

## **Minister for Planning**

ABN 38 755 709 681

## **Minister administering the *National Parks and Wildlife Act 1974***

ABN 30 841 387 271

## **Coal & Allied Operations Pty Ltd**

ABN 16 000 023 656

## **Catherine Hill Bay Land Pty Ltd**

ABN 79 129 266 459

# **Planning Agreement**

Section 93F  
Environmental Planning and Assessment Act 1979



NSW GOVERNMENT  
**Department of Planning**

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## Agreement made at on

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

**Minister administering the *National Parks and Wildlife Act 1974* ABN 30 841 387 271** of Level 35 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000  
("Environment Minister")

**Coal & Allied Operations Pty Ltd ABN 16 000 023 656** of West Tower, Level 3, 410 Ann Street, Brisbane QLD 4000

**Catherine Hill Bay Pty Ltd ABN 79 129 266 459** of West Tower, Level 3, 410 Ann Street, Brisbane QLD 4000  
(together "Landowner")

## Background

- A. The New South Wales Government is implementing the Lower Hunter Strategies.
- B. The Lower Hunter Strategies aim to:
  - (a) increase public ownership of certain land in the Lower Hunter region for dedication as a conservation reserve; and
  - (b) enhance the development potential of certain other land in the Lower Hunter region.
- C. The Landowner is the proponent for the Concept Plan Application, which proposes that part of the Land be developed and part of the Land be transferred to the Environment Minister for conservation.
- D. The Landowner:
  - (a) owns the Land;
  - (b) are companies related to Coal & Allied Industries Ltd;
  - (c) intends to enable development of the Land;
  - (d) has sought an amendment to the Major Development SEPP in relation to the Development; and
  - (e) has applied for the Concept Plan Approval.
- E. The parties have agreed to enter into this Planning Agreement in order to:
  - (a) implement the Lower Hunter Strategies insofar as they concern the Land;
  - (b) give effect of the statement of commitments submitted by the Landowner to the Department of Planning and dated XXX; and

- (c) provide the Development Contributions which includes State infrastructure contributions.

## Operative provisions

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### 1. Definitions and Interpretation

#### 1.1 Definitions

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

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

**Ambulance NSW** means the Ambulance of NSW as referred to in section 67A of the Health Services Act 1997 (NSW).

**Application** means an application for any Approval.

**Approval** means any approvals, consents, Modifications, Part 4A Certificates, Part 3A of the Act approvals, 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 Planning Agreement.

**Assignment and Dealing Terms** means the obligations imposed on the relevant Parties under, and by virtue of Schedule 8.

**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.

**Authority** means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the Building Professionals Act 2005 (NSW).

**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.

**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 Planning 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 Planning 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 Planning 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 Planning 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 Planning 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 Planning Agreement despite any calculation by the Planning Minister under paragraph (a) or (b).

**Bill** means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth), 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.

**Commencement Date** means the date that the Planning Agreement operates under clause 2(c).

**Company** means a private or a public company.

**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.

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

**Concept Plan** means the concept plan forming part of the Concept Plan Approval.

**Concept Plan Approval** means the "Middle Camp Concept Plan MP 10\_0089", if approved by the Planning Minister in respect of the Land (amongst other land), including any Modification of it.

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

**Control** means in relation to an entity, the capacity to determine the composition of the board of that entity (if applicable), the capacity to appoint or remove the trustee or responsible entity of that entity (if applicable) and/or the capacity to determine the outcome of any decisions made by or in respect of the entity, including in relation to that entity's financial and operating policies, and **Controlled** has a corresponding meaning.

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

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

**Development** means the process of designing, obtaining all necessary Approvals, construction and selling all or any part of the Land including without limitation, the carrying out of subdivision, infrastructure works and improvements to the Land or associated with the Development of the Land whether required as a condition of any Approval or not.

**Development Application** means each Application made or to be made under Part 4 of the Act, by or on behalf of the Landowner, for consent to develop the whole or any part of the Land for residential purposes.

**Development Consent** means Approval by the Consent Authority under Part 4 of the Act in response to a Development Application, including any Modification of it.

**Development Contributions** means the payment of the Infrastructure Contribution Amount and the provision of those other contributions specified in Table 2 of Schedule 3.

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

**Director-General** means the Director-General of the Department of Planning from time to time.

**Dispute Resolution Procedures** means the procedures imposed on the relevant Parties under Schedule 7.

**Emergency Services Contribution** means the infrastructure contribution referred to in Item 1 of Table 1 in Schedule 3.

**Emergency Services Site** means land to be used for emergency services infrastructure not less than 3,000 square metres (unless otherwise agreed with the Planning Minister) and as nominated in accordance with the procedures in clause 5 of Schedule 4.

**Emergency Services Subdivision Plan** means any plan of subdivision which creates a separate lot(s) for the Emergency Services Site.

**Environmental Offset Land** means the land identified by the green shading on the plan attached as Annexure A.

**Environmental Subdivision Plan** means any plan of subdivision approved by the Planning Minister which creates separate lots for the Environmental Offset Land.

**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*.

**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* (Cth).

**Gwandalan Planning Agreement** means the planning agreement between the Planning Minister, Environment Minister and Gwandalan Land Pty Ltd relating to the concept plan for Gwandalan (MP 10\_0084).

**Infrastructure Contribution Amount** means the infrastructure contribution amount referred to in Table 1 of Schedule 3.

**Land** means the land described in Schedule 2, and as shown on the plans attached as Annexure A.

**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.

**LEADR** means Lawyers Engaged in Alternative Dispute Resolution or, if no such organisation exists, a similar organisation reasonably selected by the Parties to a dispute.

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

**Lower Hunter Regional Conservation Plan** means the Lower Hunter Regional Conservation Plan released by the Department of Environment and Climate Change on 11 March 2009, which focuses on offsetting the biodiversity impacts of the Department of Planning's Lower Hunter Regional Strategy by identifying areas of regional conservation priority and recommending mechanisms to conserve these areas, as amended from time to time.

**Lower Hunter Regional Strategy** means the Lower Hunter Regional Strategy released by the Department of Planning on 17 October 2006, published on that Department's website and endorsed by the NSW Cabinet on 3 October 2006 and as amended from time to time.

**Lower Hunter Strategies** means the Lower Hunter Regional Conservation Plan and the Lower Hunter Regional Strategy.

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

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

**Modification** means:

- (a) in relation to the Concept Plan Approval or a Project Approval, a "modification" within the meaning of section 75W of the Act; and
- (b) in relation to a Development Consent, a "modification" within the meaning of section 96 of the Act.

**Nords Wharf Planning Agreement** means the planning agreement between the Planning Minister, Environment Minister and Coal & Allied Operations Pty Ltd relating to the concept plan for Nords Wharf (MP 10\_0088).

**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.

**Parent** of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including:

- (a) if the first mentioned person is a corporation, a person who:
  - (i) controls the composition of the board of directors of the first mentioned person; or



- (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or
  - (iii) holds or has a Relevant Interest in more than one half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) if the first mentioned person is a trustee of a Unit Trust, a person who:
  - (i) controls the right to appoint the trustee; or
  - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units; or
  - (iii) holds or has a Relevant Interest in more than one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

A person is also a Parent of another person if a part of this definition is satisfied in respect of each Unit Trust and Company in any chain of Unit Trusts or Companies connecting that person and the other person.

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

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

**Plan of Subdivision** means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

**Planning Agreement** means this deed.

**Practical Completion** means either:

- (a) where the expression "Practical Completion" is defined in a Road Works Agreement, the definition of "Practical Completion" in that agreement; or
- (b) where the expression "Practical Completion" is not defined in a Road Works Agreement, that stage in the execution of the RTA Works under the relevant Road Works Agreement when:
  - (i) the RTA Works (including any associated works necessary for public access) have been completed and are ready for their intended public use and occupation, except for minor omissions and minor defects which:
    - (A) do not impede use of the RTA Works by the public for the continuous safe passage of vehicular traffic and pedestrians;
    - (B) will not prejudice the convenient and safe use of the RTA Works during rectification; and

- (C) the RTA's authorised representative determines that the Landowner has reasonable grounds for not rectifying prior to public use and occupation;
- (ii) the relevant inspection and testing plan required to be complied with under the Road Works Agreement has been complied with and any other tests necessary to be carried out and passed before the RTA Works, or a part thereof, is used and occupied by the public have been carried and passed and all test results and conformance data identified in the relevant inspection and testing plan has been provided to the RTA;
- (iii) all relevant legislative requirements in respect of the RTA Works have been carried out or satisfied;
- (iv) all documents, certifications and information required under the relevant Road Works Agreement which, in the opinion of the RTA, are essential for the use, operation and maintenance of the RTA Works have been supplied, including all shop drawings and draft as-built drawings, all original manufacturers' or suppliers' warranties required by the Road Works Agreement, all Approvals required to be obtained have been obtained from relevant Authorities and all other material as requested by the RTA; and
- (v) with the approval of the RTA, the Landowner has commissioned into operation the Works, including all plant incorporated into the Works and any traffic signalling equipment and demonstrated to the RTA that the commissioning has been successful,

on the basis that any expression used in this paragraph (b) that is not otherwise defined in this Planning Agreement shall have that meaning usually given to that expression by the RTA in a Road Works Agreement.

**Project Approval** means any Approval by the Planning Minister pursuant to section 75J of the Act, in response to a Project Approval Application, including any Modification of it.

**Project Approval Application** means each Application made or to be made pursuant to section 75J of the Act, by or on behalf of the Landowner, for approval to develop the whole or any part of the Land for residential purposes.

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

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

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

**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 5.

**Relevant Interest** means the power:

- (a) to exercise, or to control the exercise of, the right to vote attached to a share or unit; or
- (b) to dispose of, or to exercise control over the disposal of, a share or unit.

**Review or Replacement Procedures** means the procedures set out in Schedule 6.

**Road Works Agreement** means a works authorisation deed (or other legally binding agreement approved by the Planning Minister in his absolute discretion) between the Landowner (or another entity nominated by the Landowner) and the RTA which governs the carrying out of the RTA Works.

**RTA** means the Roads and Traffic Authority of NSW or any similar department that may be established from time to time.

**RTA Works** means such road works as are agreed by the Landowner and the RTA, which the Parties anticipate will comprise the Item 1. "Road Contribution" matters set out in Table 2 of Schedule 3.

**Service Easements** means easements for services and drainage which are generally (but not finally) set out in the Environmental Subdivision Plan.

**State** means the State of New South Wales.

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

**Taxes** means taxes, levies, imposts, charges and duties imposed by any Authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of the Planning Minister or the Environment Minister.

**Transfer** means a transfer in the approved form under the Real Property Act which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the Environmental Offset Land to the Environment Minister or his nominee or the Emergency Services Site to the Planning Minister or his nominee, where relevant.

**Unit Trust** has the same meaning as "unit trust scheme" in the *Duties Act 1997* (NSW).

**Urban Lot** means a lot located on the Land, created by the registration at the LPMA of a Plan of Subdivision, which lot is intended to be developed, subject to Project Approval or Development Consent, by construction of residential premises including any lot that is capable of being further subdivided to create such a lot, but does not include a lot created by the Environmental Subdivision Plan.

## 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) "**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;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;

- (e) 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;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) 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;
- (h) 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;
- (i) **"includes"** in any form is not a word of limitation;
- (j) a reference to **"\$"** or **"dollar"** is to Australian currency;
- (k) the Schedules and Annexures to this Planning Agreement form part of this Planning Agreement; and
- (l) 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.

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## 2. Status of this Agreement

- (a) This Planning Agreement applies to the Development on the Land.
- (b) Until the Planning Agreement operates, this Planning Agreement constitutes an irrevocable offer from the Landowner to enter into the Planning Agreement if Concept Plan Approval is granted.
- (c) The Planning Agreement operates only if:
  - (i) a condition under section 93I(3) of the Act is placed on any Project Approval or Development Consent with respect to the Land that approves the subdivision of lots for the Environmental Offset Land;
  - (ii) the Planning Agreement is entered into as required by clause 25C(1) of the Regulation; and
  - (iii) the Planning Minister and the Environment Minister execute this Planning Agreement.
- (d) The Planning Minister must notify the Landowner immediately after the Planning Minister and the Environment Minister execute this Planning Agreement and promptly provide the Landowner with the Planning Agreement as executed.

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### **3. Planning Agreement under the Act**

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

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### **4. Application of the Planning Agreement**

The Planning Agreement applies to:

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

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### **5. Development Contributions**

The Landowner will pay or provide, or procure the payment or provision of, the Development Contributions in accordance with the Development Contributions Schedule and the terms of this Planning Agreement.

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### **6. Acknowledgements**

The Parties agree that:

- (a) the Planning Minister acknowledges to the Landowner that it is the Planning Minister's present intention that the Infrastructure Contribution Amount which the Landowner pays to the Planning Minister in cash will be made available for use or expenditure as a regional infrastructure contribution;
- (b) to the extent that a Development Contribution may be described in, or implied by this Planning Agreement, including clause 6(a), as having a particular use (intended or otherwise), the Landowner acknowledges and agrees that the Planning Minister and the Environment Minister:
  - (i) have 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 Planning Minister or the Environment transmits a Development Contribution; and
  - (ii) has no obligation to use or expend a Development Contribution for a particular purpose; and
  - (iii) is not required to repay to the Landowner, and the Landowner is not entitled to a repayment of, any Development Contribution; and
  - (iv) has no obligation to monitor or follow up the use or expenditure of such a Development Contribution including if the Planning Minister or the Environment Minister transmit a Development Contribution to any Authority.

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### **7. Security and enforcement**

#### **7.1 Security**

In consideration of the Planning Minister and the Environment Minister entering into this Planning Agreement, the Landowner has agreed to provide security to the Planning Minister and the Environment Minister for performance of the Landowner's obligations under this

Planning Agreement by the registration of this Planning Agreement under clause 9.2 and by agreeing to clause 4.2 of Schedule 4.

## **7.2 Enforcement**

This Planning Agreement may be enforced by any Party in any court of competent jurisdiction.

## **7.3 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 Planning Minister or the Environment Minister from exercising any function under any Legislation, including the Act, or any other Legislation or Law relating to the enforcement of any aspect of this Planning Agreement or any matter to which this Planning Agreement relates.

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## **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.

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## **9. Interests in the Land**

### **9.1 Ownership**

- (a) The Landowner represents and warrants to the Planning Minister and the Environment Minister that as at the date of this Planning Agreement, it is the legal and beneficial owner of the Land.
- (b) Except as expressly set out in this Planning Agreement the Landowner makes (and has made) no representations and gives (and has given) no warranties in respect of the Land and the Minister agrees to accept the Environment Offset Land as it is. (Note: This clause does not limit any existing or future obligation imposed on the Landowner under any statutory approval).

### **9.2 Registration of the Planning Agreement**

- (a) The Landowner agrees that it will procure the registration of the Planning Agreement entered into pursuant to clause 2(c), under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act;
- (b) The Landowner, at its own expense, will promptly after the Planning Agreement comes into operation, take all practical steps, and otherwise do anything that the Planning Minister and the Environment Minister reasonably require, to procure:
  - (i) the consent of each person who:
    - A. has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or

- B. is seized or possessed of an estate or interest in the Land; and
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant duplicate 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 in accordance with section 93H of the Act;
- (c) The Landowner, at its own expense, will take all practical steps, and otherwise do anything that the Planning Minister and the Environment Minister reasonably require:
  - (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 60 Business Days after that date; 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 (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 but, in any event, no later than 20 Business Days after the date on which the Landowner procures the lodgement of the Planning Agreement with the Registrar-General.

### **9.3 Release and discharge of this Planning Agreement**

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

### **9.4 Caveat**

- (a) The Landowner acknowledges and agrees that:
  - (i) the Planning Minister and the Environment Minister are deemed to have acquired, and the Landowner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Planning Minister and the Environment Minister have a sufficient interest in the Land in respect of which to lodge with the LPMA a caveat notifying that interest; and
  - (ii) it will not object to the Planning Minister or the Environment Minister lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Planning Minister or the Environment Minister;
  - (iii) it will indemnify and keep indemnified the Planning Minister and the Environment Minister against all Claims made against the Planning Minister or the Environment Minister including, without limitation, Claims made by the Landowner or any other person who has an estate or interest in any part of the Land registered under the *Real Property Act*, by virtue of or in connection to the Planning Minister or the

Environment Minister lodging a caveat in the relevant folio of the Register for the Land.

- (b) The Planning Minister or the Environment Minister, must, at the Landowner's cost (with any such cost to be reimbursed to the Planning Minister or the Environment Minister promptly on demand), lodge with the LPMA a withdrawal of caveat in respect of all the Land within 5 Business Days after the Landowner complies with clause 9.2(a).

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## **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.

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## **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.

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## **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.

### **12.2 Intention of the parties**

Without limiting the operation of this clause 12, the parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in respect of this Planning Agreement;
- (b) no tax invoices will be exchanged between the parties; and
- (c) no additional amounts will be payable on account of GST.

### **12.3 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 is entitled for the acquisition to which the cost, expense or amount relates.



## 12.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Planning Agreement 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.

## 12.5 Additional amount of GST payable

Subject to clause 12.7, 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 Planning Minister or the Environment Minister, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Planning Minister or the Environment Minister (or the representative member of any GST group of which the Planning Minister or the Environment Minister, in any capacity, is a member) is entitled in relation to the Planning Minister's or the Environment Minister's acquisition of that supply and is payable within 5 Business Days after the Planning Minister or the Environment Minister, in any capacity, is a member) 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 12.5(a).

## 12.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12.5 and clause 12.7), varies from the additional amount paid by the Recipient under clause 12.5, 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 12.6(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12.5.
- (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.

## 12.7 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 12.5 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 12.5 shall:

- (i) if the Supplier is the Planning Minister or the Environment Minister, be reduced by the amount of the input tax credit (if any) to which the Planning Minister or the Environment Minister (or the representative member of any GST group of which the Planning Minister or the Environment Minister, in any capacity, is a member) is entitled in relation to the Planning Minister's or the Environment 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 12.5 (or the time at which such GST Amount would have been payable in accordance with clause 12.5 but for the operation of clause 12.7(a)).

## **12.8 No merger**

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

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## **13. Overdue payments**

- (a) The Landowner agrees to pay ("**the payer**") interest to the Planning Minister ("**the payee**") 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 payee, calculated on daily balances. The rate to be applied to each daily balance is the rate 1% per annum above the Bank Bill Rate.
- (b) Interest which is not paid when due for payment may be capitalised by the payee at intervals which the payee 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 13.
- (c) The payer'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 Planning Agreement becomes merged in a judgment or order, then the payer agrees to pay interest to the payee 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 13.

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## **14. Release and indemnity**

- (a) The Landowner agrees that the obligation to provide the Development Contributions is at the risk of the Landowner. The Landowner releases the Planning Minister and the Environment Minister from any Claim, liability or loss arising from, and Costs incurred in connection with, the Landowner's obligation to provide the Development Contributions.
- (b) The Landowner indemnifies the Planning Minister and the Environment Minister against any Costs incurred in connection with the Planning Minister or the Environment Minister enforcing the Landowner's obligation to provide the Development Contributions in accordance with this Planning Agreement, except to

the extent caused or contributed to by the Planning Minister's or the Environment Minister's negligent act or default under this Planning Agreement.

- (c) The indemnity in clause 14(b) is a continuing obligation, independent of the Landowner's other obligations under this Planning Agreement and continues after this Planning Agreement ends.

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## **15. Costs**

- (a) The Landowner agrees to pay the Costs incurred by the Planning Minister and the Environment Minister in relation to the negotiation, preparation, execution, advertising, stamping and registration of this Planning Agreement, including, without limitation, legal costs and expenses on a solicitor and own client basis.
- (b) The Landowner agrees to pay or reimburse the Planning Minister and the Environment Minister on demand for:
  - (i) Costs of the Planning Minister and the Environment Minister in connection with any exercise or non-exercise of rights (including, without limitation, in connection with the actual or contemplated enforcement or preservation of any rights under this Planning Agreement) waiver, variation, release or discharge in connection with this Planning Agreement; and
  - (ii) taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Planning Agreement or a payment or receipt or any transaction contemplated by this Planning Agreement,including in each case, without limitation, legal costs and expenses on a solicitor and own client basis.

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## **16. Explanatory Note**

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

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## **17. Effect of Schedulised terms and conditions**

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

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## **18. General provisions**

The Parties agree to the miscellaneous and general provisions set out in Schedule 9.

**Executed** as a deed.

## Schedule 1 - Section 93F Requirements

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<b>Planning instrument and/or Development Application - (Section 93F(1))</b>  The Landowner has: <div> <div>(a)</div> <div>sought a change to an environmental planning instrument.</div> </div> <div> <div>(b)</div> <div>made, or proposes to make, a Project Approval Application or Development Application.</div> </div> <div> <div>(c)</div> <div>entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</div> </div>	<div> <div>(a)</div> <div>No</div> </div> <div> <div>(b)</div> <div>No</div> </div> <div> <div>(c)</div> <div>Yes</div> </div>
<b>Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))</b>	The whole of the Land.
<b>Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 93F(3)(b))</b>	Not applicable.
<b>The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 93F(3)(c))</b>	See Schedules 3 to 4 inclusive.
<b>Applicability of section 94 of the Act - (Section 93F(3)(d))</b>	The application of section 94 of the Act is not excluded.
<b>Applicability of section 94A of the Act - (Section 93F(3)(d))</b>	The application of section 94A of the Act is not excluded.
<b>Applicability of section 94EF of the Act - (Section 93F(3)(d))</b>	The application of section 94EF of the Act is not excluded.
<b>Mechanism for dispute resolution - (Section 93F(3)(f))</b>	See clause 11 and Schedule 7.
<b>Enforcement of the Planning Agreement - (Section 93F(3)(g))</b>	See clause 7.
<b>Registration of the Planning Agreement - (Section 93F(3)(g))</b>  The Parties agree that the Planning Agreement will be registered in accordance with clause 9.2.	Yes
<b>No obligation to grant consent or exercise functions - (Section 93F(9))</b>	No obligation. See clause 8 of Schedule 9.

## Schedule 2 - Land

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### 1. Title

The whole of the land described in the following table:

Folio
202/702669
223/1102989
2030/841175
Part of 5/736170 as shown in the plan attached as Annexure A
Part of 6/746077 as shown in the plan attached as Annexure A
Part of 12/854197 as shown in the plan attached as Annexure A
16/755266
Auto consol 1600-165

## Schedule 3 - Development Contributions Schedule

### 1. Development Contributions - the Planning Agreement

The Landowner undertakes to provide the Development Contributions as set out and provided for in Column 1 of the table below no later than the date or event described in Column 2 of the table below.

**Table 1 of Schedule 3 - Contribution Amounts**

Column 1	Column 2
Development Contribution	Date Development Contribution is payable
<p><b>ITEM 1. EMERGENCY SERVICES CONTRIBUTION</b></p> <p>The Landowner is to provide a monetary contribution to the Planning Minister, totalling \$29,006.52 (subject to indexation) towards the proposed acquisition of a 3,000 square metre site for location of emergency services, amounting to a per lot contribution of \$130.66 if the contribution is paid on or prior to 30 June 2011.</p> <p>The monetary contribution if paid after 30 June 2011 (subject to indexation) is \$43,509.78 amounting to a contribution of \$195.99 per urban lot.</p>	<p>On or prior to the issue of the first subdivision certificate that creates the first Urban Lot within the area the subject of the Concept Plan Approval.</p>

**Table 2 of Schedule 3 - Other Contributions**

The Landowner undertakes to provide the Road Contributions as a works-in-kind and provide the Environmental Offset Land Contribution set out and provided for in Column 1 of the table below no later than the date or event described in Column 2 of the table below.

<b>Column 1</b>	<b>Column 2</b>
<b>Development Contribution</b>	<b>Date of completion</b>
<p><b>ITEM 1. ROAD CONTRIBUTION</b></p> <p>The Landowner is to upgrade the intersection at Flowers Drive and Pacific Highway, Middle Camp. The intersection is to be designed and constructed to restrict Flowers Drive traffic movements to left in / left out only. Physical barriers are to be designed and constructed to implement a right turn ban from Cams Wharf Road into the Pacific Highway. A u-turn facility is to be provided on the Pacific Highway or at Nords Wharf Road to accommodate northbound vehicles exiting Flowers Drive.</p>	<p>On or prior to the issue of the first subdivision certificate that creates the first Urban Lot within the area the subject of the Concept Plan Approval and to the RTA's satisfaction.</p>
<p><b>ITEM 2. ENVIRONMENTAL OFFSET LAND CONTRIBUTION</b></p> <p>The Landowner must transfer the Environmental Offset Land to the Environment Minister or his nominee.</p>	<p>In accordance with the process set out in clause 4 of Schedule 4.</p>
<p><b>ITEM 3. LAND REMEDIATION AND RESERVE ESTABLISHMENT WORKS</b></p> <p>The Landowner must undertake the works referred to in clause 6 of Schedule 4.</p>	<p>In accordance with the process set out in clause 6 of Schedule 4.</p>

**In respect of indexation by CPI the following applies:**

Each instalment of the Infrastructure Contribution Amount is to be increased by movements in the CPI in accordance with the following formula (provided that, at all times, each instalment of the Infrastructure Contribution Amount is never less than its nominal dollar value as at the date of this Planning Agreement):

**A** means the dollar (\$) amount specified in Column 1 of 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 Planning 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):

$$\text{CPIA} = \frac{A \times C}{D} - A$$

where:

C = the most recent CPI prior to the date that payment is due to be made; and

D = the most recent CPI before the Commencement Date.

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## **Schedule 4 - Development Contribution Procedures**

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### **1. Landowner's undertakings**

The Landowner:

- (a) undertakes to pay the Infrastructure Contribution Amount set out in Table 1 of Schedule 3 to the Planning Minister, in accordance with paragraph 2 of this Schedule 4;
- (b) undertakes to carry out the RTA Works and comply with all its obligations under or pursuant to the Road Works Agreement with the RTA (or such other legally binding agreement approved by the Planning Minister in his discretion), as provided in paragraph 3 of this Schedule 4;
- (c) undertakes to provide the Environmental Offset Land Contribution set out in Table 2 of Schedule 3 to the Environment Minister as provided for in clause 4 of Schedule 4;
- (d) undertakes to respond within a reasonable period to the Planning Minister's or the Environment Minister's questions, queries and enquiries (acting reasonably) regarding the progress of the Development, to the extent such matters relate to the payment, or provision, of a Development Contribution.

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### **2. Infrastructure Contribution Amount**

- (a) The Landowner must pay each instalment of the Infrastructure Contribution Amount on the date referred to in Column 2 of Table 1 of Schedule 3.
- (b) Any payment required to be made under, or by virtue of paragraph 2(a) of this Schedule 4, must be made by the relevant party by bank cheque payable to the other party.

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### **3. Road Contributions**

- (a) The Landowner must:
  - (i) enter into a Road Works Agreement with the RTA (on terms acceptable to both the Landowner and the RTA), in respect of the carrying out and completion of the RTA Works, unless otherwise agreed in writing by the Director-General in his absolute discretion; and
  - (ii) achieve Practical Completion of the RTA Works,  
by the date of issue of a Subdivision Certificate which relates to the 1st Urban Lot to be created in respect of the relevant Land.
- (b) The Landowner must notify the Planning Minister promptly following entry into an agreement as contemplated by paragraph 3(a)(i), and provide the Planning Minister with a copy of that agreement.
- (c) The Landowner must comply with the terms and conditions of that agreement, including any requirements to provide security and achieve Practical Completion of the RTA Works.

- (d) The Landowner must procure the RTA to provide a letter to the Planning Minister on or prior to the date specified in paragraph 3(a), issued by or on behalf of the Chief Executive of the RTA, confirming Practical Completion of the RTA Works.

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## **4. Environmental Offset Land Contribution**

### **4.1 Transfer of land**

- (a) In order to give effect to the transfer of the Environmental Offset Land to the Environment Minister in accordance with clause 1 of Schedule 3, there must be a subdivision of the Land to create the parcels of land that will comprise the Environmental Offset Land.
- (b) Within 3 months of any approval being given by the Planning Minister for the Environmental Subdivision Plan, the Landowner must lodge the Environmental Subdivision Plan for registration at the LPMA.
- (c) The Landowner must within 7 days of the date of notification that the Environmental Subdivision Plan has been registered, serve a Transfer on the Environment Minister or his nominee with the relevant certificates of title and in circumstances where:
  - (i) the Environmental Offset Land is free from any encumbrances other than the Service Easements; or
  - (ii) relevant discharges in registrable form are also served on the Environment Minister or his nominee at the same time in relation to any encumbrances other than the Service Easements.
- (d) The Landowner must immediately comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Environmental Offset Land.
- (e) The Landowner will pay all rates and taxes owing in respect of the Environmental Offset Land up to and including the date of dedication of the Environmental Offset Land after which the Environment Minister or his nominee will be liable.
- (f) The Environment Minister agrees to consider, as soon as practicable after the registration of the Transfer, how conservation of the Environmental Offset Land is most appropriately achieved, whether by reservation as national park, as reserve of another category under the *National Parks and Wildlife Act 1979* (NSW), or by a combination of these or otherwise.
- (g) Notwithstanding clause 2(c) of this Planning Agreement, the Landowner must, from the date that this Planning Agreement is signed by all the Parties not undertake any action or activity, prior to the Transfer being registered that will have a detrimental effect on the conservation or Aboriginal heritage values of the Environmental Offset Land except where the Landowner is:
  - (i) directed to undertake such action or activity by another government agency or instrumentality (such as the Rural Fire Service),
  - (ii) maintaining existing access and existing tracks, or
  - (iii) otherwise required by law to undertake such an action or activity.

## 4.2 Compulsory acquisition

- (a) If the Landowner does not transfer any part of the Environmental Offset Land that it owns to the Environment Minister as required by this Planning Agreement, the Landowner consents to the Environment Minister (or his nominee) compulsorily acquiring that part of the Environmental Offset Land, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Landowner and the Environment Minister agree that:
  - (i) this paragraph 4.2 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
  - (ii) in this paragraph 4.2 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Landowner indemnifies and agrees to keep indemnified the Environment Minister (or his nominee) against all Claims made against the Environment Minister (or his nominee) as a result of any acquisition by the Environment Minister (or his nominee) of the whole or any part of the Environmental Offset Land under paragraph 4.2.
- (d) The Landowner must pay the Environment Minister (or his nominee), promptly on demand, an amount equivalent to all Costs incurred by the Environment Minister (or his nominee) acquiring the whole or any part of the Environmental Offset Land as contemplated by this paragraph 4.2.

## 4.3 Rezoning

- (a) In the event that:
    - (i) legal proceedings are commenced in a Court of competent jurisdiction by the date that is 6 months after the date of the first Project Approval for any part of the Development and a declaration is obtained that has the effect that the Major Development SEPP is invalid to the extent that the Land is no longer zoned to allow the Development of the Land; and
    - (ii) the Land is not subsequently re-zoned under the Major Development SEPP or any other planning instrument on a basis that would allow the Development on the Land (subject to issue of project approval or development consent) by the date that is 5 years after the date of the first Project Approval for any part of the Development,
- the Environment Minister (or his nominee) agrees to transfer:
- A. each part of the Environmental Offset Land that was transferred by the Landowner to the Environment Minister (or his nominee) pursuant to this Planning Agreement, back to the Landowner; or
  - B. each part of the Environmental Offset Land that was compulsory acquired from the Landowner by the Environment Minister (or his nominee) pursuant to this Planning Agreement, back to the Landowner,

free of all encumbrances and affectations that were created after the date that the Environment Minister (or his nominee) acquired that land (by way of transfer or compulsory acquisition) (other than the Service Easements).

- (b) If paragraph 4.3(a) of this Schedule 4 applies, then no later than the date that is 20 Business Days after the expiry of the 5 year period referred to in paragraph 4.3(a), the Environment Minister (or his nominee) must deliver to the Landowner:
  - (i) a form of transfer or transfers in respect of the relevant part of the Environmental Offset Land in favour of the Landowner, for a consideration of \$1, executed by the Environment Minister (or his nominee) and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
  - (ii) the certificate or certificates of title for the relevant part of the Environmental Offset Land,

and the Environment Minister (or his nominee) must take any other necessary action (other than paying stamp duty associated with the transfer) to give effect to the transfer of the title of the relevant part of the Environmental Offset Land to the Landowner free of all encumbrances and affectations that were created after the date that the Environment Minister (or his nominee) acquired that land (by way of transfer or compulsory acquisition) (other than the Service Easements).

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## **5. Emergency Services Contribution**

### **5.1 Landowner's election**

- (a) The Landowner may elect to dedicate the Emergency Services Site in lieu of providing the Emergency Services Contribution.
- (b) If the Landowner so elects, it must notify the Planning Minister in writing (**Election Notice**) and pay all costs necessary to enable that dedication to occur.
- (c) An Election Notice can only be issued by the Landowner within 12 months of receiving Project Approval or Development Consent for the subdivision of the Land that creates the first Urban Lot within the area the subject of the Concept Plan Approval.

### **5.2 Suspension of payments**

- (a) The Landowner is under no obligation to make any payment in relation to the Emergency Services Contribution that would have been required under this Planning Agreement for the period between the date of the Election Notice and the expiry of 12 months. That period is for the purposes of this clause the "**Election Period**".
- (b) If during the Election Period, the Landowner decides not to proceed with dedicating the Emergency Services Site, it must notify the Planning Minister in writing and is obliged to pay the Emergency Services Contribution on the day being the later of:
  - (i) 5 Business Days of that notification; or
  - (ii) the date referred to in Column 2 of Table 1 of Schedule 3 to this Planning Agreement.

- (c) If, at the end of the Election Period, the Landowner has not taken steps to the reasonable satisfaction of the Planning Minister to dedicate the Emergency Services Site, the Landowner (unless the Planning Minister otherwise agrees) must pay the Emergency Services Contribution on the day being the later of:
  - (i) 5 Business Days after the end of the Election Period; or
  - (ii) the date referred to in Column 2 of Table 1 of Schedule 3 to this Planning Agreement.

### 5.3 Emergency Services Site selection

- (a) The Landowner may nominate a site for the purpose of the Emergency Services Site by notice in writing to the Planning Minister (**Nomination Notice**) at the same time as giving an Election Notice or within 5 Business Days of giving an Election Notice.
- (b) If a Nomination Notice is not given in accordance with clause 5.3(a), the Landowner is deemed to have served a notice under clause 5.2(b) and the provisions of clause 5.2(b) apply.
- (c) The Planning Minister must consult with Ambulance NSW regarding the nomination made by the Landowner for the Emergency Services Site.
- (d) If the nominated site is accepted by the Planning Minister and Ambulance NSW (both acting reasonably), the Planning Minister must within 30 Business Days of receiving the Nomination Notice notify the Landowner in writing that the proposed site has been accepted for the purposes of dedication (**Acceptance Notice**).
- (e) If the Landowner receives an Acceptance Notice it must comply with the provisions of clause 5.4 below and is not required to make the Emergency Services Contribution:
  - (i) in accordance with the terms of this Planning Agreement; or
  - (ii) in accordance with and as that term is defined, under the Gwandalan Planning Agreement, or
  - (iii) in accordance with and as that term is defined, under the Nords Wharf Planning Agreement.
- (f) If the Planning Minister and Ambulance NSW do not agree with the nomination made by the Landowner, the Planning Minister must within 30 Business Days of receiving the Nomination Notice notify the Landowner in writing that the nomination has not been accepted (**Rejection Notice**).
- (g) A Rejection Notice is deemed to be given if within 30 Business Days of serving the Nomination Notice, the Landowner does not receive an Acceptance Notice or a Rejection Notice.
- (h) The Landowner must within 10 Business Days of the date of the Rejection Notice nominate in writing an alternate site for the purpose of the Emergency Services Site (**Alternate Nomination Notice**).
- (i) If an Alternate Nomination Notice is served, clauses (c) to (e) above will apply as if the Alternate Nomination Notice were the original Nomination Notice.

- (j) If the Planning Minister and Ambulance NSW do not agree with the nomination made by the Landowner in the Alternate Nomination Notice, the Planning Minister must within 20 Business Days of receiving the Alternate Nomination Notice notify the Landowner in writing that the nomination has not been accepted (**Alternate Site Rejection Notice**).
- (k) An Alternate Site Rejection Notice is deemed to be given if within 20 Business Days of serving the Alternate Nomination Notice, the Landowner does not receive an Acceptance Notice or an Alternate Rejection Notice.
- (l) If an Alternate Site Rejection Notice is given or deemed to be given, the parties are deemed to be in dispute and paragraphs 4 to 11 of Schedule 7 shall apply to that dispute.
- (m) Where the Emergency Services Site is selected as a result of the dispute resolution process, the provisions of clause 5.3(e) apply as if an Acceptance Notice had been served and for the purpose of clause 5.4, the date of the Acceptance Notice is taken to be the date that any dispute has been resolved by the selection of an Emergency Services Site.

#### **5.4 Transfer of Emergency Services Site**

- (a) In order to give effect to the transfer of the Emergency Services Site to the Planning Minister or his nominee, a subdivision of the Land to create the parcel(s) of land that will comprise the Emergency Services Site may be required.
- (b) If the Emergency Services Subdivision Plan has not been registered at the LPMA by the date of the Acceptance Notice, the Landowner must, at its cost, within one month of receiving the Acceptance Notice apply to obtain any relevant Approvals and do all things necessary to enable the Emergency Services Subdivision Plan to be registered.
- (c) Once the relevant Approvals have been granted in relation to the Emergency Services Subdivision Plan, the Landowner must lodge the Emergency Services Subdivision Plan for registration at the LPMA within 10 Business Days of receiving those Approvals.
- (d) The Landowner must within 10 Business Days of:
  - (i) the notification that the Emergency Services Subdivision Plan has been registered; or
  - (ii) receiving the Acceptance Notice from the Planning Minister in circumstances where:
    - A. the Emergency Services Subdivision Plan was registered at the time the Acceptance Notice was given, or
    - B. where a Plan of Subdivision to create the Emergency Services Site was not required,

serve a Transfer and any other documents required to enable registration of the Emergency Services Subdivision Plan on the Planning Minister or his nominee with the relevant certificates of title.
- (e) When serving the Transfer, the Landowner must ensure that:
  - (i) the Emergency Services Site is free from any encumbrances; or

- (ii) relevant discharges in registrable form are also served with the Transfer on the Planning Minister or his nominee in relation to any encumbrances.
- (f) The Landowner must immediately comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the Transfer of the Emergency Services Site.
- (g) The Landowner will pay all rates and taxes owing in respect of the Emergency Services Site up to and including the date that the Transfer is registered after which the Planning Minister or his nominee will be liable.

## 6. Remediation, reserve establishment and other works

### 6.1 References

In this clause:

“**RPS**” numbers refer to the RPS numbers contained in the report titled “Environmental Audit Report for Southern Conservation Estates” prepared by RPS Harper Somers O’Sullivan and dated January 2009.

“**Cost**” means the cost of the work to be carried out as set out in an independent quantity survey obtained by the Landowner and approved by the Environment Minister prior to any work commencing.

### 6.2 Works to be carried out

- (a) The remediation and establishment works as set out in the table below must be completed to the satisfaction of the Environment Minister within the time referred to in the table and to the assigned Cost.
- (b) The assigned Cost for works relating to RPS 6-8, 11-13, 15, 18-26, 28 and 30 is the total Cost for those works and the works required for RPS 2 and 3 which are included in the Nords Wharf Planning Agreement.

Item	Location	Work	Cost	Timing
1.	RPS 8 and 9	Bunker on the Land owned by the Landowner at Radar Hill to be cleared of rubbish and debris and installation of security features to prevent vandalism, unauthorised access, dumping and fires.		Within 12 months of the date this Planning Agreement operates under clause 2(c).
2.	RPS 10, 12 and 14	Undertake erosion control works.		Within 12 months of the date this Planning Agreement operates under clause 2(c).
3.	RPS 6-8, 11-13, 15, 18-26, 28 and 30	Treatment of major weed infestations including spraying at optimum times over successive seasons and follow up work including replanting.	\$80,000 – Year 1 \$40,000 – Years 2-4	For works in kind, commencing on the date this Planning Agreement operates under clause 2(c) and ending 4 years after that date.

4.	RPS 17	Treatment of aquatic weed infestation including initial harvesting and successive treatments for 3 years.	\$80,000	Within 12 months of the date this Planning Agreement operates under clause 2(c) and ending 3 years after that date.
5.	“Lot 7” on the plan at Annexure A.	Rehabilitate the land to the satisfaction of the Environment Minister or his nominee.		Commencing within 12 months of the date this Planning Agreement operates under clause 2(c) and ending 3 years after that date.

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## **Schedule 5 - Release and Discharge Terms**

### **1.1 Release and Discharge Terms**

- (a) Once the Landowner has:
- (i) paid an instalment of the Infrastructure Contribution Amount; and
  - (ii) achieved Practical Completion of the RTA Works under a Road Works Agreement entered into by the Landowner in respect of the RTA Works (if any); and
  - (iii) transferred the Environmental Offset Land,
- as required by this Planning Agreement, and any default by the Landowner under the Planning Agreement has been remedied by the Landowner or waived by the Planning Minister or the Environment Minister, the Planning Minister and the Environment Minister must promptly, at the request and cost of the Landowner:
- A. provide a release and discharge of the Planning Agreement to the extent that the Planning Agreement affects the Land the subject of the Contribution Amount; and
  - B. do all things necessary to enable the extinguishment of the Planning Agreement from title of the Urban Lots within the Land the subject of the Contribution Amount.
- (b) For the avoidance of doubt, the Planning Minister and the Environment Minister are not required to provide a release and discharge of the Planning Agreement in respect of any Land (or procure the removal of registration of the Planning Agreement from title of the Urban Lots within the Land) unless the Planning Minister and the Environment Minister are satisfied that:
- (i) the Landowner has fully satisfied its obligations to pay the relevant contributions in respect of the Land in accordance with the Development Contributions Schedule; and
  - (ii) the Landowner is not otherwise in default of its obligations under this Planning Agreement at the time of the Landowner's request.

## **Schedule 6 - 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.

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## **Schedule 7 - Dispute resolution**

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### **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.

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### **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.

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### **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 7.

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### **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.

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## **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 7 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

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## **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 this Planning Agreement.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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 8 - Assignment and Dealing Terms

### 1.1 Landowner's right to sell Land

- (a) The Landowner must not sell, transfer or dispose of the whole or any part of the Land (other than an Urban Lot) unless, before it sells, transfers or disposes of any such part of the Land to another person ("**Transferee**"):
  - (i) it satisfies the Planning Minister and the Environment Minister acting reasonably that the proposed Transferee is financially capable (including, without limitation, by providing financial statements for, and credit standing of, the proposed transferee) of complying with such of the Landowner's obligations under this Planning Agreement as the Planning Minister and the Environment Minister acting reasonably shall nominate must be adopted by the Transferee ("**Required Obligations**");
  - (ii) the rights of the Planning Minister and the Environment Minister under this Planning Agreement are not diminished or fettered in any way;
  - (iii) the Transferee signs a deed in form and substance acceptable to the Planning Minister and the Environment Minister containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Landowner (including obligations which arose before the transfer or assignment); and
  - (iv) the Planning Minister and the Environment Minister are satisfied that it holds appropriate security to secure the Landowner's obligations under this Planning Agreement, including, without limitation, a guarantee and indemnity in respect of the Transferee's obligations to comply with the Required Obligations (if so required by the Planning Minister and the Environment Minister);
  - (v) any default by the Landowner has been remedied by the Landowner or waived by the Planning Minister or the Environment Minister; and
  - (vi) the Landowner and the Transferee pay the Planning Minister's and the Environment Minister's reasonable Costs in relation to that assignment.

### 1.2 Minister's right to assign

The Planning Minister or the Environment Minister:

- (a) may assign its rights under this Planning Agreement without the Landowner's consent but only after first notifying the Landowner; and
- (b) may require the Landowner to enter into a Planning Agreement in form and substance acceptable to the Planning Minister and the Environment Minister containing provisions under which the transferee and the Landowner agree to comply with the terms and conditions of this Planning Agreement; and
- (c) will pay the other Parties' reasonable Costs in relation to that assignment.

### 1.3 No change in control

A person may only become or cease to be a Parent of the Landowner with the Planning Minister's and the Environment Minister's consent provided that before that event occurs:

- (a) the Landowner satisfies the Planning Minister and the Environment Minister acting reasonably that the Landowner, as Controlled by the new Parent ("**New Parent**"), will have the capability, experience and expertise to carry out the proposed Development and to satisfy the Landowner's obligations under this Planning Agreement ("**Required Obligations**");
- (b) the New Parent signs a deed in form and substance acceptable to the Planning Minister and the Environment Minister containing provisions under which:
  - (i) the New Parent agrees to comply with the Required Obligations as if it were the Landowner (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of; and
  - (ii) the New Parent acknowledges and agrees that the rights of the Planning Minister and the Environment Minister under this Planning Agreement are not diminished or fettered in any way;
- (c) any default by the Landowner has been remedied by the Landowner or waived by the Planning Minister or the Environment Minister; and
- (d) the Landowner and the New Parent pay the Planning Minister's and the Environment Minister's reasonable Costs in relation to that consent.



## Schedule 9 - General terms

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### 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:

##### Planning Minister

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

Telephone: (02) 9228 6111

Fax: (02) 9228 6455

Attention: Director-General, Department of Planning

##### Environment Minister

Address: Locked Bag 914  
Coffs Harbour, NSW 2450

Telephone: (02) 6651 5946

Fax: (02) 6659 8257

Attention: Director North East Branch, Department of Environment,  
Climate Change and Water

##### Landowner

###### **Coal & Allied Operations Pty Ltd**

Address: West Tower, Level 3, 410 Ann Street, Brisbane QLD 4000

Telephone: 07 3361 4700

Fax: 07 3361 4370

Attention: Mr Keith Dedden

###### **Catherine Hill Bay Land Pty Ltd**

Address: West Tower, Level 3, 410 Ann Street, Brisbane QLD 4000

Telephone: 07 3361 4700

Fax: 07 3361 4370

Attention: Mr Keith Dedden

## **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.

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## **2. Approvals and Consent**

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

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## **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 this Planning Agreement.

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## **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.

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## **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.

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## **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.

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## **7. Joint and individual liability and benefits**

Except as otherwise set out in this Planning Agreement, any agreement, covenant, representation or warranty under this Planning Agreement 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.

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## **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 this Planning Agreement imposes any obligation on a Consent Authority to:
  - (i) grant development consent or project 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.

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## **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 Planning Minister and the Environment Minister enter 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.

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## **10. 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 this 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.

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## **11. 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 deed.

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## **12. 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.

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## **13. Planning Agreement not confidential**

The Parties agree that the terms of this Planning Agreement and the Planning Agreement are not confidential and this Planning Agreement 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 Coal & Allied Operations Pty Ltd ABN 16 000 023 656** in accordance with section 127 of the *Corporations Act* by or in the presence of:

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

**Executed by Catherine Hill Bay Land Pty Ltd ABN 79 129 266 459** in accordance with section 127 of the *Corporations Act* by or in the presence of:

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

**Signed by The Honourable Anthony Kelly MLC**

Minister for Planning for the State of New South Wales

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
The Honourable Anthony Kelly MLC.  
Minister for Planning

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

Minister administering the *National Parks and Wildlife Act 1974* for the State of New South Wales

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
The Honourable Frank Sartor M.P.  
Minister administering the *National Parks and Wildlife Act 1974*

## **Annexure A - Plan**

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