

**Noosa Shire Council,
9 Pelican Street,
TEWANTIN QLD 4565.**

18 December 2006

ATTN: The Chief Executive Officer

BY FAX : 07 5447 1062 - 6 PAGES

CONFIRMATION BY EMAIL : mailbox@noosa.qld.gov.au

ORIGINAL BY MAIL

Dear Noosa Council,

I write to you regarding your sale of the property at 63 Nandroya Road, Cooroy (the Property) pursuant to a contract for its purchase made on 18 July 2006 (the Purchase Contract).

You are a body corporate as per section 35 of the Queensland Local Government Act 1993 (the LGA) and all the negotiations that led to the Purchase Contract were in trade and commerce. As such you are subject to the provisions of the Commonwealth Trade Practices Act 1974 (TPA) (as amended) and with particular regard to Parts IVA, V and VI of that Act.

The current owner who purchased the Property from you is hereinafter referred to as, "the Lessor".

I am a person and consumer who is a lessee of the Property from the Lessor.

I also acted as a consulting agent for the Lessor during negotiations that led to the Lessor's purchase of the Property via the Purchase Contract which was an REIQ approved contract provided by your agent Noosa Property Shop P/L.

During the course of the negotiations that led to the Lessor's purchase of the Property you made representations to myself (and the Lessor) via:

- your agent Noosa Property Shop P/L; and
- your agent Ms. Jill Burke who represented Noosa Property Shop P/L; and
- your agent's website www.noosapropertyshop.com.au; and
- the www.realestate.com.au website; and
- newspaper advertisements; and
- your commercial development administration officer, Ms. Kara Davy.

As advised to your Ms. Burke during all negotiations, the Property was to be purchased specifically for me to lease in part so that I could conduct building work improvements on and underneath the Property for the domestic habitat and home business purposes of myself and my family.

Many of your representations which were partly oral and partly in writing, represented that the Property :

- (a) featured a 170sqm highset house;
- (b) featured that the house was fully restored and meticulously refurbished by Noosa Council;
- (c) is suitable for my requirements to build underneath;
- (d) has a 200mm thick concrete slab per engineers specifications under the house;
- (e) has termite protection of the concrete slab for habitable building purposes;
- (f) bathroom wet areas had been built to Building Code of Australia 2006 (BCA) compliance;
 - (i) and as set out in the Noosa Council Development Approval 20060345;
- (g) floor wastes in the bathrooms had been installed to BCA compliance;
 - (i) and as set out in the Noosa Council Development Approval 20060345;
- (h) wall insulation had been installed to an r-value of 1 and BCA compliance;
 - (i) and as set out in the Noosa Council Development Approval 20060345;
- (i) roof insulation had been installed to an r-value of 2.2 and BCA compliance;
 - (i) and as set out in the Noosa Council Development Approval 20060345;
- (j) building work is 100% or 110%, as it has all been completed by the Council;
- (k) building work has been done by the Council I can be assured that it has all been done properly and you won't have to worry about a thing;
- (l) has been restored and refurbished to the highest standard as all the work has been performed by the Council;
- (m) has had everything done that needs to be done by the Council, there is nothing to spend;
- (n) The Building Code has been strictly adhered to regarding all the building works;
- (o) The house is suitable for a multitude of uses underneath such as your accommodation, office or even a gallery may be possible;
- (p) does not need a building and pest inspection because of the Council having performed all the building work;
- (q) building inspection would be a waste of money;
- (r) has only about 2 trains a day that go past; and
- (s) gravel road at the side only gets used by trucks about twice a year.

The above representation :

- (a) is false, in that the house is less than 142sqm; and
- (b) is false, in that the Noosa Council did not perform a substantial amount of the restoration and refurbishment; and
 - (i) is false, by reason of items (f), (f)(i), (g), (g)(i), (h), (h)(i) and (k) to (n) being false; and
- (c) is false, by reasons of items (d), (e), (f), (f)(i), (g) & (g)(i) being false; and
- (d) is false, as the slab is only 100mm thick and engineers specifications do not exist; and
- (e) is false, as there is no such termite protection; and
- (f) is false; and
 - (i) is false; and
- (g) is false; and
 - (i) is false; and
- (h) is false; and
 - (i) is false; and
- (i) maybe false to the best of my knowledge and belief; and
 - (i) maybe false to the best of my knowledge and belief; and
- (k) is false; and
- (l) is false; and
- (m) is false; and
- (n) is false; and
- (o) is misleading or deceptive in the circumstances set out herein; and
- (p) is false; and
- (q) is false; and
- (r) is false; and
- (s) is false.

Further, during the said negotiations you failed to disclose the existence of special condition 2 of the Purchase Contract or the existence of the matters contained within that special condition when you had a duty to do so for the following reasons that include :

- You are required to obey subsection 481(e) and section 1138 of the LGA.
- Your agent had a duty to observe, the Code of Conduct made pursuant to the Property Agents and Motor Dealers Act 2000, and as a member of the Real Estate Institute of Queensland (REIQ), the REIQ Standards of Business Practice.
- The partly oral and partly in writing positive representations set out at items (a) to (s) above were intended to be negated by way of special condition 2 of the Purchase Contract and as such special condition 2 or matters contained within that condition should have been fully and openly disclosed to me in (and the Lessor) in order for me to make an informed decision as to whether to advise the Lessor to purchase the Property.

In reliance of your false representations and failure to disclose special condition 2;

- I advised the Lessor to pay the full asking price for the Property being \$350,000; and
- I entered a lease agreement for part of the Property.

All of those representations that were false, were thus inherently misleading or deceptive and also of a kind that may be likely to mislead or deceive. As such, your conduct is in contravention of sections 52 and 53A(1)(b) of Part V of the TPA.

Further, your failure to disclose the existence of special condition 2 of the Purchase Contract is also in contravention of sections 52 and 53A(1)(b) of Part V of the TPA together with section 51AC of Part IVA of the TPA (Unconscionable Conduct in Business Transactions).

Your conduct has caused me loss and damage as a lessee of the Property. Remedies for my loss and damage are available under Part VI of the TPA pursuant to sections that include 82 and 87. Particulars of that loss and damage include :

- Having no telephone, fax or internet connection to the Property - compensation sought.
- Concrete slab - compensation sought.
- Inability to build underneath because of slab and bathrooms - compensation sought.
- Have to sleep in living room indefinitely - compensation sought.
- No permanent office - compensation sought.
- Repair of water pump - compensation sought.
- Repair of TV antenna - compensation sought.
- Telstra trench for line-in - compensation sought.
- Telstra connection fee - compensation sought.
- Consequential business losses - compensation sought.
- Consequential inconvenience and stress - compensation sought.

Your conduct has also caused me loss and damage as a consultant agent to the Lessor which is a debt now owing and due and partly paid to the Lessor in compensation for her loss and damage as a result of the matters contained herein that have been caused by you.

Remedies are also available for that part of my loss and damage under Part VI of the TPA pursuant to sections that include 82 and 87. Particulars of that loss and damage include :

- Compensation equivalent to a minimum 28sqm building size misrepresentation sought.
- Bathrooms - compensation sought.
- Wall insulation - compensation sought.
- Roof insulation - compensation sought.
- Mental stress of my daughter (the Lessor) - compensation sought.
- Mental stress of my family - compensation sought.
- Loss of value of house being not fully restored and meticulously refurbished by Noosa Council as led to believe by you - compensation sought.

AND pursuant to your failure to disclose the existence of special condition 2 of the Purchase Contract, the inability of the Lessor to pursue a common law loss of bargain (i.e., loss of what was bargained for) compensation pursuant to the Purchase Contract;

OR the difference between \$350,000-00 paid and what would have been offered in full knowledge of all the falsities, deceit, misrepresentations and failure to disclose.

FURTHER and ALTERNATIVELY, as to my entry into the said lease agreement :

- you intended for me to rely on your representations; and
- I did rely on your representations; and
- you intended to warrant the truth of those representations and in particular you intended to warrant the truth of those representations contained within the Noosa Council Development Approval Decision Notice 20060345 as it is your duty to do so as the Local Government that administers the Integrated Planning Act 1997 (IPA) in the Noosa Shire, for if you did not so intend, your representations made pursuant to the IPA in the Decision Notice 20060345 would likely be false; and
- by also having a (misplaced) reliance on your honesty, integrity and expertise as the Local Government in your duty to warrant the truth of your own Decision Notice, I entered into the lease in reliance of your representations.

As such, and as you knew the Property was to be purchased specifically for me to lease in part, a collateral agreement has arisen between you and me because, in exchange for your representations I did enter into the lease agreement.

You have breached that collateral agreement between us by reason of the abovementioned falsities, deceit, misrepresentations and unethical conduct.

Your conduct has caused me loss and damage for which I again claim the compensation as previously set out above.

NOW TAKE NOTICE, if you fail to respond in writing to this letter sent by fax, email and mail within 21 days setting out your response and how you are going to rectify my loss and damages, without any further notice to you, proceedings will be filed in the Federal Magistrates Court of Australia that will name you as respondent or join you as co-respondent along with the Noosa Property Shop Pty Ltd, or join you as co-respondent along with Ms. Jill Burke and Noosa Property Shop Pty Ltd.

Yours faithfully,

Gordon Craven

C.c.	Mayor	Bob Abbot	-	Mayor@noosa.qld.gov.au
	Councillor	Lew Brennan	-	Lew.Brennan@noosa.qld.gov.au
	Councillor	Ray Kelly	-	Ray.Kelly@noosa.qld.gov.au
	Councillor	Brian Lindfield	-	Brian.Lindfield@noosa.qld.gov.au
	Councillor	June Colley	-	June.Colley@noosa.qld.gov.au
	Councillor	Frank Pardon	-	Frank.Pardon@noosa.qld.gov.au
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