

23 August 2023 version

Deed of Variation of Voluntary Planning Agreement – 146 Newbridge Road, Moorebank

Liverpool City Council (ABN 81181182471)

Tanlane Pty Limited (ACN 057579718)

Deed of Variation of Voluntary Planning Agreement

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Information table

Date

Parties

Name	Liverpool City Council
ABN	81 181 182 471
Address	Ground Floor, 33 Moore Street, Liverpool NSW 2170
Telephone	1300 362 170
Facsimile	N/A
Email	lcc@liverpool.nsw.gov.au
Representative	Chief Executive Officer

Name	Tanlane Pty Limited
ACN	057 579 718
Address	11 Narabang Way, Belrose, NSW 2085
Telephone	9986 3500
Facsimile	9986 3555
Email	ernest@benedict.com.au
Representative	Ernest Dupere

Background

- A. Tanlane is the registered Proprietor of the Land.
- B. Council and Tanlane entered into a voluntary planning agreement on 11 June 2008 pursuant to the then section 93F of the Act (Original VPA) in respect of the Land and the Development.
- C. The Original VPA specified the administrative arrangements regulating the delivery and amount of Original Development Contributions to be delivered by Tanlane.
- D. The parties agree to vary the administrative arrangements and amount of Original Development Contributions specified in the Original VPA, on the terms set out in this document.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

Act means the *Environmental Planning and Assessment Act 1979*.

Council means Liverpool City Council of Ground Floor, 33 Moore Street, Liverpool NSW 2170.

LRS means NSW Land Registry Services or its successors.

Original Development Contributions means the Development Contributions as defined by the Original VPA prior to the amendments the subject of this document.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Tanlane means Tanlane Pty Limited of 11 Narabang Way, Belrose NSW 2085.

1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) any term capitalised in this document which is not defined in clause 1.1 has the meaning given to that term in the Original VPA;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the *singular* includes the plural and conversely;
- (d) a *gender* includes all genders;
- (e) where a *word* or *phrase* is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to any *party* to this agreement or any other agreement or document includes the party's successors and substitutes or assigns;
- (g) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (h) *clause* or *schedule* means a clause of or a schedule to this document;
- (i) a reference to any *agreement* or *document* is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this document;
- (j) a reference to any *legislation* or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (k) a reference to a *right* or *obligation* of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (l) unless stated otherwise, *one provision* does not limit the effect of another; and
- (m) a reference to *conduct* includes, without limitation, any omission, statement or undertaking, whether or not in writing.

1.3 Inconsistency

If there is any inconsistency between the terms and conditions of the Original VPA and the terms and conditions of this document, this document will prevail to the extent of any inconsistency.

1.4 Agreement is supplementary

- (a) This document is supplementary to the Original VPA and the parties agree that the terms of the Original VPA remain unchanged, except as expressly provided in this document.
- (b) Except as otherwise provided in this document, the terms and conditions of the Original VPA are expressly ratified and confirmed.

2. Operation of this document

- (a) This document operates on and from the date on which it is executed by all parties in accordance with clause 25C(1) of the Regulation.
- (b) The party who executes this document last is to insert the date that the party executed this document on the front page, and provide a copy of the fully executed and dated document to the other party.

3. Variation

The parties acknowledge and agree that, on and from the date of operation of this document, the Original VPA is varied, and is to be construed, in the form identified in Schedule 1 to this document (which for the avoidance of doubt contains track changes to the Original VPA which reflect the variations made by this document).

4. Registration of document

- (a) Tanlane and Council agree that this deed of variation will be registered on the title of the Land pursuant to section 7.6 of the Act.
- (b) Tanlane must:
 - (i) obtain any necessary consents required in order to register this document on the title to the Land;
 - (ii) lodge the VPA and this document for registration with the NSW Land Registry Services; and
 - (iii) following registration of the VPA and this document, notify Council of registration, enclosing a title search of the Subject Land confirming the registration.
- (c) Council will at the request of Tanlane release the Land from registration of the VPA and this document where the Original Development Contributions have been provided and Tanlane is not in breach of its obligations under the VPA and this document. The obligations of Council are satisfied when Council provides the Developer with a signed request in registrable form for the release of registration of the VPA and this document.

5. Explanatory note relating to this document

- (a) Schedule 2 of this document contains the Explanatory Note relating to this document required by clause 25E of the Regulation.

- (b) Under clause 25E(7) of the Regulation, the parties agree that the Explanatory Note in Schedule 2 is not to be used to assist in construing this document.

6. General

6.1 No fetter

Nothing in this document will be construed as requiring Council to do anything that would cause it to be in breach of its obligations at law and, without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

6.2 Notices

Any notice given under this document may be given in any manner permitted by the Original VPA.

6.3 Severability

- (a) If a clause or a part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any clause or a part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

6.4 Assignment

The rights and obligations of each party under this document cannot be assigned, charged or otherwise dealt with, and no party shall attempt or purport to do so, without the prior written consent of the other parties.

6.5 Costs

Tanlane must pay Council's reasonable costs regarding the preparation, negotiation and execution of this document.

Schedule 1– Variation to Original VPA

Item	Change
Documentation / Administration	Administration changes to reflect current status of the development, Council representatives, legislative references, updated clauses and background
3.1 – Designated Land	Takes into consideration the marina development interface works and the separation of the two
3.10 – Deferral of works	Insertion of new clause
Section 7 – application of 7.11 and 7.12	Clarify provided in the application of this clause
8.2 – Registration of this planning agreement	Additional clause inserted – rationale for security to be provided prior to the timing specified in schedule 3
10 – Contamination	Additional clauses inserted – to ensure risk of contaminated land is minimal to public and council
21.2 – Legal costs	Additional Clause inserted – reimbursement of reasonable legal costs
Schedule 2 – Defined Terms and Interpretation	Additional, updated and deleted definitions
Schedule 3 – item	Changes to description for northern and southern land – and deletion of new described works
Schedule 3 – timing	Prior to the issue of a subdivision certificate for a plan that when registered would create the one hundred and fifty first (151 st) residential lot within the Development
Schedule 3 – value of bond	Adjusted to reflect outstanding amount and CPI
Schedule 3 – Vegetation management plan and works	Additional clauses prescribing the works and timing for each southern and northern land plus the maintenance responsibility prior to dedication of land
Schedule 3 – Bike Path	Inclusion of new path layout to take into consideration the deletion of the bridge over the marina vessel ingress/egress
Schedule 4 – Terms of easement	Amended to reflect current status of work program.

Schedule 2– Explanatory Note

Explanatory Note

Explanatory Note

Introduction

This Explanatory Note has been prepared in accordance with clause 25E of the Regulation.

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft variation to an existing planning agreement between the parties under section 7.4 of the Act.

Parties

Liverpool City Council ABN 31 459 914 087 of Ground Floor, 33 Moore Street, Liverpool NSW 2170
(Council)

Tanlane Pty Limited ACN 057 579 718 of 11 Narabang Way, Belrose, NSW 2085 (Developer).

Description of the Subject Land

The land to which the planning agreement relates and applies is the Land.

Description of Proposed Development

The subdivision of the Land to create up to two hundred and twenty five (225) residential lots, 11,500m² of B6 gross floor area (as defined in Liverpool Local Environmental Plan 2008), and a single RE2 lot as well as the erection of a dwelling on each of the residential lots created.

Objectives of amendments to the VPA

The objective of the varied VPA is to:

- (a) reflect numerical amendments to the Act and Regulation;
- (b) clarify the circumstances in which the Developer may request the deferral of any Works under the VPA;
- (c) ensure the Original Development Contributions are consistent with planning agreements in the surrounding Moorebank area;
- (d) require the Developer to procure the acquisition of, or to acquire the Road Bridge Stratum and dedicate it to Council, or if this does not occur, to regulate the manner in which Council may acquire that interest and the security that must be provided to Council if Council is required to acquire that interest (including payment of the Road Bridge Stratum Payment);
- (e) amend the nature of development contributions to be made under the VPA to ensure they accurately reflect current market value and the staging of the Development.

The varied VPA will protect the public interest as it promotes greater certainty with the delivery of contributions and in a manner which complements the delivery of the Development.

Nature of amendments to the VPA

The varied VPA has been prepared in accordance with s7.4 of the Act. The varied VPA will continue to be a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the VPA) for various public purposes (as defined in s7.4(2) of the Act).

Effect of amendments to the VPA

The VPA (as amended) will continue to:

- relate to the carrying out by the Developer of the Development;
- exclude the application of sections 7.11 and 7.12 of the Act to the Development;
- not exclude the application of Liverpool Contributions Plan 2018 – Established Areas for District Facilities and Works;
- require dedication of land and carrying out of Works;
- impose restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the agreement;
- provides a dispute resolution method for a dispute under the agreement, being mediation and expert determination or further dispute resolution measures if mediation and expert determination is unsuccessful;
- provides that the agreement is governed by the law of New South Wales; and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the amendments to the VPA

The planning purposes served by the VPA (Clause 25(2)(e) of the Regulation)

In accordance with section 7.4(2) of the Act, the VPA (as amended) will continue to:

- promote and co-ordinate the orderly and economic use and development of the Land to which the VPA applies;
- require embellishment works to land for public purposes in connection with the Development;
- provide land for public purposes in connection with the Development; and
- provide and co-ordinate community services and facilities in connection with the Development.

How the Draft Planning Agreement Promotes the Public Interest (Clause 25(2)(a) of the Regulation)

The varied VPA promotes the public interest by promoting the objects of the Act as set out in section 1.3(a), (c), (g) and (h) of the Act. The varied VPA will ensure the delivery of the Development Contributions by the Developer.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities (Clause 25(2)(b) of the Regulation)

N/A

Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted (Clause 25(2)(c) of the Regulation)

N/A

Councils - How the Draft Planning Agreement Promotes the Elements of the Council's Charter (Clause 25(2)(d) of the Regulation)

The VPA (as amended) will continue to promote the elements of the Council's charter by:

- providing services and facilities for the community,
- ensuring that the public facilities provided by the Developer under the agreement are transferred to and managed by the Council or are otherwise subject to the Council's control,
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

All Planning Authorities - Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program (Clause 25(2)(f) of the Regulation)

The VPA (as amended) continues to conform with Council's Capital Works Program through the provision of essential infrastructure such as the roads, traffic facilities and drainage as listed in Schedule 3 of the VPA.

Whether the VPA (as amended) specifies that certain requirements must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate (Clause 25(2)(g) of the Regulation)

- The VPA (as amended) will continue to contain requirements that must be complied with, namely the carrying out of Work and dedication of land, before Subdivision Certificates and Construction Certificates may be issued.

Signing page

EXECUTED as an agreement.

Executed on behalf of the **Liverpool City Council**
by its **[COUNCIL TO CONFIRM EXECUTION
CLAUSE]**

Signature of General Manager

← _____ ←
Signature of Mayor

Name of General Manager (print)

Name of Mayor (print)

←

Executed by Tanlane Pty Ltd ACN 057 579 718
in accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director