
Planning Agreement
Sirius Road, Voyager Point

LIVERPOOL CITY COUNCIL

DEFENCE HOUSING AUSTRALIA

Prepared by:

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PLANNING AGREEMENT

PARTIES

- 1 LIVERPOOL CITY COUNCIL of 1 Hoxton Park Road, Liverpool, NSW 2170 (the Council).
- 2 DEFENCE HOUSING AUSTRALIA of 26 Brisbane Avenue, Barton, ACT 2600 (the Developer).

BACKGROUND

- A The Developer is the registered proprietor of the Land.
- B The Developer has made an application to the Council for the Instrument Change so as to enable an application to be made to the Council for Development Consent.
- C The Developer acknowledges that if the Development Consent is granted and the Development carried out it is likely to increase the demand for the provision of public facilities.
- D As a consequence of the matters set out in paragraph C the Developer has offered to dedicate the Designated Land and carry out the Works if the Instrument Change is gazetted and Development Consent is granted.

OPERATIVE PROVISIONS

1. DEFINITIONS

Unless the context otherwise requires the definitions and interpretational rules contained in **Schedule 2** apply in the interpretation of terms used in this Agreement.

2. APPLICATION AND OPERATION OF AGREEMENT

2.1 Planning Agreement

The parties agree that this Agreement is a planning agreement:

- (1) within the meaning set out in s93F of the Act; and
- (2) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2.2 Application

This Agreement applies to both the Land and the Development.

2.3 Operation

- (1) Subject to paragraph 2.3(2) this Agreement operates from the date it is executed by both parties.

(2) The following clauses of this Agreement will only operate if and when the Instrument Change is gazetted and the Council grants Development Consent:

(a) Clause 3; and

(b) Clause 8.

3. PROVISION OF CONTRIBUTIONS

3.1 Designated Land and Works

(1) The Developer must dedicate and transfer the Designated Land to the Council free of cost and free of any trusts, estates, interests, covenants and encumbrances when such transfer is registered at the Land and Property Information Office of New South Wales.

(2) The Developer must carry out and complete the Works free of cost to the Council.

3.2 Standard of Construction

The Developer must construct and complete the Works in accordance with the following and in the event of an inconsistency in the following order of priority:

(1) in accordance with the requirements of, or consents issued by, any relevant Authority;

(2) in accordance with Australian Standards applicable to works of the same nature as each aspect of the Works; and

(3) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

3.3 Timing of Completion

Each item of Work must be completed by the time or date specified in the column in Schedule 3 headed 'Completion Date' opposite the relevant item of Work in that Schedule.

3.4 Completion

(1) The Developer must provide a completion notice to the Council within fourteen (14) days of completing any aspect of the Works (**Completion Notice**).

(2) The Council must inspect the Works set out in a Completion Notice within fourteen (14) days of the receipt of that notice.

(3) Within the earlier of:

(a) fourteen (14) days of inspecting the Works set out in a Completion Notice; and

(b) twenty eight days from the receipt of the relevant Completion Notice,

the Council must provide notice in writing to the Developer that the Works set out in the Completion Notice:

(c) have been completed satisfactorily; or

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- (d) have not been completed satisfactorily, in which case the notice must also detail:
- (i) those aspects of the Works which have not be completed satisfactorily; and
 - (ii) the work the Council requires the Developer to carry out in order to rectify the deficiencies in those aspects of the Works.
- (4) If the Council does not provide the Developer with notice in accordance with paragraph (3) the Works set out in the Completion Notice will be deemed to have been completed satisfactorily.
- (5) Where the Council serves notice on the Developer pursuant to paragraph (3)(d) the Developer must:
- (a) rectify the Works in accordance with that notice within three (3) months from the date it is issued by the Council; or
 - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (6) Where the Developer:
- (a) serves notice on the Council in accordance with paragraph (5)(b) the dispute resolution provisions of this Agreement apply; or
 - (b) rectifies the Works in accordance with paragraph (5)(a) it must serve upon the Council a new Completion Notice for the Works it has rectified (**New Completion Notice**).
- (7) The provisions of paragraphs (2) - (6) (inclusive) apply to any New Completion Notice issued by the Developer in accordance with paragraph (6).
- (8) The Developer must do all things necessary to enable each parcel of the Designated Land to be dedicated or transferred to Council within 28 days of the issue of a Final Completion Notice in relation to the last item of Works required to be completed on that parcel of the Designated Land.
- (9) Once a parcel of Designated Land is dedicated or transferred to the Council, the Council accepts ownership, possession and control of that land and of any Works carried out on that land.
- (10) Where a Final Completion Notice has been issued for any part of the Works but those Works:
- (a) have not been completed in accordance with paragraph 3.4(3)(d)(ii); or
 - (b) contain a material defect which:
 - (i) adversely affects the ordinary use and/or enjoyment of the relevant works; or
 - (ii) 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;

Council may, but only within twelve (12) months from the issue of a Final Completion Notice for the relevant Works:

- (c) serve notice on the Developer in accordance with paragraph (3)(d); and
 - (d) upon service of the notice the provisions of paragraph 3.4(5) apply except that the words "three (3) months" in paragraph (5)(a) is replaced with the words "six (6) months".
- (11) A Completion Notice must:
- (a) be in writing;
 - (b) be issued by an Independent Engineer; and
 - (c) contain an acknowledgment from the Independent Engineer that it is recognised that the Council relies upon the certification provided by the engineer.
- (12) For the purposes of this clause:
- Final Completion Notice means the Completion Notice or the New Completion Notice in relation to which:
- (a) the Council has provided the Developer with notice in writing that the relevant Completion Notice or New Completion Notice has been completed satisfactorily in accordance with paragraph (3)(c) ; or
 - (b) the works referred to in the relevant Completion Notice or New Completion Notice are deemed to have been completed satisfactorily in accordance with paragraph (4).

4. APPLICATION OF S94 & S94A

4.1 Application

This Agreement excludes the application of section 94 or section 94A of the Act to the Development except for contributions that could lawfully be imposed on the Development Consent under Section 94 of the Act that are in accordance with Liverpool Contributions Plan 2001 (as amended or replaced from time to time) for:

- (1) city wide and district community facilities contributions (at the established areas rate); and
- (2) administration contributions (at the established areas rate).

4.2 Consideration of Benefits

Section 94(6) of the Act does not apply to the Works or Designated Land that are to be carried out or provided pursuant to this Agreement and those benefits are not to be taken into consideration when imposing a condition under section 94 of the Act, other than as set out in clause 4.1.

4.3 Permitted Contributions

For the avoidance of doubt, the Council confirms that each type of section 94 contribution that may still be imposed in accordance with clause 4.1 of this Agreement will be imposed at either the subdivision stage or the construction stage, but not at both stages.

5. REGISTRATION OF THIS PLANNING AGREEMENT

5.1 Obligation to Register

The Developer will ensure that this Agreement is registered on the title of the Land as soon as practicable after the date of this Agreement.

5.2 Effect of Registration

Subject to clause 5.3 if the Land is subdivided and/or Assigned prior to the determination of this Agreement then:

- (1) this Agreement will remain registered on the title of the lots created by virtue of any such subdivision, or further subdivision, of the Land; and
- (2) the provisions of this Agreement will be jointly and severally binding on, and enforceable against, the owner for the time being of:
 - (a) the lots created by virtue of any such subdivision, or further subdivision, of the Land; and/or
 - (b) the parts of the Land Assigned to a third party,as if that person had entered into this Agreement themselves.

5.3 Partial Discharge of Agreement

- (1) The Council will do all things necessary to allow the Developer to remove this Agreement from the title of a Residential Lot as quickly as practicable upon request by the Developer where the Developer has complied with its obligations under this Agreement with respect to the relevant Residential Lot.
- (2) In particular, if the Developer has complied with its obligations under this Agreement with respect to a Residential Lot, the Council will provide the Developer with the relevant form executed by the Council, which permits the removal of the registration of this Agreement from the title of that Residential Lot, within 10 Business Days of receipt of a written request from the Developer for that form.

6. DEVELOPER 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 Agreement.

7. DETERMINATION OF THIS AGREEMENT

- (1) This Agreement will determine upon the Developer satisfying all its obligations under the Agreement.
- (2) Upon the determination of this Agreement the Council will do all things necessary to allow the Developer to remove this Agreement from the title of the whole or any part of the Land as quickly as practicable.
- (3) In particular, upon determination of this Agreement, the Council will provide the Developer with the relevant form executed by the Council, which permits the removal of the registration of this Agreement from the title to the Land, within 10 Business Days of receipt of a written request from the Developer for that form.

8. SECURITY

8.1 Prohibition

Neither party may Assign their rights under this Agreement without the prior written consent of the other party.

8.2 Assignment of Land

The Developer must not Assign its interest in the Land (other than a Residential Lot) unless:

- (1) the Council consents to the assignment, which consent will not be unreasonably withheld; and
- (2) the proposed assignee enters into an agreement to the satisfaction of the Council under which the assignee agrees to be bound by the terms of this Agreement; and
- (3) the proposed assignee (if it is a non government organisation) provides to the Council the Bank Guarantee which the Council may call on without notice to the assignee if:
 - (a) the Designated Land is not transferred to the Council in accordance with Clause 3.4(8); and / or
 - (b) the Works are not completed in accordance with Clause 3.3 of this Agreement.

8.3 Council's consideration of proposed assignment

When considering whether to grant consent to a proposed assignment by the Developer of its interest in the Land, the Council is entitled to take into account:

- (a) whether the proposed assignee has the capacity, experience and expertise to satisfy the obligations of the Developer under this Agreement;
- (b) any offer of security, which may involve a guarantee and for indemnity; and
- (c) the financial resources of the proposed assignee.

9. REVIEW & AMENDMENT

- (1) If either party requests a review of the whole or any part of this Agreement then the parties must use their best endeavours, acting in good faith, to review the Agreement in accordance with that request.
- (2) If the parties agree to amend this Agreement as a result of a review conducted under paragraph (1) then any such amendment must be made in writing signed by both parties and clause 93G of the Act must be complied with.

10. DISPUTE RESOLUTION

10.1 Notice of Dispute

If a party believes that there is a Dispute then:

- (1) that party must give notice in writing to the other party stating that there is a Dispute; and
- (2) the notice referred to in paragraph (1) must outline:
 - (a) what the party believes the dispute to be; and
 - (b) what the party wants to achieve; and
 - (c) what the party believes will settle the Dispute; and
 - (d) who will be the party's Representatives to negotiate the dispute.

10.2 Consultation between the Representatives

Within fifteen (15) Business Days of a notice served in accordance with clause 10.1(1) the Representatives must meet in order to resolve the Dispute.

10.3 Settlement of Dispute and mediation

- (1) If the Dispute cannot be resolved by the Representatives within a further fifteen (15) Business Days of a meeting between the Representatives in accordance with clause 10.2 then the Dispute must be submitted to mediation by a mediator selected:
 - (a) by the parties; or
 - (b) if the parties cannot agree on a mediator, by the President of the Australian Commercial Disputes Centre.
- (2) The parties are to appoint a mediator who is appropriately qualified and have practical experience in the area of the Dispute.
- (3) Any costs incurred in the mediation of the Dispute are to be borne equally by the parties.

10.4 Exclusivity of dispute resolution procedure

- (1) Both parties must adhere to the dispute resolution procedure set out in this Agreement.

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- (2) The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this Agreement.

11. DEFAULT IN PERFORMANCE

11.1 Events of default

The Developer commits an "Event of Default" if it breaches a term of this Agreement.

11.2 Consequences of Events of default

Where the Developer commits an Event of Default the Council may serve a notice on the Developer requiring the relevant breach to be rectified within seventy two (72) days of the date of the notice.

11.3 No restriction on rights

The rights vested in the Council pursuant to clause 11.2 do not prevent the Council from exercising any other rights that it may possess at law.

12. TERMINATION

12.1 Termination

This Agreement terminates in the event that the parties agree in writing to terminate the operation of this Agreement at any time.

13. POSITION OF COUNCIL

13.1 Consent authority

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

13.2 Construction of Agreement to fetter powers

No term of this Agreement is to be construed, or to operate, so as to fetter, limit, restrict or otherwise interfere with the exercise of Council's statutory powers, discretion or duty.

13.3 Reading down of provisions

If any provision of this Agreement would, or could likely, operate so as to fetter, limit, restrict or otherwise interfere with the exercise of Council's statutory powers, discretion or duty then that provision is, to the extent necessary for it not to fetter, limit, restrict or otherwise interfere with the exercise of Council's statutory powers, discretion or duty:

- (1) be read down, if possible; or
- (2) severed from this Agreement.

13.4 No Obligations

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

14. CONFIDENTIALITY

14.1 Agreement not Confidential

The parties acknowledge that this Agreement:

- (1) is not confidential;
- (2) may be treated as a public document by the Council; and
- (3) may be publicly exhibited and reported without restriction by either party.

15. GST

15.1 Consideration does not include GST

The consideration expressed in this Agreement (unless otherwise specified) is GST exclusive and does not include any amount for GST.

15.2 GST Payable

Subject to subclause 15.3, if anything supplied under or in connection with this Agreement constitutes a "taxable supply" made for GST exclusive consideration, the supplier may, subject to first issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply (GST Amount).

The GST Amount shall be:

- (1) equal to the "value" of the supply calculated in accordance with the GST Act multiplied by the prevailing GST rate; and
- (2) subject to subclauses 15.3 and 15.4, payable within fourteen days of written demand by the supplier to the recipient.

15.3 Non-Monetary Consideration

The parties acknowledge that some of the supplies made under or in connection with this Agreement will be made for consideration which is or includes non-monetary consideration.

In relation to those supplies (which are referred to in this clause as Consideration in Kind Supplies) it is agreed as follows:

- (a) if the consideration for a Consideration in Kind Supply is wholly non monetary:
 - (i) the non-monetary consideration for the Consideration in Kind Supply is GST inclusive and will not be increased on account of GST under subclause 15.2;

(ii) the parties agree that the GST inclusive market value of each Consideration in Kind Supply and the consideration for that supply (being, in turn, a Consideration in Kind Supply) are equal;

(iii) the parties will each include in any Tax Invoice, issued by it in respect of a Consideration in Kind Supply made by it in return for a Consideration in Kind Supply by the other, the same amount on account of the GST inclusive market value of the supply to which the Tax Invoice relates being the "price" for that supply;

(iv) prior to the issue of the Tax Invoices referred to in subparagraph (iv) of this subclause the parties shall use their best endeavours to agree upon the GST inclusive market value of the reciprocal Consideration in Kind Supplies and, failing agreement, shall accept as final and binding the GST inclusive market value of the reciprocal Consideration in Kind Supplies determined (at the cost of the parties and shared equally between them) by an independent expert nominated by the President or other most senior officer of the Institute of Chartered Accountants in Australia;

(b) if the consideration is, in part, monetary and, in part, non-monetary then:

(i) part of the supply shall be treated as made for the non monetary consideration and shall for the purposes of this clause be treated as a "Consideration in Kind Supply" to that extent and shall be subject to the operation of paragraph (a) of this subclause;

(ii) the remaining part of the supply shall be treated as made for monetary consideration which is GST exclusive and subject to the operation of subclause 15.2.

15.4 Market Value

If the Commissioner of Taxation or a Court determines for any reason whatsoever that any of the Consideration in Kind Supplies referred to in subclause 15.3 which each of the parties make in return for the other do not have an equal GST inclusive market value for GST purposes, then:

(a) if the Consideration in Kind Supply made by a party is determined to have a greater GST inclusive market value than the reciprocal Consideration in Kind Supply made by the second party, then the first party will pay to the second party an additional amount equal to the difference multiplied by the prevailing GST rate within 10 Business Days of the date the relevant determination is made;

(b) the parties will do all things required, including issuing new tax invoices and adjustment notes (if necessary), to give effect to the relevant determinations by the Commissioner or Court; and

(c) any amount payable under this subclause 15.4 is GST inclusive and will not be increased on account of GST under subclause 15.2.

15.5 Adjustment Event

If in relation to a taxable supply under or in connection with this Agreement an "adjustment event" occurs that gives rise to an "adjustment", then the GST Amount will be adjusted accordingly and, where clause 15.2 applies to the taxable supply and a payment is necessary, a payment will be made to reflect the change in the GST Amount (by the recipient to the supplier in respect of an increase in the GST Amount and by the supplier to the recipient in respect of a decrease in the GST Amount). If a payment is required, it will be made within 10 Business Days of the issue of an "adjustment note" by the supplier who must issue an "adjustment note" immediately upon becoming aware of the "adjustment event" concerned.

15.6 Reimbursement

Notwithstanding any other provision of this Agreement, any amount payable under or in connection with this Agreement, which is calculated by reference to a cost, expense or amount paid or incurred by a party to this Agreement, will be reduced by an amount equal to any input tax credit to which that party is entitled in respect of that cost, expense or amount.

15.7 Defined GST Terms

Terms in this clause 15 in quotation marks shall have the meaning ascribed to them in the GST Act.

16. MISCELLANEOUS

16.1 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 the rights and obligations of the parties set out in this Agreement; and
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of it; and
- (3) make approvals or decisions that are required of it in good faith and in a manner consistent with the completion of the transactions set out in this Agreement; and
- (4) be just and faithful in its activities and dealings with the other parties.

16.2 Legal costs

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of the Council of the negotiation, preparation, execution, and stamping of this Agreement.
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within fourteen (14) days of receipt of a Tax Invoice from the Council.

17. ADMINISTRATIVE PROVISIONS

17.1 Notices

- (1) Any notice, consent or other communication under this Agreement shall 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; or
 - (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:

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- (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
 - (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 Agreement or another address of which that person may from time to time give notice to each other person.

17.2 Entire Agreement

This Agreement 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 Agreement.

17.3 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.

17.4 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 Agreement and the rights and obligations of the parties under it.

17.5 Counterparts

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

17.6 Amendment

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

17.7 Unenforceability

Any provision of this Agreement 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 Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

17.8 Power of Attorney

Each attorney who executes this Agreement 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.

17.9 Governing law

The law in force in the State of New South Wales governs this Agreement . 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 Agreement ; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

EXECUTION

EXECUTED AS AN AGREEMENT.

Dated:

Signed Sealed and Delivered by LIVERPOOL CITY COUNCIL by its duly constituted attorney Fausto Sut pursuant to the registered Power of Attorney Book 4418 No 998 in the presence of:

[Redacted Signature]

[Redacted Signature]

Witness (Signature)

Fausto Sut (Signature)

[Redacted Name]

Name of Witness (Print Name)

Signed by Richard Bear as attorney for DEFENCE HOUSING AUSTRALIA under Power of Attorney Registered Book 4349 No. 460 in the presence of:

[Redacted Signature]

[Redacted Signature]

Witness (Signature)

Richard Bear (signature)

BARBARA CUMMINGS

Richard Bear
General Manager
Development & Construction
Defence Housing Australia

Name of Witness (Print Name)

SCHEDULE 1

Commercial Terms

Developer	Name	Defence Housing Australia
	Address	26 Brisbane Avenue Barton ACT 2600
	ABN	72 968 504 934
	Telephone	(02) 6217 8535
	Facsimile	(02) 6217 8576
	Representative / Contact	Richard Bear
	Name	Liverpool City Council
	Address	1 Hoxton Park Road LIVERPOOL NSW 2170
	ABN	84181182471
	Telephone	(02) 9821 9141
	Facsimile	(02) 9821 9333
	Email	P.Tolhurst@liverpool.nsw.gov.au
	Representative / Contact	Phil Tolhurst
	Land	The whole of the land contained in Certificate of Title Folio Identifier 7/803038 and located at Sirius Road, Voyager Point.
Current LEP	Liverpool Local Environmental Plan 1997	
Draft LEP	Draft Liverpool Local Environmental Plan 1997 (Amendment No 107)	

REQUIREMENTS UNDER SECTION 93F

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application – (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) 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 deed applies – (Section 93F(3)(a))</p>	<p>The whole of the Land.</p>
<p>Description of change to the environmental planning instrument to which deed applies - (Section 93F(3)(b))</p>	<p>The amendments to be made to the LEP by the Draft LEP.</p>
<p>Application of section 94 of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94 is partially excluded. Refer to clause 4.1 of the Agreement.</p>
<p>Applicability of section 94A of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94A is excluded.</p>
<p>Consideration of benefits under this deed if section 94 applies - (Section 93F(3)(e))</p>	<p>Refer to clause 4.2 of the Agreement.</p>
<p>Mechanism for Dispute resolution - (Section 93F(3)(f))</p>	<p>See clause 10.</p>
<p>Enforcement of this deed (Section 93F(3)(g))</p>	<p>See clause 8.</p>
<p>No obligation to grant consent or exercise functions - (Section 93F(3)(9))</p>	<p>See clause 13.</p>

**SCHEDULE 2:
DEFINED TERMS AND INTERPRETATION**

Definitions

Act	means the <i>Environmental Planning & Assessment Act 1979 (NSW)</i> .
Agreement	means this agreement.
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; or(2) department of any federal, state or local government; or(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Bank Guarantee	means an unconditional and irrevocable undertaking issued by a major Australian Trading Bank in favour of the Council and which does not have an expiry date and is otherwise in form and substance acceptable to the Council, to pay on demand to the Council the amount equivalent to the then value of the Designated Land that has not been dedicated to Council and Works in relation to which a Final Completion Notice has not been issued in accordance with clause 3.4 at the time the Bank Guarantee is to be provided.
Business Day	means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.
Completion Notice	has the meaning given to it in clause 3.4(1).
Council	means "Council" as set out in Schedule 1 .
Current LEP	means 'Current LEP' as set out in Schedule 1 .
Designated Land	means that part of the Land shaded red on the plan that is Annexure 2 to this Agreement.
Developer	means the "Developer" set out in Schedule 1 .
Development	means the subdivision and development of the Land generally in accordance with the Indicative Master Plan.

Development Consent	means a development consent granted by the Council under the Act for the Development.
Dispute	means a dispute regarding the terms or operation of this Agreement.
Draft LEP	means "Draft LEP" as set out in Schedule 1 .
Final Completion Notice	has the meaning given to it in clause 3.4(12)
Gazetted	means a notification made by the Minister for Planning and published in the New South Wales Government Gazette.
GST	has the same meaning as in the GST Law.
GST Law	has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST
Independent Engineer	means an appropriately qualified and experienced civil engineer who is a member of the Institute of Engineers Australia (now known as ENGINEERS AUSTRALIA) or the Association of Professional Engineers, Scientists and Managers, Australia that is approved by the Council (which approval must not be unreasonably withheld) prior to engagement by the Developer.
Indicative Master Plan	means the plan attached as Annexure 1 .
Instrument Change	means the amendments to Current LEP set out in the Draft LEP.
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.
New Completion Notice	has the meaning given to it in clause 3.4(6)(b)
Perimeter Land	means the proposed lot of Designated Land that adjoins the proposed perimeter road and that runs along the western and northern boundaries of the Land.
Planning Legislation	means the Act and the <i>Local Government Act (NSW) 1993</i> .
Residential Lot	means a single residential lot within the Development.
Subdivision Certificate	has the same meaning as in the Act.
Works	means all works set out in Schedule 3 to this Agreement.
Interpretational Rules	
clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Agreement.

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 Agreement 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 Agreement.
agreement	a reference to any agreement, Agreement 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
WORKS**

Description of items of Works	Completion Date
<p>(1) Completion of those works set out in the Vegetation Management Plan attached as Annexure 3 that are noted as being Stage 1 or Stage 2 works in Table 3 in that plan.</p>	<p>(1)(a) In relation to those works noted as being Stage 1 works in Table 3, the completion date is the date prior to the issue of the first construction certificate required for the Development.</p> <p>(1)(b) In relation to those works noted as being Stage 2 works in Table 3, the completion date is the date not earlier than the date two years after the issue of the practical completion certificate to the Developer by the Developer's Contractor in relation to the planting referred to in Table 3.</p>
<p>(2) Construction of the road works set out below in accordance with the Development Consent and Council's adopted specifications for Subdivision (Land Development) – Guidelines and Policies:</p> <ul style="list-style-type: none"> • Road, road shoulder, kerb and guttering along that part of the perimeter road that adjoins the Perimeter Land. • Drainage works associated with the works referred to above. • Road shoulder, kerb and guttering along both sides of that part of Sirius Road that adjoins the Land. 	<p>(2)(a) If the Development is to be completed in stages, the completion date shall be the date prior to issue of the subdivision certificate for the stage that creates any lot that immediately adjoins the road that fronts the perimeter road that adjoins the Perimeter Corridor.</p> <p>(b) If the Development is not to be carried out in stages, the completion date is the date prior to the issue of any subdivision certificate in respect of the Development Consent.</p> <p>(c) Despite paragraph (2)(a) and (2)(b) above, the completion date for the road shoulder, kerb and guttering along that part of Sirius Road that adjoins the Land is the date prior to the issue of any subdivision certificate that would enable the creation of a residential lot that immediately adjoins Sirius Road.</p>
<p>(3) Construction of drainage works within the Development generally in accordance with the stormwater drainage works noted on the Indicative Master Plan attached as Annexure 1.</p>	<p>3(a) The completion date for those works to be carried out on the Perimeter Land is the date prior to the issue of a subdivision certificate in respect of the Development Consent that would (when combined with the subdivision certificates already issued</p>

	<p>in respect of the Land or part thereof) enable more than 70 residential lots to be created on the Land.</p> <p>(b) The completion date for those works to be carried out on the lot of Designated Land on which a detention basin is to be constructed and which adjoins Sirius Road, is the date prior to the issue of a subdivision certificate that would enable the creation of a residential lot that immediately adjoins that lot of Designated Land.</p>
<p>(4) Remediation works, being the removal of any contamination within the Designated Land, in accordance with any conditions of the Development Consent or as required by any Law.</p>	<p>In relation to any parcel of the Designated Land, the completion date is the last of the completion dates for all other items of Works on that parcel of Designated Land.</p>

**ANNEXURE 1
INDICATIVE MASTER PLAN**



Road reserve to include road verge, pavement, shared path, swale drainage and stormwater quality features

Road reserve to include road verge, pavement, footpath and stormwater quality features

Dwelling Type	Lot Size	No. Lots
Detached Housing	450m ² +	101
Small Lot Housing	400 - 450m ²	12
Integrated Development	300 - 400m ²	24
	Total	137

- WOODLAND: Narrow-leaved Apple - Scribbly Gum
- OPEN FOREST: Forest Red Gum - Narrow-Stringybark - Red Mahogany
- OPEN FOREST: Forest Redgum - Rough-barked Apple
- LOW OPEN FOREST: Swamp Oak
- HIGH VALUE TREES
- MEDIUM VALUE TREE
- TREE PROTECTION ZONE (4M OFFSET)
- ASSET PROTECTION ZONE: APZ can include the front yard of residential lots, perimeter road reserve + designated open space areas

- RIPARIAN BUFFER & CORRIDOR
- AREAS NEGOTIATED WITH DEC (formerly NPWS)
- Managed reserve for emergency vehicle access (no public vehicular access) including a 4m formed cycleway/trail
- Recommended 20 metre managed reserve (no public vehicular access) to be implemented by Council to manage bushfire risk for existing Sanctuary Point development
- Approximate location of potentially contaminated building rubble
- SITE BOUNDARY
- TOP OF BANK (AS SURVEYED)
- PROPOSED SHARED PATH NETWORK
- EXISTING WALKING PATHS

- DETENTION STORAGE
- SWALE DRAINAGE PATH
- WATER QUALITY FEATURE
- LOW FLOW
- HIGH FLOW BYPASS
- AREA 1 IS REMOVED IN FAVOUR OF AREA 2
- HABITAT CORRIDOR CONNECTION
- WATER QUALITY PONDS Combined surface area 356m²
- CONSTRUCTED WETLAND Surface area 1218m²
- DETENTION STORAGE Volume 800m³
- COMPENSATORY FLOOD VOLUME
- DETENTION STORAGE Volume 1500m³



ANNEXURE 1: INDICATIVE MASTERPLAN

**ANNEXURE 2:
PLAN OF DEDICATED LAND**

WILLIAMS CREEK

SIRIUS ROAD




THE SANCTUARY

BORONIA DRIVE

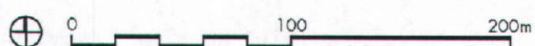
CREEK WOOD DRIVE

BUXIFOLIA CRT

PUNCATA CRT

-  Dedicated Land
-  Proposed DHA/Private Ownership
-  Voyager Point Estate

Note: Indicative street layout subject to detailed design



ANNEXURE 2: PLAN OF DEDICATED LAND

**ANNEXURE 3:
TABLE 3 FROM VEGETATION MANAGEMENT PLAN**

WILLIAMS CREEK, VOYAGER POINT
VEGETATION MANAGEMENT PLAN

TABLE 3: SUMMARY OF ACTIONS

Description

Table 3 summarises the actions in sequential order, listed by Vegetation Management Units (VMU). These actions are focussed on conserving the communities in the VMU's which are located outside the residential development. The actions also address the existing vegetation, on the adjacent land outside the proposed perimeter road, where it affects these VMU's. The actions are guided by the vegetation management principles stated in the VMP sections 4 and 5 and are a summary of the more detailed Table 2.

The Swamp Oak Floodplain and River Flat Eucalypt Forest communities are largely within the 40m wide Riparian Corridor to the western side of the site, abutting Williams Creek, and the pockets of Shale Sandstone Transition Forest and Castlereagh Scribbly Gum Woodland are along the northern boundary.

ACTIONS	STAGE
<i>All Vegetation Units and adjacent land</i>	
1. Seek approvals as required from NSW state agencies to undertake bush regeneration measures.	1
2. Identify edges to VMU's and mark physical extent of treatment areas (all actions below apply only in these treatment areas).	
3. Compile a more detailed Action Plan for VMU's based on item 2 outcomes and the then current state of the community.	
4. Chip woody vegetation identified for removal to mulch, and stockpile for re use in the units, suitable size and species only.	2
5. Cut woody weeds and remove material off site, and apply herbicide to remaining stumps/stems.	
6. Cut and remove off site biomass of weed grasses over 100mm height.	
7. Spray weed grasses with herbicide while protecting seedlings of other species.	
8. Repeat herbicide applications and / or physical removal to weed species.	
9. Maintain plantings in a healthy growing state.	3
10. Monitor VMU's for weeds and take measures to eradicate them.	
<i>Swamp Oak Floodplain Forest</i>	
1. Undertake plantings of trees and understorey species.	2
2. Mulch extent of planted areas.	
3. Establish plantings following certification of Practical Completion.	
<i>River Flat Eucalypt Forest</i>	
1. Undertake plantings of trees and understorey species.	2
2. Mulch extent of planted areas.	
3. Establish plantings following certification of Practical Completion.	
<i>Shale Sandstone Transition Forest</i>	
1. Undertake plantings of trees and understorey species.	2
2. Mulch extent of planted areas.	
3. Establish plantings following certification of Practical Completion.	
<i>Castlereagh Scribbly Gum Woodland</i>	
1. Seek approval to destroy some individual trees (as agreed with NSW Gov't agency).	2
2. Undertake plantings of trees and understorey species.	
3. Mulch extent of planted areas.	
4. Establish plantings following certification of Practical Completion.	

Timing and Responsibility

The stages for undertaking the recommended actions are listed as 1, 2 or 3.

The timing of these Stages is related to the development cycle:

- Stage 1: from the date of consent by LCC for the DHA subdivision Development Application (DA) until the issue by LCC of the subsequent subdivision Construction Certificate (CC) to DHA;
- Stage 2: from the date of subdivision CC until release of the Deposited Plan (DP) of the new lots and subsequent land 'dedication' to LCC of the lots that are public open spaces;
- Stage 3: from land dedication of the public open spaces.

The responsibility for these actions is with Defence Housing Australia's (DHA) appointed agents for Stages 1 and 2 and LCC for Stage 3.

The execution of the Stage 2 actions in the VMU's will be undertaken by DHA as part of the landscape works for the residential subdivision. This works contract will include an establishment period.

**ANNEXURE 4:
NOT USED**

**ANNEXURE 5:
EXPLANATORY NOTE**

EXPLANATORY NOTE
PLANNING AGREEMENT
DEFENCE HOUSING AUSTRALIA – VOYAGER POINT

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EXPLANATORY NOTE

1. INTRODUCTION

- (1) This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning & Assessment Regulation (NSW) 2000*.
- (2) The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the parties under s93F of the *Environmental Planning & Assessment Act (NSW) 1979 (EPA Act)* for the rezoning and development of land at Voyager Point.

2. PARTIES TO THE PLANNING AGREEMENT

The parties to the Planning Agreement are:

- (1) The Liverpool City Council (**Council**).
- (2) Defence Housing Australia (**Developer**).

3. DESCRIPTION OF THE SUBJECT LAND

The land to which the Planning Agreement relates (**Land**) is set out in the table below.

Folio Identifier	Location
7/803038	Sirius Road, Voyager Point

4. DESCRIPTION OF PROPOSED CHANGE TO ENVIRONMENTAL PLANNING INSTRUMENT

- (1) The proposed changes to the relevant environmental planning instrument are set out in the table below.

Existing Instrument	Planning Instrument	Liverpool Local Environmental Plan 1997
Proposed Instrument	New Planning Instrument	Liverpool Local Environmental Plan 1997 (Draft Amendment No 107)
Nature of Changes	Proposed Changes	The rezoning of the Land from Special Uses 5(a) – Military to Residential 2(a), Special Uses 5(a) – Drainage and Environment Protection 7(c).

- (2) Council must undertake the public exhibition of both the proposed new planning instrument, the Planning Agreement and this Explanatory Note as part of a statutory process. If the Council receives any comments on the documents after they are exhibited then:
 - (a) the proposed new planning instrument may be amended as a result of the comments; and

- (b) the matter will be referred back to the Council to decide whether to adopt the proposed new planning instrument or not.

5. SUMMARY OF OBJECTS, NATURE AND EFFECT OF THE PLANNING AGREEMENT

- (1) The objective of the Planning Agreement is to provide some of the infrastructure and some of the service needs generated by the incoming population resulting from the development of the Land.
- (2) Further, the Developer has offered to provide facilities that otherwise would not normally have been provided under Council's development contributions plan. The intent of this offer is to ensure it meets the needs of the incoming population into the area, as well as the Liverpool Local Government Area.
- (3) The various facilities are described in the table below.

Facilities
Those roads required to service new subdivision
Open space lands as appropriate for the Development
Drainage works required to service Development

- (4) In return for these facilities, the Developer will not be required to make any section 94 contributions for open space, drainage or roads purposes. The Developer will, however, still be required to make section 94 contributions in relation to city wide and district community facilities and administration.

6. ASSESSMENT OF THE MERITS OF THE PLANNING AGREEMENT

6.1 The Planning Purposes served by the Planning Agreement

- (1) In accordance with Section 93F(2) of the EPA Act, the Planning Agreement promotes the following public purpose:
- (a) the provision of public amenities public services and community and other infrastructure;
- (b) the conservation and enhancement of the natural environment.
- (2) The parties have assessed the Planning Agreement and state that the provisions of the Planning Agreement provide a reasonable means of achieving the public purposes set out above by reason that the Council has determined that the public facilities to be provided by the Developer (see table) are sufficient to provide the public amenities, services, infrastructure, conservation and enhancement of the environment required as a result of the needs generated by the incoming population resulting from the development of the Land.

6.2 How the Planning Agreement Promotes the Objects of the EPA Act

- (1) In accordance with the EPA Act the Planning Agreement promotes its intent to encourage:

-
- (a) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns, and villages for the purpose of removing the social and economic welfare of the community and a better environment;
 - (b) the promotion and co-ordination of the orderly and economic use and development of the land;
 - (c) the provision and co-ordination of community services and facilities;
 - (d) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats; and
 - (e) to promote the sharing of the responsibility for environmental planning between the different levels of the government in the state.
- (2) By virtue of the matters stated above the Planning Agreement will result in:
- (a) promotion of the social and economic welfare of the community and a better environment;
 - (b) promotion and co-ordination of the orderly and economic use of the development of the land;
 - (c) provision and co-ordination of community services and facilities;
 - (d) the protection of the environment; and
 - (e) the sharing of the responsibility for environmental planning between the different levels of the government state.

6.3 How the Planning Agreement Promotes the Public Interest

The purpose of the Planning Agreement is to promote the public interest through the recoupment of the cost of infrastructure and services, to meet the needs of the future population in the form of new residential dwellings.

6.4 The impact of the Planning Agreement on the public or any section of the public

The new population resulting from the proposed development will generate the need for augmented or additional public services and public amenities. The Planning Agreement aims to deliver necessary infrastructure and services which will result in a positive impact on the public or any section of the public.