



Australian Government
Department of the Prime Minister and Cabinet

DEED OF VARIATION No 1

Between

The Commonwealth of Australia as represented by the Department of the Prime Minister and Cabinet ("the Commonwealth") ABN: 18 108 001 191

and

City of Lithgow Council ABN 59 986 092 492 a local government authority in NSW constituted under the *Local Government Act 1993* (NSW) and located at 180 Mort Street Lithgow NSW 2790

RECITALS:

- A. The Parties wish to vary the agreement relating to redevelopment of the Lithgow Integrated Sports and Aquatic Centre dated 29 June 2007 ("the **Principal Agreement**").
- B. Clause 27.2 of the Principal Agreement states that the Principal Agreement may only be varied by a document signed by each Party.

OPERATIVE PART:

- 1. The Parties vary the Principal Agreement as follows:
 - (a) Delete Schedule 1 and replace with the following Schedule

Schedule 1 Particulars

1. Project

1.1 The Project

The Project consists of the upgrade of facilities and infrastructure at the Property.

The Project includes the following Works:

- (a) Relocation and construction of a new kiosk, new public amenities block, new first aid room and management offices;
- (b) Relocation and construction of new pool entry and car park;
- (c) Construction of new café with undercover entry zone;
- (d) Construction of new store and plant room; and
- (e) Construction of new splash park with soft fall surface, water toys and shade structure.

1.2 The Project Objectives

The Project Objectives are to develop a stronger sports sector and encourage greater participation in sport by all Australians.

1.3 The Project Activity

The project activity aims to achieve the objective by providing sporting infrastructure that facilitates a range of additional sporting activities providing social, health and sporting benefits to the Lithgow regional community.

1.4 Works documents

The Organisation has provided to the Commonwealth the following Works documents:

- (a) Project Plan including a timeline for the proposed Works (Annexure A); and
- (b) Project Budget (Annexure B).

2. The Property

The Property is the area where the Works will be conducted. The Property is Lots 1 & 2, DP 115548 at Fred Burley Drive, Lithgow, 2790, commonly known as Lithgow War Memorial Olympic Swimming Pool.

3. Time frames

3.1 Commencement of the Works

The Organisation must commence the Works within six month of the Date of this Variation.

3.2 Date for Practical Completion

The Date for Practical Completion is 30 March 2012.

3.3 Expiry Date

The Expiry Date of this Agreement is the date that is 20 Business Days after the Commonwealth has received the Final Report referred to in Item 5 of this Schedule 1 and all deliverables required under this Agreement.

4. Designated Use

4.1 Designated Use Period

The Designated Use Period is the period commencing on the date that the Organisation achieves Practical Completion of the Works and expiring on the date which is exactly one year after that date.

4.2 Designated Use

The Designated Use is for sport and recreation activities for the benefit of the community at the Lithgow War Memorial Olympic Swimming Pool.

5. Reports

5.1 Reports during the construction phase:

The Organisation must provide the following Reports from the Date of this Variation until the Date of Practical Completion in accordance with the requirements set out below:

Report No	Report title and content and format requirements	Date for delivery of Report
1.	Construction Progress Report for the period ending 30 June 2011	30 July 2011
2.	Construction Progress Report for the period ending 30 September 2011	30 October 2011
3.	Construction Phase Final Report	Within 20 days after the date that the Organisation achieves Practical Completion of the Works.

The Progress Reports must include:

- (a) information on whether the Project Aim is being achieved and if not, why not;
- (b) sufficient detail to indicate whether the Works are being completed in accordance with the Project Plan;
- (c) a statement confirming that the Works are being completed in accordance with all relevant laws and requirements of any proper authority; and in accordance with the *Building and Construction Industry Improvement Act 2005*, including the Code, the Implementation Guidelines and the Industry Guidelines;

- (d) a version of the Project Material produced to the date of the Progress Report, if requested by the Commonwealth;
- (e) a statement of the Funds expended and remaining for the Project; and
- (f) a copy of the Assets register, if requested by the Commonwealth.

The Final Report must include:

- (a) a comprehensive report on actual performance against the Project Aim, whether the Project Aim was achieved and, if not, why not;
- (b) a statement confirming that the Works were completed in accordance with the Code, the Implementation Guidelines and the Industry Guidelines;
- (c) a complete copy of the Project Material;
- (d) an audited detailed statement of receipts and expenditure in respect of the Funds and Other Contributions carried out by an Approved Auditor in compliance with the Australian Auditing Standards which must include a definitive statement as to whether the financial accounts are complete and accurate, and a statement of the balance of the Funds in the bank account referred to in clause 5.2 of the principal agreement;
- (e) a certificate provided by the Chief Executive Officer or Chief Financial Officer of the Organisation, or a person authorised by the Organisation to execute documents and legally bind it by their execution, confirming that:
 - (i) the Funds and Other Contributions received were spent for the purpose of the Project and in accordance with this Agreement, and that the Participant has complied with this Agreement;
 - (ii) salaries and allowances paid to persons involved in the Project are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations; and
 - (iii) at the time the Final Report is provided to the Commonwealth, the Participant is able to pay all its debts as and when they fall due.

5.2 Reports during and at the end of the Designated Use Period:

The Organisation must provide the following Reports during and at the end of the Designated Use Period in accordance with the requirements set out below:

Report No	Report title and content and format requirements	Date for delivery of report
1.	Annual Designated Use Report. The Annual Report must be in writing and report on whether the Facility continues to be operated for the purposes of an Aquatic Centre or purposes substantially similar to, or complementary to a Aquatic Centre at all times during the Designated Use Period and if not, why not.	On each anniversary of the Date of Practical Completion during the Term of this Agreement.
2.	Final Designated Use Report This report will be the last above Annual Designated Use Report.	Within 20 Business Days after the expiry of the Designated Use Period, or within 20 Business Days of the earlier termination of this Agreement

6. Funds

6.1 Maximum Amount of Funds

The maximum amount of Funds payable by the Commonwealth under this Agreement will be the lesser of the amount required to complete the Project and \$770,000 (inclusive of GST).

6.2 Milestone Schedule

No	Milestone description and requirements for achievements of Milestone	Date for completion of Milestone	Criteria for completion of Milestone	Amount of Funds expendable on achievement of Milestone
1.	Signing of the Deed of Variation by the Organisation and the Commonwealth.	The date the Deed of Variation is signed by the Commonwealth.	All requirements for achieving the Milestone completed to the satisfaction of the Commonwealth and compliance by the Organisation with all other obligations under the Agreement.	\$550,000 (GST inclusive)
2.	Construction Progress Report for the period ending 30 June 2011	30 July 2011	All requirements for achieving the Milestone completed to the satisfaction of the Commonwealth and compliance by the Organisation with all other obligations under the Agreement.	\$110,000 (GST inclusive)
3.	Construction Progress Report for the period ending 30 September 2011	30 October 2011	All requirements for achieving the Milestone completed to the satisfaction of the Commonwealth and compliance by the Organisation with all other obligations under the Agreement.	\$110,000 (GST inclusive)
4.	Construction Phase Final Report (including acquittal documentation)	20 business days after the date that the Organisation achieves Practical Completion of the Works.	All requirements for achieving the Milestone completed to the satisfaction of the Commonwealth and compliance by the Organisation with all other obligations under the Agreement.	N/A

7. Commonwealth Project Contact and Organisation Project Contact

- (a) The **Commonwealth Project Contact** will be the person occupying the positions of Project Officer, Sport Industry Section. This is currently occupied by Wally Murdoch, available at the following address:

Office for Sport
Department of Prime Minister and Cabinet
Level 3
1 National Circuit
BARTON ACT 2600

Postal Address:

Office for Sport
Department of Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

and available on the following telephone number and email address:

Phone: (02) 6271 6167

E-mail: wally.murdoch@pmc.gov.au

- (b) The **Organisation Project Contact** will be the person occupying the position of Group Manager Operations, City of Lithgow Council. This position is currently occupied by Mr Iain Stewart, available at the following address:

Physical Address:

City of Lithgow Council
180 Mort Street
LITHGOW NSW 2790

Postal Address:

City of Lithgow Council
PO Box 19
LITHGOW NSW 2790

and available on the following telephone number and email address:

Phone: (02) 6354 9952

E-mail: iain.stewart@lithgow.nsw.gov.au

8. Specified Personnel Positions

The Specified Personnel Positions for the purposes of this Agreement are:

- (a) None Specified

9. Insurance

9.1 The construction of the Works

- (a) The Organisation must obtain and maintain the following insurance up until Practical Completion of the Works in accordance with clause 16.1 of the principal agreement:
- (i) contract works policy covering loss or damage to the Works and any temporary work including materials stored off-site or in transit, for the full reinstatement and replacement cost of the Works including:
 - (ii) the full amount of the cost to the Organisation to construct the Works ("Works Cost");
 - (iii) an amount reasonably providing for additional costs of demolition and of removal of debris (to be not less than 10% of the Works Cost);
 - (iv) a further amount reasonably sufficient for consultants' fees (to be not less than 5% of the Works Cost); and
 - (v) an amount providing for escalation costs incurred including those costs as may be incurred (during any period of reinstatement or replacement) during the period up to Practical Completion,

and the Organisation must ensure that the policy specified in this Item 9.1(a)(i) notes the interest of the Commonwealth;
 - (vi) public and products liability policy covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works, for the sum of \$10 million for any one occurrence;
 - (vii) if asbestos decontamination work is required as part of the Works, an asbestos liability policy in respect of the risks associated with asbestos decontamination work, for the sum of \$20 million for any one occurrence.
- (b) The Organisation must ensure that each professional service provider identified in the table below, holds a professional indemnity policy in the amount specified in respect of that professional service provider in the table below, to cover its liability for breach of professional duty (if applicable) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties. Such cover must extend to liability for personal injury, illness or death of anyone in connection with the provision of professional services or as a result of breach of professional duty and must be maintained for a period of at least [7] years following the achievement of Practical Completion of the Works:

Architect	\$1 million per claim
Builder	\$1 million per claim
Fire Services	\$1 million per claim
Electrical	\$1 million per claim
Hydraulic	\$1 million per claim
Civil	\$1 million per claim
Mechanical	\$1 million per claim

9.2 The Designated Use Period

The Organisation must obtain and maintain insurance during the Designated Use Period such as would be maintained by a prudent, careful and commercial owner of the Property having regard to the nature of the Works and the value and use of the Property for the Designated Use.

10. Other contributions

10.1 Organisation's contribution

The Organisation is not required to make a specific contribution under clause 6.2, but must still meet its obligation to ensure that the Funds, together with all other contributions made or received by the Organisation in relation to the Project, will be sufficient to ensure the due and proper completion of the Works and the Organisation's other obligations under this Agreement.

10.2 Identified Third Party Contributors

Third Party Contributions are outlined in the following table:

Organisation	Amount
Centennial Coal	\$150,000
Henry Plant & Equipment	\$12,000

11. Assets

The Organisation must acquire the following Assets with the Funds:

None stated.

12. Special conditions

The following special conditions apply for the purposes of this Agreement:

12.1 Existing services

- (a) The Organisation and the Commonwealth acknowledge that the Organisation currently operates a Sports and Recreation Facility on land that includes the Property and which will include the Works once completed which is known as the Lithgow War Memorial Olympic Swimming Pool.
- (b) The Organisation acknowledges and agrees that the Commonwealth considers it fundamental to the due and proper completion of the Project (including the use of the Works and the Property for the Designated Use during the Designated Use Period) that the Facility continues to be operated for the purposes of a Sports and Recreation Facility or purposes substantially similar to, or complementary to a Sports and Recreation Facility at all times during the Designated Use Period.
- (c) If, at any time prior to the end of the Designated Use Period, the Organisation proposes to:
 - (i) cease to operate the Facility for community sports and recreation (or substantially similar or complementary purposes);
 - (ii) dispose of the Facility or any part of the land on which the Facility is located (including any part of the Property); or
 - (iii) otherwise deal with, or operate, the Facility or the land in a manner which would, or would be considered reasonably likely to, adversely affect the Organisation's ability to fulfil its obligations under this Agreement (including the use of the Works and the Property for the Designated Use during the Designated Use Period),the Organisation must notify the Commonwealth in writing of that proposal and provide the Commonwealth with full details of the nature of such action and the reasons for which the Organisation proposes to take such action.
- (d) In order to protect the Commonwealth's interests, and in consideration of the investment made by the Commonwealth under this Agreement, the Organisation agrees to comply with such directions of the Commonwealth in relation to the proposal referred to in special condition 12.1(c) above, as the Commonwealth may, in its absolute discretion, require.
- (e) The Organisation acknowledges and agrees that the directions of the Commonwealth under 12.1(d) above may include (without limitation) the Commonwealth requiring the Organisation to deal with the Facility or the land on which the Facility is located in the manner proposed by the Organisation, subject to the Commonwealth (or its nominee) being granted an interest in the Property sufficient, in the Commonwealth's opinion, to enable the Works and the Property to be used for the Designated Use until the completion of the Designated Use Period.
- (f) If the Organisation fails to comply with its obligations under these special conditions, the Commonwealth will, without limitation to any other rights it has under this Agreement or at Law, be entitled to recover from the Organisation an amount calculated in accordance with the formula set out under the heading Repayment Amount in Item 13 of this Schedule 1.

13. Repayment Amount

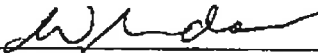
The relevant repayment amount is calculated as follows:

- (a) If the Organisation has failed to comply with its obligations under item 4 of the Schedule during the first year of the Designated Use Period, the repayment amount is 90% of the Funds paid to the Organisation pursuant to this Agreement.

EXECUTED AS A DEED

Signed for and on behalf of the
Commonwealth of Australia as represented
by the Department of the Prime Minister and
Cabinet ABN 18 108 001 191 on:

Date 23 December 2010




Signature of Witness

W.D. MURDOCH

Name of Witness in full

Signed for and on behalf of the City of
Lithgow Council, as represented by
Mr Roger Bailey, General Manager,
ABN 59 986 092 492 on:

Date



Signature of Witness

Kim NEILSON


Name of Witness in full



Signature of Authorised Person

Natasha Cole

Name of Authorised Person in full



Signature of Authorised Person

Roger William Bailey

Name of Authorised Person in full

