

Second Deed of Amendment to the Calderwood Urban Development Project Planning Agreement

Parties

Minister for Planning
(ABN 38 755 709681)

Lendlease Communities (Australia) Limited
(ABN 88 000 966 085)

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Date

10 July 2018

Parties

MINISTER FOR PLANNING (ABN 38 755 709681) 
of c/-NSW Department of Planning and Environment, 320 Pitt Street, Sydney NSW
2000
(Minister)

LENLEASE COMMUNITIES (AUSTRALIA) LIMITED (ABN 88 000 966 085)
of Level 4, 30 The Bond, 30 Hickson Road, Millers Point NSW 2000
(Developer);

Introduction

A On 3 March 2011, the Minister and the Developer entered into the Planning Agreement.

B On 21 December 2016, the Planning Agreement was amended by the First Amendment Deed.

C The parties have agreed to further amend the Planning Agreement, as set out in this deed.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this deed:

(1) **First Amendment Deed** means the 'Amendment Deed Calderwood Urban Development Project' dated 21 December 2016, entered into between the Minister and the Developer.

(2) **Planning Agreement** means the voluntary planning agreement dated 3 March 2011, entered into between the Minister and the Developer, as amended by the First Amendment Deed.

1.2 Interpretation

In this deed, unless the contrary intention appears:

(1) expressions and phrases used but not defined in this deed will have the same meanings as they have in the Planning Agreement;

(2) clause 1.2 of the Planning Agreement will apply to the interpretation and construction of this deed.

2 Amendment to Planning Agreement

2.1 Amendment




On and from the date of this deed, the Planning Agreement is amended as set out in this clause 2.

2.2 Definitions

Clause 1.1 of the Planning Agreement is amended to:

- (1) insert the following definitions:

"Draft SIC Determination" means the proposed *Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra (West Lake Illawarra)) Determination 2011*, publicly exhibited on or around 21 January 2011, as though it had provided:

- (a) that the meaning of the phrase 'net developable area' as it is used in the document;
- (b) that the list of purposes at clause 4 (2)(a)-(m) of the document; and
- (c) that the date '1 July 2011' at clause 24 of the document,

could each be varied by the Secretary in writing, at any time, with retrospective or prospective effect."

"SIC Determination" means a determination of a contribution made in accordance with section 94EE of the Act for a special contributions area which includes the Land."

"Second Amendment Deed" means the 'Second Deed of Amendment to the Calderwood Urban Development Project Planning Agreement', being the deed which inserted clause 4A into this deed."

- (2) amend the following definitions:

"Development Contributions" is amended to insert, "and for the purposes of clauses 2.4 and 5.3 and Schedule 1, includes the amount paid by the Developer in accordance with clause 4A" to the end of the definition.

"Transport Contributions" is amended to insert, "and for the purposes of clause 3 to 6 of Schedule 4, and Schedule 5, includes the amount paid by the Developer in accordance with clause 4A" to the end of the definition.

2.3 Clause 4A

The Planning Agreement is amended to insert the following clause after clause 4:

"4A REVIEW OF DEVELOPMENT CONTRIBUTIONS

- (a) Subject to clause 4A(b), the parties agree that the Draft SIC Determination operates as though it applies, and had always applied, to the Land and to the Development, with the effect that, if the rate or method of calculation for a contribution amount specified in the Draft SIC Determination would result in a contribution amount (**Draft SIC Amount**) that is less than the amount of the Transport Contributions required under this deed, then:

- (i) the Draft SIC Amount will be deemed to replace the amount of the Transport Contributions for the purpose of this deed;
 - (ii) the Minister will not be required to refund any part of the Transport Contributions already paid by the Developer under this deed, including to the extent that the amount paid exceeds the Draft SIC Amount; and
 - (iii) in respect of any part of the Transport Contributions paid before the date of the Second Amendment Deed, the Developer will be entitled to a credit, to the extent that the amount paid exceeds the portion of the Draft SIC Amount that would have been payable, to be applied against the balance of any unpaid Transport Contributions required under this deed, up to a maximum of \$1,336,931.56.
- (b) If a SIC Determination takes effect before the Transport Contributions have been paid in full:

(i) the Developer may, by written notice, elect that the SIC Determination is to be applied to those parts of the Land and the Development for which the Transport Contributions remain unpaid and not due for payment, so that the contribution amount calculated in accordance with the SIC Determination (**SIC Amount**) for those parts, replaces the amount of the Transport Contributions remaining unpaid and not due for payment; and

(ii) the Draft SIC Determination will not apply to those parts of the Land and Development to which the SIC Determination is applied under clause 4A(b)(i).

- (c) Nothing in this deed shall be construed as entitling the Developer to a refund of any amount paid by the Developer, whether before or after the date of the Second Amendment Deed."

2.4 **Clause 5.3**

The fourth row of clause 5.3 of the Planning Agreement is amended to replace the words, *"the payment of Contribution Amounts for the Dwellings proposed"* with *"Development Contributions for that Relevant Lot"*.

2.5 **Clause 12.16**

Clause 12.16 of the Planning Agreement is amended to insert:

- (1) "(iii) sent by email" to the end of subclause (a); and
- (2) "(iii) sent by email during any Business Day and the sender does not receive a delivery failure notice, on the date the email is sent" to the end of subclause (b).

2.6 **Clause 14**

The Planning Agreement is amended to delete clause 14.

2.7 **Schedule 1**

The seventh row in the second column in the table at Schedule 1 to the Planning Agreement is amended to replace the sentence "*The application of section 94EF of the Act is not excluded in respect of the Development*" with "*The application of section 94EF of the Act is excluded in respect of the Development, except to the extent provided in clause 4A*".

2.8 **Schedule 2**

The Address for Service of the Minister in Schedule 2 to the Planning Agreement is amended to replace the text with the following:

"Contact: Secretary, Department of Planning

Address: 320 Pitt Street, SYDNEY NSW 2000

Email Address: PlanningAgreements@planning.nsw.gov.au"

2.9 **Schedule 3**

Schedule 3 to the Planning Agreement is amended to insert the following text under each table in Part 1, Part 2 and Part 3:

"Note: If a title reference in this table relates to a cancelled or superseded folio, the title reference is to be taken as a reference to the land formerly comprised in that folio, as comprised in any folio or folios which succeeded that folio."

3 **Registration of this deed**

3.1 **Registration**

(1) As contemplated by section 93H of the Act, the Developer agrees to lodge this deed for registration under the Real Property Act in the relevant folios of the Register for all of the Land and upon which the Planning Agreement is registered, within 40 Business Days after the date on which this deed, executed by the Minister, is returned to the Developer.

(2) The Developer will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing which provide evidence that clause 3.1(1) has been satisfied, within 10 Business Days after the date of registration.

4 **General**

4.1 This deed and the Planning Agreement constitute the entire agreement between the parties regarding the matters set out in those documents and supersede any prior representations, understandings or arrangements between the parties, whether orally or in writing.

5 **Expenses**

5.1 The Developer must pay its own, and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.

5.2 The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the explanatory note in accordance with the Regulation, and the review of any submissions received during the public notice period.

5.3 The Developer must pay all taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).

5.4 The Developer must provide the Minister with bank cheques in respect of the Minister's costs pursuant to clauses 5.1 and 5.2 above:

- (1) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
- (2) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 10 Business Days of demand by the Minister for payment.

6 Amendments not to affect accrued rights and obligations

6.1 The amendments to the Planning Agreement do not affect the validity or enforceability of the Planning Agreement as amended.

6.2 Nothing in this deed:

- (1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Planning Agreement before the date of this deed; or
- (2) discharges, releases or otherwise affects any liability or obligation arising under the Planning Agreement before the date of this deed.

7 Confirmation

Upon execution of this deed by both parties, each party is bound by the Planning Agreement as amended by this deed.

Execution pages

Executed as a deed.

Signed sealed and delivered for and on
behalf of the **Minister for Planning**

in the presence of:

Signature of Witness


MATTHEW DOYLE

Name of Witness in full

Full name of delegate

SIGNED by BRENDAN NELSON as delegate
for the Minister for Planning
administering the
Environmental Planning and Assessment Act, 1979

Signature as delegate of the Minister



Executed as a deed in accordance with section
127 of the *Corporations Act 2001* by **Lendlease
Communities (Australia) Limited** ABN 88 000
966 085:

Signature of Secretary/Director



Susan Ann Westlake

Full name

Signature of Secretary/Director



MATTHEW JAMES WALLACE

Full name