

Allens Arthur Robinson



Deed of Novation

Ducru Pty Ltd
Lane Cove Council

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Table of Contents

1.	Definitions	2
2.	Novation	2
3.	Council's confirmation and consent	2
4.	Covenant on resale	3
5.	Costs	3
6.	Perfection of deed	3
7.	Governing law	3
	Annexure A	5



Date	22 nd NOVEMBER 2007
Parties	
1.	Ducru Pty Ltd (ACN 003 029 776) of Waterloo Business Centre, Unit 8, Level 1, 42-44 O'Dea Avenue, Zetland, NSW (<i>Ducru</i>); and
2.	Lane Cove Council of 48 Longueville Road, Lane Cove, NSW (<i>Council</i>).
Recitals	
A	Durham and the Council were parties to a deed dated 7 May 1986, a copy of which is attached to this Deed as Annexure "A" (<i>Durham Deed</i>) under which Durham undertook to carry out certain works and dedicate certain land in favour of the Council in lieu of the payment of s.94 Contributions.
B	Although the Durham Deed was never signed by the parties, Durham and the Council undertook their respective obligations set out in the Durham Deed as if it had been signed by the parties .
C	Clauses 6.1 and 6.2 of the Durham Deed provide as follows: <i>6.1 Durham shall not transfer or assign or otherwise dispose of Durham's rights and obligations under this Deed without Council's written consent which consent shall not be unreasonably withheld.</i> <i>6.2 PROVIDED THAT the consent referred to in clause 6.1 hereof is first obtained nothing in this Deed shall prohibit or in any way prevent Durham or its assignee as the case may be from selling the Land or any part thereof PROVIDED FURTHER THAT Durham (or its assignee) procures, at its own cost, the purchaser's execution of a Deed in terms substantially identical to those of the covenants, conditions and agreements of this Deed which then remain to be performed by Durham (or its assignee as the case may be) and Council respectively.</i>
D	Ducru subsequently acquired all of the shares in Durham and is the registered proprietor of the Land.
E	This Deed is entered into pursuant to clauses 6.1 and 6.2 of the Durham Deed.
F	The parties also wish to confirm the existence of the Durham Deed and record their agreement of the remaining floor space ratio credit available under clause 5.1(c) and (d) of the Durham Deed.

It is agreed as follows.

1. Definitions

The following definitions apply, including in the Recitals, unless the context requires otherwise.

Durham means Durham Developments Pty Ltd.

Land means the land comprised in Folio Identifier 1/1095363 known as 14-16 Orion Road, Lane Cove, NSW.

S.94 Contributions means contributions payable to Council under s.94 of the *Environmental Planning and Assessment Act 1979* (NSW), as amended from time to time.

2. Parties' confirmation

The parties;

- (a) acknowledge that the Durham Deed was never signed by the parties;
- (b) agree that they undertook their respective obligations set out in the Durham Deed for all intents and purposes as if the Durham Deed had been signed by them;
- (c) confirm the existence of the Durham Deed despite it not being signed by them; and
- (d) agree to do all things, including signing the Durham Deed (if necessary) in the form attached in Annexure "A", to give effect to the Durham Deed and this Deed.

3. Novation

- (a) With effect from the date of this Deed, Ducru is substituted for Durham under the Durham Deed as if Ducru had been a party to the Durham Deed instead of Durham.
- (b) With effect from the date of this Deed, Ducru will be bound by the Durham Deed as it relates to Durham and will enjoy all the rights and benefits of Durham under the Durham Deed.

4. Council's confirmation and consent

The Council:

- (a) consents to the novation of all the rights and benefits under the Durham Deed to Ducru;
- (b) acknowledges and agrees that condition 1 of Development Application DA413/04, 14-20 Orion Road, Lane Cove has been fully satisfied in respect of the Land by reason and on account of certain works carried out in lieu of the payment of s.94 Contributions relating to the Land such that no further s.94 Contributions are payable in respect of the Land; and
- (c) covenants in favour of Ducru that as from the date of this Deed, it will perform its obligations under the Durham Deed in favour of Ducru.

5. Covenant on resale

If:

- (a) Ducru sells or otherwise disposes of the Land; and/or
- (b) Ducru or a subsequent purchaser or transferee, lodges an alternative development application in respect of the Land,

then Ducru will (at its cost) obtain from the subsequent purchaser or transferee a deed of covenant in favour of the Council containing similar provisions to this Deed (and in particular, clauses 6.1 and 6.2 of the Durham Deed) and confirming the satisfaction of the payment of s.94 Contributions in respect of the Land.

6. Acknowledgment of remaining floor space ratio

The parties acknowledge and agree that for the purposes of clause 5.1(c) and (d) of the Durham Deed, no development may be carried out on the Land to which this Deed applies that would exceed the total gross floor area of 11,948m² (comprising a gross floor area of 10,582m² of office space and 432 car parking spaces).

7. Costs

- (a) Ducru shall pay its own and the Council's reasonable legal costs in connection with this Deed.
- (b) Ducru shall pay all stamp duty on this Deed.

8. Perfection of deed

Each party must execute and deliver all documents and perform all actions necessary to achieve the intention of this Deed.

9. Governing law

This Deed is governed by and construed in accordance with the law in New South Wales and the parties agree to be bound by the exclusive jurisdiction of the New South Wales Courts with respect to legal proceedings relating to this Deed.

Deed of Novation

Allens Arthur Robinson



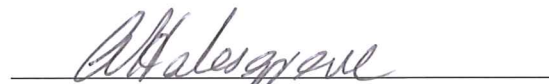
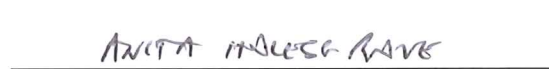
Executed and delivered as a Deed in New South Wales.

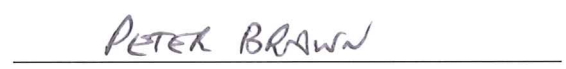
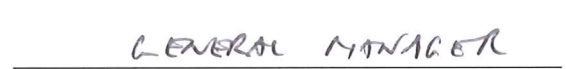
Executed in accordance with section 127 of the
Corporations Act 2001 by **Ducru Pty Limited** in
the presence of:


Sole Director and Sole Secretary Signature

Print Name

Executed and authenticated by the General
Manager for and on behalf of Lane Cove
Council in the presence of:


Witness Signature

Print Name


Authorised Representative Signature

Print Name

Position

Annexure A

Durham Deed

THIS DEED is made the

7th day of *April* 1986

BETWEEN

DURHAM DEVELOPMENTS PTY. LIMITED a company duly incorporated in the State of New South Wales and having its registered office at 14th Floor, 19-31 Pitt Street, Sydney (hereinafter "Durham") of the one part

AND

THE COUNCIL OF THE MUNICIPALITY OF LANE COVE of 48 Longueville Road, Lane Cove (hereinafter "Council") of the other part

WHEREAS:-

- A. Durham is the registered proprietor of the whole of the land comprised in Certificates of Title Volume 11949 Folio 201, Volume 9236 Folio 105, Volume 9236 Folio 106 and Volume 7606 Folio 49 being the land comprised in Lot 12 DP 536115, Lot 1 DP 210996, Lot 2 DP 210996 and Lot 6 DP 28020 known as 14 Orion Road, Lane Cove. The boundaries of the Land are marked red on the Plan.
- B. Council has issued to Durham a Notice of Determination of Development Application No. 391 dated 20 May 1985 allowing certain development of the Land by Durham subject to certain conditions.
- C. Council resolved on 9 September 1985 to approve the construction and dedication as a public road of a road passing through the Land (and other land) so as to link Orion Road with Epping Road.
- D. On or about 17 January 1986 representatives of each Durham and Council signed a drawing prepared by Ian Turner & Partners (N.S.W.) Pty. Limited bearing the number SKC15 and dated 31 December 1985 so as to indicate the approval of Durham and Council respectively to the

- 2 -

construction of the Link Road in the general location and generally in accordance with the design shown on that drawing.

- E. The parties have now agreed that the Link Road will pass through the Land in the general location marked blue on the Plan.
- F. An application seeking subdivision in accordance with the Plan was lodged on behalf of Durham with Council and Council has issued a Notice of Determination of Subdivision dated 18 February 1986 approving such subdivision subject to certain conditions.
- G. The Plan does not show easements for storm water drainage or Sydney County Council kiosk substations and it omits other details which the parties acknowledge will require to be indicated on the final linen plan and noted in the Section 88B Instrument to be submitted by Durham to Council for the endorsement of Council's approval immediately upon the Metropolitan Water Sewerage & Drainage Board issuing a Section 34B Certificate in respect of the Land.
- H. Durham has agreed to dedicate certain parcels of land to Council and the parties have agreed to incorporate the terms and conditions of such dedication as terms and conditions of this Deed.

NOW THIS DEED WITNESSES that in consideration of the mutual covenants hereinafter set forth the parties EXPRESSLY COVENANT AND AGREE as follows:-

- 3 -

1. Definitions and Interpretation

1.1 In this Deed unless there is something in the subject matter or context inconsistent therewith the following expressions shall have the following meanings respectively:-

"Deed" means this Deed including any annexures hereto.

"Drawings Nos. CO4A and CO5B" mean the drawings prepared by Ian Turner & Partners (NSW) Pty. Limited bearing those numbers and respectively undated and dated 29 January 1986 copies of which are annexed hereto and marked "B1" and "B2" respectively.

"Durham's development consent" means the Notice of Determination of Development Application referred to in Recital B hereof a copy of which is annexed hereto and marked "C".

"Durham's subdivision consent" means the Notice of Determination of Subdivision referred to in Recital F hereof a copy of which is annexed and marked "D".

"Exhibit I" means the letter if any referred to in Clause 9.1 hereof the original of which is marked "Exhibit I".

"the Land" means the land particularised in Recital A hereof.

"the Linen Plan" means the final linen plan referred to in Recital G hereof.

- 4 -

"the Link Road" means the whole of the road

described in Recital C hereof, and annexures "A", "B1" and "B2" hereof.

"the Plan" means the plan of subdivision a copy of

which is annexed hereto and marked "A", ~~and the~~

"the total cost of the Link Road" means (without limiting the generality thereof) the total of all design, survey, site clearing, construction and management fees together with the cost of all labour and materials related to the design construction and commissioning of the Link Road but excludes the cost of diverting sewers and drains within that part of the Land shown as Lot 1 on the Plan, all fees and costs related to the preparation of the Plan and the Linen Plan, all fees and costs related to the application for subdivision referred to in Recital F hereof, and all those costs and expenses agreed to be borne by Durham pursuant to Clauses 2.1.2, 2.1.3, 2.1.4, 2.1.6 and 2.2(a) hereof.

- 1.2 In the interpretation of this Deed unless there is something in the subject matter or context inconsistent therewith the word "person" shall include a corporation, words importing the singular or plural number shall include the plural or singular number respectively and words importing one gender shall include all other genders.

- 1.3 Headings are inserted for guidance only and shall

- 5 -

not form any part of the context.

- 1.4 Any document referred to herein as an Exhibit has been exhibited to the parties at the time of their execution of this Deed, initialled on their behalf by way of identification and marked as such Exhibit.

2. Contribution by Durham

2.1 The Link Road

- 2.1.1 The Linen Plan when submitted by Durham to Council for the endorsement of Council's approval shall contain a statement of Durham's intention to dedicate to Council that part of the Land required for the construction of the Link Road namely, that part of the Land in the general location marked blue on the Plan having a variable width of approximately eighteen (18) metres.
- 2.1.2 Prior to the date of registration of the Linen Plan (the cost of such registration to be borne by Durham) Durham shall demolish at its own cost all structures currently located on the Land on or across the boundaries of the lots shown on the Linen Plan.
- 2.1.3 Prior to or within six (6) months of the date of registration of the Linen Plan Durham shall demolish at its own cost all structures currently located on that part

- 6 -

of the Land which is to be dedicated by Durham to Council pursuant to Clause 2.1.1 hereof.

2.1.4 Prior to or within five (5) years of the date of registration of the Linen Plan Durham shall demolish at its own cost all those structures required to be demolished pursuant to Condition 1 of Durham's subdivision consent which have not then been demolished pursuant to Clauses 2.1.2 or 2.1.3 hereof.

2.1.5 Within fourteen (14) days of Council serving Durham with notice that Council has made a payment or progress payment to a person engaged by or on behalf of Council in connection with the design construction and commissioning of the Link Road, which payment represents the whole or a part of the total cost of the Link Road, Durham shall pay Council an amount equal to thirty-five per centum (35%) of the whole of the relevant payment or progress payment or, where the relevant payment or progress payment relates partly to the total cost of the Link Road and partly to a cost which arises as a consequence of the operation of sub-clauses (b) and (c) of Clause 2.1.6 hereof, an amount equal to thirty-five per

- 7 -

centum (35%) of the relevant payment or progress payment after deducting all amounts attributable to the operation of the said sub-clauses PROVIDED THAT Durham shall be wholly released and discharged from its obligations pursuant to this Clause 2.1.5 when the total amount paid by Durham to Council pursuant to this Clause equals Four hundred and forty thousand dollars (\$440,000.00) or thirty-five per centum of the total cost of the Link Road whichever is the lesser and for the purpose of giving effect to the last mentioned proviso the last payment made pursuant to this Clause 2.1.5 may be in an amount less than thirty-five per centum (35%) of the relevant payment or progress payment.

- 2.1.6 (a) Within eight (8) months of the date of this Deed Durham shall (subject to Durham having first obtained the approval of Council's Engineer to the detailed design and specification therefor, which by then will have been prepared by or on behalf of Council) complete construction of the crib block retaining wall marked green on Drawings Nos. C04A and C05B in

accordance with the design and specification so approved and to the satisfaction of Council's Engineer. The cost of constructing the crib block retaining wall shall be wholly borne by Durham and Durham shall not be released or discharged from its obligations pursuant to this sub-clause (a) unless a notice in the terms of the notice referred to in sub-clause (b) of this Clause 2.1.6 is served by Council on Durham.

- (b) If, for any reason other than a reason which is beyond the reasonable control of Durham, Durham has not commenced construction of the crib block retaining wall referred to in sub-clause (a) of this Clause 2.1.6 within four (4) months of the date of this Deed, then without prejudice to any rights Council may have as a consequence of Clause 3.1(b) hereof Council may serve Durham with notice that Council intends to construct the same at Durham's cost entirely and if such a notice is given then from the date of service thereof

sub-clause (c) of this Clause 2.1.6 shall apply.

- (c) Within fourteen (14) days of Council serving Durham with notice that Council has made a payment or progress payment to the contractor engaged by or on behalf of Council to construct the crib block retaining wall marked green on Drawings Nos. C04A and C05B Durham shall pay Council an amount equal to the whole of the relevant payment or progress payment.

Durham shall not be released or discharged from any of its obligations pursuant to this Clause 2.1.6 by reason of any payments made by it to Council pursuant to Clause 2.1.5 hereof.

2.2 Public Reserve

Upon the registration of the Linen Plan Durham shall dedicate Lots 6 and 7 as shown on the Linen Plan as public reserve and PROVIDED THAT at the date of dedication:-

- (a) lots 6 and 7 are, at Durham's own cost, free of all structures; and
(b) except insofar as the same is a foreseeable and reasonable consequence of the operation of Clause 4 hereof Durham by itself its

servants agents licensees or invitees has not caused or permitted the loss or despoilation of any vegetation or soil which was existing on Lots 6 and 7 at the date of this Deed,

Council HEREBY AGREES that:-

- (i) Durham shall thereafter be deemed to have landscaped the whole of Lots 6 and 7 to Council's satisfaction and shall not be required to pay or contribute to the cost of any subsequent landscaping thereof;
- (ii) the total area of Lots 6 and 7 shall thereafter be taken into account for the purposes of calculating compliance with Condition 6 of Durham's development consent; and
- (iii) PROVIDED THAT the cumulative total thereof does not exceed one hundred per centum (100%). Durham may from time to time request and Council shall upon such request treat specified proportions of the total area of Lots 6 and 7 as the landscaped areas otherwise required by Council's grant of consent to the development of each lot in the Linen Plan.

3. Best Endeavours

3.1 Durham shall:-

- (a) make reasonable efforts to demolish the

structures referred to in each of

Clauses 2.1.2, 2.1.3 and 2.2(a) hereof ~~within~~
within ~~(6)~~ six months of the date of this deed.

(b) use its best endeavours to complete

construction of the crib block retaining

wall referred to in Clause 2.1.6(a) hereof

within ~~six (6) months~~ eight (8) months of the date of this Deed.

3.2 The parties hereto shall respectively use their best endeavours and shall do all things necessary insofar as they are capable to:-

(a) immediately commence construction of the Link Road and in any event commence the same no later than within two (2) months of

the date of this Deed, and to complete construction of the Link Road within ten (10) months of the date of this deed.

(b) (i) ensure the registration of the Linen

Plan; and

(ii) ensure that the dedications of land referred to in each of Clauses 2.1.1 and 2.2 hereof are effected;

within six (6) months of the date of this Deed.

4. Authority To Enter

4.1 Upon and From the date of this Deed Durham HEREBY AGREES that Council, by its servants agents or any person engaged by or on behalf of Council in connection with the design construction and commissioning of the Link Road, is authorised to enter upon the Land without further notice for the purpose of carrying out certain preliminary works

- 12 -

related to the construction of the Link Road in the nature of site preparation, namely:-

- (a) site clearing;
- (b) the erection of construction fencing; and
- (c) depositing the minimum amount of filling material needed to provide a six (6) metre wide access ramp in the vicinity of the western end of Moore Street, Lane Cove, the precise location and gradient of such ramp to be the subject of the prior approval of Council's Engineer.

4.2 Upon and from the date of lodgment for registration of the Linen Plan Durham HEREBY AGREES that Council, by its servants agents or any person engaged by or on behalf of Council in connection with the design construction and commissioning of the Link Road, is authorised to enter upon the Land without further notice for the purpose of carrying out the then unperformed balance of the works related to the construction of the Link Road including depositing the amount of filling material then required to complete the construction of the Link Road.

5. Agreements By Council

5.1 Subject to Durham duly performing the covenants, conditions and agreements of this Deed Council HEREBY AGREES that:-

- (a) Durham shall thereafter be deemed to have

complied with Conditions 1 and 4 of Durham's development consent to Council's satisfaction.

- (b) Durham shall not be required to pay or contribute towards the provision or improvement of amenities or services pursuant to Section 94 of the Environmental Planning and Assessment Act, 1979 as amended in respect of its development of the Land or any part thereof.

- (c) The total area of the Land (which is agreed ~~FSR~~ to be 45,127.7 square metres) shall be taken into account for the purposes of calculating the floor space ratio of any development of the Land or part thereof.

- (d) PROVIDED THAT the area of the office component of the total gross floor space developed on the Land does not exceed forty-nine per centum (49%) of 45,127.7 square metres Council shall not refuse consent to any development application to develop part of the Land by reason only that such development application contemplates an office component comprising up to or equal to eighty per centum (80%) of the total gross floor space then applied to be developed PROVIDED FURTHER THAT the event that Council resolves to g:

OFFICE
Component

6. Assignment

6.1 Durham shall not transfer or assign or otherwise dispose of Durham's rights and obligations under this Deed without Council's written consent which consent shall not be unreasonably withheld.

6.2 PROVIDED THAT the consent referred to in Clause 6.1 hereof is first obtained nothing in this Deed shall prohibit or in any way prevent Durham or its assignee as the case may be from selling the Land or any part thereof PROVIDED FURTHER THAT Durham (or its assignee) procures, at its own cost, the purchaser's execution of a Deed in terms substantially identical to this Deed or terms substantially identical to those of the covenants, conditions and agreements of this Deed which then remain to be performed by Durham (or its assignee as the case may be) and Council respectively.

6.3 Upon the submission by Durham (or its assignee as the case may be) to Council of a Deed which in Council's absolute discretion satisfactorily complies with Clause 6.2 hereof Council shall immediately after having exercised such discretion in favour of Durham (or its assignee) either execute the Deed which has been executed by the purchaser or exchange duly executed counterpart Deeds with the purchaser.

7. Waiver

7.1 No waiver by either party of one breach by the

other party of any obligation on that other party's part contained in this Deed shall operate as a waiver of another breach of the same or any other obligation contained in this Deed.

8. Notices

- 8.1 All demands, consents or notices shall be in writing and may be given to or served upon a party by being left at that party's registered office or principal place of business in New South Wales or by being posted as a pre-paid certified or registered letter addressed to that party at such office or principal place of business. Any demand, consent or notice if posted shall be deemed to have been served at the expiration of three (3) working days after the time of posting. For the purposes of proof of service it shall be sufficient to prove that the envelope containing the demand, consent or notice was properly addressed, stamped and certified or registered and put in a post office box in the Commonwealth of Australia. Any demand, consent or notice given by Council may be signed on its behalf by the solicitor or Town Clerk for the time being of Council. Council's principal place of business in New South Wales for the purposes of this Clause 8.1 shall be deemed to be 48 Longueville Road, Lane Cove.

- 17 -

9. Whole Agreement

9.1 Except insofar as any letter from Durham to Council being Exhibit I hereto may have brought Clause 4.1 of this Deed into operation on and from a date earlier than the date of this Deed, the covenants and provisions contained in this Deed expressly or by statutory implication cover and comprise the whole of the agreement between the parties and it is expressly agreed and declared that no further or other covenants or provisions shall be deemed to be implied herein or to arise between the parties by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking given or made by or on behalf of either party to the other on or prior to the execution hereof and the existence of any such implication or collateral or other agreement is hereby negatived.

IN WITNESS WHEREOF the parties hereto have executed this Deed on the day and year first hereinbefore written.

THE COMMON SEAL of DURHAM)
DEVELOPMENTS PTY. LIMITED)
was hereunto affixed in the)
presence of:)

.....
Director.....
Secretary