

Office of the Registrar General - NSW

**Response to Discussion Paper:
Off-the-plan contracts for residential property**

12th January 2018



Table of Contents

1	Context of response	3
2	Key Contacts	3
3	PlanIT	3
4	Executive Summary	4
5	Response to Discussion Paper Questions	5
5.1	Response to Question 1.....	5
5.2	Response to Question 2.....	5
5.3	Response to Question 3.....	6
5.4	Response to Question 4.....	7
5.5	Response to Question 5.....	7
5.6	Response to Question 6.....	7
5.7	Response to Question 7.....	8
5.8	Response to Question 8.....	8
5.9	Response to Question 9.....	8
5.10	Response to Question 10 (i)	8
5.11	Response to Question 10 (ii)	9
5.12	Response to Question 11.....	9
5.13	Response to Question 12.....	10
5.14	Response to Question 13.....	10
5.15	Response to Question 14.....	10
5.16	Response to Question 15.....	11
5.17	Response to Question 16.....	11
5.18	Response to Question 17.....	12
5.19	Response to Question 18.....	12
5.20	Response to Question 19.....	13
5.21	Response to Question 20.....	13
6	Recommendations	14

1 Context of response

InfoTrack is the largest Information Broker providing property data to more than 8,000 firms across Australia. InfoTrack provides an off-the-plan solution to the Tier 1 and Tier 2 firms in Australia called "PlanIT". As part of the implementation of this product, we interact with the off-the-plan support teams across a variety of different firms every day. The response contained herein is a result of feedback from the InfoTrack dedicated team that supports Legal firms who are servicing Developers in off-the-plan and subdivision projects throughout Australia.

2 Key Contacts

John Ahern	Chief Executive Officer	john.ahern@infotrack.com.au	0475956856
Lee Bailie	GM – Products	lee.bailie@infotrack.com.au	0422936464
Denis Niclair	GM - Major Accounts	denis.niclair@infotrack.com.au	0418564151
Anthony Romeo	Account Manager	Anthony.romeo@infotrack.com.au	02 82037640

3 PlanIT

How InfoTrack simplifies off-the-plan contracts - PlanIT is an online portal that makes off-the-plan projects easier than ever. Leave behind your excel spreadsheets for good with our ultimate off-the-plan platform. With PlanIT, SignIT and SettleIT you can easily prepare, sign and arrange settlements for your off-the-plan contracts online. No need to print, copy, collate, compile and post hundreds or thousands of pages of documents manually.

1. Create a project
When creating a project, you simply specify the number of lots/units, address and project details.
2. Create a master contract
Once you've created your project you can order parent titles, plans, dealings and other certificates. You can also import special conditions, unregistered plans, and other documents.
3. Compile and export
Once you're satisfied with the master contract, you can compile the contracts for all lots with one click. You can customise individual contracts at a lot level or update all contracts at a master level. Choose to export all Contracts as a zip file, as well as the ability to export all data into an Excel spreadsheet.
4. Electronic signing with SignIT
You can easily upload the contracts for your off-the-plan project to SignIT. Once uploaded, you can send the parties a link via email for signing. You can easily track who has and hasn't signed via the SignIT dashboard.
5. Manage your settlements with SettleIT
With SettleIT you can easily plan, book and manage your settlements in one place. You can import development details and set criteria for settlement timeslots. With one click, you can email out links to all the purchasers' solicitors which will allow them to choose a date and time for settlement.

4 Executive Summary

InfoTrack is pleased to be able to respond to the reforms proposed by the NSW Office of the Registrar General. We outline in our paper, via direct answers to the questions raised, the strong belief that many of the practices being considered by the NSW Office of the Registrar General are in fact being completed (to some degree) in an adhoc manner and as such building a process and platform to streamline all parties (consumers, legal representatives and developers) would in fact assist with greater clarity in the marketplace. To this avail InfoTrack would also be very open to providing an open round table or panel with some of our key clients who operate in this market to further answer questions raised in the document, or validate conclusions being drawn by NSW Office of the Registrar General. We feel that this would allow for further feedback and validate some of the general considerations as outlined below.

1. Mandatory Disclosure:

Whilst it can be said that a specific disclosure regime for an off-the-plan contract is not currently mandated in New South Wales, it is largely common practice for additional disclosure documents and provisions to be provided in off-the-plan contracts in New South Wales. It is our view that mandating a disclosure regime would be a welcome formalisation of a well-established practice in New South Wales.

2. Implied Contract Terms:

Legislating this practice would arguably provide greater certainty and transparency between developers and purchasers and prevent unscrupulous developers from hiding changes until a later date. Technology like InfoTrack's PlanIT product could ease this burden by managing the collaboration or notification. It may be prudent to provide a definition of 'material impact' in such legislation and define a minimum degree of changes beyond which developers are required to provide notification to purchasers.

3. Standard notice periods where changes are needed:

It would be appropriate in these circumstances for vendors to be required to provide notification of such changes at a given time before being entitled to issue a notice to complete. In this situation, a notice period of 21 days would be most appropriate. Depending on the nature of the change, purchasers may face other impacts which would involve the need for consultation of third parties. Sufficient time should be allowed for purchasers to liaise with their lawyer or conveyancer in order to fully understand appreciate the nature of any impacts.

4. Minimum requirements for holding of deposits:

Whilst it may seem prudent to mandate deposits to be held only in the trust account of a stakeholder, we will explain that there are potential benefits to both vendors and purchasers of alternative arrangements, it could be deemed counterproductive to mandate this proposal. Rather, the Office of the Registrar General could consider implementing measures to reduce the potential risks to purchasers. For instance, mandating a limit to the percentage of the deposit which may be paid directly to vendor or mandating a limit to the percentage of the deposit which may be released to the vendor to fund construction.

The document further details the above and although significant work has gone into the response to provide fair and detailed answers to the proposals we strongly feel further validation from stakeholders in the market would assist NSW Office of the Registrar General in developing and implementing reforms that ensure fairness and clarity in the off-the-plan contract process. As outlined InfoTrack would happily assist in doing this, through our network of 8000 plus clients.

5 Response to Discussion Paper Questions

5.1 Response to Question 1

“Is a separate mandatory disclosure regime needed for off-the-plan contract?”

Given InfoTrack’s position as a market leading information broker and legal technology developer, we are uniquely placed in our dealings with Australia’s largest law firms to have visibility across common legal practice in off-the-plan conveyancing.

Accordingly, whilst it can be said that a specific disclosure regime for an off-the-plan contract is not currently mandated in New South Wales, it is largely common practice for additional disclosure documents and provisions to be provided in off-the-plan contracts in New South Wales. These include (but are not limited to):

- Proposed strata plans
- Schedule of finishes
- Proposed by-laws
- Proposed management statements
- Proposed strata unit entitlement schedules
- Proposed levy contributions schedules

It is our view that mandating a disclosure regime would be a welcome formalisation of a well-established practice in New South Wales.

5.2 Response to Question 2

“Is there benefit in mandating a prescribed disclosure statement for all off-the-plan contracts?”

As noted in response to question one, it is by and large common practice in off-the-plan conveyancing in New South Wales for additional disclosure documents to be provided in off-the-plan contracts. Given that the types and nature of these documents is not formally mandated, this can allow for a small degree of variation in the level of disclosure amongst off-the-plan contracts.

Provision of a formal mandate would allow for greater certainty, clarity and uniformity amongst off-the-plan contracts.

InfoTrack considers however that the form of the disclosure documents need not necessarily be in that of a separate statement. In other jurisdictions (such as Victoria) where disclosure documents are required to form part of a separate statement, additional delay in executing and exchanging Contracts can occur as a result.

In New South Wales, it is common practice for additional disclosure documents in off-the-plan contracts to simply be annexed in the contract alongside the mandated disclosure documents for the parent lot as required by Schedule 1 of the *Conveyancing (Sale of Land) Regulation 2017*.

InfoTrack considers that the practice of annexing additional disclosure documents to the existing

singular contract should not be disturbed. Instead, just as the existing ‘Contract for the Sale of Land’ as published by the NSW Law Society provides for the annexed disclosure documents to be marked on the ‘list of documents’ on page 2 (as reproduced below), InfoTrack considers that a similar additional ‘list of documents’ pertaining to off-the-plan contracts could be added to the existing NSW Contract for the Sale of Land’.

List of Documents	
<p>General</p> <p><input type="checkbox"/> 1 property certificate for the land</p> <p><input 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 that is to be lodged with a relevant plan</p> <p><input type="checkbox"/> 6 section 149(2) certificate (Environmental Planning and Assessment Act 1979)</p> <p><input type="checkbox"/> 7 section 149(5) information included in that certificate</p> <p><input type="checkbox"/> 8 sewerage infrastructure location diagram (service location diagram)</p> <p><input 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 section 88G certificate (positive covenant)</p> <p><input type="checkbox"/> 12 survey report</p> <p><input type="checkbox"/> 13 building certificate given under legislation</p> <p><input type="checkbox"/> 14 insurance certificate (Home Building Act 1989)</p> <p><input type="checkbox"/> 15 brochure or warning (Home Building Act 1989)</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 old system document</p> <p><input type="checkbox"/> 19 Crown purchase statement of account</p> <p><input type="checkbox"/> 20 building management statement</p> <p><input type="checkbox"/> 21 form of requisitions</p> <p><input type="checkbox"/> 22 <i>clearance certificate</i></p> <p><input type="checkbox"/> 23 land tax certificate</p> <p>Swimming Pools Act 1992</p> <p><input type="checkbox"/> 24 certificate of compliance</p> <p><input type="checkbox"/> 25 evidence of registration</p> <p><input type="checkbox"/> 26 relevant occupation certificate</p> <p><input type="checkbox"/> 27 certificate of non-compliance</p> <p><input type="checkbox"/> 28 detailed reasons of non-compliance</p>	<p>Strata or community title (clause 23 of the contract)</p> <p><input type="checkbox"/> 29 property certificate for strata common property</p> <p><input type="checkbox"/> 30 plan creating strata common property</p> <p><input type="checkbox"/> 31 strata by-laws</p> <p><input type="checkbox"/> 32 strata development contract or statement</p> <p><input type="checkbox"/> 33 strata management statement</p> <p><input type="checkbox"/> 34 leasehold strata - lease of lot and common property</p> <p><input type="checkbox"/> 35 property certificate for neighbourhood property</p> <p><input type="checkbox"/> 36 plan creating neighbourhood property</p> <p><input type="checkbox"/> 37 neighbourhood development contract</p> <p><input type="checkbox"/> 38 neighbourhood management statement</p> <p><input type="checkbox"/> 39 property certificate for precinct property</p> <p><input type="checkbox"/> 40 plan creating precinct property</p> <p><input type="checkbox"/> 41 precinct development contract</p> <p><input type="checkbox"/> 42 precinct management statement</p> <p><input type="checkbox"/> 43 property certificate for community property</p> <p><input type="checkbox"/> 44 plan creating community property</p> <p><input type="checkbox"/> 45 community development contract</p> <p><input type="checkbox"/> 46 community management statement</p> <p><input type="checkbox"/> 47 document disclosing a change of by-laws</p> <p><input type="checkbox"/> 48 document disclosing a change in a development or management contract or statement</p> <p><input type="checkbox"/> 49 document disclosing a change in boundaries</p> <p><input type="checkbox"/> 50 information certificate under Strata Schemes Management Act 2015</p> <p><input type="checkbox"/> 51 information certificate under Community Land Management Act 1989</p> <p>Other</p> <p><input type="checkbox"/> 52</p>

This would eliminate the need for additional legislative provisions and confusion resulting from the introduction if a separate disclosure statement.

5.3 Response to Question 3

“If so, what should be included in the Statement?”

As noted previously, it is common practice in off-the-plan conveyancing for certain documents to be annexed to off-the-plan contracts. In mandating a list of prescribed documents, the following should be included as a minimum:

- Proposed strata plans
- Schedule of finishes
- Proposed by-laws
- Proposed management statements
- Proposed strata unit entitlement schedules
- Proposed levy contributions schedules
- Copies of Development Application approvals / consents (if obtained at time of contract)

- A statement as to the financial position of the developer and the likelihood of the developer becoming insolvent in the near future.

5.4 Response to Question 4

“Would buyers have more certainty if the following documents were included as part of mandatory disclosure:

- **proposed plan showing the proposed lot**
- **proposed by-laws**
- **proposed schedule of unit entitlement**
- **estimate of proposed levy contributions”**

It is currently common practice for the documents listed in question four to be provided in existing off-the-plan contracts. Mandating the inclusion of these documents would be largely formalising an already well-established practice.

Introducing the mandate would certainly provide purchasers with a greater degree of certainty. In addition, purchasers could expect a greater degree of uniformity in off-the-plan contracts.

5.5 Response to Question 5

“Are any of the documents unable to be provided or would impose significant cost on developers if required at the time contracts are prepared?”

In stipulating the documents to be provided, regard should be given to the differences between apartment developments, land subdivisions and house and land packages, each of which are routinely referred to as off-the-plan sales in New South Wales.

In certain situations, it may be difficult for a developer to obtain a schedule of proposed levy contributions.

Given this, it would be prudent for the legislation to allow a mechanism to deal with the inability of a developer to provide certain documents.

5.6 Response to Question 6

“Should developers be required to notify purchasers where a change is made to:

- **The proposed plan;**
- **The schedule of unit entitlements (for strata and community schemes) and**
- **The by-laws or management statement**

that is likely to have a material impact on the purchaser?”

It can be considered that it is largely common practice in NSW off-the-plan conveyancing for developers to notify purchasers of changes to plans, unit entitlements, by laws and management statements and many contracts provide clauses and stipulations which provide a mechanism and timeframes for this to occur.

Legislating this practice would arguably provide greater certainty and transparency between developers and purchasers and prevent unscrupulous developers from hiding changes until a later date. Technology like InfoTrack's PlanIT product could ease this burden by managing the collaboration or notification.

It may be prudent to provide a definition of 'material impact' in such legislation and define a minimum degree of changes beyond which developers are required to provide notification to purchasers.

5.7 Response to Question 7

"Are there any other changes to the scheme that developers should be required to notify purchasers of?"

In addition to the items noted in the Discussion paper, it may be prudent for developers to be required to notify purchasers of any changes in the developer's beneficial ownership or any other financial position which may impact their ability to complete the project on time.

5.8 Response to Question 8

"Should notification of changes be required to be made at a set time before settlement can be enforced? "

It would be appropriate in these circumstances for vendors to be required to provide notification of such changes at a given time before being entitled to issue a notice to complete.

5.9 Response to Question 9

"What period of notice is appropriate; 14 or 21 days?"

In this situation, a notice period of 21 days would be most appropriate. Depending on the nature of the change, purchasers may face other impacts which would involve the need for consultation of third parties.

For an instance where the size of a lot is greatly reduced, purchasers may face difficulty in obtaining finance and will need additional time to liaise with their lender and / or seek additional arrangements.

Sufficient time should also be allowed for purchasers to liaise with their lawyer or conveyancer in order to fully understand appreciate the nature of any adverse impacts.

5.10 Response to Question 10 (i)

"Should the developer be required to provide a copy of the registered plan to the purchaser

before a notice to settle can be issued?”

It can be argued that it is largely common practice for developers to provide a copy of the registered plan to the purchaser when notifying of registration and triggering the completion clauses in the contract.

In InfoTrack’s opinion, a formalisation of this practice would be most welcome. Provision of the registered plan allows the purchasers and their solicitor the ability to review the plan for any alteration or material changes for which they may wish to make a claim. Accordingly, the provision of the registered plan at the earliest possible time would be beneficial.

5.11 Response to Question 10 (ii)

“Should the purchaser’s ability to terminate a contract be based on a the purchaser demonstrating “material prejudice”?”

The introduction of a right to terminate based on the purchaser demonstrating ‘material prejudice’ could prove controversial.

Currently, it is common practice in NSW off-the-plan contracts for to include clauses preventing purchasers from making any claims or terminating contracts for items such as:

- A reduction to the total area of the lot which is equal to or less than 5% of that stipulated on the draft strata plan
- Variations to the location of car spaces or storage spaces
- Use of comparable finishes where the originally proposed material is no longer available
- Variations, additions, alterations or amendments to proposed by-laws or management statements
- Minimal increases to the amount of proposed strata levy contributions

Allowing purchasers to terminate contracts on the basis of material prejudice may be considered to be shifting the balance too much in favour of purchasers. Should the measure be introduced, ‘material prejudice’ would need to be strictly defined.

As an alternative, the items and circumstances in which a purchaser would be entitled to rescind a contract could be streamlined and legislated.

5.12 Response to Question 11

“Should any statutory termination scheme include, as an alternative, a claim for compensation?”

Introduction of a mechanism by which purchasers could make a claim for compensation for material changes could also prove controversial. Whilst InfoTrack does not hold a firm opinion in this regard, it notes that the amount of compensation payable and the circumstances in which it is appropriate should be strictly defined should the measure be adopted.

5.13 Response to Question 12

“Should the cooling off period be extended for off-the-plan contracts?”

In InfoTrack’s view from dealing with legal practitioners managing off-the-plan developments that the standard 5 day cooling off period is generally not sufficient when it comes to off-the-plan contracts.

Given the increasing trend for contracts to be exchanged on weekend launch days reducing the time for legal advice to be obtained afterwards and the complexity and size of off-the-plan contracts, five days is generally not sufficient, and it is common for extensions to be sought.

It is our view extending the cooling off period would a welcome change to off-the-plan conveyancing.

5.14 Response to Question 13

“If so, should the cooling off period be 10 or 15 days?”

Whilst extending the cooling off period for off-the-plan contracts would provide greater time for review of off-the-plan contracts, regard should also be had to the vendor’s need for the security that accompanies contracts being unconditional. Accordingly, an increase of the cooling off period to 10 days at first instance would be appropriate.

5.15 Response to Question 14

“Should legislation mandate that the deposit be held in the trust account of a stakeholder?”

As stated within the discussion paper, it is becoming increasingly common for developers to offer to hold deposits and for deposits to be released to developers before completion.

This can be mutually beneficial to both the developer and the purchaser. For developers, holding the deposit and having it released early has the obvious benefit of providing additional capital for construction.

For purchasers, many developers will offer a higher interest rate than that being provided by the banks hence making payment of the deposit direct to the developer an attractive proposition.¹

As noted, this can however leave purchasers vulnerable in the event that the developer becomes insolvent. Purchasers may also face more difficulty in recovering their deposit in the event that the contract is rescinded.

Whilst it may seem prudent to mandate that deposits should be held only in the trust account of a stakeholder, given the potential benefits to both vendors and purchasers of alternative

¹ NSW Office of Fair Trading, ‘*Buying Off the Plan Fact Sheet*’. Published May 2016. Accessible at http://www.fairtrading.nsw.gov.au/Factsheet_print/Tenants_and_home_owners/Buying_property/Buying_off_the_plan.pdf.

arrangements, it would be remiss to mandate this as proposed. Rather, the Office of the Registrar General could consider implementing measures in order to reduce the potential risks to purchasers. For instance, mandating a limit to the percentage of the deposit which may be paid directly to vendor or mandating a limit to the percentage of the deposit which may be released to the vendor in order to fund construction.

5.16 Response to Question 15

“Should NCAT be allowed to make orders as suggested?”

InfoTrack considers that the proposal by the Office of the Registrar General to expand NCAT’s jurisdiction in the manner described contains many benefits.

As noted, many disputes in off-the-plan conveyancing arise in the weeks prior to settlement when delays to settlement can be most detrimental to both vendors and purchasers. Expanding the powers of NCAT to hear disputes in respect of material changes to the property and dilatory relief for termination would allow such matters to be resolved more quickly and reduce the time and expense involved for all parties in resolving such matters.

It should be noted that it is common practice for off-the-plan contracts to stipulate certain matters for which purchasers may and may not make a claim for compensation. For example, a contract may stipulate that purchasers may not make any claims in respect of items such as:

- A reduction to the total area of the lot which is equal to or less than 5% of that stipulated on the draft strata plan
- Variations to the location of car spaces or storage
- Use of comparable finishes where the originally proposed material is no longer available
- Variations, additions, alterations or amendments to proposed by-laws or management statements
- Minimal increases to the amount of proposed strata levy contributions

In light of this practice, it may be prudent to consider prescribing within the legislation a schedule of such items for which purchasers may not make a claim. Accordingly, this would reduce the number of claims brought before either NCAT or the Supreme Court for these minor items.

5.17 Response to Question 16

“Should a condition be inserted in the contract for sale requiring parties to attempt to settle disputes through arbitration?”

InfoTrack considers that a condition requiring parties to attempt to settle minor disputes via arbitration would be of benefit to all parties within off-the-plan conveyancing. This would greatly reduce the time, expense and frustration incurred in resolving disputes in the current model.

It should be noted that it is common practice for off-the-plan contracts in NSW to stipulate certain minor matters for which purchasers may not take action. Some contracts will also stipulate procedures by which disputes are to be raised and actioned at first instance or will provide a mechanism for rectification after settlement in order to avoid cost and delay (for example requiring

purchasers to report defects and obliging vendors to rectify them within a defect rectification).

In this context, inserting a clause providing a mechanism for resolution via arbitration at first instance would be a welcome extension and formalisation of this practice.

5.18 Response to Question 17

“Should legislation be introduced requiring parties to attempt to settle disputes through arbitration?”

Legislation providing for the resolution of disputes via resolution would be beneficial to all parties and stakeholders within off-the-plan conveyancing.

The matters for which arbitration is appropriate, however, should be restricted to minor disputes and should be strictly stipulated. Legislative provisions should also not prevent either party from refusing or abandoning arbitration in appropriate circumstances in order to seek resolution via other means.

5.19 Response to Question 18

“Should the definition of sunset date be expanded so that it covers other termination events?”

As noted within the discussion paper, the current definition of sunset date within s66ZL of the *Conveyancing Act 1919* is strictly focused upon registration of the plan and the issue of titles.

It is common practice for off-the-plan contracts to contain other ‘trigger points’ which the developer may rely on in order to terminate the contract and for these provisions to operate independently of the sunset clause and its associated provisions.

Whilst it may seem appropriate at first instance for the definition of sunset date to be expanded, regard should also be had to the fact that developers can face significant challenges in financing projects and obtaining development consent and occupation certificates within reasonable timeframes. Given this, there was some suggestion at the time of the introduction of *Conveyancing Amendment (Sunset Clauses) Act 2015 (NSW)*² that the balance was possibly shifting too much in favour of purchasers³. This does not, however, negate the need to prevent developers from relying on other termination triggers in order to avoid s66ZL.

InfoTrack view is that it is important to strike a balance when considering expanding the definition of ‘sunset date’. Whilst termination triggers such as failure to obtain an occupation certificate should be added to the definition, regard should also be given to other factors such as:

² Mills Oakley Lawyers, ‘*Sunset clauses – consumer protection to the fore!*’. Published November 2015. Accessible at <http://www.millsOakley.com.au/sunset-clauses-consumer-protection-to-the-fore/>.

³ Mills Oakley Lawyers, ‘*Sunset clauses – consumer protection to the fore!*’. Published November 2015. Accessible at <http://www.millsOakley.com.au/sunset-clauses-consumer-protection-to-the-fore/>.

- The proposed sunset date stipulated at the time contracts are entered into. Given the known difficulties faced by developers in reaching certain milestones, has the developer allowed a sufficient amount of time in which to complete the contracts?
- The extent to which the developer is relying on a certain level of pre-sales or early release of deposits in order to fund the project.

5.20 Response to Question 19

“Are there some termination points that a developer should be allowed to use to end a contract without seeking approval of the Court? If so, what are they?”

Yes. In InfoTrack’s opinion, certain termination points that a developer should legitimately be allowed to terminate a contract without seeking the approval of the court and which should not necessarily form part of an expanded definition of ‘sunset date’. These include:

- Where a ‘subject to DA clause’ is used, failure by the developer to obtain development application consent.
- Issue of a demolition order by the relevant local government authority prior to completion.
- Destruction or impairment of the construction site by terrorist activity or similar to the extent that it would be financially unviable for the developer to continue with development.

5.21 Response to Question 20

“Should s 66ZL be clarified or amended to allow the Court to make an award of damages to purchasers if the circumstances so require?”

InfoTrack considers that it would be prudent to expand the definition of s66ZL in order to allow the Court to make an award of damages to purchasers in appropriate circumstances, however caution should be exercised in determining the extent of ‘appropriate circumstances’.

Section 66ZL currently provides that the Court may issue an order allowing a vendor to rescind pursuant to a sunset clause by taking into account:

- (a) the terms of the off the plan contract
- (b) whether the vendor has acted unreasonably or in bad faith
- (c) the reason for the delay in creating the subject lot
- (d) the likely date on which the subject lot will be created
- (e) whether the subject lot has increased in value
- (f) the effect of the rescission on each purchaser
- (g) any other matter that the Court considers to be relevant
- (h) any other matter prescribed by the regulations

Similarly, in allowing the Court the ability to make an award of damages, regard should be had to factors such as:

- (a) whether the vendor has acted unreasonably or in bad faith

- (b) the likely date on which the subject lot has been created
- (c) whether the vendor will be able to complete the project in future; and if so
- (d) the ability of the vendor to enter into a new contract for the subject lot
- (e) the increase in value of the subject lot vs the loss of purchasing / buying power by the original purchaser with their original deposit
- (f) other current and future projects which the developer is currently engaged in

6 Recommendations

InfoTrack to be available to further explain and discuss any points outlined in the document provided.

If agreeable NSW Office of the Registrar General and InfoTrack to host a round table discussion with some of the key clients of InfoTrack to validate proposed reforms.

InfoTrack would be happy to assist in any communication and implementation changes of the proposed reforms once consultation and agreement has been reached.