

**Planning Agreement**  
**Lot 29 Cowpasture Road, Hinchinbrook**

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Liverpool City Council (ABN 81 181 182 471) (**Council**)

Amarino Pty Limited (ACN 116 918 926) (**Developer**)

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# Planning Agreement

## Lot 29 Cowpasture Road, Hinchinbrook

### Parties

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	<b>Address</b>	33 Moore Street Liverpool NSW 2170
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	<b>Representative / Contact</b>	Farooq Portelli
<b>Developer</b>	<b>Name</b>	Amarino Pty Ltd
	<b>Address</b>	PO Box 464 Cabramatta NSW 2166
	<b>ACN</b>	116 918 926
	<b>Telephone</b>	(02) 9238 3999
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	<b>Email</b>	<a href="mailto:David@kwc.com.au">David@kwc.com.au</a>
	<b>Representative / Contact</b>	David Tanevski

### Background

- A** The Developer is the registered proprietor of the Developer's Land.
- B** The Developer's Land is presently zoned IN2 Light Industrial under the Liverpool Local Environmental Plan 2008.
- C** The Council is the registered proprietor of the Council Land.
- D** The Developer has made an application to the Council for the Instrument Change so as to enable the Rezoning.
- E** If the Rezoning is made the Developer intends to lodge an application with Council for Development Consent.
- F** The Developer acknowledges that if the Development is carried out it is likely to increase the demand for the provision of public facilities.

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- G** As a consequence of the matters set out in paragraph F, the Developer has offered to make the Development Contribution, subject to the terms of this agreement.

## **Operative provisions**

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### **1 Definitions & interpretation**

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#### **1.1 Defined terms**

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

#### **1.2 Interpretation**

Unless the context otherwise requires the interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this agreement.

### **2 Application and operation of agreement**

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#### **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 the Developer's Land and the Development.

#### **2.3 Operation**

- (1) Subject to paragraph (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 development consent for the Subdivision and issue of construction certificate for buildings to enable the use of the land for permitted land uses is granted:
  - (a) clause 3;
  - (b) clause 4;
  - (c) clause 5;
  - (d) clause 8.2;
  - (e) clause 9; and
  - (f) clauses 11.3 to 11.5 inclusive.

### **3 Provision of the Development Contribution**

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#### **3.1 Monetary Contribution**

The Developer must pay the Monetary Contribution to Council by the times specified in Part 1 of **Schedule 3**.

#### **3.2 Application of Development Contribution by the Council**

- (1) Council must use all reasonable endeavours to apply a Development Contribution made by the Developer under this agreement for the Public Purpose for which it is made as specified for the relevant item in **Schedule 3** and at the locations, in the manner and to the standards required by or under this agreement.
- (2) Following provision by the Developer, Council will use its reasonable endeavours to make any Item of Work and the Designated Land available for



the Public Purpose for which it is required to meet the demand for the relevant facility created by the Development.

### 3.3 Designated Land

- (1) The Developer must dedicate or transfer the Designated Land to Council by the date or time specified in Part 3 of **Schedule 3**.
- (2) The Designated Land must be dedicated or transferred to Council:
  - (a) free of any trusts, estates, interests, covenants and encumbrances (other than those specified in this agreement); and
  - (b) at no cost to Council.
- (3) Council will allow the Developer to access the Designated Land in order to allow the Developer to carry out any Works required to be carried out on that land after it has been dedicated or transferred to Council.
- (4) Council will, as soon as possible after the Designated Land is dedicated to it, use its reasonable endeavours to classify the Designated Land as community land.

### 3.4 The Works

- (1) The Developer must procure that the Works are Completed in accordance with this agreement.
- (2) The Developer must procure that each Item of Work is Completed by the time set out for that item in Part 2 of **Schedule 3**.
- (3) Council may refuse to issue a subdivision certificate if Items 1, 2 and 3 of Work identified in Part 2 of **Schedule 3** has not been Completed in accordance with this agreement.

### 3.5 Standard of construction

The Developer must construct and Complete each Item of Work:

- (1) in accordance with the requirements of, or consents issued by, any Authority;
- (2) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the relevant Item of Work; and
- (3) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the relevant Item of Work.

### 3.6 Acceptance of risk in Works

Subject to clause 5, once the Designated Land is dedicated or transferred to Council in accordance with this agreement, the Council accepts ownership, risk, possession and control of both the Designated Land and any Item of Work on that land that has been Completed.

### 3.7 Indexation of amounts payable by the Developer

The Contribution Value for each Item of Work and each Monetary Contribution will be increased in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

where:

- A** = the indexed amount;
- B** = the relevant amount as set out in this agreement;
- C** = the Index most recently published before the date that the relevant Item of Work is Completed, or the relevant Monetary Contribution is paid; and



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**D** = the Index most recently published before the commencement date of this agreement.

If **A** is less than **B**, then the amount of the relevant Contribution Value and the relevant Monetary Contribution will not change.

### **3.8 Effect of Indexation**

- (1) Where the Contribution Value for an Item of Work is indexed in accordance with clause 3.7, the indexed amount for that item as at the date it is Complete will be the Contribution Value of that item.
- (2) Where a Monetary Contribution is indexed in accordance with clause 3.7, the indexed amount for that item as at the date the relevant payment is made is the amount the Developer must pay in accordance with this agreement.

### **3.9 Value of Works**

Upon Completion of any Item of Work, the Developer must provide Council with a certificate from a Quantity Surveyor in favour of Council and the Developer as to the Value of the relevant item.

## **4 Completion of Works**

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### **4.1 Completion Notice**

The Developer must provide a Completion Notice to Council within fourteen (14) days of completing any Item of Work.

### **4.2 Council to inspect**

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

### **4.3 Notice by Council**

Within the earlier of:

- (1) fourteen (14) days of inspecting the Item of Work set out in a Completion Notice; or
  - (2) twenty-eight (28) days from the receipt of the relevant Completion Notice,
- Council must provide notice in writing to the Developer that the Item of Work set out in the Completion Notice:
- (a) has been Completed; or
  - (b) has not been Completed, in which case the notice must also detail:
    - (i) those aspects of the relevant item which have not been Completed; and
    - (ii) the work Council requires the Developer to carry out in order to rectify those deficiencies.

### **4.4 Deemed Completion**

If Council does not provide the Developer with notice in accordance with clause 4.3, the Item of Work set out in the Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.

### **4.5 Effect of Council Notice**

- (1) Where Council serves notice on the Developer pursuant to paragraph 4.3(2)(b), the Developer must:
  - (a) rectify the deficiencies in that item in accordance with that notice within three (3) months from the date it is issued by Council; or





- (b) serve a notice on Council that it disputes the matters set out in the notice.
- (2) Where the Developer:
  - (a) serves notice on Council in accordance with paragraph (1)(b), the dispute resolution provisions of this agreement apply; or
  - (b) rectifies the Works in accordance with paragraph (1)(a) it must serve upon Council a new Completion Notice for the Item of Work it has rectified (**New Completion Notice**).
- (3) The provisions of clauses 4.2 to 4.5 (inclusive) apply to any New Completion Notice issued by the Developer.

## **5 Defects liability**

### **5.1 Defects Notice**

- (1) Where any Item of Work is Complete but that item contains a material defect which:
  - (a) adversely affects the ordinary use and/or enjoyment of that Item; or
  - (b) will require maintenance or rectification works to be performed as a result of the existence of the defect

(**Defect**) Council may issue a defects notice (**Defects Notice**) concerning that Item of Work, but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
  - (a) the nature and extent of the Defect;
  - (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 fourteen (14) days).

### **5.2 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 4 in respect of the rectification of any Defect.

### **5.3 Right of Council to step-in**

Council may, at its discretion, rectify a Defect set out in the Defects Notice where the Developer has failed to comply with a Defects Notice, but only after giving the Developer fourteen (14) days written notice to the Developer of its intention to do so.

### **5.4 Consequence of Step-In**

If Council elects to exercise the step-in rights granted to it under clause 5.3 then:

- (1) Council may:
  - (a) enter upon any part of the Developer's 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 the Council in exercising those rights.

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## 5.5 Costs of Council

Where Council exercises its step-in rights under Clause 5.3:

- (1) all reasonable costs incurred by Council in rectifying the relevant Defects may be claimed by Council as a liquidated debt owed by the Developer; and
- (2) Council must recover such debt from the Bond or Bank Guarantee.

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## 6 Licence to access

### 6.1 Grant of licence

- (1) The Developer grants Council a licence to enter and occupy the Developer's Land for the purpose of allowing Council to exercise any right granted to Council under this agreement.
- (2) Council grants the Developer a licence to enter and occupy the Council Land for the purpose of allowing the Developer to exercise any right or obligation granted to the Developer under this agreement.

### 6.2 Terms of the licences

- (1) For the purpose of this clause 6.2, **the Licences** means both of the licences granted under clause 6.1.
- (2) The terms of the Licences are as set out in **Schedule 4**.
- (3) The party accessing the land of the other pursuant to the Licences must:
  - (a) only do so at reasonable times after having provided to the other party with at least fourteen (14) days notice of that access;
  - (b) only do so for so long as is reasonable necessary to complete the purpose for which it is accessing the relevant land; and
  - (c) cause as little damage or disruption to the relevant land, or any surrounding land, and restore that land as far as reasonably practicable to the condition it was in at the date of this agreement.

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## 7 Application of s94 & s94A

This agreement excludes the application of section 94 and section 94A of the Act to:

- (1) the Development; and
- (2) any development consent for the Subdivision Plan.

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## 8 Registration of this planning agreement

### 8.1 Obligation to Register

- (1) The Developer and Council agree that this agreement will be registered on the title of the Developer's Land pursuant to s 93H of the Act.
- (2) The Developer must:
  - (a) do all things necessary to allow the registration of this agreement to occur under paragraph (1); and
  - (b) pay any reasonable costs incurred by Council in undertaking that registration.

### 8.2 Discharge of agreement

- (1) Council will do all things necessary to allow the Developer to remove the registration of this agreement from the title of the Developer's Land as quickly as practicable upon request by the Developer where the Developer has:
  - (a) dedicated the Designated Land;



- (b) Completed the Works; and
  - (c) made the Monetary Contribution.
- (2) The Developer must pay any reasonable costs incurred by Council in undertaking that discharge.

## **9 Developer warranties and indemnities**

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### **9.1 Warranty**

The Developer warrants to Council that:

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

### **9.2 Indemnity**

- (1) 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.
- (2) Nothing in paragraph (1) requires the Developer to indemnify Council for any Claim that arises after the Works have been handed over to Council under clause 3.6, except to the extent that any such Claim arose as a result of a negligent act or omission of the Developer after that date.

## **10 Contamination**

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### **10.1 Definitions**

For the purpose of this clause 9:

- (1) **Contamination** means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:
  - (a) result in an Authority issuing a notice, direction or order under an Environmental Law; or
  - (b) which would constitute a violation of any Environmental Law.
- (2) **Contaminated** means subject to Contamination.
- (3) **Environmental Law** means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

### **10.2 Warranty and indemnity**

- (1) The Developer warrants that:
  - (a) as far as it is aware, and other than as disclosed in writing to Council prior to the formation of this agreement, the Designated Land is not Contaminated; and
  - (b) in relation to any notices or orders issued pursuant to the *Contaminated Land Management Act 1997* (NSW), and the requirements of the Department of Environment and Climate Change and any other relevant authority, the Developer indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Designated Land as at



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the date of dedication or transfer of the Designated Land to Council in accordance with this agreement.

- (2) Council warrants that as far as it is aware, and other than as disclosed in writing to the Developer prior to the formation of this agreement, the Council Land is not Contaminated.

## **11 Determination of this agreement**

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This agreement will determine upon the Developer satisfying all of the obligations imposed on it under this agreement (including any obligations under clause 5).

## **12 Security**

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### **12.1 Prohibition**

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

### **12.2 Assignment of Developer's Land**

Until the Developer has made the Development Contribution in accordance with this agreement, the Developer must not Assign its interest in the Developer's Land unless:

- (1) Council consents to the Assignment, acting reasonably; and
- (2) the proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by all of the terms of this agreement.

### **12.3 Delivery to Council of Bond or Bank Guarantee**

- (1) Prior to the lodgement of an application for the first Construction Certificate in respect of a Stage of the Development, the Developer must deliver to Council a Bond or a Bank Guarantee in an amount equal to the sum (as indexed under this agreement) of the Contribution Value required to be made by the Developer under this agreement in relation to that Stage.
- (2) The Developer undertakes to Council not to lodge an application for the relevant Construction Certificate, or permit any other person to do so, until it has complied with paragraph (1).

### **12.4 Council may call on Bond or Bank Guarantee**

- (1) If the Developer does not make a Monetary Contribution or provide any Item of Work as required under this agreement, Council may issue the Developer with a notice requiring the Developer to rectify the relevant default within twenty one (21) days.
- (2) If the Developer fails to comply with a notice issued under paragraph (1) to the reasonable satisfaction of Council, Council may, without limiting any other avenues available to it, call on the relevant Bond or Bank Guarantee to the extent necessary to:
  - (a) in the case of an Item of Work, reimburse Council for any costs incurred by it in rectifying the relevant default of the Developer; or
  - (b) in the case of a Monetary Contribution, meet the payment of that contribution (or any part of it that is not made) as well as reimburse Council for any costs incurred by it in rectifying the relevant default of the Developer.

### **12.5 Return of Bank Guarantee**

- (1) Subject to paragraph (2), within one (1) month after the Developer satisfies its obligations under this agreement to provide a Monetary Contribution or

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Complete an Item of Work, Council must return the Bond or Bank Guarantee to the Developer referable to that Development Contribution.

- (2) Where the Development Contribution referred to in paragraph (1) is an Item of Work:
- (a) Council must release so much of the relevant Bond or Bank Guarantee in excess of the amount that equates to the "Defects Liability Amount" identified in Part 2 of **Schedule 3** for that item; and
  - (b) within one (1) month after the Defects Liability Period has expired with respect to that item, Council must release and return the remaining balance of the relevant Bond or Bank Guarantee to the Developer.

## **13 Force majeure**

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### **13.1 Definition**

In this clause 12, **Force Majeure Event**, means any physical or material restraint beyond the reasonable control of a party claiming the Force Majeure Event and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes.

### **13.2 Consequences of Force Majeure Event**

- (1) If a party is unable by reason of Force Majeure Event to carry out wholly or in part its obligations under this agreement, it must:
- (a) give to the other party prompt notice of the Force Majeure Event with reasonable detailed particulars; and
  - (b) suggest an alternative method, if any, of satisfying its obligations under this agreement.
- (2) If a party is unable to satisfy its obligations under this agreement by an alternative method, the obligations of the parties so far as they are affected by the Force Majeure Event are then suspended during continuance of the Force Majeure Event and any further period as may be reasonable in the circumstances.

### **13.3 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 Event or ameliorate its effects as quickly as practicable.
- (2) If the Developer is unable to Complete any Item of Work due to a Force Majeure Event, the Developer must pay to Council the amount specified in Part 2 **Schedule 3** with respect to that Item of Work.
- (3) Council may, at its absolute discretion, call on the Bond or Bank Guarantees (or any part of them) pursuant to clause 11.4 in order to satisfy any amount payable by the Developer under paragraph (2).

### **13.4 Exclusion of operation**

The parties agree that this clause 13 does not apply to an obligation of a party to transfer land or to pay money.

### **13.5 Dispute**

If the parties are unable to agree on the existence of a Force Majeure Event or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure Event, that dispute must be referred for determination under clause 14.



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## 14 Review & amendment

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### 14.1 Review

If either party requests a review of the whole or any part of this agreement then the parties must use their reasonable endeavours, acting in good faith, to review the agreement in accordance with that request.

### 14.2 Amendment

If the parties agree to amend this agreement as a result of a review conducted under clause 14.1 then any such amendment must be made:

- (1) in writing signed by both parties; and
- (2) subject to the provisions of the Act.

## 15 Dispute resolution

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### 15.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this agreement or its subject matter (a **dispute**), then either party (the **First Party**) must give to the other (the **Second Party**) a notice of dispute in writing which:
  - (a) adequately identifies and provides details of the dispute; and
  - (b) designates it's the representative of the First Party to negotiate the dispute.
- (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**).

### 15.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this agreement 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 relevant 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.

### 15.3 Further steps required before proceedings

Subject to clauses 15.14 and 15.15 and except as otherwise expressly provided in this agreement, any dispute between the parties arising in connection with this agreement or its subject matter must, as a condition precedent to the commencement of litigation, mediation under clause 15.5 or determination by an expert under clause 15.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) business days.

### 15.4 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 15.5 or expert resolution under clause 15.6.

### 15.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 15.4 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 LEADR.



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- (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 15.6.

**15.6 Choice of expert**

- (1) If the parties agree to have the matter determined by expert determination, this clause 15.6 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 agreement within five (5) business days after the date that the parties agree to have the matter determined by expert determination, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.
- (3) If the parties fail to agree as to the relevant field within five (5) business days after the parties agree to have the matter determined by expert determination, either party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a dispute must:
- (a) have a technical understanding of the issues in dispute;
  - (b) 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) 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 agreement with the expert appointed under this clause 15.6 setting out the terms of the expert's determination and the fees payable to the expert.

**15.7 Directions to expert**

- (1) In reaching a determination in respect of a dispute under clause 15.6, the independent expert must give effect to the intent of the parties entering into this agreement and the purposes of this agreement.
- (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.

**15.8 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 15.6(5) of this agreement.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

**15.9 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.

**15.10 Other courses of action**

If:

- (1) the parties cannot agree in accordance with clause 15.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 15.5 has not resulted in settlement of the dispute and 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.

**15.11 Confidentiality of information provided in dispute resolution process**

- (1) The parties agree, and must procure that the mediator and the expert agrees as a condition of his or her appointment:
- (a) subject to paragraph (b), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;





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- (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 to do so or State Government policy or local government policy or any listing rule; 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.

**15.12 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.

**15.13 Costs**

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

**15.14 Remedies available under the Act**

This clause 14 does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the Act.

**15.15 Urgent relief**

This clause 14 does not prevent a party from seeking urgent injunctive or declaratory relief.

**16 Position of council**

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**16.1 Consent authority**

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

**16.2 Agreement does not fetter discretion**

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

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



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### 16.3 Severance of provisions

- (1) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement 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 (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 agreement has full force and effect.
- (2) Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to that extent this agreement is not to be taken to be inconsistent with the Law.

### 16.4 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 Draft LEP, the Land, the Development Consent or the Development.

## 17 Confidentiality

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### 17.1 Agreement not confidential

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

### 17.2 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 agreement;
  - (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement; and
  - (c) subject to paragraphs (2) and (3), each party agrees:
    - (i) not to disclose any Confidential agreement received before or after the making of this agreement 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 agreement 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, state government policy, local government policy or any listing rule; 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.



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- (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.

## **18 GST**

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### **18.1 Defined GST terms**

Defined terms used in this clause 18 have the meaning ascribed to them in the GST Law.

### **18.2 GST to be added to amounts payable**

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

### **18.3 Continuing obligations**

This clause 18 will continue to apply after this agreement ends.

## **19 Miscellaneous**

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### **19.1 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 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.

### **19.2 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 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 Council; and
- (3) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this agreement including any breach or default by the Developer of its obligations under this agreement.

## **20 Administrative provisions**

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### **20.1 Notices**

- (1) Any notice, consent or other communication under this agreement 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; 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:
    - (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.

**20.2 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.

**20.3 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.

**20.4 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.

**20.5 Counterparts**

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

**20.6 Amendment**

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

**20.7 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.

**20.8 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.

**20.9 Governing law**

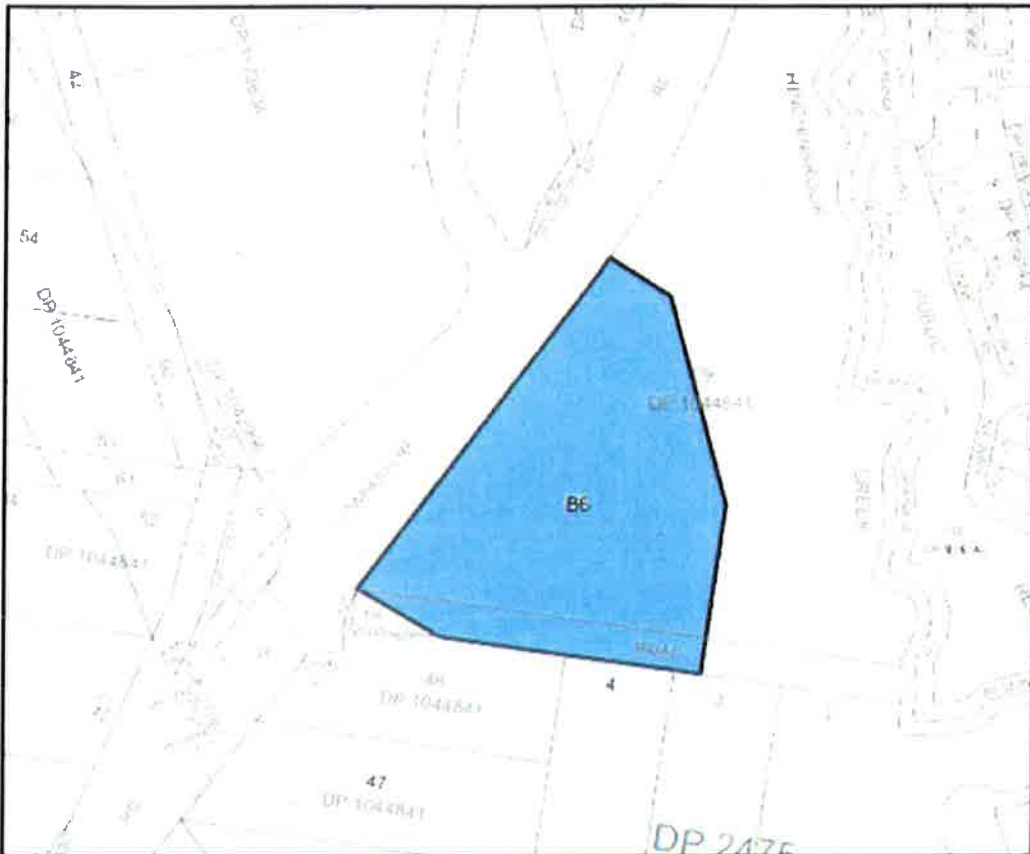
The law in force in the State of New South Wales governs this agreement. The parties:



- 
- (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*.
- 



**Annexure 1**



Zone



Enterprise Corridor

Subject land shown edged thus



SCALE : 1 : 3000

LOCALITY : LEN WATERS ESTATE

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

CITY OF LIVERPOOL

**Liverpool Local Environmental Plan, 2008.**

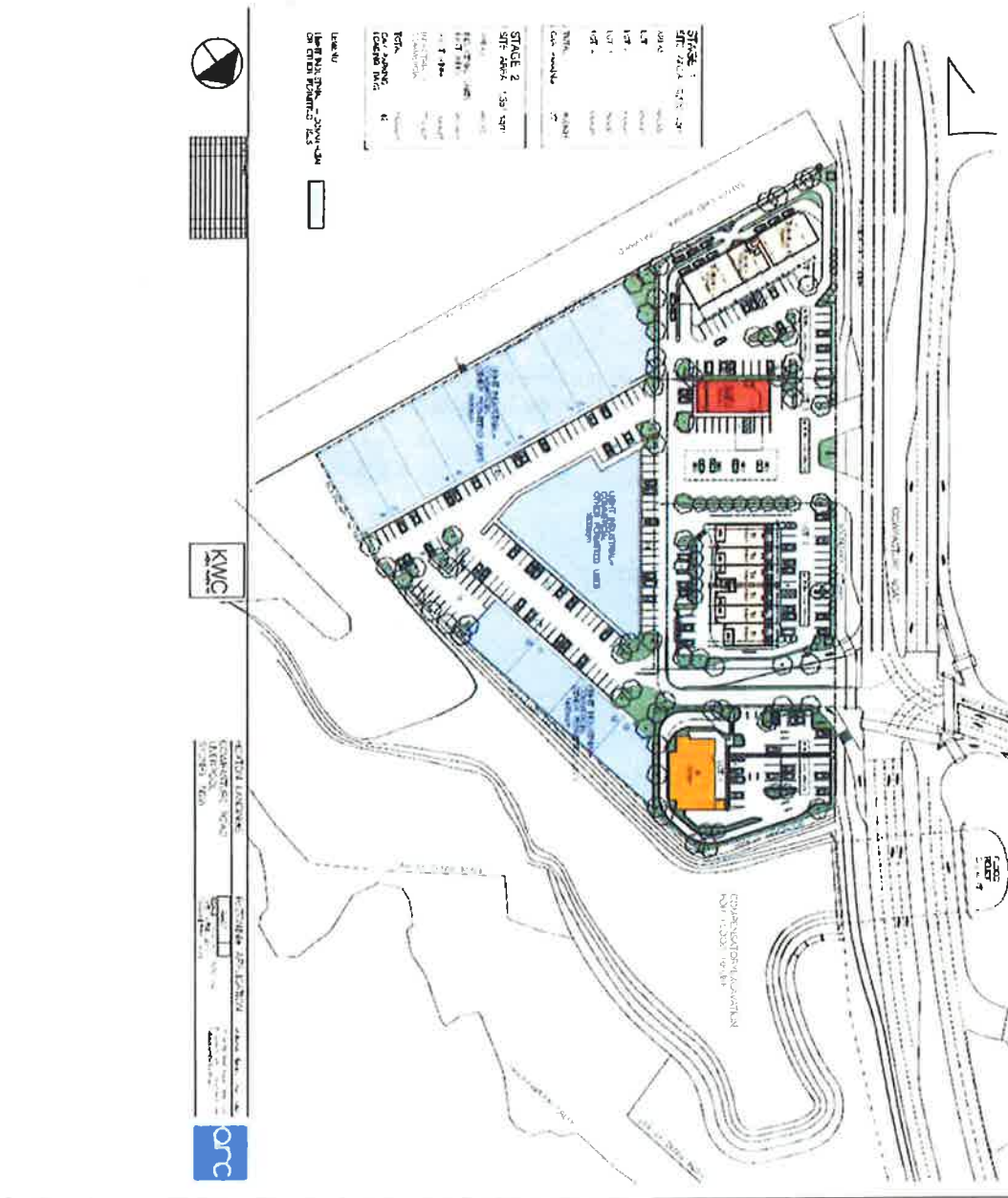
**(Draft Amendment)**

**Land Zoning Map (LZN)**

**Map 1**

DRAWN BY : F N DE ROOY	DATE 11/7/2013	STATEMENT OF RELATIONSHIP WITH OTHER PLANS AMENDS LIVERPOOL LOCAL ENVIRONMENT PLAN 2008	
PLANNING OFFICER USA MACKAY			
COUNCIL FILE No RZ - 22013			
DEPARTMENT FILE No		CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 AND REGULATION	
GOVERNMENT GAZETTE No DATE			
		GENERAL MANAGER	DATE

## Annexure 2



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## Execution page

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### Executed as an agreement

Dated:

Executed by **Amarino Pty Limited** in accordance with section 127(1) of the Corporations Act by authority of its directors.

[Redacted Signature]

*Solo* Director/Secretary (Signature)

[Redacted Name]

Name of Director/ Secretary (Print Name)

Director (Signature)

Name of Director (Print Name)

[Redacted Name]

Executed by **Liverpool City Council** by its duly constituted Attorney **Farooq Portelli** pursuant to the registered Power of Attorney Book 4418 No 998 in the presence of:

[Redacted Signature]

Witness (Signature)

[Redacted Name]

Name of Witness (Print Name)

[Redacted Signature]

Attorney (Signature)

[Redacted Name]

Name of Attorney (Print Name)

*14 May 2014.*

*R*



## Schedule 1

### Part 1 - Commercial Terms

<b>Developer</b>	<b>Name</b>	Amarino Pty Ltd
	<b>Address</b>	PO Box 464, Cabramatta NSW 2166
	<b>ACN</b>	116 918 926
	<b>Telephone</b>	(02) 9238 3999
	<b>Facsimile</b>	(02) 9231 3911
	<b>Email</b>	<a href="mailto:David@kwc.com.au">David@kwc.com.au</a>
	<b>Representative/Contact</b>	David Tanevski
<b>Council</b>	<b>Name</b>	Liverpool City Council
	<b>Address</b>	33 Moore Street, Liverpool NSW 2170
	<b>ABN</b>	84 181 182 471
	<b>Telephone</b>	(02) 9821 9141
	<b>Facsimile</b>	(02) 9821 9333
	<b>Email</b>	gm@liverpool.nsw.gov.au
	<b>Representative/Contact</b>	Farooq Portelli
<b>Council Land</b>	The whole of the land contained in Certificate of Title Folio Identifier 134/1137507.	
<b>Current LEP</b>	Liverpool Local Environmental Plan 2008	
<b>Developer's Land</b>	The whole of the land contained in Certificate of Title Folio Identifier Part Lot 29 DP 1044841 (known as Lot 29 Cowpasture Road, Len Waters Estate)	
<b>Draft LEP</b>	Draft Liverpool Local Environmental Plan 2008 Amendment No. 34 or such other draft local Environmental Plan that has the same or similar effect which effects the Rezoning.	



**Part 2 - Requirements Under Section 93F**

<b>REQUIREMENT UNDER THE ACT</b>	<b>THIS PLANNING AGREEMENT</b>
<p><b>Planning instrument and/or development application – (Section 93F(1))</b></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><b>Description of land to which this agreement applies – (Section 93F(3)(a))</b></p>	<p>The whole of the Developer's Land.</p>
<p><b>Description of change to the environmental planning instrument to which agreement applies – (Section 93F(3)(b))</b></p>	<p>The amendments to be made by the Draft LEP.</p>
<p><b>Application of section 94 of the Act – (Section 93F(3)(d))</b></p>	<p>The application of section 94 is excluded.</p>
<p><b>Applicability of section 94A of the Act – (Section 93F(3)(d))</b></p>	<p>The application of section 94A is excluded.</p>
<p><b>Mechanism for Dispute resolution – (Section 93F(3)(f))</b></p>	<p>See clause 14.</p>
<p><b>Enforcement of this agreement (Section 93F(3)(g))</b></p>	<p>See clause 15.</p>
<p><b>No obligation to grant consent or exercise functions – (Section 93F(3)(9))</b></p>	<p>See clause 16.</p>

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## Schedule 2 Defined terms and interpretation

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### Part 1 - Definitions

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<b>Act</b>	means the <i>Environmental Planning &amp; Assessment Act 1979</i> (NSW).
<b>Assign</b>	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.
<b>Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"><li>(1) federal, state or local government; or</li><li>(2) department of any federal, state or local government; or</li><li>(3) any court or administrative tribunal; or</li><li>(4) statutory corporation or regulatory body.</li></ol>
<b>Bond or Bank Guarantee</b>	means an irrevocable and unconditional undertaking by a financial institution to pay the amount specified in clause 11.3(1) to Council on demand and containing terms and conditions reasonably acceptable to Council.
<b>Claim</b>	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.
<b>Complete, Completed and Completion</b>	means with respect to an Item of Work, that particular item has been completed to the standard required under this agreement.
<b>Completion Notice</b>	means a notice setting out an Item of Work that the Developer believes is complete and which is: <ol style="list-style-type: none"><li>(1) in writing; and</li><li>(2) issued by an Independent Engineer; and</li><li>(3) contains an acknowledgement from the Independent Engineer that it is recognised that the Council relies upon the certification provided by that engineer.</li></ol>
<b>Confidential Information</b>	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"><li>(1) is by its nature confidential;</li><li>(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);</li></ol>



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- (3) any party knows or ought to know is confidential;
  - (4) is information which may be reasonably considered to be of a confidential nature.

<b>Construction Certificate</b>	has the same meaning ascribed to that term in the Act.
<b>Contribution Value</b>	means the amount specified in respect of an Item of Work in Part 2 of <b>Schedule 3</b> as "Contribution Value", subject to any adjustment of that amount made under this agreement.
<b>Council</b>	means Liverpool City Council.
<b>Council Land</b>	means the "Council Land" set out in <b>Schedule 1</b> .
<b>Defects Liability Period</b>	means twelve (12) months after the relevant Item of Work is Complete.
<b>Designated Land</b>	means that part of the Developer's Land coloured green and identified "RE1" on the plan attached to this agreement as <b>Annexure 1</b> .
<b>Developer</b>	means the "Developer" set out in <b>Schedule 1</b> .
<b>Developer's Land</b>	means the "Developer's Land" set out in <b>Schedule 1</b> .
<b>Development</b>	means the future development as proposed by the Developer of up to 24,118m <sup>2</sup> of the Enterprise Corridor Land as permitted in accordance with the zoning B6 but excluding any development for the purposes of the Subdivision Plan.
<b>Development Consent</b>	means a development consent issued under the Act for the Development.
<b>Development Contribution</b>	means the Monetary Contribution, dedication or transfer of the Designated Land to Council and the Works.
<b>Draft LEP</b>	means Draft Liverpool Local Environmental Plan 2008 Amendment No. 34 or such other draft local environmental plan which effects the Rezoning.
<b>Enterprise Corridor</b>	means that part of the Developer's Land comprising a minimum area of 24,118m <sup>2</sup> coloured blue and identified "B6" on the plan attached to this agreement as <b>Annexure 1</b> .
<b>Enterprise Corridor Lot</b>	means a lot comprising part of the Enterprise Corridor Land that is intended to be used for a mix of permitted land uses without being further subdivided, and, for the avoidance of doubt, is not created by registration of the Subdivision Plan.
<b>GST Law</b>	means the <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.



<b>Independent Engineer</b>	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.
<b>Index</b>	means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician from time to time.
<b>Indicative Master Plan</b>	means the plan attached as <b>Annexure 2</b> .
<b>Instrument Change</b>	means the making of the Draft LEP.
<b>Item of Work</b>	means an individual item of the Works as set out in Part 2 of <b>Schedule 3</b> .
<b>Law</b>	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
<b>Legislation</b>	means the Act and the <i>Local Government Act 1993</i> (NSW).
<b>Monetary Contribution</b>	means a monetary contribution specified in Part 1 of <b>Schedule 3</b> as adjusted in accordance with this agreement.
<b>Public Purpose</b>	has the same meaning as in s93F(2) of the Act.
<b>Quantity Surveyor</b>	means a person who: <ul style="list-style-type: none"> <li>(1) is a member of their respective professional organisation and has been for at least five (5) years;</li> <li>(2) practices as a quantity surveyor for works of the same nature as the relevant Item of Work;</li> <li>(3) is active as a quantity surveyor at the time of his appointment;</li> <li>(4) has at least three (3) years experience in valuing works of the same nature as the relevant Item of Work; and</li> <li>(5) undertakes to act fairly and promptly in accordance with the requirements of this agreement.</li> </ul>
<b>Rezoning</b>	means gazettal of the Draft LEP whereby the Industrial Land is rezoned as Enterprise Corridor. – B6.
<b>Stage</b>	in relation to the Development means a stage of the carrying out of the Development as specified in any relevant Development Consent.
<b>Subdivision Certificate</b>	has the meaning ascribed to that term in the Act in relation to the Subdivision Plan.
<b>Subdivision Plan</b>	means a plan of subdivision of the Developer's Land whereby upon registration of such plan the Designated

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Land and the IndustrialEnterprise Corridor Land are created as separate lots.

**Value** means the value of a particular Item of work as at the date it was Completed.

**Vegetation Management Plan** means the vegetation management plan prepared by the Developer and approved by Council with respect to the Designated Land.

**Works** means the works specified in Part 2 of **Schedule 3**.

## **Part 2 - Interpretational Rules**

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**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 plural includes** 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



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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.

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**Schedule 3  
Development Contributions**

**Part 1 - Monetary Contribution**

Item No	Public Purpose	Amount	Time for Payment
1	District drainage	\$151,280	Prior to the issue of a subdivision certificate for a plan that when registered would create the first (1 <sup>st</sup> ) B6 Enterprise Corridor Lot.
2	Administration and professional fees	\$1,981	As above.

**Part 2 - Works**

Item No	Item of Work	Description	Time for Completion	Contribution Value	Amount Retained during Defects Liability Period
1	Remediation of the Designated Land.	Removal of any waste and subsequent fill (related to the removal of the waste) to existing or otherwise approved finished ground level.  Removal or other appropriate management of site contamination if any.	Prior to the dedication of the Designated Land.	\$5,000	\$500
2	Management of the Designated Land	Prepare the Vegetation Management Plan (that includes a staged program of works for, weed control, regeneration and re-vegetation) for the Designated Land and obtain the	Prior to the dedication of the Designated Land.	\$5,000	Not applicable



Item No	Item of Work	Description	Time for Completion	Contribution Value	Amount Retained during Defects Liability Period
3	Management of the Designated Land.	approval of Council for that plan. Carry out the program of works for soil remediation, weed control, regeneration and re-vegetation for all Designated Land as stipulated in the approved Vegetation Management Plan.	Twelve (12) months Prior to the dedication of the Designated Land.	\$36,000	\$3,600
4	Conduct of maintenance works described in the Vegetation Management Plan.	Maintenance works described in the Vegetation Management Plan to optimise plant establishment and weed control.	Twelve (12) months after the dedication of the Designated Land.	\$8,500	\$850
5	Drainage Facilities	Construction of drainage channel between the Cowpasture Road and Hinchinbrook Creek and to the Government Road stormwater detention basin to the South, varying between 15m and 40m width and at an average depth of 1m. In accordance with the drainage design approved as part of DA-926/2010.	Prior to the issue of a subdivision certificate for a plan that when registered would create the first (1 <sup>st</sup> ) B6 Enterprise Corridor Lot. OR Prior to issue of the first Development Consent for buildings on the Enterprise Corridor Land (except for temporary structures erected in conjunction with building performing works).	\$214,896	\$21,489



**Part 3 - Designated Land(clause 3.2(1))**

<b>Public Purpose</b>	<b>Description of Designated Land</b>	<b>Time for dedication</b>
Public recreation land	Part of the Developer's Land coloured green and identified as "RE1" on the plan attached to this agreement as on Annexure 1.	After the issue of the Subdivision Certificate and on registration of the Subdivision Plan.



## **Schedule 4 Terms of Licence**

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### **1 Definitions**

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- (1) In this schedule, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** of this agreement have the meaning ascribed to them in that schedule.
- (2) For the purpose of this **Schedule 2**:
  - (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**

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#### **2.1 Personal rights**

- (1) The Licence is personal to the Licensee.
- (2) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- (3) The Licensor may refuse the granting of consent under paragraph (2) without reason and at its absolute discretion.

#### **2.2 Leasehold interest**

- (1) This agreement does not grant to the Licensee a leasehold interest in the Land. The parties agree that:
  - (a) subject to any contrary terms of this agreement, 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**

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#### **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 agreement, 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**

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### **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.

**4.6 OH & S**

For the purposes of this deed 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.
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