

## Appendix C

# Care Management Agreement

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**BIDJIGAL RESERVE DEED OF AGREEMENT**

**BETWEEN**

**ANTHONY BERNARD KELLY, MINISTER ASSISTING THE MINISTER FOR  
NATURAL RESOURCES (LANDS) OF THE STATE OF NEW SOUTH WALES**

**AND**

**CRAIG KNOWLES, MINISTER FOR NATURAL RESOURCES OF THE STATE  
OF NEW SOUTH WALES**

**AND**

**IAN (BUNDELUK) JOHN WATSON ON BEHALF OF THE NATIVE TITLE  
CLAIM GROUP FOR NATIVE TITLE APPLICATION NC 94/6**

**AND**

**BAULKHAM HILLS SHIRE COUNCIL**

**AND**

**TELSTRA CORPORATION LIMITED**

**AND**

**INTEGRAL ENERGY AUSTRALIA**

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DEED OF AGREEMENT MADE

4<sup>th</sup> December

2003

**PARTIES**

BETWEEN

**ANTHONY BERNARD KELLY**, Minister assisting the Minister for Natural Resources (Lands) of the State of New South Wales in his capacities as State Minister for New South Wales under the *Native Title Act 1993* (Cth), Minister administering the *Crown Lands Act 1989* (NSW) and Minister administering the *Geographical Names Act 1966* (NSW)

AND

**CRAIG KNOWLES**, Minister for Natural Resources of the State of New South Wales in his capacity as Minister administering the *Forestry Act 1916* (NSW).

AND

**IAN (BUNDELUK) JOHN WATSON** on behalf of the native title group for native title application NC94/6.

AND

**BAULKHAM HILLS SHIRE COUNCIL**, constituted under the *Local Government Act 1993* (NSW).

AND

**TELSTRA CORPORATION LIMITED**  
(ACN 051 755 556).

AND

**INTEGRAL ENERGY AUSTRALIA**  
constituted as a corporation under the *Energy Services Corporations Act 1995* (NSW).

**RECITALS**

- A. A Native Title Application was lodged by Ian (Bundeluk) John Watson on behalf of the descendants of the Darug people on 28 September 1994 with the National Native Title Tribunal under the *Native Title Act 1993* (Cth). The application was given number NC94/6 by the Tribunal. The Tribunal accepted the application for a reduced area under the original provisions of the *Native Title Act 1993* (Cth) on 20 September 1995. On 30 September 1998 the application was taken to be made to the Federal Court of Australia for determination and given file number NG6008 of 1998 in the New South Wales District Registry of the Court.
- B. Native Title Application NC94/6 (as accepted by the National Native Title Tribunal) covers an area of land and waters in the Baulkham Hills Shire local government area within the Sydney Metropolitan area. The area of the application includes part of the land known as Excelsior Park (or Excelsior Reserve) and the land comprising the remainder of Darling Mills State Forest (originally an extension to Cumberland State Forest) adjacent to the M2 Motorway. Excelsior Park is a reserve under Part 5 of the *Crown Lands Act 1989*. Darling Mills State Forest is dedicated as a State Forest and declared a National Forest under the *Forestry Act 1916*.
- C. Excelsior Park and Darling Mills State Forest form a continuous area of significant urban bushland. Two areas within Excelsior Park, known as Ted Horwood Reserve and Eric Mobbs Reserve have been developed as sporting fields and for active public recreation.
- D. The New South Wales Government, Baulkham Hills Shire Council and the descendants of the Darug Aboriginal people wish to resolve Native Title Application NC94/6 by agreement and to provide for a consistent future shared management and conservation of the overall bushland area of Excelsior Park and Darling Mills State Forest in perpetuity for the mutual benefit of the citizens of New South Wales, the local community and the descendants of the Darug people and to facilitate the preservation and promotion of Darug culture and heritage.

- E. At a meeting on 15 September 2001, persons identifying as Darug descendants and members of the Aboriginal group unanimously resolved to support the Bidjigal Reserve Agreement and to authorise Ian (Bundeluk) John Watson and Colin Gale to represent all Darug descendants and members of the Aboriginal group.
- F. On 16 August 2002, Colin Gale advised the NSW Native Title Services Ltd that he no longer wished to represent the Darug descendants or members of the Aboriginal group in the signing of the Agreement. Colin Gale's decision not to sign the Agreement does not affect the resolve of the Darug descendants or members of the Aboriginal group to support the Agreement.

## **OPERATIVE PROVISIONS**

### **THE PARTIES AGREE AS FOLLOWS:**

#### **1. Interpretation**

- 1.1 “**Aboriginal group**” means the group of persons who identify as descendants of the Aboriginal people who were in occupation of the areas of the M2 Bushland, the Eric Mobbs Reserve and the Ted Horwood Reserve under traditional laws acknowledged and traditional customs observed by them at the acquisition of sovereignty by the British Crown over the Colony of New South Wales in 1788.

“**Applicant for Native Title Application NC94/6**” means the applicant for Native Title Application NC94/6.

“**Crown Lands Act**” means the *Crown Lands Act 1989*.

“**Crown Lands Minister**” means the Minister administering the *Crown Lands Act 1989*.

“**Darling Mills State Forest**” means the land dedicated as State Forest and declared National Forest under the *Forestry Act 1916* that was named Darling Mills State Forest No.1038 under the *Geographical Names Act 1966* by notification in the Gazette of 26 October 1984 and that remained dedicated as a State Forest at the date of commencement of this Agreement.

“**Darug Custodian Aboriginal Corporation**” means the association incorporated by that name under the *Aboriginal Councils and Associations Act 1976* (Cth).



**"Darug Tribal Aboriginal Corporation"** means the association incorporated by that name under the *Aboriginal Councils and Associations Act 1976* (Cth).

**"Eric Mobbs Reserve"** means the land known by that name within the Excelsior Park developed as a sporting field and for active public recreation, the boundaries of which are defined pursuant to this Agreement.

**"Excelsior Park"** means the reserve under Part 5 of the *Crown Lands Act 1989* that at the date of commencement of this Agreement is covered by Reserve No. 80863 from sale (80864 from lease generally) for public recreation and preservation of flora and fauna notified in the Gazette of 18 July 1958 and Reserve No. 90693 for public recreation notified in the Gazette of 4 February 1977.

**"Forestry Minister"** means the Minister administering the *Forestry Act 1916*.

**"future act"** means a future act as defined in the *Native Title Act 1993* (Cth).

**"Gazette"** means the New South Wales Government Gazette.

**"Geographical Names Minister"** means the Minister administering the *Geographical Names Act 1966*.

**"Integral Energy"** means Integral Energy Australia constituted as a corporation under the *Energy Services Corporations Act 1995*.

**"Local Resident"** means a person :

- (i) who is a resident of Baulkham Hills Shire; and
- (ii) whose place of residence is not greater than 5 kilometres in any direction from the M2 Bushland; and
- (iii) who is a ratepayer of Baulkham Hills Shire Council.

**"Local Council"** means Baulkham Hills Shire Council constituted under the *Local Government Act 1993*.

**"M2 Bushland"** means the land described in Schedule 1 to this Agreement. It comprises the area of the existing Darling Mills State Forest and Excelsior Park (excluding the Eric Mobbs Reserve and the Ted Horwood Reserve).

**"Native Title Application NC94/6"** means Native Title Determination Application NC94/6 by Ian (Bundeluk) John Watson lodged under the *Native Title Act 1993* (Cth) with the National Native Title Tribunal on 28 September 1994 and accepted by the Tribunal on 20 September 1995 and given file number NG6008 of 1998 in the Federal Court of Australia, New South Wales District Registry.

**"Native title claim"** means a native title determination application that is a claimant application under the *Native Title Act 1993* (Cth), a compensation application under the *Native Title Act 1993* (Cth), or any action seeking a determination of native title in any court, made by a person claiming to hold, or at one time to have held, native title in, or in relation to, any part of the land covered by the Agreement.

**"Native title claim group"** means the persons described in section "A5" of the native title application NC94/6.

**"Party" or "Parties"** means a party or the parties to this Agreement as the case may be, except where the context or subject matter otherwise indicates or requires.

**"Telstra"** means Telstra Corporation Limited, ACN 051 755 556.

**"Ted Horwood Reserve"** means the land known by that name within the Excelsior Park developed as a sporting field and for active public recreation, the boundaries of which are defined pursuant to this Agreement.

1.2 In this Agreement unless the context or subject matter otherwise indicates or requires:

- a) the word person includes a body corporate or a statutory corporation;
- b) words denoting the singular number shall include the plural and vice versa;
- c) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including but not limited to persons taking by novation) and assigns;
- d) a reference to anything is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- e) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- f) a reference to a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure to this Agreement;
- g) a recital, schedule, annexure or a description of the Parties forms part of this Agreement;
- h) a reference to any agreement is a reference to this Agreement (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time; and
- i) a reference to a Minister, authority, body or person includes the Minister, authority, body or person for the time being performing the functions performed by that Minister, authority, body or person at the date of this Agreement.

1.3 The parties intend that this Agreement shall have effect as a Deed.

## **2. Objects**

### **2.1 The objects of this agreement are:**

- a) to recognise that the M2 Bushland, the Eric Mobbs Reserve and the Ted Horwood Reserve are within the traditional country of the Darug people;
- b) to name the place of the M2 Bushland "Bidjigal Reserve" in acknowledgment of the importance which the land is said to have for the descendants of the Darug people;
- c) to revoke the existing reservation of Excelsior Park;
- d) to dedicate the areas of Eric Mobbs and Ted Horwood Reserves for the public purposes of public recreation and community purposes and to retain the Reserves under the care and management of the Local Council;
- e) to dedicate the remainder of Excelsior Park as Bidjigal Reserve for the purposes of the Preservation of Aboriginal Cultural Heritage, the preservation of flora and fauna, and public recreation;
- f) to establish a reserve trust for the Bidjigal Reserve under the name "Bidjigal Reserve Trust" and to appoint the reserve trust as trustee of the Bidjigal Reserve;
- g) to provide for the affairs of the Bidjigal Reserve Trust to be managed by a trust board whose members will comprise descendants of the Darug people, persons from the local community and representatives of the Local Council and the Upper Parramatta River Catchment Trust;
- h) to procure an Act of the Parliament of New South Wales to revoke the dedication of Darling Mills State Forest;
- i) to add the lands comprising the former Darling Mills State Forest to the Bidjigal Reserve;
- j) to identify a suitable site within the Bidjigal Reserve or a nearby site within the Baulkham Hills Shire for the development of an Aboriginal cultural centre for the preservation and promotion of Darug culture and heritage;

- k) to permit the lawful establishment of an educational facility within the Bidjigal, Ted Horwood or Eric Mobbs Reserve for disseminating information about Aboriginal Cultural Heritage and conducting educational tours within the Bidjigal Reserve; and
- l) to provide for the withdrawal of Native Title Application NC94/6 and the discontinuance of the whole of the proceedings in the Federal Court of Australia in relation to the Application.

### **3. Commencement and Duration**

#### *Commencement*

- 3.1 This Agreement commences on the date the Agreement is made, being the date first hereinbefore written.

#### *Duration*

- 3.2 The Agreement continues in force until the reservation of Excelsior Park is revoked or otherwise extinguished and thereafter the Agreement will remain in force for so long as the dedication of Bidjigal Reserve in accordance with clause 7.2(a)(iii) of this Agreement remains in force.

#### *Rights that Survive Termination*

- 3.3 The rights and obligations of the Parties under clauses 4.5, 4.6, 4.7 and 14.4 of this Agreement will continue beyond termination of this Agreement.

### **4. Traditional Ownership**

#### *Authority to enter into Agreement*

- 4.1 Ian (Bundeluk) John Watson represents and warrants that all necessary authorisations have been obtained for him to enter into this Agreement on behalf of the native title claim group and that this Agreement is valid and binding and enforceable in accordance with its terms and against him, the native title claim group and all the persons in the Aboriginal group.

4.2 Notwithstanding the generality of the preceding clause, Ian (Bundeluk) John Watson represents and warrants that:

- (a) he is a descendant of the Darug people and a member of the Aboriginal group;
- (b) all persons who claim to be Darug descendants or members of the Aboriginal group were invited to attend a meeting held on 15 September 2001 at Parramatta in the State of New South Wales for the purpose of authorising Ian (Bundeluk) John Watson and Colin Gale or other member or members of the Aboriginal group to enter into this Agreement on behalf of all Darug descendants and members of the Aboriginal group as being entitled to speak on their behalf and to make decisions binding on them in relation to the areas of the M2 Bushland and the Eric Mobbs and Ted Horwood Reserves;
- (c) at that meeting Ian (Bundeluk) John Watson and Colin Gale were authorised to enter into this Agreement on the basis described in the preceding clause and pursuant to that authority they were to enter into this Agreement;
- (d) On 16 August 2002, Colin Gale advised NSW Native Title Services Ltd that he no longer wished to represent the Darug descendants or members of the Aboriginal group in the signing of the Agreement. Colin Gale's decision not to sign the Agreement does not affect the resolve of the Darug descendants or the Aboriginal group to support the Agreement;
- (e) where in this agreement Ian (Bundeluk) John Watson purports to bind Darug descendants and members of the Aboriginal group in a particular manner or matter he does so;
  - (i) in his capacity as described in the preceding clauses; and
  - (ii) so as to bind such persons individually and collectively in that manner or matter.

*Recognition of traditional ownership*

- 4.3 The Local Council and the State of New South Wales recognise that at the time of acquisition of sovereignty by the British Crown in 1788 over the former Colony of New South Wales, the M2 Bushland, the Ted Horwood Reserve and the Eric Mobbs Reserve formed a part of the traditional country of Aborigines whose contemporary descendants identify as the Darug people.

*No acknowledgment of native title*

- 4.4 The Parties acknowledge that this Agreement does not constitute any acknowledgment by the Local Council, the State of New South Wales, any Minister of the State of New South Wales, Telstra or Integral Energy of the existence of native title in or in relation to the M2 Bushland, the Ted Horwood Reserve or the Eric Mobbs Reserve.

*Future acts authorised*

- 4.5 Ian (Bundeluk) John Watson and all persons in the Aboriginal group consent to:
- a) all acts being done by the Parties to this Agreement in exercise of their respective rights and in performance of their respective obligations under this Agreement that would be future acts; and
  - b) any future act being done in land dedicated as the "Bidjigal Reserve" pursuant to this Agreement (including any land added to that Reserve) and land comprising the Ted Horwood and Eric Mobbs Reserves dedicated for public recreation pursuant to this Agreement but only if the act is empowered to be done and is validly done in relation to those reserve lands under the *Crown Lands Act* and regulations.

*Effect upon any native title*

- 4.6 The Parties acknowledge:
- a) that this Agreement does not constitute any surrender by the Darug descendants or other persons in the Aboriginal group on whose behalf Native Title Application NC94/6 has been made of any native title

- rights and interests held by them in or in relation to the M2 Bushland, the Ted Horwood Reserve and the Eric Mobbs Reserve; and
- b) that the rights (if any) of the Applicant for Native Title Application NC94/6, the Darug descendants or other Aborigines in connection with any native title held in relation to the M2 Bushland, the Ted Horwood Reserve and the Eric Mobbs Reserve are not affected except as is provided for in this Agreement and to the extent necessary to give effect to this Agreement.

#### *Compensation*

- 4.7 The benefits (including financial benefits and other consideration) to be provided to the Applicant for Native Title Application NC94/6, the Darug descendants and other persons in the Aboriginal group by or under this Agreement constitute full compensation within the meaning of Division 5 of Part 2 of the *Native Title Act 1993* (Cth) or any other Act (whether of the Commonwealth or the State of New South Wales) for:
- a) the dedication of any part of the M2 Bushland under the *Crown Lands Act* as the Bidjigal Reserve or as an addition to that Reserve; and
  - b) the dedication of Eric Mobbs Reserve and Ted Horwood Reserve for public recreation under the *Crown Lands Act*.
  - c) the doing of any future act in or in relation to the M2 Bushland, Ted Horwood Reserve and Eric Mobbs Reserve that is authorised to be done under this Agreement; and
  - d) the exercise of the respective rights and the discharge of the respective obligations of the parties under this Agreement; and
  - e) for any consequential impairment or effect on the continued existence, enjoyment or exercise of native title rights and interests in or in relation to the M2 Bushland, Eric Mobbs Reserve and Ted Horwood Reserve.



**5. Change of Name of the M2 Bushland**

- 5.1 The Local Council, the Crown Lands Minister and the Forestry Minister will take all necessary steps to advertise and promote a change of name of the area of the M2 Bushland now known as Darling Mills State Forest and part of Excelsior Park to "Bidjigal Reserve".
- 5.2 The Crown Lands Minister will, within 28 days after the date of commencement of this Agreement, request the Geographical Names Board of New South Wales constituted under the *Geographical Names Act 1966* to assign the geographic name of "Bidjigal Reserve" to the M2 Bushland in accordance with the *Geographical Names Act 1966*.
- 5.3 In the event that the Geographical Names Board decides that the name of "Bidjigal Reserve" should be adopted for that place and so recommends to the Geographical Names Minister, the Geographical Names Minister will, after such inquiry as the Minister thinks fit, decide whether to approve or disapprove the recommendation within 28 days of such recommendation being made. Without prejudice to the Minister's discretion under section 9(5) of the *Geographical Names Act 1966* and an inquiry which the Minister thinks fit to undertake, the Minister will approve a recommendation to assign the name "Bidjigal Reserve" to that place.

**6. Survey of Eric Mobbs and Ted Horwood Reserves**

- 6.1 The Parties acknowledge that the area of the M2 Bushland, being the area described in Schedule 1 to this Agreement, excludes the sporting and active recreation areas within Excelsior Park known as the Ted Horwood and Eric Mobbs Reserves.
- 6.2 The Local Council will fix by survey the boundaries of Eric Mobbs Reserve and Ted Horwood Reserve within Excelsior Park in consultation with the Applicant for Native Title Application NC94/6 and any representatives of the

Aboriginal group nominated to the Local Council for this purpose by the Darug Custodian Aboriginal Corporation and the Darug Tribal Aboriginal Corporation.

- 6.3 If the Local Council, the Applicant for Native Title Application NC94/6 and any nominees of the Darug Custodian Aboriginal Corporation and Darug Tribal Aboriginal Corporation are unable to agree on the position of any of the boundaries of the Eric Mobbs and Ted Horwood Reserves to be surveyed in accordance with this clause, the position of the boundary in dispute will be decided by the Surveyor-General of New South Wales.

## **7. Dedication of Ted Horwood, Eric Mobbs and Bidjigal Reserves**

### *Revocation of Excelsior Park*

- 7.1 The Crown Lands Minister will, pursuant to section 90 of the *Crown Lands Act* by notification in the Gazette, revoke the whole of the reservation of Excelsior Park.

### *Dedication of Eric Mobbs, Ted Horwood and Bidjigal Reserves*

- 7.2 The Crown Lands Minister will not revoke the reservation of Excelsior Park unless:
- (a) on the same day as the notification revoking such notification is published in the Gazette, the Crown Lands Minister also publishes in the Gazette, pursuant to section 80 of the *Crown Lands Act*, notifications dedicating the Crown lands listed below for the corresponding public purposes specified in respect of those Crown lands:
    - (i) The area of Eric Mobbs Reserve – for the public purposes of public recreation and community purposes;
    - (ii) The area of Ted Horwood Reserve – for the public purposes of public recreation and community purposes; and
    - (iii) The area of Excelsior Park excluding the areas of Eric Mobbs Reserve and Ted Horwood Reserve – for the public purposes of

Preservation of Aboriginal Cultural Heritage, preservation of flora and fauna, and public recreation (the Bidjigal Reserve); and

- (b) an abstract of the proposed dedications is laid before both Houses of the New South Wales Parliament at least 10 sitting days before the dedication is made, as hereafter provided for in this Agreement.

*Declaration of Public Purpose and Tabling of Proposed Dedications*

7.3 To enable the dedication of the Crown lands to be made, as provided for in the preceding clause of this Agreement, the Crown Lands Minister will, as soon as reasonably practicable after the date of commencement of this Agreement:

- (a) cause an abstract of the proposed dedications to be laid before both Houses of the New South Wales Parliament, as hereafter provided for in this Agreement; and
- (b) declare, by notification published in the Gazette pursuant to the *Crown Lands Act*, the purpose of Preservation of Aboriginal Cultural Heritage to be a public purpose for the purposes of section 80 of the *Crown Lands Act*.

**8. Establishment of Bidjigal Reserve Trust**

*Establishment of Reserve Trust*

8.1 The Crown Lands Minister, at the same time as the dedication of Crown land for public purposes in accordance with clause 7.2(a)(iii) of this Agreement is notified in the Gazette, will, pursuant to section 92(1) of the *Crown Lands Act* by notification in the Gazette, establish and name a reserve trust and appoint it as trustee of the dedicated land (the Bidjigal Reserve).

*Name of Reserve Trust*

8.2 The corporate name of the reserve trust shall be 'Bidjigal Reserve Trust'.

*Appointment of Trust Board*

- 8.3 The affairs of the Bidjigal Reserve Trust shall be managed by a trust board in accordance with section 92(6)(a) of the *Crown Lands Act*.

*Membership of Trust Board*

- 8.4 The Crown Lands Minister, within 28 days of the publication in the Gazette notifying the establishment of the Bidjigal Reserve Trust and from time to time thereafter as provided for in this Agreement and the *Crown Lands Act*, will appoint as members of the trust board:
- (a) 4 individual persons (none of them being a corporation), who shall be appointed as hereafter provided in this Agreement; and
  - (b) such number of ex officio members as hereafter provided in this Agreement.

*Constitution of first Trust Board*

- 8.5 The trust board first appointed by the Crown Lands Minister to manage the affairs of the Bidjigal Reserve Trust shall be comprised of 9 members, as follows:
- (a) 4 individual persons (none of them being a corporation), to be appointed in accordance with the following clause of this Agreement;
  - (b) The Secretary of the Darug Custodian Aboriginal Corporation or other office bearer of the Corporation nominated by the Corporation (ex officio appointment);
  - (c) The Secretary of the Darug Tribal Aboriginal Corporation or other office bearer of the Corporation nominated by the Corporation (ex officio appointment);
  - (d) The General Manager of Baulkham Hills Shire Council or a person holding another position with the Council nominated by the General Manager of the Council (ex officio appointment);
  - (e) The Secretary of the Bushland Conservation Committee or other office bearer of the Committee nominated by the Committee (ex officio appointment; and

- (f) The Secretary of the Upper Parramatta River Catchment Trust or a person holding another position with the Trust nominated by the Trust (ex officio appointment).

*Individual members of the first Trust Board*

8.6 The Crown Lands Minister will appoint the 4 individual (not ex officio) members of the first trust board from the following classes of persons:

- (a) The first and second appointments: to be a Darug descendant who has lodged an expression of interest with the Crown Lands Minister for appointment to the position and who has demonstrated to the satisfaction of the Crown Lands Minister a commitment to the Preservation of Aboriginal Cultural Heritage, the preservation of flora and fauna and public recreation. If no such person is available to be so appointed, the Crown Lands Minister may appoint any other individual person to the position.
- (b) The third and fourth appointments: to be a Local Resident who has lodged an expression of interest with the Crown Lands Minister for appointment to the position and who has demonstrated to the satisfaction of the Crown Lands Minister a commitment to the preservation of Aboriginal Cultural Heritage, the preservation of flora and fauna and public recreation. If no such person is available to be so appointed, the Crown Lands Minister may appoint any other individual person to the position.

*Preference in replacement of individual members of the Trust Board*

8.7 The Crown Lands Minister, when appointing any person in replacement of an individual (not ex-officio) member of the trust board whose office becomes vacant by reason of any of the matters referred to in clause 6 of Schedule 3 to the *Crown Lands Act*, shall appoint that person from the class of persons from whom the previous member was appointed if there is a person of such class available at the time to be so appointed.

*Change in the membership of the Trust Board*

8.8 The Crown Lands Minister will consult from time to time as required with the organisations from which the ex officio members of the first trust board are appointed in relation to:

- (a) any further appointment of a member to the trust board;
- (b) any reappointment of a member of the trust board;
- (c) any increase or decrease in the number of members of the trust board;  
and
- (d) the filling of any vacancy in the membership of the trust board by reason of any of the matters referred to in clause 6 of Schedule 3 to the *Crown Lands Act*.

**9. Addition of Darling Mills State Forest to Bidjigal Reserve**

*Revocation of Darling Mills State Forest*

9.1 The Forestry Minister, as soon as reasonably practicable after the dedication of the Crown land referred to in clause 7.2(a)(iii) of this Agreement, will use his or her best endeavours to secure the introduction into, and passage through, the New South Wales Parliament of a Bill for an Act to revoke the dedication of Darling Mills State Forest, being a State forest declared as a national forest within the meaning of the *Forestry Act 1916*.

*Addition of former Darling Mills State Forest to Bidjigal Reserve*

9.2 Within 28 days after the revocation of the dedication of Darling Mills State Forest, as provided for in the preceding clause of this Agreement, the Crown Lands Minister will publish in the Gazette, pursuant to s.81 of the Crown Lands Act, a notice adding such lands (as Crown lands) to the Crown lands dedicated in accordance with clause 7.2(a)(iii) of this Agreement (the Bidjigal Reserve).

## **10. Statutory Conditions for Dedication of Crown Lands**

### *Assessment under Crown Lands Act not required*

10.1 For the purpose of dedicating Crown lands under the *Crown Lands Act* as provided for in clause 7.2 of this Agreement (the dedication of the Ted Horwood, Eric Mobbs and Bidjigal Reserves) and addition of the area of Darling Mills State Forest to the Bidjigal Reserve as provided for in clause 9.2 of this Agreement, the Crown Lands Minister warrants:

- (a) that he is satisfied that it is in the public interest to dedicate the lands without assessing the lands under Part 3 of the *Crown Lands Act*; and
- (b) that in relation to the dedication of the lands he has had due regard to the principles of Crown land management.

### *Tabling in Parliament of proposed dedication and addition*

10.2 The Crown Lands Minister will, in accordance with section 82 of the *Crown Lands Act*, cause an abstract of the proposed dedication of Crown lands and an abstract of the proposed addition to dedicated Crown lands referred to in the preceding clause (as the case may be) to be laid before both Houses of the New South Wales Parliament at least 10 sitting days before the dedication or addition is made.

## **11. Cultural Centre for the Preservation of Darug Culture and Heritage**

### *Location of Centre within M2 Bushland*

11.1 The Local Council, the Applicant for Native Title Application NC94/6, the Darug Custodian Aboriginal Corporation and the Darug Tribal Aboriginal Corporation will use their reasonable endeavours to identify a suitable location within the M2 Bushland for the development of a cultural centre for the preservation and promotion of Darug culture and heritage.

*Location of Centre outside M2 Bushland*

- 11.2 In the event that a suitable location cannot be identified within the M2 Bushland for the development of a cultural centre for the preservation and promotion of Darug culture and heritage, the Local Council, the Applicant for Native Title Application NC94/6 the Darug Custodian Aboriginal Corporation and the Darug Tribal Aboriginal Corporation will use their reasonable endeavours to identify a suitable location for the development of such a cultural centre within the Baulkham Hills Shire.

*Identification process without prejudice to functions of the Local Council*

- 11.3 The identification process referred to in the preceding clauses 11.1 and 11.2 will be undertaken without prejudice to the obligations of the Local Council to exercise its statutory powers and discretions in respect of any rezoning and development applications that may be made in relation to any suitable location.

*Favourable consideration of rezoning or development applications*

- 11.4 The Local Council will favourably consider any rezoning or development application that may be made in relation to any suitable site identified in accordance with the preceding clauses 11.1 and 11.2 to enable the construction and use of a cultural centre for the preservation and promotion of Darug culture and heritage on the land.

*Local Council not to perform its statutory functions contrary to law*

- 11.5 The parties understand and accept that the Local Council cannot by this Agreement bind itself to approve any rezoning or development application made to the Council pursuant to the preceding clause of this Agreement as these decisions must be taken by the Council in accordance with law and after such notification, consultation and objection procedures as may be required by law are satisfied.



## **12. Educational Facility**

### *Local Council to Assist*

- 12.1 The Local Council will assist the Darug Custodian Aboriginal Corporation or Darug Tribal Aboriginal Corporation to establish at a location approved by the Local Council within the M2 Bushland or the Ted Horwood or Eric Mobbs Reserve, a facility for disseminating information about Aboriginal culture and heritage and for conducting educational tours within the M2 Bushland. The Local Council will not provide this assistance, and the facility will not be established if its establishment and use would be contrary to any Act or law of the State of New South Wales and the Commonwealth of Australia.

## **13. Public Utilities and Services**

### *Telstra*

- 13.1 The Parties acknowledge that telecommunication works and facilities lawfully owned, controlled, maintained or operated by Telstra may exist within the areas of Excelsior Park and Darling Mills State Forest (hereafter referred to as 'Telstra's works and facilities'). The parties will consult with Telstra before carrying out any works or doing anything within those areas in exercise of their respective rights or in the discharge of their respective obligations under this Agreement that in any way may adversely affect, impair or interfere with Telstra's works and facilities.

### *Sydney Water*

- 13.2 The Parties acknowledge that water sewerage and drainage works and facilities lawfully owned, controlled, maintained or operated by Sydney Water Corporation (a corporation constituted under the *Sydney Water Act 1994*) exist within the areas of Excelsior Park and Darling Mills State Forest (hereafter referred to as 'Sydney Water's works and facilities'). The Parties will consult with Sydney Water Corporation before carrying out any works or doing anything within those areas in exercise of their respective rights or in the

discharge of their respective obligations under this Agreement that in any way may adversely affect, impair or interfere with Sydney Water's works and facilities.

- 13.3 Without limiting the generality of the preceding clause, the Parties acknowledge that Sydney Water Corporation has or may be entitled to the benefit of the easement for water rising main described in Part 1 of Schedule 2 to this Agreement, which traverses the area of Excelsior Park.

*Integral Energy*

- 13.4 The Parties acknowledge that electricity distribution works and facilities lawfully owned, controlled, maintained or operated by Integral Energy exist within the areas of Excelsior Park and Darling Mills State Forest (hereafter referred to as 'Integral Energy's works and facilities'). The Parties will consult with Integral Energy before carrying out any works or doing anything within those areas in exercise of their respective rights or in the discharge of their respective obligations under this Agreement that in any way may adversely affect, impair or interfere with Integral Energy's works and facilities.

- 13.5 Without limiting the generality of the preceding clause, the Parties acknowledge that Integral Energy:

- (a) has or may be entitled to the benefit of easements for transmission line, electricity supply and distribution described in Parts 2, 3 and 4 of Schedule 2 to this Agreement, which traverse the area of Excelsior Park; and
- (b) holds or may be entitled to hold an occupation permit described in Part 5 of Schedule 2 to this Agreement over the site of an electricity transmission line traversing the area of Darling Mills State Forest.

- 13.6 The Parties (including Integral Energy) acknowledge that revocation of the dedication of Darling Mills State Forest, as provided for in clause 9 of this Agreement, will have the consequence of terminating the occupation permit of

Integral Energy referred to in the preceding clause of this Agreement. In the event that Integral Energy considers that it would be necessary or desirable for it to have the benefit of an easement for electricity purposes over the site of the former occupation permit following revocation of the dedication of the Darling Mills State Forest, the parties:

- (a) give their consent for Integral Energy to acquire in its favour by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991* an easement in gross for electricity purposes in the terms of such an easement specified in Part 8 of Schedule 4A of the *Conveyancing Act 1919* over the site of the former occupation permit; and
- (b) agree that the benefits to be conferred or provided under this Agreement will constitute full compensation to which they may each be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* or any other Act or law of the State of New South Wales or the Commonwealth of Australia for any impairment, diminution or affect on any interest they have in the land concerned by the acquisition of the easement for electricity purposes in favour of Integral Energy.

#### **14. Withdrawal of Native Title Application NC94/6**

##### *Withdrawal of Native Title Application*

- 14.1 The Applicant for Native Title Application NC94/6 will withdraw Native Title Application NC94/6 and discontinue the whole of the proceedings in the Federal Court of Australia in relation to the Application within 14 days after the Bidjigal Reserve Trust is established for the Bidjigal Reserve in accordance with clause 8 of this Agreement.

##### *Parties consent to withdrawal of Native Title Application*

- 14.2 The Parties to this Agreement who are parties to Native Title Application NC94/6 consent to the Applicant for Native Title Application NC94/6 withdrawing the Application in accordance with the preceding clause. These Parties will not seek an order by the Federal Court for the payment by the

Applicant for Native Title Application NC94/6 or by any other party of their costs in the proceedings in that Court in relation to the Application.

*Assistance by the Crown Lands Minister*

14.3 The Crown Lands Minister will assist the Applicant for Native Title Application NC94/6 in preparing all necessary documents and making all necessary applications to the Federal Court for the purpose of the Applicant for Native Title Application NC94/6 fulfilling his obligation under clause 14.1 of this Agreement. The Crown Lands Minister will meet any costs and expenses necessarily incurred by the Applicant for Native Title Application NC94/6 for that purpose.

*No Further Claim*

14.4 Ian (Bundeluk) John Watson, the Applicant for Native Title Application NC94/6 warrants that, after the date of commencement of this Agreement, he or any person on his behalf:

- (a) will not make any native title claim in relation to any part of the area of Native Title Application NC94/6 and the areas of the M2 Bushland, Ted Horwood Reserve and Eric Mobbs Reserve; and
- (b) will not assist in any way any person to make any native title claim in relation to any part of the area of Native Title Application NC94/6 and the areas of the M2 Bushland, Ted Horwood Reserve and Eric Mobbs Reserve; and
- (c) will assist the Crown Lands Minister in any way the Crown Lands Minister may reasonably require with respect to any native title claim made after the date of commencement of this Agreement in relation to any part of the area of Native Title Application NC94/6 and the areas of the M2 Bushland, Ted Horwood Reserve and Eric Mobbs Reserve.

## 15. General

### *Parties to act promptly in giving effect to the Agreement*

- 15.1 Each Party will, at its own expense and without unreasonable delay, do everything necessary or required of it to exercise its rights and to perform its obligations under this Agreement. If a provision of this Agreement requires a Party to do something by a specified date or within a specified period the party concerned will not, without reasonable excuse, breach that obligation.

### *Assistance by Parties to each other*

- 15.2 Except as otherwise expressly provided for in this Agreement, each Party may request the assistance (other than financial assistance) of any other Party if the assistance would be reasonably necessary to give effect to this Agreement and the matters contemplated by it. Any such assistance requested for this purpose must not be unreasonably withheld.

### *Government fees and charges*

- 15.3 Except as otherwise expressly provided for in this Agreement, the Crown Lands Minister will be responsible for payment of any Government duties, fees or charges that may be payable by any Party to this Agreement in giving effect to the Agreement and the matters required or contemplated to be done under the Agreement.

### *Costs of acquisition of easement by Integral Energy*

- 15.4 Integral Energy will be responsible for all costs, duties, fees and charges that may be incurred or suffered by it in acquiring the easement for electricity purposes as provided for in clause 13.5 of this Agreement.

### *No termination for breach*

- 15.5 No breach of this Agreement by any Party (other than breach of a provision of the Agreement that is expressed to be a warranty) will give to any other party a right to elect to terminate this Agreement, but that Party may exercise any right or remedy otherwise available to it in respect of the breach.

*Registration of Agreement in General Register of Deeds*

- 15.6 The Crown Lands Minister is authorised by the other Parties to hold the Agreement once it is executed as a deed by the Parties and thereafter to lodge the Agreement with the Registrar-General for registration in the General Register of Deeds maintained under s.184C of the *Conveyancing Act 1919*. Following registration of the Agreement in that Register, the Crown Lands Minister will provide to each other Party a registration copy of the Agreement.

*Filing of Agreement with Federal Court and National Native Title Tribunal*

- 15.7 Following registration of the Agreement in the General Register of Deeds, the Crown Lands Minister is authorised by the Parties to provide a registration copy of the Agreement to the National Native Title Tribunal and to file a registration copy of the Agreement with the Federal Court of Australia, New South Wales District Registry in the proceedings in that Court relating to Native Title Application NC94/6.

*Notices*

15.8 (a) *Method of Giving Notices*

A notice, consent, approval or other communication (each a 'Notice') under this Agreement must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (i) delivered to that person's address;
- (ii) sent by pre-paid mail to that person's address; or
- (iii) transmitted by facsimile to that person's address.

(b) *Time of Receipt*

A Notice given to a person in accordance with this clause is treated as having been given and received:

- (i) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (ii) if sent by pre-paid mail, on the third Business Day after posting; or

- (iii) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.

(c) *Addresses for Notices*

For the purposes of this clause the addresses of the Parties shall be as specified in Schedule 3 to this Agreement.

*Governing law*

15.9 This Agreement is governed by the law in force in the State of New South Wales and shall be deemed to be made in Sydney in New South Wales.

*Waiver*

15.10 The non-exercise of or delay in exercising any power or right of a Party does not operate as waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver. Where this Agreement provides that any act of a Party has to be done in a particular manner or form, the other party will waive its rights to take action for a breach of this Agreement if the Party, when it does the act, substantially complies with the required manner or form.

*Amendment*

15.11 This Agreement may only be amended or supplemented in writing, signed by the Parties

*Severability*

15.12 Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of the jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining

provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

*Liabilities of Parties*

15.13 If two or more Parties are included within the same defined term in this Agreement:

- (a) a liability of those parties under this Agreement is a joint liability of all of them and a several liability of each of them;
- (b) a right given to those parties under this Agreement is a right given severally to each of them; and
- (c) a representation, warranty or undertaking made by those Parties is made by each of them.

*Further Assurance*

15.14 Each Party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another Party to carry out and give effect to this Agreement and the rights and obligations of the Parties under it.

*Entire Agreement*

15.15 This Agreement is the entire agreement of the Parties on the subject matter. The only enforceable obligations and liabilities of the Parties in relation to the subject matter are those that arise out of the provisions contained in this Agreement. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

*Headings*

15.16 In this Agreement the Table of Contents and headings are for convenience of reference only and do not affect interpretation.



**16. Schedules**

**16.1 The following are the Schedules to this Agreement:**

1. Description of the M2 Bushland
2. Description of Easements and Occupation Permit within Excelsior Park and Darling Mills State Forest:  
Part 1 – Description of Water Rising Main Easement  
Part 2 – Description of Electricity Transmission Line Easement  
Part 3 – Description of Occupation Permit for Electricity Transmission Line.  
Part 4 – Description of Electricity Distribution Line Easement
3. Addresses for Notices

IN WITNESS of their Agreement the parties have hereunder signed their names  
and affixed their seals:

Signed sealed and delivered for and on behalf  
of **ANTHONY BERNARD KELLY**  
Minister assisting the Minister for Natural  
Resources (Lands) of the State of New  
South Wales, by  
**Warwick Watkins** Director General  
Department of Lands  
in the presence of:

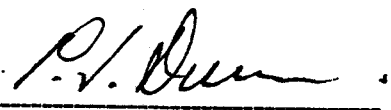


Warwick Watkins  
Director General

Signature of Witness

*JANET HOPKINS*

Signed sealed and delivered for and on behalf  
of **CRAIG KNOWLES**,  
Minister for Natural Resources  
of the State of New South, by  
**Peter Duncan**  
Managing Director  
State Forests of New South Wales  
in the presence of:

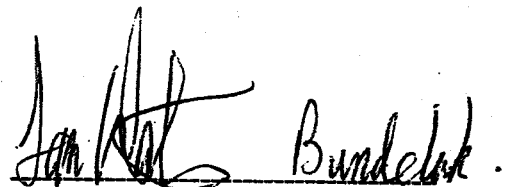


Peter Duncan  
Managing Director

Signature of Witness

*THERESE TRAN*

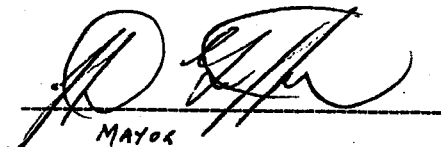
Signed sealed and delivered by  
**IAN (BUNDELUK) JOHN WATSON**  
In the presence of:



Signature of Witness

*JANET HOPKINS*

The Common Seal of  
**BAULKHAM HILLS SHIRE COUNCIL**  
was hereunto affixed in the presence of:

  
MAYOR

Signature of Witness *GENERAL MANAGER*

I certify that **RICHARD JOHN WATERS**, Regional Property Vendor Manager, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this document in my presence as attorney for **TELSTRA CORPORATION LIMITED** under Power of Attorney registered Book 4338 No. 72

S. Ray  
Signature of witness

Certified correct for the purposes of the Real Property Act 1900 by the attorney named below

[Signature]  
Signature of Attorney

Terrance John Layton  
Name of witness

Attorney's name: **RICHARD JOHN WATERS**

Address of witness:

101 King Rd  
Wollongong 2556

Signing on behalf of:

**TELSTRA CORPORATION LIMITED**


By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney

Signed, sealed and delivered by  
**John Wallace** as attorney for  
**INTEGRAL ENERGY AUSTRALIA**  
pursuant to Power of Attorney 4370 Book No  
330 who has no notice of revocation, in the  
presence of:

Signature of witness .

JANE MOSS

  
\_\_\_\_\_  
John Wallace, Attorney  
Gen. Manager Engineering Performance

  
\_\_\_\_\_  
Terry Joyce, General Counsel  
Countersignee

**Schedule 1**

**Description of the Area of the M2 Bushland**

The land which at the date of commencement of this Agreement comprises the area of the Darling Mills State Forest and the area of Excelsior Park excluding the areas of the Eric Mobbs and Ted Horwood Reserves as defined in clause 1 of this Agreement.

The M2 Bushland is shown on the Plan annexed to this Agreement.

## **Schedule 2**

### **Description of Easements and Occupation Permit within Excelsior Park and Darling Mills State Forest**

#### **Part 1 – Description of Water Rising Main Easement**

An Easement for Water Rising Main acquired by notice in the Gazette of 19 October 1962 at folio 2994 and shown on Plan 18594-3000. The easement is located within Excelsior Park to the north of Ted Horwood Reserve and traverses the area of Excelsior Park in a north-south direction.

The site of the easement is indicated on the Plan annexed to this Agreement.

#### **Part 2 – Description of Easement for Transmission Line**

An easement for transmission line 40.25 metres wide acquired by notice in the Gazette of 25 May 1956 at folio 1454. The easement is over that part of the Carlingford-Lithgow 132 Kv transmission line shown on Plans 15926-3000 and 16980-3000 within Excelsior Park. The easement traverses the area of Excelsior Park (including the area of Eric Mobbs Reserve) in an east-west direction.

The site of the easement is indicated on the Plan annexed to this Agreement.

#### **Part 3 – Description of Easement for Electricity Supply**

An easement for transmission line 18.29 metres wide acquired by notice in the Gazette of 19 July 1963 at folio 2101 and shown on Plan 18845-3000. The easement traverses that area of Excelsior Park south of Eric Mobbs Reserve, along the western boundary of Excelsior Park, in a north-south direction.

The site of the easement is indicated on the Plan annexed to this Agreement.

#### **Part 4 – Description of Electricity Distribution Line Easement**

An easement for transmission line, variable width, acquired by notice in the Gazette of 12 March 1965 at folio 840. The easement traverses the area of Excelsior Park (including the area of Eric Mobbs Reserve) in an east-west direction alongside the Carlingford – Lithgow 132 Kv transmission line described in Parts 2 and 5 of this Schedule and is shown on Plan 19442-3000.

The site of the easement is indicated on the Plan annexed to this Agreement.

**Part 5 – Description of Occupation Permit for Transmission Line**

An Occupation Permit about 30 metres wide granted under the *Forestry Act 1916* on 25 May 1956 over the part of the route of the Carlingford- Lithgow 132 Kv transmission line traversing the area of Darling Mills State Forest in an east-west direction and shown on Plans 15926-3000 and 16980-3000.

The site of the Occupation permit is indicated on the Plan annexed to this Agreement.

**Schedule 3**

**Addresses for Notices**

**Name of Party**

**Address for Notices**

Minister assisting the Minister  
for Natural Resources (Lands)

General Manager  
Native Title and Aboriginal Land Claims  
Department of Lands  
GPO Box 15  
Sydney NSW 2001

(Ref: V. Field, NC94/6)

Minister  
for Natural Resources

As above

Ian (Bundeluk) John Watson

146 Boundary Road  
Oakville NSW 2765

Baulkham Hills Shire Council

The General Manager  
Baulkham Hills Shire Council  
P O Box 75  
Castle Hill NSW 1765

(Ref: R. Webb, 442249)



Telstra Corporation Limited

Blake Dawson Waldron  
Lawyers  
Level 37  
Grosvenor Place  
225 George Street  
Sydney NSW 2000

(Ref: L. Flynn,  
MPB.CLL.1258 3286)

Integral Energy Australia

Integral Energy Networks  
(A business unit of Integral Energy  
Australia)  
General Manager Engineering Performance  
51 Huntingwood Drive  
HUNTINGWOOD NSW 2148  
(PO Box 6366 BLACKTOWN NSW  
2148)

(Ref: G Riethmuller, 97/00876)