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Caddens Release Area Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Landcom

Penrith City Council

Dated "[Insert Date]"

19 May 2009.



Caddens Release Area Planning Agreement

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Caddens Release Area Planning Agreement

Summary Sheet

Council

Name: Penrith City Council
Address: 601 High Street, Penrith NSW 2750
Telephone: (02) 4732 7777
Facsimile: (02) 4732 7958

Developer

Name: Landcom
Address: Level 2, 330 Church Street, Parramatta NSW 2150
Telephone: (02) 9841 8600
Facsimile: (02) 9841 8688

Land

See Schedule 1.

Development

See definition of *Development* in clause 1.1.

Development Contributions

See clauses 6, 7, 8 and 12.

Application of s94, s94A and s94EF of the Act

This Agreement does not exclude the application of s94, s94A or s94EF of the Act.

Security

\$5,000.00, or a total of \$50,000.00 if Landcom is not the owner of the whole of the Land, for legal costs. See clause 13.



Registration

No registration. See clause 15.

Restriction on dealings

See clause 16.

Dispute Resolution

Mediation. See clause 18.



Caddens Release Area Planning Agreement

Parties

Landcom ABN 79 268 260 688 of Level 2, 330 Church Street, Parramatta, NSW, 2150
(Developer)

Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith, NSW, 2750
(Council)

Background

- A The Developer has sought the Instrument Change to facilitate the carrying out of the Development on the Land.
- B The Developer has offered to make Development Contributions in connection with the Instrument Change and the carrying out of the Development in accordance with this Agreement.
- C Until the Planning Agreement operates, this Agreement constitutes the Developer's offer to make Development Contributions in connection with the Instrument Change and the Development on the terms and conditions set out in this Agreement.

Operative provisions

1 Definitions & Interpretation

- 1.1 The following definitions apply in this Agreement unless the context or subject-matter otherwise indicates or requires:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Affordable Housing Contribution means \$337,000.00.

Developer's Land Holding means all of the land owned by the Developer within the area of land to which the LEP applies at the time of the Instrument Change, and which at the date of this agreement is shown on the plan contained in Schedule 1.

Development means the staged subdivision of the Land for residential purposes, and infrastructure works.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other



material public benefit, or any combination of them, to be used for, or applied towards, a Public Purpose.

Final Lot means a lot to be created in the Development for separate occupation and disposition not being:

- (a) a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council, or
- (b) a lot created by a subdivision of the Land which may be further subdivided.

Instrument Change means the making of the LEP.

Land means the land identified as *Landcom Land* on the plan contained in Schedule 1.

LEP means the instrument known as the *Penrith Local Environmental Plan 2008 (Caddens)*, which the parties agree may be gazetted with a different title.

Maintenance Works means the maintenance works detailed in the Vegetation Management Plan.

Planning Agreement means the provisions of this Agreement under which the Developer is required to make Development Contributions in connection with the carrying out of the Development, and includes any provisions that are incidental or supplementary to those provisions.

Public Purpose has the same meaning as in s93F(2) of the Act.

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

Restoration Works means the restoration works detailed in the Vegetation Management Plan.

Riparian Land means the land shown hatched in red and described as '*riparian and conservation land*' on the plan in Schedule 1.

Riparian Land Works means the works detailed in the Vegetation Management Plan, being the Restoration Works and Maintenance Works.

Security means an unconditional bond or bank guarantee in a form acceptable to the Council relating to compliance by the Developer with its obligations under this Agreement.

Subdivision Certificate means a subdivision certificate as defined in the Act.

Vegetation Management Plan means a plan to be prepared by the Developer and approved by Council and the Department of Environment and Climate Change detailing the works required for the restoration and maintenance of vegetation on the Riparian Land.

WELL Contributions Plans means *Werrington Enterprise Living and Learning (WELL) Precinct Development Contributions Plan*, which took effect on 1 July 2008.

Work means building, engineering or construction work in, on, over or under land.



- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - 1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - 1.2.5 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.6 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.11 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.12 A reference to this Agreement includes the agreement recorded in this Agreement.
 - 1.2.13 A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the party, and the Party's successors and assigns.
 - 1.2.14 Any schedules, appendices and attachments form part of this Agreement.

2 Application of this Agreement

This Agreement applies to the Development.



3 Status of this Agreement

- 3.1 Until the Planning Agreement operates, this document constitutes the Developer's irrevocable offer to enter into the Planning Agreement if the Instrument Change occurs.
- 3.2 The Planning Agreement operates only if the Instrument Change occurs.

4 Further Agreements Relating to this Agreement

- 4.1 The Parties may, at any time, enter into such other agreements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- 4.2 An agreement referred to in clause 4.1 is not to be inconsistent with:
 - 4.2.1 this Agreement, or
 - 4.2.2 any Development Consent for the Development, as modified from time to time, or
 - 4.2.3 any other applicable law.
- 4.3 An agreement referred to in clause 4.1 does not have effect to the extent that it contravenes clause 4.2.

5 Application of s94 and s94A of the Act to the Development

- 5.1 This Agreement does not exclude the application of s94, s94A or s94EF of the Act to the Development.
- 5.2 This Agreement does not permit the Council to take into consideration the benefits under this Agreement in determining a Development Contribution under s94 of the Act in relation to the Development.

6 Affordable Housing Contribution

- 6.1 The original Developer under this Agreement, being Landcom, is to pay the Affordable Housing Contribution to the Council not later than 2 years after the date on which the LEP takes effect.
- 6.2 The Council must apply the Affordable Housing Contribution for the sole purpose of providing long term permanent rental accommodation for low-income households within the Penrith local government area.
- 6.3 The Affordable Housing Contribution is made for the purposes of this Agreement when cleared funds are deposited by means of electronic funds transfer into a bank account nominated by the Council.
- 6.4 The Developer is to give the Council not less than 2 days written notice of its intention to pay the Affordable Housing Contribution.
- 6.5 Upon receipt of the notice referred to in clause 6.4, the Council is to give to a tax invoice for the amount of the Affordable Housing Contribution.



- 6.6 The Developer is not in breach of this Agreement if it fails to pay the Affordable Housing Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer the tax invoice referred to in clause 6.5.
- 6.7 The Council acknowledges that the Affordable Housing Contribution is in full and final satisfaction of the Developer's obligations to make contributions towards affordable housing in relation to the development of the whole of the Developer's Land Holding.

7 The Riparian Land Works

- 7.1 The Developer, at its own cost, is to carry out the Riparian Land Works to the satisfaction of the Council.
- 7.2 The Developer is to perform its obligations under clause 7.1 in accordance with:
 - 7.2.1 this Agreement, and
 - 7.2.2 any further agreement that is entered into by the Parties under clause 4, and
 - 7.2.3 the Vegetation Management Plan.
- 7.3 The Developer's obligations under clause 7.2 are subject to:
 - 7.3.1 any Development Consent granted under the Act, and
 - 7.3.2 any applicable law.
- 7.4 The Riparian Land Works are not to be varied by the Developer, unless:
 - 7.4.1 the Parties agree in writing to the variation, and
 - 7.4.2 any consent or approval required under the Act or any other law to the variation is first obtained.

8 Completion of Restoration Works

- 8.1 The Developer is to complete the Restoration Works before the Riparian Land is transferred to the Council in accordance with this Agreement, and to carry out the Maintenance Works until the transfer of the Riparian Land to the Council.
- 8.2 The Developer, by written notice, is to inform the Council when it considers it has completed the Restoration Works.
- 8.3 For the purposes of this Agreement, the Restoration Works are taken to have been completed on the date of the written notice provided pursuant to clause 8.2.

9 Failure to Carry out the Riparian Land Works

- 9.1 If the Council considers that the Developer is in breach of any obligation under this Agreement relating to the Riparian Land Works, the Council may give the Developer a notice requiring the breach to be rectified to the Council's satisfaction.



- 9.2 A notice given under clause 9.1 is to allow the Developer a period of not less than 28 days to rectify the breach.
- 9.3 For the avoidance of doubt, clause 18 does not apply to a notice given by the Council to the Developer under clause 9.1 or the circumstances relating to the giving of that notice.

10 Inspection of the Riparian Land Works by Council

- 10.1 At any time before the Riparian Land is transferred to the Council in accordance with Agreement, the Developer is to permit the Council, its officers, employees, agents and contractors to enter the Riparian Land at any time, upon giving reasonable prior notice, to inspect, examine or test that Land.

11 Damage and Repairs to the Riparian Land Works

- 11.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to any Riparian Land Works from any cause whatsoever which occurs prior to the date on which the Riparian Land is transferred to the Council in accordance with this Agreement.

12 Transfer of Riparian Land

- 12.1 Subject to clause 8, the Developer is to transfer the Riparian Land to the Council free of cost 12 months after the date on which a Subdivision Certificate is issued to dedicate the roads which adjoin the Riparian Land to Council.
- 12.2 For the purposes of clause 12.1:
- 12.2.1 Landcom is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the Riparian Land, and
- 12.2.2 the Council is to execute the instrument of transfer and return it to Landcom within 14 days of receiving it from Landcom,
- 12.2.3 Landcom is to lodge the instrument of transfer for registration at the Department of Lands within 14 days of receiving it from the Council duly executed,
- 12.2.4 Landcom is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

13 Security

- 13.1 Upon the execution of this Agreement by all of the Parties, the Developer is to provide the Council with a bank guarantee of \$5,000.00 in respect of the Council's costs of enforcing any breach of the terms of this Agreement by the Developer.
- 13.2 Landcom is not to transfer any part of the Land, other than the Riparian Land or a Final Lot, to any person before completing its obligations under this Agreement, unless it has first provided to the Council a bank guarantee in addition to the bank guarantee referred to in clause 13.1 of \$45,000.00.



- 13.3 Landcom is not to transfer the Riparian Land to any person before completing its obligations under this Agreement, unless the person provides to the Council a bank guarantee of \$50,000.00 before the relevant land is transferred.
- 13.4 Upon receipt of the bank guarantee referred to in clause 13.3, the Council is to release and return to Landcom the bank guarantee referred to in clause 13.1 and any bank guarantee provided to the Council under clause 13.2.
- 13.5 If the Council calls on any bank guarantee given pursuant to this clause, it may use the amount so paid to it in satisfaction of the Developer's obligations under this Agreement which have been breached and additionally for any liability, loss, cost, charge or expense incurred by the Council because of the failure by the Developer to comply with this Agreement.
- 13.6 The Council is to release and return any additional bank guarantee provided under clause 13. 2, if Landcom again becomes the owner of the whole of the Land, other than any Final Lots.
- 13.7 The Council is to release and return all bank guarantees upon the completion by the Developer of all of its obligations under this Agreement.
- 13.8 At any time following the provision of a bank guarantee, the Developer may provide the Council with a replacement bank guarantee totalling the amount of the bank guarantees required to be provided under this clause 13.
- 13.9 On receipt of a replacement bank guarantee, the Council is to release and return to the Developer as directed, the bank guarantee it holds which has been replaced.

14 Enforcement

- 14.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.
- 14.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 14.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
 - 14.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

15 Registration of this Agreement

- 15.1 The Parties agree not to register this Agreement under s93H of the Act.

16 Sale of Land, Assignment, etc

- 16.1 In this clause, a reference to the transfer of the Land or any part of it is limited to a reference to the transfer of the Riparian Land or any part of it.
- 16.2 The Developer is not to:
 - 16.2.1 transfer the Land or part of the Land other than a Final Lot, or



- 16.2.2 assign its interest under this Agreement or novate this Agreement, to any person unless:
- 16.2.3 it has, at no cost to the Council, first procured the execution of an agreement in favour of the Council on terms reasonably satisfactory to the Council between itself, and the transferee, assignees or novatee and the Council under which it agrees to continue to be bound to perform all or specified obligations of the Developer under this Agreement or the transferee, assignee or novatee agrees to be bound by this Agreement to perform all or specified obligations of the Developer under this Agreement, and
- 16.2.4 the Council, by notice in writing to the Developer, has stated that evidence satisfactory to the Council has been produced by the Developer to show that the Developer or the transferee, assignee or novatee is reasonably capable of performing its obligations under this Agreement, and
- 16.2.5 it has provided the Council with the Security required to be provided under subclause 13.1, and
- 16.2.6 the Developer is not in breach of this Agreement.

17 Review of this Agreement

- 17.1 The Parties agree to review this Agreement every 3 years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent that materially affects the operation of this Agreement.
- 17.2 For the purposes of clause 17.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 17.3 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this agreement is entered into.
- 17.4 A failure by a Party to agree to take action requested by the other Party as a consequence of a review under clause 17.1 is not a dispute for the purposes of clause 18 and is not a breach of this Agreement.

18 Dispute Resolution

- 18.1 Except as otherwise specifically provided by this Agreement, should a dispute arise under this Agreement, the Parties shall firstly meet in an attempt to resolve the dispute.
- 18.2 If the dispute is not resolved within 28 days of the date that a Party first raises the issue about which there is a dispute, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 18.3 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has



been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

- 18.4 Clauses 18.1 –18.3 do not apply to a dispute relating to a matter in respect of which the Council may give or has given the Developer a notice under clause 10.1.

19 Notices

- 19.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 19.1.1 delivered or posted to that Party at its address set out in the Summary Sheet.
 - 19.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
 - 19.1.3 emailed to that Party at its email address (if any) set out in the Summary Sheet.
- 19.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 19.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 19.3.1 delivered, when it is left at the relevant address.
 - 19.3.2 sent by post, 2 business days after it is posted.
 - 19.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 19.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

20 Approvals and Consent

- 20.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.
- 20.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

21 Costs

- 21.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Agreement and any document



related to this Agreement within 7 days of a written demand by the Council for such payment.

22 Entire Agreement

- 22.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 22.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

23 Further Acts

- 23.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

24 Governing Law and Jurisdiction

- 24.1 This Agreement is governed by the law of New South Wales.
- 24.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them and they will not object to the exercise of jurisdiction by those courts on any basis.

25 Joint and Individual Liability and Benefits

- 25.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

26 No Fetter

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

27 Representations and Warranties

- 27.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

28 Severability

- 28.1 If a clause or part of a clause of this Agreement 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.



- 28.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

29 Modification

- 29.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

30 Waiver

- 30.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 30.2 A waiver by a Party is only effective if it is in writing.
- 30.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

31 GST Provisions

- 31.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 31.2 Subject to clause 31.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 31.3 Clause 31.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 31.4 No additional amount shall be payable by the Council under clause 31.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.



- 31.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 31.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 31.5.2 that any amounts payable by the Parties in accordance with clause 31.2 (as limited by clause 31.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 31.6 No payment of any amount pursuant to this clause 31, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 31.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 31.8 This clause continues to apply after expiration or termination of this Agreement.

32 Explanatory Note Relating to this Agreement

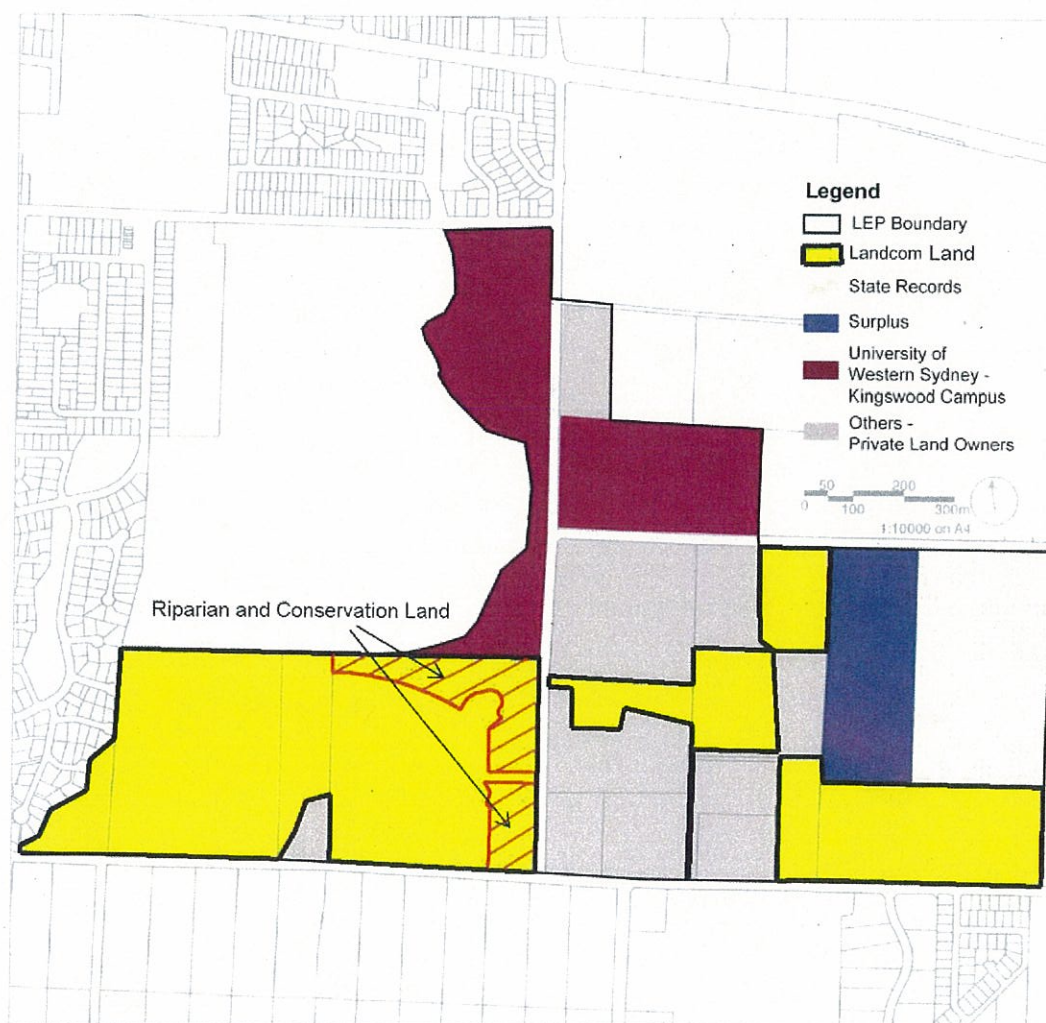
- 32.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 32.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Planning Agreement.



Schedule 1

(Clause 1.1)

Plan of the Land



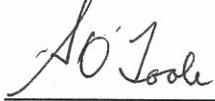


Execution


Executed as an Agreement

Dated: 19 May 2009

Executed on behalf of the Developer by me, Sean O'Toole, Managing Director,
as Delegate of Landcom and I hereby certify that I have no notice of revocation of such delegation:

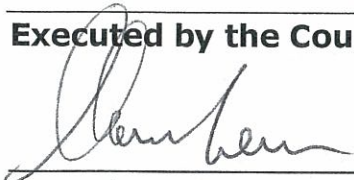


Sean O'Toole:

 Kerry Robinson. General Manager Developer

Witness/Name/Position

Executed by the Council:



General Manager



Witness/Name/Position



Appendix

(Clause 32)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Caddens Release Area Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Landcom ABN 79 268 260 688 of Level 2, 330 Church Street, Parramatta NSW 2150
(Developer)

Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith, NSW, 2750
(Council)

Description of Subject Land

The draft planning agreement applies to Part Lot 2107 in DP263159, Lot 23 in DP 602607, Lot 12 in DP 719600 and Lot 2 in DP864084, and requires contributions to be made in relation to that land, and Lots 100 and 101 in DP564332, Lot 6 in DP 567411, Lot 12 in DP 522660 and Lot 31 in DP 520322.

Description of Proposed Change to Environmental Planning Instrument/Development Application

The draft planning agreement relates to the instrument known as the *Penrith Local Environmental Plan 2008 (Caddens)*, whether or not it is gazetted with that title, the subdivision of the Land for the purposes of residential development and associated infrastructure works.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The objective of the draft Planning Agreement is to address the issue of affordable housing and to provide for the long term conservation of specific environmentally significant riparian land in a manner not available through the use of other planning and development mechanisms.

The draft Planning Agreement:

- relates to the carrying out by the Developer of development on the Land, if the Instrument Change occurs,



- does not exclude the application of s 94, s 94A and s94EF of the Act to the Development,
- provides that the Developer is to pay an affordable housing contribution to the Council no later than 2 years after the Instrument Change,
- imposes obligations on the Developer in relation to the carrying out of specified Works on land that is to be dedicated to the Council, and the rectification of defects in those Works,
- provides that the Developer is to transfer the Riparian Land to the Council,
- requires the Developer to provide the Council with security against any breach of the agreement,
- is not to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning an interest under the agreement,
- provides that mediation should be used as a dispute resolution method for a dispute under the agreement,
- 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 Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The draft Planning Agreement will:

- facilitate the provision of affordable housing,
- provide for appropriate management of vegetation restoration and maintenance works on the Riparian Land, and
- provide for the dedication of the Riparian Land to the Council.

How the Draft Planning Agreement Promotes the Public Interest & One or More of the Objects of the *Environmental Planning and Assessment Act 1979*

The draft Planning Agreement promotes the public interest by:

- facilitating the provision of affordable housing,
- providing for the carrying out of vegetation restoration and maintenance works on the Riparian Land,
- providing for the dedication of the Riparian Land to the Council for a public purpose, and
- providing for the carrying out of the above in a timely manner in connection with the development of the Land by the Developer,

and therefore promotes the objects of the Act as set out in s5(a)(ii),(iv),(vi) and (viii) of the Act.



Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The draft Planning Agreement promotes the following elements of the Council's Charter under s8(1) of the *Local Government Act 1993*:

- *Manage, protect, restore, enhance and conserve the environment.*

The draft Planning Agreement promotes this element by providing for the making of development contributions comprised of vegetation restoration and maintenance works on the Riparian Land, and the dedication of the Riparian Land to the Council, by the Developer.

- *Provide adequate, equitable and appropriate services and facilities for the community.*

The draft Planning Agreement promotes this element by providing for the making of monetary development contributions by the Developer to be applied towards the provision of affordable housing to meet the demand for long term, permanent rental accommodation from low income households in the Penrith local government area.

- *Keep the local community informed about its activities.*

This element is promoted by the public notification of the draft Planning Agreement and advertising of the notification period by the Council.

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

Yes.