



VPA Side Deed

Edmondson Park South Planning Agreement

Campbelltown City Council (**Council**)

Landcom (trading as UrbanGrowth NSW)
(**UrbanGrowth**)

Dahua Group Sydney Project 1 Pty Limited (**Dahua**)

26 July 2016

Mr Andrew Spooner
Manager Sustainable City and Environment
Campbelltown City Council
PO Box 57
CAMPBELLTOWN NSW 2560

JUL 28 '16 07:49:36 RCVD

Dear Andrew

**Edmondson Park South Voluntary Planning Agreement
VPA Side Deed – Campbelltown City Council, Landcom, Dahua Group Sydney Project 1 Pty
Limited**

Enclosed are three original counterparts of the VPA Side Deeds dated 17 June 2016, each executed by Campbelltown City Council, Landcom and Dahua Group.

Thank you for your assistance and cooperation, by promptly executing the VPA Side Deed prior to our settlement of the first stage of the land on 17 June 2016.

Yours sincerely,



Lisa Marigliano
Senior Manager Legal

VPA Side Deed

Edmondson Park South Planning Agreement

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Details

Date 17 JUNE 2016

Parties

Name **Campbelltown City Council** ABN 31 459 914 087
Short form name **Council**
Notice details Civic Centre, 91 Queen Street, Campbelltown NSW 2560
Facsimile: (02) 4645 4111
Attention: Lindy Deitz, General Manager

Name **Landcom (trading as UrbanGrowth NSW)** ABN 79 268 260 688
Short form name **UrbanGrowth**
Notice details Level 14, 60 Station Street, Parramatta NSW 2150
Facsimile: (02) 9841 8688
Attention: Tasha Burrell, Program Director

Name **Dahua Group Sydney Project 1 Pty Limited** ACN 606 390 032
Short form name **Dahua**
Notice details Suite 2, Level 20, 201-217 Elizabeth Street, Sydney NSW 2000
Facsimile:
Attention:

Background

- A On 6 July 2015, UrbanGrowth and the Council executed the VPA.
- B UrbanGrowth proposes to sell part of the Land, comprising Property A and Property B, to Dahua.
- C Due to the proposed sale of Property A and Property B, UrbanGrowth is seeking the Council's agreement to enter into the VPA Amendment and VPA Novation.
- D Pending execution of the VPA Amendment and VPA Novation, the parties have agreed to enter into this Deed for the purposes of clause 32 of the VPA.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Deed:

Amended VPA means the VPA as amended by the VPA Amendment

Business Day means any day except for a Saturday, Sunday or public holiday in New South Wales.

Commencement Date means the date on which this Deed is executed by all parties.

Corporations Act means the *Corporations Act 2001* (Cth).

Deed means this deed including any schedules and annexures.

Development has the same meaning as in the VPA.

Development Contributions means the development contributions identified in Schedule 3 of the VPA.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land has the same meaning as in the VPA and includes Property A and Property B.

Property A means Lot 101 in DP 1200781, Lot 103 in DP 1200781, Lot 104 in DP1200781 and Lot 105 in DP 1200781.

Property A Completion Date has the same meaning as the term 'Completion Date' in the Property A Sale Contract.

Property A Sale Contract means the contract for the sale of land for Property A executed by UrbanGrowth and Dahua on 5 May 2016.

Property B has the same meaning as in the Put and Call Option.

Property B Completion Date means the completion date for the Property B Sale Contract if executed by UrbanGrowth and Dahua.

Property B Sale Contract means the contract for the sale of land for Property B, in the form of Annexure C of the Put and Call Option, that may be executed by UrbanGrowth and Dahua.

Put and Call Option means the put and call option between UrbanGrowth and Dahua from which the contract for sale of land for Property A has arisen.

VPA means the document titled "Edmondson Park South – Planning Agreement" dated 6 July 2015 between the Council and UrbanGrowth which applies to the Land and the Development (as amended from time to time).

VPA Amendment means a document in a form determined by UrbanGrowth and approved by the Council under which the VPA is amended to exclude those Development Contributions that UrbanGrowth will be responsible for delivering.

VPA Novation means a document in a form determined by UrbanGrowth and approved by the Council under which Dahua will take over both the rights and obligations of UrbanGrowth under the Amended VPA in respect of those Development Contributions that Dahua will be responsible for delivering.

1.2 Interpretation

In this Deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;

- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this Deed includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a party is to a party to this Deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) any 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;
- (m) any 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;
- (n) words and expressions which are not defined in this Deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2. Operation

This Deed operates on and from the Commencement Date.

3. Acknowledgement

The parties acknowledge and agree:

- (a) that this Deed is not intended to amend or revoke the VPA for the purposes of section 93G of the *Environmental Planning and Assessment Act 1979* (NSW); and
- (b) to continue to negotiate, in good faith, the terms of the VPA Amendment and VPA Novation.

4. Council's acknowledgement

The Council hereby acknowledges and agrees that UrbanGrowth is not in breach of the VPA as at the Commencement Date.

5. UrbanGrowth's obligations

- (a) Prior to the Property A Completion Date, UrbanGrowth must register the VPA on the title of Property A at its cost.
- (b) Prior to the Property B Completion Date, UrbanGrowth must register the VPA on the title of Property B at its cost.

6. Dahua bound

On and from the Property A Completion Date, Dahua acknowledges and agrees that it is bound as if it was a party to the VPA.

7. Termination

This Deed may only be terminated with the written agreement of all parties.

8. General provisions

8.1 Entire agreement

The contents of this Deed constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Deed, whether orally or in writing.

8.2 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Deed is void, voidable, or unenforceable if it is not read down;
 - (ii) this Deed not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause 8.2(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Deed will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Deed has full effect even if clause 8.2(b)(i) or 8.2(b)(ii) applies.

8.3 Non-waiver

Failure by a party to compel performance of any term or condition of this Deed does not constitute a waiver of that term or condition and does not impair the right of the party to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.

8.4 Governing law and jurisdiction

This Deed is governed by the Laws applicable in the State of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts of appeal from them.

8.5 Counterparts

This Deed may be executed in counterparts and all counterparts are taken together to constitute one (1) document.

8.6 No merger

The rights and obligations of the parties under this Deed do not merge on completion of any transaction or obligation contemplated by this Deed.

8.7 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Deed.

8.8 Legal expenses

UrbanGrowth and Dahua agree to pay:

- (a) the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation and execution of this Deed (on a 50/50 basis); and
- (b) their own legal costs and disbursements in connection with the negotiation, preparation and execution of this Deed.