

Deed of Variation to Planning Agreement

Catherine Hill Bay

Minister administering the *Environmental Planning and Assessment Act 1979*
(ABN 20 770 707 468)

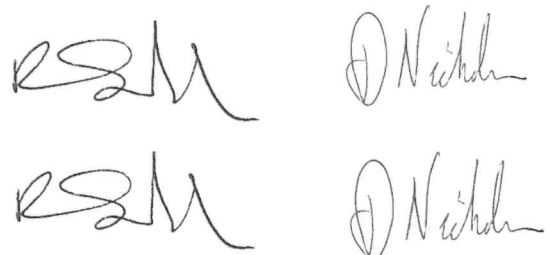
Minister administering the *National Parks and Wildlife Act 1974*
(ABN 27 578 976 844)

Wallalong Land Developments Pty Limited (ACN 158 521 567) as trustee for **Catherine Hill Bay
Honey Unit Trust** (ABN 96 937 703 587)

Lake Maintenance (NSW) Pty Limited (ACN 088 782 718)

2x Electronic signatures of me, Ricci Schwarzler, affixed on behalf of me on 18/11/2024.

2x Electronic signatures of me, Darren Nicholson, affixed on behalf of me on 18/11/2024.



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Variation of Planning Agreement

Date:

Parties: **MINISTER ADMINISTERING THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979** (ABN 20 770 707 468) of c/- NSW Department of Planning, Housing and Infrastructure of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

(Planning Minister)

MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT 1974 (ABN 27 578 976 844) of c/- NSW Department of Climate Change, Energy, the Environment and Water of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

(Environment Minister)

WALLALONG LAND DEVELOPMENTS PTY LIMITED (ACN 158 521 567) as trustee for **CATHERINE HILL BAY HONEY UNIT TRUST** (ABN 96 937 703 587) of Unit 2A, 8 Reliance Drive, Tuggerah NSW 2259

AND

LAKE MAINTENANCE (NSW) PTY LIMITED (ACN 088 782 718) of Unit 2A, 8 Reliance Drive, Tuggerah NSW 2259

(together, the **Developer**)

Introduction

- A. On 22 March 2012, the Former Landowner entered into the Planning Agreement with the Planning Minister and the Environment Minister.
- B. In 2014, the land comprising Lot 5 in DP 1180181 (**Lot 5**), to which the Planning Agreement applied, was sold to a private landowner. On 16 July 2018, the Planning Minister released the Planning Agreement in respect of Lot 5.
- C. On 28 July 2017, the Planning Agreement was novated from the Former Landowner to the Developer pursuant to the Novation Deed.
- D. On 16 April 2020 the Planning Agreement was amended pursuant to the Deed of Amendment.
- E. Under the Planning Agreement, the Developer is required to make the Development Contribution, which includes the Road Contribution in accordance with the Planning Agreement.
- F. The parties have agreed to vary the nature of the Road Contribution to be provided under the Planning Agreement.
- G. The Developer has offered, and the Planning Minister and Environment Minister have agreed, to amend the Planning Agreement as set out in this Deed.

It is agreed

1 Definitions and interpretation

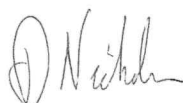
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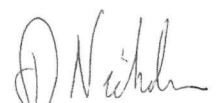
2x Electronic signatures of me, Darren Nicholson, affixed on behalf of me on 18/11/2024.

1.1 Definitions

In this Deed:

Deed means this Variation of Planning Agreement, including any schedules, annexures and appendices to this Deed.



Deed of Amendment means the Deed of Amendment to Planning Agreement registered no. AQ587461 dated 16 April 2020 between the Planning Minister, the Environment Minister, the Former Landowner and the Developer.

Environmental Offset Land has the same meaning as in the Planning Agreement, being the land now contained in Lots 6, 7, 8, 9 and 10 in DP 1180181.

Explanatory Note means the note exhibited with a copy of this Deed when this Deed is made available for inspection by the public pursuant to the Act.

Former Landowner means Coal & Allied Operations Pty Ltd (ACN 000 023 656) and Catherine Hill Bay Land Pty Ltd (ACN 129 266 459) jointly.

Land means the land described in Schedule 2 of the Planning Agreement, as amended by this Deed.

Novation Deed means the Deed of Novation of Planning Agreement dated 28 July 2017 between the Planning Minister, the Environment Minister, the Former Landowner and the Developer.

Planning Agreement means the planning agreement registered no. AH183405 dated 22 March 2012 between the Planning Minister, the Environment Minister and the Former Landowner, applying to land now contained in Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 in Deposited Plan 1180181, as amended by the Deed of Amendment.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Secretary means the Secretary of the Department.

1.2 Interpretation

- (a) In this Deed, unless the contrary intention appears, expressions and phrases used but not defined in this Deed have the same meanings as they have in the Planning Agreement.
- (b) 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 section 203(5) of the *Environmental Planning and Assessment Regulation 2021*.

3 Commencement

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

4 Transfer of the Environmental Offset Land to the Environment Minister

- 4.1 The Environment Minister acknowledges that the Environmental Offset Land has been transferred in accordance with the Planning Agreement.
- 4.2 The parties agree that on and from the commencement of this Deed, the Planning Agreement:
 - (a) is amended to remove the Environment Minister as a party to the Planning Agreement; and
 - (b) does not apply to the Environmental Offset Land.

5 Warranties and representations

The parties represent and warrant that they have the 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.

6 Counterparts

This Deed may be signed in any number of counterparts which together will form one instrument.

7 Amendment to Planning Agreement

7.1 Amendment

On and from the commencement of this Deed, the Planning Agreement is amended as set out in this clause 7.

7.2 Clause 1 – Definitions and Interpretation

In clause 1.1:

- (a) delete the following definitions:

Road Works Agreement

RTA Works

- (b) insert the following new definitions in alphabetical order:

Construction Contract means each contract between the Developer and a third party, meeting the requirements of clause 3 of Schedule 4, for the carrying out of the Nords Wharf Road Works by that third party.

Department means the NSW Department of Planning, Housing and Infrastructure.

Flowers Drive Monetary Contribution Amount means the monetary contribution amount referred to in Table 2 of Schedule 3.

Nominated Officer means an officer of the Department for the time being holding a position nominated by the Secretary for the purposes of this Planning Agreement.

Nords Wharf Road Works Contribution means the carrying out and completion of the Nords Wharf Road Works by the Developer in accordance with the terms of this Planning Agreement.

Planning Minister means the Minister administering the Act and includes the Secretary and the Nominated Officer.

Roads Authority has the meaning given to it in the Roads Act 1993 (NSW), and for the purposes of this Planning Agreement means the Lake Macquarie City Council or Transport for NSW.

Road Works Deed means a deed or agreement entered into by the Roads Authority and the Developer regarding the design and construction of the Nords Wharf Road Works.

Secretary means the Secretary of the Department.

Section 138 Approval means a consent issued pursuant to section 138 of the Roads Act 1993 (NSW).

Transport for NSW means Transport for NSW constituted under section 3C of the Transport Administration Act 1988 (NSW).

7.3 Schedule 2 – Land

In clause 1 of Schedule 2, delete the table and insert the following:

Folio Identifier
1/1180181
2/1180181
3/1180181
4/1180181

7.4 Schedule 3 – Development Contributions Schedule

- (a) In clause 1 of Schedule 3, under the heading 'Table 2 of Schedule 3 – Other Contributions', after the words 'works-in-kind', insert the words 'and monetary contribution to Transport for NSW'.
- (b) In clause 1 of Schedule 3, under the heading 'Table 2 of Schedule 3 – Other Contributions', delete the row for 'Item 1. Road Contribution' and insert the following as the new Item 1.

Development Contribution	Date for completion
<p>ITEM 1. ROAD CONTRIBUTON</p> <p>The Developer is to:</p> <p>(a) provide a monetary contribution to Transport for NSW, totalling \$1,000,000 (subject to indexation) toward the upgrade of the intersection at Flowers Drive and Pacific Highway (Flowers Drive Monetary Contribution); and</p> <p>(b) provide a U-Turn facility at Nords Wharf Road to accommodate northbound vehicles exiting Flowers Drive in accordance with condition 1.36 of the Concept Plan Approval (Nords Wharf Road Works).</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 satisfaction of Transport for NSW.</p>

- (c) At the end of Schedule 3, insert the following new clause:

Indexation of Flowers Drive Monetary Contribution

The Flowers Drive Monetary Contribution Amount is to be adjusted at time of payment, by multiplying the Flowers Drive Monetary Contribution Amount payable by an amount equal to the Current CPI divided by the Base CPI.

For the purposes of this clause:

- (a) **Base CPI** means the CPI number for the quarter ending 31 March 2024.
- (b) **CPI** means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Planning Minister specifies, in his or her sole discretion, for the purposes of this Planning Agreement.
- (c) **Current CPI** means:
- (i) if the Flowers Drive Monetary Contribution Amount is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in the preceding calendar year; and
 - (ii) if the Flowers Drive Monetary Contribution Amount is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in that calendar year.

Payment of the Flowers Drive Monetary Contribution

- (a) *The Developer must pay the Flowers Drive Monetary Contribution Amount to Transport for NSW by the time specified as the 'Date for completion' in Table 2 of clause 1 of Schedule 3 of this Planning Agreement.*
- (b) *The Developer must provide the Planning Minister with not less than 10 Business Days' written notice of its intention to lodge an application for the first subdivision certificate that creates the first Urban Lot within the area the subject of the Concept Plan Approval.*
- (c) *The Flowers Drive Monetary Contribution is made for the purpose of this Schedule 3 when the Planning Minister receives a certificate from the Roads Authority confirming that the Flowers Drive Monetary Contribution has been made.*
- (d) *The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant subdivision certificate within the meaning of section 6.15(1)(d) of the Act.*

7.5 Schedule 4 – Development Contribution Procedures

In Schedule 4, delete clause 3 Road Contributions and insert the following as the new clause 3:

3. Nords Wharf Road Works**3.1 Provision of the Nords Wharf Road Works**

The Developer must provide the Nords Wharf Road Works Contribution in accordance with this clause 3.

3.2 Conditions to Commencement of the Nords Wharf Road Works

Prior to commencement of the Nords Wharf Road Works, the Developer must:

- (a) *provide written notice to the Planning Minister which confirms that it intends to commence the Nords Wharf Road Works;*
- (b) *if development consent is required, provide evidence to the Planning Minister that it has obtained development consent for the Nords Wharf Road Works;*
- (c) *if required by the Roads Authority, enter into a Road Works Deed, on such terms and conditions as are acceptable to the Roads Authority, and provide to the Planning Minister a copy of any executed Road Works Deed; and*
- (d) *provide to the Planning Minister a copy of the Section 138 Approval.*

3.3 Timing of Nords Wharf Road Works

- (a) *The Developer must ensure completion of the Nords Wharf Road Works in accordance with any Road Works Deed and the Section 138 Approval and by the time specified as the 'Date for completion' in Table 2 of clause 1 of Schedule 3 of the Planning Agreement.*
- (b) *The parties agree that the requirement to provide the Nords Wharf Road Works Contribution by the time specified in the Planning Agreement is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 6.15(1)(d) of the Act.*

3.4 Completion of Nords Wharf Road Works

If the Developer considers that it has completed the Nords Wharf Works Contribution in accordance with the requirements of the Roads Authority and this Planning Agreement, the Developer will

*provide notice to the Planning Minister stating that the Developer considers that the Nords Wharf Works Contribution has been completed (**Completion Notice**) together with:*

- (a) a certificate from the Roads Authority confirming that the Nords Wharf Road Works have been completed;*
- (b) such other supporting documentation as is necessary for the Planning Minister to determine whether the Nords Wharf Works Contribution has been completed. The Developer must promptly provide any additional information reasonably requested by the Planning Minister.*

8 Registration of this Deed

- 8.1** As contemplated by section 7.6 of the Act, the Developer agrees to lodge this Deed for registration under the *Real Property Act 1900* (NSW) on the relevant folios of the Register for all of the Land upon which the Planning Agreement is registered, being Lots 1, 2, 3 and 4 in DP 1180181, within 20 Business Days after the date on which this Deed, executed by the Planning Minister and Environment Minister, is returned to the Developer.
- 8.2** The Developer will provide the Planning Minister with a copy of the relevant folio of the Register and a copy of the registered dealing which provide evidence that clause 8.1 has been satisfied, within 10 Business Days after the date of registration.

9 Expenses

- 9.1** Subject to receipt of a valid tax invoice, the Developer must pay the Planning Minister's and Environment Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- 9.2** 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 notice period.
- 9.3** The Developer must pay the Planning Minister's and Environment Minister's reasonable legal costs and disbursements in connection with the release and discharge of this Deed with respect to any part of the Land.
- 9.4** The Developer must pay all taxes assessed on or in respect of this Deed and any instrument or transaction required or contemplated by or necessary to give effect to this Deed (including stamp duty and registration fees, if applicable).
- 9.5** The Developer must pay its own and the Planning Minister's reasonable costs and disbursements in connection with the release and discharge of this Deed with respect to any part of the Land pursuant to clause 8.
- 9.6** The Developer must provide the Planning Minister and Environment Minister with bank cheques, or an alternative method of payment if requested by the Planning Minister or Environment Minister, in respect of the costs pursuant to clauses 9.1, 9.2, 9.3 and 9.5 above:
 - (a) where the Planning Minister or Environment Minister (as the case may be) 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
 - (b) where the Planning Minister or Environment Minister (as the case may be) 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 Planning Minister or Environment Minister for payment.

10 Amendments not to affect accrued rights and obligations

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

10.2 Nothing in this Deed:

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

11 Confirmation

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

12 Electronic Execution

- (a) Each party consents to this Deed being signed by electronic signature by the methods set out in this clause.
- (b) If this Deed or any counterpart is executed electronically by or on behalf of a party, that party represents and warrants that it or anyone signing on its behalf is duly authorised to enter into and execute this Deed and to create obligations that are valid and binding obligations on the party;
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this Deed and any variation of it:
 - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the Deed;
 - (ii) insertion of the person's name on to the Deed; or
 - (iii) use of a stylus or touch finger on a touch screen to sign the Deed;provided that in each of the above cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the Deed;
- (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the Deed; or
- (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this Deed. No person may challenge the validity of the Deed by virtue only of the fact that it has been electronically executed and each party is estopped from asserting otherwise; and
- (e) A signed copy of this Deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Deed for all purposes.

13 Notices**13.1 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:

- (a) delivered or posted to that party at its address set out below; or
- (b) sent to that party at its email address set out below.

Planning Minister

Attention: The Secretary, NSW Department of Planning,
Housing and Infrastructure

Address: Level 11, 4 Parramatta Square, 12 Darcy Street,
Parramatta NSW 2150

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

Environment Minister

Attention: The Secretary, NSW Department of Climate Change,
Energy, the Environment and Water

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

Email address:

Developer

Attention: The Company Directors and Secretary

Address: Unit 2A, 8 Reliance Drive, Tuggerah NSW 2259

Email address: darren@huntergroup.net.au

13.2 Change of address

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

13.3 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 registered post, two Business Days after it is posted; or
- (c) if it is sent by email and the sender does not receive a delivery failure notice, as soon as the email is sent.

13.4 Receipt – next Business Day

If any notices, consent, information, application or request is delivered, or a 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.

14 General

14.1 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.

14.2 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.

14.3 Waiver and exercise of rights

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. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

14.4 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.

14.5 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.

14.6 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. The Planning Agreement as amended by this Deed may be assigned or dealt with as permitted in clause 14 of the Planning Agreement.

14.7 No fetter

Nothing in this Deed shall be construed as requiring the Planning Minister or Environment Minister (as the case may be) to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

14.8 Severability

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. 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.

14.9 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.

14.10 Approvals and Consent

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

14.11 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.

14.12 Deed

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

Execution

Executed as a Deed

Executed in counterparts

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

.....
Signature of witness

.....
Signature of the delegate of the Planning Minister

.....
Name of witness in full

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

.....
Address of witness

*I have signed a counterpart of the Deed,
having witnessed the signing of the Deed over
audio visual link in accordance with section 14G
of the *Electronic Transactions Act 2000*.

Signed, sealed and delivered by the Environment Minister (ABN 27 578 976 844), in the presence of:

.....
Signature of witness

.....
Signature of the delegate of the Environment Minister

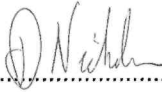
.....
Name of witness in full

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

.....
Address of witness

*I have signed a counterpart of the Deed,
having witnessed the signing of the Deed over
audio visual link in accordance with section 14G
of the *Electronic Transactions Act 2000*.

**Signed, sealed and delivered by Wallalong
Land Developments Pty Limited** (ACN 158
521 567) in its capacity as trustee for
Catherine Hill Bay Honey Unit Trust (ABN 96
937 703 587) in accordance with section 127
of the *Corporations Act 2001* (Cth) by:



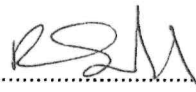
Signature of Director

Darren Keith Nicholson

Name of Director in full

Electronic signature of me, Darren Nicholson, affixed on behalf of me on 18/11/2024.

Electronic signature of me, Ricci Schwarzler, affixed on behalf of me on 18/11/2024.

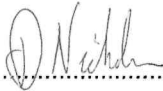


Signature of Director/Secretary

Ricci Ann Schwarzler

Name of Director/Secretary in full

**Signed, sealed and delivered by Lake
Maintenance (NSW) Pty Limited** (ACN 088
782 718) in accordance with section 127 of
the *Corporations Act 2001* (Cth) by:



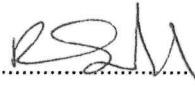
Signature of Director

Darren Keith Nicholson

Name of Director in full

Electronic signature of me, Darren Nicholson, affixed on behalf of me on 18/11/2024.

Electronic signature of me, Ricci Schwarzler, affixed on behalf of me on 18/11/2024.



Signature of Director/Secretary

Ricci Ann Schwarzler

Name of Director/Secretary in full