



lindsaytaylorlawyers
planning • environment • local government

Googong Urban Development Deed of Guarantee

The Minister for Planning & Infrastructure ("Minister")

Googong Township Pty Ltd ("Developer")

CIC Australia Limited and Mirvac JV's Pty Limited
("Guarantors")

Date: 19/12/11

lindsaytaylorlawyers
Level 7, 1 O'Connell Street, Sydney NSW 2000, Australia
T 02 8235 9700 • F 02 8235 9799 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au
ABN 15 695 894 345

Liability limited by a scheme approved under Professional Standards Legislation

DRN L/F 38119



Googong Urban Development Deed of Guarantee

Table of Contents

Summary Sheet.....	3
Parties	5
Background.....	5
Operative provisions	5
1 Definitions and Interpretation	5
2 Guarantee	7
3 Notices	8
4 Governing Law and Jurisdiction	9
5 Joint and individual liability and benefits.....	9
6 No fetter	9
7 Representations and warranties	10
8 Severability	10
9 Termination.....	10
Execution.....	12

Googong Urban Development – Deed of Guarantee
The Minister for Planning & Infrastructure
Googong Township Pty Ltd
CIC Australia Limited
Mirvac JV's Pty Ltd



Googong Urban Development Deed of Guarantee

Summary Sheet

Minister:

Name: The Minister for Planning and Infrastructure
Address: c/-, Department of Planning and Infrastructure, 23-33 Bridge Street,
Sydney NSW 2000
Telephone: (02) 9228 6111
Facsimile: (02) 9228 6455
Email: wollongong@planning.nsw.gov.au
Representative: Director-General

Developer:

Name: Googong Township Pty Ltd
Address: Level 3, 64 Allara St, Canberra ACT 2061
Telephone: (02) 6230 0800
Facsimile: (02) 6230 0811
Email: mark.attwill@cicaustralia.com.au
Representative: Mark Attiwill, Googong Project Director

Guarantors:

Name: CIC Googong Pty Limited and Mirvac JV's Pty Ltd
Address: Level 3, 64 Allara St, Canberra ACT 2061
Telephone: (02) 6230 0800
Facsimile: (02) 6230 0811
Email: mark.attwill@cicaustralia.com.au
Representative: Mark Attiwill, Googong Project Director

Googong Urban Development – Deed of Guarantee
The Minister for Planning & Infrastructure
Googong Township Pty Ltd
CIC Australia Limited
Mirvac JV's Pty Ltd





Googong Urban Development Deed of Guarantee

Parties

The Minister for Planning of ABN 38 755 709 681 of Level 34, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (**Minister**)
and

Googong Township Pty Limited ACN 154 514 593 of Level 3, 64 Allara Street, Canberra ACT 2601 (**Developer**)
and

CIC Australia Limited ABN 92 003 157 515 of Level 3, 64 Allara Street, Canberra ACT 2601 (**CIC**)
and

Mirvac JV's Pty Ltd ACN 098 668 850 of level 26, 60 Margaret Street, Sydney NSW 2000 (**Mirvac**)

Background

- A Googong Development Corporation Pty Limited and the Minister entered into the Planning Agreement.
- B The Developer acquired the title to the Land, as defined in the Planning Agreement, and is bound by the Planning Agreement as if it had entered into the Planning Agreement.
- C Clause 15 of the Planning Agreement provides that the Developer is to provide the Minister with a deed of guarantee between the Minister, the Developer, and the parent company of the Developer, under which the parent company of the Developer undertakes to meet the obligations of the Developer under the Planning Agreement.
- D This Deed is the deed of guarantee contemplated by that clause.

Operative provisions

1 Definitions and Interpretation

1.1 In this Deed, the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979*.

Googong Urban Development – Deed of Guarantee
The Minister for Planning & Infrastructure
Googong Township Pty Ltd
CIC Australia Limited
Mirvac JV's Pty Ltd



Authorised Officer means in the case of any party, a director, secretary or any officer whose title contains the word "manager" or a person performing the functions of any of them or any other person appointed by that party to act as an Authorised Officer for the purpose of this Deed.

Authority means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body and includes, where applicable, an accredited certifier within the meaning of the Act.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Guarantors means CIC and Mirvac.

Law means:

- a) the common law including principles of equity; and
- b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority, presently applying or as they may apply in the future.

Party means a party to this deed, including their successors and assigns.

Planning Agreement means the planning agreement, within the meaning of the Act, entered into between the Minister and Googong Development Corporation Pty Limited on 15 September 2011.

State means the State of New South Wales.

1.2 In this Deed unless the contrary intention appears:

- 1.2.1 a reference to this Deed or another instrument includes any variation or replacement of any of them,
- 1.2.2 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,
- 1.2.3 the singular includes the plural and vice versa,
- 1.2.4 the word "person" includes a firm, a body corporate, an unincorporated association or an authority,
- 1.2.5 a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns,
- 1.2.6 an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally,
- 1.2.7 an agreement, representation or warranty on the part of two or more persons binds them jointly and severally,

Googong Urban Development – Deed of Guarantee

The Minister for Planning & Infrastructure

Googong Township Pty Ltd

CIC Australia Limited

Mirvac JV's Pty Ltd



- 1.2.8 a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually,
- 1.2.9 "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind,
- 1.2.10 if a Party is prohibited from doing anything, it is also prohibited from:
 - (a) allowing or causing it to be done; and
 - (b) doing or omitting to do anything which results in it happening,
- 1.2.11 a reference to a statute, ordinance, code or law includes a statute, ordinance, code or law of the Commonwealth of Australia,
- 1.2.12 a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions,
- 1.2.13 no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Deed,
- 1.2.14 any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the Act..

2 Guarantee

- 2.1 The Guarantors gives this guarantee and indemnity in consideration of the Minister agreeing to enter into the Planning Agreement.
- 2.2 The Guarantors unconditionally and irrevocably guarantee to the Minister the due and punctual performance and observance by the Developer of the Developer's obligations under the Planning Agreement.
- 2.3 Subject to clause 2.5, the Guarantors unconditionally and irrevocably indemnify the Minister against all liability or loss arising from, and any expenses incurred in connection with a breach by the Developer of the Planning Agreement.
- 2.4 The Minister cannot exercise his rights under this Deed in respect of a breach of the Planning Agreement by the Developer, unless:
 - 2.4.1 the Minister has first enforced his rights under the Planning Agreement to remedy a breach of the Planning Agreement, or to recover his costs and expenses incurred in respect of the breach;
 - 2.4.2 the Minister's costs and expenses incurred in respect of the breach, to which the Minister is entitled under the Planning Agreement, have not been met through the exercise of his rights under the Planning



Agreement, or the breach of the Planning Agreement has not been remedied as a result of the exercise of those rights; and

- 2.4.3 any dispute notified under clause 17 and Schedule 1 of the Planning Agreement has been resolved, or any procedure commenced in respect of that dispute has been terminated.
- 2.5 For the avoidance of doubt, the Minister is not entitled to recover from the Guarantors any amount under this deed that it would not be entitled to recover from the Developer under the Planning Agreement, and if the amount the Minister would be entitled to recover under the Planning Agreement is varied as a result of the resolution of any dispute notified under the Planning Agreement, the Minister can only recover the amount determined to be payable as a result of the resolution of the dispute.
- 2.6 The Guarantors will pay any money payable under this Deed to the Minister within 20 business days of receipt by the Guarantor of a tax invoice for the amount payable, if one is needed.
- 2.7 A payment is made for the purposes of this Deed if the Minister receives the full amount payable under this Deed by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Minister, as the case may be

3 Notices

- 3.1 Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Summary Sheet to this Deed or, if the recipient has notified otherwise, then marked for attention in the way last notified.
- 3.2 They must be:
 - 3.2.1 left at the address set out or referred to in the Summary Sheet to this Deed;
 - 3.2.2 sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Summary Sheet to this Deed;
 - 3.2.3 sent by fax to the fax number set out or referred to in the Summary Sheet to this Deed; or
 - 3.2.4 given in any other way permitted by Law.
- 3.3 However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.
- 3.4 They take effect from the time they are received unless a later time is specified.



- 3.5 If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).
- 3.6 If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

4 Governing Law and Jurisdiction

- 4.1 This Deed is governed by the law of New South Wales.
- 4.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 4.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

5 Joint and individual liability and benefits

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

6 No fetter

- 6.1 This Deed is not intended to operate to fetter, in any unlawful manner:
 - 6.1.1 the sovereignty of the Parliament of the State to make any Law;
 - 6.1.2 the power of the Executive Government of the State to make any statutory rule; or
 - 6.1.3 the exercise of any statutory power or discretion of any minister of the State or any Authority.(all referred to in this clause as "**Discretion**").
- 6.2 No provision of this Deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the Parties agree:
 - 6.2.1 they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
 - 6.2.2 in the event that clause 6.1 cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Deed has full force and effect; and
 - 6.2.3 to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Deed which is held to be an unlawful



fetter to the extent that is possible having regard to the relevant court judgment.

7 Representations and warranties

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

8 Severability

- 8.1 The Parties agree that to the extent permitted by Law, this Deed prevails to the extent it is inconsistent with any Law.
- 8.2 If a clause or part of a clause of this Deed 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.
- 8.3 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of a clause is to be treated as removed from this Deed, but the rest of this Deed is not affected.

9 Termination

- 9.1 This Deed is terminated if the Planning Agreement is terminated.
- 9.2 This Deed will not apply:
- 9.2.1 to the extent that the Developer (in accordance with the Planning Agreement) sells, assigns or transfers its interest in the Planning Agreement or the land to which the Planning Agreement relates, or similarly deals with that interest,
 - 9.2.2 to the extent that the Developer novates the Planning Agreement (in accordance with the Planning Agreement), or
 - 9.2.3 to the extent that either of the Guarantors sells or transfers any of its shares in the Developer, but only if the Guarantor has first obtained the consent of the Minister (which shall not be unreasonably withheld) to the sale or transfer of the shares, and clause 9.4 has been complied with.
- 9.3 The Minister shall not withhold his or her consent to a sale or transfer of shares in the Developer, if the Minister, acting reasonably, is satisfied, based on evidence procured by the Developer or a Guarantor, and any other considerations the Minister considers relevant, that the Developer will, after the sale or transfer of the shares occurs, have the financial capacity and experience necessary to meet the Developer's obligations under the Planning Agreement.
- 9.4 If a Guarantor proposes to sell or transfer any of its shares in the Developer, the Guarantor must procure that an executed deed in form and substance

Googong Urban Development – Deed of Guarantee

The Minister for Planning & Infrastructure

Googong Township Pty Ltd

CIC Australia Limited

Mirvac JV's Pty Ltd



similar to this Deed and acceptable to the Minister, between the Developer, the Minister, the Guarantor (if the Guarantor proposes to retain ownership of any shares in the Developer), and the transferee of the shares, is delivered to the Minister prior to any such sale or transfer taking effect, under which the Guarantor (if the Guarantor retains ownership of any shares), and the transferee of the shares guarantee the performance by the Developer of its obligations under the Planning Agreement.

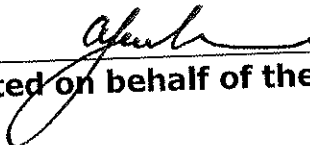
Googong Urban Development – Deed of Guarantee
The Minister for Planning & Infrastructure
Googong Township Pty Ltd
CIC Australia Limited
Mirvac JV's Pty Ltd



Execution

Executed as a Deed

Dated: 19/12/11


Executed on behalf of the Minister

Andrew Jackson - Executive Director

Name/Position

Name/Position

Executed on behalf of the Developer in accordance with s127(1) of the
Corporations Act (Cth) 2001

Colin John Alexander
Director


Name/Position

Gianni Carfi DIRECTOR
Name/Position (MIRVAC)



Googong Urban Development – Deed of Guarantee
The Minister for Planning & Infrastructure
Googong Township Pty Ltd
CIC Australia Limited
Mirvac JV's Pty Ltd



Executed on behalf of CIC in accordance with s127(1) of the Corporations Act (Cth) 2001

Anthony Noel Carey
Director

Name/Position

Melanie Andrews
Company Secretary

Name/Position

Executed on behalf of Mirvac in accordance with s127(1) of the Corporations Act (Cth) 2001

Brett Skaffen

Name/Position Director

Name/Position

Company Secretary Margaret Mezrani