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## 1. INTRODUCTION

This Residential Conveyancing Booklet (**Booklet**) is to be read in conjunction with our letter (**First Letter**) and the enclosures to the First Letter.

If you have any questions about the information, please call us.

We may give you advice during your transaction on rights that you could have, such as rights to terminate the contract or to claim compensation from the seller. This advice may be general (eg, advice contained in the Booklet) or specific (eg, contained in the Contract and Property Report). Alternatively, you may form a view that you no longer wish to buy the property and need advice about any possible termination options that might exist.

Any such rights may have strict time limits, or be subject to the Court considering you to have lost them by actions or steps you take in the conveyance - particularly those you take after you become aware of those rights (for example, receiving some types of notices or search results). It is critical that if we have advised you about any rights and you may want to rely on them, or if you otherwise are considering not proceeding with the purchase, that you contact us as soon as possible to discuss. Otherwise, any rights or options may be lost.

## 2. OUR RETAINER

### 2.1. What is included in our retainer?

Our retainer includes all things the Queensland Conveyancing Protocol (endorsed by the Queensland Law Society) recommends as being usual and necessary for a purchase in Queensland.

If you instruct us to exclude any of the steps that are generally considered usual and necessary we are required by law to provide you with a detailed explanation of the risks associated with these exclusions. Advice of this nature is not part of the usual conveyancing process and will be an extra cost to you.

### 2.2. What is excluded from our retainer?

Our retainer does not extend beyond what is usual and necessary in the conveyancing process. We consider the following to be excluded:

#### a) Financial and tax advice

We do not give advice on the commercial viability, tax and other financial implications of the purchase. If you require advice on the commercial viability or the tax implications of the purchase (including Capital Gains Tax, Goods and Services Tax and land tax) you should seek the advice of a specialist financial advisor or tax professional, such as your accountant. This

includes advice on whether or not the standard contract provisions relating to GST are appropriate for your circumstances.

Advice from your tax accountant or financial advisor could be particularly relevant for circumstances which may include if you are buying the property as an investment, with or as part of a business, to substantially renovate or develop the property, you are the executor or beneficiary of an estate or you are not intending to use the property solely as your main residence.

You need to ensure that (where required) you or your accountant have registered the purchasing entity for GST and maintain that registration after settlement. Failure to do so could have significant GST, financial and other consequences.

#### b) Succession and matrimonial advice

This transaction may affect your succession planning or any arrangements with your current or former spouse (whether a marriage, de facto relationship or registered relationship). We recommend that you obtain legal advice about wills and other succession planning and any family law agreements or other spousal arrangements.

#### c) No physical inspection

We do not conduct a physical inspection of the property at any stage of the process. It is up to you to carry out any required inspections. Once the scheme has been established, it is particularly important that you carry out an inspection of the lot.

Issues about the location of the property, impacts of nearby properties or proposed developments or road works in the vicinity of the property are not likely to be discovered by us in our searches. You must advise us as soon as possible of any concerns arising from these types of issues following physical inspection of the property.

#### d) Finance and loan advice

You must apply for any finance required and tell us whether your finance approval is satisfactory. A finance approval is often subject to satisfactory valuation or other conditions.

In the case of property being acquired "off the plan", finance approval is often subject to the financier obtaining a satisfactory valuation following construction. It is possible that between the time you enter the contract and the due date for settlement, market conditions may change and an unsatisfactory valuation may be received

or your own financial position may change. In either case, this may cause your bank to decline to provide finance to complete the purchase. In that case, if the contract is no longer conditional on finance then despite the bank's failure to provide finance you would still be obliged to complete the contract.

It is up to you to decide whether you are prepared to accept these risks before notifying us that you have finance approval.

Our retainer does not extend to giving advice on the finance or security documents or any valuation you obtain.

We will need to liaise with your financier to arrange settlement. Any instructions you give us concerning your loan, the security documents or any certificates required by your financier are beyond the scope of our retainer.

**e) Limited town planning information**

The information available from town planning searches is set out in section 7.5 of this Booklet and the Buyer Searches List. The information received depends on the search you select. The work to be done as part of this retainer does not include advice about any of the following issues, unless we accept instructions to give advice (which will be at extra cost to you):

- i) Site Issues and Planning Laws
  - A. the development potential of the site;
  - B. whether nearby land is subject to development applications or development approvals which could affect the value or potential development of the site;
  - C. whether any applications over the site are current or have lapsed;
  - D. whether the site and structures on the site have all necessary approvals;
  - E. whether any approvals over the site have lapsed;
  - F. whether any old or historic approvals are still current and binding on the site. For example, whether a Bushfire Management Plan affects the property;
  - G. the laws about compensation for changes in the town planning scheme;

- H. deadlines to apply under superseded versions of the town planning scheme;
- I. other deadlines to make and pursue applications for approvals;
- J. whether the seller should assign certain rights to make applications to the buyer;
- K. any existing use rights;
- L. infrastructure charges which apply on development;
- M. whether the site is subject to call in powers by the government;
- N. any existing or proposed planning scheme amendments;
- O. the effect of the South East Queensland Regional Plan; and
- P. the effect of current and future government planning policies.

If you are concerned about the impact of any of these things on your use of the property then you should engage a town planner or a lawyer with town planning experience or make your own enquiries with the relevant local council.

ii) Other Laws

Local laws concerning:

- A. the protection of vegetation;
- B. noise including industrial noise, road noise, rail noise, aircraft noise and future planned increases in noise levels from these and other sources;
- C. current and future transport routes;
- D. vegetation controls; and
- E. whether the site has been illegally cleared in the past.

**f) Survey**

We do not conduct a survey following construction - this is your responsibility. Issues such as errors in the boundaries, area of the land or encroachments by structures onto or from the land will generally not be identified unless a survey is conducted.

**g) Document Retention**

We may not retain documents from your purchase indefinitely. The timing of destruction will depend on authorities you may give us.

It is your responsibility to retain copies, and originals (where appropriate), of all correspondence and documentation for your purchase. This may be required for taxation, duties or other evidentiary purposes at a later date. For example, if the property is held as an investment at any time, your documentation may be required for Capital Gains Tax purposes.

**h) Consumer Guarantees**

In some circumstances where goods are being supplied as part of the sale, implied consumer guarantees may apply to those goods. Where applicable they cannot be contracted out of. Our retainer does not extend to providing advice on the applicability or effect of the consumer guarantees to your purchase.

**i) National Rental Affordability Scheme (NRAS) lease or arrangement**

We will not be providing advice on any NRAS lease related to your purchase as part of our retainer. NRAS arrangements are very complex in nature and require specialist legal advice. It is your responsibility to obtain NRAS advice and if you choose not to:

- i) you may not be eligible for any benefits from the NRAS scheme;
- ii) the NRAS lease or arrangement may not be enforceable; or
- iii) you may suffer loss.

**j) Eligibility for grants and other schemes**

We will not be providing advice on the Great Start Grant or any other government grants as part of our retainer.

To find out if you are eligible for any grants you should contact your financier (if applicable) or visit the Queensland Office of State Revenue website (<http://www.osr.qld.gov.au>).

It is up to you to apply for the grants if you think they apply to you and we do not give any advice or reminders in relation to the grants.

If you are purchasing the property to develop it we do not give any advice on your future buyers' eligibility for any grants or concessions, unless that advice has been specifically requested and is included in our retainer.

**k) Self managed superannuation fund (SMSF) advice**

If the purchasing entity is an SMSF entity, you should seek the advice of your accountant about compliance with your SMSF's investment strategy and any other requirements. There are restrictions on how your SMSF may invest funds as well as restrictions on borrowing. The work to be done as part of this retainer does not include advice about those issues unless we accept instructions to give advice (which will be an extra cost to you).

**3. CONTRACT TERMS AND RELATED ISSUES**

**3.1. Nature of Contract**

The lot you intend to buy will not exist at the time that you enter into the contract which makes this transaction different from the conveyance of an existing lot. You should be aware of the following:

- a) The standard REIQ contract is not suitable for the sale of Lots "off the plan" and instead an "off the plan" form of contract and disclosure statement has been prepared by the seller's solicitors for the sale of the Lot. If this is not the case, we have outlined this in our Contract and Property Report.
- b) As the Lot has not yet been constructed, it is difficult at the point of entry into the contract to confirm any representations made to you about the Lot such as, for example, its area, location or view but if you are materially prejudiced by a change you may elect under the *Body Corporate and Community Management Act 1997* (Qld) to terminate the Contract.
- c) During the development and construction of the project, circumstances may arise which require the seller to make changes to the lot or the scheme.
- d) Under the contract, the seller usually gives limited warranties and reserves the right to make changes to deal with various issues that might arise and you agree to accept and not object to certain changes such as, for example, minor changes or changes that may not be minor but are authorised under the contract.
- e) You do have certain statutory rights but your rights are limited.
- f) Whether you have a right to terminate the contract if changes occur to the lot or the scheme will generally depend on whether you have been materially prejudiced and we would need to have regard to the provisions of the contract and the disclosure material that was given to you.

- g) Generally speaking you would be materially prejudiced if the area was 5% less than that shown in the Plan of the proposed Lot annexed to the Contract or disclosure statement.
- h) You are unlikely to be able to terminate the contract unless it can be shown that the lot or the scheme (as constructed and established or changed) is substantially different from that described in the contract.

### 3.2. Form of contract

There are no standard terms and conditions for an "off the plan" contract, although the contract will generally be prepared for and will be particular to the development. The main terms and conditions of the contract will be summarised in our Contract and Property Report.

You should read your contract in detail.

While it may be possible to seek to limit the risks associated with buying a lot "off the plan" by requesting amendments to the contract (assuming you have not yet entered into the contract), the seller may be reluctant to make changes to the contract in the interests of maintaining a consistent approach with all buyers and to preserve flexibility to deal with issues arising during the development and construction of the project.

### 3.3. Community titles scheme

You are buying a proposed lot in a community titles scheme.

A community titles scheme contains individually owned lots and common property (for example driveways, pedestrian access ways and landscaped areas). A community titles scheme is administered by a body corporate.

The members of the body corporate are the owners of lots in the scheme.

Each member of the body corporate has the right to participate in general meetings of the body corporate where major decisions affecting the scheme will be made. The day to day administration of the scheme is generally conducted by a committee.

### 3.4. Time essential

Unless we tell you otherwise, time is of the essence of the contract. This is a legal term that means you must perform your obligations strictly by 5:00pm (or other time specified) on the due date. For example, you must be able to settle on the settlement date; otherwise the seller may either terminate or seek to enforce the contract. In both cases, the seller may claim compensation from you.

### 3.5. Deposit

Payment of the deposit is a sign of your intention to proceed with the contract. If the contract becomes unconditional and you later default under the contract then the seller may be entitled to forfeit the deposit and sue you for damages.

An "off-the-plan" contract may provide for a deposit of up to 20% of the purchase price to be paid without offending the law against penalties. This is different to the position that generally applies to the sale of existing lots where a deposit or more than 10% of the purchase price is likely to be considered a penalty and the seller may be prevented from forfeiting the deposit. In addition, a deposit of 20% under an off-the-plan contract will not have the effect of making the contract an instalment contract (please see paragraph 7.16 for more information).

The stakeholder (who must be a solicitor or real estate agent) holds the deposit in trust until completion upon which it will be paid to the seller (usually less the agent's commission) unless there is a default or termination. If you were to terminate for valid reasons in accordance with the contract, then the deposit would be repayable to you.

If the deposit is not paid on time or you are otherwise in fundamental breach of the contract the seller may be entitled to terminate the contract and forfeit the deposit and either sue you for damages or seek an order from the court that you specifically perform the contract, or both. If the seller is obliged to pay GST then GST will be payable on the forfeited deposit. The seller may also be able to claim damages.

### 3.6. Finance

If the contract is subject to finance, you must take reasonable steps to obtain finance approval by the approval date. You must provide us with a copy of your letter from your financier confirming your finance approval or otherwise before we are expected to notify the seller as to whether you have obtained finance or not.

Once notice of finance approval is given to the seller under the contract, it cannot be withdrawn. You should however be aware that most financial institutions will reserve the right to withdraw finance approval at any time prior to settlement for any number of reasons. It is important that you consider very carefully any conditions attaching to a finance approval and your ability to satisfy all requirements (now and up to settlement) relevant to the advance of funds before instructing us to give any notice about finance under the contract.

We will need to notify the seller as to whether you have an approval on or before 5:00pm on the finance date. If you do not have written finance approval from your financier, we can (on your behalf) seek an extension of

time for finance. An extension is not guaranteed and there is a risk that your request may be declined. Alternatively, you may instruct us to waive the benefit of your finance clause. However, waiving the condition means you are bound to complete the contract regardless of whether your financier approves finance or the finance terms are satisfactory. (This will not affect any other rights you may have to terminate the contract.) If we do not notify the seller that finance is approved or that the condition is waived by this time then either party can terminate the contract.

When advising us of the satisfaction or otherwise of this condition you should notify us in enough time so that we are able to prepare and give the requisite notice under the contract in time to protect your interests.

### 3.7. Settlement Funds

If you are not borrowing all of the funds required for settlement, you are responsible for providing the balance amount as cleared funds. You may be able to make arrangements to either:

- a) transfer the funds to your financier (if your financier is willing to accept additional funds from you), and instruct your financier to attend at settlement with all the settlement money;
- b) provide us with bank cheques as instructed by the seller. You will need to ask us about the exact cheque details; or
- c) deposit the funds to our trust account as cleared funds at least one day before the day of settlement. Note that an ordinary bank transfer is not cleared funds and we cannot draw on those funds. The amount needs to be deposited in cleared funds by:
  - i) telegraphic transfer; or
  - ii) RTGS.

If you need to do this, please contact us as soon as possible as we will need to discuss timing issues and we will need to provide our trust account details to you.

You need to liaise with your financier and with us to ensure that logistically all settlement funds and any other payments you need make at or before settlement are available when required. This includes ensuring that any deposits to our trust account are cleared with sufficient time for us to arrange for cheques to be drawn and made available at the place nominated for settlement.

Please note that if all the required cheques are not available at settlement in the correct amounts, payee names and form of cheque then we may not be able to settle which may place you in breach of the contract entitling the seller to terminate the contract, keep the deposit and sue you for compensation.

### 3.8. Fraud, Identity Theft and Hacking

There has been a recent increase in the number of attempted frauds relating to real estate.

It is essential to the conveyancing process that you provide us with a range of private information. Much of that information can be obtained by fraudsters and identity thieves from publicly available records or by hacking, phishing or trolling through unsecure email transmissions.

Parties to a conveyance are targeted as the conveyancing process often requires the transfer of large quantities of money.

We will take efforts, such as obtaining personal identification from you, to assist to minimise the risk that fraud is committed.

We recommend that you should also take efforts to minimise the risk that your personal information is fraudulently obtained by being cautious about all communication. Steps could include:

- a) verify that all requests for transfers of money have been legitimately requested by our law practice or your bank - despite how legitimate the request may appear;
- b) do not transfer any money to any account other than our trust account (at our request – details of which are in the To-Do List) or to your existing bank or mortgage accounts (at your bank's request) – without first verifying with us that the transfer is necessary for your transaction;
- c) if you are contacted by someone you don't immediately personally recognise representing themselves to be from our law practice, your bank or somehow linked to the transaction, ask the representative some historical questions about the transaction that you can be certain will verify that they are who they say they are;
- d) try to avoid at all costs sending personal and sensitive information such as bank account numbers via email; and
- e) where instructions are requested or advice is provided via email, independently confirm them by another form of communication.

## 4. INSURANCE

### 4.1. Risk

In our Contract and Property Report, we will outline how the contract deals with risk between the parties.

Subject to the provisions of the contract, the property will usually be at your risk from the settlement date.

## 4.2. Body corporate insurance

The type of survey plan registered for the community titles scheme affects the responsibility of the body corporate to insure a building.

If the lot is part of a scheme created by a building format plan or a standard format plan where the lots share common walls, the body corporate is responsible for insuring the building for replacement value and public liability in respect of the common property and any relevant body corporate assets.

If the lot is part of a standard format plan where there are no common walls the body corporate is responsible for public liability insurance in respect of the common property and any relevant body corporate assets. The body corporate may insure the building with the agreement of all lot owners. If the body corporate has not done so then you should insure the building.

The seller is responsible for the initial insurance of the building and public liability in respect of common property (for the first 12 months following establishment of the scheme).

## 4.3. Your insurance

Where the body corporate is required to insure the building, we recommend that before settlement you arrange insurance cover in respect of the contents of the lot (which will include things such as carpets, curtains and internal blinds) and public liability insurance for the interior of the lot. The body corporate is responsible for insuring the building itself for replacement value. You should contact your insurance broker to arrange the necessary insurances for you.

Where the body corporate is not required to insure the building, we recommend that you arrange before settlement insurance cover in respect of the building, the contents of the lot (which will include things such as carpets, curtains and internal blinds) and public liability insurance for the interior of the lot. You should contact your insurance broker to arrange the necessary insurances for you.

In considering whether your insurance is appropriate for the property, you must take into account whether all relevant risks affecting the property have been covered. For example, you may need to consider whether flood insurance is appropriate for the property (if it is available). The body corporate may not have flood cover.

If the property is destroyed or damaged before settlement (or any earlier date on which you take possession of the property) so it is unfit for occupation as a dwelling, you may be entitled to terminate the contract.

If you are acquiring vacant land, it would be prudent to take out public liability insurance.

If you are obtaining finance, your financier will need to be noted on the policy as first mortgagee.

## 5. HOW DOES THE *PROPERTY OCCUPATIONS ACT 2014* (POA) AFFECT THE CONTRACT?

### 5.1. Application of POA

POA contains provisions relating to the sale of residential property. Those provisions apply to contracts for the sale of property that is used, or is intended to be used, for residential purposes but will not apply to a contract:

- a) for the sale of property where the property is used primarily for the purposes of industry, commerce or primary production;
- b) formed on a sale by auction (directly on the fall of the hammer by outcry or directly at the end of another similar type of competition for purchase);
- c) entered into, no later than 5.00pm on the second clear business day after the property was passed in at auction with a registered bidder for the auction;
- d) formed because of the exercise of an option granted under an earlier agreement if the parties to the contract are the same as the parties to the earlier agreement;
- e) where the buyer is a publicly listed corporation or a subsidiary of a publicly listed corporation or where the buyer is the State or a statutory body or where the buyer is purchasing at least three lots at the same time (even if under separate contracts).

### 5.2. Cooling off Period

If POA applies, you may be entitled to a five business day cooling off period.

The cooling off period starts on the day you receive from the seller or the seller's agent a copy of the contract signed by both parties or, if that day is not a business day, then on the next business day. If the seller signed the contract before you did, the cooling off period starts on the day that you signed the contract and communicated your acceptance of the seller's offer to the seller.

The cooling off period ends at 5:00pm on the 5th business day.

You are entitled to terminate the contract during the cooling off period. If you exercise that right, the seller may retain a penalty of 0.25% of the purchase price from the deposit paid under the contract. The balance of the deposit (if any) must be refunded to you within 14 days after the termination.

If you terminate the contract and later decide you would like to purchase the property, there is a risk that the



seller will not be willing to enter another contract with you.

If you decide to terminate the contract during the cooling off period you should tell us as soon as possible so we have time to give notice before the period ends.

You may shorten the cooling off period or waive the benefit of it entirely by giving written notice to the seller of the shortening or the waiver. It is up to you whether you wish to do this.

### 5.3. Particular words to be included in contract

If POA applies, the seller is required to ensure that when the seller first gives you the proposed contract for signing, the contract contains a conspicuously written note (immediately above and on the same page where you sign to indicate your intention to be bound by the contract) which draws your attention to the cooling off period and the termination penalty that applies if you terminate the contract during the cooling off period. It must also include a recommendation that you obtain an independent property valuation and independent legal advice before signing the contract.

If the required statement is not included in the contract, the seller or the seller's agent may have committed an offence under POA and be liable to a fine. Please note that any non-compliance will not affect the validity of the contract or give you a right of termination.

### 5.4. Valuation

The note to be included in the contract recommends that you obtain an independent valuation of the property. We endorse this recommendation. We do not provide valuation advice and the price is something you need to satisfy yourself about. The contract is not conditional on a valuation. If you do not want to proceed until you have a valuation, you will have to obtain the valuation before entering the contract or expiry of the cooling off period.

## 6. HOW DOES THE *BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997* (BCCMA) AFFECT THE CONTRACT?

### 6.1. Sunset date

An off-the-plan contract will usually contain a sunset date which is the date by which settlement must have occurred. The contract will generally stipulate that if settlement has not occurred by the sunset date, either party may terminate the contract.

Under the BCCMA, if the parties to a contract have specified a sunset date, settlement must occur by the earlier of that date and the date which is five and a half years after the date on which you enter into the contract or you will be able to terminate the contract. If the contract does not contain a sunset date, you will be able to terminate the contract if settlement has not

occurred by the date that is three and a half years after the date on which you enter into the contract.

Under the BCCMA, the seller has no right to extend the sunset date. If you request an extension of the settlement date until a date that is after the sunset date and the seller agrees to that request, the sunset date will be extended to that date.

Our Contract and Property Report will set out details of how the contract deals with the sunset date.

### 6.2. Settlement date

Under the BCCMA, a contract for the sale of a proposed lot is deemed to include a term providing that, despite anything else in the contract, settlement must not take place earlier than 14 days after the seller gives advice to the buyer that the scheme has been established or changed.

Our Contract and Property Report will set out details of how the contract deals with the settlement date.

### 6.3. Seller disclosure obligations

The seller is obliged to make certain disclosures to a buyer prior to entering into a contract for the sale of an "off the plan" lot. The disclosure statement must:

- a) be given before the contract is entered into;
- b) contain the information set out below in paragraph 6.4;
- c) be signed by the seller; and
- d) be substantially complete.

### 6.4. Content of Disclosure Statement

The disclosure statement contains information about the community titles scheme which directly or indirectly affects your proposed lot and the financial obligations that come with ownership of a lot in the community titles scheme, once established.

The disclosure statement must:

- a) identify the proposed lot;
- b) be accompanied by a disclosure plan prepared by a cadastral surveyor (the contents of which are specified below in paragraph 6.5);
- c) state the period within which the seller must settle the contract;
- d) state the amount of annual contributions reasonably expected to be payable to the body corporate by the owner of the proposed lot;
- e) include details about the engagement of any body corporate manager or service contractor for the scheme proposed to be entered into after the establishment of the scheme or proposed to be

- continued or entered into after the scheme is changed (including the terms of the engagement, the cost to the body corporate and the proportion of the cost to be borne by the owner of the proposed lot);
- f) include details of any authorisation of a person as a letting agent for the scheme proposed to be given after the establishment of the scheme or proposed to be continued or given after the scheme is changed (including the terms of the authorisation);
- g) include details of all body corporate assets proposed to be acquired by the body corporate after the establishment or change of the scheme;
- h) be accompanied by the proposed community management statement for the scheme and (if applicable) any proposed community management statement for any higher scheme of which the scheme is a subsidiary scheme;
- i) identify the regulation module proposed to apply to the scheme; and
- j) include other matters prescribed under the regulation module applying to the scheme.

#### 6.5. Disclosure Plan

The disclosure plan, which the seller must deliver with the disclosure statement, must contain the following particulars:

##### a) for a proposed lot to be created by a building format plan:

- i) the proposed number of the lot;
- ii) the total area of the lot;
- iii) identification of any parts of the lot proposed to be outside the proposed primary structure in which the lot is to be contained, including any proposed balcony, courtyard or carport;
- iv) the floor level on which the lot is proposed to be located;
- v) identification of other lots and common property proposed to be on the same floor level in the proposed primary structure in which the lot is to be contained; and
- vi) identification of the proposed orientation of the lot by reference to north;

##### b) for a proposed lot to be created by a standard format plan:

- i) the proposed number of the lot;

- ii) a description of the dimensions of the lot as bearings and distances;
- iii) if the seller of the lot intends that before settlement a building be constructed on the lot by the seller or another person under an arrangement procured by the seller:
  - A. the location of the building on the lot;
  - B. the total area, and number of levels, of the building; and
  - C. identification of any features proposed to be constructed on the lot, including, for example, any proposed driveway, carport, courtyard or pergola;
- iv) identification of the proposed orientation of the lot by reference to north;
- v) if there is operational work for the lot:
  - A. contour maps of the lot showing the surface contours, with appropriate contour intervals, as at the completion of the work;
  - B. the location of any retaining walls that are part of the work and the height of the retaining walls (and if it varies, the lowest and highest points and an average height);
  - C. the areas of the lot to be cut or filled as part of the work; and
  - D. information about any fill that is part of the work, including the depth of the fill, whether compaction of the fill will be done in accordance with the relevant Australian Standard (and if not, the nature of departure from the Standard) and the level of inspection and testing services carried out; and

- vi) if there is no operational work for the lot, contour maps of the lot showing the existing surface contours, with appropriate contour intervals; and

##### c) for a proposed lot to be created by a volumetric format plan:

- i) the proposed number of the lot;
- ii) an isometric representation of the lot;
- iii) the area of the projected footprint of the lot;

- iv) the level of the ground surface in approximate values for illustrating the location of the lot in relation to that level;
- v) identification of the proposed orientation of the lot by reference to north; and
- vi) if the lot is proposed to contain a building or to be located in a building:
  - A. the floor level on which the lot is proposed to be located; and
  - B. identification of other lots and common property proposed to be on the same floor level in the building.

### 6.6. Community Management Statement

The CMS is the constitution for the scheme and all lot owners and occupiers must comply with it.

The CMS contains the following information (where applicable):

- a) the name of the scheme and the body corporate;
- b) the regulation module applying to the scheme;
- c) for all lots in the scheme, the contribution schedule lot entitlement (**CSLE**) and the interest schedule lot entitlement (**ISLE**);
- d) in relation to the contribution schedule lot entitlements, a statement about the contribution schedule principle on which the contribution schedule lot entitlements have been decided and:
  - i) if decided in accordance with the equality principle and the lot entitlements are unequal, explain why they are unequal; or
  - ii) if decided in accordance with the relativity principle, details about the how the individual contribution schedule lot entitlements for the lots were decided;
- e) in relation to the interest schedule lot entitlements for the lots in the scheme, a statement that they reflect the respective market value of the lots or an explanation about why the interest schedule lot entitlements do not reflect the respective market values of the lots;
- f) an explanation of the development of the scheme land where it is intended to be developed progressively and the development is not complete;
- g) an explanation of the layered arrangement of community titles schemes where the scheme forms part of a layered arrangement;
- h) the by-laws for the scheme;

- i) a services location diagram identifying the location of basic utility services and details of statutory easements affecting the lots; and
- j) exclusive use or special rights over common property allocated to lots.

The CMS must be registered with the title to the common property for the scheme. A draft of the CMS must accompany the disclosure statement.

### 6.7. Lot entitlements

The CSLE determines a lot owner's:

- a) proportion of contributions to the total administration fund and sinking fund levies issued by the body corporate; and
- b) the value of the buyers' vote on a poll.

The CSLE must be consistent with either:

- the equality principle; or
- the relativity principle.

The equality principle requires that lot entitlements must be equal, except to the extent to which it is just and equitable for them not to be equal.

The relativity principle requires that lot entitlements must clearly demonstrate the relationship between the lots by reference to one or more of the following relevant factors:

- how the Community Titles Scheme is structured;
- the nature, features and characteristics of the lots;
- the purposes for which the lots are used;
- the impact the lots may have on the costs of maintaining the common property; and
- the market value of the lots.

The ISLE is used to determine a lot owner's:

- share of the costs of the insurance premium for some of the items insured by the body corporate;
- share of the common property;
- interest in any proceeds in the event of winding up the scheme.

Except where the transitional provisions apply, the ISLE must be consistent with the market value principle.

### 6.8. By-laws – Schedule C

The by-laws for the Body Corporate are set out in Schedule C to the CMS. The by-laws contain the rules for the day to day management and administration of the building. You should read these by-laws as they will affect the way you live within the community environment of the development.

If after reading the by-laws there are any issues of concern to you please telephone us to discuss.

### 6.9. Body corporate records search

It is imperative that a search of the body corporate records be undertaken after the scheme is established or changed. The search may:

- a) assist in verifying the accuracy of information contained in any disclosure statement;
- b) provide you with details of body corporate contributions and insurances;
- c) provide you with information regarding the current balances of the administration and sinking funds of the body corporate which are used by the body corporate to meet recurrent and regular expenditure and capital expenditure respectively; and
- d) provide information about matters the body corporate has dealt with including disputes, defects, repairs, approvals for works and alterations.

As time limits will apply in relation to any rights you may have to terminate the contract if the search reveals anything adverse, the search must be undertaken immediately after the scheme is established or changed and relevant body corporate meetings have been held.

### 6.10. Termination rights

You may be entitled to terminate the contract in the following situations:

#### a) **Material prejudice further statement - BCCMA s.214(4)**

If the seller becomes aware of any information contained in the disclosure statement that is inaccurate, the seller must give to you a further statement rectifying the inaccuracies in the disclosure statement at least 21 days before the contract is settled.

If you are materially prejudiced by a further disclosure statement or an inaccuracy in the disclosure statement then you can terminate the contract by giving notice to the seller within 21 days after the seller provides the further disclosure statement.

#### b) **Inaccurate disclosure - BCCMA s.217(d)**

If the CMS recorded is different from that which has been disclosed and you are materially prejudiced by the difference or inaccuracy you may terminate the contract. In such circumstances notice of termination must be given by the last of:

- i) not later than 3 days before settlement;
- ii) 14 days after the buyer is given notice of establishment of the Scheme; and
- iii) another day agreed between the buyer and the seller.

#### c) **Inaccurate disclosure specific to CSLE and ISLE - BCCMA s.217A**

If:

- i) acting reasonably, you believe:
  - A. CSLE have not been calculated in accordance with the principle on which they are proposed to be decided – equality or relativity; or
  - B. ISLE have not been calculated on the market value principle; and
- ii) you reasonably believe you would be materially prejudiced if compelled to complete,

you may, prior to settlement, but not later than 30 days after the date you receive a copy of the contract, terminate the contract by notice in writing, stating the contract is terminated under section 217A.

#### d) **Settlement does not occur within particular period - BCCMA s.217B**

As noted above, under the BCCMA, if the parties to a contract have specified a sunset date for settlement of the contract, settlement must occur by the earlier of the stipulated date and the date which is five and a half years after the date on which you enter into the contract or you will be able to terminate the contract. If the contract does not contain a sunset date, you will be able to terminate the contract if the seller has not delivered the transfer of the lot to you by the date that is three and a half years after the date on which you enter into the contract.

#### e) **Implied warranties given about the body corporate - BCCMA s.223**

The BCCMA implies in the contract certain warranties by the seller, including that:

- i) to the seller's knowledge there are no latent or patent defects in the common property or body corporate assets;
- ii) the body corporate records do not disclose any defects in the common property or body corporate assets;

- iii) to the seller's knowledge there are no actual, contingent or expected liabilities of the body corporate that are not part of its normal operating expenses other than those disclosed in the contract;
- iv) the body corporate records do not disclose any liabilities other than those which are part of its normal operating expenses or disclosed in the contract; and
- v) as at settlement, to the seller's knowledge, there are no circumstances other than those disclosed in the contract in relation to the affairs of the body corporate likely to materially prejudice the buyer.

You may terminate the contract up until 3 days before the due date for settlement if, at the time you terminate, there is a subsisting breach of any of the above warranties. You also have an ongoing right to damages if there is a breach of any of these warranties.

If you think you have a right to terminate under any of the above sections and wish to exercise that right please contact us immediately.

#### 6.11. Budget and related financial information

The budget must disclose the total estimated body corporate expenses for the whole scheme for the first year following establishment of the scheme. The budget is an estimate of the contributions that are payable for the first 12 months of the scheme, and is indicative of the budget that will be passed at the first general meeting of the Body Corporate after establishment of the scheme.

There is no guarantee against increases in the Body Corporate budget after the first 12 months of the term.

The sinking fund contribution is an estimate of the annual contributions required in order to maintain a fund for the ongoing capital maintenance associated with the buildings within the scheme. Under the BCCMA, the original owner is required to prepare a Sinking Fund Analysis and present it to the Body Corporate at the first annual general meeting.

The Sinking Fund Analysis then dictates the sinking fund levy that applies to the building for the next 10 years.

Annual contributions to the sinking fund from the commencement of the scheme are intended to ensure that when major painting and repair work is required, the Body Corporate has collected sufficient funds in order to undertake the work required and does not have to issue a special levy at that point in time. The sinking fund may need to be revised upon receipt of the Sinking Fund Analysis.

Details of the estimates of the contributions for Lot for the first year are set out in the Contract and Property Report.

### 7. IMPORTANT CONTRACTUAL INFORMATION FOR YOU TO CONSIDER

#### 7.1. Searches and Seller's disclosure

Generally, the property is sold free from encumbrances except those disclosed in the contract. In addition, there are certain statutory warranties which apply and the seller may make certain warranties in the contract regarding the condition of the property.

We will need to undertake various searches immediately following establishment of the scheme and registration of the plan creating the lot to establish whether the seller has complied with its disclosure obligations and that the warranties are correct. In the event of any adverse results we will advise what rights you have in relation to those matters. Unless you instruct us otherwise, we will undertake all necessary searches immediately following receipt of notice that the plan creating the lot has registered so that we can protect your interests.

Note that despite undertaking certain inquiries which may reveal adverse impacts on the property, you will not be able to terminate the contract in all cases. If searches do reveal unsatisfactory results we suggest you instruct us to give you specific advice about your contractual rights and any remedies that you may have. The advice to you will depend on the nature of the unsatisfactory search result and your particular contract. For example, the discovery of unapproved structures, non-compliant swimming pool fencing and flooding do not give you a right of termination or a right of compensation from the seller. Despite this, searches are still undertaken so that you well informed of the condition of the property.

#### 7.2. Purchasing Entity/Tenancy

If any of the following apply:

- a) There is more than one buyer:

Please advise in the Questionnaire whether you intend to purchase the property as joint tenants or tenants in common (and, if so, in what proportions) as we will need to specify this on the transfer documents.

The effect of **joint tenancy** ownership is that on the death of one owner their share in the land passes to the surviving joint tenants despite any provision in a will.

If you purchase as **tenants in common** then on the death of a co-owner the share in the property of that co-owner will pass in accordance with the will of that co-owner or in accordance with the

laws of intestacy if the co-owner does not have a valid will.

Joint tenants can at any time give a notice to their co-owners which severs their interest from the joint tenancy. A joint tenant who gives such a notice will then hold their share as a tenant in common with any other co-owners remaining as joint tenants between them (if more than one).

- b) You are purchasing the property for investment purposes and the contract has not yet been entered into:

We recommend that you seek advice from an accountant or financial advisor on the best purchasing and borrowing entity for you taking into account your financial circumstances and financial planning requirements (for example:

- i) whether to purchase (and borrow funds) as an individual, company, corporate trustee or other entity such as a self-managed superannuation fund;
- ii) tax implications and structuring; and
- iii) land tax and other holding costs).

### 7.3. Foreign ownership

If you are a foreign person or are a trustee of a foreign trust:

- a) you may need to obtain the consent of the Foreign Investment Review Board under the *Foreign Acquisition and Takeovers Act 1975*; and
- b) you may need to notify the Department of Natural Resources and Mines under the *Foreign Ownership of Land Register Act 1988*.

Please call us if you think this applies to you.

Failure to obtain the relevant approvals may result in a forced sale and substantial penalties being imposed.

### 7.4. Present Use

For residential units, the development will usually require an approval for a material change of use.

Following construction, it is prudent to obtain a standard town planning certificate to confirm whether a material change of use approval was obtained and the terms of that approval. Our recommendation about a town planning certificate appears below.

### 7.5. Town planning certificates

There are 3 types of planning and development certificates which can be obtained from the local authority. The information these searches disclose and their relative cost are set out in the Buyers Searches List:

#### a) Limited Certificate - (takes approximately 12 business days)

A limited planning and development certificate provides:

- i) information as to the town plan area or zone in which the property is located; and
- ii) by reference to the plan, a description of the planning scheme provisions applying to the property.

Limited certificates do not tell you whether the existing use is lawful or whether any conditions for the use of the property have been complied with. This certificate reveals the designated zone of the land and any other restrictions on the use of land in the zone. For example, if the property is in a Demolition Control Precinct or subject to character housing or other development codes of general application to the area.

#### b) Standard Certificate - (takes approximately 12 business days)

A standard planning and development certificate provides:

- i) the same information as in a limited certificate; and
- ii) a copy of every decision notice or negotiated decision notice for a development approval that has not lapsed, which has been issued by the local authority for the property.

By looking at the existing use of the property, the local authority area or zone for the property and the approvals that have been obtained for the property it is possible to ascertain if the property is capable of being lawfully used for its existing use or for other uses.

The certificate does not identify whether the conditions of any approval have been complied with.

#### c) Full Certificate - (takes approximately 30 business days)

A full planning and development certificate provides:

- i) the same information in a limited certificate and standard certificate; and
- ii) if there is currently in force for the property a development approval containing conditions (including conditions about the carrying out of works or the payment of money), a statement about the fulfilment or non-fulfilment of each condition.

The full certificate is more expensive as a town planning officer from the local authority needs to inspect the property and go through conditions of approval to identify those which have been complied with and those which have not.

**d) Recommendation on Town Planning Certificates**

Our recommendations on the type of certificate to obtain are:

- i) **for a residential dwelling or vacant land**, a limited certificate will generally be adequate unless you intend to develop the property when you may require a standard or full certificate;
- ii) **for residential units**, the overall development must have been granted an approval for a material change of use. It is prudent to obtain a standard certificate to confirm whether a material change of use approval was obtained.

Despite the above, we recommend you instruct us to obtain a standard certificate. If you do not obtain a standard certificate the risk is that you may not be able to establish that the use is lawful. In addition, information about some local government charges that may apply to the property (such as infrastructure charges) is only available by obtaining a standard (or a full) certificate. A local government approval for a community titles scheme will often include conditions requiring the payment of charges for the use or upgrading of infrastructure. If the seller does not pay any relevant charges attaching to the lot you are buying, you may become responsible for their payment.

We recommend, at the very least, that you instruct us to obtain a limited certificate.

We also recommend you instruct us to order a building search for a certificate of classification. The issue of a certificate of classification usually demonstrates that the local authority is of the view that the conditions of development approval have been satisfied. You must check the building classification of the unit to ensure that the certificate of classification is of a classification which allows you to use the premises for your intended use.

The only sure way of knowing whether the conditions of the approval have been complied with is to obtain a full certificate. Obtaining a full certificate is costly and takes considerable time to obtain (you may not necessarily receive the certificate by settlement even if ordered immediately). The certificate is legally binding on

council and the search may discover non-compliance issues that the other town planning certificates will not. If you intend to develop the property or are particularly concerned with compliance with all approvals (and your settlement date is sufficiently far enough away to allow the results to be obtained in time) it can be beneficial. If you require a full certificate please contact us as soon as possible.

**7.6. Future Use**

If you have any plans, after settlement, to change the use of the property or any building structures on it in the future, it is your responsibility to investigate what approvals you require from the local or other authorities. This is not part of our retainer.

**7.7. Environmental Protection**

The *Environmental Protection Act 1994 (EPA)* requires that the seller makes a specific disclosure before entering into an agreement with you if any of the following are applicable to the lot or the land out of which the lot will be created:

- a) it is listed on the Contaminated Land Register or Environmental Management Register;
- b) it is the subject of a notice or evaluation under the EPA (generally about possible contamination or notifiable activities such as underground fuel storage); or
- c) a magistrate has issued an order under the EPA for an authorised person to enter the land to conduct an investigation or to carry out work.

If any of these apply and the seller does not give disclosure before you enter the contract then you may terminate the contract before the earlier of settlement or possession. If the seller has not complied with these disclosure obligations, the seller may still give disclosure after the contract has been entered into, but in that case you will be given a period of 21 days after the seller's disclosure to terminate the contract. If you do not terminate in that time you will lose the right of termination. Given the limited time period available for termination, it is important that you contact us promptly if you receive a notice from the seller to remedy a failure to comply with its disclosure obligations.

If you terminate the contract because of the seller's failure to make relevant disclosure, all money paid by you under the contract must be refunded.

The searches we undertake only identify land on the Contaminated Land Register or the Environmental Management Register but not notices and orders. If you think the land from which the lot is to be created may be contaminated, consider that the prior or current use of the land might contribute to any contamination issues or think that any notices or orders may affect the

land, please contact us immediately so that we can take the steps necessary to address the issue.

### **7.8. Administrative Advices**

Administrative advices may reveal interests on title impacting on the land that require disclosure by the seller such as heritage listing or agreements, coastal protection notices, nature conservation orders, vegetation clearing offences or Milton Brewery notices (in respect of a unit).

An administrative advice on title may note that the land is declared acquisition land under the *Queensland Reconstruction Authority Act 2011* (Qld) and the following would apply:

- a) the owner is not able to sell the land other than to the authority; and
- b) if the owner does want to sell the land the authority must acquire it.

If at the contract date the land is declared to be acquisition land and disclosure has not been made in the contract then you may be entitled to terminate the contract by giving notice no later than 2 Business Days before the settlement date.

If a coastal protection or tidal works notice is given under the *Coastal Protection and Management Act 1995* (Qld), this should appear as an administrative advice. If you buy land with this on title, then the contract may be of no effect unless the seller has given you written advice of the undischarged notice not less than 14 days before settlement, or if settlement is less than 14 days after the date of the contract, at or before entering the contract.

Your rights for any administrative advice, including termination rights, may depend on the administrative advice and the extent of disclosure.

### **7.9. Particular issues of concern**

If there are matters regarding the property of particular concern or importance to you or your financier then you should discuss this with us so that we can determine whether a special condition is required and appropriate investigations can be made. For example:

- a) is the purchase to be subject to sale of buyer's existing property?
- b) is payment of deposit by insurance bond or bank guarantee?
- c) rights of termination if particular searches are adverse for example, if an existing or proposed tunnel or abandoned mines are discovered beneath the property.

### **7.10. Land Tax**

Land tax is potentially payable if the unimproved value of all land owned by you as at midnight on 30 June in each year meets the statutory threshold amount. Generally there are exemptions for your private residence. If the seller has any outstanding land tax liability in respect of the property then this will need to be taken into account in determining the settlement figures. There may need to be a settlement retention for unpaid land tax although in off the plan contracts, this right is not often given and instead you must rely on the seller's undertaking to pay land tax for the current land tax year. Following settlement you will be responsible for receiving any land tax assessments, checking the correctness of them and payment.

After settlement, you will be responsible for dealing with any land tax assessments, checking their accuracy (including your entitlement to any deduction or concession) and attending to payment of them.

### **7.11. Physical limitations, government intervention and operational issues affecting the land**

Unless you specifically instruct us to do so or unless the information is provided in the results from our standard searches, our retainer does not include advice about any of the following issues: whether the land is subject to laws about acid sulphate soils, whether there are agricultural land protection laws affecting the site or nearby land, air pollution, animal conservation laws over the site including current or proposed future wildlife corridors, bushfire control laws, whether the site is subject to commonwealth government environmental laws, laws about potential acquisition of part or all of the site by government or quasi government entities, whether the site or nearby land is contaminated or potentially contaminated, ability for the site to treat effluent, impacts on the site from current or future extractive resource developments including existing or possible future road haul routes, flooding from storm surge, overland flow or other sources, foul water drainage, storm water drainage pipes, sewerage pipes whether existing or proposed, whether you have any rights in negligence or contract or any other basis against an approving or acquiring authority, service connections to the site by services such as sewerage, water, power, telephone, internet or gas, whether the site is subject to land slip on or steep slopes, any laws relating to waste management and the use of the site for waste management activities, the availability of waste collection services for the site, water courses and underground water sources on the site and their effect on the usability of the site.

If you have any particular concerns relating to any of these matters then you should contact us.



### 7.12. Unregistered encumbrances

Unregistered encumbrances and other government rights or interests may affect the property or the title such as:

- a) unregistered water, sewerage or combine drains; or
- b) access or extraction rights under the *Greenhouse Gas Storage Act 2009*; *Geothermal Energy Act 2010* or the *Petroleum and Gas (Production and Safety) Act 2004*.

The standard searches may not reveal all unregistered encumbrances or other rights or interests. Council rates searches often show the existence of sewerage or drainage lines through the property.

If you have any concerns about unregistered encumbrances you should contact us as soon as possible.

### 7.13. State Government – Prescribed Projects

It is possible that infrastructure projects being undertaken by the State Government under the *State Development and Public Works Organisation Act 1971* may affect the land or nearby properties. An example is water infrastructure pipeline works.

Your use and enjoyment of the land may be affected by a project even though the land is not directly affected. Our searches only reveal issues affecting your land.

We suggest you make enquiries to see if projects have been declared or proposed in the area.

### 7.14. Urban Encroachment

The *Sustainable Planning Act (“SPA”)* contains provisions for the registration of urban encroachment areas that are known to be affected by the emission of aerosols, fumes, light, noise, odour, particles or smoke.

If the property you are purchasing is in an affected area, then you are restricted from taking proceedings against the industry making the emissions, with few exceptions.

There is generally no termination right if it is discovered that the property is in an affected area. However, contracts for units in the Milton Rail Precinct that are subject to a current development application made before 27 April 2009 may be terminated if the buyer did not receive a notice before the contract.

An owner must not lease a unit in an urban encroachment area before giving notice to any tenant that the unit is in the area and noting the restriction on proceedings.

### 7.15. Neighbourhood Disputes

Please tell us if you have been told about or been given any copies of documents relating to disputes between the seller and neighbouring property owners about

dividing fences or trees. In particular, please tell us if you are aware of any:

- a) notices to fence from a neighbour;
- b) applications to QCAT for fencing or trees; or
- c) QCAT orders for fencing or trees affecting the property.

If there are tree applications or orders affecting the property and they have been given to you by the seller before you enter into the contract, then you can be obliged to respond to the QCAT application or complete work specified in an order which has not been completed by the seller.

If copies of tree applications or orders are not given to you prior to your entry into the contract then you may have the ability to terminate the contract at any time before settlement.

If you terminate the contract in these circumstances then the seller may also be liable for your reasonable legal and other expenses incurred in relation to the contract after you signed the contract.

If you complete the purchase and the seller has not completed all work in relation to a QCAT tree order or application which has not been given, the seller will remain liable to carry out the work required under the order following settlement.

### 7.16. Instalment Contract

We need to determine if your contract is an instalment contract. An off-the-plan contract can become an instalment contract for many reasons including:

- a) the deposit is more than 20%;
- b) the deposit is stated to be non-refundable in all circumstances;
- c) the buyer is given a rebate off the purchase price which makes the deposit more than 20% of the rebated purchase price; or
- d) the buyer is required to pay money to the seller (other than a 20% deposit) before receiving a transfer and the amount payable under the contract exceeds market value for what is provided in exchange. For example, a rent to buy contract may require the payment of instalments which exceed the market rent that would otherwise be payable.

The effect of the contract being an instalment contract is:

- e) if you default in the payment of any instalment or part of the purchase price (other than a deposit) the seller cannot terminate the contract until 30 days after having served a notice giving you 30

days within which to make payment. If you choose to make payment within the 30 day period (including any default interest payable under the contract) then the seller cannot terminate the contract as a consequence of your initial non-payment. This means that where the default is in the payment of the balance purchase price, you can effectively obtain another 30 days in which to settle;

- f) the seller is prohibited from re-selling or re-mortgaging the property before settlement; and
- g) the seller may be required to comply with the National Credit Code, including the requirements for pre-contractual disclosure, ongoing notices and certain pre-requisites to enforcement.

Unless you instruct us to investigate the possibility that your contract is an instalment contract, we will assume that this investigation will not be of any benefit to you and that you wish to settle the purchase on the settlement date. If, of course, your capability to settle on the settlement date changes at any time, you should let us know.

### 7.17. Transfer Duty

Transfer duty is a state tax which is payable on dutiable transactions in Queensland. Transfer duty is calculated on the dutiable value of the property which is generally the higher of the consideration payable under the contract and the unencumbered market value of the property.

As transfer duty is applicable to each transaction, you must ensure that the buyer named in the contract is the person or entity that you intend to own the property. Otherwise you risk 2 or more assessments of transfer duty, which can increase the transfer duty payable.

If you are seeking to purchase property for your Self Managed Super Fund (**SMSF**) and are planning to buy the property using a bare trustee as purchaser with a loan then you run the risk of having to pay transfer duty again when the property is transferred to your SMSF on repayment of the loan. It is outside our normal retainer to advise you on strategy to avoid that additional duty.

You also need to carefully consider your current and ongoing eligibility for any concession or exemption that you obtain.

If you do not fulfil obligations regarding the payment of duty or advising the Office of State Revenue of changes to your eligibility for concessions or exemptions then they may identify this (as they actively cross-check data held by other government agencies) and can seek to recover any shortfall directly from you including penalties and interest. Recovery of incorrect or unpaid duty may occur years after settlement and could compound into substantial amounts.

### 7.18. Home Concessions to Transfer Duty

You may be eligible for a home concession on the transfer duty if you meet the following occupancy requirements:

- a) the property is being purchased as your first home and will be occupied as your principal place of residence within 12 months after settlement (**first home concession**);
- b) the property is vacant land, is being purchased to construct your first principal place of residence that you will occupy within 24 months after settlement (**first home vacant land concession**); or
- c) the property is being purchased:
  - i) to be occupied as your principal place of residence within 12 months after settlement; and
  - ii) the agreement to purchase the home was entered into either before 1 August 2011 or after 30 June 2012 (**home concession**),

and:

- d) you satisfy all the Office of State Revenue's strict eligibility requirements; and
- e) you do not dispose of **the property within 12 months of** occupying the residence.

#### **First Home Concession**

If you are eligible, no transfer duty is payable for purchases where the consideration or value is under \$500,000. The concession progressively reduces as the consideration or value of the acquired property increases up to \$550,000.

There is no first home concession where the consideration or value of the acquired property is equal to or greater than the applicable amount noted above. If you are over the upper limit for the first home concession you may be still be eligible for a home concession.

#### **First Home Vacant Land Concession**

If you are eligible, no transfer duty is payable for purchases of first home vacant land up to \$250,000 in value. The concession progressively reduces as the value of the acquired vacant land increases up to \$400,000. There is no concession where the value of the vacant land is \$400,000 or greater and transfer duty is then payable at ordinary rates.

#### **Home Concession**

If you are eligible, concessional duty rates apply to the first \$350,000 of the consideration or value of the home and any part of the price over \$980,000.

Duty at general rates apply to the value between \$350,000 and \$980,000.

### **Eligibility requirements**

Strict eligibility requirements apply to each of these home concessions.

We strongly suggest that if you intend on applying that you check your eligibility for the concession by using the Office of State Revenue's on-line eligibility test (available on their website at <http://www.osr.qld.gov.au>) or by calling them directly on 1300 300 734.

Usually you will not meet the eligibility requirements for a home concession on duty if:

- a) you are purchasing an investment property;
- b) you are purchasing using a company, unit trust or discretionary trust;
- c) you are applying for a first home concession and:
  - i) have held an interest in residential land somewhere in the world; or
  - ii) have claimed the concession before;
- d) you are applying for a first home vacant land concession and:
  - i) have held an interest in residential land somewhere in the world; or
  - ii) there will be more than one home constructed on the vacant land; or
  - iii) there was a building, or part of a building, on the land when you bought it.

You should tell us as soon as possible if:

- a) a concession applicant is under 18 years old; or
- b) a trustee or guardian is purchasing for the benefit of legally disabled beneficiaries.

### **Disposal of property**

You will lose your entitlement to the full concession if you sell, transfer, lease, extend a lease, rent, surrender a lease to another person or otherwise grant possession of your property to another person within 12 months of occupying the house. Repayment of all or part of the concession may be required and penalties and interest can apply.

If any of these things apply, you must notify the Office of State Revenue within 28 days of the event happening as your liability for transfer duty is required to be reassessed. If you do not, significant additional penalty duty may be payable and interest will be charged from when you are liable to notify the Office of State Revenue. If applicable, this is your responsibility and is outside the scope of our retainer.

However, the following are generally not considered to be a disposal of the property by the Office of State Revenue:

- a) the sellers remain in the property after settlement and move out within 6 months of settlement;
- b) existing tenants remain in the property no longer than 6 months after settlement and their current lease expiry date;
- c) an intervening event such as a natural disaster, incapacity or death prevents you from occupying the home;
- d) you enter a retirement village lease;
- e) you occupy the home as your principal place of residence, then leave it vacant for the rest of the 1 year occupancy period; or
- f) you transfer part of the property to your spouse.

It is important to consider the potential effect that any dealing with the property may have on your entitlement to a concession for transfer duty. You should contact us to discuss any queries you have in relation to this issue.

### **7.19. Related Parties**

You must tell us if you have a business or personal relationship with the seller or if the consideration for the sale is less than market value. If so, this will have duty implications and we will require for duty assessment purposes a valuation of the property using 3 comparable sales within the last 3 months. If applicable, these valuations must meet certain criteria and are required before duty being assessed and paid. You should call us as soon as possible to discuss if you think this may apply, as failure to obtain the valuations can result in serious consequences for you, for example, the imposition of penalty duty and interest.

### **7.20. Aggregation of Transfer Duty**

If you buy 2 or more properties or enter into 2 or more contracts that the Office of State Revenue considers arise from the 1 arrangement you may be liable to pay more transfer duty based on the aggregate value of the assets being purchased.

Please contact us as soon possible if you have:

- a) previously bought a property from any of the sellers noted in the contract (including family members or associates of any of the sellers, such as companies or officeholders related to any of the sellers);
- b) bought an adjoining or nearby property from anyone - particularly to develop together with this current property;

- c) bought a business in conjunction with this transaction;
- d) negotiated this contract or property together with or shortly after other contracts or property; or
- e) otherwise have reason to believe that the Office of State Revenue may consider this transaction as one transaction with another contract or agreement.

### 7.21. Pre-settlement inspection

Unless we tell you otherwise, your contract will entitle you to undertake a pre-settlement inspection of the property. We suggest you make arrangements with the seller to undertake that inspection. You may wish to engage a consultant to assist you undertake the inspection and, among other things, check that the property has been finished in accordance with the agreed specifications.

### 7.22. Transfer documents

Title to the property will be transferred to you after settlement when transfer documents are registered in the Land Titles Office. The transfer documents must be signed by the seller and by you although we are able to sign the transfer documents on your behalf.

The transfer documents will not be prepared until the title for the property has been created. In off-the-plan transactions, it is common practice for the seller's lawyers to prepare the transfer documents (as a large number of them may need to be signed by their client at the same time).

After settlement, we will lodge the transfer documents for registration unless you have a financier, in which case the financier will be responsible for lodging the transfer documents for registration. Registration of the transfer is critical to your ownership of the property and you should follow up your financier after settlement to ensure that the transfer has been registered. If you require us to follow up your financier, please let us know (but we note that this will be an extra cost to you).

### 7.23. Other Professionals

We suggest you seek advice about the purchase from other professionals, including:

- a) an accountant – about the commercial viability, appropriate purchasing entity, tax considerations of the purchase and (if applicable) compliance with your Self Managed Super Fund's investment strategy;
- b) a valuer – to assure yourself that the price represents the market value of the property; and
- c) a town planner – to assess planning compliance issues or give advice regarding proposed future development.

If the proposed lot includes vacant land, you might also consider seeking advice from:

- d) a surveyor – to survey the property to check for boundary, area and encroachment issues;
- e) a soil tester – if you are planning on building (particularly in a new estate) to assure yourself that the soil condition does not require any special construction requirements;

### 7.24. Settlement Notice

We will lodge a Form 23 Settlement Notice on title before settlement. This helps protect your interest in the property by preventing the registration of any conflicting interest (such as a mortgage or transfer to an unrelated third party, but not a caveat or writ of execution) until the first of:

- a) 2 months after we lodge the notice;
- b) your transfer and all related documents have been lodged; and
- c) it is withdrawn.

### 7.25. Utility Services

You will need to make your own arrangements for the connection of electricity, gas, telephone, internet, pay-TV services and other utility services from the proposed settlement date. If a service provider will not arrange for connection from settlement without authority or confirmation from the seller you should obtain this via the real estate agent or from the seller directly. It is beyond the scope of our retainer.

### 7.26. Promises made by the Seller or the Agent

Please tell us of any promises or warranties made to you by the seller or the agent which are not contained in the contract. If you have been promised anything not shown in the contract you should tell us as soon as possible, as we may not be aware of them. There may be no protection for you in the contract in relation to such issues. Your options may be limited to:

- a) terminating the contract under any applicable cooling off period or some other contractual term (where applicable); or
- b) making a claim for compensation.

Court action is expensive and if you are aggrieved by the misrepresentation it may ultimately be more cost effective to terminate using any contractual rights if you have the opportunity.

### 7.27. Building Covenants

Are you aware of any building covenants affecting the property or have you signed any document relating to any covenants? If so, please provide us with details

and a copy of any documents signed, as these may impact on your proposed use of the property or bind you to additional contractual obligations or liabilities.

## **8. ELECTRONIC CONVEYANCING (OR E-CONVEYANCING)**

### **8.1. What is e-conveyancing?**

E-conveyancing is a recently introduced system which allows for an “electronic” settlement of a conveyancing transaction through an online exchange known as PEXA. The system will operate across Australia and is supported by legislation in Queensland.

The system does not cover all aspects of the conveyancing process but does allow for the preparation and signing of documents and their lodgement in the Land Titles Office as well as the completion of financial transactions involved in a conveyance (such as the transfer of settlement money and the payment of transfer duty) to occur electronically. Traditionally, each of these steps is handled by a paper process where printed documents would be signed by parties and documents and cheques for settlement funds are physically exchanged at settlement.

The main advantage of an electronic settlement process is efficiency. Not only does the process make it unnecessary to attend a physical settlement for exchange of documents and funds, when the exchange occurs, cleared funds are credited to the recipient's account within a very short time. This has particular benefits for a seller who will not be required to wait for cheque clearing procedures following a settlement.

### **8.2. When can e-conveyancing be used?**

The electronic settlement process cannot be used for all conveyancing transactions. The process is only available to financial institutions and legal practitioners. It could not be used, for example, where a party chooses not to engage a legal practitioner. Generally speaking, the process can only be used if all parties agree to use it (ie, there is no compulsion to use the system).

In our First Letter we will tell you whether the contract makes provision for e-conveyancing to be used for settlement. Even if it does, the use of e-conveyancing for settlement will likely depend on the agreement of all parties (including financiers) to do so.

### **8.3. Client Authorisation and verification of identity**

We require your authority to use e-conveyancing for settlement of the transaction. That authority must be provided in the form of a Client Authorisation. A separate authorisation form must be signed by each buyer. If e-conveyancing is to be used, we will contact you closer to settlement to discuss arrangements for the signing of a client authorisation.

As a client authorisation allows us to undertake the settlement of the transaction on your behalf (and to sign documents for you), we will be required to undertake a prescribed process to verify your identity. This will require you to attend at our office for a face-to-face meeting where you will need to produce identity documents and sign the client authorisation. If it is not possible for you to attend at our office for a face-to-face meeting, arrangements can be made for an agent to undertake the verification of identity process.

### **8.4. Risks of using e-conveyancing**

Although the system may have advantages for the parties in relation to the efficiency of arranging settlement and the transfer of funds, a party contemplating the use of the system should be aware of the following risks:

- a) The electronic settlement may be delayed by system failures. If e-conveyancing is proposed, it will be important to consider how the contract deals with the issue of system failure to ensure that your rights are not adversely affected because a relevant computer system is inoperative.
- b) A party to a transaction may, after having previously agreed to use the system, elect to withdraw from it. Once again, it will be important to consider how the contract deals with this issue. For example, if the contract does allow parties to withdraw from the system, the parties may still need to prepare for a traditional (paper based) settlement process to ensure that the other party is still able to satisfy its settlement obligations on time. Having to prepare for both methods of settlement may erode the efficiencies and costs savings of the electronic process and may well add to the work involved in preparing for settlement.
- c) One of the main advantages of electronic settlement is the transfer of funds to the recipients of the settlement proceeds within a very short time. This will include not only the seller and the seller's financial institution but also authorities to whom money is paid to discharge an outgoing. Any arrangement that involves the transfer of funds to a nominated bank account carries with it the risk that an error may result in funds being credited to the wrong account. The speedy transfer of funds may make any wrongfully transferred funds more difficult to track or recover.
- d) A traditional settlement involves a physical exchange of documents and funds (provided by bank cheques) and, generally speaking, at any time until that exchange has taken place a party may refuse to settle. An electronic settlement will

require the respective parties to commit themselves to settlement of the transaction at an agreed time for settlement (when the electronic workspace for the transaction will lock). The settlement process is to commence at this time and, unlike a traditional settlement (where settlement may be aborted until final exchange), the parties will not be able to abort the settlement after the workspace locks and the settlement process has commenced. In limited circumstances, this may mean you discover issues with the property and, while the contract has not settled, you may be unable to exercise any rights.

If you have any questions about how e-conveyancing works or whether it may be used for your transaction, please contact us to discuss them.

## **9. PERSONAL PROPERTY SECURITIES**

### **9.1. What are Personal Property Securities and how do they affect this transaction?**

*The Personal Property Securities Act 2009 (Cth)* (PPSA) applies to security interests in personal property, including goods and chattels, financial property, shares and intellectual property (personal property).

PPSA doesn't apply to land, buildings or fixtures that form part of the land.

The PPSA may apply if, in addition to the land, personal property is sold to you which is not a fixture. Title to that personal property must be transferred at settlement free from encumbrances.

### **9.2. What is affected by the PPSA?**

A chattel, good or other personal property (other than crops) is considered to be a "Fixture" if it is affixed or annexed to the land in such a way as to become part of the land (taking into account the degree/ mode/ object of annexation). Fixtures are not affected by the PPSA.

All other goods will generally be considered chattels and may be affected by the PPSA.

For example:

- a) An air-conditioning unit, satellite dish, oven, rangehood, window furnishings or carpets are usually fixtures and the PPSA may not apply.
- b) A clothes dryer, furniture package, fridge or washing machine (if not affixed) are chattels to which the PPSA may apply.
- c) Items such as solar panels or water tanks/pumps may be considered a chattel depending on how these items are part of the property (eg if they are affixed, and if so, how)

### **9.3. When do I need a specific release?**

If:

- a) personal property is included in the sale;
- b) a security interest is noted on the PPS register for that property; and
- c) none of the extinguishment rules apply,

then the seller will need to obtain from the secured party either a letter or financing change statement, which releases the personal property being sold and provide it at settlement. If you are uncertain about the legal position of the chattels, we recommend you instruct us to request a specific release from the seller.

To enable us to consider if any of the extinguishment rules apply, please provide your instructions on whether any personal property being sold as part of the property is worth less than \$5,000, is subject to a security interest and is being sold for "new value".

Please tell us about any personal property included in the purchase so we can consider the impact of the PPSA on the transaction and protect your interests accordingly.

## **10. POOL SAFETY**

### **10.1. Pool Safety Laws**

The *Building Act 1975* (Qld) requires owners of swimming pools to comply with the pool safety standard in Part MP3.4 of the Queensland Development Code. The standard, which deals primarily with swimming pool barriers, was introduced on 1 December 2010 and pool owners were given until 30 November 2015 to comply with the standard unless they sold their property before this time in which case the standard would become applicable at the time of the sale.

### **10.2. What is a "swimming pool"**

A regulated swimming pool is any excavation or structure capable of being filled with water to a depth of 300mm or more including a pool, spa or wading pool, but generally does not include a fish pond (or similar ornamental water feature), dam, water tank, watercourse, spa bath in a bathroom (unless continually filled with 300mm or more of water) or birthing pool.

### **10.3. Pool Safety Certificate**

If there is to be a pool on the lot or the scheme land:

- a) we recommend that the contract include an obligation on the seller to provide you with a Pool Safety Certificate at settlement;
- b) we will conduct a search closer to settlement to find out if the pool is recorded on the register and if a Pool Safety Certificate has been issued.

The consequences for you if there is no Pool Safety Certificate in effect at settlement are:

- c) in the case of a pool on your lot – that you have an obligation to obtain a Pool Safety Certificate at your cost (including any works required to bring pool safety up to the current standard); and
- d) in relation to a shared pool – that the body corporate must obtain a Pool Safety Certificate at its cost (and you may be called on to contribute your proportionate share of the cost through the body corporate levies).

#### **10.4. Prohibition on letting**

If there is no Pool Safety Certificate for a pool you are prohibited from entering into a lease or tenancy without obtaining one.

#### **10.5. Penalties**

There are substantial penalties for non-compliance. On the spot fines range between \$117 and \$824 (although larger penalties may apply in some circumstances). The maximum penalty for non-compliance with the pool safety standard is \$19,437.

#### **10.6. Pool Safety Register**

Owners of swimming pools are responsible for ensuring that their pool is recorded in the Pool Safety Register. Failure to do so can result in a fine. We do not give this notice on your behalf.