

**Invitation to Submit
an Expression of Interest
for
2 Jonson Street
Byron Bay NSW 2481**

**Being Lot 6 in
DP 255629**

DATED

2023

INVITATION TO SUBMIT AN EXPRESSION OF INTEREST

FOR : 2 JONSON STREET, BYRON BAY NSW being LOT 2 in DP 255629

RECITALS

- A. A draft Contract has been prepared for the Sale of the Property.
- B. The Vendor has requested interested parties to submit an Expression of Interest for the purchase of the Property.

1. Invitation to Submit an Expression of Interest

An Expression of Interest offer is simply an indication of interest for the purchase of the Property and does not create a legally binding contract

2. Acknowledgment by Offeror

An Expression of Interest is made on the basis that the Offeror acknowledges that:

- (a) The submission of an Expression of Interest by the Offeror in relation to the Property does not entitle or oblige the Offeror to enter into contracts for the purchase of the Property. It does not oblige the Vendor to enter into a Contract for the Sale of the Property or to consider an Expression of Interest.
- (b) The Vendor may accept or reject Expressions of Interest in the Vendor's absolute discretion.
- (c) The Offeror can withdraw its Expression of Interest at any time on notice to the Vendor.
- (d) The Vendor may withdraw the Property from sale at any time on notice to the Offeror.
- (e) The Vendor makes no warranties that any information provided to interested parties is accurate. Offerors must rely on their own enquiries.
- (f) Depending on the Expression of Interest made by the Offeror, that additional contractual agreements may be required and additional documents inserted in the Contract for Sale.
- (g) If the Expression of Interest is not received by the Closing Date, the Vendor may decline to consider the Expression of Interest.

- (h) The Vendor will not meet or contribute to the costs of any Expression of Interest or costs associated with any Expression of Interest. The Offeror must meet its own costs.
- (i) The Offeror has read the Definitions contained in Schedule 1.

3. Method of Submitting an Expression of Interest

- (a) An Offeror must submit an Expression of Interest in relation to the Property using the Expression of Interest Form in Annexure A.
- (b) Each Offeror must complete the Expression of Interest Form by providing the following details:
 - (i) The Offeror's full name or company name (where the Offeror comprises more than one party, the name of each party must be stated);
 - (ii) The Offeror's address, email address and contact numbers;
 - (iii) The price;
- (c) An Offeror must submit an Expression of Interest by 5pm on the Closing Date. The Vendor is not obliged to consider any late Expressions of Interest.

4. CONTRACT FOR SALE

- (a) A copy of the proposed Contract for Sale is attached in Annexure B.
- (b) The Contract for Sale:
 - (i) is in draft form only, and
 - (ii) the Vendor reserves the right to vary the Contract before it is exchanged.

5. LODGEMENT OF EXPRESSION OF INTEREST AND ENQUIRIES

- (a) All Expressions of Interest should be delivered to and all enquiries should be made to:

Will Phillips
McGraths Estate Agents
Shop 7A/21-25 Fletcher
Street
Byron Bay NSW 2481
Mobile: 0488 508 111
Email: willphillips@mcgrath.com.au

(b) All enquiries concerning the Contract should be made to:

Andrew McInnes
McInnes Legal
Level 1
26-54 River Street
BALLINA NSW
2478
Ph: (02)66814 814
Fax:(02) 66814813
Email: andrew@mcinneslegal.com.au

SCHEDULE 1

Part 1 - Definitions

In this Agreement, unless the context otherwise indicates, each of the following expressions shall have the meaning assigned to it below:

Agent	Will Phillips, McGrath Estate Agents, Shop 7A/21-25 Fletcher Street, Byron Bay, NSW 2481
Closing Date	means 5.00pm on <u>Thursday 19th October</u> 2023 or such other date as may be advised by the Vendor or the Vendor's Agent.
Contract for Sale	means the proposed Contract for Sale for sale of the Property attached in Annexure B
Expression of Interest	means an expression of interest by the Offeror to purchase the Property submitted by way of completing the Expression of Interest Form.
Expression of Interest Form	means the form attached in Annexure A marked "Expression of Interest".
Invitation	means this Invitation to Submit an Expression of Interest.
Offeror	means a person (or entity) submitting an Expression of Interest to purchase the Property under the conditions set out in this Invitation.
Property	2 JONSON STREET, BYRON BAY NSW being LOT 2 in DP 255629
Vendor	means QuickieBB Pty Ltd A.C.N. 607 319 371 as trustee for The QuickieBB Trust
Vendor's Solicitor	means McInnes Legal, Level 1, 26-54 River Street Ballina NSW 2478

ANNEXURE A

EXPRESSION OF INTEREST FORM

ANNEXURE B

CONTRACT FOR SALE

" A "

Expression of Interest Form

Due 5.00pm on Thursday 19th October **2023**

2 Jonson Street, Byron Bay NSW 2481
Being lot 6 of DP 255629
is offered for sale by McGrath Real Estate Agents, Shop 7A/21-25 Fletcher Street
Byron Bay NSW 2481

Your submission using this form is an offer to purchase the Property.

It is non-binding and if your offer for the Property is acceptable to the Vendor it will then proceed to a formal contract.

All Expression of Interest forms will be forwarded to the Vendor within 24 hours.

Please submit this Expression of Interest Form to the

following: Will Phillips – willphillips@mcgrath.com.au

I/We (full name) / (Company):

..... **Mailing Address:**
..... **Email**

Address:

.....

Telephone:

..... **Name of Contact Person:**

..... **Hereby submit**

an offer to purchase:

2 Jonson Street, Byron Bay NSW 2481

\$..... (Please insert price)

And if our offer is successful I/We or My/Our Company as described above is/are prepared to pay a Deposit of 10% of the purchase offer.

DEPOSIT \$.....

My solicitor's details are:

Name:

.....

Address:.....

Fax:

Telephone:

Email:

Contact Person:

I acknowledge and agree that this Expression of Interest is not a Contract to purchase the Property and the Vendor has no obligation to sell the Property to me.

Dated:

.....

Signature

.....

Print Name

Contract for the sale and purchase of land 2022 edition

TERM	MEANING OF TERM	NSW DAN:
vendor's agent	McGrath Estate Agents Shop 7A/21-25 Fletcher Street, Byron Bay, NSW 2481	Phone: 02 6639 1200 Fax: 02 6639 1299 Ref: Will Phillips
co-agent		
vendor	QuickieBB Pty Ltd ACN 607 319 371 as trustee for The QuickieBB Trust 55 Murphy Street, South Yarra, VIC 3141	
vendor's solicitor	McInnes Legal Suite 5, Level 1, 26-54 River Street, Ballina NSW 2478 PO Box 117, Ballina NSW 2478	Phone: 02 66 814 814 Email: samantha@mcinneslegal.com.au Fax: 02 66 814 813 Ref: SM:ML:230256
date for completion	28th day after the contract date	(clause 15)
land (address, plan details and title reference)	2 Jonson Street, Byron Bay, New South Wales 2481 Registered Plan: Lot 6 Plan DP 255629 Folio Identifier 6/255629	
improvements	<input type="checkbox"/> VACANT POSSESSION <input checked="" type="checkbox"/> subject to existing tenancies <input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input type="checkbox"/> home unit <input type="checkbox"/> carspace <input type="checkbox"/> storage space <input type="checkbox"/> none <input checked="" type="checkbox"/> other: Commercial and residential	
attached copies	<input type="checkbox"/> documents in the List of Documents as marked or as numbered: <input type="checkbox"/> other documents:	

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

inclusions	<input type="checkbox"/> air conditioning	<input type="checkbox"/> clothes line	<input type="checkbox"/> fixed floor coverings	<input type="checkbox"/> range hood
	<input type="checkbox"/> blinds	<input type="checkbox"/> curtains	<input type="checkbox"/> insect screens	<input type="checkbox"/> solar panels
	<input type="checkbox"/> built-in wardrobes	<input type="checkbox"/> dishwasher	<input type="checkbox"/> light fittings	<input type="checkbox"/> stove
	<input type="checkbox"/> ceiling fans	<input type="checkbox"/> EV charger	<input type="checkbox"/> pool equipment	<input type="checkbox"/> TV antenna
	<input type="checkbox"/> other:			
exclusions				
purchaser				
purchaser's solicitor				
price	\$			
deposit	\$	(10% of the price, unless otherwise stated)		
balance	\$			
contract date	(if not stated, the date this contract was made)			

Where there is more than one purchaser JOINT TENANTS
 tenants in common in unequal shares, specify:

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

buyer's agent

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

SIGNING PAGE

<p>VENDOR</p> <p>Signed by _____</p> <p>Vendor _____</p> <p>Vendor _____</p>	<p>PURCHASER</p> <p>Signed by _____</p> <p>Purchaser _____</p> <p>Purchaser _____</p>
<p>VENDOR (COMPANY)</p> <p>Signed by _____ in accordance with s127(1) of the Corporations Act 2001 by the authorised person(s) whose signature(s) appear(s) below:</p> <p>_____ Signature of authorised person</p> <p>_____ Signature of authorised person</p> <p>_____ Name of authorised person</p> <p>_____ Name of authorised person</p> <p>_____ Office held</p> <p>_____ Office held</p>	<p>PURCHASER (COMPANY)</p> <p>Signed by _____ in accordance with s127(1) of the Corporations Act 2001 by the authorised person(s) whose signature(s) appear(s) below:</p> <p>_____ Signature of authorised person</p> <p>_____ Signature of authorised person</p> <p>_____ Name of authorised person</p> <p>_____ Name of authorised person</p> <p>_____ Office held</p> <p>_____ Office held</p>

ChoicesVendor agrees to accept a **deposit-bond** NO yes**Nominated Electronic Lodgment Network (ELN)** (clause 4):**Manual transaction** (clause 30) NO yes

(if yes, vendor must provide further details, including any applicable exception, in the space below):

Tax information (the parties promise this is correct as far as each party is aware)**Land tax** is adjustable NO yes**GST: Taxable supply** NO yes in full yes to an extent

Margin scheme will be used in making the taxable supply

 NO yes

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

 not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b)) by a vendor who is neither registered nor required to be registered for GST (section 9-5(d)) GST-free because the sale is the supply of a going concern under section 38-325 GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-O input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)Purchaser must make a **GSTRW payment**
(GST residential withholding payment) NO yes (if yes, vendor must provide further details)

If the further details below are not fully completed at the contract date, the vendor must provide all these details in a separate notice at least 7 days before the date for completion.

GSTRW payment (GST residential withholding payment) – further details

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

Supplier's name:

Supplier's ABN:

Supplier's GST branch address (if applicable):

Supplier's business address:

Supplier's representative:

Supplier's contact phone number:

Supplier's proportion of **GSTRW payment**:**If more than one supplier, provide the above details for each supplier.**Amount purchaser must pay – price multiplied by the **GSTRW rate** (residential withholding rate):Amount must be paid: AT COMPLETION at another time (specify):Is any of the consideration not expressed as an amount in money? NO yes

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

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

List of Documents

<p>General</p> <p><input checked="" type="checkbox"/> 1 property certificate for the land</p> <p><input checked="" type="checkbox"/> 2 plan of the land</p> <p><input type="checkbox"/> 3 unregistered plan of the land</p> <p><input type="checkbox"/> 4 plan of land to be subdivided</p> <p><input type="checkbox"/> 5 document to be lodged with a relevant plan</p> <p><input checked="" type="checkbox"/> 6 section 10.7(2) planning certificate under Environmental Planning and Assessment Act 1979</p> <p><input checked="" type="checkbox"/> 7 additional information included in that certificate under section 10.7(5)</p> <p><input checked="" type="checkbox"/> 8 sewerage infrastructure location diagram (service location diagram)</p> <p><input checked="" type="checkbox"/> 9 sewer lines location diagram (sewerage service diagram)</p> <p><input type="checkbox"/> 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract</p> <p><input type="checkbox"/> 11 <i>planning agreement</i></p> <p><input type="checkbox"/> 12 section 88G certificate (positive covenant)</p> <p><input type="checkbox"/> 13 survey report</p> <p><input type="checkbox"/> 14 building information certificate or building certificate given under <i>legislation</i></p> <p><input type="checkbox"/> 15 occupation certificate</p> <p><input type="checkbox"/> 16 lease (with every relevant memorandum or variation)</p> <p><input type="checkbox"/> 17 other document relevant to tenancies</p> <p><input type="checkbox"/> 18 licence benefiting the land</p> <p><input type="checkbox"/> 19 old system document</p> <p><input type="checkbox"/> 20 Crown purchase statement of account</p> <p><input type="checkbox"/> 21 building management statement</p> <p><input checked="" type="checkbox"/> 22 form of requisitions</p> <p><input type="checkbox"/> 23 <i>clearance certificate</i></p> <p><input type="checkbox"/> 24 land tax certificate</p> <p>Home Building Act 1989</p> <p><input type="checkbox"/> 25 insurance certificate</p> <p><input type="checkbox"/> 26 brochure or warning</p> <p><input type="checkbox"/> 27 evidence of alternative indemnity cover</p> <p>Swimming Pools Act 1992</p> <p><input type="checkbox"/> 28 certificate of compliance</p> <p><input type="checkbox"/> 29 evidence of registration</p> <p><input type="checkbox"/> 30 relevant occupation certificate</p> <p><input type="checkbox"/> 31 certificate of non-compliance</p> <p><input type="checkbox"/> 32 detailed reasons of non-compliance</p>	<p>Strata or community title (clause 23 of the contract)</p> <p><input type="checkbox"/> 33 property certificate for strata common property</p> <p><input type="checkbox"/> 34 plan creating strata common property</p> <p><input type="checkbox"/> 35 strata by-laws</p> <p><input type="checkbox"/> 36 strata development contract or statement</p> <p><input type="checkbox"/> 37 strata management statement</p> <p><input type="checkbox"/> 38 strata renewal proposal</p> <p><input type="checkbox"/> 39 strata renewal plan</p> <p><input type="checkbox"/> 40 leasehold strata - lease of lot and common property</p> <p><input type="checkbox"/> 41 property certificate for neighbourhood property</p> <p><input type="checkbox"/> 42 plan creating neighbourhood property</p> <p><input type="checkbox"/> 43 neighbourhood development contract</p> <p><input type="checkbox"/> 44 neighbourhood management statement</p> <p><input type="checkbox"/> 45 property certificate for precinct property</p> <p><input type="checkbox"/> 46 plan creating precinct property</p> <p><input type="checkbox"/> 47 precinct development contract</p> <p><input type="checkbox"/> 48 precinct management statement</p> <p><input type="checkbox"/> 49 property certificate for community property</p> <p><input type="checkbox"/> 50 plan creating community property</p> <p><input type="checkbox"/> 51 community development contract</p> <p><input type="checkbox"/> 52 community management statement</p> <p><input type="checkbox"/> 53 document disclosing a change of by-laws</p> <p><input type="checkbox"/> 54 document disclosing a change in a development or management contract or statement</p> <p><input type="checkbox"/> 55 document disclosing a change in boundaries</p> <p><input type="checkbox"/> 56 information certificate under Strata Schemes Management Act 2015</p> <p><input type="checkbox"/> 57 information certificate under Community Land Management Act 1989</p> <p><input type="checkbox"/> 58 disclosure statement - off the plan contract</p> <p><input type="checkbox"/> 59 other document relevant to off the plan contract</p> <p>Other</p> <p><input type="checkbox"/> 60</p>
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HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address, email address and telephone number

IMPORTANT NOTICE TO VENDORS AND PURCHASERS

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

WARNING—SMOKE ALARMS

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

WARNING—LOOSE-FILL ASBESTOS INSULATION

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

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

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

Cooling off period (purchaser's rights)

- 1** This is the statement required by the *Conveyancing Act 1919*, section 66X. This statement applies to a contract for the sale of residential property.
- 2** **EXCEPT** in the circumstances listed in paragraph 3, the purchaser may rescind the contract before 5pm on—
 - (a) for an off the plan contract—the tenth business day after the day on which the contract was made, or
 - (b) in any other case—the fifth business day after the day on which the contract was made.
- 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 the Act, section 66W, 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 the Act, section 66ZG.
- 4** A purchaser exercising the right to cool off by rescinding the contract forfeits 0.25% of the purchase price of the property to the vendor.
- 5** The vendor is entitled to recover the forfeited amount from an amount paid by the purchaser as a deposit under the contract. The purchaser is entitled to a refund of any balance.

DISPUTES

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

AUCTIONS

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

WARNINGS

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

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

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

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

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

<i>adjustment date</i>	the earlier of the giving of possession to the purchaser or completion;
<i>adjustment figures</i>	details of the adjustments to be made to the price under clause 14;
<i>authorised Subscriber</i>	a <i>Subscriber</i> (not being a <i>party's solicitor</i>) named in a notice served by a <i>party</i> as being authorised for the purposes of clause 20.6.8;
<i>bank</i>	the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>clearance certificate</i>	a certificate within the meaning of s14-220 of Schedule 1 to the <i>TA Act</i> , that covers one or more days falling within the period from and including the contract date to completion;
<i>completion time</i>	the time of day at which completion is to occur;
<i>conveyancing rules</i>	the rules made under s12E of the Real Property Act 1900;
<i>deposit-bond</i>	a deposit bond or guarantee with each of the following approved by the vendor – <ul style="list-style-type: none"> ● the issuer; ● the expiry date (if any); and ● the amount;
<i>depositholder</i>	vendor's agent (or if no vendor's agent is named in this contract, the vendor's <i>solicitor</i> , or if no vendor's <i>solicitor</i> is named in this contract, the buyer's agent);
<i>discharging mortgagee</i>	any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a <i>Digitally Signed</i> discharge of mortgage, discharge of charge or withdrawal of caveat is required in order for unencumbered title to the <i>property</i> to be transferred to the purchaser;
<i>document of title</i>	document relevant to the title or the passing of title;
<i>ECNL</i>	the Electronic Conveyancing National Law (NSW);
<i>electronic document</i>	a dealing as defined in the Real Property Act 1900 which may be created and <i>Digitally Signed</i> in an <i>Electronic Workspace</i> ;
<i>electronic transaction</i>	a <i>Conveyancing Transaction</i> to be conducted for the <i>parties</i> by their legal representatives as <i>Subscribers</i> using an <i>ELN</i> and in accordance with the <i>ECNL</i> and the <i>participation rules</i> ;
<i>electronic transfer</i>	a transfer of land under the Real Property Act 1900 for the <i>property</i> to be prepared and <i>Digitally Signed</i> in the <i>Electronic Workspace</i> established for the purposes of the <i>parties' Conveyancing Transaction</i> ;
<i>FRCGW percentage</i>	the percentage mentioned in s14-200(3)(a) of Schedule 1 to the <i>TA Act</i> (12.5% as at 1 July 2017);
<i>FRCGW remittance</i>	a remittance which the purchaser must make under s14-200 of Schedule 1 to the <i>TA Act</i> , being the lesser of the <i>FRCGW percentage</i> of the price (inclusive of GST, if any) and the amount specified in a <i>variation served by a party</i> ;
<i>GST Act</i>	A New Tax System (Goods and Services Tax) Act 1999;
<i>GST rate</i>	the rate mentioned in s4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
<i>GSTRW payment</i>	a payment which the purchaser must make under s14-250 of Schedule 1 to the <i>TA Act</i> (the price multiplied by the <i>GSTRW rate</i>);
<i>GSTRW rate</i>	the rate determined under ss14-250(6), (8) or (9) of Schedule 1 to the <i>TA Act</i> (as at 1 July 2018, usually 7% of the price if the margin scheme applies, 1/11 th if not);
<i>incoming mortgagee</i>	any mortgagee who is to provide finance to the purchaser on the security of the <i>property</i> and to enable the purchaser to pay the whole or part of the price;
<i>legislation</i>	an Act or a by-law, ordinance, regulation or rule made under an Act;
<i>manual transaction</i>	a <i>Conveyancing Transaction</i> in which a dealing forming part of the <i>Lodgment Case</i> at or following completion cannot be <i>Digitally Signed</i> ;
<i>normally</i>	subject to any other provision of this contract;
<i>participation rules</i>	the participation rules as determined by the <i>ECNL</i> ;
<i>party</i>	each of the vendor and the purchaser;
<i>property</i>	the land, the improvements, all fixtures and the inclusions, but not the exclusions;
<i>planning agreement</i>	a valid voluntary agreement within the meaning of s7.4 of the Environmental Planning and Assessment Act 1979 entered into in relation to the <i>property</i> ;
<i>populate</i>	to complete data fields in the <i>Electronic Workspace</i> ;

<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid and – <ul style="list-style-type: none"> ● issued by a <i>bank</i> and drawn on itself; or ● if authorised in writing by the vendor or the vendor's <i>solicitor</i>, some other <i>cheque</i>;
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice <i>served</i> by the <i>party</i> ;
<i>TA Act</i>	Taxation Administration Act 1953;
<i>terminate</i>	terminate this contract for breach;
<i>title data</i>	the details of the title to the <i>property</i> made available to the <i>Electronic Workspace</i> by the <i>Land Registry</i> ;
<i>variation</i>	a variation made under s14-235 of Schedule 1 to the <i>TA Act</i> ;
<i>within</i>	in relation to a period, at any time before or during the period; and
<i>work order</i>	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the <i>property</i> or any adjoining footpath or road (but the term does not include a notice under s22E of the Swimming Pools Act 1992 or clause 22 of the Swimming Pools Regulation 2018).

1.2 Words and phrases used in this contract (italicised and in Title Case, such as *Conveyancing Transaction*, *Digitally Signed*, *Electronic Workspace*, *ELN*, *ELNO*, *Land Registry*, *Lodgment Case* and *Subscriber*) have the meanings given in the *participation rules*.

2 Deposit and other payments before completion

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

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

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

2.4 The purchaser can pay any of the deposit by –

2.4.1 giving cash (up to \$2,000) to the *depositholder*,

2.4.2 unconditionally giving a *cheque* to the *depositholder* or to the vendor, vendor's agent or vendor's *solicitor* for sending to the *depositholder*, or

2.4.3 electronic funds transfer to the *depositholder's* nominated account and, if requested by the vendor or the *depositholder*, providing evidence of that transfer.

2.5 The vendor can *terminate* if –

2.5.1 any of the deposit is not paid on time;

2.5.2 a *cheque* for any of the deposit is not honoured on presentation; or

2.5.3 a payment under clause 2.4.3 is not received in the *depositholder's* nominated account by 5.00 pm on the third *business day* after the time for payment.

This right to *terminate* is lost as soon as the deposit is paid in full.

2.6 If the vendor accepts a *deposit-bond* for the deposit, clauses 2.1 to 2.5 do not apply.

2.7 If the vendor accepts a *deposit-bond* for part of the deposit, clauses 2.1 to 2.5 apply only to the balance.

2.8 If any of the deposit or of the balance of the price is paid before completion to the vendor or as the vendor directs, it is a charge on the land in favour of the purchaser until *termination* by the vendor or completion, subject to any existing right.

2.9 If each *party* tells the *depositholder* that the deposit is to be invested, the *depositholder* is to invest the deposit (at the risk of the *party* who becomes entitled to it) with a *bank*, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the *parties* equally, after deduction of all proper government taxes and financial institution charges and other charges.

3 Deposit-bond

3.1 This clause applies only if the vendor accepts a *deposit-bond* for the deposit (or part of it).

3.2 The purchaser must provide the *deposit-bond* to the vendor's *solicitor* (or if no solicitor the *depositholder*) at or before the making of this contract and this time is essential.

3.3 If the *deposit-bond* has an expiry date and completion does not occur by the date which is 14 days before the expiry date, the purchaser must *serve* a replacement *deposit-bond* at least 7 days before the expiry date. The time for service is essential.

3.4 The vendor must approve a replacement *deposit-bond* if –

3.4.1 it is from the same issuer and for the same amount as the earlier *deposit-bond*; and

3.4.2 it has an expiry date at least three months after its date of issue.

3.5 A breach of clauses 3.2 or 3.3 entitles the vendor to *terminate*. The right to *terminate* is lost as soon as –

3.5.1 the purchaser *serves* a replacement *deposit-bond*; or

3.5.2 the deposit is paid in full under clause 2.

3.6 Clauses 3.3 and 3.4 can operate more than once.

- 3.7 If the purchaser serves a replacement *deposit-bond*, the vendor must serve the earlier *deposit-bond*.
- 3.8 The amount of any *deposit-bond* does not form part of the price for the purposes of clause 16.5.
- 3.9 The vendor must give the purchaser any original *deposit-bond* –
- 3.9.1 on completion; or
- 3.9.2 if this contract is *rescinded*.
- 3.10 If this contract is *terminated* by the vendor –
- 3.10.1 normally, the vendor can immediately demand payment from the issuer of the *deposit-bond*; or
- 3.10.2 if the purchaser serves prior to *termination* a notice disputing the vendor's right to *terminate*, the vendor must forward any original *deposit-bond* (or its proceeds if called up) to the *depositholder* as stakeholder.
- 3.11 If this contract is *terminated* by the purchaser –
- 3.11.1 normally, the vendor must give the purchaser any original *deposit-bond*; or
- 3.11.2 if the vendor serves prior to *termination* a notice disputing the purchaser's right to *terminate*, the vendor must forward any original *deposit-bond* (or its proceeds if called up) to the *depositholder* as stakeholder.
- 4 Electronic transaction**
- 4.1 This *Conveyancing Transaction* is to be conducted as an *electronic transaction* unless –
- 4.1.1 the contract says this transaction is a *manual transaction*, giving the reason, or
- 4.1.2 a party serves a notice stating why the transaction is a *manual transaction*, in which case the parties do not have to complete earlier than 14 days after service of the notice, and clause 21.3 does not apply to this provision, and in both cases clause 30 applies.
- 4.2 If, because of clause 4.1.2, this *Conveyancing Transaction* is to be conducted as a *manual transaction* –
- 4.2.1 each party must –
- bear equally any disbursements or fees; and
 - otherwise bear that party's own costs;
- incurred because this *Conveyancing Transaction* was to be conducted as an *electronic transaction*; and
- 4.2.2 if a party has paid all of a disbursement or fee which, by reason of this clause, is to be borne equally by the parties, that amount must be adjusted under clause 14.
- 4.3 The parties must conduct the *electronic transaction* –
- 4.3.1 in accordance with the *participation rules* and the *ECNL*; and
- 4.3.2 using the nominated *ELN*, unless the parties otherwise agree. This clause 4.3.2 does not prevent a party using an *ELN* which can interoperate with the nominated *ELN*.
- 4.4 A party must pay the fees and charges payable by that party to the *ELNO* and the *Land Registry*.
- 4.5 Normally, the vendor must within 7 days of the contract date create and populate an *Electronic Workspace* with title data and the date for completion, and invite the purchaser to the *Electronic Workspace*.
- 4.6 If the vendor has not created an *Electronic Workspace* in accordance with clause 4.5, the purchaser may create and populate an *Electronic Workspace* and, if it does so, the purchaser must invite the vendor to the *Electronic Workspace*.
- 4.7 The parties must, as applicable to their role in the *Conveyancing Transaction* and the steps taken under clauses 4.5 or 4.6 –
- 4.7.1 promptly join the *Electronic Workspace* after receipt of an invitation;
- 4.7.2 create and populate an *electronic transfer*;
- 4.7.3 invite any *discharging mortgagee* or *incoming mortgagee* to join the *Electronic Workspace*; and
- 4.7.4 populate the *Electronic Workspace* with a nominated *completion time*.
- 4.8 If the transferee in the *electronic transfer* is not the purchaser, the purchaser must give the vendor a direction signed by the purchaser personally for that transfer.
- 4.9 The vendor can require the purchaser to include a covenant or easement in the *electronic transfer* only if this contract contains the wording of the proposed covenant or easement, and a description of the land burdened and benefited.
- 4.10 If the purchaser must make a *GSTRW payment* or an *FRCGW remittance*, the purchaser must populate the *Electronic Workspace* with the payment details for the *GSTRW payment* or *FRCGW remittance* payable to the Deputy Commissioner of Taxation at least 2 *business days* before the date for completion.
- 4.11 Before completion, the parties must ensure that –
- 4.11.1 all *electronic documents* which a party must *Digitally Sign* to complete the *electronic transaction* are populated and *Digitally Signed*;
- 4.11.2 all certifications required by the *ECNL* are properly given; and
- 4.11.3 they do everything else in the *Electronic Workspace* which that party must do to enable the *electronic transaction* to proceed to completion.
- 4.12 If the computer systems of any of the *Land Registry*, the *ELNO*, Revenue NSW or the Reserve Bank of Australia are inoperative for any reason at the *completion time* agreed by the parties, a failure to complete this contract for that reason is not a default under this contract on the part of either party.

- 4.13 If the computer systems of the *Land Registry* are inoperative for any reason at the *completion time* agreed by the *parties*, and the *parties* choose that financial settlement is to occur despite this, then on financial settlement occurring –
- 4.13.1 all *electronic documents Digitally Signed* by the vendor and any discharge of mortgage, withdrawal of caveat or other *electronic document* forming part of the *Lodgment Case* for the *electronic transaction* are taken to have been unconditionally and irrevocably delivered to the purchaser or the purchaser's mortgagee at the time of financial settlement together with the right to deal with the land; and
- 4.13.2 the vendor is taken to have no legal or equitable interest in the *property*.
- 4.14 If the *parties* do not agree about the delivery before completion of one or more documents or things that cannot be delivered through the *Electronic Workspace*, the *party* required to deliver the documents or things –
- 4.14.1 holds them on completion in escrow for the benefit of; and
- 4.14.2 must immediately after completion deliver the documents or things to, or as directed by; the *party* entitled to them.
- 5 Requisitions**
- 5.1 If a form of *requisitions* is attached to this contract, the purchaser is taken to have made those *requisitions*.
- 5.2 If the purchaser is or becomes entitled to make any other *requisition*, the purchaser can make it only by *servicing* it –
- 5.2.1 if it arises out of this contract or it is a general question about the *property* or title - *within 21 days* after the contract date;
- 5.2.2 if it arises out of anything *served* by the vendor - *within 21 days* after the later of the contract date and that *service*; and
- 5.2.3 in any other case - *within* a reasonable time.
- 6 Error or misdescription**
- 6.1 *Normally*, the purchaser can (but only before completion) claim compensation for an error or misdescription in this contract (as to the *property*, the title or anything else and whether substantial or not).
- 6.2 This clause applies even if the purchaser did not take notice of or rely on anything in this contract containing or giving rise to the error or misdescription.
- 6.3 However, this clause does not apply to the extent the purchaser knows the true position.
- 7 Claims by purchaser**
- Normally*, the purchaser can make a claim (including a claim under clause 6) before completion only by *servicing* it with a statement of the amount claimed, and if the purchaser makes one or more claims before completion –
- 7.1 the vendor can *rescind* if in the case of claims that are not claims for delay –
- 7.1.1 the total amount claimed exceeds 5% of the price;
- 7.1.2 the vendor *serves* notice of intention to *rescind*; and
- 7.1.3 the purchaser does not *serve* notice waiving the claims *within 14 days* after that *service*; and
- 7.2 if the vendor does not *rescind*, the *parties* must complete and if this contract is completed –
- 7.2.1 the lesser of the total amount claimed and 10% of the price must be paid out of the price to and held by the *depositholder* until the claims are finalised or lapse;
- 7.2.2 the amount held is to be invested in accordance with clause 2.9;
- 7.2.3 the claims must be finalised by an arbitrator appointed by the *parties* or, if an appointment is not made *within 1 month* of completion, by an arbitrator appointed by the President of the Law Society at the request of a *party* (in the latter case the *parties* are bound by the terms of the Conveyancing Arbitration Rules approved by the Law Society as at the date of the appointment);
- 7.2.4 the purchaser is not entitled, in respect of the claims, to more than the total amount claimed and the costs of the purchaser;
- 7.2.5 net interest on the amount held must be paid to the *parties* in the same proportion as the amount held is paid; and
- 7.2.6 if the *parties* do not appoint an arbitrator and neither *party* requests the President to appoint an arbitrator *within 3 months* after completion, the claims lapse and the amount belongs to the vendor.
- 8 Vendor's rights and obligations**
- 8.1 The vendor can *rescind* if –
- 8.1.1 the vendor is, on reasonable grounds, unable or unwilling to comply with a *requisition*;
- 8.1.2 the vendor *serves* a notice of intention to *rescind* that specifies the *requisition* and those grounds; and
- 8.1.3 the purchaser does not *serve* a notice waiving the *requisition within 14 days* after that *service*.

- 8.2 If the vendor does not comply with this contract (or a notice under or relating to it) in an essential respect, the purchaser can *terminate* by *serving* a notice. After the *termination* –
- 8.2.1 the purchaser can recover the deposit and any other money paid by the purchaser under this contract;
- 8.2.2 the purchaser can sue the vendor to recover damages for breach of contract; and
- 8.2.3 if the purchaser has been in possession a *party* can claim for a reasonable adjustment.
- 9 Purchaser's default**
- If the purchaser does not comply with this contract (or a notice under or relating to it) in an essential respect, the vendor can *terminate* by *serving* a notice. After the *termination* the vendor can –
- 9.1 keep or recover the deposit (to a maximum of 10% of the price);
- 9.2 hold any other money paid by the purchaser under this contract as security for anything recoverable under this clause –
- 9.2.1 for 12 months after the *termination*; or
- 9.2.2 if the vendor commences proceedings under this clause *within* 12 months, until those proceedings are concluded; and
- 9.3 sue the purchaser either –
- 9.3.1 where the vendor has resold the *property* under a contract made *within* 12 months after the *termination*, to recover –
- the deficiency on resale (with credit for any of the deposit kept or recovered and after allowance for any capital gains tax or goods and services tax payable on anything recovered under this clause); and
 - the reasonable costs and expenses arising out of the purchaser's non-compliance with this contract or the notice and of resale and any attempted resale; or
- 9.3.2 to recover damages for breach of contract.
- 10 Restrictions on rights of purchaser**
- 10.1 The purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of –
- 10.1.1 the ownership or location of any fence as defined in the Dividing Fences Act 1991;
- 10.1.2 a service for the *property* being a joint service or passing through another property, or any service for another property passing through the *property* ('service' includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water service);
- 10.1.3 a wall being or not being a party wall in any sense of that term or the *property* being affected by an easement for support or not having the benefit of an easement for support;
- 10.1.4 any change in the *property* due to fair wear and tear before completion;
- 10.1.5 a promise, representation or statement about this contract, the *property* or the title, not set out or referred to in this contract;
- 10.1.6 a condition, exception, reservation or restriction in a Crown grant;
- 10.1.7 the existence of any authority or licence to explore or prospect for gas, minerals or petroleum;
- 10.1.8 any easement or restriction on use the substance of either of which is disclosed in this contract or any non-compliance with the easement or restriction on use; or
- 10.1.9 anything the substance of which is disclosed in this contract (except a caveat, charge, mortgage, priority notice or writ).
- 10.2 The purchaser cannot *rescind* or *terminate* only because of a defect in title to or quality of the inclusions.
- 10.3 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* or require the vendor to change the nature of the title disclosed in this contract (for example, to remove a caution evidencing qualified title, or to lodge a plan of survey as regards limited title).
- 11 Compliance with work orders**
- 11.1 *Normally*, the vendor must by completion comply with a *work order* made on or before the contract date and if this contract is completed the purchaser must comply with any other *work order*.
- 11.2 If the purchaser complies with a *work order*, and this contract is *rescinded* or *terminated*, the vendor must pay the expense of compliance to the purchaser.
- 12 Certificates and inspections**
- The vendor must do everything reasonable to enable the purchaser, subject to the rights of any tenant –
- 12.1 to have the *property* inspected to obtain any certificate or report reasonably required;
- 12.2 to apply (if necessary in the name of the vendor) for –
- 12.2.1 any certificate that can be given in respect of the *property* under *legislation*; or
- 12.2.2 a copy of any approval, certificate, consent, direction, notice or order in respect of the *property* given under *legislation*, even if given after the contract date; and
- 12.3 to make 1 inspection of the *property* in the 3 days before a time appointed for completion.

13 Goods and services tax (GST)

- 13.1 Terms used in this clause which are not defined elsewhere in this contract and have a defined meaning in the *GST Act* have the same meaning in this clause.
- 13.2 *Normally*, if a *party* must pay the price or any other amount to the other *party* under this contract, GST is not to be added to the price or amount.
- 13.3 If under this contract a *party* must make an adjustment or payment for an expense of another party or pay an expense payable by or to a third party (for example, under clauses 14 or 20.7) –
- 13.3.1 the *party* must adjust or pay on completion any GST added to or included in the expense; but
- 13.3.2 the amount of the expense must be reduced to the extent the party receiving the adjustment or payment (or the representative member of a GST group of which that party is a member) is entitled to an input tax credit for the expense; and
- 13.3.3 if the adjustment or payment under this contract is consideration for a taxable supply, an amount for GST must be added at the *GST rate*.
- 13.4 If this contract says this sale is the supply of a going concern –
- 13.4.1 the *parties* agree the supply of the *property* is a supply of a going concern;
- 13.4.2 the vendor must, between the contract date and completion, carry on the enterprise conducted on the land in a proper and business-like way;
- 13.4.3 if the purchaser is not registered by the date for completion, the *parties* must complete and the purchaser must pay on completion, in addition to the price, an amount being the price multiplied by the *GST rate* ("the retention sum"). The retention sum is to be held by the *depositholder* and dealt with as follows –
- if *within* 3 months of completion the purchaser *serves* a letter from the Australian Taxation Office stating the purchaser is registered with a date of effect of registration on or before completion, the *depositholder* is to pay the retention sum to the purchaser; but
 - if the purchaser does not *serve* that letter *within* 3 months of completion, the *depositholder* is to pay the retention sum to the vendor; and
- 13.4.4 if the vendor, despite clause 13.4.1, *serves* a letter from the Australian Taxation Office stating the vendor has to pay GST on the supply, the purchaser must pay to the vendor on demand the amount of GST assessed.
- 13.5 *Normally*, the vendor promises the margin scheme will not apply to the supply of the *property*.
- 13.6 If this contract says the margin scheme is to apply in making the taxable supply, the *parties* agree that the margin scheme is to apply to the sale of the *property*.
- 13.7 If this contract says the sale is not a taxable supply –
- 13.7.1 the purchaser promises that the *property* will not be used and represents that the purchaser does not intend the *property* (or any part of the *property*) to be used in a way that could make the sale a taxable supply to any extent; and
- 13.7.2 the purchaser must pay the vendor on completion in addition to the price an amount calculated by multiplying the price by the *GST rate* if this sale is a taxable supply to any extent because of –
- a breach of clause 13.7.1; or
 - something else known to the purchaser but not the vendor.
- 13.8 If this contract says this sale is a taxable supply in full and does not say the margin scheme applies to the *property*, the vendor must pay the purchaser on completion an amount of one-eleventh of the price if –
- 13.8.1 this sale is not a taxable supply in full; or
- 13.8.2 the margin scheme applies to the *property* (or any part of the *property*).
- 13.9 If this contract says this sale is a taxable supply to an extent –
- 13.9.1 clause 13.7.1 does not apply to any part of the *property* which is identified as being a taxable supply; and
- 13.9.2 the payments mentioned in clauses 13.7 and 13.8 are to be recalculated by multiplying the relevant payment by the proportion of the price which represents the value of that part of the *property* to which the clause applies (the proportion to be expressed as a number between 0 and 1). Any evidence of value must be obtained at the expense of the vendor.
- 13.10 *Normally*, on completion the vendor must give the recipient of the supply a tax invoice for any taxable supply by the vendor by or under this contract.
- 13.11 The vendor does not have to give the purchaser a tax invoice if the margin scheme applies to a taxable supply.
- 13.12 If the vendor is liable for GST on rents or profits due to issuing an invoice or receiving consideration before completion, any adjustment of those amounts must exclude an amount equal to the vendor's GST liability.
- 13.13 If the vendor *serves* details of a *GSTRW payment* which the purchaser must make, the purchaser does not have to complete earlier than 5 *business days* after that *service* and clause 21.3 does not apply to this provision.
- 13.14 If the purchaser must make a *GSTRW payment* the purchaser must, at least 2 *business days* before the date for completion, *serve* evidence of submission of a *GSTRW payment* notification form to the Australian Taxation Office by the purchaser or, if a direction under either clause 4.8 or clause 30.4 has been given, by the transferee named in the transfer the subject of that direction.

14 Adjustments

- 14.1 *Normally*, the vendor is entitled to the rents and profits and will be liable for all rates, water, sewerage and drainage service and usage charges, land tax, levies and all other periodic outgoings up to and including the *adjustment date* after which the purchaser will be entitled and liable.
- 14.2 The *parties* must make any necessary adjustment on completion, and –
- 14.2.1 the purchaser must provide the vendor with *adjustment figures* at least 2 *business days* before the date for completion; and
- 14.2.2 the vendor must confirm the *adjustment figures* at least 1 *business day* before the date for completion.
- 14.3 If an amount that is adjustable under this contract has been reduced under *legislation*, the *parties* must on completion adjust the reduced amount.
- 14.4 The *parties* must not adjust surcharge land tax (as defined in the Land Tax Act 1956) but must adjust any other land tax for the year current at the *adjustment date* –
- 14.4.1 only if land tax has been paid or is payable for the year (whether by the vendor or by a predecessor in title) and this contract says that land tax is adjustable;
- 14.4.2 by adjusting the amount that would have been payable if at the start of the year –
- the person who owned the land owned no other land;
 - the land was not subject to a special trust or owned by a non-concessional company; and
 - if the land (or part of it) had no separate taxable value, by calculating its separate taxable value on a proportional area basis.
- 14.5 The *parties* must not adjust any first home buyer choice property tax.
- 14.6 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.
- 14.7 If on completion the last bill for a water, sewerage or drainage usage charge is for a period ending before the *adjustment date*, the vendor is liable for an amount calculated by dividing the bill by the number of days in the period then multiplying by the number of unbilled days up to and including the *adjustment date*.
- 14.8 The vendor is liable for any amount recoverable for work started on or before the contract date on the *property* or any adjoining footpath or road.

15 Date for completion

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

16 Completion**• Vendor**

- 16.1 *Normally*, on completion the vendor must cause the legal title to the *property* (being the estate disclosed in this contract) to pass to the purchaser free of any charge, mortgage or other interest, subject to any necessary registration.
- 16.2 The legal title to the *property* does not pass before completion.
- 16.3 If the vendor gives the purchaser a document (other than the transfer) that needs to be lodged for registration, the vendor must pay the lodgment fee to the purchaser.
- 16.4 If a *party* serves a land tax certificate showing a charge on any of the land, by completion the vendor must do all things and pay all money required so that the charge is no longer effective against the land.

• Purchaser

- 16.5 On completion the purchaser must pay to the vendor –
- 16.5.1 the price less any –
- deposit paid;
 - *FRCGW remittance* payable;
 - *GSTRW payment*; and
 - amount payable by the vendor to the purchaser under this contract; and
- 16.5.2 any other amount payable by the purchaser under this contract.
- 16.6 If any of the deposit is not covered by a *deposit-bond*, at least 1 *business day* before the date for completion the purchaser must give the vendor an order signed by the purchaser authorising the *depositholder* to account to the vendor for the deposit, to be held by the vendor in escrow until completion.
- 16.7 On completion the deposit belongs to the vendor.

17 Possession

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

18 Possession before completion

- 18.1 This clause applies only if the vendor gives the purchaser possession of the *property* before completion.
- 18.2 The purchaser must not before completion –
- 18.2.1 let or part with possession of any of the *property*;
 - 18.2.2 make any change or structural alteration or addition to the *property*; or
 - 18.2.3 contravene any agreement between the *parties* or any direction, document, *legislation*, notice or order affecting the *property*.
- 18.3 The purchaser must until completion –
- 18.3.1 keep the *property* in good condition and repair having regard to its condition at the giving of possession; and
 - 18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.
- 18.4 The risk as to damage to the *property* passes to the purchaser immediately after the purchaser enters into possession.
- 18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor –
- 18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and
 - 18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate prescribed under s101 Civil Procedure Act 2005.
- 18.6 If this contract is *rescinded* or *terminated* the purchaser must immediately vacate the *property*.
- 18.7 If the *parties* or their *solicitors* on their behalf do not agree in writing to a fee or rent, none is payable.

19 Rescission of contract

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

20 Miscellaneous

- 20.1 The *parties* acknowledge that anything stated in this contract to be attached was attached to this contract by the vendor before the purchaser signed it and is part of this contract.
- 20.2 Anything attached to this contract is part of this contract.
- 20.3 An area, bearing or dimension in this contract is only approximate.
- 20.4 If a *party* consists of 2 or more persons, this contract benefits and binds them separately and together.
- 20.5 A *party's solicitor* can receive any amount payable to the *party* under this contract or direct in writing that it is to be paid to another person.
- 20.6 A document under or relating to this contract is –
- 20.6.1 signed by a *party* if it is signed by the *party* or the *party's solicitor* (apart from a direction under clause 4.8 or clause 30.4);
 - 20.6.2 *served* if it is *served* by the *party* or the *party's solicitor*;
 - 20.6.3 *served* if it is *served* on the *party's solicitor*, even if the *party* has died or any of them has died;
 - 20.6.4 *served* if it is *served* in any manner provided in s170 of the Conveyancing Act 1919;
 - 20.6.5 *served* if it is sent by email or fax to the *party's solicitor*, unless in either case it is not received;
 - 20.6.6 *served* on a person if it (or a copy of it) comes into the possession of the person;
 - 20.6.7 *served* at the earliest time it is *served*, if it is *served* more than once; and
 - 20.6.8 *served* if it is provided to or by the *party's solicitor* or an *authorised Subscriber* by means of an *Electronic Workspace* created under clause 4. However, this does not apply to a notice making an obligation essential, or a notice of *rescission* or *termination*.
- 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 4, 11, 13, 14, 17, 24, 30 and 31 continue after completion, whether or not other rights continue.
- 20.9 The vendor does not promise, represent or state that the purchaser has any cooling off rights.
- 20.10 The vendor does not promise, represent or state that any attached survey report is accurate or current.
- 20.11 A reference to any *legislation* (including any percentage or rate specified in *legislation*) is also a reference to any corresponding later *legislation*.
- 20.12 Each *party* must do whatever is necessary after completion to carry out the *party's* obligations under this contract.
- 20.13 Neither taking possession nor *servicing* a transfer of itself implies acceptance of the *property* or the title.

- 20.14 The details and information provided in this contract (for example, on pages 1 - 4) 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.
- 20.16 Each *party* consents to –
- 20.16.1 any *party* signing this contract electronically; and
- 20.16.2 the making of this contract by the exchange of counterparts delivered by email, or by such other electronic means as may be agreed in writing by the *parties*.
- 20.17 Each *party* agrees that electronic signing by a *party* identifies that *party* and indicates that *party's* intention to be bound by this contract.
- 21 Time limits in these provisions**
- 21.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.
- 21.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.
- 21.3 The time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.
- 21.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.
- 21.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clauses 2 and 3.2.
- 21.6 *Normally*, the time by which something must be done is fixed but not essential.
- 22 Foreign Acquisitions and Takeovers Act 1975**
- 22.1 The purchaser promises that the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer under the Foreign Acquisitions and Takeovers Act 1975.
- 22.2 This promise is essential and a breach of it entitles the vendor to *terminate*.
- 23 Strata or community title**
- **Definitions and modifications**
- 23.1 This clause applies only if the land (or part of it) is a lot in a strata, neighbourhood, precinct or community scheme (or on completion is to be a lot in a scheme of that kind).
- 23.2 In this contract –
- 23.2.1 'change', in relation to a scheme, means –
- a registered or registrable change from by-laws set out in this contract;
 - a change from a development or management contract or statement set out in this contract; or
 - a change in the boundaries of common property;
- 23.2.2 'common property' includes association property for the scheme or any higher scheme;
- 23.2.3 'contribution' includes an amount payable under a by-law;
- 23.2.4 'information certificate' includes a certificate under s184 Strata Schemes Management Act 2015 and s171 Community Land Management Act 2021;
- 23.2.5 'interest notice' includes a strata interest notice under s22 Strata Schemes Management Act 2015 and an association interest notice under s20 Community Land Management Act 2021;
- 23.2.6 'normal expenses', in relation to an owners corporation for a scheme, means normal operating expenses usually payable from the administrative fund of an owners corporation for a scheme of the same kind;
- 23.2.7 'owners corporation' means the owners corporation or the association for the scheme or any higher scheme;
- 23.2.8 'the *property*' includes any interest in common property for the scheme associated with the lot; and
- 23.2.9 'special expenses', in relation to an owners corporation, means its actual, contingent or expected expenses, except to the extent they are –
- normal expenses;
 - due to fair wear and tear;
 - disclosed in this contract; or
 - covered by moneys held in the capital works fund.
- 23.3 Clauses 11, 14.8 and 18.4 do not apply to an obligation of the owners corporation, or to property insurable by it.
- 23.4 Clauses 14.4.2 and 14.6 apply but on a unit entitlement basis instead of an area basis.
- **Adjustments and liability for expenses**
- 23.5 The *parties* must adjust under clause 14.1 –
- 23.5.1 a regular periodic contribution;
- 23.5.2 a contribution which is not a regular periodic contribution but is disclosed in this contract; and
- 23.5.3 on a unit entitlement basis, any amount paid by the vendor for a normal expense of the owners corporation to the extent the owners corporation has not paid the amount to the vendor.

- 23.6 If a contribution is not a regular periodic contribution and is not disclosed in this contract –
- 23.6.1 the vendor is liable for it if it was determined on or before the contract date, even if it is payable by instalments; and
- 23.6.2 the purchaser is liable for all contributions determined after the contract date.
- 23.7 The vendor must pay or allow to the purchaser on completion the amount of any unpaid contributions for which the vendor is liable under clause 23.6.1.
- 23.8 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of –
- 23.8.1 an existing or future actual, contingent or expected expense of the owners corporation;
- 23.8.2 a proportional unit entitlement of the lot or a relevant lot or former lot, apart from a claim under clause 6; or
- 23.8.3 a past or future change in the scheme or a higher scheme.
- 23.9 However, the purchaser can *rescind* if –
- 23.9.1 the special expenses of the owners corporation at the later of the contract date and the creation of the owners corporation when calculated on a unit entitlement basis (and, if more than one lot or a higher scheme is involved, added together), less any contribution paid by the vendor, are more than 1% of the price;
- 23.9.2 in the case of the lot or a relevant lot or former lot in a higher scheme, a proportional unit entitlement for the lot is disclosed in this contract but the lot has a different proportional unit entitlement at the contract date or at any time before completion;
- 23.9.3 a change before the contract date or before completion in the scheme or a higher scheme materially prejudices the purchaser and is not disclosed in this contract; or
- 23.9.4 a resolution is passed by the owners corporation before the contract date or before completion to give to the owners in the scheme for their consideration a strata renewal plan that has not lapsed at the contract date and there is not attached to this contract a strata renewal proposal or the strata renewal plan.
- **Notices, certificates and inspections**
- 23.10 Before completion, the purchaser must *serve* a copy of an interest notice addressed to the owners corporation and signed by the purchaser.
- 23.11 After completion, the purchaser must insert the date of completion in the interest notice and send it to the owners corporation.
- 23.12 The vendor can complete and send the interest notice as agent for the purchaser.
- 23.13 The vendor must *serve* at least 7 days before the date for completion, an information certificate for the lot, the scheme or any higher scheme which relates to a period in which the date for completion falls.
- 23.14 The purchaser does not have to complete earlier than 7 days after *service* of the information certificate and clause 21.3 does not apply to this provision. On completion the purchaser must pay the vendor the prescribed fee for the information certificate.
- 23.15 The vendor authorises the purchaser to apply for the purchaser's own information certificate.
- 23.16 The vendor authorises the purchaser to apply for and make an inspection of any record or other document in the custody or control of the owners corporation or relating to the scheme or any higher scheme.
- **Meetings of the owners corporation**
- 23.17 If a general meeting of the owners corporation is convened before completion –
- 23.17.1 if the vendor receives notice of it, the vendor must immediately notify the purchaser of it; and
- 23.17.2 after the expiry of any cooling off period, the purchaser can require the vendor to appoint the purchaser (or the purchaser's nominee) to exercise any voting rights of the vendor in respect of the lot at the meeting.
- 24 Tenancies**
- 24.1 If a tenant has not made a payment for a period preceding or current at the *adjustment date* –
- 24.1.1 for the purposes of clause 14.2, the amount is to be treated as if it were paid; and
- 24.1.2 the purchaser assigns the debt to the vendor on completion and will if required give a further assignment at the vendor's expense.
- 24.2 If a tenant has paid in advance of the *adjustment date* any periodic payment in addition to rent, it must be adjusted as if it were rent for the period to which it relates.
- 24.3 If the *property* is to be subject to a tenancy on completion or is subject to a tenancy on completion –
- 24.3.1 the vendor authorises the purchaser to have any accounting records relating to the tenancy inspected and audited and to have any other document relating to the tenancy inspected;
- 24.3.2 the vendor must *serve* any information about the tenancy reasonably requested by the purchaser before or after completion; and
- 24.3.3 *normally*, the purchaser can claim compensation (before or after completion) if –
- a disclosure statement required by the Retail Leases Act 1994 was not given when required;
 - such a statement contained information that was materially false or misleading;
 - a provision of the lease is not enforceable because of a non-disclosure in such a statement; or
 - the lease was entered into in contravention of the Retail Leases Act 1994.

- 24.4 If the *property* is subject to a tenancy on completion –
- 24.4.1 the vendor must allow or transfer –
- any remaining bond money or any other security against the tenant's default (to the extent the security is transferable);
 - any money in a fund established under the lease for a purpose and compensation for any money in the fund or interest earned by the fund that has been applied for any other purpose; and
 - any money paid by the tenant for a purpose that has not been applied for that purpose and compensation for any of the money that has been applied for any other purpose;
- 24.4.2 if the security is not transferable, each *party* must do everything reasonable to cause a replacement security to issue for the benefit of the purchaser and the vendor must hold the original security on trust for the benefit of the purchaser until the replacement security issues;
- 24.4.3 the vendor must give to the purchaser –
- at least 2 *business days* before the date for completion, a proper notice of the transfer (an attornment notice) addressed to the tenant, to be held by the purchaser in escrow until completion;
 - any certificate given under the Retail Leases Act 1994 in relation to the tenancy;
 - a copy of any disclosure statement given under the Retail Leases Act 1994;
 - a copy of any document served on the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion; and
 - any document served by the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion;
- 24.4.4 the vendor must comply with any obligation to the tenant under the lease, to the extent it is to be complied with by completion; and
- 24.4.5 the purchaser must comply with any obligation to the tenant under the lease, to the extent that the obligation is disclosed in this contract and is to be complied with after completion.
- 25 Qualified title, limited title and old system title**
- 25.1 This clause applies only if the land (or part of it) –
- 25.1.1 is under qualified, limited or old system title; or
- 25.1.2 on completion is to be under one of those titles.
- 25.2 The vendor must *serve* a proper abstract of title *within 7 days* after the contract date.
- 25.3 If an abstract of title or part of an abstract of title is attached to this contract or has been lent by the vendor to the purchaser before the contract date, the abstract or part is *served* on the contract date.
- 25.4 An abstract of title can be or include a list of documents, events and facts arranged (apart from a will or codicil) in date order, if the list in respect of each document –
- 25.4.1 shows its date, general nature, names of parties and any registration number; and
- 25.4.2 has attached a legible photocopy of it or of an official or registration copy of it.
- 25.5 An abstract of title –
- 25.5.1 must start with a good root of title (if the good root of title must be at least 30 years old, this means 30 years old at the contract date);
- 25.5.2 in the case of a leasehold interest, must include an abstract of the lease and any higher lease;
- 25.5.3 *normally*, need not include a Crown grant; and
- 25.5.4 need not include anything evidenced by the Register kept under the Real Property Act 1900.
- 25.6 In the case of land under old system title –
- 25.6.1 in this contract 'transfer' means conveyance;
- 25.6.2 the purchaser does not have to *serve* the 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 On completion the vendor must give the purchaser any *document of title* that relates only to the *property*.
- 25.9 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.
- 25.10 The vendor must give a proper covenant to produce where relevant.
- 25.11 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.
- 25.12 If the vendor is unable to produce an original document in the chain of title, the purchaser will accept a photocopy from the *Land Registry* 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.

27 Consent to transfer

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

28 Unregistered plan

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

29 Conditional contract

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

- 29.8 If the *parties* cannot lawfully complete without the event happening –
- 29.8.1 if the event does not happen *within* the time for it to happen, either *party* can *rescind*;
- 29.8.2 if the event involves an approval and an application for the approval is refused, either *party* can *rescind*;
- 29.8.3 the date for completion becomes the later of the date for completion and 21 days after either *party* serves notice of the event happening.
- 29.9 A *party* cannot *rescind* under clauses 29.7 or 29.8 after the event happens.
- 30 Manual transaction**
- 30.1 This clause applies if this transaction is to be conducted as a *manual transaction*.
- **Transfer**
- 30.2 *Normally*, the purchaser must *serve* the transfer at least 7 days before the date for completion.
- 30.3 If any information needed for the transfer is not disclosed in this contract, the vendor must *serve* it.
- 30.4 If the purchaser *serves* a transfer and the transferee is not the purchaser, the purchaser must give the vendor a direction signed by the purchaser personally for that transfer.
- 30.5 The vendor can require the purchaser to include a 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 burdened and benefited.
- **Place for completion**
- 30.6 *Normally*, the *parties* must complete at the completion address, which is –
- 30.6.1 if a special completion address is stated in this contract - that address; or
- 30.6.2 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
- 30.6.3 in any other case - the vendor's *solicitor's* address stated in this contract.
- 30.7 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.
- 30.8 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.
- **Payments on completion**
- 30.9 On completion the purchaser must pay to the vendor the amounts referred to in clauses 16.5.1 and 16.5.2, by cash (up to \$2,000) or *settlement cheque*.
- 30.10 *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 –
- 30.10.1 the amount is to be treated as if it were paid; and
- 30.10.2 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).
- 30.11 If the vendor requires more than 5 *settlement cheques*, the vendor must pay \$10 for each extra *cheque*.
- 30.12 If the purchaser must make a *GSTRW payment* the purchaser must –
- 30.12.1 produce on completion a *settlement cheque* for the *GSTRW payment* payable to the Deputy Commissioner of Taxation;
- 30.12.2 forward the *settlement cheque* to the payee immediately after completion; and
- 30.12.3 *serve* evidence of receipt of payment of the *GSTRW payment* and a copy of the settlement date confirmation form submitted to the Australian Taxation Office.
- 30.13 If the purchaser must pay an *FRCGW remittance*, the purchaser must –
- 30.13.1 produce on completion a *settlement cheque* for the *FRCGW remittance* payable to the Deputy Commissioner of Taxation;
- 30.13.2 forward the *settlement cheque* to the payee immediately after completion; and
- 30.13.3 *serve* evidence of receipt of payment of the *FRCGW remittance*.
- 31 Foreign Resident Capital Gains Withholding**
- 31.1 This clause applies only if –
- 31.1.1 the sale is not an excluded transaction within the meaning of s14-215 of Schedule 1 to the *TA Act*; and
- 31.1.2 a *clearance certificate* in respect of every vendor is not attached to this contract.
- 31.2 If the vendor *serves* any *clearance certificate* or *variation*, the purchaser does not have to complete earlier than 5 *business days* after that *service* and clause 21.3 does not apply to this provision.
- 31.3 The purchaser must at least 2 *business days* before the date for completion, *serve* evidence of submission of a purchaser payment notification to the Australian Taxation Office by the purchaser or, if a direction under either clause 4.8 or clause 30.4 has been given, by the transferee named in the transfer the subject of that direction.
- 31.4 The vendor cannot refuse to complete if the purchaser complies with clause 31.3 and, as applicable, clauses 4.10 or 30.13.
- 31.5 If the vendor *serves* in respect of every vendor either a *clearance certificate* or a *variation* to 0.00 percent, clauses 31.3 and 31.4 do not apply.

32 Residential off the plan contract

32.1 This clause applies if this contract is an off the plan contract within the meaning of Division 10 of Part 4 of the Conveyancing Act 1919 (the Division).

32.2 No provision of this contract has the effect of excluding, modifying or restricting the operation of the Division.

32.3 If the purchaser makes a claim for compensation under the terms prescribed by sections 4 to 6 of Schedule 3 to the Conveyancing (Sale of Land) Regulation 2022 –

32.3.1 the purchaser cannot make a claim under this contract about the same subject matter, including a claim under clauses 6 or 7; and

32.3.2 the claim for compensation is not a claim under this contract.

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SPECIAL CONDITIONS CONTRACT FOR THE SALE OF LAND

The terms and conditions of the printed contract to which these special conditions are annexed must be read subject to these special conditions. If there is a conflict between the printed contract and these special conditions then these special conditions will prevail.

33. Notice to Complete

If either party fails to complete this contract by the due date then the non-defaulting party may issue a Notice to Complete on the defaulting party requiring that party to complete this contract no later than fourteen (14) days from the service of such notice and may make time of the essence for completion at the end of the fourteen (14) day period. The said period of fourteen (14) days shall be deemed to be a proper and reasonable time.

34. Interest

- (a) If by reason of default by the Purchaser completion does not take place on or before the due date, the Purchaser will in addition to the obligation to pay the Purchase price, pay to the Vendor on completion, interest on the price at the rate of ten percent (10%) per annum calculated daily and computed from the due date to the date of actual completion (inclusive). The Vendor's right to interest under this condition is conditional upon the Vendor being ready, willing and able to complete the sale on the due date. If the Vendor is not so ready, willing and able, the Vendor's right to interest will only commence upon the day on which the Vendor is ready, willing and able to complete the sale. This is an essential condition of this contract.
- (b) If interest is payable under sub-clause (a) above, then the Purchaser will pay the sum of Three Hundred Dollars (\$300.00) plus GST to cover legal costs and other expenses incurred by the Vendor as a consequence of the delay, to be allowed by the Purchaser as an additional adjustment on completion.

35. Purchaser Acknowledgement

The Purchasers acknowledge that the property is purchased in its present state, order and condition and that no warranties or representations made by or on behalf of the Vendor are relied on by the Purchaser(s) who shall make no objection, requisition or claim for compensation in respect thereto nor call upon the Vendor to carry out any repairs whatsoever in relation to the said property including any repairs requested by the relevant council to obtain the issue of a Building Certificate pursuant to Section 172 of the Local Government Act, or pursuant to Section 149D of the Environmental Planning and Assessment Act, 1979 (as amended).

36. Warranty re Agent

The Purchaser warrants to the Vendor that it was not introduced to the property by any agent other than the agent referred to herein, nor was any other agent the effective cause of the sale herein provided for. In the event that the Purchaser is in breach of such warranty the Purchaser hereby agrees to indemnify and keep indemnified the Vendor against any claim for commission by any agent (other than the agent referred to herein) arising out of the sale herein provided. This condition shall not merge on completion of this contract.

37. Death/Incapacity of Party

- (a) If the Purchasers or Vendors or any one or more of them prior to completion:
 - (i) dies; or
 - (ii) becomes mentally incapacitated

then either party may, by notice in writing to the other party's solicitor, rescind this contract whereupon the provisions of Clause 19 will apply;

- (b) If the Purchaser or Vendors or any one or more of them prior to completion become bankrupt or enter into any scheme or make any assignment for the benefit of creditors or, being a company, resolve to go into liquidation or have a petition for winding-up of the party presented or enter into any Scheme of Arrangement with its creditors under Part VIII of the Corporations Law (as amended) or should any liquidator, receiver or voluntary administrator be appointed in respect of the said party then that party shall be deemed to be in default of this contract.

38. Requisitions

Notwithstanding any other provision of this contract to the contrary, the Purchaser agrees that the only form of requisitions that the Vendor will be obliged to complete are in the form annexed hereto.

39. Entire Agreement

- (a) Notwithstanding the provisions of any other clause or special condition of this contract, it is agreed that:
 - (i) this contract constitutes the whole agreement between the parties and whole of any promises, representations, warranties or undertakings relied upon by the parties and also the whole of the conditions of sale between the parties.
 - (ii) no promise, representation, warranty, undertaking or condition will be deemed to be implied in this contract or to arise between the parties by way of collateral or other agreement or by reason of any promise, representation, warranty or undertaking given or made by any party to the other on or prior to the making of this contract;
 - (iii) the Purchaser has not been induced to enter into this contract by any statement representation or promise made or given by or on behalf of the Vendor;

AND the Purchaser agrees that no objection requisition or claim for compensation in relation to any of the foregoing matters will be made.

- (b) Notwithstanding Clause 7 of this contract, the parties agree that any claim for compensation will be deemed to be an objection or requisition for the purposes of Clause 8 of those standard printed terms of this contract and such objection or requisition will constitute "reasonable grounds" at the Vendor's option for the purposes of Clause 8.

40. Claims by Purchaser

- (a) Notwithstanding any other provision in this contract to the contrary, the words "5% of the price" shall be deleted from sub-clause 7.1.1 and replaced with the words "\$250.00".
- (b) Notwithstanding the provisions of Clauses 6 and 7 the parties expressly agree that any claim for compensation and/or any objection by the Purchaser will be deemed to be a requisition for the purposes of Clause 8 entitling the Vendor to rescind this contract.

41. Alterations

Each party hereby authorises his/her Solicitor/Conveyancer to make alterations to this contract for sale up until the date of this contract, regardless of whether that party has previously signed this contract for sale. Such alterations may include the addition or omission of clause(s), terms, conditions or annexures, and will be binding upon the party hereby deemed to have authorised same.

42. Discharge or Withdrawal of Documents

On or before completion, any mortgage or caveat or writ must be discharged, withdrawn or cancelled (as the case may be) or, in the case of a mortgage or caveat, an executed discharge or withdrawal handed over on completion.

43. Trustee Warranty

- (a) If the Purchaser is a trustee then the Purchaser declares that:
 - (i) it is the sole trustee; and
 - (ii) it is not in breach of its obligations under the trust; and
 - (iii) is or has a right to be the legal owner of the property to be sold pursuant to this contract; and
 - (iv) has the power and the authority to enter into this contract.
- (b) If the Purchaser is a trustee then the Purchaser is liable under this contract both personally and as trustee.
- (c) The Purchaser must ensure that up until completion;
 - (i) the Purchaser remains the sole trustee of the trust;
 - (ii) the trust is not vested;
 - (iii) the trustee's right of indemnity against the trust property is not reduced;
 - (iv) the trust documents are not varied;
 - (v) there is no delegation of trust powers;
 - (vi) any power of appointment is not exercised.

44. Purchaser Acknowledgements

(a) No obligation to disclose

The Purchaser acknowledges and agrees that:

- (i) the Vendor has no obligation to disclose to the Purchaser anything about the *State of the Property*; and
- (ii) the Vendor has not made any warranties or representations to the Purchaser about anything in relation to the *State of the Property*.

(b) No warranties or representations

If the Vendor or anyone else on behalf of the Vendor has made any warranties or representations to the Purchaser or anyone else on behalf of the Purchaser about the *State of the Property*, the Purchaser acknowledges and agrees that:

- (i) those warranties and representations are excluded from this agreement;
- (ii) it has not relied upon those warranties and representations;
- (iii) the only warranties and representations that it has relied upon are those contained in this agreement; and
- (iv) the Vendor may not have any proceedings brought against it in relation to any loss suffered or incurred by the Purchaser as a result of or in connection with those warranties and representations.

(c) Purchaser's own enquiries

The Purchaser acknowledges and agrees that:

- (i) it has had the opportunity to make its own enquiries and investigations into and about the *State of the Property*; and
- (ii) is in any event deemed to have made and relied upon its own inquiries and investigations into and about the *State of the Property*.

(d) State of the Property

The Purchaser purchases the Property on an *as is, where is* basis and the Purchaser will not make any claim against the Vendor for any loss suffered by the Purchaser as a result of or in connection with the *State of the Property*.

In this clause 43, the term *State of the Property* has its natural meaning and includes:

- (i) the condition of the property;
- (ii) the use to which the property has been or may be put;
- (iii) any encroachments onto or from the property;
- (iv) any misdescription of the property on the certificate(s) of title;

- (v) any deficiencies or inaccuracy in the area of measurement of the property in the certificate(s) of title;
- (vi) any planning, development or other restrictions on or in relation to the property;
- (vii) any contamination;
- (viii) any defects in the property, improvements and/or inclusions, patent or latent;
- (ix) any easements, rights, exceptions and/or reservations referred to in the certificate(s) of title to the property;
- (x) any other easements, rights, exceptions and/or reservations, statutory or otherwise affecting the property; and
- (xi) any other matter which may adversely affect the use, amenity or value of the property.

45. Guarantee Clause

If the purchaser is a company and/or trustee then this Clause applies:

- (a) The guarantor is _____
- (b) If the guarantor has not signed this clause, the Vendor may terminate this contract by serving a notice, but only within fourteen (14) days after the contract date.
- (c) In consideration of the vendor entering into this contract at the guarantor's request, the guarantor guarantees to the Vendor the performance of all of the Purchaser's obligations under this contract.
- (d) The guarantor:-
 - (i) will indemnify the Vendor against any claim, action, loss, damage, cost, liability, expense or payment incurred by the Vendor in connection with or arising from any breach or default by the Purchaser of its obligations under this contract; and
 - (ii) must pay on demand any money due to the Vendor under this indemnity.
- (e) The guarantor is liable with the Purchaser to the Vendor for:-
 - (i) the performance by the Purchaser of its obligations under this contract; and
 - (ii) any damage incurred by the Vendor as a result of the Purchaser's failure to perform its obligations under this contract or the termination of this contract by the Purchaser.
 - (iii) the guarantor must pay to the Vendor on written demand by the Vendor all expenses incurred by the Vendor in respect of the Vendor's exercise or attempted exercise of any right under this clause.

- (iv) if the Vendor assigns or transfers the benefit of this contract, the transferee receives the benefit of the guarantor's obligations under this clause.
- (f) The guarantor's obligations under this clause are not released, discharge or otherwise effected by:-
 - (i) the granting of any time, waiver, covenant not to sue or other indulgence;
 - (ii) the release or discharge of any person;
 - (iii) an arrangement, composition or compromise entered into by the Purchaser, the vendor, the guarantor or any other person;
 - (iv) any moratorium or other suspension of the right, power, authority, discretion or remedy conferred on the Purchaser by this contract, a statute, a court or otherwise;
 - (v) payment to the vendor, including payment which at or after the payment date is illegal, void, voidable, avoided or unenforceable; or
 - (vi) the winding up of the Purchaser;
 - (vii) the failure of one or more guarantors to execute this guarantee
 - (viii) the inability to enforce this guarantee against one or more guarantors for any reason.
 - (ix) the Purchaser being in breach of any Trust agreement or arrangement
 - (x) any restriction limitation or prohibition imposed on the Purchaser by any trust agreement
- (g) This clause binds the guarantor and the executors, administrators and assigns of the guarantor.
- (h) This clause operates as a Deed between the vendor and the guarantor.

This clause is executed as a Deed

Signed by

.....)
)
)
 in the presence of:)

.....
Signature of Witness

.....
Name of Witness

46. Execution of Contract

Both parties acknowledge and agree that: -

- a) This Contract may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument;
- b) For the purpose of the Electronic Transactions Act 2000, each of the parties consent to send and receive the executed counterparts by email;
- c) Submission of the executed counterpart for exchange by email will be accepted as a valid and binding execution of this Contract; and
- d) Neither party has an obligation to provide original signatures by mail or any other means.

47. Electronic Settlement

The parties agree that settlement of this matter is to occur online electronically through PEXA (Property Exchange Australia). Should the purchaser require settlement not to be conducted as an electronic transaction then the provisions of clause 30.3 do not apply and the Purchaser shall pay to the Vendor an amount of \$200.00 plus GST on settlement by way of an adjustment, being additional professional legal fees incurred by the Vendor as a consequence of the Purchaser not settling through PEXA, together with a sum of \$150.00 plus GST at settlement by way of an adjustment for Vendor's disbursement and legal agents costs (if required) associated with settlement which is not electronic through PEXA.

48. Sewer Diagram

- (a) The Vendor discloses and the Purchaser acknowledges that the attached are copies of all documents received from the sewer authority on the Vendor's application for a sewer diagram (**Sewer Document(s)**) and that the Vendor is unable to state with any certainty which of the documents described under box 8 or 9 under the List of Documents on page 2 of this Contract the Sewer Document(s) comprise.
- (b) The Purchaser shall raise no objection, requisition or claim for compensation, nor delay completion or have a right of rescission or termination in the event that the Sewer Document(s) are not as described in the List of Documents nor that the diagrams as described under boxes 8 or 9 are not available from the sewer authority.

49. Vendor Disclosure

The Vendor discloses and the Purchaser acknowledges that there is no Bank Guarantee or Directors personal Guarantees or Rental Bond held with respect to the Lease of the property.

The Purchaser shall raise no objection, requisition or claim for compensation, nor delay completion or have a right of rescission or termination in respect of the above disclosure.

50. Holiday Lettings

- (a) The Purchaser acknowledges that pursuant to a Variation of the Lease annexed to the Contract the Residential Units at the property are the responsibility of the Vendor. The Vendor is responsible for the letting, rental collection and management of the Residential Units, and the rents and profits with respect to the letting of the Residential Units are for the benefit of the Vendor.
- (b) The Vendor has appointed "A Perfect Stay/Byron Bay Holiday Rentals" to manage the letting of the Residential Units which are described on their website as "Quiksilver Apartments – The Pass".
- (c) The Purchaser agrees to honour all forward bookings for the Residential Units scheduled after the date for completion which have been made via "A Perfect Stay/Byron Bay Holiday Rentals".
- (d) The Vendor and the Purchaser agree that on completion, the Vendor will, subject to sub-clause (e) below, provide or arrange to be provided to the Purchaser all deposits received for holiday bookings relating to any periods post completion.
- (e) Prior to transferring to the Purchaser deposits held by the Vendor or on its behalf, the Vendor retains the right to deduct from those deposits such out of pocket charges and expenses reasonably incurred by the Vendor or on its behalf and which relate to any period pre-completion, including but not limited to credit card fees, agency fees and web nightly fees, cleaning fees etc.
- (f) Following completion, the Purchaser will, subject to sub-clause (g) below, receive the benefit of all forward bookings received by the Vendor prior to completion and which relate to any period post completion. In relation to all such bookings, the Vendor will provide to the Purchaser on completion detail of the bookings held.
- (g) Notwithstanding the contents of this special condition 50:
 - (i) the Purchaser acknowledges that bookings are sometimes cancelled by tenants prior to the tenant taking occupation and renting the property;
 - (ii) the Vendor makes no representation and gives no warranty that the bookings received as at the date of this contract will necessarily result in the tenant taking occupation and renting the property for the periods booked;
 - (iii) the Vendor will not be liable to the Purchaser for any financial loss or loss of expected rental income if bookings are cancelled at any time before or after the date of completion and the Purchaser irrevocably and unconditionally releases the Vendor absolutely from all such liability to the fullest extent permitted by law.
- (f) This clause will not merge upon completion.



FOLIO: 6/255629

SEARCH DATE	TIME	EDITION NO	DATE
28/8/2023	1:07 PM	11	1/9/2018

LAND

LOT 6 IN DEPOSITED PLAN 255629
AT BYRON BAY
LOCAL GOVERNMENT AREA BYRON
PARISH OF BYRON COUNTY OF ROUS
TITLE DIAGRAM DP255629

FIRST SCHEDULE

QUICKIEBB PTY LTD

(T AJ937974)

SECOND SCHEDULE (5 NOTIFICATIONS)

- 1 LAND EXCLUDES MINERALS
- 2 AG285271 RESTRICTION(S) ON THE USE OF LAND
- 3 AG285272 RESTRICTION(S) ON THE USE OF LAND
- 4 AH37645 LEASE TO QS RETAIL PTY LIMITED EXPIRES: 14/6/2021.
OPTION OF RENEWAL: TWO PERIODS OF FIVE YEARS.
AM203300 TRANSFER OF LEASE AH37645 LESSEE NOW UG
MANUFACTURING CO. PTY LTD
- 5 AJ937975 MORTGAGE TO AUSTRALIA AND NEW ZEALAND BANKING GROUP
LIMITED

NOTATIONS

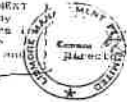
UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

PLAN FORM 2

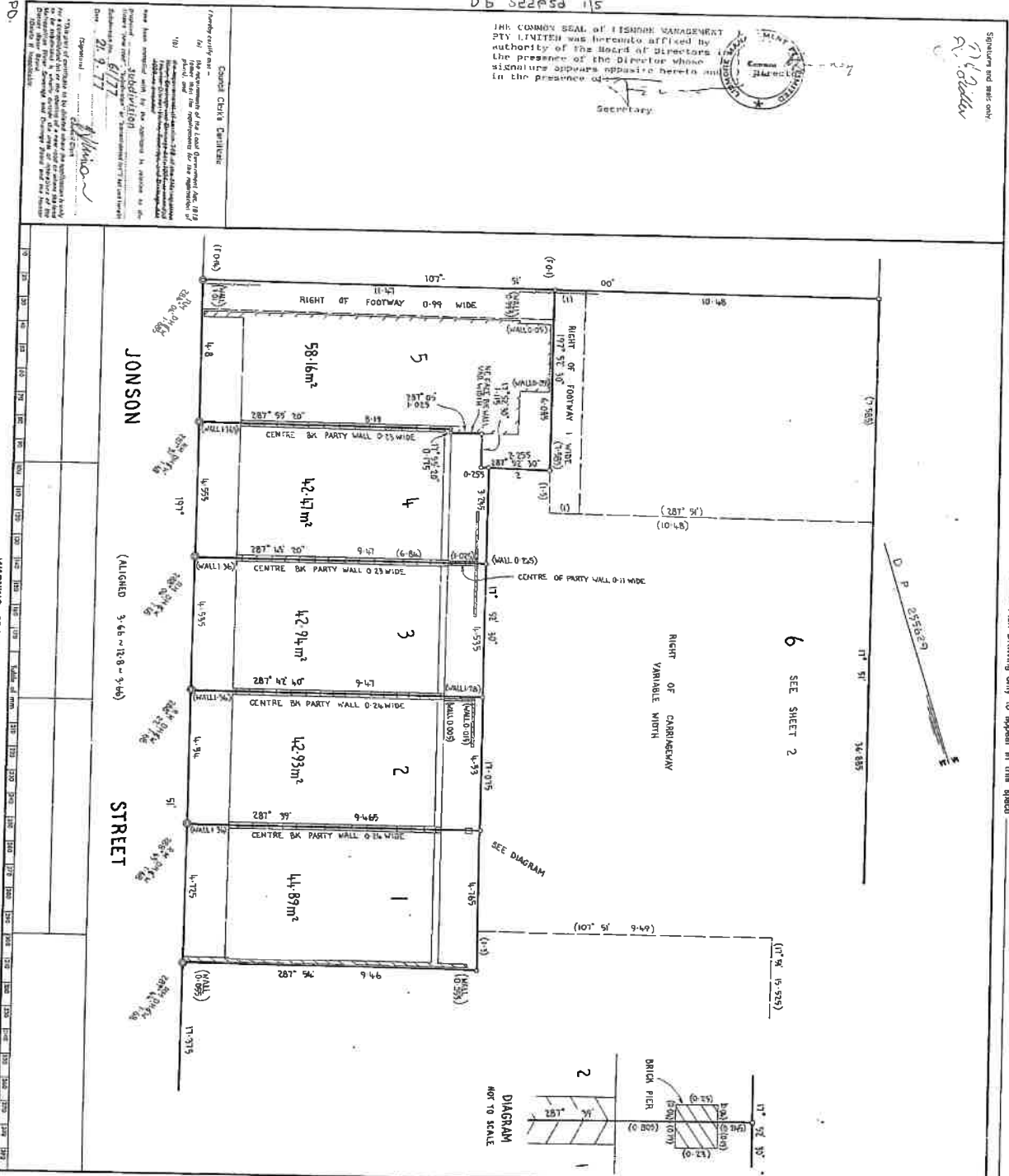
Signatures and seals only

THE COMMON SEAL OF THE STRONG MANAGEMENT
 PTY LIMITED was hereto affixed by
 authority of the Board of Directors in
 the presence of the Director whose
 signature appears opposite hereto and
 in the presence of



Secretary

MPD



WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Plan Drawing only to appear in this space

1. Bruce Richard Davis, Registrar General for New South Wales, certifies that this negative is a photograph made on a permanent record of a document in accordance with the provisions of the Public Records Act 1977.

Surveyor's Reference: 2544

OFFICE USE ONLY

D P 255629
 Highways: 22-12-1971
 CAT: No 61/77 OF 21-9-1977
 The Strain TORRENS
 SUBDIVISION
 BYRON SH 13
 Lot Plan: DP 34097 #

Hydroplan Flood: SO
 Estimated in meters
 Maximum
 Minimum
 Localities: BYRON BYRON BAY
 Priests: BYRON
 County: ROUS

This is a plan of the following:
 District of Suburb:
 Robert Edward Smyth
 Byron Bay

Special for one year for extension of registration
 of the COMPANIONSHIP ACT 1915-
 1966. IT IS INTENDED TO GRANT
 RIGHTS OF CARRIEWAY
 VARIABLE WIDTH
 RIGHTS OF FOOTWAY 0.99 WIDE

Consent Clerk's Certificate
 I, the undersigned, Clerk of the Local Government, do hereby
 certify that the above plan and the accompanying documents
 have been examined and found to be in accordance with the
 provisions of the Local Government Act 1915-1966 and the
 provisions of the Local Government (Consent) Act 1977.
 Date: 21/11/92
 Signature: [Signature]

Y O O O O A

D P 255629 P

Form: 13RPA
Licence: 01-05-079
Licence: LEAP Legal Software Pty Limited
Firm name: McInnes Legal

**RESTRICTION ON THE
USE OF LAND BY A
PRESCRIBED AUTHORITY**



AG285271V

New South Wales
Section 88E(3) Conveyancing Act 1919

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

(A) **TORRENS TITLE** 6/255629

(B) **LODGED BY**

Delivery Box BOX 30P	Name, Address or DX and Telephone L J KANE & CO LLPN 123818G Reference: <i>McIN - BYRON</i>	CODE R
--------------------------------	--	------------------

(C) **REGISTERED PROPRIETOR**
Of the above land
BYRON BAY BEACH HOTEL PTY LTD ACN 125 711 293

(D) **LESSEE MORTGAGEE or CHARGE**

Of the above land agreeing to be bound by this restriction		
Nature of Interest	Number of Instrument	Name
Mortgage	AD246344	NATIONAL AUSTRALIA BANK LIMITED

(E) **PRESCRIBED AUTHORITY**
Within the meaning of section 88E(1) of the Conveyancing Act 1919
BYRON SHIRE COUNCIL

(F) The prescribed authority having imposed on the above land a restriction in the terms set out in annexure "A" hereto applies to have it recorded in the Register and certifies this application correct for the purposes of the Real Property Act 1900.

DATE 13/4/11

(G) **Execution by the prescribed authority**

I certify that an authorised officer of the prescribed authority who is personally known to me or as to whose identity I am otherwise satisfied signed this application in my presence.

Signature of witness: *[Signature]*
Name of witness: *Peter John PEARITT*
Address of witness: *Byron Council*

Signature of authorised officer: *[Signature]*
Name of authorised officer: *JOHN LEONARD SANNIELS*
Position of authorised officer: *ENGINEER.*

(G) **Execution by Registered Proprietor**

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appears(s) below
Corporation: **Byron Bay Beach Hotel Pty Ltd ACN 125 711 293**
Authority: **section 127 of the Corporations Act 2001**

Signature of authorised person: *[Signature]*
Name of authorised person: *John H. van Handel*
Office held: **Sole Director/Secretary**

Signature of authorised person:
Name of authorised person:
Office held:

(H) **Consent of the mortgagee**

The mortgagee under mortgage No. AD246344, agrees to be bound by this restriction. I certify that the above mortgagee who is personally known to me or as to whose identity I am otherwise satisfied, signed this application in my presence.

Signature of witness:
Name of witness:
Address of witness:

Signature of mortgagee:

R179

"A"

THIS IS THE ANNEXURE "A" TO THE RESTRICTION ON THE USE OF LAND BY A PRESCRIBED AUTHORITY OVER FOLIO IDENTIFIER 6/255629 BETWEEN BYRON BAY BEACH HOTEL PTY LTD ACN 125 711 293 AND BYRON SHIRE COUNCIL

The development granted via development consent number 10.2009.212 must cease if at any time the coastal erosion escarpment comes within 50 metres of the building subject of the consent. The development the subject of this consent must be demolished and removed immediately. Further the landowner must suitably revegetate the land.

In this restriction coastal erosion escarpment means the landward limit of erosion in the dune system caused by storm waves.

"B"

THIS IS THE ANNEXURE "A" TO THE RESTRICTION ON THE USE OF LAND BY A PRESCRIBED AUTHORITY OVER FOLIO IDENTIFIER 6/255629 BETWEEN BYRON BAY BEACH HOTEL PTY LTD ACN 125 711 293 AND BYRON SHIRE COUNCIL

(D)

Lessee Mortgagee or Chargee of the above land agreeing to be bound by this restriction		
Nature of interest:	Number of Instrument:	Name:
Mortgage	AD246345	HIZAN HOLDINGS PTY LTD

(H) The mortgagee under mortgage No. AD246345 agrees to be bound by this restriction.

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

Corporation: **HIZAN HOLDINGS PTY LIMITED** ACN 003 695 690

Authority: Section 127 of the Corporations Act 2001

Signature of authorised person:



Name of authorised person: John Sydney Cornell

Office held: Director

Signature of authorised person:



Name of authorised person: Delvene Katherine Cornell

Office held: Director

**THIS IS AN ANNEXURE TO RESTRICTION ON THE USE OF LAND BY A
PRESCRIBED AUTHORITY WITH BYRON BAY BEACH HOTEL PTY LTD
ACN 125 711 293 AS REGISTERED PROPRIETOR AND BYRON SHIRE
COUNCIL AS PRESCRIBED AUTHORITY DATED**

Torrens Title: 6/255629

NATIONAL AUSTRALIA BANK LIMITED ABN 12 004 044 937 as mortgagee
under Mortgage Registered No. AD246344 hereby consents to the within
Restriction on the Use of Land by a Prescribed Authority but without
prejudice to and reserving all its rights powers and remedies under its
security.

DATED at this 31ST day of MARCH 2011.

SIGNED SEALED AND DELIVERED)
for and on behalf of **NATIONAL)**
AUSTRALIA BANK LIMITED)
ABN 12 004 044 937 by its Attorney)
who holds the position of)
Level 2 Attorney under)
Power of Attorney Registered No. 39)
Book 4512 in the presence of:)
)

Witness Signature

JAI MANZO

Print Name



Attorney Signature

Print Name

Jeffrey Price
Director
Group Strategic Business
Services

Form: 13RPA
 Licence: 01-05-079
 Licensee: LEAP Legal Software Pty Limited
 Firm name: McInnes Legal

**RESTRICTION ON THE
 USE OF LAND BY A
 PRESCRIBED AUTHORITY**



AG285272T

New South Wales
 Section 88E(3) Conveyancing Act 1919

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

(A) **TORRENS TITLE** 6/255629

(B) **LODGED BY**

Delivery Box	Name, Address or DX and Telephone	CODE
BOX 30P	L J KANE & CO LLPN 123818G	R
Reference: <i>McIN BYRON</i>		

(C) **REGISTERED PROPRIETOR**
 Of the above land
 BYRON BAY BEACH HOTEL PTY LTD ACN 125 711 293

(D) **LESSEE MORTGAGEE or CHARGE**

Of the above land agreeing to be bound by this restriction		
Nature of Interest	Number of Instrument	Name
Mortgage	AD246344	NATIONAL AUSTRALIA BANK LIMITED

(E) **PRESCRIBED AUTHORITY**
 Within the meaning of section 88E(1) of the Conveyancing Act 1919
 BYRON SHIRE COUNCIL

(F) The prescribed authority having imposed on the above land a restriction in the terms set out in annexure "A" hereto applies to have it recorded in the Register and certifies this application correct for the purposes of the Real Property Act 1900.

DATE 13/4/11

(G) **Execution by the prescribed authority**

I certify that an authorised officer of the prescribed authority who is personally known to me or as to whose identity I am otherwise satisfied signed this application in my presence.

Signature of witness: *[Signature]*
 Name of witness: *Peter John Parritt*
 Address of witness: *Byron Council*

Signature of authorised officer: *[Signature]*
 Name of authorised officer: *JOHN LEONARD SAMUELS*
 Position of authorised officer: *ENGINEER*

(G) **Execution by Registered Proprietor**

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appears(s) below
 Corporation: *Byron Bay Beach Hotel Pty Ltd* ACN 125 711 293
 Authority: section 127 of the Corporations Act 2001

Signature of authorised person: *[Signature]*
 Name of authorised person: *John H van Haandel*
 Office held: *Sole Director/Secretary*

Signature of authorised person:
 Name of authorised person:
 Office held:

(H) **Consent of the mortgagee**

The mortgagee under mortgage No. AD246344, agrees to be bound by this restriction. I certify that the above mortgagee who is personally known to me or as to whose identity I am otherwise satisfied, signed this application in my presence.

Signature of witness:
 Name of witness:
 Address of witness:

Signature of mortgagee:

[Handwritten initials]

"A"

**THIS IS THE ANNEXURE "A" TO THE RESTRICTION ON THE USE OF LAND BY A PRESCRIBED
AUTHORITY OVER FOLIO IDENTIFIER 6/255629 BETWEEN BYRON BAY BEACH HOTEL PTY LTD
ACN 125 711 293 AND BYRON SHIRE COUNCIL**

The area within a two metre by two metre corner splay at the intersection of the site frontages of
Jonson Street and Bay Street (being the north-eastern corner of the subject land) must be managed so
that no structures or landscaping have a height greater than 0.8 metres above the level of the adjacent
footpath in Jonson Street and Bay Street remain in this area.

"B"

THIS IS THE ANNEXURE "A" TO THE RESTRICTION ON THE USE OF LAND BY A PRESCRIBED AUTHORITY OVER FOLIO IDENTIFIER 6/255629 BETWEEN BYRON BAY BEACH HOTEL PTY LTD ACN 125 711 293 AND BYRON SHIRE COUNCIL

(D)

Lessee Mortgagee or Chargee of the above land agreeing to be bound by this restriction		
Nature of interest:	Number of Instrument:	Name:
Mortgage	AD246345	HIZAN HOLDINGS PTY LTD

(H) The mortgagee under mortgage No. AD246345 agrees to be bound by this restriction.

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

Corporation: **HIZAN HOLDINGS PTY LIMITED** ACN 003 695 690
Authority: Section 127 of the Corporations Act 2001

Signature of authorised person: 

Name of authorised person: John Sydney Cornell

Office held: Director

Signature of authorised person: 

Name of authorised person: Delvene Katherine Cornell

Office held: Director

**THIS IS AN ANNEXURE TO RESTRICTION ON THE USE OF LAND BY A
PRESCRIBED AUTHORITY WITH BYRON BAY BEACH HOTEL PTY LTD
ACN 125 711 293 AS REGISTERED PROPRIETOR AND BYRON SHIRE
COUNCIL AS PRESCRIBED AUTHORITY DATED**

Torrens Title: 6/255629

NATIONAL AUSTRALIA BANK LIMITED ABN 12 004 044 937 as mortgagee
under Mortgage Registered No. AD246344 hereby consents to the within
Restriction on the Use of Land by a Prescribed Authority but without
prejudice to and reserving all its rights powers and remedies under its
security.

DATED at this 31st day of MARCH 2011.

SIGNED SEALED AND DELIVERED)
for and on behalf of **NATIONAL**)
AUSTRALIA BANK LIMITED)
ABN 12 004 044 937 by its Attorney)
who holds the position of)
Level 2 Attorney under)
Power of Attorney Registered No. 39)
Book 4512 in the presence of:)
)

Witness Signature

Print Name

JAI MANZO

Attorney Signature

Print Name

Jeffrey Price
Director
Group Strategic Business
Services

Form: 07L
Licence: 01-05-028
Licensee: LEAP Legal Software Pty Limited
Firm name: McInnes Legal

LEASE

New South Wales
Real Property Act 1900



AH37645R

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

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises
6/255629

(B) LODGED BY

Delivery Box	Name, Address or DX and Telephone	CODE
BOX 30P	L J KANE & CO LLPN 1288183 Reference (optional): AMC = BYRON	L

(C) LESSOR

BYRON BAY BEACH HOTEL PTY LTD ACN 125 711 293

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

QS RETAIL PTY LTD ACN 112 796 988

(F)

TENANCY:

- (G) 1. **TERM:** 10 YEARS
2. **COMMENCING DATE:** 15 JUNE 2011
3. **TERMINATING DATE:** 14 JUNE 2021
4. With an **OPTION TO RENEW** for a period of **TWO PERIODS OF FIVE YEARS** set out in Item/Clause 12 of **ANNEXURE "A"**.
5. With an **OPTION TO PURCHASE** set out in N/A
6. Together with and reserving the **RIGHTS** set out in N/A
7. Incorporates the provisions set out in **ANNEXURE(S) "A" & "B"** hereto.
8. Incorporates the provisions set out in N/A in the Department of Lands, Land and Property Information Division as No. N/A
9. The **RENT** is set out in item/clause 3 of **ANNEXURE "A"**.

or produced by 45A on 25/5/12 for lease

All handwriting must be in block capitals.

Page 1 of 29

Total Pages (office use only) _____

DATE: 15/6/2011

(H)

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

Corporation: BYRON BAY BEACH HOTEL PTY LTD ACN 125 711 293
Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Name of authorised person:
Office held: Director/Secretary

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

Corporation: QS RETAIL PTY LTD ACN 112 796 988
Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Name of authorised person: DAVID NOCK
Office held: Director/Secretary

Signature of authorised person:

Name of authorised person: JOHN VAN HAANDEI
Office held: SOLE Director/Secretary

Signature of authorised person:

Name of authorised person: GREG HEALY
Office held: Director/Secretary

(I) STATUTORY DECLARATION

I

solemnly and sincerely declare that—

1. The time for the exercise of option to renew/option to purchase in expired lease No. _____ has ended;
2. The lessee under that lease has not exercised the option.

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

Made and subscribed at _____ in the State of New South Wales
on _____ in the presence of—

Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:

Qualification of witness:

ANNEXURE A

SEE A SOLICITOR ABOUT THIS LEASE

Lessor: Byron Bay Beach Hotel Pty Ltd 125 711 293

Lessee: QS Retail Pty Ltd ACN 112 796 988

This annexure consists of 2 pages.

NOTE: Any alterations and additions to Lease Covenants in Annexure B **must** be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

SCHEDULE OF ITEMS (continued)

Item 10
(cls 2.3, 13.1)
(cl 13.7)

- A. The guarantor:**
B. Limit of guarantor's liability: N/A

Item 11
(cl 3)

Additional leased property: Nil

Item 12
(cl 4)

Option to renew

- A. Further period of **five (5) years** from **15 June 2021** to **14 June 2026**
 B. Further period of **five (5) years** from **15 June 2026** to **14 June 2031**
 C. Maximum period of tenancy under this lease and permitted renewals: **20 years**
 D. First day option for renewal can be exercised: **Six (6) months before termination date**
 E. Last day option for renewal can be exercised: **Three (3) months before termination date**

Item 13
(cl 5)

A. Rent

For the lease period:
From the commencement date
to the first rent review date:

\$380,000.00 a year (plus GST)
by monthly instalments of **\$31,666.66**
(plus GST)

Afterwards:

At the new yearly rent beginning on each
review date by monthly instalments of one
twelfth of the new yearly rent.

For the further period in item 12A:
From the commencement date
to the first rent review date:
(for example: Current market rent)
Afterwards:

Fixed percentage increase of 3.5%

At the new yearly rent beginning on each
review date by monthly instalments of one
twelfth of the new yearly rent.

.....
.....
.....

.....
.....
.....

For the further period in item 12B:
 From the commencement date
 to the first rent review date:
 (for example: Current market rent)
 Afterwards:

Fixed percentage increase of 3.5%

At the new yearly rent beginning on each
 review date by monthly instalments of one
 twelfth of the new yearly rent.

Item 13
 (cl 15)

B. GST

Clause 15 provides for payment by the lessee of GST unless otherwise here indicated:

Item 14
 (cl 5)

Outgoings

A. Share of outgoings: **100% - All outgoings (as set out below) payable by lessee**

B. Outgoings –

- (a) local council rates and charges;
- (b) water sewerage and drainage charges;
- (c) land tax (on a single holding basis);
- (d) all charges for water, gas, oil, electricity, light, power, fuel, sewage, garbage and other services supplied to the building for the general benefit of the building;
- (e) if the property is the subject of a strata plan, all levies (including strata levies) and contributions of whatsoever nature determined and/or levied by the owners corporation or any strata managing agent lessee with the exception of any special levy relating to capital works in respect of the strata scheme of which the property forms part (if applicable)

Item 15
 (cl 5.1.5)

Interest rate: 10%

Item 16
 (cl 5.4)

Rent review

Rent review date	Method of rent review	If method 1 applies, increase by (the increase should show percentage or amount)
15 June 2012	1	3.5%
15 June 2013	1	3.5%
15 June 2014	1	3.5%
15 June 2015	1	3.5%
15 June 2016	1	3.5%
15 June 2017	1	3.5%
15 June 2018	1	3.5%
15 June 2019	1	3.5%
15 June 2020	1	3.5%
15 June 2021	1	3.5%

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15 June 2022	1	3.5%
15 June 2023	1	3.5%
15 June 2024	1	3.5%
15 June 2025	1	3.5%
15 June 2026	1	3.5%
15 June 2027	1	3.5%
15 June 2028	1	3.5%
15 June 2029	1	3.5%
15 June 2030	1	3.5%

Method 1 is a fixed amount or percentage.
 Method 2 is Consumer Price Index.
 Method 3 is current market rent.
 Method 2 applies unless another method is stated.

Item 17 **Permitted use: Retail sale of surf, skate and fashion apparel and related accessories such as surfing & fashion merchandising, eyewear, watches, footwear and other associated items, and related promotional activities together with residential use of first floor units and/or retail use of first floor (subject to Council approval).**

(cl 6.1)

Item 18 **Amount of required public liability insurance: \$20,000,000.00**
 (cl 8.1.1)

Item 19 **Bank Guarantee**
 (cl 16) **Three (3) months base rent (inclusive of GST) applicable from time to time.**

Item 20 **Security Deposit**
 (cl 17) **Not applicable**

Item 21 **Details of strata manager/secretary of the owners corporation (if applicable)**

The following alterations and additions are to be made to the Lease Covenants in Annexure B:

ADDITIONAL LEASE COVENANTS

Item 22. **OUTGOINGS & ADDITIONAL PAYMENTS**

22.1 The following items are to be included in clause 5.1:

5.1.11 additional or unusual expenses incurred by the lessor at the request of the lessee in providing any additional or unusual service for the lessee;

5.1.12 all government charges and levies that did not exist at the time that the lessee took possession of the property and where such charges and levies are not separately assessed a fair proportion as determined by the lessor acting reasonably; and

.....

5.1.13 all extra or excess premiums and other charges for insurances effected by the lessor payable on account of extra risk caused directly by the use or occupancy of the property by the lessee.

22.2 Clause 5.3 is amended by deletion of the following words:

"A payment under clause 5.1.2 must be paid on the next rent day after a request for payment is made by the lessor.

A request for payment can be made-

- 5.3.1 after the lessor has paid an outgoing; or
- 5.3.2 after the lessor has received an assessment or account for payment of an outgoing."

and insertion of the following words:

5.3 The lessee will pay to the lessor in each financial year on account a contribution towards those outgoings listed in item 14B of the schedule in an amount calculated in accordance with item 14A of the schedule. The lessor will provide the lessee with an estimate of outgoings at least one (1) month prior to the commencement of each financial year. Outgoings are to be paid by the lessee to the lessor by equal monthly instalments in advance on the same days and in the same manner as rent is payable under the terms of this lease. The lessor may, by notice to the lessee, vary the amount of such monthly instalments to meet any variations in actual outgoings of the property.

5.3A The lessor will keep accurate records of the outgoings of the property and will, within one (1) month after the end of each twelve (12) month period of each financial year, compute such expenses for that period and make a copy available to the lessee. An adjustment will be made between the lessor and the lessee by the payment of any deficiency by the lessee to the lessor or the refunding or crediting of any excess by the lessor to the lessee (as the case may require) within one (1) month of the end of each financial year."

Item 23. SERVICES AND EQUIPMENT

23.1 The lessee shall pay punctually all charges for services payable by the lessee or which may be made in respect of the premises or in connection with the lessee's use and occupation of the premises and if the lessor shall pay the same then the lessee will reimburse the amount to the lessor within 21 days of presentation of the relevant invoice. To avoid doubt, "services" means all services provided to the premises or land and includes (without limitation) the provision of telephone, electricity, gas, power, water (when the property is metered separately), garbage and refuse (in addition to the service rated and charged by Council in the Rates Notice).

Item 24. ABANDONMENT

24.1 By way of clarification of clause 12.3, "dispose" includes private sale, auction, gift distribution or otherwise.

24.2 In addition to the provisions of clause 12.3, the lessor may apply the proceeds of the disposal towards:-

- 24.2.1 any monies payable by the lessee to the lessor; or
- 24.2.2 any loss or damage

without being liable to the lessee for trespass, detinue, conversion or negligence.

- 24.3 In addition to the provisions of clause 12.5, clause 6.1.1 is an essential term of this lease.
- 24.4 The lessor can enter and take possession of the property or demand possession of the property if the lessee has breached the provisions of clause 6.1.1 for 14 consecutive days.

Item 25. **TRANSFER BY PRIVATE COMPANY**

- 25.1 This clause applies if the lessee is a company that is not a listed public company, nor a subsidiary of a listed public company;
- 25.2 If it is proposed to change the shareholding of the lessee or its holding company so that a different person or persons will control the Board of Directors or more than 50% of the voting shares then the lessee must not make the change unless it obtains the lessor's consent in accordance with Clause 10 of the lease.
- 25.3 Clause 10.2.4 is added as follows "a guarantee by the Directors of any transferee company having sufficient financial resources, is not provided (including where there is a substantial change in the controlling interest in the lessee in accordance with Item 26.2)".

Item 26. **LESSEES RISK**

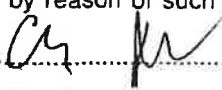
- 26.1 The lessee agrees to occupy and use the property at the risk of the lessee and the lessor will not in any circumstances (except where the lessor or its employees, agents or contractors are negligent or commit some wilful act or omission) be liable to the lessee for any damage to the plant equipment fixtures fittings merchandise stock-in-trade or any other property of any description of or in the possession of the lessee and contained in or about the property occasioned by water heat fire electricity vermin explosion tempest whatsoever or by the operation non-operation or malfunction of the air conditioning equipment (subject to any specific air conditioning clause in this lease) or any fire equipment or by any other cause whatsoever nor for any loss of profits resulting.
- 26.2 The Lessee will indemnify the Lessor for any loss, damage or liability imposed on the Lessor as a result of the acts or omissions of the Lessee, its agents or customers, except in relation to any loss, damage or liability imposed as a result of negligence or default by the Lessor or its agents.


Item 27. **INSURANCE**

- 27.1 The lessee must note the lessor as an interested party under the policy described in clause 8.1
- 27.2 Clause 8.1 is amended by deleting "upon request" and inserting at the end, "within 14 days of the lessee receiving the policy and the receipt for the last premium".

Item 28. **AIR-CONDITIONING**

- 28.1 In the event that there is any air-conditioning in the premises, the lessee agrees to service and maintain the air-conditioning plant at the lessee's expense during the term of the lease. However, this shall not extend to the replacement of the air-conditioning plant or any major or capital parts of the air-conditioning plant should the air-conditioning plant or any major or capital parts breakdown or cease to operate, which shall be the responsibility of the lessor to replace, at its cost, as soon as reasonably practicable after being notified by the lessee. The lessee's maintenance obligations as set out in this clause shall apply to any new air-conditioning equipment installed in the premises by the lessor.
- 28.2 In the event of the air-conditioning plant failing to function for any reason whatsoever, the lessee shall not by reason of such failure be entitled to determine this lease, nor shall the lessee have any right of

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action or claim for compensation or damages against the lessor in respect of such failure (except loss or damage occasioned by the negligence of the lessor or its servants or agents).

Item 29. PEST CONTROL

29.1 The lessee is responsible for regular implementation of pest eradication actions and will provide the lessor with evidence that such actions have been undertaken.

Item 30. LESSOR'S CONSENT FOR ALTERATIONS

30.1 The lessee shall not make or cause or suffer to be made any alterations, additions or improvements to the premises or property leased or install or cause or suffer to be installed any trade fixtures, exterior signs, floor coverings, interior or exterior lighting, plumbing, fixtures, shades or awnings without firstly obtaining:-

30.1.1 the written consent of the lessor (such consent not to be unreasonably withheld); and

30.1.2 the approval, where necessary, of any licensing authority or other authority having jurisdiction or control in respect of any such alteration, addition, improvements or installation.

30.2 The lessee shall present to the lessor plans and specifications for such work prior to the time that such approval is sought. The lessor shall be entitled to obtain the advice of its architect or solicitor in respect of any application referred to in this clause and any reasonable fees payable by the lessor to such architect or solicitor shall be repaid by the lessee to the lessor on demand.

30.3 Any such work carried out shall be carried out by contractors approved by the lessor in a proper and workmanlike manner and to the satisfaction of the lessor and the said authorities and in carrying out such work the lessee shall ensure that a minimum amount of disturbance and inconvenience shall be caused to patrons of the adjoining businesses.

Item 31. NOISE FROM BEACH HOTEL

31.1 The lessor discloses that the premises are located directly across the road from the Beach Hotel and that live and recorded amplifier music and other entertainment at the Beach Hotel will be available from the leased premises. The Lessee consents to the Beach Hotel having live and/or amplified music or other entertainment.

Item 32. MORTGAGEES' CONSENT

This lease is subject to the consent and approval of the lessor's mortgagees. The lessor undertakes to use its best endeavours to obtain the consent of the mortgagees as soon as practicable.

Item 33. RENT FREE PERIOD

Subject to the Lessee's compliance with the terms and conditions of this Lease, the Lessor grants the Lessee a rent free period from the Commencement Date to the date that is 6 months after the issue of a Construction Certificate for the works set out in the Development Consent issued by Byron Shire Council dated 15 October 2010 in relation to Development Application No.10.2009.212.1. This clause is to be deleted from any lease created by the exercise of an option under this Lease.

Item 34. AMENDMENTS TO ANNEXURE B

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ANNEXURE A

- 34.1 Clause 5.1.9 is deleted and each party is to pay their own costs of the preparation of this Lease except that the lessee will pay any stamp duty payable and disbursements relating to the registration of this Lease.
- 34.2 Clauses 6.3.4 and 7.6 do not apply to any signs or works within the scope of the Development Consent No. 10.2009.212.1 dated 15 October 2010.
- 34.3 Clause 10.7 does not apply to the sub-leasing of the first floor residential units.
- 34.4 The Lessor must obtain and maintain, at the lessor's cost, insurance for all improvements on the subject land for the full replacement value of those improvements.
- 34.5 Clause 8.2.3 is deleted and replaced with the following: "Unless the damage is caused by the lessee, its servants or agents, the lessor must repair any damage to the premises within a reasonable time (other than damage that the lessee is required to repair under the terms of this lease) and, in the cases where damage or destruction to the premises has rendered the building substantially unfit for the Permitted Use or substantially inaccessible, the term of the lease shall be extended by a period equal to the period during which the property or the building is substantially unfit for the Permitted Use or substantially inaccessible".
- 34.6 Clause 12.2.2 is amended to add the words "and the lessor has served a notice of default specifying the overdue payment and the lessee has failed to rectify the non-payment within 7 days of the notice" after the word "payment".
- 34.7 In the event that the lessee carries out and completes the works referred to in the Development Consent of Byron Shire Council No.10.2009.212.1 dated 15 October 2010 then, for the purposes of clause 7.2 the "condition at the commencement date" is deemed to be the condition of the premises at the completion of those works.
- 34.8 Clause 12.3.2 is amended to add "(other than anything within the scope of the works referred to in the Development Consent of Byron Shire Council No.10.2009.212.1 dated 15 October 2010 (which must not be removed) and/or anything that the lessor has agreed may remain) after the word "property".
- 34.9 In the second last line of clause 12.3 after the word "Anything" the following words are added: "the lessee is required to remove under clause 12.3.2 (as amended above) but has".

Item 35. DEVELOPMENT APPLICATION

- 35.1 The lessor consents to the lessee making application to Byron Shire Council and any other relevant authority for approval to use the first floor of the premises for retail purposes (if such approval is required) provided the lessee pays all costs and expenses relating to any such application or approval or conditions of approval.
- 35.2 The lessor will sign any necessary documents to enable the lessee to make an application referred to in Item 35.1.

ANNEXURE B

Lessor: Byron Bay Beach Hotel Pty Ltd 125 711 293

Lessee: QS Retail Pty Ltd ACN 112 796 988

This annexure consists of 13 pages.

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NOTE: Any alterations and additions to Lease Covenants in Annexure B must be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

CONTENTS

Table with 6 columns: CLAUSE, SUBJECT, PAGE, CLAUSE, SUBJECT, PAGE. Lists clauses 1-18 and their corresponding page numbers.

RETAIL LEASE CERTIFICATE

If section 16 of the Retail Leases Act 1994 applies to this lease, and the term plus any further terms are less than 5 years (subject to section 16(4)), the term will be extended unless a section 16 certificate is given. Sections 16(1) and (2) provide -

- 16(1) The term for which a retail shop lease is entered into, together with any further term or terms provided for by any agreement or option for the acquisition by the lessee of a further term as an extension or renewal of the lease, must not be less than 5 years. An agreement or option is not taken into account if it was entered into or conferred after the lease was entered into.
16(2) If a lease is entered into in contravention of this section, the validity of the lease is not thereby affected but the term of the lease is extended by such period as may be necessary to prevent the lease contravening this section.

I certify that I am a solicitor not acting for the lessor and that at the request of the lessee I explained to the lessee before (or within 6 months after) the lessee entered into this lease -

- the effect of sections 16(1) and (2); and
that the giving of this certificate would result in section 16 not applying to this lease.

Date

Signature

NAME (BLOCK LETTERS)

Handwritten signature/initials in the Date field.

Handwritten signature in the Signature field.

Handwritten signature in the NAME field.

CLAUSE 1 FORM OF THIS LEASE**What are the parts to this lease?**

- 1.1 There are three parts to this lease – a lease form, Annexure A and this annexure.
- 1.2 This lease is a deed even if it is not registered.
- 1.3 A reference in this deed to the schedule is to the schedule of items commencing at item 1 on the lease form and ending with item 20 in Annexure A.

CLAUSE 2 PARTIES**Who are the parties to this lease?**

- 2.1 The lessor is named on page 1 of this lease.
- 2.2 The lessee is named on page 1 of this lease.
- 2.3 The guarantor is named in item 10 in the schedule, if there is a guarantor.
- 2.4 If a party consists of two or more persons, obligations of that party can be enforced against any one or more of them.

CLAUSE 3 THE PROPERTY**What property is leased?**

- 3.1 The property leased is described on page 1 of this lease.
- 3.2 The lessor's fixtures are included in the property leased.
- 3.3 If anything else is leased (such as furniture belonging to the lessor) and is described in item 11 in the schedule it is included in the property.
- 3.4 If the property has facilities and services shared in common with other persons in the same building as the property, clause 11.3.2 applies to those common facilities. The lessee shares the common facilities with the lessor, and with other lessees of the lessor. The lessor can set reasonable rules for sharing these common facilities.

CLAUSE 4 LEASE PERIOD**How long is this lease for?**

- 4.1 This lease is for the period stated in item 1 in the schedule, commences on the date stated in item 2 in the schedule and ends on the date stated in item 3 in the schedule.
- 4.2 If a further period, commencing when this lease ends, is stated in item 12A in the schedule then the lessee has the option to renew this lease for that period.
- 4.3 The lessee can renew this lease more than once if that is stated in item 12B in the schedule. However the period of tenancy under this lease and under any renewal(s) is, in total, not longer than the maximum period stated in item 12C in the schedule.
- 4.4 The lessee can exercise the option only if –
 - 4.4.1 the lessee serves on the lessor a notice of exercise of option not earlier than the first day stated in item 12D in the schedule and not later than the last day stated in item 12E in the schedule;
 - 4.4.2 there is at the time of service no rent or outgoing that is overdue for payment; and
 - 4.4.3 at the time of service all the other obligations of the lessee have been complied with or fully remedied in accordance with the terms of any notice to remedy given by the lessor.

If this lease is extended by legislation, items 12D and 12E in the schedule are adjusted accordingly.

- 4.5 After exercising the option the lessee must continue to pay all rents and outgoings on time and continue to comply with all of the lessee's obligations under this lease. If the lessee does not do so, the lessor may treat any breach as being a breach of the new lease as well as of this lease.

- 4.6 A new lease will be the same as this lease except for –
- 4.6.1 the new rent;
 - 4.6.2 the commencement date and the termination date;
 - 4.6.3 the omission of clauses 4.2, 4.3, 4.4, 4.5 and 4.6 and items 12A and 12B in the schedule in the last lease allowed in item 12 in the schedule;
 - 4.6.4 item 12B becoming item 12A;
 - 4.6.5 adjustment of item 12C in the schedule; and
 - 4.6.6 adjustment of items 12D and 12E in the schedule. The number of days between the dates stated in items 12D and 12E in the schedule of the new lease and the termination date of the new lease and the number of days between each date stated in items 12D and 12E in the schedule of this lease and the termination date of this lease are to correspond.

If the new rent is to be current market rent it will be decided in the same way that current market rent is to be decided under Method 3 stated in clause 5 assuming that this lease and the new lease were one continuous lease and the commencement date of the new lease was a rent review date.

CLAUSE 5 MONEY

What money must the lessee pay?

- 5.1 The lessee must pay to the lessor or as the lessor directs –
- 5.1.1 the rent stated in item 13A in the schedule;
 - 5.1.2 the share stated in item 14A in the schedule of those outgoings stated in item 14B in the schedule;
 - 5.1.3 the reasonable cost to the lessor of remedying a default by the lessee;
 - 5.1.4 the reasonable cost to the lessor of dealing with any application by the lessee for the lessor's consent under this lease (whether or not it is given);
 - 5.1.5 interest on these moneys at the rate stated in item 15 in the schedule when payment is more than 14 days overdue, calculated from the due date to the date of payment;
 - 5.1.6 registration fee for registration of this lease at Land and Property Information NSW (payable on delivery to the lessor's solicitor of the executed lease);
 - 5.1.7 stamp duty on this lease (payable on delivery to the lessor's solicitor of the executed lease) if not previously paid by the lessee to the Office of State Revenue;
 - 5.1.8 if the lessee defaults, the lessor's reasonable legal costs relating to the default;
 - 5.1.9 the lessor's reasonable costs and expenses in connection with the preparation of this lease but only that part of those costs and expenses which are permitted to be recovered by a lessor under section 14 and section 45 of the *Retail Leases Act, 1994*; and
 - 5.1.10 GST as provided for in clause 15.
- 5.2 The first month's instalment of rent is to be paid by the commencement date. Each later month's instalment of rent is to be paid in advance.
- 5.3 A payment under clause 5.1.2 must be paid on the next rent day after a request for payment is made by the lessor.
- A request for payment can be made -
- 5.3.1 after the lessor has paid an outgoing; or
 - 5.3.2 after the lessor has received an assessment or account for payment of an outgoing.

If item 14B in the schedule refers to land tax –

- if the property is a strata lot, the relevant land tax is land tax on that lot;
- if the property is not a strata lot but is part of a building, the relevant land tax is land tax on the land on which the building is situated, plus any land of the lessor used or available for use by or for the benefit of lessees conducting business in the building or in connection with trading in the building; and
- in either case, the land tax must be calculated as if the land was the only land owned by the lessor and there was no special trust or non-concessional company involved.

When and how is the rent to be reviewed?

- 5.4 The rent is to be reviewed on the rent review dates stated in item 16 in the schedule.
If this lease is extended by legislation, the rent review dates include each anniversary of the latest rent review date stated in item 16 in the schedule (or if none is stated each anniversary of the commencement date) which falls during the extension.
- 5.5 The lessee must continue to pay rent at the old rate until the new rate is known. After that, the lessee is to pay the new rent from the next rent day. By that rent day the lessee is also to pay any shortfall between the old and new rate for the period since the rent review date. Alternatively, the lessor is to refund to the lessee any overpayment of rent.
- 5.6 There are three different methods described here for fixing the new rent on a rent review date. The method agreed by the lessor and the lessee is stated at item 16 in the schedule. The lessee is entitled to a reduction if the method produces a rent lower than the rent current just before the review date.

Method 1. By a fixed amount or percentage.

- 5.7 In this case the rent beginning on each review date will be increased by the percentage or amount stated in item 16 in the schedule.

Method 2. By reference to Consumer Price Index.

- 5.8 In this case –
- take the yearly rent as of the last review date or if none, the rent at the commencement date (\$X),
 - divide that rent by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before that date (CPI 1),
 - multiply the result by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the review date (CPI 2).

The product is the new rent for the year beginning on the review date (\$Y), written as a formula –

$$\frac{\$X}{\text{CPI 1}} \times \text{CPI 2} = \$Y$$

- 5.9 The lessor must calculate the new rent after each review date and give the lessee written notice of the new rent.
- 5.10 If the Australian Bureau of Statistics makes a change in the reference base of the index and there is a published co-relation between the old and new base then the published co-relation is to be applied to convert the CPI 1 figure to the new reference base. If there is none then the lessor and the lessee agree to accept the calculations of the lessor's solicitor who must be retained to determine a fair co-relation between the old and the new series of numbers.
- 5.11 If the index used to calculate the new rent is discontinued the lessor may substitute another index that, as nearly as practicable, serves the same purpose and, if there is no such index, then the rent will be fixed by Method 3.

Method 3. By reference to current market rent.

- 5.12 In this case the rent is to be the current market rent. This can be higher or lower than the rent payable at the rent review date and is the rent that would reasonably be expected to be paid for the property, determined on an effective rent basis, having regard to the following matters –
- 5.12.1 the provisions of this lease;
 - 5.12.2 the rent that would reasonably be expected to be paid for the property if it were unoccupied and offered for renting for the same or a substantially similar use to which the property may be put under this lease;
 - 5.12.3 the gross rent, less the lessor's outgoings payable by the lessee;
 - 5.12.4 where the property is a retail shop, rent concessions and other benefits that are frequently or generally offered to prospective lessees of unoccupied retail shops; and
 - 5.12.5 the value of goodwill created by the lessee's occupation and the value of lessee's fixtures and fittings are to be ignored.

- 5.13 The lessor or the lessee can inform the other in writing at least 60 days before the rent review date of the rent that the lessor or lessee thinks will be the current market rent at the review date.
- 5.14 If the lessor and the lessee agree on a new rent then that rent will be the new rent beginning on the rent review date and the lessor and the lessee must sign a statement saying so.
- 5.15 If the lessor and the lessee do not agree on the amount of the new rent 30 days before the rent review date, the current market rent will be decided by a valuer appointed under clause 5.16.
- 5.16
- 5.16.1 Unless 5.16.2 applies the lessor and the lessee can either agree upon a valuer or can ask the President of the Law Society of New South Wales to nominate a person who is a licensed valuer to decide the current market rent.
- 5.16.2 Where the property is a retail shop, the valuer appointed must be a specialist retail valuer.
- 5.17 The valuer will act as an expert not an arbitrator. The lessor and the lessee can each make submissions in writing to the valuer within 14 days after they receive notice of the valuer's appointment but not later unless the valuer agrees.
- 5.18 The valuer's decision is final and binding. The valuer must state how the decision was reached.
- 5.19 If the valuer –
- 5.19.1 does not accept the nomination to act; or
- 5.19.2 does not decide the current market rent within 1 month after accepting the nomination; or
- 5.19.3 becomes incapacitated or dies; or
- 5.19.4 resigns,
- then another valuer is to be appointed in the same way.
- 5.20 The lessor and lessee must each pay half the valuer's costs.
- 5.21 If the lessor and lessee do not agree upon a valuer and neither asks for a valuer to be nominated before –
- 5.21.1 the next rent review date passes; or
- 5.21.2 this lease ends without the lessee renewing it; or
- 5.21.3 this lease is transferred after the rent review date with the lessor's consent; or
- 5.21.4 the property is transferred after the rent review date
- then the rent will not change on that rent review date.

CLAUSE 6 USE

How must the property be used?

- 6.1 The lessee must –
- 6.1.1 use the property for the purpose stated in item 17 in the schedule and not for any other purpose;
- 6.1.2 open for business at times usual for a business of the kind conducted by the lessee;
- 6.1.3 keep the property clean and dispose of waste properly; and
- 6.1.4 comply with all laws relating to strata schemes and all other laws regulating how the property is used, obtain any consents or licences needed, comply with any conditions of consent, and keep current any licences or registrations needed for the use of the property or for the conduct of the lessee's business there.
- 6.1.7 where the property is a lot in a strata scheme:
- 6.1.7.1 use the lessor's common property only in connection with the use of the property;
- 6.1.7.2 co-operate with all other permitted users of the common property;
- 6.1.7.3 comply with so many of the provisions of the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973* and the by-laws and all lawful orders, motions and directives under these Acts as may be applicable to the exercise of the lessee's rights and obligations under this lease.

- 6.2 The lessor can consent to a change of use and cannot withhold consent unreasonably.
- 6.3 The lessee must not –
- 6.3.1 do anything that might invalidate any insurance policy covering the property or that might increase the premium unless the lessor consents in which case the lessee must pay the increased premium; or
 - 6.3.2 use the property as a residence or for any activity that is dangerous, offensive, noxious, illegal or immoral or that is or may become a nuisance or annoyance to the lessor or to the owner or occupier of any neighbouring property; or
 - 6.3.3 hold any auction, bankrupt or fire sale in the property; or
 - 6.3.4 display signs or advertisements on the outside of the property, or that can be seen from the outside, unless the lessor consents (but the lessor cannot withhold consent unreasonably); or
 - 6.3.5 overload the floors or walls of the property; or
 - 6.3.6 without the prior written consent of the lessor and/or the owners corporation, use the common property for any purpose other than for access to and egress from the property.

CLAUSE 7 CONDITION AND REPAIRS

Who is to repair the property?

- 7.1 The lessor must –
- 7.1.1 maintain in a state of good condition and serviceable repair the roof, the ceiling, the external walls and external doors and associated door jambs, and the floors of the property and must fix structural defects;
 - 7.1.2 maintain the property in a structurally sound condition; and
 - 7.1.3 maintain essential services.
- 7.2 The lessee must otherwise maintain the property in its condition at the commencement date and promptly do repairs needed to keep it in that condition but the lessee does not have to –
- 7.2.1 alter or improve the property; or
 - 7.2.2 fix structural defects; or
 - 7.2.3 repair fair wear and tear.
- 7.3 The lessee must also –
- 7.3.1 reimburse the lessor for the cost of fixing structural damage caused by the lessee, apart from fair wear and tear;
 - 7.3.2 maintain and decorate the shop front if the property has one;
 - 7.3.3 decorate the inside of the property in the last 3 months of the lease period (however it ends) – ‘decorate’ here means restoring the surfaces of the property in a style and to a standard of finish originally used e.g. by repainting;
 - 7.3.4 where the property is a lot in a strata scheme:
 - 7.3.4.1 meet the cost of all damage to the common property occasioned by the lessee or any invitee or licensee of the lessee; and
 - 7.3.4.2 permit the owners corporation, temporarily, to close any part of the common property for the purpose of making and effecting repairs to it.
- 7.4 If an authority requires work to be done on the property and it is structural work or work needed to make the property safe to use then the lessor must do the work unless it is required only because of the way the lessee uses the property. But if it is any other work or is required only because of the way the lessee uses the property then the lessee must do the work.
- 7.5 If the lessee fails to do any work that the lessee must do the lessor can give the lessee a notice in writing stating what the lessee has failed to do. After the notice is given the lessee must –
- 7.5.1 do the work immediately if there is an emergency; and
 - 7.5.2 do the work promptly and diligently in any other case.
- If the lessee does not do the work, the lessor can do it and the lessee must reimburse the lessor for the cost of the work.

- 7.6 The lessee must not make any structural alterations to the property. Any other alterations require the lessor's consent in writing (but the lessor cannot withhold consent unreasonably).

CLAUSE 8 INSURANCE AND DAMAGE

What insurances must the lessee take out?

- 8.1 The lessee must keep current an insurance policy covering –
- 8.1.1 liability to the public in an amount not less than the amount stated in item 18 in the schedule (for each accident or event); and
 - 8.1.2 damage or destruction from any cause to all plate glass in the windows and other portions of the property
- and must produce to the lessor, upon request, the policy and the receipt for the last premium.

What happens if the property is damaged?

- 8.2 If the property or the building of which it is part is damaged (a term which includes destroyed) –
- 8.2.1 the lessee is not liable to pay rent, or any amount payable to the lessor in respect of outgoings and other charges, that is attributable to any period during which the property cannot be used under this lease or is inaccessible due to that damage;
 - 8.2.2 if the property is still useable under this lease but its useability is diminished due to the damage, the lessee's liability for rent and any amount in respect of outgoings attributable to any period during which useability is diminished is reduced in proportion to the reduction in useability caused by the damage;
 - 8.2.3 if the lessor notifies the lessee in writing that the lessor considers that the damage is such as to make its repair impracticable or undesirable, the lessor or the lessee can terminate this lease by giving not less than 7 days notice in writing of termination to the other and no compensation is payable in respect of that termination;
 - 8.2.4 if the lessor fails to repair the damage within a reasonable time after the lessee requests the lessor to do so the lessee can terminate this lease by giving not less than 7 days notice in writing of termination to the lessor; and
 - 8.2.5 nothing in clause 8.2 affects any right of the lessor to recover damages from the lessee in respect of any damage or destruction to which the clause applies.

CLAUSE 9 ACCESS

What are the lessor's rights of access to the property?

- 9.1 The lessee must give the lessor (or anyone authorised in writing by the lessor) access to the property at any reasonable time for the purpose of –
- 9.1.1 inspecting the condition of the property, or how it is being used; or
 - 9.1.2 doing anything that the lessor can or must do under this lease or must do by law; or
 - 9.1.3 viewing the property as a valuer, prospective buyer or mortgagee; or
 - 9.1.4 fixing a notice in a reasonable position on the outside of the property saying that it is for sale; or
 - 9.1.5 viewing the property as a prospective lessee not earlier than 6 months before the lease period ends; or
 - 9.1.6 fixing a notice not earlier than 6 months before the lease period ends in a reasonable position on the outside of the property saying that it is to let; or
 - 9.1.7 inspecting, cleaning or repairing another property or any services to another property.
- 9.2 The lessor must give the lessee at least 2 days written notice for access (except in an emergency). The day of the giving of the notice and any Saturday, Sunday or public holiday on which the property is not open for business are not counted.
- 9.3 The lessor must promptly make good any damage caused to the property and to any of the lessee's belongings which results from exercising these rights.
- 9.4 The lessee must give to the lessor a copy of any notice relating to the property or relating to any neighbouring property immediately after receiving the notice.

CLAUSE 10 TRANSFER AND SUB-LEASE

Can this lease be transferred or the property shared or sub-let?

- 10.1 The lessee must not transfer this lease without consent.
- 10.2 The lessor can withhold consent only if –
- 10.2.1 the proposed transferee proposes to change the use to which the property is put; or
- 10.2.2 where the property is a retail shop, the proposed transferee has financial resources or retailing skills inferior to those of the proposed transferor and otherwise the proposed transferee has financial resources or business experience inferior to those of the proposed transferor; or
- 10.2.3 the lessee has not complied with clause 10.3 and, where the property is a retail shop, clause 10.4.
- 10.3 A request for the lessor's consent to a transfer of lease must be made in writing and the lessee must provide the lessor with such information as the lessor may reasonably require concerning the financial standing and business experience of the proposed transferee.
- 10.4 Where the property is a retail shop, before requesting the consent of the lessor to a proposed transfer of this lease, the lessee must furnish the proposed transferee with a copy of any disclosure statement given to the lessee in respect of this lease, together with details of any changes that have occurred in respect of the information contained in the disclosure statement (being changes of which the lessee was aware or could reasonably be expected to be aware). For the purpose of enabling the lessee to comply with this obligation, the lessee can request the lessor to provide the lessee with a copy of the disclosure statement concerned and, if the lessor is unable or unwilling to comply with such a request within 14 days after it is made, this clause 10.4 does not apply.
- 10.5 Where the lessee has complied with clause 10.3 and where required to do so clause 10.4, and the lessor has not within 42 days or where the *Retail Leases Act 1994* applies 28 days after the request was made or the lessee has complied with paragraphs 41(a) and 41(b) of that Act, whichever is the later, given notice in writing to the lessee either consenting or withholding consent the lessor is taken to have consented.
- 10.6 The lessee has to pay in connection with any consent the lessor's reasonable legal costs, the reasonable costs of obtaining any mortgagee's consent, the stamp duty and the registration fee for the transfer.
- 10.7 Where the property is a retail shop, the lessee can sublet, grant a license or concession, share or part with the possession of the whole or any part of the property or mortgage or otherwise charge or encumber the lessee's estate or interest in this lease only with the written consent of the lessor which can be refused in the lessor's absolute discretion. Otherwise, the lessee cannot do any of these things.

CLAUSE 11 LESSOR'S OTHER OBLIGATIONS

What are the lessor's other obligations?

- 11.1 So long as the lessee does all the things that must be done by the lessee under this lease the lessor must allow the lessee to possess and use the property in any way permitted under this lease without interference from the lessor, or any person claiming under the lessor or having superior title to the title of the lessor.
- 11.2 The lessor must pay all outgoing for the land or the building of which the property is part when they fall due.
- 11.3 If the property is part of a building owned or controlled by the lessor –
- 11.3.1 the lessor must maintain in reasonable structural condition all parts of the building that the lessee can use under this lease; and
- 11.3.2 if the property has facilities and service connections shared in common with other persons the lessor must –
- 11.3.2.1 allow reasonable use of the facilities and service connections including –
- the right for the lessee and other persons to come and go to and from the property over the areas provided for access;
 - access by the lessee to service connections; and
 - the right for the lessee's customers to park vehicles in any area set aside for customer parking, subject to any reasonable rules made by the lessor.
- 11.3.2.2 maintain the facilities and service connections in reasonable condition.

- 11.4 Where registration is necessary for the validity of this lease, the lessor must ensure that this lease is registered.
- 11.5 If a consent is needed for this lease, from someone such as a mortgagee or head lessor of the property, then the lessor must get the consent.

CLAUSE 12 FORFEITURE AND END OF LEASE

When does this lease end?

- 12.1 This lease ends -
- 12.1.1 on the date stated in item 3 in the schedule; or
- 12.1.2 if the lessor lawfully enters and takes possession of any part of the property; or
- 12.1.3 if the lessor lawfully demands possession of the property.
- 12.2 The lessor can enter and take possession of the property or demand possession of the property if -
- 12.2.1 the lessee has repudiated this lease; or
- 12.2.2 rent or any other money due under this lease is 14 days overdue for payment; or
- 12.2.3 the lessee has failed to comply with a lessor's notice under section 129 of the *Conveyancing Act 1919*; or
- 12.2.4 the lessee has not complied with any term of this lease where a lessor's notice is not required under section 129 of the *Conveyancing Act 1919* and the lessor has given at least 14 days written notice of the lessor's intention to end this lease.
- 12.3 When this lease ends, unless the lessee becomes a lessee of the property under a new lease the lessee must -
- 12.3.1 return the property to the lessor in the state and condition that this lease requires the lessee to keep it in; and
- 12.3.2 have removed any goods and anything that the lessee fixed to the property and have made good any damage caused by the removal.
- Anything not removed becomes the property of the lessor who can keep it or remove and dispose of it and charge to the lessee the cost of removal making good and disposal.
- 12.4 If the lessor allows the lessee to continue to occupy the property after the end of the lease period (other than under a new lease) then -
- 12.4.1 the lessee becomes a monthly lessee and must go on paying the same rent and other money in the same way that the lessee had to do under this lease just before the lease period ended (apportioned and payable monthly);
- 12.4.2 the monthly tenancy will be on the same terms as this lease, except for -
- clause 4;
 - clauses 5.4 to 5.21 inclusive; and
 - clause 6.2 unless consent has previously been given;
- 12.4.3 either the lessor or the lessee can end the monthly tenancy by giving, at any time, one month's written notice to the other expiring on any date; and
- 12.4.4 anything that the lessee must do by the end of this lease must be done by the end of the monthly tenancy.
- 12.5 Essential terms of this lease include -
- 12.5.1 the obligation to pay rent not later than 14 days after the due date for payment of each periodic instalment (and this obligation stays essential even if the lessor, from time to time, accepted late payment);
- 12.5.2 the obligations of the lessee in clause 5.1.2 (dealing with outgoing);
- 12.5.3 the obligations of the lessee in clause 6.1 (dealing with use);
- 12.5.4 the obligations of the lessee in clause 7 (dealing with repairs);
- 12.5.5 the obligations of the lessee in clause 10 (dealing with transfer and sub-lease); and
- 12.5.6 the obligations of the lessee in clause 15 (dealing with GST).

- 12.6 If there is a breach of an essential term the lessor can recover damages for losses over the entire period of this lease but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.
- 12.7 The lessor can recover damages even if –
- 12.7.1 the lessor accepts the lessee's repudiation of this lease; or
 - 12.7.2 the lessor ends this lease by entering and taking possession of any part of the property or by demanding possession of the property; or
 - 12.7.3 the lessee abandons possession of the property; or
 - 12.7.4 a surrender of this lease occurs.

CLAUSE 13 GUARANTEE

What are the obligations of a guarantor?

- 13.1 This clause applies if a guarantor of the lessee is named in item 10A in the schedule and has signed or executed this lease or, if this lease is a renewal of an earlier lease, the earlier lease.
- 13.2 The guarantor guarantees to the lessor the performance by the lessee of all the lessee's obligations (including any obligation to pay rent, outgoings or damages) under this lease, under every extension of it or under any renewal of it or under any tenancy and including obligations that are later changed or created.
- 13.3 If the lessee does not pay any money due under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must pay that money to the lessor on demand even if the lessor has not tried to recover payment from the lessee.
- 13.4 If the lessee does not perform any of the lessee's obligations under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must compensate the lessor even if the lessor has not tried to recover compensation from the lessee.
- 13.5 If the lessee is insolvent and this lease or any extension or renewal of it is disclaimed the guarantor is liable to the lessor for any damage suffered by the lessor because of the disclaimer. The lessor can recover damages for losses over the entire period of this lease or any extension or renewal but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.
- 13.6 Even if the lessor gives the lessee extra time to comply with an obligation under this lease, under any extension of it or under any renewal of it or under any tenancy, or does not insist on strict compliance with the terms of this lease or any extension of it or renewal of it or of any tenancy, the guarantor's obligations are not affected.
- 13.7 If an amount is stated in item 10B in the schedule the guarantor's liability under this clause is limited to that amount.
- 13.8 The terms of this guarantee apply even if this lease is not registered, even if any obligation of the lessee is only an equitable one, and even if this lease is extended by legislation.

CLAUSE 14 EXCLUSIONS, NOTICES AND SPECIAL CLAUSES

- 14.1 No covenant or power is implied in this lease by section 84 or 85 of the *Conveyancing Act 1919*.
- 14.2 A document under or relating to this lease is –
- 14.2.1 served if it is served in any manner provided in section 170 of the *Conveyancing Act 1919*; and
 - 14.2.2 served on the lessee if it is left at the property.
- 14.3 This lease is subject to any legislation that cannot be excluded.
- 14.4 In this lease, 'retail shop' means premises to which the *Retail Leases Act 1994* applies.
- 14.5 In this lease 'Director General' has the same meaning as in the *Retail Leases Act 1994*.

CLAUSE 15 GOODS AND SERVICES TAX

Unless item 13B in the schedule has been completed in a way that indicates that this clause is not to apply:

- 15.1 As consideration in whole or in part for a taxable supply the person receiving the supply must pay to the party making the supply an additional amount equal to the amount of GST payable on the supply.
- 15.2 To the extent that the lessee is required to reimburse the lessor in whole or in part for outgoings incurred by the lessor, for the purposes of this lease the amount of the outgoings must be reduced by the amount of any credit or refund of GST to which the lessor is entitled as a result of incurring outgoings.
- 15.3 Outgoings in item 14B in the schedule are to be calculated after deducting any input tax credit to which the lessor is entitled.
- 15.4 For the purposes of this lease GST means a tax in the nature of a supply of goods and services tax levied or imposed by the Commonwealth of Australia.

CLAUSE 16 BANK GUARANTEE

- 16.1 If a number of months appears in item 19 in the schedule, clauses 16.2 to 16.5 apply.
- 16.2 On or before the commencement date of this lease the lessee will deliver to the lessor a guarantee by a bank trading in the State of New South Wales in the form of an unconditional and irrevocable undertaking to pay drawn in favour of the lessor (unlimited as to time) in a form acceptable to the lessor and for an amount equivalent to the number of months referred to in item 19 in the schedule.
- 16.3 The lessor is entitled to claim under the guarantee an amount equal to any moneys due but unpaid by the lessee to the lessor under this lease.
- 16.4 The lessee agrees to vary the amount of the guarantee immediately upon each rent review so that the amount at all times represents the equivalent of the number of months referred to in the schedule.
- 16.5 The lessor will deliver the guarantee (or so much of it as is then held by the lessor) to the lessee on the last of:
 - 16.5.1 the terminating date of this lease;
 - 16.5.2 the expiry date of any holding over under this lease; and
 - 16.5.3 the date that the lessee has no further obligations under this lease or at law.

CLAUSE 17 SECURITY DEPOSIT

- 17.1 If an amount or a number of months appears in item 20 in the schedule, clauses 17.2 to 17.6 apply.
- 17.2 On or before the commencement date of this lease the lessee will deliver the security deposit to the lessor.
- 17.3 The lessor is entitled to deduct from the security deposit an amount equal to any monies due but unpaid by the lessee to the lessor under this lease.
- 17.4 Where the property is a retail shop, the security deposit will be held in accordance with Section 16C of the *Retail Leases Act 1994*. The lessee will not make an application to the Director General seeking the return of the security deposit (or so much of it as is then held by the Director General) until the later of:
 - 17.4.1 the terminating date of this lease;
 - 17.4.2 the expiry date of any holding over under this lease; and
 - 17.4.3 the date that the lessee has no further obligations under this lease or at law.
- 17.5 Where the property is other than a retail shop the security deposit (or so much of it as is then held by the lessor) will be returned to the lessee on the later of the dates as specified in clause 17.4.
- 17.6 The lessee agrees to vary the amount of the security deposit immediately upon each rent review so that it represents the equivalent of the number of months referred to in the schedule.

CLAUSE 18 STRATA CONVERSION

- 18.1 "Owners corporation", "owner", "strata scheme", "lot" and "parcel" where used in this lease have the meanings given under the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973*.

- 18.2 "Strata Acts" means the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973*, and includes any amending Acts, rules, regulations, ordinances, by-laws, statutory instruments, orders or notices now or hereafter made under those Acts.
- 18.3 "Strata conversion" means a subdivision of the property under the *Strata Schemes (Freehold Development) Act 1973* or the *Community Land Development Act 1989* or the *Community Land Management Act 1989* or other legislation permitting such subdivision.
- 18.4 Strata Titles
- 18.4.1 Lessee consents to registration of strata plan
- 18.4.1.1 By its entry into this lease the lessee acknowledges that the lessor can register a strata plan, a strata schemes plan, a strata plan of subdivision, a strata plan of consolidation or a building alteration plan insofar as any of these may relate to the property, the Building or the land. The lessor will provide the lessee with copies of the proposed strata plan and associated documentation for the lessee's approval, which will not be unreasonably withheld.
- 18.4.1.2 Provided the lessee consents to the strata conversion as per clause 18.4.1.1 then within 7 days of written request by the lessor the lessee will sign and return to the lessor any consents or other documents necessary to enable the lessor to carry out the strata conversion and will make no objection or claim for compensation in relation to the strata conversion.
- 18.4.2 Compliance with the Strata Acts and by-laws:
- 18.4.2.1 **(Covenant):** The lessee and any and all persons acting by, through or under it or with its authority express or implied shall comply with so many of the provisions of the Strata Acts and the by-laws and all lawful orders, motions and directives under the Strata Acts as may be applicable to the exercise of the lessee's rights and obligations under the provisions elsewhere contained in this lease.
- 18.4.2.2 **Not to prejudice interests of owners corporation.** Without the prior written consent of the owners corporation, the lessee shall not do any act, matter or thing under the exercise of its rights and obligations elsewhere contained in this lease or permit or allow any act, matter or thing to be done which shall or may:
- increase the rate of premium payable by the owners corporation under any policy of insurance taken out by the owners corporation; or
 - invalidate, avoid or suspend the operation of any such policy of insurance or otherwise prejudice the owners corporation rights under any such policy.
- 18.4.2.3 Upon the occurrence of any of the matters **previously** referred to the lessee shall:
- pay to the lessor or such other person responsible for payment any amounts payable to the owners corporation as a consequence of any such matters;
 - pay to the lessor for and on behalf of the owners corporation any amounts payable by the owners corporation as a consequence of any such matters and not the subject of clause 18.4.2.2; and
 - pay to the lessor for and on behalf of the owners corporation the amount of any and all losses and damages arising from the occurrence of any such matters.
- 18.4.2.4 **(Indemnity):** The lessee shall indemnify the lessor for any loss or damage suffered by the lessor if the lessee or the lessee's employees fail to comply with the obligations as to conduct imposed upon the lessee or the lessee's employees by this lease or by reason of the Strata Acts.
- 18.4.3 If the strata conversion occurs:
- 18.4.3.1 any reference in this lease will be deemed to be a reference to the buildings comprised in the registered plan or plans of which the property forms part;
- 18.4.3.2 any levies or other monies payable to the owners corporation will be payable by the lessee with the exception of any contribution to a sinking fund or special levy; and
- 18.4.3.3 this lease will be deemed to be amended in any respect that is necessary to ensure that this lease reflects that the strata conversion has been carried out.


IMPORTANT NOTES

The following notes are for guidance and do not form part of this lease.

If you are a lessor, a solicitor will prepare this lease for you.

If you are a lessee, a solicitor can advise you about it.

1. This document creates legal rights and legal obligations.
2. Failure to register a lease can have serious consequences.
3. If an option for renewal is not exercised at the right time it will be lost.
4. The lessee can exercise an option for renewal even if there has been a breach of this lease in a case where section 133E of the *Conveyancing Act 1919* applies. The lessor must give a prescribed notice within 14 days after the option is exercised if the lessor wants to rely on the breach to prevent the exercise of the option.
5. The Law Society of New South Wales is not to be responsible for any loss resulting from the use of this lease as printed whether authorised or not.



I certify that this and the preceding twelve pages are in exactly the same wording as Annexure B of the copyright Law Society Lease.



Solicitor for the lessor



National Australia Bank Limited
ABN 12 004 044 937

Annexure to Lease

FROM Byron Bay Beach Hotel Pty Ltd ACN 125 711 293

TO QS Retail Pty Ltd ACN 112 796 988

DATE

FOLIO IDENTIFIER(S) 6/255629

National Australia Bank Limited ABN 12 004 044 937 as Mortgagee under **Mortgage Number AD246344** hereby consents to the within Lease subject to and without in any way limiting abridging affecting or prejudicing the rights powers and remedies of the Mortgagee under the said Mortgage/s (or any of them) which rights powers and remedies shall remain in full force and effect as if this consent had not been given Save and Except that so long as the covenants conditions and provisions of the within Lease are duly observed and performed the Mortgagee will in the event of the exercise of the power of sale or other power or remedy of the Mortgagee on default under the said Mortgage/s (or any of them) exercise the same subject to the then subsisting rights of the Lessee/s under the within Lease And this limited consent is also given on the express condition that the consent of the Mortgagee is procured in all cases where the consent of the Lessor/s is necessary under the within Lease that the Mortgagee shall not be obliged to perform any covenant or agreement by the Lessor/s contained in the within Lease and that all rights powers and remedies of the Lessor/s under the within Lease shall absolutely vest in and be exercisable and enforceable by the Mortgagee immediately upon the Mortgagee giving notice to the Lessee/s of demand to enter into receipt of the rents and profits of the leased premises.

Signed at 500 BOURKE ST. MELBOURNE VIC this 1st day of MAY 2012.
(Day) (Month) (Year - cyy)

SIGNED SEALED AND DELIVERED for and)
on behalf of **NATIONAL AUSTRALIA BANK**)
LIMITED ABN 12 004 044 937 by its)
Attorney who holds the position of)
Level 3 Attorney under)
Power of Attorney Registered No. 39 Book)
4512 in the presence of:)



Witness Signature **Rob Audsley**
Analyst

Print Name **NAB Corporate VIC**

Attorney Signature **LISATA**
ASSOCIATE

Print Name of Attorney **NAB CORPORATE VICTORIA**

MORTGAGEE'S CONSENT TO LEASE

THIS DEED OF MORTGAGEE'S CONSENT TO LEASE is made on 12 December 2011

BETWEEN

HIZAN HOLDINGS PTY LIMITED ACN 003 695 690 having its registered office at Level 3,
107 Phillip Street, Parramatta NSW 2150

("Mortgagee")

AND

BYRON BAY BEACH HOTEL PTY LIMITED ACN 125 711 293 of 2 Jonson Street, Byron
Bay NSW 2481

("Lessor")

AND

QS RETAIL PTY LIMITED ACN 112 796 988 of having its registered office at
27 Baines Crescent, Torquay VIC 3228

("Lessee")

RECITALS:

- A. The Lessor and the Lessee wish to enter into a lease of the Premises for the Lessee to carry out the Permitted Use as defined in Item 17 of the Lease.
- B. The Lessor must obtain the Mortgagee's prior written consent to the Lease under mortgage registered AD246345 ("Mortgage").
- C. The Lessor and the Lessee have requested the Mortgagee's consent to the Lease.
- D. The Mortgagee agrees to consent to the Lease on the conditions contained in this deed.

NOW THIS DEED WITNESSES that in consideration of, among other things, the mutual promises contained in this deed:

1. Definitions

"Approvals" means all necessary approvals from any relevant governmental agency for the proposed fitout of the Premises and for the Permitted Use;

"Address" of a party means, unless otherwise notified in writing by that party to each other party, the address of that party as shown at the beginning of this deed;

"Lease" means the lease of the Premises referred to in Recital A registered in the Land Titles Office as number _____ between the Lessor and the Lessee;

"**Lessee's Obligations**" means the obligations of the Lessee under the Lease.

"**Premises**" means the land described in Folio Identifier 6/255629 being Byron Bay Beach Hotel, 2 Jonson Street, Byron Bay

2. Interpretation

In this deed, unless the context otherwise requires:

- (a) headings and underlings and any table of contents are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- (e) a reference to anything includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure exhibit and schedule to this deed;
- (g) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes an amendment or supplement to, or replacement or novation of that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it;
- (k) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (l) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to an asset includes all property of any nature, including, but not limited to, a business, and all rights, revenues and benefits; and

- (n) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, assignment for the benefit of creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution or any partnership or person, or death.

3. Mortgagee's consent

- (a) The Lessor warrants to the Mortgagee that the Lessee is a respectable, reasonable, responsible and solvent person capable of adequately carrying on the business proposed to be carried on by the Lessee in the Premises;
- (b) The Lessor warrants that there are no breaches under the Lease of which the Lessor is aware.
- (c) As far as the Lessor and Lessee are aware, the best rent is being received under the Lease.
- (d) The Lessor agrees that it will stamp the Lease if necessary and lodge it for registration.
- (e) This consent is without prejudice to the right of the Mortgagee to exercise its right under its Mortgage subject to the rights of the Lessee under the Lease.
- (f) If the Mortgagee exercises its rights under its Mortgage, it has all the rights of the Lessor under the Lease:
- (i) to enforce observance of the Lessee's Obligations relating to the use and occupation of the Premises:
 - (ii) to exercise all rights, powers, privileges, remedies and authorities of the Lessor (including all right of re-entry and all incidental powers); and
 - (iii) to do all acts and grant all consents and licences to the same extent as if those covenants, provisions, rights, powers, privileges and authorities were given to the Mortgagee.
- (g) If the Mortgagee exercises its rights under its Mortgage and gives a written notice to the Lessee to pay the rent to it ("**Redirection Notice**"), the Lessee must pay all future rents and other moneys payable under the Lease to the Mortgagee, who may demand and sue for them if not paid. Upon receipt of the Redirection Notice, the Lease is then deemed to be executed by the Lessee and the Mortgagee.
- (h) Until the Redirection Notice is withdrawn or the Mortgage is discharged all rights, powers and remedies of the Lessor under the Lease are not capable of being enforced by the Lessor without the consent in writing of the Mortgagee. Until then the Mortgagee will have the same rights and remedies as the Lessor by virtue of the Lease, but if the Lessee has any legal or equitable rights of set-off against the Lessor, the Lessee cannot enforce them against the Mortgagee.

- (i) Subject to the Lessee's right of quiet enjoyment of the Premises, the Mortgagee will not be liable to observe or perform any of the obligations of the Lessor under the Lease unless it becomes the mortgagee in possession.
- (j) Subject to :
 - (i) the execution of this deed by each party;
 - (ii) the Lessee obtaining the Approvals; and
 - (iii) the delivery of this deed and all counterpart copies duly executed by all parties (other than the Mortgagee) together with a copy of the executed Lease within four (4) weeks of the date of this deed,

the Mortgagee consents to the Lease.

4. No Assignment without Mortgagee Consent

The Lessor and the Lessee must not:

- (a) agree to assign, charge or mortgage the Lease, or sublet all or any part of the Premises, or change the use of the Premises; or
 - (b) vary the terms and conditions of the Lease or any renewal of it
- without the written consent of the Mortgagee.

5. Mortgagee Consent Voidable

If the Lessee does not observe the terms and conditions of this consent, then the Mortgagee's consent to the granting of the Lease may, at the option of the Mortgagee, become void and the rights of the Mortgagee can be enforced without reference to the Lease.

6. Any statutory form of consent by the Mortgagee is given without prejudice to these conditions.

7. Mortgagee will not Interfere

The Mortgagee agrees that while the Lessee is not in default under the Lease it will not interfere with the Lessee's use or occupation of the Premises even though the Lessor is in default under the Mortgage but it will not be liable to perform any obligation of the Lessor in the Lease to sell the premises to the Lessee (if any).

8. Payment of Mortgagee's Costs

Within seven days of receipt of written demand, the Lessor must pay or must procure payment by the Lessee to the Mortgagee, the Mortgagee's costs and expenses on a full indemnity time costing basis of:

- (a) the approval and review of the Mortgage or any application or ancillary documentation lodged for an Approval or submitted in support of such application;

- (b) the negotiation, preparation, execution, delivery, stamping and any registration of this deed; and
- (c) the enforcement or protection or attempted enforcement or protection of any rights under this deed,

including, but not limited to, any reasonable legal costs and expenses and any reasonable professional consultant's fees in respect of any of the above on a full indemnity time costing basis.

THE LESSOR AND THE LESSEE accept these conditions.

EXECUTED by the parties as a deed.

EXECUTED by HIZAN HOLDINGS PTY)
LIMITED ACN 003 695 690)
in accordance with S.127 of the)
Corporations Act 2001)

Director

Director/Secretary

Name (please print)

Name (please print)

EXECUTED by BYRON BAY BEACH)
HOTEL PTY LIMITED ACN 125 711 293)
in accordance with S.127 of the)
Corporations Act 2001)

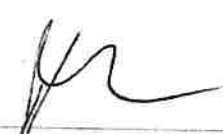
Sole Director/Secretary

Name (please print)

EXECUTED by QS RETAIL PTY)
LIMITED ACN 112 796 988)
in accordance with S.127 of the)
Corporations Act 2001)

GH
Director 

GREG HEALY
Name (please print)


Director/Secretary

DAVID NOCK
Name (please print)

Deed of Guarantee and Indemnity

BETWEEN

QUIKSILVER AUSTRALIA PTY LTD

AND

QS RETAIL PTY LTD

AND

L & S BYRON PTY LTD

Parties

QUIKSILVER AUSTRALIA PTY LTD ABN 20 091 136 195 of 27 Baines Crescent, Torquay, Victoria 3228 ("**Guarantor**")

QS RETAIL PTY LTD ACN 112 796 988 of 27 Baines Crescent, Torquay, Victoria 3228 ("**Tenant**")

L & S BYRON PTY LTD ABN 96 162 645 383 of 11 Princess Street, St Kilda Victoria 3182 ("**Landlord**")

Background

- A. Byron Bay Beach Hotel Pty Ltd ACN 125 711 293 granted the Lease to the Tenant.
- B. The Landlord is now the owner of the Land and the landlord under the Lease
- C. The Guarantor has agreed to guarantee and indemnify the Landlord in respect of the performance by the Tenant of the Tenant's obligations under the Lease as set out in this Deed.
- D. The Landlord has agreed to not require the Tenant to provide a bank guarantee or security deposit under the Lease in consideration of the guarantee and indemnity in this clause.

Agreement

1 Definitions and Interpretation

1.1 Definitions

In this Deed unless the context otherwise requires:

- (a) **Lease** means the lease of folio identifier 6/255629 registered as AH37645.
- (b) **Premises** mean folio identifier 6/255629 with an address of 2 Jonson Street, Byron Bay NSW.
- (c) **Tenant's Covenants** means the covenants and agreements contained or implied in this Lease to be observed and performed by the Tenant.

1.2 Interpretation

In this Deed unless the context clearly indicates otherwise:

- (a) a reference to this Deed or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a body or authority which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing deed, to a body or authority having substantially the same objects as the named body or authority;

- (d) a reference to the introduction, a clause, schedule or annexure is a reference to the introduction, a clause, a schedule or an annexure to or of this Deed;
- (e) clause headings and the table of contents are inserted for convenience only and do not form part of this Deed;
- (f) the introduction, schedules (if any) and annexures (if any) form part of this Deed;
- (g) the introduction accurately sets out the circumstances in which the parties have entered into this Deed;
- (h) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a natural person includes their personal representatives, successors and permitted assigns;
- (j) a reference to a corporation includes its successors and permitted assigns;
- (k) related or subsidiary in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (l) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Deed;
- (m) an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (n) a reference to a breach of warranty includes that warranty not being complete, true or accurate;
- (o) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (p) including and includes are not words of limitation;
- (q) the words at any time mean at any time and from time to time;
- (r) a word that is derived from a defined word has a corresponding meaning;
- (s) monetary amounts are expressed in Australian dollars;
- (t) the singular includes the plural and vice-versa;
- (u) words importing one gender include all other genders;
- (v) a reference to a thing includes each part of that thing; and
- (w) neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 The Guarantee and the Indemnity

2.1 Guarantee and Indemnity

The Guarantor hereby agrees as a separate and distinct covenant by this Deed to:

- (a) unconditionally guarantees to the Landlord the Tenant's due and punctual performance of the Tenant's Covenants;
- (b) unconditionally agrees that if the Tenant breaches any of the Tenant's Covenants, the Guarantor will perform that obligation;

- (c) indemnifies the Landlord and keeps the Landlord indemnified against any loss or damage incurred by the Landlord in respect of the Tenant's breach under the Lease; and
- (d) indemnifies the Landlord and keeps the Landlord indemnified against any liability incurred by the Landlord arising out of the disclaimer of the Lease by the Tenant's Trustee in bankruptcy or the Tenant's liquidator.

2.2 Liability of Guarantor

The liability of the Guarantor is continuing and will not be affected by any act, matter or thing including:

- (a) the death of any person who is, or who is one of, the Tenant or the Guarantor;
- (b) the giving of time or the granting of any other indulgence to the Tenant or the Guarantor;
- (c) any variation, assignment or extension of the Lease;
- (d) any sub-lease or grant of a licence or other occupation rights in respect of the Premises;
- (e) the sale of the Landlord's interest in the Premises (and in that regard the Guarantor acknowledges that the guarantee and indemnity by the Guarantor under this Deed ('guarantee') is also given in favour of and may be enforced by the Landlord's successors and assigns and also by any person who is at any time the registered or entitled to be registered as proprietor of the land on which the Building is built);
- (f) any release of the Tenant or the Guarantor;
- (g) any security held or taken by the Landlord at any time in respect of the Lease or the loss of any such security;
- (h) the Landlord failing or neglecting to recover by the realisation of any such security or otherwise any money owing by the Tenant;
- (i) the waiver by the Landlord of any breach by the Tenant of its obligations under the Lease or of the Landlord's rights under this Lease or such other security;
- (j) any delay or mistake of the Landlord; or
- (k) the payment of any money secured by this guarantee.

2.3 Guarantor's Rights

Until the Guarantor is released from this guarantee, the Guarantor may not:

- (a) claim the benefit of any security;
- (b) claim or receive the benefit of any dividend or payment out of any winding up of the Tenant; or
- (c) if the Tenant goes into liquidation or enters into a scheme of arrangement, prove or claim in that liquidation or scheme in competition with the Landlord so as to diminish any dividend or payment which the Landlord would be entitled to receive out of that liquidation or scheme.

2.4 Receipt of payments by Landlord

The receipt by the Landlord of any dividend or other payment from the liquidation of the Tenant or any scheme of arrangement entered into by the Tenant will not prejudice the right of the Landlord to recover from the Guarantor under this guarantee.

2.5 Guarantee is a principal obligation

This guarantee is a principal obligation and is not to be treated as ancillary or collateral to any other obligation whatsoever and:

- (a) the Landlord may act as though the Guarantor is the principal debtor of the Landlord; and
- (b) the Guarantor waives any rights as surety which may at any time be inconsistent with the provisions of this guarantee.

2.6 Guarantee applies during the Tenant's entire period of occupation

This guarantee extends to any extension or renewal of the Lease and to any period in which the Tenant holds over under the Lease.

3 No bank guarantee or other security

While this Deed is in force, the Tenant is not required to provide any other security under the Lease, despite anything to the contrary contained in the Lease. Upon execution of this Deed, the Landlord shall deliver up to the Tenant, any existing bank guarantee or security held by the Landlord to secure the Tenant's performance under this lease.

Form: 01TL
Licence: 01-05-046
Licensee: LEAP Legal Software Pty Limited
Firm name: McInnes Legal

TRANSFER OF LEASE MORTGAGE OR CHARGE

Leave this space clear. Affix additional



New South Wales
Real Property Act 1900

AM203300E

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

STAMP DUTY

Office of State Revenue use only	
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(A) LEASE/CHARGE/ MORTGAGE

AH37645	Asst details:
---------	---------------

(B) TORRENS TITLE

6/255629

(C) LODGED BY

Document Collection BOX 30P	Name, Address or DX, Telephone and Customer Account Number if any L J KANE & CO LLPN 123818G	CODE TL TM TC
Reference: MZL = QS		

(D) TRANSFEROR

QS RETAIL PTY LTD ACN 112 796 988

(E) The transferor acknowledges receipt of the consideration of \$1 and transfers to the transferee all the transferor's estate and interest in the above LEASE.
(F) Encumbrances (if applicable):

(G) TRANSFEREE

UG MANUFACTURING CO. PTY LTD ACN 005 047 941
TENANCY:

DATE 1 February 2017

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

Company: QS RETAIL PTY LIMITED ACN 112 796 988
Authority: section 127 of the Corporations Act 2001

Signature of authorised person:
Name of authorised person: ANDREW MARK BRUNES
Office held: Director

Signature of authorised person:
Name of authorised person: SIMON FRANCIS LYNCH
Office held: Director/Secretary

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

Company: UG MANUFACTURING CO. PTY. LTD. ACN 005 047 941
Authority: section 127 of the Corporations Act 2001

Signature of authorised person:
Name of authorised person: ANDREW MARK BRUNES
Office held: Director

Signature of authorised person:
Name of authorised person: SIMON FRANCIS LYNCH
Office held: Director/Secretary

(I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS. The applicant certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No. Full name: Signature:

Form: 07VL
 Release: 3.4
 Licence: 01-05-063
 Licensee: LEAP Legal Software Pty Limited
 Firm name: McInnes Legal

VARIATION OF LEASE

New South Wales
 Real Property Act 1900

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

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

STAMP DUTY

Insert Duties Assessment No. as issued by Revenue NSW Office.
 Duties Assessment No.

(A) **TORRENS TITLE**

6/255629

(B) **HEAD LEASE**

Number

Torrens Title

(C) **LODGED BY**

Document
Collection
Box

Name, Address or DX, Telephone and Customer Account Number if any

CODE

VL

Email:

Reference:

(D) **LESSOR**

QuickieBB Pty Ltd ACN 607 319 371

(E) **LEASE VARIED**

AH37645

(F) **LESSEE**

Ug Manufacturing Co Pty Ltd

- (G) 1. The rent is reduced to \$260,000.00 plus GST per year on and as from 15 June 2021 by monthly instalments.
 2. The term is increased to 10 years 0 months and 259 days so as to expire on 28 February 2022
 3. The option to renew is N.A.
 4. The provisions of the lease are varied as set out in annexure "A" hereto.

DATE / /

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

Company: QuickieBB Pty Ltd 607 319 371
 Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Name of authorised person: John Henry van Haandel
 Office held: Director

Signature of authorised person:

Name of authorised person: Lisa Van Haandel
 Office held: Director

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

Company: Ug Manufacturing Co Pty Ltd ACN 005 047 941
 Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Name of authorised person: Greg Healy
 Office held: Director

Signature of authorised person:

Name of authorised person: Simon Lynett
 Office held: Director/Secretary

**Annexure "A" to Variation of Lease AH37645
Between QuickieBB Pty Ltd (Lessor) and Ug Manufacturing Co Pty Ltd (Lessee)**

The following amendments apply from and including 15 June 2021.

1. Item 4 on the first page is deleted.
2. Item 12 on page 3 is deleted.
3. Item 14 on page 4 is deleted.
4. Item 16 on page 4 is deleted.
5. Item 33 on page 8 is deleted.

6. Clause 12.4 of Annexure B is deleted and replaced with:

12.4 If the lessor allows the lessee to continue to occupy the property after 28 February 2022 (other than under a new lease) then-

12.4.1 The lessee will continue as a 90 day to 90 day tenant and must go on paying the same rent and other money in the same way that the lessee had to do under this lease prior to 15 June 2021 (apportioned and payable monthly);


12.4.2 The tenancy shall be on the same terms as this lease, except for-

- Clause 4;
- Clauses 5.4 to 5.21 inclusive; and
- Clause 6.2 unless consent has previously been given;

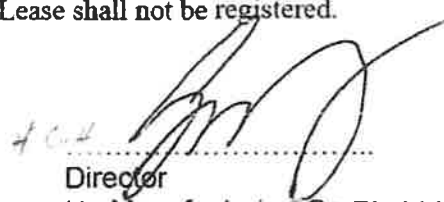
12.4.3 Either the lessor or the lessee can end the lease after 28 February 2022 by giving, at any time, 90 day's written notice to the other; and

12.4.4 Anything the lessee must do by the end of this lease must be done by the end of the 90 day notice period referred to in clause 12.4.3."

7. The parties agree that this Variation of Lease shall not be registered.


.....
John Henry Van Haandel


.....
Lisa Van Haandel

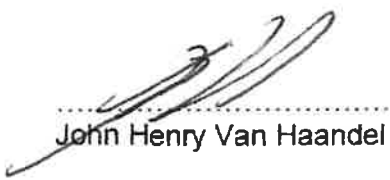

.....
Director
Ug Manufacturing Co Pty Ltd


.....
Director Secretary
Ug Manufacturing Co Pty Ltd


8. Vacating the premises and make good
- (a) On and from 15 June 2021, the Lessee's Permitted Use will no longer comprise the "residential use of the first floor units" (the "**Residential Units**").
 - (b) On or prior to 15 June 2021, the Lessee will vacate that part of the Premises which comprises the Residential Units. For the avoidance of doubt, the Lessee will not be required to make good the Residential Units (in accordance with sub-clause 8(c) below) until the date this Lease ends.
 - (c) On or before the date this Lease ends, the Lessee must (at its own cost) make good the Premises (including the Residential Units) as follows:
 - (i) remove the Lessee's signage;
 - (ii) remove the Lessee's retail stock;
 - (iii) repair and make good any damage caused by the removal of the Lessee's signage and retail stock, including patching and painting where required, but excluding fair wear and tear; and
 - (iv) return all keys and access devices to the Lessor.
 - (d) The Lessee may, at its election, remove all items of memorabilia in the Premises, including but not limited to surfboards and artwork.
 - (e) At the Lessor's request, on the day this Lease ends, the Lessee agrees to leave all furniture and fittings in the Residential Units (excluding the memorabilia) in situ.

9. Use of Trade Marks

- (a) In this clause:
 - (i) "**Licence Period**" means 15 June 2021 up to and including the date this Lease ends.
 - (ii) "**Trade Mark**" means the Lessee's trade mark or trade marks and includes both registered and unregistered trademarks and word marks.


.....
John Henry Van Haandel


.....
Lisa Van Haandel

*C 41

.....
Director Screehan
Ug Manufacturing Co Pty Ltd

*S. L.

.....
Director
Ug Manufacturing Co Pty Ltd

- (b) The Lessee grants to the Lessor a licence to use its name and Trade Mark(s) for the Licence Period, for the purpose of signage and marketing associated with the Residential Units.
- (c) The Lessor must ensure that the Lessee's Trade Mark(s):
 - (i) are used in accordance with any trade mark use or branding guidelines as provided by the Lessee from time to time; and
 - (ii) are not used in any manner likely to deceive or cause confusion or jeopardise their distinctiveness or value or the Lessee's goodwill or reputation.

10. Forward bookings – Residential Units

- (a) The Lessor acknowledges that it is responsible for the letting, rental collection and management of the Residential Units on and from 15 June 2021. For the avoidance of doubt, the Lessor agrees to honour all forward bookings on and from 15 June 2021.
- (b) The rents and profits with respect to the letting of the Residential Units shall benefit the Lessee up to and including 14 June 2021, and thereafter shall benefit the Lessor.

Execution

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

Corporation: QuickleBB Pty Ltd A.C.N 607 319 371
Authority: Section 127 of the Corporations Act 2001



 Signature of authorised person
 JOHN HENRY VAN HAANDEL



 Signature of authorised person
 LISA VAN HAANDEL

 Name of authorised person
 DIRECTOR

 Name of authorised person
 DIRECTOR

 Office held

 Office held

Form: 07VL
Release: 3-4

VARIATION OF LEASE
New South Wales
Real Property Act 1900

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

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STAMP DUTY Insert Duties Assessment No. as issued by Revenue NSW Office.

Duties Assessment No.

(A) **TORRENS TITLE**

6/255629

(B) **HEAD LEASE**

Number

Torrens Title

(C) **LODGED BY**

Document
Collection
Box

Name, Address or DX, Telephone, and Customer Account Number if any

CODE

Email:

Reference:

VL

(D) **LESSOR**

QuickieBB Pty Ltd ACN 607 319 371

(E) **LEASE VARIED**

AH37645

(F) **LESSEE**

Ug Manufacturing Co. Pty Ltd ACN 005 047 941

- (G) 1. The rent is reduced to \$ 12,500 . N.A. per month on and as from 28 February 2022
2. The term is N.A. to N.A. years N.A. months and N.A. days so as to expire on N.A.
3. The option to renew is N.A.
4. The provisions of the lease are varied as set out in annexure A hereto.

DATE

(H)

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

Company: QuickieBB Pty Ltd ACN 607 319 371

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

DIRECTOR

DIRECTOR

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

Company: Ug Manufacturing Co. Pty Ltd ACN 005 047 941

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person: Greg Healy

Name of authorised person: Simon Lynch

Office held:

Director

Office held:

Secretary

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

Form: 07VL
Release: 3-4

VARIATION OF LEASE
New South Wales
Real Property Act 1900

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

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STAMP DUTY

Insert Duties Assessment No. as issued by Revenue NSW Office.

Duties Assessment No.

(A) **TORRENS TITLE**

6/255629

(B) **HEAD LEASE**

Number

Torrens Title

(C) **LODGED BY**

Document
Collection
Box

Name, Address or DX, Telephone, and Customer Account Number if any

CODE

Email:

Reference:

VL

(D) **LESSOR**

QuickieBB Pty Ltd ACN 607 319 371

(E) **LEASE VARIED**

AH37645

(F) **LESSEE**

Ug Manufacturing Co. Pty Ltd ACN 005 047 941

- (G) 1. The rent is reduced to \$ 12,500 . N.A. per month on and as from 28 February 2022
2. The term is N.A. to N.A. years N.A. months and N.A. days so as to expire on N.A.
3. The option to renew is N.A.
4. The provisions of the lease are varied as set out in annexure A hereto.

DATE

(H)

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

Company: QuickieBB Pty Ltd ACN 607 319 371

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

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

Company: Ug Manufacturing Co. Pty Ltd ACN 005 047 941

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person: Greg Healy

Name of authorised person: Simon Lynch

Office held: Director

Office held: Secretary

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

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

Annexure A – Variation of Lease AH37645 Between QuickieBB Pty Ltd (Lessor) and Ug Manufacturing Co. Pty Ltd (Lessee)

1. Background

- (a) Lease AH37645 was varied by the parties by way of an unregistered variation of lease dated 15 June 2021 (included as Annexure B for reference) (together the "**Lease**").
- (b) The parties have agreed to further vary the Lease as set out in this Variation of Lease.

2. Variations

The following amendments to the Lease apply from and including 1 March 2022:

- (a) The Rent is reduced to \$12,500.00 excluding GST per month, payable by monthly instalments.

3. Agreement

The parties:

- (a) agree this Variation of Lease shall not be registered;
- (b) affirm the terms of the Lease except as they have been varied by this Variation of Lease. The other terms and conditions of the Lease remain unchanged and continue to have full force and effect; and
- (c) agree they must pay their own costs of an incidental to this Variation of Lease.

Execution

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

Corporation: QuickieBB Pty Ltd ACN 607 319 371

Authority: Section 127 of the Corporations Act 2001



Signature of authorised person

Name: JOHN VAN HAANDEL

Office held: DIRECTOR



Signature of authorised person

Name: LISA VAN HAANDEL

Office held: DIRECTOR

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

Corporation: Ug Manufacturing Co. Pty Ltd ACN 005 047 941

Authority: Section 127 of the Corporations Act 2001

Signature of authorised person

Name: **Greg Healy**

Office held: Director

Signature of authorised person

Name: **Simon Lynch**

Office held: Secretary

Annexure A – Variation of Lease AH37645 Between QuickieBB Pty Ltd (Lessor) and Ug Manufacturing Co. Pty Ltd (Lessee)

1. Background

- (a) Lease AH37645 was varied by the parties by way of an unregistered variation of lease dated 15 June 2021 (included as Annexure B for reference) (together the "Lease").
- (b) The parties have agreed to further vary the Lease as set out in this Variation of Lease.

2. Variations

The following amendments to the Lease apply from and including 1 March 2022:

- (a) The Rent is reduced to \$12,500.00 excluding GST per month, payable by monthly instalments.

3. Agreement

The parties:

- (a) agree this Variation of Lease shall not be registered;
- (b) affirm the terms of the Lease except as they have been varied by this Variation of Lease. The other terms and conditions of the Lease remain unchanged and continue to have full force and effect; and
- (c) agree they must pay their own costs of an incidental to this Variation of Lease.

Execution

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

Corporation: QuickieBB Pty Ltd ACN 607 319 371

Authority: Section 127 of the Corporations Act 2001

Signature of authorised person

Name: _____

Office held: _____

Signature of authorised person


Name: _____

Office held: _____

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

Corporation: Ug Manufacturing Co. Pty Ltd ACN 005 047 941

Authority: Section 127 of the Corporations Act 2001



Signature of authorised person

Name: Greg Healy

Office held: Director



Signature of authorised person

Name: Simon Lynch

Office held: Secretary

Annexure B – Unregistered variation of lease dated 15 June 2021

Certificate No: 20231050
Date: 29/08/2023
Receipt No: BSCCERT-7654
Your Reference: 230256



McInnes Legal
office@mcinneslegal.com.au

**PLANNING CERTIFICATE PURSUANT TO
SECTION 10.7(2) & 10.7(5) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

Property: 2 Jonson Street BYRON BAY 2481
Description: LOT: 6 DP: 255629
Parish: Byron
County: Rous
Parcel No: 35290

1 Names of relevant planning instruments and DCPs

- (1) The name of each environmental planning instrument and development control plan that applies to the carrying out of development on the land.**

Byron Local Environmental Plan 2014

State Environmental Planning Policies – refer to Annexure 1

State Environmental Planning Policy (Resilience and Hazards) 2021: Chapter 2 – Coastal Management (whole of lot)

Byron Shire Development Control Plan (DCP) 2014

- (2) The name of each proposed environmental planning instrument and draft development control plan, which is or has been subject to community consultation or public exhibition under the Act, that will apply to the carrying out of development on the land.**

Draft State Environmental Planning Policies – refer to Annexure 1

Planning Proposals – refer to Annexure 2.

2 Zoning and land use under relevant planning instruments.

The following matters for each environmental planning instrument or draft environmental planning instrument that includes the land in a zone, however described:

- (a) the identity of the zone, whether by reference to —
 - (i) a name, such as “Residential Zone” or “Heritage Area” or
 - (ii) a number, such as “Zone No 2(a)”,
- (b) the purposes for which development in the zone —
 - (iii) may be carried out without development consent, and
 - (iv) may not be carried out except with development consent, and
 - (v) is prohibited.
- (c) whether additional permitted uses apply to the land,
- (d) whether development standards applying to the land fix minimum land dimensions for the erection of a dwelling-house on the land and, if so, the fixed minimum land dimensions,
- (e) whether the land is in an area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*,
- (f) whether the land is in a conservation area, however described,
- (g) whether an item of environmental heritage, however described, is situated on the land.

BYRON LOCAL ENVIRONMENTAL PLAN 2014

2(a) – (b) Land zoning & permissibility of development

Zone E1 Local Centre

1 Objectives of zone

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To maximise public transport patronage and encourage walking and cycling.

2 Permitted without consent

Environmental protection works; Home-based child care; Home occupations

3 Permitted with consent

Amusement centres; Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Function centres; Home industries; Hostels; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation facilities (indoor); Respite day care centres; Service stations; Shop top housing; Tank-based aquaculture; Veterinary hospitals; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Recreation facilities (major); Research stations; Residential accommodation; Rural industries; Sewerage systems; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities; Wholesale supplies

In accordance with the Standard Instrument – Principal Local Environmental Plan, development that is permitted with development consent on land in a former Employment Zone under Byron Local Environmental Plan 2014, as in force immediately before 26 April 2023, continues to be permitted with development consent on the land until 26 April 2025.

Regard must be had for other clauses in Byron Local Environmental Plan 2014, which may affect the purpose for which development may be carried out.

2(c) Additional Permitted Use/s applying to the land:

Development for the purposes of tourist and visitor accommodation is permitted with development consent

2(d) The dimensions of the land have no bearing as to whether or not a dwelling-house may be erected on the land. Further information in regard to whether a dwelling-house is permissible with the consent of council is contained in Section 10.7(5) of this certificate (if applied for).

2(e) The land is not in an area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*

2(f) The land is not in a conservation area

2(g) An item of environmental heritage is not situated on the land

3 Contributions plans

(1) **The name of each contributions plan under the Act, Division 7.1 applying to the land, including draft contributions plans.**

(2) **If the land is in a special contributions area under Division 7.1, the name of the area.**

(1) Applications lodged after 21 November, 2001 and prior to 1 January 2013 are subject to contributions levied in accordance with the Byron Shire Council Section 94 Development Contributions Plan 2005 (incorporating Amendment No 1) for community facilities, open space, roads, car parking, cycleways, civic and urban improvements, shire support facilities and administration. The Byron Shire Council Section 94 Development Contributions Plan 2005 (incorporating Amendment No 1) remains in force for the purposes of collection of contributions levied under its terms.

Applications lodged after 1 January 2013 are subject to contributions levied in accordance with the Byron Shire Developer Contributions Plan 2012 (Amendment No 2). The plan is split into two parts, Part A being the Byron Section 94 plan that applies to all residential development and Part B being the Byron Section 94A plan that applies to all non residential development.

- (2) The land is not in a special contributions area under Division 7.1.

4 Complying Development

- (1) If the land is land on which complying development may be carried out under each of the complying development codes under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, because of that Policy, clause 1.17A (1) (c) - (e), (2), (3) or (4), 1.18(1)(c3) or 1.19.
- (2) If complying development may not be carried out on the land because of 1 of those clauses, the reasons why it may not be carried out under the clause.
- (3) If the council does not have sufficient information to ascertain the extent to which complying development may or may not be carried out on the land, a statement that—
 - (a) a restriction applies to the land, but it may not apply to all of the land, and
 - (b) the council does not have sufficient information to ascertain the extent to which complying development may or may not be carried out on the land.
- (4) If the complying development codes are varied, under that Policy, clause 1.12, in relation to the land.

Complying development under General Housing Code

Complying development may not be carried out on any part of the land due to the zoning of the land.

Complying development under Low Rise Housing Diversity Code

Complying development may not be carried out on any part of the land due to the zoning of the land.

Complying development under the Greenfield Housing Code

Complying development may not be carried out on any part of the land due to the zoning of the land.

Note:

From 6 July 2021 Complying Development on Greenfield Housing sites may only take place under the Greenfield Housing Code and not the Housing Code.

Complying development under the Rural Housing Code

Complying development may not be carried out on any part of the land due to the zoning of the land.

Complying development under the Agritourism and Farm Stay Accommodation Code

Complying development may not be carried out on any part of the land due to the zoning of the land.

Complying development under the Industrial and Business Buildings Code (previously known as Commercial & Industrial (New/Additions) Code)

Because of the provisions of clause 1.19 of SEPP (Exempt & Complying Development Codes) 2008, complying development may not be carried out on any part of the land as the land is wholly land that is identified by Byron Shire Development Control Plan 2014 as being or affected by a coastal erosion hazard.

Complying development under the Container Recycling Facilities Code

Complying development may be carried out on any part of the land.

Complying development under the General Development Code and Housing Alterations Code

Complying development may be carried out on any part of the land.

Complying development under the Industrial & Business Alterations Code (previously known as the Commercial and Industrial Alterations Code), Subdivision Code, Demolition Code and Fire Safety Code

Complying development may be carried out on any part of the land.

5 Exempt development

- (1) If the land is land on which exempt development may be carried out under each of the exempt development codes under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, because of that Policy, clause 1.16(1)(b1)-(d) or 1.16A.
- (2) If exempt development may not be carried out on the land because of 1 of those clauses, the reasons why it may not be carried out under the clause.

If the council does not have sufficient information to ascertain the extent to which exempt development may or may not be carried out on the land, a statement that—

- (a) a restriction applies to the land, but it may not apply to all of the land, and
 - (b) the council does not have sufficient information to ascertain the extent to which exempt development may or may not be carried out on the land.
- (3) If the exempt development codes are varied, under that Policy, clause 1.12, in relation to the land.

Exempt development may be carried out on the land.

6 Affected building notices and building product rectification orders

- (1) Whether the council is aware that -
 - (a) an affected building notice is in force in relation to the land, or
 - (b) a building product rectification order is in force in relation to the land that has not been fully complied with, or

- (c) a notice of intention to make a building product rectification order given in relation to the land is outstanding.

(2) In this section —

affected building notice has the same meaning as in the *Building Products (Safety) Act 2017, Part 4*.

building product rectification order has the same meaning as in the *Building Products (Safety) Act 2017*

- (1) The council is not aware of any affected building notice (within the meaning of Part 4 of the *Building Products (Safety) Act 2017*) that is in force with respect to the land.
- (2) Council is not aware of any outstanding notice of intention to make a building product rectification (within the meaning of the *Building Products (Safety) Act 2017*) having been given with respect to the land.

7 Land reserved for acquisition

Whether an environmental planning instrument or proposed environmental planning instrument referred to in section 1 makes provision in relation to the acquisition of the land by an authority of the State, as referred to in the Act, section 3.15.

BYRON LOCAL ENVIRONMENTAL PLAN 2014

No provision is made for acquisition of the land.

PROPOSED ENVIRONMENTAL PLANNING INSTRUMENT

Not applicable.

8 Road widening and road realignment

Whether the land is affected by any road widening or road realignment under—

- (a) Division 2 of Part 3 of the *Roads Act 1993*, or

Not affected

- (b) any environmental planning instrument, or

Not affected

- (c) any resolution of the council

Not affected

9 Flood related development controls

- (1) If the land or part of the land is within the flood planning area and subject to flood related development controls.

The land is not within the flood planning area and not subject to flood related development controls

- (2) If the land or part of the land is between the flood planning area and the probable maximum flood and subject to flood related development controls.

The land is not between the flood planning area and the probable maximum flood boundaries and therefore not subject to flood related development controls applying to this area.

(3) In this section—

flood planning area has the same meaning as in the Floodplain Development Manual.

Floodplain Development Manual means the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

probable maximum flood has the same meaning as in the Floodplain Development Manual.

10 Council and other public authority policies on hazard risk restrictions

(1) Whether any of the land is affected by an adopted policy that restricts the development of the land because of the likelihood of land slip, bush fire, tidal inundation, subsidence, acid sulfate soils, contamination, aircraft noise, salinity, coastal hazards, sea level rise or another risk, other than flooding.

(2) In this section—

adopted policy means a policy adopted—

(a) by the council, or

(b) by another public authority, if the public authority has notified the council that the policy will be included in a planning certificate issued by the council.

(a) The land is affected by a policy adopted by the council or another public authority and notified to the council that restricts the development of the land because of the likelihood of land slip, bushfire, tidal inundation, subsidence, acid sulphate soil and any other risk (other than flooding) known as:

Management of Contaminated Land Policy No 5.61.

Acid Sulfate Soils - Class 5 - Refer to Byron Local Environmental Plan 2014.

Coastal erosion hazard area - This land has been identified in the Development Control Plan 2014 - Chapter E5 as having a current and/or future exposure to coastal erosion and shoreline recession. The Development Control Plan 2014 - Chapter E5 is based on the Byron Bay Hastings Point Erosion Study dated November 1978 and reflects information available at the time. Contact council for more information.

(b) The land is not affected by a policy adopted by another public authority and notified to the council for the express purpose of its adoption by that authority being referred to in planning certificates issued by the council that restricts the development of the land because of the likelihood of land slip, bushfire, tidal inundation, subsidence, acid sulfate soil and any other risk (other than flooding).

11 Bush fire prone land

(1) If any of the land is bush fire prone land, designated by the Commissioner of the NSW Rural Fire Service under the Act, section 10.3, a statement that all or some of the land is bush fire prone land.

(2) If none of the land is bush fire prone land, a statement to that effect.

None of the land is bush fire prone land.

12 Loose-fill asbestos insulation

If the land includes residential premises, within the meaning of the *Home Building Act 1989*, Part 8, Division 1A, that are listed on the Register kept under that Division, a statement to that effect.

The land does not include any residential premises (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*) that are listed on the register that is required to be maintained under that Division.

13 Mine subsidence

Whether the land is declared to be a mine subsidence district, within the meaning of the *Coal Mine Subsidence Compensation Act 2017*.

The land is not proclaimed to be a mine subsidence district.

14 Paper subdivision information

(1) The name of a development plan adopted by a relevant authority that —

(a) applies to the land, or

(b) that is proposed to be subject to a ballot.

(2) The date of any subdivision order that applies to the land.

Words and expressions used in this section have the same meaning as in this Regulation, Part 10 and the Act, Schedule 7.

(1) Not applicable.

(2) Not applicable.

15 Property vegetation plans

If the land is land in relation to which a property vegetation plan is approved and in force under the *Native Vegetation Act 2003*, Part 4, a statement to that effect, but only if the council has been notified of the existence of the plan by the person or body that approved the plan under that Act.

A property vegetation plan under the *Native Vegetation Act 2003* or private native forestry plan under the *Local Land Services Act 2013* does not apply to the land.

16 Biodiversity stewardship sites

If the land is a biodiversity stewardship site under a biodiversity stewardship agreement under the *Biodiversity Conservation Act 2016*, Part 5, a statement to that effect, but only if the council has been notified of the existence of the agreement by the Biodiversity Conservation Trust.

Note— Biodiversity stewardship agreements include biobanking agreements under the *Threatened Species Conservation Act 1995*, Part 7A that are taken to be biodiversity

stewardship agreements under the Biodiversity Conservation Act 2016, Part 5.

The land is not a biodiversity stewardship site under a biodiversity stewardship agreement under Part 5 of the *Biodiversity Conservation Act 2016*

17 Biodiversity certified land

If the land is biodiversity certified land under the *Biodiversity Conservation Act 2016*, Part 8, a statement to that effect.

Note— Biodiversity certified land includes land certified under the *Threatened Species Conservation Act 1995*, Part 7AA that is taken to be certified under the *Biodiversity Conservation Act 2016*, Part 8.

The land is not biodiversity certified land

18 Orders under *Trees (Disputes Between Neighbours) Act 2006*

Whether an order has been made under the *Trees (Disputes Between Neighbours) Act 2006* to carry out work in relation to a tree on the land (but only if the council has been notified of the order).

An order under the *Trees (Disputes Between Neighbours) Act 2006* has not been made.

19 Annual charges under *Local Government Act 1993* for coastal protection services that relate to existing coastal protection works.

(1) If the *Coastal Management Act 2016* applies to the council, whether the owner, or a previous owner, of the land has given written consent to the land being subject to annual charges under the *Local Government Act 1993*, section 496B, for coastal protection services that relate to existing coastal protection works.

**(2) In this section —
existing coastal protection works has the same meaning as in the *Local Government Act 1993*, section 553B.**

Note — Existing coastal protection works are works to reduce the impact of coastal hazards on land, such as seawalls, revetments, groynes and beach nourishment, that existed before 1 January 2011.

Council is not aware of such a consent.

20 State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

Whether under *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* the land is—

- (a) in an ANEF or ANEC contour of 20 or greater, as referred to in that Policy, clause 19, or**
- (b) shown on the Lighting Intensity and Wind Shear Map, or**
- (c) shown on the Obstacle Limitation Surface Map, or**
- (d) in the “public safety area” on the Public Safety Area Map, or**

- (e) in the “3 kilometre wildlife buffer zone” or the “13 kilometre wildlife buffer zone” on the Wildlife Buffer Zone Map.

State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 does not apply to the land.

21 Development consent conditions for seniors housing

If *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 5 applies to the land, any conditions of a development consent granted after 11 October 2007 in relation to the land that are of the kind set out in that Policy, clause 88(2).

Council is not aware of any development consent conditions *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 5 that would apply to the land

22 Site compatibility certificates and development consent conditions for affordable rental housing

- (1) Whether there is a current site compatibility certificate under *State Environmental Planning Policy (Housing) 2021*, or a former site compatibility certificate, of which the council is aware, in relation to proposed development on the land and, if there is a certificate—

(a) the period for which the certificate is current, and

(b) that a copy may be obtained from the Department.

- (2) If *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Division 1 or 5 applies to the land, any conditions of a development consent in relation to the land that are of a kind referred to in that Policy, clause 21(1) or 40(1).

- (3) Any conditions of a development consent in relation to land that are of a kind referred to in *State Environmental Planning Policy (Affordable Rental Housing) 2009*, clause 17(1) or 38(1).

- (4) In this section —
former site compatibility certificate means a site compatibility certificate issued under *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

- (1) Council is not aware of any current site compatibility certificate (affordable rental housing) in respect of proposed development on the land.

- (2) No terms referred to in clause 21(1) or 40(1) of *State Environmental Planning Policy (Housing) 2021* have been imposed as conditions of consent to a development application in respect of the land

- (3) No terms referred to in clause 17(1) or 37(1) of *State Environmental Planning Policy (Affordable Rental Housing) 2009* have been imposed as conditions of consent to a development application in respect of the land.

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

- (a) that the land to which the certificate relates is significantly contaminated – if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued,
 - (b) that the land to which the certificate relates is subject to a management order – if it is subject to such an order at the date when the certificate is issued,
 - (c) that the land to which the certificate relates is the subject of an approved voluntary management proposal – if it is the subject of such an approved proposal at the date when the certificate was issued,
 - (d) that the land to which the certificate relates is subject to an ongoing maintenance order – if it is subject to such an order at the date when the certificate is issued,
 - (e) that the land to which the certificate relates is the subject of a site audit statement - if a copy of such a statement has been provided at any time to the local authority issuing the certificate.
- (a) The land (or part of the land) is **not** significantly contaminated as at the date this certificate is issued.
 - (b) The land is **not** subject to a management order as at the date this certificate is issued.
 - (c) The land is **not** the subject of an approved voluntary management proposal as at the date this certificate is issued.
 - (d) The land is **not** subject to an ongoing maintenance order as at the date this certificate is issued.
 - (e) The land is **not** the subject of a site audit statement as at the date this certificate is issued.

Note: Absence of notification from the EPA under Section 59 of the Contaminated Land Management Act 1997 does not necessarily mean that the land is not subject to some type of contamination

The answer given above only relates to "significantly contaminated" land as defined under the Contaminated Land Management Act 1997. If Council holds sufficient information about whether or not land is contaminated land (as defined under Schedule 6 of the Environmental Planning and Assessment Act 1979), this information will be given in the 10.7(5) certificate

In accordance with s10.7(5) of the *Environmental Planning & Assessment Act 1979* as amended, Council provides the following additional advice on other relevant matters that it is aware.

1. Dwelling entitlement

Is a dwelling-house permitted to be erected on land with the development consent of Council pursuant to Byron LEP 2014?

No

Note: Other legislation including Part 4, Division 4.11 Existing Uses of the *Environmental Planning & Assessment Act 1979* and State Environmental Planning Policy (SEPP) Exempt and Complying Development Codes 2009 contain provisions that may allow a dwelling house to be erected on the land under certain circumstances. Please consult those provisions to determine if they apply to the land.

2. Contaminated Land

Council records do not have sufficient information about previous use of the land subject of this certificate to determine whether or not the land is contaminated as defined in Schedule 6 of the *Environmental Planning & Assessment Act 1979*. Restrictions imposed by State Legislation including SEPP (Resilience & Hazards), and Council's Management of Contaminated Land Policy 5.61 will need to be considered in respect of any proposal to develop, remediate or rezone the land.

3. Burials on Private Land

Not applicable.

4. Biodiversity Conservation Agreements

This land is not subject to a conservation agreement under Part 5.20 of the *Biodiversity Conservation Act 2016*.

5. Land Proposed to be Subject to an Affordable Housing Contribution Scheme

The subject land is not identified in the Byron Shire Affordable Housing Contribution Scheme.

6. Voluntary House Purchase Scheme

The land is not identified in a voluntary house purchase scheme.

Any advice provided pursuant to S10.7(5) of the *Environmental Planning & Assessment Act, 1979* as amended, has been taken from Council's records, after a search thereof, but Council cannot accept responsibility for any omission or inaccuracy.

Any statement made or information given in this certificate does not relieve the property owner of obtaining Council's approval required under the *Local Government Act 1993*, the *Environmental Planning & Assessment Act 1979* as amended, or any other Act.

Mark Arnold
General Manager

Per 

ANNEXURE 1

State Environmental Planning Policies and Draft State Environmental Planning Policies applicable to land within Byron Shire

SEPP TITLE	LAND AFFECTED
State Environmental Planning Policy (Resilience and Hazards) 2021	Applies to the State (unless otherwise noted in the SEPP)
State Environmental Planning Policy (Biodiversity and Conservation) 2021	Applies to the State (unless otherwise noted in the SEPP)
State Environmental Planning Policy (Industry and Employment) 2021	Applies to the State (unless otherwise noted in the SEPP)
State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development	Applies to the State (unless otherwise noted in the SEPP)
State Environmental Planning Policy (Building Sustainability Index: Basix) 2004	Applies to the State (unless otherwise noted in the SEPP)
State Environmental Planning Policy (Resources and Energy) 2021	Applies to the State (unless otherwise noted in the SEPP)
State Environmental Planning Policy (Transport and Infrastructure) 2021	Applies to the State (unless otherwise noted in the SEPP)
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	Applies to the State (unless otherwise noted in the SEPP)
State Environmental Planning Policy (Planning Systems) 2021	Applies to the State (unless otherwise noted in the SEPP)
State Environmental Planning Policy (Primary Production) 2021	Applies to the State (unless otherwise noted in the SEPP)
State Environmental Planning Policy (Housing) 2021	Applies to the State (unless otherwise noted in the SEPP)

DRAFT STATE ENVIRONMENTAL PLANNING POLICIES PLACED ON EXHIBITION PURSUANT TO SCHEDULE 4 1(2) OF THE ENVIRONMENTAL PLANNING & ASSESSMENT REGULATION 2000

26.2020.1.1 - Amendment to State Environmental Planning Policy (Housing) 2021- Planning Proposal to:

1. introduce a mapping overlay for the Byron LGA known as the Byron Shire Short-term Rental Accommodation (STRA) Area Map to identify precincts where non-hosted STRA is permitted 365 days per year.
2. include a new clause that limits non-hosted STRA in the Byron LGA to 90-days in any 365-day period where a dwelling is located on land outside a mapped precinct. The Byron LGA to be removed from the list of “prescribed areas” under Clause 112(3) of the SEPP (Housing) for this provision to have effect.
3. provide a 12-month transition period deferring commencement in the Byron Shire local government area.

**DRAFT LOCAL ENVIRONMENTAL PLAN/S No/S PLACED ON EXHIBITION PURSUANT TO
SCHEDULE 4 1(4) OF THE ENVIRONMENTAL PLANNING & ASSESSMENT REGULATION
2000**

3513.00000

SHIRE OF BYRON
SEWERAGE CONNECTION PLAN

No. 651
For Mr. Leonard From Fidler House No. 2 Street Tonsen
of Cradens Lot 6 Section D.P. 255629
175 Pitt St, Sydney 2000 Fees \$15.00 Sheet No. 1

This Diagram is the property of the owner and must be returned to him on completion of the work. All plumbing and drainage work shown on Diagram must be carried out in accordance with the provision of Ordinance 46, made under the Local Government Act, 1919 (as amended) and to the satisfaction of the Council and no responsibility will be taken for the same unless OFFICIAL CERTIFICATES are obtained by LICENSED PLUMBERS AND DRAINERS.

RAIN OR SURFACE WATER IS NOT TO BE CONNECTED WITH SEWER.

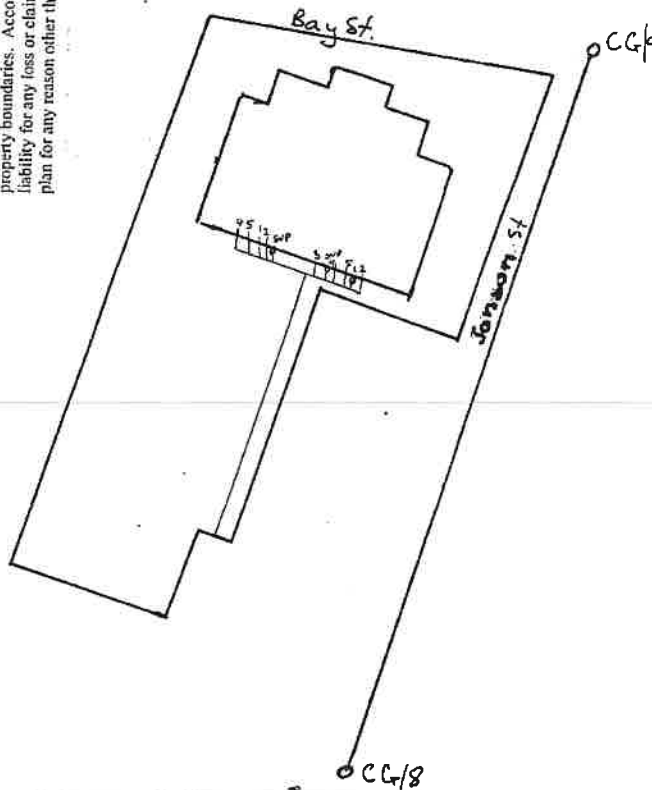
Junction about Details not available m. from downstream manhole. Depth -

REFERENCE

- | | |
|----------------------------|-------------------------|
| 1. Kitchen Sink | I.O. Inspection Opening |
| 2. Basin | G.T. Gully Trap |
| 3. Tubs | S.V.P. Soil Vent Pipe |
| 4. Bath | B.V. Back Vent |
| 5. Water Closet | E.V. Educt Vent |
| 6. Grease Interceptor Trap | |
| 7. Shower Recess | I.C. Inspection Chamber |

PLAN

WARNING: The boundaries of the land represented on this plan are the approximate locations of fence lines or other boundary markers at the time of preparation of the plan. The intent of this plan is to show only the approximate location of sewerage pipes by reference to buildings, fences or other boundary markers and not by reference to the surveyed boundaries. The plan should not be relied upon for any purpose other than to identify the approximate location of sewerage pipes. A Registered Surveyor should check the property boundaries. Accordingly, Council can accept no liability for any loss or claim by any person relying on this plan for any reason other than stated above.



BYRON SHIRE COUNCIL

DRAWN: *Phodge*

BYRON BAY

SCALE: NTS

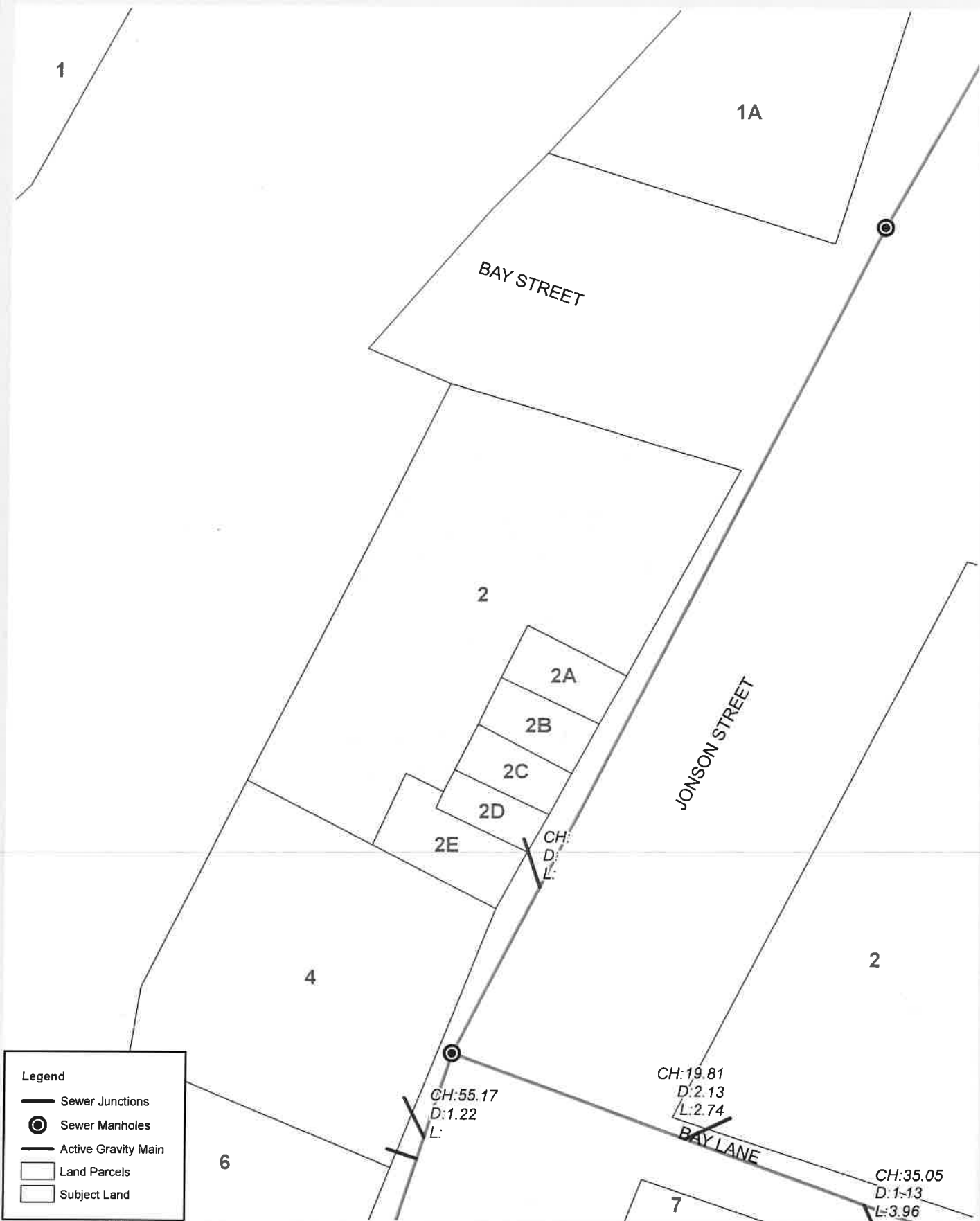
DATE 28.8.81.

[Signature]
HEALTH SURVEYOR

CHECKED: *[Signature]*

Sewer Location Plan

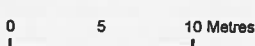
LOT: 6 DP: 255629 2 Jonson Street BYRON BAY NSW 2481



Legend

- Sewer Junctions
- Sewer Manholes
- Active Gravity Main
- Land Parcels
- Subject Land

WARNING
 The boundaries of the land represented on this plan are the approximate locations of fence lines or other boundary markers at the time of preparation of the plan. The intent of this plan is to show only the approximate location of sewerage pipes by reference to buildings, fences or other boundary markers and not by reference to surveyed boundaries. The plan should not be relied on for any purpose other than to identify the approximate location of sewerage pipes. A Registered Surveyor should check the property boundaries. Accordingly Council can accept no liability for any loss or claim by any person relying on this plan for any reason other than that stated above.
 Note: The information shown on this map is a copyright of the Byron Shire Council and the NSW Department of Lands.



1:400 @ A4 size



Date: 29/08/2023



COMMERCIAL REQUISITIONS ON TITLE

Vendor:
Purchaser:
Property:
Dated:

Possession and tenancies

1. Vacant possession of the Property must be given on completion unless the Contract provides otherwise.
2. Is anyone in adverse possession of the Property or any part of it?
3.
 - (a) What is the nature of any tenancy or occupancy?
 - (b) If it is in writing, all relevant documentation should be produced, found in order and handed over on completion with notices of attornment.
 - (c) Please specify any existing breaches.
 - (d) What is the current rent payable?
 - (e) All rent should be paid up to or beyond the date of completion.
 - (f) Please provide details of any bond money held, which money is to be paid to or allowed to the purchaser on completion.
 - (g) If the bond money is held by the Rental Bond Board, the appropriate transfer documentation duly signed should be handed over on completion.
 - (h) Please provide details of any security deposits and copies of any bank guarantees which are held by the vendor.
 - (i) Appropriate transfer documentation duly signed should be handed over on completion assigning the vendor's interest in the security deposits, bank guarantees and any personal guarantees.
 - (j) Are there any sub-leases? If so, copies should be provided.
 - (k) Please provide details of current insurances held by the tenant over the improvements and/or for public liability and plate glass, in particular the type of the cover, the name of the insurer, the period of the cover and the amount of the cover.
4. Is any tenancy subject to the *Retail Leases Act 1994 (NSW)*?
If so:
 - (a) complete copies of the disclosure statements as required by the *Retail Leases Act 1994 (NSW)* should be provided;
 - (b) a copy of a certificate given under Section 16(3) of the *Retail Leases Act 1994 (NSW)* should be provided or other evidence to confirm that Section 16 would not apply to the lease;
 - (c) is the vendor aware of any provision of the lease which is not enforceable because of a non disclosure in the disclosure statement or any lease which has been entered into in contravention of the *Retail Leases Act 1994 (NSW)*?
5. Is any part of the Property affected by a protected tenancy (a tenancy affected by Parts 2, 3, 4 or 5 of the *Landlord and Tenant (Amendment) Act 1948 (NSW)*)? If so, please provide details.
6. If any tenancy is subject to the *Residential Tenancies Act 2010 (NSW)*:
 - (a) has either the vendor or any predecessor or the tenant applied to the NSW Civil and Administrative Tribunal for an order?
 - (b) have any orders been made by the NSW Civil and Administrative Tribunal? If so, please provide details.

Title

7. Subject to the Contract, on completion the vendor should be registered as proprietor in fee simple of the Property free from all encumbrances and notations.
8. On or before completion, any mortgage, caveat, writ or priority notice must be discharged, withdrawn, cancelled or removed as the case may be or, in the case of a mortgage, caveat or priority notice, an executed discharge or withdrawal or removal handed over on completion.
9. Are there any proceedings pending or concluded that could result in the recording of any writ on the title to the Property or in the General Register of Deeds? If so, full details should be provided at least 14 days prior to completion.
10. When and where may the title documents be inspected?
11.
 - (a) In these requisitions, *personal property*, *secured party*, *security agreement*, *security interest* and *verification certificate* have the same meanings as in the *Personal Property Securities Act 2009 (Cth)*.
 - (b) Are the inclusions or other items of personal property included in the sale (*inclusions*) subject to a security interest or has the vendor entered into any security agreement in respect of the inclusions and in respect of which the vendor has received, or waived its right to receive, a verification certificate? If so, please provide full details of the property the subject of the security interest, the nature of the security agreement giving rise to the security interest and the full name, address, ACN and/or ABN of the secured party or security agreement counterparty.
 - (c) If a security interest has arisen or been granted over the inclusions, the vendor must procure a full release and discharge of that security interest by the secured party to the extent that it relates to the inclusions. Please provide details of whether the release will be a full or partial release of the security interest and confirm the manner in which the release is to be effected (eg. by provision of a duly executed *Deed Poll*

of Release and Undertaking to Amend Registration in the form recommended by the Australian Bankers' Association).

12. A depreciation schedule or all details of the written down values of all fixtures, fittings and chattels included in the Property must be provided.

Rates and taxes

13. All rates, taxes, levies, other charges and assessments, including land tax, affecting the Property must be paid up to the date of completion and receipts produced.
14. Is the vendor liable to pay land tax or is the Property otherwise charged or liable to be charged with land tax?
If so:
- (a) to what year has a return been made?
 - (b) what is the taxable value of the Property for land tax purposes for the current year?
15. The vendor must serve on the purchaser a current land tax certificate (issued under Section 47 of the *Land Tax Management Act 1956 (NSW)*) at least 14 days before completion.

Survey, Building, fencing, etc

16. Subject to the Contract, survey should be satisfactory and show that the whole of the Property is available and that there are no encroachments by or upon the Property and that all improvements comply with local government/planning legislation.
17. Is the vendor in possession of a survey report? If so, please produce a copy for inspection prior to completion. The original should be handed over on completion.
- 18.
- (a) Have the provisions of the *Local Government Act 1993 (NSW)*, the *Environmental Planning and Assessment Act 1979 (NSW)* and their regulations and instruments or former instruments been complied with?
 - (b) Have there been any alterations to improvements since 1959 requiring the consent of the Local Council or other authority? If so, please provide details and evidence of consents.
 - (c) Has the vendor a Building Information Certificate or Building Certificate? If so, it should be handed over on completion. Please provide a copy prior to completion.
 - (d) Has the vendor a Final Occupation Certificate (as referred to in the former s109C of the *Environmental Planning and Assessment Act 1979*) or an Occupation Certificate as referred to in s6.4 of that Act for all current buildings or structures? If so, it should be handed over on completion. Please provide a copy in advance.
 - (e) Has there been any building work on the Property to which provisions of the *Home Building Act 1989 (NSW)* apply? If so, please provide details and state whether the work was done pursuant to an owner/builder permit or by a licensed builder and provide details as to the permit, names of the parties and licence number(s).
19. Has any notice been given or received or has an application been made under the *Encroachment of Buildings Act 1922 (NSW)* or are there circumstances which would give rise to a notice or application under that Act in respect of the Property. If the answer is yes, please provide full details.
20. Are the improvements affected or have they been previously affected by:
- (a) termite infestation, treatment or repair?
 - (b) flooding or dampness of areas below ground levels?
 - (c) functional problems with equipment such as air conditioning, roofs or inclinators, pool equipment, building management and security systems?
21. Are there any pipes or structures below the surface of the land which are not disclosed in the Contract?
22. Is there any development approval consent to use the Property which is not disclosed in the Contract?
23. Has all the structural work including any retaining walls been designed by a qualified structural engineer?
24. If the answer to any of Requisitions 20 to 23 is yes, please provide full details.
25. Has the vendor (or any predecessor) entered into any agreement with or granted any indemnity to the local council, any water or sewerage authority or any other authority concerning any development on the Property?
26. Is there any planning agreement or other arrangement referred to in s7.4 of the *Environmental Planning and Assessment Act*, (registered or unregistered) affecting the Property. If so please provide details and indicate if there are any proposals for amendment or revocation?
27. Is there a swimming pool in the Property to which the *Swimming Pools Act 1992 (NSW)* applies? If so:
- (a) did its installation or construction commence before or after 1 August 1990?
 - (b) has the swimming pool been installed or constructed in accordance with approvals under the *Local Government Act 1919 (NSW)* and *Local Government Act 1993 (NSW)*?
 - (c) does it comply with the provisions of the *Swimming Pools Act 1992 (NSW)* and regulations relating to access? If not, please provide details or the exemptions claimed;
 - (d) have any notices or orders issued or been threatened under the *Swimming Pools Act 1992 (NSW)* or regulations?
 - (e) if a certificate of non-compliance has issued, please provide reasons for its issue if not disclosed in the Contract;
 - (f) originals of certificate of compliance or non-compliance and occupation certificate should be handed over on settlement.
- 28.
- (a) To whom do the boundary fences belong?
 - (b) Are there any party walls?
 - (c) If the answer to Requisition 28(b) is yes, specify what rights exist in relation to each party wall and produce any agreement. The benefit of any such agreement should be assigned to the purchaser on completion.

Capacity

41. If the Contract discloses that the vendor is a trustee, evidence should be produced to establish the trustee's power of sale.

Requisitions and transfer

42. If not attached to the Contract and the transaction is not an excluded transaction, any *clearance certificate* under Section 14-220 of Schedule 1 of the *Taxation Administration Act 1953 (Cth)* should be served on the purchaser at least 7 days prior to completion.
43. The vendor should furnish completed details within the time specified in the contract, sufficient to enable the purchaser to make any RW payment.
44. If the transfer or any other document to be handed over on completion is executed pursuant to a power of attorney, then at least 7 days prior to completion a copy of the power of attorney should be produced and found in order.
45. If the vendor has or is entitled to have possession of the title deeds the Certificate Authentication Code must be provided 7 days prior to settlement.
46. Searches, surveys, enquiries and inspection of title documents must prove satisfactory.
47. The purchaser reserves the right to make further requisitions prior to completion.
48. Unless we are advised by you to the contrary prior to completion, it will be assumed that your replies to these requisitions remain unchanged as at the completion date.

Completion

49. Please confirm that on completion you will hand to us:
- (a) a discharge of any mortgage, a withdrawal of any caveat and removal of any priority notice;
 - (b) the Certificate of Title Folio Identifier;
 - (c) Transfer executed by the vendor;
 - (d) the vendor's copies of all leases and disclosure statements;
 - (e) notices of attornment;
 - (f) all keys in the possession of the vendor;
 - (g) original of any Building Information Certificate or Building Certificate, Survey Report, occupation certificate and swimming pool compliance or non-compliance certificate;
 - (h) instruction manuals and warranties for any plant belonging to the vendor;
 - (i) any third party guarantees together with appropriate assignments;
 - (j) any documents required for the purchaser to have benefit of any bonds;
 - (k) tax invoice;
 - (l) depreciation schedule;
 - (m) any documents required for the purchaser to have good title to any fixtures, fittings or personal property;
 - (n) information or devices necessary for the operation of the security system, air conditioning systems, building management systems, etc;
 - (o) any security deposits or bank guarantees pursuant to any of the leases; and
 - (p) keys and other mechanisms (such as remote control equipment) for access to the premises (internal and external).