

Date 23 March 2018

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Cessnock City Council

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Huntlee Pty Ltd

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# Second Deed of Variation to Planning Agreement

Huntlee New Town

**Stephen Glen**  
General Manager  
Cessnock City Council

**ALAN FRANCIS NEVILLE**

**DANNY WILLIAM MURPHY**

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## Date

## 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**)

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## Background

- A The Parties to this Deed are parties to the Planning Agreement
  - B Pursuant to clause 12(e) of the Planning Agreement, the Parties have agreed to further modify the Planning Agreement in accordance with this Deed
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## Agreed terms

### 1 Definitions

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

<b>Deed</b>	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.
<b>Explanatory Note</b>	The Explanatory Note at Appendix 2 of this Deed.
<b>Party</b>	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.
<b>Planning Agreement</b>	The planning agreement between the Council and the Developer pursuant to section 93F of the Act dated 18 November 2015 as varied by the Deed of Variation dated 28 September 2017 between the Council and the Developer.

- (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**

- (a) Clause 6 1(b) of the Planning Agreement is deleted and replaced with the following

*"In lieu of providing the Works in Kind identified as **Item No. 1, 4, 6, 7, 14 or 15 in Column 1 of Schedule 2**, the Developer may pay a monetary contribution to the value amount specified in **Column 6 of Schedule 2** prior to the timing specified in **Column 7 of Schedule 2** and in accordance with **clause 7.2** but only if "*

- (b) In Schedule 2, Item 1, Column 7 of the Planning Agreement, the figure "1,000<sup>th</sup>" is deleted and replaced with "1,800<sup>th</sup>",
- (c) In Schedule 2, Item 2, Column 7 of the Planning Agreement, the figure "1,600<sup>th</sup>" is deleted and replaced with "2,200<sup>th</sup>",
- (d) In Schedule 2, Item 4, Column 7 of the Planning Agreement
  - (i) the figure "800<sup>th</sup>" is deleted and replaced with "1,000<sup>th</sup>", and
  - (ii) the figure "1,600<sup>th</sup>" is deleted and replaced with "1,800<sup>th</sup>",
- (e) In Schedule 2, Item 6, Column 7 of the Planning Agreement
  - (i) the figure "800<sup>th</sup>" is deleted and replaced with "1,200<sup>th</sup>", and
  - (ii) the figure "1,600<sup>th</sup>" is deleted and replaced with "2,000<sup>th</sup>",

- (f) In Schedule 2, Item 14, Column 7 of the Planning Agreement, the figure “800<sup>th</sup>” is deleted and replaced with “2,200<sup>th</sup>”,
- (g) In Schedule 2 of the Planning Agreement, the following Item 15 is added to the table

<b>Column 1 Item No.</b>	<b>Column 2 Public Purpose</b>	<b>Column 3 Type of Contribution</b>	<b>Column 4 Dedication of Land to Council</b>	<b>Column 5 Monetary Contribution</b>	<b>Column 6 Works in Kind Contribution</b>	<b>Column 7 Timing</b>
15	Wine Country Drive Planted Median Maintenance (commencing at Empire Street north through to Bridge St RAB)	Works in Kind			\$90,000 (comprising 5 annual payments of \$18,000)	Developer to maintain the median for a period of 5 years following Practical Completion of the planting works

and

- (h) Figure 1 in Schedule 2 and the Staging Plan in Schedule 5 of the Planning Agreement are deleted and replaced with the maps in Appendix 1 of this Deed

## 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.

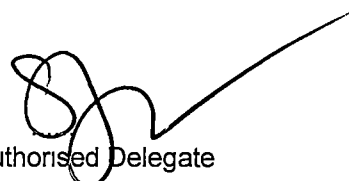
# Execution

**Executed** as a deed

**Signed** for an on behalf of **Cessnock** )  
**City Council** in accordance with a )  
resolution of Council dated 13 December )  
2017 by its authorised delegate in the )  
presence of

  
Witness

**MELANIE PARKER**  
Name of Witness (print)

  
Authorised Delegate

**Stephen Glen**  
Name of Authorised Delegate (print)  
**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

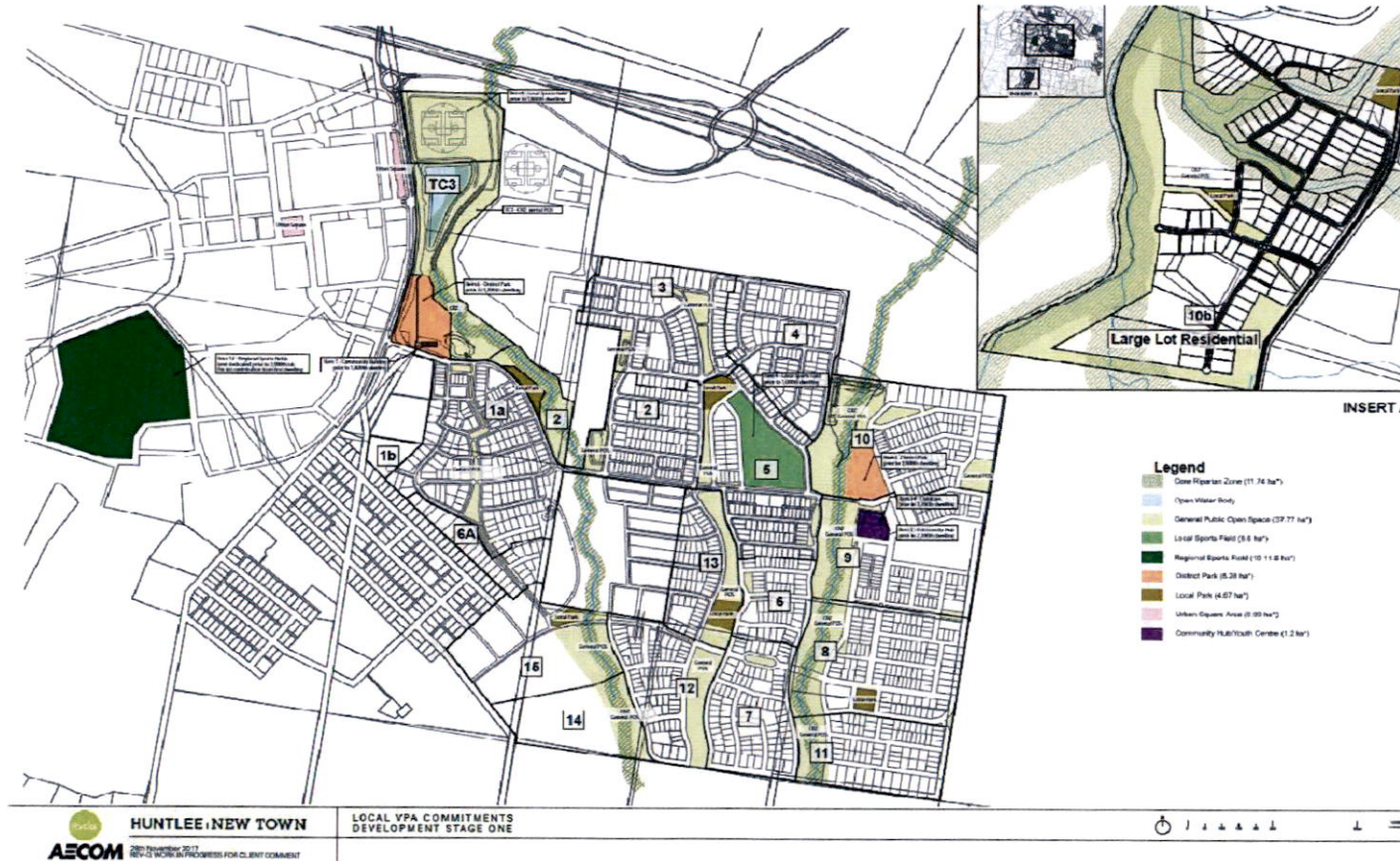
**ALAN FRANCIS NEVILLE**  
Name of Company Secretary/Director  
(print)

  
Director

**DANNY WILLIAM MURPHY**  
Name of Director (print)

# Appendix 1

Figure 1 in Schedule 2 of the Planning Agreement (Clause 4)



*[Signature]*  
**ALAN FRANCIS NEVILLE**

*[Signature]*  
**DANNY WILLIAM MURPHY**

*[Signature]*  
**Stephen Glen**  
General Manager  
Cessnock City Council



## 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, as varied by the first Deed of Variation dated 28 September 2017

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**)

On 18 November 2015 the parties entered into the Planning Agreement, pursuant to Condition E5 of the Project Approval for Stage 1 for the delivery of the local development contributions outlined in Conditions E3 and E4

On 28 September 2017 the parties entered into the first Deed of Variation to the Planning Agreement which modifies the Planning Agreement in accordance with Condition 8 of Mod 5 to the Stage 1 Project Approval

The Parties have agreed to further amend the Planning Agreement as set out in this Deed

### 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

- (a) clarify the requirements relating to the timing for the delivery and completion of a number of development contributions which are



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General Manager  
Cessnock City Council

dependent on the number of Dwellings developed within Stage 1 of the Development, and

- (b) to include a new development contribution (Item 15 in Table 1 in Schedule 2 of the Planning Agreement) in the form of works in kind requiring the Developer to maintain the median strip along Wine Country Drive between Empire Street north and Bridge Street RAB for a period of 5 years following Practical Completion of the planting works

## **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

- (a) clarify the requirements relating to the timing for the delivery and completion of a number of development contributions,
- (b) making the relevant amendments to Table 1 in Schedule 2 to the Planning Agreement, and
- (c) insert Item 15 in Table 1 to Schedule 2 of the Planning Agreement, being a new development contribution requiring the Developer to maintain the Wine Country Drive median for a period of 5 years following Practical Completion of the planting works along Wine Country Drive between Empire Street north and Bridge Street RAB

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

Amendment to the Planning Agreement under this Deed provides clarity and certainty around the timing for the delivery and completion of development contributions which are dependent on the Developed Lots within the Stage 1 development

The amendment to the Planning Agreement under this deed also provides the mechanism for the delivery of a new development contribution (outlined in Section 2 1(a), above) associated with the Stage 1 Development

As with the existing works in kind development contributions, the Planning Agreement includes a regime whereby Council must be satisfied with the design for the Wine Country Drive Planted Median and, if the Developer fails to complete the Wine Country Drive Planted Median Maintenance, Council may elect to maintain the median instead and Council can call on the security provided under the Planning Agreement

Along with the existing development contributions, the Planning Agreement (as modified) promotes the orderly, efficient and economic development of the Land

Amendment to the Planning Agreement under this deed does not result in any significant additional impact to 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**

The Planning Agreement, as modified by this Deed, 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. Maintenance of the Wine Country Drive median is required to be provided to Council in accordance with the timing set out in Item 15 in Schedule 2 of the Planning Agreement, being for a period of 5 years following Practical Completion of the planting works on the relevant portion of the Wine Country Drive Median

