

## **Planning Agreement**

### **Environmental Planning and Assessment Act 1979**

Cessnock Road, Gillieston Heights

**Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468)

**McCloy Loxford Land Pty Ltd** (ACN 624 968 092)

**Dowmere Pty Ltd** (ACN 002 160 152)

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**This Planning Agreement** is dated

**Parties:**

**Minister**

**Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468)  
c/- NSW Department of Planning and Environment  
of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

**Developer, together:**

**McCloy Loxford Land Pty Ltd** (ACN 624 968 092)  
of Suite 2, Ground Floor, 317 Hunter Street, Newcastle NSW 2300

and

**Dowmere Pty Ltd** (ACN 002 160 152)  
of Suite 6, 257-259 Central Coast Highway, Erina, NSW 2250

**Introduction:**

- A** The Developer owns the Land.
- B** The Developer has sought a change to the LEP to: (i) amend the map to identify the Land as an 'urban release area'; and (ii) amend the zoning and minimum lot size of the Land.
- C** On 30 May 2022, the *Maitland Local Environmental Plan 2011 (Map Amendment No 2)* was made to amend the LEP to give effect to the changes sought by the Developer.
- D** The Developer has offered to enter into this deed with the Minister to make a Development Contribution in connection with the change to the LEP and the carrying out of the Development on the Land.

**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)*.

**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.

**Bank Guarantee** means an irrevocable and unconditional undertaking:

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(a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

**Base CPI** means the CPI number for the quarter ending 31 March 2022.

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

**CLM Act** means the *Contaminated Land Management Act 1997* (NSW).

**Consent Authority** has the same meaning as in the Act.

**Construction Contract** means each contract between the Developer and a third party, meeting the requirements of clause 3.3 of Schedule 4, for the carrying out of the Main Road 195 Works by that third party.

**Contaminated Land Consultant** means a certified environmental practitioner under the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) (CEnvP(SC)) scheme or a certified professional soil scientist under the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.

**Contaminated Land Report** means a report provided by the Contaminated Land Consultant to support the Contaminated Land Statement.

**Contaminated Land Statement** means a statement from the Contaminated Land Consultant.

**Contamination** has the same meaning as in the CLM Act.

**Contribution Amount** means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

**Costs** means any loss, cost, fee, charge, expense, Tax, rate, fine, penalty or debts including those in connection with advisors and any compensation payable to any person in accordance with the law.

**CPI** means the Consumer Price Index (All Groups Index) for Sydney 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 in clause 2(d) of Schedule 4.

**Dealing** means in relation to the Land means, without limitation, selling, transferring, assigning, mortgaging, charging, disposing, encumbering or otherwise dealing with the Land.

**Department** means the NSW Department of Planning and Environment.

**Developer** means McCloy Loxford Land Pty Ltd (ACN 624 968 092) and Downmere Pty Ltd (ACN 002 160 152), jointly and severally.

**Development** means the following:

- (a) subdivision of part of the Land in 17 stages into approximately 342 residential lots, three (3) residue lots and seven (7) public reserve lots and other works including:

- (i) construction of roads and footpaths;
  - (ii) construction of signalised interchanges;
  - (iii) clearing of vegetation;
  - (iv) bulk earthworks and benching;
  - (v) provision of underground water, wastewater, electrical and telecommunication services and easements;
  - (vi) construction of an acoustic wall along Cessnock Road; and
  - (vii) landscaping,
- on the Land generally in accordance with DA2022/193 lodged with Maitland City Council; and
- (b) subdivision of the remainder of the Land into approximately 49 residential lots as part of an exhibition village, and the construction of a two storey dwelling house (with an office, meeting rooms and public toilets) for temporary use as a sales office for the exhibition village and a café in accordance with DA2022/496 lodged with Maitland 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 following contributions to be provided by the Developer in accordance with Schedule 4:

- (a) the Main Road 195 Monetary Contribution;
- (b) the Main Road 195 Works Contribution; and
- (c) the Main Road 195 Land Contribution.

**ELNO** has the same meaning as in the *Electronic Conveyancing National Law (NSW)*.

**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.

**General Register of Deeds** means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

**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 *Maitland Local Environmental Plan 2011*.

**Main Road 195 Land** means the area of land required for the widening of Main Road 195, being a minimum of 4,355 square metres (unless otherwise agreed by the Minister) to be used as a public road, generally as identified on the Main Road 195 Land Plan at Schedule 8.

**Main Road 195 Land Contribution** means the dedication of the Main Road 195 Land as a public road by the Developer in accordance with the terms of this deed.

**Main Road 195 Works** means the intersection works for Main Road 195 that is shown generally on the Main Road 195 Works Plan at Schedule 7.

**Main Road 195 Works Contribution** means the carrying out and completion of the Main Road 195 Works by the Developer in accordance with the terms of this deed and the Road Works Deed.

**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 administering the *Environmental Planning and Assessment Act 1979* and includes the Secretary and the Nominated Officer.

**Net Developable Area** means the net developable area for the Development on the Land calculated in accordance with Schedule 6 and in the event of a dispute or ambiguity, as determined by the Secretary.

**Nominated Officer** means an officer of the Department for the time being holding a position nominated by the Secretary for the purposes of this deed.

**Plan of Subdivision** means a plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

**Planning Application** means:

- (a) a Development Application; or
  - (b) any other application required under the Act,
- relating to the Land.

**Practical Completion** means practical completion of the Main Road 195 Works in accordance with the Road Works Deed.

**Real Property Act** means the *Real Property Act 1900* (NSW).

**Register** means the Torrens title register maintained under the Real Property Act.

**Roads Authority** has the meaning given to it in the *Roads Act 1993*, and for the purposes of this deed means Maitland City Council or Transport for NSW.

**Road Works Deed** means a deed or agreement entered into by the Roads Authority and the Developer regarding the design and construction of the Main Road 195 Works and its handover to the Roads Authority by the Developer, if required by the Roads Authority.

**Road Works Design** means the design of the Main Road 195 Works including project management, fees, investigations, consultant fees, studies or reports specifically required for the Main Road 195 Works.

**Secretary** means the Secretary of the Department (including that Department if renamed) or, if that Department is abolished or ceases to include the group of staff principally responsible for the administration of the Act, the head of any other Department or other Public Service agency that includes that group of staff.

**Security** means one or more Bank Guarantees in the amounts specified as the 'Security Amount' in the table in clause 1(b) of Schedule 5 and on the terms specified in Schedule 5.

**Section 138 Approval** means a consent issued pursuant to section 138 of the *Roads Act 1993*.

**Subdivision Certificate** has the same meaning as in the Act.

**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.

**Transport for NSW** means Transport for NSW constituted under section 3C of the *Transport Administration Act 1988*.

## 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**, or a **schedule** is a reference to the introduction, a clause, or a schedule 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** 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**

The Developer undertakes to provide, or procure the provision of, the Development Contribution to the Minister or the Roads Authority in accordance with the provisions of Schedule 4.

### **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 any amounts to the Developer in connection with this deed; and
- (b) in circumstances where the Development Contribution is made 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. Interest**

### **5.1 Interest for late payment**

- (a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Minister on the due date for payment, the Developer must also pay to the Minister

interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.

- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

## **6. Enforcement**

### **6.1 Developer to provide Security**

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by:

- (a) agreeing to register this deed in accordance with clause 7; and
- (b) providing the Security in accordance with the terms and procedures set out in Schedule 5.

## **7. Registration**

### **7.1 Registration of deed**

- (a) The Developer agrees to procure the registration of this deed on the title to the Land, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents, within three months of the date of this deed.
- (b) To procure registration of this deed as required in clause 7.1(a), the Developer at its own expense is to take all practical steps and otherwise do anything to procure:
  - (i) the consent of each person, as required by the Registrar-General, who:
    - (A) has an estate or interest in that land registered under the Real Property Act; or
    - (B) is seized or possessed of an estate or interest in that land,
 to the registration of this deed on the title to that land and to the terms of this deed;
  - (ii) the execution of any documents; and
  - (iii) the electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar-General in the relevant folios of the Register for that land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

### **7.2 Evidence of registration**

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(b)(iii) within 10 Business Days of such lodgement.
- (b) The Developer will provide the Minister with copies of the relevant folios of the Register and copies of the registered dealings containing this deed within 10 Business Days of receipt of notice of registration of this deed.

### **7.3 Release and discharge of deed**

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

### **7.4 Interest in Land**

The Developer represents and warrants that it is as at the date of execution of this deed:

- (a) the owner of the Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(b)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with their obligations under clause 7.

### **7.5 Right to lodge caveat**

- (a) Subject to clause 7.5(b) until such time as this deed is registered on the title to the Land in accordance with clause 7.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with clause 7.5(a), then the Minister will do all things reasonably necessary to:
  - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
  - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 7.1.
- (c) If, after 20 Business Days of receipt of a copy of this deed executed by the Minister, the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 7.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 7.5(a) to lodge and withdraw a caveat(s) (as applicable).

## **8. Dispute Resolution**

### **8.1 Not commence**

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

### **8.2 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.

### **8.3 Attempt to resolve**

On receipt of notice under clause 8.2, 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.

#### **8.4 Mediation**

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

#### **8.5 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

#### **8.6 Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

#### **8.7 No prejudice**

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

### **9. GST**

#### **9.1 Definitions**

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

#### **9.2 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.

#### **9.3 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.

#### 9.4 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 9.4.

#### 9.5 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.

#### 9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

#### 9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

#### 9.8 No merger

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

### 10. Assignment and transfer

#### 10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
  - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
  - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
  - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

## 10.2 Right to transfer Land

- (a) Subject to clauses 10.2(b) and 10.2(d), the Developer must not sell or transfer to another person (**Transferee**) the whole or any part of the Land:
  - (i) on which this deed remains registered under section 7.6 of the Act; or
  - (ii) for which a Development Contribution required under this deed remain outstanding.
- (b) The Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
  - (i) satisfies the Minister, acting reasonably, that:
    - (A) the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed; or
    - (B) the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
  - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
  - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.
- (d) This clause does not apply to the:
  - (i) transfer or sale of the whole or any part of the Land between the Parties; or.
  - (ii) Main Road 195 Land.

## 11. Capacity

### 11.1 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.

### 11.2 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.

## 12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July

to 30 June of the preceding financial year which must include the following matters, as applicable:

- (i) details of all Development Consents and Subdivision Certificates applied for or issued in relation to the Development;
  - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
  - (iii) a forecast in relation to the anticipated progression and completion of the Development;
  - (iv) a forecast in relation to the anticipated progression and completion of the Main Road 195 Works; and
  - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

### **13. General Provisions**

#### **13.1 Entire deed**

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

#### **13.2 Variation**

This deed must not be varied except by a later written document executed by all parties.

#### **13.3 Waiver**

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

#### **13.4 Further assurances**

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

#### **13.5 Time for doing acts**

- (a) If:
  - (i) the time for doing any act or thing required to be done; or
  - (ii) a notice period specified in this deed,
 expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

### **13.6 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

### **13.7 Severance**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

### **13.8 Preservation of existing rights**

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

### **13.9 No merger**

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

### **13.10 Counterparts**

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

### **13.11 Relationship of parties**

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

### **13.12 Good faith**

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

### **13.13 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.



### 13.14 Explanatory note

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

### 13.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs, valuation costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note.
- (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 pay its own and the Minister's reasonable costs and disbursements in connection with the release and discharge of this deed with respect to any part of the Land pursuant to clause 7.3.
- (e) 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 13.15(a), (b) and (d):
  - (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.

### 13.16 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) 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 5pm on a Business Day, on that Day;
    - (B) after 5pm 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.

### 13.17 Electronic Execution

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
  - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
  - (ii) insertion of the person's name on to the deed; or
  - (iii) use of a stylus or touch finger or a touch screen to sign the deed,

provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;

  - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
  - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.

## 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
<b>Planning instrument and/or development application – (section 7.4(1))</b>  The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Yes</li> <li>(b) Yes</li> <li>(c) No</li> </ul>
<b>Description of land to which this deed applies – (section 7.4(3)(a))</b>	See Schedule 3
<b>Description of development to which this deed applies – (section 7.4(3)(b))</b>	See definition of Development in clause 1.1
<b>Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))</b>	<ul style="list-style-type: none"> <li>• change the zoning of part of the Land from RU2 to R1</li> <li>• change the minimum lot size applying to part of the Land to 450 square metres</li> <li>• change to map to identify part of the Land as an ‘urban release area’.</li> </ul>
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))</b>	See Schedule 4
<b>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))</b>	The application of sections 7.11 and 7.12 of the Act <b>is not excluded</b> in respect of the Development.
<b>Applicability of section 7.24 of the Act – (section 7.4(3)(d))</b>	The application of section 7.24 of the Act <b>is excluded</b> in respect of the Development.
<b>Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e))</b>	No

Requirement under the Act	This deed
<b>Mechanism for Dispute Resolution</b> – (section 7.4(3)(f))	See clause 8
<b>Enforcement of this deed</b> – (section 7.4(3)(g))	See clause 6 and clause 7
<b>No obligation to grant consent or exercise functions</b> – (section 7.4(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
<b>Registration of the Planning Agreement</b> – (section 7.6 of the Act)	Yes (see clause 7)
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued</b> – (section 21 of <a href="#">Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</a> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued</b> – (section 48 of <a href="#">Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</a> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued</b> – (section 6.15(1)(d) of the Act)	Yes (see clauses 2.2(c), 3.4(b) and 4.3(b) of Schedule 4)

**Schedule 2 – Address for Service**

(clause 1.1)

**Minister**

**Contact:** The Secretary

**Address:** Department of Planning and Environment  
Level 11, 4 Parramatta Square, 12 Darcy Street  
PARRAMATTA NSW 2150

**Email:** [planningagreements@planning.nsw.gov.au](mailto:planningagreements@planning.nsw.gov.au)

**Developer**

**Contact:** The Directors and Company Secretary

**Address:** McCloy Loxford Land Pty Ltd  
Suite 2, Ground Floor, 317 Hunter Street  
NEWCASTLE NSW 2300

**Email:** [shane@mccloygroup.com.au](mailto:shane@mccloygroup.com.au)

**Contact:** The Director

**Address:** Dowmere Pty Ltd  
Suite 6, 257-259 Central Coast Highway  
ERINA NSW 2250

**Email:** [shane@mccloygroup.com.au](mailto:shane@mccloygroup.com.au)

**Schedule 3 – Land**

(clause 1.1)

Lot	Deposited Plan	Folio Identifier
1	456946	Auto Consol 5365-116
2	456946	Auto Consol 5365-116
3	456946	Auto Consol 5365-116
4	456946	Auto Consol 5365-116
5	456946	Auto Consol 5365-116
7	456946	Auto Consol 5365-116
8	456946	Auto Consol 5365-116
9	456946	Auto Consol 5365-116
10	456946	Auto Consol 5365-116
11	456946	Auto Consol 5365-116
54	975994	Auto Consol 5365-116
55	975994	Auto Consol 5365-116
69	975994	Auto Consol 5365-116
70	975994	Auto Consol 5365-116
71	975994	Auto Consol 5365-116
1	1206034	Auto Consol 5365-116

## Schedule 4 – Development Contribution

(clause 4)

### 1. Development Contribution

#### 1.1 Development Contribution

The Developer undertakes to provide the Development Contribution to the Minister or the Roads Authority in the manner and the times as set out in the table below:

Development Contribution	Estimated cost/value	Timing
Contribution Amount - Main Road 195 Monetary Contribution towards designated State public infrastructure	\$91,250 per hectare of Net Developable Area for any part of the Land to which a Subdivision Certificate application relates.	In accordance with clause 2.2 of this Schedule 4.
Main Road 195 Works Contribution		Prior to the issue of the first Subdivision Certificate for the Development.
Main Road 195 Land Contribution		Prior to the issue of the first Subdivision Certificate for the Development.

### 2. Main Road 195 Monetary Contribution

#### 2.1 Calculation of the value of Main Road 195 Monetary Contribution

- (a) The Minister and Developer acknowledge and agree that the Main Road 195 Monetary Contribution is the sum of the Contribution Amounts under this deed.
- (b) Each Contribution Amount will be an amount equal to “X” in the following formula:  

$$X = N \times \$91,250$$

“N” means the number of hectares comprised in the Net Developable Area of the part of Land to which a Subdivision Certificate application relates.
- (c) Each Contribution Amount is to be adjusted, at time of payment, by multiplying the Contribution Amount payable by an amount equal to the Current CPI divided by the Base CPI.
- (d) For the purposes of this clause 2.1, the Current CPI is:
  - (i) if the Contribution Amount 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 Contribution Amount 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.

## 2.2 Payment of Main Road 195 Monetary Contribution

- (a) The Developer must pay to the Minister each Contribution Amount prior to the issue of the relevant Subdivision Certificate.
- (b) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to lodge an application for the relevant Subdivision Certificate.
- (c) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 6.15(1)(d) of the Act.

## 3. Main Road 195 Works

### 3.1 Provision of the Main Road 195 Works

The Developer must provide the Main Road 195 Works Contribution in accordance with this clause 3.

### 3.2 Conditions to Commencement of the Main Road 195 Works

Prior to commencement of the Main Road 195 Works, the Developer must:

- (a) if Development Consent is required — provide evidence to the Minister that it has obtained Development Consent for the Main Road 195 Works;
- (b) if required by the Roads Authority to enter into a Road Works Deed:
  - (i) enter into a Road Works Deed, on such terms and conditions as are:
    - (A) consistent with the requirements of this deed, including this Schedule 4; and
    - (B) acceptable to the Roads Authority and the Minister; and
  - (ii) provide to the Minister a copy of the executed Road Works Deed to carry out the Main Road 195 Works; and
- (c) if a Section 138 Approval is required in relation to the Main Road 195 Works, provide to the Minister a copy of the Section 138 Approval.

### 3.3 Construction Contract for the Main Road 195 Works

- (a) The Developer must provide written notice to the Minister which confirms that it intends to commence the Main Road 195 Works (**Works Notice**). If the Developer is to engage a third party to carry out the Main Road 195 Works, then clauses 3.3(b) to (f) apply.
- (b) The Developer may only enter into a Construction Contract with a third party contractor who is:
  - (i) appointed under the competitive tender process on an arm's length basis; and
  - (ii) approved by the Roads Authority and meets all of the Roads Authority's requirements.
- (c) The Developer must undergo a competitive tender process in awarding a Construction Contract for the Main Road 195 Works and provide evidence of such tender process to the Minister within 10 Business Days of awarding the Construction Contract.
- (d) The Works Notice must be accompanied by a copy of each Construction Contract in place for the Main Road 195 Works.



- (e) If further Construction Contract(s) are entered into after the Works Notice has been issued the Developer must provide a written notice to the Minister of that fact as soon as is practicable and follow the process for appointing a construction contractor described in clauses 3.3(b) and (c) above. The Developer will provide the Minister with a copy of the further Construction Contract(s).
- (f) Each Construction Contract must:
  - (i) identify a superintendent for the Main Road 195 Works;
  - (ii) provide a reasonable itemisation of works comprising the Main Road 195 Works, which, in relation to construction work, may be by a bill of quantities;
  - (iii) identify the contract value for each item of the Main Road 195 Works; and
  - (iv) identify the terms and conditions applicable to the carrying out of the Main Road 195 Works.

### **3.4 Timing of Main Road 195 Works**

- (a) The Developer must ensure Practical Completion of the Main Road 195 Works in accordance with the Road Works Deed and by the time specified in the table in clause 1.1 of this Schedule 4.
- (b) The parties agree that the requirement to provide the Main Road 195 Works Contribution under this clause 3 is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 6.15(1)(d) of the Act.

## **4. Main Road 195 Land**

### **4.1 Provision of the Main Road 195 Land Contribution**

The Developer must provide the Main Road 195 Land Contribution in accordance with this clause 4.

### **4.2 Subdivision of the Main Road 195 Land**

- (a) In order to dedicate the Main Road 195 Land in accordance with clause 4.4 of this Schedule 4, the Developer must (at its cost) obtain Development Consent (if any is required) and any other necessary approvals, in connection with a proposed Plan of Subdivision or other plan that on registration will dedicate the Main Road 195 Land as a public road in accordance with section 9 of the *Roads Act 1993*.
- (b) The Developer must comply with any conditions of Development Consent and other approvals.

### **4.3 Timing for Provision of the Main Road 195 Land Contribution**

- (a) The Developer must provide the Main Road 195 Land Contribution in accordance with this deed by the time specified in the table in clause 1.1 of this Schedule 4 (**Main Road 195 Land Dedication Date**).
- (b) The parties agree that the requirement to provide the Main Road 195 Land Contribution under this clause 4 is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 6.15(1)(d) of the Act.

### **4.4 Dedication of the Main Road 195 Land**

- (a) In satisfying its obligation under clause 4.3 of this Schedule 4, the Developer must:

- (i) deliver to the Roads Authority for approval a proposed Plan of Subdivision or other plan that bears a statement of intention to dedicate the Main Road 195 Land as a public road as provided by section 9 of the *Roads Act 1993*;
  - (ii) deliver to the Roads Authority a Contaminated Land Report and Contaminated Land Statement from a Contaminated Land Consultant in respect of the Main Road 195 Land which:
    - (A) state that the Main Road 195 Land is suitable or will be suitable for the purposes of a road as at the Main Road 195 Land Dedication Date;
    - (B) are addressed to the Minister and the Roads Authority; and
    - (C) are otherwise on terms satisfactory to the Minister and Roads Authority (acting reasonably);
  - (iii) upon receipt of approval from the Roads Authority to register the proposed Plan of Subdivision or other plan that bears a statement of intention to dedicate the Main Road 195 Land as a public road referred to in clause 4.4(a)(i) of this Schedule 4, lodge that proposed Plan of Subdivision or other plan at the NSW Land Registry Services for registration;
  - (iv) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the dedication of the Main Road 195 Land as a public road; and
  - (v) take any other necessary action to give effect to the dedication of the Main Road 195 Land as a public road free of all encumbrances (including any mortgages, easements, covenants and planning agreements) and affectations (including any charge or liability for rates, Taxes and charges) other than service easements or such other encumbrances as agreed by the Minister or the Roads Authority in writing.
- (b) If the Developer does not comply with clause 4.4(a)(ii), the Minister or Roads Authority may:
- (i) refuse to accept the dedication of the Main Road 195 Land; and
  - (ii) require that the Developer undertake works, at the Developer's cost and within a timeframe determined by the Minister or the Roads Authority (acting reasonably), so as to enable the Developer to comply with clause 4.4(a)(ii),
- in which case the Developer must comply with the Minister's requirements.
- (c) For avoidance of doubt, clause 4.4(a)(v) of this Schedule 4 does not apply in relation to encumbrances or affectations being statutory rights that exist or arise under legislation which are of a type which the Developer could not prevent from affecting the Main Road 195 Land and in respect of which no action can be taken by the Developer.
- (d) Despite clause 4.4(a)(v) of this Schedule 4, if, having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance and affectation which would otherwise be the subject of clause 4.4(a)(v), then:
- (i) the Developer may request that the Roads Authority agree to accept the land subject to those encumbrances and affectations; and
  - (ii) if the encumbrance or affectation:
    - (A) does not prevent the future use of the land as a public road; or

- (B) is not a charge arising as a result of unpaid taxes or charges,  
the Minister or Roads Authority may agree to accept the land subject to those encumbrances; and
- (iii) in other circumstances, the Minister or the Roads Authority may withhold the Minister's or Roads Authority's agreement at their absolute discretion.
- (e) The Developer indemnifies and agrees to keep indemnified the Minister and the Roads Authority against all Claims made against the Minister or Roads Authority as a result of any Contamination that is required to be Remediated by an Authority over the whole or any part of the Main Road 195 Land but only in relation to Contamination that existed on or before the date the Main Road 195 Land is dedicated as a public road or compulsorily acquired by the Minister or the Roads Authority (as the case may be).
- (f) The Developer will pay all rates and Taxes owing in respect of the Main Road 195 Land up to and including the date that the Developer dedicates the Main Road 195 Land as a public road pursuant to clause 4.3 of this Schedule 4 or the date of acquisition (as applicable), after which time the Roads Authority will be responsible for any rates and Taxes in relation to the Main Road 195 Land.
- (g) The Developer indemnifies and keeps indemnified the Minister (or at the Minister's election, the Roads Authority) in relation to any failure of the Developer to comply with clauses 4.1 to 4.5 of this Schedule 4.
- (h) The parties agree that clause 4 of this Schedule 4 operates as a deed poll in favour of the Roads Authority (where applicable).
- (i) Despite any other provision of this Schedule 4, the Developer may request the Minister to agree to providing the Main Road 195 Land Contribution in a different manner to dedication through registration of a Plan of Subdivision or other plan as referred to in section 9 of the *Roads Act 1993*. If the Minister agrees to the request, the parties may agree to the modification of provisions of Schedule 4 referring to such a plan to accommodate the alternative manner in which the land is to be provided.

#### **4.5 Compulsory acquisition of Main Road 195 Land**

- (a) If the Developer does not dedicate the Main Road 195 Land as a public road as required by clause 4.4 of this Schedule 4, the Minister may elect to, and the Developer consents to, the Minister or the Roads Authority compulsorily acquiring the whole or any part of the Main Road 195 Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.
- (b) The Developer and the Minister agree that:
  - (i) this clause 4.5 is an agreement between the Developer and the Minister or Roads Authority for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
  - (ii) in this clause 4.5 the Developer and the Minister or Roads Authority have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) Subject to clause 4.4(d) of this Schedule 4, the Developer must ensure that the Main Road 195 Land is free of all encumbrances and affectations (including any charge or liability for rates,

Taxes and charges) immediately before the Main Road 195 Land is to be acquired by the Minister or the Roads Authority.

- (d) The Developer indemnifies and keeps indemnified the Minister and the Roads Authority against any Claims made against the Minister or Roads Authority as a result of any acquisition by the Minister or the Roads Authority of the whole or any part of the Main Road 195 Land under this clause 4.5.
- (e) The Developer must pay the Minister or Roads Authority, promptly on demand, an amount equivalent to all Costs incurred by the Minister in acquiring the whole or any part of the Main Road 195 Land as contemplated by this clause 4.5.

## 5. Completion of a Development Contribution

### 5.1 Completion Notice

- (a) If the Developer considers that it has completed the Main Road 195 Works Contribution or the Main Road 195 Land Contribution in accordance with the requirements of the Roads Authority and this deed, the Developer will provide notice to the Minister stating that the Developer considers that the Main Road 195 Works Contribution or the Main Road 195 Land Contribution (as the case may be) has been completed (**Completion Notice**) together with:
  - (i) in relation to the Main Road 195 Works Contribution, a certificate from the Roads Authority confirming that Practical Completion of the Main Road 195 Works has occurred;
  - (ii) in relation to the Main Road 195 Land Contribution, a registered Plan of Subdivision or other registered plan that bears a statement of intention to dedicate the Main Road 195 Land as a public road in accordance with section 9 of the *Roads Act 1993*; and
  - (iii) such other supporting documentation as is necessary for the Minister to determine whether the Main Road 195 Works Contribution or the Main Road 195 Land Contribution (as the case may be) has been completed. The Developer must promptly provide any additional information reasonably requested by the Minister.
- (b) The Minister will, within 45 days of receiving the Completion Notice and all the certificates and information required under this clause 5.1 determine whether the Main Road 195 Works Contribution or the Main Road 195 Land Contribution (as the case may be) has been completed.
- (c) If the Minister, acting reasonably, is not satisfied the Main Road 195 Works Contribution or the Main Road 195 Land Contribution has been provided, the Minister will notify the Developer and provide an explanation as to why he or she considered that the Main Road 195 Works Contribution or the Main Road 195 Land Contribution (as the case may be) has not been completed and, if applicable, provide details of:
  - (i) any additional work or tasks which must be undertaken; and/or
  - (ii) any information or documents which must be provided,

by the Developer, in order to complete the Main Road 195 Works Contribution or the Main Road 195 Land Contribution (as the case may be). The Developer may, after taking into account the Minister's explanation and undertaking the work or providing the information or documents required, re-submit a Completion Notice together with any necessary documentation.

- (d) If, despite the actions undertaken under clause 5.1(c) of this Schedule 4, the parties dispute whether the Main Road 195 Works Contribution or the Main Road 195 Land Contribution has been provided to the Minister, clause 8 applies to the resolution of the dispute.

## Schedule 5- Security

(clause 6.1)

### 1. Developer to provide Security

- (a) In order to secure the performance of the obligations of the Developer under this deed, the Developer has agreed to provide the Security, in the form of Bank Guarantees, to the Minister.
- (b) Each Bank Guarantee must:
  - (i) name the “Minister administering the *Environmental Planning and Assessment Act 1979*” and the “Department of Planning and Environment ABN 20 770 707 468” as the relevant beneficiaries;
  - (ii) be in the amount as set out in the table below;
  - (iii) be security for the Secured Obligation as set out in the table below; and
  - (iv) not have an expiry date.

Security Amount	Secured Obligation
\$200,000 ( <b>Base Security</b> )	All obligations imposed on the Developer under this deed.
\$2,015,375 ( <b>Road Works Security</b> )	The obligation to make the Main Road 195 Works Contribution pursuant to clause 3 of Schedule 4 .

### 2. Base Security

- (a) At the time the Developer executes this deed, the Developer must provide the Base Security to the Minister in order to secure the performance of all obligations of the Developer under this deed when it is executed by the Minister.
- (b) From the date the Developer executes this deed until the date that the Developer has performed all its obligations under this deed, the Minister is entitled to retain the Base Security and call upon it in the circumstances set out in clause 4 of this Schedule 5.

### 3. Road Works Security

- (a) At the time the Developer executes this deed, the Developer must provide the Road Works Security to the Minister in order to secure the provision of the Main Road 195 Works Contribution under this deed when it is executed by the Minister.
- (b) If, following the execution of this deed, the Developer:
  - (i) enters into one or more Road Works Deeds in relation to the Main Road 195 Works;
  - (ii) provides security to the Roads Authority so that the total amount of the security provided to the Roads Authority equals or exceeds the Road Works Security; and
  - (iii) satisfies the Minister, in the Minister’s absolute discretion, as to the adequacy of the security provided to the Roads Authority for the Main Road 195 Works including providing all information reasonably required by the Minister regarding the security provided,

the Minister will accept the security provided to the Roads Authority as securing the performance of the Developer's obligation to deliver the Main Road 195 Works, and will provide written notification to the Developer of the Minister's position under this clause 3(b) within 20 Business Days of receiving all required information from the Developer regarding the security provided to the Roads Authority.

- (c) Where clause 3(b) of this Schedule 5 applies, the Minister will return the Road Works Security within 20 Business Days of the Minister notifying the Developer of the Minister's acceptance of the security provided to the Roads Authority.
- (d) If the Developer does not satisfy the Minister as to the adequacy of the security provided for the Main Road 195 Works to the Roads Authority in accordance with clause 3(b) of this Schedule 5, then:
  - (i) the Developer will be required to provide a Bank Guarantee to the Minister for the difference between the total amount of the security provided under one or more Road Works Deeds to the Roads Authority and the Road Works Security;
  - (ii) upon receipt of the Bank Guarantee required by the Minister under clause 3(d)(i) of this Schedule 5, the Minister will accept that Bank Guarantee and the security provided to the Roads Authority as securing the performance of the Developer's obligation to deliver the Main Road 195 Works; and
  - (iii) the Minister will return the Road Works Security within 10 Business Days of receiving the Bank Guarantee under clause 3(d)(i) of this Schedule 5.

#### **4. Claims under Security**

- (a) The Minister may:
  - (i) call upon any Security provided in accordance with this deed where the Developer has failed to fulfil the Secured Obligation in accordance with this deed; and
  - (ii) retain and apply such monies towards any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
  - (i) the Minister calls upon the Security; and
  - (ii) applies all or part of such monies towards and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
  - (iii) has notified the Developer of the call upon the Security in accordance with clause 4(b) of this Schedule 5,

then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 5 of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the Security required to be provided in accordance with clause 1 of this Schedule 5.

## **5. Release of Security**

If the whole of the Base Security (and if applicable, the Road Works Security) has not been expended and the Developer has paid or satisfied all of its obligations under this deed, including provision of the Development Contribution in accordance with this deed then the Minister will promptly return those securities (less any costs, charges, duties and taxes payable) to the Developer.



## Schedule 6 – Definition of Net Developable Area (Schedule 4, clauses 1 and 2)

1. The net developable area of a part of the Land (*the net developable area for the proposed subdivision*) is the area of land, in hectares, shown on the proposed plan of subdivision (that is, the area to which the relevant application for a subdivision certificate for that part of the Land relates), subject to the other provisions of this Schedule 6.
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 C2 Environmental Conservation;
  - (d) any area of land within the curtilage of a building listed on the State Heritage Register;
  - (e) any area of land that 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;

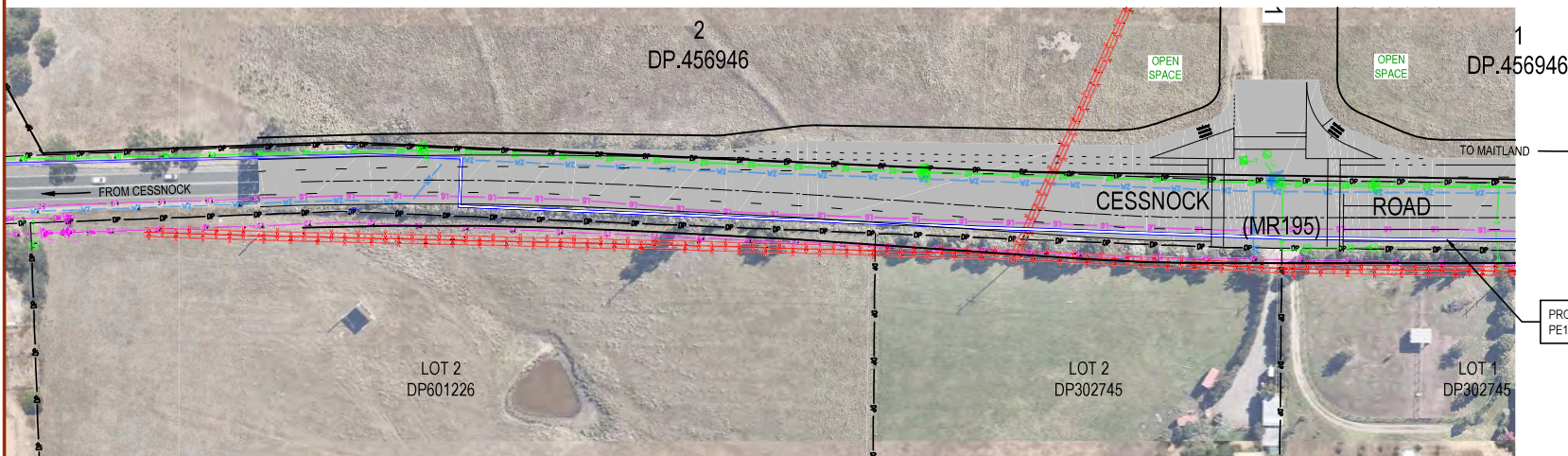
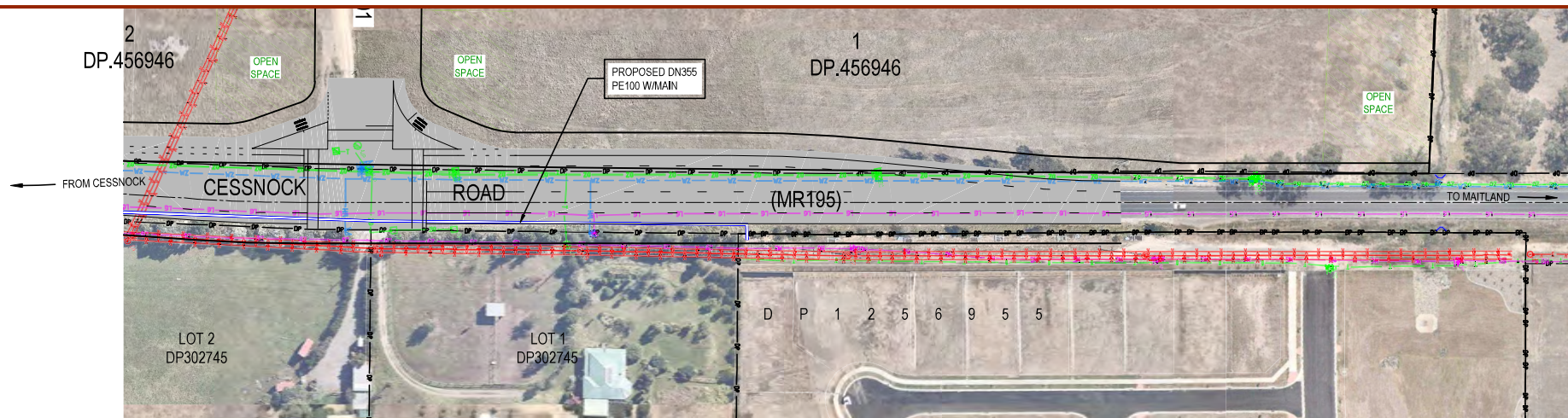
- (f) an area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land or as confirmed in writing by the public utility undertaking, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of the easement;
  - (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;
  - (h) any area of land that the Developer establishes to the Secretary's satisfaction is not located within an urban release area under the LEP; and
  - (i) any area of land that is within an acoustic and vibration buffer zone required to be established by a 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.
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 C3 Environmental Management, Zone C4 Environmental Living or Zone C5 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 Schedule 6 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 6, the following words or expressions have the same meanings as they have in 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 6, 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) a Conservation Zone (Zone C2, Zone C3 and Zone C4) includes a reference to an Environmental Protection Zone (Zone E2, Zone E3 and Zone E4), as referred to in the Standard Instrument immediately before 1 December 2021; and
- (c) 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
- (d) a “strata scheme” means a reference to a strata scheme as that term is defined in the *Strata Schemes Development Act 2015*.

**Schedule 7- Main Road 195 Works Plan**



Vol Stevens

#Sine

C Southward

#### BOUNDARIES

DP OVERLAY (ACCURACY 0.1m) (BO)

#### COMMUNICATIONS

- ABOVE GROUND JOINING POST (TJP)
- OPTICAL FIBRE - DIGITISED (OZ)
- OPTICAL FIBRE - UNDERGROUND (OU)
- OPTICAL FIBRE CABLE MARKER (POFM)
- OPTICAL FIBRE CONDUIT (OD)
- OPTICAL FIBRE PIT (POFP)
- STD 1.1m BY 1.1m MAIN PIT (PTMP)
- TELEPHONE BOX POINT (PTBX)
- TELEPHONE CABLE MARKER (PTCM)
- TELEPHONE DISTRIBUTION PILLAR (PTDP)
- TELEPHONE LINE (TN)
- TELEPHONE SINGLE CONCRETE PIT (PTSP)
- TELEPHONE TWIN CONCRETE PIT (PTTP)

#### DRAINAGE

- DRAIN - TABLE DRAIN (DT)
- HEADWALL BOTTOM (HB)
- HEADWALL TOP (HW)
- LINE - MAJOR TRANSMISSION (UE)
- LINE - MINOR TRANSMISSION (UL)
- POLE - LIGHT (PLPL)
- POLE - POWER (PPPL)
- POLE - POWER AND LIGHT (PPLP)
- POLE - POWER AND TRANSFORMER (PPTR)

#### GAS

- MAIN - LOW PRESSURE (LG)
- MAIN - HIGH PRESSURE PIPELINE (HG)
- MAIN - DIGITISED (ZG)
- HOUSE CONNECTION (DG)
- METER (PGMR)
- PIPELINE MARKER (PGPM)
- PIPELINE MARKER - HIGH PRESSURE (PGHM)
- VALVE BOX (PGAS)

#### WATER

- AIR VALUE (PWAV)
- HOUSE CONNECTION (WY)
- HYDRANT (PWHY)
- MAIN (WM)
- MAIN - DIGITISED (WZ)
- MAIN MARKER (PWMM)
- METER (PWMR)
- STOP VALVE (PWSV)
- TAP (PWTP)
- PROPOSED WATERMAIN

#### INTERSECTION DESIGN PARAMETERS

- DESIGN SPEED : 90km/hr
- LANE WIDTHS : 3.5m
- CYCLE LANE/SHOULDER : 2.0m
- VERGE WIDTHS : 4.5m
- MINIMUM MEDIAN WIDTHS : 1.5m
- STORAGE LENGTHS AS SPECIFIED WITHIN HYDER REPORT
- "HYDRO REDEVELOPMENT AT KURRI KURRI - TRAFFIC & TRANSPORT STUDY" - MARCH 2015

ver.	date	comment	drawn	pm	level information	scale (A3 original size)	notes
A	05.08.21	INITIAL VPA PLANS	RC	RK	DATUM: N/A CONTOUR INTERVAL: N/A	0 30 60 75m SCALE: 1:1500	

drawing title:

## CONCEPT INTERSECTION LAYOUT

location: CESSNOCK RD,  
GILLISTON HEIGHTS

council: MAITLAND CITY COUNCIL

dwg ref: 239836(2)-ESK-052

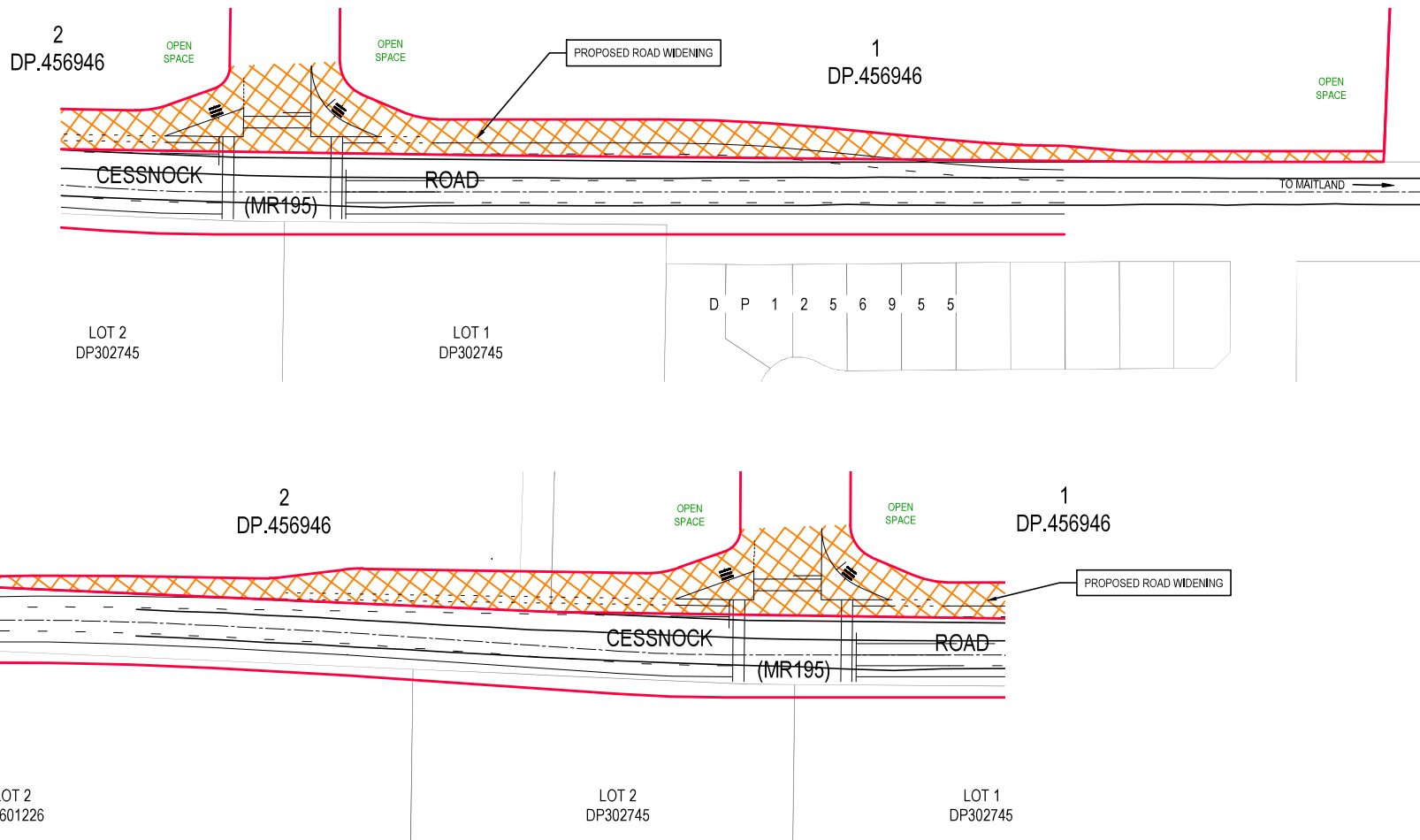
client:



central coast office ph: (02) 4305 4300  
hunter office ph: (02) 4978 5100  
sydney office ph: (02) 8046 7411

www.adwjohnson.com.au

**Schedule 8 - Main Road 195 Land Plan**



*John Stevens*

*#Sine*

*Southward*

drawing title:

## INTERSECTION ROAD WIDENING DEDICATION

location: CESSNOCK RD,  
GILLIESTON HEIGHTS

council: MAITLAND CITY COUNCIL

dwg ref: 239836(2)-ESK-054

client:



central coast office ph: (02) 4305 4300  
hunter office ph: (02) 4978 5100  
sydney office ph: (02) 8046 7411

[www.adwjohanson.com.au](http://www.adwjohanson.com.au)

ver.	date	comment	drawn	pm	level information	scale (A3 original size)	notes
A	05.08.21	INITIAL VPA PLANS	RC	RK	DATUM: N/A CONTOUR INTERVAL: N/A	0 30 60 75m SCALE: 1:1500	

• project management • civil engineering • infrastructure • superintendency • social impact • town planning • surveying • development feasibility • visualisation • urban design

**Execution page**

**Executed** as a deed

**Signed, sealed and delivered** by the **Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468), in the presence of:

.....  
Signature of witness

.....  
Signature of the delegate of the Minister for administering the *Environmental Planning and Assessment Act 1979*

.....  
Name of witness in full

.....  
Name of the delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

.....  
Address of witness

\*By signing this deed, the witness states that they witnessed the signing of this deed by:

.....  
(being the name of the Minister's delegate) over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW)



**Signed, sealed and delivered by McCloy  
Loxford Land Pty Ltd** (ACN 624 968 092) in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:



.....  
Signature of Director

.....  
Brian Swaine

.....  
Name of Director in full



.....  
Signature of Director/Secretary

.....  
Christian Southward

.....  
Name of Director/Secretary in full

**Signed, sealed and delivered by Downmere  
Pty Ltd** (ACN 002 160 152) in accordance with  
section 127 of the *Corporations Act 2001*  
(Cth) by:



.....  
Signature of Director

.....  
John Stevens

.....  
Name of Director in full





# VPA - Hydro Gillieston Heights (execution version) - updated 28 February 2023

Final Audit Report

2023-02-28

Created:	2023-02-28
By:	Michelle collison (michelle.c@mccloygroup.com.au)
Status:	Signed
Transaction ID:	CBJCHBCAABAAVnkVeWw7sbw_PoePKSqFOIU0chg2JQh3


## "VPA - Hydro Gillieston Heights (execution version) - updated 28 February 2023" History

 Document created by Michelle collison (michelle.c@mccloygroup.com.au)


2023-02-28 - 0:47:57 AM GMT

 Document emailed to john@stevensgroup.com.au for signature

2023-02-28 - 0:52:23 AM GMT

 Email viewed by john@stevensgroup.com.au


2023-02-28 - 1:24:25 AM GMT

 Signer john@stevensgroup.com.au entered name at signing as John Stevens


2023-02-28 - 1:50:51 AM GMT

 Document e-signed by John Stevens (john@stevensgroup.com.au)

Signature Date: 2023-02-28 - 1:50:53 AM GMT - Time Source: server

 Document emailed to Brian Swaine (brian@mccloygroup.com.au) for signature

2023-02-28 - 1:50:58 AM GMT

 Email viewed by Brian Swaine (brian@mccloygroup.com.au)


2023-02-28 - 2:07:47 AM GMT

 Document e-signed by Brian Swaine (brian@mccloygroup.com.au)

Signature Date: 2023-02-28 - 2:08:26 AM GMT - Time Source: server

 Document emailed to Christian Southward (christian.southward@mccloygroup.com.au) for signature

2023-02-28 - 2:08:29 AM GMT

 Email viewed by Christian Southward (christian.southward@mccloygroup.com.au)

2023-02-28 - 3:50:56 AM GMT



Document e-signed by Christian Southward (christian.southward@mccloygroup.com.au)

Signature Date: 2023-02-28 - 3:51:19 AM GMT - Time Source: server



Agreement completed.

2023-02-28 - 3:51:19 AM GMT



**Adobe Acrobat Sign**