

Deed of Novation

Penny Lane Carpark, Thirlmere Planning Agreement

Wollondilly Shire Council

Ozy Investments Pty Ltd as trustee for Ozy Investment Trust

Great North No 1 Pty Ltd

Date:

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement
Wollondilly Shire Council
Ozy Investments Pty Ltd as trustee for Ozy Investment Trust
Great North No 1 Pty Ltd

Deed of Novation
Penny Lane Carpark, Thirlmere
Planning Agreement

Table of Contents

Summary Sheet.....3

Parties4

Background.....4

Operative provisions5

 Part 1 - Preliminary5

 1 Definitions and Interpretation.....5

 2 Novation.....6

 3 Affirmation of the Original Planning Agreement6

 4 Council Satisfaction7

 5 Warranties and Representations7

 6 Trustee Developer7

 7 GST.....8

 8 Stamp duty and costs8

 9 Further acts.....8

 10 Entire Deed.....9

 11 Amendment9

 12 Governing law9

 13 Counterparts **Error! Bookmark not defined.**

Execution 10

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement

Wollondilly Shire Council

Ozy Investments Pty Ltd as trustee for Ozy Investment Trust

Great North No 1 Pty Ltd

**Deed of Novation
Penny Lane Carpark, Thirlmere
Planning Agreement**

Summary Sheet

Council:

Name: Wollondilly Shire Council

Address: 62-64 Menangle Street, Picton, NSW 2571

Telephone: 02 4677 1100

Email: council@wollondilly.nsw.gov.au

Representative: Chief Executive Officer

Original Developer:

Name: Ozy Investments Pty Ltd ACN 163 521 382 as trustee for Ozy Investment Trust ABN 92 746 957 279

Address: 2A, 148-150 Canterbury Road, Bankstown NSW 2200

Telephone: 1300 093 704

Email: ghazi@ozyhomes.com.au

Representative: Ghazi Sangari

New Developer:

Name: Great North No 1 Pty Ltd (ACN 165 867 729)

Address: Level 3, 239 Church Street, Parramatta NSW 2150

Telephone: 0404 047 667

Email: sam@eltorosecurities.com.au

Representative: Sam Almir, Company Officer

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement

Wollondilly Shire Council

Ozy Investments Pty Ltd as trustee for Ozy Investment Trust

Great North No 1 Pty Ltd

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement

Parties

Wollondilly Shire Council ABN 93 723 245 808 of 62-64 Menangle Street Picton NSW 2571 (**Council**)

and

Ozy Investments Pty Ltd ACN 163 521 382 as trustee for Ozy Investment Trust ABN 92 746 957 279 of 2A, 148-150 Canterbury Road, Bankstown NSW 2200 (**Original Developer**)

and

Great North No 1 Pty Ltd ACN 165 867 729 of Level 3, 239 Church Street, Parramatta NSW 2150 (**New Developer**)

Background

- A The Original Developer is the owner of the Developer Land, otherwise known as 27 Oaks Street, Thirlmere.
- B In connection with Development Application DA/2018/188, the Original Developer entered into the Planning Agreement with the Council under the Environmental Planning and Assessment Act 1979 for the construction of a carpark, footpath and landscaping on the Council Land, as well as the resurfacing and linemarking of the existing carpark and Penny Lane, immediately to the east of the Council Land, in connection with the Development.
- C The Original Developer has entered into to a contract to sell the Developer Land to the New Developer. The sale is conditional on satisfaction of the requirements in clause 26.1 of the Planning Agreement.
- D The Original Developer wishes to novate the Planning Agreement and all of the respective rights and obligations in the Planning Agreement to the New Developer.
- E The Council consents to the transfer of the Developer Land to the New Developer and agrees to the novation of the Planning Agreement to the New Developer on the terms set out in this Deed, and pursuant to clause 26.1 of the Planning Agreement.

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement

Wollondilly Shire Council

Ozy Investments Pty Ltd as trustee for Ozy Investment Trust

Great North No 1 Pty Ltd

Operative provisions

Part 1 - Preliminary

1 Definitions and Interpretation

1.1 In this Deed the following definitions apply:

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

Council Land means Lot 100 DP1175654.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Development means the development described in Development Application DA/2018/188 on the Developer Land for which Development Consent was granted by the Council on 31 October 2019, as modified from time to time.

Developer Land means Lot 3, Section C DP1569, otherwise known as 27 Oaks Street, Thirlmere.

Effective Date means the date of settlement of the sale of the Developer Land from the Original Developer to the New Developer.

Party means a party to this Deed.

Planning Agreement means the Penny Lane Carpark, Thirlmere Planning Agreement entered into on 10 November 2021 between Council and the Original Developer.

Trust means the Ozy Investment Trust ABN 92 746 957 279.

1.2 In this Deed unless the contrary intention appears:

1.2.1 words in the singular include the plural and vice versa;

1.2.2 any gender includes the other genders;

1.2.3 if a word or phrase is defined its other grammatical forms have corresponding meanings;

1.2.4 "includes" means includes without limitation;

1.2.5 no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and

1.2.6 a reference to:

- (a) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
- (b) a person includes the person's legal personal representatives, successors, assigns and persons substituted by assignment;
- (c) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement

Wollondilly Shire Council

Ozy Investments Pty Ltd as trustee for Ozy Investment Trust

Great North No 1 Pty Ltd

- (d) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

1.2.7 Headings do not affect the interpretation of this Deed.

2 Novation

- 2.1 Subject to clause 3 and with effect from the Effective Date:
 - 2.1.1 the New Developer is substituted for the Original Developer as a Party to the Planning Agreement;
 - 2.1.2 the New Developer is bound by the Planning Agreement to perform all of the obligations in the Planning Agreement;
 - 2.1.3 the New Developer is entitled to the benefit of the Planning Agreement as if the New Developer was a Party to the Planning Agreement; and
 - 2.1.4 the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Planning Agreement, except in relation to any breaches of the Planning Agreement which arose prior to the Effective Date.
- 2.2 With effect from the Effective Date:
 - 2.2.1 all references to the Original Developer in the Planning Agreement are construed as references to the New Developer; and
 - 2.2.2 the Council must address all notices and communications given or made by it to the New Developer under the Planning Agreement to the address noted on the Summary Sheet to this Deed for the New Developer.

3 Affirmation of the Original Planning Agreement

- 3.1 The Planning Agreement will be read and construed subject to this Deed, and in all other respects the provisions of the Planning Agreement are ratified and confirmed, and, subject to the variation and novation contained in this Deed, the Planning Agreement will continue in full force and effect.
- 3.2 On and from the Effective Date, the New Developer must properly and punctually observe and perform all of the Original Developer's obligations (both present, future, actual and contingent) under the Planning Agreement or which arise as a result of the Council exercising any right under the Planning Agreement and which are due to be performed on or after the Effective Date.
- 3.3 Until the Effective Date, the Original Developer must continue to properly and punctually observe and perform all of the Original Developer's obligations both future, actual and contingent under the Planning Agreement.

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement

Wollondilly Shire Council

Ozy Investments Pty Ltd as trustee for Ozy Investment Trust

Great North No 1 Pty Ltd

4 Council Satisfaction

- 4.1 For the purposes of clause 26.1 of the Planning Agreement, the Council acknowledges that:
 - 4.1.1 this Deed is the deed in favour of the Council referred to in clause 26.1.3 of the Planning Agreement,
 - 4.1.2 the Council is satisfied that the New Developer is reasonably capable of performing the obligations under the Planning Agreement,
 - 4.1.3 as at the date of this Deed, the Original Developer is not in breach of the Planning Agreement, and
 - 4.1.4 the Council consents to the transfer of Developer Land from the Original Developer to the New Developer.

5 Warranties and Representations

- 5.1 Each Party represents and warrants that, at the time of execution, and at the Effective Date:
 - 5.1.1 it has capacity unconditionally to execute, deliver and comply with its obligations under this Deed;
 - 5.1.2 it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this Deed;
 - 5.1.3 this Deed is a valid and legally binding obligation and is enforceable against it by each other Party in accordance with its terms; and
 - 5.1.4 its unconditional execution and delivery of, and compliance with its obligations under this Deed do not contravene:
 - (a) any law or directive from a government entity;
 - (b) its constituent documents;
 - (c) any agreement or instrument to which it is a Party; or
 - (d) any obligation of it to any other person.
- 5.2 The warranties and representations in clause 5.1 survive the execution of this Deed and the novation and assignment of the Planning Agreement.

6 Trustee Developer

- 6.1 The Original Developer enters into this Deed in its capacity as the trustee for the Trust constituted by a trust deed (**Trust Deed**).
- 6.2 The Original Developer warrants as follows:
 - 6.2.1 it is the sole trustee of the Trust,
 - 6.2.2 it has not been removed as trustee and no action has been taken to remove or replace it as trustee, or to terminate the Trust,
 - 6.2.3 no release or revocation of its powers under the Trust Deed has occurred,

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement

Wollondilly Shire Council

Ozy Investments Pty Ltd as trustee for Ozy Investment Trust

Great North No 1 Pty Ltd

- 6.2.4 it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this Deed;
- 6.2.5 it is not in breach of the Trust Deed;
- 6.2.6 it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this Deed and the Planning Agreement;
- 6.2.7 it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Deed and the Planning Agreement.
- 6.3 The Original Developer indemnifies the Council, and agrees to keep the Council indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 6.2.

7 GST

- 7.1 Where a supply made under this Deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this Deed.
- 7.2 Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

8 Stamp duty and costs

- 8.1 The Original Developer is responsible for the Council's legal costs incidental to the negotiation, preparation and execution of this Deed.
- 8.2 The New Developer must pay all stamp duty (if any) arising directly or indirectly from this Deed.
- 8.3 This clause continues to apply after termination of this Deed.

9 Further acts

- 9.1 Immediately upon settlement of the sale of the Developer Land to the New Developer, the Original Developer is to notify the Council in writing of the Effective Date.
- 9.2 Each Party will take all steps, execute all deeds and do everything reasonably required by any other Party to give effect to any of the actions contemplated by this Deed.
- 9.3 This Deed binds each Party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement

Wollondilly Shire Council

Ozy Investments Pty Ltd as trustee for Ozy Investment Trust

Great North No 1 Pty Ltd

10 Entire Deed

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

11 Amendment

- 11.1 This Deed may only be varied or replaced by a document executed by the Parties.

12 Governing law

- 12.1 This Deed is governed by the law in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement

Wollondilly Shire Council

Ozy Investments Pty Ltd as trustee for Ozy Investment Trust

Great North No 1 Pty Ltd

Execution

Executed as a Deed

Dated:

Executed on behalf of Wollondilly Shire Council ABN 93 723 245 808 in
the presence of

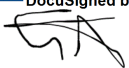
Name / Position

Witness

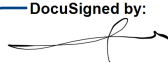
Name and address of Witness

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement
Wollondilly Shire Council
Ozy Investments Pty Ltd as trustee for Ozy Investment Trust
Great North No 1 Pty Ltd

Executed on behalf of Ozy Investments Pty Ltd ACN 163 521 382, as trustee for Ozy Investment Trust ABN 92 746 957 279, in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

DocuSigned by:

E5289F154071497...

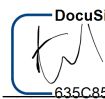
Name / Position Ghazi Sangari Director

DocuSigned by:

FB8090B844A940C...

Name / Position Mohamad Hubi Director

Deed of Novation of Penny Lane Carpark, Thirlmere Planning Agreement
Wollondilly Shire Council
Ozy Investments Pty Ltd as trustee for Ozy Investment Trust
Great North No 1 Pty Ltd

Executed on behalf of Great North No 1 Pty Ltd ACN 165 867 729 in accordance with s127(1) of the *Corporations Act 2001* (Cth) by:

DocuSigned by:

635C85ED909E40E...

Sam Almir Sole Director/Secretary

Name / Position

Name / Position