

DEED OF VARIATION OF PLANNING AGREEMENT

WOLLONDILLY SHIRE COUNCIL

ABN 93 723 245 808

VERDOSO TAHMOOR PTY LTD

ABN 80 166 184 649

30 July 2019

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Deed of Variation of Planning Agreement

This DEED OF VARIATION is made on 30 July 2019 ~~2018~~

BETWEEN:

- 1 **Wollondilly Shire Council ABN 93 723 245 808** of 62-64 Menangle Street, Picton NSW 2571 (**Council**) and
- 2 **Verdoso Tahmoor Pty Ltd ABN 80 166 184 649** of Level 1, 20 Hunter Street, Sydney NSW 2000 (**Developer**)

Background

- (A) The Council and the Developer are parties to the Agreement.
- (B) Regulation 25C(3) of the *Environmental Planning and Assessment Regulation 2000* permits a planning agreement to be amended by the parties to it signing a further agreement in writing between them.
- (C) Pursuant to clause 44 of the Agreement, the Council and the Developer have agreed to vary the Agreement so as to exclude a minor portion of the Land to facilitate its transfer to Sydney Water Corporation for the purposes of an extension to a pumping station in the manner set out in this Deed.

THE PARTIES AGREE AS FOLLOWS:

1 Definitions and interpretation

1.1 Definitions

The following definitions apply in this Deed.

Agreement means the planning agreement pursuant to s7.4 of the Act, in the form of a deed titled '2710 Remembrance Driveway, Tahmoor' entered into between Council and the Developer dated 6th February 2014.

Deed means this deed of variation of planning agreement and all annexures, schedules, attachments and exhibits to it.

Excluded Land means Lot 11 DP 1214212 shown on the plan in the Schedule to this Deed.

Party means a party to this Deed.

1.2 Rules for Interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision of legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and;
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept) such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) A reference to **including** means "including, without limitation".
 - (g) A reference to **dollars** or **\$** is to an amount in Australian currency.
 - (h) A reference to **this document** includes the agreement recorded by this document.
 - (i) Word defined in the GST Law have the same meaning in clauses about GST.
 - (j) This document is not to be interpreted against the interest of a party merely because that party proposed this document or some provisions in it or because that party relies on a provision of this document to protect itself.
 - (k) a capitalised term or expression defined in the Agreement shall have the same meaning when used in this Deed, except as provided for in clause 1.1 of this Deed.

2 Status of this Deed

- (a) This Deed is an amendment to the Agreement within the meaning of clause 25C(3) of the Regulation.
- (b) This Deed is not a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- (a) This Deed takes effect on the date when all Parties have executed this Deed.
- (b) The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Warranties

- (a) The Parties warrant to each other that they:
 - (i) have full capacity to enter into this Deed, and
 - (ii) are able to fully comply with their obligations under this Deed.

5 Variation of Agreement

The Agreement is varied as follows:

- (a) **Clause 1.1**
Insert the following definition in alphabetical order:
'Plan of Acquisition means DP1214212 a copy of which is in Schedule 3.'
- (b) **Clause 1.1, definition of 'Land'**
Omit the full stop at the end of the definition. Insert instead:
',' but excluding land comprised in Lot 11 DP1214212 shown on the Plan of Acquisition.'
- (c) **Clause 27.6**
Insert the following clause after clause 27.5
'27.6 Notwithstanding any other provision of this Deed, the Parties are to do such things as are reasonably necessary to remove any notation of this Deed, or ensure that any notation of this Deed is not carried forward, to Lot 11 DP1214212 upon creation of that lot.'
- (d) **Schedule 3**
Insert after Schedule 2 of the Agreement the plan in the Schedule to this Deed.

6 Consent

- (a) For the purposes of clause 28 of the Agreement, the Council:
 - (i) consents to the Developer selling and transferring all its estate or interest in the Excluded Land to Sydney Water Corporation ABN 49 776 225 038,
 - (ii) waives the requirements in clauses 28.1.3 and 28.1.4 of the Agreement in respect of the sale and transfer referred to in clause 6(a)(i) of this Deed,
 - (iii) agrees that the Developer is not in breach of the Agreement for the purposes of the sale and transfer referred to in clause 6(a)(i) of this Deed,

7 Registration of this Deed

- (a) On the execution of this Deed by the Council, the Developer is to deliver to the Council:
 - (i) a request to Land Registration Services NSW in registrable form to register a copy of this Deed on the

title to Lot 2 DP 874556 to confirm the amendment to the terms of the Agreement effected by this Deed in the form of the request set out in Annexure A to this Deed (**Request**) executed by the registered proprietor of that lot and all other persons required by the Registrar-General to execute such a form,

- (ii) the written irrevocable consent of the mortgagee to Lot 2 DP 874556 and of each other person referred to in s7.6(1)(a) of the Act to the registration of this Deed,
- (b) The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

8 No Other Change

- (a) The Parties confirm that the Agreement will continue in full force and effect as varied by this Deed.
- (b) Nothing in this Deed will be read or construed as implying any form of variation or waiver to the Agreement other than as expressly set out in this Deed.

9 Further Assurance

Subject to clause 10 each Party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

10 Legal Costs

The Developer must pay the Council's costs and expenses to a limit of \$15,000.00+GST, and its own costs, of preparing, executing and registering the Request and must effect such registration as soon as possible after the execution of this Deed.

11 General

- (a) This Deed contains the entire agreement between the Parties and any previous negotiations, agreements, representations or warranties relating to the subject matter of this Deed are of no effect.
- (b) A right may only be waived in writing, signed by the Party giving the waiver, and
 - (i) no other conduct or a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise presents the exercise of the right;
 - (ii) a waiver of right on one or more occasions does not operate as a waiver of that right if it arises again; and
 - (iii) the exercise of a right does not prevent any further exercise of that right or of any other right.
- (c) Nothing in this Deed in any way restricts or otherwise affects the Council's unfettered discretion to exercise statutory powers as a public authority.

- (d) The invalidity, illegality or unenforceability of any provisions of this Deed will not affect the validity or enforceability or any other provisions.
- (e) This Deed may only be varied in writing by the agreement of the Parties.
- (f) This Deed is governed by and construed in accordance with the law or the State of New South Wales
- (g) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relating to all matters arising under, or relating to, this Deed.


12 Explanatory Note

- (a) Annexure B contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

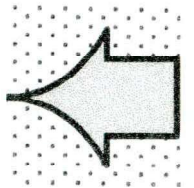
Signing page(s)

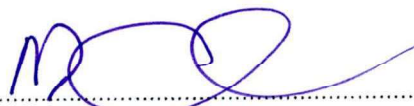
Executed and delivered as a deed

Signed, sealed and delivered by Wollondilly Shire Council (ABN 93 723 245 808) by its duly authorised officer, in the presence of:


.....
Signature


.....
Signature of authorised officer




.....
Signature of witness

Michael Malone
.....
Name of authorised Officer

RON DOWD
.....
Full name of witness – BLOCK LETTERS

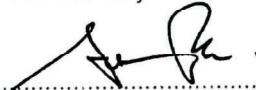
a/c o
.....
Position of Authorised officer

62-64 MENANGKEST PICTON
.....
Address of witness (street address not PO Box etc)

CONTRIBUTIONS PLANNGR
.....
Occupation of witness

Executed by Verdoso Tahmoor Pty Ltd (ABN 80 166 184 649) by its attorney *Gregory Lane Simpson* pursuant to power of attorney registered book *4657* number *578* who states he has no notice of the revocation of that power of attorney


.....
Signature of attorney


.....
Signature of Director/Secretary witness

GREG SIMPSON
.....
Name of attorney – BLOCK LETTERS

ANDREW LEE PRICE
.....
Name of witness – BLOCK LETTERS

(GREGORY LANE SIMPSON)

Annexure B – Explanatory Note

Draft Deed of Variation to 2710 Remembrance Driveway, Tahmoor Planning Agreement

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

Parties

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

Verdoso Tahmoor Pty Ltd ABN 80 166 184 649 of Level 1, 20 Hunter Street, Sydney NSW 2000 (**Developer**)

Description of the Land to which the Draft Deed of Variation Applies

The Draft Deed applies to the same land the subject of the planning agreement and the effect of the Draft Deed is to exclude a minor portion of that land from the planning agreement.

Description of Proposed Development

The Draft Deed relates to the same development the subject of the planning agreement.

Summary of Objectives, Nature and Effect of the Draft Deed of Variation

Objectives of Draft Deed of Variation

The Draft Deed amends the planning agreement to exclude a minor portion of the land from the land to which the planning agreement applies in order to facilitate the transfer of that minor portion to Sydney Water Corporation.

Nature of Draft Deed of Variation

The Draft Deed is a deed of variation of the planning agreement under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*.

Effect of the Draft Deed of Variation

The Draft Deed:

- amends the planning agreement to exclude a minor portion of the land (Lot 11 DP1214212) from the land to which the planning agreement applies,
- amends the planning agreement to require the removal of notation of the planning agreement from the minor portion once it is created as a separate lot,
- is required to be registered on the title to Lot 2 DP874556.

Assessment of the Merits of the Draft Deed of Variation

The Planning Purposes Served by the Draft Deed of Variation

The Draft Deed:

- promotes the orderly and economic use and development of the land to which the planning agreement applies; and
- provide increased opportunity for community participation in environmental planning and assessment.

How the Draft Deed of Variation Promotes the Public Interest

The Draft Deed does not impact value of the development contributions to be provided under the planning agreement for the public benefit.

The Draft Deed promotes the public interest by promoting the objects of the Act set out in section 1.3(c) and (j) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Deed of Variation Promotes its Statutory Responsibilities

N/A

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

N/A

Councils - How the Draft Deed of Variation Promotes the Guiding Principles for Councils in section 8 of the Local Government Act 1993 (previously Elements of the Council's Charter in section 8)

The Draft Planning Agreement promotes the elements of the Council's charter by facilitating the transfer of land to Sydney Water Corporation for the purposes of an extension to a pumping station which shows:

- Council working with others to secure appropriate services for local community, and
- Council acting fairly, ethically and without bias in the interests of the local community.

All Planning Authorities – Whether the Draft Deed of Variation Conforms with the Authority’s Capital Works Program

The Draft Deed does not impact on the works to be provided under the planning agreement. The planning agreement creates no inconsistency with the Council’s capital works program. Accordingly, the Draft Deed also does not create any inconsistency with the Council’s capital works program.

All Planning Authorities – Whether the Draft Deed of Variation specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

No, the Draft Deed of variation does not contain requirements that must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.]

