

Deed of Variation

Penrith City Council

Assunta Vianello

大成 DENTONS

Eora Country
77 Castlereagh Street
Sydney NSW 2000
Australia
T +61 2 9931 4999
F +61 2 9931 4888
Ref ©02

Contents

1.	Definitions and interpretation	1
2.	Agreement to vary	2
3.	General	2
	Schedule 1 – Variation to Planning Agreement	3
	Schedule 2 – Biodiversity Corridor Planting Works Plan	4

Deed of Variation of Variation

Dated

Parties

1. **Penrith City Council** ABN 43 794 422 563 of 601 High Street, PENRITH NSW 2750 (**Council**).
2. **Assunta Vianello** of "Hills of Home" 2183 The Northern Road, MULGOA NSW 2745 (**Vianello**).

(together, the **Parties**).

Background

- A. Council and Vianello are parties to a Planning Agreement dated 5 November 2007, in connection with the development of certain land, described in Schedule 2 of that agreement, at Mulgoa NSW (**Planning Agreement**).
- B. Vianello owned that part of the land described in Schedule 2 of the Planning Agreement as being owned by Vianello (**Vianello Land**).
- C. The Vianello Land is to be developed in accordance with the development consent granted to DA20/0782 (**Development Consent**).
- D. The Development Consent permits the subdivision of the Vianello Land into four stages.
- E. The Planning Agreement relevantly requires biodiversity corridor planting works to occur and dedication of part of the Vianello Land for the creation of a biodiversity corridor known as the "Surveyors Creek Corridor", with the planting works to occur prior to the issue of the subdivision certificate for the 225th lot
- F. Owing to changes with the timing for completion of the works required by the Development Consent, the parties agree to vary the terms of the Planning Agreement in accordance with the terms of this Deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

Expressions defined in the Planning Agreement (including as varied by this Deed) that are not defined in this Deed have the same meaning given to them in the Planning Agreement unless contrary to or inconsistent with the intention or as the context.

1.2 Business Days

Unless expressed to the contrary in this Deed, if the day on or by which a party must do something under this agreement is not a Business Day, the party must do it on or by the next Business Day.

1.3 Consents or approvals

Unless expressed to the contrary in this Deed, if the doing of any act, matter or thing under this agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

2. Agreement to vary

The parties agree that the Planning Agreement is on and from the date of this Deed varied as set out in Schedule 1.

3. General

- (a) The developer is responsible for all costs related to this Deed, including the Council's costs of preparing, negotiation, executing and stamping this Deed. Such costs are payable within 30 days of receipt of a tax invoice issued by Council.
- (b) Each party shall take all steps, execute all documents and do all acts and things as may reasonably be required by the other party to give effect to this Deed.
- (c) This Deed and the Planning Agreement contain the entire agreement between the parties with respect to its subject matter.
- (d) This Deed may be executed in multiple counterparts, each of which shall have the effect of an original and all counterparts when taken together shall form one original.
- (e) This Deed is governed by the laws of New South Wales. The Parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Schedule 1 – Variation to Planning Agreement

The Planning Agreement is varied as follows:

1. Biodiversity corridor works at Surveyors Creek

- (a) At schedule 3, Item 5(c) of the Planning Agreement **delete**:

“in respect of any Biodiversity Corridor Planting Works to be carried out on that part of the Land owned by Vianello, by Vianello prior to the date on which a Subdivision Certificate is issued that refers to the 225th Residential Lot to be created in respect of any part of the Land owned by Vianello.”
- (b) At schedule 3, Item 5(c) of the Planning Agreement **insert**:
 - (i) *in respect of any Biodiversity Corridor Planting Works to be carried out on that part of the Land owned by Vianello, by Vianello in accordance with the plan 2 June 2022 at Annexure D to this Agreement;*
 - (ii) *it is anticipated that Stages 7A and 7B of consent DA20/0782 and the adjacent south-western biodiversity corridor planting will be completed by June 2023, and Stages 8A and 8B by June 2024;*
 - (iii) *should the Glenmore Park Stage 3 Planning Proposal not be gazetted by June 2024, the balance of the biodiversity corridor planting will be completed prior to the date on which a Subdivision Certificate is issued that refers to the 300th Residential Lot to be created in respect of any part of the Land owned by Vianello; and*
 - (iv) *notwithstanding any other clause in this planning agreement, the timeframe for the delivery of the Biodiversity Corridor Planting Works can be varied by way of written agreement between the Council and Vianello.*

2. Biodiversity Corridor Planting Works – Plan

- (a) In the Planning Agreement, **add** the plan at Schedule 2 of this Deed at ‘Annexure D – Biodiversity Corridor Planting Works.’

Schedule 2 – Biodiversity Corridor Planting Works Plan

Signing page

Executed as a deed.

Signed sealed and delivered by **Penrith City Council** in the presence of:

Witness

Print name

Print address

Signed sealed and delivered by **Assunta Vianello** in the presence of:

Witness

Print name

Print address