

Deed of Variation

North Ryde M2 Site Planning Agreement

The Council of the City of Ryde

Landcom



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Parties

Name	The Council of the City of Ryde ABN 81 621 292 610
Short form name	Council
Notice details	1 Devlin Street, Ryde NSW 2112

Name	Landcom ABN 79 268 260 688
Short form name	Developer
Notice details	Level 14, 60 Station Street East, Parramatta NSW 2150

Background

- A The Council and the Developer are parties under the Planning Agreement.
- B The Developer has requested the Council has agreed to vary the maximum amount of credit that may be applied in accordance with clause 4.2(e) of the Planning Agreement to Development Lots 115 and 116.
- C The parties have agreed to vary the Planning Agreement in accordance with this Deed.

Agreed Terms

1 Definitions

1.1 Definitions

Meanings shall apply to capitalised terms used in this Deed as specified in this Deed unless the context otherwise requires:

Deed means this document and any and all schedules and annexures to it.

Land means Lots 114, 115, 116 and 117 in Deposited Plan 1224238.

Planning Agreement means the planning agreement dated 20 October 2016 between the Council and the Developer, registered number AM194995.

1.2 Transaction Document Definitions

Words used in this Deed but not separately defined in this Deed, have the same meaning as used or defined in the Planning Agreement.

2 Variation

2.1 Agreement to vary

The parties agree that clause 4.2(f)(iii) of the Planning Agreement is varied on and from the date of this Deed by deleting that clause and replacing it with the following:

“(iii) Development Lots 115 and 116:

- (A) Development Lot 115 - \$4,250,000.00 indexed in accordance with movements in the CPI from the date of this Deed to the date the amount is applied to reduce S94 or S94A Equivalent Contributions; and
- (B) Development Lot 116 - \$4,250,000.00 indexed in accordance with movements in the CPI from the date of this Deed to the date the amount is applied to reduce S94 or S94A Equivalent Contributions.”

2.2 Contract terms

By executing this Deed the parties agree to be bound by its terms.

2.3 Registration

The parties agree that this Deed is to be registered against the title to the Land, in accordance with the provisions of clauses 7 and 8 and Schedules 8 and 9 of the Planning Agreement as if those provisions were set out in full in this Deed.

3 Miscellaneous

3.1 Alterations

This Deed may be altered only in writing signed by each party.

3.2 Approvals and consents

Except where this Deed expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Deed.

3.3 Assignment

A party may only assign this Deed or a right under this Deed with the prior written consent of each other party.

3.4 Costs

The Developer must pay the Council's costs of negotiating, preparing, executing and registering this Deed.

3.5 Stamp duty

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this Deed or any transaction contemplated by this Deed, must be paid by the Developer.

3.6 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one document.

3.7 Entire agreement

This Deed constitutes the entire Deed between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

3.8 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Deed and any transaction contemplated by it.

3.9 Severability

A term or part of a term of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining terms or parts of the term of this Deed continue in force.

3.10 Relationship

Except where this Deed expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

3.11 Governing law and jurisdiction

This Deed is governed by the law of the State of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of New South Wales.

3.12 Explanatory Note

- (a) Annexure A contains the Explanatory Note relating to this Deed and as required by clause 205 of the *Environmental Planning and Assessment Regulation 2021*.
- (b) The parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

4 GST

4.1 Amounts exclusive of GST

The parties acknowledge and agree that all amounts payable pursuant to this Deed are exclusive of GST.

4.2 Tax invoice to be provided

The supplier of a supply under this Deed must give the recipient of that supply a tax invoice for any taxable supply for that supply not later than the next day after that supply is made.

Signing page

Executed as a deed on _____ 2022

Executed for and on behalf of **Council of the City of Ryde**
by its authorised delegate pursuant to Section 377 of the
Local Government Act 1993 in the presence of:

Signature of witness

Signature of authorised delegate

Name of witness

Name and position of authorised delegate

Signed, sealed and delivered for and on behalf of **Landcom** by its attorneys jointly under power of attorney Book 4794 No 700 dated 28 January 2022. By signing this document, each attorney certifies that they have no notice of revocation of such powers and authorities.

Signed in the presence of:

Signature of witness

Signature of attorney

Name of witness

Name of attorney

Address of witness

Position of attorney

Signed in the presence of:

Signature of witness

Signature of attorney

Name of witness

Name of attorney

Address of witness

Position of attorney

Annexure A Explanatory Note

Explanatory Note

Environmental Planning and Assessment Regulation 2021

(Clause 205)

Draft Deed of Variation to North Ryde M2 Site Planning Agreement

This is an Explanatory Note under clause 205 of the *Environmental Planning and Assessment Regulation 2021* relating to a proposed variation of the planning agreement entered into on 16 October 2016 between the parties set out below (**Planning Agreement**).

1 Parties

The parties to the Planning Agreement and the draft Deed of Variation are:

- (a) The Council of the City of Ryde (**Council**); and
- (b) Landcom (**Developer**).

2 Description of the Land to which the Draft Deed Applies

The Planning Agreement and the draft Deed apply to Lots 114, 115, 116 and 117 in Deposited Plan 1224238. (**Land**).

3 Description of the Development to which the Draft Deed Applies

The Planning Agreement and the draft Deed apply to development of the Land in accordance with Development Consent SSD5093, as modified from time to time, approving a concept proposal for subdivision into 12 development lots, 5 public open space lots and 2 public road lots, infrastructure, civil works and landscaping.

4 Summary of Objectives, Nature and Effect of the Draft Deed

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

The draft Deed is a deed of variation of the Planning Agreement under clause 205 of the *Environmental Planning and Assessment Regulation 2021*.

The Planning Agreement requires the dedication of land and the provision of material public benefits in favour of Council. Under the Planning Agreement, Council agreed to apply a credit towards development contributions payable under section 7.11 or section 7.12 of the *Environmental Planning and Assessment Act 1979* to a maximum amount of \$26,284,732.00. The Planning Agreement further provided that a maximum amount of credit could be applied for each development lot, including a maximum credit of \$8.5 million (indexed in accordance with movements in the CPI from the date of the Planning Agreement to the date the credit is applied) for

development lots 115 and 116 (now Lots 115 and 116 DP 1224238). The draft Deed will increase the maximum credit to:

- (a) \$4,250,000.00 (indexed in accordance with movements in the CPI from the date of the Planning Agreement to the date the credit is applied) for future development on Lot 115 DP 1224238; and
- (b) \$4,250,000.00 (indexed in accordance with movements in the CPI from the date of the Planning Agreement to the date the credit is applied) for future development on Lot 116 DP 1224238.

Under the Planning Agreement, the maximum amount able to be claimed for development on Lot 117 DP 1224238 is “the remainder” of the total credit amount. The proposed variation may therefore have the effect of reducing the maximum credit able to be claimed for future development on Lot 117 DP 1224238.

5 Assessment of the Merits of the Draft Deed and Impacts on the Public

Notwithstanding the proposed increase in maximum credit available for Lots 115 and 116, the proposed variation will not change the total value of contributions or credits available under the original Planning Agreement.

The proposed variation will not have any negative impact on the public benefits to be delivered under the Planning Agreement.