

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

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**Marsdens Law Group**

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Ref: 43 5649



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

**Parties**

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

**Background**

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- 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**

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**1 Definitions & Interpretation**

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**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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# Deed of Variation to Voluntary Planning Agreement

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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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## Deed of Variation to Voluntary Planning 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

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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

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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

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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

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#### 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

## Deed of Variation to Voluntary Planning Agreement

### 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"><li>1. the issue of the first Subdivision Certificate or Occupation Certificate issued in respect of the Development;</li><li>2. two (2) months after Completion of the Road Widening Works; and</li><li>3. 30 June 2022.</li></ol>	\$5,753,800.00.
Dedication of Road Widening Land.	Subject to clause 5.1(1), the earlier of: <ol style="list-style-type: none"><li>1. the issue of the first Subdivision Certificate or Occupation Certificate issued in respect of the Development;</li><li>2. two (2) months after Completion of the Road Widening Works; and</li><li>3. 30 June 2022.</li></ol>	At no cost to Council.

# Deed of Variation to Voluntary Planning Agreement

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## Execution Page

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Executed as a Deed.

Dated: 09/09/2021

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)

PETER FITZGERALD  
\_\_\_\_\_  
Name of General Manager (Print Name)

Steve Christou.  
\_\_\_\_\_  
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

## **Deed of Variation to Voluntary Planning Agreement**

### **Explanatory Note**

**4 – 12 Railway Street, Lidcombe**

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# Deed of Variation to Voluntary Planning Agreement

## Explanatory Note

### 4 – 12 Railway Street, Lidcombe

#### 1 Introduction

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This Explanatory Note has been prepared jointly between the parties in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the Deed of Variation to the existing Voluntary Planning Agreement (**Deed of Variation**) between the parties under s7.4 of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**).

This Explanatory Note is not to be used to assist in construing the Deed of Variation.

#### 2 Parties to the Deed of Variation

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The parties to both the existing Voluntary Planning Agreement and Deed of Variation are:

- (1) Cumberland Council (ABN 22 798 563 329) (**Council**).
- (2) Lidcombe Property (NSW) Pty Limited (ABN 44 618 446 389) (**Developer**).

#### 3 Description of the Subject Land

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The Deed of Variation applies to the 'Land' under the existing Voluntary Planning Agreement, which is set out in the table below (**Land**).

Folio Identifier	Location
Lot 38 DP222712	4 - 12 Railway Street, Lidcombe 2141
Lot 100 DP793305	
Lot 1 DP397	
Lot 6 DP397	
Lot 7 DP397	
Lot 8 DP397	
Lot 101 DP1248142	

#### 4 Summary of objects, nature and effect of the Deed of Variation

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The Deed of Variation amends the timing for completion for the dedication of the 'Designated Land' under the existing Voluntary Planning Agreement from '30 June 2021' to '30 June 2022'.

The **intent** of the Deed of Variation is to ensure that public benefits, in the form of the dedication of land and carrying out of works, for public purposes is provided by the Developer to ensure existing communities do not bear those costs.



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The **nature** of the Deed of Variation is a contractual relationship between the Council and the Developer for the provision of Development Contributions to support the development of the Land.

The **effect** of the Deed of Variation is that the Developer will provide the Development Contributions in the manner provided for by the Planning Agreement (as amended by the Deed of Variation).

## **5 Assessment of the merits of the Deed of Variation**

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The merits of the Deed of Variation are the same as those set out in the existing Voluntary Planning Agreement.

### **5.1 The planning purposes served by the Deed of Variation**

In accordance with section 7.4(2) of the EPA Act, the Deed of Variation promotes the following public purpose:

- (1) The provision of public amenities and public services.
- (2) The provision of transport or other infrastructure relating to land.

### **5.2 How the Deed of Variation promotes the public interest**

In accordance with the objects of the EPA Act, the Deed of Variation promotes the public interest in the following manner:

- (1) The promotion and co-ordination of the orderly and economic use and development of land.
- (2) The provision of land for public purposes.
- (3) The Deed of Variation will not preclude the public being provided with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to be involved with the development assessment and are invited to make comment on the Deed of Variation, particularly with regard to the public interest.

### **5.3 How the Deed of Variation promotes Council's guiding principles**

The Deed of Variation promotes a number of Council's guiding principles under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) This Explanatory Note is prepared for the purposes of keeping the local community and the State government (and through it, the wider community) informed about its activities and to ensure that its decision-making is transparent.
- (2) To manage lands and other assets so that current and future local community needs can be met in an affordable way which provides the best possible value for residents and ratepayers.
- (3) To act fairly, ethically and without bias in the interests of the local community.
- (4) To recognise diverse local community needs and interests.
- (5) To have regard to the long term and cumulative effects of its decisions on future generations.

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- (6) To promote the public interest by committing the Developer to make contributions towards local amenity improvements.

**6 Identification of whether the Deed of Variation conforms with the Council's capital works program**

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Not applicable.

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