

## **Voluntary Planning Agreement**

between

Maitland City Council

ABN 11 596 310 805

and

Dowmere Pty Ltd

ACN 002 160 152

McCloy Loxford Land Pty Ltd

ACN 624 968 092

Hydro Aluminium Kurri Kurri Pty Ltd

ACN 093 266 221

**Cessnock Road, Gillieston Heights, NSW, 2321**

Maitland City Council  
Administration Centre  
285-287 High Street  
Maitland NSW 2320  
PO Box 220  
Maitland NSW 2320  
Telephone: 02 4934 9700  
Version: 25.08.22

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This Deed is made this        **twelfth**        **December**        2022  
..... day of.....

**PARTIES**

**Maitland City Council** a body politic under section 220 of the Local Government Act 1993, of 285-287 High Street, Maitland in the State of New South Wales (**Council**)

and

**Dowmere Pty Ltd**, ACN 002 160 152, of Level 21, 68 Pitt Street, Sydney, New South Wales, 2000

and

**McCloy Loxford Land Pty Ltd**, ACN 624 968 092, of Suite 2 Ground Floor 317 Hunter Street, Newcastle, New South Wales, 2300

(Together the **Developer**)

and

**Hydro Aluminium Kurri Kurri Pty Ltd**, ACN 093 266 221 of 'Commercial Office' Lot 411 Hart Road, Loxford via Kurri Kurri, New South Wales, 2327 (**Landowner**)

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## BACKGROUND

1. The Landowner is the registered proprietor of the Land and has entered into a put and call option agreement under which the Developer has the right to acquire the Land.
2. The Developer has lodged the following Development Applications with Council:
  - (a) DA 2022/193 for a subdivision creating 342 residential lots and 7 public reserve lots including 8,828m<sup>2</sup> of land for a district park in relation to the Land, and
  - (b) DA 2022/912 for a subdivision creating 224 residential lots and 4 public reserve lots.
3. The Developer is prepared to provide Contributions in connection with the Development if the Development is undertaken.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS

The following definitions apply unless the context otherwise requires:

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Acquisition Act</b>	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
<b>Assign</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<b>Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"><li>(1) federal, state or local government;</li><li>(2) department of any federal, state or local government;</li><li>(3) any court or administrative tribunal; or</li><li>(4) statutory corporation or regulatory body.</li></ol>
<b>Bank Guarantee</b>	means an unconditional bank guarantee(s) without an expiry date from a major Australian bank in a form acceptable to Council, acting reasonably.
<b>Business Day</b>	means a day other than a Saturday, Sunday, public holiday or bank holiday in Newcastle, New South Wales.

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<b>Claim</b>	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense, or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Complete, Completed Completion</b>	means completed in accordance with the requirements of this agreement.
<b>Contamination</b>	has the same meaning as in the <i>Contaminated Land Management Act 1997 (NSW)</i> .
<b>Contribution Value</b>	in respect of a Contribution means the amount specified in Column 4 of the tables in Schedule 3, 4 or 5 for that Contribution.
<b>Contributions</b>	means the provision of the Works (Schedule 3), the making of the Monetary Contributions (Schedule 4) and the dedication of the Designated Lands by the Developer (Schedule 5) in accordance with this agreement.
<b>Contributions Plan</b>	means the <i>Maitland City Wide Section 94 Contributions Plan 2016</i> or such other replacement plan adopted by Council from time to time.
<b>CPI</b>	means the 'Consumer Price Index – Sydney All Groups' published by the Australian Bureau of Statistics.
<b>Defects Liability Period</b>	means for each Stage of the Work, 12 months commencing on the date of Completion of that Stage of the Work.
<b>Designated Land</b>	means the part of the Land noted as 'Proposed District Park' on the plan attached at Schedule 7 which has a minimum area of 8,828m <sup>2</sup> and which is; intended to be dedicated or transferred to Council.
<b>Development</b>	means the development contemplated by the Development Applications.
<b>Development Applications</b>	means: <ol style="list-style-type: none"> <li>(1) DA 2022/193 for a subdivision creating 342 residential lots and 7 public reserve lots including 8,828m<sup>2</sup> of land for a district park, and</li> <li>(2) DA 2022/912 for a subdivision creating 224 residential lots and 4 public reserve lots.</li> </ol>

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**Development Consent**

means any development consents granted under the Act with respect to the Development Applications.

**Encumbrance**

means an interest or power:

- (1) reserved in or over an interest in any asset, including items of land or real property;
- (2) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust, or bill of sale; or
- (3) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

**ELNO**

has the meaning given to that term in the Participation Rules.

**GST Law**

means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.

**Land**

Means the whole of the land contained in

- Lots 1, 2, 3, 4, 5, 7, 8 & 9 in Deposited Plan 456946;
- Lots 54, 55, 69, 70 & 71 in Deposited Plan 975994; and
- Lot 1 in Deposited Plan 1206034

**Law**

means all legislation, regulations, by-laws, common law, and other binding order made by any Authority.

**Monetary Contributions**

means the monetary Contributions set out in Schedule 4.

**Occupation Certificate**

means an occupation certificate as defined in Division 6.3 of the Act.

**Participation Rules**

means the participation rules as determined by the *Electronic Conveyancing National Law* as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW)*.

**PEXA**

means Property Exchange Australia Ltd.

**Planning Legislation**

means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

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<b>Regulation</b>	means the <i>Environmental Planning &amp; Assessment Regulation 2021</i> .
<b>Residential Lot</b>	means a lot created in the Development to be used for residential purposes and not intended to be further subdivided.
<b>Site Audit Report</b>	has the same meaning as in the <i>Contaminated Land Management Act 1997 (NSW)</i> .
<b>Site Audit Statement</b>	has the same meaning as in the <i>Contaminated Land Management Act 1997 (NSW)</i> .
<b>Stage</b>	means each stage of the Development and the Works approved by the Development Consents or otherwise approved in writing by the Council for the purposes of this agreement and which at the date of this agreement are intended to be at least partially as shown on the Staging Plan.
<b>Staging Plan</b>	means the plan in Schedule 9 as amended by any Development Consents for the Development.
<b>Subdivision Certificate</b>	means a subdivision certificate as defined in Division 6.4 of the Act.
<b>Works</b>	means the works specified or described in Schedule 3.
<b>Works Plans</b>	means the plans in Schedule 6 being: <ul style="list-style-type: none"> <li>(1) Site Plan (13808.5, DA, L301, C), prepared by Terras Landscape,</li> <li>(2) Playground – Detail Plan (13808.5, DA, L302, C) prepared by Terras Landscape, and</li> <li>(3) Playground - Sections (13808.5, DA, L3012, C) prepared by Terras Landscape Architects,</li> </ul>

## 2. INTERPRETATION

The following rules of interpretation apply unless the context requires otherwise:

<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement. a reference to any thing includes a part of that thing
<b>reference to statutes</b>	a reference to any statute, regulation, proclamation, ordinance, or by-law includes all statutes, regulations proclamations, ordinances or by-laws varying, consolidating, or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued after that statute;
<b>singular includes plural</b>	the singular includes the plural and vice versa.

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<b>person</b>	<p>the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body, trust, or association or any government agency, or other owner corporation, authority, government or government agency.</p> <p>a reference to a body, whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions.</p>
<b>executors, administrators, successors</b>	<p>a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.</p>
<b>dollars</b>	<p>Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.</p>
<b>calculation of time</b>	<p>if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.</p>
<b>reference to a day</b>	<p>a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.</p>
<b>reference to a group of persons</b>	<p>a group of persons or things is a reference to any two or more of them jointly and to each of them individually.</p> <p>a covenant, an agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or enures to their benefit jointly and severally.</p>
<b>meaning not limited</b>	<p>the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.</p>
<b>next day</b>	<p>if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.</p>
<b>next Business Day</b>	<p>if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.</p>
<b>time of day</b>	<p>time is a reference to Sydney time.</p>
<b>headings</b>	<p>headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.</p>
<b>agreement</b>	<p>a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.</p>
<b>gender</b>	<p>a reference to a gender includes any gender.</p>

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### **3. APPLICATION AND OPERATION**

#### **3.1 Planning Agreement**

This agreement is a planning agreement:

- (1) within the meaning set out in section 7.4 of the Act; and
- (2) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

#### **3.2 Application**

This agreement applies to the Land and the Development.

#### **3.3 Operation of agreement**

- (1) This agreement operates from the date it is executed by all parties.
- (2) Council may terminate this agreement, at the request of the other parties, prior to any Contributions having been made under this agreement:
  - (a) on the declaration by a Court of competent jurisdiction that both Development Consents issued for the Development are invalid; or
  - (b) if both the Development Consents issued for the Development are surrendered in accordance with section 4.63 of the Act and the Regulation.
- (3) On the date of termination of this agreement:
  - (a) the parties release each other from any obligation to perform any term of this agreement after the date of termination of this agreement or any liability arising after the date of termination of this agreement, other than where the liability arises out of anything done or omitted to be done before the termination of the agreement;
  - (b) neither party is released from any obligation or liability arising under this agreement before termination.

#### **3.4 Agreement not Confidential**

The terms of this agreement are not confidential, and this agreement may be treated as a public agreement and exhibited or reported without restriction by any party.

### **4. APPLICATION OF S7.11,S7.12 and S7.24**

#### **4.1 Application**

- (1) This agreement excludes the application of section 7.11 and section 7.12 of the Act to the Development Applications.
- (2) This agreement does not exclude the application of s7.24 of the Act to the Development Applications.

#### **4.2 Consideration of Benefits**

Pursuant to section 7.4(6) of the Act, Contributions that are to be carried out or provided pursuant to this agreement are excluded from consideration under s7.11(6)

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## **5. REGISTRATION OF THIS AGREEMENT**

### **5.1 Registration**

This agreement must be registered on the title of the Land pursuant to section 7.6 of the Act.

### **5.2 Obligations of the Developer**

- (1) Upon the commencement of this agreement, the Developer is to deliver to the Council:
  - (a) an instrument in registrable form requesting registration of this agreement on the title to the Land duly executed by the Landowner; and
  - (b) the written irrevocable consent of the Landowner and each person referred to in s7.6(1) of the Act to that registration.
- (2) The Developer and the Landowner must:
  - (a) do such other things as are reasonably necessary to enable lodgement and registration of this agreement to occur electronically through PEXA or another ELNO; and
  - (b) pay any reasonable costs incurred by Council in undertaking that registration.

### **5.3 Caveat**

- (1) The Developer and the Landowner acknowledge that this agreement creates a charge over the Land being a caveatable interest effective upon the date of this agreement and that Council may lodge a caveat to protect its interest in the Land with Land Registry Services NSW. If requested by Council, the Developer, and the Landowner, as applicable, must execute a form of consent to such lodgement. The Developer and the Landowner agree to not object to the lodgement of such caveat.

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#### **5.4 Removal from title of the Land**

- (1) Council will do all things reasonably required to allow the Developer to remove the registration of this agreement and the caveat referred to above from the title of all or part the Land where the Developer has:
  - (a) provided all Monetary Contributions;
  - (b) completed the Works;
  - (c) dedicated the Designated Land; and
  - (d) otherwise satisfied all of its obligations under this agreement,in respect of the relevant part of the Land for which the release is sought.
- (2) The Developer must pay any reasonable costs incurred by Council in undertaking that discharge.

### **6. PROVISION OF CONTRIBUTIONS**

#### **6.1 Public purpose of Contributions**

- (1) The Council is to apply each Contribution made under this agreement towards the public purpose for which it is made and otherwise in accordance with this agreement.
- (2) Despite paragraph (1), the Council may apply a Contribution towards a different public purpose if the Council reasonably considers that the public interest would be better served by applying the Contribution towards that other purpose rather than the purpose so specified.

#### **6.2 Designated Land**

- (1) The Developer must dedicate or transfer the Designated Land to Council:
  - (a) free of any charges, trusts, estates, interests, covenants, and Encumbrances, including free of any rates, charges, water rates, and land tax;
  - (b) in accordance with the times and requirements in Schedule 5; and
  - (c) at no cost to Council.
- (2) The Developer must meet all costs associated with the dedication of the Designated Lands in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.
- (3) Council must do all things reasonably necessary to enable the Developer to comply with paragraph (1).

#### **6.3 Works**

The Developer, at its cost, must:

- (1) if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the conduct of the Works;
  - (2) carry out and complete each Stage of the Works in accordance with the times and requirements in Schedule 3;
  - (3) carry out and complete the Works:
    - (a) in accordance with the requirements of, or consents issued, by any Authority;
    - (b) in accordance with the reasonable requirements of Council and any applicable
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Development Consents;

- (c) in a proper and workmanlike manner complying with current industry practice and standards, including applicable Australian standards;
- (d) in such a manner that public property or the environment do not sustain any damage during the course of or as a result of construction of the Works;
- (e) in such a manner that Council's assets or public safety or the environment is not put at risk; and
- (f) in such a manner that at Completion the Works will be fit for their intended purposes and structurally adequate.

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## 6.4 Monetary Contributions

- (1) The Developer must pay the Monetary Contributions as required by Schedule 4.
- (2) The amount of each Monetary Contribution will be indexed in accordance with increases in the CPI from the date of this agreement until the date the Monetary Contribution is paid in accordance with the following formula:

$$\text{IMDC} = \text{MDC} + \frac{(\text{MDC} \times (\text{Current CPI} - \text{Previous CPI}))}{\text{Previous CPI}}$$

where

<b>IMDC</b>	means the indexed monetary Development Contribution;
<b>MDC</b>	means the monetary Development Contribution as at the date of this agreement;
<b>Current CPI</b>	means the CPI number published for the last quarter before the date on which the monetary Development Contribution is to be paid; and
<b>Previous CPI</b>	means the CPI number published for the last quarter before the date of this agreement.

- (3) A Monetary Contribution is made for the purposes of this agreement when the Council receives the full amount of the contribution payable under this agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

## 7. COMPLETION OF WORKS

### 7.1 Issue of Completion Notice

- (1) If the Developer considers that a Stage of the Works is Complete it must serve a notice on Council within fourteen (14) days of the date on which it considers the Stage of the Works to have been Completed which:
  - (a) is in writing; and
  - (b) specifies the date on which the Developer believes the Stage of the Works were Completed,

**(Completion Notice).**
- (2) The Completion Notice must be accompanied by a certificate from an appropriately qualified and practicing structural or civil engineer, (or other expert at the reasonable discretion of Council) certifying that:
  - (a) the Stage of the Works is complete, fit for its intended purposes and is structurally adequate; and
  - (b) the Stage of the Works has been built in accordance with the plans and specifications noted in Schedule 3 and otherwise in accordance with the requirements of this agreement.
- (3) The Completion Notice must be accompanied by:
  - (a) any warranties and maintenance manuals for the Stage of the Works;
  - (b) works-as executed plans for the Stage of the Works; and
  - (c) Detailed costings for the Stage of the Works, including documentary evidence of the costs actually incurred by the Developer in carrying out the

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### Stage of the Works

- (4) Council must inspect the Stage of the Works within twenty-eight (28) days of receipt of a Completion Notice and the documents referred to above.

## **7.2 Notice by Council**

Within twenty-one (21) days of inspecting the Stage of the Works set out in a Completion Notice Council must provide notice in writing to the Developer that the relevant Item of Work:

- (1) has been Completed; or
- (2) has not been Completed, in which case the Council's notice must also detail:
  - (a) those aspects of the Stage of the Works which have not been Completed; and
  - (b) the work Council requires the Developer to carry out in order to rectify those deficiencies.

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### 7.3 Effect of Council notice

- (1) Where Council serves notice on the Developer pursuant to clause 7.2(4), the Developer must:
  - (a) rectify the deficiencies in that Stage of the Works in accordance with that notice within a reasonable time (not being less than fourteen (14) days from the date it is issued by Council); or
  - (b) serve a notice on Council that it disputes the matters set out in the notice.
- (2) Where the Developer:
  - (a) serves notice on Council in accordance with paragraph 7.3(1)(b) the dispute resolution provisions of this agreement apply; or
  - (b) rectifies the Works in accordance with paragraph 7.3(1)(a) it must serve upon Council a new Completion Notice for the Works it has rectified (**New Completion Notice**).

### 7.4 New Completion Notice

The provisions of clauses 7.1 to 7.3 (inclusive) apply to any New Completion Notice issued by the Developer.

## 8. DEFECTS LIABILITY

### 8.1 Defects Notice

- (1) Where any Stage of the Works is Complete, and defects arise or are discovered in that Stage of the Works which:
  - (a) adversely affects the ordinary use and/or enjoyment of that Stage of the Works; or
  - (b) will require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect,(**Defect**), Council may issue a notice to the Developer (**Defects Notice**) concerning that Stage of the Works but only during the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
  - (a) the nature and extent of the Defect;
  - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
  - (c) the time within which the Defect must be rectified by the Developer (which must be a reasonable time and not less than fourteen (14) days).

### 8.2 Developer to rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice prior to the date specified in that notice.

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- (2) The Developer must follow the procedure set out in clause 7 in respect of the completion of the rectification of any Defect as if a reference in that clause to a Stage of the Works is a reference to the work required to rectify the relevant Defect.

### **8.3 Access to Designated Land**

If the Developer is required to access, use and occupy any part of the Designated Land for the purpose of discharging its obligations under clause 7 or 8 after the relevant land has been dedicated or transferred to Council, Council will grant a fee free licence to the Developer:

- (1) in relation to the relevant Designated Land; and
- (2) for such period,

in accordance with the terms of the Licence at Schedule 2.

### **8.4 Right of Council to step-in**

Council may, at its absolute discretion, enter upon the Land or Designated Land for the purpose of rectifying a Defect set out in the Defects Notice where the Developer has failed to comply with a Defects Notice, but only after giving the Developer fourteen (14) days written notice of its intention to do so. Council is not required to give notice in an emergency, or a threat to public safety or the environment.

### **8.5 Consequence of step-in**

If Council elects to exercise the step-in rights granted to it under clause 8.4 then:

- (1) Council may:
  - (a) enter upon any part of the Land or Designated Land reasonably required to exercise those step-in rights; and
  - (b) rectify the relevant Defects in accordance with the Defects Notice;
- (2) the Developer and Landowner must not impede or interfere with Council in exercising those rights; and
- (3) Council may claim any costs incurred by it in doing so from the Developer as a liquidated debt.

### **8.6 Costs of Council**

Where Council exercises its step-in rights under clause 8.5, it may:

- (1) call upon the Bank Guarantees provided by the Developer pursuant to clause 11 to meet any costs for which the Developer is liable under clause 8.5(3); and
- (2) recover as a debt due in a court of competent jurisdiction any difference between the amount of the Bank Guarantees and the costs incurred by Council in rectifying the Defects.



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## **9. CONTAMINATION**

### **9.1 Warranty and indemnity**

The Developer warrants that:

- (1) other than as disclosed in writing to Council prior to the formation of this agreement, the Land and Designated Land is not Contaminated; and
- (2) in relation to any notices or orders issued under any Environmental Law, and the requirements of the EPA and any other relevant Authority, the Developer indemnifies and keeps indemnified Council against all liability for and associated with all Contamination present in, on or under the Land and Designated Land as at the date of dedication or transfer of the Designated Land to Council in accordance with this agreement.

**9.2** The indemnity under this clause continues to apply after the expiry or termination of this agreement.

## **10. WARRANTIES AND INDEMNITIES**

### **10.1 Warranties**

Each party warrants to the others that:

- (1) it is able to fully comply with its obligations under this agreement;
- (2) it has full capacity to enter into this agreement; and
- (3) there is no legal impediment to it entering into this agreement, or performing the obligations imposed under it.



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## **10.2 Indemnity and Release**

The Developer releases Council from and indemnifies Council in relation to any Claim arising from or in connection with the carrying out of the Works and making of the Contributions. The indemnity is reduced proportionally to the extent that any such Claim is a direct result of the negligent or willful act or omission of Council. The indemnity and release under this clause continues to apply after the expiry or termination of this agreement.

## **10.3 Insurances**

- (1) The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to the Works until the Works are completed in accordance with this agreement:
  - (a) contract works insurance for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works;
  - (b) public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Developer and any subcontractor of the Developer, for liability to any third party; and
  - (c) workers compensation insurance as required by law.
- (2) If the Developer fails to comply with paragraph (1), the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
  - (a) by calling upon the Bank Guarantees provided by the Developer to the Council under this agreement, or
  - (b) recovery as a debt due in a court of competent jurisdiction.
- (3) The Developer is not to commence to provide any Works unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in paragraph (1).

## **11. SECURITY**

### **11.1 Prohibition**

Neither party may Assign their rights under this agreement without the prior written consent of the other party.

### **11.2 Assignment of Land**

- (1) Subject to clause 11.2(2), the Developer and the Landowner must not Assign their interests in the Land, unless:
  - (a) Council consents to the Assignment;
  - (b) the Developer and Landowner are not in breach of this agreement; and
  - (c) the proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by the terms of this agreement with respect to the relevant part of the Land being Assigned.
- (2) Clause 11.2(1) does not apply to any transaction by which the Landowner Assigns its interest in the Land to the Developer as Council has consented to such an Assignment on the date of this agreement.

### **11.3 Compulsory acquisition of the Designated Land**

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- (1) The Landowner and the Developer consent to the compulsory acquisition of the Designated Land:
    - (a) in accordance with the Acquisition Act; and
    - (b) on the terms set out in this clause.
  - (2) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Landowner or the Developer is in default of this agreement with respect to the dedication or transfer of that land under this agreement and has failed to remedy the default after receiving written notice requiring it to do so.
  - (3) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
    - (a) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00;
    - (b) the requirement to dedicate the Designated Land under this agreement is satisfied on the acquisition of the Designated Land and recovery by Council of costs of the acquisition in accordance with this clause 11.3; and
    - (c) Council must endeavour to complete that acquisition within twenty-four (24) months of the relevant default.
  - (4) The parties agree that the provisions of this clause are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of section 30 of the Acquisition Act.
  - (5) If, as a result of the acquisition referred to in this clause 11.3, the Council is required to pay compensation to any person other than the Landowner or Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or should the Developer fail to reimburse Council within 28 days of written request, the Council can call on the Bank Guarantees.
  - (6) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Designated Lands except if, and to the extent that, the Claim arises because of the Council's act, negligence or default.
  - (7) The Developer and Landowner are to promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this clause 11.3, including without limitation:
    - (a) signing any documents or forms,
    - (b) giving landowner's consent for lodgment of any development application, and
    - (c) paying the Council's costs arising under this clause 11.3.

#### **11.4 Delivery to Council of Bank Guarantee**

- (1) The Developer must deliver to Council a Bank Guarantee in the amount noted in Schedule 8 prior to the release of the Subdivision Works Certificate for Stage 1 of DA 2022/193.
- (2) The amount of the Bank Guarantee Council is entitled to hold under this agreement is indexed annually from the date of this agreement in accordance with CPI and the formula in clause 6.4.

#### **11.5 Council may call on Bank Guarantee**

- (1) If the Developer does not comply with the terms of this agreement, Council may issue the Developer with a notice requiring the Developer to rectify the relevant default within

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a reasonable period of time determined by Council having regard to the nature of the default. Council is not required to provide notice in an emergency or in circumstances where there is an imminent threat of environmental harm or a threat to public safety or if Council's assets or public safety or the environment is risk.

- (2) If the Developer fails to comply with a notice issued under paragraph (1) to the reasonable satisfaction of Council, or if a notice is not required, Council may, without limiting any other avenues available to it, call on the Bank Guarantees provided under clause 11.4 to the extent necessary to reimburse Council for any costs incurred by it in rectifying the relevant default of the Developer.

#### **11.6 Top up of Bank Guarantee**

- (1) The Developer is to ensure that the Bank Guarantees held by the Council are at all times maintained to their full current indexed value.
- (2) If the Council calls-up a Bank Guarantee or any portion of it, the Developer is to provide a further or replacement Bank Guarantee to ensure that the amount of Bank Guarantees held by the Council equals the amount the Council is entitled to hold under this agreement.

#### **11.7 Security during Defects Liability Period**

- (1) Upon the completion of the final Stage of the Works and the commencement of the Defects Liability Period for that Stage of the Works, Council must return to the Developer 90% of the Bank Guarantees provided under clause 11.4.

#### **11.8 Return of Bank Guarantees**

- (1) Within 30 days of the end of the Defects Liability Period for the final Stage of the Works, Council must return to the Developer the remaining 10% of the Bank Guarantees held for the Works.

### **12. DISPUTE RESOLUTION**

#### **12.1 Notice of dispute**

- (1) If a dispute between the parties arises in connection with this agreement or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
  - (a) is in writing;
  - (b) adequately identifies and provides details of the Dispute;
  - (c) stipulates what the First Party believes will resolve the Dispute; and
  - (d) designates its representative (**Representative**) with the necessary authority to negotiate and resolve the Dispute (**Notice of Dispute**).



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- (2) The Second Party must, within five (5) Business Days of service of the Notice of Dispute, provide a notice to the First Party designating as its representative a person with the necessary authority to negotiate and settle the Dispute (the representatives designated by the parties being together, the **Representatives**).

## **12.2 Conduct pending resolution**

The parties must continue to perform their respective obligations under this agreement if there is a Dispute.

## **12.3 Further steps required before proceedings**

Subject to clause 12.12 and except as otherwise expressly provided in this agreement, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 12.5 or determination by an expert under clause 12.6, first be referred to the Representatives. The Representatives must meet within fourteen (14) Business Days of the service of the Notice of Dispute to endeavour to resolve the dispute.

## **12.4 Disputes for mediation or expert determination**

If the Representatives have not been able to resolve the Dispute within twenty (20) Business Days of the meeting referred to in clause 12.3, the parties must use their best endeavours within fifteen (15) Business Days to either refer the matter to mediation under clause 12.5 or, if the parties agree that the Dispute can be appropriately determined by expert determination, to expert determination under clause 12.6.

## **12.5 Disputes for mediation**

- (1) If the Dispute is referred to mediation, the mediation must be conducted by a mediator agreed by the parties and in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time, and if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute within a further twenty (20) Business Days after referral of the Dispute to mediation, or such longer period as may be necessary to allow any mediation process to be completed, , then the parties may exercise their legal rights in relation to the Dispute including by commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- (3) Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (4) The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **12.6 Choice of expert**

- (1) If the parties agree under clause 12.4 that the Dispute can be determined by expert determination, this clause 12.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
  - (a) agreed between and appointed jointly by the parties; or
  - (b) in the absence of agreement within five (5) Business Days after the date that the matter is required to be referred to expert determination, appointed by the President of the Law Society of New South Wales.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the

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date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.

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- (4) The expert appointed to determine a Dispute:
    - (a) must have a technical understanding of the issues in dispute;
    - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
    - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
  - (5) The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's appointment and the fees payable to the expert.

#### **12.7 Directions to expert**

- (1) In reaching a determination in respect of a dispute under clause 12.6, the independent expert must give effect to the purposes of this agreement.
- (2) The expert must:
  - (a) act as an expert and not as an arbitrator;
  - (b) not accept verbal submissions unless both parties are present;
  - (c) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (d) take into consideration all agreements, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
  - (e) not be expected or required to obtain or refer to any other agreements, information or material (but may do so if the expert so wishes);
  - (f) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
  - (g) issue a final certificate stating the expert's determination (together with written reasons); and
  - (h) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must within the time period specified by the expert, give the expert:
  - (a) a short statement of facts;
  - (b) a description of the Dispute; and
  - (c) any other agreements, records, or information which the expert requests.

#### **12.8 Expert may convene meetings**

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.



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- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

### **12.9 Final determination of expert**

The parties agree that the determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

### **12.10 Costs**

Each party must contribute equally to the expert's costs in making the determination and bear its own costs of the expert determination.

### **12.11 Remedies available under the Act**

This clause does not operate to limit the availability of any remedies available to Council under Divisions 9.5 and 9.6 of the Act.

### **12.12 Urgent relief**

This clause does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this agreement.

## **13. POSITION OF COUNCIL**

### **13.1 Consent authority**

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the Planning Legislation and other laws.

### **13.2 Agreement does not fetter discretion**

This agreement is not intended to operate to fetter:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power, function or discretion (**Discretion**).

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### **13.3 Severance of provisions**

- (1) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
  - (a) they will take all practical steps, including the execution of any further agreements, to ensure the objective of this clause is substantially satisfied;
  - (b) in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
  - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to the extent of this agreement is not to be taken to be inconsistent with the Law.

### **13.4 No obligations**

Nothing in this agreement will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land, the Designated Land, or the Development in a certain manner.

## **14. GST**

### **14.1 Definitions**

In this clause 14 the terms “taxable supply”, “GST”, “Tax Invoice” and “Input Tax Credit” have the meaning given to them in the GST Law. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.

### **14.2 Non-monetary supplies**

- (1) The parties agree that any non-monetary supplies made by one party to the other pursuant to this agreement (including Works and the dedication of land) will be exempt from GST pursuant to Division 82 of the GST Law.
- (2) However, if GST is imposed on any non-monetary supplies made under or in accordance with this agreement, the Developer must pay to the Council an amount equal to the GST payable on or for the taxable supply.
- (3) If the Council is obliged to pay any GST on any non-monetary supply made under or in accordance with this agreement, the Developer indemnifies the Council for the amount of any such payment is required to make.
- (4) The Developer will issue Tax Invoices as directed by Council.

### **14.3 Supply expressed in terms of money**

- (1) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay to the Council an amount equal to the GST payable on or for the taxable supply.

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- (2) If the Council is obliged to pay any GST on any supply made under or in accordance with this agreement, the Developer indemnifies the Council for the amount of any such payment is required to make.
  - (3) The Developer will issue Tax Invoices as directed by Council.

#### **14.4 Expenses and costs incurred**

- (1) If any expenses or costs incurred by one party are required to be reimbursed by the other party under this agreement, then the amount of the reimbursement will be calculated as follows:
  - (a) the amount of the cost or expense incurred by the party seeking reimbursement will be initially calculated excluding any Input Tax Credit to which that party is entitled to claim.
  - (b) this amount initially calculated will be increased by the applicable rate of GST to equal a GST inclusive reimbursement amount and this amount will be paid by the party liable to make the reimbursement.
  - (c) the party being reimbursed will issue a Tax Invoice to the other at the GST inclusive reimbursement amount prior to being reimbursed.

#### **14.5 Survival of clause**

This clause 14 continues to apply after the expiration or termination of this agreement.

### **15. ACCESS TO LAND**

#### **15.1 Application of clause**

This clause applies if the Developer accesses, uses and/or occupies any land owned by Council in performing its obligations or exercising its rights under this agreement (**Necessary Access**).

#### **15.2 Terms of Licence**

The terms of Schedule 2 apply to any Necessary Access, subject to Council providing written consent to the Necessary Access.

### **16. LEGAL COSTS**

- (1) The Developer must pay Council's reasonable legal costs and disbursements with respect to the preparation, negotiation, exhibition, formation, and registration, of this agreement up to a maximum of \$12,500 plus GST within 7 days of a written request by Council
- (2) The Developer must pay Council's reasonable legal costs and disbursements with respect to the implementation and enforcement of this agreement within 7 days of a written request by Council .

### **17. ADMINISTRATIVE AND INTERPRETIVE PROVISIONS**

#### **17.1 Notices**

- (1) Any notice, consent or other communication under this agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (a) delivered to that person or that person's address;

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(b) sent by pre-paid mail to that person's address; or



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- (c) sent by email to that person's email address.
  - (2) A notice given to a person in accordance with this clause is treated as having been given and received:
    - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
    - (b) if sent by pre-paid mail, on the fourth Business Day after posting; and
    - (c) if sent by email to a person's email address and a confirmation of receipt can be retrieved, on the day it was sent if a Business Day, otherwise on the next Business Day.
  - (3) For the purpose of this clause the address of a person is the address set out in this agreement or another address of which that person may from time to time give notice to each other person.

## **17.2 Power of Attorney**

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

## **17.3 Governing law**

The law in force in the State of New South Wales governs this agreement. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this agreement; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

## **17.4 Variations**

Any amendments, variation, or modification to or of, or consent to departure by any party from the terms of this agreement shall have no force or effect unless effected by an agreement executed by the parties.

## **17.5 Waivers**

The failure to exercise or delay in exercising by any party of any right conferred by this agreement shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party. To avoid doubt, if a party exercises a particular right or power or enforces a particular remedy, this does not prevent them from also exercising or enforcing a different one whether separately or at the same time.

## **17.6 Remedies**

The rights of a party conferred by this agreement are cumulative and are not exclusive of any rights provided by law.

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#### **17.7 Pre-Contractual Negotiation**

This agreement expresses and incorporates the entire agreement between the parties in relation to its subject matter and all the terms of that agreement and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement representation or warranty by or between the parties in relation to that subject matter or any term of that agreement.

Neither party shall, after execution of this agreement, be entitled, as against the other party or other officers of any party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by this agreement.

#### **17.8 Further Assistance**

The Developer shall execute all agreements and perform all acts necessary to give full effect to this agreement.

#### **17.9 Joint liability and benefit**

Except as otherwise specified, any agreement, covenant, representation or warranty under this agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

#### **17.10 Severability**

Any provision of this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

#### **17.11 Representations and warranties**

Each party warrants that it has the authority to enter into this agreement and to comply with their obligations and that entry into this agreement will not result in the breach of any Law.

#### **17.12 Third Parties**

This agreement shall confer rights and benefits only upon a person expressed to be a party and not upon any other person.

#### **17.13 Survival of terms**

The terms of this agreement survive its termination to the extent permitted by law.

#### **17.14 Independent legal advice**

Each party acknowledges that there has been adequate opportunity to obtain independent legal advice as to the meaning and effect of this agreement before it was signed.

#### **17.15 No fetter**

Nothing in this agreement is intended to limit or fetter Council's proper performance of its statutory functions or duties and clauses are to be construed consistently with the proper exercise of those functions and duties.



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**17.16 No agency**

This agreement does not create a relationship of agency between the parties. Neither party shall act or represent itself as acting on behalf of the other party.

**17.17 No Merger**

Nothing in this agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

**17.18 Consents and Approvals**

Where this agreement gives Council a right or power to consent or approve in relation to a matter under this agreement, Council may withhold any consent or approval or give consent or approval conditionally or unconditionally. The Developer must comply with any conditions Council reasonably imposes on its consent or approval.

**17.19 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it.

**17.20 Explanatory note**

Whilst the parties note their agreement to the explanatory note provided in Schedule 10 to this agreement, the explanatory note is not to be used to assist in construing this agreement.

THE PARTIES AGREE TO THE PRECEDING TERMS AND CONDITIONS OF THIS  
VOLUNTARY PLANNING AGREEMENT (BEING A DEED OF AGREEMENT)

EXECUTED AS A DEED

Executed by Maitland City Council by its Attorney, Council's General Manager pursuant to Power  
of Attorney .....



General Manager – David Evans

Date: 12.12.22

*I certify that I am an eligible witness, and that the Attorney signed this Deed in my presence.*

*\*I certify that I have known the Attorney for at least 12 months OR ~~\*I have not known the Attorney for at least 12 months, but I have confirmed the Attorney's identity by sighting an original identification document and the document I relied on was~~* .....

**\*Cross out text which does not apply**

**(Omit ID number of document)**

Signature of Witness: 

Name of Witness: Linda McLaren

Address of Witness: C/- 285-287 High Street, Maitland

Executed by Dowmere Pty Ltd (**the Developer**)

ACN 002 160 152 in accordance with section 127 of the *Corporations Act* 2001:

Date: Dec 8, 2022

Signature: 

Print Name: John Stevens

Sole Director/Secretary

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Executed by McCloy Loxford Land Pty Ltd **(the Developer)**

ACN 624 968 092 in accordance with section 127 of the *Corporations Act* 2001:

Date: Dec 8, 2022

Signature:   
Jeff McCloy (Dec 8, 2022 13:23 GMT+10)

Print Name: Jeff mccloy

Director

Signature: 

Print Name: Christian Southward

Director and/or Secretary

Executed by Hydro Aluminium Kurri Kurri Pty Ltd **(the Landowner)**

ACN 093 266 221 in accordance with section 127 of the *Corporations Act* 2001:

Date: Dec 7, 2022

Signature:   
Richard Brown (Dec 7, 2022 16:17 HST)

Print Name: Richard Brown

Director

Signature:   
SJ Roberts (Dec 8, 2022 13:37 GMT+11)

Print Name: SJ Roberts

Director and/or Secretary

## SCHEDULE 1: REQUIREMENTS UNDER SECTION 7.4 OF THE ACT

Requirement Under The Act	This Agreement
<p><b>Planning instrument and/or development application – (Section 7.4(1))</b></p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No/<del>Yes</del></p> <p>(b) <del>No</del>/Yes</p> <p>(c) <del>No</del>/Yes</p>
<b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b>	See clause 1.
<b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b>	Not Applicable.
<b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b>	See clause 4.1.
<b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b>	See clause 4.1.
<b>Applicability of section 7.24 of the Act – (Section 7.4(3)(d))</b>	See clause 4.1.
<b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b>	See clause 4.2.
<b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b>	See clause 12.
<b>Enforcement of this agreement (Section 7.4(3)(g))</b>	See clause 11.
<b>No obligation to grant consent or exercise functions – (Section 7.4(9))</b>	See clause 13.
<p><b>Registration of this agreement</b></p> <p>The parties agree that this agreement will be registered.</p>	See clause 5.



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## **SCHEDULE 2: TERMS OF LICENCE**

### **1. DEFINITIONS**

For the purposes of this Schedule 2:

- (1) the **Land** is the land being accessed under the Licence;
- (2) the **Licence** means the licence of the Land to which this Schedule applies;
- (3) the **Licensee** is the party accessing the Land; and
- (4) the **Licensor** is the owner of the Land.

### **2. LICENCE**

#### **2.1 Personal Rights**

- (1) The Licence is personal to the Licensee.
- (2) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- (3) The Licensor may refuse the granting of consent under paragraph (2) without reason and at its absolute discretion.

#### **2.2 Leasehold interest**

- (1) This licence does not grant to the Licensee a leasehold interest in the Land. The parties agree that:
  - (a) the Licence does not confer exclusive possession of the Land on the Licensee;
  - (b) the Licensee may not exclude the Licensor, its officers, employees and invitees from:
    - (i) entry onto the Land; and/or
    - (ii) the performance of any works on the Land.
- (2) the Licensee does not have any right to quiet enjoyment of the Land; and
- (3) the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensor.

### **3. COMPLIANCE WITH AUTHORITIES**

#### **3.1 No warranty as to suitability for use**

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the purposes of the Licensee.

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### **3.2 Compliance with the terms of the consents**

The Licensee must comply with the requirements of all Authorities and the Licensor in relation to its access to the Land and the conduct of any activities on it by the Licensee.

### **3.3 Compliance with directions from Authorities**

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Licensor and which arise from the conduct of any activities on the Land by the Licensee.

### **3.4 Obtaining further consents**

- (1) If the Licensee requires further consents to conduct activities on the Land it must:
  - (a) make such applications itself; and
  - (b) bear all costs incurred by it in relation to obtaining the relevant consent.
- (2) The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application to any Authority.

## **4. LIMITATION OF THE LICENSOR'S LIABILITY**

### **4.1 Insurances**

- (1) The Licensee must effect and keep current and in force the following policies of insurance:
  - (a) Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor, acting reasonably, in an amount of \$10,000,000 for any one occurrence in respect of any liability for:
    - (i) personal injury or death of any person; and
    - (ii) loss or damage to property.
  - (b) Workers compensation insurance under the *Workers Compensation Act 1987* covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the activities on the Land by the Licensee;
  - (c) A comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the activities on the Land by the Licensee; and
  - (d) A contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the activities on the Land by the Licensee.
- (2) The policies referred to in paragraphs (1)(a), (1)(c) and (1)(d) must note the interest of the Licensor.

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#### **4.2 Inspection of insurance**

- (1) The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.
- (2) The Licensor may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies wherever requested by the Licensor.

#### **4.3 Cancellation of insurance**

If any policy is cancelled either by the Licensee or the insurer the Licensor must notify the Licensor immediately.

#### **4.4 Risk**

The Licensee uses and occupies the Land at its own risk.

#### **4.5 Indemnity**

The Licensee releases and indemnifies the Licensor against any Claim (of whatever nature) made in respect of or arising out of the Licensee's negligence or breach whilst in occupation of the Land except to the extent the Claim arises as a consequence of the negligent act or omission of the Licensor. The release and indemnity under this clause continues to apply after the expiry or termination of this agreement.

#### **4.6 Rectification**

The Licensee must repair any damage caused by the Licensee's use of the Land as directed and to the satisfaction of the Licensor, acting reasonably. If the Licensee does not rectify such damage the Licensor may carry out such repair works as it deems necessary and recover the cost of doing so as a liquidated debt from the Licensee. The Licensor may also have recourse to the Bank Guarantees in this regard.

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**SCHEDULE 3: THE WORKS**

<b>COLUMN 1</b> <b>Details</b>	<b>COLUMN 2</b> <b>Public Purpose</b>	<b>COLUMN 3</b> <b>Timing</b>	<b>COLUMN 4</b> <b>Contribution Value</b>
Construction of the District Park in 4 Stages and in accordance with the Works Plans.	Public Recreation	Each Stage of the Works must be completed prior to the issue of a Subdivision Certificate for that Stage of the Development.	For each Stage of the Works the actual costs of carrying out the Stage of the Works as evidenced by the detailed costings required to be provided under clause 7.1(3)(c).



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**SCHEDULE 4: THE MONETARY CONTRIBUTIONS**

<b>COLUMN 1</b> <b>Item No / Details</b>	<b>COLUMN 2</b> <b>Public Purpose</b>	<b>COLUMN 3</b> <b>Timing</b>	<b>COLUMN 4</b> <b>Contribution Value \$</b>
1. The Developer is to pay to Council \$3,461 (exclusive of GST) for each Residential Lot in the Development authorised by a Development Consent granted to DA 2022/193 (at the date of this agreement estimated to be \$1,155,974, based on 334 lots).	City Wide Roads and Traffic'	In 8 equal instalments with each instalment payable prior to the issue of the Subdivision Certificates for each of Stages 10 to 18 of the part of the Development authorised by the Development Consent granted to DA 2022/193	\$3,461 per Residential Lot
2. The Developer is to pay to Council \$3,461 (exclusive of GST) for each Residential Lot in the Development authorised by the Development Consent granted to DA 2022/912 (at the date of this agreement estimated to be \$775,264 based on 224 lots)	City Wide Roads and Traffic'	In 14 equal instalments with each instalment payable prior to the issue of the Subdivision Certificate for each of Stages 1 to 14 of the part of the Development authorised by the Development Consent granted to DA 2022/912	\$3,461 per Residential Lot

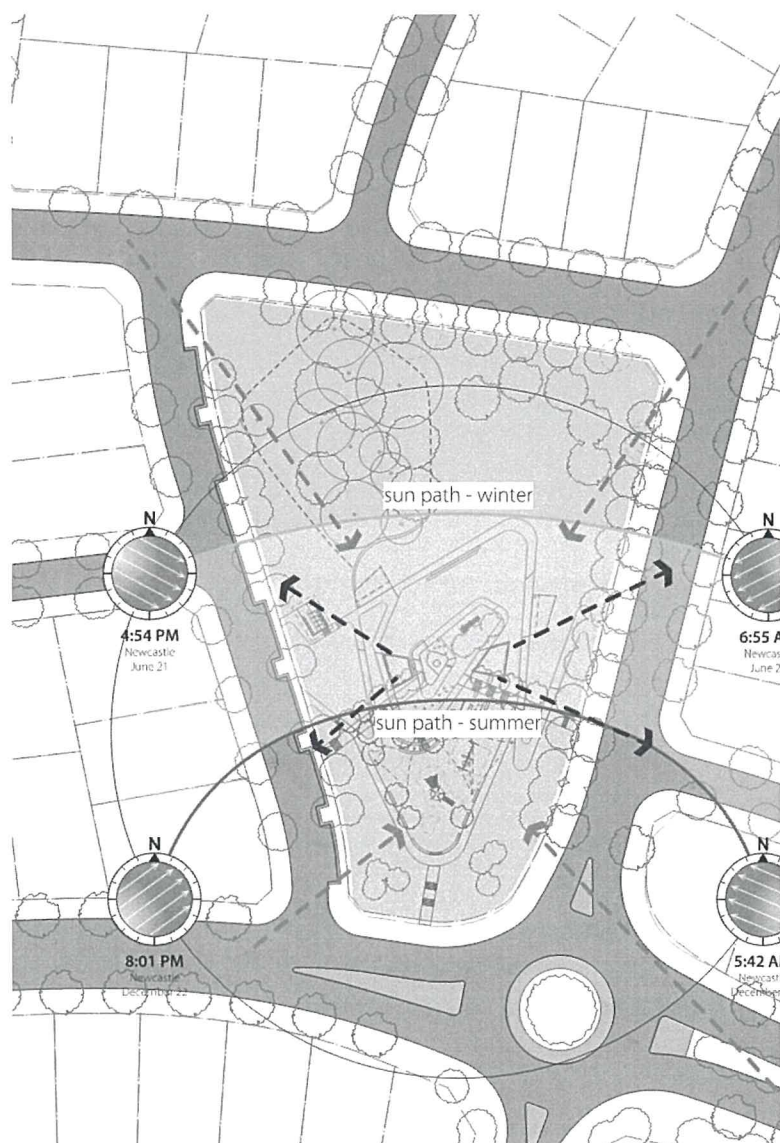
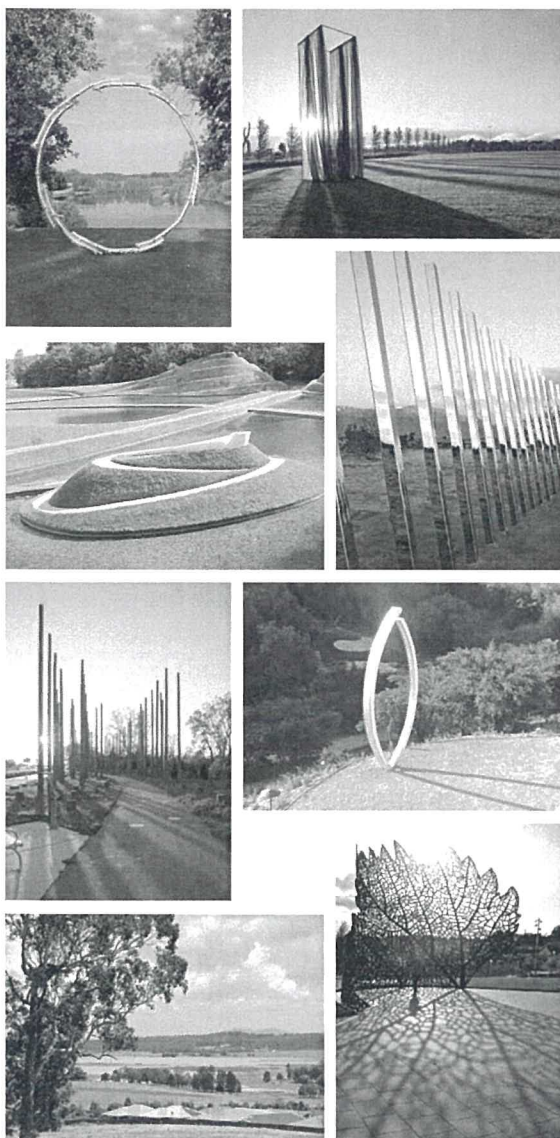
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**SCHEDULE 5: DEDICATION OF THE DESIGNATED LAND BY THE DEVELOPER**

<b>COLUMN 1</b> <b>Details</b>	<b>COLUMN 2</b> <b>Public Purpose</b>	<b>COLUMN 3</b> <b>Timing</b>	<b>COLUMN 4</b> <b>Contribution Value \$</b>
Dedication of the Designated Land	Public Recreation	Prior to the release of the Subdivision Certificate for the final Stage of the Development authorised by the Development Consent granted to 2022/193.	\$2,840,000

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## SCHEDULE 6: WORKS PLANS



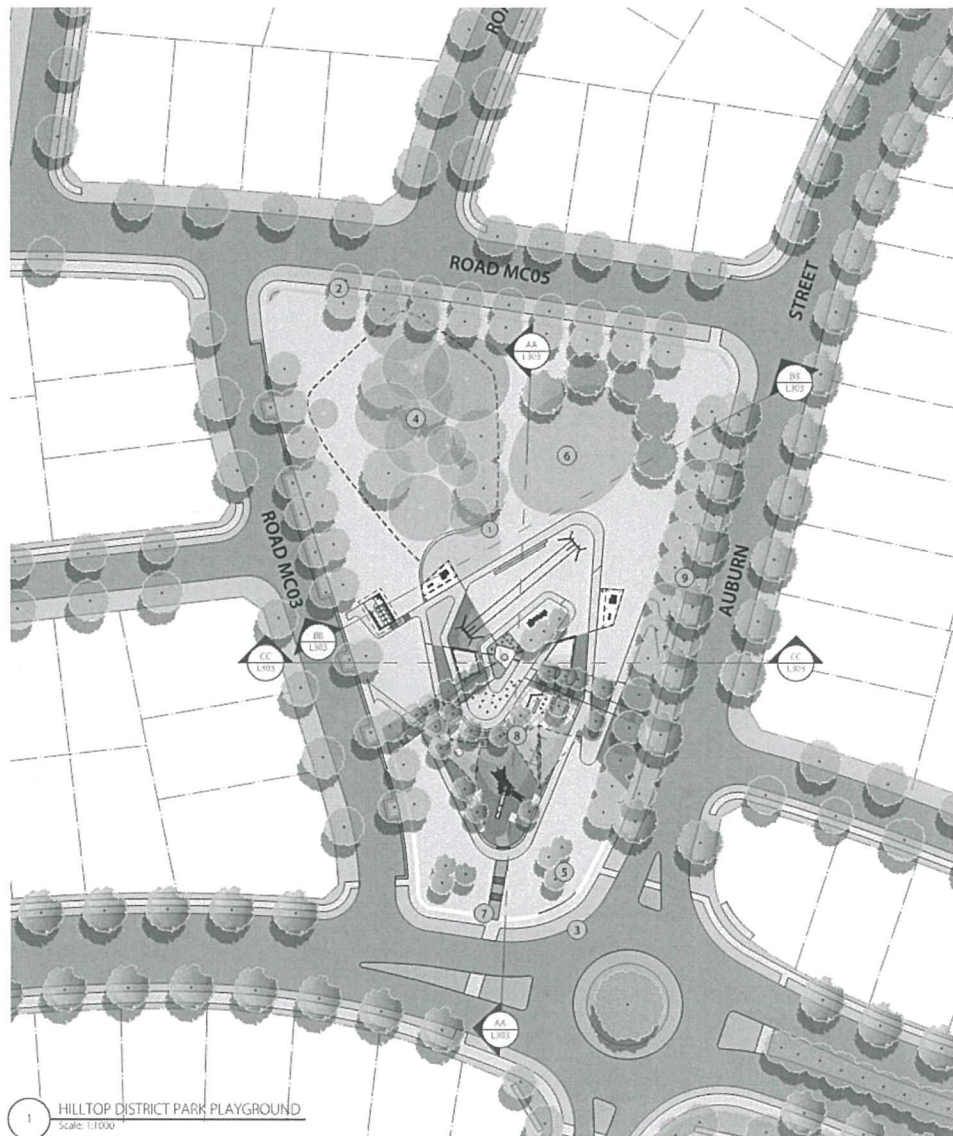
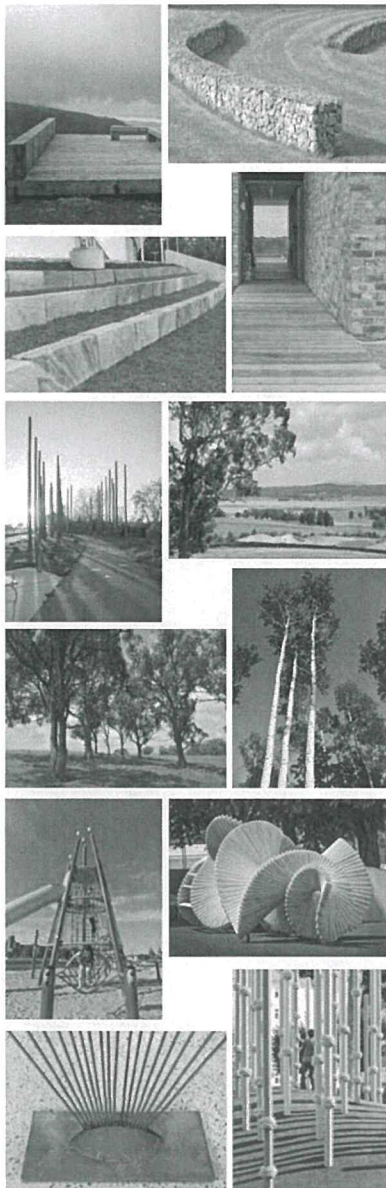
**L01**  
sunrise park - concept + approach

ReGrowth Kurri Ki  
Landscape Des



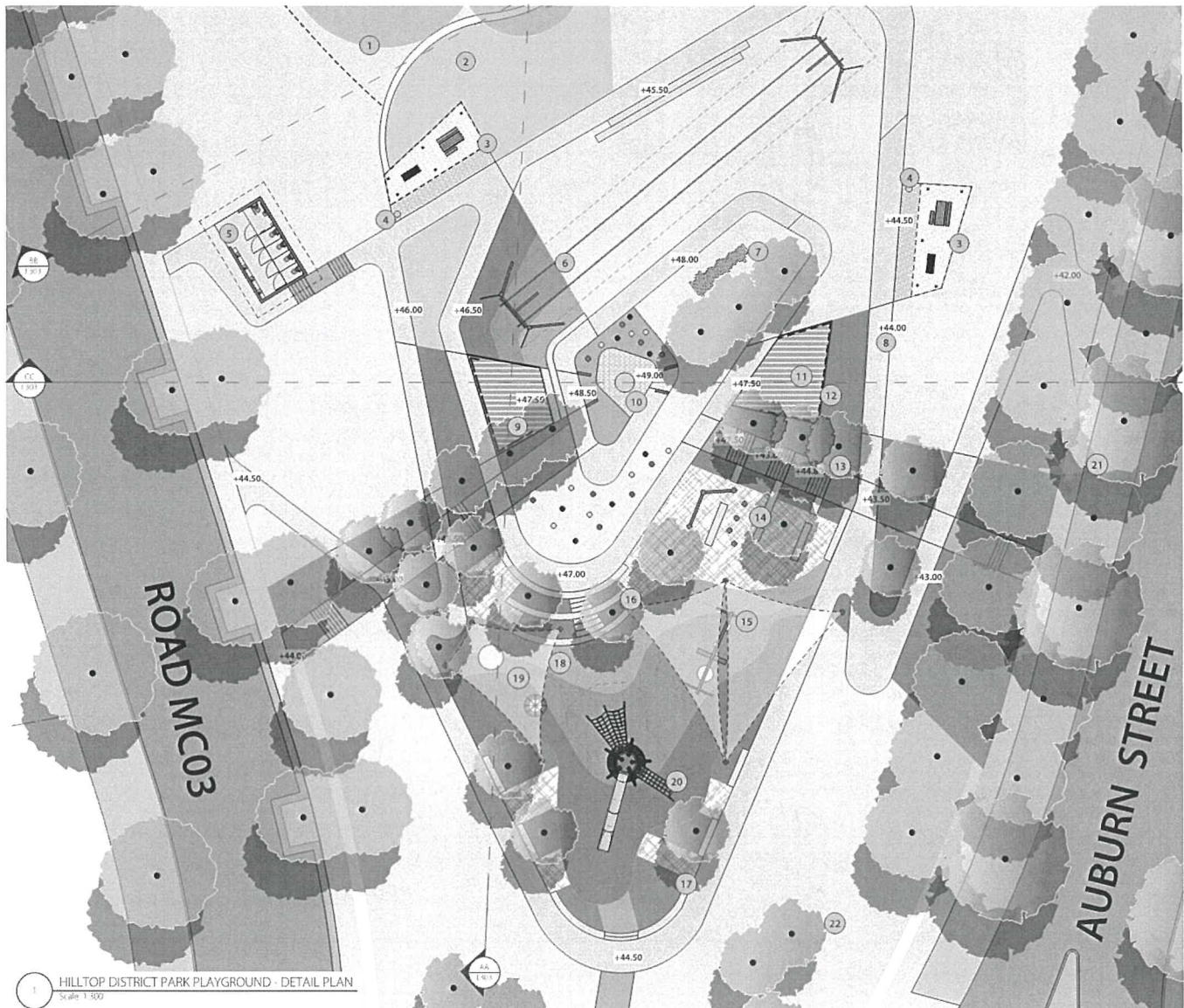
# Playgroun

ReGrow1



# Playground ·

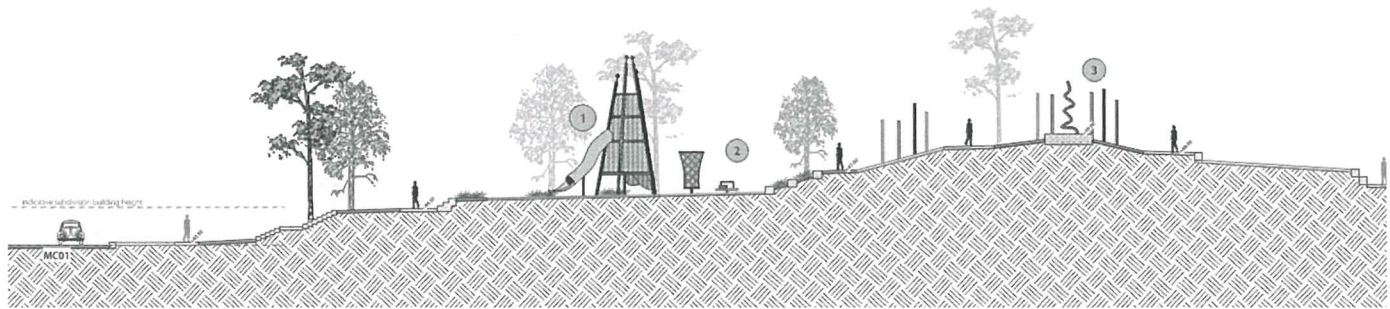
ReGrowl



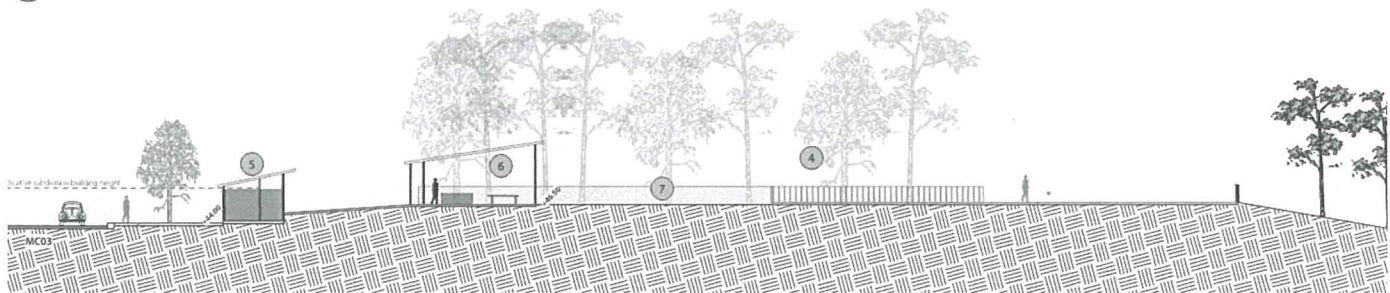


# Playgroun

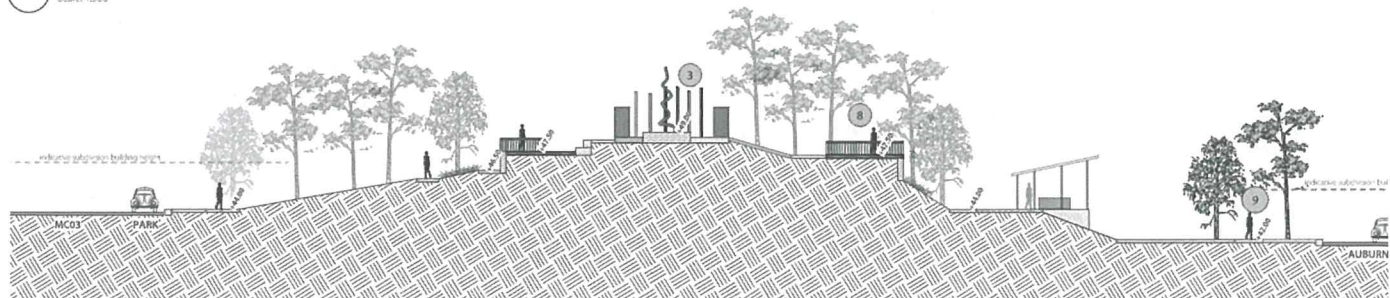
ReGrowt



AA PLAYGROUND - SECTION AA  
Scale: 1:300



B3 PLAYGROUND SECTION BB  
Scale: 1:300



CC PLAYGROUND - SECTION CC  
Scale: 1:300

22  
DP1021694

1025 DRAINAGE CORRIDOR

1216 DRAINAGE CORRIDOR (10)

1721 DRAINAGE CORRIDOR (6)

2 (RESIDUE) 7.73ha

PROPOSED DISTRICT PARK

DETAIL PLAN  
SCALE 1:750

22  
DP1021695

SHEET 2402/11 (A-C)

NO.	DATE	REVISION	BY	CHKD	APPD	DESCRIPTION
1	20/04/2023					CLIENT COMMENTS
2						PROJECT MANAGEMENT
3						CIVIL ENGINEERING
4						INFRASTRUCTURE
5						SUPERINTENDENCY
6						SOCIAL IMPACT
7						TOWN PLANNING
8						SURVEYING
9						DEVELOPMENT FEASIBILITY
10						VISUALISATION
11						URBAN DESIGN



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## **SCHEDULE 8: THE BANK GUARANTEES**

The Developer must provide Bank Guarantees in the amount of \$500,000 under clause 11.4.

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## SCHEDULE 9: THE STAGING PLAN



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## SCHEDULE 10: THE EXPLANATORY NOTE

### Explanatory Note under section 205 of the *Environmental Planning & Assessment Regulation 2021*

Exhibition of draft Voluntary Planning Agreement

Lots 1, 2, 3, 4, 5, 7, 8 & 9 in Deposited Plan 456946;  
Lots 54, 55, 69, 70 & 71 in Deposited Plan 975994; and  
Lot 1 in Deposited Plan 1206034

known as Regrowth, 464 Cessnock Road, Gillieston Heights, NSW, 2321.

#### Planning Agreement

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (**the Act**).

This Explanatory Note has been prepared jointly between the parties as required by section 205 of the *Environmental Planning and Assessment Regulation 2021* (**the Regulations**).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### Parties

Dowmere Pty Ltd and McCloy Loxford Pty Ltd (**Developer**) have made an offer to Maitland City Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with a Development Application relating to the land.

The parties to the Planning Agreement will be the Developer, Council and Hydro Aluminium Kurri Kurri Pty Ltd, ACN 093 266 221, which owns the land to which the Planning Agreement relates (**Landowner**).

#### Description of subject land

The land to which the Planning Agreement applies is described as 464 Cessnock Road, Gillieston Heights, NSW, 2321 (**the Land**).

#### Description of the Development Application to which the Planning Agreement applies

The development applications to which the Planning Agreement *relate* are:

- (1) DA 2022/193 for a subdivision creating 342 residential lots and 7 public reserve lots including 8,828m<sup>2</sup> of land for a district park in relation to the Land, and
- (2) DA 2022/912 for a subdivision creating 224 residential lots and 4 public reserve lots.

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## **Summary of Objectives, Nature, and Effect of the Planning Agreement**

The Planning Agreement will require the payment of monetary contributions, works and land dedication for public infrastructure and improvements in Gillieston Heights as follows:

- (i) Dedication of 8,828sqm of land and associated embellishment and construction works for a District Park; and
- (ii) \$3,461 per lot created in the Development, for an estimated total of \$1,931,238 for City Wide Road and Traffic Category as listed under the Maitland City Wide Development Contributions Plan in operation at the time the payment is made.

The above contributions are made in connection with a proposed development of the Land.

## **Assessment of the Merits of the Planning Agreement**

### **How the Planning Agreement Promotes the Objects of the Act and the public interest**

The draft Planning Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

- the social and economic welfare of the community and a better environment by the proper management, development, and conservation of the State's natural and other resources,
- the orderly and economic use and development of land,
- good design and amenity of the built environment,
- increased opportunity for community participation in environmental planning and assessment.

The draft Planning Agreement promotes the public interest by providing public amenities and public infrastructure improvements in Gillieston Heights.

### **The Planning Purposes served by the Planning Agreement**

The monetary contribution will be used for City Wide Road and Traffic improvements.

The land will be dedicated to increase the size of the existing Council open space by 8,828sqm.



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## **How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter (now section 8A)**

By enabling Council to provide public infrastructure and facilities, the Planning Agreement is consistent with the following guiding principles of councils, set out in section 8A of the *Local Government Act 1993*:

- Councils should provide strong and effective representation, leadership, planning and decision-making.
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- Councils should consider the long term and cumulative effects of actions on future generations.
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

### **Whether the Planning Agreement conforms with the Council's Capital Works Program**

The Planning Agreement is satisfactory having regard to Council's Capital Works Program ('CWP') by the construction of additional public amenities. These public improvements are outside of the scope of Council's immediate Capital Works Program but have been necessitated by the development and their cost will be borne by the Developer. As the public improvements will have a nil net cost to Council and align with strategic objectives for Gillieston Heights, the proposed improvements are considered to generally conform with the intent of Council's Capital Works Program.

### **Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Planning Agreement requires the following:

- The Developer is to pay monetary contributions prior to the release of Subdivision Certificates relating to DA 2022/193 & DA2022/912;
- Works are to be completed in stages prior to the issue of Subdivision Certificates for the stage, and land is to be dedicated prior to the release of the last Subdivision Certificate for the last Stage.














# VPA Final Execution Version 061222 (002)

Final Audit Report

2022-12-08

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By:	Michelle collison (michelle.c@mccloygroup.com.au)
Status:	Signed
Transaction ID:	CBJCHBCAABAApn5A9M-ZjNwsAogCttWl1YPbEDfr48_c


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