

Deed of Variation to Voluntary Planning Agreement
4 – 12 Railway Street, Lidcombe

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Deed of Variation to Voluntary Planning Agreement 4 – 12 Railway Street, Lidcombe

Parties

Council	Name	Cumberland Council
	Address	16 Memorial Avenue Merrylands NSW 2160
	ABN	22 798 563 329
Developer	Name	Lidcombe Property (NSW) Pty Limited
	Address	C/- Maxim Chartered Accountants Level 2, 59 Wentworth Avenue Kingston ACT 2604
	ABN	44 618 446 389

Background

- A** Council and the Developer previously entered into a Voluntary Planning Agreement dated 20 July 2020 (**Planning Agreement**).
- B** Pursuant to clause 21.3 of the Planning Agreement, Council and the Developer wish to amend the Planning Agreement on the terms set out in this document.

Operative Provisions

1 Definitions & Interpretation

1.1 Defined Terms

In this document, words defined in the Planning Agreement have the meaning ascribed to them in the Planning Agreement.

1.2 Interpretation

The interpretational rules contained in Part 2 of Schedule 2 of the Planning Agreement apply in the interpretation of this document.

2 Agreement

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The agreement of the parties is:

- (1) made in consideration of, amongst other things, the mutual promises contained in this document; and
- (2) set out in these Operative Provisions.

3 Amendments

On and from the date of this document and pursuant to clause 21.3 of the Planning Agreement, Schedule 3 of the Planning Agreement is varied as set out in **Annexure 1** with the variations being marked as shown in the Annexure such that:

- (1) text marked in colour and underlined is inserted; and
- (2) text with a line through it is deleted.

4 Affirmation

Except as amended by the terms of this document, the parties affirm that the Planning Agreement remains, in all other respects, valid and effective.

5 Costs

The Developer must pay the reasonable costs of Council incurred with respect to this document and the variation of the Planning Agreement set out in it.

6 Administrative provisions

6.1 Entire agreement

This document is the entire agreement of the parties on the specific subject matter addressed in this document. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

6.2 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

6.3 Cooperation

Each party must sign, execute and deliver all deeds, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

6.4 Counterparts

This document may be executed in any number of counterparts (which may be executed and delivered by electronic signature or other electronic means) and all of those counterparts taken together constitute one and the same instrument.

6.5 Amendment

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This document may only be amended or supplemented in writing signed by the parties.

6.6 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

6.7 Governing law

The law in force in the State of New South Wales governs this document.

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Annexure 1: Tracked Planning Agreement

Schedule 3 - Designated Land

Item	Time for Completion	Contribution Value
Lots 7 and 8 in DP 397.	Subject to clause 5.1(1), the earlier of: <ol style="list-style-type: none">1. the issue of the first Subdivision Certificate or Occupation Certificate issued in respect of the Development;2. two (2) months after Completion of the Road Widening Works; and3. <u>30 June 2022</u>.	\$5,753,800.00.
Dedication of Road Widening Land.	Subject to clause 5.1(1), the earlier of: <ol style="list-style-type: none">1. the issue of the first Subdivision Certificate or Occupation Certificate issued in respect of the Development;2. two (2) months after Completion of the Road Widening Works; and3. <u>30 June 2022</u>.	At no cost to Council.

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Execution Page

Executed as a Deed.

Dated:

Signed, sealed and delivered by **Cumberland Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

General Manager (Signature)

Mayor (Signature)

Name of General Manager (Print Name)

Name of Mayor (Print Name)

Signed, sealed and delivered by **Lidcombe Property (NSW) Pty Limited** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its sole director and secretary.

Director/Secretary (Signature)

Simon Xistouris
