

CLAYTON UTZ

Planning Agreement

The Minister for Planning

ABN 38 755 709 681

Minister

The Minister for Climate Change and the Environment

ABN 30 841 387 271

Minister for the Environment

Misthold Pty Limited

ABN 59 054 079 739

and

Huntlee Pty Ltd in its capacity as bare trustee of the Relevant Partnership

ABN 73 143 744 745

Collectively, the Land Owner

Contents

1. Definitions and Interpretation 1

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1.1	Definitions	1
1.2	Interpretation	7
2.	Status of this Agreement	8
3.	Planning Agreement under the Act	8
4.	Application of the Planning Agreement	8
5.	Development Contributions	8
6.	Acknowledgements	8
7.	Enforcement.....	9
7.1	Enforcement.....	9
7.2	No prevention to enforcement	9
8.	Application of sections 94, 94A and 94EF of the Act to the Development.....	9
9.	Interests in the Land.....	10
9.1	Ownership	10
9.2	Registration of the Planning Agreement	11
9.3	Release and discharge of this Planning Agreement	12
9.4	Caveat.....	12
9.5	Lot 5.....	13
9.6	Consent of Financier	14
10.	Review or replacement of this Planning Agreement.....	14
11.	Dispute resolution	15
12.	GST	15
12.1	Interpretation	15
12.2	Reimbursement.....	15
12.3	Consideration GST exclusive	15
12.4	Additional amount of GST payable	15
12.5	Variation.....	16
12.6	Exchange of non-monetary consideration	16
12.7	Adjustments	16
12.8	No merger	16
13.	Obligations under this Planning Agreement and Re-Transfer of the Conservation Offset Lands	17
13.1	Obligations under this Planning Agreement.....	17
13.2	Re-transfer of the Conservation Offset Lands.....	18
13.3	Minister for the Environment's obligations to re-transfer Conservation Offset Lands and repay Contribution Amount	19
13.4	Not used.....	21
13.5	Land Owner, Minister and Minister for the Environment to meet.....	21
14.	Release and indemnity	21
15.	Overdue Payments	22
16.	Explanatory Note	22
17.	Effect of Scheduled terms and conditions.....	22

18. General provisions	22
Schedule 1 - Section 93F Requirements.....	23
Schedule 2 – Land and Conservation Offset Lands	25
Schedule 3 - Development Contributions Schedule	30
Schedule 4 - Development Contribution Procedures	32
Schedule 5 - Development Contributions Timetable	39
Schedule 6 - Release and Discharge Terms.....	41
Schedule 7 - Review or Replacement Procedures	43
Schedule 8 - Dispute resolution	44
Schedule 9 - Not used.....	48
Schedule 10 - Assignment and Dealing Terms	49
Schedule 11 - General terms	51
Annexure A - Novation Deed	57
Annexure B - Plan of Subdivision for the Huntlee Conservation Offset Lands (780 ha).....	63

Agreement made at **SYDNEY** on **3 DECEMBER 2010**

Parties

The Minister for Planning ABN 38 755 709 681 of Level 34 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (**Minister**)

The Minister for Climate Change and the Environment ABN 30 841 387 271 of Level 35 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (**Minister for the Environment**)

Misthold Pty Limited ABN 59 054 079 739 (Misthold) and Huntlee Pty Ltd ABN 73 143 744 745 in its capacity as bare trustee of the Relevant Partnership (**Huntlee**) c/- LWP Property Group, 34 Main Street, Ellenbrook WA 6069 (Collectively, the **Land Owner**)

Background

- A. The Land Owner is or will be the owner of the Land.
- B. The Land Owner intends to develop the Land.
- C. The Land Owner seeks a change to an environmental planning instrument (being the Major Development SEPP).
- D. The Land Owner intends to lodge Part 3A project applications for the Development in accordance with the Major Development SEPP, once amended, seeking Approval for the Development on a stage by stage basis.
- E. By way of this deed, the Land Owner offers to enter into a planning agreement on the terms and conditions of this deed.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

The meaning of capitalised terms and the provisions relating to the interpretation of the Planning Agreement are as follows:

Act means the Environmental Planning and Assessment Act, 1979 (NSW).

Appeal means an appeal (including an application for any kind of leave to appeal) in a Court of competent jurisdiction against the decision of a lower court.

Appeal Notice means:

- (a) in proceedings in the Court of Appeal:
 - (i) an application for leave to Appeal;
 - (ii) a Notice of Intention to Appeal; or
 - (iii) if a valid Notice of Intention to Appeal has been lodged, a Notice of Appeal; and
- (b) in proceedings in the High Court, an application for Special Leave to Appeal.

Application means an application for any Approval.

Approval means any approvals, consents, Modifications, Part 4A Certificates, Part 3A approvals (within the meaning of the Act), certificates, Construction Certificates, Compliance Certificate, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by law for the Development or for the commencement or carrying out of works contemplated by this deed.

Assignment and Dealing Terms means the obligations imposed on the relevant Parties under, and by virtue of Schedule 10.

ASX Listing Rules means the listing rules established by ASX Limited ACN 008 624 691 to, inter alia, govern the admission of entities to the official list, quotation of securities, suspension of securities from quotation and removal of entities from the official list.

Audit Report has the meaning given to that term in paragraph 2A.1(b) of Schedule 4.

Authorised Officer means, in the case of any Party, a director or secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them, or any other person appointed by that Party to act as an Authorised Officer for the purpose of this Planning Agreement.

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, person or entity and includes an accredited certifier accredited under section 109T of the Act.

Bank Bill Rate means, the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate, **Bank Bill Rate** means:

- (a) the rate the Minister calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Minister which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the Minister is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Minister in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The Minister may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the "BBSY" page by 11:00 am and there is no obvious error in it, the "BBSY" page rate applies as the Bank Bill Rate under this deed despite any calculation by the payee under paragraph (a) or (b).

Bill means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cwlth), but does not include a cheque.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at Law, in equity, under statute or otherwise, including (without limitation), any claim for compensation arising under or pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991*.

Compliance Certificate means a certificate referred to in section 109C(1)(a) of the Act.

Complying Development Certificate means a complying development certificate referred to in section 85 of the Act.

Consent Authority means, in relation to an Application, the Authority having the function to determine the Application.

Conservation Offset Lands means the land comprised in, or formerly comprised in (as the case may be), the lots described in Table 2 of Schedule 2.

Contribution Amount means the amount set out in Item 2 in Column 1 in Table 1 in Schedule 3.

Construction Certificate means a certificate issued under section 109C(1)(b) of the Act.

Controller has the meaning given to that term in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cwlth).

Costs includes costs, charges and expenses, including those incurred in connection with advisers.

Court means the New South Wales Land and Environment Court or any other court of competent jurisdiction.

Development means the development of up to approximately 7,500 Dwellings, up to approximately 200 hectares of employment lands and certain conservation lands on a stage by stage basis and which may comprise, subject to any amendments necessary:

- (a) up to approximately 5,600 Dwellings in residential zones of varying sizes;
- (b) employment lands including a mixed use town centre which may include up to approximately 1,700 Dwellings;
- (c) rural residential development covering up to approximately 93 hectares to achieve up to approximately 200 lots;
- (d) the provision of associated infrastructure including upgrades to road, sewerage and water infrastructure;
- (e) dedication to the Minister of certain conservation lands;
- (f) dedication to the Minister of Persoonia Park; and
- (g) dedication to the Minister of certain conservation lands elsewhere within the Lower Hunter Region.

Development Contributions means the contributions specified in Table 1 of Schedule 3.

Development Contributions Procedures means the development contribution procedures set out in Schedule 4 of this Planning Agreement.

Development Contributions Schedule means the schedule for the Development Contributions set out in Schedule 3 of this Planning Agreement.

Development Contributions Timetable means the timetable and milestones for the Development Contributions described in Table 1 in Schedule 5 of this Planning Agreement.

Dispute Resolution Procedures means the procedures imposed on the relevant Parties under Schedule 8.

Dwelling means a room or suite of rooms occupied or used or so developed or adapted as to be capable of being occupied or used as a separate residential domicile.

Environmental Audit has the meaning given to that term in paragraph 2A of Schedule 4.

Environmental Auditor means RPS Pty Limited or such other auditor as nominated by the Land Owner and as agreed by the Minister and the Minister for the Environment.

Environmental Contribution means the Development Contribution set out at Item 2 of Table 1 in Schedule 3.

Explanatory Note means the note exhibited with a copy of this Planning Agreement, when this Planning Agreement is made available for inspection by the public in accordance with the Act, as contemplated by clause 25E of the *Environmental Planning & Assessment Regulation 2000*.

Financier means any chargee and/or financier of the Land Owner, including without limitation a financier who holds a mortgage over any part of the Land or the Conservation Offset Lands (as the case may be).

Gazettal Date means the date that the Major Development SEPP Amendment commences being the later of the date the Major Development SEPP Amendments is published on the NSW legislation website or such later commencement date as specified in the Major Development SEPP Amendment.

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

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

Land means the land comprised in, or formerly comprised in (as the case may be), the lots described in Table 1 of Schedule 2.

Law means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,

presently applying or as they may apply in the future.

Legislation means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by an Authority.

Lot 5 means that part of Lot 5 in Deposited Plan 1108112 that forms part of the Conservation Offset Lands and is subject to the Plan of Subdivision.

Lot 241 has the meaning given to that term in clause 9.1(a).

LPMA means Land and Property Management Authority NSW or any similar department that may be established from time to time.

Major Development SEPP means State Environmental Planning Policy (Major Development) 2005.

Major Development SEPP Amendment means the amendment to the Major Development SEPP in order to permit (with approval) the Development.

Minister means the New South Wales Minister for Planning.

NSW means the State of New South Wales.

Occupation Certificate means a certificate referred to in section 109C(1)(c) of the Act and which may be interim or final as provided for in section 109C(2) of the Act.

Part 4A Certificate means a certificate referred to in section 109C(1)(a), (b), (c) or (d) of the Act.

Part Lot 34 has the meaning given to that term in clause 9.1(a).

Party means a party to this Planning Agreement, including their respective successors and assigns.

Perpetual Lease Land has the meaning given to that term in clause 9.1(d)(ii).

Plan of Subdivision means a plan of subdivision within the meaning of section 195 of the *Conveyancing Act* 1919 (NSW) to be Registered to, amongst other things, create separate lots for part of the Conservation Offset Lands generally in accordance with the plan attached at Annexure D.

Planning Agreement means the planning agreement that comes into operation upon satisfaction of the requirements set out in clause 2(b), comprising the form and content of this deed.

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

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

Registered means registered with the LPMA.

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

Related Body Corporate has the meaning given to that term in section 9 of the Corporations Act.

Release and Discharge Terms means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 6.

Relevant Legal Challenge means proceedings in a Court in which a declaration that the Major Development SEPP or the Major Development SEPP Amendment is invalid is sought, and includes, but is not limited to, any proceedings in which such a declaration is sought which are heard on remitter from another Court following an Appeal.

Relevant Partnership means the partnership of which Huntlee is the bare trustee (and in that capacity has entered into the Planning Agreement), details of which were supplied to the Minister's solicitors before Huntlee signed this Planning Agreement.

Relevant Partnership Deed means the deed which establishes the Relevant Partnership, a true copy of which was supplied to the Minister's solicitors before Huntlee signed this Planning Agreement.

Residential Lot means each lot forming part of the Land identified in any Application for subdivision of the whole, or any part of the Land (including a stratum) which lot is intended to be developed for residential purposes.

Review or Replacement Procedures means the procedures set out in Schedule 7.

State means the State of New South Wales.

State Environmental Planning Policy means a State Environmental Planning Policy created under the Act.

State Forest Land has the meaning given to that term in paragraph 2B.1 of Schedule 4.

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

Suspension Expiry Date means the date on which the Suspension Period ends.

Suspension Period means the period of time from and including the date on which a document initiating a Relevant Legal Challenge has been served on the Minister and the Land Owner and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
 - (i) the Relevant Legal Challenge is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Relevant Legal Challenge; or
 - (iii) for any other reason, the Relevant Legal Challenge no longer includes an application for a declaration that the Major Development SEPP or the Major Development SEPP Amendment is invalid;whichever is the earlier;
- (b) subject to paragraph (c), if an Appeal Notice is filed and served in connection with final orders in the Relevant Legal Challenge or an Appeal from the Relevant Legal Challenge (apart from any orders as to costs), the date on which:
 - (i) the Appeal is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Appeal; or
 - (iii) for any other reason, the Appeal no longer includes an appeal in respect of a Court decision regarding the validity of the Major Development SEPP or the Major Development SEPP Amendment whichever is earlier,

unless the orders in the Appeal require the Relevant Legal Challenge to be remitted to another Court in relation to the validity of the Major Development SEPP or the Major Development SEPP Amendment, in which case paragraph (a) re-applies; or

- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice described in paragraph (b) has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date.

For the avoidance of doubt, the Suspension Period continues if paragraph (b) applies.

Transferred Lands has the meaning given to that term in clause 13.2(a).

1.2 Interpretation

In this Planning Agreement:

- (a) headings are for convenience only and do not affect interpretation;
and unless the context indicates a contrary intention:
 - (b) if more than one person is identified as the Minister, that expression refers to them, and the obligations of the Minister under this Planning Agreement bind them, jointly and severally;
 - (c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
 - (e) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
 - (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Planning Agreement, and a reference to this Planning Agreement includes all schedules, exhibits, attachments and annexures to it;
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (j) **"includes"** in any form is not a word of limitation;
 - (k) a reference to **"\$"** or **"dollar"** is to Australian currency;
 - (l) the Schedules and Annexures to this Planning Agreement form part of this Planning Agreement; and
 - (m) if a party to this Planning Agreement is made up of more than one person:
 - (i) an obligation of those persons is joint and several;
 - (ii) a right of those persons is held by each of them severally; and

- (iii) any references to that party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

2. Status of this Agreement

- (a) This Planning Agreement applies to the Land, the Conservation Offset Lands and the Major Development SEPP Amendment.
- (b) The Planning Agreement operates only if:
 - (i) the Major Development SEPP Amendment is gazetted and is incorporated into the Major Development SEPP;
 - (ii) the Planning Agreement is entered into as required by clause 25C(1) of the Regulation; and
 - (iii) the Minister and the Minister for the Environment executes this Planning Agreement.
- (c) The Minister must notify the Land Owner immediately after the Minister and the Minister for the Environment execute this Planning Agreement and promptly provide the Land Owner with the Planning Agreement as executed by the Minister and the Minister for the Environment.

3. Planning Agreement under the Act

The Planning Agreement constitutes a planning agreement within the meaning of section 93F of the Act.

4. Application of the Planning Agreement

The Planning Agreement applies to:

- (a) the Land;
- (b) the Conservation Offset Lands; and
- (c) the Major Development SEPP Amendment.

5. Development Contributions

The Land Owner will provide, or procure the provision of, the Development Contributions in accordance with:

- (a) the Development Contributions Schedule;
- (b) the Development Contributions Timetable; and
- (c) the terms of this Planning Agreement.

6. Acknowledgements

- (a) The Parties agree that:

- (i) the Minister acknowledges to the Land Owner that it is the Minister's present intention that those parts of the Development Contributions which the Land Owner pays to the Minister in cash will be made available for use or expenditure for the purposes set out in Column 2 of Table 1 of Schedule 3;
- (ii) the Land Owner intends to make appropriate provision for development contributions for the Development as part of any future Approvals;
- (iii) to the extent that a Development Contribution may be described in, or implied by this Planning Agreement, including clause 6(a)(i), as having a particular use (intended or otherwise), the Land Owner acknowledges and agrees that the Minister:
 - A. has not made any warranty or representation that a Development Contribution must, or will, be used for, or expended on, a particular purpose by any Authority to which the Minister transmits a Development Contribution;
 - B. has no obligation to use or expend a Development Contribution for a particular purpose; and
 - C. has no obligation to monitor or follow up the use or expenditure of such a Development Contribution including if the Minister transmits a Development Contribution to any Authority.
- (b) Upon receipt of the Environmental Contribution from the Minister, the Minister for the Environment agrees that the Environmental Contribution will be made available for use or expenditure for the purposes set out in Column 2 of Table 1 of Schedule 3.

7. Enforcement

7.1 Enforcement

This Planning Agreement may be enforced by any Party in any Court.

7.2 No prevention to enforcement

For the avoidance of doubt, nothing in this Planning Agreement prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Planning Agreement or any matter to which this Planning Agreement relates; and
- (b) the Minister from exercising any function under any Legislation, including the Act, or any other Act or Law relating to the enforcement of any aspect of this Planning Agreement or any matter to which this Planning Agreement relates.

8. Application of sections 94, 94A and 94EF of the Act to the Development

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

9. Interests in the Land

9.1 Ownership

- (a) Huntlee represents and warrants to the Minister and the Minister for the Environment that:
 - (i) on the date of this Planning Agreement, it is the legal owner of the Land, other than that part of Lot 34 in Deposited Plan 755211 (**Part Lot 34**) and Lot 241 in Deposited Plan 1105591 (**Lot 241**) that is included within the Land;
 - (ii) in respect of Part Lot 34:
 - A. Disage Pty Limited is the current registered proprietor;
 - B. Disage Pty Limited and Hardie Ayrefield Pty Limited are parties to a conditional contract for sale for Part Lot 34 (**Part Lot 34 Sale Contract**) also described as Lot 342 in an unregistered plan; and
 - C. Huntlee (as grantee) and Hardie Ayrefield Pty Ltd (as grantor) have entered into a conditional call option agreement for the sale of Part Lot 34 which is conditional on the completion of the Part Lot 34 Sale Contract whereby Hardie Ayrefield will become the registered proprietor of Part Lot 34; and
 - (iii) Huntlee (as grantee) has entered into a put and call option with Les Russell and Son Pty Ltd (as grantor) for Lot 241.
- (b) The Land Owner must notify the Minister promptly after it becomes the legal owner of Part Lot 34 and Lot 241.
- (c) Huntlee holds its interest in the Conservation Offset Lands and its rights in the land referred to in clause 9.1(d)(iii) in its capacity as bare trustee of the Relevant Partnership.
- (d) Huntlee represents and warrants to the Minister and the Minister for the Environment that on the date of this Planning Agreement, it is:
 - (i) (subject to clause 9.1(d)(ii), clause 9.1(d)(iii) and clause 9.1(e)) the legal owner of the Conservation Offset Lands;
 - (ii) the registered lessee of those parts of the Conservation Offset Lands comprised in Lot 179 in Deposited Plan 755241, Lot 139 in Deposited Plan 752770 and Lot 165 in Deposited Plan 755219 pursuant to perpetual leases with the Crown (**Perpetual Lease Land**); and
 - (iii) the registered holder of the enclosure permits numbered 407052, 51263, 386736, 51233 and 51342 which benefit part of the Conservation Offset Lands.
- (e) Misthold represents and warrants to the Minister and the Minister for the Environment that on the date of the Planning Agreement, it is the legal and beneficial owner of that part of the Conservation Offset Lands comprised in Lot 5.

- (f) The representations and warranties in this clause 9.1 are given by each of Huntlee and Misthold as at the date of this Planning Agreement and, in respect of the representation and warranty in clause 9.1(d) and clause 9.1(e), is repeated by each of Huntlee and Misthold as at the date that each of Huntlee and Misthold:
- (i) is required to transfer to (or consent to the compulsory acquisition by) the Minister the Conservation Offset Lands; and
 - (ii) transfers (or the Minister compulsorily acquires) the Conservation Offset Lands

pursuant to this Planning Agreement.

9.2 Registration of the Planning Agreement

- (a) The Land Owner agrees it will procure the registration of the Planning Agreement entered into pursuant to clause 2(b), under the *Real Property Act* 1900 (NSW) in the relevant folios of the register for the Land that it owns and the Conservation Offset Lands in accordance with section 93H of the Act.
- (b) The Land Owner at its own expense will, promptly after the Planning Agreement comes into operation (and in respect of Part Lot 34 and Lot 241, promptly after completion of the purchase of Part Lot 34 and Lot 241, by Huntlee), take all practical steps, and otherwise do anything that the Minister reasonably requires, to procure:
- (i) the consent of each person who:
 - A. has an estate or interest in the Land and the Conservation Offset Lands registered under the *Real Property Act* 1900 (NSW); or
 - B. is seized or possessed of an estate or interest in the Land and the Conservation Offset Lands;
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title,
- to enable the registration of the Planning Agreement under the *Real Property Act* 1900 (NSW) in the relevant folios of the register for the Land and the Conservation Offset Lands in accordance with section 93H of the Act.
- (c) The Land Owner, at its own expense, will take all practical steps, and otherwise do anything that the Minister reasonably requires:
- (i) to procure the lodgement of the Planning Agreement with the Registrar-General as soon as reasonably practicable after the Planning Agreement comes into operation but in any event, no later than 90 Business Days after that date (and in respect of Part Lot 34 and Lot 241, promptly after completion of the purchase of Part Lot 34 and Lot 241 by Huntlee); and
 - (ii) to procure the registration of the Planning Agreement by the Registrar-General either in the relevant folios of the Register for the Land and the Conservation Offset Lands (or in the General Register of Deeds if the Planning Agreement relates to land not under the *Real Property Act*

1900 (NSW)) as soon as reasonably practicable after the Planning Agreement is lodged for registration.

- (d) Where the Land Owner has failed to register the Planning Agreement in the relevant folios of the Register for that part of the Conservation Offset Lands comprising the Perpetual Lease Land, the Parties agree that the Land Owner will not be in default of its obligation under clause 9.2(a) where:
- (i) the Land Owner has used its best endeavours to:
 - A. procure the registration of the Planning Agreement in the relevant folios of the Register for the Perpetual Lease Land; and
 - B. obtain the consent of the Crown, as the freehold owner of the Perpetual Lease Land, to the registration of the Planning Agreement in the relevant folios of the Register for the Perpetual Lease Land; and
 - (ii) the Crown has not given its consent to the registration of the Planning Agreement in the relevant folios of the Register for the Perpetual Lease Land.

9.3 Release and discharge of this Planning Agreement

The Minister agrees to release and discharge the Planning Agreement on the Release and Discharge Terms.

9.4 Caveat

- (a) The Land Owner acknowledges and agrees that:
- (i) when this Planning Agreement comes into operation, the Minister is deemed to have acquired, and the Land Owner is deemed to have granted, an equitable estate and interest in the Land (excluding Part Lot 34 and Lot 241) and the Conservation Offset Lands for the purposes of section 74F(1) of the *Real Property Act* 1900 (NSW) and consequently the Minister has a sufficient interest in the Land (excluding Part Lot 34 and Lot 241) and the Conservation Offset Lands in respect of which to lodge with the LPMA a caveat notifying that interest;
 - (ii) it will not object to the Minister lodging a caveat in the relevant folio of the Register for the Land (excluding Part Lot 34 and Lot 241) and the Conservation Offset Lands nor will it seek to remove any caveat lodged by the Minister provided the caveat does not prevent registration of any dealing or plan (including a Plan of Subdivision) other than a transfer; and
 - (iii) it will obtain the consent to the lodgement of the caveat of each person who has an estate or interest in the Land (excluding Part Lot 34 and Lot 241) and the Conservation Offset Lands registered under the *Real Property Act* 1900 (NSW).
- (b) The Land Owner acknowledges and agrees that:
- (i) when the Land Owner becomes the legal owner of any one of Part Lot 34 and Lot 241, the Minister is deemed to have acquired, and the Land

Owner is deemed to have granted, an equitable estate and interest in Part Lot 34 and Lot 241 (as the case may be) for the purposes of section 74F(1) of the *Real Property Act* 1900 (NSW) and consequently the Minister has a sufficient interest in Part Lot 34 and Lot 241 (as the case may be) in respect of which to lodge with the LPMA a caveat notifying that interest;

- (ii) it will not object to the Minister lodging a caveat in the relevant folio of the Register for each of Part Lot 34 and Lot 241 nor will it seek to remove any caveat lodged by the Minister provided the caveat does not prevent registration of any dealing or plan (including a Plan of Subdivision) other than a transfer; and
 - (iii) it will obtain the consent to the lodgement of the caveat of each person who has an estate or interest in each of Part Lot 34 and Lot 241 registered under the *Real Property Act* 1990 (NSW).
- (c) The Minister must, at the Land Owner's cost (with any such cost to be reimbursed to the Minister promptly on demand), register at the LPMA a withdrawal of caveat in respect of all the Land and the Conservation Offset Lands:
 - (i) within 5 Business Days after the Land Owner complies with clause 9.2(a) and the Minister must not lodge any other caveats on the titles to any of the Land and the Conservation Offset Lands, providing the withdrawal of the caveat will only apply in respect of such parts of the Land and the Conservation Offset Lands in respect of which registration of the Planning Agreement has been procured in accordance with clause 9.2(a), it being acknowledged by the Parties that registration of the Planning Agreement in respect of Part Lot 34 and Lot 241 may be delayed; and
 - (ii) if applicable, at the same time the transfer of the Conservation Offset Lands is registered at the LPMA.
- (d) Where the Land Owner has failed to obtain the consent of the Crown, as freehold owner of the Perpetual Leasehold Land, to the lodgement of the caveat in the relevant folios of the Register for that part of the Conservation Offset Lands comprising the Perpetual Lease Land and, as a result, the Minister has not been able to lodge a caveat in the relevant folio of the Register for the Perpetual Lease Land, the Parties agree that the Land Owner will not be in default of its obligation under clause 9.4(a) where:
 - (i) the Land Owner has used its best endeavours to obtain the consent of the Crown to the lodgement of the caveat in the relevant folios of the Register for the Perpetual Lease Land; and
 - (ii) the Crown has not given its consent to the lodgement of the caveat in the relevant folios of the Register for the Perpetual Lease Land.

9.5 Lot 5

- (a) Subject to clause 9.5(b), the parties acknowledge and agree that:
 - (i) the Land Owner will not be required to procure the registration of the Planning Agreement entered into pursuant to clause 2(b), under the *Real Property Act* 1900 (NSW) in the relevant folios of the register for that

part of the Conservation Offset Lands comprised in Lot 5 in accordance with section 93H of the Act; and

- (ii) the Minister will not lodge a caveat notifying its equitable estate and interest in Lot 5 with LPMA for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW).
- (b) Misthold must procure (at its cost and risk), by the date on which it is required to transfer the Conservation Offset Lands to the Minister pursuant to paragraph 2 of Schedule 4:
- (i) the surrender of the unregistered lease to NSW Historic Sites and Railway Company Pty Limited, or otherwise provide evidence to the reasonable satisfaction of the Minister that the unregistered lease has expired, to the extent that lease affects Lot 5; and
 - (ii) the registration at LPMA of a withdrawal of the caveat lodged by NSW Historic Sites and Railway Company Pty Limited in respect of its equitable estate and interest in Lot 5.

9.6 Consent of Financier

The Land Owner represents and warrants to the Minister that it has obtained, and is in possession of a written consent from the Financier in which the Financier:

- (a) consents to:
 - (i) the Land Owner entering into and performing its obligations under this Planning Agreement;
 - (ii) the registration of the Planning Agreement in the relevant folio of the Register for the Land and the Conservation Offset Lands registered under the *Real Property Act 1900* (NSW); and
 - (iii) the lodgement by the Minister of a caveat (in a form agreed by the Financier) notifying its interest in the Planning Agreement in the relevant folio of the Register for the Land and the Conservation Offset Lands registered under the *Real Property Act 1900* (NSW); and
- (b) agrees:
 - (i) that it will only exercise its rights under any mortgage, charge, lien, pledge, trust, power or title retention or deposit arrangement in relation to the Land and the Conservation Offset Lands subject to the rights of the Minister and the Minister for the Environment under this Planning Agreement; and
 - (ii) promptly upon request, to lodge at the LPMA the relevant certificates of title to enable the registration of the Planning Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Land and the Conservation Offset Lands.

10. Review or replacement of this Planning Agreement

The Parties agree that this Planning Agreement will be reviewed or modified in the circumstances, and in accordance with, the Review or Replacement Procedures.

11. Dispute resolution

The Parties agree that any disputes under or in relation to this Planning Agreement will be resolved in accordance with the Dispute Resolution Procedures.

12. GST

12.1 Interpretation

In this clause 12:

- (a) except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12; and
- (c) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts. For the avoidance of any doubt, a supply or acquisition made by the Minister includes a supply or acquisition made by a government entity through which the Minister acts.

12.2 Reimbursement

Any payment or reimbursement required to be made under this Planning Agreement 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 (or to which the representative member for a GST group of which the entity is a member) is entitled for the acquisition to which the cost, expense or amount relates.

12.3 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Planning Agreement other than under this clause 12 are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 12.

12.4 Additional amount of GST payable

Subject to clause 12.6, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Planning Agreement:

- (a) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of GST payable on that supply (**GST Amount**), and:
 - (i) where that GST Amount is payable by the Minister, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of that supply and is payable within 5 Business Days after the Minister, in any capacity, has received the benefit of that input tax credit; and

- (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 12.4(a).

12.5 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12.4 and clause 12.6), varies from the additional amount paid by the Recipient under clause 12.4 (taking into account any previous adjustment under this clause), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 12.5(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12.4.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Planning Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

12.6 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 12.4 applies is a taxable supply made by the Recipient (the **Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 12.4 shall:
 - (i) if the Supplier is the Minister, be reduced by the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of the Recipient Supply; and
 - (ii) in any other case, be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 12.4 (or the time at which such GST Amount would have been payable in accordance with clause 12.4 but for the operation of clause 12.6(a)).

12.7 Adjustments

The parties agree that any re-transfer of the Conservation Offset Lands under clause 13.2 and/or repayment of Contributions Amount made under clause 13.1(d)(i)B will give rise to an adjustment event for the purposes of Division 19 of the GST Act and the parties will deal with their respective GST obligations arising in respect of that adjustment event in accordance with the GST Act and clause 12.5 of this Planning Agreement.

12.8 No merger

This clause will not merge on completion or termination of the Planning Agreement.

13. Obligations under this Planning Agreement and Re-Transfer of the Conservation Offset Lands

13.1 Obligations under this Planning Agreement

- (a) Notwithstanding anything else in this Planning Agreement, and subject to clause 13.1(b), the Minister agrees that in the event that a Relevant Legal Challenge is commenced:
 - (i) the Land Owner's obligation under this Planning Agreement to pay the Contribution Amount to the Minister is suspended and neither the Minister nor the Minister for the Environment can require the Land Owner to pay the Contribution Amount pursuant to paragraph 1(a) of Schedule 4;
 - (ii) the Land Owner's obligation under this Planning Agreement to transfer or dedicate the Conservation Offset Lands is suspended and neither the Minister nor the Minister for the Environment can require the Land Owner to transfer or dedicate the Conservation Offset Lands pursuant to paragraph 2.3 of Schedule 4; and
 - (iii) the consent provided under this Planning Agreement by the Land Owner to the compulsory acquisition of the Conservation Offset Lands under paragraph 2.4 of Schedule 4 is withdrawn, is of no effect and the Minister cannot compulsorily acquire the Conservation Lands pursuant to paragraph 2.4 of Schedule 4.

For the avoidance of doubt, where the Land Owner has paid part of the Contribution Amount pursuant to paragraph 1(a) of Schedule 4 before the commencement of the Suspension Period, the Land Owner's obligation to pay the Contribution Amount will be suspended in respect of the Land Owner's obligation to pay that part of the Contribution Amount which has not been paid as at the commencement of the Suspension Period.

- (b) Clause 13.1(a) will have effect only for the Suspension Period.
- (c) If, at the end of the Suspension Period, there is no effective Court declaration or order that the Major Development SEPP or the Major Development SEPP Amendment is invalid, the parties agree that notwithstanding clause 13.1(a), from (and including) the Suspension Expiry Date:
 - (i) the Land Owner's obligation under this Planning Agreement to pay the Contribution Amount to the Minister has full legal force and effect and where the Land Owner has not paid the whole or any part of Contribution Amount to the Minister by the Suspension Expiry Date, the Land Owner must pay the whole or that part of the Contribution Amount to the Minister by the dates referred to in Schedule 5;
 - (ii) the Land Owner's obligation under this Planning Agreement to transfer or dedicate the Conservation Offset Lands to the Minister has full legal force and effect and where the Land Owner has not transferred or dedicated the whole or any part of Conservation Offset Lands to the Minister by the Suspension Expiry Date, the Land Owner must transfer or dedicate the whole of or that part of the Conservation Offset Lands to the Minister by the date referred to in Schedule 5; and

- (iii) the Land Owner gives its consent to the Minister compulsorily acquiring the Conservation Offset Lands.
- (d) If, at the end of the Suspension Period, there is an effective Court declaration or order that the Major Development SEPP or the Major Development SEPP Amendment is invalid, the parties agree that from (and including) the Suspension Expiry Date:
 - (i) where the Land Owner has:
 - A. not paid the whole or any part of the Contribution Amount to the Minister by the Suspension Expiry Date, the Land Owner has no obligation to pay the whole or that part of the Contribution Amount to the Minister under this Planning Agreement; or
 - B. paid the whole or any part of the Contribution Amount to the Minister by the Suspension Expiry Date, the Minister must repay to the Land Owner, or procure that the Minister for the Environment repays to the Land Owner, the whole or that part of the Contribution Amount (as the case may be) within 20 Business Days after receipt of a notice from the Land Owner requesting payment of the Contribution Amount;
 - (ii) where the Land Owner has:
 - A. transferred the whole or any part of the Conservation Offset Lands to the Minister by the Suspension Expiry Date, the provisions of clause 13.2 apply; or
 - B. not transferred or dedicated the whole or any part of the Conservation Offset Lands to the Minister by the Suspension Expiry Date, the Land Owner has no obligation to transfer or dedicate the whole or that part of the Conservation Offset Lands to the Minister under this Planning Agreement;
 - (iii) the Land Owner has no obligation to register the Planning Agreement in the relevant folios of the register for the Land and the Conservation Offset Lands under clause 9.2, the Release and Discharge Terms will apply;
 - (iv) the Minister has no right to lodge a caveat over the Land and the Conservation Offset Lands and in the event a caveat or caveats have been lodged over the Land and the Conservation Offset Lands under clause 9.4, the Minister must proceed to register at the LPMA a withdrawal of that caveat in respect of that Land and those Conservation Offset Lands within 5 Business Days of that Court declaration or order.

13.2 Re-transfer of the Conservation Offset Lands

- (a) In the event that clause 13.1(d)(i)A applies, unless agreed otherwise and subject to clause 13.5, if the whole or any part of the Conservation Offset Lands have already been transferred or dedicated by the Land Owner to the Minister or the Minister has compulsorily acquired the Conservation Offset Lands under this Planning Agreement, the Minister agrees to re-transfer or procure the re-transfer to the Land Owner those parts of the Conservation Offset Lands that have been transferred,

dedicated to or compulsorily acquired by the Minister (**Transferred Lands**) in accordance with clause 13.2(b) and clause 13.2(c).

- (b) The Minister shall re-transfer or procure the re-transfer to the Land Owner of the Transferred Lands within 20 Business Days after receipt of a notice from the Land Owner requesting re-transfer to it of the Transferred Lands.
- (c) In the event the Minister is required to re-transfer or procure the re-transfer of the Transferred Lands to the Land Owner pursuant to clause 13.2(b), the Minister agrees to:
 - (i) deliver, or procure to be delivered, to the Land Owner:
 - A. a form of transfer in respect of the Transferred Lands in favour of the Land Owner for a consideration of \$1, executed by the Minister (or, where appropriate the Minister for the Environment) and in registrable form except for acceptance by the Land Owner and marking by the Office of State Revenue;
 - B. the certificate or certificates of title for the Transferred Lands;
 - C. any consents and other documentation in registrable form required for the transfer (and registration) of the Transferred Lands including without limitation any consents and other documentation necessary, or otherwise required by the Land Owner, for the transfer of those parts of the Conservation Offset lands which:
 - 1) are held by the Minister or Minister for the Environment as registered lessee under a perpetual lease; or
 - 2) have been dedicated as state forest;
 - D. any permits in connection with the Conservation Offset Lands including, without limitation, any enclosure permits, and any consents and other documentation in a registrable form necessary, or otherwise required by the Land Owner, for the transfer (and registration) of those permits; and
 - (ii) take any other necessary action (including procuring the transfer of the Transferred Lands to the Land Owner where those Transferred Lands have been transferred to the Minister for the Environment) to give effect to the transfer of the title of the Transferred Lands to the Land Owner free of any encumbrances and affectations that were created after the date that the Minister acquired that land (by way of transfer or compulsory acquisition) other than any obligation to pay any stamp duty and other taxes, charges and imposts in relation to the re-transfer of the Transferred Lands.

13.3 Minister for the Environment's obligations to re-transfer Conservation Offset Lands and repay Contribution Amount

- (a) Where:

- (i) the Minister has transferred the whole or any part of the Conservation Offset Lands to the Minister for the Environment pursuant to paragraph 3 of Schedule 4; and
- (ii) the Minister is required to re-transfer the Transferred Lands to the Land Owner pursuant to clause 13.2(b),

then the Minister for the Environment must, promptly upon written request from the Minister and in any event no later than 20 Business Days after the Minister received notice from the Land Owner requesting the re-transfer of the Transferred Lands:

- (iii) deliver to the Land Owner:
 - A. a form of transfer in respect of the Transferred Lands in favour of the Land Owner for a consideration of \$1, executed by the Minister for the Environment and in registrable form except for acceptance by the Land Owner and marking by the Office of State Revenue;
 - B. the certificate or certificates of title for the Transferred Lands;
 - C. any consents and other documentation in registrable form required for the transfer (and registration) of the Transferred Lands including without limitation any consents and other documentation necessary, or otherwise required by the Land Owner, for the transfer of those parts of the Conservation Offset lands which:
 - 1) are held by the Minister for the Environment as registered lessee under a perpetual lease; or
 - 2) have been dedicated as state forest;
 - D. any permits in connection with the Conservation Offset Lands including, without limitation, any enclosure permits, and any consents and other documentation in a registrable form necessary, or otherwise required by the Land Owner, for the transfer (and registration) of those permits; and
- (iv) take any other necessary action to give effect to the transfer of the title of the Transferred Lands to the Land Owner free of any encumbrances and affectations that were created after the date that the Minister acquired that land (by way of transfer or compulsory acquisition) other than any obligation to pay any stamp duty and other taxes, charges and imposts in relation to the re-transfer of the Transferred Lands.

(b) Where:

- (i) the Land Owner has paid the whole or any part of the Contribution Amount to the Minister;
- (ii) the Minister has paid the whole or that part of the Contribution Amount to the Minister for the Environment; and
- (iii) the Minister is required to re-pay the whole or that part of the Contribution Amount to the Land Owner pursuant to clause 13.1(d)(i)B,

then the Minister for the Environment must, promptly upon written request from the Minister and in any event no later than 20 Business Days after the Minister received notice from the Land Owner requesting repayment of the whole or that part of the Contribution Amount, pay the whole or that part of the Contribution Amount to the Land Owner.

13.4 Not used

13.5 Land Owner, Minister and Minister for the Environment to meet

- (a) Subject to clause 13.5(b), where any Relevant Legal Challenge is commenced and/or where the Court declares or orders the Major Development SEPP or the Major Development SEPP Amendment to be invalid, the Minister, the Minister for the Environment and the Land Owner agree to:
 - (i) meet, no later than 5 Business Days after the date of service of commencement of the Relevant Legal Challenge and after any declaration or order that the Major Development SEPP or the Major Development SEPP is invalid, to discuss in good faith their intentions in relation to that declaration or order, including without limitation any intention to Appeal that declaration; and
 - (ii) consult regularly with the other in relation to any Appeal and must respond within a reasonable period to each other's questions, queries and enquiries and generally keep each other informed regarding the progress of any such Appeal.
- (b) Neither the Minister, the Minister for the Environment nor the Land Owner will be required to meet, or consult, with the other parties pursuant to clause 13.5(a) in circumstances where either the Minister, the Minister for the Environment or the Land Owner receives legal advice that it should not so meet or consult with the other Party in connection with any such declaration or Appeal.
- (c) The parties agree that any discussions held between the parties under the clause 13.5 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.

14. Release and indemnity

- (a) Subject to this Planning Agreement, the Land Owner agrees that the obligation to provide the Development Contributions is at the risk of the Land Owner. Subject to clause 14(c), the Land Owner releases the Minister from any Claim, liability or loss arising from, and Costs incurred in connection with, the Land Owner's obligation to provide the Development Contributions.
- (b) The Land Owner indemnifies the Minister against all liabilities or loss arising from, and any Costs incurred in connection with the Minister enforcing the Land Owner's obligation to provide the Development Contributions in accordance with this Planning Agreement and/or the Minister exercising the Minister's rights under or by virtue of this Planning Agreement.
- (c) The Land Owner's release in clause 14(a) excludes any Claim, liability or loss arising from and Costs incurred in connection with:
 - (i) the Minister repaying the Contribution Amount or re-transferring the Transferred Lands pursuant to clause 13;

- (ii) the enforcement of this Planning Agreement by the Land Owner; or
- (iii) any Claim against the Minister or the Land Owner relating to or concerning the validity of the Major Development SEPP or the Major Development SEPP Amendment. The indemnity in clause 14(b) is a continuing obligation, independent of the Land Owner's other obligations under this Planning Agreement and continues after this Planning Agreement ends.

15. Overdue Payments

- (a) The Land Owner agrees to pay the Minister interest on any amount payable by it under this Planning Agreement from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Land Owner, calculated on daily balances. The rate to be applied to each daily balance is the rate 2% per annum above the Bank Bill Rate.
- (b) Interest which is not paid when due for payment may be capitalised by the Minister at intervals which the Minister determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 15.
- (c) The Land Owner's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by any other provision of this Planning Agreement.
- (d) If a liability under this deed becomes merged in a judgment or order, then the Land Owner agrees to pay interest to the Minister on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause 15.

16. Explanatory Note

The Explanatory Note must not be used to assist in construing the Planning Agreement.

17. Effect of Scheduled terms and conditions

The Parties agree to comply with the terms and conditions contained in the Schedules as if those rights and obligations were expressly set out in full in the operative parts of this Planning Agreement.

18. General provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 11.

Schedule 1 - Section 93F Requirements

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
Planning instrument and/or Application - (Section 93F(1)) The Land Owner has: <div style="margin-left: 40px;"> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a project or concept plan approval application under Part 3A of the Act.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p> </div>	<div style="margin-left: 40px;"> <p>(a) Yes</p> <p>(b) No</p> <p>(c) No</p> </div>
Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))	The whole of the Land and the Conservation Offset Lands.
Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 93F(3)(b))	An amendment to the Major Development SEPP to facilitate the Development (see clause 1.1).
The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 93F(3)(c))	See Schedule 3 to Schedule 5 inclusive.
Applicability of section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is not excluded.
Applicability of section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is not excluded.
Applicability of section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded.
Mechanism for dispute resolution - (Section 93F(3)(f))	See clause 11 and Schedule 8.
Enforcement of the Planning Agreement - (Section 93F(3)(g))	See clause 7.
Registration of the Planning Agreement (Section 93F(3)(g)) The Parties agree that the Planning Agreement will be registered in accordance with clause 9.2.	Yes

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
No obligation to grant consent or exercise functions - (Section 93F(9))	No obligation. See paragraph 8 of Schedule 11.

Schedule 2 – Land and Conservation Offset Lands

Table 1 –Land Description

Lot	Deposited Plan	Registered Proprietor
36	755211	Huntlee Pty Ltd
37	755211	Huntlee Pty Ltd
38	755211	Huntlee Pty Ltd
43	755211	Huntlee Pty Ltd
9	729973	Huntlee Pty Ltd
10	729973	Huntlee Pty Ltd
11	729973	Huntlee Pty Ltd
12	729973	Huntlee Pty Ltd
211	828787	Huntlee Pty Ltd
7	729973	Huntlee Pty Ltd
39	755211	Huntlee Pty Ltd
33	755211	Huntlee Pty Ltd
10	1105639	Huntlee Pty Ltd
102	1040618	Huntlee Pty Ltd
34 (part)	755211	Disage Pty Ltd (subject to a conditional contract with Hardie Ayrefield Pty Limited and in turn, a conditional call option in favour of Huntlee Pty Ltd with Hardie Ayrefield Pty Ltd as grantee)
21	1050597	Huntlee Pty Ltd
221	1064738	Huntlee Pty Ltd
201	828486	Huntlee Pty Ltd
200	828486	Huntlee Pty Ltd
8	729973	Huntlee Pty Ltd
6	729973	Huntlee Pty Ltd
3	813163	Huntlee Pty Ltd
4	813163	Huntlee Pty Ltd
240	1105591	Huntlee Pty Ltd

Lot	Deposited Plan	Registered Proprietor
123	1012402	Huntlee Pty Ltd
231	879198	Huntlee Pty Ltd
230	879198	Huntlee Pty Ltd
241	1105591	Eden Stanhope Pty Limited (formerly Les Russell and Son Pty Ltd) (subject of a Put and Call Option in favour of Huntlee Pty Ltd)

Table 2 – Conservation Offset Lands Description

Lot	Deposited Plan	Registered Proprietor
5 (part)	1108112	Misthold Pty Ltd
179	755241	Huntlee Pty Ltd
181	755241	Huntlee Pty Ltd
10	753809	Huntlee Pty Ltd
11	753809	Huntlee Pty Ltd
13	753809	Huntlee Pty Ltd
20	753809	Huntlee Pty Ltd
23	753809	Huntlee Pty Ltd
51	753809	Huntlee Pty Ltd
53	753809	Huntlee Pty Ltd
54	753809	Huntlee Pty Ltd
58	753809	Huntlee Pty Ltd
65	753809	Huntlee Pty Ltd
74	753809	Huntlee Pty Ltd
37	753809	Huntlee Pty Ltd
42	753809	Huntlee Pty Ltd
71	753809	Huntlee Pty Ltd
4	753809	Huntlee Pty Ltd
5	753809	Huntlee Pty Ltd
9	753809	Huntlee Pty Ltd
12	753809	Huntlee Pty Ltd
19	753809	Huntlee Pty Ltd
21	753809	Huntlee Pty Ltd
22	753809	Huntlee Pty Ltd
26	753809	Huntlee Pty Ltd
27	753809	Huntlee Pty Ltd
28	753809	Huntlee Pty Ltd
30	753809	Huntlee Pty Ltd

Lot	Deposited Plan	Registered Proprietor
31	753809	Huntlee Pty Ltd
35	753809	Huntlee Pty Ltd
36	753809	Huntlee Pty Ltd
39	753809	Huntlee Pty Ltd
40	753809	Huntlee Pty Ltd
41	753809	Huntlee Pty Ltd
52	753809	Huntlee Pty Ltd
56	753809	Huntlee Pty Ltd
57	753809	Huntlee Pty Ltd
59	753809	Huntlee Pty Ltd
64	753809	Huntlee Pty Ltd
75	753809	Huntlee Pty Ltd
82	753809	Huntlee Pty Ltd
95	753809	Huntlee Pty Ltd
105	753809	Huntlee Pty Ltd
220	755230	Huntlee Pty Ltd
126	755272	Huntlee Pty Ltd
24	755213	Huntlee Pty Ltd
43	755213	Huntlee Pty Ltd
32	755213	Huntlee Pty Ltd
46	755213	Huntlee Pty Ltd
64	755213	Huntlee Pty Ltd
63	755217	Huntlee Pty Ltd
139	753770	Huntlee Pty Ltd
165	755219	Huntlee Pty Ltd
9	1102521	Huntlee Pty Ltd
61	752473	Huntlee Pty Ltd
63	752473	Huntlee Pty Ltd
66	752473	Huntlee Pty Ltd
67	752473	Huntlee Pty Ltd

Lot	Deposited Plan	Registered Proprietor
300	1029733	Huntlee Pty Ltd
1	707207	Huntlee Pty Ltd
1	137264	Huntlee Pty Ltd
200	1008434	Huntlee Pty Ltd
32	1003656	Huntlee Pty Ltd
15	755211	Huntlee Pty Ltd
16	755211	Huntlee Pty Ltd
33	753809	Huntlee Pty Ltd
34	753809	Huntlee Pty Ltd

Schedule 3 - Development Contributions Schedule

1. Development Contributions

The Land Owner undertakes to pay, make or provide the following Development Contributions as set out and provided for in the Table below.

Table 1 of Schedule 3

Column 1	Column 2
Development Contribution	Intended use
Item 1. Transfer of Conservation Offset Lands (Schedule 2, Table 2)	Conservation Offset Lands to be transferred to the Minister for environmental conservation purposes.
Item 2. Environmental Contribution \$1,100,000	<p>Environmental contribution of:</p> <ul style="list-style-type: none"> \$100,000 to be paid towards the conservation of <i>persoonia pauciflora</i> in the North Rothbury area; and \$1,000,000 to be paid towards the management of the Conservation Offset Lands of which \$900,000 (being the amount referred to in paragraph (b) in Column 2 in Table 1 in Schedule 5) is to be adjusted by movements in the CPI as provided for in this Schedule 3.

In respect of indexation by CPI the following applies:

A means the dollar (\$) amount specified in Item 2, Column 1 of the Table 1 in this Schedule 3 payable prior to indexation by CPI.

CPI means the published Consumer Price Index (Sydney - All Groups), or if that index is no longer published, then any other index which, in the reasonable opinion of the Minister, is a similar index.

CPIA means the amount determined in accordance with the following formula (which may be a negative amount where D is greater than C):

$$CPIA = \left[\frac{A \times C}{D} - A \right] \times \frac{ND - NDSP}{ND}$$

where:

- C = the most recent CPI prior to the date of actual payment of the relevant part of the Contribution Amount (including without limitation the date of actual payment of the Contribution Amount pursuant to clause 13.1(c)(i));
- D = the most recent CPI before 31 January 2014;
- ND = for any application of the above formula to determine the indexation to apply to any part of "A", the number of days in the period during which that part of "A" is to be indexed; and

NDSP = the number of days in the Suspension Period

provided that, at all times, the Contribution Amount is never less than its nominal dollar value as at the date of this deed.

Schedule 4 - Development Contribution Procedures

1. Land Owner's undertakings

1.1 Undertakings regarding Developer Contributions

The Land Owner undertakes:

- (a) to pay the Contribution Amount set out in Item 2 of Column 1 of Table 1 in Schedule 3 to the Minister as contemplated by, and in accordance with, the Development Contributions Timetable;
- (b) to transfer to the Minister the Conservation Offset Lands and its improvements as contemplated by, and in accordance with, Item 1 of Column 1 of Table 1 in Schedule 3, paragraph 2 of this Schedule 4 and the Development Contributions Timetable; and
- (c) to consult regularly with the Minister, respond within a reasonable period to the Minister's questions, queries and enquiries and generally keep the Minister informed regarding the progress of the Development to the extent such matters relate to the provision of the Contribution Amount and the Conservation Offset Lands.

1.2 Undertakings regarding Conservation Offset Lands

Unless otherwise agreed with the Minister for the Environment, the Land Owner agrees that it (including its agents and employees) will not do any works or take any action that significantly degrades the Conservation Offset Lands, including:

- (a) clearing (including slashing and thinning) of native vegetation on the Conservation Offset Lands;
- (b) carrying out of intensive agriculture including any livestock grazing on the Conservation Offset Lands;
- (c) changing the current use of the Conservation Offset Lands; or
- (d) carrying out significant works on the Conservation Offset Lands,

so that the Conservation Offset Lands are not degraded from their condition as at the date of this Planning Agreement until the date on which the Conservation Offset Lands are transferred to the Minister pursuant to paragraph 2 of this Schedule 4.

2A Environmental Audit

2A.1 Land Owner to procure Environmental Audit

- (a) As soon as practicable after the date of this Deed, the Land Owner, at its expense, will procure an Environmental Audit to be prepared by the Environmental Auditor in respect of the Conservation Offset Lands.
- (b) For the purposes of paragraph 2A of this Schedule 4, Environmental Audit means an inspection, audit and report (**Audit Report**) of the Conservation Offset Lands by the Environmental Auditor, which requires the Environmental Auditor to certify all lands within the Conservation Offset Lands which are:

- (i) satisfactory for transfer to the Minister (and the Minister for the Environment); or
- (ii) unsatisfactory for transfer to the Minister (and the Minister for the Environment),

having regard to the anticipated mine subsidence liabilities and associated public safety risks required to be accepted by the Minister and the Minister for the Environment if those lands are transferred as contemplated by this Deed, after taking into account the environmental and ecological benefits to the State of New South Wales of that land being so transferred to the Minister and the Minister for the Environment.

2A.2 Audit Report

- (a) Without limitation, the Audit Report must nominate and contain recommendations in relation to any works which the Land Owner must undertake and complete prior to the transfer of the Conservation Offset Lands to the Minister, in the nature of:
 - (i) demolition of dwellings, houses or sheds, and removal of demolition waste; and
 - (ii) removal of dumped motor vehicles.
- (b) The Land Owner must deliver a copy of the Audit Report to the Minister and the Minister for the Environment promptly after receiving the Audit Report from the Environmental Auditor.

2A.3 Proposals and submissions following review of Audit Report

- (a) The Minister for the Environment, acting reasonably following review of the Audit Report, must issue notice to the Land Owner (with a copy to the Minister), of his proposals for:
 - (i) those parts, if any, of the Conservation Offset Lands to be excluded from the lands to be transferred as part of the Conservation Offset Lands; and
 - (ii) those works to be carried out, at the cost and risk of the Land Owner, prior to transfer of the Conservation Offset Lands to the Minister in order to demolish dwellings, houses or sheds and remove demolition waste and remove dumped motor vehicles,

having regard to the recommendations in the Audit Report.
- (b) Within 10 Business Days of receipt of the notice referred to in paragraph 2A.3(a) of this Schedule 4, the Land Owner may provide to the Minister for the Environment (with a copy to the Minister), submissions in relation to the proposals by the Minister for the Environment set out in that notice.

2A.4 Requirements of Minister for the Environment

- (a) The Minister for the Environment, acting reasonably, following receipt and consideration of any submissions by the Land Owner pursuant to paragraph 2A.3(b) of this Schedule 4 must issue notice to the Land Owner (with a copy to the Minister) certifying:

- (i) those parts, if any, of the Conservation Offset Lands to be excluded from the lands to be transferred as part of the Conservation Offset Lands; and
 - (ii) those works to be carried out, at the cost and risk of the Land Owner, prior to transfer of the Conservation Offset Lands to the Minister,

having regard to the recommendations in the Audit Report.
- (b) With effect from the date of issue of the notice by the Minister for the Environment pursuant to paragraph 2A.4(a) of this Schedule 4:
 - (i) the Conservation Offset Lands, for the purposes of this Deed, will be taken to exclude any land nominated by the Minister for the Environment for exclusion from the Conservation Offset Lands; and
 - (ii) the Land Owner must, as soon as practicable, and in any event prior to transfer of the Conservation Offset Lands to the Minister or as otherwise agreed, carry out the works specified in the notice by the Minister for the Environment issued pursuant to paragraph 2A.4(a) of this Schedule 4.
- (c) Any dispute between the parties in relation to any matter or thing arising by virtue of this paragraph 2A shall be resolved in accordance with the dispute resolution provisions in Schedule 8.

2B State Forest Land

2B.1 Dedication of Conservation Offset Lands

- (a) The Parties acknowledge that the Minister for the Environment contemplates that the Conservation Offset Lands will be dedicated under the *National Parks and Wildlife Act 1974 (NSW)* following the transfer of the Conservation Offset Lands to the Minister for the Environment pursuant to the provisions of this Schedule 4.
- (b) The Parties acknowledge and agree that:
 - (i) those parts of the Conservation Offset Lands comprised in Lot 179 in Deposited Plan 755241 and Lot 165 comprised in Deposited Plan 755219 have been dedicated respectively as part of Pokolbin State Forest and as Corrabare State Forest (**State Forest Land**);
 - (ii) subject to further investigations by the Minister for the Environment, the Minister for the Environment may not be able to dedicate the State Forest Land under the *National Parks and Wildlife Act 1974 (NSW)*;
 - (iii) the Minister for the Environment will investigate and also discuss and consult with the NSW Department of Primary Industries as to whether the State Forest Land can be dedicated under the *National Parks and Wildlife Act 1974 (NSW)*; and
 - (iv) where the Minister for the Environment is not satisfied that the State Forest Land can be dedicated under the *National Parks and Wildlife Act 1974 (NSW)*, the Minister for the Environment can require that State Forest Land to be excluded from the Conservation Offset Lands for the purposes of this Deed.

2B.2 Minister for the Environment to notify

- (a) Before the date on which the Land Owner is required to transfer the Conservation Offset Lands to the Minister, the Minister for the Environment must issue a notice to the Land Owner (with a copy to the Minister) certifying:
 - (i) whether the Minister for the Environment is satisfied that the State Forest Land can be dedicated under the *National Parks and Wildlife Act* 1974 (NSW); and
 - (ii) those parts, if any, of the State Forest Land to be excluded from the lands to be transferred as part of the Conservation Offset Lands pursuant to paragraph 2B.1(b)(iv) of this Schedule 4.
- (b) With effect from the date of issue of the notice by the Minister for the Environment pursuant to paragraph 2B.2(a) of this Schedule 4 the Conservation Offset Lands, for the purposes of this Deed, will be taken to exclude any of the State Forest Land nominated by the Minister for the Environment for exclusion from the Conservation Offset Lands.
- (c) Any dispute between the parties in relation to any matter or thing arising by virtue of this paragraph 2B shall be resolved in accordance with the dispute resolution provisions in Schedule 8.

2C Contribution Amount

2C.1 Minister to notify

The Minister must promptly notify the Minister for the Environment after he receives payment of each respective instalment of the Contribution Amount from the Land Owner and must pay each such instalment of the Contribution Amount to the Minister for the Environment.

2. Conservation Offset Lands

2.1 Conservation Offset Lands

Subject to clause 13.1, the Minister and the Land Owner agree that the Land Owner must transfer the Conservation Offset Lands to the Minister in accordance with the Development Contribution Timetable and paragraph 2.3 and 2.4 of this Schedule 4.

2.2 Proposed subdivision of part of Conservation Offset Lands

- (a) Unless Registered before the date of this Planning Agreement, the Land Owner must (at its risk and Cost) procure the registration of the Plan of Subdivision to create a separate lot or lots for part of the Conservation Offset Lands as shown in the plan attached to this Deed at Annexure B in accordance with the provisions of paragraph 2.2 of this Schedule 4.
- (b) As soon as reasonably practicable after the date of this Planning Agreement, the Land Owner must (at its risk and Cost) apply for, and procure, all Approvals to create a separate lot or lots for part of the Conservation Offset Lands.
- (c) The Developer must keep the Minister reasonably informed in relation to the progress of obtaining the Approvals referred to in paragraph 2.2(b) of this Schedule 4.

- (d) Upon receipt by the Land Owner of the Approvals, the Land Owner must (at its risk and Cost) do all that is reasonably required as soon as reasonably practicable to procure the LPMA to register a Plan of Subdivision to create a separate lot or lots for part of the Conservation Offset Lands consistent with those Approvals.

2.3 Transfer of Conservation Offset Lands

In accordance with the timing identified in Column 2 of Table 2 of Schedule 5, the Land Owner must (at its risk and Cost):

- (a) deliver to the Minister:
 - (i) a form of transfer in respect of the land comprising the Conservation Offset Lands in favour of the Minister for a consideration of \$1, executed by the Land Owner and in registrable form except for acceptance by the Minister and marking by the Office of State Revenue;
 - (ii) the certificate or certificates of title for the Conservation Offset Lands;
 - (iii) any consents and other documentation in registrable form required for the transfer (and registration) of the Conservation Offset Lands including without limitation any consents and other documentation necessary, or otherwise required by the Minister, for the transfer of those parts of the Conservation Offset Lands which:
 - A. are held by the Land Owner as registered lessee under a perpetual lease; or
 - B. have been dedicated as state forest;
 - (iv) any permits in connection with the Conservation Offset Lands including, without limitation, any enclosure permits, and any consents and other documentation in a registrable form necessary, or otherwise required by the Minister, for the transfer (and registration) of those permits; and
- (b) take any other necessary action (other than paying stamp duty) to give effect to the transfer of the title of the Conservation Offset Lands to the Minister free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) except any caveat lodged over the Conservation Offset Lands by the Minister in accordance with clause 9.4.

2.4 Compulsory Acquisition

- (a) If the Land Owner does not transfer the Conservation Offset Lands as required by this Planning Agreement, the Land Owner consents to the Minister compulsorily acquiring the whole or any part of the Conservation Offset Lands in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*, for the amount of \$1.00.
- (b) The Land Owner and the Minister agree that:
 - (i) this paragraph 2.4 of Schedule 4 is an agreement between the Minister and the Land Owner for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and

- (ii) in this paragraph 2.4 of Schedule 4 the Minister and the Land Owner have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) Except as otherwise agreed between the Land Owner and the Minister and subject to any caveat lodged by the Minister under clause 9.4, the Land Owner must ensure that the Conservation Offset Lands are free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), on both the date that the Land Owner is liable to transfer the Conservation Offset Lands to the Minister in accordance with paragraph 2.1 of this Schedule 4 and the date on which the Minister compulsorily acquires the whole or any part of the Conservation Offset Lands in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- (d) Subject to clause 13 and clause 14, the Land Owner indemnifies and keeps indemnified the Minister and the Minister for the Environment against all Claims made against the Minister as a result of any acquisition by the Minister of the whole or any part of the Conservation Offset Lands under this paragraph 2.4 of Schedule 4.
- (e) Subject to clause 13 and clause 14, the Land Owner must pay the Minister, promptly on demand, an amount equivalent to all Costs incurred by the Minister in acquiring the whole or any part of the Conservation Offset Lands as contemplated by this paragraph 2.4 of Schedule 4.

2.5 Minister to notify

The Minister must notify the Minister for the Environment that it is the legal owner or lessee (as the case may be) of the Conservation Offset Lands within 10 Business Days of either:

- (a) the completion of the transfer of the Conservation Offset Lands from the Land Owner to the Minister pursuant to paragraph 2.3 of this Schedule 4; or
- (b) the compulsory acquisition of the Conservation Offset Lands in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) pursuant to paragraph 2.4 of this Schedule 4

(as the case may be).

3. Transfer of Conservation Offset Lands from Minister to Minister for Environment

3.1 Transfer

- (a) Subject to paragraph 3.1(c) of this Schedule 4, the Minister will, upon written request from the Minister for the Environment, transfer the Conservation Offset Lands to the Minister for the Environment.
- (b) The Minister must:
 - (i) deliver to the Minister for the Environment:
 - A. a form of transfer in respect of the land comprising the Conservation Offset Lands in favour of the Minister for the Environment for a consideration of \$1, executed by the Minister and in registrable form except for acceptance by the

Minister for the Environment and marking by the Office of State Revenue;

- B. the certificate or certificates of title for the Conservation Offset Lands;
- C. any consents and other documentation in registrable form required for the transfer (and registration) of the Conservation Offset Lands including without limitation any consents and other documentation necessary, or otherwise required by the Minister for the Environment, for the transfer of those parts of the Conservation Offset Lands which:
 - 1) are held by the Minister as registered lessee under a perpetual lease; or
 - 2) have been dedicated as state forest;
- D. any permits in connection with the Conservation Offset Lands including, without limitation, any enclosure permits, and any consents and other documentation in a registrable form necessary, or otherwise required by the Minister for the Environment, for the transfer (and registration) of those permits, and

(ii) take any other necessary action to give effect to the transfer of the title of the Conservation Offset Lands to the Minister for the Environment free of any encumbrances and affectations which have been created during the period of ownership by the Minister (including any charge or liability for rates, taxes and charges), other than any obligation to pay any stamp duty and other taxes, charges and imposts in relation to the transfer of the Transferred Lands.

- (c) The Minister for the Environment must not make a written request pursuant to paragraph 3.1(a) of this Schedule 4 unless the Minister has notified the Minister for the Environment that it is the legal owner of the Conservation Offset Lands.

Schedule 5 - Development Contributions Timetable

Table 1 - Contribution Amounts

Note: In the event that:

- (a) the obligation of the Land Owner to pay the Contribution Amount by the dates specified in paragraphs (a) and (b) of Column 2 of Table 1 is suspended pursuant to clause 13.1(a);
- (b) the Land Owner has not paid the whole or any part of the Contribution Amount to the Minister by the Suspension Expiry Date; and
- (c) the Land Owner is then required to pay the whole or that part of the Contribution Amount to the Minister following the Suspension Expiry Date pursuant to clause 13.1(c)(i).

the Land Owner must pay the Minister the whole or that part of the Contribution Amount (as indexed in accordance with Schedule 3) which has not been paid by the Suspension Expiry Date by the dates referred to for each such outstanding instalment in paragraphs (a) and (b) of Column 2 of Table 1, such dates for payment to be extended by the same number of days as are comprised in the Suspension Period.

Column 1	Column 2
Development Contribution	Date for payment of Contribution Amount
Item 2 of Table 1 in Schedule 3	<p>The Development Contribution specified in Item 2 of Table 1 in Schedule 3 will be paid as follows:</p> <ul style="list-style-type: none"> (a) \$100,000 towards the conservation of <i>persoonia pauciflora</i> in the North Rothbury area and \$100,000 towards the management of the Conservation Offset Lands, payable by the Land Owner by 31 January 2012 as may be extended pursuant to the notes to Table 1 in this Schedule 5; and (b) 6 equal instalments of \$150,000 towards the management of the Conservation Offset Lands (as those amounts are adjusted by movements in the CPI as provided for in Schedule 3), paid annually, the first instalment to be paid on 31 January 2014, and each subsequent instalment to be paid on the date that is each subsequent anniversary of 31 January 2014.

Table 2 - Conservation Offset Lands

Note: In the event that:

- (a) the obligation of the Land Owner to transfer the Conservation Offset Lands by the date specified in Column 2 of Table 2 is suspended pursuant to clause 13.1(a);
- (b) the Land Owner has not transferred, or the Minister has not compulsorily acquired the whole or any part of the Conservation Offset Lands by the Suspension Expiry Date; and
- (c) the Land Owner is then required to transfer the Conservation Offset Lands to the Minister following the Suspension Expiry Date pursuant to clause 13.1(c)(ii),

the Land Owner must transfer to the Minister the whole or any of the Conservation Offset Lands which have not been transferred by the Suspension Expiry Date by the date referred to in Column 2 of Table 2, such date for transfer to be extended by the same number of days as are comprised in the Suspension Period.

If the Land Owner does not transfer the Conservation Offset Lands to the Minister by the date referred to in this Schedule 5, the provisions of paragraph 2.4 of Schedule 4 apply.

Column 1	Column 2
Development Contribution	Date for transfer or dedication of the Conservation Offset Lands
Item 1 of Table 1 in Schedule 3	<p>The Land Owner must transfer the Conservation Offset Lands to the Minister on the date which is the later of:</p> <ul style="list-style-type: none">(a) the date which is 30 days after the registration of the Plan of Subdivision; and(b) the date which is 4 months after the Gazettal Date.

Schedule 6 - Release and Discharge Terms

1. Release and Discharge Terms

- (a) If:
- (i) the Land Owner has:
 - A. paid the Contribution Amount; and
 - B. transferred the Conservation Offset Landsas required by this Planning Agreement;
 - (ii) any default by the Land Owner under the Planning Agreement has been remedied by the Land Owner (to the reasonable satisfaction of the Minister) or waived by the Minister under this Planning Agreement; and
 - (iii) the Suspension Expiry Date has occurred,
- the Minister must promptly, at the request and cost of the Land Owner:
- (i) provide a release and discharge of the Planning Agreement to the extent that the Planning Agreement affects the Land owned by the Land Owner; and
 - (ii) do all things necessary to enable the extinguishment of the Planning Agreement from title of that Land.
- (b) From time to time, the Land Owner may request the Minister to provide a release and discharge of the Planning Agreement to the extent the Planning Agreement affects any Residential Lot for which a Subdivision Certificate has been issued and where the Land Owner has fully satisfied its obligations under this Planning Agreement (including paying the Contribution Amount) in respect of that part of the Land or provided security to the Minister's satisfaction (in his sole and unfettered discretion) to secure performance of any outstanding obligations under this Planning Agreement in respect of that part of the Land, and where the Land Owner is not otherwise in default of any of its obligations under this Planning Agreement (as determined by the Minister (acting reasonably)), at the time of the Land Owner's request.
- (c) For the avoidance of doubt, the Minister is not required to provide a release and discharge of the Planning Agreement in respect of any part of the Land (or procure the removal of registration of the Planning Agreement from title of that part of the Land) unless the Minister is satisfied that the Land Owner is not in default of its obligations under this Planning Agreement at the time of the Land Owner's request.
- (d) If at the end of the Suspension Period, there is an effective Court declaration or order that the Major Development SEPP or the Major Development SEPP Amendment is invalid, notwithstanding anything in this Agreement, the parties agree that, 1 year and 1 month after the Suspension Expiry Date, the Minister must promptly, at the request and cost of the Land Owner:
- (i) provide a release and discharge of the Planning Agreement to the extent that the Planning Agreement affects the Land or Conservation Offset Lands owned by the Land Owner; and

- (ii) do all things necessary to enable the extinguishment of the Planning Agreement from title of that Land or the Conservation Offset Lands.

Schedule 7 - Review or Replacement Procedures

The Parties may agree to review this Planning Agreement. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties. For clarity, no such review or replacement shall have any force or effect unless and until formal legal documents are signed by the Parties.

Schedule 8 - Dispute resolution

1. Notice of Dispute

- (a) If a dispute between any of the Parties arises in connection with this Planning Agreement or its subject matter, then any Party may give to the other Parties a notice of dispute in writing adequately identifying and providing details of the dispute.
- (b) The Parties must continue to perform their respective obligations under this Planning Agreement if there is a dispute but will not be required to complete the matter, the subject of the dispute, unless each Party indemnifies the other Parties against cost, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

2. Further steps required before proceedings

- (a) Any dispute between the Parties arising in connection with this Planning Agreement or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation by a mediator agreed from time to time by each Party to the dispute.
- (b) If the Parties to the dispute cannot agree on a mediator within 10 Business Days of receipt by the relevant Party of the notice referred to in paragraph 2(a), either Party may request LEADR to appoint a mediator.
- (c) Each party must use its best efforts to resolve the dispute by a mediation procedure to be agreed upon by each Party to the dispute.
- (d) If mediation does not result in the resolution of the dispute within 30 Business Days of the notice referred to in paragraph 2(a) (or such longer period as the Parties agree in writing), then either Party is entitled to commence litigation in respect of that dispute.

3. Disputes for expert determination

If the mediation referred to in paragraph 2 has not resulted in settlement of the dispute, any Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph 4, such expert to act in accordance with the requirements of this Schedule 8.

4. Choice of expert

- (a) A dispute to be referred to an expert in accordance with paragraph 3 must be determined by an independent expert in the relevant field:
 - (i) agreed between and appointed jointly by the Parties; or
 - (ii) in the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph 3, appointed by the President or other senior officer for the time being of the body administering the relevant field.

- (b) If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

5. Requirements for expert

- (a) The expert appointed to determine a dispute:
 - (i) must have a technical understanding of the issues in contest;
 - (ii) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
 - (iii) must inform the Parties before being appointed the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- (b) The Parties must enter into an agreement with the expert appointed under this Schedule 8 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

6. Directions to expert

In reaching a determination in respect of a dispute under paragraph 3, the independent expert must give effect to the intent of the Parties entering into the Planning Agreement.

7. Expert not arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

8. Compliance with directions

The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

- (a) a short statement of facts; and
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

9. Expert may commission reports

The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants.

10. Expert may convene meetings

- (a) The expert will hold a meeting with all the Parties present to discuss the dispute.
- (b) The meeting must be conducted in a manner which the expert considers appropriate.
- (c) The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (d) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

11. Final determination of expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all Claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

12. Other courses of action

If the mediation referred to in paragraph 2 or the expert determination required or agreed under paragraph 3 has not resulted in resolution of the dispute, any one Party may take whatever course of action it deems appropriate (including commencing and prosecuting any proceedings in any court of competent jurisdiction) for the purpose of resolving the dispute.

13. Confidentiality of information

- (a) The Parties agree, and must procure that, the mediator and expert agrees as a condition of his or her appointment:

- (i) subject to paragraph (ii) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
 - (ii) not to disclose any confidential documents, information and other material except:
 - A. to a Party or adviser who has signed a confidentiality undertaking to the same effect as this paragraph 13; or
 - B. if required by Law or the ASX Listing Rules to do so; or
 - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.
- (b) The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (i) views expressed or proposals or suggestions made by a Party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
 - (ii) admissions or concessions made by Party during the expert determination or mediation in relation to the dispute; and
 - (iii) information, documents or other material concerning the dispute which are disclosed by a Party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

Schedule 9 - Not used

Schedule 10 - Assignment and Dealing Terms

1. Land Owner's right to sell Land

- (a) Except in respect of any part of the Land where the Planning Agreement has been released and discharged under paragraph 1 of Schedule 6, the Land Owner must not sell, transfer or dispose of the whole or any part of the Land in excess of 10 hectares in aggregate otherwise than in circumstances where paragraph 1(b) of this Schedule 10 or paragraph 1(c) of this Schedule 10 applies, unless before it sells, transfers or disposes of any such part of the Land to another person (**Transferee**):
- (i) it satisfies the Minister acting reasonably that the proposed Transferee is financially capable of complying with such of the Land Owner's obligations under this deed (including, without limitation, by providing financial statements for, and credit standing of, the proposed transferee) as the Minister acting reasonably shall nominate must be adopted by the Transferee (**Required Obligations**);
 - (ii) except as provided in the deed set out in Annexure A which is signed in accordance with paragraph 1(a)(iii) of this Schedule, the rights of the Minister under this deed are not diminished or fettered in any way;
 - (iii) the Transferee signs a deed in the form set out in Annexure A to the Minister containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Land Owner (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of;
 - (iv) any default by the Land Owner (other than a material default constituted by the appointment of a Controller of the Land Owner by a Financier) has been remedied by the Land Owner or that Financier (as the case may be), unless that default has been waived by the Minister; and
 - (v) the Land Owner and the Transferee pay the Minister's reasonable Costs in relation to that assignment; and
- (b) The Land Owner acknowledges that if it sells, transfers or disposes of any Land which is not in excess of 10 hectares, nothing in this Planning Agreement requires the Minister to release the Planning Agreement insofar as it relates to that Land unless and until the requirements of paragraph 1 of Schedule 6 have been complied with.
- (c) For the purposes of paragraph 1 of this Schedule 10, the following will be taken to be the sale, transfer or disposal of the whole or any part of the Land in excess of 10 hectares in aggregate:
- (i) one transaction where that transaction results in the sale, transfer or disposal of Land in excess of 10 hectares;
 - (ii) two or more transactions where the purchaser, transferee or disponent are different people and those transactions result in the sale, transfer or disposal of Land in excess of 10 hectares in aggregate, but excluding the area of any Land:

- A. comprised in any Residential Lot which has been sold, transferred or disposed to a purchaser, transferee or donee; and
 - B. which has been subject to the release and discharge of the Planning Agreement pursuant to paragraph 1(b) of Schedule 6.
- (iii) two or more transactions where the purchaser, transferee or donee is the same person (or persons) where the Minister, acting reasonably, determines that those separate transactions should be regarded as, in substance, one transaction.

2. Land Owner's right to sell Conservation Offset Lands

The Land Owner must not sell, transfer or dispose of the whole or any part of the Conservation Offset Lands other than to the Minister in accordance with the provisions of this Planning Agreement.

3. Release

If the Land Owner sells, transfers or disposes of the whole or any part of the Land in excess of 10 hectares in aggregate and fully satisfies the requirements of paragraph 1 of this Schedule 10, the Land Owner will be released from its obligations under this Planning Agreement with respect to that Land being sold, transferred or disposed of.

4. Land Owner to retain obligations

If the Land Owner sells, transfers or disposes of the whole or any part of the Land in the manner identified in paragraph 1(a) of this Schedule 10 to a Transferee:

- (a) the Land Owner may elect, by way of notice to the Minister, to continue to be bound by the obligations under the Planning Agreement in respect of the Land in lieu of the Transferee;
- (b) the Minister agrees to release the Transferee from the requirement to comply with the obligations under the Planning Agreement in respect of that Land; and
- (c) the Minister will do all things reasonably necessary to effect the release included in paragraph 4(b) of this Schedule 10, including entering into a further agreement if necessary with the Transferee and Land Owner.

Schedule 11 - General terms

1. Notices

1.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Planning Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below:

Minister

Address: 22-33 Bridge Street
Sydney, NSW, 2000

Telephone: (02) 9228 6111

Fax: (02) 9228 6195

Attention: Director-General

Minister for the Environment

Address: Level 35 Governor Macquarie Tower
1 Farrer Place
Sydney, NSW, 2000

Telephone: (02) 9995 5000

Fax: (02) 9995 5999

Attention: Director-General

Land Owner

Address: c/ - LWP Property Group (NSW) Pty Ltd
34 Main Street
Ellenbrook Town Centre
ELLENBROOK WA 6069

Telephone: (08) 9297 9900

Fax: (08) 9296 9100

Attention: Mr Danny Murphy

1.2 Change of address

If a Party gives another Party 3 Business Days notice of a change of its address or fax number, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

1.3 Receipt

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted; or
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

1.4 Receipt - next Business Day

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day or after 5pm on any Business Day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

2. Approvals and Consent

Except as otherwise set out in this Planning Agreement, and subject to any statutory obligations, the Minister may give or withhold an approval or consent to be given under this Planning Agreement in his absolute discretion and subject to any conditions determined by the Minister. The Minister is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

3. Assignment and dealings

None of the Parties to this Planning Agreement may assign or otherwise deal with its rights under this Planning Agreement or allow any interest in them to arise or be varied in each case unless stated otherwise in Schedule 10.

4. Entire Agreement

This Planning Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, or by an Authorised Officer, agent or employee of that Party, before the Planning Agreement was executed, except as permitted by Law.

5. Further Acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Planning Agreement and all transactions incidental to it.

6. Governing Law and Jurisdiction

This Planning Agreement is governed by the Law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

7. Joint and individual liability and benefits

Unless expressly provided to the contrary in this deed, the Parties acknowledge and agree that:

- (a) any agreement, covenant, representation or warranty under this Planning Agreement by two or more persons binds them jointly and severally;
- (b) a Land Owner guarantees the performance by any other Land Owner in respect of that other Land Owner's obligations under this Planning Agreement; and
- (c) a breach by one Landowner of its obligations under this Planning Agreement, constitutes a breach by any other Land Owner of its obligations under this Planning Agreement.

8. No fetter

Nothing in this Planning Agreement is to be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this Planning Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this Planning Agreement imposes any obligation on an Authority to:
 - (i) grant Approval; or
 - (ii) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

9. Representations and warranties

- (a) The Parties represent and warrant that they have power to enter into this Planning Agreement and comply with their obligations under this Planning Agreement and that entry into this Planning Agreement will not result in the breach of any Law.
- (b) The Parties agree that the Minister enters into this Planning Agreement for and on behalf of the State of New South Wales and for the benefit of the State Government as a juristic entity.

10. Additional representations and warranties

Huntlee in its capacity as bare trustee of the Relevant Partnership represents and warrants to the other parties that as at the date of this Planning Agreement:

- (a) **(Trustee)**: it has power to enter into this Planning Agreement in its capacity as bare trustee of the Relevant Partnership;
- (b) **(Trustee has authority)**: it has the power to perform its obligations under this Planning Agreement as Land Owner in its capacity as bare trustee of the Relevant Partnership, including the power to pay the Environmental Contribution and transfer the Conservation Offset Lands to the Minister;
- (c) **(Partnership validly created)**: the Relevant Partnership has been validly created and is in existence at the date Huntlee signs this Planning Agreement;
- (d) **(Trustee validly appointed)**: Huntlee has been validly appointed as bare trustee of the Relevant Partnership and is presently the sole trustee of the Relevant Partnership;

- (e) **(Partnership Deed):** the Relevant Partnership is solely constituted by the Relevant Partnership Deed, a true copy of which was provided to the Minister's solicitors before Huntlee signed this Planning Agreement;
- (f) **(Reliance):** any act or omission of Huntlee can be relied upon by the Minister and the Minister for the Environment as if that act or omission had been done by the partners of the Relevant Partnership;
- (g) **(Commercial benefit):** it is to the commercial benefit of the Relevant Partnership that Huntlee, as Land Owner, enters into this Deed in its capacity, inter alia, as bare trustee of the Relevant Partnership; and
- (h) **(Rights of indemnity and exoneration against Partnership assets):** Except in the case of its own fraud, wilful violation of law, gross negligence, breach of trust or breach of duty, Huntlee as bare trustee of the Relevant Partnership has valid rights of indemnity and exoneration pursuant to the terms of the Relevant Partnership Deed.

11. Severability

- (a) If any part of this Planning Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any part of the Planning Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Planning Agreement, but the rest of this Planning Agreement is not affected.

12. Modification

No modification of this Planning Agreement will be of any force or effect unless it is in writing and signed by the Parties as a Planning Agreement.

13. Waiver


- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Planning Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.


14. Planning Agreement not confidential

The Parties agree that the terms of the Planning Agreement are not confidential and the Planning Agreement may be treated as a public document and exhibited or reported without restriction by any Party.


Executed as a deed


Executed by Misthold Pty Limited (ABN 59)
054 079 739) in accordance with section 127 of)
the Corporations Act by or in the presence of:)


.....
Company Secretary/Director
ALAN FRANCIS NEVILLE
.....
Name of Company Secretary/Director (print)


.....
Director
Danny William Murphy
.....
Name of Director(print)

Executed by Huntlee Pty Ltd (ABN 73 143)
744 745) in accordance with section 127 of the)
Corporations Act by or in the presence of:)


.....
Company Secretary/Director
ALAN FRANCIS NEVILLE
.....
Company Secretary/Director (print)

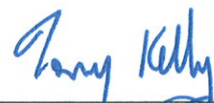

.....
Director
Danny William Murphy
.....
Name of Director (print)

Signed by The Honourable Tony Kelly
M.L.C

Minister for Planning for the State of New South
Wales

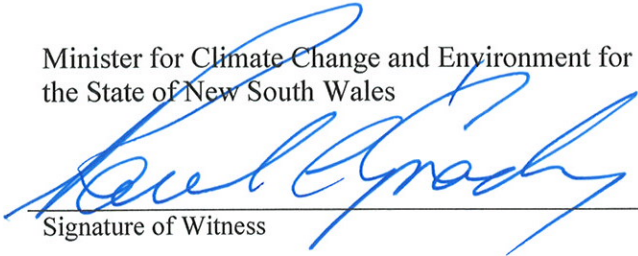

.....
Signature of Witness

MICHAEL FLEMING
.....
Name of Witness in full
L34 GOVERNOR MACQUARIE TOWER
Phillip St Sydney


.....
The Honourable Tony Kelly M.L.C
Minister for Planning
L 34 GOVERNOR MACQUARIE TOWER
PHILIP STREET
SYDNEY

Signed by The Honourable Frank Sartor
M.P.

Minister for Climate Change and Environment for
the State of New South Wales


Signature of Witness


Name of Witness in full

LEVEL 35

56
24/12/12 GOVERNOR MACQUARIE TOWER
1 FARRER PLACE
SYDNEY



The Honourable Frank Sartor M.P.
Minister for Climate Change and
Environment

Annexure A - Novation Deed

CLAYTON UTZ

Novation Deed

The Minister for Planning
Minister



The Minister for Climate Change and the Environment

Minister for the Environment

Misthold Pty Limited

and

Huntlee Pty Limited

Collectively, the Land Owner

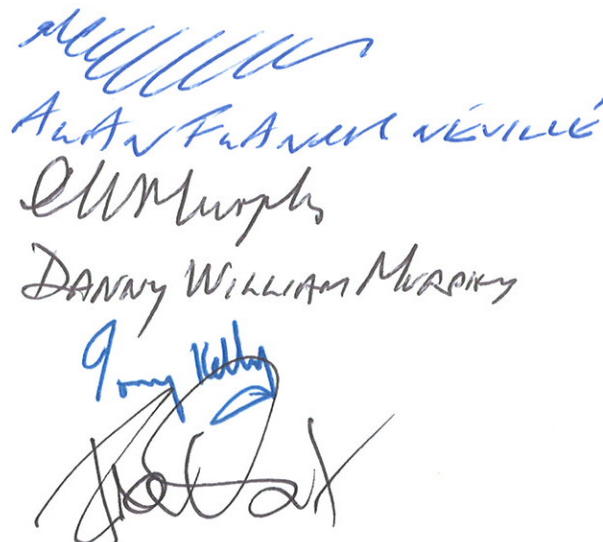
[Insert Land Owner's name]
Transferor

[Insert Transferee's name]
Transferee

Clayton Utz
Lawyers
Levels 19-35 No. 1 O'Connell Street Sydney NSW 2000 Australia
PO Box H3 Australia Square Sydney NSW 1215
T + 61 2 9353 4000 F + 61 2 8220 6700

www.claytonutz.com

Our reference 15266/15992/80074328



Novation Deed made at **on**

Parties **The Minister for Planning ABN 38 755 709 681** of Level 34 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
(Minister)

The Minister for Climate Change and the Environment ABN 30 841 387 271 of Level 35 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (Minister for the Environment)

Misthold Pty Limited ABN 59 054 079 739 and Huntlee Pty Limited ABN 73 143 744 745 both c/- LWP Property Group, 34 Main Street, Ellenbrook WA 6069 (Collectively, the **Land Owner**)

 [Insert Land Owner's name] of [insert] (Transferor)

 [Insert Transferee's name] of [insert] (Transferee)

Recitals

- A The Minister, the Minister for the Environment and the Land Owner are parties to the Original Agreement.
- B The Original Agreement relates to the whole of the Land.
- C The Transferor wishes to transfer [the whole of] [part or parts of] the Land comprising Lot [insert Lot number] in DP [insert Deposited Plan number] to the Transferee.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Effective Date means [insert].

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the voluntary planning agreement dated [insert] and made between the Minister, the Minister for the Environment and the Land Owner.

Required Obligations means [insert the obligations nominated by the Minister pursuant to paragraph 1.1(a)(i) of Schedule 10 of the Original Agreement].

1.2 References to certain general terms

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of them;

- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (g) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or mote of them; and
- (h) "include" in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

2. Novation

2.1 Original Agreement

Subject to clause 2.2 and with effect from the Effective Date:

- (a) the Transferee is substituted for the Transferor as a party to the Original Agreement, and agrees to perform the Required Obligations;
- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Transferor insofar as the Original Agreement relates to the Required Obligations; and
- (c) the Transferor is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

2.2 Liability before Effective Date

Notwithstanding clause 2.1, the Transferor is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Transferor occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) insofar as the Original Agreement relates to the Required Obligations.

3. Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4. GST

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

5. Stamp duty and costs

- (a) The Transferor and the Transferee are jointly and severally liable for the Minister's and the Minister for the Environment's legal costs of and incidental to the negotiation, preparation and execution of this deed, and must reimburse the Minister and the Minister for the Environment for such legal costs promptly on demand.
- (b) The Transferee will pay all stamp duty arising directly or indirectly from this deed.

6. Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

7. Governing law

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

8. Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Executed as a deed.

Signed by The Honourable Tony Kelly M.P.

Minister for Planning for the State of New South
Wales



Signature of Witness

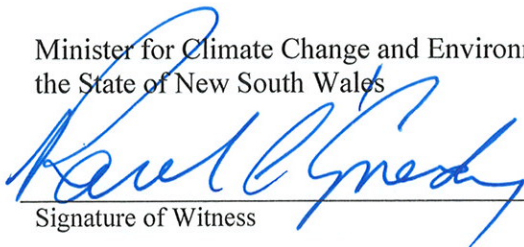
Michael Fleming

Name of Witness in full

L34 GOVERNOR MACQUARIE TOWER
Phillip St Sydney

**Signed by The Honourable Frank Sartor
M.P.**

Minister for Climate Change and Environment for
the State of New South Wales



Signature of Witness

Paul O'Gredy

Name of Witness in full

Executed by Misthold Pty Limited (ABN 59)
054 079 739) in accordance with section 127 of)
the Corporations Act by or in the presence of:)

.....
Company Secretary/Director

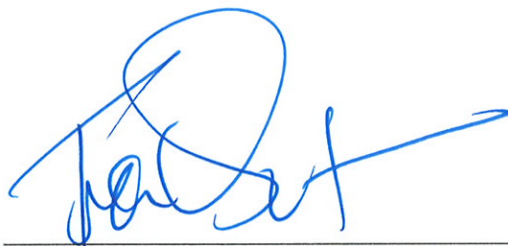
.....
Name of Company Secretary/Director (print)

.....
Director

.....
Name of Director(print)



The Honourable Tony Kelly M.P.
Minister for Planning



The Honourable Frank Sartor M.P.
Minister for Climate Change and
Environment

Executed by Huntlee Pty Ltd (ABN 73 143 744 745) in accordance with section 127 of the Corporations Act by or in the presence of:)
)
)

.....
Company Secretary/Director

.....
Director

.....
Company Secretary/Director (print)

.....
Name of Director (print)

Executed by [insert Transferor] in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Signature of Director

Name of Secretary/other Director in full

Name of Director in full

Executed by [insert Transferee] in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Signature of Director

Name of Secretary/other Director in full

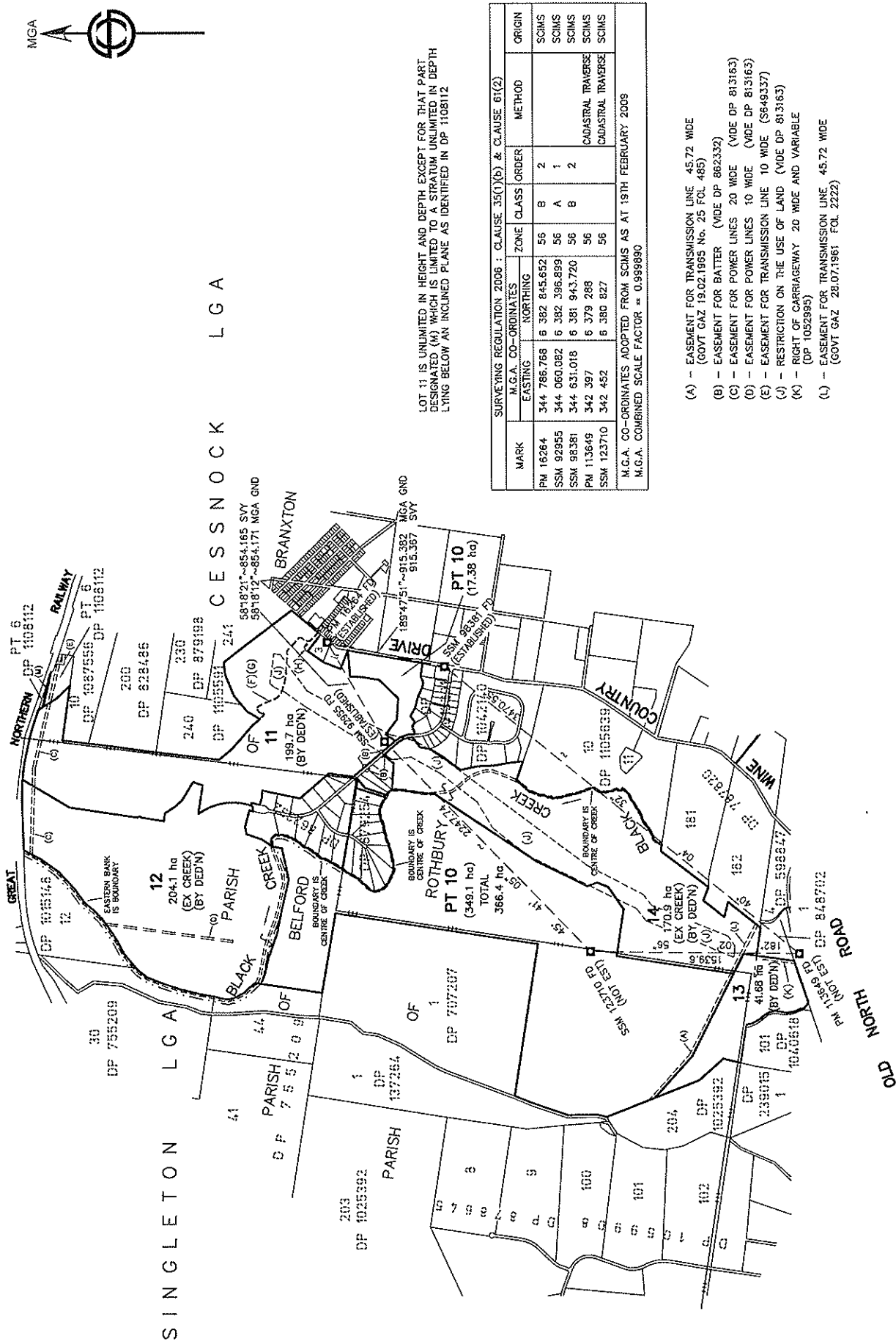
Name of Director in full

Annexure B - Plan of Subdivision for the Huntlee Conservation Offset Lands
(780 ha)

Mauller
ALAN FANERS REVILLE

DM Murphy
Danay WILLIAM MURPHY

Tom Kelly
[Signature]



LOT 11 IS UNLIMITED IN HEIGHT AND DEPTH EXCEPT FOR THAT PART DESIGNATED (M) WHICH IS LIMITED TO A STRATUM UNLIMITED IN DEPTH LYING BELOW AN INCLINED PLANE AS IDENTIFIED IN DP 1108112

MARK	M.G.A. CO-ORDINATES		ZONE	CLASS	ORDER	METHOD	ORIGIN
	EASTING	NORTHING					
PM 16264	344 785.768	6 382 845.652	56	B	2		SCIMS
SSM 92955	344 060.082	6 382 396.899	56	A	1		SCIMS
SSM 98381	344 631.018	6 381 943.720	56	B	2		SCIMS
PM 113649	342 397	6 379 288	56			CADAstral TRAVERSE	SCIMS
SSM 123710	342 452	6 380 827	56			CADAstral TRAVERSE	SCIMS

M.G.A. CO-ORDINATES ADOPTED FROM SCIMS AS AT 19TH FEBRUARY 2009
M.G.A. COMBINED SCALE FACTOR = 0.9999890

- (A) - EASEMENT FOR TRANSMISSION LINE 45.72 WIDE (GOVT GAZ 19.02.1965 No. 25 FOL 485)
- (B) - EASEMENT FOR BATTER (VIDE DP 862332)
- (C) - EASEMENT FOR POWER LINES 20 WIDE (VIDE DP 813163)
- (D) - EASEMENT FOR POWER LINES 10 WIDE (VIDE DP 813163)
- (E) - EASEMENT FOR TRANSMISSION LINE 10 WIDE (S649337)
- (J) - RESTRICTION ON THE USE OF LAND (VIDE DP 813163)
- (K) - RIGHT OF CARRIAGEWAY 20 WIDE AND VARIABLE (DP 1052985)
- (L) - EASEMENT FOR TRANSMISSION LINE 45.72 WIDE (GOVT GAZ 28.07.1961 FOL 22222)

Surveyor: NIGEL DELFS
Date of Survey: 13TH MARCH 2009
Surveyor's Ref.: 25165-8
2008/7100 (1166) PARTIAL SURVEY

PLAN OF SUBDIVISION OF
LOT 300 DP 1029733, LOT 123 DP 1012402,
LOT 32 DP 1003656, LOT 102 DP 1040818
LOT 2 DP 1042140 AND LOT 5 DP 1108112

LGA: CESSNOCK/SINGLETON
Locality: ROTHBURY & BELFORD
Subdivision No.: 14/2008/627/1
Lengths are in metres. Reduce Ratio 1:20000

Registered
DP

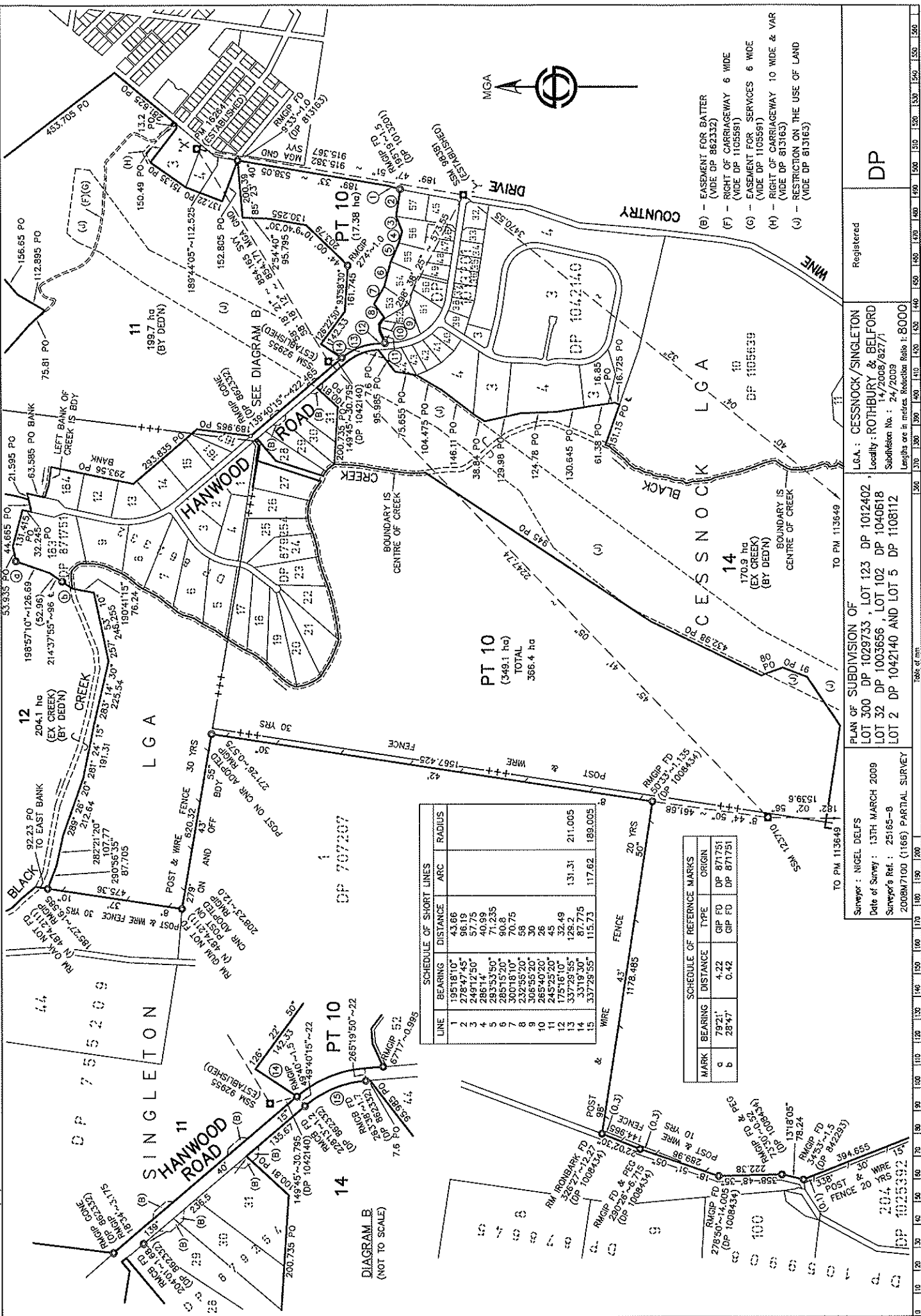
300 310 320 330 340 350 360 370 380 390 400 410 420 430 440 450 460 470 480 490 500 510 520 530 540 550 560 570 580 590 600

Scale of mm



WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

PLAN FORM 2 (A2)



SCHEDULE OF SHORT LINES

LINE	BEARING	DISTANCE	ARC	RADIUS
1	135°18'10"	43.66		
2	278°47'45"	96.19		
3	249°12'50"	57.75		
4	286°14'	40.99		
5	283°53'50"	71.235		
6	285°15'20"	90.8		
7	300°18'10"	70.75		
8	232°55'20"	58		
9	306°55'20"	30		
10	285°40'20"	26		
11	245°25'20"	45		
12	175°16'10"	32.49		
13	337°29'55"	129.2		
14	331°19'30"	87.775		
15	337°29'55"	115.73		
16		117.62		189.005
17		131.31		211.005

SCHEDULE OF REFERENCE MARKS

MARK	BEARING	DISTANCE	TYPE	ORIGIN
a	79°21'	4.22	GIP	DP 871751
b	28°17'	0.42	GIP	DP 871751

- (B) - EASEMENT FOR BATTER (VIDE DP 882332)
- (F) - RIGHT OF CARRIAGEWAY 6 WIDE (VIDE DP 1105591)
- (G) - EASEMENT FOR SERVICES 6 WIDE (VIDE DP 1105591)
- (H) - RIGHT OF CARRIAGEWAY 10 WIDE & VAR (VIDE DP 813163)
- (J) - RESTRICTION ON THE USE OF LAND (VIDE DP 813163)

PLAN OF SUBDIVISION OF
 LOT 300 DP 1029733, LOT 123 DP 1012402,
 LOT 32 DP 1003656, LOT 102 DP 1040818
 LOT 2 DP 1042140 AND LOT 5 DP 1108112

Surveyor: NIGEL DELFS
Date of Survey: 13TH MARCH 2009
Surveyor's Ref: 25165-8
 2008/7100 (1166) PARTIAL SURVEY

LGA: CESSNOCK/SINGLETON
Locality: ROTHBURY & BELFORD
Subdivision No: 24/2009
 Lengths are in metres. Reduction Ratio 1:8000

Registered DP

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

PLAN FORM 2 (A2)

