

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: **13 OCTOBER 2017**

Edmondson Park South

Planning Agreement

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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.