



Office of  
Environment  
& Heritage

DOC16/318095-9

Mr Wayne Wallis  
General Manager  
Port Stephens Council  
PO Box 42  
RAYMOND TERRACE NSW 2324

Attention: David Rowland

PORT STEPHENS COUNCIL Information Services	
Legal Doc	
7 OCT 2016	
File No. ....	PSC2006-6592
Action by .....	PSC2016-01178
<input type="checkbox"/> R.H.C .....	

Dear Mr Wallis

**RE: DELIVERY OF SIGNED PLANNING AGREEMENT FOR 93 - 96 BOUNDARY ROAD, MEDOWIE**

Please find enclosed a copy of the Planning Agreement between the Minister administering the *National Parks and Wildlife Act 1974* (NSW), McCloy Medowie Pty Ltd and Port Stephens Council which has been signed by the Minister's delegate.

Should you wish to further discuss any of the above matters, please contact Karen Thumm, Conservation Planning Officer, Hunter Central Coast Region, on 4927 3153 or [karen.thumm@environment.nsw.gov.au](mailto:karen.thumm@environment.nsw.gov.au).

Yours sincerely

30 SEP 2016

**RICHARD BATH**  
Senior Team Leader Planning, Hunter Central Coast Region  
Regional Operations

Enclosure

Form: 11R  
Licence: 05-11-683  
Licensee: Softdocs  
Harris Wheeler

**REQUEST**  
New South Wales  
Real Property Act 1900

Leave this space clear. Affix additional  
pages to the left-hand corner.

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) **STAMP DUTY**

If applicable. Office of State Revenue use only

(B) **TORRENS TITLE**

93/753194, 94/753194, 95/753194 and 96/753194

(C) **REGISTERED  
DEALING**

Number

Torrens Title

(D) **LODGED BY**

Document  
Collection  
Box

Name, Address or DX, Telephone, and Customer Account Number if any

CODE

Reference (optional):

**R**

(E) **APPLICANT**

MCCLOY MEDOWIE PTY LTD ACN 169 323 924

(F) **NATURE OF  
REQUEST**

Registration of Planning Ageement pursuant to s.93H Environmental Planning and Assessment Act 1979 (NSW)

(G) **TEXT OF  
REQUEST**

Annexed and marked "A" is a certified copy of the Planning Agreement between Minister administering the National Parks and Wildlife Act 1974 (NSW) as the Minister, McCloy Medowie Pty Ltd as the Proponent and Port Stephens Council as the Council dated

**DATE**


18, 8, 16

- (H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: MCCLOY MEDOWIE PTY LTD ACN 169 323 924

Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:



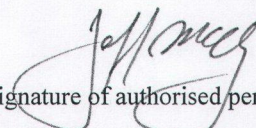
Name of authorised person:

BRIAN SWAINE

Office held:

DIRECTOR

Signature of authorised person:



Name of authorised person:

JEFF MCCLOY

Office held:

DIRECTOR

- (I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS. The applicant / applicant's solicitor / applicant's agent certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No.  Full Name: ..... Signature: .....

\* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

**Minister administering the *National Parks and Wildlife Act 1974* (NSW)**  
ABN 30 841 387 271

**McCloy Medowie Pty Ltd**  
ABN 26 169 323 924

**Port Stephens Council**  
ABN 16 744 377 876

**Planning Agreement**

Environmental Planning and Assessment Act 1979 (NSW)

Contact  
Newcastle  
Katrina Reye  
Tel: (02) 4907 6300

*Mark Speelman*  
*B. McKenzie*  
*Jeffrey*  
*DS*  
*A*

THIS PLANNING AGREEMENT is dated

28 September

2016

**PARTIES:**

Minister administering the *National Parks and Wildlife Act 1974* (NSW) (ABN 30 841 387 271) of Level 32, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW 2000 ("**the Minister**")

McCloy Medowie Pty Ltd (ABN 26 169 323 924) of Suite 1, Level 3, 426 King Street, Newcastle West, 2300 ("**the Proponent**")

Port Stephens Council (ABN 16 744 377 876) of 116 Adelaide Street, Raymond Terrace NSW ("**the Council**")

**INTRODUCTION:**

- A. The Proponent owns the Land.
- B. The Proponent proposes to carry out the Proposed Development.
- C. The Proponent has made a Development Application for the Proposed Development to the Council in respect of the Land.
- D. Clause 7.19 of the *Port Stephens Local Environmental Plan 2013* provides that the Council must not grant Development Consent to the Proposed Development unless the Council is satisfied that arrangements, acceptable to the Council and the Minister, have been made for the ongoing protection and management, for conservation purposes, of the Land.
- E. The Proponent has offered to enter into this deed with the Council and the Minister to make arrangements acceptable to the Council and the Minister for the ongoing protection and management, for conservation purposes, of the Land.
- F. The Council and the Minister confirm that this deed reflects arrangements acceptable to them for the ongoing protection and management, for conservation purposes, of the Land and to satisfy the requirements of clause 7.19 of the *Port Stephens Local Environmental Plan 2013*.

**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 this deed at 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:

(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 and Council in each of their absolute discretion

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

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

**Claims** means any allegation, debt, cause of action, liability, claim, proceedings, suit or demand of any nature however arising and whether fixed or unascertained, actual or contingent whether in law, in equity, under statute or otherwise

**Commencement Date** means the date that this deed comes into operation in accordance with clause 2.1

**Completion Notice** means a notice issued by the Minister to the Proponent in accordance with clause 7(d)(i) of Schedule 4

**Contribution Amount** means:

(a) the amount of \$37,200.00 to be paid to the Minister for the public purpose of reserve establishment; and

(b) an amount of \$5,750.00 to be paid to the Minister for the public purpose of upgrading the James Road trail in Medowie

**Corporations Act** means the *Corporations Act 2001* (Cth)

**Development Application** means DA-16-2015-336-1, being a 127 hectare residential subdivision known as "The Bower" to be located off Medowie Road in Medowie

**Development Consent** means any development consent granted under section 80 of the Act for all or part of the Proposed Development

**Development Contribution** means the dedication of the Environmental Offset Land to the Minister, carrying out of the Proponent Works, creation of the Service Easements in favour of Council and payment of the Contribution Amounts to the Minister as set out in Schedule 4

**Development Site** means the area shown marked as the "Development Site" on the plan attached as Annexure A to this deed

**Environmental Offset Land** means the land identified as such in Schedule 3

**Explanatory Note** means the explanatory note required by the Regulation

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

**GST** means any form of goods and services tax payable under the GST Law

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

**Land** means the land identified as such in Schedule 3

**Minister** means the Minister administering the *National Parks and Wildlife Act 1974* (NSW) and includes the Minister's nominee, whether nominated before or after the date of this deed

**Plan** means the plan attached as Annexure A to this deed

**Proponent Works** means the works described in clause 6 of Schedule 4

**Proposed Development** means the proposed development described in the Development Application

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

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

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

**Secured Obligations** means the dedication of the Environmental Offset Land to the Minister, carrying out of the Proponent Works and payment of the Contribution Amount to the Minister as set out in Schedule 4

**Service Easements** means the easements required by Council in connection with the Proposed Development shown on the Plan

**Stage 1** means stage 1 of the Proposed Development generally as shown on the staging plan attached as Annexure B to this deed

**Subdivision Certificate** means a certificate issued under section 109C(1)(d) of the Act

**Subdivision Plan** means any plan of subdivision approved by the Minister and the Council which creates a separate lot for the Environmental Offset Land

**Transfer** means a transfer in the approved form under the Real Property Act which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the Environmental Offset Land to the Minister

**Umwelt Report** means the report prepared by Umwelt dated 21 December 2012 attached as Annexure C to this deed

## 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 issued 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 schedule is a reference to the introduction, a clause, or a schedule of this deed;
- (e) clause headings and the table of contents are inserted for convenience only and do not form part of this deed;
- (f) the introduction and schedules form part of this deed;
- (g) the introduction accurately sets out the circumstances in which the parties have entered into 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 corporation includes its successors and permitted assigns;
- (j) related or subsidiary in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (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 anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (n) including and includes are not words of limitation;
- (o) the words at any time mean at any time and from time to time;
- (p) a reference to a time is to that time in New South Wales;
- (q) a word that is derived from a defined word has a corresponding meaning;
- (r) monetary amounts are expressed in Australian dollars;
- (s) the singular includes the plural and vice-versa;
- (t) words importing one gender include all other genders; and
- (u) a reference to a thing includes each part of that thing.

### **1.3 Construction**

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:

- (a) constitutes a planning agreement within the meaning of Section 93F of the Act;
- (b) other than clauses 6.3, 7.3 and clause 2 of Schedule 4 which commence on the date of execution of this deed, this deed commences operation and is effective from the date that is the later of the date when the following occurs:
  - (i) this deed is signed by all the parties; and

- (ii) when a Development Consent for the Proposed Development is granted by the Council,
- (c) is terminated when:
  - (i) the Council and the Minister gives written notice to the Proponent stating that the Council and the Minister are satisfied that the Proponent has completed all its obligations under this deed; or
  - (ii) if Council refuses the Development Application; or
  - (iii) if the Development Consent for the Proposed Development lapses under the Act.

## **2.2 Application**

This deed applies to:

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

## **2.3 Consequences of termination of deed**

If this deed is terminated under clause 2.1 the Proponent has no further obligations under this deed.

## **2.4 Consequences of Rejection of Development Application**

If the Development Application is refused by Council and the Proponent has paid any money to the Minister and Council under this deed including any Bank Guarantee, Minister and Council must refund that money to the Proponent within a period of 10 Business Days from the date of the Proponent's request.

## **3. APPLICATION OF SECTION 94, SECTION 94A, SECTION 94EF OF THE ACT**

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

## **4. REQUIREMENT TO PROVIDE DEVELOPMENT CONTRIBUTIONS**

### **4.1 Proponent to provide Proponent Contributions**

The Proponent is to provide to the Minister the Development Contribution in accordance with Schedule 4 of this deed.

### **4.2 Acknowledgement**

The Proponent acknowledges and agrees that the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose 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 FOR LATE PAYMENT**

If the Proponent fails to pay any monetary amount under this deed on the due date for payment, the Proponent must also pay the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time. Interest will be 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. REGISTRATION ON TITLE**

### **6.1 Land ownership**

The Proponent represents and warrants that it is:

- (a) the legal and beneficial 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 6.3(b) to assist, co-operate and to otherwise do all things necessary for the Proponent to comply with its obligations under this clause 6.

### **6.2 No warranties**

Except as expressly set out in this deed and subject to the Proponent complying with its obligations under this deed to the satisfaction of the Minister and the Council, including but not limited to:

- (a) the Proponent completing the Proponent's Works in accordance with Schedule 4; and
- (b) the Proponent complying with its obligations under clause 4(h) of Schedule 4,

the Proponent makes (and has made) no representations and gives (and has given) no warranties in respect of the Land and the OEH agrees to accept the Environmental Offset Land in its current state and condition.

*(Note: this clause does not limit any existing or future obligation imposed on the Proponent under any statutory approval).*

### **6.3 Registration of deed**

- (a) As contemplated by section 93H of the Act, the Proponent agrees to lodge this deed for registration with the relevant Authority under the Real Property Act in the folio of the Register for the Land within 5 Business Days of the date of this deed.
- (b) The Proponent at its own expense, will take all practical steps and otherwise do anything that the Minister and the Council reasonably require 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 title to the Land and to the terms of this deed; and
  - (ii) the execution of any documents;
  - (iii) the production of the relevant certificates of title;
  - (iv) payment of any duty liability arising from this deed under the Duties Act 1997 (NSW); and
  - (v) the lodgement of this deed in registrable form at the Land and Property Information 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.

- (c) The Proponent must provide the Minister and the Council with evidence of the registration of this deed with the relevant Authority within 10 Business Days of registration of this deed.

#### **6.4 Release and discharge of deed**

The Minister agrees to sign all required consents and other documents required by the Proponent to remove this deed from title to the Land provided that the Minister and the Council are satisfied that the Proponent has satisfied all of its obligations under this deed.

### **7. ENFORCEMENT**

#### **7.1 Proponent to provide Security**

The Proponent has agreed to provide security to the Minister and Council (where appropriate) for the performance of the Proponent's obligations under this deed in accordance with this clause.

#### **7.2 Compulsory acquisition**

In addition to clause 7.3 below, the parties agree that clause 5 of Schedule 4 is the provision of security for the obligation to dedicate the Environmental Offset Land.

#### **7.3 Bank Guarantee**

- (a) Within 10 Business Days of the date this deed is signed, the Proponent is to provide security in the form of a Bank Guarantee in favour of the Minister for the monetary amount in Schedule 5 (**Bank Guarantee Amount**).
- (b) The Minister may call upon the Bank Guarantee to satisfy, either wholly or in part:
  - (i) the Proponent's obligation to pay the Contribution Amounts;
  - (ii) any outstanding rates and charges as may be owing in respect of the Land up to and including the date of the Transfer to the Minister of the Environmental Offset Land;
  - (iii) any other costs of and incidental to the Minister's becoming registered as proprietor of the Environmental Offset Land and/or protecting beforehand its estate or interest therein; and/or
  - (iv) the Proponent's obligation to carry out the Proponent Works, (the **Secured Obligations**).
- (c) The above Bank Guarantee will be held by the Minister.

#### **7.4 Claims under a Bank Guarantee**

- (a) The Proponent agrees that the Minister may make claims under a Bank Guarantee on the following basis:
  - (i) the Minister may call upon a Bank Guarantee (in full or in part) in the event that the Proponent fails to provide the Secured Obligations in accordance with this deed and the Minister may retain and use such monies in his discretion to compensate the Minister for the Proponent's breach of the relevant obligation;
  - (ii) the Minister agrees not to make any claim under a Bank Guarantee without providing at least 2 Business Days' prior written notice to the Proponent of its intention to do so;
  - (iii) the amount appropriated by the Minister under clause 7.4(a) must be applied towards the costs and expenses incurred by the Minister in rectifying any default by the Proponent under this deed.

- (b) Should the Minister use the part or whole of the monies under the Bank Guarantee under clause 7.4(a), the Proponent shall, on being advised in writing by the Minister to do so, immediately take steps to ensure that the Bank Guarantee Amount is replaced for the benefit of the Minister.
- (c) Should there be outstanding obligations by the Proponent to be performed after the expiry date of the Bank Guarantee, the Proponent shall arrange for a replacement Bank Guarantee to be delivered to the Minister no later than 1 week prior to that expiry date.

#### **7.5 Release of Bank Guarantee**

- (a) Subject to clause 7.5(b), upon the Minister being satisfied that the Secured Obligations have been discharged or if this deed is terminated or discharged pursuant to clause 2.1(c), the Minister will promptly return the Bank Guarantee to the Proponent.
- (b) If the Minister has called upon the relevant Bank Guarantee, then upon satisfaction of the Secured Obligations the Minister will return to the Proponent the Bank Guarantee amount less any monies appropriated by the Minister under clause 7.4(a).

### **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 endeavor in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

#### **8.4 Mediation**

If the parties do not agree within 7 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 Rules of the Law Society of NSW. 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 42 days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 7 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 Law 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 Law 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 will 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 GST exclusive. 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 under or in connection with this deed (GST Amount), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister or the Council as Recipient of the supply, the Proponent will ensure that:

- (a) the Proponent makes payment of the GST Amount on behalf of the Minister or Council (where appropriate), including any gross up that may be required; and
- (b) the Proponent provides a Tax Invoice to the Minister or the Council (where appropriate).

## **9.6 Non-monetary consideration**

Clause 9.5 applies to non-monetary consideration.

## **9.7 Assumptions**

The Proponent acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Proponent will assume the Minister, is not entitled to any input tax credit

## **9.8 No merger**

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

# **10. ASSIGNMENT AND RESTRICTION ON SALE OF LAND**

## **10.1 Assignment**

This deed is personal to each party and neither party may assign the rights or benefits of this deed to any person except:

- (a) to a related body corporate, after obtaining the consent of the other party, which the other party must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or
- (b) to any other person, with the prior consent of the other party, which the other party may acting reasonably give, give conditionally or withhold.

## **10.2 Restriction on Sale**

The Proponent must not sell, transfer or dispose of the whole or any part of the Land unless, before it sells, transfers or disposes of any such part of the Land to another person ("**Transferee**"):

- (a) it satisfies the Minister acting reasonably that the proposed Transferee is financially capable (including, without limitation, by providing financial statements for, and credit standing of, the proposed transferee) of complying with such of the Proponent's obligations under this deed as the Minister acting reasonably shall nominate must be adopted by the Transferee ("**Required Obligations**");
- (b) the rights of the Minister under this deed are not diminished or fettered in any way;
- (c) the Transferee signs a deed in form and substance acceptable to the Minister containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Proponent (including obligations which arose before the transfer or assignment);
- (d) the Minister is satisfied that it holds appropriate security to secure the Proponent's obligations under this Agreement, including, without limitation, a guarantee and indemnity in respect of the Transferee's obligations to comply with the Required Obligations (if so required by the Minister);
- (e) any default by the Proponent has been remedied by the Landowner or waived by the Minister; and
- (f) the Proponent and the Transferee pay the Minister's reasonable costs in relation to that assignment.

# **11. WARRANTIES OF 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. Release and indemnity**

- (a) The Proponent agrees that the obligation to provide the Development Contributions is at the risk of the Proponent. The Proponent releases the Minister and the Council from any Claim, liability or loss arising from, and costs incurred in connection with, the Proponent's obligation to provide the Development Contribution.
- (b) The Proponent indemnifies the Minister and the Council against any costs incurred in connection with the Minister or the Council enforcing the Landowner's obligation to provide the Development Contributions in accordance with this deed, except to the extent caused or contributed to by the Minister's or the Council's negligent act or default under this deed.
- (c) The indemnity in clause 12(b) is a continuing obligation, independent of the Proponent's other obligations under this deed and continues after this deed ends.

#### **13. GENERAL PROVISIONS**

##### **13.1 Entire agreement**

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 and publicly notified in accordance with clause 25D of the Regulation.

##### **13.3 Annual Report**

If requested by Minister or the Council the Proponent must prepare a status report in the form reasonably requested by Minister or the Council detailing the status of performance of its obligations under this deed. The Minister and Council must not request a status report more than once per year.

##### **13.4 Governing Law**

This deed is governed by, and is to be construed in accordance with, the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any court hearing appeals from those courts.

##### **13.5 Change of Circumstances**

Either party must review and negotiate variations to this deed in good faith if there is any change of circumstances that materially affects the operation of this deed.

##### **13.6 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.

### **13.7 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.

### **13.8 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.

### **13.9 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.

### **13.10 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.

### **13.11 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, will not merge on the occurrence of that event but will remain in full force and effect.

### **13.12 Counterparts**

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

### **13.13 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.

#### **13.14 No fetter**

Nothing in this deed will be construed as requiring the Minister or Council to do anything that would cause it to be in breach of any of its obligations at law and, without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

#### **13.15 Explanatory note**

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

#### **13.16 Legal expenses and stamp duty**

- (a) The Proponent must pay its own, Council's 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 Proponent must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Proponent must pay all stamp duty assessed on or in respect of this deed and any instrument or transaction required by or necessary to give effect to this deed.
- (d) If the Proponent breaches this deed and does not remedy the breach within a reasonable period of time specified in a notice of breach issued by the Council or the Minister then the Proponent must pay Council's and the Minister's reasonable legal costs of enforcing this deed.

#### **13.17 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;
  - (ii) sent by facsimile transmission;
  - (iii) sent by email;
  - (iv) sent by prepaid ordinary mail within Australia; or
  - (v) sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries.
- (b) A notice is given if:
  - (i) hand delivered, on the date of delivery;
  - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted;
  - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
  - (iv) sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting.

## SCHEDULE 1

### Requirements under section 93F of the Act

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 93F(1))</b> The Proponent 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) No</li> <li>(b) Yes</li> <li>(c) No</li> </ul>	
<b>Description of the land to which this deed applies (section 93F(3)(a))</b>	See Schedule 3	
<b>Description of the change to the environmental planning instrument to which this deed applies (section 93F(3)(b))</b>	NA	
<b>The scope, timing and manner of delivery of contribution required by this deed (section 93F(3)(c))</b>	See Schedule 4	
<b>The application of section 94 and 94A of the Act (section 93F(3)(d))</b>	The application of these sections is not excluded in respect of the Proposed Development.	
<b>Applicability of section 94EF of the Act (section 93F(3)(d))</b>	The application of this section is not excluded in respect of the Proposed Development.	
<b>Consideration of benefits under this deed if section 94 applies (section 93F(3)(e))</b>	No. The benefits under this deed are not to be taken into consideration in determining s.94 contributions.	
<b>Mechanism for Dispute Resolution (section 93F(3)(f))</b>	See clause 8	
<b>Enforcement of this deed (section 93F(3)(g))</b>	See clause 7	
<b>No obligation to grant consent or exercise functions (section 93F(10))</b>	See clause 13.14	
<b>Registration of the Planning Agreement- (section 93H of the Act)</b>	See clause 6	
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued (clause 25E(2)(g) Regulation)</b>	No	
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued (clause 25E(2)(g) Regulation)</b>	No	
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued (clause 25E(2)(g) Regulation)</b>	Yes	

## **SCHEDULE 2**

### **Address for service**

#### **Minister**

**Contact:** Regional Manager, Hunter Central Coast

**Address:** Locked Bag 1002, Dangar NSW 2309

**Facsimile No:** 02 4927 3192

**Email address:** rog.hcc@environment.nsw.gov.au

#### **McCloy Medowie Pty Ltd**

**Contact:** Mr. James Goode

**Address:** Suite 1, Level 3, 426 King Street, Newcastle West, 2300

**Facsimile No:** (02) 4929 6472

**Email address:** james@mccloygroup.com.au

#### **Port Stephens Council**

**Contact:** Mr. David Rowland

**Address:** 116 Adelaide Street, Raymond Terrace NSW 2324

**Facsimile No:** (02) 4987 3612

**Email address:** david.rowland@portstephens.nsw.gov.au

### **SCHEDULE 3**

#### **Land**

(Clause 1.1)

#### **Land**

The Land on which the Proposed Development is to be located is 93-96 Boundary Road, Medowie known as Folio Identifier 93-96/753194

#### **Environmental Offset Land**

Proposed Lot 2 as shown on the Plan being an area of approximately 69.7 hectares and forming part of the Land.

#### **Service Easements**

The proposed service easements are shown on the Plan.

## SCHEDULE 4

### Development Contribution

(Clause 4)

#### 1. Development Contributions Generally

The Proponent is to provide the following development contributions in accordance with this Schedule:

- (a) The Environmental Offset Land to be transferred to the Minister, free of cost;
- (b) The Service Easements to be provided in favour of Council, free of any cost to Council;
- (c) The Proponent Works to be carried out in favour of the Minister;
- (d) The payment of the Contribution Amounts to the Minister.

The parties acknowledge that the above package of measures comprise the Development Contributions under this deed.

#### 2. Contribution Amounts

- (a) The Proponent must pay each of the Contribution Amounts to the Minister within 30 days of the date of execution of this deed and prior to the release of any Subdivision Certificate for Stage 1.
- (b) The requirement to pay a Contribution Amount is satisfied for the purposes of this deed when the Minister receives the full amount of the Contribution Amounts in cash or by unendorsed bank cheque or by the deposit by electronic funds transfer into a bank account nominated by the Minister.

#### 3. Service Easements

Prior to transferring the Environmental Offset Land to Minister the Proponent must create the Service Easements in favour of Council.

#### 4. Environmental Offset Land Contribution

- (a) The Proponent must transfer the Environmental Offset Land to the Minister prior to the issue of a Subdivision Certificate for Stage 1 in accordance with the following process.
- (b) In order to give effect to the transfer of the Environmental Offset Land to the Minister in accordance with this Schedule the Proponent is to procure the subdivision of the Land to create the Environmental Offset Land as a separate lot (**Environmental Offset Land Subdivision**).
- (c) Within 3 weeks of any Subdivision Certificate being given by the Council for the Subdivision Plan, the Proponent must lodge the Subdivision Plan for registration with the appropriate Authority and promptly notify the Council and the Minister of such lodgment.
- (d) The Proponent must promptly notify the Council and Minister when it receives notification that the Subdivision Plan has been registered and within 5 Business Days of the date of notification that the Subdivision Plan has been registered, serve a Transfer on the Minister with the relevant certificates of title and ensure that:
  - (i) the Environmental Offset Land is free from any encumbrances other than the Service Easements; or

- (ii) relevant discharges in registrable form are also served on the Minister at the same time in relation to any encumbrances other than the Service Easements.
- (e) The Proponent must immediately comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Environmental Offset Land.
- (f) The Proponent will pay all rates and taxes owing in respect of the Environmental Offset Land up to and including the date of transfer of the Environmental Offset Land after which the Minister will be liable.
- (g) After the transfer of the Environmental Offset Land to the Minister, the Minister agrees to allow the Proponent to enter the Environmental Offset Land to undertake all works in connection with weed control as required in item 4 of the table in clause 6 of this Schedule 4 (**Weed Control Works**) on the terms outlined in clause 7 of this Schedule 4.
- (h) The Proponent must, from the date that this deed is signed by all the parties not undertake any action or activity, prior to the Transfer being registered that will have a detrimental effect on the conservation or Aboriginal heritage values of the Environmental Offset Land except where the Proponent is:
  - i. directed to undertake such action or activity by another government agency or instrumentality (such as the Rural Fire Service);
  - ii. maintaining existing access and existing track; or
  - iii. otherwise required by law to undertake such an action or activity.

#### 5. **Compulsory Acquisition of Environmental Offset Land**

- (a) If the Proponent does not transfer any part of the Environmental Offset Land to the Minister as required by this deed, the Proponent consents to the Minister compulsorily acquiring that part of the Environmental Offset Land in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) for the amount of \$1.00.
- (b) The Proponent and the Minister agree that:
  - (i) this clause 5 is an agreement between them for the purposes of section 30 of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW); and
  - (i) in this clause 5, they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Proponent must pay the Minister, promptly on demand, an amount equal to all costs, charges or expenses incurred by the Minister acquiring the whole or any part of the Environmental Offset Land as contemplated by this clause 5.
- (d) The Proponent indemnifies and agrees to keep indemnified the Minister (or his or her nominee) against all claims made against the Minister (or his or her nominee) as a result of any acquisition by the Minister (or his or her nominee) of the whole or any part of the Environmental Offset Land under this clause 5.

#### 6. **Proponent Works**

- (a) The Proponent must complete the following works to the reasonable satisfaction of the Minister and the Council within the time period referred to in the table set out below.

Item	Timing
1. All internal boundary fences within the Environmental Offset Land are to be removed.	Prior to the transfer of the Environmental Offset Land to the Minister
2. Install fence line and gates at appropriate points along the common boundary of the Development Site and the Environmental Offset Land, as nominated by the Minister, being along the external easement boundary of the proposed drainage easement as shown on the Plan. A vehicle width of 3-4 meters of vegetation will be cleared along the fence line within the Environmental Offset Land. The fencing materials will be steel posts and pickets with 4 plain strands of wire. The Minister will nominate gate locations following a written request from the Developer to do so.	Prior to the transfer of the Environmental Offset Land to the Minister
3. Remove all rubbish from the Environmental Offset Land. However the Proponent will not be required to undertake ongoing rubbish removal from the Environmental Offset Land once the land has been transferred to the Minister	This rubbish removal will be undertaken prior to the transfer of the Environmental Offset Land to the Minister and only undertaken once.
4. Weed control will be undertaken within the Environmental Offset Land including spraying of all noxious weeds, including but not limited to those noxious weeds identified in Figure 1 of the Umwelt Report.	For a period of 3 years from the date the Environmental Offset Land is transferred to Minister.
5. A fence and gate will be placed across the power line easement to prevent unauthorised access to the power easement from Boundary Road as shown on the Plan.	Prior to the transfer of the Environmental Offset Land to the Minister
6. The Proponent agrees to undertake annual slashing by a tractor for bushfire control to the satisfaction of the Minister along the western edge of the common boundary of the Development Site and the Environmental Offset Land to a width of 10 metres.  Please note: The perimeter roads shown on the Plan once created will be under the ownership of council and Council will maintain.	Every 12 months from the Commencement Date until the road reserve shown on the Plan becomes Council owned land.

## **7. Completion of the Proponent's Works**

- (a) For the purposes of clause 6(a) of this Schedule, the Proponent's Works are taken to be completed when a Completion Notice is issued in accordance with the process outlined in this clause 7.
- (b) The Proponent is to give the Minister written notice of the date on which it will complete all or part of the Proponent's Works.
- (c) Not later than 5 Business Days after receiving the Proponent's notice under clause 7(b), the Minister will, and the Proponent must permit the Minister to inspect the Proponent's Work in the presence of a representative of the Proponent.
- (d) Not later than 5 Business Days after the inspection referred to in clause 7(c), the Minister, acting reasonably, is to:
  - i. issue a Completion Notice to the Proponent stating that in the Minister's opinion, the Proponent's Works have been completed; or
  - ii. give a written direction to the Proponent to complete, rectify or repair any specified part of the Proponent Work as a pre-condition to the issuing of a Completion Notice.
- (e) The Proponent must, at its cost, promptly comply with a direction given to it by the Minister under clause 7(d)(ii).
- (f) The Minister is to issue a Completion Notice to the Proponent once the Minister is reasonably satisfied that the Minister has complied with any written direction given under clause 7(d)(ii) and no further written direction will be given.

## **8. Terms of Access to the Environmental Offset Land**

- (a) The Minister grants the Proponent a non-exclusive licence to access to the Environmental Offset Land for a period of 3 years from the date of transfer of the Environmental Offset Land to the Minister in accordance with clause 4 of this Schedule 4 (**Term**) for the purpose of undertaking the Weed Control Works.
- (b) The Proponent must:
  - i. provide at least 24 hours' notice of its intention to access the Environmental Offset Land by contacting the National Parks and Wildlife Hunter Coast Area Manager on 02 4984 8200;
  - ii. comply with any reasonable directions given by the Minister in carrying out the Weed Control Works;
  - iii. not undertake any action that would have a detrimental effect on the conservation or Aboriginal heritage values of the Environmental Offset Land; and
  - iv. immediately notify the Minister of any damage caused to the Environmental Offset Land and to make good the damage caused.
- (c) During the Term, the Proponent must effect and maintain insurance policies with a reputable insurance company for:
  - i. public liability for an amount not less than the sum of \$20 million for any one claim; and

- ii. if required by law, workers compensation insurance.

(d) The insurance policies referred to under sub-clause (c) must:

- i. note the Minister as an interested party (except in the case of workers compensation); and
- ii. be on terms and conditions reasonably acceptable to the Minister.

(e) The Proponent must serve evidence of the above insurances to the Minister prior to the Developer accessing the Environmental Offset Land.

(f) The Proponent indemnifies the Minister and keeps the Minister indemnified from and against all Loss which the Developer may suffer or incur consequent upon or arising directly or indirectly out of:

- i. any act or thing which is a breach or non-observance of this sub-clause by the Proponent including without limitation, the cost to the Developer in carrying out the Weed Control Works;
- ii. the Proponent's wilful act or negligence;
- iii. the Proponent's use of the Environmental Offset Land; or
- iv. the Proponent's use of services to the Environmental Offset Land,

except to the extent caused directly or indirectly or contributed to by a negligent act or omission of the Minister, his or her employees, consultants or agents.

(g) The Proponent:

- i. acknowledges that access to the Environmental Offset Land by the Proponent and is at the Proponent's risk; and
- ii. to the extent permitted by Law, releases the Minister from all Claims arising out of any damage to any Environmental Offset Land or injury or death to any person occurring in the Environmental Offset Land, except to the extent that the Minister causes or contributes to the Claim by a wilful act, negligence or omission.

**SCHEDULE 5**  
**Security**

**(clause 6)**

Each Bank Guarantee will be:

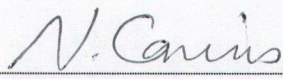
- (a) in favour of the favouree;
- (b) in the amount; and
- (c) a security for the Secured Obligations

as set out in the table below.

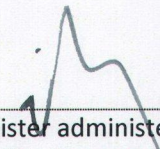
<b>Favouree</b>	<b>Bank Guarantee Amount</b>	<b>Secured Obligations</b>
Minister	\$37,200	The Secured Obligations as defined in clause 7.3(b) of this deed

EXECUTED as a deed

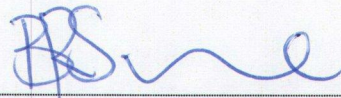
EXECUTED by <sup>the Delegate of the Minister</sup>~~the Minister~~ administering the  
*National Parks and Wildlife Act 1974 (NSW)* ABN 30  
841 387 271:

  
Signature of Witness

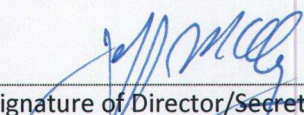
VICKI COMINS  
Name of Witness in full (BLOCK LETTERS)

  
Delegate of the Minister administering the *National Parks & Wildlife Act 1974 (NSW)*

EXECUTED by MCCLOY MEDOWIE PTY LIMITED  
ABN 26 169 323 924 in accordance with section 127  
of the *Corporations Act 2001 (Cth)* by authority of its  
directors:

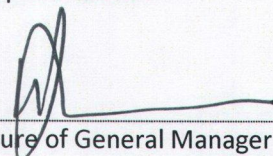
  
Signature of Director

BRIAN SWAINE  
Name of Director (BLOCK LETTERS)

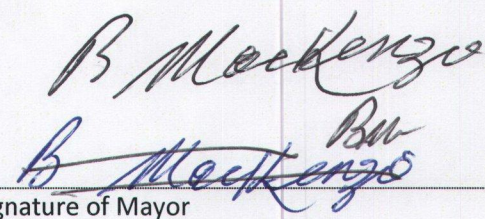
  
Signature of Director/Secretary

JEFF MCCLOY  
Name of Director/Secretary (BLOCK LETTERS)

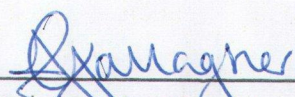
EXECUTED ON BEHALF OF  
~~THE COMMON SEAL~~ by PORT STEPHENS  
COUNCIL was hereunto affixed pursuant to a  
resolution of Council dated [ ]  
Resolution Number -  
in the presence of:

  
Signature of General Manager

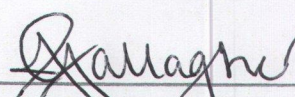
Name of General Manager: WAYNE WALLIS

  
Signature of Mayor

Name of Mayor: BRUCE MACKENZIE

  
Signature of witness

JULIE GALLAGHER  
Name of witness

  
Signature of witness

JULIE GALLAGHER  
Name of witness

- (A) PROPOSED DRAINAGE EASEMENT 5.0m WIDE (573m<sup>2</sup>) - SERVICE EASEMENTS  
 (B) PROPOSED DRAINAGE EASEMENT VARIABLE WIDTH (2954m<sup>2</sup>) - SERVICE EASEMENTS



PROPOSED LOT 2 TO BE DEDICATED TO OEH

AREAS AND EASEMENTS ARE SUBJECT TO ENGINEERING DESIGN, FINAL SURVEY AND COUNCIL APPROVAL



DEVELOPMENT SITE

WESTERN EDGE OF PROPOSED LOT 2 TO BE SLASHED (WITHIN DEVELOPMENT SITE) PRIOR TO CREATION OF ADJOINING ROADS AND BASIN.

LOCATION OF PROPOSED FENCE LINE AND GATES (STEEL POST AND PICKETS WITH 4 PLAIN STRANDS OF WIRE).

JAMES ROAD

LOT 2  
69.7 ha

BASIN 1

BASIN 2

BASIN 1

MEDOWIE ROAD

BOUNDARY ROAD

LOCATION OF PROPOSED FENCE AND GATE TO PREVENT ACCESS TO POWER EASEMENT

TITLE: PROPOSED SUBDIVISION OF LOT 93,94,95 AND 96  
BOUNDARY ROAD MEDOWIE

McCLOY MEDOWIE

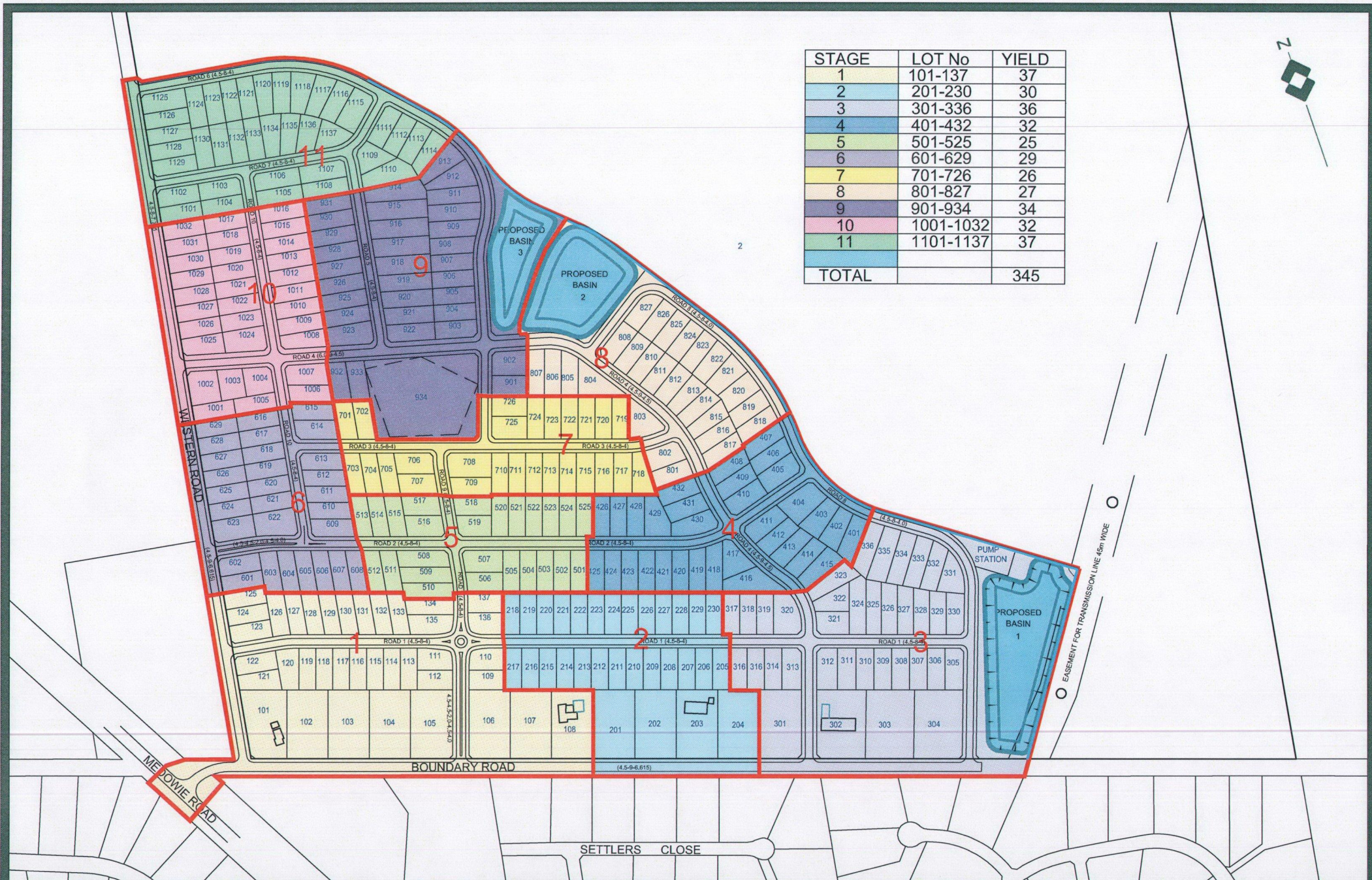


KEVIN URANE 0412009891

High Definition Design Drafting

PLAN OF LOT 2

Date:	Scale:	1:5000 A3	Designed:	KU	Project No:
Cad Ref:	HDD 3 r15				HD3
15	ADD FENCING AND CLEARING NOTES		KU	20.01.18	Drawing No
14	ORIGINAL ISSUE		KU	28.10.18	Revision
No	Amendment		Drawn	Date	HD09 15



TITLE: PROPOSED SUBDIVISION OF LOT 93,94,95 AND 96  
BOUNDARY ROAD MEDOWIE

McCLOY MEDOWIE



KEVIN URANE 0412009891

High Definition  
Design Drafting

Date: 18.12.14 Scale: 1:4000 A3  
Cad Ref: HDDD 3 r15

Designed: KU

Project No

HD3

No	Amendment	Drawn	Date
12	AMEND LAYOUT	KU	23.08.15
13	AMEND STAGING	KU	8.02.16
14	AMEND LAYOUT	KU	18.09.16

Drawing No  
HD04  
Revision  
15



Our Ref: 2711/TP/RV/RV/211212

21 December 2012

Andrew Simons  
Development Manager  
Eureka Funds Management  
GPO Box 4201  
SYDNEY NSW 2001

Dear Andrew

Re: Additional Information Requested by OEH in relation to Lots 93 - 96  
Boundary Road, Medowie

#### Introduction

The Office of Environment and Heritage (OEH) has requested further information in relation to the condition of the 73 hectare portion of the site (being Lots 93 - 96 Boundary Road, Medowie), that is proposed for transferral to public ownership as an offset for the development of the remainder of the site. In their request, OEH have asked for an audit of fences, rubbish and weeds within the proposed offset area.

#### Methods

Two Umwelt staff assessed the proposed offset area to map infestations of weeds, dumped rubbish and fence condition on 7 December 2012. The majority of the proposed offset area was accessed as part of this survey, however some parts of the Swamp Sclerophyll Forest EEC were too dense to provide reasonable access on foot. Any observed weed, rubbish or fence issues were recorded via GPS and these are provided on Figure 1.

#### Results

The extent of survey and associated findings are mapped in Figure 1. Three dumped cars were recorded in the proposed offset area, one being within the power line easement and two together to the east of the easement. Several small dumps of rubbish - mainly car parts were recorded around the power line easement.

The whole site is fenced, and there is evidence of internal fencing separating each of the lots. These areas can be seen on the aerial in Figure 1, however it is noted that this aerial is dated. The boundary fence was cut in several locations across the site and in disrepair in other areas. These have been mapped in Figure 1. No internal fences could be located between Lots 94 and 95 or 95 and 96. It is noted that there has been considerable regeneration of the understorey in previously cleared areas, and this may be masking the presence of parts of these previous fences. The internal fence between lots 93 and 94 was present but in disrepair.

Inspired People.  
Dedicated Team.  
Quality Outcomes.

#### Newcastle

PO Box 3024  
75 York Street  
Teralba NSW 2284

Ph. 02 4950 5322

#### Perth

PO Box 8177  
144 Churchill Avenue  
Subiaco East WA 6008

Ph. 08 6260 0700

#### Canberra

PO Box 6135  
56 Bluebell Street  
O'Connor ACT 2602

Ph. 02 6262 9484

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



Source: Google Earth (2007), Port Stephens Council (2006), Umwelt (2006)

- Legend**
- Study Area
  - Proposed Offset Area
  - Fence Locations
  - Dumped Cars
  - Dumped Rubbish
  - Fence Cut or Damaged
  - Cotton Bush
  - Pampas Grass

**FIGURE 1**  
Location of Weeds,  
Rubbish and Fence Condition

Extremely thick native vegetation prevented access to the areas of the site towards the proposed development site. As a result it was not possible to determine the presence and/or condition of any fencing in these areas, however it is believed that there is no fence between the proposed development and offset areas at this stage.

Given the close proximity of the site to urban areas, there were remarkably few weeds recorded. Those weeds which were identified were in very low densities with very limited management actions required.

Weeds of low environmental significance were found in the power line easement, and these included flat weed (*Hypochaeris radicata*), *Verbena* sp. and *Conyza* sp.. One cotton bush plant (*Gomphocarpus fruticosus*) was recorded to the east of the easement and two pampas grass plants (*Cortaderia selloana*) were recorded towards the centre of Lot 95.

Pampas grass is classified as a Class 4 noxious weed in the Port Stephens LGA. This classification specifies that:

The growth of the plant must be managed in a manner that reduces its numbers spread and incidence and continuously inhibits its reproduction.

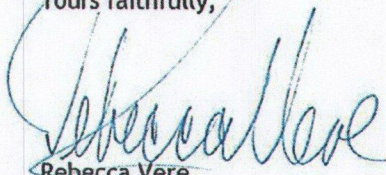
The thick native vegetation prevented access to all of the central and southern parts of the Swamp Sclerophyll Forest EEC, however the density of native vegetation (primarily *Melaleucas* and *Leptospermum*) is highly likely to exclude any significant weed infestations in this area.

During the survey, it was identified that the powerline easement was being used by members of the public to gain access to the site in vehicles, some of which have been damaged and/or vandalised and left on site.

Overall, the proposed offset area is in very good ecological condition, with only minor management actions required to address these identified issues.

I trust that this provides you with the information required for the OEH request. Please do not hesitate to contact me if you require any further discussion on this matter.

Yours faithfully,

  
Rebecca Vere  
Senior Ecologist