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LC/SY/HUNT16295-9119674

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17 January 2018

**By email and regular post:**

info@environment.nsw.gov.au  
Anthony Lean  
Chief Executive  
Office of Environment and Heritage  
PO Box A290  
SYDNEY SOUTH NSW 1232

**Contact**  
Samantha Yeung (02) 9210 6284  
Email: [samantha.yeung@corrs.com.au](mailto:samantha.yeung@corrs.com.au)

**Partner**  
Louise Camenzuli

Dear Mr Lean

## **Huntlee New Town Development Certification of development under clause 34A(4) of Savings and Transitional Regulation**

We act for Huntlee Pty Ltd in relation to the Huntlee New Town Development (**Development**). We understand that you are aware of the Development from previous correspondence with our client, Stephen Thompson, Project Director, Huntlee.

As you are aware, clause 34A(4) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* (**Savings and Transitional Reg**) provides that the Environment Agency Head may certify certain development applications.

Once a proposed development is certified under clause 34A(4), the biodiversity assessment and approvals provisions under Part 7 of the BC Act no longer apply, and the proposed development is assessed under the provisions of the *Environmental Planning and Assessment Act 1979* (**EPA Act**).

We write to you, as the Environment Agency Head, to seek certification pursuant to clause 34A(4) for any future development applications (including modification applications) relating to the Huntlee Development.

### **1 Background to the Development**

- 1.1 Huntlee owns significant land holdings in the NSW Hunter Valley (**Huntlee Land**). A land zoning map showing the extent of the Huntlee Land is **Annexure A** to this letter.
- 1.2 In 2010, the Huntlee Land was declared a State Significant Site (**SSS**) and rezoned under the former *State Environmental Planning Policy (Major Development) 2005*. The purpose of the rezoning was to facilitate the Development, a 1,702ha staged development of more than 7,500 homes, 200ha

of commercial development, 173ha of rural lands and the dedication of more than 5,000ha of conservation land.

- 1.3 As part of the rezoning, Huntlee was required to enter into a voluntary planning agreement with the Minister for Planning and the Minister for the Environment (**SEPP VPA**). Pursuant to the SEPP VPA, Huntlee was required to make various environmental conservation contributions to offset the impacts of the Development. These contributions comprised:
- (i) dedication of 5,791ha of environmentally significant land for conservation purposes (**Conservation Offset Lands**);
  - (ii) payment of:
    - (A) \$100,000 for the conservation of the *Persoonia pauciflora* (a critically endangered shrub listed under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and the former *Threatened Species Conservation Act 1995*) in the North Rothbury area; and
    - (B) \$1 million towards the management of the Conservation Offset Lands (of which \$900,000 was adjusted by CPI movements).
- 1.4 On 21 September 2010, the Development was declared a major project under the former Part 3A of the EPA Act.
- 1.5 On 24 April 2013, Stage 1 of the Development was approved by the Planning Assessment Commission (**PAC**) as a delegate of the Minister for Planning under Project Approval MP10\_0137 (**Stage 1 Approval**). Stage 1 involved the subdivision of approximately 355ha of land (of the total 1,702ha for the entire Development) to create 1,473 residential allotments, 14 superlots, 1 allotment for a primary school, drainage and open space reserves.
- 1.6 Works for Stage 1 of the Development have already commenced and residential lots have been sold to purchasers.
- 1.7 Due to the scale of the development, Huntlee intends to lodge a number of development applications over the life of the project seeking approval under Part 4 of the *Environmental Planning and Assessment Act 1979* for the future stages of the Development.
- 1.8 Huntlee has fully discharged all of its development contributions obligations under the SEPP VPA. For your reference, we **attach as Annexure B:**
- (i) our letter to the Minister for the Environment dated 27 May 2016 that all of Huntlee's development contributions obligations under the SEPP VPA have been satisfied and requesting the Minister provide a release and discharge of the SEPP VPA from the titles to all the land on which the SEPP VPA is registered; and

- (ii) letter from the Minister for the Environment dated 8 June 2016 providing his consent to the removal of the SEPP VPA from the titles to the land on which the SEPP VPA is registered.

1.9 Huntlee seeks certification under clause 34A(4) of the Savings and Transitional Reg with respect to the whole Development including any:

- (i) modifications applications to the Stage 1 Approval; and
- (ii) development applications (including modification applications) for future stages of the Development.

## **2 Clause 34A(4) elements**

2.1 The elements to be satisfied in clause 34A(4) before the Environmental Agency Head may certify a proposed development and the status of satisfaction of each of these elements for the Development are set out below:

(i) **The proposed development the subject of a development application is part of a relevant planning arrangement**

“Relevant planning arrangement” is broadly defined in clause 34A(7) of the Savings and Transitional Reg as “an arrangement associated with the making of an environmental planning instrument or development control plan under the EPA Act, the grant of concurrence under that Act or the making of any other application or request under that Act.”

As:

- (A) the Development was facilitated by entry into the SEPP VPA at the time of the rezoning of the Huntlee Land; and
- (B) Huntlee intends to lodge any future development applications (including modification applications) for the Development under Part 4 of the EPA Act,

the Development is part of a “relevant planning arrangement”.

(ii) **The biodiversity impacts of the proposed development were satisfactorily addressed before the commencement of the BC Act as part of the relevant planning arrangement**

The BC Act commenced on 25 August 2017.

In September 2010, as part of the process to rezone the Huntlee Land for the Development, Huntlee undertook a comprehensive environmental assessment of the potential impacts of the rezoning on biodiversity, flora and fauna within the Huntlee Land in the SSS Study Report. The SSS Study Report and the accompanying specialist biodiversity reports concluded that “*the impacts of the development of Huntlee, as proposed in the SSS Study and in accordance with the proposed offset strategy are sustainable*”.

In connection with the rezoning and the Development, and as contemplated in the SSS Study Report, on 3 December 2010, Huntlee entered into the SEPP VPA with the Minister for Planning and the Minister for the Environment.

The clear intention was, and remains, that the environmental conservation contributions made under the SEPP VPA would sufficiently offset the environmental impacts for the entire Development and that no further environmental conservation contributions would be required to be made by Huntlee for any future stages of the Development.

This is evidenced by the fact that the contributions provided under the SEPP VPA are extensive and cannot be said to relate to only one stage of the Development and that the "Development" is defined in the SEPP VPA by reference to the entire Development.

The Director-General's assessment of the Stage 1 development application was undertaken consistently with the intention that the environmental conservation contributions made under the SEPP VPA sufficiently offset the environmental impacts for the entire Development. The Director General's Assessment Report for Stage 1 of the Development stated that: "*[t]he entire development area of Huntlee has been appropriately offset as part of the Voluntary Planning Agreement at the time of rezoning.*"

In relation to the impacts of Stage 1 of the Development on the *Personia pauciflora*, the Director General's Assessment Report stated that "*[a]n assessment of the impacts of the proposal on this species were considered as part of the rezoning process and with the proposed offset lands and other mitigation and management measures, were considered to be acceptable*". Huntlee was not required to provide any further environmental conservation contributions in conjunction with Stage 1 of its Development in light of the extensive environmental conservation contributions made under the SEPP VPA.

Finally, as outlined above, Huntlee has wholly fulfilled its obligations under the SEPP VPA to make the required environmental contributions. Accordingly, the biodiversity impacts of the whole Development have been extensively and satisfactorily addressed in the rezoning process through the SEPP VPA. In this regard, we refer also to the **attached** correspondence (**Annexure C**) from yourself, dated 23 November 2017, noting that "...the policy intent is that developers only need to offset their biodiversity impacts once" and that the Savings and Transitional Reg "...will protect the conservation obligations delivered by the Huntlee...development".

17 January 2018

Office of Environment and Heritage

**Huntlee New Town Development**

**Certification of development under clause 34A(4) of  
Savings and Transitional Regulation**

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- (iii) **Conservation measures have been secured into the future (by a planning agreement, land reservation or otherwise) to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts**

Conservation measures to offset the residual impact of the Development on biodiversity values after the measures required to avoid or minimise those impacts have been taken into account have been secured by:

- (A) Huntlee's entry into the SEPP VPA; and
- (B) Huntlee's full discharge of all its development contribution obligations under the SEPP VPA including the transfer of over 5,000ha of Conservation Offset Lands to the Minister for the Environment.

Specifically, the dedication of the Conservation Offset Lands under the SEPP VPA was required under the offset strategy proposed in the SSS Study Report to offset the impacts of the whole Development.

In light of the above, we respectfully submit that the Development satisfies all elements in clause 34A(4) of the Savings and Transitional Reg.

Accordingly, we request your confirmation that the whole of the Huntlee Development is certified pursuant to clause 34A(4) and that any future development applications (including modification applications) lodged in respect of the Development will be assessed under the former planning provisions.

If you have any queries, please contact Samantha Yeung on (02) 9210 6284.

Yours faithfully

**Corrs Chambers Westgarth**



**Louise Camenzuli**

Partner

**attachments**

17 January 2018

Office of Environment and Heritage

**Huntlee New Town Development**

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Savings and Transitional Regulation**

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






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## Annexure A

### Land Zoning Map

**State Environmental Planning Policy  
(Major Development) 2005  
Huntlee New Town Site  
Land Zoning Map**

sheet LZN 001

-  Subject Land
- Zone**
-  B4 Mixed Use
-  E1 National Parks and Nature Reserves
-  E3 Environmental Management
-  R1 General Residential
-  R2 Low Density Residential
-  R5 Large Lot Residential
- Cadastre**
-  Cadastre 28/11/2010 © LPMA

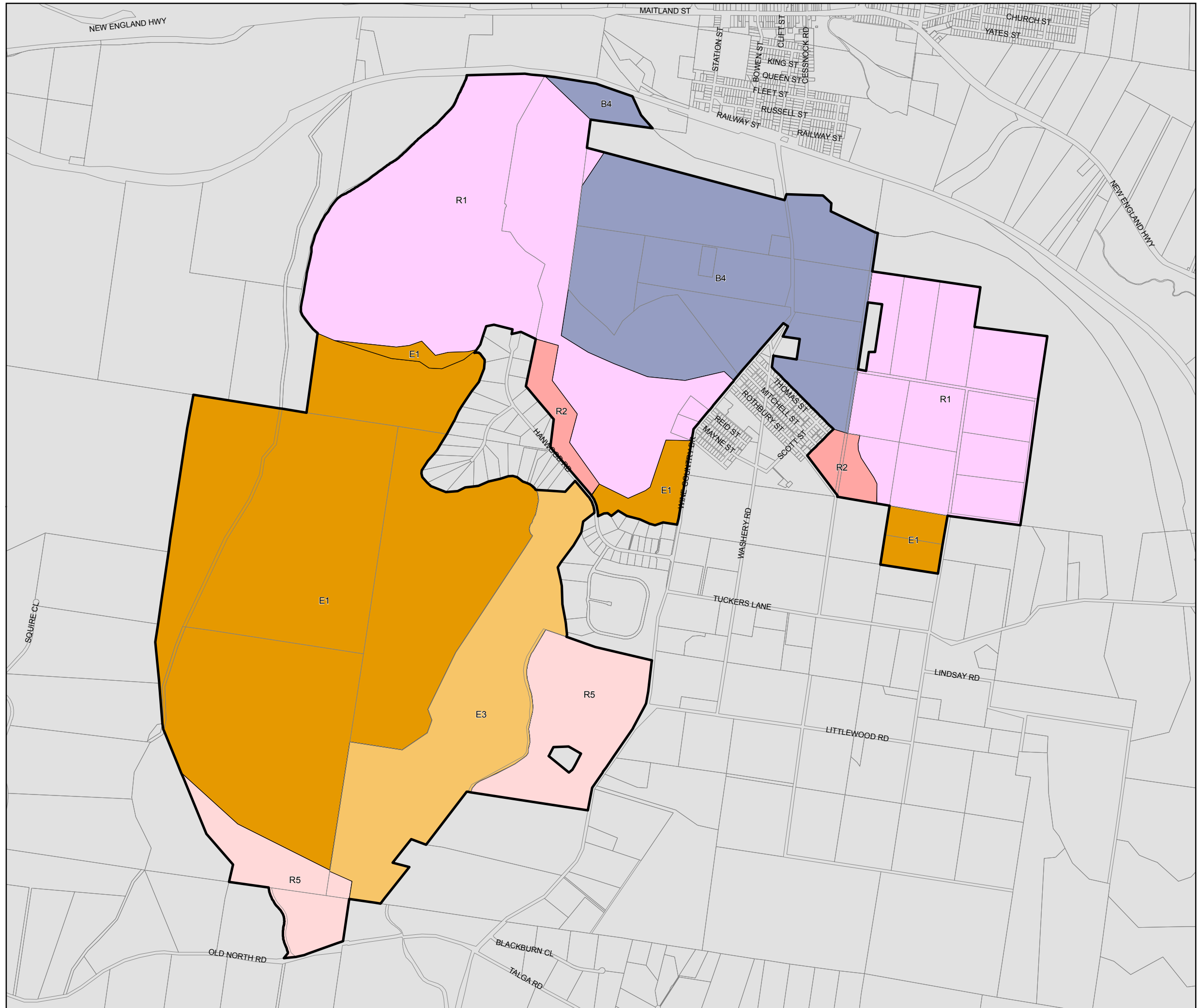


0 250 500 750 m

Projection: MGA Zone 56  
Datum: GDA94

Scale: 1:25,000 @ A3

Map Identification Number  
SEPP\_MP\_HNT\_LZN\_001\_20101130



17 January 2018

Office of Environment and Heritage

**Huntlee New Town Development**

**Certification of development under clause 34A(4) of  
Savings and Transitional Regulation**

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## Annexure B – Correspondence re Huntlee’s Satisfaction of its SEPP VPA Contribution Obligations

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27 May 2016

**By email:** [bran.black@minister.nsw.gov.au](mailto:bran.black@minister.nsw.gov.au)  
Minister for the Environment  
NSW Office of Environment and Heritage  
Level 14, 59-61 Goulburn Street  
Sydney NSW 2000

**Contact**  
Louise Lee (02) 9210 6121  
Email: [louise.lee@corrs.com.au](mailto:louise.lee@corrs.com.au)

**Partner**  
Louise Camenzuli

**Attention:** Bran Black, Chief of Staff

Dear Minister

## Huntlee New Town Development Request for Release of Planning Agreement

We act for Huntlee Pty Limited (**Huntlee**).

### 1 Introduction

Our client is party to a planning agreement with the Minister for Planning, the Minister for the Environment (**Minister**) and Misthold Pty Limited dated 3 December 2010 (**Planning Agreement**). We **attach** a copy of the Planning Agreement for your information. Capitalised terms used in this letter and not otherwise defined have the meaning given in the Planning Agreement.

We refer to the following correspondence, copies of which are **attached**:

- (a) our letter to the Minister dated 13 April 2016, which requested the Minister's consent to the release and removal of the Planning Agreement from titles to be created upon registration of subdivision plans for Stages 7, 8 and 5; and
- (b) the email from Jessica Meddows of the Department of Planning and Environment (**DPE**) dated 16 May 2016.

We are now instructed:

- (a) that Huntlee has paid the remaining Environmental Contributions (calculated at **\$465,857.14**) via EFT. We **attach** a receipt confirming that this payment has been made; and
- (b) to request that the Minister provides consent to the release and removal of the Planning Agreement from **all titles** to the land upon which it has been registered.

We **attach** 3 Requests for the removal of the Planning Agreement from the remaining titles, for execution by the Minister (or authorised delegate).

For the reasons outlined below, we are instructed to seek the Minister's execution of the Requests on an **urgent basis and by no later than COB Monday, 6 June 2016**.

## **2 Status of development contributions under Planning Agreement**

Under the Planning Agreement, Huntlee was required to provide the following Development Contributions:

### **(a) Transfer of Conservation Offset Lands**

Schedule 5 Table 2 of the Planning Agreement required Huntlee to transfer the Conservation Offset Lands (listed at Table 2 to Schedule 2 of the Planning Agreement) to the Minister for Planning (It was subsequently agreed that the Conservation Offset Lands would be transferred directly to the Minister, rather than the Minister for Planning).

We confirm that Huntlee transferred the Conservation Offset Lands to the Minister on 29 October 2015. Copies of the certificates of title for the Conservation Offset Land showing the Minister as the registered proprietor have previously been provided to the Office of Environment & Heritage (**OEH**).

### **(b) Environmental Contribution**

Schedule 5 Table 1 of the Planning Agreement requires Huntlee to pay Environmental Contributions of \$1,100,000 to the Minister for Planning as follows:

- (i) An amount of \$100,000 for the conservation of *persoonia pauciflora* and an amount of \$100,000 towards management of the Conservation Offset Lands by 31 January 2012.

These payments were previously made to the Minister for Planning.

- (ii) An amount of \$900,000 to be paid in 6 equal instalments of \$150,000 adjusted by CPI from 31 January 2014.

The 2014 and 2015 payments were made to the Minister for Planning.

Following transfer of the Conservation Offset Lands to the Minister, it was agreed that subsequent payments of the Environmental Contribution would be made directly to the Minister / OEH. The 2016 payment was made by way of EFT directly to OEH. We **attach** a copy of receipt of that payment.

Huntlee has now paid the remaining Environmental Contributions (calculated at **\$465,857.14**) via EFT.

In summary, all of Huntlee's Development Contributions under the Planning Agreement have now been satisfied.

## **3 Status of registration of the Planning Agreement on title**

As security for provision of the Development Contributions outlined above, Huntlee was required to register the Planning Agreement on title to the land set out in Table 1 to Schedule 2.

Under clause 1(b) of Schedule 6 of the Planning Agreement, Huntlee may request the Minister for Planning provide a release and discharge of the Planning Agreement from any part of the land upon which the Planning Agreement has been registered where the Minister for Planning is satisfied that:

- (a) Huntlee has fully satisfied its obligations under the Planning Agreement (including paying the relevant Contribution Amount in respect of that part of the land); and
- (b) Huntlee is not otherwise in default of its obligations under the Planning Agreement (as determined by the Minister for Planning, acting reasonably).

Huntlee has registered subdivision plans for Stages 1, 2a, 2b, 2c and 4 for the Huntlee New Town Development. The Planning Agreement has been removed from titles created under those stages.

The Planning Agreement remains registered on title to 25 lots, listed in the Table attached to this letter as **annexure A**. Title searches for each of these lots are **attached**.

#### **4 Background to request for release of Planning Agreement from title of Urban Lots created under Stages 7, 8 and 5**

On 13 April 2016, we provided a letter to OEH seeking the Minister's consent to the release and removal of the Planning Agreement from Urban Lots to be created upon registration of subdivision plans for Stages 7, 8 and 5.

We were informed that the Minister's consent to the release of the Planning Agreement would be dependent upon the Minister for Planning being satisfied that such release was appropriate.

On 16 May 2016, we received an email from Jessica Meddows of DPE, copying in Richard Bath of OEH, indicating that:

- (a) OEH and DPE have agreed to take whole of government approach to the release forms sent to OEH and DPE. From further conversations with DPE and OEH, we understand this to mean that OEH will defer to DPE confirming that the Minister for Planning is satisfied that the Planning Agreement can be released, before progressing execution of the relevant release forms by the Minister; and
- (b) OEH's delegation processes meant that the Minister would not be able to execute the relevant Request for a period of **several months**.

The process and timeframe adopted by OEH is simply **unworkable** because:

- (a) there is no reason for OEH to confirm that the Minister for Planning is satisfied with Huntlee's request before progressing release of the Planning Agreement. The only Development Contributions which remain outstanding are three instalments of Environmental Contributions which, from 2016, are paid by Huntlee directly to the Minister / OEH and not via DPE;
- (b) no certainty around the timeframe for execution of the release forms by the Minister has been provided;

- (c) 16 May 2016 was the first time that the estimated timeframe of 'several months' had been communicated to us, and came after OEH had already been in receipt of our request (provided on 13 April 2016) for over a month;
- (d) by comparison, and whilst we acknowledge that the delegation processes differ, DPE is able to achieve execution of the relevant release forms by the Minister for Planning in less than one week;
- (e) there are legitimate commercial imperatives necessitating removal of the Planning Agreement from title to Urban Lots on a timely basis. Removal of the Planning Agreement from titles to Urban Lots is a condition precedent to settlement of the sales of those lots to mum and dad purchasers. Any delay in removal of the Planning Agreement increases the risk that there will be financial consequences for purchasers (e.g. costs associated with re-arranging settlements, re-financing or delaying building); and
- (f) there is limited time period in which Huntlee can request release of the Planning Agreement. Huntlee cannot seek the release of the Planning Agreement from titles to Urban Lots prior to the finalisation of the relevant plan of subdivision for those lots, simply in order to accommodate OEH's timeframe of several months. The relevant Request can only be prepared once the folio identifiers for the proposed Urban Lots are known.

## **5 Request for release of Planning Agreement from remaining titles**

We are instructed:

- (a) that Huntlee has paid the remaining Environmental Contributions; and
- (b) to request that the Minister provides consent to the release and removal of the Planning Agreement from **all titles** to the land upon which it has been registered.

The outstanding Environmental Contributions amount to **\$465,857.14**, calculated as follows:

- (a) 3 instalments of \$150,000 each, adjusted by CPI;
- (b) the CPI immediately preceding January 2014 is the December 2013 index (Sydney All Groups) which is 105.0;
- (c) the current CPI (Sydney All Groups) is the March 2016 index, which is 108.7;
- (d) the remaining Environmental Contribution is therefore calculated as:  
$$\$150,000 \times 3 = \$450,000 \times (108.7 / 105.0) = \$465,857.14.$$

We **attach** 3 Requests for the removal of the Planning Agreement from the remaining titles, for execution by the Minister (or authorised delegate).

We would be grateful if you could arrange execution of the Requests by the Minister on an **urgent basis and by no later than COB Monday, 6 June 2016.**

Please contact Louise Lee on (02) 9210 6121 if you have any queries.

27 May 2016  
NSW Office of Environment and Heritage  
**Huntlee New Town Development**  
**Request for Release of Planning Agreement**

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Yours faithfully  
**Corrs Chambers Westgarth**



**Louise Camenzuli**  
Partner

**attachments**

**Annexure A**

**Table: Land subject to Planning Agreement**

<b>Item</b>	<b>Title reference</b>	<b>Planning Agreement registration number</b>
1	36/755211	AG78056
2	37/755211	AG78056
3	38/755211	AG78056
4	43/755211	AG78056
5	9/729973	AG78056
6	10/729973	AG78056
7	11/729973	AG78056
8	12/729973	AG78056
9	7/729973	AG78056
10	39/755211	AG78056
11	33/755211	AG78056
12	10/1105639	AG78056
13	21/1050597	AG78056
14	201/828486	AG78056
15	200/828486	AG78056
16	6/729973	AG78056
17	3/813163	AG78056
18	4/813163	AG78056
19	240/1105591	AG78056
20	231/879198	AG78056
21	444/1197589	AG78056
22	1/1211767	AG78056
23	12/1137569	AG78056
24	13/1137569	AG78056
25	179/755241	AG78055