

Deed of Novation of Planning Agreement

Archbold Road, Eastern Creek, New South Wales

Lot 1 in DP1145808 and Lot 2 in DP1247691 (formerly Lot 4 in DP1145808)

Minister for Planning (ABN 38 755 709 681)

A.C.N. 114 843 453 Pty Ltd (ACN 114 843 453) as trustee for the Eastern Creek Land Trust

ThaQuarry Pty Limited (ACN 119 533 372) as trustee for the ThaQuarry Unit Trust

Alexandria Landfill Pty Ltd (ACN 098 849 971)

Dial A Dump (EC) Pty Ltd (ACN 115 345 769)



THIS DEED OF NOVATION IS MADE ON THE 23rd day of April 2019

BETWEEN

The Minister for Planning (ABN 38 755 709 681) c/- NSW Department of Planning and Environment of 320 Pitt Street, Sydney, New South Wales 2000 ("**Minister**")

AND

A.C.N. 114 843 453 PTY LTD (ACN 114 843 453) as trustee for the **Eastern Creek Land Trust** of 84-88 Burrows Road, Alexandria, New South Wales, 2015

AND

ThaQuarry Pty Limited (ACN 119 533 372) as trustee for the **ThaQuarry Unit Trust** of 84-88 Burrows Road, Alexandria, New South Wales, 2015

(together the "**Existing Developer**")

AND

Alexandria Landfill Pty Ltd (ACN 098 849 971) of 84-88 Burrows Road, Alexandria, New South Wales, 2015 ("**Guarantor**")

AND

Dial A Dump (EC) Pty Ltd (ACN 115 345 769) of 84-88 Burrows Road, Alexandria, New South Wales, 2015 ("**New Developer**")

BACKGROUND

- A** The Existing Developer, the Guarantor and the Minister are parties to the planning agreement dated 19 April 2012 relating to Lot 1 in DP1145808 and Lot 4 in DP1145808, both known as Archbold Road, Eastern Creek, New South Wales (the "**Planning Agreement**").
- B** Lot 4 in DP1145808 subsequently became Lot 8 in DP1200048.
- C** On 1 June 2017, A.C.N. 114 843 453 Pty Ltd (ACN 114 843 453) as trustee for the Eastern Creek Land Trust sold and transferred the land comprised in Lot 1 in DP1145808 to the New Developer.
- D** On 1 June 2017, ThaQuarry Pty Limited (ACN 119 533 372) as trustee for the ThaQuarry Unit Trust sold and transferred the land comprised in Lot 8 in DP1200048 (formerly Lot 4 in DP1145808) to the New Developer.
- E** At the time of sale of the land comprised in those lots, each Existing Developer as transferor and the New Developer as transferee were related bodies corporate within the meaning of section 50 of the *Corporations Act 2001*.
- F** Lot 8 in DP1200048 became Lot 2 in DP1247691, and together with the land comprised in Lot 1 in DP1145808 forms the land the subject of the Planning Agreement ("**Land**").
- G** The Existing Developer, Guarantor and New Developer have agreed to enter into this deed with the Minister in respect of the Land on terms satisfactory to the Minister, under which the New

Developer agrees to comply with the terms and conditions of the Planning Agreement as though the New Developer were the Developer, and the Guarantor agrees to continue complying with the terms and conditions of the Planning Agreement in the capacity as Guarantor.

OPERATIVE PROVISIONS

1. Definitions

Unless the context otherwise requires, any capitalised term which is defined in the Planning Agreement and which is not defined in this deed, has the same meaning as defined in the Planning Agreement. In this deed:

Effective Time means the date of this deed.

2. Interpretation

In this deed, headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;

- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

3. Novation

On and from the Effective Time, the Planning Agreement is novated from the Existing Developer to the New Developer, with the effect that:

- (a) the New Developer replaces the Existing Developer under the Planning Agreement and becomes a party to the Planning Agreement;
- (b) a reference in the Planning Agreement to the Developer is to be read as a reference to the New Developer;
- (c) the New Developer is entitled to all rights and benefits under the Planning Agreement to which, but for this deed, the Existing Developer would have been entitled to at and after the Effective Time;
- (d) the New Developer must perform all obligations and discharge all liabilities under the Planning Agreement which, but for this deed, the Existing Developer would have been required to perform or discharge at and after the Effective Time; and

the Guarantor must perform all obligations and discharge all liabilities under the Planning Agreement in respect of the New Developer which, but for this deed, the Guarantor would have been required to perform in respect of the Existing Developer at and after the Effective Time.

4. Release by Minister

With effect from the Effective Time, the Minister releases the Existing Developer from all obligations and liabilities under the Planning Agreement to be performed or discharged at or after the Effective Time.

5. Release by Existing Developer

With effect from the Effective Time, the Existing Developer releases the Minister from all obligations and liabilities under the Planning Agreement to be performed or discharged at or after the Effective Time.

6. Obligations and liabilities arising before the Effective Time

Nothing in this deed releases the Existing Developer or Guarantor from any obligation or liability under the Planning Agreement arising before the Effective Time.

7. Confirmation of deed

The Minister, Existing Developer, Guarantor and the New Developer confirm the terms of the Planning Agreement as varied by this deed.

8. Assignment and transfer

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed or the Planning Agreement, the party seeking to assign its rights or novate its obligations ("**Assigning Party**") must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated ("**Incoming Party**") has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed and the Planning Agreement insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed and the Planning Agreement as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed or the Planning Agreement.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 8(a).
- (c) The Developer must not sell or transfer to another person ("**Transferee**") the whole or part of any part of the Land:
 - (i) on which the Planning Agreement remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under the Planning Agreement remains outstanding.
- (d) Notwithstanding clause 8(c) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under the Planning Agreement or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed and the Planning Agreement after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of the Planning Agreement as though the Transferee were the Developer; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed or the Planning Agreement.
- (e) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 8(d).
- (f) Provided that:

- (i) the Developer has complied with clause 8(a) to (e); and
- (ii) the Transferee or Incoming Party (as the case may be) has provided the Minister with replacement Bank Guarantees in accordance with the requirements of Schedule 5 to the Planning Agreement and on terms acceptable to the Minister,

the Minister will promptly return any Bank Guarantee provided under the Planning Agreement or the remainder of any money secured by that Bank Guarantee having regard to the Minister's right to call upon the Bank Guarantee in accordance with Schedule 5 to the Planning Agreement to the Guarantor.

9. Security

The Minister will release to the Guarantor any Bank Guarantee provided by the Guarantor under the Planning Agreement on the condition that the New Developer or Guarantor has first provided the Minister with a replacement Bank Guarantee satisfactory to the Minister such that the Minister holds the same amount the Minister is entitled to hold under the Planning Agreement.

10. Capacity of A.C.N. 114 843 453 Pty Ltd

- (a) A.C.N. 114 843 453 Pty Ltd (ACN 114 843 453) ("Trustee") enters into this deed in its capacity as trustee of the Eastern Creek Land Trust ("Trust") constituted by the trust deed for Eastern Creek Land Trust dated 25 June 2005 ("Trust Deed"). The Trustee:
 - (i) warrants that:
 - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (B) entry into this deed is for the benefit of the beneficiaries of the Trust;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed; and
 - (ii) indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 10(a)(i).
- (b) Subject to clause 10(d), liability arising under or in connection with this deed (except under or in connection with clause 10(a) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.

- (c) No party to this deed or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust,
 except under or in connection with clause 10(a) above.
- (d) Notwithstanding any other provision of this deed, clauses 10(b) and 10(c) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (e) Nothing in clause 10(d) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

11. Capacity of ThaQuarry Pty Limited

- (a) ThaQuarry Pty Limited (ACN 119 533 372) ("**Trustee**") enters into this deed in its capacity as trustee of the ThaQuarry Unit Trust ("**Trust**") constituted by the trust deed for ThaQuarry Trust registered on 17 October 2006 Book 4501 No. 241 ("**Trust Deed**"). The Trustee:
 - (i) warrants that:
 - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (B) entry into this deed is for the benefit of the beneficiaries of the Trust;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed; and

- (ii) indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 11(a)(i).
- (b) Subject to clause 11(d), liability arising under or in connection with this deed (except under or in connection with clause 11(a) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) No party to this deed or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust,
 except under or in connection with clause 11(a) above.
- (d) Notwithstanding any other provision of this deed, clauses 11(b) and 11(c) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (e) Nothing in clause 11(d) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

12. Notices

Any Notice to or by a party to this deed or the Planning Agreement must be sent to the Minister, Guarantor, or New Developer:

- (a) by email transmission during a Business Day and the Notice is deemed sent when no delivery failure notice in relation to the Notice is received; or
- (b) in the manner set out in clause 12.15 of the Planning Agreement,

except that the Addresses for Service of Notices specified in Schedule 2 of the Planning Agreement, are substituted with:

"Minister for Planning

Contact: Secretary, Department of Planning and Environment

Address: 320 Pitt Street, Sydney, New South Wales, 2000

Email: PlanningAgreements@planning.nsw.gov.au

Dial A Dump (EC) Pty Ltd (ACN 115 345 769)

Contact: Director and Company Secretary, Dial A Dump (EC) Pty Ltd (ACN 115 345 769)

Address: 84-88 Burrows Road, Alexandria, New South Wales, 2015

Email:

Alexandria Landfill Pty Ltd (ACN 098 849 971)

Contact: Director and Company Secretary, Alexandria Landfill Pty Ltd (ACN 098 849 971)

Address: 84-88 Burrows Road, Alexandria, New South Wales, 2015

Email:

13. Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

14. Costs

The Existing Developer shall reimburse the Minister for the costs and disbursements of the Minister in connection with:

- (a) the preparation, negotiation, execution of this deed; and
- (b) the placing of any document on notification relating to this deed.

15. Stamp duty etc.

The Existing Developer must pay any stamp, transaction, registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of this deed or any payment or receipt or other transaction contemplated by this instrument of novation.

16. Entire agreement

This deed contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this instrument of novation was executed.

17. Governing law and jurisdiction

This deed is governed by and must be construed according to the law applying in New South Wales.

Execution pages

Executed as a deed

Signed, sealed and delivered for and on behalf of the **Minister for Planning** (ABN 38 755 709 681), in the presence of:



Signature of witness

ELEANOR ROBERTSON

Name of witness in full

320 PITT ST, SYDNEY

Address of witness

SIGNED by ~~BRENDAN NELSON~~ as delegate
for the Minister for Planning
administering the
Environmental Planning and Assessment Act, 1979



Signature of the Minister for Planning or
delegate

BRETT WHITWORTH

Name of the Minister for Planning or delegate

**Signed, sealed and delivered by A.C.N. 114
843 453 Pty Ltd (ACN 114 843 453) as
trustee for the Eastern Creek Land Trust in
accordance with section 127 of the
Corporations Act 2001(Cth) by:**



Signature of sole director and secretary

IAN RAYMOND MALOUF

Name of sole director and secretary in full

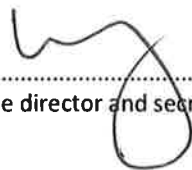
Executed as a deed

Signed, sealed and delivered by ThaQuarry Pty Limited (ACN 119 533 372) as trustee for the ThaQuarry Unit Trust in accordance with section 127 of the *Corporations Act 2001*(Cth) by:


.....
Signature of sole director and secretary

IAN RAYMOND MALOUF
.....
Name of sole director and secretary in full

Signed, sealed and delivered by Alexandria Landfill Pty Ltd (ACN 098 849 971) in accordance with section 127 of the *Corporations Act 2001*(Cth) by:


.....
Signature of sole director and secretary

IAN RAYMOND MALOUF
.....
Name of sole director and secretary in full

Executed as a deed

**Signed, sealed and delivered by Dial A
Dump (EC) Pty Ltd (ACN 115 345 769) in
accordance with section 127 of the
Corporations Act 2001(Cth) by:**

.....
Signature of sole director and secretary

.....
IAN RAYMOND MALOUF
Name of sole director and secretary in full