

# **Draft Edmondson Park South**

## **Planning Agreement**

Under s 93F of the *Environmental Planning and Assessment Act 1979*

**Campbelltown City Council**

**Landcom (t/a UrbanGrowth NSW)**

Date:

# Edmondson Park South

## Planning Agreement

### Table of Contents

<b>Summary Sheet.....</b>	<b>5</b>
<b>Parties .....</b>	<b>7</b>
<b>Background.....</b>	<b>7</b>
<b>Operative provisions .....</b>	<b>8</b>
<b>Part 1 – Preliminary .....</b>	<b>8</b>
1    Definitions & Interpretation .....	8
2    Status of this Agreement .....	11
3    Operation this Agreement .....	11
4    Application of this Agreement.....	11
5    Commencement of Development Contributions obligations .....	11
6    Part-performance of this Agreement .....	11
7    Further agreements relating to this Agreement.....	11
8    Application of s 94, s 94A and s 94EF of the Act to the Development.....	11
9    Provision of Development Contributions .....	12
10   Variation of scope or timing for provision of Development Contributions .....	12
<b>Part 2 - Provisions relating to monetary Development Contributions .....</b>	<b>13</b>
11   Payment of monetary Development Contributions.....	13
<b>Part 3 - Provisions relating to dedication of Land .....</b>	<b>13</b>
12   Procedures relating to the dedication of Land.....	13
13   Transfer of Land to the Developer .....	14
<b>Part 4 - Provisions relating to the carrying out of Work.....</b>	<b>14</b>
14   Design and Specification of Work .....	14
15   Standard of construction of Work .....	14
16   Access for Works.....	15
17   Protection of people and property .....	15
18   Completion .....	15
19   Procedures relating to the rectification of defects .....	15
20   Failure to carry out Work .....	16
21   Maintenance and management of Works .....	17
22   Works-as-executed-plan .....	18
23   Hand-over of Works .....	18
<b>Part 5 - Security, Enforcement and Disputes.....</b>	<b>19</b>
24   Security for monetary Development Contributions.....	19

25	Security for the Dedication of Land .....	19
26	Security for carrying out of Work .....	20
27	Council to consult before enforcing this Agreement.....	22
28	Enforcement in court .....	22
29	Dispute resolution - expert determination .....	22
30	Dispute resolution - mediation.....	23
31	Registration of this Agreement .....	23
32	Assignment, sale of Land, etc .....	24
	<b>Part 6 - Other provisions .....</b>	<b>24</b>
33	Indemnity .....	24
34	Insurance .....	24
35	Insurance when Developer other than Landcom .....	25
36	Developer may Review Draft Determinations Relating to the Development .....	25
37	Review of this Agreement .....	25
38	Confidentiality .....	26
39	Notices.....	27
40	Approvals and consent.....	27
41	Legal Costs.....	27
42	Entire Agreement .....	28
43	Further acts .....	28
44	Governing law and jurisdiction .....	28
45	Joint and individual liability and benefits .....	28
46	Representations and warranties.....	28
47	Severability .....	28
48	Modification .....	29
49	Waiver .....	29
50	GST .....	29
51	Explanatory Note Relating to this Agreement .....	30
	<b>Schedule 1.....</b>	<b>31</b>
	<b>Schedule 2.....</b>	<b>32</b>
	<b>Schedule 3.....</b>	<b>33</b>
	<b>Schedule 4.....</b>	<b>35</b>
	<b>Schedule 5.....</b>	<b>37</b>
	<b>Execution .....</b>	<b>39</b>
	<b>Appendix .....</b>	<b>41</b>

# Edmondson Park South Planning Agreement

## Summary Sheet

### Council:

**Name:** Campbelltown City Council

**Address:** Civic Centre, cnr Queen and Broughton Sts, Campbelltown NSW 2560

**Telephone:** 4645 4000

**Facsimile:** 4645 4111

**Email:** council@campbelltown.nsw.gov.au

**Representative:** General Manager

### Developer:

**Name:** Landcom (t/a UrbanGrowth NSW)

**Address:** Level 14, 60 Station Street, Parramatta, NSW 2150

**Telephone:** 9841 8600

**Facsimile:** 9841 8688

**Email:** Pdrivas@urbangrowth.nsw.gov.au

**Representative:** Peter Drivas

### Land:

See definition of *Land* in clause 1.1 and Schedule 1.

### Development:

See definition of *Development* in clause 1.1.

### Development Contributions:

See Schedule 3.

## **Application of s 94, s 94A and s 94EF of the Act:**

See clause 8.

## **Security:**

See Part 5.

## **Registration:**

See clause 31.

## **Restriction on dealings:**

See clause 32.

## **Dispute Resolution:**

Expert determination and mediation. See clauses 29 and 30.

# Edmondson Park South Planning Agreement

Under s 93F of the *Environmental Planning and Assessment Act 1979* (NSW)

## Parties

**Campbelltown City Council** ABN 31 459 914 087 of Civic Centre, cnr Queen and Broughton Sts, Campbelltown NSW 2560 (**Council**)

and

**Landcom (t/a UrbanGrowth NSW)** ABN 79 268 260 688 of Level 14, 60 Station Street, Parramatta, NSW 2150 (**Developer**)

## Background

- A The Developer was established as a corporation under s5(1) of the *Landcom Corporation Act 2001* with the corporate name of Landcom.
- B The Developer trades under the name of *UrbanGrowth NSW*.
- C The Developer is the owner of the Original VPA Land.
- D The Developer 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 The Developer agreed to make the Original Development Contributions in connection with the carrying out of the Development in accordance with the unamended Existing VPA.
- G The Developer proposes to sell the Subject Land to the Purchaser.
- H The Existing VPA will continue to apply to the Subject Land.
- I The Developer proposes to retain the Land.
- J The Developer proposes to enter into this Agreement with the Council in respect of the Development and Land, and to make the Development Contributions.
- K The Original Development Contributions set out in the unamended Existing VPA will be delivered by the Purchaser in accordance with the Existing VPA and by the Developer in accordance with this Agreement.

# Operative provisions

## Part 1 – Preliminary

### 1 Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Agreement** means this Agreement and includes any schedules, annexures and appendices to this Agreement.

**Authority** means the Commonwealth of Australia, the State of New South Wales, or any department or agency of the Commonwealth of Australia or the State of New South Wales, any public authority within the meaning of the Act, and any court or tribunal.

**Claim** against any person means any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense, or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Complete** means when an Item of Work has been completed in accordance with this Agreement.

**Concept Plan Application** means the application made to the Minister for concept plan approval being MP10\_0118.

**Contribution Value** means:

- (a) in relation to an Item (or any part) comprising a Work, the amount shown in column 5 of Schedule 3 for that Work, indexed from July 2013 in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics,
- (b) in relation to an Item (or any part) comprising Land to be dedicated, the amount shown in column 5 of Schedule 3 for that Land.

**Construction Certificate** has the same meaning as in the Act.

**Defect** means any error, omission, shrinkage, blemish in appearance or other fault in the Works which prevents the Works from being reasonably capable of being used for their intended purpose.

**Defects Liability Period** has the meaning ascribed to it in clause 19.1.2.

**Development** means the development of the Land described in Schedule 2 and in any Development Consent under the Act with respect to that development.

**Development Application** has the same meaning as in the Act.

**Development Area** means the area described as 'Land to which this VPA Applies' as shown on the Development Area Plan.

**Development Area Plan** means the plan contained in Schedule 4.

**Development Consent** means a development consent or project approval within the meaning of the Act.

**Development Contributions** means the development contributions set out in Schedule 3 of this Agreement, comprising part of the Original Development Contributions.

**Existing VPA** means the document titled "Edmondson Park South – Planning Agreement" dated 6 July 2015 in relation to the Developer's proposed Development on the Original VPA Land, as amended from time to time.

**Final Lot** means a lot to be created in the Development for separate occupation and disposition, not being:

- (a) a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council, or
- (b) a lot created by a subdivision of the Land which may be further subdivided.

**ISDP** means the document titled '*Edmondson Park South Infrastructure Services Delivery Plan*' prepared by Landcom and dated March 2015.

**Item** means each separate Development Contribution specified in Column 1 of Schedule 3.

**Land** means part of the Original VPA Land described in Schedule 1.

**Maintenance Period** has the meaning ascribed to it in clause 21.1.2.

**Minister** means the Minister administering the Act.

**Open Space Work** means any Work which Column 2 of Schedule 3 indicates is for the public purpose of '*Parks and Open Space*'.

**Original Development Contributions** means the original Development Contributions as defined by the Existing VPA prior to any amendments or variations.

**Original VPA Land** means the land subject to the Existing VPA prior to any amendments or variations and that was, prior to its subdivision, described as:

- (a) Lot 2 in DP 1144667;
- (b) Lot 1 in DP 831149;
- (c) Lot 1 in DP 831148; and
- (d) Lot 3 in DP 246213.

**Party** means a party to this Agreement, including their successors and assigns.

**Purchaser** means Dahua Group Sydney Project 1 Pty Limited ACN 606 390 032 of Suite 1, Level 2, 251 Elizabeth Street, Sydney NSW 2000.

**Rectification Notice** means a notice in writing that identifies a Defect in Work and requires rectification of the Defect within a specified period of time.

**Registrar General** means the Registrar General within the meaning of the *Real Property Act 1900* (NSW).

**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW).

**Subdivision Certificate** has the same meaning as in the Act.

**Subject Land** means the land described in Schedule 1.

**Unused Road** means the land on which MacDonald Road was located before completion and dedication of the New MacDonald Road, as referred to in clause 13, and which is no longer required for the purposes of a public road.

**Work** means the physical result of any building, engineering or construction work in, on, over or under land, required to be carried out by the Developer under this Agreement.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 A reference to a business day means a day, other than a Saturday or Sunday, on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which something is to be done under this Agreement is not a business day, then it must be done on the next business day.
- 1.2.4 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference to any legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 A reference to a person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- 1.2.11 The singular includes the plural, and the plural includes the singular.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to a Party to this Agreement includes a reference to the Party's employees, agents and contractors, and the Party's successors and assigns and includes any third party undertaking the Development for or on behalf of, or in conjunction with the Party.

1.2.14 Any schedules, appendices and attachments form part of this Agreement.

## **2 Status of this Agreement**

2.1 This Agreement is intended by the Parties to be a planning agreement within the meaning of s93F(1) of the Act.

## **3 Operation this Agreement**

3.1 This Agreement operates if:

3.1.1 the Purchaser becomes the registered proprietor of the Subject Land; and

3.1.2 this Agreement is entered into as required by clause 25C(1) of the Regulation.

3.2 The Party who executes this Agreement last is to insert the date that they executed this Agreement on the front page, and provide a copy of the fully executed and dated Agreement to any other person who is a Party.

3.3 The Parties agree and acknowledge that they will use reasonable endeavours to execute this Agreement within twenty eight (28) days of the date that the Purchaser proposes to become registered proprietor of the Subject Land.

## **4 Application of this Agreement**

4.1 This Agreement applies to the Land and the Development.

4.2 The Parties acknowledge that the Development Contributions required to be made under this Agreement are to meet the expected demand for public facilities arising from the Development.

## **5 Commencement of Development Contributions obligations**

Not Used

## **6 Part-performance of this Agreement**

6.1 The Council is not to raise any objection, requisition or claim, or impose any requirements beyond that provided for in this Agreement in relation to any obligation imposed on the Developer under this Agreement that had been performed, whether in whole or in part, on the date this Agreement commenced.

## **7 Further agreements relating to this Agreement**

7.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

## **8 Application of s 94, s 94A and s 94EF of the Act to the Development**

8.1 This Agreement excludes the application of s 94 and s 94A of the Act to the Development.

8.2 This Agreement does not exclude the application of s 94EF of the Act to the Development.

## **9 Provision of Development Contributions**

- 9.1 The Developer is to make Development Contributions to the Council in accordance with this Agreement and otherwise to the satisfaction of the Council acting reasonably.
- 9.2 Schedule 3 has effect in relation to Development Contributions to be made by the Developer under this Agreement.
- 9.3 A Contribution Value specified in relation to an obligation by the Developer to carry out Work or dedicate Land under this Agreement does not define or limit the extent of the Developer's obligation in that regard.
- 9.4 If the cost incurred by the Developer to properly perform an obligation to carry out Work or dedicate land is less than a Contribution Value specified in relation to the obligation, the Developer is not required to carry out further Work or dedicate further land or pay money to the Council to make up the difference between the Contribution Value and the cost incurred by the Developer in performing the obligation.
- 9.5 The Council will use its best endeavours to apply each Development Contribution made by the Developer under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.

## **10 Variation of scope or timing for provision of Development Contributions**

- 10.1 The Developer may request that the Council approve in writing, a variation to the scope or the timing for the provision of Development Contributions, and the Council must act reasonably in determining whether to approve the variation.
- 10.2 For the purposes of determining whether to approve a variation under clause 10.1, the Council may consider the content of the ISDP and whether the variation prejudices the provision of public services or public amenities for any Development Area.
- 10.3 The scope or the timing for provision of a Development Contribution is not to be varied unless:
  - 10.3.1 the Parties, acting reasonably, agree in writing to the variation; and
  - 10.3.2 any consent or approval required under the Act or any other law to the variation is first obtained, if required.
- 10.4 If a variation is made to the scope or timing for provision of a Development Contribution pursuant to this clause, then Schedule 3 is taken to have been amended accordingly.
- 10.5 If the Council requests a variation to a Work after a Construction Certificate has been issued for the Work, then the Council is liable to pay to the Developer an amount equal to the increase in the costs incurred by the Developer of completing the Work which results from the variation requested by the Council.
- 10.6 Council must pay the amount referred to in clause 10.5 to the Developer after the Work is Complete, and within twenty eight (28) days of receipt of:
  - 10.6.1 a tax invoice for the amount claimed by the Developer; and
  - 10.6.2 documentation which verifies the increase in costs incurred by the Developer as a result of the variation.

- 10.7 The Council cannot withhold its agreement to a variation of a Work if the variation does not result in a change to the matters identified as core elements for that Work in the ISDP.

## **Part 2 - Provisions relating to monetary Development Contributions**

### **11 Payment of monetary Development Contributions**

- 11.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 11.2 The Developer is to give the Council not less than two (2) business days written notice of its intention to pay a monetary Development Contribution.
- 11.3 The Developer is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 11.2, has given to the Developer a tax invoice for the amount of the Development Contribution.
- 11.4 The Developer is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.

## **Part 3 - Provisions relating to dedication of Land**

### **12 Procedures relating to the dedication of Land**

- 12.1 A Development Contribution comprising the dedication of the Land is made for the purposes of this Agreement when:
- 12.1.1 a deposited plan is registered in the register of plans held with the Registrar General that:
- (a) dedicates Land as a public road (including a temporary public road) under the *Roads Act 1993* (NSW), or
  - (b) creates the Land as a public reserve or drainage reserve under the *Local Government Act 1993* (NSW), or
- 12.1.2 the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the Land to the Council when registered.
- 12.2 For the purposes of clause 12.1.2:
- 12.2.1 the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the Land to be dedicated, and
- 12.2.2 within 21 days of receiving it from the Developer, the Council is to execute it and return it to the Developer, and

- 12.2.3 within 7 days of receiving it from the Council (properly executed), the Developer is to lodge it for registration with the Registrar General, and
- 12.2.4 the Developer is to do all things reasonably necessary to enable it to be registered, and
- 12.2.5 the Developer is to do all things reasonably necessary to enable the certificate of title for the Land dedicated which identifies the Council as the registered proprietor of that Land, to be provided to the Council at no cost to the Council.

## **13 Transfer of Land to the Developer**

Not used.

## **Part 4- Provisions relating to the carrying out of Work**

### **14 Design and Specification of Work**

- 14.1 Before commencing construction of a Work, the Developer is to submit to the Council for its approval the detailed design and specification for the Work.
- 14.2 If, within sixty (60) days of the date of submission referred to in clause 14.1:
  - 14.2.1 the Council notifies the Developer in writing of its approval of the design and specification, the Developer is to carry out and Complete the Work in accordance with that design and specification,
  - 14.2.2 the Council fails to notify the Developer in writing that it approves or does not approve of the design and specification or does not require the Developer to make modifications, the Council is taken to have approved the design and specification of the Work and the Developer may carry out and Complete the Work in accordance with that design and specification,
  - 14.2.3 the Council notifies the Developer in writing that it does not approve of the design and specification or requires the Developer to make modifications, the Developer may:
    - (a) amend the design and specification and submit to the Council the amended design and specification, in which case the Developer must submit any such amended detailed design and specification to Council under clause 14.1, or
    - (b) if the Developer does not agree with the modifications requested by Council, refer the matter for expert determination or mediation under clauses 29 and 30.

### **15 Standard of construction of Work**

- 15.1 Any Work that the Developer is required to carry out under this Agreement is to be carried out in accordance with:
  - 15.1.1 this Agreement;
  - 15.1.2 any further agreement entered into by the Parties under clause 7;

- 15.1.3 any reasonable requirements and directions of the Council notified in writing to the Developer before the Work is Completed for the purposes of this Agreement, that are not inconsistent with this Agreement or any Development Consent for the Development;
- 15.1.4 the requirements of any approval, consent, permission or licence issued by a relevant Authority;
- 15.1.5 any Australian standards and other laws applicable to the Work; and
- 15.1.6 in a proper and workmanlike manner, complying with current industry practice and standards relating to the Work.

## 16 Access for Works

- 16.1 The Developer must permit the Council, its officers, employees, agents and contractors to enter the Land or any other land at any time, upon giving reasonable prior notice, to:
  - 16.1.1 inspect, examine or test any Work; or
  - 16.1.2 remedy any breach by the Developer in carrying out a Work.
- 16.2 The Council must permit the Developer its officers, employees, agents and contractors to enter and occupy any land owned or controlled by the Council, including any part of the Land dedicated to the Council, to:
  - 16.2.1 enable the Developer to carry out any Work under this Agreement that is required to be carried out on that land, or
  - 16.2.2 perform any other obligation imposed on the Developer by this Agreement.

## 17 Protection of people and property

- 17.1 The Developer is to ensure to the fullest extent reasonably practicable in carrying out any Work that:
  - 17.1.1 all necessary measures are taken to protect people and property; and
  - 17.1.2 unnecessary interference with the passage of people and vehicles is avoided; and
  - 17.1.3 nuisances and unreasonable noise and disturbances are prevented.

## 18 Completion

- 18.1 In this clause **Compliance Certificate** has the same meaning as in the Act.
- 18.2 An Item (or any part) that comprises a Work is Completed for the purposes of this Agreement when the Council issues a Compliance Certificate (with respect to that Item).
- 18.3 The Developer must not seek any Compliance Certificate for a Work from any person other than Council.

## 19 Procedures relating to the rectification of defects

- 19.1 In this clause:

19.1.1 **Building Works** has the same meaning as in the Act.

19.1.2 **Defects Liability Period** means:

- (a) for an Open Space Work (other than a Building Work), or any Work which Column 2 of Schedule 3 indicates is for the public purpose of '*Drainage*' '*Roads and Drainage*', '*Roads and Traffic Facilities*' - twelve (12) months from the date the Work is Completed for the purposes of this Agreement;
- (b) for Building Work - three (3) months from the date the Work is Completed for the purposes of this Agreement.

19.2 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.

19.3 The Developer must comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council acting reasonably.

19.4 If the Developer breaches clause 19.3, the Council may have the Defect rectified at the cost of the Developer.

19.5 By no later than fourteen (14) days prior to the end of the Defects Liability Period:

19.5.1 Council will undertake a final inspection of the Work; and

19.5.2 Council may either:

- (a) by way of written notice to the Developer, confirm that the Work is acceptable to Council acting reasonably; or
- (b) issue a Rectification Notice to the Developer if it identifies any part of the Work which is not acceptable to Council (acting reasonably).

19.6 If Council issues a Rectification Notice under clause 19.5.2(b), the Developer must comply with the Rectification Notice at its own cost according to its terms and to the satisfaction of the Council acting reasonably.

19.7 Council may not issue a further Rectification Notice under clause 19.5 for any additional unacceptable parts of the Work that were not identified in the Rectification Notice issued under clause 19.5.2(b).

## **20 Failure to carry out Work**

20.1 Subject to clause 27, if the Council considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of any Work, including Work the subject of a Rectification Notice, the Council may give the Developer a notice under this clause.

20.2 The notice may require the Developer to:

20.2.1 rectify the breach to the Council's satisfaction; and

20.2.2 immediately cease carrying out further work relating to the Work except to rectify the breach.

- 20.3 A notice given under clause 20.1 must allow the Developer not less than 28 days (or such further period as the Council considers reasonable in the circumstances) to rectify the breach.
- 20.4 Without limiting any other rights the Council has to enforce this Agreement, if the Developer does not comply with a notice given under clause 20.1 then the Council may:
- 20.4.1 call upon the Security referred to in clause 26; and
  - 20.4.2 carry out and Complete the Work the subject of the Developer's breach, and
  - 20.4.3 in the event the costs reasonably incurred by the Council in carrying out the Works cannot be met by the Security, the Developer must pay the difference to Council within twenty eight (28) days of receiving a written demand for such payment by Council.
- 20.5 Clauses 29 and 30 do not prevent a notice being given under clause 20.1, nor do they apply to such a notice or the circumstances relating to the giving of the notice. Any procedure commenced under clause 29 or clause 30 ceases to apply when such a notice is given.
- 20.6 For the purposes of clause 20.4, the costs which Council can recover include fees and charges incurred by Council, Council's employees, agents and contractors, and legal costs and expenses.

## 21 Maintenance and management of Works

- 21.1 In this clause:
- 21.1.1 **Hard Landscaping Work** means items such as paving, seating, buildings, signage, lighting, playground equipment, and any other landscaping work that is not a Soft Landscaping Work.
  - 21.1.2 **Maintenance Period** means:
    - (a) in respect of Hard Landscaping Work, a period of twelve (12) months commencing on the date the Work is Completed for the purpose of this Agreement,
    - (b) in respect of Soft Landscaping Work, a period of twenty four (24) months commencing on the date the Work is Completed for the purpose of this Agreement.
  - 21.1.3 **Plan of Management** means a plan of management within the meaning of s36 of the *Local Government Act 1993* (NSW).
  - 21.1.4 **Soft Landscaping Work** means any Work comprising the planting of vegetation and associated preparation of planting beds or growing medium, such as shrubs, groundcovers, mulch and grass.
- 21.2 The Developer must maintain each Hard Landscaping Work and Soft Landscaping Work during the Maintenance Period in accordance with:
- 21.2.1 any matters set out in clause 15.1,
  - 21.2.2 any Plan of Management or draft Plan of Management relating to the Work or the land on which the Work is or is to be located.

- 21.3 By no later than fourteen (14) days prior to the end of the Maintenance Period:
- 21.3.1 Council will undertake a final inspection of the Work; and
- 21.3.2 Council may either:
- (a) by way of written notice to the Developer, confirm that the Work is acceptable to Council acting reasonably; or
  - (b) issue a notice to the Developer if it identifies any part of the Work which has not been maintained by the Developer in accordance with this clause 21.
- 21.4 If Council issues a notice under clause 21.3.2(b), the Developer must comply with that notice at its own cost.
- 21.5 Council may not issue a further notice under clause 21.3.2(b) for any additional unacceptable parts of the Work that were not identified in the original notice issued under clause 21.3.2(b).
- 21.6 For the purposes of this clause maintenance includes repairing damage caused by vandalism to the Work (including replacement of plants due to vandalism).
- 21.7 The Developer must:
- 21.7.1 fund and prepare a draft Plan of Management for any part of the Land on which an Open Space Work is to be constructed, and
  - 21.7.2 provide the draft Plan of Management to the Council for Council's consideration not less than six (6) months prior to the time the Land the subject of the draft Plan of Management is required to be dedicated.
- 21.8 For the purposes of clause 21.7.1, the Council is to promptly provide the Developer with a template of a Plan of Management if requested by the Developer in writing.
- 21.9 If the Developer has complied with its obligations under this clause, the Council cannot make any Claim (other than a Claim arising from the negligence of the Developer or a breach of this Agreement by the Developer), objection or demand about the state or condition of a Work after the end the Maintenance Period for that Work.

## **22 Works-as-executed-plan**

- 22.1 No later than sixty (60) days after an Item comprising a Work is Completed in accordance with this Agreement, the Developer must submit to the Council:
- 22.1.1 a full works-as-executed-plan for the Item, and
  - 22.1.2 the technical or operation manual, specifications and warranties (if any) for any product that forms part of the Item comprising a Work.

## **23 Hand-over of Works**

- 23.1 Subject to anything to the contrary in this Agreement, Council accepts responsibility for a Work on the later of:
- 23.1.1 the date when the Work is Completed for the purposes of this Agreement; or

23.1.2 if the Work is carried out on land which is to be dedicated to the Council under this Agreement, the date of dedication of that land.

23.2 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council (acting reasonably) any loss or damage to a Work from any cause whatsoever which occurs before the Work is Completed for the purposes of this Agreement.

## Part 5 - Security, Enforcement and Disputes

### 24 Security for monetary Development Contributions

24.1 The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate that creates a Final Lot in the Development if, at the date of the application, the Developer is not in breach of its obligation to make monetary Development Contributions under this Agreement.

### 25 Security for the Dedication of Land

25.1 Subject to clause 27, if the Developer does not dedicate the land required to be dedicated under this Agreement, or any part thereof, at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures under the Just Terms Act.

25.2 The Council is to only acquire land pursuant to clause 25.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement.

25.3 Clause 25.1 constitutes an agreement for the purposes of section 30 of the Just Terms Act.

25.4 If, as a result of an acquisition referred to in clause 25.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council for that amount upon a written request being made by the Council.

25.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land that is required to be dedicated under this Agreement.

25.6 The Developer is to promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this clause 25, including without limitation:

25.6.1 signing any documents or forms;

25.6.2 giving land owner's consent for the lodgement of any Development Application;

25.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW); and

25.6.4 paying the Council's costs arising from this clause 25.

25.7 In this clause, **Just Terms Act** means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

## 26 Security for carrying out of Work

26.1 In this clause:

26.1.1 **Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
  - (i) Australia and New Zealand Banking Group Limited,
  - (ii) Commonwealth Bank of Australia,
  - (iii) Macquarie Bank Limited,
  - (iv) National Australia Bank Limited,
  - (v) St George Bank Limited,
  - (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

26.1.2 **Ledger** means a document in a form similar to that in Schedule 5 that includes the following information:

- (a) the Notional Contribution Value,
- (b) all Work that is required to be provided under this Agreement and the Contribution Value of those Items,
- (c) all Work that has been Completed under clause 18.1, and
- (d) the sum of all Contribution Values of Work that have been Completed under clause 18.2.

26.1.3 **Ledger Item** means a Work identified in the Ledger.

26.1.4 **Notional Contribution Value** means the amount determined by multiplying \$17,123.00 by the sum of the number of Final Lots that have been created and the number of Final Lots that are proposed to be created by the Subdivision Certificate referred to in clause 26.3.

26.1.5 **Security** means:

- (a) if Landcom (t/a UrbanGrowth NSW) is the Developer under this Agreement, a Treasury Guarantee,
- (b) if Landcom (t/a UrbanGrowth NSW) is not the Developer under this Agreement, a Bank Guarantee or a bond or other form of security to the satisfaction of the Council.

26.1.6 **Treasury Guarantee** means a written guarantee issued by or on behalf of New South Wales Government that is materially similar to a Bank Guarantee.

- 26.2 A Construction Certificate may only be issued if at the time of issuing, the Parties, acting reasonably, determine the appropriate Ledger Item that is to be completed or for which Security is to be provided so that the sum of the Contribution Value of that Ledger Item and Contribution Values of Work that have been Completed equals or exceeds the Notional Contribution Value.
- 26.3 Subject only to clause 26.5 and notwithstanding any other provision in this Agreement, a Subdivision Certificate may only be issued if, at the time of issuing, the Ledger Item that has been determined under clause 26.2 to be completed prior to the issue of the relevant Construction Certificate has been Completed or Security has been provided for that Ledger Item to a value of:
- 26.3.1 150% of the cost to complete the Ledger Item, if it has been commenced but uncompleted; or
- 26.3.2 the Contribution Value of the Ledger Item if it has not been commenced, as the case may be.
- 26.4 The Developer is to ensure that a Ledger accompanies any Development Application or application for a Construction Certificate or Subdivision Certificate for the Development (or any part).
- 26.5 Despite clause 26.3, a Subdivision Certificate may be issued in respect of the Development if the Developer provides Security for 150% of the Contribution Value of a Work which, when the Contribution Value of that Work is added to the sum of all Contribution Values of Work that have been Completed, equals or exceeds the Notional Contribution Value to the satisfaction of Council, acting reasonably.
- 26.6 If any Item of Work is subject to the provision of Security under clause 26.3 or 26.5 (**Deferred Work**):
- 26.6.1 the Developer must Complete the Deferred Work within such time determined by Council acting reasonably (**Extended Completion Date**); and
- 26.6.2 by way of written notice to the Developer, Council may:
- (a) extend the Extended Completion Date at its discretion having regard to the nature of the Work to be completed; and
- (b) if Council extends the Extended Completion Date, the Developer must Complete the uncompleted part of the Work by the date specified in the notice.
- 26.7 If any Deferred Work is not Completed by the Extended Completion Date, then Council may:
- 26.7.1 refuse to issue any further Subdivision Certificates with respect to the Development until the Deferred Work is Completed; or
- 26.7.2 Complete the Deferred Work itself in which case the Developer must meet the costs incurred by Council in doing so.
- 26.8 Council must return the Security provided for a Work to the Developer within twenty eight (28) days after a Work is Completed for the purpose of this Agreement.

## 27 Council to consult before enforcing this Agreement

- 27.1 This clause applies to any of the Developer's obligations to carry out Work or dedicate land under this Agreement.
- 27.2 If the Council reasonably forms the opinion that the Developer has failed to comply with an obligation to which this clause applies, it is not to enforce this Agreement against the Developer (including taking any action under clause 20) unless it has first notified the Developer in writing of its intention to do so and has consulted with the Developer as to:
- 27.2.1 the reason for the non-compliance;
  - 27.2.2 the likely effects of the non-compliance; and
  - 27.2.3 the Developer's capacity in all of the circumstances to reasonably rectify the non-compliance.
- 27.3 The Council is not to enforce this Agreement against the Developer unless, after having consulted with the Developer:
- 27.3.1 it has reasonably formed the opinion the Developer has no reasonable excuse for the non-compliance;
  - 27.3.2 it has notified the Developer in writing that intends to enforce the Agreement not earlier than 14 days from the date of the notice; and
  - 27.3.3 the notice specifies the enforcement action it intends to take.
- 27.4 At any time between the date of the notice referred to in clause 27.3 and the time when the Council takes action to enforce this Agreement, the Developer may notify the Council of a dispute under clause 29 or 30.
- 27.5 If the Developer notifies the Council in accordance with clause 27.4, the Council is not to enforce this Agreement against the Developer in relation to the relevant non-compliance unless and until the dispute resolution process under clause 29 or 30 has been exhausted without resolution between the parties.

## 28 Enforcement in court

- 28.1 Subject only to clause 27, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 28.2 For the avoidance of doubt, nothing in this Agreement prevents:
- 28.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and/or
  - 28.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## 29 Dispute resolution - expert determination

- 29.1 This clause applies to a dispute under this Agreement about a matter that can be determined by an appropriately qualified expert (**Expert Determination Dispute**).

- 29.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute and requiring it to be determined by an appropriately qualified expert.
- 29.3 Within fourteen (14) days of the notice, the Parties are to meet to try to resolve the dispute.
- 29.4 If within a further twenty eight (28) days the dispute is not resolved, the dispute must be referred to the President of the NSW Law Society to appoint an expert to determine the dispute.
- 29.5 The expert determination binds the Parties, except in the case of the expert's fraud or misfeasance.
- 29.6 Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 29.7 If the Parties disagree over whether a dispute is properly an Expert Determination Dispute, then either Party may refer that issue to the Chief Executive Officer (**CEO**) of the professional body that represents persons with the relevant expertise, for a determination of that issue. The CEO's determination is final and binds the Parties.

## **30 Dispute resolution - mediation**

- 30.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 29 applies.
- 30.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 30.3 The Parties are then to meet within fourteen (14) days of the notice to try to resolve the dispute.
- 30.4 If the dispute is not resolved within a further twenty eight (28) days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time, and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 30.5 If the dispute is not resolved by mediation within a further twenty eight (28) days, or any longer period that may be needed to complete any mediation process which has been started, then the Parties may exercise their legal rights in relation to the dispute, including by taking legal proceedings in a court of competent jurisdiction in New South Wales.

## **31 Registration of this Agreement**

- 31.1 The Developer must ensure that this Agreement is registered on the title of the Land at the time required under clause 32 including by:
- 31.1.1 procuring the consent of each person referred to in s93H(1) of the Act to the registration of this Agreement on the folio of the Register pertaining to the Land;
- 31.1.2 arranging for the production of the relevant certificate of title pertaining to the Land at the Lands and Property Information Office (**LPI**); and
- 31.1.3 promptly responding to any requisition raised by the LPI regarding any matter within the Developer's control.

31.2 The provisions of this Agreement will be jointly and severally binding on, and enforceable against, the owner for the time being of:

31.2.1 the lots created by virtue of any such subdivision, or further subdivision, of the Land; and/or

31.2.2 the parts of the Land transferred to a third party,

on which this Agreement remains registered as if that person had entered into this Agreement themselves.

## **32 Assignment, sale of Land, etc**

32.1 Unless the preconditions specified in clause 32.2 are satisfied, the Developer must not:

32.1.1 transfer the Land or any part of it, other than a Final Lot, to any person; or

32.1.2 assign its rights or obligations under this Agreement, or novate this Agreement, to any person.

32.2 The preconditions to be satisfied under clause 32.1 are:

32.2.1 the Developer has, at no cost to the Council, procured the execution by the person to whom the Developer proposes to sell or transfer the Land, or to whom the Developer's rights or obligations under this Agreement are to be assigned or novated (**Third Party**), of an agreement in favour of the Council to the effect that the Third Party is bound as if a party to this Agreement;

32.2.2 prior to completion of a transfer under clause 32.1.1, this Agreement is registered on the title to the relevant part of the Land proposed to be transferred pursuant to clause 31; and

32.2.3 the Developer is not in breach of this Agreement.

## **Part 6 - Other provisions**

### **33 Indemnity**

33.1 Each Party indemnifies the other Party from and against all Claims that may be sustained, suffered, recovered or made against the other Party arising in connection with the performance of their obligations under this Agreement except if, and to the extent that, the Claim arises because of the other Party's negligence or default.

### **34 Insurance**

34.1 This clause only applies if Landcom (t/a UrbanGrowth NSW) is the Developer under this Agreement.

34.2 The Developer warrants, and Council acknowledges, that:

34.2.1 the Developer is a member of the NSW Treasury Managed Fund (**Fund**),

34.2.2 the Fund provides the Developer with insurance cover against any liability arising from a breach by the Developer of its obligations under this Agreement.

## **35 Insurance when Developer other than Landcom**

- 35.1 This clause only applies if Landcom (t/a UrbanGrowth NSW) is not the Developer under this Agreement.
- 35.2 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed, up until the time that the Work is taken to have been Completed in accordance with this Deed:
- 35.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 35.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence or provided Landcom is not the Developer an additional amount requested by Council following an annual review, acting reasonably, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
- 35.2.3 workers compensation insurance as required by law, and
- 35.2.4 any other insurance required by law.
- 35.3 If the Developer fails to comply with clause 35.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate, including:
- 35.3.1 by calling upon any Security provided by the Developer to the Council pursuant to clause 26, or
- 35.3.2 recovery as a debt due in a court of competent jurisdiction.
- 35.4 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 35.2.

## **36 Developer may Review Draft Determinations Relating to the Development**

- 36.1 Not less than 14 days before determining a Development Application or an application under s96 of the Act relating to the Development, the Council must give to the Developer a copy of its proposed determination including, if applicable, the terms and conditions upon which any Development Consent or approval is proposed to be granted.
- 36.2 The Developer may, by notice in writing, not more than 14 days from receipt of the proposed determination under clause 36.1 request the Council to modify or abandon the proposed determination.
- 36.3 The Council must properly consider a request made by the Developer under clause 36.2 before it makes any further decision in relation to the determination.

## **37 Review of this Agreement**

- 37.1 The Developer must provide the Council with a report every three years detailing the performance of its obligations under this Agreement.

- 37.2 The report is to be:
- 37.2.1 given no later than every three (3) years from the date on which this Agreement is entered into; and
  - 37.2.2 in the form and addressing the matters the Council notifies to the Developer from time to time.
- 37.3 The Parties are to review this Agreement every three (3) years, and otherwise if either Party considers that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- 37.4 For the purposes of clause 37.3, the relevant changes include any change to a law that restricts or prohibits, or enables the Council or any other planning authority to restrict or prohibit, any aspect of the Development.
- 37.5 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 37.3, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 37.6 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 37.7 A Party's failure to agree to take action requested by the other Party as a consequence of a review referred to in clause 37.3 is not a dispute for the purposes of clauses 29 and 30, and is not a breach of this Agreement.

## **38 Confidentiality**

- 38.1 The terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.
- 38.2 The Parties acknowledge that:
- 38.2.1 confidential information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Agreement; and
  - 38.2.2 the Parties may disclose to each other further confidential information in connection with the subject matter of this Agreement.
  - 38.2.3 subject to clauses 38.3 and 38.4, each Party agrees:
    - (a) not to disclose any confidential information received before or after the making of this Agreement to any person without the prior written consent of the Party who supplied the confidential information; or
    - (b) to take all reasonable steps to ensure all confidential information received before or after the making of this Agreement is kept confidential and protected against unauthorised use and access.
- 38.3 A Party may disclose confidential information in the following circumstances:
- 38.3.1 in order to comply with the law, or the requirements of any Authority; or
  - 38.3.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees,

consultants, advisers, financiers or contractors undertake to keep the information confidential.

- 38.4 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

## 39 Notices

- 39.1 A notice, consent, information, application or request (**Notification**) that must or may be given or made to a Party under this Agreement must only be given or made if it is in writing and sent in one of the following ways:
- 39.1.1 delivered or posted to that Party at its address set out in the Summary Sheet; or
  - 39.1.2 faxed to that Party at its fax number set out in the Summary Sheet; or
  - 39.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 39.2 A Party may change its address, fax number or email address by giving the other Party three (3) business days' notice of the change, in which case the new address, fax number or email address is treated as the address or number in the Summary Sheet.
- 39.3 A Notification is to be treated as given or made if it is:
- 39.3.1 delivered, when it is left at the relevant address;
  - 39.3.2 sent by post, two (2) business days after it is posted;
  - 39.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error-free transmission to the correct fax number; or
  - 39.3.4 sent by email, and the sender does not receive a delivery failure message from the sender's internet service provider within a period of twenty four (24) hours of the email being sent.
- 39.4 If a Notification is delivered, or an error-free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## 40 Approvals and consent

- 40.1 In this clause, a reference to an approval or consent does not include a reference to a Development Consent.
- 40.2 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.
- 40.3 A Party must give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 41 Legal Costs

- 41.1 The Developer agrees to:

- 41.1.1 pay or reimburse the legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this Agreement up to an amount of no more than \$20,000.00 plus GST;
- 41.1.2 pay the reasonable legal costs and disbursements referred to in clause 41.1.1 within fourteen (14) days of receipt of a tax invoice from Council; and
- 41.1.3 pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this Agreement.

## **42 Entire Agreement**

- 42.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 42.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

## **43 Further acts**

- 43.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

## **44 Governing law and jurisdiction**

- 44.1 This Agreement is governed by the law of New South Wales.
- 44.2 The Parties submit to the non-exclusive jurisdiction of its courts, and are not to object to the exercise of jurisdiction by those courts on any basis.

## **45 Joint and individual liability and benefits**

- 45.1 Except as otherwise set out in this Agreement:
  - 45.1.1 any agreement, covenant, representation or warranty under this Agreement by two (2) or more persons binds them jointly and each of them individually, and
  - 45.1.2 any benefit in favour of two (2) or more persons is for the benefit of them jointly and each of them individually.

## **46 Representations and warranties**

- 46.1 The Parties represent and warrant that they have power to enter into this Agreement and to comply with their obligations under the Agreement, and that entry into this Agreement will not result in the breach of any law.

## **47 Severability**

- 47.1 If a clause or part of a clause 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.

- 47.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of it is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## 48 Modification

- 48.1 No modification of this Agreement has any effect unless it is in writing and signed by the Parties.

## 49 Waiver

- 49.1 A Party does not waive any of the other Party's obligation or breach of obligation merely by failing to do, or delaying in doing, something under this Agreement.
- 49.2 A waiver by a Party is effective only if it is in writing.
- 49.3 A written waiver by a Party is effective only in relation to the particular obligation or breach for which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

## 50 GST

- 50.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable for the Taxable Supply.

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

**Taxable Supply** has the meaning given by the GST Law, excluding (except where expressly agreed otherwise) a supply for which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 50.2 Subject to clause 50.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 50.3 Clause 50.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 50.4 No additional amount is payable by the Council under clause 50.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

- 50.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 50.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices for those Supplies;
- 50.5.2 that any amounts payable by the Parties in accordance with clause 50.2 (as limited by clause 50.4) to each other for those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 50.6 No payment of any amount under this clause 50, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided the recipient with a Tax Invoice or Adjustment Note as the case may be.
- 50.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- 50.8 This clause continues to apply after expiration or termination of this Agreement.

## **51 Explanatory Note Relating to this Agreement**

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

# Schedule 1

(Clause 1.1)

## Land

Title
Lot 2201 DP1216225 (Mont St Quentin Oval)
Lot 1137 DP 1175991 (Bardia)
Lot 1516 DP1175995 (Memorial Park)

# **Schedule 2**

(Clause 1.1)

## **Development**

Development means so much of a mixed use residential development with a dwelling yield of approximately 1,710 dwellings as described in the Concept Plan Application that is on the Land.

# Schedule 3

(Clause 1.1)

## Development Contributions

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Public purpose	Nature and Extent	Timing	Contribution Value
1. Mont St Quentin Oval and Park	Parks and Open Space	Carrying out of Work as described in the table under the heading '1. <i>Mont St Quentin Oval and Park</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 for that Work specified in the ISDP and subject to clause 26.	\$4,100,000.00
		Dedication of approximately 5.3ha 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.	\$3,600,000.00
2. Brigade Park	Parks and Open Space	Carrying out of Work as described in the table under the heading '2. <i>Brigade Park</i> ' in Part A of the ISDP	This Work has been completed	\$900,000.00
		Dedication of approximately 1.19ha of land on which the Work is located	Land has been dedicated	\$1,100,000.00
3. Bardia Park – Stage 1	Parks and Open Space	Carrying out of Work as described in the table under the heading '3. <i>Bardia Park</i> ' in Part A of the ISDP (in part)	This Work has been completed.	\$346,667.00
		Dedication of approximately 0.52ha of land on	Land to be dedicated as soon as practicable	\$196,444.00

		which the Work is located.	after the commencement of this Agreement.	
4. Memorial Forest Reserve	Parks and Open Space and Drainage	Carrying out of Work as described in the table under the heading '4. <i>Memorial Forest Reserve</i> ' in Part A of the ISDP	Part of this Work has been completed.  The uncompleted part of the Work to be completed generally in accordance with the indicative timing for that Work specified in the ISDP and subject to clause 26.	\$700,000.00
		Dedication of approximately 3.46ha 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.	\$1,400,000.00
6. 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), excluding the roads that front the Remainder Land.	Part of this works has been completed. Final AC layer to be constructed in accordance with the ISDP.	\$385,000.00
		Dedication of land on which the Work is located	Land has been dedicated.	\$0
7. Child Care Centre	Community facility	Payment of \$550,000.00 in instalments of amounts to be agreed in writing between the Parties towards construction of a child care centre described under the heading '1. <i>Child Care Centre</i> ' in Part B of the ISDP	This work has been completed	\$550,000.00
<b>Total Contribution Value for Work</b>				<b>\$7,581,667.00</b>
<b>Total Contribution Value:</b>				<b>\$13,878,111.00</b>

# **Schedule 4**

(Clause 1.1)

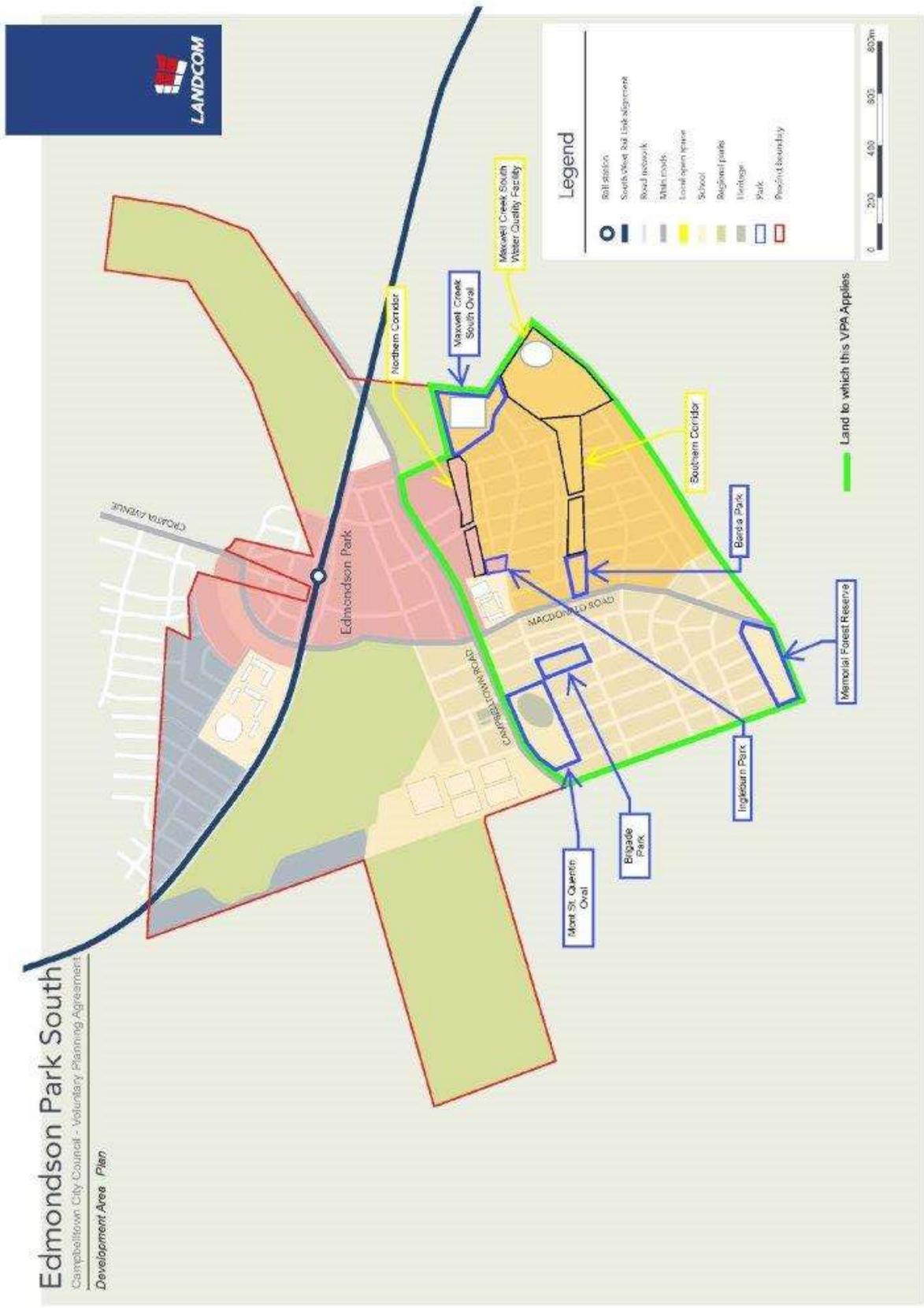
## **Development**

See next page

# Edmondson Park South Planning Agreement

Campbelltown City Council

Landcom (t/as UrbanGrowth NSW)



# **Schedule 5**

(Clause 27.5)

## **Ledger**

See the following pages



# Execution

**Executed as an Agreement**

**Dated:**

---

**Executed on behalf of the Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

---

General Manager (Signature)

---

Mayor (Signature)

---

Name of General Manager (Print Name)

---

Mayor (Print Name)

**Executed** for and on behalf of **Landcom** by its attorneys jointly under power of attorney Book 4716 No 510 dated 28 October 2016.

By signing this document, each attorney certifies that they have no notice of revocation of such powers and authorities.

Signed in the presence of:

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Signature of witness

---

Name of witness

---

Address of witness

---

Signature of attorney

---

Name of attorney

---

Position of attorney

Signed in the presence of:

---

Signature of witness

---

Name of witness

---

Address of witness

---

---

Signature of attorney

---

Name of attorney

---

Position of attorney

---

# Appendix

(Clause 51)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## Explanatory Note

### Draft Planning Agreement

Under s 93F of the *Environmental Planning and Assessment Act 1979*

### Parties

**Campbelltown City Council** ABN 31 459 914 087 of Civic Centre, cnr Queen and Broughton Sts, Campbelltown NSW 2560 (**Council**)

**Landcom (t/a UrbanGrowth NSW)** ABN 79 268 260 688 of Level14, 60 Station Street Parramatta, NSW 2150 (**Developer**)

### Description of the Land to which the Draft Planning Agreement Applies

The Land described in Schedule 1.

### Description of Proposed Development

The part of a mixed use residential development, with a dwelling yield of approximately 1,710 dwellings as described in the Concept Plan Application that is on the Land.

# Summary of Objectives, Nature and Effect of the Draft Planning Agreement

## Objectives of Draft Planning Agreement

The unamended Existing VPA requires the Developer to make the Original Development Contributions in respect of the Development and the Original VPA Land.

The Purchaser will be required to make part of the Original Development Contributions in respect of the Subject Land in accordance with the Existing VPA.

The objective of this Draft Planning Agreement is to provide funding for and provide infrastructure, facilities and services and dedication of land to meet the needs of the Development, namely the delivery of the Development Contributions the subject of this Agreement.

## Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 93F(3) of the Act).

## Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development,
- excludes the application of s 94 and s 94A of the Act to the Development,
- does not exclude the application of s 94EF of the Act to the Development,
- requires dedication of land and carrying out of Works,
- requires the Developer to provide the Council with a letter of undertaking,
- is not to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the Agreement,
- provides a dispute resolution method for a dispute under the agreement, being mediation and expert determination,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

## Whether the Draft Planning Agreement specifies that certain requirements must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate

- This Draft Planning agreement contains requirements that must be complied with, namely the carrying out of Work and dedication of land, before Subdivision Certificates and Construction Certificates may be issued.

# Assessment of the Merits of the Draft Planning Agreement

## The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

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

## How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in ss 5(a)(ii)-(v) and 5(c) of the Act.

## For Planning Authorities:

### ***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A

### ***Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted***

N/A

### ***Councils - How the Draft Planning Agreement Promotes the Elements of the Council's Charter***

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing services and facilities for the community,
- ensuring that the public facilities provided by the Developer under the agreement are transferred to and managed by the Council or are otherwise subject to the Council's control,
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

### ***All Planning Authorities - Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

The Draft Planning Agreement conforms with Council's Capital Works Program through the provision of essential infrastructure such as the roads, traffic facilities and drainage as listed in Schedule 3.

# Deed of Variation of Planning Agreement – Edmondson Park South

---

Campbelltown City Council  
Landcom (t/a UrbanGrowth NSW)  
Dahua Group Sydney Project 1 Pty Ltd

MinterElison

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY  
TEL: +61 2 9921 8888 FAX: +61 2 9921 8123  
[www.minterellison.com](http://www.minterellison.com)

# Deed of Variation of Planning Agreement

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<b>Information table</b>	<b>3</b>
<b>1. Defined terms and interpretation</b>	<b>5</b>
1.1 Defined terms	5
1.2 Interpretation	5
1.3 Inconsistency	6
1.4 Agreement is supplementary	6
<b>2. Operation of this document</b>	<b>6</b>
<b>3. Execution of this document and the VPA Novation</b>	<b>6</b>
<b>4. Variation</b>	<b>7</b>
<b>5. Registration of document</b>	<b>7</b>
<b>6. Explanatory note relating to this document</b>	<b>7</b>
<b>7. General</b>	<b>8</b>
7.1 No fetter	8
7.2 Notices	8
7.3 Severability	8
7.4 Assignment	8
7.5 Costs	8
<b>Schedule 1 – Development Contributions</b>	<b>9</b>
<b>Schedule 2 – Explanatory Note</b>	<b>14</b>
<b>Schedule 3 – VPA Novation</b>	<b>17</b>
<b>Signing page</b>	<b>18</b>

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# Information table

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## Date

## Parties

Name	<b>Campbelltown City Council</b>
ABN	31 459 914 087
Address	Civic Centre, cnr Queen and Broughton Sts, Campbelltown NSW 2560
Telephone	4645 4000
Facsimile	4645 4111
Email	Council@campbelltown.nsw.gov.au
Representative	General Manager

Name	<b>Landcom (t/a UrbanGrowth NSW)</b>
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	<b>Dahua Group Sydney Project 1 Pty Limited</b>
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 To the extent that the Developer has not already provided Security (pursuant to clause 26.5) in respect of any same item of Works referred to in this clause 26.9, the Developer must ensure that where an item of Works specified in Item 13 ('Traffic Signals') of Schedule 3 are not completed by the time specified in column 4 for that item of Works, that it provides Council with a Bank Guarantee for an amount equal to 150% of the amount specified in column 5 for the relevant item of Works, to be held by Council as security for Completion of those Works by the Extended Completion Date and to be released by Council to the Developer pursuant to clause 26.8 after the relevant Work is Completed."*

## 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. <i>Bardia Park</i> ' 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. <i>Ingleburn Park</i> ' 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. <i>Maxwell Creek South Oval</i> ' 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. Southern Corridor' 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. Northern Corridor' 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. Maxwell Creek South Water Quality Facility' 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	<p>Carrying out of Work as described in the table under the heading '10. <i>Macdonald Road</i>' in Part A of the ISDP</p> <p>Dedication of land on which the Work is located</p>	<p>Work to be completed before the issuing of the Subdivision Certificate that creates the first Final Lot that fronts MacDonald Road.</p> <p>Land to be dedicated on the registration of the plan of subdivision that creates the first Final Lot that fronts MacDonald Road.</p>	\$9,000,000.00
8. Connecting Road to Ingleburn Gardens	Roads and Traffic Facilities	<p>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</p> <p>Dedication of land on which the Work is located</p>	<p>Work to be completed generally in accordance with the indicative timing for that Work specified in the ISDP and subject to clause 26.</p> <p>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.</p>	\$100,000.00
9. Roads fronting open space	Roads and Traffic Facilities	<p>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</p> <p>Dedication of land on which the Work is located</p>	<p>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.</p> <p>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.</p>	\$765,000.00

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 Culvert.	\$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	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
<b>Total Contribution Value for Work</b>				<b>\$21,998,333.00</b>
<b>Total Contribution Value:</b>				<b>\$27,651,890.00</b>

# Schedule 2– Explanatory Note

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## Explanatory Note

## Explanatory Note

### Introduction

This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning and Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft variation to an existing planning agreement between the parties under section 93F of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).

### Parties

**Campbelltown City Council** ABN 31 459 914 087 of Civic Centre, cnr Queen and Broughton Sts, Campbelltown NSW 2560 (**Council**)

**Landcom (t/a UrbanGrowth NSW)** ABN 79 268 260 688 of Level 14, 60 Station Street Parramatta, NSW 2150 (**Developer**)

### Description of the Subject Land

The land to which the planning agreement relates and applies is the Subject Land.

### Description of Proposed Development

The part of a mixed use residential development, with a dwelling yield of approximately 1,710 dwellings as described in the Concept Plan Application that is on the Original VPA Land.

### Objectives of amendments to the VPA

The objective of the varied VPA is to:

- (a) amend the land to which the VPA applies from the Original VPA Land to the Subject Land;
- (b) make Dahua responsible for the delivery of the Development Contributions relating to the Subject Land only rather than the Original Development Contributions relating to the Original VPA Land; and
- (c) require the registration of the varied VPA on the Subject Land.

The varied VPA will enable UrbanGrowth NSW to sell the Subject Land to Dahua and novate its rights and obligations under the VPA to Dahua, subject to clause 32 of the VPA. As a result, Dahua will be responsible for the delivery of the Development Contributions under the varied VPA.

UrbanGrowth NSW will be responsible for the delivery of the balance of the Original Development Contributions relating to the Residue Land under the New VPA.

The Original Development Contributions will continue to be delivered by Dahua under the varied VPA and by UrbanGrowth NSW under the New VPA.

### **Nature of amendments to the VPA**

The varied VPA has been prepared in accordance with section 93G of the Act. The varied VPA will continue to be a voluntary agreement, under which UrbanGrowth NSW makes Development Contributions (as defined in clause 1.1 of the VPA) for various public purposes (as defined in s 93F(3) of the Act).

### **Effect of amendments to the VPA**

The VPA (as amended) will continue to:

- relate to the carrying out by UrbanGrowth NSW of the Development;
- exclude the application of sections 94 and 94A of the Act to the Development;
- not exclude the application of section 94EF of the Act to the Development;
- require dedication of land and carrying out of Works;
- impose restrictions on UrbanGrowth NSW transferring the Land or part of the Land or assigning an interest under the Agreement;
- provides a dispute resolution method for a dispute under the agreement, being mediation and expert determination;
- provides that the agreement is governed by the law of New South Wales; and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

### **Whether the VPA (as amended) specifies that certain requirements must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate**

- The VPA (as amended) will continue to contain requirements that must be complied with, namely the carrying out of Work and dedication of land, before Subdivision Certificates and Construction Certificates may be issued.

### **Assessment of the Merits of the amendments to the VPA**

#### **The planning purposes served by the VPA**

In accordance with section 93F(2) of the Act, the VPA (as amended) will continue to:

- promote and co-ordinate the orderly and economic use and development of the Subject Land to which the VPA applies;
- provide land for public purposes in connection with the Development;

- provide and co-ordinate community services and facilities in connection with the Development; and
- provide increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

**How the Draft Planning Agreement Promotes the Public Interest**

The varied VPA promotes the public interest by promoting the objects of the Act as set out in ss 5(a)(ii)-(v) and 5(c) of the Act. Together, the varied VPA and the New VPA will ensure the delivery of the Development Contributions by Dahua and UrbanGrowth NSW, respectively.

**For Planning Authorities:**

***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A

***Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted***

N/A

***Councils - How the Draft Planning Agreement Promotes the Elements of the Council's Charter***

The VPA (as amended) will continue to promote the elements of the Council's charter by:

- providing services and facilities for the community,
- ensuring that the public facilities provided by UrbanGrowth NSW under the agreement are transferred to and managed by the Council or are otherwise subject to the Council's control,
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

***All Planning Authorities - Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

The VPA (as amended) continues to conform with Council's Capital Works Program through the provision of essential infrastructure such as the roads, traffic facilities and drainage as listed in Schedule 3 of the VPA.

# Schedule 3– VPA Novation

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# Signing page

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**EXECUTED** as an agreement.

**Executed** on behalf of the **Campbelltown City Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

\_\_\_\_\_  
Signature of General Manager



\_\_\_\_\_  
Signature of Mayor



\_\_\_\_\_  
Name of General Manager (print)

\_\_\_\_\_  
Name of Mayor (print)

**Executed** for and on behalf of **Landcom** by its attorneys jointly under power of attorney Book 4716 No 510 dated 28 October 2016.

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

**Executed by Dahua Group Sydney Project 1  
Pty Limited ABN 91 606 390 032** in accordance  
with section 127 of the Corporations Act 2001  
(Cth):

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Signature of director

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Full name of director

---

Signature of company secretary/director

---

Full name of company secretary/director

# Deed of Novation of Planning Agreement – Edmondson Park South

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Campbelltown City Council (**Council**)

Landcom (t/a UrbanGrowth NSW) (**Developer**)

Dahua Group Sydney Project 1 Pty Ltd (**Purchaser**)

## MinterEllison

Level 40 Governor Macquarie Tower 1 Farrer Place Sydney NSW  
2000  
Australia DX 117 Sydney  
T +61 2 9921 8888 F +61 2 9921 8123  
minterellison.com

# Deed of Novation of Planning Agreement

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<b>Details</b>	<b>3</b>
<b>Agreed terms</b>	<b>4</b>
<b>1. Defined terms &amp; interpretation</b>	<b>4</b>
1.1 Defined terms	4
1.2 Interpretation	4
1.3 Headings	5
<b>2. Operation</b>	<b>5</b>
<b>3. Execution of this Novation Deed</b>	<b>5</b>
<b>4. Novation</b>	<b>5</b>
4.1 Acknowledgment	5
4.2 Novation	5
4.3 Continued force and effect of the VPA	5
<b>5. Assumption and release</b>	<b>5</b>
5.1 Obligations of the Purchaser	5
5.2 Liability	6
5.3 Release	6
<b>6. General provisions</b>	<b>6</b>
6.1 Counterparts	6
6.2 Amendment and waiver	6
6.3 Governing Law	6
<b>Signing page</b>	<b>7</b>

# Date

# Parties

Name **Campbelltown City Council** ABN 31 459 914 087  
Short form name **Council**  
Notice details Civic Centre, cnr Queen and Broughton Streets, Campbelltown NSW 2650  
Facsimile: 4645 4111  
Attention: General Manager

Name **Landcom (t/a UrbanGrowth NSW)** ABN 79 268 260 688  
Short form name **Developer**  
Notice details Level 14, 60 Station Street, Parramatta NSW 2150  
Facsimile: 9841 8688  
Attention: Peter Drivas

Name **Dahua Group Sydney Project 1 Pty Ltd** ACN 606 390 032  
Short form name **Purchaser**  
Notice details Suite 2, Level 20, 201-217 Elizabeth Street, Sydney NSW 2000  
Facsimile: 02 9286 3399  
Attention: John He, Legal Affairs Officer

# Background

- A On 6 July 2015, the VPA between the Council and the Developer was executed by all parties and came into force.
- B The Developer proposes to sell the Land to the Purchaser, and retain the Residue Land.
- C The Developer proposes to novate its rights and obligations under the VPA to the Purchaser in accordance with clause 32 of the VPA and on the terms set out in this Deed of Novation.

# 1. Defined terms & interpretation

## 1.1 Defined terms

In this document:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Amended VPA** means the proposed amendment to the VPA to remove the Residue Land and have the effect of the VPA applying to the Land only.

**Development** has the same meaning as in the VPA.

**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 in DP1218190 and 115/1218190.

**Novation Deed** means this deed.

**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.

**VPA** means the document titled "Edmondson Park South – Planning Agreement" dated 6 July 2015 in relation to the Developer's proposed Development on the Original VPA Land, as amended from time to time.

## 1.2 Interpretation

In this agreement, 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 agreement 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 party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) 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;

- (h) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions; and
- (i) 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.

### **1.3 Headings**

Headings are for ease of reference only and do not affect interpretation.

## **2. Operation**

- (a) This Novation Deed operates on and from the date on which it is executed by all parties.
- (b) The party who executes this Novation Deed last is to insert the date that the party executed this Novation Deed on the front page, and provide a copy of the fully executed and dated Novation Deed to the other parties.

## **3. Execution of this Novation Deed**

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

## **4. Novation**

### **4.1 Acknowledgment**

For the purpose of section 93F(1) of the Act, the parties acknowledge and agree that the Purchaser is a person associated with a person to whom either section 93F(1)(a) or section 93F(1)(b) of the Act applies.

### **4.2 Novation**

The parties agree that on and from the commencement of this Novation Deed:

- (a) the Purchaser is substituted for the Developer for the purposes of the VPA; and
- (b) all references to the Developer in the VPA are to be read and construed as though they are references to the Purchaser.

### **4.3 Continued force and effect of the VPA**

Subject to the provisions of this Novation Deed, the parties agree that the provisions of the VPA continue to be in full force and effect according to the tenor of the VPA.

## **5. Assumption and release**

### **5.1 Obligations of the Purchaser**

On and from the commencement of this Novation Deed, the Purchaser:

- (a) is bound to perform all of the obligations of the Developer under the VPA;
- (b) must comply with the provisions of the VPA; and
- (c) may exercise all of the rights and benefits that may be exercised by Developer under the VPA.

## **5.2 Liability**

This Novation Deed does not affect:

- (a) any liability of the Developer incurred by the Developer prior to the commencement of this Novation Deed; or
- (b) any liability of Council incurred by Council before the commencement of this Novation Deed.

## **5.3 Release**

Council releases the Developer from any obligations under the VPA that arise on or after the commencement of this Novation Deed.

# **6. General provisions**

## **6.1 Counterparts**

This Deed of Novation may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute one and the same document.

## **6.2 Amendment and waiver**

No amendment or waiver of any provision of this Deed of Novation shall be valid unless it is in writing and signed by the parties.

## **6.3 Costs**

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

## **6.4 Governing Law**

This Deed of Novation shall be governed by and construed in accordance with the laws of the state of New South Wales.

# Signing page

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**EXECUTED** as a deed.

**Executed** on behalf of **Campbelltown City Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

\_\_\_\_\_  
Signature of General Manager

←

\_\_\_\_\_  
Signature of Mayor

←

\_\_\_\_\_  
Name of General Manager

\_\_\_\_\_  
Name of Mayor

**Executed** for and on behalf of **Landcom** by its attorneys jointly under power of attorney Book 4716 No 510 dated 28 October 2016. 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

**Executed by Dahua Group Sydney  
Project 1 Pty Ltd** pursuant to s127(1) of the  
Corporations Act 2001:

\_\_\_\_\_  
Signature of Secretary/director

←

\_\_\_\_\_  
Signature of director

←

\_\_\_\_\_  
Name of Secretary/director

\_\_\_\_\_  
Name of director