

EXAMPLE CONDITIONS PRECEDENT TO DRAWDOWN

[Guidance Note: Provider Build of New Supply Properties]

Provider builds of New Supply Properties may differ depending on whether the Provider already owns the land, or will need MSD funding to help acquire the land. Once the Provider has the land (or if it already owns the land), the development process will often look very similar.

Accordingly, the below table incorporates all the basic elements for Provider builds of New Supply Properties. It may be that one or more of the milestones are not relevant to the procurement, or two milestones are combined together, for any given procurement.

Where a Condition Precedent to Drawdown has already been satisfied under an earlier milestone, it may be suitable to remove it from this table (e.g., if resource consents have already been provided it may not be necessary to see them again). However, some conditions precedent may continue to remain relevant or may update as the development progresses (e.g., external finance may be subject to certain conditions during the land acquisition stage, but need to be an unconditional commitment for the construction stage.)

Drawdown Stage	Conditions
Drawdown for Milestone 1 Completion of Purchase Agreement	The Provider is to provide: <ul style="list-style-type: none"> the Provider's nominated bank account for deposit of the Upfront Development Cost Funding; a copy of the signed agreement for sale and purchase between the Provider (as purchaser) and [Vendor Entity] (as vendor) for the land being purchased for the New Supply Housing Project (Purchase Agreement), which provides for the: <ul style="list-style-type: none"> deposit (if any) to be held until settlement or cancellation of the Purchase Agreement; and settlement date under the Purchase Agreement to align with, or occur shortly after [insert relevant conditions for settlement date, for example, the issue of copies of all relevant resource consent(s) and building consent(s) for the New Supply Housing Project]; written confirmation from the Provider that all conditions contained within the Purchase Agreement are fully satisfied in all respects, and reasonable evidence of the same; written confirmation from the Provider of the settlement date under the Purchase Agreement, and reasonable evidence of the same;

	<ul style="list-style-type: none"> • copies of all relevant resource and building consents for the New Supply Housing Project; • if the Provider is or will receive funding from any external financier(s) to enable it to complete the New Supply Housing Project: <ul style="list-style-type: none"> ◦ evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has an unconditional and binding commitment from the external financier(s) that such funding will be provided; and ◦ where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; • a copy of an independent valuation from a registered valuer under the Valuers Act 1948 of the land being acquired under the Purchase Agreement on an “as is” and “as if complete” basis that demonstrates, to the reasonable satisfaction of MSD, that, respectively, the purchase price under the Purchase Agreement and the anticipated Development Costs are proportionate to the current and future value of the New Supply Housing Project; and • evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has sufficient financial resources to enable the completion of the New Supply Housing Project (which could include the Upfront Development Cost Funding, funding from external financiers, the Provider’s own financial resources, or a combination thereof).
Drawdown for Milestone 2 Entry into and commencement of construction contract	<p>The Provider is to provide</p> <ul style="list-style-type: none"> • [the Provider’s nominated bank account for deposit of the Upfront Development Cost Funding]; • [copies of all relevant resource consents and building consents for the New Supply Housing Project]; • a report from an independent quantity surveyor, who may be appointed jointly with the Provider’s external financiers, endorsed by a board member or trustee of the Provider certifying that: <ul style="list-style-type: none"> ◦ all required building consents and resource consents for the New Supply Housing Project are held and are not subject to any conditions that are likely not to be satisfied; ◦ they have seen and approved the form and content of any construction contract(s) and relevant subcontract(s) in relation to the New Supply Housing Project and that any such construction contract(s) (and to the extent relevant, any such

	<p>subcontract(s)) complies with the Project Management Plan and has been confirmed;</p> <ul style="list-style-type: none"> ○ the construction contract(s) and any relevant subcontracts include appropriate liquidated damages regimes to incentivise the full and timely performance and delivery of the New Supply Housing Project; ○ the contractor(s) that will be involved with the construction under such contract(s) are reputable contractors, to the best of his or her knowledge; ○ the procurement process undertaken in order to select the contractor(s) was fair and transparent and designed to obtain value-for-money; ○ the fees under the construction contract(s) are consistent with the New Supply Housing Project costings in the Project Management Plan, and are fair and reasonable given the nature of the New Supply Housing Project; and ○ confirmation that construction on the New Supply Housing Project has begun, or is expected to begin within one month from the date that that Drawdown Notice is submitted; <ul style="list-style-type: none"> • a copy of any construction contract(s) in relation to the New Supply Housing Project; • [if the Provider is or will receive funding from any external financier(s) to enable it to complete the New Supply Housing Project: <ul style="list-style-type: none"> ○ evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has an unconditional and binding commitment from the external financier(s) that such funding will be provided; and ○ where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; and] • [written confirmation that there have been no material adverse changes to any information previously provided by the Provider to MSD (whether under an earlier Condition Precedent to Drawdown or otherwise), which MSD has not previously been made aware of and consented to.]
Drawdown for Milestone 3 Completion of construction	<p>The Provider is to provide:</p> <ul style="list-style-type: none"> • a copy of the Code Compliance Certificate(s) for each of the New Supply Properties; and • a final project acquittal report in the form notified by MSD to the Provider from time to time, annexing a report from an independent quantity surveyor, who may be appointed

	jointly with the Provider's external financier(s), which confirms that the relevant milestones for Drawdown [4] have been met.
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[Guidance note: Turnkey]

Turnkey purchases are likely to involve either a single drawdown to complete the purchase, or two drawdowns to contribute towards the deposit, and then complete the purchase. Accordingly, instead of providing multiple options within one table to delete or add to, the two options are provided below in full.

Select and amend as appropriate.

Two Stage Drawdown for payment of deposit, then balance of funds on settlement]

Drawdown Stage	Conditions
Drawdown for Milestone 1 Deposit	<p>The Provider is to provide:</p> <ul style="list-style-type: none">• the Provider's nominated bank account for deposit of the Upfront Development Cost Funding;• copy of the signed Agreement for Sale and Purchase between the Provider (as purchaser) and [Vendor Entity] (as vendor) for the New Supply Properties (Purchase Agreement), which provides for the:<ul style="list-style-type: none">○ the construction, development, or procurement of the New Supply Properties in compliance with the Plans and Specifications;○ deposit (if any) to be held until settlement or cancellation of the Purchase Agreement; and○ settlement date under the Purchase Agreement to align with, or occur shortly after, the issue of the Code Compliance Certificate for all of the New Supply Properties;• written confirmation from the Provider that all conditions contained within the Purchase Agreement are fully satisfied in all respects, and reasonable evidence of the same;• if the Provider is or will receive funding from any external financier(s) to enable it to complete Purchase Agreement:<ul style="list-style-type: none">○ evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has a binding commitment from the external financier(s) that such funding will be provided, and that it is not subject to any conditions that are not likely to be satisfied;○ where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; and• evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has sufficient financial resources to enable the completion of the Purchase Agreement (which could include the Upfront Development Cost

	Funding, funding from external financiers, the Provider's own financial resources, or a combination thereof).
Drawdown for Milestone 2 Balance of Purchase Price	<p>The Provider is to provide:</p> <ul style="list-style-type: none"> • written confirmation from the Provider of the settlement date under the Purchase Agreement, and reasonable evidence of the same; • if the Provider is or will receive funding from any external financier(s) to enable it to complete the Purchase Agreement, confirmation and evidence to the reasonable satisfaction of MSD that the funding will still be provided; • if the Provider is or will receive funding from any external financier(s) to enable it to complete the New Supply Housing Project: <ul style="list-style-type: none"> ◦ evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has an unconditional and binding commitment from the external financier(s) that such funding will be provided; and ◦ where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; and • evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has sufficient financial resources to enable the completion of the Purchase Agreement (which could include the Upfront Development Cost Funding, funding from external financiers, the Provider's own financial resources, or a combination thereof); • written confirmation that there have been no material adverse changes to any information previously provided by the Provider to MSD (whether under an earlier Condition Precedent to Drawdown or otherwise), which MSD has not previously been made aware of and consented to; • a copy of the Code Compliance Certificate(s) issued for the New Supply Properties; • search copies of the computer registers or records of title for each of the New Supply Properties; and • a final project acquittal report in the form notified by MSD to the Provider from time to time.

[Single drawdown for payment of purchase price on settlement]

Drawdown for Milestone 1	<p>The Provider is to provide:</p> <ul style="list-style-type: none"> • the Provider's nominated bank account for deposit of the Upfront Development Cost Funding;
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	<ul style="list-style-type: none"> • copy of the signed Agreement for Sale and Purchase between the Provider (as purchaser) and [Vendor Entity] (as vendor) for the New Supply Properties (Purchase Agreement), which provides for the: <ul style="list-style-type: none"> ○ the construction, development, or procurement of the New Supply Properties in compliance with the Project Management Plan; and ○ settlement date under the Purchase Agreement to align with, or occur shortly after, the issue of the Code Compliance Certificate for all of the New Supply Properties; • written confirmation from the Provider that all conditions contained within the Purchase Agreement are fully satisfied in all respects, and reasonable evidence of the same; • written confirmation from the Provider of the settlement date under the Purchase Agreement, and reasonable evidence of the same; • if the Provider is or will receive funding from any external financier(s) to enable it to complete the New Supply Housing Project: <ul style="list-style-type: none"> ○ evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has an unconditional and binding commitment from the external financier(s) that such funding will be provided; and ○ where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; and • evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has sufficient financial resources to enable the completion of the Purchase Agreement (which could include the Upfront Development Cost Funding, funding from external financiers, the Provider's own financial resources, or a combination thereof); • a copy of the Code Compliance Certificate(s) issued for the New Supply Properties; • search copies of the computer registers or records of title for each of the New Supply Properties; and • a final project acquittal report in the form notified by MSD to the Provider from time to time.
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[Guidance note: Developer Build Partnership]

Developer build partnerships may take a variety of forms, and the different milestones and Conditions Precedent to Drawdown on each milestone will need to be carefully considered when preparing these forms of Agreements.

A general example of developer build partnerships is provided below to assist with developing the Agreement.]

Drawdown Stage	Conditions
Drawdown for Milestone 1	<p>The Provider is to provide</p> <ul style="list-style-type: none">• the Provider's nominated bank account for deposit of the Upfront Development Cost Funding;• a copy of the development agreement between the Provider (as purchaser) and [Developer Entity] (as developer) for the New Supply Housing Project (Development Agreement), which provides for the delivery (including the construction, development, or procurement) of the New Supply Properties in compliance with the Project Management Plan;• [a copy of the signed agreement for sale and purchase between the Provider (as purchaser) and [Vendor Entity] (as vendor) for the land being purchased for the New Supply Housing Project (Purchase Agreement), which provides for the:<ul style="list-style-type: none">○ deposit (if any) to be held until settlement or cancellation of the Purchase Agreement; and○ settlement date under the Purchase Agreement to align with, or occur shortly after, [insert relevant conditions for settlement date, for example, the issue of copies of all relevant resource consent(s) and building consent(s) for the New Supply Housing Project];]• a report from an independent quantity surveyor, who may be appointed jointly with the Provider's external financiers, endorsed by a board member or trustee of the Provider certifying that:<ul style="list-style-type: none">○ all required building consents and resource consents for the New Supply Housing Project are held and are not subject to any conditions that are likely not to be satisfied;○ they have seen and approved the form and content of any construction contract(s) and relevant subcontract(s) in relation to the New Supply Housing Project and that any such construction contract(s) (and to the extent relevant, any such subcontract(s)) complies with the Project Management Plan and has been confirmed;

Drawdown Stage	Conditions
	<ul style="list-style-type: none"> ○ the construction contract(s) and any relevant subcontracts include appropriate liquidated damages regimes to incentivise the full and timely performance and delivery of the New Supply Housing Project; ○ the contractor(s) that will be involved with the construction under such contract(s) are reputable contractors, to the best of his or her knowledge; ○ the procurement process undertaken in order to select the contractor(s) was fair and transparent and designed to obtain value-for-money; ○ the fees under the construction contract(s) are consistent with the New Supply Housing Project costings in the Project Management Plan, and are fair and reasonable given the nature of the New Supply Housing Project; and ○ confirmation that construction on the New Supply Housing Project has begun, or is expected to begin within one month from the date that that Drawdown Notice is submitted; • a copy of any construction contract(s) in relation to the New Supply Housing Project; • if the Provider is or will receive funding from any external financier(s) to enable it to complete the New Supply Housing Project: <ul style="list-style-type: none"> ○ evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has an unconditional and binding commitment from the external financier(s) that such funding will be provided; and ○ where an external financier has required any other quantity surveyor or similar report as a condition of or in relation to its funding, a copy of that report; and • evidence that demonstrates, to the reasonable satisfaction of MSD, that the Provider has sufficient financial resources to enable the completion of the New Supply Housing Project (which could include the Upfront Development Cost Funding, funding from external financiers, the Provider's own financial resources, or a combination thereof).
Drawdown for Milestone 2	<p>The Provider is to provide:</p> <ul style="list-style-type: none"> • a copy of the Code Compliance Certificate(s) for each of the New Supply Properties; and • a final project acquittal report in the form notified by MSD to the Provider from time to time, annexing a report from an independent quantity surveyor, who may be appointed

Drawdown Stage	Conditions
	jointly with the Provider's external financier(s), that the relevant milestones for Drawdown [2] have been met.

[Guidance note: Provider Lease of New Supply Properties

It is envisaged that most, if not all, Provider lease arrangements of all New Supply Properties will not include any Upfront Development Funding Costs, and instead an Operating Supplement will be used to cover the costs of delivering the New Supply Properties over the term of the Agreement.

Accordingly, there are no Conditions Precedent to Drawdown.]

Drawdown Stage	Conditions
N/A	N/A