

Planning Agreement

Environmental Planning and Assessment Act 1979

100 Minmi Road, Edgeworth 2285

Lower Hunter

Minister for Planning and Public Spaces (ABN 20 770 707 468)

McCloy Edgeworth Pty Ltd (ACN 616 353 845)

Norman Leslie Lyons

Brian Geoffrey Fisher

Ian Douglas Fisher

Barry Neil Fisher



B.G. Fisher
B.N. Fisher
C. Southward


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This deed is dated

Parties:

Minister

Minister for Planning and Public Spaces (ABN 20 770 707 468) c/- NSW Department of Planning, Industry and Environment of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta, NSW 2150

McCloy

McCloy Edgeworth Pty Ltd (ACN 616 353 845) of Level 3, Suite 1, 426 King Street, Newcastle, NSW 2300

Landowner(s)

Norman Leslie Lyons of 100 Minmi Road, Edgeworth, NSW 2285

Brian Geoffrey Fisher of 100 Minmi Road, Edgeworth, NSW 2285

Ian Douglas Fisher of 100 Minmi Road, Edgeworth, NSW 2285

Barry Neil Fisher of 100 Minmi Road, Edgeworth, NSW 2285

(each a **Landowner** and together referred to as the **Landowners**)

Introduction:

- A The Landowners own the Land.
- B McCloy proposes to carry out the Development on the Land.
- C McCloy has made a Development Application to the Consent Authority in respect of the Land.
- D Clause 6.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State infrastructure referred to in clause 6.1 of the LEP.
- E The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Chantwood
M. Fisher

B. Fisher
B. Fisher
J. Fisher B.N. Fisher

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Base CPI means the CPI number for the quarter ending 31 March 2021.

Business Day means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Consent Authority has the same meaning as in the Act.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

Current CPI means the CPI number as provided for in clause 4.1.

Developer means McCloy and the Landowners, jointly and severally.

Development means the proposed subdivision of the Land into approximately twenty-five (25) residential lots and associated infrastructure, generally in accordance with DA/730/2021 lodged with Lake Macquarie City Council.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contributions to be provided by the Developer in accordance with clause 4.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land described in Schedule 3.

LEP means *Lake Macquarie Local Environmental Plan 2014*.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Minister means the Minister for Planning and Public Spaces and includes the Secretary and the Secretary's nominee.

Net Developable Area has the meaning given to it in Schedule 4 to this deed.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Secretary means the Secretary of the Department of Planning, Industry and Environment.

Standard Instrument means the standard instrument set out at the end of the *Standard Instrument (Local Environmental Plans) Order 2006*.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation made under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** and **annexures** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and

- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent stated in Schedule 1.

4. Development Contribution

4.1 Developer to provide Development Contribution

- (a) The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution on or prior to the commencement of this deed.
- (b) The Minister and the Developer acknowledge and agree that the Development Contribution for the purposes of this deed will be calculated on the basis that the rate per hectare of Net Developable Area is \$87,414.
- (c) The Development Contribution will be an amount equal to "X" in the following formula:

$$X = N \times \$87,414$$

"N" means the number of hectares comprised in the Net Developable Area of the Land, as defined and determined in accordance with Schedule 4.

- (d) If the Development Contribution is paid between 1 July and 31 December (inclusive) in any calendar year, the amount payable is to be adjusted by multiplying the Development Contribution that would have been payable before 1 July by an amount equal to the Current CPI divided by the Base CPI.
- (e) For the purposes of this clause 4.1, the Current CPI is:

- (i) if the Development Contribution is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in the preceding calendar year; and
- (ii) if the Development Contribution is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in that calendar year.

4.2 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. Dispute Resolution

5.1 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

5.2 Attempt to resolve

On receipt of notice under clause 5.1, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

5.3 Referral to the Secretary

Should the matter not be resolved under clause 5.2, the matter shall be referred to the Secretary whose determination of the disagreement shall be final and binding on the parties.

6. GST

6.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

6.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

6.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

6.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 6.

6.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Minister.

6.6 Non monetary consideration

Clause 6.5 applies to non-monetary consideration.

6.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 6.5 the Developer must assume the Minister is not entitled to any input tax credit.

6.8 No merger

This clause does not merge on completion or termination of this deed.

7. Capacity

7.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

7.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

8. General Provisions

8.1 No fetter

Nothing in this deed is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

8.2 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

8.3 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable valuation costs, legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 8.3(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

8.4 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or

- (iii) sent by email:
 - (A) before 5 pm on a Business Day, on that Day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent,
and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 7.4 of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(2)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))	See clause 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4(3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(5))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 5
Enforcement of this deed – (section 7.4(3)(g))	Not required
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 8.1

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 146A of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 154E of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	No

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

Address: NSW Department of Planning, Industry and Environment
4 Parramatta Square, 12 Darcy Street

PARRAMATTA NSW 2150

Email: planningagreements@planning.nsw.gov.au

McCloy

Contact: The Company Director(s) and Secretary, McCloy Edgeworth Pty Ltd

Address: Level 3, Suite 1, 426 King Street

NEWCASTLE NSW 2300

Email: jeffrey.bretag@mccloygroup.com.au

Landowner

Contact: Norman Leslie Lyons

Address: 100 Minmi Road

EDGEWORTH NSW 2285

Email: brianfisher1952@gmail.com

Contact: Brian Geoffrey Fisher

Address: 100 Minmi Road

EDGEWORTH NSW 2285

Email: brianfisher1952@gmail.com

Contact: Ian Douglas Fisher
Address: 100 Minmi Road
EDGEWORTH NSW 2285
Email: brianfisher1952@gmail.com

Contact: Barry Neil Fisher
Address: 100 Minmi Road
EDGEWORTH NSW 2285
Email: brianfisher1952@gmail.com

Schedule 3**Land (clause 1.1)****1. Lots proposed for development**

Lot	Deposited Plan	Folio Identifier
2	1267414	2/1267414

Schedule 4

Definition of Net Developable Area (clause 4)

1. The net developable area of the Land is the area of land, in hectares, shown on the then-current proposed plan of subdivision for the Land, as at the date that the Minister requires payment of the Development Contribution, subject to the other provisions of this Schedule 4.
2. The net developable area does not include the area of any land that the proposed subdivision reserves, dedicates or otherwise sets aside as, or for the purpose of, any of the following:
 - (a) school;
 - (b) TAFE establishment;
 - (c) emergency services facility;
 - (d) health services facility owned or operated by a public authority;
 - (e) golf course;
 - (f) passenger transport facility;
 - (g) place of public worship;
 - (h) public open space, including a public reserve (within the meaning of the *Local Government Act 1993*);
 - (i) drainage reserve (within the meaning of the *Local Government Act 1993*);
 - (j) public utility undertaking;
 - (k) bus depot;
 - (l) recreation area;
 - (m) cemetery (within the meaning of the *Cemeteries and Crematoria Act 2013*);
 - (n) public roads; and
 - (o) public amenities or public services, in connection with which development contributions have been imposed under section 7.11 or section 7.12 of the Act or may be imposed in accordance with a contributions plan approved under section 7.18 of the Act.
3. The following areas of land are not to be included in the calculation of the net developable area for the proposed subdivision:
 - (a) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of it being at or below that level;
 - (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 7.18 of the Act;
 - (c) any area of land that is within Zone E2 Environmental Conservation;
 - (d) any area of land within the curtilage of a building listed on the State Heritage Register;
 - (e) any area of land this is within an asset protection zone:

- (i) that is specified in a bush fire safety authority issued under the *Rural Fires Act 1997*; or
 - (ii) that is required to be established by the development consent relating to the subdivision,

if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of it being within that zone;
 - (f) an area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land or as confirmed in writing by the public utility undertaking, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of the easement; and
 - (g) any area of land that is within a public transport corridor (other than a road corridor) as shown on a Land Zoning Map for the purposes of an environmental planning instrument or a development control plan made under the Act, if the Secretary is satisfied that the area is unsuitable for development for the purposes of the subdivision by virtue of it being within the public transport corridor.
4. The net developable area does not include the area of any lot in the proposed plan of subdivision that may be further subdivided (other than under a strata scheme) in accordance with the development consent relating to the subdivision.
 5. The net developable area does not include the area of any lot in the proposed plan of subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to the relevant planning controls, will be further subdivided (other than under a strata scheme) in accordance with a future development consent for the purpose of the orderly development of the land for urban purposes in the future.
 6. If a proposed lot contains an existing lawful habitable dwelling (being a dwelling that lawfully existed on the proposed lot at the date this deed commences) and:
 - (a) is no more than 0.1 hectare, the net developable area does not include the area of the lot, or
 - (b) is more than 0.1 hectare in area, the net developable area is reduced by 0.1 hectare, for the purpose of calculating the net developable area for the proposed subdivision.
 7. If a proposed lot is wholly within Zone E3 Environmental Management, Zone E4 Environmental Living or Zone R5 Large Lot Residential and is more than 0.1 hectare, that lot is taken to be 0.1 hectare for the purpose of calculating the net developable area for the proposed subdivision.
 8. The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the net developable area for the proposed subdivision in accordance with this clause and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.
 9. In this Schedule 4, the following words or expressions have the same meanings as they have in the Standard Instrument (that is, the standard instrument for a principal local environmental plan prescribed by the Standard Instrument):
 - (a) emergency services facility;

- (b) health services facility;
- (c) passenger transport facility;
- (d) place of public worship;
- (e) public utility undertaking;
- (f) recreation area; and
- (g) school.

10. In this Schedule, a reference to:

- (a) a land use zone is a reference to a land use zone specified in the Standard Instrument and to a land use zone that is equivalent to any such land use zone; and
- (b) curtilage of a building listed on the State Heritage Register is a reference to the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register kept under Part 3A of the *Heritage Act 1977*; and
- (c) a “strata scheme” means a reference to a strata scheme as that term is defined in the *Strata Schemes Development Act 2015*.

Execution page

Executed as a deed

**Signed, sealed and delivered by the Minister
for Planning and Public Spaces (ABN 20 770
707 468) in the presence of:**

.....
Signature of witness

.....
Signature of delegate of the Minister for Planning
and Public Spaces

.....
Name of witness in full

.....
Name of delegate of the Minister for Planning
and Public Spaces

.....
Address of witness

Signed, sealed and delivered by McCloy

Edgeworth Pty Ltd (ACN 616 353 845) in

accordance with section 127(1) of the under

Corporations Act 2001 by: power of attorney

Book 4791 No 589 in the presence of:

R Scott
.....
Signature of ~~Director~~ witness

[Signature]
.....
Signature of ~~Director/Secretary~~ Attorney

Rachael Lola Scott
.....
Name of ~~Director~~ in full
Witness

MICHELLE ANNE COLLISON
.....
Name of ~~Director/Secretary~~ in full
Attorney

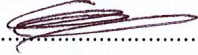
Christian James Euanus Southward
.....
Signature of Attorney

CHRISTIAN JAMES EUANUS SOUTHWARD
.....
Name of Attorney in full

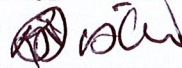
Signed sealed and delivered

by **Norman Leslie Lyons** in the presence of:

by his attorney Brian Geoffrey Fisher under Power of
Attorney Book 4774 No J632



Signature of witness



Signature of **Norman Leslie Lyons** Attorney



Bryson Cox

Name of witness in full

17 A Bailey Ct Adamstown

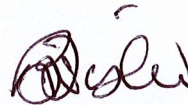
Address of Witness

Signed sealed and delivered

by **Brian Geoffrey Fisher** in the presence of:



Signature of witness



Signature of **Brian Geoffrey Fisher**

Bryson Cox

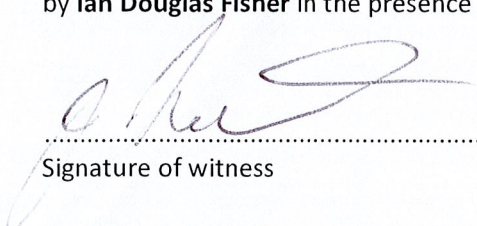
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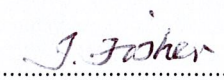
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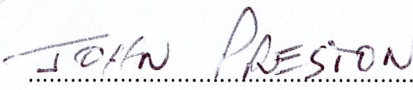
Address of Witness

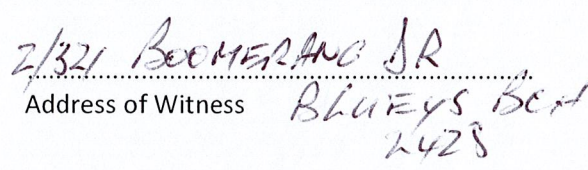
Signed sealed and delivered

by **Ian Douglas Fisher** in the presence of:


.....
Signature of witness

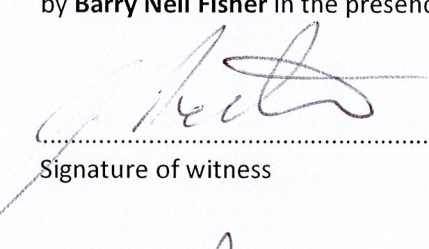

.....
Signature of Ian Douglas Fisher

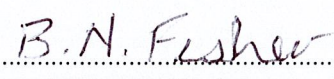

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Name of witness in full

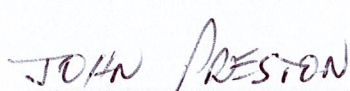

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Address of Witness

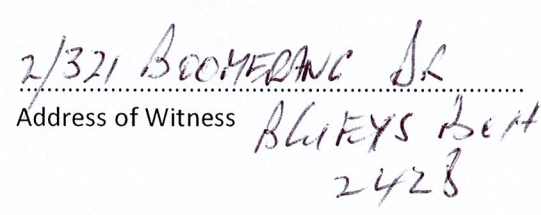
Signed sealed and delivered

by **Barry Neil Fisher** in the presence of:


.....
Signature of witness


.....
Signature of Barry Neil Fisher


.....
Name of witness in full


.....
Address of Witness