

Third Deed of Variation to Planning Agreement

Huntlee New Town

Parties

Minister for Planning and Public Spaces

(ABN 20 770 707 468)

Huntlee Pty Limited

(ACN 143 744 745)



Contents

1	Definitions and interpretation	1
2	Status of this Deed	2
3	Commencement	2
4	Warranties and representations	3
5	Amendment to Planning Agreement	3
6	Registration of this Deed	4
7	Expenses	5
8	Amendments not to affect accrued rights and obligations	5
9	GST	5
10	Confirmation	5
11	Notices	6
12	General	7
	Execution	9
	Appendix 1 – Updated definition of NDA	10
	Appendix 2 – Updated Education Contribution Land	13
	Appendix 3 – Updated Plan of Stage 1 Development	15
	Appendix 4 - Annexure F	16



Date

Parties **MINISTER FOR PLANNING AND PUBLIC SPACES** (ABN 20 770 707 468)
of c/-NSW Department of Planning, Industry and Environment, 320 Pitt Street,
Sydney NSW 2000
(**Minister**)

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

Introduction

- A** The Minister and the Developer are parties to the Planning Agreement.
- B** Under the Planning Agreement, the Developer is required to make Development Contributions, which include:
- a. payment of Regional Road Contributions based on NDA, where NDA includes any land that the Development Consent authorises or requires to be used as a road or reserved or dedicated as a public road, subject to certain exceptions; and
 - b. the transfer of the Education Contribution Land prior to the issue of a Subdivision Certificate for the part of the Land on which the 800th Dwelling is to sit.
- C** On 22 May 2019, approval was granted to MOD 10, which, among other modifications:
- a. extended the timeframe for delivery of the intersection upgrade at Wine Country Drive and Hunter Expressway Link Road to a 2 lane circulating roundabout; and
 - b. permitted the construction of an interim left in left out intersection on the Hunter Expressway Link Road, between the Hunter Expressway and Wine Country Drive, subject to conditions.
- D** On **13 December 2019**, approval was granted to MOD 9, which among other modifications:
- a. changed the location and configuration of the Education Contribution Land; and
 - b. included additional land to the land the subject of the Project Approval.
- E** The parties have agreed to amend the Planning Agreement as set out in this Deed, to:
- a. amend the definition of NDA; and
 - b. reflect MOD 10 and MOD 9.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Deed:

- (1) **Deed** means this Deed including any schedules, annexures and appendices to this Deed. A reference to this Deed includes the agreement recorded in this Deed.
- (2) **First Variation Deed** means the 'Deed of Variation to Planning Agreement' dated 2 January 2018, entered into between the Minister and the Developer.
- (3) **MOD 9** means modification application MP 10_0137 MOD 9 approved under Ministerial delegation by the NSW Department of Planning, Industry and Environment, on 13 December 2019, subject to conditions as delegate of the Minister,
- (4) **MOD 10** means modification application MP 10_0137 MOD 10 approved under Ministerial delegation by the NSW Department of Planning and Environment, as delegate of the Minister, on 22 May 2019, subject to conditions.
- (5) **Planning Agreement** means the planning agreement dated 4 September 2013, entered into between the Minister and the Developer, as amended by the First Variation Deed and the Second Variation Deed.
- (6) **Project Approval** means 'Project Approval MP10_0137' approved under Ministerial delegation by the Planning Assessment Commission, as delegate of the Minister, on 24 April 2013, as modified from time to time.
- (7) **Second Variation Deed** means the 'Second Deed of Variation to Planning Agreement' dated _____, entered into between the Minister and the Developer

1.2 Interpretation

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

2 Status of this Deed

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

3 Commencement

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

4 Warranties and representations

4.1 Representations and warranties

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

4.2 Additional representations and warranties

- (1) In this **clause 4.2**, Huntlee Pty Ltd is defined as "**Huntlee**".
- (2) Huntlee in its capacity as bare trustee of the Relevant Partnership represents and warrants to the other parties that as at the date of this Deed:
 - (A) (**Trustee**): it has the power to enter into this Deed in its capacity as bare trustee of the Relevant Partnership;
 - (B) (**Trustee has authority**): it has the power to perform its obligations under this Deed as Developer in its capacity as bare trustee of the Relevant Partnership;
 - (C) (**Partnership validly created**): the Relevant Partnership has been validity created and is in existence at the date Huntlee signs this Deed;
 - (D) (**Trustee validly appointed**): Huntlee has been validly appointed as bare trustee of the Relevant Partnership and is presently the sole trustee of the Relevant Partnership;
 - (E) (**Partnership Deed**): the Relevant Partnership is solely constituted by the Relevant Partnership Deed, a true copy of which was provided to the Minister's solicitors before Huntlee signed the Planning Agreement;
 - (F) (**Reliance**): any act or omission of Huntlee can be relied upon by the Minister as if that act or omission had been done by the partners of the Relevant Partnership;
 - (G) (**Commercial benefit**): it is to the commercial benefit of the Relevant Partnership that Huntlee, as Developer, enters into the Planning Agreement in its capacity, inter alia, as bare trustee of the Relevant Partnership; and
 - (H) (**Rights of indemnity and exoneration against Partnership assets**): Except in the case of its own fraud, wilful violation of law, breach of trust or breach of duty, Huntlee as bare trustee of the Relevant Partnership has valid rights of indemnity and exoneration pursuant to the terms of the Relevant Partnership Deed.

5 Amendment to Planning Agreement

5.1 Amendment

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

5.2 Definitions

The definition of 'NDA' in clause 1.1 of the Planning Agreement is deleted and replaced with the definition in Appendix 1 to this Deed.

5.3 Schedule 2 - Land

Schedule 2 to the Planning Agreement is deleted and replaced with the table at Appendix 2 to this Deed.

5.4 Annexure B – Education Contribution Land

The plan at Annexure B to the Planning Agreement is deleted and replaced with the plan at Appendix 3 to this Deed.

5.5 Annexure C – Plan of Stage 1 Development

The plan at Annexure C to the Planning Agreement is deleted and replaced with the plan at Appendix 4 to this Deed.

5.6 Annexure F

The table at Annexure F to the Planning Agreement is amended in accordance with the mark up shown in the copy of Annexure F at Appendix 5 to this Deed.

6 Registration of this Deed

6.1 Registration

- (1) As contemplated by section 7.6 of the Act, the Developer agrees to lodge this Deed for registration under the *Real Property Act 1990* on the relevant folios of the Register for all of the Land upon which the Planning Agreement is registered, within 60 Business Days after the date on which this Deed, executed by the Minister, is returned to the Developer.
- (2) The Developer will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing which provide evidence that clause 6.1(1) has been satisfied, within 10 Business Days after the date of registration.
- (3) Despite clause 6.1(1) above, the parties agree that the Developer is not required to lodge this Deed for registration under the *Real Property Act 1990* in the relevant folios of the Register for the land, which at the time of registration of this Deed, the Planning Agreement has been released pursuant to clause 1(b) of Schedule 6 of the Planning Agreement.

7 Expenses

- 7.1 Subject to receipt of a valid tax invoice, the Developer must pay the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- 7.2 The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation, and the review of any submissions received during the public notice period.
- 7.3 The Developer must pay all taxes assessed on or in respect of this Deed and any instrument or transaction required or contemplated by or necessary to give effect to this Deed (including stamp duty and registration fees, if applicable).
- 7.4 The Developer must provide the Minister with bank cheques in respect of the Minister's costs pursuant to clauses 7.1 and 7.2 above:
- (1) where the Minister has provided the Developer with a tax invoice of the sum of such costs prior to execution, on the date of execution of this Deed; or
 - (2) where the Minister has not provided the Developer with a tax invoice of the sum of such costs prior to execution, within 10 Business Days of demand by the Minister for payment.

8 Amendments not to affect accrued rights and obligations

- 8.1 The amendments to the Planning Agreement under this Deed do not affect the validity or enforceability of the Planning Agreement as amended.
- 8.2 Nothing in this Deed:
- (1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Planning Agreement before the date of this Deed; or
 - (2) discharges, releases or otherwise affects any liability or obligation arising under the Planning Agreement before the date of this Deed.

9 GST

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

10 Confirmation

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

11 Notices

11.1 Form

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

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

Minister

Attention: The Secretary, NSW Department of Planning,
Industry and Environment

Address: 320 Pitt Street
Sydney NSW 2000

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

Land Owner

Attention: Danny Murphy

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

Fax Number: (08) 9296 9100

11.2 Change of address

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

11.3 Receipt

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

- (1) if it is delivered, when it is left at the relevant address;
- (2) if it is sent by registered post, two Business Days after it is posted;
- (3) if it is sent by email and the sender does not receive a delivery failure notice, as soon as the email is sent; or
- (4) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

11.4 Receipt – next Business Day

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

12 General

12.1 Entire agreement

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

12.2 Amendment

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

12.3 Waiver and exercise of rights

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

12.4 Further acts

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

12.5 Governing law and jurisdiction

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

12.6 Assignment and dealings

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

12.7 No fetter

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

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

12.8 Severability

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

12.9 Joint and individual liability and benefits

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

12.10 Approvals and Consent

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

12.11 Deed not confidential

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

12.12 Deed

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

Execution

Executed as a deed.

Signed sealed and delivered by an
authorised delegate of the **Minister for
Planning and Public Spaces** (ABN 20
770 707 468) in the presence of:

.....
Signature of Witness

.....
Signature of authorised delegate

.....
Name of Witness in full

.....
Full name of delegate

.....
Address of Witness

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

.....
Signature of Secretary/Director

ALAN FRANCIS NEVILLE

.....
Full name

.....
Signature of Director

DANNY WILLIAM MURPHY

.....
Full name

Appendix 1 – Updated definition of NDA

NDA or the net developable area has the following meaning:

1. The net developable area of a part of the Land (*the net developable area for the proposed subdivision*) is the area of land, in hectares, shown on the proposed plan of subdivision (that is, the area to which the relevant application for a subdivision certificate for that part of the Land relates), subject to the other provisions of this definition.
2. The net developable area does not include the area of any land that the proposed subdivision reserves, dedicates or otherwise sets aside as, or for the purpose of, any of the following:
 - (a) school;
 - (b) TAFE establishment;
 - (c) emergency services facility;
 - (d) health services facility owned or operated by a public authority;
 - (e) golf course;
 - (f) passenger transport facility;
 - (g) place of public worship;
 - (h) public open space, including a public reserve (within the meaning of the *Local Government Act 1993*);
 - (i) drainage reserve (within the meaning of the *Local Government Act 1993*);
 - (j) public utility undertaking;
 - (k) bus depot;
 - (l) recreation area;
 - (m) cemetery (within the meaning of the *Cemeteries and Crematoria Act 2013*);
 - (n) public roads; and
 - (o) public amenities or public services, in connection with which development contributions have been imposed under section 7.11 or section 7.12 of the Act or may be imposed in accordance with a contributions plan approved under section 7.18 of the Act.
3. The following areas of land are not to be included in the calculation of the net developable area for the proposed subdivision:
 - (a) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the Secretary of the Department of Planning, Industry and Environment (the **Secretary**) is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of it being at or below that level;
 - (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 7.18 of the Act;
 - (c) any area of land that is within Zone E2 Environmental Conservation;
 - (d) any area of land within the curtilage of a building listed on the State Heritage Register;

- (e) any area of land this is within an asset protection zone:
 - (i) that is specified in a bush fire safety authority issued under the *Rural Fires Act 1997*; or
 - (ii) that is required to be established by the development consent relating to the subdivision,
if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of it being within that zone;
 - (f) an area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land or as confirmed in writing by the public utility undertaking, if the Secretary is satisfied the that the area is unsuitable for developing for the purposes of the subdivision by virtue of the easement; and
 - (g) any area of land that is within a public transport corridor (other than a road corridor) as shown on a Land Zoning Map for the purposes of an environmental planning instrument or a development control plan made under the Act, if the Secretary is satisfied that the area is unsuitable for development for the purposes of the subdivision by virtue of it being within the public transport corridor.
4. The net developable area does not include the area of any lot in the proposed plan of subdivision that may be further subdivided (other than under a strata scheme) in accordance with the development consent relating to the subdivision.
5. The net developable area does not include the area of any lot in the proposed plan of subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to the relevant planning controls, will be further subdivided (other than under a strata scheme) in accordance with a future development consent for the purpose of the orderly development of the land for urban purposes in the future.
6. If a proposed lot contains an existing lawful habitable dwelling (being a dwelling that lawfully existed on the proposed lot at the date this deed commences) and:
- (a) is no more than 0.1 hectare, the net developable area does not include the area of the lot, or
 - (b) is more than 0.1 hectare in area, the net developable area is reduced by 0.1 hectare,
- for the purpose of calculating the net developable area for the proposed subdivision.
7. If a proposed lot is wholly within Zone E3 Environmental Management, Zone E4 Environmental Living or Zone R5 Large Lot Residential and is more than 0.1 hectare, that lot is taken to be 0.1 hectare for the purpose of calculating the net developable area for the proposed subdivision.
8. The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the net developable area for the proposed subdivision in accordance with this clause and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.
9. In this definition, the following words or expressions have the same meanings as they have in the Standard Instrument (that is, the standard instrument for a principal



local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* (**Standard Instrument**):

- (a) emergency services facility;
- (b) health services facility;
- (c) passenger transport facility;
- (d) place of public worship;
- (e) public utility undertaking;
- (f) recreation area; and
- (g) school.

10. In this definition, a reference to:

- (a) a land use zone is a reference to a land use zone specified in the Standard Instrument and to a land use zone that is equivalent to any such land use zone; and
- (b) curtilage of a building listed on the State Heritage Register is a reference to the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register kept under Part 3A of the *Heritage Act 1977*; and
- (c) a "strata scheme" means a reference to a strata scheme as that term is defined in the *Strata Schemes Development Act 2015* or a leasehold strata scheme as that term is defined in the *Strata Schemes Development Act 2015*.



Appendix 2 – Updated Schedule 2 to the Stage 1 VPA

Land

The whole of the land described in the following table:

Lot	Deposited Plan	Registered Proprietor
9	729973	Huntlee Pty Ltd
10	729973	Huntlee Pty Ltd
39	755211	Huntlee Pty Ltd
33	755211	Huntlee Pty Ltd
10	1105639	Huntlee Pty Ltd
231	879198	Huntlee Pty Ltd
2	729973	Huntlee Pty Ltd
3	729973	Huntlee Pty Ltd
240	1105591	Huntlee Pty Ltd
1418	1220518	Huntlee Pty Ltd
609	1236344	Huntlee Pty Ltd
298	1240825	Huntlee Pty Ltd
144	1231921	Huntlee Pty Ltd
2 (part)	1211767	Huntlee Pty Ltd

Note: If a title reference in this table relates to a cancelled or superseded folio, the title reference is to be taken as a reference to the land formerly comprised in that folio, as comprised in any folio or folios which succeeded that folio.



page 14



Appendix 5 - Annexure F

Road Improvement Works

Item	Upgrade	Description	Timing
1	-	Wine Country Drive shall be upgraded to 4 through lanes (2 lanes in each direction with central median) in accordance with the Huntlee Stage 2 – Wine Country Drive Upgrade plans by Northrop, dated 11 November 2016, job number NL151628, Revision 6.	(a) Prior to 725 Dwellings for which a Subdivision Certificate has been issued; or (b) 1 June 2018, whichever occurs first.
2	A1	Upgrade Wine Country Drive / Hunter Expressway Link Road intersection to a 2 lane circulating roundabout.	(a) Prior to 1,000 725 Dwellings for which a Subdivision Certificate has been issued; or (b) 1 June 2020 December 2018, whichever occurs first.
3	A3	Wine Country Drive / Main Street intersection with traffic signal control generally in accordance with the layout shown in the Addendum report dated August 2012.	Prior to the construction of any development (excluding subdivision) west of Wine Country Drive, with the exception of any sales office and must be constructed concurrently with the upgrade of Wine Country Drive as described in Item 1 in the table in Appendix 2.
4	A2	Wine Country Drive / Anvil Creek Regional Park intersection with Type CHR / CHL intersection (protected right and left turn bay) and restricted to left in / left out / right in movements.	Prior to opening of the park
5	A5	Wine Country Drive / Village 1 access with traffic signal control.	(a) prior to 1,000 Dwellings for which a Subdivision

Item	Upgrade	Description	Timing
			Certificate has been issued. The fourth leg of the intersection (Link Road 1) is not to be constructed and operational prior to the intersection being signal controlled and operational. The capacity of this intersection is to be tested again prior to 1,500 Dwellings for which a subdivision certificate has been issued.
6	A9	Wine Country Drive / Large Lot access upgraded to an Austroads Type CHR / CHL intersection or seagull	Prior to any Dwelling in R5 zone west of Wine Country Drive
7	A6	Hunter Expressway Link Road / Village 1 North access intersection and link road shall be constructed during Stage 1. The intersection shall be a 2 lane circulating roundabout or traffic signals. The link road shall be one lane in each direction, allowing for a future additional one lane in each direction. <u>An interim intersection such as a left in/left out can be provided prior to 1500 lots with the agreement of RMS (Transport for NSW), however this will be subject to upgrade to a roundabout of traffic signal controlled intersection prior to the Subdivision Certificate of more than 1500 lots in Village 1 unless otherwise agreed with RMS (Transport for NSW).</u>	Prior to the Subdivision Certificate of more than 1500 lots in Village 1.
8	A11	Upgrade Hunter Expressway Branxton interchange to include: a continuous left turn slip lane / ramp from the	Prior to 1,900 Dwellings for which a Subdivision Certificate has been issued.



Item	Upgrade	Description	Timing
		northbound off ramp onto Hunter Expressway Link Road • a continuous left turn slip lane / ramp from the New England Highway extension to the Hunter Expressway southbound on ramp • extension of the Hunter Expressway southbound off ramp to cater for expected queuing • adjustments to line marking in stages to ensure appropriate operation of the interchange.	
9	A11	Upgrade Hunter Expressway Link Road to 4 lanes (2 in each direction) between Wine Country Drive and the Hunter Expressway Interchange	Prior to 1,500 Dwellings for which a Subdivision Certificate has been issued.