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**Bio-security non-consent Notice**

**In relation to the property located [insert address]** (**the Property**)**.**

1. Section 98 of the *Biosecurity Act 2015 (NSW)* (**the BSA**) states that authorized officers can enter a premises.
2. However, Section 99 of the BSA states as follows:

**99**   **Entry into residential premises only with permission or warrant**

This Division does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant.

1. Section 99 explicitly mandates the consent of the Property owner for your access to residential property under the auspices of the BSA.
2. By way of letter dated [insert date letter titled “We urgently need to contact you” signed] the National Fire Ant Eradication Program and the NSW Department of Primary Industries (**the Department**) acknowledged this, by stating as follows:

Section 99 of the Biosecurity Act 2015 (NSW) provides that, authorized officers **require the consent of the owner or occupier to enter a residential property** to conduct surveillance and treatment of fire ants.

1. Neither “Residential Property” nor “residential” are defined in the BSA. However, the *Conveyancing Act 1919 (NSW)* defines “residential property” as follows:

**Meaning of "residential property"**

**66Q Meaning of "residential property"**

(1) For the purposes of this Division,

**"residential property"**is--

(a) land on which are situated (or in the course of construction) not more than two places of residence, and no other improvements, or

(b) vacant land on which the construction of a single place of residence alone is not prohibited by law, or

(c) a lot or lots (including a proposed lot or lots) under the *Strata Schemes Development Act 2015*, comprising not more than one place of residence alone, whether constructed or in the course of construction, and including any place used or designed for use for a purpose ancillary to the place of residence.

(2) Residential property does not however include--

(a) land or a lot that is used wholly for non-residential purposes, or

(b) land that is more than 2.5 hectares in area (or such other area as may be prescribed).

(3) For the purposes of this section,
**"place of residence"**means a building or part thereof used, or currently designed for use, as a single dwelling only, and includes outbuildings or other appurtenances incidental to any such use.

1. As per the above definition, residential property is “land on which are situated…places of residence” and not “land or a lot that is used wholly for non-residential purposes”.

**Notice**

1. I hereby put you on notice that:
	1. The Property located at [address] is “residential property” as per the definition in the *Conveyancing Act 1919 (NSW)*, as well as in accordance with common parlance; and
	2. You do **not** have my consent to access or enter the Property for surveillance and/or treatment of fire ants; and
	3. Any access or attempted access to my property in these circumstances constitutes a breach of Section 99 of the BSA and a trespass to land; and
	4. If you enter the Property despite the provision of this notice, damages will be sought accordingly.

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_