

186374, 2017



Inglis

Australian Turf Club®



19 June 2017

Received by

By Email

10 JUL 2017

Attention: Chris Guthrie
Senior Officer Business Liaison

Records & Archives

The Chief Executive Officer
Liverpool City Council
33 Moore Street
LIVERPOOL NSW 2170
Dear Sir

**Planning Agreement for Inglis, Coopers Paddock, Warwick Farm
Amendment by letter**

We refer to recent discussions with Council concerning the proposal to make minor amendments to the Planning Agreement for Inglis, Coopers Paddock, Warwick Farm, reference 65 35 4369 JRT (VPA).

Specifically, Stockland has proposed a minor amendment to this VPA which would enable interim occupation certificates to be issued for each of the Stockland and Inglis developments prior to the completion of roadworks on Governor Macquarie Drive (**the GMD Works**), but once works on each of the Stockland and Inglis properties are otherwise ready for use and occupation in accordance with the applicable development consents.

An amendment of this kind would enable timely commencement of the occupation of the new developments on the Stockland and Inglis properties whilst the remaining component of the GMD Works is completed, by removing an impediment to the issue of an interim occupation certificate which currently exists by reason of clause 9.2 of the VPA.

Stockland and Inglis have proposed, and we understand that Council has accepted, that this proposed amendment is a minor amendment to the VPA which is capable of variation by letter under clause 15.2 of the VPA.

Accordingly, the parties record in this letter their agreement to vary the VPA in the manner set out in this letter.

1. Background

- 1.1 The VPA was executed on 14 May 2012. At the time of execution, the parties were Council, and Australian Turf Club Limited (**ATC**) as the owner of the land to which the VPA relates, known as the **Developer's Land** and described in Schedule 1 to the VPA.

- 1.2 The VPA was registered on the folios of the land comprising the Developer's Land. Subsequently, The titles for the Developer Land were cancelled and new folios created for Lots 1-4 in DP1172051.
- 1.3 Lot 4 in DP1172051 was further cancelled and new folios created for Lots 41-43 in DP1201607.
- 1.4 Subsequently, parts of the Developer's Land were sold to Stockland (registered proprietor is The Trust Company Limited as custodian for Stockland Trust Management Limited as responsible entity for Stockland Trust), and William Inglis & Son Limited.
- 1.5 The current title details and land ownership of the land referred to in the VPA as the Developer's Land are set out below.

Current title details for Developer Land	Current registered proprietor
Lot 1 in DP1172051	William Inglis & Son Limited
Lot 2 in DP1172051	Australian Turf Club Limited
Lot 3 in DP1172051	Australian Turf Club Limited
Lot 41 in DP1201607	Australian Turf Club Limited
Lot 42 in DP1201607	The Trust Company Limited
Lot 43 in DP1201607	Australian Turf Club Limited

- 1.6 The VPA is registered on all of the titles listed in the table above. As a consequence of registration on title, the VPA runs with the land and the VPA is binding on and enforceable against all current registered proprietors.
- 1.7 Accordingly, The Trust Company Limited, Stockland Trust Management Limited, and William Inglis & Son Limited are parties to this variation of the VPA by letter, in addition to ATC and Council.

2. Variation of VPA

- 2.1 The parties amend clause 9.2(2) of the VPA as follows (amendment in bold and strikethrough/underlined):
- it will not make an application for the issue of ~~an~~ **a Final** Occupation Certificate from a Principal Certifying Authority if any of the items referred to above in 9.1 (1), (2) and (3) have not been completed.*
- 2.2 The parties agree to insert a new clause 9.2(3) of the VPA as follows:
- 9.3 No restriction on interim occupation certificate**
- For the avoidance of doubt, any restriction in this agreement on the issue of a Final Occupation Certificate is not taken to impose any restriction on the issue of any Interim Occupation Certificate.*

2.3 The parties agree to insert the following definitions in Part 1 of Schedule 2 of the VPA:

Final Occupation Certificate means a certificate that authorises a person to commence occupation or use of a new Building, or to commence a new use of a Building resulting from a change of Building use for an existing Building, as defined by s 109H(1)(b) of the Environmental Planning and Assessment Act 1979.

Interim Occupation Certificate means a certificate that authorises a person to commence occupation or use of a partially completed new Building, or to commence a new use of part of a Building resulting from a change of Building use for an existing Building, as defined by s 109H(1)(a) of the Environmental Planning and Assessment Act 1979.

Building Includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure).

2.4 The parties amend Part 1 of Schedule 3 of the VPA, by amending the stated "Time for Completion" of items 4A, 4B and 4C in Part 1 of Schedule 3 of the VPA as follows:

Item	Item of Work	Time for Completion
4A	Traffic Improvements	<p>Prior to the issue of either:</p> <p>(1) a Subdivision Certificate for a plan that when registered would create an Industrial Lot;</p> <p>(2) an a Final Occupation Certificate for any Development on the Industrial Land or;</p> <p>(3) an a Final Occupation Certificate for any Development on the Inglis Site,</p> <p>whichever occurs first.</p>
4B	Traffic Improvements	<p>Prior to the issue of either:</p> <p>(1) a Subdivision Certificate for a plan that when registered would create an Industrial Lot;</p> <p>(2) an a Final Occupation Certificate for any Development on the Industrial Land; or</p> <p>(3) an a Final Occupation Certificate for any Development on the Inglis Site,</p> <p>whichever occurs first.</p>

Item	Item of Work	Time for Completion
4C	Traffic Improvements	<p>Prior to the issue of either:</p> <p>(1) a Subdivision Certificate for a plan that when registered would create an Industrial Lot;</p> <p>(2) an a Final Occupation Certificate for any Development on the Industrial Land; or</p> <p>(3) an a Final Occupation Certificate for any Development on the Inglis Site,</p> <p>whichever occurs first.</p>
5A	Bike/Pedestrian paths	<p>Prior to the issue of either:</p> <p>(a) an a Final Occupation Certificate for any Development on the Industrial Land; or</p> <p>(b) an a Final Occupation Certificate for any Development on the Inglis Site,</p> <p>whichever occurs first.</p>
5B	Bike/Pedestrian paths	<p>Prior to the issue of either:</p> <p>(1) a Subdivision Certificate for a plan that on registration would create an Industrial Lot; or</p> <p>(2) an a Final Occupation Certificate for any Development on the Industrial Land,</p> <p>whichever occurs first</p>

2.5 Capacity and liability

The parties amend the VPA by inserting the following provisions as a new clause 22:

22. Capacity and Liability

22.1 Interpretation

(1) All provisions of this agreement will have effect and be applied subject to this clause.

(2) For the purpose of this clause:

Assets includes all assets, property and rights of personal or any nature whatsoever.

Constitution means the constitution of the Trust dated 16 May 2000 (as amended).

Custodian means The Trust Company Limited ACN 004 027 749 or such other party as is the custodian for the time being appointed by the Responsible Entity in relation to the Trust.

Obligations means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Custodian as "Landowner" under or in respect of this Agreement or any deed, agreement or other instrument collateral to this

Agreement or given or entered into pursuant to this Agreement whether express or implied by statute or other legal requirements or arising otherwise howsoever.

Responsible Entity means Stockland Trust Management Limited ACN 001 900 741 or such other party as is the responsible entity for the time being of the Trust as the term "responsible entity" is defined in the Corporations Act 2001 (Cth).

Trust means Stockland Trust ARSN 092 897 348.

22.2 Custodian's and Responsible Entity's capacity

(1) The Custodian must carry out the Obligations to the extent that the same are capable of being carried out by it as Custodian and are not capable of being carried out by the Responsible Entity.

(2) The Responsible Entity must (and will be entitled) to perform the Obligations with the exception of those Obligations referred to in preceding sub-clause 22.2(1) and must procure that the Custodian performs the Obligations in preceding sub clause 22.2(1).

22.3 Custodian's Limitation of Liability

(1) The Custodian enters into this agreement as agent of the Responsible Entity and as custodian of the Assets of the Trust. The Custodian can only act in accordance with the terms of the agreement under which it is appointed as the Responsible Entity's agent and is not liable under any circumstances to any party under this agreement. This limitation of the Custodian's liability applies despite any other provisions of this agreement and extends to all Obligations of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.

(2) The Custodian is not obliged to do or may refrain from doing anything under this Agreement (including, without limitation, incur any liability) unless the Custodian's liability is limited in the same manner as set out in the preceding sub-clause 22.3(1).

(3) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of the Custodian in a way which exposes the Custodian to any liability.

22.4 Responsible Entity's Limitation of Liability

(1) Any liability of the Responsible Entity arising in connection with this agreement is limited to the extent that the Responsible Entity is able to be indemnified for that liability out of the assets of the Trust under the Constitution. The Council acknowledges and agrees that it may enforce its rights against the Responsible Entity with respect to the non-observance of the Responsible Entity's obligations under this agreement only to the extent necessary to enforce the Council's rights, powers and remedies against the Responsible Entity in respect of the Assets of the Trust by subrogation or otherwise.

(2) However, despite anything in this clause, the Responsible Entity is liable to the extent that a liability under this agreement arises out of the Responsible Entity's own fraud, gross negligence, wilful default, breach of trust or breach of duty which disentitles it from an indemnity out of the Assets of the Trust in relation to the relevant liability.

Yours faithfully




Robert MacKay
for Stockland, ATC and Inglis

The parties execute this VPA amendment by letter and agree that this VPA amendment will take effect when executed and dated by Liverpool City Council:


Australian Turf Club Limited:

Signed, sealed and delivered by Australian Turf Club Limited in accordance with section 127(1) of the Corporations Act by authority of its directors.



Director/Secretary (Signature)
MATT GALANOS

Name of Director/ Secretary (Print Name)




Director (Signature)
Matt Mcworth

Name of Director (Print Name)


William Inglis & Son Limited:

Signed, sealed and delivered by William Inglis & Son Limited in accordance with section 127(1) of the Corporations Act by authority of its directors.



Director/Secretary (Signature)
Jacqueline Ellings

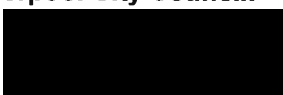
Name of Director/ Secretary (Print Name)



Director (Signature)
Mark Webster


Name of Director (Print Name)

Liverpool City Council:



Witness (Signature)
DAVID CHRISTIAAN VAN ZYL

Name of Witness (Print Name)



Attorney (Signature)
DAVID IMAGUIRE

Name of Attorney (Print Name)
PUBLIC OFFICER

The Trust Company of Australia Limited

Yangmin Park

Executed on behalf of **The Trust Company Limited** (ACN 004 027 749) by its attorney pursuant to Power of Attorney dated ~~Registration No.~~ in the presence of: Book 4558
No. 602



Signature of witness

JOSEPH CHRISTOPHER DI ROCCO

Name of witness

LAWYER

Occupation of witness

LV 25, 133 CASTLEREAGH ST
SYDNEY NSW 2000

Address of witness



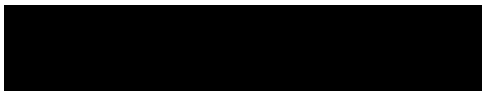
By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney

Stockland Trust Management Limited

Executed on behalf of **Stockland Trust Management Limited** (ACN 001 900 741) by its attorney *Yangmin Park*

pursuant to power of attorney ~~Registration Number~~ in the presence of:

Book 4624
No. 190



Signature of witness

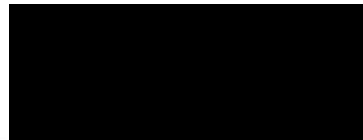
JOSEPH CHRISTOPHER DI ROCCO

Name of witness

LAWYER

Occupation of witness

Level 25, 133 Castlereagh Street
Sydney NSW 2000



By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney

Liverpool City Council:



Witness (Signature)

DAVID CHRISTIAN VAN ZYL

Name of Witness (Print Name)



Attorney (Signature)

DAVID J MAGUIRE

Name of Attorney (Print Name)

PUBLIC OFFICER

Dated: 12 JULY 2017

Signed, sealed and delivered by Liverpool City Council by its duly constituted attorney DAVID MAGUIRE pursuant to the registered Power of Attorney Book 465 No. 791 who states that no notice of revocation of the power of attorney has been received in the presence of: