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Sanctuary Estate Planning Agreement Deed of Variation

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

**Newcastle City Council
Landcom**

Date:

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Sanctuary Estate Planning Agreement Deed of Variation

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Sanctuary Estate Planning Agreement Deed of Variation

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

Parties

Newcastle City Council ABN 25 242 068 129 of 282 King Street, Newcastle NSW 2300
(Council)

and

Landcom ABN 79 268 260 688 of Level 2, 330 Church Street, Parramatta NSW 2150
(Developer)

Background

- A The Parties are Parties to the Planning Agreement.
- B Pursuant to clause 39 of the Planning Agreement, the Parties agree to modify the Planning Agreement in accordance with this Deed.

Operative provisions

1 Definitions & Interpretation

- 1.1 In this Deed the following definitions apply:
 - Deed** means this Deed of Variation and includes any schedules, annexures and appendices to this Deed.
 - Planning Agreement** means the Sanctuary Estate Planning Agreement pursuant to s93F of the *Environmental Planning and Assessment Act 1979* entered into between the Parties on 21 April 2011.
- 1.2 All other capitalised words used in this Deed have the meanings given to those words in the Planning Agreement.
- 1.3 Clauses 1.2, 30, 32 to 38 inclusive, and 41 of the Planning Agreement apply to this Deed, except that a reference in those clauses to *this Agreement* wherever occurring are to be read as references to *this Deed*.



2 Status of this Deed

- 2.1 This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.
- 2.2 This Deed is not a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when the Parties have executed one counterpart of this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to the other Party.

4 Warranties

- 4.1 The Parties warrant to each other that they:
 - 4.1.1 have full capacity to enter into this Deed, and
 - 4.1.2 are able to fully comply with their obligations under this Deed and the Planning Agreement as modified by this Deed.

5 Modification of Planning Agreement

- 5.1 On and from the date this Deed takes effect, the Planning Agreement is modified in the manner shown in the Schedule.

6 Explanatory Note

- 6.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 6.1 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.



Schedule

(Clause 5)

Clause 9.3

Omit "Except in relation to the Item C in Part 3 of Schedule 2, if", insert instead "if".

Clause 9.4

Omit the clause.

Clauses 16.3.1 and 16.3.2

Omit "16.1", insert instead "17.1".

Clause 16.6

Omit the clause, insert instead:

"16.6 The Parties agree that:

- 16.6.1 the Local Field and Court Based Facilities and Local Parks and Playgrounds, being items A and B1 of the Neighbourhood Centre Precinct Work, must be completed so as to enable an instrument of transfer of the land on which it is located to be given to the Council prior to the issuing of the first subdivision certificate for Stage 4 of the Modified Development,
- 16.6.2 the Neighbourhood Centre, being item C of the Neighbourhood Centre Precinct Work, must be completed so as to enable an instrument of transfer of the land on which it is located to be given to the Council prior to the issuing of the first subdivision certificate for Stage 10 of the Modified Development."

Schedule 2

Amend the following text appearing in Schedule 2 in accordance with the marking-up appearing on the text:

Part 2 - Dedication of land to the Council

C Neighbourhood Centre	Sheet 4 and Sheet 6	Refer Sheet 4 and Sheet 6 of the Map	Prior to the issuing of the first subdivision certificate for Stage 9 10 of the Modified Development	Deleted: 4
D1 Residual Open Space (Additional)	Sheet 4	Refer Sheet 4 of the Map	Prior to the issuing of the first subdivision certificate for Stage 10 9 of the Modified Development	Deleted: 4
D2 Residual Open Space (Additional)	Sheet 4	Refer Sheet 4 of the Map	Prior to the issuing of the first subdivision certificate for Stage 10 11 of the Modified Development	Deleted: 9

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E1 Aboriginal Heritage Conservation Area	Sheet 4	Refer Sheet 4 of the Map	Prior to the issuing of the first subdivision certificate for Stage 9 of the Modified Development but not before establishment of the E1 area in accordance with Section 4.0 of the Sanctuary Estate Overarching Aboriginal Cultural Heritage Management Plan.	Deleted: 4
G Defendable Zones	Sheet 4	Refer Sheet 4 of the Map	Not later than 4 months following the issuing of the first subdivision certificate for Stage 23 of the Modified Development	Deleted: Prior to

Part 3 - Works to be handed-over to the Council

B1 Local Parks & Playground	Sheet 3 and Sheet 6	Refer Sheets 3 and 6 of the Map	Refer clause 16.6.1	Deleted: 16.6
B3 Local Parks & Playground	Sheet 3	Refer Sheet 3 of the Map	Prior to the issuing of the first subdivision certificate for Stage 21 of the Modified Development	Deleted: 16
A Local Field and Court Based Facilities	Sheet 3 and Sheet 6	Refer Sheet 6. In accordance with existing concept layouts and quantity surveyor estimates as agreed with Council officers but subject to final detailed specifications agreed by the parties prior to the issuing of a construction certificate.	Refer clause 16.6.1	Deleted: 16.6

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C Neighbourhood Centre	Sheet 3 and Sheet 6	Refer Sheet 6. In accordance with existing concept layouts floorplans, elevations and quantity surveyor estimates as agreed with Council officers but subject to final detailed specifications agreed by the parties prior to the issuing of a construction certificate.	Refer clause 16.6.2	Deleted: 16.6
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Execution

Executed as a Deed

Dated: 11 Dec 12

Council:
Executed on behalf of the Council:

General Manager

Witness/Name/Position
TERRI FREEMAN
EXECUTIVE ASSISTANT TO THE GENERAL MANAGER

Developer:

Executed on behalf of the Developer by me, Sean O'Toole, Managing Director, as Delegate of Landcom and I hereby certify that I have no notice of revocation of such delegation:

Sean O'Toole

Witness/Name/Position
TERRI FREEMAN
EXECUTIVE ASSISTANT TO THE GENERAL MANAGER



Appendix

(Clause 6)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Deed

Under s25C(3) of the *Environmental Planning and Assessment Regulation 2000*

Parties

Newcastle City Council ABN 25 242 068 129 of 282 King Street, Newcastle NSW 2300
(Council)

and

Landcom ABN 79 268 260 688 of Level 2, 330 Church Street, Parramatta NSW 2150
(Developer)

Description of the Land to which the Draft Deed Applies

Land as defined in the Planning Agreement.

Description of Proposed Development

The Draft Deed relates to the carrying out of the Modified Development, as defined in the Planning Agreement.



Summary of Objectives, Nature and Effect of the Draft Deed

Objective of Draft Deed

The objective of the Draft Deed is to amend the Planning Agreement.

Nature of Draft Deed

The Draft Deed is a deed of variation to the Planning Agreement under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*.

Effect of the Draft Deed

The Draft Deed:

- corrects typographical errors in the Planning Agreement, and
- amends the timing for provision of certain works and dedication of land under the Planning Agreement.

Assessment of the Merits of the Draft Deed

The Planning Purposes Served by the Draft Deed

The Draft Deed:

- promotes and co-ordinates the orderly and economic use and development of land,
- provides land for public purposes,
- provides and co-ordinates community services and facilities,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Deed Promotes the Public Interest

The Draft Deed promotes the objects of the Act as set out in s5(a)(ii),(iv),(v) and (c).

For Planning Authorities:

Development Corporations - How the Draft Deed Promotes its Statutory Responsibilities

N/A



Other Public Authorities – How the Draft Deed Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Deed Promotes the Elements of the Council's Charter

The Draft Deed promotes the following elements of the Council's charter:

- *to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively*

This element is promoted by the Draft Deed ensuring that community facilities and land on which community facilities are located will be provided by the Developer at the appropriate time, having regard to the staging of the Development.

- *to keep the local community informed about its activities.*

This element is promoted by the public notification of the Draft Deed and advertising of the notification period by the Council, providing a means that allows the wider community to make submissions to the Council.

All Planning Authorities – Whether the Draft Deed Conforms with the Authority's Capital Works Program

The Draft Deed conforms with the Council's Capital Works Program. The proposed works are identified in Development Contributions Plan 1, 2005 and have been proposed for the Fletcher area for a number of years. The implementation of the Sanctuary Estate Planning Agreement Deed of Variation will not impact on Council's capital works program or the delivery of the proposed facilities.

All Planning Authorities – Whether the Draft Deed specifies that certain requirements must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate

The Draft Deed specifies that certain requirements must be complied with before the issuing of subdivision certificates under Part 4A of the Act.