

Planning Agreement
1370 Camden Valley Way, Leppington

Liverpool City Council (ABN 84 181 182 471) (Council)

Vicliz Pty Ltd (ACN 063 429 130) (Developer)

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Planning Agreement

1370 Camden Valley Way, Leppington

Parties

Council	Name	Liverpool City Council
	Address	Ground Floor 33 Moore Street Liverpool NSW 2170
	ABN	84 181 182 471
Developer	Name	Vicliz Pty Ltd
	Address	67-69 Box Road Casula NSW 2170
	ACN	063 429 130

Background

- A The Developer owns the Land.
- B The Developer wishes to carry out the Development.
- C The Developer has applied, or proposes to apply, for the Instrument Change.
- D The Developer has agreed to make the Development Contributions on and subject to the terms of this document.

Operative Provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

2 Definitions

2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

3 Application and operation of document

3.1 Planning Agreement

This document is a planning agreement:

- (1) within the meaning set out in s7.4 of the Act; and
- (2) governed by Subdivision 2 of Part 7 of the Act.

3.2 Application

This document applies to both the Land and the Development.

3.3 Operation

- (1) Subject to paragraph (2), this document operates from the date it is executed by both parties.
- (2) The following clauses of this document will only operate if and when the Instrument Change is made:
 - (a) Clause 5; and
 - (b) Clause 10.

4 Application of s7.11 & s7.12

4.1 Application

This document does not exclude the application of section 7.11 or section 7.12 of the Act to the Development.

4.2 Consideration of Benefits

Section 7.11(6) of the Act does not apply to the Contributions that are to be carried out or provided pursuant to this document.

4.3 Section 7.24

This document does not exclude the application of s7.24 to the Development.

5 Provision of Contributions

5.1 Works

The Developer, at its cost, must:

- (1) obtain Development Consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works;
- (2) carry out and complete the Works to the satisfaction of the Council by the time specified in **Schedule 4** and **Schedule 5**; and
- (3) carry out and complete the Works:
 - (a) in accordance with the specifications referred to in **Schedule 4** and **Schedule 5** for the relevant item of Work;

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- (b) in accordance with any relevant Development Consent;
 - (c) in accordance with the requirements of, or consents issued by, any Authority;
 - (d) ensuring that:
 - (i) all necessary measures are taken to protect people, property, and the Environment;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided;
 - (iii) nuisances and unreasonable noise and disturbances are prevented; and
 - (iv) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW);
 - (e) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
 - (f) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

5.2 Contribution Value

If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this document, determined at the date on which the Works are Completed, differs from the Contribution Value, then subject to the Works having been sufficiently completed in accordance with this document, neither party will be entitled to claim credit or reimbursement, as the case may be, for the difference.

5.3 Access to the Land and location of Works

- (1) The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works.
- (2) The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.

5.4 Licence to Developer to Access

- (1) If the Acquisition Land is acquired by Council before the Works are Completed, Council grants the Developer a licence to enter the Acquisition Land for the purpose of undertaking the Works (**Licence**).
- (2) For the purpose of this clause 5.4, the Licence means the licence granted under paragraph (1).
- (3) The Terms of the Licence are as set out in **Schedule 6**.
- (4) When accessing the Land pursuant to the Licence, the Developer must:
 - (a) only do so at reasonable times after having provided to Council with at least seven (7) days' written notice of that access;

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- (b) only do so for so long as is reasonable necessary to complete the Works on the Land for which it is accessing the Land; and
 - (c) cause as little damage or disruption to the Land, or any surrounding land, and restore the Land as far as reasonably practicable to the condition it was in at the date of this document.

6 Completion of Works

6.1 Issue of Completion Notice

If the Developer considers that any particular item of the Works is complete it must serve a notice on Council which:

- (1) is in writing;
- (2) identifies the particular item of the Works to which it relates; and
- (3) specifies the date on which the Developer believes the relevant item of the Works was completed,

(Completion Notice).

6.2 Inspection by Council

- (1) Council must inspect the Works set out in a Completion Notice within ten (10) business days of the receipt of that notice.
- (2) If Council fails to carry out an inspection required under paragraph (1) the Works referred to in the relevant Completion Notice will be deemed to be Complete.

6.3 Rectification Notice

- (1) Within twenty (20) business days of inspecting the Works set out in a Completion Notice Council must provide notice in writing (**Rectification Notice**) to the Developer that the Works set out in the Completion Notice:
 - (a) have been Completed; or
 - (b) have not been Completed, in which case the notice must also detail:
 - (i) those aspects of the Works which have not been Completed; and
 - (ii) the work Council requires the Developer to carry out in order to rectify the deficiencies in those Works.
- (2) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (1), the Works set out in the Completion Notice will be deemed to have been Completed.
- (3) Where Council serves a Rectification Notice on the Developer, the Developer must:
 - (a) rectify the Works in accordance with that notice; or
 - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (4) Where the Developer:

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- (a) serves notice on Council in accordance with paragraph (3)(b), the dispute resolution provisions of this document apply; or
 - (b) rectifies the Works in accordance with paragraph (3)(a), it must serve upon the Council a new Completion Notice for the Works it has rectified.

6.4 Acceptance of Works

Subject to clause 6.5, Council accepts ownership, possession and control of, and risk in, any Works carried out on the Acquisition Land on the earlier of:

- (1) the date that is twelve (12) months after those Works are Completed; or
- (2) the date that the Acquisition Land has been acquired by Council.

6.5 Maintenance of Works

- (1) If the Acquisition Land has not been acquired by Council before the Completion of the Works required to be carried out on the Acquisition Land, the Developer, at its own expense, must carry out the Maintenance Works during the period:
 - (a) commencing on the date that the relevant Work is Completed; and
 - (b) ending on the date that the Acquisition Land has been acquired by Council.
- (2) For the purpose of this clause 6.5, if a detailed maintenance regime has been provided to the Developer by Council from time to time with respect to the Maintenance Works, then the Developer must carry out the Maintenance Works in accordance with that detailed maintenance regime.

6.6 Positive Covenant for public access to Works

If the Acquisition Land has not been acquired by Council before the Completion of the Works, the Developer, at its own expense, must register a positive covenant in accordance with **Schedule 4** on the title of the Acquisition Land, or on such other terms acceptable to Council acting reasonably, to enable members of the public to use and access the Acquisition Land after the Works are Completed and prior to Council acquiring the Acquisition Land (**Positive Covenant**).

7 Defects Liability

7.1 Defects Notice

- (1) Where any part of the Works has been Completed but those Works contain a material defect which:
 - (a) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
 - (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect;

(**Defect**) Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
 - (a) the nature and extent of the Defect;

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- (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
 - (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than ten (10) business days).

7.2 Developer to Rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 6 in respect of the satisfaction of the Defects Notice.

7.3 Right of Council to Step-In

Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer five (5) business days written notice of its intention to do so.

7.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 7.3 then:

- (1) Council may:
 - (a) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
 - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

7.5 Costs of Council

Where Council exercises its step-in rights all, costs incurred by Council in rectifying the relevant Defects may call upon the Defects Security provided by the Developer pursuant to clause 10 and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Defects Security and the costs incurred by the Council in rectifying the Defects.

8 Variation of scope or timing for provision of Works

8.1 Variation to the scope of an item of Work

- (1) The Developer may request that Council approve in writing a variation to the scope any item of Work.
- (2) The scope of an item of Work is not to be varied unless Council and the Developer agree in writing to the variation.
- (3) Council may withhold its consent to a variation of an item of Work at its absolute discretion.

8.2 Deferral of the timing of Completion of an item of the Works

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:

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- (a) it is unable to Complete any item of the Works by the time specified in **Schedule 5**; or
 - (b) it believes that there is a risk of damage to any item of the Works if they are delivered by the time required in **Schedule 5**,

(**Deferred Works**), then the Developer may seek Council's approval to defer the Completion of the relevant item of the Works by providing written notice to the Council:
 - (c) identifying the relevant item of Work that the Developer proposes to defer;
 - (d) specifying the reason for the request to defer the Completion of that item of the Works; and
 - (e) identifying the anticipated time for Completion of the relevant item of Work.
- (2) The Council, acting reasonably, must give the Developer a written notice within thirty (30) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
- (a) whether or not it consents to the deferral of the Deferred Works;
 - (b) the revised date for Completion required by Council; and
 - (c) any reasonable conditions Council requires with respect to the deferral (including any requirement for additional Security on account of that deferral, but only to the extent necessary to ensure that Council holds adequate security based on the then estimated cost to complete the relevant item of the Works).
- (3) If the Council consents to the deferral of the Deferred Works, then the following applies:
- (a) The Developer must comply with any conditions required by Council under paragraph (2)(c) above.
 - (b) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document.
 - (c) The time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.

9 Developer Warranties and Indemnities

9.1 Warranties

The Developer warrants to Council that it is:

- (1) legally and beneficially entitled to the Land;
- (2) able to fully comply with its obligations under this document;
- (3) it has full capacity to enter into this document; and
- (4) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

9.2 Indemnity

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

10 Security

10.1 Provision of Security

- (1) Subject to paragraphs (2) and (3), prior to the acquisition of the Acquisition Land by Council, the Developer must deliver to Council separate Bank Guarantees, bonds or other forms of security to the satisfaction of the Council:
 - (a) for the amount equivalent to the sum of the Contribution Values (**Primary Security**) for all items of Work which are required to be Completed prior to the issue of a Subdivision Certificate with respect to that part of the Development to which the relevant Construction Certificate relates; and
 - (b) for an amount equivalent to fifteen (15%) of the sum of those Contribution Values (**Defects Security**),

(collectively referred to as the **Security**).
- (2) The Developer may satisfy its obligations under paragraph (1) (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this document.
- (3) The Developer is not required to provide the Primary Security in the event that the Works have been Completed prior to the acquisition of the Acquisition Land by Council.

10.2 Replacement of Security

- (1) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.
- (2) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

10.3 Council may call on Security

- (1) If the Developer commits an Event of Default Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.
- (2) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

10.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this document.

10.5 Release of Primary Security

Unless:

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- (1) Council has made or intends to make a demand against any Security provided by the Developer;
 - (2) the Development Contributions on account of which that Security was provided have not been made; or
 - (3) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Primary Security within ten (10) business days of such a request being made.

10.6 Release of Defects Security

Unless:

- (1) Council has made or intends to make a demand against any Security provided by the Developer for that Stage;
- (2) the relevant Defects Liability Period has not expired; or
- (3) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) business days of such a request being made.

10.7 Indexation of value of Contribution Value

- (1) The Contribution Values for the Works and any Security provided for the Works will be indexed quarterly in accordance with ABS Producer Price Index (Non-Residential Building Construction for NSW) #3020 provided by the Australian Bureau of Statistics.
- (2) The Developer must ensure that the Security held by Council at all times equals the indexed amount notified to the Developer by Council.

10.8 Developer must not deal with property

- (1) The Developer must not during the term of this document sell, transfer, mortgage, charge or grant a lease or license or any other right of occupancy to any person over the Acquisition Land without first obtaining Council's consent in writing.
- (2) Council may, at its absolute discretion, refuse its consent or give consent with conditions.

10.9 Council may withhold Subdivision Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Contribution under this document.
- (2) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Contribution under this document until such time as:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

11 Registration of this document

11.1 Registration of this document

The Developer acknowledges and agrees that:

- (1) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 11.2, Council will undertake that registration at the cost of the Developer.

11.2 Obligations of Developer

- (1) The Developer, at its own expense, will promptly after this document comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (a) the consent of each person who:
 - (i) has an estate or interest in the Land; or
 - (ii) is seized or possessed of an estate or interest in the Land;
 - (b) the execution of any documents; and
 - (c) the production of the relevant duplicate certificates of title,
to enable the registration of this document in accordance with clause 11.1.
- (2) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than sixty (60) business days after that date; and
 - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

11.3 Discharge from the Register

- (1) The Council will provide a release and discharge of this document so that it may be removed from the folios of the Register for the Land (except the Acquisition Land) when:
 - (a) the obligations under this document have been satisfied in respect of the Works set out in **Schedule 5**; or
 - (b) if this document is terminated or rescinded.
- (2) The Council will provide a release and discharge of this document so that it may be removed from the folios of the Register for the Acquisition Land when:
 - (a) the Acquisition Land is acquired by Council; or

-
- (b) if this document is terminated or rescinded.

12 Assignment

12.1 Restriction on Assignment

Other than in accordance with this clause 12 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

12.2 Procedure for Assignment

- (1) If the Developer:
 - (a) wishes to Assign any part of the Land; and/or
 - (b) wishes to Assign its rights or obligations under this document,

then the Developer must:

- (c) provide a written request to Council for the consent of Council to the relevant Assignment;
 - (d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
 - (e) obtain written consent of Council to the relevant Assignment; and
 - (f) at no cost to Council, procure:
 - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
 - (ii) the provision of all Securities to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
- (2) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.

13 Dispute Resolution

13.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
 - (a) is in writing;
 - (b) adequately identifies and provides details of the Dispute;
 - (c) stipulates what the First Party believes will resolve the Dispute; and
 - (d) designates its representative (**Representative**) to negotiate the Dispute.

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- (2) The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

13.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

13.3 Further steps required before proceedings

Subject to clauses 13.14 and 13.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 13.5 or determination by an expert under clause 13.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 13.1(2) is served.

13.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 13.5 or expert resolution under clause 13.6.

13.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 13.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 13.6.

13.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 13.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
- (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of document within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:
- (a) must have a technical understanding of the issues in dispute;

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- (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into an document with the expert appointed under this clause 13.6 setting out the terms of the expert's determination and the fees payable to the expert.

13.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 13.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
 - (a) act as an expert and not as an arbitrator;
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both parties are present;
 - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
 - (a) a short statement of facts;
 - (b) a description of the Dispute; and
 - (c) any other documents, records or information which the expert requests.

13.8 Expert may commission reports

- (1) Subject to paragraph (2):
 - (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
 - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 13.6(5) of this document.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

13.9 Expert may convene meetings

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

13.10 Other courses of action

If:

- (1) the parties cannot agree in accordance with clause 13.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 13.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

13.11 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
 - (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law or any Authority to do so; and
 - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.

-
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
- (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
 - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
 - (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

13.12 Final determination of expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

13.13 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

13.14 Remedies available under the Act

This clause 13 does not operate to limit the availability of any remedies available to Council under the Act.

13.15 Urgent relief

This clause 13 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

14 Force Majeure

14.1 Definition

In this clause 14, force majeure (**Force Majeure**), means any physical or material restraint beyond the reasonable control of a party claiming the Force Majeure and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes.

14.2 Consequences of Force Majeure Event

If a party is unable by reason of Force Majeure to carry out wholly or in part its obligations under this document, it must:

- (1) give to the other party prompt notice of the Force Majeure with reasonably full particulars; and
- (2) suggest an alternative method, if any, of satisfying its obligations under this document.
- (3) If a party is unable to satisfy its obligations under this document by an alternative method, the obligations of the parties so far as they are affected by the Force Majeure are then suspended during continuance of the Force Majeure and any further period as may be reasonable in the circumstances.

14.3 Inability to complete Works

- (1) The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.
- (2) If the Developer is unable to Complete any part of the Works due to a Force Majeure event the Developer must pay to Council the Contribution Value of the relevant works and the amount payable to Council may be apportioned, if necessary, in such manner as may be fair and reasonable.
- (3) In reference to paragraph (2), Council may at its absolute discretion call on the Bank Guarantees (or any part of it) pursuant to clause 10.3.

14.4 Exclusion of operation

The parties agree that this Force Majeure provision does not apply to an obligation of a party to transfer land or to pay money.

14.5 Dispute

If the parties are unable to agree on the existence of an event of Force Majeure or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure, that dispute must be referred for determination under clause 13.

15 Breach of this document

15.1 Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- (1) the nature and extent of the alleged breach;
- (2) if:
 - (a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
 - (b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.

15.2 Events of Default

The Developer commits an **Event of Default** if it:

- (1) fails to comply with a Breach Notice; or
- (2) becomes subject to an Insolvency Event.

15.3 Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

-
- (1) exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or
 - (2) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

16 Termination, Rescission or Determination

16.1 Termination

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) Council serves notice on the Developer terminating this Planning Agreement where the Developer has failed to comply with a notice issued in accordance with clause 15.1.

16.2 Consequence of termination

Upon termination of this Planning Agreement:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

16.3 Determination

This Planning Agreement will determine upon the Developer satisfying all of the obligations imposed on it in full.

17 Position of Council

17.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

17.2 Document does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,

(Discretion).

17.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 17 is substantially satisfied; and

-
- (b) in the event that paragraph (1)(a) 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 document has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

17.4 No Obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Instrument Change, the Land or the Development in a certain manner.

18 Confidentiality

18.1 Document not Confidential

The terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

18.2 Other Confidential Information

- (1) The parties acknowledge that:
- (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
 - (c) Subject to paragraphs (2) and (3), each party agrees:
 - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
- (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

19 GST

19.1 Defined GST Terms

Defined terms used in this clause 19 have the meaning ascribed to them in the GST Law.

19.2 GST to be Added to Amounts Payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

19.3 GST Obligations to Survive Termination

This clause 19 will continue to apply after expiration of termination of this document.

20 Miscellaneous

20.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (4) be just and faithful in their activities and dealings with the other parties.

20.2 Legal costs

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document;
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within ten (10) business days of receipt of a Tax Invoice from Council; and
- (3) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document.

21 Administrative Provisions

21.1 Notices

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

21.2 Entire Document

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

21.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

21.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

21.5 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

21.6 Amendment

This document may only be amended or supplemented in writing signed by the parties.

21.7 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

21.8 Power of Attorney

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

21.9 Governing law

The law in force in the State of New South Wales governs this document. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
 - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
-

Schedule 1– Requirements under s7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application – (Section 7.4(1))</p> <p>The Developer has:</p> <p>(c) sought a change to an environmental planning instrument.</p> <p>(d) made, or proposes to make, a Development Application.</p> <p>(e) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Not applicable</p>
<p>Description of land to which this agreement applies – (Section 7.4(3)(a))</p>	<p>Lot E in DP 28997</p>
<p>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</p>	<p>Yes</p>
<p>Application of section 7.11 of the Act – (Section 7.4(3)(d))</p>	<p>Applies</p>
<p>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</p>	<p>Applies</p>
<p>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</p>	<p>Refer to clause 4.2 of the Planning Agreement.</p>
<p>Mechanism for Dispute resolution – (Section 7.4(3)(f))</p>	<p>See clause 13.</p>
<p>Enforcement of this agreement (Section 7.4(3)(g))</p>	<p>See clause 10.</p>
<p>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</p>	<p>See clause 16.</p>

Schedule 2 – Defined Terms and Interpretation

Part 1 – Definitions

Acquisition Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
Acquisition Land	means that part of the Land coloured yellow and hatched in red labelled SP2 and RE1 on the plan that is attached as Annexure 1 .
Act	means the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> .
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ol style="list-style-type: none">(1) Australia and New Zealand Banking Group Limited.(2) Commonwealth Bank of Australia.(3) Macquarie Bank.(4) National Australia Bank Limited.(5) St George Bank Limited.(6) Westpac Banking Corporation.(7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Completed	means completed in accordance with the requirements of this document.
Completion Notice	has the meaning ascribed in clause 6.1.
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:

	<ol style="list-style-type: none"> (1) is by its nature confidential; (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise); (3) any party knows or ought to know is confidential; (4) is information which may be reasonably considered to be of a confidential nature.
Construction Certificate	has the same meaning as in section 6.4(d) of the Act.
Contributions	means the Works, the Maintenance Works and the Positive Covenant.
Contribution Value	means the amount specified in Schedules 4 and 5 in the column headed "contribution value" for each item of the Contributions.
Defect	has the meaning ascribed to it in clause 7.1.
Defects Notice	has the meaning ascribed to it in clause 7.1.
Defects Liability Period	means twelve (12) months.
Defects Security	has the meaning ascribed to it in clause 10.
Development	means any development permitted to be undertaken on the Land after the Instrument Change is made.
Dispute	has the meaning ascribed to it in clause 13.1.
Encumbrance	<p>means an interest or power:</p> <ol style="list-style-type: none"> (1) reserved in or over an interest in any asset; (2) arising under, or with respect to, a Bio-Banking Agreement; (3) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation. <p>Encumber means to grant an Encumbrance.</p>
Event of Default	has the meaning ascribed to it in clause 15.2.
Force Majeure	has the meaning ascribed to it in clause 14.
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Insolvency Event

means the happening of any of the following events:

- (8) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.
- (9) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.
- (10) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (11) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (12) A body corporate is or states that it is insolvent.
- (13) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
- (14) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act*.
- (15) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (16) A person becomes an insolvent under administration as defined in section 9 of the *Corporations Act* or action is taken which could result in that event.
- (17) A receiver, manager or receiver and manager is appointed to the Company.
- (18) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (19) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Instrument Change

means the instrument change as described in **Schedule 3**.

Land

means the "Land" set out in **Schedule 1**.

Law

means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

Location Plan

means the plan that is attached as **Annexure 2**.

Maintenance Works	means all works set out in Schedule 4 and the Positive Covenant.
Occupation Certificate	has the same meaning as in section 6.4(c) of the Act.
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Positive Covenant	has the meaning ascribed to it in clause 6.6.
Primary Security	has the meaning ascribed to it in clause 10.
Rectification Notice	has the meaning ascribed to it in clause 6.3.
Security	means collectively the Primary Security and the Defects Security.
Subdivision Certificate	has the same meaning as in section 6.4(d) of the Act.
Works	means the works specified or described in Schedule 4 and Schedule 5 .

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
reference to statutes	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.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words

	to which the example relates to that example or examples of a similar kind.
next day	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
agreement	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other and neuter gender.

Schedule 3 – Instrument Change

Proposed changes to the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* sought by the proponent under the Planning Proposal RZ-1/2017 (LEP Amendment no. 88).

To facilitate the proposed changes, the following SEPP maps are to be amended:

Land Zoning Map

- SEPP_SRGC_SW_LZN_013_020_20131128

Lot Size Map

- SEPP_SRGC_SW_LSZ_013_020_20131031

Height of Building Map

- SEPP_SRGC_SW_HOB_013_020_20130111

Land Reservation Acquisition Map

- SEPP_SRGC_SW_LRA_013_020_20131128

Residential Density Map

- SEPP_SRGC_SW_RDN_013_020_20131128

The upper limit of permissible total retail Gross Floor Area (GFA) in clause 6.4 under Appendix 8 – Liverpool Growth Centre Precinct Plan of the Growth Centre SEPP is to be amended to reflect the increase of permissible retail GFA from 2,500 m² to 4,800 m² in B1 Neighbourhood Centre zone.

The amended clause will read –

“6.4 Maximum gross floor area for retail premises in Zone B1 in East Leppington Precinct. Despite any other provision of this Precinct Plan, the total gross floor area of all retail premises on land in Zone B1 Neighbourhood Centre within the East Leppington Precinct must not exceed 4,800 square metres.”

The planning proposal will further induce amendments to the Liverpool Growth Centre Precincts DCP to reflect the changes proposed under the planning proposal.

Schedule 4 – Maintenance Works – Positive Covenant

Item	Specification	Time for Completion	Contribution Value
Maintenance Works	All Maintenance Works required to maintain and keep in good repair the Acquisition Land, and any improvements on it, prior to its acquisition by Council.	In accordance with clause 6.5.	\$40,320
Registration of Positive Covenant on the title of the Acquisition Land to provide for public use and access of the Acquisition Land and to ensure the Developer carries out the Maintenance Works.	The terms of the Positive Covenant must be as set out in Annexure 3 unless otherwise agreed by Council.	Prior to the issue of the first subdivision certificate which, when registered would create a lot that is intended to be sold for residential purposes and which is not a super lot intended to be further subdivided or a lot intended to be dedicated to Council.	Nil

Schedule 5 – Works

Item of Works	Specification	Time for Completion	Contribution Value
Social Court	Broom finish concrete surface plaza with outdoor seating and tree plantings. Informal recreation elements (i.e. basketball/netball hoop, bocce court etc). Width 20m, length 20m, area 400m ² .	Prior to the issue of the first subdivision certificate which, when registered would create a lot that is intended to be sold for residential purposes and which is not a super lot intended to be further subdivided or a lot intended to be acquired by Council.	\$814,436
Walking Loop	Broom finished concrete. Width 2.5m, length 180m, area 450m ² .	Prior to the issue of the first subdivision certificate which, when registered would create a lot that is intended to be sold for residential purposes and which is not a super lot intended to be further subdivided or a lot intended to be acquired by Council.	\$255,617
Link Across Riparian Corridor (Boardwalk/Bridge)	Broom finished concrete path connecting to boardwalk spanning riparian corridor. Structure: steel and timber. Decking: recycled plastic. Balustrade: steel and timber. Width 3.5m, length 70m (actual span of boardwalk to be acceptable to Council), area 245m ² .	Prior to the issue of the first subdivision certificate which, when registered would create a lot that is intended to be sold for residential purposes and which is not a super lot intended to be further subdivided or a lot intended to be acquired by Council.	\$726,375
Pedestrian Crossing	Raised, marked pedestrian crossing in accordance with AS 1742.10. Pedestrian refuge to be included, if required. Width 3.6m and length 17m.	Prior to the issue of the first subdivision certificate which, when registered would create a lot that is intended to be sold for residential purposes and which is not a super lot intended to be further subdivided or a lot intended to be acquired by Council.	\$270,920

Schedule 6 – Terms of Licence

1 Definitions

- (1) In this schedule, words beginning with a capital letter that are defined in **Schedule 1** of this document have the meaning ascribed to them in that schedule.
- (2) For the purpose of this **Schedule 6**:
 - (a) **the Land** means the land being accessed in accordance with this licence;
 - (b) **the Licensor** means the party that owns the land being accessed under this licence;
 - (c) **the Licensee** means the other party; and
 - (d) **the Purpose** means the purpose for which the Licensee is accessing the Land from time to time.

2 Licence

2.1 Personal rights

- (1) The Licence is personal to the Licensee.
 - (a) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
 - (b) The Licensor may refuse the granting of consent under paragraph (a) without reason and at its absolute discretion.

2.2 Leasehold interest

- (1) This document does not grant to the Licensee a leasehold interest in the Land. The parties agree that:
 - (a) subject to any contrary terms of this document, this licence does not confer exclusive possession of the Land on the Licensee; and
 - (b) the Licensee may not exclude the Licensor, its officers, employees and invitees from:
 - (i) entry onto the Land; and/or
 - (ii) the performance of any works on the Land;provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the Purpose; and
- (2) the Licensee does not have any right to quiet enjoyment of the Land; and
- (3) the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensee.

3 Compliance With authorities

3.1 No warranty as to suitability for use

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the Purpose.

3.2 Compliance with the terms of consents

In the conduct of the Purpose and compliance with its obligations under this document, the Licensee must comply with the requirements of all Authorities.

3.3 Compliance with directions from Authorities

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Licensor and which arise from the conduct of the Purpose on the Land by the Licensee.

3.4 Obtaining further consents

- (1) If the Licensee requires further consents to conduct the Purpose it must:
 - (a) make such applications itself; and
 - (b) bear all costs incurred by it in relation to obtaining the relevant consent.
- (2) The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application for consent to any Authority.

4 Limitation of the Licensor's liability

4.1 Insurances

- (1) The Licensee must effect and keep current and in force the following policies of insurance:
 - (a) a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
 - (i) personal injury or death of any person; and
 - (ii) loss of or damage to property,
 - (b) workers compensation insurance under the *Workers Compensation Act 1987* (NSW) covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the Purpose;
 - (c) a comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the conduct of the Purpose; and
 - (d) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the Purpose.
- (2) The policies referred to in paragraphs (1)(a), (1)(c) and (1)(d) must note the interest of the Licensor as principal.

4.2 Inspection of insurance

- (1) The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.
- (2) The Licensor may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies whenever requested by the Licensor.

4.3 Cancellation of insurance

If any policy is cancelled either by the Licensee or the insurer the Licensee must notify the Licensor immediately.

4.4 Risk

The Licensee uses and occupies the Land at its own risk.

4.5 Indemnity

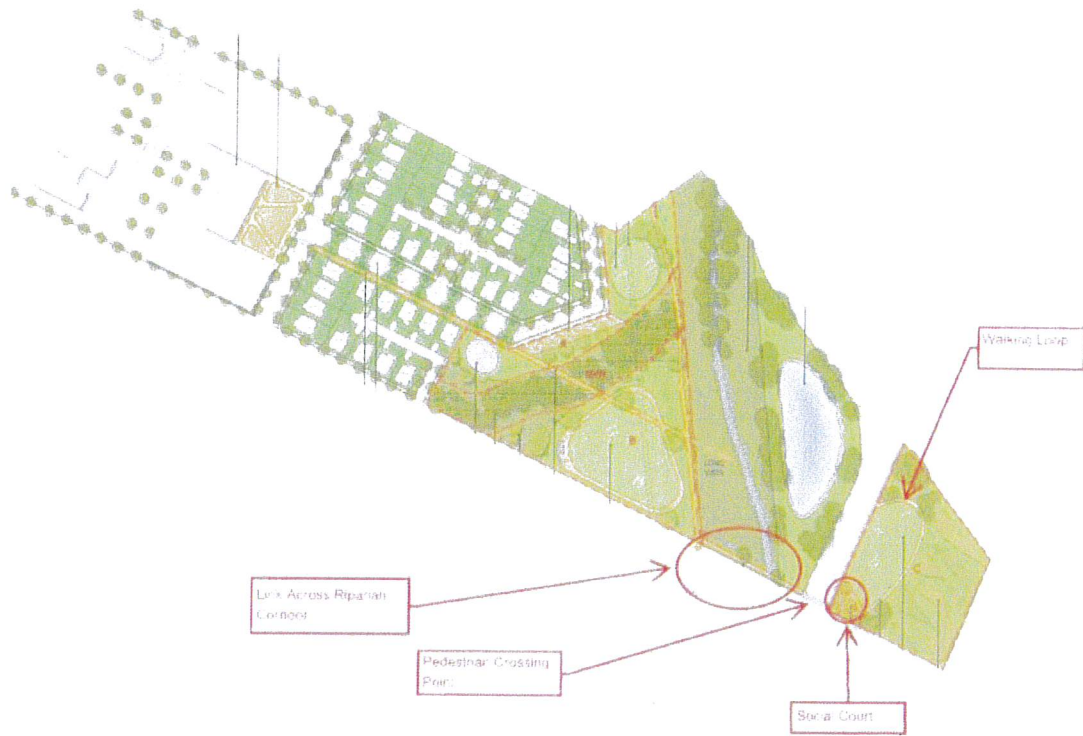
The Licensee indemnifies the Licensor against any Claim (of whatever nature) made in respect of the Licensee's use and occupation of the Land but only to the extent that any such Claim does not arise as the result of the wilful or negligent acts or omissions of the Licensor, its officer, employees, agents, contractors or invitees.

4.6 OH & S

For the purposes of this document and in accordance with clause 210 of the *Occupational Health & Safety Regulation 2001* (NSW) (**OH&S Regulation**), the Licensor:

- (1) will appoint as the "principal contractor" for any part of the Purpose conducted on the Land, the head civil works contractor specified by the Licensee from time to time; and
- (2) will authorise the nominated head civil works contractor to exercise such authority of the Licensor as is necessary to enable the head civil works contractor to discharge the responsibilities imposed on a principal contractor under Part 8 of the OH&S Regulation.

Annexure 2 – Location Plan



Annexure 3 – Form of Positive Covenant

ANNEXURE A TO POSITIVE COVENANT

PARTIES: VICLIZ PTY LTD (ACN 063 429 130) AND LIVERPOOL CITY COUNCIL (ABN 84 181 182 471)

BURDENED LAND: [INSERT]

DATED:

Maintenance and repair

- (1) The Registered Proprietor of the Burdened Land from time to time will, at its own expense, do all things necessary to inspect, maintain, repair and/or replace all surfaces, sub-strata, structures and fittings that exist from time to time on the Land, and to otherwise monitor and maintain all vegetation and improvements on the Burdened Land, to the satisfaction of Liverpool City Council (**Council**), and comply with any reasonable direction of Council in that regard.
- (2) Where the Registered Proprietor of the Burdened Land fails to comply with any written request of the Council referred to in paragraph (1) above, the Council and every person authorised by it has the full and free right to enter upon the Burdened Land in order to inspect, maintain, repair and/or replace all surfaces, sub-strata, structures and fittings, and to otherwise monitor and maintain all vegetation and improvements on the Burdened Land, and the Registered Proprietor will meet any reasonable cost incurred by the Council in carrying out that work.

**Name of Authority with the right to release, vary or modify this positive covenant:
Liverpool City Council.**

Access to the public

The Registered Proprietor grants to the Council and to all members of the public a free, irrevocable licence to use and access the Burdened Land and remain on the Burdened Land during such days and times and for any purpose as nominated from time to time by Council at its sole discretion.

**Name of Authority with the right to release, vary or modify this positive covenant:
Liverpool City Council.**

"Burdened Land" means the burdened land specified above.

"Registered Proprietor" means the registered proprietor of the land from time to time, and all its heirs, executors, assigns and successors in title to the Burdened Land and, where there are two or more registered proprietors of the land, the terms of this covenant shall bind all those persons jointly and severally.

Execution page

Executed as an agreement.

Dated: 11 February 2022

Executed by **Liverpool City Council** by its Attorney pursuant to Power of Attorney registered Book 4756 Number 447 in the presence of:



Witness (Signature)

ALVIN MORALES

Name of Witness (Print Name)



Attorney (Signature)

JENNIFER CHENHAI

Name of Attorney (Print Name)

GENERAL COUNSEL.

Position of Attorney

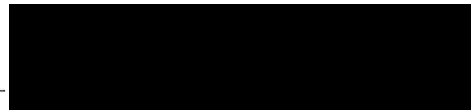
Executed by **Vicliz Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.



Director/Secretary (Signature)

MARIA MAGGIOTTO.

Name of Director/ Secretary (Print Name)



Director (Signature)

ANGELO MAGGIOTTO.

Name of Director (Print Name)
