

CESSNOCK CITY COUNCIL
- 3 OCT 2017
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Cessnock City Council

Huntlee Pty Ltd

Deed of Variation to Planning Agreement

Huntlee New Town

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Corrs Chambers Westgarth

Date 28/9/17

Parties

Cessnock City Council ABN 60 919 148 928 of 62-78 Vincent Street, Cessnock New South Wales (**Council**)

Huntlee Pty Ltd ABN 73 143 744 745 in its capacity as trustee of the Relevant Partnership c/- LWP Property Group, 34 Main Street, Ellenbrook, Western Australia (**Developer**)

Background

- A The Parties to this Deed are parties to the Planning Agreement.
 - B On 5 July 2016, approval was granted to Mod 5 to the Stage 1 Project Approval under Ministerial delegation by the Planning and Assessment Commission. Mod 5 provided for the extension of the boundary to the Project approval to include an additional 3.1ha, extension of the existing road network and amended plans.
 - C Condition 8 of Mod 5 inserted new Condition E10 to the Project Approval requiring an amendment to the Planning Agreement to include the land to which Mod 5 applies.
 - D Pursuant to clause 12(e) of the Planning Agreement, the Parties have agreed to modify the Planning Agreement in accordance with this Deed, as required by Condition E10 of Mod 5.
-

Agreed terms

1 Definitions

- (a) In this Deed these terms have the following meanings:

Deed	This Deed including any schedules, annexures and appendices to this Deed. A reference to this Deed includes the agreement recorded in this Deed. Any schedules, annexures and attachments form part of this Deed.
Explanatory Note	The Explanatory Note at Appendix 2 of this Deed.

Mod 5	Modification application MP10_0137 MOD 5 approved under Ministerial delegation by the Planning and Assessment Commission, as delegate of the Minister on 5 July 2016, pursuant to section 75W of the Act, subject to conditions.
Party	A party to this Deed. A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
Planning Agreement	The planning agreement between the Council and the Developer pursuant to section 93F of the Act dated 18 November 2015.
Replacement Map	The Map at Appendix 1 of this Deed.

- (b) Capitalised terms which are not defined in this Deed have the same meaning as in the Planning Agreement.
- (c) Clauses 4.2, 15, 17.1 and 19 to 31 of the Planning Agreement apply as if they form part of this Deed, with any necessary changes.

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

- (a) This Deed operates only if the Council executes this Deed.
- (b) The Council must notify the Developer immediately after the Council executes the Deed and promptly provide the Developer with this Deed as executed by Council.
- (c) Provided **clause 3(b)** is satisfied, this Deed commences operation from the date it is signed by all parties in accordance with clause 25C(1) of the Regulation.

4 Amendment of Planning Agreement

On and from commencement of this Deed under **clause 3**, the map at Schedule 4 of the Planning Agreement is deleted and replaced with the Replacement Map.

5 Affirmation of Planning Agreement

The Planning Agreement will be read and construed subject to this Deed and in all other respects, the provisions of the Planning Agreement will continue in full force and effect, subject to the variation contained in this Deed.

6 Explanatory Note

- (a) Appendix 2 contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

7 General

7.1 Amendment

No modification or review of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.

7.2 Deed

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

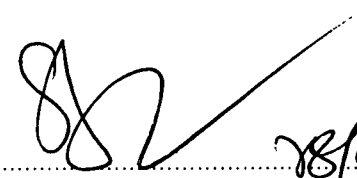
Execution

Executed as a deed.

Signed for and on behalf of **Cessnock City Council** in accordance with a resolution of Council dated by its authorised delegate in the presence of:

Y.B.C. 28/9/2017
.....
Witness

J. Blake
.....
Name of Witness (print)



.....
Authorised Delegate

28/9/17
.....
Name of Authorised Delegate (print)
**Stephen Glen
General Manager
Cessnock City Council**

Executed by **Huntlee Pty Ltd** (ABN 73 143 744 745) in its capacity as trustee of the Relevant Partnership in accordance with section 127 of the *Corporations Act* 2001 (Cth):


.....
Company Secretary/Director
ALAN FRANCIS NEVILLE

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


.....
Director
DANNY WILLIAM MURPHY

.....
Name of Director (print)

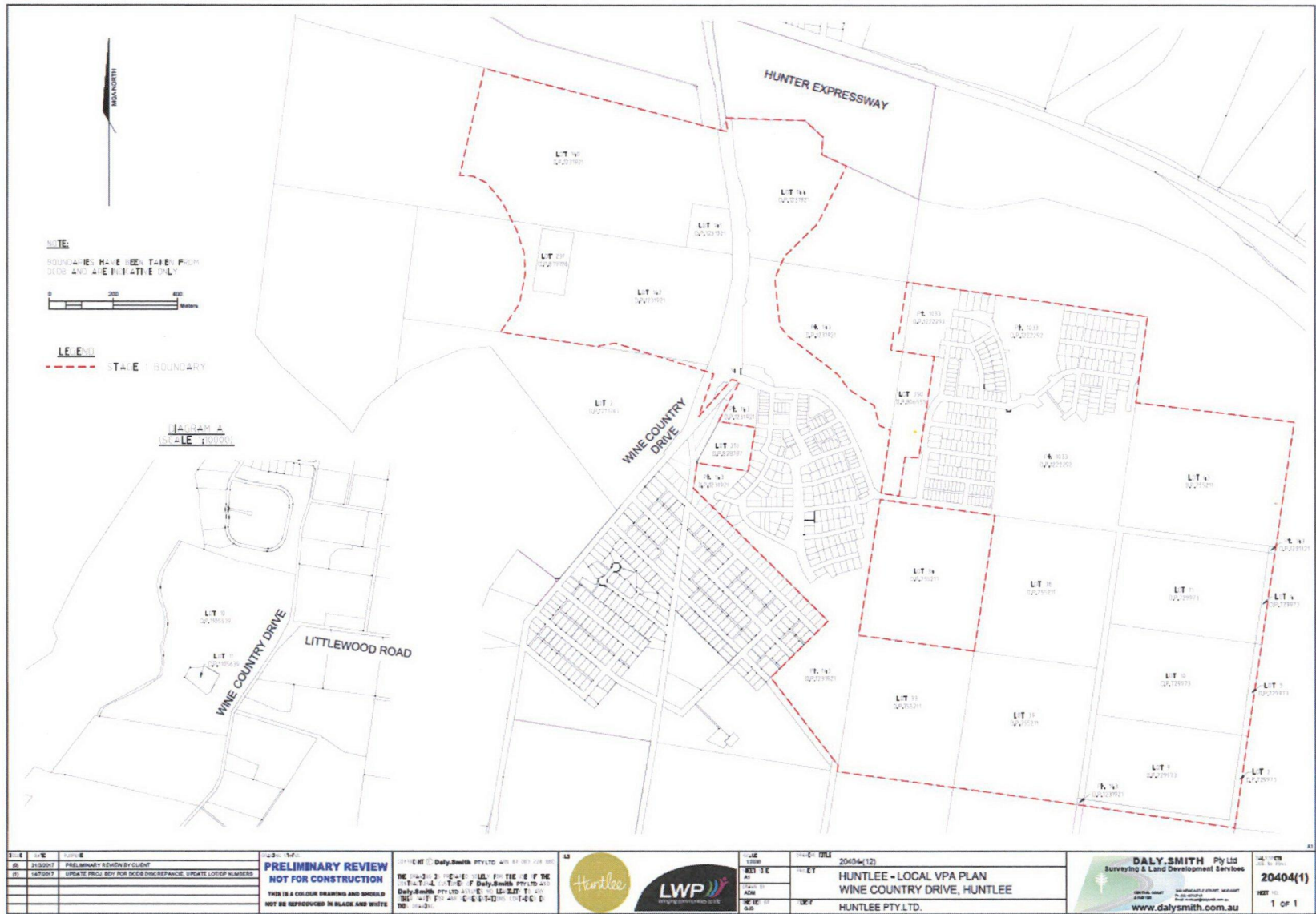
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Appendix 1

Replacement Map (clause 4)

Overview Map of Land proposed for development

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<table border="1"> <tr> <td>DATE</td> <td>DESCRIPTION</td> </tr> <tr> <td>20150917</td> <td>PRELIMINARY REVIEW BY CLIENT</td> </tr> <tr> <td>14/10/17</td> <td>UPDATE FROM BOD FOR DEEDS DISCREPANCY, UPDATE LOT/ST NUMBERS</td> </tr> </table>	DATE	DESCRIPTION	20150917	PRELIMINARY REVIEW BY CLIENT	14/10/17	UPDATE FROM BOD FOR DEEDS DISCREPANCY, UPDATE LOT/ST NUMBERS	<p>PRELIMINARY REVIEW NOT FOR CONSTRUCTION</p> <p>THIS IS A CIVIL DRAWING AND SHOULD NOT BE REPRODUCED IN BLACK AND WHITE.</p>	<p>DATE: 14/10/17 DRAWN BY: Daly.Smith Pty Ltd 401 84 061 228 985</p> <p>THE HUNTLEE LOCAL VPA PLAN FOR THE USE OF THE HUNTLEE LOCAL VPA PLAN OF Daly.Smith Pty Ltd 401 84 061 228 985 DATE: 14/10/17 SCALE: 1:10000</p>		<p>SCALE: 1:1000</p> <p>DATE: 2016/04/12</p> <p>PROJECT: HUNTLEE - LOCAL VPA PLAN WINE COUNTRY DRIVE, HUNTLEE</p> <p>CLIENT: HUNTLEE PTY.LTD.</p>	<p>DALY.SMITH Pty Ltd Surveying & Land Development Services</p> <p>www.dalysmith.com.au</p>	<p>PROJECT: 20404(1)</p> <p>SHEET: 1 OF 1</p>
DATE	DESCRIPTION											
20150917	PRELIMINARY REVIEW BY CLIENT											
14/10/17	UPDATE FROM BOD FOR DEEDS DISCREPANCY, UPDATE LOT/ST NUMBERS											

Appendix 2

Explanatory Note (Clause 6)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

1 Background

The parties to the Deed are Cessnock City Council (**Council**) and Huntlee Pty Ltd in its capacity as trustee of the Relevant Partnership (**Developer**), being the parties to the Planning Agreement

On 24 April 2013, the Developer was granted development consent for Stage 1 of the Huntlee New Town development which permitted, subject to conditions, the subdivision of the Land for 1,473 residential allotments, 14 super lots and 1 allotment for a primary school and associated infrastructure, including landscaping, bulk earthworks, public open space, recreation areas, roads, drainage and utility services (**Project Approval for Stage 1**).

Since the consent was granted, the Project Approval for Stage 1 has been modified on a number of occasions.

On 5 July 2016 approval was granted for Mod 5 to the Project Approval for Stage 1 (**Mod 5**) for the extension of the boundary of the Project Approval for Stage 1, creation an additional 33 residential allotments; extension of the existing road network to provide vehicle and pedestrian access to the additional lots; and addition of amended plans.

Condition 8 of Mod 5 inserted new Condition E10 to the Project Approval to require the planning agreement with Cessnock City Council be amended to include the land to which Mod 5 applies.

The Deed amends the Planning Agreement as required by Condition 8 of Mod 5 (Condition E10 of the Project Approval).

2 Summary of Objectives, Nature and Effect of the Deed

2.1 Objectives of the Deed

The objective of this Deed is to amend the Planning Agreement to reflect the extension of the boundary for the Project Approval approved under Mod 5 as required by condition 8 of Mod 5.

2.2 Nature of the Deed

This Deed is a deed of variation to the Planning Agreement under clause 25C(3) of the Environmental Planning and Assessment Regulation 2000.

2.3 Effect of the Deed

The effect of the Deed is to amend the Planning Agreement to extend the boundary of the Land to which the Planning Agreement applies by updating the plan of the Land included at Schedule 4 of the Planning Agreement.

3 Assessment of the Merits of the Deed, including the impact on the public or any relevant section of the public

This Deed amends the Planning Agreement as required by Condition 8 of Mod 5.

Amendment to the Planning Agreement under this Deed does not result in any significant additional impact on the public or relevant section of the public.

4 Other Matters

4.1 How the Deed promotes public interest and one or more of the objects of the Act

The Planning Agreement, as modified by this Deed, promotes the public interest by promoting the objects of the Act as set out in sections 5(a)(i), (ii), (iii) and 5(c) of the Act.

4.2 How the Deed promotes one or more of the elements of Council's charter under Section 8 of the Local Government Act 1993

The Planning Agreement, as modified by this Deed, promotes the following elements of Council's charter:

- (a) to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- (b) to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is

- consistent with and promotes the principles of ecologically sustainable development;
- (c) to have regard to the long term and cumulative effects of its decisions;
- (d) to engage in long-term strategic planning on behalf of the local community;
- (e) to keep the local community and the State government (and through it, the wider community) informed about its activities; and
- (f) to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected.

4.3 The planning purpose/s served by the Deed

The Planning Agreement, as modified by this Deed, provides for the long term, staged and co-ordinated development of the Land. This planning purpose is facilitated by the provision of community building infrastructure, public recreation space, environmental conservation and monetary contributions to Council.

4.4 Whether the Deed conforms with Council's capital works program

This Deed does not provide for any works.

The Planning Agreement also does not provide for works that relate to Council's current Capital Works Program. The Planning Agreement has no effect on the Capital Works Program and is therefore conformant.

4.5 Whether the Deed specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

This Deed does not specify that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

Each of the Works in Kind, Monetary Contributions, Dedication of Land is required to be provided to Council in accordance with the timing set out in Schedule 2 of the Planning Agreement.

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Handwritten signatures and initials: A large signature on the left, a signature in the middle, and a signature on the right. There are also some initials and scribbles.