



**lindsaytaylorlawyers**

planning • environment • local government

## **Deed**

### **First Deed of Variation**

## **Sancrox Employment Land Environmental Lands and Services Planning Agreement**

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

**Port Macquarie-Hastings Council**

**Expressway Spares Pty Limited**

**James John Dunn & Catherine Brigette Dunn**

Date:

© Lindsay Taylor Lawyers

**lindsaytaylorlawyers**

Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia

**T** 02 8235 9700 • **F** 02 8235 9799 • **W** [www.lindsaytaylorlawyers.com.au](http://www.lindsaytaylorlawyers.com.au) • **E** [mail@lindsaytaylorlawyers.com.au](mailto:mail@lindsaytaylorlawyers.com.au)

**ABN** 29 682 671 304

Liability limited by a scheme approved under Professional Standards Legislation



**First Deed of Variation to Sancrox Employment Land  
Environmental Lands and Services Planning  
Agreement**

**Table of Contents**

<b>Parties</b> .....	<b>3</b>
<b>Background</b> .....	<b>3</b>
<b>Operative provisions</b> .....	<b>3</b>
Part 1 - Preliminary .....	3
1 Interpretation.....	3
2 Status of this Deed .....	4
3 Commencement .....	4
4 Warranties .....	4
5 Amendment to Planning Agreement.....	4
6 Costs.....	4
7 Entire Deed.....	4
8 Governing Law and Jurisdiction .....	5
9 No Fetter.....	5
10 Severability .....	5
11 Explanatory Note .....	5
<b>Schedule</b> .....	<b>6</b>
<b>Execution</b> .....	<b>7</b>
<b>Appendix</b> .....	<b>9</b>

## **First Deed of Variation to Sancrox Employment Land Environmental Lands and Services Planning Agreement**

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

### **Parties**

**Port Macquarie-Hastings Council** ABN 11 236 901 601 of Corner Lord and  
Burrawan Streets, Port Macquarie, New South Wales, 2444 (**Council**)

and

**Expressway Spares Pty Limited** ABN 55 000 483 107 of 7 Sancrox Road,  
Wauchope, New South Wales, 2446 (**Expressway Spares**)

and

**James John Dunn & Catherine Brigette Dunn** of 181 Sancrox Road,  
Wauchope, New South Wales, 2446 (**Dunn**)

### **Background**

- A The Parties are Parties to the Planning Agreement.
- B Pursuant to clause 50 of the Planning Agreement, the Parties agree to amend the Planning Agreement to allow for staging of the provision of the Offsite Offset Environmental Land.

### **Operative provisions**

#### **Part 1 - Preliminary**

##### **1 Interpretation**

- 1.1 In this Deed the following definitions apply:

**Deed** means this First Deed of Variation and includes any schedules, annexures and appendices to this Deed.

**Planning Agreement** means the document titled '*Sancrox Employment Land Environmental Lands and Services Planning Agreement*' pursuant to s93F of the *Environmental Planning and Assessment Act 1979* entered into between the Parties on 15 July 2011.

- 1.2 All other capitalised words used in this Deed have the meanings given to those words in the Planning Agreement.
- 1.3 Clauses 1.2 of the Planning Agreement apply as if it forms part of this Deed with any necessary changes.

## **2 Status of this Deed**

- 2.1 This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.
- 2.2 This Deed is not a planning agreement within the meaning of s93F(1) of the Act.

## **3 Commencement**

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

## **4 Warranties**

- 4.1 The Parties warrant to each other that they:
  - 4.1.1 have full capacity to enter into this Deed, and
  - 4.1.2 are able to fully comply with their obligations under this Deed.

## **5 Amendment to Planning Agreement**

- 5.1 On and from the date this Deed takes effect the Planning Agreement is amended in accordance with the marking-up shown on the copy of the Planning Agreement contained in the Schedule.

## **6 Costs**

- 6.1 The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 6.2 This clause continues to apply after expiration or termination of this Deed.

## **7 Entire Deed**

- 7.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.

- 7.2 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 Deed was executed, except as permitted by law.

## **8 Governing Law and Jurisdiction**

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

## **9 No Fetter**

- 9.1 Nothing in this Deed 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.

## **10 Severability**

- 10.1 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.
- 10.2 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 Deed, but the rest of this Deed is not affected.

## **11 Explanatory Note**

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



## **Schedule**

(Clause 5)

# **Amended Planning Agreement**



**Execution**

**Executed as a Deed**

**Dated:**

---

**Executed on behalf of the Council**

\_\_\_\_\_

**General Manager**

\_\_\_\_\_

**Witness**

\_\_\_\_\_

**Mayor**

\_\_\_\_\_

**Witness**

---

**Executed on behalf of the Expressway Spares Pty Limited** in  
accordance with s127(1) of the Corporations Act (Cth) 2001

\_\_\_\_\_

**Name/Position**

\_\_\_\_\_

**Name/Position**

**First Deed of Variation  
Port Macquarie-Hastings Council  
Expressway Spares Pty Limited  
James John Dunn & Catherine Bridgette Dunn**

---



---

**Executed by James John Dunn**

---

James John Dunn

---

Witness

---

**Executed by Catherine Bridgette Dunn**

---

Catherine Bridgette Dunn

---

Witness



## **Appendix**

(Clause 11)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft First Deed of Variation to Sancrox Employment Land Environmental Lands and Services Planning Agreement**

Under cl25C(3) of the Environmental Planning and Assessment Regulation 2000

#### **Parties**

**Port Macquarie-Hastings Council** ABN 11 236 901 601 of Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444 (**Council**)

**Expressway Spares Pty Limited** ABN 55 000 483 107 of 7 Sancrox Road, Wauchope, New South Wales, 2446 (**Expressway Spares**)

**James John Dunn & Catherine Brigette Dunn** 181 Sancrox Road, Wauchope, New South Wales, 2446 (**Dunn**)

#### **Description of the Land to which the Draft Deed of Variation Applies**

Lot 2 DP 222740, Lot 30 DP 255774, and Lot 31 DP 255774, Lot 62 DP 754434, Lot 19 DP 1191370, Lot 1 DP 124543, Lot 1 DP 1131036 and Lot 1 DP 1144490

#### **Description of Proposed Development**

Development of the Land for industrial purposes

## **Summary of Objectives, Nature and Effect of the Draft Deed of Variation**

### **Objectives of Draft Deed of Variation**

The objective of the Draft Deed of Variation is to amend the Planning Agreement.

### **Nature of Draft Deed of Variation**

The Draft Deed of Variation is an amendment to the Planning Agreement.

### **Effect of the Draft Deed of Variation**

The Draft Deed of Variation amends the Planning Agreement to update the Planning Agreement to reflect the current status of the Development, to allow for the Developer to establish, manage and dedicate the Offsite Offset Environmental Land in two stages, to restrict the ability of Expressway Spares to develop part of the land during the period when one stage of the Offsite Offset Environmental Land is managed and to allow the Council to compulsorily acquire one stage of the Offsite Offset Environmental Land.

## **Assessment of the Merits of the Draft Deed of Variation**

### **The Planning Purposes Served by the Draft Deed of Variation**

The Draft Deed of Variation:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- promote the protection of the environment, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

### **How the Draft Deed of Variation Promotes the Public Interest**

The Draft Deed of Variation promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii), (iv), (vi) and 5(c) of the Act.

### **For Planning Authorities:**

#### ***Development Corporations - How the Draft Deed of Variation Promotes its Statutory Responsibilities***

N/A

#### ***Other Public Authorities – How the Draft Deed of Variation Promotes the Objects (if any) of the Act under which it is Constituted***

N/A

***Councils – How the Draft Deed of Variation Promotes the Elements of the Council’s Charter***

The Draft Planning Agreement as amended by this Draft Deed of Variation promotes the elements of the Council’s charter by ensuring the proper management, development, protection, restoration, enhancement and conservation of the environment, and providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

***All Planning Authorities – Whether the Draft Deed of Variation Conforms with the Authority’s Capital Works Program***

The Draft Deed of Variation does not amend the requirement in the Planning Agreement for specified Works to be carried out for the purposes of providing water supply sewerage services. These Works are not included in the Council’s relevant current capital works program. However, the Council’s management plan identifies these types of Works in the relevant capital works program. Accordingly, the provision of these Works under the Agreement is consistent and conforms with the capital works envisioned by Council’s management plan.

***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

This planning agreement as amended by this Draft Deed of Variation contains requirements that must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued, being:

- payment of Water Supply Contribution
- construction of Water Supply Work
- payment of Sewerage Services Contribution
- construction of Sewerage Services Work
- dedication of Environmental Management Land
- payment of Management Contribution