

## **Deed of Variation**

### **Voluntary Planning Agreement – 124 Newbridge Road, Moorebank**

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

Syesun Pty Limited (ABN 51 001 805 830) (**Developer**)

#### **MARSDENS LAW GROUP**

Level 1  
49 Dumaresq Street  
CAMPBELLTOWN NSW 2560

Tel: 02 4626 5077

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Ref: 65 35 9104



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**Deed of Variation****Deed of Variation****Voluntary Planning Agreement – 124 Newbridge Road,  
Moorebank****Parties**

<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 9222
	<b>Facsimile</b>	(02) 9821 9333
	<b>Email</b>	lcc@liverpool.nsw.gov.au
	<b>Representative Contact</b>	Farooq Portelli
<b>Developer</b>	<b>Name</b>	Syesun Pty Ltd
	<b>Address</b>	124-144 Newbridge Road, Moorebank NSW 2170
	<b>ABN</b>	51 001 805 830
	<b>Telephone</b>	9601 4188
	<b>Facsimile</b>	9821 2337
	<b>Email</b>	m.spiteri@flowerpower.com.au
	<b>Representative Contact</b>	Michael Spiteri

**Background**

- A** Council and the Developer have entered into the VPA.
- B** Pursuant to clause 13.2 of the VPA, the parties may agree to amend the provisions of the VPA.
- C** The Developer has requested, that the VPA be amended on the terms set out in this deed and Council has agreed to that request.



## **Deed of Variation**

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### **Operative Provisions**

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#### **1 Definitions and interpretation**

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##### **1.1 Defined terms**

In this deed, words that are defined in the document entitled "*Voluntary Planning Agreement*" entered into between the Developer and Council dated 29 August 2008 (VPA) have the meaning ascribed to them in the VPA.

##### **1.2 Interpretation**

The interpretational rules contained in Schedule 2 of the VPA apply in the interpretation of this deed.

#### **2 Amendment**

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##### **2.1 Relation with VPA**

- (1) Except as this deed expressly provides otherwise, this deed does not affect a person's rights, obligations, powers or remedies under the VPA.
- (2) The provisions of this deed prevail to the extent of any inconsistency between them and the provisions of the VPA.

##### **2.2 Tracked changes to VPA**

The parties acknowledge and agree that from the date of this deed, the VPA is varied and amended as shown in the "marked up" version of the VPA attached as **Annexure 1** to this deed.

#### **3 Affirmation**

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Except as amended by the terms of this deed, the parties affirm that the VPA remains, in all other respects, valid and effective.

#### **4 Costs**

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The Developer must pay all legal costs and expenses incurred by Council in relation to the negotiation, preparation, execution and registration of this deed within fourteen (14) days of receiving a tax invoice from Council.

#### **5 Administrative Provisions**

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##### **5.1 Notices**

- (1) Any notice, consent or other communication under this deed must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (a) delivered to that person's address;
  - (b) sent by pre-paid mail to that person's address; or
  - (c) transmitted by facsimile to that person's address.



## Deed of Variation

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

### 5.2 Entire agreement

This deed and the VPA are 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 deed.

### 5.3 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.

### 5.4 Cooperation

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

### 5.5 Counterparts

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

### 5.6 Amendment

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

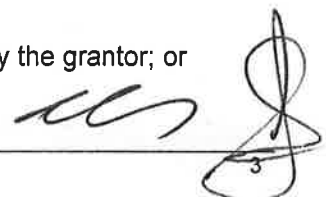
### 5.7 Unenforceability

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

### 5.8 Power of Attorney

Each attorney who executes this deed 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



## Deed of Variation

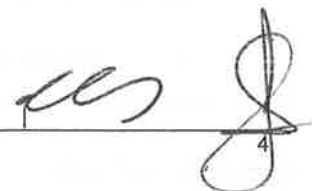
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- (2) the death of the grantor.

### 5.9 Governing law

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



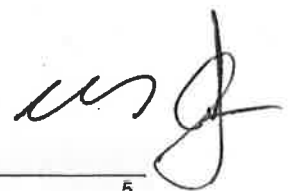
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**Deed of Variation**

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**Annexure 1:  
Tracked VPA**

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**Deed of Variation**

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**Execution page**

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**Executed as a deed.**

Dated:

**Signed, sealed and delivered by Syesun Pty Limited in accordance with section 127(1) of the Corporations Act by authority of its directors.**



Director/Secretary (Signature)

*NICHANNE SPETERE*

Name of Director/ Secretary (Print Name)

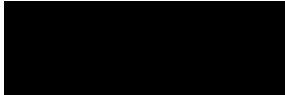


Director (Signature)

*JOHN SAMMUT*

Name of Director (Print Name)

**Signed, sealed and delivered 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:**



Witness (Signature)

*Deborah Cuthbertson*

Name of Witness (Print Name)



Farooq Portelli (Signature)



# Voluntary Planning Agreement

## PARTIES

<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 9222
	<b>Facsimile</b>	(02) 9821 9333
	<b>Email</b>	lcc@liverpool.nsw.gov.au
	<b>Representative Contact</b>	Farooq Portelli
<b>Developer</b>	<b>Name</b>	Syesun Pty Ltd
	<b>Address</b>	124-144 Newbridge Road, Moorebank NSW 2170
	<b>CAN</b>	001 805 830
	<b>Telephone</b>	9601 4188
	<b>Facsimile</b>	9821 2337
	<b>Email</b>	m.spiteri@flowerpower.com.au
	<b>Representative Contact</b>	Michael Spiteri

## 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 on the terms of this agreement if the Instrument Change is gazetted and the Development Consent is granted.



## OPERATIVE PROVISIONS

### 1 DEFINITIONS

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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

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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 both the Land and the Development.

#### 2.2 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 the Council grants the Development Consent:
  - (a) Clause 3; and
  - (b) Clause 11.

### 3 PROVISION OF NON-MONETARY CONTRIBUTIONS

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#### 3.1 Designated Land

- (1) The Developer must dedicate and transfer the Designated Land to the Council by the date or time specified for the relevant item in **Schedule 3**.
- (2) The Designated Land must be dedicated to the 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.

#### 3.2 Works Contribution

- (1) The Developer must carry out and complete the Works in accordance with this agreement.
- (2) The Council may refuse to issue the relevant Subdivision Certificate for the Development if the relevant portion of the works identified in Schedule 3 has not been carried out in accordance with this agreement.

#### 3.3 Standard of Construction

The Developer must construct and complete the Works:

- (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 Works; and

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

### **3.4 Timing**

Each item of the Works must be completed to the satisfaction of the Council by the time or date specified for that term or parcel in **Schedule 3**.

### **3.5 Acceptance of Risk in Works**

Once a parcel of Designated Land is dedicated or transferred to the Council, the Council accepts ownership, possession and control of the Land and any Works carried out on the Land.

### **3.6 Value of Works**

- (1) Upon Completion of any item of the Works the Developer must provide Council with a certificate from a Quantity Surveyor in favour of Council and the Developer as to the Development Cost of the relevant Works.
- (2) The Developer warrants that the Development Cost of each item of the works is equal to or greater than the Contribution Value of that item.

### **3.7 Indexation of Amounts payable by Developer**

The Contribution Value for each item of the Works 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 the Works is Completed; and
- 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 will not change.

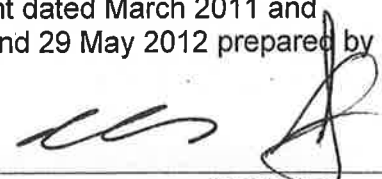
### **3.8 Licence for Maintenance**

The Council and the Developer will enter into the Licence Agreement set out as Annexure 3 in order to allow the Developer to access the River Foreshore Land to carry out the maintenance works required of it under this agreement.\

### **3A Fill**

#### **3A.1 Removal of fill**

- (1) The Developer must promptly submit a detailed plan to Council for approval, which describes the Developers' proposal including the removal of fill on the Land as part of the Development (originally proposed for the North Eastern corner of the Land).
- (2) The Developer must ensure that any such detailed plan complies with the flood model entitled Flood Impact Assessment dated March 2011 and subsequent reports dated 23 January 2012 and 29 May 2012 prepared by WMA Water.



- (3) If the Fill Removal Proposal is approved by Council, then the Developer must carry out the works referred to in that plan in accordance with it.

### **3A.2 Revised Staging Plan**

- (1) The Developer must promptly submit a revised staging plan to Council with respect to the Works (**Works Staging Plan**) for Council's approval. The Works Staging Plan is to include (inter alia) the Developer's proposal as to how the Land is to be filled.
- (2) If the Works Staging Plan is approved by Council then the Developer must carry out any applicable works in accordance with it.

### **3A.3 Further obligations of the Developer**

- (1) The Developer must provide Council with a complete works as executed plan detailing the filling of the Land and the resultant finished ground levels.
- (2) All filling of the Land is to be staged so as to ensure that the impact on flooding heights is to be no more than 10mm as per the entitled Flood Impact Assessment dated March 2011 and subsequent reports dated 23 January 2012 and 29 May 2012 prepared by WMA Water.

## **3B MONETARY CONTRIBUTION**

### **3B.1 Monetary Contribution**

- (3) The Developer must pay the Contribution to Council.
- (4) The parties acknowledge and agree that the Contribution is required by Council to assist it with the purchase of a property within the Moorebank Floodplain Voluntary Acquisition Scheme (**Relevant Property**).

### **3B.2 Timing of payment**

- (1) The Developer must pay the Contribution to Council on the date requested by Council in order to allow Council to complete the purchase of the Relevant Property.
- (2) If the Developer defaults in payment of the Contribution (or any part of it) then Council, without further notice to the Developer, may call on the Contribution Bank Guarantee to the extent of the Contribution.

### **3B.3 Security**

- (1) As security for payment of the Contribution, the Developer, upon being requested to do so by Council, must and in any event no later than the date it lodges any application for a construction certificate relating to DA 309/2011, deliver to Council an unconditional Bank Guarantee for the amount of the Contribution (**Contribution Bank Guarantee**) in a form acceptable to Council.
- (2) Council must return the Contribution Bank Guarantee (or that part of it which is not called upon by Council) to the Developer within fourteen (14) days of the Developer paying the Contribution to Council.

#### 4 COMPLETION OF WORKS

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- (1) The Developer must provide a Completion Notice to the Council within fourteen (14) days of completing any items of the Works.
- (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 item of the Works set out in a Completion Notice; and
  - (b) Twenty-eight (28) 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:

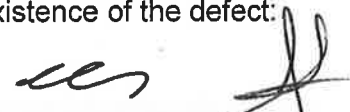
- (c) have been Completed; or
- (d) have not been Completed, in which case the notice must also detail:
  - i. those aspects of the relevant item which have not be Completed; and
  - ii. the work the Council requires the Developer to carry out in order to rectify those deficiencies.
- (4) If the Council 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 on the date nominated in the Completion Notice.
- (5) Where the Council serves notice on the Developer pursuant to paragraph 3)d. 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 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 item of 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)b.

#### 5 DEFECTS LIABILITY

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##### 5.1 Defects Notice

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



(Defect) Council may issue a defects notice (Defects Notice) concerning those Works but only within the Defects Liability Period.

- (2) A Defects Notice must contain the following information:
  - (a) The nature and extent of the Defect;
  - (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 satisfaction of the Defects Notice.

## **5.3 Right of Council to Step-In**

Council may, at its absolute discretion, enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer seven (7) days written notice 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 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 undertaking that work.

## **5.5 Costs of Council**

Where Council exercises its step-in rights all costs incurred by Council in rectifying the relevant Defects may be claimed by Council as a liquidated debt owed by the Developer.

# **6 APPLICATION OF S94 &S94A**

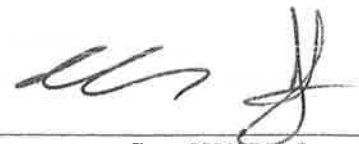
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## **6.1 Application**

This agreement excludes the application of section 94 and section 94A of the Act to the Development in respect of the imposition of contributions other than those that may be imposed by Council in accordance with these sections for 'City Wide Facilities' and 'Established Areas District Facilities' contained in the Liverpool Contributions Plan 2001 (September 2007) (as amended or replaced from time to time).

## **6.2 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.



## **7 REGISTRATION OF THIS PLANNING AGREEMENT**

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### **7.1 Obligation to Register**

- (1) The Developer and the Council agree that this agreement will be registered on the title of the Land pursuant to S93H 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 the Council in undertaking that registration.

### **7.2 Partial Discharge of Agreement**

The Council will do all things necessary to allow the Developer to remove this agreement from the title of 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.

## **8 DEVELOPER WARRANTIES AND INDEMNITIES**

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### **8.1 Warranty**

- (1) the Developer warrants to Council that:
  - (a) It is legally and beneficially entitled to the Land;
  - (b) It is able to fully comply with its obligations under this agreement;
  - (c) It has full capacity to enter into this agreement; and
  - (d) There is no legal impediment to it entering into this agreement, or performing the obligations imposed under it.

### **8.2 Indemnity**

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

## **9 CONTAMINATION**

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### **9.1 Warranty and Indemnity**

The Developer:

- (1) warrants that as far as it is aware, and other than as disclosed to Council, the Designated Land is not contaminated; and
- (2) indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Designated Land including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of the Department of Environment and Conservation and any other relevant Authority as at the time of dedication of the land to Council, and that any works carried out on the Designated Land will be carried out in a manner that ensures the land is free of contamination at the completion of such works.

## 10 DETERMINATION OF THIS AGREEMENT

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### 10.1 Determination

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

### 10.2 Consequences

Upon the determination of this agreement 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 possible.

## 11 SECURITY

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### 11.1 Prohibition

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

### 11.2 Assignment of Land

The Developer must not assign its interest in the Land unless:

- (1) the Council consents to the Assignment and such consent shall 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.

### 11.3 Delivery to Council of Bank Guarantee

Prior to the lodgement of the first Construction Certificate for the Development the Developer must deliver to Council unconditional bank guarantees (**Bank Guarantees**) in a form acceptable to the Council for the amounts specified in **Schedule 3**.

### 11.4 Council may call on Bank Guarantee

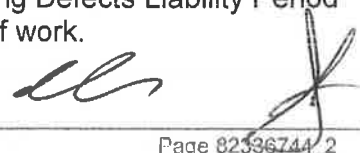
- (1) If the Developer does not carry out and deliver the Works by the time or times and the manner set out in Schedule 3 the Council may issue the Developer with a notice in accordance with clause 21.1 requiring the Developer to rectify the relevant default within twenty-one (21) days.
- (2) In the event that the Developer fails to comply with a notice issued under paragraph (1) to the reasonable satisfaction of Council, the Council may, without limiting any other avenues available to it, call on the relevant Bank Guarantees to the extent necessary to reimburse the Council for any costs incurred by it in rectifying the relevant default of the Developer.

### 11.5 Top up of Bank Guarantee

Within seven (7) days of being requested to do so by the Council the Developer must ensure that the amount secured by any Bank Guarantee is returned to the relevant level set out in **Schedule 3**.

### 11.6 Return of Bank Guarantee

- (1) Within one (1) month after the Developer satisfies its obligation under this agreement to deliver or procure the delivery of the Works, Council must return the amount of the Bank Guarantee to the Developer that is in excess of the 'Percentage of Bank Guarantee Retained During Defects Liability Period' identified in **Schedule 3** for the relevant item of work.





- (2) Within one (1) month after the Defects Liability Period has expired with respect to the relevant item of Work Council must return the remaining balance of the relevant Bank Guarantee to the Developer.
- (3) The Developer may, at its discretion, lodge separate Bank Guarantees for any one (1) or more of the items of Works set out in Schedule 3.

## **12 FORCE MAJEURE**

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### **12.1 Definition**

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

### **12.2 Consequences of Force Majeure**

- (1) If a party is unable by reason of Force Majeure 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 with reasonably full 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 are then suspended during continuance of the Force majeure and any further period as may be reasonable in the circumstances.

### **12.3 Inability to complete Works**

- (1) The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.
- (2) If the Developer is unable to Complete any part of the Works due to a Force Majeure event the Developer must pay to Council the amount specified in **Schedule 3** of the relevant works and the amount payable to Council may be apportioned, if necessary, in such manner as may be fair and reasonable.
- (3) In reference to paragraph 2), Council may at its absolute discretion call on the Bank Guarantees (or any part of it) pursuant to clause 11.4.

### **Exclusion of operation**

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

### **Dispute**

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

## REVIEW & AMENDMENT

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### 13.1 Review

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. This may include the delivery of items outlined in Schedule 3 being staged to respond to future staging of development of land within the B6 zone.

### 13.2 Amendment

If the parties agree to amend this agreement as a result of a review conducted under clause 13.1 then any such amendment is to be made:

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

## 14 DISPUTE RESOLUTION

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### 14.1 Notice of Dispute

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 adequately identifying and providing details of the dispute and designating as its representative a person to negotiate the dispute. 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**).

### 14.2 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.

### 14.3 Further steps required before proceedings

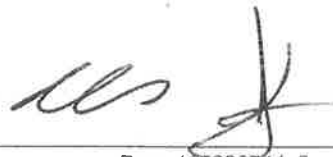
Subject to clauses 14.14 and 14.15 and except as otherwise expressly provided in this agreement, any dispute between the Parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation, mediation under clause 14.5 or determination by an expert under clause 14.6, first be referred to the Representative. The Representatives must endeavour to resolve the dispute within five (5) Business Days.

### 14.4 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 14.5 or expert resolution under clause 14.6.

### 14.5 Disputes for mediation

- (1) If the Parties agree in accordance with clause 14.4 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.



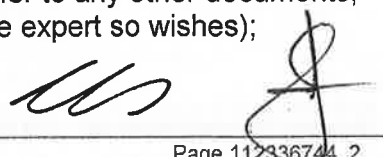
- (2) If the mediation referred to in paragraph 1) has not resulted in settlement of the dispute and has been terminated, the Parties may agree to have the matter determined by expert determination under clause 14.6.

#### **14.6 Choice of Expert**

- (1) If the Parties agree to have the matter determined by expert determination, this clause 14.6 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:
  - (a) Must have a technical understanding of the issues in dispute;
  - (b) Must not have a significantly greater understanding of one Party's business functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - (c) Must inform the Parties before being appointed of the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- (5) the Parties must promptly enter into an agreement with the expert appointed under this clause 14.6 setting out the terms of the expert's determination and the fees payable to the expert.

#### **14.7 Directions to expert**

- (1) In reaching a determination in respect of a dispute under clause 14.6, the independent expert must give effect to the intent of the Parties entering into this deed and the purposes of this deed.
- (2) The expert must:
  - I. Act as an expert and not as an arbitrator;
  - II. Proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
  - III. Not accept verbal submissions unless both Parties are present;
  - IV. On receipt of a written submission from one Party, ensure that a copy of that submission is given promptly to the other Party;
  - V. 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;
  - VI. 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);



- VII. 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;
  - VIII. Issue a final certificate stating the expert's determination (together with written reasons); and
  - IX. 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.

#### **14.8 Expert may commission reports**

- (1) Subject to paragraph (2):

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

The Parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 14.6(5) of this deed.

- (2) The Parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

#### **14.9 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 arbitration.

#### **14.10 Other courses of action**

If:

- (1) the Parties cannot agree in accordance with clause 14.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 14.5 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.

#### **14.11 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;
  - (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 the 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.

#### **14.12 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.

#### **14.12 Costs**

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

#### **14.13 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.

#### **14.14 Urgent relief**

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

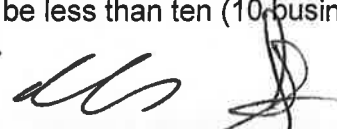
### **15 DEFAULT IN PERFORMANCE**

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#### **15.1 Events of default**

The Developer commits an 'Event of Default' if:

- (1) It breaches an essential term of this agreement, or
- (2) It breaches a non-essential term of this agreement and fails to rectify that breach within a reasonable time (which must not be less than ten (10) business days) of being requested to do so by the Council.



## **15.2 Consequences of Events of default**

Where the Developer commits an Event of Default the Council may terminate this agreement by notice in writing to the Developer.

## **15.3 No restriction on rights**

The rights vested in the Council pursuant to clause 15.2 do not prevent the Council from exercising any other rights that it may possess at law.

## **16 TERMINATION**

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### **16.1 Termination**

This agreement may be terminated:

- (1) if the parties agree in writing to terminate it; or
- (2) in accordance with clause 10.

### **16.2 Consequence of termination**

Upon termination of this agreement:

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

## **17 POSITION OF COUNCIL**

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### **17.1 Consent authority**

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

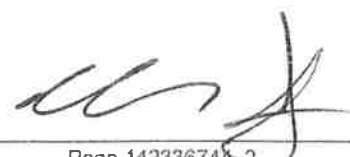
### **17.2 Agreement does not fetter discretion**

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) Exercise by Council of any statutory power or discretion.
- (Discretion)

### **17.3 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 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.



#### **17.4 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 or the Development.

### **18 CONFIDENTIALITY**

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#### **18.1 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.

#### **18.2 Other Confidential Information**

- (1) The parties acknowledge that:
  - (a) confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this agreement;
  - (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
  - (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.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

### **19 GST**

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#### **19.1 Defined GST Terms**

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

#### **19.2 GST to be Added to Amounts Payable**

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.



### **19.3 GST Obligations to Survive Termination**

This Clause 19 will continue to apply after expiration of termination of this agreement.

## **20 MISCELLANEOUS**

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### **20.1 Obligation to act in good faith**

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to 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 dealing with the other parties.

### **20.2 Legal costs**

The Developer agrees to:

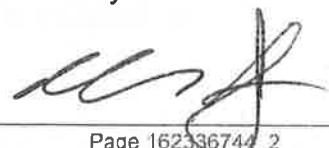
- (1) pay or reimburse the reasonable legal costs and disbursements of the Council of the negotiation, preparation, execution, and stamping of this agreement.
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within fourteen (14) days of receipt of a Tax Invoice from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

## **21 ADMINISTRATIVE PROVISIONS**

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### **21.1 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.





## **21.2 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.

## **21.3 Waiver**

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

## **21.4 Cooperation**

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

## **21.5 Counterparts**

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

## **21.6 Amendment**

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

## **21.7 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.

## **21.8 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.

## **21.9 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 PAGE**

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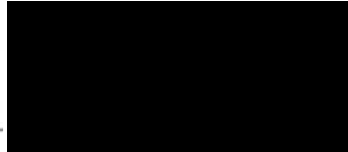
**Executed as a deed**

Dated:

**Signed, Sealed and Delivered by Syesun Pty Ltd** in accordance with section 127(1) of the Corporations Act by authority of its directors.



Director/Secretary (Signature)



Director (Signature)

MELBAER SPETER

Name of Director/Secretary (Print Name)

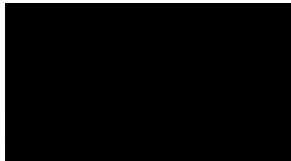
JOHN SAMMUT

Name of Director (Print Name)

**Signed, Sealed and Delivered 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:



Witness (Signature)



Attorney (Signature)

Deborah Cuthbertson FAROOQ C. PORTELLI JP.

Name of Witness (Print Name)

Name of Attorney (Print Name)

## Schedule 1 – Commercial Terms

### Commercial Terms

<b>Developer</b>	Name	Syesun Pty Limited
	Address	124 - 144 Newbridge Road Moorebank, NSW 2170
	ACN	001 805 830
	Telephone	(02) 96014188
	Facsimile	(02) 9821 2337
	Email	m.spiteri@flowerpower.com.au
	Representative/ Council	Michael Spiteri
<b>Council</b>	Name	Liverpool City Council
	Address	33 Moore Street, Liverpool NSW 2170
	ABN	84 181 182 471
	Telephone	(02) 9821 9222
	Facsimile	(02) 9821 9333
	Email	lcc@liverpool.nsw.gov.au
	Representative/ Council	Farooq Portelli
<b>Land</b>	The whole of the land contained in Certificate of Title Folio Identifier 2/602988 and known as 124 Newbridge Road, Moorebank.	
<b>Current LEP</b>	Liverpool Local Environmental Plan 2008	
<b>Draft LEP</b>	Draft Liverpool Local Environmental Plan 2008	



## 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 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 excluded.</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>Benefits are not to be taken into consideration.</p>
<p>Mechanism for Dispute resolution - (Section 93F(3)(f))</p>	<p>See clause 14.</p>
<p>Enforcement of this deed (Section 93F(3)(g))</p>	<p>See clause 11.</p>
<p>No obligation to grant consent or exercise functions - (Section 93F(3)(g))</p>	<p>See clause 17.</p>



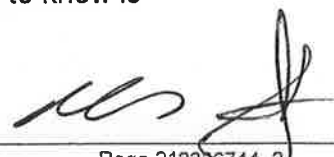
## Schedule 2 – Defined Terms and Interpretation

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### Definitions

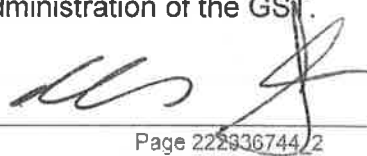
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<b>Act</b>	means the <i>Environmental Planning &amp; Assessment Act 1979 (NSW)</i> .
<b>Assign</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<b>Authority</b>	means (as appropriate) and: <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>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</b>	with respect to an item of the Works means 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 the Works 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><li>(3) Any party knows or ought to know is confidential;</li></ol>



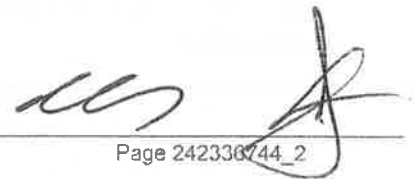
- (4) Is information which may be reasonably considered to be of a confidential nature.

<b>Contamination</b>	means the same meaning as <i>Contaminated Land Management Act 1997</i> .
<b>Contribution</b>	means the sum of \$450,000.00 to be contributed by the Developer to the Council in accordance with clause 3B.
<b>Contribution Value</b>	means the value of the bank guarantee required to be provided for each respective item of Work as set out in <b>Schedule 3</b> .
<b>Council</b>	means Liverpool City Council.
<b>Defects Liability Period</b>	means twelve (12) months after a Completion Notice has been issued for a particular aspect of the Works or as set out in <b>Schedule 3</b> .
<b>Designated Land</b>	means that part of the Land outlined in blue on the plan that is <b>Annexure 2</b> to this agreement and subject to easements as set out in <b>Schedule 4</b> .
<b>Developer</b>	means the 'Developer' set out in <b>Schedule 1</b> .
<b>Development</b>	means the development of the B6 Enterprise Corridor Zoned Land for a maximum gross floor area of 18,500sqm of development including a maximum of 47 dwellings and development of the RE2 Zoned Land for the purpose of Landscape and Garden Supplies, other than earthworks or roads.
<b>Development Consent</b>	means a development consent for the Development.
<b>Development Cost</b>	means in relation to an item of Work: <ol style="list-style-type: none"><li>(1) the construction costs of that item</li><li>(2) any costs incurred under a building contract in relation that item;</li><li>(3) the costs of any consultants engaged in relation to that item; and</li><li>(4) any costs or expenses payable to an Authority in relation that item.</li></ol>
<b>Dispute</b>	means a dispute regarding the terms or operation of this agreement.
<b>Draft LEP</b>	means draft local environmental plan set out in Schedule 1 in respect of the Land.
<b>GST Law</b>	means the <i>A New Tax System (Good 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>Indicative Master Plan</b>	means the plan attached as Annexure 1.
<b>Instrument Change</b>	means the making of the draft LEP.
<b>Land</b>	means the 'Land' set out in Schedule 1.
<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 Local Government Act 1993 (NSW).
<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 Works;</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 Works; and</li> <li>(5) undertakes to act fairly and promptly in accordance with the requirements of this agreement.</li> </ul>
<b>Residential Lot</b>	means a lot comprising part of the Land that is intended to be used for the purpose of a dwelling or a dwelling house without being further subdivided.
<b>RiverForeshoreLand</b>	means that part of the Land shown as the 'RiverForeshoreLand' on the plan attached as Annexure 2.
<b>Subdivision Certificate</b>	has the same meaning as in the Act.
<b>Works</b>	means all works set out in <b>Schedule 3</b> .
<b>Interpretational Rules</b>	
<b>Clauses, annexures and Schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.

<b>Reference of Statutes</b>	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.
<b>Singular includes plural</b>	the singular includes the plural and vice versa.
<b>Person</b>	the word 'person' includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>Executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>Dollars</b>	australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>Calculation of time</b>	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.
<b>Reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>Accounting terms</b>	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.
<b>Reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>Meaning not limited</b>	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.
<b>Next day</b>	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.
<b>Next Business Day</b>	if an even 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.
<b>Time of day</b>	time is a reference to Sydney time.





**Headings**

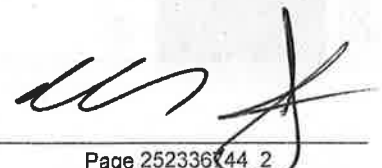
headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

**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.

A handwritten signature in black ink, consisting of stylized initials and a surname, located in the bottom right corner of the page.

### Schedule 3 – Description of Works

Item	Description of Works	Time for Completion	Guarantee Amount	Percentage of Bank Guarantee Retained during Defects Liability Period	
1a	Embellishment of River Foreshore Land	Removal of waste and fill to existing or otherwise approved finish ground level as detailed in a Council approved flood study	\$200,000	10%	
1b					Removal of visible surface waste on foreshore.
1c					Removal or other appropriate management of site contamination.
1d	Dedication of River Foreshore Land to Council. The River Foreshore Land is as identified on Annexure 2 and marked as "A" subject to a fifty metre (50m) wide easement for maritime vessel access and drainage more or less in the location shown on the plan attached as <b>Annexure 1</b> .	<p>Dedication of the River Foreshore land to Council.</p> <p>By the earlier of:</p> <p>(1) the completion of the filling works associated with works described in DA 309/2011; and</p> <p>(2) a written request being made by Council</p>	Not applicable.		

Item	Description of Works	Time for Completion	Guarantee Amount	Percentage of Bank Guarantee Retained during Defects Liability Period	
2a	Development of a Vegetation Management Plan and offset Strategy	Plan developed by consultants for initial planting and maintenance of River Foreshore Land and approved by Council.	Prior to issue of any construction certificate applying to the land for development. This excludes construction certificates for minor site works, roads, and services to meet obligations of agreement.	\$5,000	Nil

Item	Description of Works	Time for Completion	Guarantee Amount	Percentage of Bank Guarantee Retained during Defects Liability Period	
2b	Completion of works described in the Vegetation Management Plan	Removal of noxious weeds. Restored and enhanced vegetation in keeping with surrounding indigenous species in accordance with an approved Vegetation Management Plan.	Prior to issue of any construction certificate applying to the land for development. This excludes construction certificates for minor site works, roads, and services to meet obligations of agreement.	\$15,000	5%
2c	Conduct of maintenance works described in the Vegetation Management Plan	As set out in the Vegetation Management Plan.	One (1) year after dedication of the River Foreshore Land.		

Item	Description of Works	Time for Completion	Guarantee Amount	Percentage of Bank Guarantee Retained during Defects Liability Period	
3a	Construction of 'Bike/Pedestrian Path' as shown on the plan attached as Annexure 2	Prior to issue of any construction certificate applying to the land for development. This excludes construction certificates for minor site works, roads, and services to meet obligations of agreement.	\$105,000	5%	
3b					3 metres wide.
3c					Entire length of river foreshore reserve. 100mm reinforced concrete for maintenance vehicles.
3d	Construction of pedestrian footpath along northern boundary of site within Newbridge Road verge.	In conjunction with any development of the RE2 Zoned portion of the land. This excludes construction certificates for minor site works, roads, and services to meet obligations of agreement.	\$16,000	5%	
3e	Construction of pedestrian footpath along northern boundary of site within Newbridge Road verge.	In conjunction with any development of the B6 Zoned portion of the land. This excludes construction certificates for minor site works, roads, and services to meet obligations of agreement.	\$21,500	5%	
<b>TOTAL</b>			<b>\$362,500</b>		

## Schedule 4– Terms of easements

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### Easement for Maritime Vessels

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- (1) In this easement:
  - (a) Council means Liverpool City Council.
  - (b) Owner means the registered proprietor of the benefited lot from time to time.
  - (c) Vessels means any:
    - (i) recreational maritime vessels such as yachts, boats and dinghys;
    - (ii) maritime service vessels; or
    - (iii) maritime emergency vessels.
  - (e) Waterway means the artificial canal constructed on the lot burdened and within the site of the easement.
- (2) The Owner, its employees, agents, contractors, licensees and invitees may by Vessels pass across the burdened lot, but only within the site of the easement, to get to or from the lot benefited.
- (3) Notwithstanding paragraph (2) above, the Owner must not pass or permit to pass any Vessel, class of Vessel or type of Vessel across the site of the easement which Council in its reasonable opinion believes:
  - (a) may cause damage to the Waterway;
  - (b) may be unsafe; or
  - (c) may not be able to pass through the Waterway.
- (4) The Owner must comply with any notice or direction given by Council in respect of paragraph (3) above.
- (5) In exercising its right over the site of the easement, the Owner must:
  - (a) without delay give written notice to Council of any damage to the Waterway; and
  - (b) cause as little inconvenience as is practicable to the lot burdened and any improvement on it; and
  - (c) make good, in a proper workmanlike manner, any damage to the Waterway the site of the easement or the lot burdened caused by the existence or use of the Waterway.

### Easement for Bike Track

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Full and free rights for the authority benefited and any person authorised by it from time to time, to at all times go, pass and repass on foot with or without bicycles (or any other form of personal transport that is not motorised) or domestic pets or both to, from and across the lots benefited or any part of them.

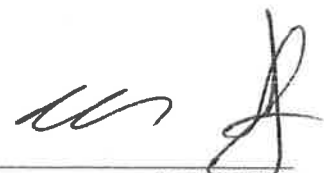
### Easement to drain water

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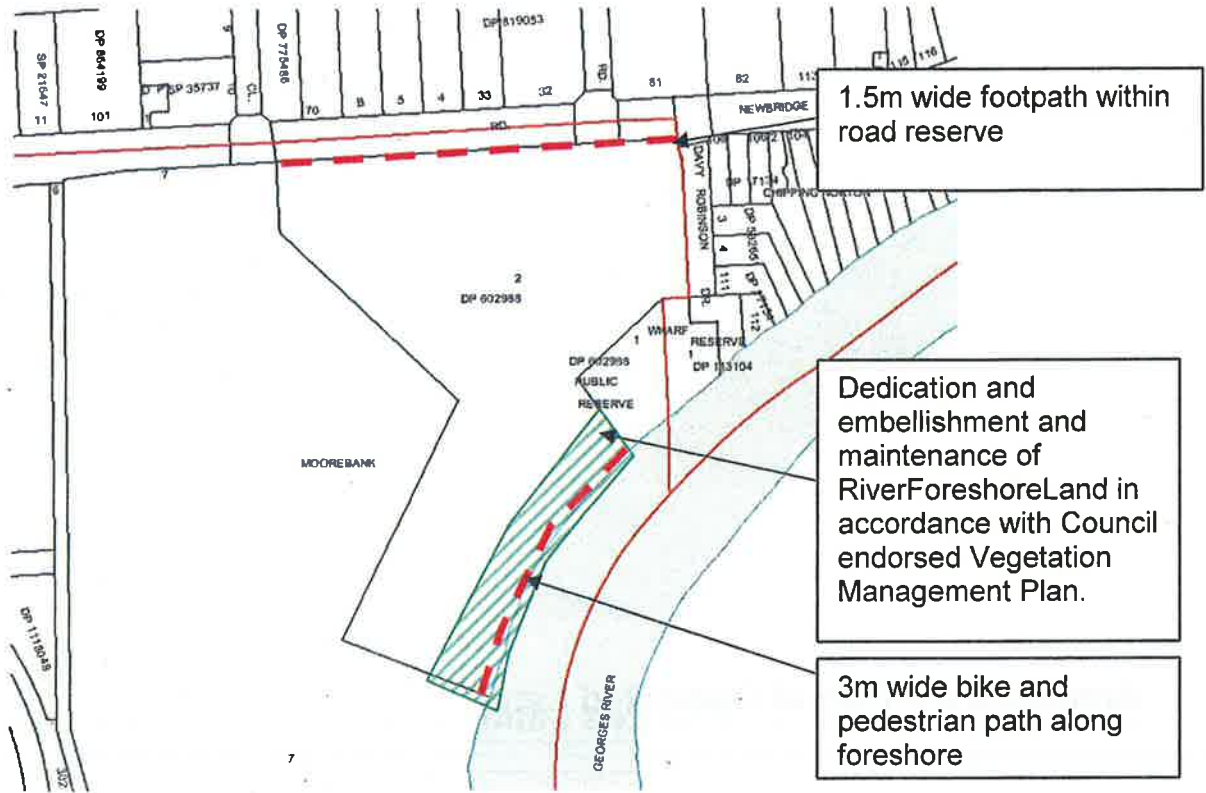
In accordance with Part 3 of Schedule 8 of the *Conveyancing Act 1919* (NSW).



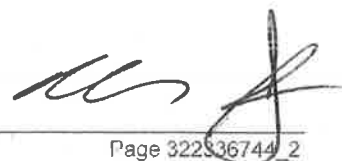
## **Annexure 1 – Indicative Master Plan**

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# Indicative Master Plan

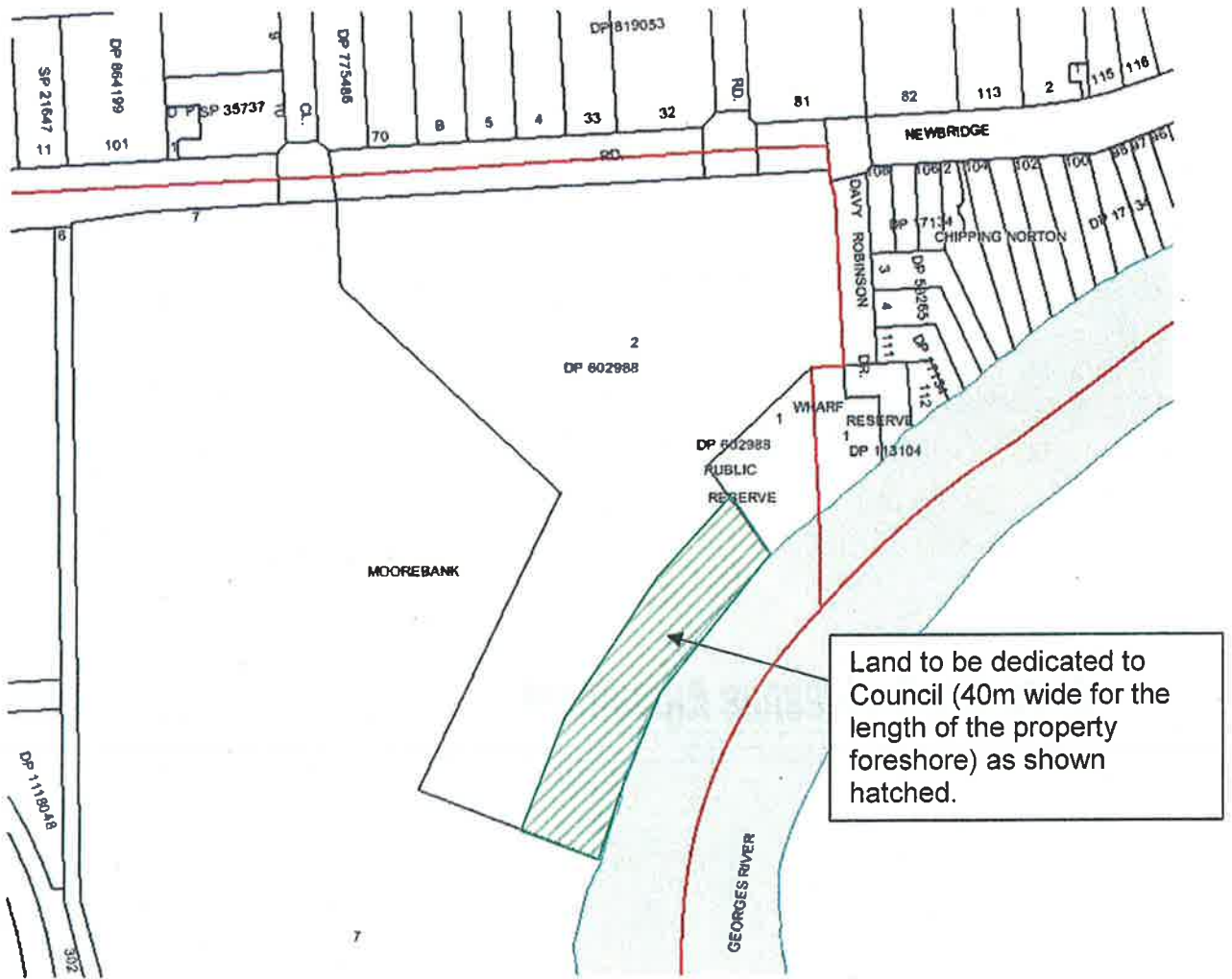


**Annexure 2 – Plan of Dedicated Land**

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# Dedicated Land



Land to be dedicated to Council (40m wide for the length of the property foreshore) as shown hatched.

## **Annexure 3 – Licence Agreement**

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A handwritten signature in black ink, consisting of several loops and a long vertical stroke, positioned in the bottom right corner of the page.

**Licence Deed – Voluntary Planning Agreement, 124-144  
Newbridge Road, Moorebank**

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

Syesun Pty Ltd (ACN 001 805 830) (**Licensee**)

A handwritten signature in black ink, appearing to be 'MJD', located in the bottom right corner of the page.

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# LICENCE DEED

## **PARTIES**

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**THE OWNER & THE LICENSEE** as set out in **Schedule 2**.

## **BACKGROUND**

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- A** The Owner is either the registered proprietor of, or is entitled to exclusive occupation of, the Land.
- B** The Licensee has requested that the Owner grant it a licence to conduct the Works on the Land.
- C** The Owner has agreed to grant the Licence to the Licensee on the terms set out in this Deed.

## **OPERATIVE PROVISIONS**

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### **1 DEFINITIONS**

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Unless the context otherwise requires the definitions and interpretational rules contained in **Schedule 1** apply in the interpretation of terms used in this deed.

### **2 LICENCE**

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#### **2.1 Grant of the Licence**

The Owner grants to the Licensee a licence to access and occupy the Land in accordance with the terms of this deed (**Licence**).

#### **2.2 Term**

Unless terminated earlier the Licence is to continue until the earlier of:

- (1) the Works being completed; and
- (2) this deed being terminated.

#### **2.3 Relationship between the parties**

- (1) The relationship between the Owner and Licensee constituted by this deed is licensor-licensee only.
- (2) No term of this Contract is to be construed so as to give rise to any of the following relationships:
  - (a) principal and independent contractor; or
  - (b) joint venturers; or
  - (c) partners; or
  - (d) trustee and beneficiary; or
  - (e) employer and employee.
- (3) Each party must ensure that they do not conduct themselves so as to hold out, or otherwise represent, that a relationship set out in the preceding paragraph exists between them.

#### **2.4 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 Owner.
- (3) The Owner may refuse the granting of consent under paragraph (2) without reason and at its absolute discretion.

## **2.5 Leasehold interest**

- (1) This deed does not grant to the Licensee a leasehold interest in the Land. The parties agree that:
  - (a) subject to any contrary terms of this deed, the Licence does not confer exclusive possession of the Land on the Licensee; and
  - (b) the Licensee may not exclude the Owner, 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 conduct of the Works by the Licensee; 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 Owner.

## **2.6 Secure Site**

Nothing in this deed prohibits the Licensee from securing that part of the Land on which the Works are being carried out to ensure that the site complies with the safety requirements of any Authority.

## **3 WORKS**

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- (1) The Licence is granted for the sole purpose of allowing the Licensee to carry out the Works on the Land.
- (2) The Licensee may not carry out any other activities on the Land without the express written consent of the Owner.
- (3) In carrying out the Works the Licensee must comply with the requirements of any relevant Authority.
- (4) The Works may only be carried out at the Agreed Times.

## **4 RESTORATION OBLIGATIONS**

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### **4.1 Restoration Works**

Upon completion of the Works the Licensee must carry out any work necessary to restore the Land to its condition at the date of this deed other than those required on account of an act undertaken by the Owner (**Restoration Works**).

### **4.2 Standard of the Restoration Works**

- (1) The Licensee must complete the Restoration Works:
  - (a) in a proper and workmanlike manner; and
  - (b) within ten (10) Business Days of the completion of the Works.
- (2) If the Licensee fails to comply with paragraph (1) the Owner may carry out, or repair any defective, Restoration Works in which case the cost of those works is a liquidated debt due and payable to the Owner by the Licensee.



## **5 LIMITATION OF THE OWNER'S LIABILITY**

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### **5.1 Insurances**

- (1) The Licensee must effect and maintain the following policies of insurance during the term of the Licence:
  - (a) a Broadform Public Liability Insurance policy with a reputable insurance company in an amount of ten million dollars (\$10,000,000) 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; and
  - (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 performance of the Works; and
  - (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 performance of the Works; and
  - (d) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the performance of the Works.
- (2) The policies referred to in paragraphs (1), (1)(c) and (1)(d) must note the interest of the Owner as principal and include a cross liability clause.

### **5.2 Occupational Health & Safety**

When carrying out the Works the Licensee must comply with all applicable requirements under the *Work, Health & Safety Act 2011* (NSW) as well as any regulations in force under that Act.

### **5.3 Risk**

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

### **5.4 Indemnity**

The Licensee indemnifies the Owner against any Claim (of whatever nature) made in respect of the Licensee's use and occupation of the Land.

## **6 TERMINATION**

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The Owner may terminate this deed if:

- (1) the Licensee is in breach of a material term of this deed; and
- (2) the Owner serves a notice on the Licensee requiring that breach to be rectified within a reasonable time (which cannot be less than fourteen (14) days; and
- (3) the Licensee fails to comply with that notice.


## **7 ADMINISTRATIVE PROVISIONS**

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### **7.1 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.

### **7.2 Cooperation**



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

### **7.3 Counterparts**

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

### **7.4 Amendment**

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

### **7.5 Unenforceability**

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

### **7.6 Power of Attorney**

Each attorney who executes this deed 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.

### **7.7 Governing law**

The law in force in the State of New South Wales governs this deed. 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 deed; 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**

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**Executed as a deed**

Dated:

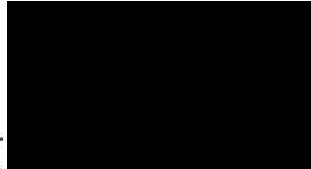
**Signed, Sealed and Delivered by Syesun Pty Ltd in accordance with s127 of the Corporations Act 2001 (Cth) by authority of its directors**



Director/Secretary (Signature)

MICHAEL SPETERI

Name of Director/Secretary (Print Name)



Director (Signature)

JOHN SAMMUT

Name of Director (Print Name)

**Signed, Sealed and Delivered by Liverpool Council by its duly constituted attorney Farooq Portelli pursuant to the registered Power of Attorney Book 4418 No 998 in the presence of:**



Witness (Signature)

Deborah Cuthbertson

Name of Witness (Print Name)



Attorney (Signature)

FAROOQ C. PORTELLI JP

Name of Attorney (Print Name)

## Schedule 1 - Defined terms and interpretation

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### Definitions

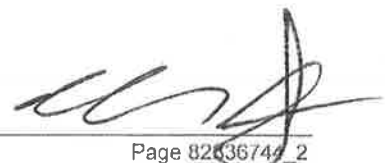
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<b>Agreed Times</b>	means the "Agreed Times" set out in <b>Schedule 2</b> .
<b>Authorities or Authority</b>	means (as appropriate) any: (1) federal, state or local government; or (2) department of any federal, state or local government; or (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
<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>Land</b>	means the "Land" as set out in <b>Schedule 2</b> .
<b>Licence</b>	means the licence to conduct the Works granted in clause 2.
<b>Licensee</b>	means the "Licensee" as set out in <b>Schedule 2</b> .
<b>Owner</b>	means the "Owner" as set out in <b>Schedule 2</b> .
<b>Works</b>	means the "Works" as set out in <b>Schedule 2</b> .

### Interpretational Rules

---

<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed.
<b>variations or replacements</b>	a document (including this Deed) includes any variation or replacement of it.
<b>reference to statutes</b>	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.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.



<b>calculation of time</b>	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.
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<b>agreement</b>	a reference to any agreement, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>gender</b>	a reference to one gender extends and applies to the other and neuter gender.



## Schedule 2 – Details

<b>Licensee</b>	<b>Name</b>	Syesun Pty Ltd
	<b>Address</b>	124-144 Newbridge Road, MOOREBANK NSW 2170
	<b>ACN</b>	001 805 830
<b>Owner</b>	<b>Name</b>	Liverpool City Council
	<b>Address</b>	33 Moore Street LIVERPOOL NSW 2170
	<b>ABN</b>	84 181 182 471
<b>Land</b> The whole of the land contained in Certificate of Title Folio Identifier 2/602988 and known as 124 Newbridge Road, Moorebank.		
<b>Works</b> The works defined in Schedule 3 of the Voluntary Planning Agreement.		
<b>Agreed Times</b> 7.00am – 5.00pm weekdays and Saturdays, No works Sundays or public holidays except in the event of emergency.		

