

Biodiversity Certification Agreement

Between the Minister administering the *Biodiversity Conservation Act 2016* (NSW)

And

Central Coast Council

And

Alda Properties (Lake Munmorah) Pty Ltd

And

Rose Living Pty Ltd

And

Urban Land Redevelopment Pty Ltd

And

Robin Ernest Becker and Roxanne Annette Becker

(Collectively referred to as the Landowner).

The image shows a series of digital signatures in blue ink, each enclosed in a rounded rectangular box with 'DS' in the top left corner. From left to right, the signatures are: a stylized 'A' and 'W' (Alda Properties), 'DBVA' and 'BR' (Alda Properties), 'SR' (Central Coast Council), 'A' and 'DW' (Rose Living), 'RER' and 'RAB' (Urban Land Redevelopment), and a signature for 'RAB' (Robin Ernest Becker). To the right of these boxes is a handwritten signature in blue ink.

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Agreement made on

Parties **Minister for Environment** as the Minister administering the *Biodiversity Conservation Act 2016* (NSW) (**the Minister**)

And

Central Coast Council (ABN 73 149 644 003)

and

Alda Industrial Properties (Lake Munmorah) Pty Ltd (ACN 657 729 630)

and

Rose Living Pty Ltd (ACN 628 415 823)

and

Urban Land Redevelopment Pty Ltd (ACN 645 826 160)

and

Robin Ernest Becker and Roxanne Annette Becker
(collectively **the Landowner**)

Background

- A. On 13 April 2022, Alda Properties (Lake Munmorah) Pty Ltd (ACN 657 729 630), Rose Living Pty Ltd (ACN 628 415 823), Urban Land Redevelopment Pty Ltd (ACN 645 826 160) and Robin Ernest Becker and Roxanne Annette Becker made an application for Biodiversity Certification (**Biodiversity Certification Application**) for land at 285 – 325 Pacific Highway and (part) 6W Kemira Road, Lake Munmorah, within the Central Coast local government area, being Lot 1 in DP 626787, Lots 27, 437 and 438 of DP 755266, Lot 83 of DP 650114 and (part) Lot 79 of DP 217918 (**the Biodiversity Certification Assessment Area**) under Part 8 of the BC Act.
- B. Central Coast Council (ABN 73 149 644 003) were joined to the Biodiversity Certification Application on 1 March 2023.
- C. The Landowners are the registered proprietors of the respective lots that are part of the Biodiversity Certification Assessment Area.
- D. The Biodiversity Certification Application relates to the proposed residential subdivision of the Biodiversity Certification Assessment Area.
- E. The Biodiversity Certification Assessment Report (**BCAR**) identified proposed conservation measures and commitments including:

3455-1739-0883v7

1. the retirement of:
 - i. 7 Ecosystem Credits for impacts to PCT 1649
 - ii. 171 Ecosystem Credits for impacts to PCT 1638
 - iii. 8 Ecosystem Credits for impacts to PCT 1737 (Threatened Ecological Community)
 - iv. 23 Ecosystem Credits for impacts to PCT 1649 (Threatened Ecological Community)
 - v. 224 Species Credits for impact to *Angophora inopina* (Charmhaven Apple)
 - vi. 160 Species Credits for *Lathamus discolor* (Swift Parrot)
 - vii. 192 Species Credits for *Myotis Macropus* (Southern Myotis)
 2. the preparation and implementation of a Biodiversity Management Plan to protect vegetation and fauna habitat in the Certified Land and Conservation Land; and
 3. that the Conservation Land be not further subdivided.
- F. This Agreement implements measures 2 (on the Certified Land) and 3 identified in the BCAR referred to in Background item (D) above.
- G. The retirement of Biodiversity Credits is to be delivered in accordance with an order for Biodiversity Certification.
- H. This Agreement will be registered on the title of the Biodiversity Certification Assessment Area. It will apply to the Avoided Land, Conservation Land and the Certified Land, but may be removed from the title of subsequent lots created for residential occupation on the Certified Land.
- I. Parts of the Agreement apply to the Landowner during the Development Phase, while parts will continue to apply to the Subsequent Lot Landowner of the Conservation Land during the Occupation Phase.
- J. For the avoidance of doubt, the Central Coast Council is a party to this Agreement in its capacity as landowner and not as a consent authority under NSW legislation Operative provisions.

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context indicates otherwise:

Agreement means this Agreement titled 'Biodiversity Certification Agreement' and includes all schedules.

Annual Report means a report in a format determined by the Environment Agency Head and contains reporting requirements as determined by the Biodiversity Management Plan.

Avoided Land means the land within the Biodiversity Certification Assessment Area identified as 'Avoided land' in Schedule 1 of this Agreement.

BC Act means the *Biodiversity Conservation Act 2016* (NSW).

BC Regulation means the *Biodiversity Conservation Regulation 2017* (NSW).

Biodiversity Certification has the same meaning as in section 8.2 of the BC Act.

Biodiversity Certification Assessment Area means the land identified as the Biodiversity Certification Assessment Area with a heavy dotted border in Schedule 1 to this Agreement and has the meaning given in Recital A.

Biodiversity Certification Application has the meaning given in Recital A.

Biodiversity Certification Assessment Report (BCAR) means the biodiversity certification assessment report within the meaning of the BC Act dated 9 December 2022 prepared by Kleinfelder for the purposes of the Biodiversity Certification Application.

Biodiversity Credit means a biodiversity credit created under Part 6 Division 4 of the BC Act and includes a reference to an ecosystem credit and a species credit.

Biodiversity Management Plan means the plan contemplated by the BCAR and approved under clause 5.2 of this Agreement which will apply to the Certified Land during the Development Phase and the Conservation Land in perpetuity.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Certified Land means the Biodiversity Certification Assessment Area on which Biodiversity Certification may be conferred under Part 8 of the BC Act, being identified as the 'land proposed for certification' in Schedule 1 of this Agreement.

Clearing of native vegetation has the same meaning as in section 60B and 60C of the *Local Land Services Act 2013*.

Conservation Land means the land within the Biodiversity Certification Assessment Area identified as 'Conservation land' in Schedule 1 of this Agreement. The Conservation Land includes the Avoided Land and other land of biodiversity value that cannot be defined as Avoided Land.

Consent Authority has the same meaning as in division 4.2 of the *Environmental Planning and Assessment Act 1979*.

Department means the NSW Department of Climate Change, Energy, the Environment and Water and any name it may be known by in the future.

Development has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

Development Completion means, in respect of each individual Subsequent Lot, completion of the development, triggered by the registration of a plan of subdivision for the Certified Land.

Development Phase means, in respect of each individual Subsequent Lot, the period from the Effective Date until Development Completion for that Subsequent

Lot.

Effective Date means the date on which Biodiversity Certification is conferred by the Minister on the Certified Land.

Environment Agency Head has the meaning given in section 6.1 of the BC Act.

Force Majeure Event means an event that is beyond the reasonable control of the Landowner, including any natural disaster, fire, flood, accident, war, riot, act of terrorism, biohazard, a serious epidemic, or a change in legislation, but only to the extent that such events were beyond the Landowner's reasonable control. A force majeure event does not include any obligation to pay money, a labour dispute or shortage of materials or labour.

Landowner means:

- (a) Central Coast Council (ABN 73 149 644 003);
- (b) Alda Properties (Lake Munmorah) Pty Ltd (ACN 657 729 630);
- (c) Rose Living Pty Ltd (ACN 628 415 823);
- (d) Urban Land Redevelopment Pty Ltd (ACN 645 826 160); and
- (e) Robin Ernest Becker and Roxanne Annette Becker,

Collectively (unless an express exclusion applies), as at the Effective Date and any successors in title of the Biodiversity Certification Assessment Area but excludes the Subsequent Lot Landowners.

Minister means the Minister of the State of New South Wales administering the BC Act and includes his or her successors in office and where appropriate includes the servants and agents of the Minister.

Occupation Phase means, in respect of each individual Subsequent Lot, the period commencing on the issue of a subdivision certificate for the Certified Land.

Party means a Party to this Agreement and includes a person or persons taken to be Parties to this Agreement by operation of section 8.17 of the BC Act.

PCT means a NSW plant community type identified using the PCT classification system in NSW BioNet. .

Registrar-General has the same meaning as in the *Real Property Act 1900* (NSW).

Subdivision Works Certificate means a certificate issued under section 6.13 of the *Environmental Planning and Assessment Act 1979* (NSW).

Subsequent Lot means a lot created in the Biodiversity Certification Assessment Area as a result of a subdivision approved under the *Environmental Planning and Assessment Act 1979*.

Subsequent Lot Landowner means the registered proprietor of a Subsequent Lot.

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;
and unless the context indicates a contrary intention:
- (b) **person** includes an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a Party, clause, schedule, exhibit, attachment or annexure is a reference to a Party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) includes in any form is not a word of limitation;
- (j) where a schedule contains obligations of any Party then the obligation so expressed shall be read and construed and shall constitute obligation on the part of the relevant Party, as the case may be, to be performed or observed under this Agreement;
- (k) neither this Agreement nor any part of it is to be construed against a Party on the basis that the Party or its lawyers were responsible for its drafting;
- (l) if a Party to this Agreement is subsequently made up of more than one person:
 - (a) an obligation of those persons is joint and several;
 - (b) a right of those persons is held by each of them severally; and
 - (c) any references to that Party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

1.3 Agreement to run with the land

In accordance with section 8.17 of the BC Act, when registered by the Registrar-General, this entire Agreement is binding on and is enforceable against the Landowner and any Subsequent Lot Landowner.

Note: Subject to the operation of Clause 1.3, pursuant to section 8.17(1) and (5) of the BC Act, any Subsequent Lot Landowners of the Conservation Land will become Parties to this Agreement and will be bound by the obligations imposed on them in this Agreement.

2. Commencement and Term

- (a) This Agreement is to be executed by the Parties and held in escrow by the Department prior to the Effective Date.
- (b) This Agreement is effective on the Effective Date.
- (c) Subject to clause 6.3, this Agreement has effect indefinitely.

3. Status of this Agreement

- (a) The Parties agree that this Agreement:
 - (a) is a Biodiversity Certification Agreement within the meaning of Part 8 of the BC Act; and
 - (b) establishes the obligations of the Landowner and the Subsequent Lot Landowners in the Biodiversity Certification Assessment Area.
- (b) For the purposes of clause 5.1(1)(c) of the BC Regulation, the Minister advises that the legal obligations created under this Agreement:
 - (a) are not created for biodiversity offset purposes; and
 - (b) do not make provision for biodiversity offsets.
- (c) Subject to clause 6.3, this Agreement has effect indefinitely.

4. Registration of this Agreement and Notice to Purchasers

- (a) The Landowner agrees to use its best endeavours, and at its own expense, to lodge or arrange for the lodgement of this Agreement in registrable form with the Registrar-General within forty (40) Business Days of the Effective Date in order to secure the registration of this Agreement on the titles to the Biodiversity Certification Assessment Area.
- (b) The Landowner, at its own expense and risk, must take all practicable steps and otherwise do anything the Minister reasonably requires, to procure:
 - (a) the execution of any documents necessary to enable registration of the Agreement on the title to the Biodiversity Certification Assessment Area; and
 - (b) the registration of this Agreement by the Registrar-General in the relevant folios of the register as soon as possible after lodgement of the Agreement for registration under clause 4(a).
- (c) The Landowner, within 21 days of registration of this Agreement on the title to the Biodiversity Certification Assessment Area, must provide the

Minister with evidence of registration of this Agreement on the respective lots.

- (d) The Landowner, excluding Central Coast Council, agrees to provide notice of this Agreement to purchasers of any land in the Biodiversity Certification Assessment Area where the Agreement applies.

5. Development Phase

5.1 Landowner obligations

- (a) The Landowner agrees to comply with all relevant obligations of the Landowner set out in this Agreement.
- (b) The Landowner, excluding Central Coast Council, agrees:
 - (i) To not commence any Development in the Biodiversity Certification Assessment Area, and not clear native vegetation, until the Landowner receives written notice from the Department that the Biodiversity Management Plan has been approved by the Department and a Subdivision Works Certificate has been issued.
 - (ii) within six (6) months of the Effective Date, prepare and submit to the Department for approval a draft Biodiversity Management Plan to apply to the Certified Land during the Development Phase and the Conservation Land in perpetuity.
 - (iii) to assume the reporting responsibilities of the Landowner detailed in clause 5.7 of this Agreement until completion of the Development Phase.
 - (iv) to take measures to implement the Biodiversity Management Plan immediately upon approval until the completion of the Development Phase.
 - (v) to ensure that the Conservation Land is not subdivided in accordance with clause 6.2 of this Agreement.
- (c) Notwithstanding clauses 4(d), 5.1(b), 5.2(a), 5.3, 5.4, 5.5, 5.7(a), 6.1, 6.2(a) and 8.1, which expressly exclude the application of this Agreement to Central Coast Council, the parties acknowledge and agree that if any of the Conservation Land is dedicated to Central Coast Council on or after the date of this Agreement, then Central Coast Council will become subject to the obligations set out in this Agreement in respect of that land.

5.2 Approval of Biodiversity Management Plan

- (a) The Department will, in good faith, make all reasonable attempts to approve a draft Biodiversity Management Plan within three (3) months of the draft Biodiversity Management Plan being submitted to the Department by the Landowner, excluding Central Coast Council. If the Draft Biodiversity Management Plan is not approved, the Department will provide reasons why it is not approved.

- (b) If the Department approves the Biodiversity Management Plan, it will provide written notice of this approval to the Landowner.

5.3 **Conservation of Avoided Land and Conservation Land**

The Landowner, excluding Central Coast Council, must:

- (a) ensure that there is no disturbance of the Avoided Land or Conservation Land, including the removal of any native vegetation, fallen timber or habitat, or any earthworks, from the Avoided Land or Conservation Land; and
- (b) must maintain the Avoided Land and Conservation Land with C2 Environmental Conservation zoning and must not initiate and application to change the zoning.

5.4 **Reasonable steps**

The Landowner, excluding Central Coast Council, agrees to take all reasonable steps to ensure that persons who enter or intend to enter the Conservation Land comply with the Landowner's obligations referred to in clause 5.4.

5.5 **Clearing**

The Parties acknowledge that clauses 5.3 and 5.4 apply, despite any legislation, regulation, rule or code which provides that the Landowner, excluding Central Coast Council, is permitted to Clear vegetation on the Conservation Land.

5.6 **Effect of overlapping obligations in the Development and Occupation Phases**

Clauses 5.3, 5.4 and 5.5 are effective until such time that the Occupation Phase commences for a Subsequent Lot. Upon commencement of the Occupation Phase for a Subsequent Lot, these obligations become the obligations of the Subsequent Lot Landowner.

5.7 **Reporting requirements of the Landowner**

- (a) During the period from the Effective Date to Development Completion, the Landowner, excluding Central Coast Council, must complete and submit an Annual Report in the form requested by, and to the satisfaction of, the Environment Agency Head.
- (b) An Annual Report must be prepared for each reporting period. A reporting period means the period of 12 months after the Effective Date, and each subsequent period of 12 months:
 - (a) five years from the date of this Agreement; or
 - (b) until Development Completion;whichever is the latter.
- (c) The Annual Report for the reporting period must be provided to the

Environment Agency Head within 60 days after the end of each reporting period.

6. Occupation Phase

6.1 Land management obligations

The Landowner, excluding Central Coast Council, and any Subsequent Lot Landowner of the Conservation Land must comply with:

- (a) all relevant obligations of Subsequent Lot Landowners set out in clauses 5.3, 5.4, 5.5 and 6.2 to this Agreement; and
- (b) the approved Biodiversity Management Plan;

in relation to conservation and management of the Conservation Land.

6.2 Prohibition on subdivision of Conservation Land

- (a) The Landowner, excluding Central Coast Council, and any Subsequent Lot Landowner agree and acknowledge

the Conservation Land must not be subdivided in order to conserve the biodiversity values of the Conservation Land, and that it must not cause the subdivision of the Conservation Land.

- (b) To avoid doubt, this clause 6.2 does not prevent the subdivision of the Biodiversity Certification Assessment Area during the Development Phase, provided that the Conservation Land is not subdivided as shown in Schedule 1 to this Agreement.

6.3 Agreement does not apply to Certified Land in Occupation Phase

- (a) This Agreement does not apply to the Certified Land in the Occupation Phase.
- (b) The parties agree that this Agreement is to be removed from the certificate of title of all Subsequent Lots in relation to the Certified Land at the commencement of the Occupation Phase. The parties agree to use all best endeavours to do all things necessary to remove this Agreement from the certificate of title for all Subsequent Lots in relation to the Certified Land at the commencement of the Occupation Phase.
- (c) The Minister or her delegate must take all practicable steps to execute documents necessary to enable removal of the Agreement on the title to the Certified Land, at the commencement of the Occupation Phase, and provide these documents to the Landowner for lodgement with the Registrar-General within 21 days of receiving the documents from the Landowner.
- (d) Upon receipt of the documentation referred to in clause 6.3(c), the Landowner must procure the removal of this Agreement by the Registrar-General in the relevant folios of the register of the Certified Land as soon as possible at the commencement of the Occupation Phase at its sole

cost.

- (e) The Landowner, within 21 days of registration of the removal of this Agreement on the title to a lot within the Certified Land, must provide the Minister with evidence of the removal of this Agreement from the title of that lot.
- (f) This clause 6.3 does not impact the application of this Agreement to the Certified Land during the Development Phase.

7. Enforcement

- 7.1 The Parties acknowledge that the Minister has rights under the BC Act and at law in the event of a default by the Landowner under this Agreement, including rectification rights.
- 7.2 In accordance with section 13.16 of the BC Act, and without limiting other remedies available to the Minister, the Minister or a person acting with the written consent of the Minister, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of this Agreement.

8. Consent for Minor Disturbances

- 8.1 Despite clause 5.3, the Landowner, excluding Central Coast Council, may disturb, or permit a third party to disturb, the Avoided Land if the disturbance is minor in nature and:
 - (a) is not likely to significantly affect threatened species or ecological communities in accordance with s 7.2 of the BC Act,
 - (b) does not exceed the Biodiversity Offsets Scheme threshold under Part 7 of the BC Act, and
 - (c) complies with the procedural requirements at clause 8.2.
- 8.2 For clause 8.1, the Landowner, excluding Central Coast Council, must –
 - (a) give written notice of the disturbance to the Minister in accordance with clause 17 of this Agreement,
 - (b) receive written consent from the Minister to undertake the disturbance, which shall not be unreasonably withheld, and
 - (c) comply with the conditions of any consent granted by the Minister pursuant to clause 8.2(b) in making the disturbance.

9. Permissions, consents and authorisations

- (a) Each Party to this Agreement is responsible for obtaining all necessary licences, consents, authorisations, permits or approvals in order to lawfully comply with and carry out its obligations under this Agreement.

- (b) Each Party to this Agreement agrees that this Agreement may be executed electronically in accordance with the *Electronic Transactions Act 2000 (NSW)*.

10. Force Majeure

- (a) In relation to a Force Majeure Event, the Landowner and any Subsequent Lot Landowner is:
 - (a) not required to comply with its obligations under this Agreement; and
 - (b) is not liable for any loss or liability suffered or incurred by the Minister as a result of the Landowners' or Subsequent Lot Landowners' inability to comply with its obligations,
 - (c) to the extent that the Landowner is prevented from complying, or its ability to comply is delayed, due to a Force Majeure Event. This applies so long as the Force Majeure Event continues to prevent the Landowner or Subsequent Lot Landowner from complying.
- (b) If the Landowner's or Subsequent Lot Landowner's ability to comply with its obligations under this Agreement is affected by a Force Majeure Event it must:
 - (a) promptly notify the Minister, in accordance with clause 17, as soon as it becomes aware that it is (or is likely to be) so affected, giving reasonable details of the Force Majeure Event and the obligations that will be affected;
 - (b) take all reasonable steps to prevent, limit and minimise the effect of the Force Majeure Event on the Landowner's and Subsequent Lot Landowners' obligations and comply again with its obligations as soon as reasonably possible; and
 - (c) keep the Minister informed of the expected duration of the Force Majeure Event and the steps taken to comply with clause 10(b)(b).

11. Dispute resolution

- (a) Where there is a dispute, difference or claim ("**Dispute**"), the Party raising the dispute must notify the other Parties of the nature of the Dispute, including the factual and legal basis of the Dispute.
- (b) Within 14 days of the notice, the Parties, or nominated senior representatives of the Parties, must confer to attempt to resolve the Dispute, and if the Dispute cannot be resolved within 21 days of the written notice, the Parties will refer the matter to mediation.
- (c) The Parties will agree on a mediator, the terms of appointment of the mediator and the terms of the mediation in writing within 28 days of the referral of the matter to mediation under clause 11(b). If they cannot

agree on those matters, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.

- (d) If the matter has not been resolved within 28 days of the appointment of the mediator, the mediation process will be at an end and any Party may commence court proceedings in respect of the Dispute.
- (e) Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (f) The Parties are to share equally the costs of the President (if any), the mediator and the mediation.

12. GST

- (a) The Parties to this Agreement acknowledge and agree that for any taxable supply made by one Party to another Party under this Agreement the Party which has received the supply will on receipt of a tax invoice from the supplier make a payment to the supplier that covers both the value of the supply and the GST liability of the Party that has made the supply.
- (b) This clause will not merge on completion or termination of this Agreement.
- (c) Words used in this clause that are defined in the GST Law have the meaning given in that legislation. GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

13. Releases and indemnities

- (a) Each Party to this Agreement agrees to carry out their obligations under this Agreement at their own risk.
- (b) Each Party, other than the Minister (severally, not jointly), agrees to release and indemnify the Minister from any claim, liability or loss arising from, and costs incurred in connection with a breach of the respective obligations of the Party under this Agreement except to the extent caused or contributed to by the Minister's negligent act or default under this Agreement.
- (c) The indemnity in clause 13(b) is a continuing obligation, independent of the other obligations of the Party under this Agreement and continues after the Agreement ends.

14. Costs

Subject to clause 13, each Party bears its own costs in connection with the preparation and execution of this Agreement.

15. General provisions

15.1 **Prior representations**

No Party can rely on an earlier document, anything said or done by another Party, or by an authorised officer, agent or employee of that Party, before the Agreement was executed.

15.2 **Further acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

15.3 **Governing law and jurisdiction**

This Agreement is governed by the laws of the State of New South Wales and the Parties agree to submit to the jurisdiction of the courts of that State.

15.4 **No fetter**

- (a) Without prejudice to or limiting the express obligations that each Party has agreed to perform under this Agreement, this Agreement is not intended to operate to fetter, in any unlawful manner:
 - (a) the sovereignty of the Parliament of the State of New South Wales to make any law;
 - (b) the power of the Executive Government of the State of New South Wales to make any statutory rule; or
 - (c) the exercise of any statutory power or discretion of any Minister of the State.
- (b) Nothing in this Agreement is to be construed as requiring any Party to do anything that would cause it to be in breach of any of its obligations at law, and without limitation and nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

15.5 **No joint venture, etc.**

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the Parties; and
- (b) no Party has the authority to bind any other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other Party or to pledge any other Party's credit.

15.6 **Representations and warranties**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement.

15.7 Severability

- (a) If any part of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any part of this Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

15.8 Variation

No variation of this Agreement will be of any force or effect unless it is in writing and signed by all the Parties.

15.9 Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

15.10 Good faith

Each Party must act in good faith towards all other Parties and use its best endeavours to comply with the spirit and intention of this Agreement.

15.11 Counterparts

- (a) This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.
- (b) This Agreement may be validly exchanged by counterparts with each Party's signed counterpart (electronic or otherwise) sent to each other Party by email.

15.12 Electronic execution

- (a) Each Party:
 - (a) consents to this Agreement being signed by electronic signature by the methods set out in clause 15.12(c);
 - (b) agrees that those methods validly identify the person signing and indicates that person's intention to sign this Agreement;
 - (c) agrees that those methods are reliable as appropriate for the purpose of signing this Agreement; and
 - (d) agrees that electronic signing of this Agreement by or on behalf of a Party by those methods indicates that Party's intention to be

bound.

- (b) If this Agreement is signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
 - (c) For the purposes of clause 15.12(a), the methods are:
 - (a) insertion of an image (including a scanned image) of the person's own unique signature onto the Agreement; or
 - (b) insertion of the person's name onto the Agreement; or
 - (c) use of a stylus or touch finger or a touch screen to sign the Agreement,
- provided that in each of the above cases, words to the effect of '*Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]*' are also included on the Agreement; or
- (d) use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the Agreement; or
 - (e) as otherwise agreed in writing between the Parties.

16. Publication

Each Party acknowledges that a copy of this Agreement is to be published on a NSW government website maintained by the Environment Agency Head in accordance with clause 8.5 of the *Biodiversity Conservation Regulation 2017*.

The Environment Agency Head will restrict access to all personal information contained in this Agreement in accordance with the *Privacy and Personal Information Protection Act 1998*.

17. Notices

17.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing delivered, posted or sent by electronic service address to that Party at its addresses set out below.

The Minister

Address: **Environment and Heritage Group**
NSW Department of Climate Change, Energy, the
Environment and Water
Locked Bag 5022
PARRAMATTA NSW 2124

Attention:

Telephone:

Email address: [Redacted]

The Landowner

Address: **Central Coast Council**
[Redacted]

Attention: Chief Executive Officer

Email address: [Redacted]

Address: **Alda Properties (Lake Munmorah) Pty Ltd**
[Redacted]

Attention: [Redacted]

Email address: [Redacted]

Address: **Rose Living Pty Ltd**
[Redacted]

Attention: [Redacted]

Email address: [Redacted]

Address: **Urban Land Redevelopment Pty Ltd**
[Redacted]

Attention: [Redacted]

Email address: [Redacted]

Address: **Robin Ernest Becker and Roxanne Annette Becker**
[Redacted]

Attention: [Redacted]

Email address: [Redacted]

17.2 Change in details

The name or title of the nominated officer or the address for the Parties referred to in clause 17.1 above may be updated from time to time by written notice being sent to the other Parties by the Party (which in the case of the Minister may include an officer of the Department) advising of the new officer (or title of an office) and address to which such documents, information or notification may be sent.

17.3 **Receipt**





- (a) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (a) if it is delivered, when it is left at the relevant address;
 - (b) if it is sent by post, two (2) Business Days after it is posted (unless the contrary is proved); or
 - (c) If it is sent by electronic service address, by transmitting an electronic copy of the document to that address
- (b) If any notice, consent, information, application or request is delivered or sent by electronic service address, on a day that is not a Business Day or after 5pm on any Business Day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

Schedule 1:

285 - 325 Pacific Highway, Lake Munmorah NSW



Legend

-  Biodiversity certification assessment area
-  Land proposed for biodiversity certification
-  Conservation land
-  Avoided land

0 25 50 75 100 Meters
Datum: Projection: GCS GDA 1994



Copyright of Department of Planning and Environment
This map is not guaranteed to be free from error or omission. The Department and its employees disclaim liability for any act done on the information in the map and any consequences of such acts or omissions

Executed as an agreement under section 8.16 of the BC Act

Executed on behalf of the Honourable Penny Sharpe, MP Minister for Environment for the State of New South Wales as the Minister administering the *Biodiversity Conservation Act 2016* (NSW)



Delegate for the Hon. Penny Sharpe, MP, Minister for Environment

~~Electronic signature of me, Brendan Bruce, Deputy Secretary Biodiversity Conservation & Science Group [insert full name, including any middle name]~~

affixed by me on

26/03/2024: 3:55pm

~~[insert date and time]~~

~~[strike through above if document is not executed electronically]~~

Signature of Witness

~~Electronic signature of me, [redacted] Biodiversity, Conservation & Science Group [insert full name, including any middle name]~~

affixed by me on

26/03/2024: 3:55pm

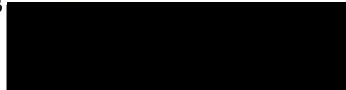
~~[insert date and time]~~

~~[strike through above if document is not executed electronically]~~



Name of Witness in full (written in block letters)

Executed on behalf of Central Coast Council ABN 73 149 644 003 pursuant to delegation granted under section 377 OR 378 of the Local Government Act 1993



Signature of delegate



Name of Witness in full (written in block letters)

Electronic signature of me,



~~[insert full name, including any middle name]~~

affixed by me on

14 February 2024 | 10:58 AM AEDT

~~[insert date and time]~~

~~[strike through above if document is not executed electronically]~~



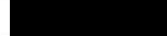
Name of delegate

DocuSigned by:



Signature of Witness 1A357CB0FA664B8

Electronic signature of me,



~~[insert full name, including any middle name]~~

affixed by me on

14 February 2024 | 11:31 AM AEDT

~~[insert date and time]~~

~~[strike through above if document is not executed electronically]~~

Executed by Alda Properties (Lake Munmorah) Pty Ltd (ACN 657 729 630) in accordance with s127 of the Corporations Act 2001 (Cth)

[Redacted Signature]

Signature of Director

[Redacted Name]

Name of Director

Electronic signature of me,

[Redacted Signature]

[insert full name, including any middle name]

affixed by me on

01 February 2024 | 9:34 PM PST

[insert date and time]

[strike through above if document is not executed electronically]

[Redacted Signature]

Signature of Director/Secretary

[Redacted Name]

Name of Director/Secretary

Electronic signature of me,

[Redacted Signature]

[insert full name, including any middle name]

affixed by me on

02 February 2024 | 10:38 PM AEDT

[insert date and time]

[strike through above if document is not executed electronically]

Executed by Rose Living Pty Ltd (ACN 628 415 823) in accordance with s127 of the Corporations Act 2001 (Cth)

[Redacted Signature]

Signature of Director

[Redacted Name]

Name of Director

Electronic signature of me,

[Redacted Signature]

[insert full name, including any middle name]

affixed by me on

05 February 2024 | 12:10 PM AEDT

[insert date and time]

[strike through above if document is not executed electronically]

[Redacted Signature]

Signature of Director/Secretary

[Redacted Name]

Name of Director/Secretary

Electronic signature of me,

[Redacted Signature]

[insert full name, including any middle name]

affixed by me on

04 February 2024 | 2:15 PM PST

[insert date and time]

[strike through above if document is not executed electronically]


Executed by Urban Land Redevelopment Pty Ltd (ACN 645 826 160) in accordance with s127 of the Corporations Act 2001 (Cth)



Signature of Director A8C209DC44E...



Name of Director

Electronic signature of me,


[insert full name, including any middle name]

affixed by me on
05 February 2024 | 8:24 PM AEDT

[insert date and time]

[strike through above if document is not executed electronically]

Executed by Robin Ernest Becker in the presence of:



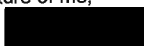
Name of Witness in full (written in block letters)



Signature of Director/Secretary C270A5E241F450...



Name of Director/Secretary

Electronic signature of me,


[insert full name, including any middle name]


affixed by me on
05 February 2024 | 4:28 PM AEDT

[insert date and time]

[strike through above if document is not executed electronically]



Signature of Robin Ernest Becker

Electronic signature of me,


[insert full name, including any middle name]


affixed by me on
06 February 2024 | 11:11 AM AEDT

[insert date and time]

[strike through above if document is not executed electronically]



Signature of Witness 5AF6F784091F430...

Electronic signature of me,


[insert full name, including any middle name]

affixed by me on
06 February 2024 | 11:15 AM AEDT

[insert date and time]

[strike through above if document is not executed electronically]

Executed by Roxanne Annette Becker in the presence of:

[Redacted]

Signature of Roxanne Annette Becker

Electronic signature of me,

[Redacted]

[insert full name, including any middle name]

affixed by me on

06 February 2024 | 11:24 AM AEDT

[insert date and time]

[strike through above if document is not executed electronically]

DocuSigned by:

[Redacted]

Signature of Witness

Electronic signature of me

[Redacted]

[insert full name, including any middle name]

affixed by me on

06 February 2024 | 11:37 AM AEDT

[insert date and time]

[strike through above if document is not executed electronically]

[Redacted]

Name of Witness in full (written in block letters)

[Handwritten signatures: DS, DS, DS, DS, DS, DS, DS, DS]

Electronic Record and Signature Disclosure

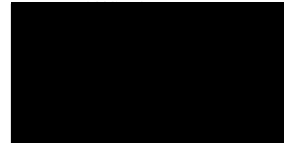


Certificate Of Completion

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Subject: Complete with DocuSign: Biodiversity Certification Agreement - Lakes Ridge.pdf
1. Is this matter related?: Yes
2. Matter No# OR 00000 for non-matter: 9188753
Source Envelope:
Document Pages: 25
Certificate Pages: 7
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC+10:00) Canberra, Melbourne, Sydney

Status: Completed

Envelope Originator:



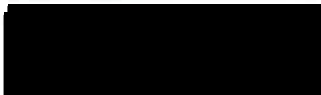
Record Tracking

Status: Original
2/2/2024 | 12:42

Holder: [Redacted]

Location: DocuSign

Signer Events



Security Level: Email, Account Authentication (None)

Signature

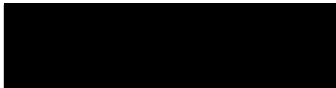


Signature Adoption: Drawn on Device
Signed using mobile

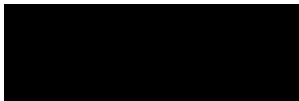
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Signed: 2/2/2024 | 22:38

Electronic Record and Signature Disclosure:
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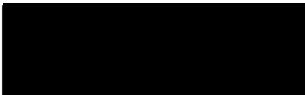
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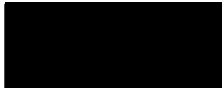
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Signed: 2/2/2024 | 16:34

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Security Level: Email, Account Authentication (None)



Signature Adoption: Pre-selected Style
Signed using mobile

Sent: 5/2/2024 | 09:01
Viewed: 5/2/2024 | 09:11
Signed: 5/2/2024 | 09:15

Electronic Record and Signature Disclosure:
Accepted: 5/2/2024 | 09:11
ID: aef30b3a-5299-4de1-b8c0-f678483921ed



Security Level: Email, Account Authentication (None)



Signature Adoption: Pre-selected Style

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Viewed: 5/2/2024 | 12:10
Signed: 5/2/2024 | 12:10

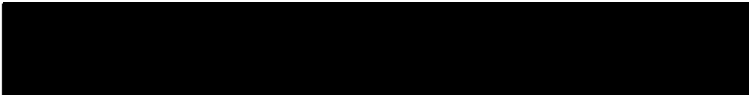
Signer Events

Signature

Timestamp

Electronic Record and Signature Disclosure:

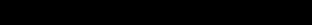
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Signed: 5/2/2024 | 16:28

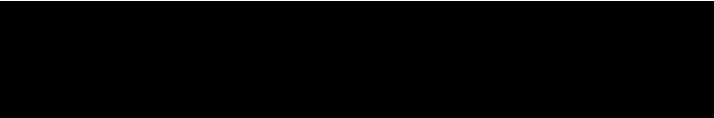
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Signature Adoption: Drawn on Device



Electronic Record and Signature Disclosure:

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Sent: 5/2/2024 | 13:31
Viewed: 5/2/2024 | 20:24
Signed: 5/2/2024 | 20:24

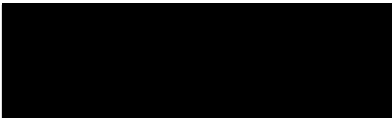
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Signature Adoption: Pre-selected Style



Electronic Record and Signature Disclosure:

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Completed



Sent: 5/2/2024 | 20:24
Resent: 6/2/2024 | 09:06
Viewed: 6/2/2024 | 09:06
Signed: 6/2/2024 | 09:07

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign



Sent: 6/2/2024 | 09:07
Viewed: 6/2/2024 | 11:08
Signed: 6/2/2024 | 11:11

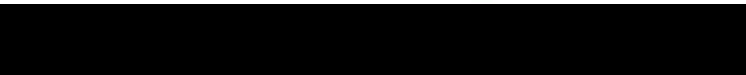
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Signature Adoption: Pre-selected Style



Electronic Record and Signature Disclosure:

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Viewed: 6/2/2024 | 11:14
Signed: 6/2/2024 | 11:24

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style



Electronic Record and Signature Disclosure:

Accepted: 6/2/2024 | 11:14
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Signer Events**Signature****Timestamp**

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 Viewed: 14/2/2024 | 10:56
 Signed: 14/2/2024 | 10:58

Security Level: Email, Account Authentication
 (None)

Signature Adoption: Drawn on Device

Electronic Record and Signature Disclosure:
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 ID: bfe4b5ab-e3ee-4c34-86c7-1ec6926050ac

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp**

Sent: 2/2/2024 | 22:38
 Viewed: 5/2/2024 | 09:01

Security Level: Email, Account Authentication
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VIEWED

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sent: 5/2/2024 | 12:10
 Viewed: 5/2/2024 | 13:31

Security Level: Email, Account Authentication
 (None)

VIEWED

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sent: 6/2/2024 | 11:37
 Viewed: 6/2/2024 | 11:46

Security Level: Email, Account Authentication
 (None)

VIEWED

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sent: 14/2/2024 | 11:31
 Resent: 14/2/2024 | 11:40
 Viewed: 14/2/2024 | 11:40

Security Level: Email, Account Authentication
 (None)

VIEWED

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Carbon Copy Events**Status****Timestamp****Witness Events****Signature****Timestamp**

Witness Events**Signature****Timestamp**

Sent: 6/2/2024 | 11:25
 Viewed: 6/2/2024 | 11:36
 Signed: 6/2/2024 | 11:37



Signature Adoption: Pre-selected Style



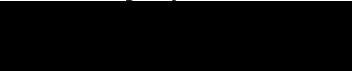
Security Level:

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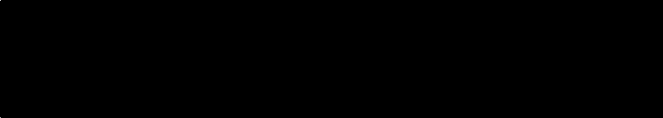
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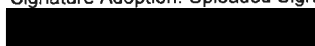
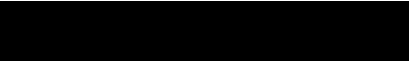
Security Level:

Electronic Record and Signature Disclosure:
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Sent: 14/2/2024 | 10:58
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 Signed: 14/2/2024 | 11:31



Signature Adoption: Uploaded Signature Image



Security Level:

Electronic Record and Signature Disclosure:
 Accepted: 14/2/2024 | 11:30
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Notary Events**Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/2/2024 15:35
Envelope Updated	Security Checked	6/2/2024 09:06
Envelope Updated	Security Checked	6/2/2024 09:06
Certified Delivered	Security Checked	14/2/2024 11:40
Signing Complete	Security Checked	14/2/2024 11:31
Completed	Security Checked	14/2/2024 11:40

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Corrs Chambers Westgarth (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Corrs Chambers Westgarth:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: technology.helpdesk.team@corrs.com.au

To advise Corrs Chambers Westgarth of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at technology.helpdesk.team@corrs.com.au and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Corrs Chambers Westgarth

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to technology.helpdesk.team@corrs.com.au and in the body of such request you must state your email address, full name, mailing address, and telephone number. Please speak to your contact at Corrs about additional fees.

To withdraw your consent with Corrs Chambers Westgarth

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to technology.helpdesk.team@corrs.com.au and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Corrs Chambers Westgarth as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Corrs Chambers Westgarth during the course of your relationship with Corrs Chambers Westgarth.