

# PROPERTY AND PROJECT DEVELOPMENT LIFECYCLE

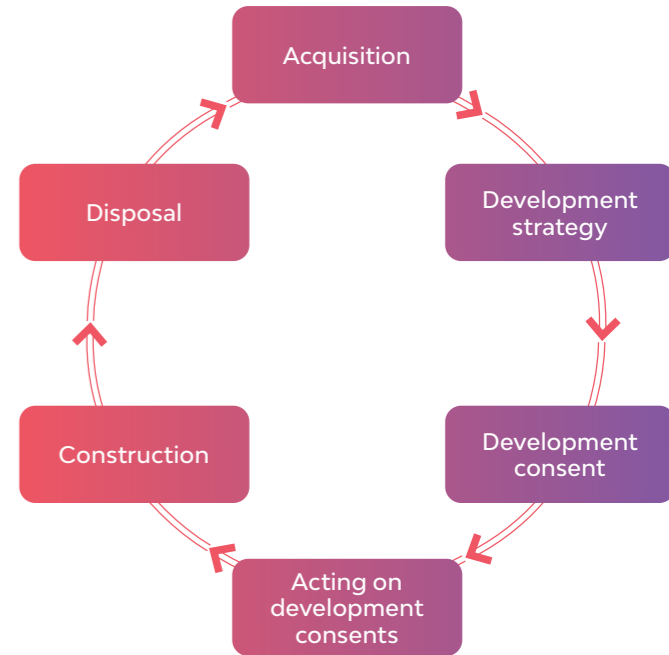


Bartier  
Perry  
LAWYERS

“  
Property development can  
be a minefield; let us guide  
you through it to maximise  
your investment.”

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## DID YOU KNOW...



The number of off-the-plan contracts increased from approximately **2000** in **2006**, to **29,000** in **2018**.



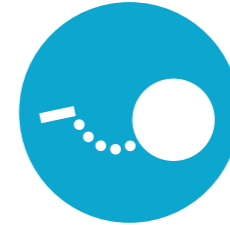
Off-the-plan contracts make up **11.5%** of all residential sales in NSW.



The **NSW Government** has introduced new **“vendor disclosure”** laws for off-the-plan contracts that give purchasers statutory rescission rights.



The new laws mean developers will face **greater risks** of purchasers rescinding contracts due to **changes** that arise during construction.



Off-the-plan sales can get **bogged down** when developers change their scheme.



Developers can appeal to the **Land and Environment Court** if they are dissatisfied with a decision of a consent authority in relation to a development application.

## ACQUISITION IMPORTANT CONSIDERATIONS

When assessing a property's potential for redevelopment it is important to consider:

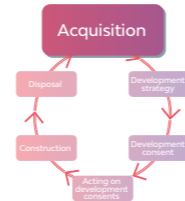
Existing **easements, covenants** and **restrictions** on use which may impact proposed development of the land

Existence of **infrastructure** on the land which may give rise to statutory easements that are not disclosed on the title to property

**Encroachments** by or on the land

**Heritage listings** which may restrict redevelopment

**Zoning** of the property and the impact on intended use



## GET YOUR STRUCTURE RIGHT

Avoid being locked into the wrong property by planning ahead and reviewing your acquisition options and considering potential implications such as double stamp duty. Other options to consider include:



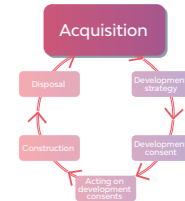
Delayed settlement, delayed payment of stamp duty, due diligence, development approval



Increased capital and potential



Standard 6 week settlement



## DEVELOPMENT STRATEGY UNLOCK YOUR PROPERTY'S POTENTIAL

A robust strategy is vital to realise the full potential of your property. We can help you:

**Maximise** your returns through appropriate development

**Understand** your end goals and be strategic in your approach eg. concept developments and planning agreements

**Avoid being restricted** to what generic planning controls prescribe

**Understand** the planning controls that will dictate the type and scale of your development

**The right strategy** can allow you to vary or amend planning controls to facilitate a development that would otherwise be unattainable.



## WHAT YOU NEED TO CONSIDER

### ZONING

- Is the development permissible?
- Is the property located at a zone boundary?
- How do nearby developments affect your development?

### DEVELOPMENT CONTROLS

- What are the potential restrictions - density, height, scale, amenity, design?

### TIMING

- What is the anticipated delivery of the project?
- Are there likely to be delays in the assessment process?

### APPROVALS

- What approvals and consents are required to deliver the project?

### HERITAGE

- Is the property heritage listed?
- Is the property in a heritage conservation area?
- Is the property likely to be subject to an Interim Heritage Order?



## DEVELOPMENT STRATEGY GETTING STARTED

### PLANNING PROPOSALS



For **rezoning** and **changes** to development standards under environmental planning instruments eg. **upzoning** to increase density yields

### DEVELOPMENT APPLICATIONS



To **obtain consent** for development including concept developments, state significant developments and other permissible development



### VOLUNTARY PLANNING AGREEMENTS



**Negotiating** development concessions with a consent authority in exchange for contributions for public benefit

### CERTIFICATION OF DEVELOPMENT



**Streamlining** the approval process eg. complying development

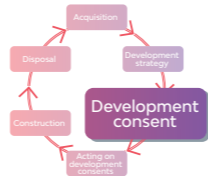


## DEVELOPMENT CONSENT

### OBTAINING DEVELOPMENT CONSENT THROUGH LITIGATION

*In certain circumstances, developers have no option other than to file an appeal in the Land and Environment Court against a consent authority's determination.*

*Otherwise, it's back to the drawing board!*



In 2017, **67%** of Class 1 appeals were finalised by alternative dispute resolution processes and negotiated settlement, without the need for a court hearing.

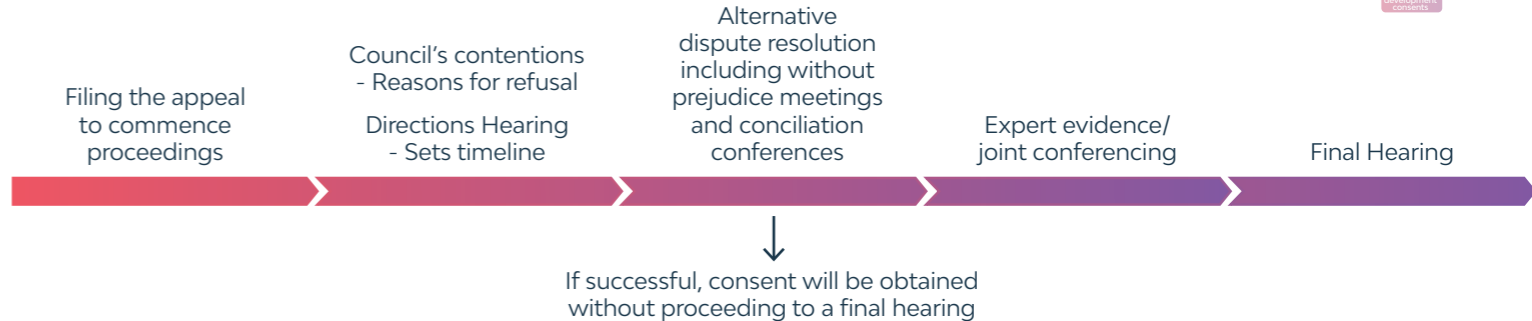


2018 - 872 Class 1 applications were filed and approximately half were deemed refusals. **54%** were resolved at a conciliation conference.



In 2017, **63%** of Class 1 appeals were finalised within six months of commencement.

## CLASS 1 APPEALS - THE PROCESS



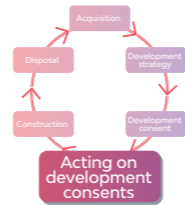
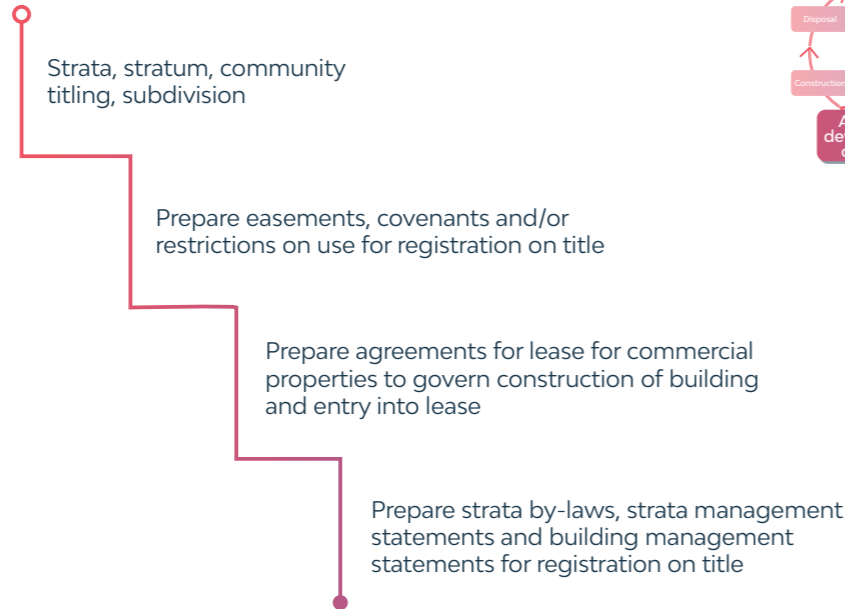
**At any stage of the court process an applicant can amend the application to respond to council's contentions.**

**The vast majority of our appeals are resolved through the Court's alternative dispute resolution process - saving costs and fast-tracking approvals.**

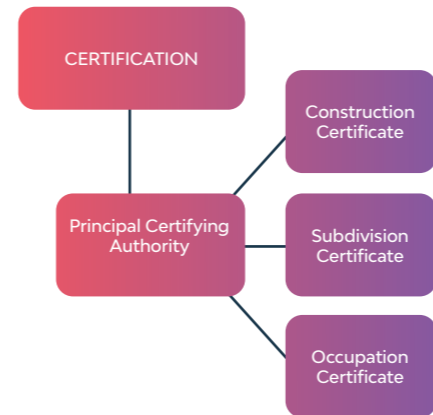
# ACTING ON DEVELOPMENT CONSENT

## NAVIGATING CONDITIONS OF CONSENT

For a major development your conditions of consent might require you to do the following:



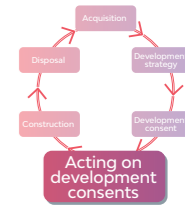
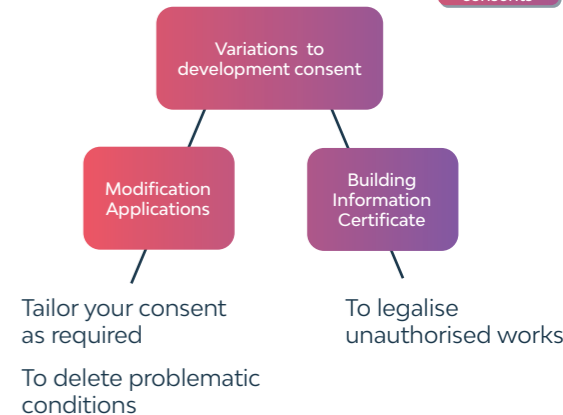
### Acting on your development consent



### Where can things go wrong?

- Problematic conditions
- When you cannot build in accordance with the Construction Certificate
- When you have not built in accordance with the Construction Certificate
- Being issued with an order

### What options do you have?

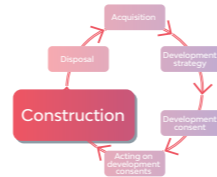




## PRINCIPALS/ DEVELOPERS DOES YOUR CONSTRUCTION CONTRACT REFLECT YOUR APPETITE FOR RISK?

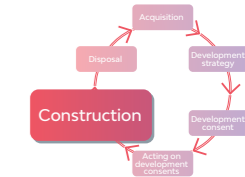
How does your construction contract deal with:

- Claims for an increase to the contract sum
- Claims for time and cost relief by your contractor
- The provision of indemnities and warranties
- Disputes and alternative dispute resolution processes
- Termination, including for your convenience
- Adjustments to the contract sum
- Extensions of time
- Time over runs
- Site conditions
- Variations
- Discrepancies in documents
- Back charges
- Rights of termination



## CONSTRUCTION CONTRACTS

The primary reason for amending contract terms is to **shift risk**

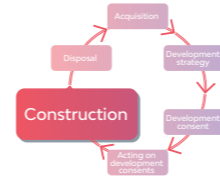


*CLAUSES MOST LIKELY TO BE AMENDED RELATE TO:	
EOT's	76%
delay damages including LD's	68%
variations	63%
warranties as to quality	62%

\*University of Melbourne 'Standard Forms of Contract in the Australian Construction Industry Research Report' dated June 2014

## HOME OWNERS THINGS TO THINK ABOUT

- All builders must have a contractor licence where the value of works and materials is more than \$5,000 (inclusive)
- Does your builder have the necessary licence and insurances?
- Has your builder provided a certificate of home warranty insurance under the Home Building Compensation Fund?
- Can you terminate the building contract with your builder and at what cost?
- Do you know the difference between a 'major' and 'other' defect' and the defect liability periods that apply to each?
- Did you know that you can only lodge a claim under the builder's home warranty insurance if your builder dies, disappears or goes into bankruptcy or liquidation?



## STATUTORY WARRANTIES UNDER THE HOME BUILDING ACT

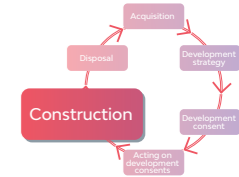
Every building contract for residential work will contain the **statutory warranties** set out in **section 18B** of the **Home Building Act 1989**

The statutory warranty period:

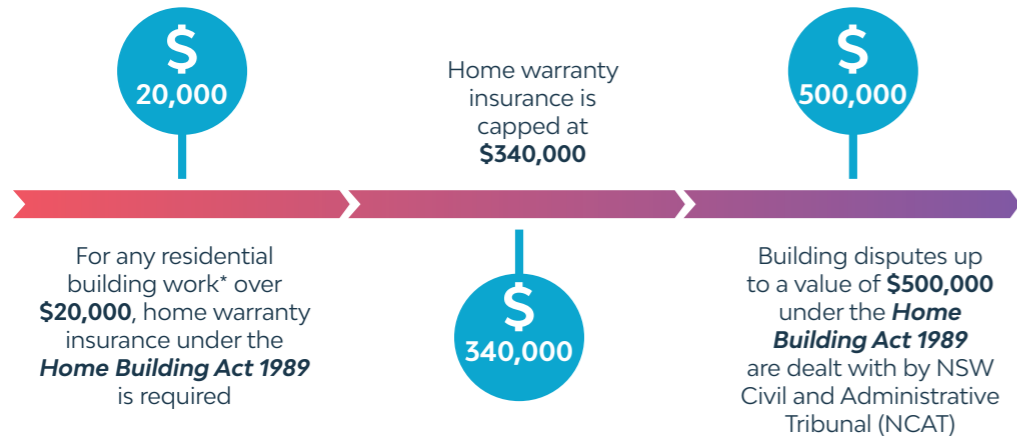
- for a **Major Defect** is 6 years from completion of the work; and
- for **Other Defects** is 2 years from completion of the work

Section 18B Statutory warranties include:

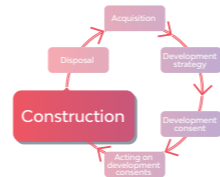
- That work will be done:
  - with due care & skill
  - in accordance with plans & specifications
  - in accordance with and comply with all law
  - with due diligence
  - within the time stipulated in the contract
- That work on a dwelling will result in a dwelling reasonably fit for occupation



## HOME WARRANTY INSURANCE

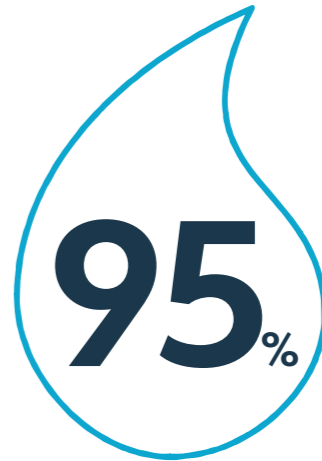


\*Builders carrying out residential building work are not required to take out home warranty insurance for new buildings which are 4 or more storeys and contain 2 or more separate dwellings.

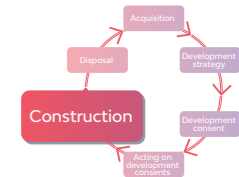


## HOME BUILDING DISPUTES

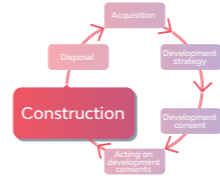
You can only claim on home warranty insurance in the event of death or insolvency of the builder, or where you can establish that the builder has disappeared.



of **defects** relate to **waterproofing**



## DEVELOPMENTS CAN LEAD TO ISSUES WITH COUNCIL



### Unauthorised development

Penalty notices and/or development control orders, if ignored, may lead to civil and criminal prosecutions

Don't get caught out, get our advice upfront on challenging orders, challenging penalty notices and negotiating outcomes

## DEVELOPMENT CAN LEAD TO DISPUTES WITH YOUR NEIGHBOURS

Avoid disputes with neighbours by understanding your legal rights and obligations.

### Tree Disputes

- On your property
- On your neighbour's land

### Fencing

- What is a sufficient dividing fence?
- Who pays?

### Encroachments

- Dealing with existing encroachments
- Avoiding new encroachments

### Objectors

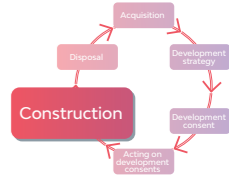
- Managing their expectations
- Addressing their concerns

### Complaints

- Noise complaints
- Amenity complaints

## TIPS

- 1 Seek our advice
- 2 Engage with stakeholders
- 3 Negotiate upfront
- 4 Think about costs – costs of settling vs costs of not settling
- 5 Avoid litigation
- 6 Know your options, including going to court



## DISPOSAL SEAL THE DEAL WITH WATERTIGHT ADVICE



### Build to lease



Retail, commercial and industrial leasing.



### Land subdivision and sale



We can assist with subdividing land for sale including securing ongoing property rights such as easements and rights of way.



### Off-the-plan contracts and sales



We can draft contracts to ensure compliance with the laws and regulations.



### Selling brand new homes following construction



## PROPERTY, PLANNING & CONSTRUCTION TEAM

Our specialist team can guide you through the entire property development lifecycle to help you achieve the best possible results.



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## ABOUT BARTIER PERRY

Based in Sydney, we are a leading law firm with a proud 75 year history of providing expert legal services. Our team have an inherent understanding that your need for advice serves a greater purpose. To meet this, we go beyond the technicalities of the law and provide insights into what this means for you, your company or your industry.

Our clients reap the benefits of Bartier Perry's extensive experience and flexibility across all areas of property law, from purchases and acquisitions, leases and licences to planning and development in assisting clients realise the potential of their property portfolios and achieve their strategic objectives.

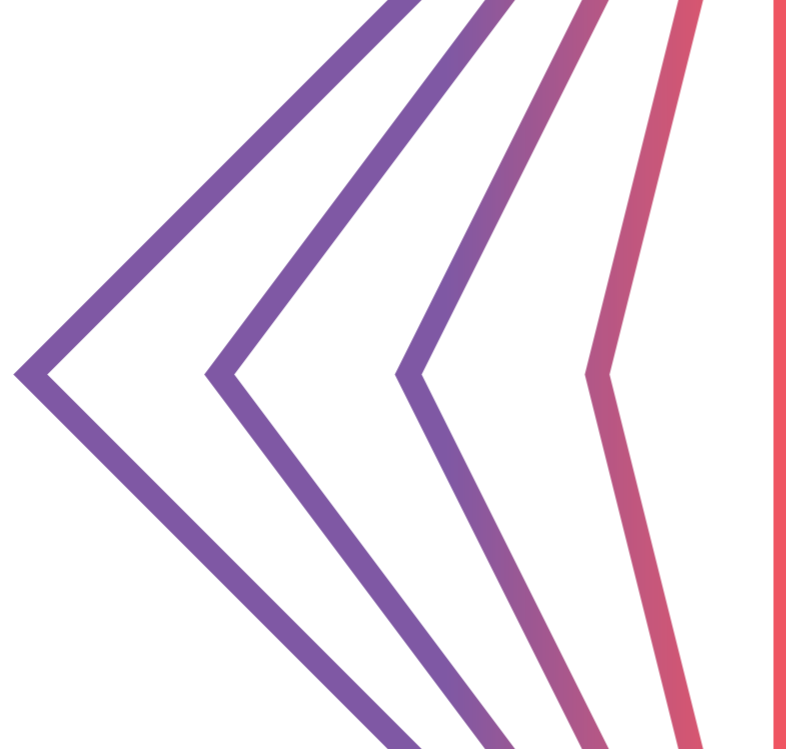
In delivering continuous value for our clients, we ensure you always have direct access to responsive Partners who balance deep technical expertise with providing clear, unambiguous and client-centric advice.

We provide tailored seminars for our clients. Presentations are also captured via webcast for our regional clients and available to view on our website. If you would like to subscribe to receive our bulletins and invitations, please visit [www.bartier.com.au/subscribe](http://www.bartier.com.au/subscribe)

## SUPPORT OF INDUSTRY

Educating and being involved with our relevant industries is important to us. It means together we are always current in an often-changing environment – not only with the law but with industry experts, current trends and broader industry information. We work with the various players in the industry to ensure we bring value back to clients.

Bartier Perry is a member and regularly sponsors, attends and hosts training events for the Master Builders Association, Urban Development Institute of Australia, Australian Property Institute and Planning Institute of Australia.





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