

# Deed of Amendment to St Mary's Development Agreement

Dated

24 May 2004

The Minister for Infrastructure and Planning ("Minister")  
Roads and Traffic Authority of New South Wales ("RTA")  
The Council of the City of Blacktown ("Blacktown Council")  
The Council of the City of Penrith ("Penrith Council")  
St Mary's Land Limited ABN 32 088 278 602 ("Landowner")  
Lend Lease Development Pty Limited ABN 33 000 311 277 ("LLD")  
ComLand Limited ABN 85 088 278 451 ("ComLand")  
Lend Lease Corporation Limited ABN 32 000 226 228 ("LLC")

**Mallesons Stephen Jaques**

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Governor Phillip Tower  
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# Deed of Amendment to St Mary's Development Agreement

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# Deed of Amendment to St Mary's Development Agreement

## Details

**Interpretation** – definitions are at the end of the General Terms

<b>Parties</b>	<b>Minister, RTA, Blacktown Council, Penrith Council, Landowner, LLD, ComLand and LLC</b>	
<b>Minister</b>	<b>Name</b>	<b>The Minister for Infrastructure and Planning</b>
	<b>Address</b>	Level 31, Governor Macquarie Tower, 1 Farrer Place Sydney NSW 2000
<b>RTA</b>	<b>Name</b>	<b>Roads and Traffic Authority of New South Wales</b>
	<b>Address</b>	Centennial Plaza 260 Elizabeth Street Surry Hills NSW 2010
<b>Blacktown Council</b>	<b>Name</b>	<b>The Council of the City of Blacktown</b>
	<b>Address</b>	62 Flushcombe Road Blacktown NSW 2148
<b>Penrith Council</b>	<b>Name</b>	<b>The Council of the City of Penrith</b>
	<b>Address</b>	Civic Centre 601 High Street Penrith NSW 2750
<b>Landowner</b>	<b>Name</b>	<b>St Mary's Land Limited</b>
	<b>ABN</b>	32 088 278 602
	<b>Address</b>	Level 1 15 Torrens Street Braddon ACT 2612
<b>LLD</b>	<b>Name</b>	<b>Lend Lease Development Pty Limited</b>
	<b>ABN</b>	33 000 311 277
	<b>Address</b>	Level 4

30 The Bond  
30 Hickson Road  
Millers Point NSW 2000

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<b>ComLand</b>	<b>Name</b>	<b>ComLand Limited</b>
	<b>ABN</b>	85 088 278 451
	<b>Address</b>	Level 1 15 Torrens Street Braddon ACT 2612

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<b>LLC</b>	<b>Name</b>	<b>Lend Lease Corporation Limited</b>
	<b>ABN</b>	32 000 226 228
	<b>Address</b>	Level 4 30 The Bond 30 Hickson Road Millers Point NSW 2000

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#### **Recitals**

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<b>A</b>	On 13 December 2002 the Parties entered into the Original Document.
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<b>B</b>	On 22 January 2004, the Commonwealth entered into an agreement with LLD (ComLand) Pty Limited for the sale of all its shares in the issued capital of ComLand.
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<b>C</b>	The State Parties consent to the transfer on the condition that LLC guarantees the obligations of Comland and the Landowner on the terms provided for in schedule 1 to this deed.
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<b>D</b>	Under the Original Document LLC has guaranteed the obligations of LLD and ComLand has guaranteed the obligations of the Landowner.
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<b>E</b>	The Parties agree to vary the Original Document on the terms contained in this deed.
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<b>Original Document</b>	St Mary's Development Agreement dated 13 December 2002 between the Parties.
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<b>Governing law</b>	New South Wales
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<b>Date of Amending Deed</b>	See Signing page
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# **Deed of Amendment to St Mary's Development Agreement**

## **General terms**

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### **1 Consent and Amendments**

#### **1.1 Consent of the State Parties**

The Minister and RTA consent, for the purposes of clause 9 of the Original Document, to the sale of all issued shares in the capital of ComLand to LLD (ComLand) Pty Ltd, a wholly owned subsidiary of LLD.

#### **1.2 Amendments**

As from the Effective Date, the Original Document is varied as set out in schedule 1.

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### **2 Confirmation and Ratification of ComLand and LLC**

ComLand and LLC confirm and ratify each of their respective obligations under clauses 23 and 24 of the Original Document notwithstanding:

(a) the amendments made by this deed to the Original Document;

(b) the obligations undertaken by LLC under and by virtue of the Original Document as amended by this deed.

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### **3 Confirmation and acknowledgement**

#### **3.1 Confirmation**

Each party confirms that, other than as provided for in clause 1 ("Consent and Amendments"), the Original Document remains in full force and effect.

#### **3.2 Conflict**

If there is a conflict between the Original Document and this deed, the terms of this deed prevail.

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### **4 Costs**

LLC agrees to pay or reimburse each other party the reasonable costs in connection with the execution of this deed.

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## 5 Non-execution by ComLand and the Landowner

The Minister, RTA, LLD and LLC acknowledge and agree that this deed will be binding as between them whether or not the other Parties sign this deed. In particular, LLC will be deemed, for all purposes, to have provided for the benefit of the Minister and the RTA a guarantee and indemnity on the terms of Schedule 1, from the date of execution of this deed by LLC, LLD, the Minister and the RTA whether or not the other Parties sign this deed.

Without limitation, LLC and LLD agree to procure execution of this deed by ComLand and the Landowner as soon as practicable after LLC and LLD sign this deed.

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## 6 General

Clauses 1 ("Definitions and Interpretations") and 10 ("Miscellaneous") of the Original Document apply to this deed as if they were fully set out in this deed.

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## 7 Governing law

This deed is governed by the law in force in the place specified in the Details and each party submits to the non-exclusive jurisdiction of the courts of that place.

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## 8 Execution by counterpart

Without limiting clause 5, the Parties acknowledge and agree that this deed may be signed by one or more Parties signing separate counterparts and upon execution of those counterparts, this deed shall be binding as between the Parties as if each Party had signed each counterpart of this deed.

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## 9 Interpretation

These meanings apply unless the contrary intention appears:

**Commonwealth** means the Commonwealth of Australia.

**Effective Date** means the date of this deed.

**LLD ComLand** means LLD (ComLand) Pty Limited ABN 59 107 447 772.

**Original Document** means the document so described in the Details.

**Party** means a party to this deed.

**EXECUTED** as a deed

# Deed of Amendment to St Mary's Development Agreement

## Schedule 1 - Amendments

As from the Effective date, the Original Document is varied as follows:

### A.

Clause 2.5 ("Guarantee") is replaced by the following:

" LLC has agreed to guarantee

(a) the Guaranteed Obligations of LLD; and

(b) the Guaranteed Obligations of ComLand and the Landowner under this deed in accordance with the terms set out in Part 4."

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### B.

## 25 Guarantee and Indemnity by LLC in respect of the obligations of the Landowner and ComLand

### Guaranteed Party

The obligations of LLC as Guarantor under this clause 25 are in addition to the obligations of LLC under clause 23.

To the extent that the Guaranteed Obligations for the purposes of this clause 25 are the same as the Guaranteed Obligations for the purposes of clause 24, the obligations of LLC under clause 25 and the obligations of ComLand under clause 24 are joint and several.

All Parties other than Blacktown Council and Penrith Council acknowledge and agree that this deed will be binding as between them, whether or not Blacktown Council or Penrith Council execute this deed.

25.1 In this clause:

**"Guaranteed Party"** means the State Party.

**"Guaranteed Obligations"** means all agreements, conditions, covenants, provisions, obligations and liabilities expressed or implied on the part of the Parties Liable to be performed, observed or complied with under Part 2 and Part 4 of this deed in favour of the Guaranteed Party as varied from time to time by the relevant Parties.

**"Guarantor"** means LLC

**"Parties Liable"** means:

(a) St Marys Land Limited in each of its capacities under this deed including as Landowner and as one of the persons comprising, and having a several half interest in, the Joint Venture and being liable severally for a one half share of the obligations, liabilities and responsibilities of the Joint Venture under this deed to the extent the Joint Venture is liable to comply with or satisfy a Guaranteed Obligation under this deed; and

(b) ComLand Limited in its capacity as Guarantor for the purposes of Part 4 of this deed.

### **Guarantee**

25.2 The Guarantor irrevocably guarantees to the Guaranteed Party the due and punctual performance and observance by the Parties Liable of the Guaranteed Obligations.

25.3 If the Parties Liable do not perform or observe the Guaranteed Obligations on time and in accordance with the provisions of the deed, then the Guarantor agrees to procure the Parties Liable to perform and observe such of the Guaranteed Obligations for the benefit of the Guaranteed Party on demand from the Guaranteed Party (provided a demand has been made by the Guaranteed Party on either of the Parties Liable).

### **Indemnity**

25.4 The Guarantor irrevocably indemnifies the Guaranteed Party for all damages (including costs and expenses of enforcing the Guarantor's obligations under this clause 25) which it incurs or suffers because either of the Parties Liable fail to duly and punctually perform and observe the Guaranteed Obligations, provided that the liability of the Guarantor under this clause 25.4 is (subject to clause 25.12) limited to the maximum amount of damages for which either of the Parties Liable may become liable to the Guaranteed Party in respect of the Guaranteed Obligations, assuming that the Parties Liable remain duly incorporated at all relevant times and assuming that the Guaranteed Obligations are not invalid, void, voidable or irrecoverable and are fully enforceable and on the basis that the Guaranteed Party has a duty to mitigate damages to the extent (if any) that it has such a duty to mitigate damages to the Parties Liable.

25.5 The indemnity in clause 25.4 includes any damages (including costs and expenses of enforcing the Guarantor's obligations under this clause 25) which the Guaranteed Party may suffer because:

- (a) the liability to perform or observe the Guaranteed Obligations is unenforceable in whole or in part as a result of a lack of capacity, power or authority or the improper exercise of a power or authority; or
- (b) the Guaranteed Obligations are rescinded or terminated by the Guaranteed Party for any reason, but only to the extent that the Parties Liable remain liable for or in connection with the Guaranteed Obligations in such circumstances; or

- (c) either of the Parties Liable disregard an order for specific performance of the Guaranteed Obligations; or
- (d) an Insolvency Event occurs in respect of either of the Parties Liable; or
- (e) the Guaranteed Obligations are not or have never been enforceable against the Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever, including any transaction relating to the Guaranteed Obligations being void, voidable or unenforceable and whether or not the Guaranteed Party knew or should have known anything about that transaction,

provided that the liability of the Guarantor under this clause 25.5 is (subject to clause 25.12) limited to the maximum amount for which either of the Parties Liable may become liable to the Guaranteed Party in respect of the Guaranteed Obligations, assuming that the Parties Liable remain duly incorporated at all relevant times and assuming that the Guaranteed Obligations are not invalid, void, voidable or irrecoverable and are fully enforceable and on the basis that the Guaranteed Party has a duty to mitigate damages to the extent (if any) that it has such a duty to mitigate damages to the Parties Liable.

25.6 Deleted.

#### **Extent of Guarantee and Indemnity**

25.7

- (a) The guarantee provided in clause 25.2 and the indemnity provided in clause 25.4 are a continuing security and extend to all of the Guaranteed Obligations. Subject to clause 25.7(b), the Guarantor waives any right it has of first requiring the Guaranteed Party to commence proceedings or to enforce any other right against either of the Parties Liable or any other person before claiming from the Guarantor under this deed.
- (b) Any amount which the Guarantor is liable to pay the Guaranteed Party under clause 25.2, 25.3 and 25.4 must be paid within 14 days of a demand being made by the Guaranteed Party on the Guarantor. Any such demand must:
  - (i) be in writing;
  - (ii) state that it is made under clause 25.2, 25.3 or 25.4;
  - (iii) state and provide details of the amount being demanded and confirm that:
    - (A) a written demand for payment of the amount has been made on either of the Parties Liable by the Guaranteed Party;

- (B) at least 14 days have passed since the demand on either of the Parties Liable was made; and
- (C) the demand on either of the Parties Liable remains unsatisfied; and

be signed by the Guaranteed Party.

### **Preservation of the Guaranteed Party's rights**

25.8 The liabilities under this deed of the Guarantor as a guarantor or an indemnifier and the rights of the Guaranteed Party under this deed are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person):

- (a) the Guaranteed Party or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with or wholly or partially releasing either of the Parties Liable, any other indemnifier or another person in any way; or
- (b) laches, acquiescence, delay, acts, omissions or mistakes on the part of the Guaranteed Party or another person or both the Guaranteed Party and another person; or
- (c) any variation or novation of a right of the Guaranteed Party or another person, or any material alteration of this deed, in respect of either of the Parties Liable, the Guarantor or another person (other than to the effect of a variation or alteration agreed in writing by the relevant Parties); or
- (d) the transaction of business, expressly or impliedly, with, for or at the request of either of the Parties Liable, the Guarantor or another person; or
- (e) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise whether or not the Guarantor or another person was a member; or
- (f) a Security Interest being void, voidable or unenforceable; or
- (g) a person dealing in any way with a Security Interest, guarantee, judgment or negotiable instrument (including, without limitation, taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it); or
- (h) the death of any person or an Insolvency Event occurring in respect of any person; or
- (i) a change in the legal capacity, rights or obligations of a person; or

- (j) the fact that a person is a trustee, nominee, joint owner, or a member of a partnership or firm; or
- (k) a judgment against either of the Parties Liable or another person; or
- (l) the receipt of a dividend after an Insolvency Event or the payment of a sum or sums into the account of either of the Parties Liable or another person at any time (whether received or paid jointly, jointly and severally or otherwise); or
- (m) any part of the Guaranteed Obligations being irrecoverable; or
- (n) an assignment of rights in connection with the Guaranteed Obligations; or
- (o) the acceptance (by the Guaranteed Party) of repudiation (by either of the Parties Liable) or other termination (by the Guaranteed Party) in connection with the Guaranteed Obligations other than a termination for default by the Guaranteed Party; or
- (p) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor; or
- (q) invalidity or irregularity in the execution of this deed by any Guarantor or any deficiency in or irregularity in the exercise of the powers of any Guarantor to enter into or observe its obligations under this deed; or
- (r) any obligation of either of the Parties Liable or any other Guarantor being discharged by operation of Law or otherwise; or
- (s) property secured under a Security Interest being forfeited, extinguished, surrendered, resumed or determined; or
- (t) because any other person who was intended to enter into this deed or otherwise become a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this deed has not done so or has not done so effectively; or
- (u) because a person who is a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this deed is discharged under an agreement or under statute or a principle of law or equity.

### **Suspension of Guarantor's rights**

25.9 As long as the Guaranteed Obligations are due and remain unpaid and uncompensated, the Guarantor cannot without the consent of the Guaranteed Party:

- (a) in reduction of its liability under this deed, raise a defence, set-off or counterclaim available to itself, either of the Parties Liable or a co-surety or co-indemnifier against the Guaranteed Party in respect of

any matter that does not arise under or in connection with this deed or in relation to the Development; or

- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a Security Interest or guarantee or a share in it now or subsequently held for the Guaranteed Obligations.

#### **Other securities and obligations of Guarantor**

25.10 The Guaranteed Party's rights under this deed are additional to and do not merge with or affect and are not affected by:

- (a) any Security Interest now or subsequently held by the Guaranteed Party from either of the Parties Liable, the Guarantor or any other person; or
- (b) any other obligation of the Guarantor to the Guaranteed Party,

notwithstanding any rule of law or equity or any statutory provision to the contrary.

#### **Reinstatement of the Guaranteed Party's rights**

25.11 If a claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in connection with the Guaranteed Obligations or other money payable under this clause is void or voidable under any Law relating to Insolvency Events or the protection of creditors and the claim is upheld, conceded or compromised, then:

- (a) the Guaranteed Party is entitled immediately as against the Guarantor to the rights in respect of the Guaranteed Obligations or other money payable under this deed to which it would have been entitled if all or that part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and
- (b) promptly on request from the Guaranteed Party, the Guarantor agrees to do any act and sign any document reasonably required by the Guaranteed Party to restore to the Guaranteed Party any Security Interest or guarantee held by it from the Guarantor immediately prior to that payment, obligation, settlement, transaction, conveyance or transfer.

#### **Dollar Cap and Limitation on Guarantee and Indemnity**

25.12 Despite any other provision in this deed:

- (a) The aggregate maximum liability of the Guarantor under this clause 25 in relation to the Guaranteed Obligations is \$15,000,000 indexed in the same manner as amounts are indexed under clause 1.15 (and upon the basis the "D" where used in clause 1.15 means the Index most recently published before the date of this Development Deed dated 13 December 2002) and the Joint Venture cannot develop any

Precinct other than the Eastern and Dunheved Precincts until paragraphs (f) and (g) are satisfied.

- (b) The Parties agree that the aggregate maximum liability has been calculated to reflect one half of the agreed monetary value of the approximate liability of the Joint Venture in relation to the Guaranteed Obligations until completion of development of the Eastern and Dunheved Precincts at the date of this deed, as follows:
  - (i) obligations under clauses 11 and 12 (Regional Park and Regional Open Space): \$2,050,000;
  - (ii) obligations under clause 16 (Transport): \$5,000,000;
  - (iii) obligations under clause 17 (Affordable Housing): \$12,000,000; and
  - (iv) remaining obligations under Part 2 of this deed in favour of the Guaranteed Party together with contingency: \$10,950,000.
- (c) The Guarantor may notify the Minister when it believes that the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts have been completed, but this notification has no bearing on the duration of this guarantee.
- (d) Subject to paragraph (e), all obligations of the Guarantor under this clause 25 in relation to the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts shall be released in respect of any claim made by the Guaranteed Party under this clause 25 after the date which is the earlier of:
  - (i) the date on which the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts have been completed; and
  - (ii) 10 years after the Commencement Date ("***Precinct Completion Date***").
- (e) (i) If the Guarantor assesses that the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts will not be completed by the Precinct Completion Date:
  - (A) it must give the Minister at least 12 months notice of the Guarantor's assessment of the date on which the Guarantor assesses that the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts will be completed;
  - (B) the Precinct Completion Date will be replaced with that date; and
  - (C) paragraphs (c), (d) and (e) will apply to that replacement date.

- (ii) Unless paragraph (d)(i) or (e)(i) applies, the Precinct Completion Date automatically extends by 12 months and this paragraph will reapply to the extended Precinct Completion Date.
- (f) Before the commencement of any Precinct other than the Eastern and Dunheved Precincts, the Minister (on behalf of the Guaranteed Party) and the Guarantor must negotiate in good faith to endeavour to agree on:
  - (i) the aggregate maximum liability of the Guarantor under this clause 25 in relation to the Guaranteed Obligations during the development of that Precinct, taking into account any existing guarantee given by the Guarantor under this clause 25 or any deed of guarantee; and
  - (ii) the Precinct Completion Date for that Precinct.
- (g) When the Minister and the Guarantor reach agreement on the matters referred to in paragraph (f) in relation to a Precinct, they will enter into a deed of guarantee for that Precinct on the terms and conditions of this clause 25, including this clause 25.12, with appropriate amendments made to clauses 25.12(a) and (b) to document the agreement reached for that Precinct.
- (h) The Guaranteed Party acknowledges that the Guarantor will have no liability or obligation under or for breach of clauses 25.2, 25.3 and 25.4 in excess of the maximum amount for which either of the Parties Liable may become liable to the Guaranteed Party (together with the costs and expenses of enforcing the Guarantor's obligations under this clause 25), assuming the Guaranteed Obligations are not invalid, void, voidable or irrecoverable and are fully enforceable and assuming the Parties Liable remain duly incorporated at all relevant times; and
- (i) The extent of the Guarantor's obligations under clauses 25.2, 25.3 and 25.4 in relation to a Guaranteed Obligation is to be no greater than one half of the monetary value of the liability of the Joint Venture in relation to the relevant Guaranteed Obligation, assuming the Guaranteed Obligation is not invalid, void, voidable or irrecoverable and is fully enforceable and assuming both parties comprising the Joint Venture remain duly incorporated at all relevant times.

## **Release of Guarantee**

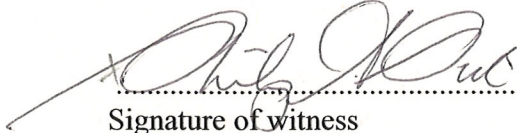
- 25.13 If the Minister consents to the assignment or novation of the obligations of either of the Parties Liable under this deed in accordance with clause 9, then the Guarantor will have no liability to the Guaranteed Party in respect of the Guaranteed Obligations as from the date such assignment or novation becomes effective other than for those which arise before the date of such assignment or novation.

# Deed of Amendment to St Mary's Development Agreement

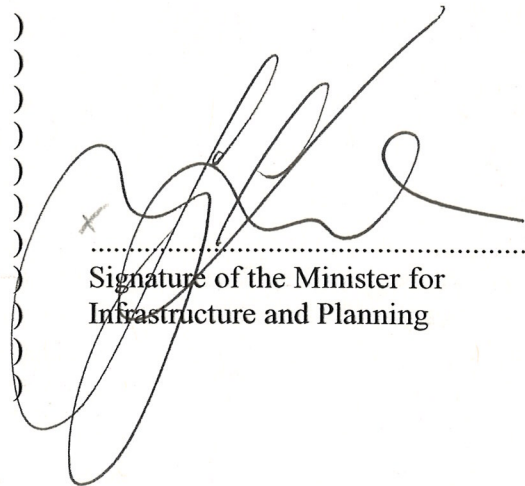
## Signing page

DATED: 24 May 2004

SIGNED, SEALED AND  
DELIVERED by the MINISTER  
FOR INFRASTRUCTURE AND  
PLANNING in the presence of:

  
Signature of witness

PHILIP A. PICK  
Name of witness (block letters)

  
Signature of the Minister for  
Infrastructure and Planning

SIGNED, SEALED AND  
DELIVERED by ROADS AND  
TRAFFIC AUTHORITY OF NEW  
SOUTH WALES in the presence of:

  
Signature of witness

MELISSA HENNESSY  
Name of witness (block letters)

  
Signature of

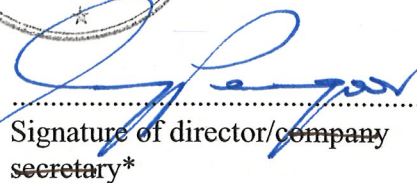
**M J Najem**  
GENERAL MANAGER,  
LEGAL BRANCH

EXECUTED by ST MARY'S  
LAND LIMITED in accordance  
with section 127(1) of the  
Corporations Act by authority of its  
directors:

  
Signature of director

Lawrence Michael Rynne  
Name of director (block letters)



  
Signature of director/company  
secretary\*

\*delete whichever is not applicable

Eng Peng Ooi  
Name of director/company secretary\*  
(block letters)

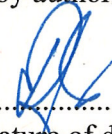
\*delete whichever is not applicable

SIGNED, SEALED AND  
DELIVERED  
by **KENNETH LESLIE JAMES**  
as attorney for **LEND LEASE  
DEVELOPMENT PTY LIMITED**  
under power of attorney registered  
book **4425** no. **101** in the presence  
of:

  
Signature of witness

**MELISSA J HENNESSY**  
Name of witness (block letters)

EXECUTED by **COMLAND  
LIMITED** in accordance with  
section 127(1) of the Corporations  
Act by authority of its directors:

  
Signature of director

**Lawrence Michael Rynne**  
Name of director (block letters)



Signature of director/company  
secretary\*


\*delete whichever is not applicable

**Eng Peng Ooi**


Name of director/company secretary\*  
(block letters)

\*delete whichever is not applicable

SIGNED, SEALED AND  
DELIVERED  
by **KENNETH LESLIE JAMES**  
as attorney for **LEND LEASE  
CORPORATION LIMITED** under  
power of attorney registered book **4424**  
no. **888** in the presence of:

  
Signature of witness

**MELISSA J HENNESSY**  
Name of witness (block letters)

  
By executing this deed the attorney  
states that the attorney has received  
no notice of revocation of the power  
of attorney