



Deed of Amendment to St Marys Development Agreement

—

St Marys Land Limited (ACN 088 278 602)
(Landowner)

Lendlease Development Pty Ltd (ACN 000 311 277)
(LLD)

Transport for NSW (ABN 18 804 239 602) (TfNSW)

Minister for Planning (ABN 20 770 707 468)
(Minister)

Comland Limited (ABN 85 088 278 451) (Comland)

Lendlease Corporation Limited (ABN 32 000 226
228) (LLC)

—

Deed of Amendment

Details	4
1. Defined terms & interpretation	6
1.1 Development Agreement defined terms	6
1.2 Defined terms	6
1.3 Interpretation	6
2. Amendment	7
2.1 Amendments to the Development Agreement	7
2.2 Amendments not to affect validity, rights, obligations	9
2.3 Amendment and waiver	9
3. Confirmation and acknowledgement	9
3.1 Confirmation	9
3.2 Conflict	9
4. Costs	9
4.1 Costs and expenses	9
5. General provisions	9
5.1 Status of deed	9
5.2 Further action	9
5.3 Severability	9
5.4 Governing law and jurisdiction	9
5.5 Electronic exchange and exchange of counterparts	9
Signing page	11
Annexure A – New Corridor Plan	14

Details

Date

Parties

Name **St Marys Land Limited** (ACN 088 278 602)
Short form name **Landowner**
Notice details Level 14, Tower 3,
International Towers
300 Barangaroo Avenue
Barangaroo NSW 2000
Attention: Company Secretary

Name **Lendlease Development Pty Ltd** (ACN 000 311 277)
Short form name **LLD**
Notice details Level 14, Tower 3,
International Towers
300 Barangaroo Avenue
Barangaroo NSW 2000
Attention: Company Secretary

Name **Transport for NSW** (ABN 18 804 239 602)
Short form name **TfNSW**
Notice details 231 Elizabeth Street
Sydney NSW 2000
Attention: Anna Summerhayes

Name **Minister for Planning** (ABN 20 770 707 468)
Short form name **Minister**
Notice details 4 Parramatta Square,
12 Darcy Street
Parramatta NSW 2150
Attention: The Secretary, Department of Planning and Environment

Name **Comland Limited** (ABN 85 088 278 451)
Short form name **Comland**
Notice details Level 14, Tower 3,
International Towers
300 Barangaroo Avenue
Barangaroo NSW 2000
Attention: Company Secretary

Name	Lendlease Corporation Limited (ABN 32 000 226 228)
Short form name	LLC
Notice details	Level 14, Tower 3, International Towers 300 Barangaroo Avenue Barangaroo NSW 2000 Attention: Company Secretary

Background

- A The parties to this deed are parties to the Development Agreement, relating to the development of land in and around St Marys in western Sydney.
- B Under the terms of the Development Agreement, and upon certain preconditions being met, the Landowner agreed to transfer to TfNSW the 2002 Proposed Transit Corridor, or if the Landowner did not acquire the 2002 Proposed Transit Corridor, an equivalent 12 metre wide strip of land within the 2002 Existing Rail Corridor (**Existing Alternate Corridor**).
- C The Landowner did not acquire the 2002 Proposed Transit Corridor and has not transferred the Existing Alternate Corridor to TfNSW.
- D TfNSW has advised that it no longer proposes to construct a transitway within either the 2002 Proposed Transit Corridor or the 2002 Existing Rail Corridor.
- E The Landowner has requested that TfNSW remove the requirement to transfer the Existing Alternate Corridor from the Development Agreement.
- F TfNSW has agreed to remove the requirement to transfer the Existing Alternate Corridor from the Development Agreement on the basis that the Landowner agrees to transfer equivalent parcels of land in the New Corridor to ensure the public benefit to be delivered under the Development Agreement is realised.
- G In order to give effect to this variation, the parties agree to enter into this deed, which is a variation by agreement between the relevant parties as per clause 3.3 of the Development Agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Development Agreement defined terms

Unless the context otherwise requires or the relevant term is defined in this document, terms defined in (or incorporated by reference into) the Development Agreement have the same meaning in this deed.

1.2 Defined terms

In this document:

2002 Existing Rail Corridor means the area shown generally on the plan at Annexure K to the Development Agreement as the 'Existing Rail Corridor'.

2002 Proposed Transit Corridor means the area shown generally on the plan at Annexure K to the Development Agreement as the 'Proposed Transit Corridor'.

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

Commencement Date means the date that this deed is executed by the parties.

Development Agreement means the St Marys Development Agreement entered into on 13 December 2002 (as amended by the Deed of Amendment to St Marys Development Agreement dated 24 May 2004 and the Deed of Variation of St Marys State Development Agreement dated 7 May 2013).

New Corridor means the land identified in yellow on the New Corridor Plan.

New Corridor Plan means the plan at Annexure A.

1.3 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's:
 - (i) employees; and
 - (ii) executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it; and

- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2. Amendment

2.1 Amendments to the Development Agreement

The parties agree that from the Commencement Date, the Development Agreement is varied as follows:

- (a) the following definitions are inserted in the Development Agreement:

Contamination has the same meaning as it does in the Contaminated Land Management Act 1997 (NSW).

Contamination Reports means the:

- (a) report prepared by JBS&G titled "Phase 1 Preliminary Site Investigation (Lend Lease Land) Dunheved Circuit, St Marys, NSW" dated 17 April 2015;
- (b) report prepared by JBS&G titled "Northern Rail Lands – Condition letter for proposed handover area within Lot 196 DP 31912 and Part lot 7 DP31908 dated 19 April 2022;
- (c) report prepared by JBS&G titled "Phase 2 Detailed Site Investigation – Northern Rail Corridor Lands (Part Lot 2 DP 1280963 and Part Lot 7 DP31908) St Marys, NSW 63061/146420 (Rev 2) dated 21 October 2022; and
- (d) DRAFT Remedial Action Plan – Northern Rail Corridor Lands (Part Lot 2 DP 1280963 and Part Lot 7 DP31908) (Rev B) – 21 October 2022 (**RAP**).

New Corridor means the land identified in yellow on the New Corridor Plan being the land comprised in:

- (i) Lot 20 in DP1287299; and
- (ii) part of Lot 7 in DP31908.

New Corridor Plan means the plan contained in Annexure K.

Remediation means removing, dispersing, destroying, reducing, mitigating or containing Contamination on or under the New Corridor.

Transfer Notice means a notice from TfNSW specifying that the New Corridor is to be transferred to TfNSW.

- (b) the entirety of clause 16.21 "Transit Corridor" is replaced with the following:

- "(a) The Landowner must transfer the titles to the land comprising the New Corridor to TfNSW for consideration of \$1:
 - (i) within 30 days of receipt of the Transfer Notice; or
 - (ii) otherwise upon request by TfNSW.
- (b) TfNSW agrees to register the New Corridor Plan with NSW Land Registry Services and the Landowner (being St Marys Land Limited) agrees to pay all costs relating to the preparation, lodgement and registration of the New Corridor Plan with the NSW Land Registry Services.
- (c) TfNSW agrees that it will not issue a Transfer Notice until:
 - (i) the Landowner has removed all Contamination and carried out Remediation of Contamination to the satisfaction of TfNSW pursuant to 16.21(g)(i) and (ii); and

- (ii) *in relation to that part of Lot 7 in DP31908 which forms part of the New Corridor, the lot to be transferred to TfNSW has been created.*
- (d) *The Landowner acknowledges that TfNSW may lodge a caveat with NSW Land Registry Services on the whole of the titles of Lot 20 in DP1287299 and Lot 7 in DP31908, even though TfNSW's rights under this clause relate to only part of Lot 7 in DP31908, to protect its rights under this clause in respect of the New Corridor.*
- (e) *The Landowner agrees to carry out all necessary actions required by TfNSW in respect of creation of the lot to be transferred to TfNSW in respect of part Lot 7 in DP31908 (including through lodgement of a development application to subdivide Lot 7 in DP31908, and registration of any plan or plans of subdivision of Lot 7 in DP31908 but not including commencement by the Landowner of any legal proceedings) at the Landowner's cost and expense by 31 December 2026.*
- (f) *TfNSW may give a separate Transfer Notice for each of the 2 parcels of land identified in the definition of New Corridor.*
- (g) *The Landowner agrees to:*
 - (i) *remove all Contamination (including flytipping and stockpiling/mounding of soils) on or under the New Corridor identified in the Contamination Reports in accordance with the Remedial Action Plan and all Law to TfNSW's satisfaction by 31 December 2025;*
 - (ii) *carry out Remediation of Contamination on and under the New Corridor identified in the Contamination Reports at the Landowner's cost and expense to the satisfaction of TfNSW by 31 December 2025. The Remediation must be undertaken so as to ensure the New Corridor is:*
 - (A) *suitable for the purpose of both open space and industrial use; and*
 - (B) *in a condition such that the Contamination on or under the New Corridor is not significant enough so as to warrant regulation under the Contaminated Land Management Act 1997 (NSW) and the Environment Protection Authority is unable to issue an investigation order or management order under the Contaminated Land Management Act 1997 (NSW) in respect of the New Corridor;*
 - (iii) *obtain an unconditional site audit statement from an accredited site auditor for the New Corridor confirming that the site is suitable for the proposed use as open space and industrial use at the Landowner's cost and expense to the satisfaction of TfNSW by 31 December 2025;*
 - (iv) *indemnify, and keep indemnified, TfNSW in respect of any liability, loss, claim, cost or expense suffered or incurred by TfNSW arising from Contamination existing on or under the New Corridor as at the date this clause was inserted into this deed, or Remediation of such Contamination, to the extent that such liability loss, claim, cost or expense arises from:*
 - (A) *any notice or order issued by an Authority under a Law;*
 - (B) *any legal claim made by any person other than the Landowner; or*
 - (C) *a Court order."*
- (c) *Annexure K to the Development Agreement is replaced with the New Corridor Plan being the plan at Annexure A of this deed.*

2.2 Amendments not to affect validity, rights, obligations

The parties acknowledge and agree that the amendments in clause 2.1 is not by its inclusion intended to create a new agreement that replaces, terminates, rescinds, restates or discharges the Development Agreement.

2.3 Amendment and waiver

No amendment or waiver of any provision of this deed shall be valid unless it is in writing and signed by the parties.

3. Confirmation and acknowledgement**3.1 Confirmation**

Each party confirms that, other than the amendments in clause 2.1, the Development Agreement remains in full force and effect.

3.2 Conflict

If there is a conflict between the Development Agreement and this deed, the terms of this deed prevail.

4. Costs**4.1 Costs and expenses**

- (a) Subject to clause 4.1(b), each party bears its own costs and expenses in relation to the negotiation, preparation, execution and delivery of this deed.
- (b) LLD and LLC agree to bear the Minister's and TfNSW's costs and expenses in relation to the negotiation, preparation, execution and delivery of this deed.

5. General provisions**5.1 Status of deed**

Each party agrees that all clauses in this deed are binding on each other party.

5.2 Further action

Each party must do all things necessary or desirable to give full effect to this deed.

5.3 Severability

A provision of this document that is illegal, invalid or unenforceable in a jurisdiction is ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the remainder of this document in any jurisdiction.

5.4 Governing law and jurisdiction

This deed is governed by the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place (and any court of appeal) and waives any right to object to an action being brought in those courts, including on the basis of an inconvenient forum or those courts not having jurisdiction.

5.5 Electronic exchange and exchange of counterparts

A party may execute this deed as well as any modifications to it by electronic means (including by electronic signature or by facsimile or email of a signed document in PDF or scanned format in each case signed (including by electronic means) by two directors of that party or one director and the company secretary). The parties agree and intend that such signature by electronic means or

by facsimile or email in PDF or scanned format shall bind the party so signing with the same effect as though the signature were an original signature. This deed may be executed as set out above in two or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

Signing page

EXECUTED as a deed.

Executed by St Marys Land Limited ACN 088
278 602 in accordance with Section 127 of the
Corporations Act 2001 presence of

DocuSigned by:

D0F14624AEGA448...
Signature of Director

Gary John Searle
Name of Director (print)

DocuSigned by:

BE0B6FE1A861499...
Signature of ~~Director~~/Company Secretary (delete as applicable)

Katrina Beth Smith
Name of ~~Director~~/Company Secretary

Executed by Lendlease Development Pty Ltd
ACN 000 311 277 in accordance with Section 127
of the Corporations Act 2001 presence of

DocuSigned by:

B31D24836F2A4D1...
Signature of Director

Thomas Lachlan Mackellar
Name of Director (print)

DocuSigned by:

BE0B6FE1A861499...
Signature of ~~Director~~/Company Secretary (delete as applicable)

Katrina Beth Smith
Name of ~~Director~~/Company Secretary

**Signed, sealed and delivered by Transport for
NSW** ABN 18 804 239 602 by its authorised
delegate in the presence of

Signature of witness

Name of witness

Signature of authorised delegate

Name of authorised delegate

Signed, sealed and delivered by Minister for Planning ABN 20 770 707 468 by its authorised delegate in the presence of

Signature of witness

Name of witness

Signature of authorised delegate

Name of authorised delegate

By signing this deed, the witness states that they witnessed the signing of this deed by [NAME OF DELEGATE] over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Executed by Comland Limited ABN 85 088 278 451 in accordance with Section 127 of the Corporations Act 2001 presence of

DocuSigned by:
Gary John Searle

Signature of Director

Gary John Searle

Name of Director (print)

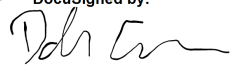
DocuSigned by:
Katrina Beth Smith

Signature of Director/Company Secretary (delete as applicable)

Katrina Beth Smith

Name of Director/Company Secretary

Signed for and on behalf of
Lendlease Corporation Limited ABN 32 000 226
228 by its attorneys under power of attorney dated
31 March 2022 who personally warrant and
represent that the power of attorney has not been
revoked and remains valid:

DocuSigned by:

56AEAB02785A4BF...
Signature of attorney

Dale James Connor
Name of attorney (print)

Chief Executive Officer, Australia
Title of attorney (print)

DocuSigned by:

831D22836E2A4D3...
Signature of attorney

Thomas Lachlan Mackellar
Name of attorney (print)

Managing Director, Development - Australia
Title of attorney (print)

Annexure A – New Corridor Plan

