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Contact: Justin Thornton
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Sent TO Records
16 MAR 2015

Your Ref: Andy Kabok

The General Manager
Liverpool City Council
DX 5030
LIVERPOOL

13 March 2015

ABN 59 874 202 316

All correspondence to
PO Box 291
Campbelltown NSW 2560
DX 5107 Campbelltown

www.marsdens.net.au
email@marsdens.net.au

Dear Andy,

Re: Planning Agreement, Pty: Lot 2 Pine Road, Casula

I refer to the above matter and to my previous correspondence.

The Land and Property Information Office has requisitioned our request to register the Voluntary Planning Agreement entered into between Council and Jim Ho Shon, Elsa Therese Ho Shon and Tom Ho Shon.

As part of LPI requirements, any annexure to a LPI dealing is required to be executed by the parties to that dealing, on the first and last page.

In that regard as Council is the applicant, and therefore the only party to the dealing, it is required to execute both the first and last pages of the annexure.

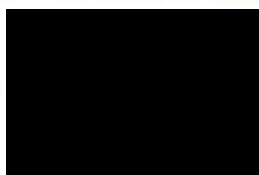
In that regard, please find **enclosed** the LPI Request Form with a copy of the VPA annexed, marked up for Council's execution.

Could Council execute the documents where marked and return it to me so that I may return it to the LPI to have the matter finalised.

Should Council wish to discuss anything in relation to the above, please do not hesitate to contact me at the Campbelltown office.

Yours faithfully

MARSDENS LAW GROUP



J.R. THORNTON

Partner

Accredited Specialist Business Law

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A I Percival
A J Seton
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REQUEST
New South Wales
Real Property Act 1900



AJ225680R

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) **STAMP DUTY** If applicable. Office of State Revenue use only

(B) **TORRENS TITLE** 2/876487

(C) **REGISTERED DEALING**

Number	Torrens Title
--------	---------------

(D) **LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE
570E	MARSDENS LAW GROUP DX 5107, Campbelltown Tel: (02) 4626 5077 Reference (optional): JRT:GMW:353299	R

(E) **APPLICANT** Liverpool City Council (ABN 84 181 182 741)

(F) **NATURE OF REQUEST** To register the Voluntary Planning Agreement on the folio of the Land.
Section 93H, Environmental Planning & Assessment Act 1979 (NSW).

(G) **TEXT OF REQUEST** The Applicant has entered into a Voluntary Planning Agreement pursuant to section 93H of the Environmental Planning & Assessment Act 1979 (NSW) with the registered proprietors of the Land being Jim Ho Shon, Elsa Therese Ho Shon and Tom Ho Shon.

The Applicant requests that the VPA annexed to this application (Annexure A) and comprising of twenty five (25) pages, be registered on the title to the Land.

DATE 2 / 2 / 15

(H) Certified correct for the purposes of the Real Property Act 1900 by the person whose signature appears below.

Signature:

Signatory's name: Justin R Thornton
Capacity: Solicitor for the Applicant

(I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS. The applicant's solicitor certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No. [] Full Name: Signature:

Annexure A to REQUEST

Parties: By Liverpool City Council (ABN 84 181 182 741)

Dated: / /

Planning Agreement Lot 2 Pine Road, Casula

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

Jim Ho Shon, Elsa Therese Ho Shon and Tom Ho Shon (**Developers**)

Marsdens Law Group
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Ref: 65 35 3299 RXL JRT



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Planning Agreement

Lot 2 Pine Road, Casula

Parties

Council	Name	Liverpool City Council
	Address	33 Moore Street LIVERPOOL NSW 2170
	ABN	84 181 182 471
Developers	Name	Jim Ho Shon, Elsa Therese Ho Shon and Tom Ho Shon
	Address	8 Strathlora Street STRATHFIELD NSW 2135

Background

- A** The Developers are the registered proprietors of the Land
- B** Pine Road is a public road adjoining the Land.
- C** Council is the Roads Authority in respect of Pine Road.
- D** The Developers have commenced the Original Development in accordance with the Existing Development Consent – DA 1320/2011.
- E** The Developers have made an offer to Council to enter into this agreement with respect to the Development.

Operative provisions

1 Agreement

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

2 Definitions and interpretation

2.1 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.

2.2 Interpretation

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

3 Application and operation of agreement

3.1 Planning Agreement

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.

3.2 Application

This agreement applies to both the Land and the Development.

4 Application of s94 and s94A of the Act

4.1 Application

This agreement does not exclude the application of section 94 or section 94A of the Act to the Development. The material public benefits provided by the Developers under this agreement will not be taken into consideration in determining a development contribution under s94 of the Act.

4.2 Consideration of Benefits

Section 94(6) of the Act does not apply to any contributions that are to be carried out or provided pursuant to this agreement.

5 Registration of this agreement

5.1 Registration

This agreement will be registered on the title of the Land pursuant to s 93H of the Act.

5.2 Obligations of Developers

The Developers must:

- (1) do all things necessary to allow the registration of this agreement to occur under paragraph (1) (including obtaining the consent of any mortgagee); and
- (2) pay any reasonable costs incurred by Council in undertaking that registration, within twenty (20) Business Days of the date of this agreement.

5.3 Removal of agreement from title

Council, at the cost of the Developers, will do all things necessary to ensure that this agreement is removed from the title of the Land upon the completion of the last to occur of:

- (1) transfer of the Closed Road to the Developers;
- (2) the dedication of the Opened Road to Council;
- (3) the transfer of the Transfer Land to Council; and
- (4) the Developers making all payments to Council required to be made under this agreement.

6 Plan of Subdivision

6.1 Preparation

The Developers, at their own cost, must prepare and submit a full copy of the Plan of Subdivision for approval by Council's Property Manager as soon as possible after the date of this agreement.

6.2 Approval by Council

- (1) Within thirty (30) business days of receiving a full and complete copy of the Plan of Subdivision under clause 6.1, Council's Property Manager will provide the Developers with a notice stating that Council:
 - (a) approves the Plan of Subdivision; or
 - (b) does not approve the Plan of Subdivision and specifying the reasons for that non-approval.
- (2) If Council's Property Manager provides the Developers with a notice under paragraph (1)(b), the Developers must amend the Plan of Subdivision having regard to the reasons raised by Council.

6.3 Amendment

If the Developers amend the Plan of Subdivision in accordance with clause 6.2(2) they must undertake the procedure set out in this clause 6 with respect to that amended version of the Plan of Subdivision.

6.4 Lodgement of Development Application

The Developer must lodge an application for development approval for the Plan of Subdivision within sixty (60) days of receiving approval from Council's Property Manager under clause 6.2.

7 The Minister's Approval

7.1 Application to the Minister

- (1) Council has made, or will make, any application necessary for the Minister's Approval for the closure of the Closed Road.
- (2) Council will notify the Developers in writing as soon as possible after it receives:
 - (a) confirmation that the Minister's Approval has been granted; or
 - (b) notification that the application for the Minister's Approval has been refused, with respect to the closure of the Closed Road.

7.2 The Developers acknowledgement

The Developers acknowledge and agree that Council has a discretion as to the content of any applications required to be made for the Minister's Approval.

8 Construction of Opened Road

8.1 Subdivision

The Developers, at their cost, must:

- (1) register the Plan of Subdivision as a deposited plan at the Land and Property Information office as soon as possible after obtaining Council's approval under clause 6.2(1)(a); and
- (2) dedicate or transfer (at the election of Council) the Opened Road Section 1 to Council at no cost to Council.

8.2 Council to undertake Opened Road Works

- (1) Council will arrange for the Opened Road Works to be completed.
- (2) Council will dedicate the Opened Road as a public road after the completion of the Opened Road Works.

8.3 Pine Road Deviation Section

The parties acknowledge and agree that:

- (1) the Pine Road Deviation Section was transferred to Council by the Developers and subsequently dedicated as a public road prior to the date of this agreement; and
- (2) the Developers are entitled to compensation in accordance with clause 12 as a result of the transfer of the Pine Road Deviation Section to Council.

9 Pine Road Deviation Works

9.1 Council to undertake

Council will arrange the Pine Road Deviation Works including any works required to close off the median strip within the Hume Highway as a result of the closure of the Closed Road.

9.2 Timing

Council will undertake the Pine Road Deviation Works within a reasonable time after the transfer or dedication of the Opened Road to Council.

10 Closed Road Works

Council will arrange the Closed Road Works in a proper and workman like manner.

11 The closure of the Closed Road

11.1 Conditions precedent

Council is not obliged to procure the closure of the Closed Road unless and until it:

- (1) receives notice of the Minister's Approval with respect to that closure; and
- (2) the Developers have complied with clause 8.1.

11.2 Road Closure Plan

Council, at its cost, will:

- (1) prepare the Road Closure Plan as soon as reasonably practicable after the Minister's Approval with respect to the closure of the Closed Road is obtained; and
- (2) do any other act or thing requested by the Minister with respect to the Minister's Approval to that closure.

11.3 Obligations of Council

- (1) As soon as possible after the conditions set out in clause 11.1 and 11.2 are satisfied, Council will:
 - (a) attend to the registration of the Road Closure Plan; and
 - (b) do all things necessary to procure that the Gazettal Notice is published.
- (2) Council will notify the Developers as soon as possible after it becomes aware that the Gazettal Notice has been published.

12 Transfer of Opened Road and Closed Road

12.1 Entitlement to compensation

- (1) Council acknowledges that the Developers are entitled to compensation from Council on account of:
 - (a) the transfer of the Opened Road Section 2 to Council; and
 - (b) the transfer of the Pine Road Deviation Section to Council prior to the date of this agreement,
(Opened Roads Compensation).
- (2) The Developers acknowledge that Council is entitled to compensation from the Developers on account of the transfer of the Closed Road to the Developers **(Closed Road Compensation).**

12.2 Works compensation

- (1) The Developer acknowledges and agrees that but for this agreement being entered into, it would have been required to undertake the Opened Road Works Section 1.
- (2) Council will undertake the Opened Road Works Section 1.
- (3) The Developer agrees to off-set the amount of \$95,200.00 plus GST against the Opened Roads Compensation on account of Council arranging to undertake the Opened Road Works Section 1.

12.3 Determination of compensation

- (1) The Opened Roads Compensation and the Closed Road Compensation will be calculated on a square metre basis at the agreed rate of \$401.85 (plus GST if applicable) per square metre for the final areas of the following:
 - (a) Opened Road Section 2 – 823.4sqm;
 - (b) Closed Road – 895.9sqm; and
 - (c) Pine Road Deviation – 1,505sqm.

- (2) The areas referred to in paragraph (1) are approximate only and subject to a final survey being undertaken.

12.4 Timing of transfer

The parties must complete:

- (1) the transfer of the Closed Road from Council to the Developers; and
- (2) the transfer to Council, or dedication as a public road (at the election of Council), of the Opened Road,

within forty two (42) days of:

- (3) the Developers having complied with clause 8.1; and
- (4) the Gazettal Notice being published with respect to the closure of the Closed Road.

12.5 Procedure

On completion of:

- (1) the transfer of the Closed Road from Council to the Developers, Council must provide to the Developers:
 - (a) the original Certificate of Title for the Closed Road;
 - (b) a *Real Property Act 1900* (NSW) transfer for the Closed Road duly executed by Council; and
 - (c) any document required to remove any Encumbrance from the title of the Closed Road,
- (2) if applicable, the transfer of all or part of the Opened Road from the Developers to Council, the Developers must provide to Council:
 - (a) the original Certificates of Title for each relevant lot forming part of the Opened Road;
 - (b) a *Real Property Act 1900* (NSW) transfer for the lots comprising the Opened Road duly executed by the Developers; and
 - (c) any document required to remove any Encumbrance from the title of the Opened Road.

12.6 Payment

- (1) If the amount of the Opened Roads Compensation is more than the aggregate of the amount of the Closed Road Compensation and the off-set set out in clause 12.2, Council must pay the difference between those amounts to the Developers.
- (2) If the amount of the aggregate of the Closed Road Compensation and the off-set set out in clause 12.2 is more than the Opened Roads Compensation the Developers must pay the difference between those amounts to Council.

12.7 No interest in Closed Road

Nothing in this agreement grants to the Developers any interest in the Closed Road.

12.8 No caveat

The Developers must not register, or cause to be registered, any caveat over the Closed Road.

13 Licence

13.1 Licence Area

For the purpose of this clause, the **Licence Area** is:

- (1) the Opened Road Works Section 1;
- (2) the Opened Road Works Section 2; and
- (3) the Pine Road Deviation Section.

13.2 Grant of Licence

The Landowner grants a licence to Council (**Licence**) (commencing on the date of this agreement) to occupy the Licence Area for the purpose of undertaking any or all works associated with:

- (1) Opened Road Works; and
- (2) Pine Road Deviation Works.

13.3 Terms of Licence

The Licence will be on the terms specified in **Schedule 3**.

13.4 Consideration

The parties agree that the compensation as determined under clause 12 represents adequate consideration for the Landowner granting the Licence.

14 Termination

14.1 Other breaches of this agreement

If the Developers breach a non-essential term of this agreement it must:

- (1) if the breach is capable of remedy, remedy the breach; or
- (2) if the breach is not capable of remedy, compensate Council for the breach,

within a reasonable time (which must not be less than fourteen (14) days) of Council serving a notice on the Developers specifying the breach and what Council requires the Developers to do to remedy that breach.

14.2 Event of Default

For the purpose of this agreement a **Default Event** means:

- (1) a party becoming subject to an Insolvency Event;
- (2) a party failing to rectify a breach of this agreement in accordance with clause 14.1; or
- (3) a party breaching an essential term of this agreement.

14.3 Rights of Council

If a Default Event occurs then Council may:

- (1) terminate this agreement immediately by written notice to the Developers;
- (2) claim damages from the Developers; and/or
- (3) pursue such other remedies as are available to Council at law or in equity.

14.4 Limitation

Termination of this agreement does not prejudice the exercise of pre-existing rights of a party under this agreement.

15 Dispute resolution

15.1 Notification of dispute

- (1) If either party believe that there is a Dispute regarding the operation of this agreement then that party must give notice in writing to the other stating that there is a Dispute.
- (2) The notice referred to in paragraph (1) must outline:
 - (a) what the party believes the Dispute to be;
 - (b) what the party wants to achieve; and
 - (c) what the party believes will settle the Dispute.

15.2 Consultation between the representatives

Within fourteen (14) days of a notice served in accordance with clause 15.1 the representatives of each party must meet in order to resolve the Dispute.

15.3 Settlement of Dispute and mediation

If the Dispute cannot be resolved by the Representatives within twenty one (21) days of the notification under clause 15.1 then the Dispute must be submitted to mediation by a mediator selected:

- (1) by the parties; or
- (2) if the parties cannot agree on a mediator, by the President of the Australian Commercial Disputes Centre.

15.4 Exclusivity of dispute resolution procedure

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

16 Position of Council

16.1 The Developers acknowledgement

The Developers acknowledge that Council is a Consent Authority and the Roads Authority in respect of Pine Road.

16.2 No Fetter

This deed 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.

16.3 Severance of provisions

- (1) No provision of this agreement is intended to, or does, constitute any unlawful fetter on Council's powers as a statutory authority. 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 Council's powers, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 16.3 is substantially satisfied; and
 - (b) in the event that sub-clause (a) cannot be achieved without giving rise to an unlawful fetter on Council's powers, 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 statutory or other power at Law, then if the Council has in this agreement contracted out of a provision or exercised that power under this agreement, then to that extent this agreement is not to be taken to be inconsistent with the Law.

16.4 Transparency

- (1) 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 Council.
- (2) Council does not represent or warrant to the Developers that the Minister will grant the Minister's Approval.

17 Administrative provisions

17.1 Warranties

The Developers warrant that:

- (1) the execution and delivery of this agreement and any instrument referred or annexed to it has been properly authorised by all necessary action;
- (2) they have full power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed their obligations under this agreement;
- (3) this agreement constitutes a legal, valid and binding obligation on it; and
- (4) that the entry into and performance of its obligations under, and the transactions contemplated by, this agreement is for their commercial benefit and is in their commercial interest.

17.2 No assignment

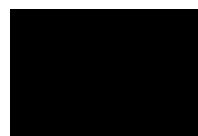
The Developers must not assign its benefit and/or obligations in this agreement or of any instrument or agreement incidental to it without the prior written consent of Council, which may be withheld in its absolute discretion.

17.3 Confidential Information

- (1) Subject to clause 16.2 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; and
 - (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 Information 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, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

17.4 Notices

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

17.5 Entire Agreement

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

17.6 Non merger

The warranties, conditions, covenants and other obligations in this agreement (and all other instruments annexed to, referred to, or executed in accordance with this agreement) which remain to be performed or a capable of having effect do not merge on and remain in full force and effect after this agreement ends unless expressly stated otherwise in this agreement.

17.7 Waiver

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

17.8 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 agreement and the rights and obligations of the parties under it.

17.9 Counterparts

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

17.10 Amendment

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

17.11 Unenforceability

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

17.12 Joint parties

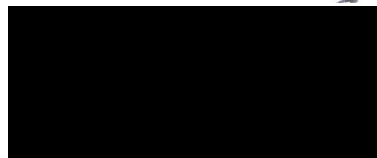
If two or more parties are included within the same defined term in this agreement:

- (1) a liability of those parties under this agreement is a joint liability of all of them and a several liability of each of them;
- (2) a right given to those parties under this agreement is a right given severally to each of them; and
- (3) a representation, warranty or undertaking made by those parties is made by each of them.

17.13 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*.

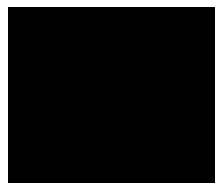
17.14 Power of attorney

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.
-

**Schedule 1:
Requirements under section 93F of the Act**

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application – (Section 93F(1))</p> <p>The Developers have:</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) No</p> <p>(b) Yes</p> <p>(c) No.</p>
<p>Description of land to which this agreement applies – (Section 93F(3)(a))</p>	<p>The land contained in certificate of title folio identifier 2/876487 and located at Pine Road, Casula.</p>
<p>Description of change to the environmental planning instrument to which this agreement applies – (Section 93F(3)(b))</p>	<p>Not applicable.</p>
<p>Application of section 94 of the Act – (Section 93F(3)(d))</p>	<p>Refer to clause 4.1.</p>
<p>Applicability of section 94A of the Act – (Section 93F(3)(d))</p>	<p>Refer to clause 4.1.</p>
<p>Consideration of benefits under this agreement if section 94 applies – (Section 93F(3)(e))</p>	<p>Refer to clause 4.2.</p>
<p>Mechanism for Dispute resolution – (Section 93F(3)(f))</p>	<p>See clause 15.</p>
<p>Enforcement of this agreement (Section 93F(3)(g))</p>	<p>See clauses 5, 13 and 14.</p>
<p>No obligation to grant consent or exercise functions – (Section 93F(3)(9))</p>	<p>See clause 16.</p>



Schedule 2: Defined terms and interpretation

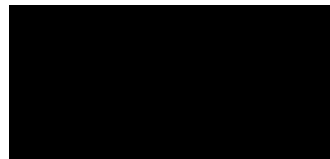
Part-1 – Definitions

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Claim	means a claim against any person any allegation, action, demand, cause of action, suit, proceeding, judgment, 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.
Closed Road	means that part of Pine Road identified on the Concept Plan as Area A and which is to be closed as a public road in accordance with this agreement.
Closed Road Works	means all works required to be completed as a result of the closure of the Closed Road including the construction of kerb and gutter, drainage, footpaths and line marking along that part of the Hume Highway extending along the Closed Road, including the works identified in Item A1.1 in the table attached as Annexure 2 .
Concept Plan	means the plan attached as Annexure 1 .
Confidential Information	means: <ol style="list-style-type: none">(1) financial information: information regarding costs, profits, markets, sales and other financial information;(2) business information: information regarding business relationships and strategies, development plans, marketing, product concepts, trade secrets and other business information the business of the disclosing party and the disclosing party's clients or third party suppliers;(3) personal information: any personal information relating to the officers (as defined in s 9 of the <i>Corporations Act 2001</i> (Cth)), partners, employees, agents, contractors or clients of the disclosing party;(4) information obtained through performance: all information which becomes known to a party as a consequence of it performing the obligations under this agreement including (without limitation) all records, documents, accounts, plans, specifications, price lists, customer lists, correspondence, photos and papers of every description relating to the disclosing party;(5) technical information: information regarding designs, development processes and tools, hardware specifications, know-how, production, research, software specifications, data bases and software developed or used by a party whether as owner or under licence from any person and other technical

information; and

- (6) **disclosed information:** any other information disclosed by a disclosing party that:
- (a) is identified as being confidential; or
 - (b) would be apparent to a reasonable person that such information was disclosed in confidence by the disclosing party.

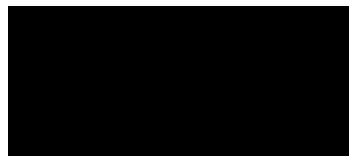
Consent Authority	means a "consent authority" as that term is defined in section 4 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Development	means the development of the Land in accordance with the Existing Development Consent.
Development Application	means the development application previously lodged by the Developers consent to which was granted under the Act under Council file No DA – 1320/2011.
Dispute	means a dispute in relation to this agreement or anything arising from it.
Encumbrance	means an interest or power: <ul style="list-style-type: none">(1) reserved in or over an interest in any asset;(2) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or(3) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation. Encumber means to grant an Encumbrance.
Existing Development Consent	means the existing development consent granted with respect to the Development and being consent No DA – 1320/2011.
Gazettal Notice	means a notice published in accordance with section 37 of the Roads Act with respect to the Closed Road.
Land	means the land contained in certificate of title folio identifier 2/876487 and located at Pine Road, Casula.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Minister	means the minister administering the Roads Act.
Minister's Approval	means notice of the Minister's unconditional approval to close the Closed Road as a public road in accordance with section 37 of the Roads Act.
Opened Road	means that part of the Land marked as C, C1, D1, D2 and D3 as shown on the Concept Plan.
Opened Road Section 1	means that part of the Opened Road marked C and C1 on the Concept Plan.



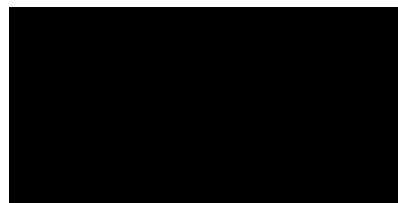
Opened Road Section 2	means that part of the Opened Road marked D1, D2 and D3 on the Concept Plan.
Opened Road Works	means the works to be undertaken so as to construct those parts of the Opened Road to allow those parts to be opened as a public road.
Opened Road Works Section 1	means the Open Road Works on that part of the Opened Road marked C on the Concept Plan.
Opened Road Works Section 2	means the Open Road Works on that part of the Opened Road marked C1, D1, D2 and D3 on the Concept Plan.
Pine Road Deviation Section	means that part of Pine Road identified as the "Pine Road Deviation" and marked B in the Concept Plan.
Pine Road Deviation Works	means all works required to be undertaken to Pine Road in anticipation of the closure of the Closed Road in accordance with this agreement, including the works identified in Items A1.2 and A1.4 in Annexure 2 .
Plan of Subdivision	means a plan of subdivision of that part of the Land which creates the following three (3) areas identified in the Concept Plan as separate lots: <ul style="list-style-type: none"> (1) the Opened Road Section 1; (2) the Opened Road Section 2; and (3) the residual land owned by the Developer.
Roads Act	means the <i>Roads Act 1993</i> (NSW).
Roads Authority	has the meaning ascribed to that term in Section 7 of the Roads Act.
Road Closure Plan	means the plan in registrable form prepared by Council which identifies the Closed Road as a separate lot.

Part 2 - Interpretational rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.
variations or replacements	a document (including this agreement) includes any variation or replacement of it.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes



	(including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.
agreement	a reference to any agreement, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time.
gender	a reference to one gender extends and applies to the other and neuter gender.



**Schedule 3:
Terms of Licence**

1 Licence

1.1 Grant of the Licence

The Developers grants a licence to Council its agents, employees or contractors of the relevant part of the Land (**Licence**) for the term of this Licence.

1.2 Personal rights

- (1) The Licence is personal to Council.
- (2) Council may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Developers at their absolute discretion.

1.3 No Leasehold interest

- (1) This Licence does not grant to Council a leasehold interest in the Land.
- (2) Council does not have any right to quiet enjoyment of the Land.

2 Limitation of the Developer's liability

2.1 Risk

Council uses and occupies the Land at its own risk.

2.2 Indemnity

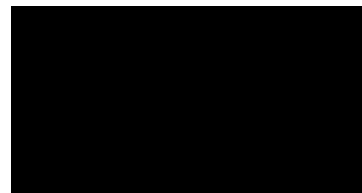
Council indemnifies the Developer's against any Claim (of whatever nature) made in respect of Council's use and occupation of the Land except that Council's obligation to indemnify the Developers under this clause 2.2 will be reduced proportionally to the extent that any Claim arises from or in connection with an act or omission of the Developers, its agents, employees or contractors.

2.3 Public liability insurance

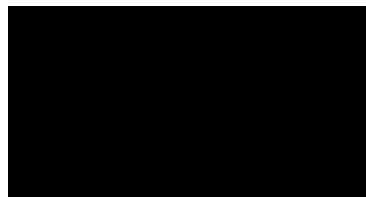
Council must, in relation to its access to the Land, maintain a policy of public liability insurance for an amount being not less than twenty million dollars (\$20,000,000) in respect of liability for:

- (1) personal injury or death of any person; and
- (2) loss of or damage to property,

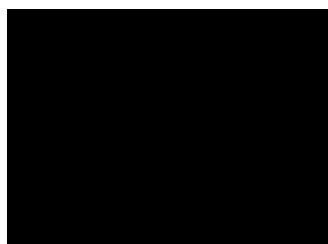
in respect of a single occurrence in relation to the use of the Land.



Annexure 1
Concept Plan



Annexure 2
Table of Works



List of Works for the Pine Road Deviation and the Closed Road

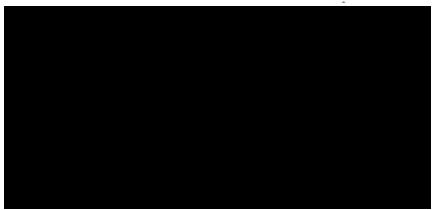
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- 1 Ingham Drive shall be orientated to Hume Highway in accordance with the Brown Consulting plan attached
- 2 The road works to be designed and to include kerb and gutter, footpath formation, drainage, pavement construction, sealing and service adjustments in accordance to Council's design and construction specifications and to the satisfaction of the Roads Authority
- 3 The closure of the section of Pine Road between the Hume Highway and the driveway of the BP Service Station as indicated on the Brown Consulting plan
- 4 Kerb and Gutter construction will be required over the section of Road to be closed and shall match and make good into existing kerb and gutter. All works on the Hume Highway shall be approved by the Roads & Maritime Services (RMS)
- 5 The right turning bay/area onto Pine Road from the Hume Highway shall be removed as shown on the Brown Consulting Plan. These works on the Hume Highway will be approved by the RMS
- 6 The works shown for the Pine Road Deviation on the Brown Consulting plan will be completed to the satisfaction of Council. These works will include extending the kerb and gutter, removal of the section currently jutting out on Pine Road and the construction of new road paving

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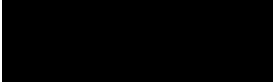


Execution page

Executed as an agreement

Dated: 14/1/2015

Executed by Liverpool City Council by its duly constituted Attorney CARL WULFF pursuant to the registered Powers of Attorney Book No 791 in the presence of:



Witness (Signature)

Teresa Wilson

Name of Witness (Print Name)



Attorney (Signature)

CARL WULFF

Name of Attorney (Print Name)

Executed by Jim Ho Shon, Elsa Therese Ho Shon and Tom Ho Shon and in the presence of:



Witness (Signature)

YUEK PING JUN

Name of Witness (Print Name)



Jim Ho Shon



Elsa Therese Ho Shon



Tom Ho Shon