

Planning Agreement

Environmental Planning and Assessment Act 1979

14 Sturt Street, Telopea 2117 (Stage 1A)

Telopea Precinct

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

New South Wales Land and Housing Corporation (ABN 24 960 729 253)

Frasers Property Telopea Developer Pty Limited (ACN 637 732 079) in its capacity as trustee of the Telopea Development Trust

DocuSigned by:

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Electronic signature of me, David
Johns, affixed by me on 24 May 2024

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This deed is dated 9 August 2024



Parties:

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

New South Wales Land and Housing Corporation (ABN 24 960 729 253) of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

Frasers Property Telopea Developer Pty Limited (ACN 637 732 079) in its capacity as trustee of the Telopea Development Trust of Level 2, 1C Homebush Bay Drive, Rhodes NSW 2138

Introduction:

- A** The Landowner owns the Land.
- B** LAHC has appointed the Developer to carry out the Development on the Land pursuant to the Project Delivery Agreement.
- C** The Developer proposes to carry out the Development on the Land and has made a Development Application to the Consent Authority in respect of the Land.
- D** Clause 8.1 of the LEP provides that the Consent Authority must not grant Development Consent for 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 Public Infrastructure referred to in clause 8.1 of the LEP. This clause, despite its repeal, continues to apply to the Development Application for the Development by virtue of clause 1.8A of *Parramatta Local Environmental Plan 2023*.
- 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).


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.


Affordable Housing Dwellings means dwellings that are affordable housing within the meaning of section 1.4 of the Act and section 13 of the *State Environmental Planning Policy (Housing) 2021*.

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



Electronic signature of me, David Johns, affixed by me on 24 May 2024

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Bank Guarantee means an irrevocable and unconditional undertaking:

(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 discretion (acting reasonably),

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

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.

Concept Development Application has the same meaning as in the Act.

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Dealing means, in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.

Designated State Public Infrastructure has the same meaning as in clause 8.1 of the LEP (before its repeal).

Developer means Frasers, unless otherwise specified in this deed.

Development means development of the Land with a total GFA of up to 37,299 square metres being the total GFA of five (5) buildings containing approximately 450 Dwellings generally in accordance with detailed proposals for the first stage of development set out in the Concept Development Application SSD-14378717 lodged with the Department of Planning, Housing and Infrastructure, including additional public facilities, public open space and new roads.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the monetary contribution to be provided by the Developer in accordance with Schedule 4.

Dwelling has the same meaning as in the Standard Instrument as at the date of this deed.

Note. An example of a dwelling includes, without limitation, an individual apartment in a residential flat building, and an individual townhouse or villa in a dual occupancy or multi dwelling housing development.

Effective Date means the date of the written notice provided jointly by the Developer and LAHC under clause 10.3(c).

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.

Frasers means Frasers Property Telopea Developer Pty Limited (ACN 637 732 079) in its capacity as trustee of the Telopea Development Trust.

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

GFA means gross floor area within the meaning of the Standard Instrument.

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).

Insurance Bond means an irrevocable and unconditional undertaking:

(a) by an Insurance Company 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 discretion (acting reasonably),

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

Insurance Company means an insurance company authorised under the *Insurance Act 1973* (Cth) and subject to prudential supervision by Australian Prudential Regulatory Authority.

LAHC means the New South Wales Land and Housing Corporation (ABN 24 960 729 253) constituted under section 6 of the *Housing Act 2001* (NSW).

Land means the land described in Schedule 3.

Landowner means the owner of the Land from time to time and includes any party listed in Schedule 3.

LEP means *Parramatta Local Environmental Plan 2011*.

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 Secretary's nominee.

Ministerial Planning Order means the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023* as in force on 1 October 2023, made under Subdivision 4 of Division 7.1 of the Act.

Planning Application means:

(a) a Development Application; or

(b) any other application required under the Act,

in relation to development on the Land.

Project Delivery Agreement means the document identified as 'Project Delivery Agreement – Telopea Urban Renewal Project dated 9 December 2019' entered into between the Developer, the Landowner and Frasers Property AHL Limited (ACN 008 443 696) as amended from time to time.

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

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

Registered Community Housing Provider has the same meaning as in the *Community Housing Providers National Law* (NSW).

Secretary means the Secretary of the Department of Planning, Housing and Infrastructure.

Security means a Bank Guarantee or an Insurance Bond.

Social Housing Dwellings means dwellings (and associated car spaces and utility spaces) that:

- (a) are constructed as part of the Development for social housing purposes;
- (b) remain in the ownership of LAHC; and
- (c) will be managed by a Registered Community Housing Provider or LAHC as dwellings for social housing tenants.

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 and 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 the **Department of Planning, Housing and Infrastructure** continues to be a reference to the Department even if renamed and, if that Department is abolished or ceases to include the group of staff principally responsible for the administration of the Act, is a reference to any other Department or other Public Service agency (within the meaning of the *Government Sector Employment Act 2013* (NSW)) that includes that group of staff, whether or not the change in relation to the Department occurs before or after the execution of this deed by the Minister;
- (d) 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;
- (e) 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;
- (f) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (g) the **schedules** and **annexures** form part of this deed;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;

- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (l) 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;
- (m) 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;
- (n) **including** and **includes** are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning;
- (p) **monetary amounts** are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) 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 development contributions provisions of the Act

The application of the following provisions of the Act to the Development is excluded (or not excluded) to the extent stated in Schedule 1:

- (a) sections 7.11 and 7.12; and
- (b) Subdivision 4 of Division 7.1.

4. Development Contribution

4.1 Developer to provide Development Contribution

Subject to clause 10.3(e), the Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4.

4.2 Housing and Productivity Contribution

Where the Ministerial Planning Order provides for a discount of the amount payable as a contribution by a specified percentage if payment is made before a certain date, the Minister agrees that if the Development Contribution is paid before that date, the amount otherwise payable is reduced by the same percentage.

4.3 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. Interest

5.1 Interest for late payment

- (a) If the Developer fails to pay the Development Contribution (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 any amount 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 providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

- (a) Within 15 Business Days of the Developer receiving a copy of this deed validly executed by the Minister (or any further period agreed by the Minister in writing), the Developer at its own expense is to use all reasonable endeavours to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,to the registration of this deed on the title to the Land and to the terms of this deed; and
 - (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 folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will use all reasonable endeavours to procure the registration of this deed within three months of the date of this deed (or any further period agreed by the Minister in writing) in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

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(a)(iii) within 10 Business Days of such lodgement.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

- (a) The Minister agrees to do all things reasonably required by the Developer or the Landowner to release and discharge this deed with respect to any part of the Land:
 - (i) upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land; or
 - (ii) if all the substantive Development Consents for the Development lapse, are surrendered or are declared invalid, upon the Developer satisfying the Minister that those Development Consents for the Development have lapsed, been surrendered or been declared invalid.
- (b) For the purposes of clause 7.3(a)(i), the Developer is only taken to have satisfied all of its obligations under this deed in relation to the Land or any part of it, if the Developer has made the Development Contribution relating to those Dwellings in accordance with the provisions of Schedule 4.

7.4 Interest in Land

The Landowner represents and warrants that it is:

- (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(a)(i) to assist, co-operate and to otherwise do all things necessary for the Developer to comply with the 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 of the Land in accordance with clause 7.1, the Developer and Landowner acknowledge 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 15 Business Days of receipt of a copy of this deed executed by the Minister, the Developer has been unable to achieve the registration of this deed, 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, other than with the consent of the other parties.

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.

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:
 - (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.
- (c) Provided that:
 - (i) the Assigning Party has complied with clause 10.1(a) and (b); and
 - (ii) the Incoming Party has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Assigning Party.

10.2 Right to transfer Land

- (a) The Landowner must not sell, transfer or dispose of the whole or any part of its right, title or interest in the Land to another person (**Transferee**):
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) Notwithstanding clause 10.2(a), the Landowner may sell, transfer or dispose of its right, title or interest in the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Landowner:
 - (i) provides written notice to the Minister of the proposed sale or transfer;
 - (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 Landowner; and

- (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Landowner must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

10.3 Termination of Project Delivery Agreement

- (a) The Minister acknowledges that the Project Delivery Agreement may be terminated after the commencement of this deed.
- (b) The Developer and LAHC must jointly provide written notice (being notice signed by both parties) to the Minister that the Project Delivery Agreement has been terminated.
- (c) Subject to clause 10.3(d), if the Developer and LAHC jointly provide the written notice under clause 10.3(b), the Parties acknowledge and agree that on and from the date of the written notice (**Effective Date**):
 - (i) in addition to the obligations of the Landowner, LAHC must perform all obligations and discharge all liabilities under this deed, which, but for this clause, the Developer would have been required to perform or discharge at or after the Effective Date;
 - (ii) the Minister releases the Developer from all obligations and liabilities under or in respect of this deed to be performed or discharged at or after the Effective Date; and
 - (iii) the Minister will return the Security provided under this deed to the Developer in accordance with clause 4 of Schedule 5 within 20 Business Days of receiving the written notice under clause 10.3(b).
- (d) Nothing in this clause 10.3 affects the Developer's liability for and responsibility to remedy any breach of the Developer's obligations under this deed where that breach arose before the Effective Date.
- (e) Subject to clause 10.3(d), on and from the Effective Date, the obligations and liabilities of the Developer under this deed are obligations and liabilities of the Landowner whether or not LAHC ceases to be the owner of the Land, wholly or in part.
- (f) Despite any other provision in this deed, LAHC is not required to provide any Security if it performs the obligations and discharges all liabilities of the Developer under this deed in accordance with clause 10.3(c).

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.

11.3 Trustee Developer

- (a) All provisions of this deed will have effect and be applied subject to this clause 11.3. For the purposes of this clause 11.3:
 - (i) **Assets** includes all assets, property and rights real or personal of any nature whatsoever;
 - (ii) **Trustee** means the trustee of the Trust as at the date of this deed and its successors and assigns;
 - (iii) **Trust** means the Telopea Development Trust;
 - (iv) **Trust Deed** means the trust deed under which the Trust is established; and
 - (v) **Obligations** means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Developer, under or in respect of this deed or any deed, agreement or other instrument collateral to this deed or given or entered into pursuant to this deed whether express or implied by statute or other legal requirements or arising otherwise howsoever.
- (b) The Trustee enters into this deed in its capacity as the trustee for the **Trust** constituted by a trust deed.
- (c) The Trustee:
 - (i) represents and warrants to the other parties that:
 - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (B) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its Obligations;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled to be indemnified in full out of the Assets of the Trust in respect of the Obligations;
 - (E) it is not aware of any reason why the Assets of the Trust might be insufficient to satisfy or discharge the Obligations; and
 - (F) it has the power under the Trust Deed to execute and perform its Obligations and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed.
- (d) Subject to clause 11.3(e), prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
 - (i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;

- (ii) the Trustee (as outgoing trustee) must procure an agreement from the Minister, under which the Minister releases the Trustee from the requirement to observe and perform any future Obligations;
 - (iii) the Trustee (as outgoing trustee) must release the Minister, from the requirement to observe and perform any future obligation under this deed; and
 - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause 11.3(d) and the costs and expenses of registering any new deed on the title to the Land.
- (e) Clause 11.3(d) applies from the date of this deed until the Development Contribution is provided by the Developer in accordance with Schedule 4.
- (f) The Developer enters into this deed in its capacity as trustee of the Trust and covenants that the Trustee has the power as trustee of the Trust to enter into this deed and to assume the Obligations.
- (g) The Trustee must perform and carry out the Obligations.
- (h) Any liability of the Trustee arising in connection with this deed is limited to the extent that the Trustee is entitled to be indemnified for that liability out of the Assets of the Trust under the Trust Deed.
- (i) A party may enforce its rights powers and remedies under this deed against the Trustee, and the Trustee is only liable to pay or satisfy any Obligation, to the extent to which the Trustee is entitled to be indemnified out of the Assets of the Trust and the Trustee must exercise all such rights to indemnity to satisfy such rights, powers and remedies.
- (j) Where a party does not recover all money owing to it by enforcing the rights powers and remedies referred to paragraph (i) of this clause 11.3, that party may not seek to recover the shortfall by bringing proceedings against the Trustee in its personal capacity.
- (k) Paragraphs (h) to (j) of this clause 11.3 do not apply in the case of fraud, negligence, default, breach of trust or breach of duty on the part of the Trustee or its agents.
- (l) No receiver or receiver and manager, liquidator, administrator or similar person appointed by any party to this deed other than the Trustee has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability or to liability in any capacity other than as trustee of the Trust.
- (m) The Trustee is not obliged to enter into or refrain from entry into any collateral document in connection with this deed unless the Trustee's liability in relation to that collateral document is limited to the reasonable satisfaction of the Trustee in the same manner as set out in this clause 11.3.

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, and until the Developer has satisfied all obligations under this deed, 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 Construction Certificates 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 compliance schedule showing the details of the Development Contribution provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; 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 every thing 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 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.
- (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 pay the Minister by electronic funds transfer into an account nominated by the Minister, 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 and a tax invoice 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 and a tax invoice prior to execution, within 30 Business Days of receipt of a tax invoice.

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 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.

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 |
|---|--|
| Planning instrument and/or development application – (section 7.4(1)) The Developer and LAHC has: <ul style="list-style-type: none"> (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. | <ul style="list-style-type: none"> (a) N/A (b) Yes – in the case of Frasers (c) Yes – in the case of LAHC |
| 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 Schedule 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 to the Development is not excluded. |
| Applicability of Subdivision 4 of Division 7.1 of the Act – (section 7.4(3)(d)) | The application of Subdivision 4 of Division 7.1 of the Act to the Development is excluded. |
| Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e)) | No |
| Mechanism for Dispute Resolution – (section 7.4(3)(f)) | See clause 8 |
| Enforcement of this deed – (section 7.4(3)(g)) | See clause 5, clause 6 and clause 7 |
| No obligation to grant consent or exercise functions – (section 7.4(9) and section 7.4(10)) | See clause 13.13 |

Table 2 – Other matters

| Requirement under the Act | This deed |
|---|----------------------------------|
| Registration of the Planning Agreement – (section 7.6 of the Act) | Yes (see clause 7) |
| Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> (NSW)) | Yes (see clause 3 of Schedule 4) |
| Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> (NSW)) | 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: Department of Planning, Housing and Infrastructure
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

Email: planningagreements@planning.nsw.gov.au

LAHC

Contact: David Johns
Executive Director Integrated Projects

Address: Homes NSW
4 Parramatta Square, 12 Darcy Street
PARRAMATTA NSW 2150

Email: david.johns@homes.nsw.gov.au

Developer

Contact: The Company Director(s) and Secretary
Attention: Chris Koukoutaris

Address: Frasers Property Telopea Developer Pty Limited
Level 2, 1C Homebush Bay Drive
RHODES NSW 2138

Email: chris.koukoutaris@frasersproperty.com.au

Schedule 3

Land (clause 1.1)

1. Lots proposed for development

| Lot/Section/Deposited Plan | Folio Identifier | Landowner |
|--------------------------------|------------------|-----------|
| Lot 6 in Deposited Plan 128229 | 6/128229 | LAHC |
| Lot 7 in Deposited Plan 128229 | 7/128229 | LAHC |

Schedule 4

Development Contribution (clause 4)

1. Development Contribution

The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

| Development Contribution | Value | Timing |
|--|--|---|
| Monetary contribution towards Designated State Public Infrastructure | \$10,000 for each Dwelling in the Development that is not an Affordable Housing Dwelling or a Social Housing Dwelling. | Pursuant to clause 3 of this Schedule 4 |

2. Calculation of the value of the Development Contribution

- (a) The Development Contribution will be an amount equal to “X” in the following formula:

$$X = N \times \$10,000$$

Where:

“N” is the number of Dwellings authorised by a Development Consent for the Development that are not Affordable Housing Dwellings or Social Housing Dwellings.

- (b) The Development Contribution is to be adjusted, at time of payment, by multiplying the Development Contribution payable by an amount equal to the Latest PPI number divided by the Base PPI number.
- (c) If the adjustment of the Development Contribution payable under clause 2(b) of this Schedule 4 would result in a Development Contribution that is less than the amount calculated under clause 2(a) of this Schedule 4, then the amount under clause 2(a) of this Schedule 4 is payable instead.
- (d) For the purpose of this clause 2:

Base PPI number means the PPI number for the June quarter 2023 (Q2).

Latest PPI number means the PPI number for the second last quarter before the quarter in which the adjustment is made.

PPI means the Producer Price Index (Road and Bridge Construction (NSW)) published by the Australian Bureau of Statistics.

quarter means each of the following three-month periods in a calendar year—

- (i) March quarter—1 January to 31 March (Q1),
- (ii) June quarter—1 April to 30 June (Q2),
- (iii) September quarter—1 July to 30 September (Q3),

(iv) December quarter—1 October to 31 December (Q4).

3. Payment of the Development Contribution

- (a) The Developer must pay to the Minister or the Minister's nominee the Development Contribution:
 - (i) prior to the issue of the first Construction Certificate in relation to the erection of a Dwelling in the Development that is not an Affordable Housing Dwelling or a Social Housing Dwelling; or
 - (ii) if no Construction Certificate is required or the Developer does not intend to apply for a Construction Certificate because the Developer is the Crown for the purposes of Part 6 of the Act, before the construction of a Dwelling in the Development that is not an Affordable Housing Dwelling or a Social Housing Dwelling as authorised by a Development Consent to the Development.
- (b) No later than 10 Business Days before the Developer intends to lodge an application for the first Construction Certificate for or commence works to erect a Dwelling in the Development authorised by a Development Consent to the Development (as the case may be), the Developer must provide the Minister with the following:
 - (i) written notice of its intention to lodge or not lodge an application for the first Construction Certificate or written notice of its intention to commence works;
 - (ii) evidence of the number of studio Dwellings, one bedroom Dwellings, two bedroom Dwellings and three bedroom Dwellings within the Development; and
 - (iii) in respect of each category (that is, studio Dwellings, one bedroom Dwellings, two bedroom Dwellings and three bedroom Dwellings), the number that are to be Affordable Housing Dwellings or Social Housing Dwellings.
- (c) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of a Construction Certificate within the meaning of section 21 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (NSW).
- (d) To avoid doubt, the Developer agrees that if the first Construction Certificate has been issued, or the erection of a Dwelling has commenced, as referred to in clause 3(a) of this Schedule 4 before the commencement of this deed, it is required to pay the Minister the Development Contribution. The Development Contribution must be paid within five (5) Business Days of that commencement.

Schedule 5

Security terms (clause 6)

1. Developer to provide Security

- (a) In order to secure the payment of the Development Contribution the Developer has agreed to provide the Security.
- (b) The Security must:
 - (i) name the “Minister administering the *Environmental Planning and Assessment Act 1979*” and the “Department of Planning, Housing and Infrastructure ABN 20 770 707 468” as the relevant beneficiaries; and
 - (ii) not have an expiry date.
- (c) If an Administrative Arrangements Order (within the meaning of Part 7 of the *Constitution Act 1902* (NSW)) is made affecting the Department of Planning, Housing and Infrastructure before the relevant Security is provided under this Schedule, the Security is to name the agency that the Secretary advises the Developer in writing is to be a beneficiary in addition to the Minister.

2. Security

- (a) The Developer agrees that clause 1, this clause 2 and clause 3 of this Schedule 5 operate as a deed poll in favour of the Minister from the date of execution by the Developer of this deed.
- (b) To avoid doubt, clause 1, this clause 2 and clause 3 of this Schedule 5 commence from the date of execution by the Developer, even though this deed has not commenced pursuant to clause 2.1.
- (c) At the time the Developer executes this deed, the Developer must provide the Security to the Minister having a face value amount of \$2,250,000 in order to secure the Developer’s obligations to make a Development Contribution under this deed when it is executed by the Minister.
- (d) If the Developer has not provided the Development Contribution to the Minister by 1 July 2024, the Developer must provide additional Security to the Minister so that the Minister is in possession of Security that has a face value amount equivalent to 75% of the value of the Development Contribution as if the time of payment were 1 July 2024, as calculated in accordance with clause 2(a) of Schedule 4, and adjusted in accordance with clause 2(b) of Schedule 4, in order to secure the Developer’s obligations to make the Development Contribution under this deed.
- (e) If the Developer has not provided the Development Contribution to the Minister by 1 July 2025, the Developer must provide additional Security to the Minister so that the Minister is in possession of Security that has a face value amount equivalent to 100% of the value of the Development Contribution as if the time of payment were 1 July 2025, as calculated in accordance with clause 2(a) of Schedule 4, and adjusted in accordance with clause 2(b) of Schedule 4, in order to secure the Developer’s obligations to make the Development Contribution under this deed.
- (f) The Minister will provide written notice to the Developer specifying the amount of the additional Security to be provided under clauses 2(d) and/or 2(e) of this Schedule 5

(**Notice**). The Developer must within 10 Business Days of the date of the Notice provide the Minister with additional Security in the amount specified in the Notice.

- (g) From the date the Developer executes this deed until the date that the Developer has provided the Development Contribution, the Minister is entitled to retain the Security and call upon it in the circumstances set out in clause 3 of this Schedule 5.
- (h) To the extent necessary, the definitions in clause 1 of this deed apply to the construction of the deed poll created by this clause 2 of Schedule 5.
- (i) The deed poll created by this clause 2 of Schedule 5 will cease to operate 9 months from the execution by the Developer of this deed unless the Minister has executed the deed within that period.

3. Claims under Security

- (a) The Minister may:
 - (i) call upon the Security where the Developer has failed to make the Development Contribution for the Development on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Development Contribution or 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 the Development Contribution or 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 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Security to ensure that at all times until the date that the Security is released in accordance with clause 4 of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the amounts provided under clause 2 of this Schedule 5.

4. Release of Security

- (a) Subject to clause 4(b) of this Schedule 5, if the whole of the monies secured by the Security has not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5 and:
 - (i) the Developer and LAHC jointly provide notice to the Minister under clause 10.3(b) of this deed; or
 - (ii) the Developer has satisfied all of its obligations under this deed secured by the Security;

then the Minister will return the Security (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Security (as the case may be), to the Developer within 20 Business Days.

- (b) Nothing in clause 10.3(c)(iii) or this clause 4 of Schedule 5 requires the Minister to return the Security to the Developer until such time as the Developer has remedied any breach of the Developer's obligations under this deed where that breach arose before the Effective Date.

5. Substitution of Security and registration on title


- (a) If the Developer provides the Minister with:
- (i) evidence of registration of this deed on the title to the whole of the Land and the Minister, acting reasonably, is satisfied such registration has been effected; and
 - (ii) Security for a face value of \$20,000 (**Replacement Security**),

the Minister will accept the Replacement Security and return:

- (iii) the Security required under clause 2 of this Schedule 5 (**Original Security**); or
- (iv) if the monies secured by the Security have been drawn down in accordance with clause 3 of this Schedule 5, the remainder of the monies secured by the Original Security,

less any costs, charges, duties and taxes payable, to the Developer subject to clause 5(b) of this Schedule 5.

- (b) The Minister will not be obliged to accept the Replacement Security where the Developer is in breach of its obligations under this deed.
- (c) To avoid doubt, the provisions of this Schedule 5 (other than clause 2) apply to the Replacement Security in the same way as they apply to the Original Security.

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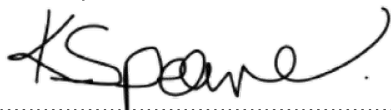


Electronic signature of me, David Johns,
affixed by me on 24 May 2024

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

Kate Speare

.....
Name of witness in full

12 Darcy Street Parramatta

.....
Address of witness

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

Jonathon Schipp

.....
(being the delegate of the Minister) 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).




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

Jonathon Schipp


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

Signed, sealed and delivered by the **New South Wales Land and Housing Corporation** (ABN 24 960 729 253) by its duly authorised delegate, and I hereby certify that I have no notice of revocation of such delegation, in the presence of:



Electronic signature of me,
Fiona Donald, affixed by me on
24 May 2024

.....
Signature of witness



Electronic signature of me, David
Johns, affixed by me on 24 May
2024

.....
Signature of delegate

Fiona Donald
.....
Name of witness in full

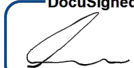
David Johns
.....
Name of delegate

10/12-28 Daphne Street, Botany NSW 2019
.....
Address of witness

a/Executive Director Integrated Projects
.....
Office held


I, Fiona Donald, certify this document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000

Signed, sealed and delivered by **Frasers Property Telopea Developer Pty Limited** (ACN 637 732 079) in its capacity as trustee of the Telopea Development Trust in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

DocuSigned by:



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Signature of Director

Mark Ivan Gleeson
.....
Name of Director in full

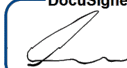
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Signature of Director/Secretary


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



Electronic signature of me,
David Johns, affixed by me
on 24 May 2024

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295A4CF93230445.....

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