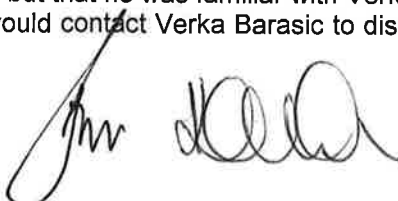


# STATUTORY DECLARATION

I, MALCOLM JOHN HEARD of 91 Crown Street, Wollongong in the State of New South Wales, Solicitor, do solemnly and sincerely declare that:

1. I am the solicitor for Nicolas Daoud & Co Pty Limited ("ND"), the registered proprietor of 22-32 Gladstone Avenue, Wollongong and 6 Rowland Avenue, Wollongong ("proposed development site").
2. Adjoining these properties (and completely surrounded by them) is property known as 34 Gladstone Avenue, Wollongong ("adjoining property") which is on the corner of Rowland Avenue.
3. I am instructed ND intends developing its proposed development site and that in order to enhance the development, it desired to purchase the adjoining property, the owner of which I am instructed is Verka Barasic.
4. I am informed and verily believe that in November 2009 Nicolas Daoud, director of ND, instructed Clayton Real Estate of Shop 2, 143-149 Corrimal Street, Wollongong to assess the value of the adjoining property, which was duly done, resulting in a figure of approximately \$470,000.00 - \$480,000.00.
5. I am further informed and verily believe that Clayton Real Estate negotiated the purchase of the adjoining property with Verka Barasic and/or members of his immediate family in the following manner:
  - a. On 30 November 2009, Christie Ellis Clayton met with Mrs Barasic at 34 Gladstone Avenue, Wollongong and outlined to her details of the development proposed by ND on the development site and informed her that ND was prepared to purchase the adjoining property for \$600,000.00.
  - b. On 11 December 2009, Mr Clayton called back at 34 Gladstone Avenue, Wollongong and verbally confirmed the offer.
  - c. On 18 December 2009, Verka Barasic's son telephoned Mr Clayton and informed him that Verka Barasic would sell the adjoining property to ND for \$1,000,000.00 clear of all expenses.
  - d. On 28 January 2010, Mr Clayton hand delivered to Verka Barasic's son the letter dated that same day accepting that offer and annexed hereto marked "A".
  - e. On 2 February 2010, Verka Barasic's son again telephoned Mr Clayton and informed him the price now required by Verka Barasic for the adjoining property was \$1,500,000.00.
  - f. On 4 February 2010, Mr Clayton caused to be posted by registered mail to Mrs Barasic the letter annexed hereto marked "B".
6. I am informed and verily believe neither Clayton Real Estate nor Mr Clayton received any response to the 4 February 2010 letter.
7. I am instructed that during the discussions Mr Clayton referred to earlier, he was informed that the solicitor acting for Verka Barasic was Peter Andonovski & Associates of Warrawong.
8. On 11 March 2010, I telephoned Mr Andonovski to enquire whether he had received any instructions from Verka Barasic in relation to the sale of the adjoining property to ND. He informed me he held no such instructions, but that he was familiar with Verka Barasic and that if I sent to him any correspondence, he would contact Verka Barasic to discuss its terms and



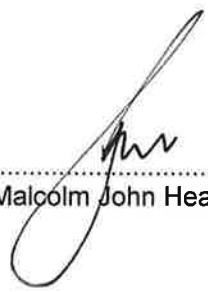
that if he received any instructions, he would contact me. Annexed hereto marked "C" is a letter from my firm Heard McEwan Legal to Peter Andonovski & Associates dated 11 March 2010.

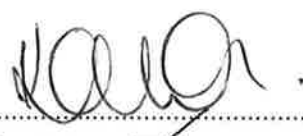
9. I heard nothing further from Mr Andonovski.
10. I am informed and verily believe that on 13 May 2010, Mr Clayton telephoned Mr Andonovski when he informed Mr Andonovski that ND still desired to acquire the adjoining property and we prepared to enhance the terms of its previous offer. Annexed hereto marked "D" is a copy of a letter from Clayton Real Estate to Mr Andonovski setting out that offer, details of which are:
  - a. Purchase price to be \$1,000,000.00 clear of all expenses.
  - b. A deposit of 5% to be paid forthwith and to be released to Verka Barasic.
  - c. Completion of the contract to be no later than 12 months, but with the right for Verka Barasic to call for completion at any time within that 12 months upon the giving of 6 weeks notice to ND, thus allowing Verka Barasic to source an settle on a new residence.
  - d. ND to pay all land rates incurred by Verka Barasic as from the date of exchange of sale contracts.
11. I am informed and verily believe that no response to its letter of 14 May 2010 was received by Clayton Real Estate.
12. I am instructed that as a result of its inability to purchase the adjoining property, notwithstanding its efforts set out earlier, ND has instructed its architects to prepare plans for development of the development site (not incorporating the adjoining property).

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

Declared at Wollongong  
this 10 day of December  
Before me:

2010

  
Malcolm John Heard

  
☐ Solicitor ☒ Justice of the Peace  
☐ Other (specify): KAREN SMALL  
JP 194346

"A"



Phone 4226 1074

Fax 4226 3327

Suite 4/74 Kembla Street  
(PO Box 500)  
Wollongong NSW 2500

mail@chrisclayton.com.au  
www.chrisclayton.com.au

**Bartcor Pty Ltd**

License no 1372453

Licensee Timothy Bartlett  
ABN: 35 117 905 521

28<sup>th</sup> January 2010

Mrs Slavko Basaric  
34 Gladstone Avenue  
Wollongong 2500

Dear Mrs Basaric,

**Re: Agreement to purchase your home**  
**Property: 34 Gladstone Avenue, Wollongong 2500**

Further to our recent meetings with your son in November & in December 2009. We wish to advise the developer of the adjoining Dairy Farmers site has agreed to meet & pay your asking price of \$1,000,000.00.

We would request you appreciate this sale price is very substantially above the current market value of your property.

As a result of my client paying very much above market value his formal offer is on the following basis:

- 1/. Sale price \$1,000,000.00 clear to you on settlement (our client will pay our commission in addition to this amount)
- 2/. 5% deposit being \$50,000.00 paid on exchange of contracts with the deposit being released to you on exchange of contracts.
- 3/. Settlement to take place within 12 months from exchange of contracts.

Could you advise your acceptance of this offer to permit me to order contracts for signing from your solicitor to enable this sale to go ahead.

Could you please advise your solicitors name and details.

Kind regards,

Chris Clayton

This is the annexure marked  
referred to in the Statutory Declaration  
of Malcolm Heard  
Sworn the 19 day of December 2010  
Before me   
A Justice of the Peace

Proudly incorporating...

**Clayton**  
RESIDENTIAL

**HOME UNIT**  
HEADQUARTERS

**Clayton**  
COMMERCIAL

**WAREHOUSE**

**Clayton**  
INDUSTRIAL

"B"



Phone 4226 1074  
Fax 4226 3327

Suite 4/74 Kembla Street  
(PO Box 500)  
Wollongong NSW 2500

mail@chrisclayton.com.au  
www.chrisclayton.com.au

**Bartcor Pty Ltd**  
License no 1372453  
Licensee Timothy Bartlett  
ABN: 35 117 905 521

4<sup>th</sup> February 2010

Mary Basaric  
34 Gladstone Avenue,  
Wollongong 2500

Dear Mary,

**Re: Offer to purchase, 34 Gladstone Avenue, Wollongong**

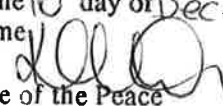
Further to our meeting on Tuesday 2/2/2010, we wish to reconfirm our clients offer as detailed in our previous letter (copy attached) still stands however, we are instructed to advise if not accepted or negotiated by Wednesday 10/2/2010 at 5pm his offer will be withdrawn.

I have personally been in commercial real estate for over 30 years in Wollongong & believe our clients offer of \$1,000,000.00 clear to you for your property is very substantially in excess of the properties current fair market value.

As previously advised to your brother, our client intends to build up to four major high rise buildings on the adjoining "dairy farmers" site, potentially including up to 250 residential home units plus a substantial commercial component. On completion this could have a major impact on the salability & then value of your property.

Kind regards,

-----  
Chris Clayton

This is the annexure marked  
referred to in the Statutory Declaration  
of Malcolm Heard  
Sworn the 10 day of December 2010  
Before me  
  
A Justice of the Peace

Proudly incorporating...



"C"



## Letter by Facsimile

NUMBER OF PAGES including this page: 1

11 March 2010

**FAX TO:** PETER ANDONOVSKI & ASSOCIATES

**FAX NO:** 02 4276 4322

**FROM:** MALCOLM HEARD

**Our Ref:** MJH:10001

**RE:** 34 GLADSTONE AVENUE, WOLLONGONG - BASARIC

Dear Peter

We refer to our discussions this morning and confirm we act for Nicolas Daoud & Co Pty Limited, the owner of the former Dairy Farmers site in Gladstone Avenue, Wollongong. Adjoining and surrounded by that site is 34 Gladstone Avenue, Wollongong, owned by your clients, Mr & Mrs Basaric.

Our client desires to acquire your client's land and it include it in the Development Application it shortly intends to lodge with Wollongong City Council, but unfortunately its approaches to Mr & Mrs Basaric have proved unsuccessful.

In due course, as part of its approval process, our client will need to demonstrate that it has attempted to acquire 34 Gladstone Avenue from your clients and that its failure to so acquire is the reason for a development application which, effectively, isolates your clients' property and, presumably, devalues it.; for this reason, the attached letters dated 28 January 2010 and 4 February 2010 to your clients from Clayton Real Estate put on record the approaches made including details of a \$1,000,000.00 offer to purchase which, in the opinion of the very experienced purchaser's agent, is substantially over market.

The likely result for your clients then is that an opportunity to be paid an over-the-market sum will turn into a situation where, once our client's development is complete, if they desire to sell on the open market, they may not even obtain today's market value.

We thank you for agreeing to contact your clients to discuss the situation with them and we look forward to hearing from you if any progress can be made. Regrettably, in the absence of a quick indication from your clients that they are willing to accept our client's generous offer, our client will proceed regardless.

Kind regards,

**HEARD McEWAN LEGAL**

**Malcolm Heard**

Director

Law Society of NSW Accredited Specialist Business Law

Law Society of NSW Accredited Specialist Property Law

Email: mheard@heardmcewan.com.au

Direct Line: (02) 4254 5213

Web: <http://www.heardmcewan.com.au>

Heard McEwan Pty Ltd trading as Heard McEwan Legal is a Solicitor Corporation under the Legal Profession Act 2004. ABN 47 061 240 048

**Karen Small**

Email: ksmall@heardmcewan.com.au

Direct Line: (02) 4254 5236

This is the annexure marked  
referred to in the Statutory Declaration  
of Malcolm Heard  
Sworn the 10 day of December 2010  
Before me

A Justice of the Peace

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Corrimal

Wollongong

Dapto

Shellharbour City



Specialist Accreditor  
The Law Society of NSW  
Business Law  
Commercial Litigation  
Property Law

Business Law  
M.J. Heard  
J.E. McEwan  
Commercial Litigation  
J.E. McEwan  
Property Law  
M.J. Heard

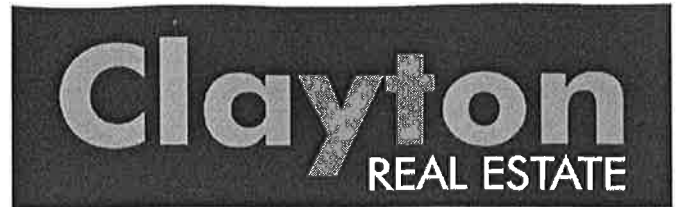
email: [info@heardmcewan.com.au](mailto:info@heardmcewan.com.au)

All mail to: PO Box 882, Wollongong NSW 2520, DX 27848 Wollongong Court

Ph: (02) 4254 5222 Fax: (02) 4254 5221

Liability limited by a scheme approved under Professional Standards Legislation

"D"



**Phone 4226 1074**

Fax 4226 3327

Shop 2, 143-149 Corrimal St  
(PO Box 500)  
Wollongong NSW 2500

mail@chrisclyton.com.au  
www.chrisclyton.com.au

**Bartcor Pty Ltd**

License no 1372453

Licensee Timothy Bartlett

ABN: 35 117 905 521

14 May 2010

Mr. Peter Andonovski solicitor  
PO Box 110  
WARRAWONG NSW 2502

Dear Peter,

**Nick Daoud offer to purchase 34 Gladstone Avenue, Wollongong**

Further to our discussion of 13 May 2010 in relation to my clients offer to purchase the above property from your client Mrs. Basaric, I now wish to detail my clients final offer.

As advised my client has commenced demolition & is well into the planning stage for the development to then submit a DA to council for the development.

It is costing hundreds of thousands of dollars to complete the plans & will be soon too late to stop & start again to include your clients land in the planning.

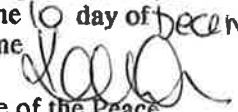
The revised offer is as follows:

1. Sale price \$1,000,000.00 clear to the vendor.
  2. 5% deposit paid on exchange of contracts & the 5% will be released to the vendor on exchange.
  3. Settlement would take place within 12 months from exchange of contracts however the vendor has the right to request settlement to take place with 6 weeks notice at anytime during the 12 month period. (This allows the vendor to look & purchase another house & give notice requesting settlement to pay for her new home).
  4. The purchaser will pay the land rates for the property from exchange of contracts.
  5. The vendor pays no rent for the duration that she is living in the house after exchange of contracts.
- The purchaser has requested we put a time limit for acceptance of this offer with the deadline being 30 May 2010.

Could you please forward this offer to your client.

Kind Regards,  
CLAYTON REAL ESTATE

.....  
Robert Corneteg  
Director

This is the annexure marked  
referred to in the Statutory Declaration  
of Malcolm Heard  
Sworn the 10 day of December 2010  
Before me   
A Justice of the Peace

Proudly Incorporating...

