Explanatory Note

Amendment of Planning Agreement

Under s93G and 93L of the *Environmental Planning and Assessment Act 1979* and regulation 25C of the *Environmental Planning and Assessment Regulation 2000*

Parties

Queanbeyan City Council of 257 Crawford St, QUEANBEYAN NSW 2620 (**Council**)

Googong Development Corporation Pty Ltd ABN 83 104 332 523 of Level 3, 64 Allara Street, CANBERRA ACT 2601 (**Developer**)

Description of the Proposed Amendment

The Deed of Novation changes the entity who is party to the Voluntary Planning Agreement (VPA) for Googong from Googong Development Corporation Pty. Ltd. to the new entity known as Googong Township Pty. Ltd.

Summary of Objectives, Nature and Effect of the Amendment

Objectives of Amendment

The objective of the agreement is to provide for the change of entity and allows for Googong Development Corporation Pty. Ltd which is being wound down to novate its obligations under the VPA. The VPA will be novated to the new entity, Googong Township Pty. Ltd.

Nature of Draft Planning Agreement

The Amendment is an amendment under s93G and 93L of the *Environmental Planning and Assessment Act 1979* and regulation 25C of the *Environmental Planning and Assessment Regulation 2000.*

Effect of the Amendment

The Amendment will novate the Googong Voluntary Planning Agreement from Googong Development Corporation Pty. Ltd. to the new entity, Googong Township Pty. Ltd.

Assessment of the Merits of the Amendment

The Planning Purposes Served by the Amendment

The amendment ensures that the obligations the developer has under the VPA are transferred to the new entity prior to the winding down of the original signatory to the VPA.

How the Amendment promotes the Public Interest

The Amendment(s) promote(s) the public interest by promoting the objects of the Act as set out in s5(a)(i), (ii), (iv), (v), (vii) and (viii) of the Act.

For Planning Authorities:

Development Corporations - How the Amendment Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Amendment Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Amendment Promotes the Elements of the Council's Charter

The Amendment(s) promotes the elements of the Council's charter by:

As a NSW council, Queanbeyan must observe the Council charter laid down in the *Local Government Act 1993*. In the development of this deed the principles of the charter have been promoted and the Council has exercised its responsibility for community leadership, equity and social justice.

The deed will ensure that the developers will meet their obligations as set out in the VPA.

All Planning Authorities – Whether the Amendment Conforms with the Authority's Capital Works Program

Googong Development Corporation Pty Ltd

ABN 83 104 332 523

and

Googong Township Pty Ltd

ABN 95 154 514 593

and

Queanbeyan City Council

ABN 12 842 195 133

DEED OF NOVATION OF THE VOLUNTARY PLANNING AGREEMENT FOR THE MAKING OF DEVELOPMENT CONTRIBUTIONS TOWARDS DEVELOPMENT OF THE GOOGONG URBAN RELEASE AREA

Dated: 16 February 2015



DEED OF NOVATION OF THE VOLUNTARY PLANNING AGREEMENT FOR THE MAKING OF DEVELOPMENT CONTRIBUTIONS FOR DEVELOPMENT OF THE GOOGONG URBAN RELEASE AREA

Parties

This Deed is made between and binds the following parties:

- Googong Development Corporation Pty Ltd ABN 83 104 332 523 of Level 3, Allara Street, Canberra ACT 2601 (Googong Development)
- 2. Googong Township Pty Ltd ABN 95 154 514 593 of Level 3, Allara Street, Canberra ACT 2601 (Googong Township)
- 3. Queanbeyan City Council ABN 12 842 195 133 of 257 Crawford Street Queanbeyan NSW 2620 (**Council**)

Recitals

This Deed of Novation is made in the following context:

- A. Googong Development is undertaking a large-scale residential development on land at Googong in the Queanbeyan local government area.
- B. On 12 January 2012 Googong Development and Council entered into a voluntary planning agreement (**the Planning Agreement**) under section 93F of the *Environmental Planning and Assessment Act 1979* (**the Act**). Under the Planning Agreement Googong Development agreed to make various development contributions.
- C. As at the date of this Deed Googong Township owns some of the land the subject of the Planning Agreement and has an option to purchase the remaining land included in the Planning Agreement. A map showing what land is owned by Googong Township and what land Googong Township has an option to purchase is at Annexure A.
- D. Googong Development wishes to novate all of its obligations under the Planning Agreement to Googong Township in accordance with the terms of the Planning Agreement and this Deed.
- Council has consented to the novation on the terms set out in this Deed.

1. Interpretation

- 1.1. Unless the contrary intention appears terms that are used but not defined in this Deed but are defined in the Planning Agreement have the same meaning as in the Planning Agreement.
- 1.2. In this Deed, unless the contrary intention appears:
 - a. words in the singular include the plural and words in the plural include the singular;

- b. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- d. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.
- 1.3. As far as possible all provisions of this Deed will be construed so as not to be void or otherwise unenforceable.
- 1.4. If anything in this Deed is void or otherwise unenforceable then it will be severed and the rest of the Deed remains in force.
- 1.5. A provision of this Deed will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.
- 1.6. In the event of conflict between this Deed and the Planning Agreement, the provisions of the Deed will prevail.
- 1.7. The terms of this Deed apply on and from 17 January 2012 (the **Effective Date**).

2. Novation

- 2.1. For the purpose of section 93F(1)(c) of the Act, the parties acknowledge and agree that Googong Township is a person associated with a person to whom paragraph 93F(1)(a) or 93F(1)(b) of the Act applies.
- 2.2. Subject to clause 3.2, the parties agree that on and from the Effective Date:
 - Googong Township is substituted for Googong Development under the Planning Agreement as if Googong Township had originally been a party to the Planning Agreement instead of Googong Development; and
 - all references in the Planning Agreement to Googong Development or "the Developer" are to be read and construed as if they were references to Googong Township;
 - c. notices to Googong Township must be sent to:

Malcolm Leslie

Level 3

64 Allara Street

Canberra ACT 2601

2.3. Subject only to the amendments set out in this Deed, the parties confirm all other provisions of the Planning Agreement will remain in full force and effect and will be read, construed and enforced as if the terms of this Deed were supplemental to the Planning Agreement.

3. Assumption and release

- 3.1. On and from the Effective Date Googong Township:
 - a. is contractually bound to perform all of the obligations of Googong
 Development under the Planning Agreement (including obligations which
 may have arisen before the Effective Date);
 - b. must comply with the provisions of the Planning Agreement; and
 - c. enjoys all the rights and benefits given to Googong Development under the Planning Agreement.
- 3.2. This Deed of Novation does not affect:
 - a. any liability of Googong Development incurred by Googong Development relating to events occurring before the Effective Date; or
 - b. any liability of the Council incurred by the Council relating to events occurring before the Effective Date.
- 3.3. On and from the Effective Date,
 - a. Googong Township indemnifies the Council from any and all claims, actions, proceedings, obligations and liabilities (whether actual or contingent and whether based in negligence or any other form of legal liability) and all damages, costs and expenses (including on a solicitor and own client basis) arising from any act, omission, or default of Googong Development (whether based in negligence or any other form of legal liability) in performance of the Planning Agreement prior to the Effective Date.
 - the Council releases Googong Development from performing any obligations that arise under the Planning Agreement on or after the Effective Date.

4. Representations and Warranties

- 4.1. Googong Township represents and warrants to the Council that, as at the Effective Date, it possesses the right and capacity to perform and fulfil its obligations under this Deed and the Planning Agreement.
- 4.2. Googong Township represents and warrants to the Council that, as at the Effective Date:
 - a. it is bound by, and must comply with, the provisions of the Planning Agreement; and
 - b. it possesses the right and capacity to perform and fulfil its obligations under this Deed and the Planning Agreement.

Applicable law

- 5.1. This Deed will be construed in accordance with, and any matter related to it will be governed by, the laws applicable in New South Wales.
- 5.2. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

6. Costs

6.1. The parties must each bear their own respective costs and expenses of and incidental to the preparing and carrying into effect of this Deed

7. Entire Agreement

7.1. This Deed, together with the Planning Agreement and all Deeds of Guarantee that relate to the performance of the Planning Agreement, constitute the entire agreement of the Parties in relation to the making of development contributions for the development of the Googong urban release area.

EXECUTED as a Deed

The Seal of **Queanbeyan City Council** was affixed to this Deed in accordance with a resolution of the Council passed on [date] and in the presence of:

_		I'M OVERALL
	¥ 3999	WELLHALL
	Signature of mayor/general manager/councillor	Name of mayor/general manager/councillor
	Signature of mayor/general manager/councillor	Name of mayor/general manager/councillor
	Executed as a Deed by Googong Development Corporation Pty Ltd ABN 83 104 332 523 in accordance with section 127 of the Corporations Act 2001 (Cth) by:	
-		andrem
	Signature of Director/Secretary	Signature of Director/Secretary
	Colin John Alexander <i>Director</i>	Melanie Andrews Company Secretary
	Print name of Director/Secretary	Print name of Director/Secretary
	Executed as a Deed by Googong Township Pty Ltd ABN 95 154 514 593 in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth) by:	
	Je J. L.	John W.
	Signature of Director/Secretary	Signature of Director/Secretary
	Gianni Carfi	Toben Michael James Long
	Print name of Director/Secretary	Print name of Director/Secretary

