

GAZCORP

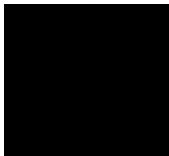
9th October, 2015

Lina Kakish
Manager Development Assessment
Liverpool City Council
Locked Bag 7064
LIVERPOOL NSW 2170

Dear Ms Kakish,

Please find attached the executed copies of the Voluntary Planning Agreement as requested for DA-920/2012.

Yours faithfully,
GAZCORP PTY LTD.



Nicholas Gazal
DIRECTOR.

Planning Agreement

5 Viscount Place, Warwick Farm

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

Gazcorp Pty Ltd (ABN 41 001 696 073) (**Developer**)

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Planning Agreement

5 Viscount Place, Warwick Farm

Parties

Council	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	gm@liverpool.nsw.gov.au
	Representative / Contact	Lina Kakish , Manager Development Assessment, Planning & Growth
Developer	Name	Gazcorp Pty Ltd
	Address	Suite 1, Level 2 230 Victoria Road Gladesville NSW 2111
	ABN	41 001 696 073
	Telephone	(02) 9817 7488
	Facsimile	(02) 9879 0341
	Email	nabiljnr@gazcorp.com, NicholasG@gazcorp.com
	Representative / Contact	Nabil Gazal Jnr, and/or Nicholas Gazal

Background

- A** The Developer owns the Land and proposes to undertake the Development.
- B** The Developer made an application to the Council for the Instrument Change so as to enable an application to be made to the Council for the Development Consent. The Instrument Change has occurred.
- C** The Developer acknowledges that once the Development is 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 C above, the Developer has offered to make the contributions for the Development on the terms set out in this deed.

Operative provisions

1 Definitions and interpretation

1.1 Defined terms

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

1.2 Interpretation

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

2 Application and operation of deed

2.1 Application

This deed applies to both the Land and the Development.

2.2 Operation

- (1) This document operates as a deed from the date that it is formed.
- (2) This document operates as a planning agreement:
 - (a) within the meaning set out in s93F of the Act, the requirements of that section being set out in Part 2 of **Schedule 1**; and
 - (b) governed by Subdivision 2 of Division 6 of Part 4 of the Act,
from the later of the date that:
 - (c) it is entered into in accordance with the Regulation;
 - (d) the Minister administering the Act causes the Instrument Change to be published on the NSW legislation website in accordance with section 34 of the Act; and
 - (e) the Development Consent is granted.

3 Application of s94 and s94A

3.1 Sections 94 and 94A

This deed excludes the application of section 94 and section 94A of the Act to the Development.

3.2 Section 94EF

This deed does not exclude the application of section 94EF of the Act to the Development.

4 Monetary Contributions

4.1 Contribution

- (1) The Developer must pay the Monetary Contribution to Council in accordance with the timing specified in **Schedule 3**.
- (2) The Monetary Contribution must be paid to the Council by way of bank cheque or direct deposit into a bank account nominated by the Council.
- (3) The Monetary Contribution will be made for the purposes of this deed when the Council receives a record that cleared funds have been deposited into a bank account nominated by the Council.
- (4) The parties agree and acknowledge that the Monetary Contribution is made for the public purposes identified in **Schedule 3**.

5 Indexation of amounts in this deed

5.1 Indexation

The Monetary Contribution will be indexed in accordance with the following formula:

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

where:

- A** = the indexed amount of the Monetary Contribution;
- B** = the Monetary Contribution as set out in this deed;
- C** = the Index most recently published before the date that the Monetary Contribution is paid; and
- D** = the Index current as at the quarter immediately preceding the date of this deed.

5.2 Timing of indexation

For the purpose of clause 5.1, each component of the Monetary Contribution is indexed as at the date it is paid to Council.

6 Developer warranties and indemnities

6.1 Warranty

The Developer warrants to Council that:

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

7 Determination of this deed

7.1 Satisfaction of obligations

This deed will determine upon the Developer paying the Monetary Contribution to Council in full in accordance with this deed.

8 Bank guarantee and caveat

8.1 Ownership

The Developer represents and warrants to the Council that on the date of this deed it is the legal owner of the Land and holds the Land in its capacity as registered proprietor.

8.2 Bank Guarantee

- (1) On or within 5 Business Days of the date of this deed, the Developer must provide the Bank Guarantee to Council as security for the performance of the Developer's obligations under this deed.
- (2) If the Developer does not comply with its obligation to pay the Monetary Contribution under this deed, then Council may, after giving the Developer no less than 10 Business Days' notice of the default, call on all or part of the Bank Guarantee and apply the proceeds as its own property in order to recover Council's loss arising from the failure to pay the Monetary Contribution.
- (3) When the Developer has paid the Monetary Contribution to Council in full in accordance with this deed, Council must promptly (and in any event within 10 Business Days) do all acts and things necessary to return the Bank Guarantee to the Developer.

8.3 Caveat

- (1) Subject to the Developer providing the Bank Guarantee to Council in accordance with clause 8.2, Council agrees that it will not lodge or attempt to lodge a caveat against the title of the Land in respect of Council's interest under this deed.
- (2) If the Developer defaults in its obligation to provide the Bank Guarantee, the parties acknowledge and agree that:
 - (a) when this deed is executed by the Developer, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge with the LPI a caveat notifying that interest;
 - (b) the Development Consent predominantly relates to the land comprised in folio identifier 23/1190437, and contemplates the use of part of the land comprised in folio identifier 101/1043160 for ancillary purposes only;
 - (c) despite its rights under clause 8.3(2)(a), Council agrees that any caveat lodged by it will relate only to the land comprised in folio identifier 23/1190437; and
 - (d) for so long as the Developer is in default of its obligation to provide the Bank Guarantee, the Developer will not object to the Council lodging a caveat against folio identifier 23/1190437 nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.

The Council must, at the Developer's cost, register at the LPI a withdrawal of any caveat lodged by Council under clause 8.3(2) within 20 Business Days after the Developer has paid the Monetary Contribution to Council and must not lodge any other caveats on the titles to any of the Land.

9 Assignment

9.1 Prohibition

The Developer must not Assign its rights under this deed without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).

9.2 Assignment of Land

The Developer must not Assign the whole or any part of its interest in the Land unless:

- (1) the Developer satisfies the Council, acting reasonably, that the proposed Assignee is financially capable of complying with the Developer's obligations under this deed;

- (2) the rights of the Council are not diminished or fettered in any way;
- (3) the Council consents to the Assignment, acting reasonably;
- (4) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land (or part of it) is to be Assigned, of a deed in favour of the Council binding the relevant Assignee to the terms of this deed as if a reference in this deed to the Developer was a reference to the Assignee; and
- (5) any default by the Developer has been remedied by the Developer or waived by the Council;
- (6) the Developer and the Assignee pay the Council's reasonable costs in relation to the Assignment.

10 Provision of Security

10.1 Construction Certificate

For the purposes of section 109F(1) of the Act and clause 146A of the Regulation the Developer must pay the Monetary Contribution to the Council in accordance with this deed prior to the issue of any Construction Certificate for the Development or any part of the Development.

10.2 Security

Council acknowledges that:

- (1) the restrictions on assignment of the Land under **clause 9**;
- (2) the requirement under **clause 10.1** for the Monetary Contribution to be paid prior to the issue of any Construction Certificate for the Development, and
- (3) the provision of a Bank Guarantee in the form set out in **Annexure 5** of this deed;

constitute adequate security for the purposes of this deed and section 93F(3)(g) of the Act.

10.3 Enforcement by any party

- (1) Without limiting any other remedies available to the parties, this deed may be enforced by any party in any court of competent jurisdiction.
- (2) Nothing in this deed prevents:
 - (a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this deed or any matter to which this deed relates; and
 - (b) the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this deed or any matter to which this deed relates.

11 Review and amendment

11.1 Review

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

11.2 Amendment

If the parties agree to amend this deed as a result of a review conducted under this **clause 11** then any such amendment must be made:

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

12 Dispute resolution

12.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this deed 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.
- (2) The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the dispute (the representatives designated by the Parties being together, the **Representatives**).
- (3) Notwithstanding **clause 12.1(2)**, if it is necessary for the Council to meet and pass a resolution to appoint a Representative, the Council will not be required to provide the notice under that clause until 5 Business Days after the Council has met and resolved to appoint a person as the Representative.

12.2 Conduct pending resolution

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

12.3 Further steps required before proceedings

Subject to **clauses 12.14 and 12.15** and except as otherwise expressly provided in this deed, 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 12.5** or determination by an expert under **clause 12.6**, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days.

12.4 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 12.5** or expert resolution under **clause 12.6**.

12.5 Disputes for mediation

- (1) If the parties agree in accordance with **clause 12.4** 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 **clause 12.5(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 12.6**.

12.6 Choice of expert

- (1) If the parties agree to have the matter determined by expert determination, this **clause 12.6** applies.
- (2) The dispute must be determined by an independent expert in the relevant field:
 - (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of agreement within five (5) Business Days after the date that the parties agree to have the matter determined by expert determination, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.

- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the parties agree to have the matter determined by expert determination, either party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a dispute must:
 - (a) have a technical understanding of the issues in dispute;
 - (b) not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) inform the Parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into an agreement with the expert appointed under this **clause 12.6** setting out the terms of the expert's determination and the fees payable to the expert.

12.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under **clause 12.6**, 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:
 - (a) act as an expert and not as an arbitrator;
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both parties are present;
 - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within the time period specified by the expert, give the expert:
 - (a) a short statement of facts;
 - (b) a description of the dispute; and
 - (c) any other documents, records or information which the expert requests.

12.8 Expert may commission reports

- (1) Subject to **clause 12.8(2)**:
 - (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
 - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with **clause 12.6(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.

12.9 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 **clause 12.9(1)** is not a hearing and is not an arbitration.

12.10 Other courses of action

If:

- (1) The parties cannot agree in accordance with **clause 12.4** to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in **clause 12.5** 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.

12.11 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 **clause 12.11(1)(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 a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the dispute;

- (b) admissions or concessions made by a party during the mediation or expert determination in relation to the dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

12.12 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.

12.13 Costs

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

12.14 Remedies available under the Act

This **clause 12** does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the Act.

12.15 Urgent relief

This **clause 12** does not prevent a party from seeking urgent injunctive or declaratory relief.

13 Position of Council

13.1 Consent authority

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

13.2 Agreement does not fetter discretion

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 or discretion, (Discretion).

13.3 Severance of provisions

- (1) No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed 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 13** is substantially satisfied; and
 - (b) in the event that clause 13.3(1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this deed has full force and effect.
- (2) Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this deed contracted out of a provision or exercised a Discretion under this deed, then to that extent this deed is not to be taken to be inconsistent with the Law.

13.4 No obligations

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

14 Confidentiality

14.1 Agreement not Confidential

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

14.2 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 deed;
 - (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this deed; and
 - (c) subject to **clauses 14.2(2) and 14.2(3)**, each party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this deed 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 deed 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.

15 GST

15.1 Defined GST Terms

Defined terms used in this **clause 15** have the meaning ascribed to them in the GST Law.

15.2 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 deed, 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 deed are exclusive of GST.

15.3 GST Obligations to Survive Termination

This **clause 15** will continue to apply after expiration or termination of this deed.

16 Miscellaneous

16.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to the rights and obligations of the parties set out in this deed;

- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of it;
- (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 deed; and
- (4) be just and faithful in its activities and dealings with the other parties.

16.2 Legal costs

- (1) The Developer agrees to pay the Council's legal costs and disbursements in connection with the:
 - (a) negotiation, preparation, execution, and stamping of this deed; and
 - (b) ongoing administration of this deed.
- (2) The parties acknowledge and agree that the Monetary Contribution has been calculated to include the Council's legal costs and that payment of the Monetary Contribution specified in item 2 of **Schedule 3** by the Developer to the Council will satisfy the obligation under 16.2(1).

17 Administrative provisions

17.1 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;
 - (c) transmitted by facsimile to that person's address; or
 - (d) emailed to the person's email address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting;
 - (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; and
 - (d) if sent by email to a person's email address before close of a business day, then on the day of delivery at that person's email address 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.

17.2 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 deed.

17.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any

other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

17.4 Cooperation

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

17.5 Counterparts

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

17.6 Amendment

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

17.7 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.

17.8 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
- (2) the death of the grantor.

17.9 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*.
-

Schedule 1

Part 1 – Commercial details

Land	<ul style="list-style-type: none">• Lot 23 in Deposited Plan 1190437 (formerly Lot 121 in Deposited Plan 876962); and• Part Lot 101 in Deposited Plan 1043160 as shown on the plan attached as Annexure 1 .
Draft LEP	An amendment to the Liverpool Local Environmental Plan 2008 proposed by the Developer seeking to rezone the Land to allow for retail premises operating as retail outlets

Part 2 - 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 Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</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 the development to which the agreement applies– (Section 93F(3)(b))</p>	<p>Use and fit out of an existing building for the purpose of a retail centre (operating as a discount retail outlet centre); construction of a new car park; and ancillary site works. See the definition of Development in Schedule 2.</p>
<p>Nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made – (Section 93F(3)(c))</p>	<p>See Schedule 3 for the nature and extent of the provision to be made and the time by which the provision is to be made.</p> <p>See clauses 4.1(2) and 4.1(3) for the manner by which the provision is to be made.</p>
<p>Application of section 94 of the Act – (Section 93F(3)(d))</p>	<p>Section 94 of the Act is excluded from the proposed development. See clause 3.</p>
<p>Applicability of section 94A of the Act – (Section 93F(3)(d))</p>	<p>Section 94A of the Act is excluded from the proposed development. See clause 3.</p>
<p>Applicability of section 94EF of the Act – (Section 93F(3)(d))</p>	<p>Section 94EF is not excluded from the proposed development. See clause 3.</p>
<p>Mechanism for Dispute resolution – (Section 93F(3)(f))</p>	<p>See clause 12.</p>
<p>Enforcement of this deed (Section 93F(3)(g))</p>	<p>See clause 10.</p>
<p>No obligation to grant consent or exercise functions – (Section 93F(9))</p>	<p>See clause 13.</p>

Schedule 2 Defined Terms And Interpretation

Part 1 - Definitions

Act	means the <i>Environmental Planning & Assessment Act 1979</i> (NSW).
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Bank Guarantee	Means the bank guarantee for the amount of AUD\$100,000 provided by the Developer in favour of Council, set out in Annexure 5 .
Business Day	means any day except for a Saturday or Sunday or a day which is a public holiday in Sydney.
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ol style="list-style-type: none">(1) is by its nature confidential;(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);(3) any party knows or ought to know is confidential; or(4) is information which may be reasonably considered to be of a confidential nature.
Construction Certificate	has the same meaning as in section 109C of the Act.
Development	means the use of the existing building on Lot 23 in Deposited Plan 1190437 (formerly Lot 121 in Deposited Plan 876962) No. 5 Viscount Place as a retail centre (operating as a discount retail outlet centre) with fit-out to create retail tenancies; construction of a new car park; line-marking of the existing car park; and improvements to the existing private roads partly on Lot 23 in Deposited Plan 1190437 and partly on Lot 101 in Deposited Plan 1043160 No. 5 Viscount Place; partly on land identified in the development application as Lot 201 DP 268862 but correctly described as part Lot 1 in Deposited Plan 1088280 No. 14 Homepride Avenue; and partly on Lot 2 DP 1088280 No. 12 Homepride Avenue.
Development Application	means development application number DA-920/2012 for the Development.
Development Consent	means any development consent issued under the Act to the

	Development Application.
Development Contribution	means the Monetary Contribution.
Draft LEP	means the "Draft LEP" set out in Schedule 1 .
GST Law	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other act or regulation relating to the imposition or administration of the GST.
Index	means the Consumer Price Index All Groups for Sydney published by the Australian Bureau of Statistics or, if that index is no longer published, its closest substitute.
Instrument Change	means the making of the Draft LEP.
Land	means the "Land" set out in Schedule 1 .
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
LEADR	means LEADR - Association of Dispute Resolvers (see www.leadr.com.au).
Legislation	means the Act and the <i>Local Government Act 1993</i> (NSW).
Monetary Contribution	means a monetary contribution in the amount of \$100,000.00, indexed in accordance with clause 5 and payable in accordance with clause 4 and Schedule 3 .
Occupation Certificate	has the meaning given to that term in the Act.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW)

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 deed.
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 deed 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 clauses) are for convenience only and do not affect the interpretation of this deed.
deed	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
Calculation of Monetary Contributions**

Item No.	Public Purpose	Timing of Payment	Total Amount
1.	Contribution toward the Liverpool Town Improvement Fund.	Prior to the issue of any Construction Certificate for the Development or part of the Development.	\$95,000
2.	Administration. Contribution towards administration of contributions including legal costs associated with the preparation, negotiation, execution and ongoing administration of this deed.	On execution of this deed.	\$5,000.00
Total Monetary Contribution			\$100,000.00

PLAN FORM 2
LOCAL PLAN AND ROAD PLAN

DP1043160
12-22-2009

CA
WEST GERRHYTE
The Owners
TERRIENS
SUBDIVISION

Prop. Name
U-5146-71, U-9146-72
Lot Plan
DP 87896Z

PLAN OF SUBDIVISION OF LOT 101 IN DP8794Z

1. OWNER'S NAME OF PROJECT: Terris/David S. Webb

LOCAL AUTHORITY: LINCOLN

SUBDIVISION: WARRICK FARM

TOWN: STURGE

COUNTY: CUMBERLAND

Scale: 1" = 100'

Project Description: See local plan DP 87896Z

Map Sheet: U-5146-71, U-9146-72

Plan No.: DP 87896Z

Plan Name: U-5146-71, U-9146-72

Lot Plan: DP 87896Z

PLAN OF SUBDIVISION OF LOT 101 IN DP8794Z

Comments:

1. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

2. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

3. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

4. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

Local Plan DP 87896Z:

1. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

2. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

3. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

4. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

Local Plan DP 8794Z:

1. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

2. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

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4. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

Local Plan DP 8794Z:

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4. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

Local Plan DP 8794Z:

1. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

2. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

3. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

4. APPROVED FOR THE PURPOSES OF LOCAL PLAN DP 87896Z AND FOR THE PURPOSES OF LOCAL PLAN DP 8794Z.

Annexure 2 - Extract of Development Application Form



Customer Service Centre
 Level 2, 33 Moore Street, Liverpool NSW 2170
 Locked Bag 7064, Liverpool NSW 1871
 DX 5030, Liverpool NSW
 Phone: 1300 362 170 NRS: 133 677
 Fax: (02) 9821 9333
 Email: lcc@liverpool.nsw.gov.au

DACC	
Office use only	
Property Key:	57619
Development Application No.	DA - 920/2012
Construction Certificate No.	
Complying Certificate No.	
Subdivision Certificate No.	

ALL SECTIONS IN WHITE, INCLUDING CHECKLIST MUST BE FULLY COMPLETED

1. What type of application are you making?

APPLICATION FOR DEVELOPMENT MADE UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 SEC 78A
 Please tick appropriate box(es).

- Development Application (See Section 1.1)
- Construction Certificate - Building (See Section 1.2)
- Construction Certificate - Engineering (See Section 1.4)
- Subdivision Certificate (See Section 1.10)
- Complying Development Certificate (See Section 1.3)

NE 28/3/12

- SEPP
- Do you wish Council to be appointed as Principal Certifying Authority (PCA)? (See Section 1.9) Yes No
- (If yes, owner/s please complete & attach PCA Agreement form)
- Are you applying for a consent which will have a "Deferred Commencement" date? Yes No
- Are you applying for development consent in "Stages"? (If yes please attach staging plan) Yes No
- Has a Pre-lodgement meeting been held with Council? Yes No

If Yes, name of officer: _____ Date: _____

2. What is the address of the property on which the work is to be carried out?

House/Shop/Unit No.	Lot	(Section) (if known)	Deposited Plan (DP) OR Strata Plan (SP) (if known)	Office Use Only
5	Lot 10 DP 8764 62	Part of DP 8764 62	Lot 10 DP 8764 62	<input checked="" type="checkbox"/>
Street <u>Viscount Place</u>			Suburb <u>Warwick Farm</u>	

3. What work do you propose to carry out?

<input checked="" type="checkbox"/> change use of land/building	Proposed Work: <u>INTERNAL FIT OUT TO CREATE TRAINING AND STORAGE ROOMS</u> <u>RE-CONSTRUCTION OF EXISTING GARAGE AND CONSTRUCTION OF A NEW CAR PARK AREA</u> Proposed Use: <u>RETAIL PREMISES (FACILITY ROOMS OVER GARAGE)</u> Type of Subdivision (if applicable): <u>N/A</u>	<input checked="" type="checkbox"/>
<input type="checkbox"/> subdivision of land/building		
<input type="checkbox"/> demolish a building		
<input type="checkbox"/> erection of a building		
<input type="checkbox"/> signage		
<input type="checkbox"/> other		

4. What is the construction/work cost for this proposal?

Contract price of works (incl. labour & materials):	\$ <u>2,165,000 (inc GST)</u>	Floor Area (m ²):	<u>14,455 m²</u>	<input checked="" type="checkbox"/>
OR Council valuation of work (refer 1.12)				

5. Applicant - details of person applying for approval

Company (if applicable)	<u>Gazco Pty Ltd</u>		
Mr/Mrs/Ms Surname(s)	_____		
First Name(s)	_____		
Address	<u>P.O. Box 732 Gladstone NSW</u>		Postcode <u>2111</u>
Phone Business	<u>9817 7400</u>	Mobile	Home
Email	<u>nick@gazco.com.au</u>	Fax	<u>9874 0344</u>
Date	_____		
Signature(s)	_____		
(or person signing on behalf of company - please attach written authority)	_____		

6. Agreement of Owner/s - This section must be fully completed and signed by all owner/s

Company (if applicable)	<u>Gazco Pty Ltd</u> - Refer to <u>Attaching Letter</u>		
Mr/Mrs/Ms Surname(s)	_____		
First Name(s)	_____		
Address	<u>Suite 1, Level 2, 230 Victoria Road, Gladstone NSW</u>		Postcode <u>2111</u>
Phone Business	<u>9817 7400</u>	Mobile	Home
Email	<u>nick@gazco.com.au</u>	Fax	<u>9874 0344</u>
Date	_____		
Name(s) (please print)	<u>GERALD AYOUB</u>		
Signature of owner(s)	_____ <u>see attached letter</u>		

7. Describe existing development

a. What building(s) are currently on the land? (eg If land is vacant – state vacant or dwelling, shop, factory etc) Office Use Only

WEEKEND MANAGER, FACTORY UNITS

b. Is the land contaminated or potentially contaminated? Yes No
(See 1.19, 1.20, 1.21, 1.22, 1.23 on explanation sheet for further information)

c. Does the land contain any of the following?

Yes (If yes to any of these, please tick)

Environmentally Significant Land Bushland Archaeological Significance

Threatened Species No (If no, go to Question 8) Critical Habitat Heritage Item

8. Integrated Development

Does the development require any other approvals or licences from other government bodies?
(See 1.6 on explanation sheet for further information)

Yes (If yes, additional fees and plans will be required to be submitted for referral to the government body)

Name of Government Body/Act

No (If no, go to Question 9)

9. Additional Approvals

Does the development require any additional approvals Under Section 68 of the Local Government Act?
(See 1.7 on explanation sheet for further information)

Yes (If yes to any of these, separate forms are available at the counter) No (If no, go to Question 10)

Stormwater drainage work Temporary structure

Moveable dwelling, manufactured home Septic Tank, waste treatment system

Operate amusement devices Solid fuel heating

Operate a caravan park Tower Crane

Other (Specify)

10. Conflict of Interest

Is the applicant/owner of this application an employee/councillor of Liverpool City Council or have a relationship to any staff, which may present a conflict of interest? Yes (If yes, this conflict of interest must be disclosed) No

11. Development proposals and donations or gifts

Have you or anyone with a financial interest in this Development Application made a political donation or gift to any relevant party or person in the last 2 years?

Yes (If yes, please complete disclosure statement) No

12. Commercial/Industrial/Other Uses – Operating Details (if applicable)

No. of Shops/Offices <u>02 TRAVELERS</u>	No. of off-street parking spaces <u>500 CAR SPACES</u>
No. of employees (at present)	No. of employees (proposed)
Existing floor space <u>14,455m²</u> (m ²)	Proposed Hours of Operation (attach details)
Plant and machinery to be installed (attach details) <u>TRUCKY LIFTING AND CRANES</u>	
Type, size and quantity of goods to be made, stored or transported (attach details) <u>N/A</u>	
Loading and unloading facilities (attach details) <u>EX-SITU CRANES NEXT TO SOUTH OF BUILDING</u>	
Intended methods of waste disposal and control of emissions (attach details) <u>DELIVER WITH CONTAINERS</u>	

13. Release of approved application

Would you like your assessed application to be:
(Please tick)

Posted OR

Held for collection at Council

To be completed when collecting

Collected: _____

Date: _____

(Authority to collect - if applicable)

14. Issue of Construction Certificate/Complying Development Certificate - (if applicable)

Do you require Council to issue the Construction Certificate/Complying Development Certificate?
(See 1.2, 1.3 on explanation sheet for further information)

Yes (If yes, complete following details) No

Builder/Owner Builder Details and Signature/s

Company (if applicable)

Mr/Mrs/Ms Surname(s) _____ First Name(s) _____

Address _____ Postcode _____

Phone Business _____ Mobile _____ Home _____

Email _____ Fax _____ Date _____

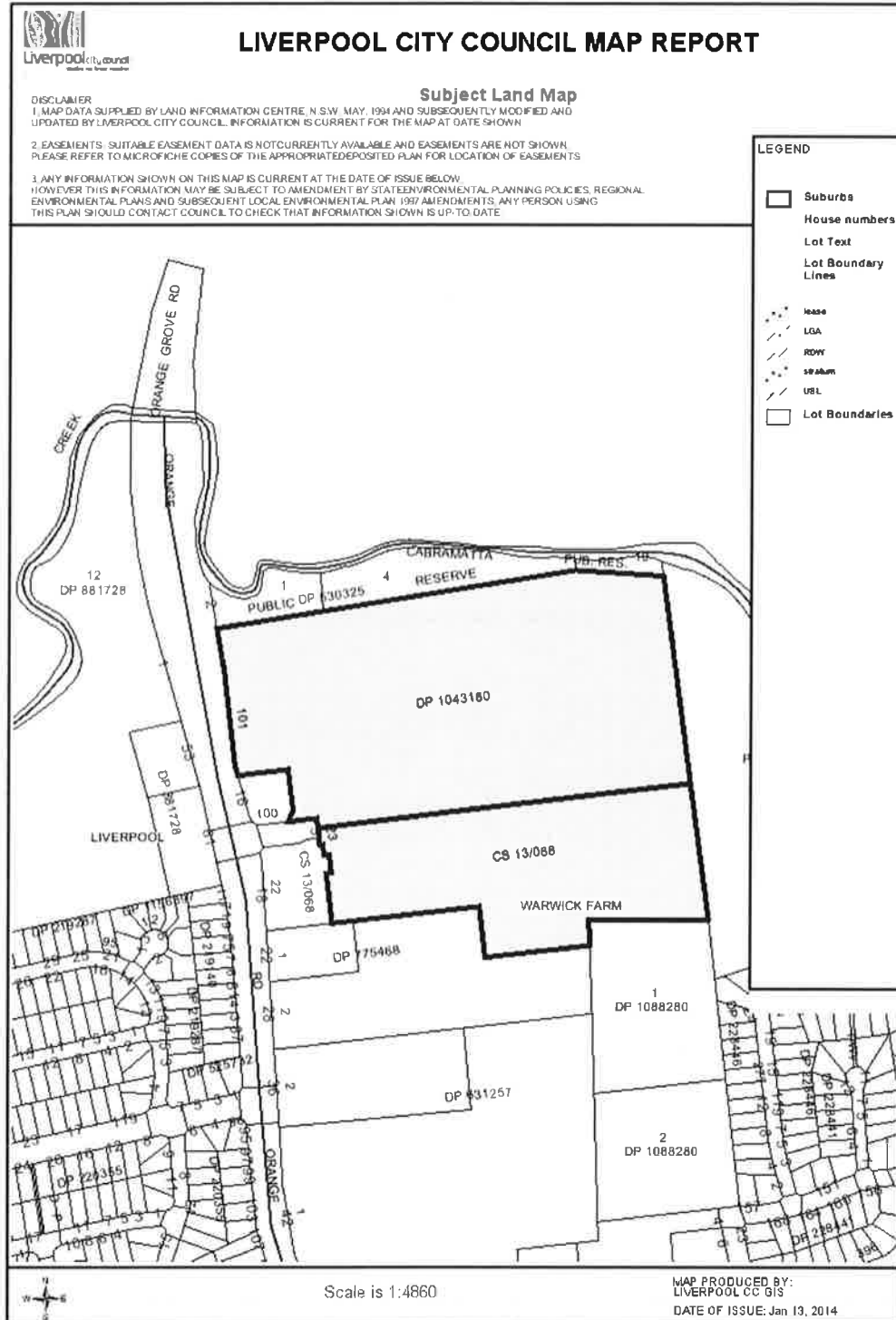
Licence No. _____ Owner/Builder Permit No. _____

Signature(s)
(or person signing on behalf of company – please state in what capacity)

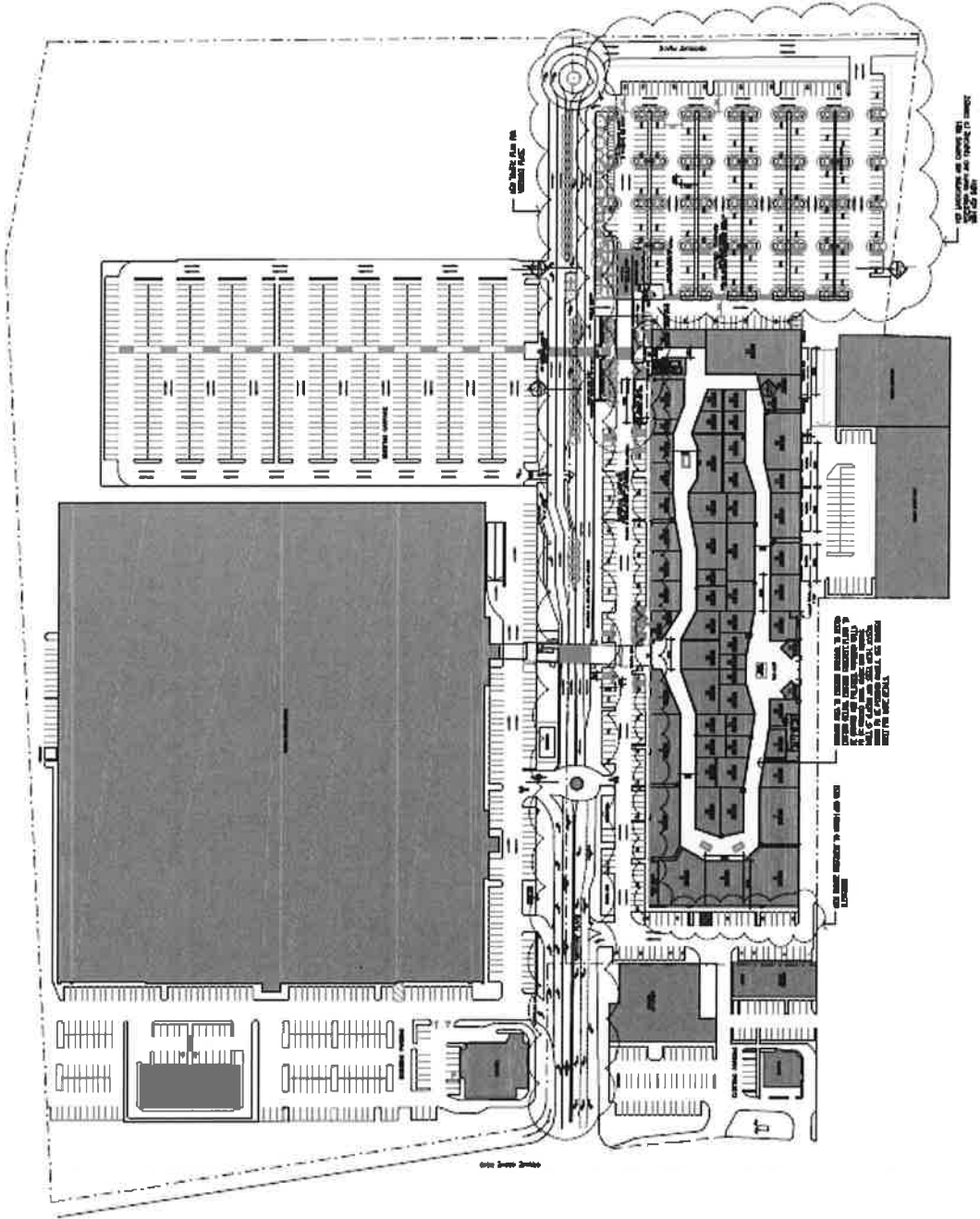
Construction Materials Used: eg (Walls-brick veneer/Roof-concrete tiles/Floor-concrete/Frame-timber)

Walls _____ Roof _____ Floor _____ Frame _____

Annexure 3 - Subject Land Map

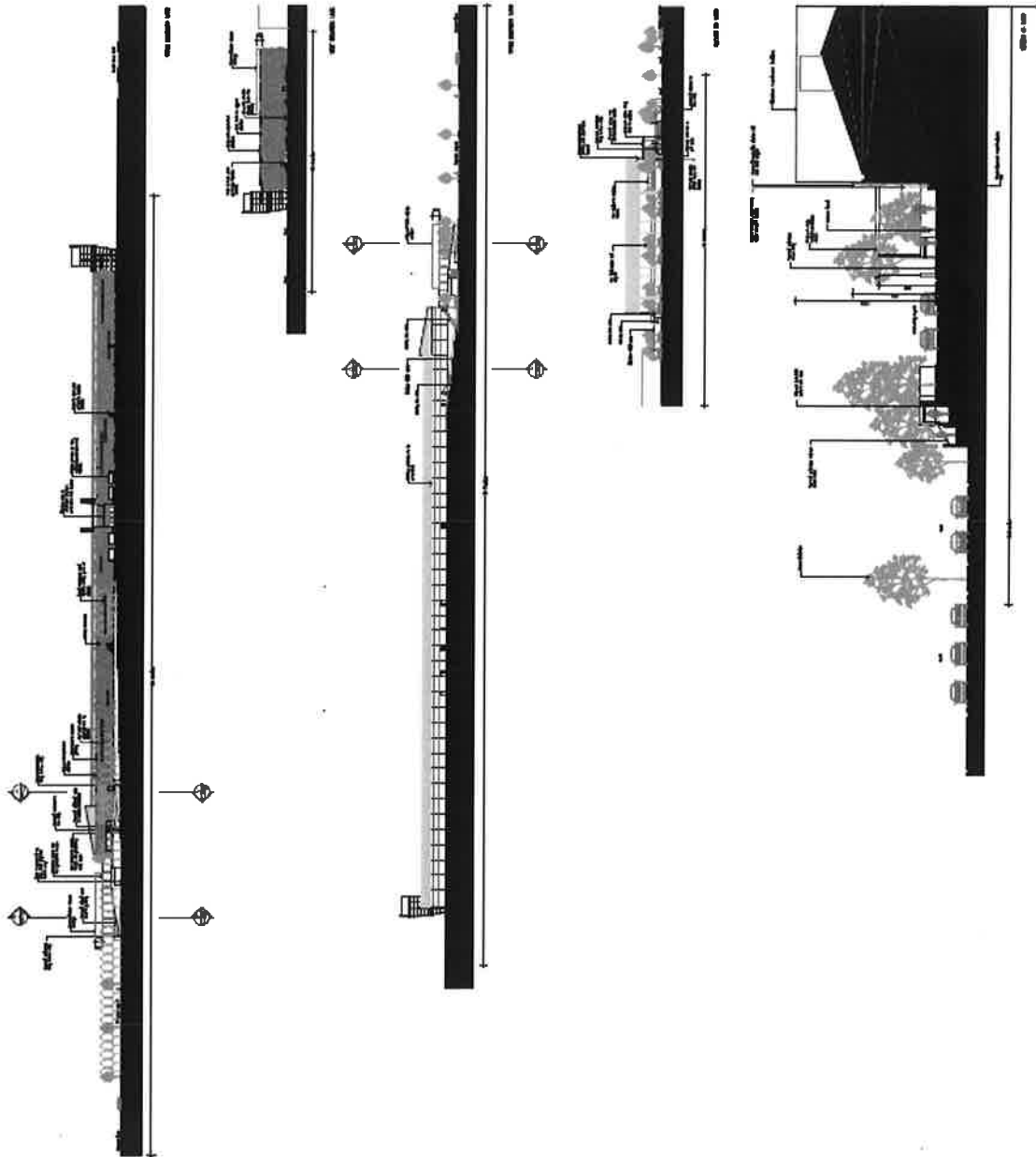


Annexure 4 - Extract of Development Plans



DATE: _____
BY: _____
FOR: _____
PROJECT: _____
SHEET NO. _____
TOTAL SHEETS _____
SCALE: _____
DRAWN BY: _____
CHECKED BY: _____
APPROVED BY: _____
DATE: _____

PROJECT: _____
 SHEET NO. _____
 TOTAL SHEETS _____
 SCALE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 APPROVED BY: _____
 DATE: _____



Annexure 5 - Bank Guarantee

National Australia Bank Limited ("Bank")
ABN 12 004 044 937

Bank Guarantee

Details

A. Beneficiary

Name 1

LIVERPOOL CITY COUNCIL
A.C.N./A.R.B.N./ABN 84 181 182471

Address 1

38 MOORE STREET
LIVERPOOL NSW 2170

Name 2

A.C.N./A.R.B.N./ABN

Address 2

B. Customer

Name 1

GAZCORP PTY LIMITED
A.C.N./A.R.B.N./ABN 41 001 696 073

Address 1

SUITE 1, LEVEL 2, 230 VICTORIA ROAD
GLADESVILLE NSW 2111

Name 2

A.C.N./A.R.B.N./ABN

Address 2

C. Outlet (of Bank)

CORPORATE PROPERTY NSW
LEVEL 22, 255 GEORGE STREET, SYDNEY NSW 2000

D. Agreement (Insert short description of agreement between Beneficiary and Customer giving rise to guarantee, including any identifying number, contract or reference number. Note, where item No. 2 of the Details section of the Indemnity for Bank Guarantee has been completed, this description must match Agreement in that section.)

PERFORMANCE OF PLANNING AGREEMENT FOR 5 VISCOUNT PLACE, WARWICK FARM, BETWEEN LIVERPOOL CITY COUNCIL AND
GAZCORP PTY LIMITED DATED 2013

E. Amount (Insert total amount of guarantee and currency in which it is to be paid)

Amount \$100,000.00 Currency of AUSTRALIA

Amount in words

ONE HUNDRED THOUSAND DOLLARS

F. Termination Date (If appropriate, insert latest date guarantee will be in force, otherwise delete.)

30 JUNE 2018

Terms printed in bold in the Details have the same meaning in the Provisions below where those terms commence with a capital letter.

Provisions

To: The Beneficiary

1. In consideration of the Beneficiary agreeing at the request of the Customer and the Bank to accept this guarantee in connection with the Agreement, the Bank undertakes to pay the Beneficiary an amount or amounts not exceeding the Amount in total.
2. Payment of the Amount or any part or parts of the Amount will be made by the Bank to the Beneficiary:
 - a) upon the Bank receiving at its Outlet while this guarantee remains in force an unconditional written demand from the Beneficiary accompanied by this guarantee; and
 - b) whether or not the Bank gives prior notice of the payment to the Customer; and
 - c) despite any notice given to the Bank by the Customer not to pay to the Beneficiary any moneys payable under this guarantee; and
 - d) irrespective of the performance or non-performance by the Customer or the Beneficiary of the Agreement in any respect; and
 - e) with no obligation on the Bank to enquire as to the performance or non-performance of the Agreement in any respect by the customer or the Beneficiary; and
 - f) with no obligation on the Bank to enquire as to the correctness or validity of any demand pursuant to sub-clause 2(a) of this clause.
3. Where a demand and payment is made pursuant to clause 2, for a sum that is less than the Amount, the Bank will issue to the Beneficiary a replacement guarantee for the balance of the Amount then remaining, after such part payment or payments.
4. The Bank's liability under this guarantee is not affected or discharged in any way by any variation of the Agreement or by any extension of time or other forbearance on the part of the Beneficiary or the Customer to the other.
5. The Bank may terminate this guarantee at any time upon payment to the Beneficiary of the Amount or the balance of the Amount remaining after any part payment of the Amount, or such lesser amount as the Beneficiary requires.
6. If two or more persons are named as the Beneficiary, this guarantee takes effect for the benefit of them jointly and a demand under this guarantee by any one or more of them is deemed to be a demand by both or all of them jointly. Payment by the Bank under this guarantee to any one or more of them discharges this guarantee to the extent of the amount so paid.
7. The benefit of this guarantee is not assignable by the Beneficiary.
8. This guarantee continues in force until the earliest of the following events occurs:
 - a) this guarantee is returned to the Bank at its Outlet (other than for a payment in accordance with clause 2(a));
 - b) notification in writing has been received by the Bank at its Outlet from the Beneficiary that this guarantee is no longer required;
 - c) payment is made under clause 2 or 5 to the Beneficiary by the Bank of the whole of the Amount or the balance of the Amount remaining after any part payment or payments of the Amount, or such lesser amount as the Beneficiary requires;
 - d) the close of business on the Termination Date (if any).
9. In the events of clause 8(b), (c) & (d), the Beneficiary must return this guarantee to the Bank at its Outlet as recorded in (c) of Details.
10. This guarantee is governed by and is to be construed in accordance with the laws of the place where it is executed by the Bank.

Dated _____
(day) (month) (year - ccyy)

Executed on behalf of the National Australia Bank Limited by its Attorney

Name of Attorney
who holds the position of Level 3 Attorney under Power of Attorney dated 1 March 2007
in the presence of:

Signature of witness

Name of witness

Signature of Attorney

80391A0211

Execution page

Executed as a deed

Dated:


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



Director/Secretary (Signature)

NICHOLAS GAZAL

Name of Director/ Secretary (Print Name)



Director (Signature)

Nabil Gazal

Name of Director (Print Name)

Executed by **Liverpool City Council** by its duly constituted Attorney, pursuant to the registered Power of Attorney Book 4660 No 962 in the presence of:

Witness (Signature)

Name of Witness (Print Name)

Attorney (Signature)

Name of Attorney (Print Name)

Planning Agreement

5 Viscount Place, Warwick Farm

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

Gazcorp Pty Ltd (ABN 41 001 696 073) (**Developer**)

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Planning Agreement

5 Viscount Place, Warwick Farm

Parties

Council	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	gm@liverpool.nsw.gov.au
	Representative / Contact	Lina Kakish , Manager Development Assessment, Planning & Growth
Developer	Name	Gazcorp Pty Ltd
	Address	Suite 1, Level 2 230 Victoria Road Gladesville NSW 2111
	ABN	41 001 696 073
	Telephone	(02) 9817 7488
	Facsimile	(02) 9879 0341
	Email	nabiljnr@gazcorp.com, NicholasG@gazcorp.com
	Representative / Contact	Nabil Gazal Jnr, and/or Nicholas Gazal

Background

- A The Developer owns the Land and proposes to undertake the Development.
- B The Developer made an application to the Council for the Instrument Change so as to enable an application to be made to the Council for the Development Consent. The Instrument Change has occurred.
- C The Developer acknowledges that once the Development is 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 C above, the Developer has offered to make the contributions for the Development on the terms set out in this deed.

Operative provisions

1 Definitions and interpretation

1.1 Defined terms

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

1.2 Interpretation

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

2 Application and operation of deed

2.1 Application

This deed applies to both the Land and the Development.

2.2 Operation

- (1) This document operates as a deed from the date that it is formed.
- (2) This document operates as a planning agreement:
 - (a) within the meaning set out in s93F of the Act, the requirements of that section being set out in Part 2 of **Schedule 1**; and
 - (b) governed by Subdivision 2 of Division 6 of Part 4 of the Act, from the later of the date that:
 - (c) it is entered into in accordance with the Regulation;
 - (d) the Minister administering the Act causes the Instrument Change to be published on the NSW legislation website in accordance with section 34 of the Act; and
 - (e) the Development Consent is granted.

3 Application of s94 and s94A

3.1 Sections 94 and 94A

This deed excludes the application of section 94 and section 94A of the Act to the Development.

3.2 Section 94EF

This deed does not exclude the application of section 94EF of the Act to the Development.

4 Monetary Contributions

4.1 Contribution

- (1) The Developer must pay the Monetary Contribution to Council in accordance with the timing specified in **Schedule 3**.
- (2) The Monetary Contribution must be paid to the Council by way of bank cheque or direct deposit into a bank account nominated by the Council.
- (3) The Monetary Contribution will be made for the purposes of this deed when the Council receives a record that cleared funds have been deposited into a bank account nominated by the Council.
- (4) The parties agree and acknowledge that the Monetary Contribution is made for the public purposes identified in **Schedule 3**.

5 Indexation of amounts in this deed

5.1 Indexation

The Monetary Contribution will be indexed in accordance with the following formula:

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

where:

- A** = the indexed amount of the Monetary Contribution;
- B** = the Monetary Contribution as set out in this deed;
- C** = the Index most recently published before the date that the Monetary Contribution is paid; and
- D** = the Index current as at the quarter immediately preceding the date of this deed.

5.2 Timing of indexation

For the purpose of clause 5.1, each component of the Monetary Contribution is indexed as at the date it is paid to Council.

6 Developer warranties and indemnities

6.1 Warranty

The Developer warrants to Council that:

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

7 Determination of this deed

7.1 Satisfaction of obligations

This deed will determine upon the Developer paying the Monetary Contribution to Council in full in accordance with this deed.

8 Bank guarantee and caveat

8.1 Ownership

The Developer represents and warrants to the Council that on the date of this deed it is the legal owner of the Land and holds the Land in its capacity as registered proprietor.

8.2 Bank Guarantee

- (1) On or within 5 Business Days of the date of this deed, the Developer must provide the Bank Guarantee to Council as security for the performance of the Developer's obligations under this deed.
- (2) If the Developer does not comply with its obligation to pay the Monetary Contribution under this deed, then Council may, after giving the Developer no less than 10 Business Days' notice of the default, call on all or part of the Bank Guarantee and apply the proceeds as its own property in order to recover Council's loss arising from the failure to pay the Monetary Contribution.
- (3) When the Developer has paid the Monetary Contribution to Council in full in accordance with this deed, Council must promptly (and in any event within 10 Business Days) do all acts and things necessary to return the Bank Guarantee to the Developer.

8.3 Caveat

- (1) Subject to the Developer providing the Bank Guarantee to Council in accordance with clause 8.2, Council agrees that it will not lodge or attempt to lodge a caveat against the title of the Land in respect of Council's interest under this deed.
- (2) If the Developer defaults in its obligation to provide the Bank Guarantee, the parties acknowledge and agree that:
 - (a) when this deed is executed by the Developer, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge with the LPI a caveat notifying that interest;
 - (b) the Development Consent predominantly relates to the land comprised in folio identifier 23/1190437, and contemplates the use of part of the land comprised in folio identifier 101/1043160 for ancillary purposes only;
 - (c) despite its rights under clause 8.3(2)(a), Council agrees that any caveat lodged by it will relate only to the land comprised in folio identifier 23/1190437; and
 - (d) for so long as the Developer is in default of its obligation to provide the Bank Guarantee, the Developer will not object to the Council lodging a caveat against folio identifier 23/1190437 nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.

The Council must, at the Developer's cost, register at the LPI a withdrawal of any caveat lodged by Council under clause 8.3(2) within 20 Business Days after the Developer has paid the Monetary Contribution to Council and must not lodge any other caveats on the titles to any of the Land.

9 Assignment

9.1 Prohibition

The Developer must not Assign its rights under this deed without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).

9.2 Assignment of Land

The Developer must not Assign the whole or any part of its interest in the Land unless:

- (1) the Developer satisfies the Council, acting reasonably, that the proposed Assignee is financially capable of complying with the Developer's obligations under this deed;

- (2) the rights of the Council are not diminished or fettered in any way;
- (3) the Council consents to the Assignment, acting reasonably;
- (4) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land (or part of it) is to be Assigned, of a deed in favour of the Council binding the relevant Assignee to the terms of this deed as if a reference in this deed to the Developer was a reference to the Assignee; and
- (5) any default by the Developer has been remedied by the Developer or waived by the Council;
- (6) the Developer and the Assignee pay the Council's reasonable costs in relation to the Assignment.

10 Provision of Security

10.1 Construction Certificate

For the purposes of section 109F(1) of the Act and clause 146A of the Regulation the Developer must pay the Monetary Contribution to the Council in accordance with this deed prior to the issue of any Construction Certificate for the Development or any part of the Development.

10.2 Security

Council acknowledges that:

- (1) the restrictions on assignment of the Land under **clause 9**;
- (2) the requirement under **clause 10.1** for the Monetary Contribution to be paid prior to the issue of any Construction Certificate for the Development, and
- (3) the provision of a Bank Guarantee in the form set out in **Annexure 5** of this deed;

constitute adequate security for the purposes of this deed and section 93F(3)(g) of the Act.

10.3 Enforcement by any party

- (1) Without limiting any other remedies available to the parties, this deed may be enforced by any party in any court of competent jurisdiction.
- (2) Nothing in this deed prevents:
 - (a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this deed or any matter to which this deed relates; and
 - (b) the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this deed or any matter to which this deed relates.

11 Review and amendment

11.1 Review

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

11.2 Amendment

If the parties agree to amend this deed as a result of a review conducted under this **clause 11** then any such amendment must be made:

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

12 Dispute resolution

12.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this deed 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.
- (2) The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the dispute (the representatives designated by the Parties being together, the **Representatives**).
- (3) Notwithstanding **clause 12.1(2)**, if it is necessary for the Council to meet and pass a resolution to appoint a Representative, the Council will not be required to provide the notice under that clause until 5 Business Days after the Council has met and resolved to appoint a person as the Representative.

12.2 Conduct pending resolution

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

12.3 Further steps required before proceedings

Subject to **clauses 12.14 and 12.15** and except as otherwise expressly provided in this deed, 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 12.5** or determination by an expert under **clause 12.6**, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days.

12.4 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 12.5** or expert resolution under **clause 12.6**.

12.5 Disputes for mediation

- (1) If the parties agree in accordance with **clause 12.4** 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 **clause 12.5(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 12.6**.

12.6 Choice of expert

- (1) If the parties agree to have the matter determined by expert determination, this **clause 12.6** applies.
- (2) The dispute must be determined by an independent expert in the relevant field:
 - (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of agreement within five (5) Business Days after the date that the parties agree to have the matter determined by expert determination, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.

- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the parties agree to have the matter determined by expert determination, either party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a dispute must:
 - (a) have a technical understanding of the issues in dispute;
 - (b) not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) inform the Parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into an agreement with the expert appointed under this **clause 12.6** setting out the terms of the expert's determination and the fees payable to the expert.

12.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under **clause 12.6**, 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:
 - (a) act as an expert and not as an arbitrator;
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both parties are present;
 - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within the time period specified by the expert, give the expert:
 - (a) a short statement of facts;
 - (b) a description of the dispute; and
 - (c) any other documents, records or information which the expert requests.

12.8 Expert may commission reports

- (1) Subject to **clause 12.8(2)**:
 - (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
 - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with **clause 12.6(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.

12.9 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 **clause 12.9(1)** is not a hearing and is not an arbitration.

12.10 Other courses of action

If:

- (1) The parties cannot agree in accordance with **clause 12.4** to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in **clause 12.5** 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.

12.11 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 **clause 12.11(1)(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 a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the dispute;

- (b) admissions or concessions made by a party during the mediation or expert determination in relation to the dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

12.12 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.

12.13 Costs

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

12.14 Remedies available under the Act

This **clause 12** does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the Act.

12.15 Urgent relief

This **clause 12** does not prevent a party from seeking urgent injunctive or declaratory relief.

13 Position of Council

13.1 Consent authority

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

13.2 Agreement does not fetter discretion

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 or discretion, (Discretion).

13.3 Severance of provisions

- (1) No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed 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 13** is substantially satisfied; and
- (b) in the event that clause 13.3(1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this deed has full force and effect.

- (2) Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this deed contracted out of a provision or exercised a Discretion under this deed, then to that extent this deed is not to be taken to be inconsistent with the Law.

13.4 No obligations

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

14 Confidentiality

14.1 Agreement not Confidential

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

14.2 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 deed;
 - (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this deed; and
 - (c) subject to **clauses 14.2(2) and 14.2(3)**, each party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this deed 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 deed 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.

15 GST

15.1 Defined GST Terms

Defined terms used in this **clause 15** have the meaning ascribed to them in the GST Law.

15.2 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 deed, 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 deed are exclusive of GST.

15.3 GST Obligations to Survive Termination

This **clause 15** will continue to apply after expiration or termination of this deed.

16 Miscellaneous

16.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to the rights and obligations of the parties set out in this deed;

- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of it;
- (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 deed; and
- (4) be just and faithful in its activities and dealings with the other parties.

16.2 Legal costs

- (1) The Developer agrees to pay the Council's legal costs and disbursements in connection with the:
 - (a) negotiation, preparation, execution, and stamping of this deed; and
 - (b) ongoing administration of this deed.
- (2) The parties acknowledge and agree that the Monetary Contribution has been calculated to include the Council's legal costs and that payment of the Monetary Contribution specified in item 2 of **Schedule 3** by the Developer to the Council will satisfy the obligation under 16.2(1).

17 Administrative provisions

17.1 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;
 - (c) transmitted by facsimile to that person's address; or
 - (d) emailed to the person's email address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting;
 - (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; and
 - (d) if sent by email to a person's email address before close of a business day, the on the day of delivery at that person's email address 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.

17.2 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 deed.

17.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any

other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

17.4 Cooperation

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

17.5 Counterparts

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

17.6 Amendment

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

17.7 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.

17.8 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
- (2) the death of the grantor.

17.9 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*.
-

Schedule 1

Part 1 – Commercial details

Land	<ul style="list-style-type: none">• Lot 23 in Deposited Plan 1190437 (formerly Lot 121 in Deposited Plan 876962); and• Part Lot 101 in Deposited Plan 1043160 as shown on the plan attached as Annexure 1 .
Draft LEP	An amendment to the Liverpool Local Environmental Plan 2008 proposed by the Developer seeking to rezone the Land to allow for retail premises operating as retail outlets

Part 2 - 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 Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</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 the development to which the agreement applies– (Section 93F(3)(b))</p>	<p>Use and fit out of an existing building for the purpose of a retail centre (operating as a discount retail outlet centre); construction of a new car park; and ancillary site works. See the definition of Development in Schedule 2.</p>
<p>Nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made – (Section 93F(3)(c))</p>	<p>See Schedule 3 for the nature and extent of the provision to be made and the time by which the provision is to be made.</p> <p>See clauses 4.1(2) and 4.1(3) for the manner by which the provision is to be made.</p>
<p>Application of section 94 of the Act – (Section 93F(3)(d))</p>	<p>Section 94 of the Act is excluded from the proposed development. See clause 3.</p>
<p>Applicability of section 94A of the Act – (Section 93F(3)(d))</p>	<p>Section 94A of the Act is excluded from the proposed development. See clause 3.</p>
<p>Applicability of section 94EF of the Act – (Section 93F(3)(d))</p>	<p>Section 94EF is not excluded from the proposed development. See clause 3.</p>
<p>Mechanism for Dispute resolution – (Section 93F(3)(f))</p>	<p>See clause 12.</p>
<p>Enforcement of this deed (Section 93F(3)(g))</p>	<p>See clause 10.</p>
<p>No obligation to grant consent or exercise functions – (Section 93F(9))</p>	<p>See clause 13.</p>

Schedule 2 Defined Terms And Interpretation

Part 1 - Definitions

Act	means the <i>Environmental Planning & Assessment Act 1979</i> (NSW).
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Bank Guarantee	Means the bank guarantee for the amount of AUD\$100,000 provided by the Developer in favour of Council, set out in Annexure 5 .
Business Day	means any day except for a Saturday or Sunday or a day which is a public holiday in Sydney.
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ol style="list-style-type: none">(1) is by its nature confidential;(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);(3) any party knows or ought to know is confidential; or(4) is information which may be reasonably considered to be of a confidential nature.
Construction Certificate	has the same meaning as in section 109C of the Act.
Development	means the use of the existing building on Lot 23 in Deposited Plan 1190437 (formerly Lot 121 in Deposited Plan 876962) No. 5 Viscount Place as a retail centre (operating as a discount retail outlet centre) with fit-out to create retail tenancies; construction of a new car park; line-marking of the existing car park; and improvements to the existing private roads partly on Lot 23 in Deposited Plan 1190437 and partly on Lot 101 in Deposited Plan 1043160 No. 5 Viscount Place; partly on land identified in the development application as Lot 201 DP 268862 but correctly described as part Lot 1 in Deposited Plan 1088280 No. 14 Homepride Avenue; and partly on Lot 2 DP 1088280 No. 12 Homepride Avenue.
Development Application	means development application number DA-920/2012 for the Development.
Development Consent	means any development consent issued under the Act to the

	Development Application.
Development Contribution	means the Monetary Contribution.
Draft LEP	means the "Draft LEP" set out in Schedule 1 .
GST Law	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other act or regulation relating to the imposition or administration of the GST.
Index	means the Consumer Price Index All Groups for Sydney published by the Australian Bureau of Statistics or, if that index is no longer published, its closest substitute.
Instrument Change	means the making of the Draft LEP.
Land	means the "Land" set out in Schedule 1 .
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
LEADR	means LEADR - Association of Dispute Resolvers (see www.leadr.com.au).
Legislation	means the Act and the <i>Local Government Act 1993</i> (NSW).
Monetary Contribution	means a monetary contribution in the amount of \$100,000.00, indexed in accordance with clause 5 and payable in accordance with clause 4 and Schedule 3 .
Occupation Certificate	has the meaning given to that term in the Act.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW)

Part 2 - Interpretational Rules

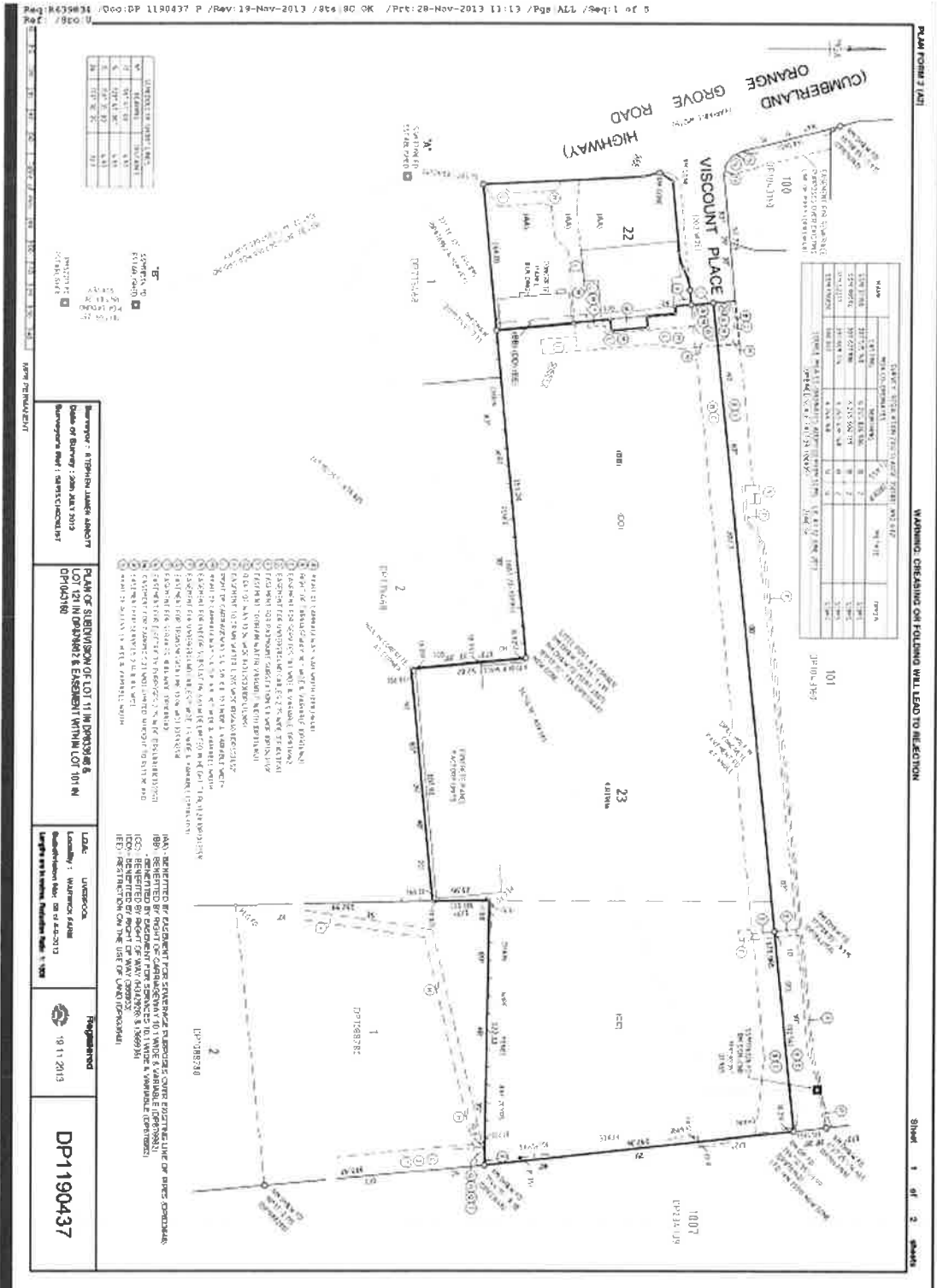
clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements 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 deed 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 clauses) are for convenience only and do not affect the interpretation of this deed.
deed	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
Calculation of Monetary Contributions**

Item No.	Public Purpose	Timing of Payment	Total Amount
1.	Contribution toward the Liverpool Town Improvement Fund.	Prior to the issue of any Construction Certificate for the Development or part of the Development.	\$95,000
2.	Administration. Contribution towards administration of contributions including legal costs associated with the preparation, negotiation, execution and ongoing administration of this deed.	On execution of this deed.	\$5,000.00
Total Monetary Contribution			\$100,000.00

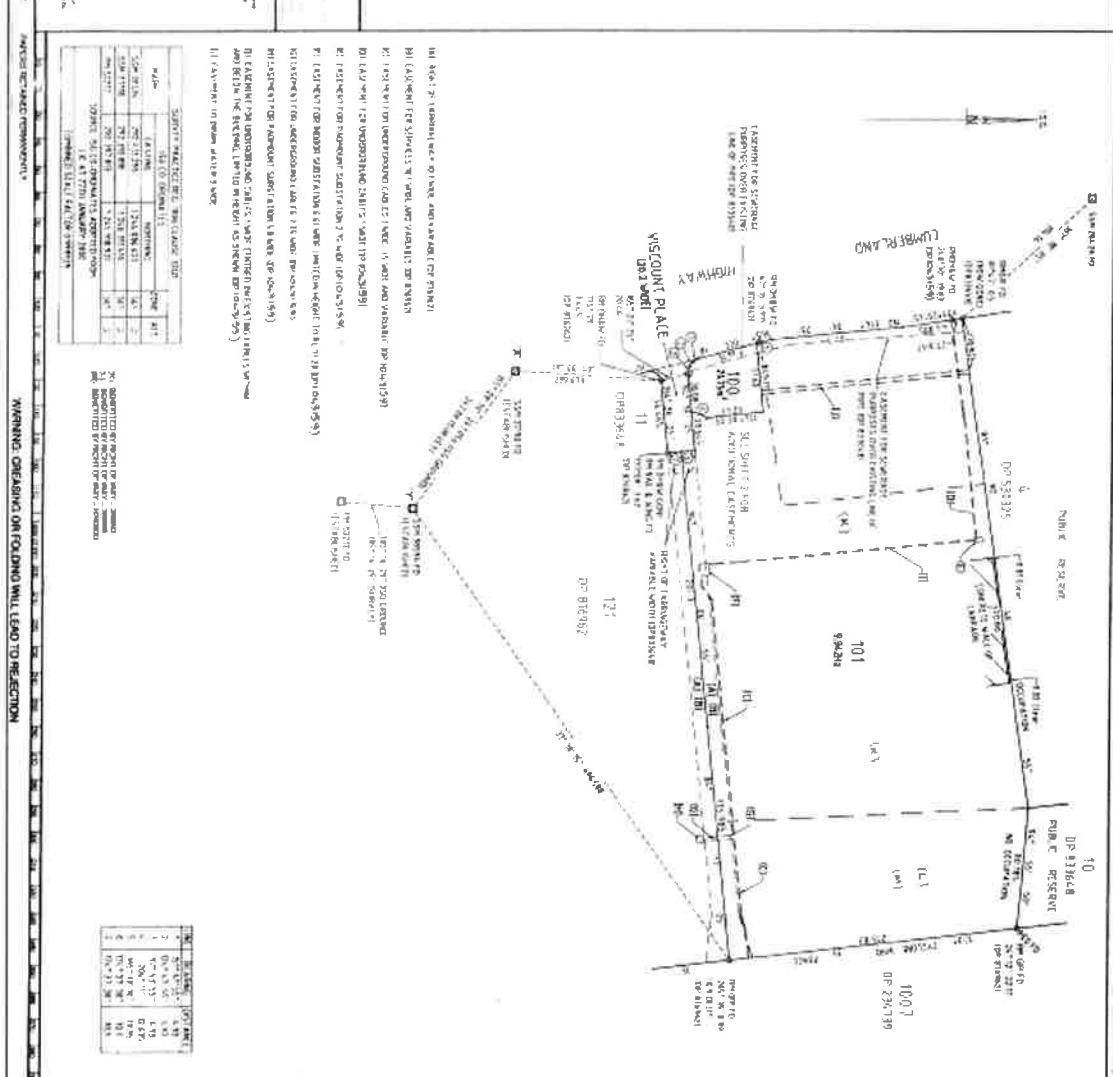
Annexure 1 - Deposited Plans



PLAN FORM 2
 201502657 / Dms: DP 1043160 P / Rev: 04-Dec-2002 / Sbs: 80, 0K / Pft: 25-Feb-2014 11:04 / Pgs: ALL / Req: 1 of 2
 Ref: Henry Davis York / Sco P

Subdivision Certificate
 Approved by the Registrar
 18-1-2002

City of Toronto
 Planning Department



DP1043160
 2-12-2002

CA
 DEFERRED
 TORONTO
 SUBDIVISION

U.S. 465 - 71, U.S. 465-72
 Lot 101
 OF 67623

PLAN OF SUBDIVISION OF LOT
 101 IN DP 1043160

104
 LINDSAY

BRANDSOME, BARBARA FARR
 Owner
 STUWIE

County: QUINCY

Plan label in accordance with the provisions of the Act:
 DP 1043160
 DP 51335
 DP 81000
 DP 1043159

PLAN OF SUBDIVISION OF LOT 101 IN DP 1043160

Annexure 2 - Extract of Development Application Form



Customer Service Centre
 Level 2, 33 Moore Street, Liverpool NSW 2170
 Locked Bag 7064, Liverpool NSW 1671
 DX 5030, Liverpool NSW
 Phone: 1300 362 170 NRS: 133 677
 Fax: (02) 9821 9333
 Email: lcc@liverpool.nsw.gov.au

Property Key.	57619
Development Application No.	DA - 920/2012
Construction Certificate No.	
Complying Certificate No.	
Subdivision Certificate No.	

ALL SECTIONS IN WHITE, INCLUDING CHECKLIST MUST BE FULLY COMPLETED

1. What type of application are you making?

APPLICATION FOR DEVELOPMENT MADE UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 SEC 76A
 Please tick appropriate box(es).

- Development Application (See Section 1.1)
- Construction Certificate - Building (See Section 1.2)
- Construction Certificate - Engineering (See Section 1.4)
- Subdivision Certificate (See Section 1.10)
- Complying Development Certificate (See Section 1.3)

SEPP

Do you wish Council to be appointed as Principal Certifying Authority (PCA)? (See Section 1.9)

Yes No

(If yes, owner/s please complete & attach PCA Agreement form)

Are you applying for a consent which will have a "Deferred Commencement" date?

Yes No

Are you applying for development consent in "Stages"? (If yes please attach staging plan)

Yes No

Has a Pre-lodgement meeting been held with Council?

Yes No

If Yes, name of officer: _____ Date: _____

2. What is the address of the property on which the work is to be carried out?

House/Shop/Unit No.	Lot	(Section) (if known)	Deposited Plan (DP) OR Strata Plan (SP) (if known)	Office Use Only
5	Lot 124 DP 8769162	Part of DP 8769162	DP 8769162	
Street	Suburb			
Viscount Place	Warwick Farm			

3. What work do you propose to carry out?

<input checked="" type="checkbox"/> change use of land/building	Proposed Work: <u>INTERNAL FIT OUT TO COURT TENNIS AND STAIRWAYS</u> <u>RE-DEVELOPMENT OF EXISTING CARPORT AND CONSTRUCTION OF A</u> <u>NEW CAR PARK AREA</u> Proposed Use: <u>RETAIL TENNIS (FAMILY RECREATION CENTRE)</u> Type of Subdivision (if applicable): <u>N/A</u>	<input checked="" type="checkbox"/>
<input type="checkbox"/> subdivision of land/building		
<input type="checkbox"/> demolish a building		
<input type="checkbox"/> erection of a building		
<input type="checkbox"/> signage		
<input type="checkbox"/> other		

4. What is the construction/work cost for this proposal?

Contract price of works (incl. labour & materials):	\$ 2,165,000 (inc GST)	Floor Area (m ²):	14,655 m ²	<input checked="" type="checkbox"/>
OR Council valuation of work (refer 1.12)				

5. Applicant - details of person applying for approval

Company (if applicable)	Gazcook Pty Ltd		
Mr/Mrs/Ms Surname(s)	First Name(s)		
Address	P.O. Box 732, Gungahlin NSW		Postcode 2111
Phone Business	9877 7485	Mobile	Home
Email	nic@gazcook.com.au	Fax	9874 0344
Signature(s)	[Redacted Signature]		
(or person signing on behalf of)	[Redacted Name]		

6. Agreement of Owner/s - This section must be fully completed and signed by all owner/s

Company (if applicable)	Gazcook Pty Ltd - Refer to Attached Letter		
Mr/Mrs/Ms Surname(s)	First Name(s)		
Address	Suite 1, Level 2, 210 Viscount Place, Gungahlin NSW		Postcode 2111
Phone Business	9877 7485	Mobile	Home
Email	nic@gazcook.com.au	Fax	9874 0344
Name(s) (please print)	GERALD AYOUB		
Signature of owner(s)	[Redacted Signature]		

I am the subject land
 agree with this application
 agree with entry of conditions by Council

If the owner is a company, give authority to sign through a seal/Authorised Seal of Body Corporate required for Strata

7. Describe existing development

a. What building(s) are currently on the land? (eg if land is vacant – state vacant or dwelling, shop, factory etc) Office Use Only
 WEEKEND MARKETS, FACTORY UNITS

b. Is the land contaminated or potentially contaminated? Yes No
 (See 1.19, 1.20, 1.21, 1.22, 1.23) on explanation sheet for further information)

c. Does the land contain any of the following?
 Yes (If yes to any of these, please tick)
 Environmentally Significant Land
 Threatened Species
 No (If no, go to Question 8)
 Bushland
 Critical Habitat
 Archaeological Significance
 Heritage Item

8. Integrated Development

Does the development require any other approvals or licences from other government bodies?
 (See 1.6 on explanation sheet for further information)
 Yes (If yes, additional fees and plans will be required to be submitted for referral to the government body)
 Name of Government Body/Act
 No (If no, go to Question 9)

9. Additional Approvals

Does the development require any additional approvals Under Section 68 of the Local Government Act?
 (See 1.7 on explanation sheet for further information)
 Yes (If yes to any of these, separate forms are available at the counter)
 No (If no, go to Question 10)
 Stormwater drainage work
 Moveable dwelling, manufactured home
 Operate amusement devices
 Operate a caravan park
 Other (Specify)
 Temporary structure
 Septic Tank, waste treatment system
 Solid fuel heating
 Tower Crane

10. Conflict of Interest

Is the applicant/owner of this application an employee/councillor of Liverpool City Council or have a relationship to any staff, which may present a conflict of interest? Yes (If yes, this conflict of interest must be disclosed) No

11. Development proposals and donations or gifts

Have you or anyone with a financial interest in this Development Application made a political donation or gift to any relevant party or person in the last 2 years?
 Yes (If yes, please complete disclosure statement) No

12. Commercial/Industrial/or Other Uses – Operating Details (if applicable)

No. of Shops/Offices	60 TENANCIES	No. of off-street parking spaces	500 CAR SPACES
No. of employees (at present)		No. of employees (proposed)	
Existing floor space	14,455 m ²	Proposed Hours of Operation	(attach details)
Plant and machinery to be installed (attach details)	SEE NEW PROVISION AND SUPPLY STATE		
Type, size and quantity of goods to be made, stored or transported (attach details)	N/A		
Loading and unloading facilities (attach details)	EXISTING WORKING AREA TO SOUTH OF BUILDING		
Intended methods of waste disposal and control of emissions (attach details)	GROUND WATER COLLECTION		

13. Release of approved application

Would you like your assessed application to be:
 (Please tick)
 Posted OR
 Held for collection at Council

To be completed when collecting
 Collected:
 Date:
 (Authority to collect - if applicable)

14. Issue of Construction Certificate/Complying Development Certificate - (if applicable)

Do you require Council to issue the Construction Certificate/Complying Development Certificate?
 (See 1.2, 1.3 on explanation sheet for further information)
 Yes (If yes, complete following details)
 No

Builder/Owner Builder Details and Signature/s

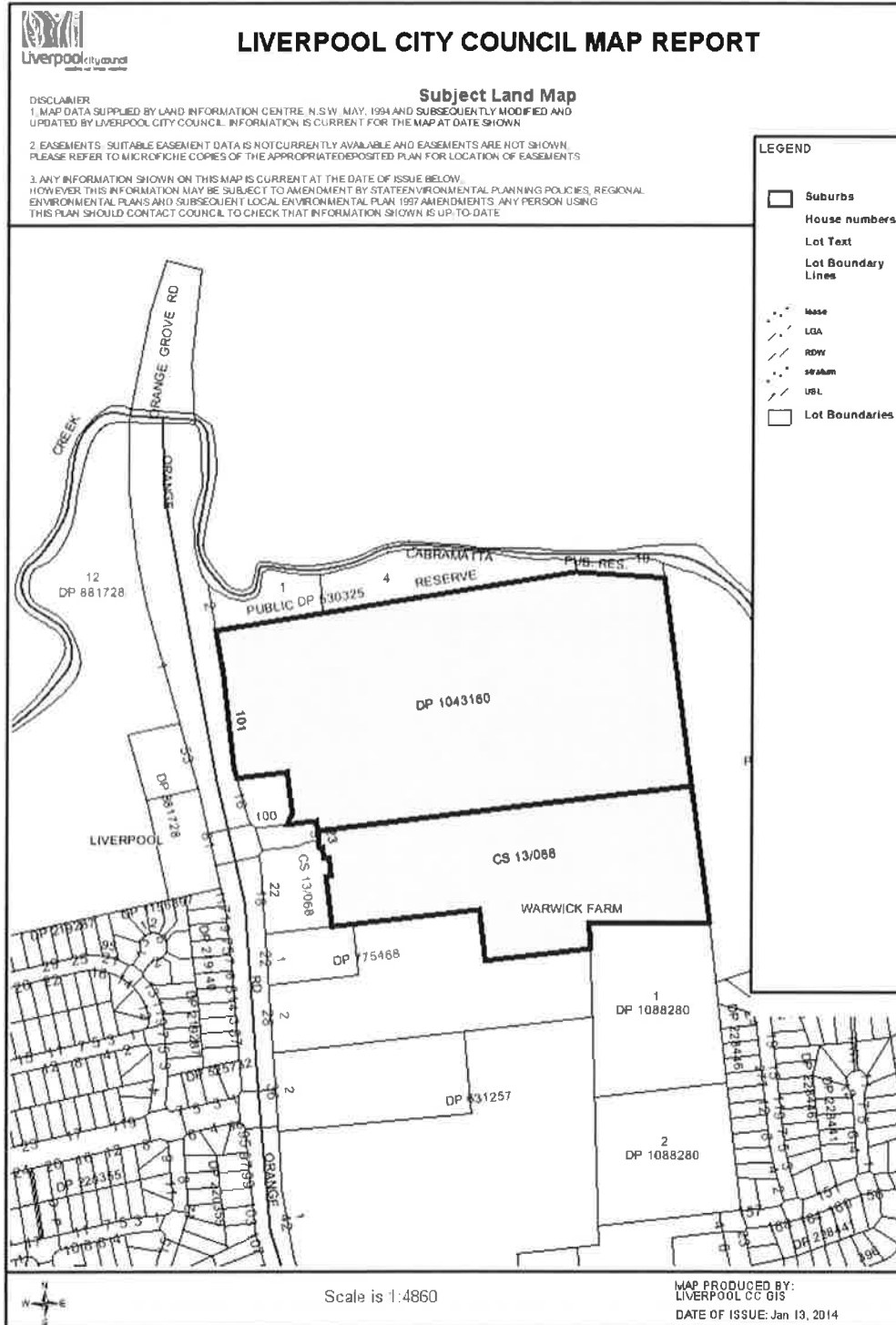
Company (if applicable)
 Mr/Mrs/Ms Surname(s) First Name(s)
 Address Postcode
 Phone Business Mobile Home
 Email Fax Date
 Licence No. Owner/Builder Permit No.

Signature(s)
 (or person signing on behalf of company – please state in what capacity)

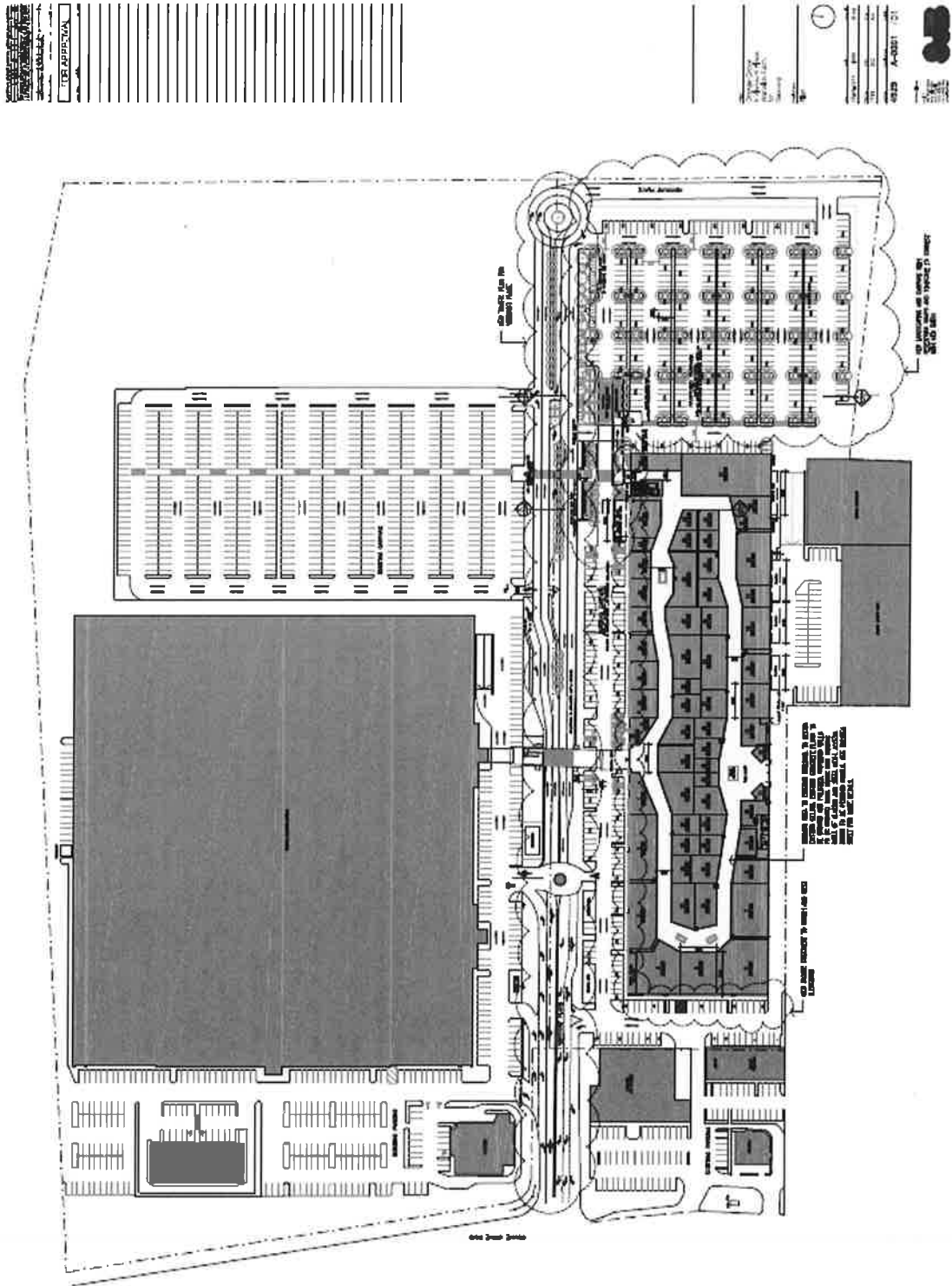
Construction Materials Used: eg (Walls-brick veneer/Roof-concrete tiles/Floor-concrete/Frame-timber)

Walls	Roof	Floor	Frame
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Annexure 3 - Subject Land Map



Annexure 4 - Extract of Development Plans



Annexure 5 - Bank Guarantee

National Australia Bank Limited ("Bank")
ABN 12 004 044 937

Bank Guarantee

Details

A. Beneficiary

Name 1

LIVERPOOL CITY COUNCIL

A.C.N./A.R.B.N./ABN 84 181 182471

Address 1

38 MOORE STREET
LIVERPOOL NSW 2170

Name 2

A.C.N./A.R.B.N./ABN

Address 2

B. Customer

Name 1

GAZCORP PTY LIMITED

A.C.N./A.R.B.N./ABN 41 001 896 073

Address 1

SUITE 1, LEVEL 2, 230 VICTORIA ROAD
GLADESVILLE NSW 2111

Name 2

A.C.N./A.R.B.N./ABN

Address 2

C. Outlet (of Bank)

CORPORATE PROPERTY NSW
LEVEL 22, 255 GEORGE STREET, SYDNEY NSW 2000

D. Agreement (Insert short description of agreement between Beneficiary and Customer giving rise to guarantee, including any identifying number, contract or reference number. Note, where item No. 2 of the Details section of the Indemnity for Bank Guarantee has been completed, this description must match Agreement in that section.)

PERFORMANCE OF PLANNING AGREEMENT FOR 5 VISCOUNT PLACE, WARWICK FARM, BETWEEN LIVERPOOL CITY COUNCIL AND
GAZCORP PTY LIMITED DATED ----- 2013

E. Amount

 (Insert total amount of guarantee and currency in which it is to be paid.)

Amount

\$100,000.00

Currency of

AUSTRALIA

Amount in words

ONE HUNDRED THOUSAND DOLLARS

F. Termination Date

 (If appropriate, insert latest date guarantee will be in force, otherwise delete.)

30 JUNE 2018

Terms printed in bold in the Details have the same meaning in the Provisions below where those terms commence with a capital letter.

Provisions

To: The Beneficiary

1. In consideration of the Beneficiary agreeing at the request of the Customer and the Bank to accept this guarantee in connection with the Agreement, the Bank undertakes to pay the Beneficiary an amount or amounts not exceeding the Amount in total.
2. Payment of the Amount or any part or parts of the Amount will be made by the Bank to the Beneficiary:
 - a) upon the Bank receiving at its Outlet while this guarantee remains in force an unconditional written demand from the Beneficiary accompanied by this guarantee; and
 - b) whether or not the Bank gives prior notice of the payment to the Customer; and
 - c) despite any notice given to the Bank by the Customer not to pay to the Beneficiary any moneys payable under this guarantee; and
 - d) irrespective of the performance or non-performance by the Customer or the Beneficiary of the Agreement in any respect; and
 - e) with no obligation on the Bank to enquire as to the performance or non-performance of the Agreement in any respect by the customer or the Beneficiary; and
 - f) with no obligation on the Bank to enquire as to the correctness or validity of any demand pursuant to sub-clause 2(a) of this clause.
3. Where a demand and payment is made pursuant to clause 2, for a sum that is less than the Amount, the Bank will issue to the Beneficiary a replacement guarantee for the balance of the Amount then remaining, after such part payment or payments.
4. The Bank's liability under this guarantee is not affected or discharged in any way by any variation of the Agreement or by any extension of time or other forbearance on the part of the Beneficiary or the Customer to the other.
5. The Bank may terminate this guarantee at any time upon payment to the Beneficiary of the Amount or the balance of the Amount remaining after any part payment of the Amount, or such lesser amount as the Beneficiary requires.
6. If two or more persons are named as the Beneficiary, this guarantee takes effect for the benefit of them jointly and a demand under this guarantee by any one or more of them is deemed to be a demand by both or all of them jointly. Payment by the Bank under this guarantee to any one or more of them discharges this guarantee to the extent of the amount so paid.
7. The benefit of this guarantee is not assignable by the Beneficiary.
3. This guarantee continues in force until the earliest of the following events occurs:
 - a) this guarantee is returned to the Bank at its Outlet (other than for a payment in accordance with clause 2(a));
 - b) notification in writing has been received by the Bank at its Outlet from the Beneficiary that this guarantee is no longer required;
 - c) payment is made under clause 2 or 5 to the Beneficiary by the Bank of the whole of the Amount or the balance of the Amount remaining after any part payment or payments of the Amount, or such lesser amount as the Beneficiary requires;
 - d) the close of business on the Termination Date (if any).
9. In the events of clause 3(b), (c) & (d), the Beneficiary must return this guarantee to the Bank at its Outlet as recorded in (c) of Details.
10. This guarantee is governed by and is to be construed in accordance with the laws of the place where it is executed by the Bank.

Dated: _____
(day) (month) (year - cccc)

Executed on behalf of the National Australia Bank Limited by its Attorney

Name of Attorney

who holds the position of Level 3 Attorney under Power of Attorney dated 1 March 2007 in the presence of:

Signature of witness

Name of witness

Signature of Attorney

80391A0211

Execution page

Executed as a deed

Dated: *15 OCTOBER 2015*

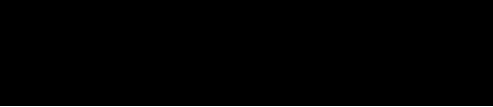
Executed by Gazcorp Pty Ltd in accordance with section 127(1) of the Corporations Act by authority of its directors



Director/Secretary (Signature)

NICHOLAS CAZAL

Name of Director/Secretary (Print Name)



Director (Signature)

Nabil Gureal

Name of Director (Print Name)


Executed by Liverpool City Council by its duly constituted Attorney, pursuant to the registered Power of Attorney Book 4660 No 962 in the presence of:



Witness (Signature)

RODGER KOPPOLO

Name of Witness (Print Name)



Attorney (Signature)

DAVID MAGUIRE

Name of Attorney (Print Name)

PUBLIC OFFICER
