This Agreement forms the entire Agreement between the parties and each party has entered into this Agreement after making their own enquiries and without relying on representations not contained herein.
- 28. Special Conditions**
Any Special Conditions to this Agreement shall form part of this Agreement. Should there be any inconsistency between the Terms of Agreement and the Special Conditions the Special Conditions shall apply.

29. Interest on Overdue Monies

29.1 Any monies payable under this Lease Contract, (or any judgment given in respect of this Lease Contract) not paid when due will attract Interest from the due date for payment, to the date of payment at the rate prescribed in Item (14). If no rate is prescribed, the rate will be equivalent to the Lessor's bank overdraft rate plus 2%.

29.2 Interest due will not be payable until notice is given to the Lessee by the Lessor in respect to monies owed.

30. Notices

30.1 Any notice to be served on any party under this Agreement shall be in writing and may be served on that party:

- (a) by delivering the notice to the party personally; or
- (b) by leaving it for the party at the party's address as stated in Items (2), (3) and (4); or
- (c) by posting it to the party, by registered mail as a letter addressed to the party at the address as stated in Items (2), (3) or (4); or
- (d) by facsimile to the party's facsimile number in Items (2), (3) or (4).

30.2 A notice so posted shall be deemed to have been served, unless the contrary is shown, at the time when, by the ordinary course of post, the notice would be delivered.

30.3 Notices must be served before 5pm on a Business Day, failing which, such Notice will be deemed to have been served on the next Business Day.

31. Guarantor

31.1 In consideration of the Landlord granting this Lease to the Tenant at the Guarantor's request, the Guarantor guarantees to the Landlord:

- (1) the payment by the Tenant of the Rent and other money agreed to be paid; and
- (2) prompt performance and observance of all of the Tenant's covenants and obligations contained or implied in this Agreement; and
- (3) indemnifies the Landlord against all claims which the Landlord may suffer or incur in connection with any breach or default by the Tenant under this Agreement or any extension or renewal of the Lease Term.

31.2 The liability of the Guarantor under this guarantee and indemnity will not be affected by the granting of time or any other indulgence to the Tenant or by the compounding, compromise, release or variation of any of the rights of the Landlord against the Tenant.

32. Provision of Documents

The parties agree and confirm this Agreement may be forwarded electronically if the recipient has provided an email address or facsimile number in the Item Schedule to this Agreement.

33. Severability

Should any court or tribunal of competent jurisdiction determine any term, provision or obligation of this Agreement to be void, illegal or unenforceable by law, that term, provision or obligation must be read down to the extent possible or removed from the Agreement whilst keeping the operation of the remainder of the Lease in effect.

NOTE

- (1) This Agreement is not suitable, nor intended to be used for leases under the *Residential Tenancies Act 2010* and/or the *Retail Leases Act 1994*.
- (2) Parties to this Agreement should refer to the *Conveyancing Act 1919* Schedule 4 Part 2 for clarification of short form covenants where used in this Agreement. (Refer to Clauses 8.1 (1), 8.1 (4), 8.1 (5), 8.1 (13), 8.1 (18), 8.2 (1), 9, 10.3, 12 and 14)
- (3) Any lease of a term longer than 3 years will require registration under the *Real Property Act 1990* in which case this document will form a schedule to the Land & Property Information NSW (LPI) Lease Form 07L.

TRANSFER GRANTING EASEMENT

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

New South Wales
Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) TORRENS TITLE	Servient Tenement	Dominant Tenement
	Folio 1/901143	Folio 1/932077

(B) LODGED BY	Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE TG
	95J	Andrew P Mason, Solicitor LLPN 132 373T PO Box 56 Milsons Point NSW 1565 Ph: 02-9954 3042 Reference: 20409:AM	

(C) TRANSFEROR

Simon Chivers

(D) The transferor acknowledges receipt of the consideration of \$ 1.00 and transfers and grants—

(E) DESCRIPTION OF EASEMENT

Easement to Drain Water Over Existing Line of Pipes, (approximate position shown on Annexure B)

out of the servient tenement and appurtenant to the dominant tenement.

(F) Encumbrances (if applicable):

(G) TRANSFEREE

Frank M Mason & Co Pty Ltd ACN 003 142 836, Andrew Philip Mason & Alison Louise Welinski

DATE

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

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

Signature of witness:

Signature of transferor:

Name of witness:
Address of witness:

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

Company: Frank M Mason & Co Pty Ltd
Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person: Andrew Philip Mason
Office held: Director

Name of authorised person: Kenneth James Holder
Office held: Director

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

Annexure A

Annexure to Transfer Granting Easement from **Simon Chivers** to **Frank M Mason & Co Pty Ltd, Andrew Philip Mason and Alison Louise Welinski.**

Dated:

I certify that I am an eligible witness and that the transferee signed this dealing in my presence.

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

Signature of witness

Andrew Philip Mason

Name of witness

Address of witness

I certify that I am an eligible witness and that the transferee signed this dealing in my presence.

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

Signature of witness

Alison Louise Welinski

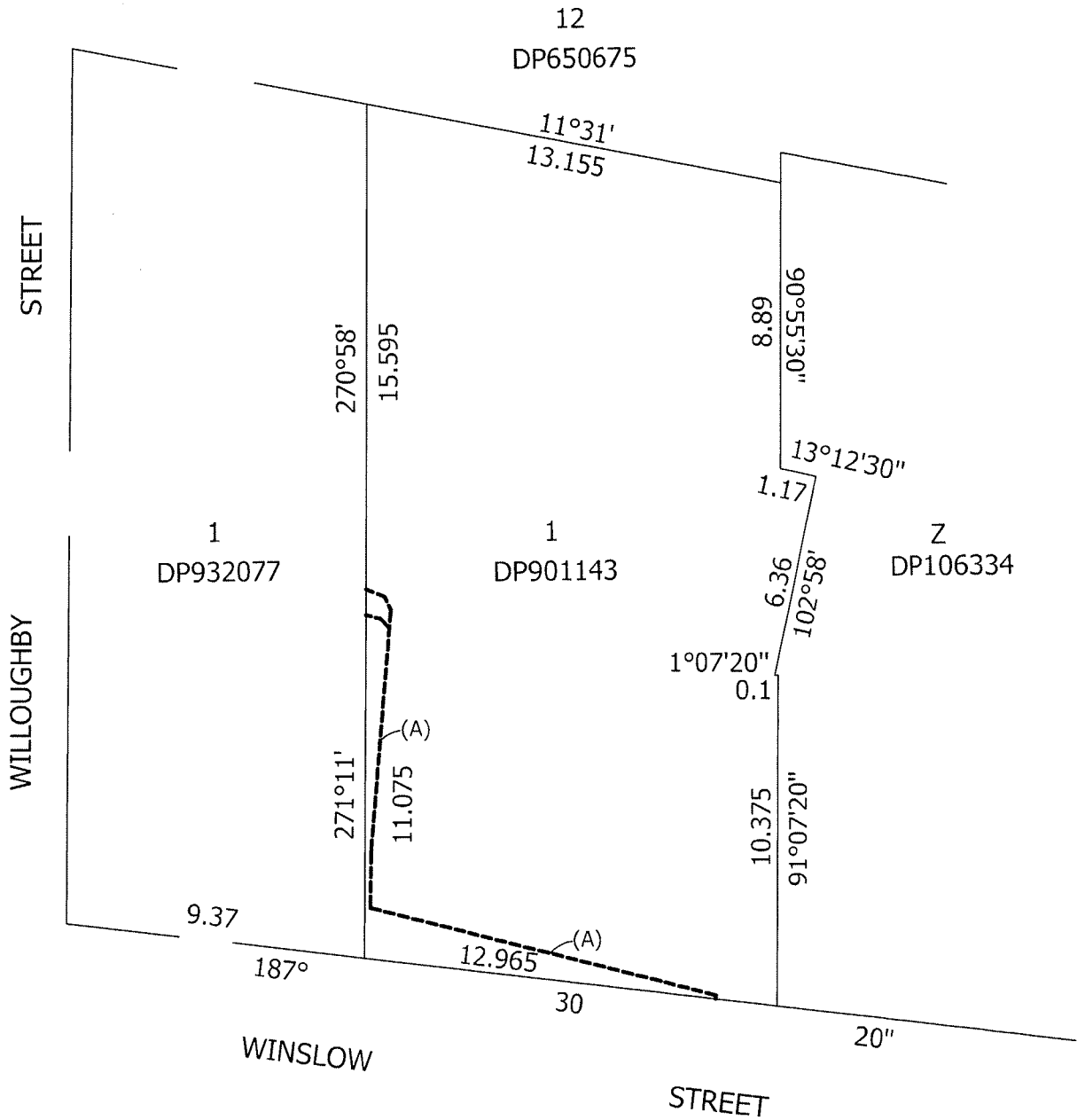
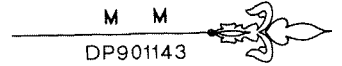
Name of witness

Address of witness

Executed by the HSBC Bank Australia Ltd, as mortgagee to Simon Chivers pursuant to Mortgage No. AD981743

ANNEXURE B

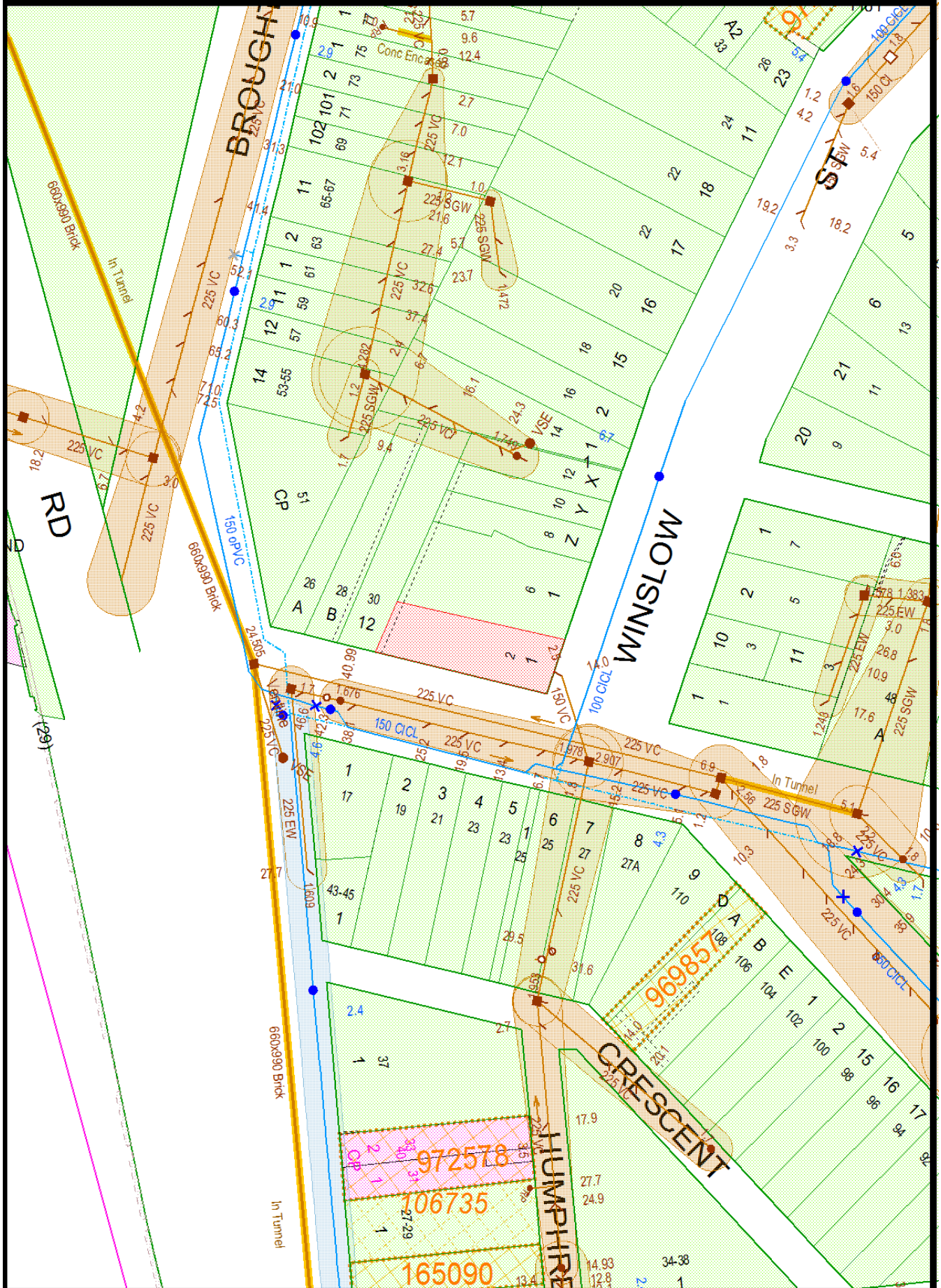
PLAN SHOWING EASEMENT AFFECTING LOT 1 DP 901143
AT KIRRIBILLI IN THE LGA OF NORTH SYDNEY



(A) DENOTES EASEMENT TO DRAIN WATER OVER EXISTING LINE
OF PIPES APPROXIMATE POSITION

PREPARED BY:
FRANK M. MASON & CO. PTY LIMITED
2 WINSLOW STREET KIRRIBILLI 2061
PER

REGISTERED SURVEYOR
RED. RATIO 1:200 DATED 09.March 2020
REFERENCE 31005-03



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

METROPOLITAN WATER SEWERAGE AND DRAINAGE BOARD SEWERAGE SERVICE DIAGRAM

Municipality of *Nth. Sydney*
Milsons Point

No. *215522*

- Boundary Trap
- Pit
- G.I. Grease Interceptor
- Gully
- P.T. P. Trap
- R.S. Reflux Sink

SYMBOLS AND ABBREVIATIONS

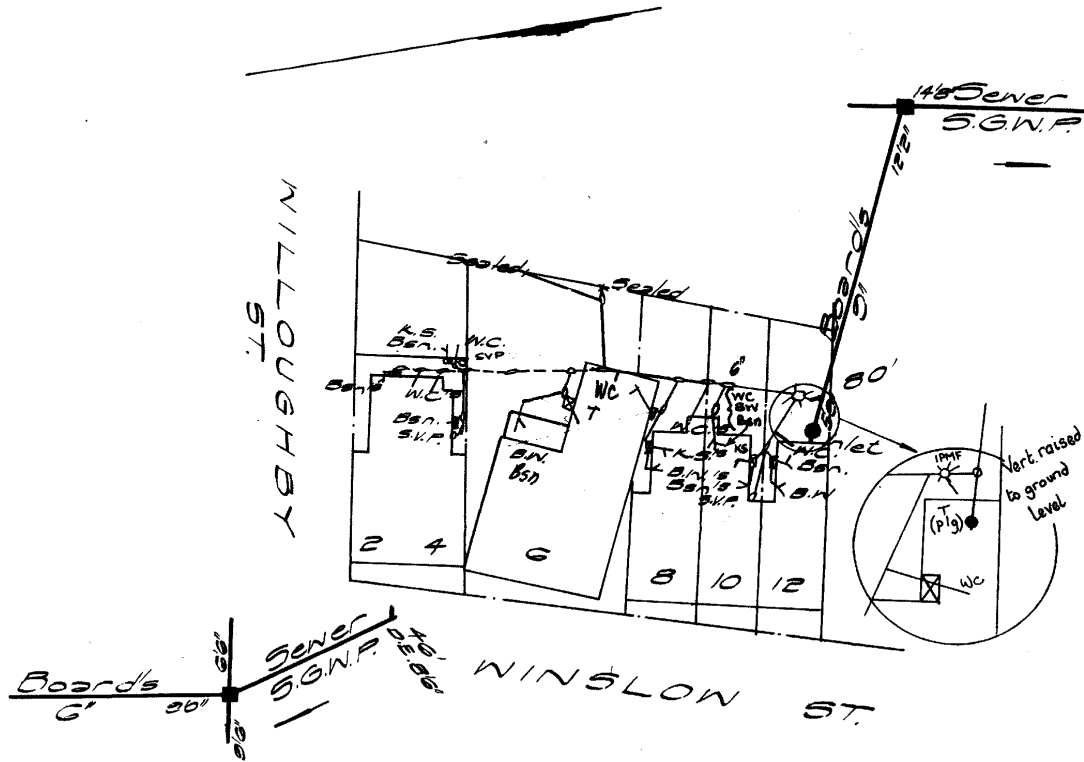
- | | | |
|---|-------------------|--------------------------|
| <input checked="" type="checkbox"/> R.V. Reflux Valve | I.P. Induct Pipe | Bsn. Basin |
| <input type="checkbox"/> Cleaning Eye | M.F. Mica Flap | Shr. Shower |
| <input type="checkbox"/> VERT. Vertical Pipe | T. Tubs | W.I.P. Wrought Iron Pipe |
| <input type="checkbox"/> V.P. Vent. Pipe | K.S. Kitchen Sink | C.I.P. Cast Iron Pipe |
| <input type="checkbox"/> S.V.P. Soil Vent. Pipe | W.C. Water Closet | F.W. Floor Waste |
| <input type="checkbox"/> D.C.C. Down Cast Cowl | B.W. Bath Waste | W.M. Washing Machine |

SCALE: 40 FEET TO AN INCH.

SEWER AVAILABLE

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

Note: Broken Lines Denote Assumed Position of Drainage.



RATE No. 5 W.C.s. 1 U.C.s. _____ 19_____
SHEET No. 500 OFFICE USE ONLY FOR ENGINEER HOUSE SERVICES

DRAINAGE		PLUMBING	
W.C.	Supervised by	Date	Supervised by
Bth	Inspector/...../.....	Date
Shr	/...../...../...../.....
Bsn.	Chief Inspector/...../.....	Inspector
K.S.	/...../...../...../.....
T.	Tracing Checked/...../.....	33-504 591 113
Pig.	/...../.....	
Dge. Int.			Boundary Trap
Dge. Ext.			is is not required

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