

Deed of Variation of Planning Agreement – Edmondson Park South

Campbelltown City Council

Landcom (t/a UrbanGrowth NSW)

Dahua Group Sydney Project 1 Pty Ltd

MinterEllison

L A W Y E R S

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Deed of Variation of Planning Agreement

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Date 13 OCTOBER 2017

Parties

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Representative General Manager

Name **Landcom (t/a UrbanGrowth NSW)**
ABN 79 268 260 688
Address Level 14, 60 Station Street, Parramatta NSW 2150
Telephone 9841 8600
Facsimile 9841 8688
Email pdrivas@urbangrowth.nsw.gov.au
Representative Peter Drivas

Name **Dahua Group Sydney Project 1 Pty Limited**
ABN 91 606 390 032
Address Suite 2, Level 20, 201 217 Elizabeth Street, Sydney, NSW 2000
Telephone 02 9267 7788
Facsimile 02 9286 3399
Email johnhe@dahuaaustralia.com.au
Representative John He, Legal Affairs Officer

Background

- A. Landcom was established as a corporation under s5(1) of the *Landcom Corporation Act 2001* (NSW) with the corporate name of Landcom.
- B. Landcom trades under the name of *UrbanGrowth NSW*.
- C. UrbanGrowth NSW was, at the time of entering into the VPA, the owner of the Original VPA Land.
- D. UrbanGrowth NSW lodged with the Minister the Concept Plan Application relating to the Development.
- E. Approval to the Concept Plan Application was granted on 18 August 2011.
- F. UrbanGrowth NSW agreed to make the Original Development Contributions in connection with the carrying out of the Development in accordance with the VPA.
- G. On 5 November 2015, UrbanGrowth NSW entered into a Put and Call Option with Dahua to sell the Subject Land to Dahua in two tranches.
- H. On 5 May 2016, Dahua exercised its option to acquire the first tranche of the Subject Land pursuant to the Put and Call Option.
- I. Dahua will become the owner of the balance of the Subject Land pursuant to the Put and Call Option Deed.
- J. The VPA (as amended by this document) will continue to apply to the Subject Land.
- K. UrbanGrowth NSW proposes to retain the Residue Land.
- L. UrbanGrowth NSW will enter into the New VPA with the Council in respect of the Residue Land.
- M. The Original Development Contributions set out in the VPA will be delivered by Dahua in accordance with the VPA (as amended by this document) and by UrbanGrowth NSW in accordance with the New VPA.
- N. The parties agree to vary the VPA, in relation to the Original VPA Land and the responsibility for the delivery of the Original Development Contributions, on the terms set out in this document.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

Council means Campbelltown City Council of Civic Centre, cnr Queen and Broughton Sts, Campbelltown NSW 2560.

Dahua means Dahua Group Sydney Project 1 Pty Limited ACN 606 390 032 of Suite 2, Level 20, 201-217 Elizabeth Street, Sydney, NSW 2000.

LPI means the Land and Property Information or its successors.

New VPA means the new voluntary planning agreement between UrbanGrowth NSW and the Council which will apply to the Development and the Residue Land.

Original Development Contributions means the Development Contributions as defined by the VPA prior to the amendments the subject of this document.

Original VPA Land means land comprised within folio identifiers 101/1200781, 102/1200781, 103/1200781, 104/1200781, 105/1200781, 106/1200781, 107/1200781, 109/1200781, 110/1200781, 111/1200781, 112/1218190, 113/1218190, 114/1218190 and 115/1218190 (being land that was, prior to its subdivision, described as Lot 2 in DP 1144667, Lot 1 in DP 831149, Lot 1 in DP 831148 and Lot 3 in DP 246213).

Residue Land means part of the Original VPA Land comprised within folio identifiers 2201/1216225, 1137/1175991, 1516/1175995.

Subject Land means part of the Original VPA Land comprised within folio identifiers 101/1200781, 102/1200781, 103/1200781, 104/1200781, 105/1200781, 107/1200781, 111/1200781, 113/1218190 and 115/1218190.

UrbanGrowth NSW means Landcom (t/a UrbanGrowth NSW) of Level 14, 60 Station Street, Parramatta NSW 2150.

VPA means the document titled "Edmondson Park South – Planning Agreement" dated 6 July 2015 in relation to UrbanGrowth NSW's proposed Development on the Land registered AK494633.

VPA Novation means a deed of novation generally in accordance with Schedule 3 of this document.

1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) any term capitalised in this document which is not defined in clause 1.1 has the meaning given to that term in the VPA;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the *singular* includes the plural and conversely;
- (d) a *gender* includes all genders;
- (e) where a *word* or *phrase* is defined, its other grammatical forms have a corresponding meaning;

- (f) a reference to any *party* to this agreement or any other agreement or document includes the party's successors and substitutes or assigns;
- (g) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (h) *clause* or *schedule* means a clause of or a schedule to this document;
- (i) a reference to any *agreement* or *document* is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this document;
- (j) a reference to any *legislation* or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (k) a reference to a *right* or *obligation* of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (l) unless stated otherwise, *one provision* does not limit the effect of another; and
- (m) a reference to *conduct* includes, without limitation, any omission, statement or undertaking, whether or not in writing.

1.3 Inconsistency

If there is any inconsistency between the terms and conditions of the VPA and the terms and conditions of this document, this document will prevail to the extent of any inconsistency.

1.4 Agreement is supplementary

- (a) This document is supplementary to the VPA and the parties agree that the terms of the VPA remain unchanged, except as expressly provided in this document.
- (b) Except as otherwise provided in this document, the terms and conditions of the VPA are expressly ratified and confirmed.

2. Operation of this document

- (a) This document operates on and from the date on which it is executed by all parties in accordance with clause 25C(1) of the Regulation.
- (b) The party who executes this document last is to insert the date that the party executed this document on the front page, and provide a copy of the fully executed and dated document to the other party.

3. Execution of this document and the VPA Novation

- (a) The parties agree and acknowledge that they will use reasonable endeavours to execute this document and the VPA Novation simultaneously and by no later than two (2) months prior to the date on which Dahua proposes to become the registered proprietor of the balance of the Subject Land.
- (b) UrbanGrowth NSW is to provide written notice to the Council of the date on which Dahua proposes to become the registered proprietor of the balance of the Subject Land at least three (3) months prior to that date.

4. Variation

- (a) The parties acknowledge and agree that, on and from the date of operation of this document, the VPA is varied as follows:
 - (i) The definition of "Land" on page 11 of the VPA is deleted and replaced with "**Land** means the land comprised within folio identifiers 101/1200781, 102/1200781, 103/1200781, 104/1200781, 105/1200781, 107/1200781, 111/1200781, 113/1218190 and 115/1218190".
 - (ii) Clause 5.1 of the VPA is deleted in its entirety and replaced with the words "NOT USED".
 - (iii) Clauses 36.1, 36.2 and 36.3 of the VPA are deleted in their entirety and replaced with the words "NOT USED".
 - (iv) Schedule 3 of the VPA is deleted and replaced with Schedule 1 of this document.
 - (v) An additional clause 26.9 is inserted in the VPA as follows:
 - 26.9 The Developer must ensure that where the works specified in Item 13 of Schedule 3 are not completed by the time specified in column 4 for that item, that it provides Council with a Bank Guarantee for an amount equal to 150% of the amount specified in column 5 for that item, to be held by Council as security for Completion of those works by the Extended Completion Date.

5. Registration of document

- (a) Prior to the date on which the balance of the Subject Land is transferred to Dahua, UrbanGrowth NSW must:
 - (i) obtain any necessary consents required in order to register the VPA and this document on the title to the Subject Land;
 - (ii) lodge the VPA and this document for registration at LPI; and
 - (iii) following registration of the VPA and this document, notify Council of registration, enclosing a title search of the Subject Land confirming the registration.
- (b) UrbanGrowth NSW must pay the costs for registration of the VPA and this document at LPI.

6. Explanatory note relating to this document

- (a) Schedule 2 of this document contains the Explanatory Note relating to this document required by clause 25E of the Regulation.
- (b) Under clause 25E(7) of the Regulation, the parties agree that the Explanatory Note in Schedule 2 is not to be used to assist in construing this document.

7. General

7.1 No fetter

Nothing in this document will be construed as requiring Council to do anything that would cause it to be in breach of its obligations at law and, without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

7.2 Notices

Any notice given under this document may be given in any manner permitted by the VPA.

7.3 Severability

- (a) If a clause or a part of a clause of this document 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 clause or a part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

7.4 Assignment

The rights and obligations of each party under this document cannot be assigned, charged or otherwise dealt with, and no party shall attempt or purport to do so, without the prior written consent of the other parties.

7.5 Costs

- (a) UrbanGrowth NSW must pay Council's reasonable costs regarding the preparation, negotiation and execution of this document.
- (b) UrbanGrowth NSW and Dahua must each pay its own costs regarding the preparation, negotiation and execution of this document.

Schedule 1 – Development Contributions

Development Contributions

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Public purpose	Nature and Extent	Timing	Contribution Value
1. Bardia Park – Stage 2	Parks and Open Space	Carrying out of Work as described in the table under the heading '3. Bardia Park' in Part A of the ISDP (in part)	This Work has been completed.	\$253,333.00
2. Ingleburn Park	Parks and Open Space	Dedication of approximately 0.38ha of land on which the Work is located	Land to be dedicated as soon as practicable after the commencement of this Agreement.	\$143,556.00
		Carrying out of Work as described in the table under the heading '5. Ingleburn Park' in Part A of the ISDP	Work to be completed before the issuing of any Subdivision Certificate that creates a Final Lot immediately adjoining Ingleburn Park to the north or east of that Park.	\$280,000.00
3. Maxwell Creek South Oval	Parks and Open Space	Dedication of approximately 0.33ha of land on which the Work is located	Land to be dedicated as soon as practicable after the Work is completed under clause 18.2.	\$330,000.00
		Carrying out of Work as described in the table under the heading '6. Maxwell Creek South Oval' in Part A of the ISDP	Work to be completed at a time to be determined by the Developer subject to clause 26.	\$3,700,000.00

Column 1	Column 2	Column 3	Column 4	Column 5
		Dedication of approximately 4.8ha if land on which the Work is located	Land to be dedicated as soon as practicable after the Work is completed under clause 18.2.	\$1,700,000.00
4. Southern Corridor	Parks and Open Space	Carrying out of Work as described in the table under the heading '7. <i>Southern Corridor</i> ' in Part A of the ISDP	Work to be completed generally in accordance with the indicative timing for that Work specified in the ISDP and subject to clause 26.	\$2,200,000.00
		Dedication of approximately 3.5ha of land on which the Work is located	Land to be dedicated as soon as practicable after the Work is completed under clause 18.2.	\$0
5. Northern Corridor	Parks and Open Space	Carrying out of Work as described in the table under the heading '8. <i>Northern Corridor</i> ' in Part A of the ISDP	Work to be completed generally in accordance with the indicative timing for that Work specified in the ISDP and subject to clause 26.	\$900,000.00
		Dedication of approximately 1.95ha of land on which the Work is located	Land to be dedicated as soon as practicable after the Work is completed under clause 18.2.	\$880,000.00
6. Maxwell Creek South Water Quality Facility	Parks and Open Space and Drainage	Carrying out of Work as described in the table under the heading '9. <i>Maxwell Creek South Water Quality Facility</i> ' in Part A of the ISDP	Work to be completed generally in accordance with the indicative timing for that Work specified in the ISDP and subject to clause 26.	\$1,800,000.00
		Dedication of approximately 8.3ha of land on which the Work is located	Land to be dedicated as soon as practicable after the Work is completed under clause 18.2.	\$2,600,000.00

Column 1	Column 2	Column 3	Column 4	Column 5
7. MacDonald Road	Roads and Traffic Facilities	Carrying out of Work as described in the table under the heading '10. <i>Macdonald Road</i> ' in Part A of the ISDP	Work to be completed before the issuing of the Subdivision Certificate that creates the first Final Lot that fronts MacDonald Road	\$9,000,000.00
		Dedication of land on which the Work is located	Land to be dedicated on the registration of the plan of subdivision that creates the first Final Lot that fronts MacDonald Road.	\$1.00
8. Connecting Road to Ingleburn Gardens	Roads and Traffic Facilities	Carrying out of Work as described in the table under the heading '12. <i>Connecting Road to Ingleburn Gardens</i> ' in Part A of the ISDP	Work to be completed generally in accordance with the indicative timing for that Work specified in the ISDP and subject to clause 26.	\$100,000.00
		Dedication of land on which the Work is located	Land to be dedicated on or before the registration of the plan of subdivision that creates the first Final Lot immediately adjoining the Connecting Road to the west of the Road.	\$0
9. Roads fronting open space	Roads and Traffic Facilities	Carrying out of Work as described in the table under the heading '13. <i>Roads fronting open space</i> ' in Part A of the ISDP (in part) to the extent that the roads front the Land	Work in respect of an open space to be completed before the issuing of the Subdivision Certificate that creates the first Final Lot that fronts that open space.	\$765,000.00
		Dedication of land on which the Work is located	Land to be dedicated on or before the registration of the plan of subdivision that creates the first Final Lot that fronts the relevant open space.	\$0

Column 1	Column 2	Column 3	Column 4	Column 5
10. Culvert (South)	Roads and Drainage	Carrying out of Work as described in the table under the heading '14. Culvert (South)' in Part A of the ISDP	Work to be completed before the issuing of the Subdivision Certificate that creates the first Final Lot immediately adjoining the Culvert to the south of the Culvert.	\$900,000.00
		Dedication of land on which the Works are located	Land to be dedicated on or before the registration of the plan of subdivision that creates the first Final Lot immediately adjoining the Culvert to the south of the Culvert.	\$0
11. Culvert (East) on the north/south road near the primary school	Roads and Drainage	Carrying out of Work as described in the table under the heading '15. Culvert (East)' in Part A of the ISDP	Work to be completed before the issuing of the Subdivision Certificate that creates the first Final Lot immediately adjoining the Culvert to the east of the Culvert.	\$900,000.00
		Dedication of land on which the Work is located	Land to be dedicated on or before the registration of the plan of subdivision that creates the first Final Lot immediately adjoining the Culvert to the south of the Culvert.	\$0
12. Culvert (West)	Roads and Drainage	Carrying out of Work as described in the table under the heading '16. Culvert (West)' in Part A of the ISDP	Work to be completed before the issuing of the Subdivision Certificate that creates the first Final Lot immediately adjoining the Culvert to the west of the Culvert.	\$900,000.00
		Dedication of land on which the Work is located	Land to be dedicated on or before the registration of the plan of subdivision that creates the first Final Lot immediately adjoining the Culvert to the south of the	\$0

Column 1	Column 2	Column 3	Column 4	Column 5
13. Traffic Signals	Roads and Drainage	Installation of traffic signals at the intersection of Arthur Allen Drive and MacDonald Road subject to and in accordance with any relevant approval from Roads and Maritime Services	Culvert. Work to be completed by the earlier of: (a) the date for completion specified in any relevant approval from Roads and Maritime Services in respect of the works; and (b) completion of the Development.	\$300,000.00
Total Contribution Value for Work				\$21,998,333.00
Total Contribution Value:				\$27,651,890.00