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Deed

Dumaresq Street Gordon Roadworks Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Ku-ring-gai Council

Australia Wenzhou Group Property Pty Limited

[Insert Date]

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Dumaresq Street Gordon Roadworks Planning Agreement

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Dumaresq Street Roadworks Planning Agreement

Summary Sheet

Council:

Name: Ku-ring-gai Council

Address: Locked Bag 1056, Pymble NSW 2073

Telephone: (02) 9424 0000

Facsimile: (02) 9424 0001

Email: kmc@kmc.nsw.gov.au

Representative: John McKee, General Manager or Andrew Watson, Director of Strategy and Environment

Developer:

Name: Australia Wenzhou Group Property Pty Limited

Address: [Insert Details]

Telephone: [Insert Details]

Facsimile: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Part 3.

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Application of s94, s94A and s94EF of the Act:

See clause 8.

Registration:

See clause 28.

Restriction on dealings:

See clause 29.

Dispute Resolution:

See Part 4.

Security

See Part 5 and Part 7

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Dumaresq Street Gordon Roadworks Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Ku-ring-gai Council ABN 86 408 856 411 of 818 Pacific Highway, GORDON NSW 2072 (**Council**)

and

Australia Wenzhou Group Property Pty Ltd ABN 73 145 964 156 of [Insert Details] (**Developer**)

and

Background

A Council owns the Council Land being 32 Dumaresq Street, Gordon and wishes to construct a road on the Council Land.

B The Developer owns the Land being 28-30 Dumaresq Street, Gordon, and has lodged a Development Application for the Development.

C The Developer also wishes to purchase the Transfer Land to increase the site area for the Development and therefore the floor space ratio that can be achieved on the Land and the Transfer Land, and to facilitate access from the Development to the new road to be constructed on the Council Land.

D The Developer has offered to purchase the Transfer Land, and to carry out the Road Works on the Council Land on the terms and conditions contained in this Deed.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

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Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Contributions Plan means the *Ku-ring-gai Contributions Plan 2010*, as amended from time to time.

Conveyancing Act means the *Conveyancing Act 1919*.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Council Land means Lot 1 in DP 949218 otherwise known as 32 Dumaresq Street, Gordon**.**

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of the Road Works or any part of the Road Works, other than a matter arising out of the Road Specifications.

Defects Liability Period means the period of 1 year commencing on the day immediately after the Road Works are completed for the purposes of this Deed.

Development means the development of a residential flat building comprising 34 residential units on the Land and the Transfer Land.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Estimated Costs, means the estimated costs of carrying out the Road Works determined by an independent quantity surveyor who has been agreed between the Parties. [**Drafting Note**: If the QS estimate is available before the VPA is signed, then the amount can be included here or in the relevant clause, and this definition deleted]

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

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

Land means Lot 1 in DP103163 and Lot 1 in DP 961448 otherwise known as 28-30 Dumaresq Street, Gordon.

Monetary Contribution means the monetary Development Contribution calculated in accordance with clause 12.2.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Plan means the plan contained in Schedule 1.

Rectification Notice means a notice in writing:

(a) identifying the nature and extent of a Defect,

(b) specifying the works or actions that are required to Rectify the Defect,

(c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

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

Road Land means the Council Land other than the Transfer Land.

Road Specifications means any design, specification or construction drawing for the Road Works provided by Council to the Developer.

Road Works means the construction of a road on the Road Land in accordance with the Road Specifications.

Transfer Land means the part of the Council Land marked as 'Proposed Lot 1' on the Plan.

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

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.

1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

1.2.4 A reference in this Deed to dollars or $ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

1.2.5 A reference in this Deed to a $ value relating to a Development Contribution is a reference to the value exclusive of GST.

1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

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1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.

1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

1.2.12 References to the word 'include' or 'including' are to be construed without limitation.

1.2.13 A reference to this Deed includes the agreement recorded in this Deed.

1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.

1.2.15 Any schedules, appendices and attachments form part of this Deed.

1.2.16 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

3.1 This Deed takes effect on the date when all Parties have executed this Deed.

3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other Party, within 7 business days of execution..

4 Application of this Deed

4.1 This Deed applies to the Land, the Council Land and to the Development.

4.2 The Landowner is under no obligation to carry out the Road Works unless Development Consent is granted for the carrying out of the Development.

5 Warranties

5.1 The Parties warrant to each other that they:

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5.1.1 have full capacity to enter into this Deed, and

5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s94, s94A and s94EF of the Act to the Development

8.1 This Deed excludes the application of s94 and s94A of the Act to the Development.

8.2 This Deed does not exclude the application of s94EF to the Development.

Part 2 Sale of Transfer Land

9 Obligation to Sell Transfer Land

9.1 The Council agrees to sell the Transfer Land to the Developer and the Developer agrees to purchase the Transfer Land in accordance with this Deed, if Development Consent is granted to the Development..

9.2 The Developer is not to commence any part of the Development unless and until the Transfer Land is transferred to the Developer.

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10 Date of Transfer

10.1 The Parties acknowledge that at the date of this Deed, the Transfer Land is not contained in a separate lot to the remainder of the Council Land, and cannot be transferred to the Developer until either:

10.1.1 the Council Land is subdivided to create the Transfer Land as a separate lot, or

10.1.2 the Road Land is opened as a public road.

10.2 The Council will use its best endeavours to transfer the Transfer Land to the Developer as soon as practicable after the granting of Development Consent for the Development.

10.3 Council will lodge all documents necessary to have the Transfer Land created as a separate lot with Land & Property Information within 2 weeks of the date of this Deed.

10.4 The Council is to notify the Developer in writing when the Transfer Land is capable of being transferred to the Developer, and completion of the sale of the Transfer Land must occur within 5 business days of the date of that notice, on a date agreed between the Parties which shall be the completion date for the purposes of this Deed.

11 Conditions of sale of Transfer Land

11.1 The purchase price for the Transfer Land is $640,000.00 (exclusive of GST) being the agreed market value of the Transfer Land.

11.2 The sale of the Transfer Land is subject to the following conditions to the exclusion of the provisions in Schedule 3 of the Conveyancing Act*:*

11.2.1 The following conditions of the printed Contract for the sale of land - 2005 edition published by the Law Society of New South Wales and the Real Estate Institute of New South Wales, a copy of which is included in Schedule 2:

(a) Condition 4 – Transfer;

(b) Condition 13 –Goods and services tax (GST);

(c) Condition 14 – Adjustments;

(d) Condition 15 – Completion date;

(e) Condition 16 – Completion, other than Condition 16.11.3;

(f) Condition 22 – Foreign Acquisitions and Takeovers Act 1975; and

(g) Such of the definitions contained in Condition 1 as are necessary for the interpretation of the above conditions, with the following amendments:

(i) ‘property’ means the Transfer Land; and

(ii) ‘party’ means a Party as defined in this Deed.

11.2.2 The Developer is not entitled to make any claim, requisition or objection in respect of the Transfer Land or to make any claim for compensation, or to rescind or terminate this Deed as a result of the

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condition or state of the Transfer Land, the title to the Transfer Land, or anything in connection with the Transfer Land.

11.2.3 The sale of the Transfer Land is a taxable supply within the meaning of the GST Law.

11.3 Schedule 3 contains a certificate under s66W of the Conveyancing Act signed by the Developer's solicitor.

Part 3 – Development Contributions

12 Provision of Development Contributions

12.1 The Developer is to make Development Contributions to the Council in accordance with this Deed.

12.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

13 Payment of Monetary Contribution

[**Drafting Note:** If, prior to the VPA being signed, it is determined that the s94 contributions and road costs are equivalent, and there is to be a direct offset, then this clause can be deleted]

13.1 The Developer is to pay the Monetary Contribution to the Council:

13.1.1 within 21 days after the Road Works are completed under this Deed, and

13.1.2 prior to the issuing of an Occupation Certificate for the Development.

13.2 The Monetary Contribution is to be determined in accordance with the following formula:

MC = X – Y

Where:

MC = the amount of Monetary Contribution,

X = $711,318.56 (calculated as at February 2013, which will be indexed in accordance with the Contributions Plan as if the amount were a contribution under that plan, until payment).

Y = the actual cost of the Road Works capped at an amount equal to 110% of the Estimated Costs.

13.3 If the Monetary Contribution calculated in accordance with clause 13.2 is in the negative, then Council will pay to the Developer an amount equal to the amount by which Y exceeds X in the formula in clause 13.2, within 21 days after the date on which the Road Works are complete for the purposes of this Deed.

13.4 For the purposes of clause 13.2. the actual cost of the Road Works means the costs actually incurred by the Developer in carrying out the Road Works,

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which are to be agreed between the Parties once the Road Works are completed based on written evidence to the satisfaction of Council provided by the Developer and include, without limitation the costs of materials, labour, contract administration costs and clean up costs for the Road Works, but for the avoidance of doubt, exclude any costs incurred by the Council in respect of the Road Works .

13.5 The Monetary Contribution is made for the purposes of this Deed when the Council receives the full amount of the Monetary Contribution in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

14 Carrying out of Road Works

14.1 The Developer is to carry out and complete the Road Works prior to the issuing of an Occupation Certificate for the Development.

14.2 Without limiting any other provision of this Deed, the Road Works are to be carried out in a good and workmanlike manner, to the reasonable satisfaction of Council, and in accordance with this clause, Council's technical specifications titled '*General Specification for the Construction of Roadworks and Drainage works in Ku-ring-gai Council'* dated, November 2004, the Road Specifications, any relevant Approval and any other applicable law.

14.3 The Council is responsible for obtaining any Approval under the Act required for the carrying out of the Road Works, at its cost.

14.4 In the event of an inconsistency between this Deed and any Approval for the Road Works or any applicable law, the Approval and the law prevail to the extent of the inconsistency.

14.5 The Parties acknowledge that the Developer is carrying out the Road Works under this Deed for and on behalf of the Council and on Council owned land.

15 Variation to Road Works

15.1 The Council may vary the Road Specifications from time to time after giving reasonable notice to the Developer, provided that if it does so, the Parties will have the independent quantity surveyor who determined the Estimated Costs determine whether any change needs to be made to the Estimated Costs to reflect any increase or decrease in costs which would be incurred by the Developer (including costs reasonably incurred due to a delay in completion of the Road Works) as a result of the variation to the Road Specifications.

16 Ownership of Road Works and Road Land

16.1 Nothing in, or done under, this Deed gives the Developer any right, title, or interest in the Road Works, or any estate or interest in the Road Land whether at law or in equity.

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17 Access to land

17.1 The Council authorises the Developer to enter, occupy and use the Council Land for the purpose of performing its obligations under this Deed.

17.2 The Council may enter any land on which the Road Works are being carried in order to inspect, examine or test the Road Works, or to remedy any breach by the Developer of its obligations under this Deed relating to the Road Works.

18 Council's obligations relating to the Road Works

18.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

19 Protection of people, property & utilities

19.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:

19.1.1 all necessary measures are taken to protect people and property,

19.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

19.1.3 nuisances and unreasonable noise and disturbances are prevented.

19.2 Without limiting clause 19.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

20 Repair of damage

20.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any damage to the Road Works resulting from any cause whatsoever that occurs before the date on which the Road Works are completed for the purposes of this Deed, other than damage caused by the Council.

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21 Completion of Road Works

21.1 The Developer is to give the Council written notice of the date on which it will complete the Road Works.

21.2 The Council is to inspect the Road Works within 14 days of the date specified in the notice issued under clause 21.1.

21.3 The Road Works are completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.

21.4 The Council assumes responsibility for the Road Works upon the issuing of the notice referred to in clause 21.3.

21.5 Before the Council gives the Developer a notice referred to in clause 21.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Road Works to the reasonable satisfaction of the Council, provided that the Council cannot given such a direction in respect of any concern with the Road Works which arises as a result of the Road Specifications.

21.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 21.5.

22 Rectification of defects

22.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.

22.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.

22.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification.

22.4 The Council may issue a further Rectification Notice in respect of any works carried out pursuant to a Rectification Notice issued under clause 22.1 (**Rectification Works**), during the period of 12 months from the date of completion of the Rectification Works. Clauses 22.2 and 22.3 apply in respect of such a notice.

23 Works-As-Executed-Plan

23.1 No later than 60 days after the Road Works are completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Road Works.

23.2 If the Council is not the owner of the copyright in the plans referred to in clause 23.1, the Developer grants the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

24 Removal of Equipment

24.1 When the Road Works are completed for the purposes of this Deed, the Developer, without delay, is to:

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24.1.1 remove any Equipment from the Road Land and make good any damage or disturbance to the land as a result of that removal, and

24.1.2 leave the Road Land in a neat and tidy state, clean and free of rubbish.

Part 4 – Dispute Resolution

25 Dispute resolution – expert determination

25.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:

25.1.1 the Parties to the Dispute agree that it can be so determined, or

25.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.

25.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

25.3 If a notice is given under clause 25.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

25.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.

25.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

25.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

25.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

26 Dispute Resolution - mediation

26.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 25 applies.

26.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

26.3 If a notice is given under clause 26.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

26.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.

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26.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

26.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.

26.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 5 - Enforcement

27 Breach of obligations

27.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:

27.1.1 specifying the nature and extent of the breach,

27.1.2 requiring the Developer to:

(a) rectify the breach if it reasonably considers it is capable of rectification, or

(b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,

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

27.2 If the Developer fails to comply with a notice given under clause 27.1 relating to the carrying out the Road Works under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land or the Council Land for that purpose.

27.3 Any costs incurred by the Council in remedying a breach in accordance with clause 27.2 may be recovered by the Council as a debt due in a court of competent jurisdiction.

27.4 For the purpose of clause 27.3, the Council's costs of remedying a breach the subject of a notice given under clause 27.1 include, but are not limited to:

27.4.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

27.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and

27.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

27.5 Nothing in this clause 27 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

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28 Enforcement in a court of competent jurisdiction

28.1 Without limiting any other provision of this Deed, and subject to the dispute resolution provisions set out in Part 4 of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

28.2 For the avoidance of doubt, nothing in this Deed prevents:

28.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or

28.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 6 – Registration & Restriction on Dealings

29 Registration of this Deed

29.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.

29.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:

29.2.1 an instrument requesting registration of this Deed on the title to the Land and the Council Land duly executed by the Developer, and

29.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.

29.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

29.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from:

29.4.1 the title to the Land once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason, and

29.4.2 the title to the Road Land, once the Transfer Land is excised from the Council Land.

30 Restriction on dealings

30.1 The Developer is not to:

30.1.1 sell or transfer the Land and the Transfer Land (once owned by the Developer) or any part of it, or

30.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

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30.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or Transfer Land or part thereof is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

30.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

30.1.5 the Developer is not in breach of this Deed, and

30.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

30.2 Clause 30.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 7 – Indemnities & Insurance

31 Risk

31.1 The Developer performs this Deed at its own risk and its own cost.

32 Release

32.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

33 Indemnity

33.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

34 Insurance

34.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Roads Works up until the Road Works are taken to have been completed in accordance with this Deed:

34.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Road Works (including the cost of demolition and removal of debris, consultants' fees and authorities'

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fees), to cover the Developer's liability in respect of damage to or destruction of the Road Works,

34.1.2 public liability insurance for at least $20,000,000.00 for any single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,

34.1.3 workers compensation insurance as required by law, and

34.1.4 any other insurance required by law.

34.2 If the Developer fails to comply with clause 34.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including recovery as a debt due in a court of competent jurisdiction.

34.3 The Developer is not to commence to carry out any Road Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 34.1.

Part 8 – Other Provisions

35 Notices

35.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:

35.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,

35.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or

35.1.3 emailed to that Party at its email address set out in the Summary Sheet.

35.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.

35.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

35.3.1 delivered, when it is left at the relevant address,

35.3.2 sent by post, 2 business days after it is posted,

35.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or

35.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

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35.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

36 Approvals and Consent

36.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.

36.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

37 Costs

37.1 The Parties agree to bear their own costs of preparing, negotiating, executing, registering and stamping this Deed, and any document related to this Deed.

37.2 Each Party is to pay to the other Party the other Party's reasonable costs of enforcing this Deed within 7 days of a written demand for such payment, subject to any alternative order of a court of competent jurisdiction.

38 Entire Deed

38.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.

38.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

39 Further Acts

39.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

40 Governing Law and Jurisdiction

40.1 This Deed is governed by the law of New South Wales.

40.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

40.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

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41 Joint and Individual Liability and Benefits

41.1 Except as otherwise set out in this Deed:

41.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and

41.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

42 No Fetter

42.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

43 Illegality

43.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

44 Severability

44.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

44.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

45 Amendment

45.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

46 Waiver

46.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

46.2 A waiver by a Party is only effective if it is in writing.

46.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an

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implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

47 GST

47.1 This clause 47 does not apply to the sale of the Transfer Land, and in this clause 47:

Adjustment Note, **Consideration**, **GST**, **GST Group**, **Margin Scheme**, **Money, Supply** and **Tax Invoice** have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply

47.2 Subject to clause 47.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

47.3 Clause 47.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

47.4 No additional amount shall be payable by the Council under clause 47.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

47.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

47.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

47.5.2 that any amounts payable by the Parties in accordance with clause 47.2 (as limited by clause 47.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

47.6 No payment of any amount pursuant to this clause 47, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

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47.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

47.8 This clause continues to apply after expiration or termination of this Deed.

48 Explanatory Note

48.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.

48.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

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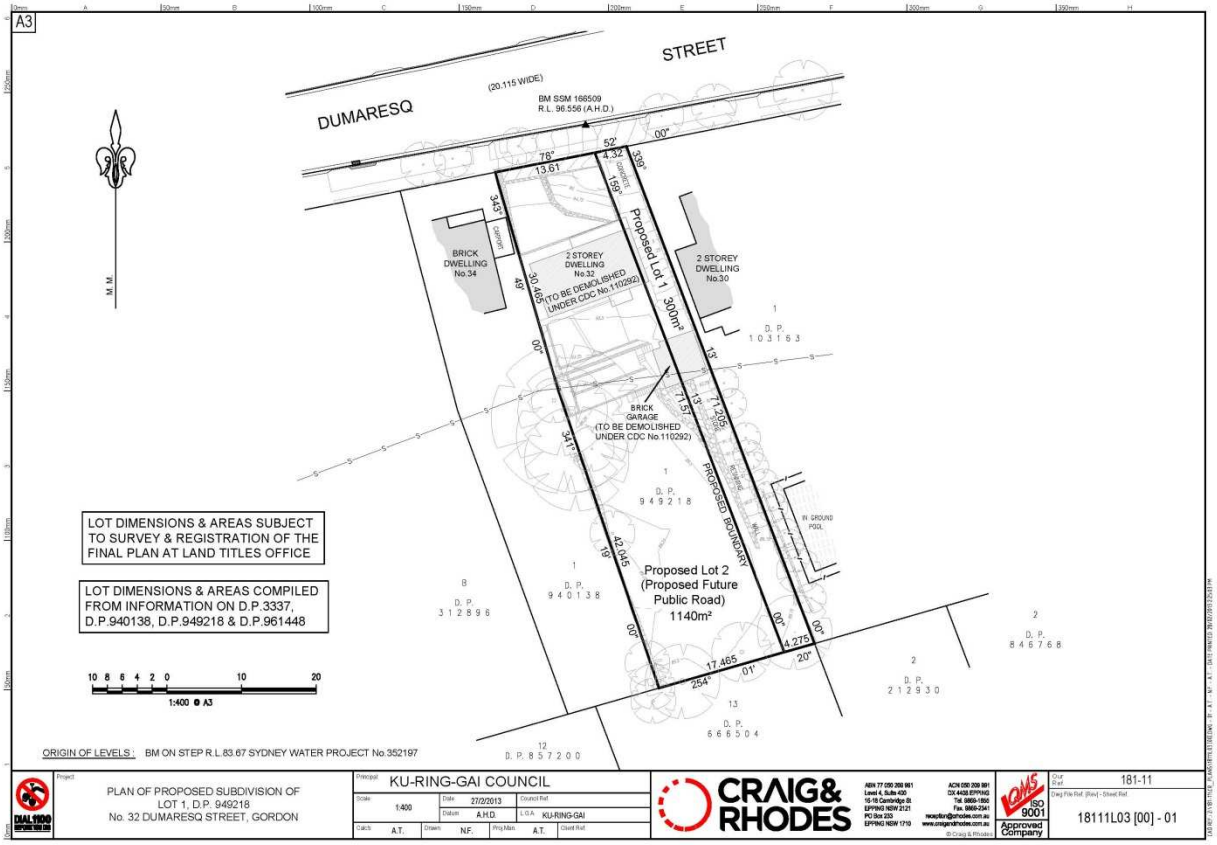
Schedule 1

(Clause 1.1)

Plan



Schedule 2

(Clause 11)

Printed conditions of contract for sale - 2005 edition

See following pages

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WARNING
SMOKE ALARMS

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

IMPORTANT NOTICE TO VENDORS AND PURCHASERS

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

For example, as purchaser you should be satisfied that finance will be available at the time of completing the purchase (even if settlement might occur many months after signing this contract - in particular, if you are buying off the plan).

COOLING OFF PERIOD (PURCHASER'S RIGHTS)

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

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 -

adjustment date	the earlier of the giving of possession to the purchaser or completion;
bank	a bank as defined in the Banking Act 1959, the Reserve Bank or a State bank;
business day	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
cheque	a cheque that is not postdated or stale;
depositholder	vendor's agent (or if no vendor's agent is named in this contract, the vendor's *solicitor*);
document of title	document relevant to the title or the passing of title;
GST Act	A New Tax System (Goods and Services Tax) Act 1999;
GST rate	the rate mentioned in section 4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
legislation	an Act or a by-law, ordinance, regulation or rule made under an Act;
normally	subject to any other provision of this contract;
party	each of the vendor and the purchaser;
property	the land, the improvements, all fixtures and the inclusions, but not the exclusions;
requisition	an objection, question or requisition (but the term does not include a claim);
rescind	rescind this contract from the beginning;
serve	serve in writing on the other *party*;
settlement cheque	an unendorsed *cheque* made payable to the person to be paid and drawn on its own funds by - ● a *bank;* or ● a building society, credit union or other FCA institution as defined in Cheques Act 1986; that carries on business in Australia; or if authorised in writing by the vendor or the vendor's *solicitor*, some other *cheque*;
solicitor	in relation to a *party*, the *party's* solicitor or licensed conveyancer named in this contract or in a notice *served* by the *party;*
terminate	terminate this contract for breach;
vendor duty	vendor duty imposed under Chapter 4 of the Duties Act 1997;
within	in relation to a period, at any time before or during the period;
work order	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the *property* or any adjoining footpath or road.

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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 only by unconditionally giving cash (up to $2,000) or a *cheque* to the *depositholder* or to the vendor, vendor's agent or vendor's *solicitor* for sending to the *depositholder*.

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

2.6 If the vendor accepts a bond or guarantee for the deposit, clauses 2.1 to 2.5 and 3 do not apply.

2.7 If the vendor accepts a bond or guarantee for part of the deposit, clauses 2.1 to 2.5 and 3 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*, credit union or permanent building society, 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 Payment of vendor duty out of the deposit

3.1 This clause applies only if this contract says the deposit can be used to pay vendor duty.

3.2 If the amount held by the *depositholder* (disregarding the value of any bond or guarantee) exceeds the amount of *vendor duty*, the *parties* direct the *depositholder* to release the amount of *vendor duty* on the following terms -

3.2.1 the *depositholder* is to draw a *cheque* ("the vendor duty cheque") in favour of the Office of State Revenue and in a form acceptable to the Office of State Revenue for payment of *vendor duty;*

3.2.2 the *depositholder* is not to draw that *cheque* earlier than 14 days before the completion date; and

3.2.3 the receipt of a letter from the vendor's *solicitor* requesting the vendor duty cheque will be sufficient authority for the *depositholder* to draw and release that cheque.

3.3 The vendor's *solicitor* will use the vendor duty cheque for the sole purpose of payment of the *vendor duty* relating to this transaction.

3.4 If this contract is not completed in circumstances that there is, or may be, no liability for *vendor duty* -

3.4.1 if the vendor duty cheque has been forwarded to the vendor's *solicitor* but has not been used to pay *vendor duty,* that cheque must be returned immediately to the *depositholder* for cancellation;

3.4.2 if the vendor duty cheque has been used to pay *vendor duty* -

- the amount of *vendor duty* is repayable upon demand;
- the vendor must lodge an application for refund of *vendor duty;* and
- the vendor irrevocably authorises the Office of State Revenue to pay to the *depositholder* the refund of *vendor duty;*

3.4.3 each *party* must do whatever else is necessary to ensure that the *party* whose funds were used to pay *vendor duty* receives the refund; and

3.4.4 rights under this clause continue even if the contract has been *rescinded* or *terminated.*

4 Transfer

4.1 *Normally*, the purchaser must *serve* the form of transfer at least 14 days before the completion date.

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.

4.5 If this sale is exempt from *vendor duty* -

4.5.1 the vendor can (but does not have to) *serve* an application for exemption from *vendor duty* in the form satisfactory to the Office of State Revenue *within* 7 days after the contract date;

4.5.2 if that application is attached to this contract or has been provided to the purchaser before the contract date, the application is *served* on the contract date; and

4.5.3 if the vendor complies with clause 4.5.1 -

- the purchaser must have the form of transfer marked by the Office of State Revenue in relation to *vendor duty* before *serving* the form of transfer; and
- on completion the vendor must pay to the purchaser $33.

5 Requisitions

If the purchaser is or becomes entitled to make a *requisition,* the purchaser can make it only by *serving* it -

5.1 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 if it arises out of anything *served* by the vendor - *within* 21 days after the later of the contract date and that *service*; and

5.3 in any other case - *within* a reasonable time.

6 Error or misdescription

6.1 The purchaser can (but only before completion) claim compensation for an error or misdescription in this contract (as to the *property*, the title or anything else and whether substantial or not).

6.2 This clause applies even if the purchaser did not take notice of or rely on anything in this contract containing or giving rise to the error or misdescription.

6.3 However, this clause does not apply to the extent the purchaser knows the true position.

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7 Claims by purchaser

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

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

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

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

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

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

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

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

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

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

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

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

8 Vendor's right to rescind

The vendor can *rescind* if -

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

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

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

9 Purchaser's default

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

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

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

9.2.1 for 12 months after the *termination;* or

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

9.3 sue the purchaser either -

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

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

9.3.2 to recover damages for breach of contract.

10 Restrictions on rights of purchaser

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

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

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

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

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

10.1.5 a promise, representation or statement about this contract, the *property* or the title, not set out or referred to in this contract;

10.1.6 a condition, exception, reservation or restriction in a Crown grant;

10.1.7 the existence of any authority or licence to explore or prospect for gas, minerals or petroleum;

10.1.8 any easement or restriction on use the substance of either of which is disclosed in this contract or any non-compliance with the easement or restriction on use; or

10.1.9 anything the substance of which is disclosed in this contract (except a caveat, charge, mortgage or writ).

10.2 The purchaser cannot *rescind* or *terminate* only because of a defect in title to or quality of the inclusions.

10.3 *Normally,* the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* or require the vendor to change the nature of the title disclosed in this contract (for example, to remove a caution evidencing qualified title, or to lodge a plan of survey as regards limited title).

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11 Compliance with work orders

11.1 *Normally,* the vendor must by completion comply with a *work order* made on or before the contract date and if this contract is completed the purchaser must comply with any other *work order*.

11.2 If the purchaser complies with a *work order*, and this contract is *rescinded* or *terminated*, the vendor must pay the expense of compliance to the purchaser.

12 Certificates and inspections

The vendor must do everything reasonable to enable the purchaser, subject to the rights of any tenant -

12.1 to have the *property* inspected to obtain any certificate or report reasonably required;

12.2 to apply (if necessary in the name of the vendor) for -

12.2.1 any certificate that can be given in respect of the *property* under *legislation*; or

12.2.2 a copy of any approval, certificate, consent, direction, notice or order in respect of the *property* given under *legislation*, even if given after the contract date; and

12.3 to make 1 inspection of the *property* in the 3 days before a time appointed for completion.

13 Goods and services tax (GST)

13.1 In this clause, enterprise, input tax credit, margin scheme, supply of a going concern, tax invoice and taxable supply have the same meanings as in the *GST Act*.

13.2 *Normally*, if a *party* must pay the price or any other amount to the other *party* under this contract, GST is not to be added to the price or amount.

13.3 If under this contract a *party* must make an adjustment, pay an expense of another party or pay an amount payable by or to a third party (for example, under clauses 14 or 20.7) -

13.3.1 the *party* must adjust or pay on completion any GST added to or included in the amount; but

13.3.2 if this contract says this sale is a taxable supply, and payment would entitle the *party* to an input tax credit, the adjustment or payment is to be worked out by deducting any input tax credit to which the party receiving the adjustment is or was entitled and adding the *GST rate*.

13.4 If this contract says this sale is the supply of a going concern -

13.4.1 the *parties* agree the supply of the *property* is a supply of a going concern;

13.4.2 the vendor must, between the contract date and completion, carry on the enterprise conducted on the land in a proper and business-like way;

13.4.3 if the purchaser is not registered by the completion date, the *parties* must complete and the purchaser must pay on completion, in addition to the price, an amount being the price multiplied by the *GST rate* ("the retention sum"). The retention sum is to be held by the *depositholder* and dealt with as follows:

- if *within* 3 months of completion the purchaser *serves* a letter from the Australian Taxation Office stating the purchaser is registered, the *depositholder* is to pay the retention sum to the purchaser; but
- if the purchaser does not *serve* that letter *within* 3 months of completion, the *depositholder* is to pay the retention sum to the vendor; and

13.4.4 if the vendor, despite clause 13.4.1, *serves* a letter from the Australian Taxation Office stating the vendor has to pay GST on the supply, the purchaser must pay to the vendor on demand the amount of GST assessed.

13.5 *Normally,* the vendor promises the margin scheme will not apply to the supply of the *property*.

13.6 If this contract says the margin scheme is to apply in making the taxable supply, the parties agree that the margin scheme is to apply to the sale of the property.

13.7 If this contract says the sale is not a taxable supply -

13.7.1 the purchaser promises that the *property* will not be used and represents that the purchaser does not intend the *property* (or any part of the *property*) to be used in a way that could make the sale a taxable supply to any extent; and

13.7.2 the purchaser must pay the vendor on completion in addition to the price an amount calculated by multiplying the price by the *GST rate* if this sale is a taxable supply to any extent because of -

- a breach of clause 13.7.1; or
- something else known to the purchaser but not the vendor.

13.8 If this contract says this sale is a taxable supply in full and does not say the margin scheme applies to the *property,* the vendor must pay the purchaser on completion an amount of one-eleventh of the price if -

13.8.1 this sale is not a taxable supply in full; or

13.8.2 the margin scheme applies to the *property* (or any part of the *property*).

13.9 If this contract says this sale is a taxable supply to an extent -

13.9.1 clause 13.7.1 does not apply to any part of the *property* which is identified as being a taxable supply; and

13.9.2 the payments mentioned in clauses 13.7 and 13.8 are to be recalculated by multiplying the relevant payment by the proportion of the price which represents the value of that part of the *property* to which the clause applies (the proportion to be expressed as a number between 0 and 1). Any evidence of value must be obtained at the expense of the vendor.

13.10 *Normally*, on completion the vendor must give the recipient of the supply a tax invoice for any taxable supply by the vendor by or under this contract.

13.11 The vendor does not have to give the purchaser a tax invoice if the margin scheme applies to a taxable supply.

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14 Adjustments

14.1 *Normally*, the vendor is entitled to the rents and profits and will be liable for all rates, water, sewerage and drainage service and usage charges, land tax and all other periodic outgoings up to and including the *adjustment date* after which the purchaser will be entitled and liable.

14.2 The *parties* must make any necessary adjustment on completion.

14.3 If an amount that is adjustable under this contract has been reduced under *legislation*, the *parties* must on completion adjust the reduced amount.

14.4 The *parties* must adjust land tax for the year current at the *adjustment date* -

14.4.1 only if land tax has been paid or is payable for the year (whether by the vendor or by a predecessor in title) and this contract says that land tax is adjustable;

14.4.2 by adjusting the amount that would have been payable if at the start of the year -

- the person who owned the land owned no other land;
- the land was not subject to a special trust or owned by a non-concessional company; and
- if the land (or part of it) had no separate taxable value, by calculating its separate taxable value on a proportional area basis.

14.5 If any other amount that is adjustable under this contract relates partly to the land and partly to other land, the *parties* must adjust it on a proportional area basis.

14.6 *Normally*, the vendor can direct the purchaser to produce a *settlement cheque* on completion to pay an amount adjustable under this contract and if so -

14.6.1 the amount is to be treated as if it were paid; and

14.6.2 the *cheque* must be forwarded to the payee immediately after completion (by the purchaser if the *cheque* relates only to the *property* or by the vendor in any other case).

14.7 If on completion the last bill for a water, sewerage or drainage usage charge is for a period ending before the *adjustment date*, the vendor is liable for an amount calculated by dividing the bill by the number of days in the period then multiplying by the number of unbilled days up to and including the *adjustment date*.

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

15 Completion date

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

16 Completion

- **Vendor**

16.1 On completion the vendor must give the purchaser any *document of title* that relates only to the *property*.

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

16.3 *Normally*, on completion the vendor must cause the legal title to the *property* (being an estate in fee simple) to pass to the purchaser free of any mortgage or other interest, subject to any necessary registration.

16.4 The legal title to the *property* does not pass before completion.

16.5 If the vendor gives the purchaser a document (other than the transfer) that needs to be lodged for registration, the vendor must pay the lodgment fee to the purchaser, plus another 20% of that fee.

16.6 If the purchaser *serves* a land tax certificate showing a charge on any of the land, on completion the vendor must give the purchaser a land tax certificate showing the charge is no longer effective against the land.

- **Purchaser**

16.7 On completion the purchaser must pay to the vendor, by cash (up to $2,000) or *settlement cheque*, the price (less any deposit paid) and any other amount payable by the purchaser under this contract (less any amount payable by the vendor to 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 -

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17.2.1 this contract says that the sale is subject to existing tenancies; and
17.2.2 the contract discloses the provisions of the tenancy (for example, by attaching a copy of the lease and any relevant memorandum or variation).

17.3 *Normally*, the purchaser can claim compensation (before or after completion) or *rescind* if any of the land is affected by a protected tenancy (a tenancy affected by Part 2, 3, 4 or 5 Landlord and Tenant (Amendment) Act 1948).

18 Possession before completion

18.1 This clause applies only if the vendor gives the purchaser possession of the *property* before completion.
18.2 The purchaser must not before completion -
18.2.1 let or part with possession of any of the *property*;
18.2.2 make any change or structural alteration or addition to the *property*; or
18.2.3 contravene any agreement between the *parties* or any direction, document, *legislation*, notice or order affecting the *property*.
18.3 The purchaser must until completion -
18.3.1 keep the *property* in good condition and repair having regard to its condition at the giving of possession; and
18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.
18.4 The risk as to damage to the *property* passes to the purchaser immediately after the purchaser enters into possession.
18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor -
18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and
18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate mentioned in Schedule J of the Supreme Court Rules 1970.
18.6 If this contract is *rescinded* or *terminated* the purchaser must immediately vacate the *property*.
18.7 If the *parties* or their *solicitors* on their behalf do not agree in writing to a fee or rent, none is payable.

19 Rescission of contract

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

20 Miscellaneous

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

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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 clause 2 (deposit).
21.6 *Normally*, the time by which something must be done is fixed but not essential.

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

23 Strata or community title
23.1 This clause applies only if the land (or part of it) is a lot in a strata, neighbourhood, precinct or community scheme (or on completion is to be a lot in a scheme of that kind).
23.2 In this contract -
'change', in relation to a scheme, means -
- a registered or registrable change from by-laws set out in this contract or set out in *legislation* and specified in this contract;
- a change from a development or management contract or statement set out in this contract; or
- a change in the boundaries of common property;

'common property' includes association property for the scheme or any higher scheme;
'contribution' includes an amount payable under a by-law;
'normal expenses', in relation to an owners corporation for a scheme, means normal operating expenses usually payable from the administrative fund of an owners corporation for a scheme of the same kind;
'owners corporation' means the owners corporation or the association for the scheme or any higher scheme;
'the *property*' includes any interest in common property for the scheme associated with the lot;
'special expenses', in relation to an owners corporation, means its actual, contingent or expected expenses, except to the extent they are normal expenses, due to fair wear and tear, disclosed in this contract or covered by moneys held in the sinking fund.
23.3 Clauses 11, 14.8 and 18.4 do not apply to an obligation of the owners corporation, or to property insurable by it.
23.4 Clauses 14.4.2 and 14.5 apply but on a unit entitlement basis instead of an area basis.
23.5 The *parties* must adjust under clause 14.1 -
23.5.1 a regular periodic contribution;
23.5.2 a contribution which is not a regular periodic contribution but is disclosed in this contract; and
23.5.3 on a unit entitlement basis, any amount paid by the vendor for a normal expense of the owners corporation to the extent the owners corporation has not paid the amount to the vendor.
23.6 If a contribution is not a regular periodic contribution and is not disclosed in this contract -
23.6.1 the vendor is liable for it if it was levied before the contract date (unless it relates to work not started by that date), even if it is payable by instalments;
23.6.2 the vendor is also liable for it to the extent it relates to work started by the owners corporation before the contract date; and
23.6.3 the purchaser is liable for all other contributions levied after the *contract date*.
23.7 The vendor must pay or allow to the purchaser on completion the amount of any unpaid contributions for which the vendor is liable under clause 23.6.
23.8 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of -
23.8.1 an existing or future actual, contingent or expected expense of the owners corporation;
23.8.2 a proportional unit entitlement of the lot or a relevant lot or former lot, apart from a claim under clause 6; or
23.8.3 a past or future change in the scheme or a higher scheme.
23.9 However, the purchaser can *rescind* if -
23.9.1 the special expenses of the owners corporation at the later of the contract date and the creation of the owners corporation when calculated on a unit entitlement basis (and, if more than one lot or a higher scheme is involved, added together), less any contribution paid by the vendor, are more than 1% of the price;
23.9.2 in the case of the lot or a relevant lot or former lot in a higher scheme -
- a proportional unit entitlement for the lot is not disclosed in this contract; or
- a proportional unit entitlement for the lot is disclosed in this contract but the lot has a different proportional unit entitlement at the contract date or at any time before completion; or

23.9.3 a change before the contract date or before completion in the scheme or a higher scheme substantially disadvantages the purchaser and is not disclosed in this contract.
23.10 The purchaser must give the vendor 2 copies of a proper form of notice of the transfer of the lot addressed to the owners corporation and signed by the purchaser.
23.11 The vendor must complete and sign 1 copy of the notice and give it to the purchaser on completion.
23.12 Each *party* can sign and give the notice as agent for the other.
23.13 The vendor must *serve* a certificate under section 109 Strata Schemes Management Act 1996 or section 26 Community Land Management Act 1989 in relation to the lot, the scheme or any higher scheme at least 7 days before the completion date.

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23.14 The purchaser does not have to complete earlier than 7 days after *service* of the certificate and clause 21.3 does not apply to this provision.

23.15 On completion the purchaser must pay the vendor the prescribed fee for the certificate.

23.16 The vendor authorises the purchaser to apply for the purchaser's own certificate.

23.17 The vendor authorises the purchaser to apply for and make an inspection of any record or other document in the custody or control of the owners corporation or relating to the scheme or any higher scheme.

23.18 If a general meeting of the owners corporation is convened before completion -

23.18.1 if the vendor receives notice of it, the vendor must immediately notify the purchaser of it; and

23.18.2 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 -

- any of Parts 2 to 7 of the Retail Leases Act 1994 applies to the tenancy, unless this contract discloses that the tenancy commenced on or after 1 August 1994;
- a disclosure statement required by the Act 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 Act.

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 earnt by the fund that has been applied for any other purpose;
- 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; and

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 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 to the tenant 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.

24.5 Rights under this clause continue after completion, whether or not other rights continue.

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25 Qualified title, limited title and old system title

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

26 Crown purchase money

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

27 Consent to transfer

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

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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.
28.4 Either *party* can serve notice of the registration of the plan and every relevant lot and plan number.
28.5 The completion date becomes the later of the completion date and 21 days after *service* of the notice.
28.6 Clauses 28.2 and 28.3 apply to a 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;
29.7.3 the completion date becomes the later of the completion date 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;
- 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 completion date becomes the later of the completion date 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.

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Schedule 3

(Clause 11)

Section 66W Certificate

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 (NSW)* with reference to a contract for the sale of property being proposed lot 1 as shown on the Plan of Proposed Subdivision of Lot 1, D.P. 949218, 32 Dumaresq Street Gordon, prepared by Craig & Rhodes being plan number 18111L03 [00] – 01, from Ku-ring-gai Council as vendor to Australia Wenzhou Group Property Pty Ltd ABN 73 145 964 156 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 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, that there is no cooling-off period in relation to the contract.

Dated:

Signed: _____

DRAFT

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

_____	_____
General Manager	**Witness**
_____	----------
Mayor	**Witness**

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

_____

Name/Position

_____

Name/Position

DRAFT

Appendix

(Clause 54)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

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Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Ku-ring-gai Council **ABN** 86 408 856 411 of 818 Pacific Highway, GORDON NSW 2072 (**Council**)

Australia Wenzhou Group Property Ltd ABN 73 145 964 156 of [Insert Details] (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 1 in DP103163 and Lot 1 in DP 961448 otherwise known as 28-30 Dumaresq Street, Gordon and Lot 1 in DP 949218 otherwise known as 32 Dumaresq Street, Gordon**.**

Description of Proposed Development

The development of a residential flat building comprising 34 residential units

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to ensure that road works are carried out for the public benefit, and that surplus Council land is disposed of.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (**Act**). It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development,
- excludes the application of s 94 and s 94A of the Act to the Development,
- does not exclude the application of s 94EF of the Act to the Development,
- requires the carrying out of road works and payment of monetary development contributions,
- provides for the sale of surplus Council owned land to the Developer, once the road is created,
- is to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the Draft Planning Agreement,
- provides a dispute resolution method for a dispute under the agreement, being mediation and expert determination,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement.

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Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the Land to which the Agreement applies,
- provides public infrastructure in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by providing services and facilities for the community.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

Yes

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Draft Planning Agreement requires road works to be completed and a monetary contribution to be paid before the issue of an occupation certificate for the Development.

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