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: 6 July 2015

Edmondson Park South Planning Agreement

Table of Contents

Summary Sheet **5**
Parties **7**
Background **7**
Operative provisions **7**
Part 1 - Preliminary 7
1 Definitions & Interpretation 7
2 Status of this Agreement 10
3 Commencement of this Agreement 10
4 Application of this Agreement 10
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 11
10 Variation of scope or timing for provision of Development Contributions 12
Part 2 – Provisions relating to monetary Development Contributions 13
11 Payment of monetary Development Contributions 13
Part 3 – Provisions relating to dedication of Land 13
12 Procedures relating to the dedication of Land 13
13 Transfer of Land to the Developer 14
Part 4 – Provisions relating to the carrying out of Work 14
14 Design and Specification of Work 14
15 Standard of construction of Work 15
16 Access for Works 15
17 Protection of people and property 16
18 Completion 16
19 Procedures relating to the rectification of defects 16
20 Failure to carry out Work 17
21 Maintenance and management of Works 17
22 Works-as-executed-plan 19

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

Execution **46**
Appendix **47**

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: michael.sewell@campbelltown.nsw.gov.au

Representative: Michael Sewell

Developer:

Name: Landcom (t/a UrbanGrowth NSW)

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

Telephone: 9841 8600

Facsimile: 9841 8688

Email: dsavage@urbangrowth.nsw.gov.au

Representative: Donna Savage

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 Land.

D The Developer has 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 is prepared to make Development Contributions in connection with the carrying out of the Development 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 Contribution means any of the following, or any combination of them, to be used for, or applied towards, a public purpose:

- a monetary contribution;
- the dedication of land free of cost;
- the carrying out of work; and
- the provision of any other material public benefit.

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 land that is, or was prior to its subdivision, described in Schedule 1, and identified as 'Land to which this VPA applies' on the Development Area Plan.

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'*.

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

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.

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 Commencement of this Agreement

3.1 This Agreement commences on the date on which it has been executed by all Parties.

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.

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

5.1 The Developer is under no obligation to make the Development Contributions provided for in this Agreement unless and until a Development Consent is granted with respect to any part of the Development, which contains a requirement or condition requiring this Agreement to be entered into.

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

13.1 This clause 13 applies when New MacDonald Road, being Item 10 in Schedule 3 is Completed for the purposes of this Agreement and the land on which it has been constructed is dedicated to the Council.

13.2 The Council will:

13.2.1 do all things necessary to close as a public road the Unused Road, and

13.2.2 transfer the Unused Road to the Developer free of cost.

13.3 The Parties are to do all things necessary to transfer the Unused Road to the Developer within six (6) months of the dedication of the land on which the New MacDonald Road is to be located, or within a later time agreed between the Parties, agreement which must not be unreasonably withheld.

13.4 The Developer is to give to the Council a survey of the Unused Road showing such information as is necessary for the Unused Road to be closed as a public road.

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 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: