

# LAND MANAGEMENT AGREEMENT BY DEED

ADELAIDE HILLS COUNCIL

NATURE FOUNDATION SA INC.

Norman  
Waterhouse

Level 15, 45 Pirie Street  
Adelaide SA 5000  
Telephone + 61 8 8210 1200  
Fax + 61 8 8210 1234  
[www.normans.com.au](http://www.normans.com.au)

## DATE

## PARTIES

**Adelaide Hills Council** of 28 Onkaparinga Valley Road, WOODSIDE SA 5244 (**Council**)

**Nature Foundation SA Inc.** of 32 Holden Street, HINDMARSH SA 5007 (**Owner**)

## BACKGROUND

- A. The Owner is the proprietor of an estate in fee simple in the Land.
- B. By Development Application numbered 473/D40/2007 the Owner sought from the Council development plan consent, land division consent and development approval pursuant to the Act to develop the Land by dividing the Land by way of a boundary realignment and the creation of an additional allotment in accordance with the Plan of Division.
- C. The Land is subject to a Heritage Agreement pursuant to Section 23 of the *Native Vegetation Act 1991* which said agreement seeks to ensure that the Land is dedicated to the conservation of native vegetation and native fauna located on the Land.
- D. In the event the Council grants development plan consent, land division consent and development approval to Development Application numbered 473/D40/2007, upon the deposit of the Plan of Division, Allotment 1, 2 and 3 shall be created.
- E. Upon the creation of Allotment 1, 2 and 3, the Council and the Owner wish to ensure that any future development on Allotment 1 and 2 is sensitively sited having regard to the Heritage Agreement and that the ownership of Allotment 3 is transferred to the Minister for Environment & Heritage.
- F. The Council and the Owner agree that the obligations under this deed are intended to be complied with by all occupiers and persons having enjoyment from time to time of the Land and that it is the Owner's responsibility to ensure that all such persons comply with the terms of this deed.
- G. Pursuant to section 57(2) of the Act the Owner has agreed with the Council to enter into this deed relating to the development, management, preservation or conservation of the Land.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this deed:

**Act** means the *Development Act 1993* (SA).

**Allotment 1** means proposed allotment 1 as depicted on the Plan of Division.

**Allotment 2** means proposed allotment 2 as depicted on the Plan of Division.

**Allotment 3** means proposed allotment 3 as depicted on the Plan of Division.

**Building Envelope** means a building envelope that is depicted upon Allotment 1 and 2 that is contained within the Building Envelope Plan.

**Building Envelope Plan** means the plan contained in Schedule 2 to this deed.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in South Australia.

**Heritage Agreement** means the Heritage Agreement No 8486583 pursuant to Section 23 of the *Native Vegetation Act 1991* including the deed of variation dated 26 May 2009 that is currently registered against the Land and is contained in Schedule 3 to this deed.

**Heritage Agreement Exclusion Area** means the area on the Land that is not subject to the Heritage Agreement as depicted in Schedule 4 to this deed.

**Land** means the whole of the land comprised in Certificates of Title Volume 5606 Folio 842 and Volume 5079 Folio 272 and includes any part or parts of it.

**Native Vegetation** means a plant or plants of a species indigenous to South Australia as defined in section 3 (1) of the *Native Vegetation Act 1991* and that is indigenous to the Mount Lofty Ranges or Adelaide Hills.

**Plan of Division** means the division of the Land by way of a boundary realignment and the creation of an additional allotment as described in Development Application numbered 473/D40/2007 as depicted in Schedule 1 to this deed.

**Soakage Area** means the area described as soakage area on the Building Envelope Plan.

**Waste Control System** means any system installed on the Land that provides for the collection, treatment or disposal of human waste.

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;

- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to the Owner includes each person registered or entitled to be registered as a proprietor of an estate in fee simple of the Land;
- 1.2.6 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.8 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.9 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.10 a provision is not construed against a party only because that party drafted it;
- 1.2.11 an unenforceable provision or part of a provision may be severed, and the remainder of this deed continues in force, unless this would materially change the intended effect of this deed;
- 1.2.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.13 an expression defined in the Act has the meaning given by the Act at the date of this deed.

### 1.3 **Background**

The Background forms part of this deed and is correct at the date of this deed.

### 1.4 **Legislation**

The requirements of this deed are to be construed as additional to the requirements of the Act and any other legislation affecting the Land and the Heritage Agreement No 8486583 including the deed of variation dated 26 May 2009 currently registered against the Land pursuant to Section 23 of the *Native Vegetation Act 1991*.

## 2. **OWNER'S OBLIGATIONS**

- 2.1 The Owner shall provide a copy of this deed to any person commencing occupation of the Land before commencement of that occupation and shall, within 28 days of the transfer of the Land, notify the Council that the Land is to be transferred together with the name and address of the transferee.

## **Vegetation**

### 2.2 The Owner must:

- 2.2.1 protect and retain all Native Vegetation that is located on the Land in order to preserve and maintain the general woodland character of the Land with the exception of any Native Vegetation that is:
  - 2.2.1.1 located within the Building Envelope, driveway area and Soakage Area shown on the Building Envelope Plan;
  - 2.2.1.2 required to be removed in compliance with CFS requirements for the construction of, or alteration to, an approved dwelling;
  - 2.2.1.3 required to be removed to create pathway areas around an approved dwelling and from such approved dwelling to the boundary of the Heritage Agreement Exclusion Area;
- 2.2.2 ensure that any vegetation that is planted on the Land is local native endemic vegetation with the exception of vegetation planted within the Building Envelope (for example a vegetable garden and/or ornamental garden);
- 2.2.4 preserve and maintain the general woodland character of the Land.

## **Building Work**

### 2.3 The Owner shall not cause suffer or permit:

- 2.3.1 any building work to be undertaken on the Land outside the Building Envelope with the exception of water storage tanks;
- 2.3.2 more than one (1) dwelling and one (1) outbuilding to be constructed on Allotment 1 or Allotment 2;
- 2.3.3 the commencement of the construction of a dwelling on Allotment 1 or Allotment 2 without having first obtained an approval for a Waste Control System for that dwelling on Allotment 1 or Allotment 2 from the relevant authority;
- 2.3.4 any fencing to be erected on the Land other than post and wire or meshtype fencing subject to clause 2.4.2 of this deed.

### 2.4 The Owner shall ensure that:

- 2.4.1 any building materials used for any building work undertaken on the Land must blend with the natural environment, to the satisfaction of the Council;
- 2.4.2 the perimeter of the Heritage Agreement Exclusion Area is fenced to a standard to prevent the free access of animals to the area of land outside the Heritage Exclusion Area.

- 2.4.2.1 subject to clause 2.4.2 and clause 2.4.2.2, fencing is restricted to the common boundary of Allotments 1 and 2 within the Heritage Agreement Exclusion Area;
- 2.4.2.2 if it is necessary to prevent access to the Land from the adjacent Mark Oliphant Conservation Park a fence may be constructed that is sufficient to deter pedestrian access to the Land from the adjacent Mark Oliphant Conservation Park but such fencing shall be of such construction and material to enable native animals to move freely and safely between the Mark Oliphant Conservation Park and the Land;
- 2.4.2.3 the fire access gate as shown on the Building Envelope Plan must remain unlocked at all times.
- 2.4.3 any Waste Control System that is established on the Land shall comprise an effluent tank and effluent disposal area which shall be located within the area shown as the Soakage Area on the Building Envelope Plan.

#### **Land Use**

- 2.5 The Owner shall not cause suffer or permit:
  - 2.5.1 the keeping of horses on the Land at any time;
  - 2.5.2 the Land being used for intensive animal keeping at any time;
  - 2.5.3 the keeping of any dogs or cats on Allotments 1 and 2 due to the serious threat they pose to the critically endangered Southern Brown Bandicoot (*Isodon obesulus obesulus*).

#### **Further division of the Land**

- 2.6 The Owner shall not cause, suffer or permit the further division of the Land at any time.

#### **Transfer of Allotment 3**

- 2.7 The Owner shall within twelve (12) months of the Registrar-General issuing a certificate of title for Allotment 3, transfer the whole of Allotment 3 to the Minister for Environment & Heritage.

### **3. RESTRICTION ON LEASING AND OTHER DEALINGS**

The Owner must not grant any lease licence easement or other right under such terms which may give any person the right to possession or control of or entry on to the Land which right would enable such person to breach any of the obligations imposed on the Owner by this deed unless such grant:

- 3.1 is expressed in writing; and
- 3.2 contains as an essential term a covenant by the grantee not to do or omit to do (or suffer or permit any other person to do or omit to do) any act matter

or thing which would constitute a breach by the Owner of the Owner's obligations under this deed.

#### **4. COUNCIL'S POWERS OF ENTRY**

- 4.1 The Council and any employee or agent of the Council authorised by the Council may at any reasonable time enter the Land for the purpose of:
  - 4.1.1 inspecting the Land and any building or structure on the Land;
  - 4.1.2 exercising any other powers of the Council under this deed or pursuant to law.
- 4.2 If the Owner is in breach of any provision of this deed, the Council may, by notice served on the Owner, specify the nature of the breach and require the Owner to remedy the breach within such time as may be nominated by the Council in the notice (being at least 28 days from the date of service of the notice).
- 4.3 If the Owner fails so to remedy the breach, the Council or its employees or agents may carry out the requirements of the notice and in doing so may enter and perform any necessary works upon the Land and recover any costs thereby incurred from the Owner.
- 4.4 The Owner has a right of response to a notice referred to in clause 4.2 within 28 days from the date of service of the said notice. If following this period the matter remains in dispute, a process of independent mediation should be instituted with a requirement for a resolution within 90 days. If as a result of mediation, the breach remains unremedied, the Council may exercise the powers specified under clause 4.3.
- 4.5 If in a notice referred to in clause 4.2 the Council requires the removal of a building or structure from the Land, the Council and its servants or agents are authorised and empowered by the Owner to enter and remove the building or structure from the Land and to dispose of it in any manner determined by the Council provided that if such building or structure has any monetary value then the Council must use its best endeavours to realise that monetary value and must after the disposal account to the Owner and pay to the Owner the realised value less all expenses incurred.
- 4.6 The Council, by formal resolution of the Council, may delegate any of its powers under this deed to any person.

#### **5. NOTATION OF THIS DEED**

Each party must do and execute all acts documents and things necessary to ensure that as soon as possible after the execution of this deed by all necessary parties this deed is noted by the Registrar-General on the Certificate of Title for the Land pursuant to section 57(5) of the Act.

## 6. MISCELLANEOUS

### 6.1 Alteration

This deed may be altered only by a supplementary deed signed by the Council and the Owner

### 6.2 Entire agreement

This deed:

- 6.1.1 constitutes the entire agreement between the parties about its subject matter;
- 6.1.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

### 6.2 Waiver

A waiver of a provision of or right under this deed:

- 6.2.1 must be in writing signed by the party giving the waiver;
- 6.2.2 is effective only to the extent set out in the written waiver.

### 6.3 Exercise of power

- 6.3.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this deed is not a waiver of that power or right.
- 6.3.2 An exercise of a power or right under this deed does not preclude a further exercise of it or the exercise of another right or power.

### 6.4 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this deed, remains in force after the expiration or termination of this deed.

### 6.5 Governing law

- 6.5.1 This deed is governed by the law in South Australia.
- 6.5.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts in South Australia.

## 7. NOTICES

7.1 A notice, demand, agreement or communication under this deed (**Notice**) must be:

- 7.1.1 in writing, in English and signed by a person authorised by the sender; and

7.1.2 hand delivered or sent by pre paid post to the recipient's address as varied by any Notice given by the recipient to the sender, or affixed in a prominent position on the Land.

7.2 At the date of this deed, the address and facsimile number for Notices to the Owner are:

Nature Foundation SA Inc

32 Holden Street, HINDMARSH SA 5007

**Attention:** Mr J McHugh, Executive Officer

7.3 A Notice is deemed to be received:

7.3.1 if hand delivered or affixed in a prominent position on the Land, on delivery or affixing;

7.3.2 if sent by prepaid mail, two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);

However if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

7.4 If two or more persons comprise a party, Notice to one is effective Notice to all.

## 8. COSTS

The Owner must pay to the Council on demand the Council's costs and expenses (including legal costs and expenses) of preparing, stamping and noting this deed.

**EXECUTED** as a deed

**The common seal of Adelaide Hills Council** was affixed in the presence of:

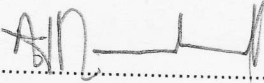
.....  
Signature of Mayor

.....  
Signature of Chief Executive Officer/City  
Manager/Town Clerk  
(Please delete as applicable)

.....  
Name of Mayor (print)

.....  
Name of Chief Executive Officer/City Manager/Town  
Clerk (print)

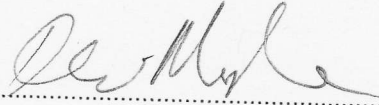
Signed by Nature Foundation SA Inc.  
in the presence of:



.....  
Signature of witness

ALEX NANKIVELL

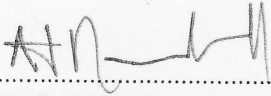
.....  
Name of witness (print)



.....  
(President)

The Owner certifies pursuant to section 57(4) of the Act that no other person has a legal interest in the Land.

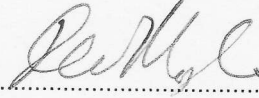
**Signed by Nature Foundation SA Inc.**  
in the presence of:



.....  
Signature of witness

ALEX NANKIVELL

.....  
Name of witness (print)



.....  
(President)

**SCHEDULE 1**

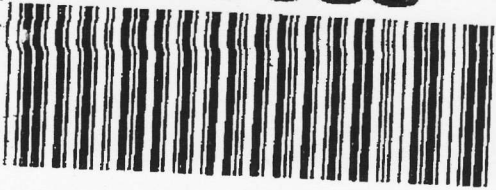


**SCHEDULE 2**



**SCHEDULE 3**

8486583



LANDS TITLES REGISTRATION OFFICE SOUTH AUSTRALIA

Series No.	Prefix
	AH

FORM APPROVED BY THE REGISTRAR-GENERAL

CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886

*Lesley J. Foran*

Solicitor/Licensed Land Broker/Applicant  
LESLEY J. FORAN REGISTERED CONVEYANCER

NOTES

- 1. This form may be used only when no panel form is suitable.

BELOW THIS LINE FOR OFFICE USE ONLY

Date - 8 MAY 1998	Time 15:05		
FEES			
R.G.O.	POSTAGE	ADVERT	NEW C.T.
NFP			-

**CROWN INSTRUMENT  
NO FEES PAYABLE**

EXAMINATION

CORRECTION	PASSED
	<i>[Signature]</i>

BELOW THIS LINE FOR AGENT USE ONLY

Lodged by: } Crown Solicitor's Office CSOL  
 Correction to: } 48 Flinders Street  
 ADELAIDE 5000 22

TITLES, CROWN LEASES, DECLARATIONS ETC. LOGGED WITH INSTRUMENT (TO BE FILLED IN BY PERSON LOGGING)

- CT 5079-272
  - CT 5386-818
  - 
  - 
  -
- Assessor *[Signature]*

DELIVERY INSTRUCTIONS (Agent to complete)  
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE UNDERMENTIONED AGENT(S)

ITEM CTCL REF.	AGENT CODE
CT 5079-272	CSOL
CT 5386-818	LTAB (52)

PLEASE ISSUE NEW CERTIFICATES OF TITLE AS FOLLOWS

- - 
  - 
  - 
  -
- NUM 96-1030-330201

REGISTERED ..... JUN 1998  
...../19

*Suresh Dhande pro*



REGISTRAR-GENERAL

MINISTER FOR ENVIRONMENT AND HERITAGE of Adelaide, 5000 in the State of South Australia ("the applicant") Hereby Applies pursuant to Section 23b(3) of the Native Vegetation Act 1991 to note the Agreement attached hereto made the 6<sup>th</sup> day of March 1998 BETWEEN ROGER GEOFFREY CUNDELL and PEGGY MARY CUNDELL of Ironbank Road, UPPER STURT 5156 in the State of South Australia, the registered proprietors of an estate in FEE SIMPLE ("the owner") and the Minister for Environment and Heritage ("the Minister") against the whole of the land comprised in Certificate of Title Register Book Volume 5079 Folio 272, more particularly defined as Area "A" in G.R.O. Plan G.P. 40/1998 ("the said plan") and against that portion of the land comprised in Certificate of Title Register Book Volume 5386 Folio 818, more particularly defined as Area "B" in G.R.O. Plan G.P. 40/1998 ("the said plan").

DATED

30<sup>th</sup>

day of

April

19 98

The Common Seal of :

MINISTER FOR ENVIRONMENT  
AND HERITAGE )

was hereunto affixed by  
direction of the Minister  
and in the presence of : )

*Neil All*





MEMORANDUM OF AGREEMENT made the 6<sup>th</sup> day of March 1998  
B E T W E E N : ~~MINISTER FOR THE ENVIRONMENT / HERITAGE AND ABORIGINAL~~  
~~AFFAIRS~~ (hereinafter called "the Minister") of the one part and ROGER  
GEOFFREY CUNDELL and PEGGY MARY CUNDELL of Ironbank Road Upper Sturt 5156  
in the State of South Australia (hereinafter called "the owner") of the  
other part.

RECITALS

- A. The owner is the proprietor of that piece of land containing 5.4 hectares being Allotment 202 in DP 34327 in the Hundred of NOARLUNGA, County of Adelaide and being the whole of the land comprised in Certificate of Title Register Book Volume 5079 Folio 272 and that piece of land containing 12.57 hectares being Allotment 207 in DP 45929 in the Hundred of Noarlunga, County of Adelaide and being the whole of the land comprised in Certificate of Title Register Book Volume 5386 Folio 818.
- B. The Minister considers that in respect of that piece of land containing 17.7 hectares, or thereabouts being portion of the land referred to in Recital A as is delineated as "A" and "B" in G.R.O. Plan G.P. 40/1998 a copy whereof is attached to this agreement should be preserved having regard to the effect of the subject land on the environment.

NOW IT IS AGREED as follows:

1. In this agreement, unless the contrary intention appears -

- (a) "native fauna" means an animal or animals of a species indigenous to South Australia:

"owner" means the person who has executed this agreement as proprietor of the subject land and includes a person to whom ownership of the land and the rights and liabilities under this agreement have passed:

"the subject land" means the land that is subject to this agreement;

- (b) terms defined in the Native Vegetation Act, 1991, have the meanings defined in that Act,

2. During the term of this agreement, the subject land is dedicated to the conservation of native vegetation and native fauna on the land and, subject to this agreement, shall not be used in a manner inconsistent with that dedication.
  
3. The owner shall not, without the written consent of the Minister, undertake or permit on the subject land -
  - (a) the clearance of native vegetation;
  - (b) the planting of vegetation, whether native or exotic;
  - (c) the construction of a building or other structure;
  - (d) the grazing of stock;
  - (e) any other activity that, in the opinion of the Minister, is likely to damage, injure or endanger the native vegetation or native fauna on the subject land.
  
4. The owner shall comply with the National Parks and Wildlife Act, 1972, the Native Vegetation Act, 1991, the Animal and Plant Control Act, 1986, the Soil Conservation and Landcare Act, 1989, and all other Acts and statutory instruments from time to time in force in relation to the subject land.
  
5. The owner shall give written notice to the Minister of -
  - (a)
    - (i) any damage to, or destruction of, native vegetation or native fauna on the subject land or the removal of any native vegetation or native fauna from the subject land;
    - (ii) any activity on the subject land that is likely, in the owner's opinion, to result in damage, destruction or removal referred to in sub-paragraph (i);
  - (b) any change in ownership of the subject land,

as soon as practicable after first becoming aware of the matter to which the notice relates.
  
6. (a). Subject to this clause, the owner is released from the payment of -

- (i) rates and taxes (other than council rates) in respect of the subject land during the term of this agreement;
- (ii) council rates in respect of the subject land in the second rating year next following the commencement of this agreement and thereafter until the termination of the agreement.

(b) The owner is not released from the payment of rates and taxes in relation to land that, in the opinion of the Minister after receiving advice from the Native Vegetation Council -

- (i) is used for primary production or for any other commercial purpose;

or

- (ii) comprises a dwelling and curtilage.

7. (a) The Minister may, at any time and at the Minister's expense -

- (i) construct or replace fences on the boundaries, or through any part of, the subject land, to the standard, or value of that fence described in schedule 1 attached to this agreement.

and

- (ii) perform on those fences major repair work required as the result of damage by fire to the standard, or value, of the fences described in schedule 1 attached to this agreement.

(b) The owner shall, at the owner's expense and to the satisfaction of the Minister, perform all other necessary maintenance and repair work on all fences (whether constructed by the Minister or not) on the boundaries or on any other part of the subject land.

8. The Minister and any employee or agent of the Minister authorized by the Minister may, at any reasonable time -

- (a) enter the subject land for the purpose of -
  - (i) constructing any fence on the land;
  - (ii) inspecting the land or any fence on the land;
  - (iii) exercising any other powers of the Minister under this agreement;
- (b) obtain access to the subject land across land of the owner for the purposes referred to in paragraph (a).

- 9. If the owner is in breach of this agreement, the Minister may, by notice in writing served on the owner, require the owner to remedy the breach and, if the owner fails to do so, the aggregate value of the rates and taxes from payment of which the owner (and every predecessor in title of the owner) has been relieved by virtue of this agreement must be paid by the owner to the appropriate rating or taxing authority.
- 10. The Minister may delegate any of the Minister's powers under this agreement to any person.
- 11. This agreement may not be varied except in writing signed by the parties.
- 12. An act or omission based on a genuine mistake as to the boundaries of the subject land shall not constitute a breach of this agreement.
- 13. This agreement remains in force until terminated by the parties.
- 14. Notice shall, for the purpose of this agreement, be properly served on the owner if it is -
  - (a) posted to the owner at the owner's last address known to the Minister;
  - or
  - (b) fixed in a prominent position on the subject land.

The Common Seal of :

MINISTER FOR THE ENVIRONMENT AND  
HERITAGE AND ABORIGINAL AFFAIRS

was hereunto affixed by  
direction of the Minister  
and in the presence of :

*Neil Alls*



SIGNED by the Owner :

*R. G. Cundell*

ROGER GEOFFREY CUNDELL

and

*P. M. Cundell*

PEGGY MARY CUNDELL

in the presence of:

*David Sawing*

(Witness)

SCHEDULE 1  
STANDARD HERITAGE FENCE SPECIFICATION

6 PLAIN

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*PURPOSE OF FENCE*

The standard fence specification has been approved for the purpose of the construction of stock proof fencing along specified boundaries of Heritage Agreement areas.

*FENCE SPECIFICATION*

*Posts:*

- Treated pine posts (cambio) [1.8m X 75-100mm], 20 metres minimum apart, 1.1m out of the ground.
- Distance between posts can be altered to suit conditions (min 18m)
- 1.56m star droppers can be substituted for posts in limestone. In this case posts to be 80m apart with three star droppers equally spaced between

*Spacers:*

- Two or three spacers equally spaced between each pair of posts depending on conditions.
- Spacers may be either:
  - galvanised pressed steel
  - poly droppers

*Strainer assemblies:*

- Box assembly made of treated pine posts (cambio) [2.4m X 150-200mm] with treated pine post rail (cambio) [3.0m X 100-125mm] and a diagonal stay of steel rod or high tensile wire.
- Wherever possible box assemblies shall bisect the fence angle.
- Strains should be as long as possible, up to 1500m.

*Wire:*

- The bottom wire 150mm above the ground, two bottom wires 150mm apart, four top wires 175mm apart. Total height 1000mm (approx).
- Height and distances between wires may be varied subject to mutual agreement.
- The wires shall be 2.5mm high tensile wire (eg "tyeasy").
- All wires shall be properly secured to spacers with galvanised 2.5mm tie wire or clips.
- If the fence is located within 50km of the coast all wires shall be heavily galvanised.
- Wires shall be stapled to posts with galvanised 50mm barbed fence staples.
- All wires to be strained to manufacturer's specifications. (1.8kN for "tyeasy").

*Gates:*

- Gates at agreed locations shall be 3.6 metres wide standard field gates (galvanised with a weldmesh panel).

## DEED OF VARIATION OF HERITAGE AGREEMENT

THIS DEED is made on the 26<sup>th</sup> day of May 2009

### BETWEEN:

**MINISTER FOR ENVIRONMENT AND CONSERVATION** a body corporate pursuant to the *Administrative Arrangements Act 1994* (SA) of 91-97 Grenfell Street, Adelaide, South Australia 5000 ("the **Minister**");

and

**NATURE FOUNDATION SA INC.**, of PO Box 448 Hindmarsh 5007 in the State of South Australia (the "**Owner**").

### BACKGROUND:

- A. By Memorandum of Agreement dated 6<sup>th</sup> March 1998 between the then MINISTER FOR ENVIRONMENT AND HERITAGE and Roger Geoffrey Cundell and Peggy Mary Cundell (the "**Original Agreement**") approximately 17.7 hectares of land contained within portion of Allotment 202 in DP 34327 and portion of what was then described as Allotment 207 in DP 45929 in the Hundred of Noarlunga, as defined as Areas "A" and "B" in GRO Plan GP 40/1998 (the "**Subject Land**") was dedicated to the conservation of native vegetation and native fauna.
- B. The Owner is the successor in title in respect of the Subject Land and is bound by the Original Agreement pursuant to the provisions of the *Native Vegetation Act 1991* (SA) (the "**Act**").
- C. The Owner has requested that the Original Agreement be varied as to its terms and conditions so that an area is excluded from the Original Agreement.
- D. In accordance with the Act the Minister has consulted with and obtained the approval of the Native Vegetation Council (the "**Council**") a body established by the Act.

### THE PARTIES AGREE AS FOLLOWS:

1. In this Deed, unless the contrary intention appears, words or phrases that are defined in the Original Agreement have the meanings ascribed to them in the Original Agreement.

[Redacted signature area]

2. The parties acknowledge and declare that the matters referred to in the Background of this Deed are true and accurate in every particular and that the Background will form part of this Deed.
3. The Original Agreement is varied so that an area is withdrawn from the Subject Land by mutual consent and for no other consideration whatsoever with effect on and from the date of the Deed.
4. The Subject Land is defined as Areas "A", "B" and "C" in G.R.O. Plan GP 102/2006, being approximately 4.7 hectares in area and Area "B" on GRO Plan 40/1998 being 12.46 hectares in area (copies of which plans have been deposited in the General Registry Office at the Lands Titles Office).
5. The Minister and the Owner acknowledge and agree that at the date of this Deed there are no outstanding or unremedied breaches of the Original Agreement relating to the Subject Land.

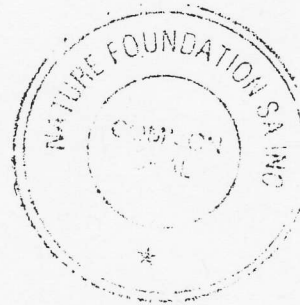
EXECUTED BY THE PARTIES AS A DEED

The **COMMON SEAL** of the )  
**MINISTER FOR ENVIRONMENT AND** )  
**CONSERVATION** was hereunto affixed )  
with the authority of the Minister and in )  
the presence of: )



.....  
Witness  
Print Full Name: *Gay Henderson*

The **COMMON SEAL** of **NATURE** )  
**FOUNDATION SA INC.** was hereunto )  
affixed in the presence of: )



.....  
*[Signature]*  
(President)

.....  
*[Signature]*  
(Member)

# SUPPLEMENTARY DEED

ADELAIDE HILLS COUNCIL

NATURE FOUNDATION SA INC

**Norman  
Waterhouse**  
LAWYERS

Level 15, 45 Pirie Street  
Adelaide SA 5000  
Telephone + 61 8 8210 1200  
Fax + 61 8 8210 1234  
[www.normans.com.au](http://www.normans.com.au)

DATE 15 July 2011

**PARTIES**

**Adelaide Hills Council** of 28 Onkaparinga Valley Road, WOODSIDE SA 5244 (**Council**)

**Nature Foundation SA Inc** of 32 Holden Street, Hindmarsh SA 5007 (**Owner**)

-----  
 Revenue SA -- Stamp Duty  
 62119 040 309 865  
 Doc Code EX  
 Rev/NotID 125506589  
 Consid/Val/Sec\$ 0.00  
 SA Proportion \$ 0.00  
 Stamp Duty \$ 0.00  
 LTO Fees \$ 0.00  
 Interest \$ 0.00  
 Per/NotID \$ 0.00  
 Date 18/07/2011  
 Copy 1 of 2  
 ----- End of Receipt -----

**BACKGROUND**

- A. The Council and the Owner entered into the Land Management Agreement pursuant to section 57 of the Act.
- B. The Owner is the registered proprietor of the Land.
- C. The Land Management Agreement operated to ensure, amongst other things, that any future development on the Land is sensitively sited having regard to the Heritage Agreement.
- D. The Council and the Owner have agreed to amend the Land Management Agreement so as to permit building work to be undertaken outside the Original Building Envelope Plan, to further restrict the type of vegetation that may be planted on the Land, to further restrict the keeping of domestic animals on the Land and to require the Land to be fenced in certain specific circumstances only.
- E. The Owner acknowledges that they must comply with the terms of the Heritage Agreement at all times and, to the extent of any inconsistency, the terms of the Heritage Agreement will prevail over the terms of this agreement.
- F. The Owner acknowledges that the terms of the Land Management Agreement continue to apply to the Land except where varied by the terms of this agreement.
- G. The Council and the Owner have agreed to amend the Land Management Agreement and to apply to the Registrar-General to enter a note to amend the Land Management Agreement against the instrument of title to the Land pursuant to section 57(8) of the Act.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this deed:

**Act** means the *Development Act 1993* (SA).

**Amended Building Envelope Plan** means the building envelope plan contained in Schedule 1 to this agreement.

**Original Building Envelope Plan** means the building envelope plan contained in Schedule 2 to this agreement.

**Declared Plant** means any plant that is listed in the Declared Plants of the Mount Lofty Ranges contained in the table contained in Schedule 3 to this agreement.

**Heritage Agreement** means the Heritage Agreement between the Owner and the Minister for Environment & Heritage being document number 8486583 currently registered against the certificates of title to the Land and includes any variations made to that agreement.

**Land** means the whole of the land comprised in Certificates of Title Certificate of Title Register Book Volume 6068 Folio 182 and Folio 6068 Folio 183 and any part or parts of it.

**Land Management Agreement** means the registered deed numbered 11281568 between the Council and the Owner in respect of the Land.

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to the Owner includes each person registered or entitled to be registered as a proprietor of an estate in fee simple of the Land;
- 1.2.6 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.8 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.9 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.10 a provision is not construed against a party only because that party drafted it;
- 1.2.11 an unenforceable provision or part of a provision may be severed, and the remainder of this deed continues in force, unless this would materially change the intended effect of this deed;
- 1.2.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;

1.2.13 an expression defined in the Act has the meaning given by the Act at the date of this deed.

### 1.3 **Background**

The Background forms part of this deed and is correct.

### 1.4 **Legislation**

The requirements of this deed are to be construed as additional to the requirements of the Act and any other legislation affecting the Land.

## 2. **AMENDMENT OF LAND MANAGEMENT AGREEMENT**

The Owner and the Council agree that:

2.1 the Land Management Agreement remains in force except as varied by this deed;

2.2 the Land Management Agreement is varied by:

2.2.1 clauses 2.2.1.1, 2.2.2, 2.3.1, 2.4.2.3 and 2.4.3 are amended by replacing the words "*Building Envelope*" and "*Building Envelope Plan*" with the words "*Amended Building Envelope Plan*";

2.2.2 clause 2.2.2 is varied by replacing the words "*local native endemic vegetation with the exception of vegetation planted within the Building Envelope (for example a vegetable garden and/or ornamental garden*" with the words "*not a Declared Plant*";

2.2.3 clause 2.4.2 is deleted and replaced with the following clause:

*"in the event poultry is kept on the Land, the poultry must be kept at all times in a fenced secure enclosure of a maximum size of 20 square metres to prevent the free access of poultry to the area of land outside the Heritage Exclusion Area"*

2.2.4 clause 2.5.3 is deleted and replaced with the following clause:

*"the keeping of any domestic animals on the Land (including but not limited to dogs, cats, goats, sheep, cattle, alpaca) with the exception of poultry which may be kept on the Land"*.

2.3 the Original Building Envelope Plan is substituted by the Amended Building Envelope Plan.

## 3. **APPLICATION TO REGISTRAR-GENERAL**

The Council must lodge an Application to the Registrar-General to enter a note of amendment against the instruments of title to the Land pursuant to section 57(8) of the Act.

## 4. **NOTATION OF THIS DEED**

Each party must do and execute all acts documents and things necessary to ensure that as soon as possible after the execution of this deed by all necessary parties this

deed is noted by the Registrar-General on the Certificates of Title for the Land pursuant to section 57(5) of the Act.

**5. MISCELLANEOUS**

**5.1 Alteration**

This deed may be altered only by a supplementary deed signed by each party.

**5.2 Entire agreement**

This deed:

- 5.2.1 constitutes the entire agreement between the parties about its subject matter;
- 5.2.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

**5.3 Governing law**

- 5.3.1 This deed is governed by the law in South Australia.
- 5.3.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts in South Australia.

**6. COSTS**

The Owner must pay to the Council on demand the Council's costs and expenses (including legal costs and expenses) of preparing, stamping and noting this deed.

**EXECUTED** as a deed

Executed for and on behalf of the  
**Adelaide Hills Council** by its duly  
authorised delegate in the presence of:



.....  
Signature of witness

**D.P. ATKINSON**

.....  
Name of witness (print)

*Deryn Patricia Atkinson*



.....  
Signature of authorised delegate

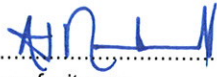
**Mr Marc Salver**

.....  
Name of authorised delegate (print)

**Director of Planning & Development Services**

.....  
Position of authorised delegate

**Signed by Nature Foundation SA Inc** in  
the presence of:

✓  .....  
Signature of witness

✓  .....  
Nature Foundation SA Inc

✓ ALEX NANKIVELL .....  
Name of witness (print)

The Owner certifies pursuant to section 57(4) of the Act that no other person has a legal interest in the Land.

✓   
Signature of witness

✓   
Nature Foundation SA Inc

✓ ALEX NANKIVELL  
Name of witness (print)

**SCHEDULE 1**



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**SCHEDULE 2**