

# **Fifth Deed of Variation to Planning Agreement**

Huntlee New Town

Parties

**Minister for Planning**

(ABN 20 770 707 468)

**Huntlee Pty Limited**

(ACN 143 744 745)

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## Date

**Parties** **MINISTER FOR PLANNING** (ABN 20 770 707 468)  
of c/-NSW Department of Planning and Environment, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 (**Minister**)

**HUNTLEE PTY LIMITED** (ACN 143 744 745) in its capacity as bare trustee of the Relevant Partnership of c/-LWP Property Group, IBM Centre, Level 2, 1060 Hay Street, West Perth, WA 6005 (**Developer**)

## Introduction

- A** The Minister and the Developer are parties to the Planning Agreement.
- B** Under the Planning Agreement, the Developer is required to achieve Practical Completion of each element of the Road Improvement Works set out in the table at Annexure F to the Planning Agreement within the timing set out in the table at Annexure F to the Planning Agreement for that element of the Road Improvement Works.
- C** On 6 October 2021, approval was granted to MOD 17 to the Project Approval which, among other modifications, modified Condition E7(a) of the Project Approval to vary the timing of an element of the Road Improvement Works to be delivered by the Developer under the Project Approval.
- D** Any modification of Condition E7 of the Project Approval to the timing for delivery of an element of the Road Improvement Works necessitates an amendment to the table at Annexure F to the Planning Agreement.
- E** The Developer has offered, and the Minister has agreed, to amend the Planning Agreement to require the Developer to achieve Practical Completion of each element of the Road Improvement Works within the time required by the Project Approval.

## It is agreed

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Deed:

- (1) **Deed** means this Deed including any schedules, annexures and appendices to this Deed. A reference to this Deed includes the agreement recorded in this Deed.
- (2) **First Variation Deed** means the 'Deed of Variation to Planning Agreement' dated 2 January 2018, entered into between the Minister and the Developer.
- (3) **Fourth Variation Deed** means the 'Fourth Deed of Variation to Planning Agreement' dated 21 June 2021, entered into between the Minister and the Developer.
- (4) **MOD 17** means modification application MP 10\_0137 MOD 17 approved under Ministerial delegation by the then NSW Department of Planning, Industry and Environment, as delegate of the Minister, on 6 October 2021, subject to conditions.
- (5) **Planning Agreement** means the planning agreement dated 4 September 2013, entered into between the Minister and the Developer, as amended by the First

Variation Deed, the Second Variation Deed, the Third Variation Deed and Fourth Variation Deed.

- (6) **Project Approval** means 'Project Approval MP10\_0137' approved under Ministerial delegation by the Planning Assessment Commission, as delegate of the Minister, on 24 April 2013, as modified from time to time.
- (7) **Second Variation Deed** means the 'Second Deed of Variation to Planning Agreement' dated 16 April 2020, entered into between the Minister and the Developer.
- (8) **Third Variation Deed** means the 'Third Deed of Variation to Planning Agreement' dated 16 April 2020, entered into between the Minister and the Developer.

## 1.2 Interpretation

- (1) In this Deed, unless the contrary intention appears:
  - (a) expressions and phrases used but not defined in this Deed have the same meanings they have in the Planning Agreement; and
  - (b) clause 1.2 of the Planning Agreement will apply to the interpretation and construction of this Deed.
- (2) The parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

## 2 Status of this Deed

This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.

## 3 Commencement

This Deed commences operation from the date it is signed by all parties.

## 4 Warranties and representations

### 4.1 Representations and warranties

The parties represent and warrant that they have power to enter into this Deed and comply with their obligations under this Deed and that entry into this Deed will not result in the breach of any Law.

### 4.2 Additional representations and warranties

- (1) In this **clause 4.2**, Huntlee Pty Ltd is defined as "**Huntlee**".
- (2) 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 Deed:
  - (a) **(Trustee)**: it has the power to enter into this Deed in its capacity as bare trustee of the Relevant Partnership;

- (b) **(Trustee has authority)**: it has the power to perform its obligations under this Deed as Developer in its capacity as bare trustee of the Relevant Partnership;
- (c) **(Partnership validly created)**: the Relevant Partnership has been validly created and is in existence at the date Huntlee signs this Deed;
- (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 the Planning Agreement;
- (f) **(Reliance)**: any act or omission of Huntlee can be relied upon by the Minister 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 Developer, enters into the Planning Agreement 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, 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.

## **5 Amendment to Planning Agreement**

### **5.1 Amendment**

On and from the commencement of this Deed, the Planning Agreement is amended as set out in this clause 5.

### **5.2 Annexure F – Road Improvement Works**

The table at Annexure F to the Planning Agreement is amended in accordance with the mark up shown in the copy of Annexure F at Appendix 1 to this Deed.

### **5.3 Clause 4.1(a) of Schedule 4 – Road Improvement Works**

Clause 4.1(a) of Schedule 4 is deleted and a new clause 4.1(a) is inserted in Schedule 4 as follows:

*(a) The Land Owner must:*

- (i) enter into a Road Works Agreement(s) in respect of the carrying out and completion of the Road Improvement Works for each element(s) of the Road Improvement Works set out in column 1 of the table in Annexure F before the issue of a Construction Certificate for the relevant element(s) of the Road Improvement Works;*

- (ii) *achieve Practical Completion of each element of the Road Improvement Works set out in column 1 of the table in Annexure F within the timing set out in column 2 of the table in Annexure F for that element of the Road Improvement Works;*
- (iii) *notify the Minister immediately upon lodgment of any Application to modify the Project Approval to change the timing for delivery of an element of the Road Improvement Works, and again, upon determination of any such Modification and*
- (iv) *notwithstanding clause 4.1(a)(ii), achieve Practical Completion of each element of the Road Improvement Works set out in column 1 of the table in Annexure F prior to the issue of the Subdivision Certificate in respect of that part of the Land comprising land on which the final Dwelling is to be developed within Stage 1 as approved under the Project Approval.*

## **6 Registration of this Deed**

### **6.1 Registration**

- (1) As contemplated by section 7.6 of the Act, the Developer agrees to lodge this Deed for registration under the *Real Property Act 1990* on the relevant folios of the Register for all of the Land upon which the Planning Agreement is registered, within 60 Business Days after the date on which this Deed, executed by the Minister, is returned to the Developer.
- (2) The Developer will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing which provide evidence that clause 6.1(1) has been satisfied, within 10 Business Days after the date of registration.

## **7 Expenses**

- 7.1** Subject to receipt of a valid tax invoice, the Developer must pay the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- 7.2** The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation, and the review of any submissions received during the public notice period.
- 7.3** The Developer must pay the Minister's reasonable legal costs and disbursements in connection with the release and discharge of this Deed with respect to any part of the Land.
- 7.4** The Developer must pay all taxes assessed on or in respect of this Deed and any instrument or transaction required or contemplated by or necessary to give effect to this Deed (including stamp duty and registration fees, if applicable).
- 7.5** The Developer must provide the Minister with bank cheques, or an alternative method of payment if requested by the Minister, in respect of the Minister's costs pursuant to clauses 7.1, 7.2 and 7.3 above:

- (1) where the Minister has provided the Developer with a tax invoice of the sum of such costs prior to execution, on the date of execution of this Deed; or
- (2) where the Minister has not provided the Developer with a tax invoice of the sum of such costs prior to execution, within 10 Business Days of demand by the Minister for payment.

## **8 Amendments not to affect accrued rights and obligations**

**8.1** The amendments to the Planning Agreement under this Deed do not affect the validity or enforceability of the Planning Agreement as amended.

**8.2** Nothing in this Deed:

- (1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Planning Agreement before the date of this Deed; or
- (2) discharges, releases or otherwise affects any liability or obligation arising under the Planning Agreement before the date of this Deed.

## **9 GST**

Clause 12 of the Planning Agreement applies as if it forms part of this Deed, with any necessary changes.

## **10 Confirmation**

Upon execution of this Deed by both parties, each Party is bound by the Planning Agreement as amended by this Deed.

## **11 Electronic execution and witnessing**

The parties acknowledge and agree that:

- (1) this Deed, including any counterpart, may be executed electronically, including by using software or a platform for the electronic execution of documents;
- (2) if this Deed or any counterpart is executed electronically, a scan or a hard copy print out of that executed Deed will be treated as if it is the original Deed or counterpart that has been executed;
- (3) if this Deed or any counterpart is executed electronically by or on behalf of a party, that party represents and warrants that it or anyone signing on its behalf:
  - (a) is duly authorised to enter into and execute this Deed and to create obligations that are valid and binding obligations on the party; and
  - (b) affixed their own electronic signature to the Deed;
- (4) no person may challenge the validity of the Deed by virtue only of the fact that it has been electronically executed and each party is estopped from asserting otherwise;

- (5) this Deed may be exchanged by hand or by post, or remotely by any electronic method that evidences a party's execution of this Deed; and
- (6) each party will be taken to have received the other party's executed counterpart Deed at the time it would be taken to have received it if it were a notice served under **clause 12**.

## **12 Notices**

### **12.1 Form**

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

- (1) delivered or posted to that Party at its address set out below;
- (2) sent to that Party at its email address set out below; or
- (3) faxed to that Party at its fax number set out below.

#### **Minister**

Attention: The Secretary, NSW Department of Planning and Environment

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

Email address: PlanningAgreements@planning.nsw.gov.au

#### **Developer**

Attention: Danny Murphy

Address: c/- LWP Property Group (NSW) Pty Ltd  
IBM Centre, Level 2, 1060 Hay Street  
West Perth WA 6005

Fax Number: (08) 9296 9100

### **12.2 Change of address**

If a Party gives another Party 3 Business Days' notice of a change of its address, email 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, sent or faxed to the latest address, email address or fax number.

### **12.3 Receipt**

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

- (1) if it is delivered, when it is left at the relevant address;
- (2) if it is sent by registered post, two Business Days after it is posted;



- (3) if it is sent by email and the sender does not receive a delivery failure notice, as soon as the email is sent; or
- (4) 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.

**12.4 Receipt – next Business Day**

If any notices, consent, information, application or request is delivered, or an error free transmission report or delivery failure notice 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 treated as having been given or made at the beginning of the next Business Day.

**13 General**

**13.1 Entire agreement**

This Deed constitutes the entire agreement between the Parties regarding the matters set out in this Deed and supersede any prior representations, understandings or arrangements between the Parties, whether orally or in writing.

**13.2 Amendment**

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

**13.3 Waiver and exercise of rights**

- (1) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- (2) A waiver by a Party is only effective if it is in writing.
- (3) 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.

**13.4 Further acts**

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

**13.5 Governing law and jurisdiction**

This Deed 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.

**13.6 Assignment and dealings**

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

**13.7 No fetter**

Nothing in this Deed shall 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:

- (1) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (2) nothing in this Deed imposes any obligation on a Consent Authority to:
  - (A) grant Development Consent;
  - (B) exercise any functions or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

**13.8 Severability**

- (1) If any part of this Deed 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 the latter way.
- (2) If any part of the Deed is illegal, unenforceable or invalid, that part is to be treated as removed from this Deed, but the rest of the Deed is not affected.

**13.9 Joint and individual liability and benefits**

Except as otherwise set out in this Deed, any agreement, covenant, representation or warranty under this Deed made by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

**13.10 Approvals and Consent**

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

**13.11 Deed not confidential**

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

**13.12 Deed**

This document is a deed. Factors which might suggest otherwise are to be disregarded.

# Execution

**Executed** as a deed.

**Signed, sealed and delivered** by the  
**Minister for Planning** (ABN 20 770 707 468)  
in the presence of:

.....  
Signature of witness  
  
Electronic signature of me, the person named  
below, affixed by me, or at my direction, on  
date:\_\_\_\_\_.

.....  
Name of witness in full

.....  
Address of witness  
  
This document was signed in counterpart and  
witnessed over audio visual link in accordance  
with section 14G of the *Electronic  
Transactions Act 2000*

.....  
Signature of delegate of the Minister for  
Planning  
  
Electronic signature of me, the person named  
below, affixed by me, or at my direction, on  
date:\_\_\_\_\_.

.....  
Name of delegate of the Minister for Planning

**Executed by Huntlee Pty Limited** (ACN 143 744 745) in its capacity as trustee of the Relevant Partnership in accordance with section 127 of the *Corporations Act 2001* (Cth):

DocuSigned by:  
  
BA312E2B1175494.....

Signature of Secretary/Director

Electronic signature of me, the person named below, affixed by me, or at my direction, on date: 05 December 2022.

Eric Lee

.....  
Full name

DocuSigned by:  
  
5C17A5B68A0046D.....

Signature of Director

Electronic signature of me, the person named below, affixed by me, or at my direction, on date: 05 December 2022.

Danny William Murphy

.....  
Full name

## Appendix 1 - Annexure F

### Road Improvement Works

Item	Upgrade	Description	Timing
1	-	Wine Country Drive shall be upgraded to 4 through lanes (2 lanes in each direction with central median) in accordance with the Huntlee Stage 2 – Wine Country Drive Upgrade plans by Northrop, dated 11 November 2016, job number NL151628, Revision 6.	<p><u>In accordance with the timing required by the Project Approval, as modified from time to time.</u></p> <p><del>(a) Prior to 725 Dwellings for which a Subdivision Certificate has been issued; or</del></p> <p><del>(a) 1 June 2018, whichever occurs first.</del></p>
2	A1	Upgrade Wine Country Drive / Hunter Expressway Link Road intersection to a 2 lane circulating roundabout.	<p><u>In accordance with the timing required by the Project Approval, as modified from time to time.</u></p> <p><del>(b) Prior to 1,000 Dwellings for which a Subdivision Certificate has been issued; or</del></p> <p><del>(c) 1 December 2021, whichever occurs first.</del></p>
3	A3	Wine Country Drive / Main Street intersection with traffic signal control generally in accordance with the layout shown in the Addendum report dated August 2012.	<p><u>In accordance with the timing required by the Project Approval, as modified from time to time.</u></p> <p><del>Prior to the construction of any development (excluding subdivision) west of Wine Country Drive, with the exception of any sales office and must be constructed concurrently with the upgrade of Wine Country Drive as described in Item 1 in the table in Annexure F.</del></p>
4	A2	Wine Country Drive / Anvil Creek Regional Park intersection with Type CHR / CHL intersection (protected right and left turn bay) and restricted to left in / left out / right in movements.	<p><u>In accordance with the timing required by the Project Approval, as modified from time to time.</u></p> <p><del>Prior to opening of the park</del></p>

Item	Upgrade	Description	Timing
5	A5	Wine Country Drive / Village 1 access with traffic signal control.	<p><a href="#">In accordance with the timing required by the Project Approval, as modified from time to time.</a></p> <p><del>Prior to 1,000 Dwellings for which a Subdivision Certificate has been issued.</del></p> <p><del>The fourth leg of the intersection (Link Road 1) is not to be constructed and operational prior to the intersection being signal controlled and operational. The capacity of this intersection is to be tested again prior to 1,500 Dwellings for which a subdivision certificate has been issued.</del></p>
6	A9	Wine Country Drive / Large Lot access upgraded to an Austroads Type CHR / CHL intersection or seagull	<p><a href="#">In accordance with the timing required by the Project Approval, as modified from time to time.</a></p> <p><del>Prior to any Dwelling in R5 zone west of Wine Country Drive</del></p>
7	A6	<p>Hunter Expressway Link Road / Village 1 North access intersection and link road shall be constructed during Stage 1.</p> <p>The intersection shall be a 2 lane circulating roundabout or traffic signals.</p> <p>The link road shall be one lane in each direction, allowing for a future additional one lane in each direction.</p> <p>An interim intersection, <del>such as</del> <a href="#">specifically</a> a left in/left out <del>can be provided prior to 1500 lots with the agreement of RMS (Transport for NSW)</del> <a href="#">is to be constructed</a>, however this will be subject to upgrade to a roundabout of traffic signal controlled intersection. <del>prior to the Subdivision Certificate of more than 1500 lots in Village 1 unless otherwise agreed with RMS (Transport for NSW).</del></p>	<p><a href="#">In accordance with the timing required by the Project Approval, as modified from time to time.</a></p> <p><del>Prior to the Subdivision Certificate of more than 1500 lots in Village 1.</del></p>

Item	Upgrade	Description	Timing
8	A11	<p>Upgrade Hunter Expressway Branxton interchange to include:</p> <ul style="list-style-type: none"> <li>• a continuous left turn slip lane / ramp from the northbound off ramp onto Hunter Expressway Link Road</li> <li>• a continuous left turn slip lane / ramp from the New England Highway extension to the Hunter Expressway southbound on ramp</li> <li>• extension of the Hunter Expressway southbound off ramp to cater for expected queuing</li> <li>• adjustments to line marking in stages to ensure appropriate operation of the interchange.</li> </ul>	<p><a href="#">In accordance with the timing required by the Project Approval, as modified from time to time.</a></p> <p><del>Prior to 1,900 Dwellings for which a Subdivision Certificate has been issued.</del></p>
9	A11	<p>Upgrade Hunter Expressway Link Road to 4 lanes (2 in each direction) between Wine Country Drive and the Hunter Expressway Interchange</p>	<p><a href="#">In accordance with the timing required by the Project Approval, as modified from time to time.</a></p> <p><del>Prior to 1,500 Dwellings for which a Subdivision Certificate has been issued.</del></p>