

Planning agreement - 20, 26, 28, 31, 32 - 34 & 33 Shepherd Street, Liverpool

Liverpool City Council

Shepherd Street Developments Pty Limited

Coronation (33 Shepherd St) Pty Limited

Coronation (28 Shepherd St) Pty Limited

Coronation (26 Shepherd St) Pty Limited

Shepherd Property Nominee Pty Limited

Planning agreement - 20, 26, 28, 31, 32 - 34 & 33 Shepherd Street, Liverpool

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Date

8 NOVEMBER 2017

Parties

Liverpool City Council ACN 181 182 471 of Suite 2, 33 Moore Street, Liverpool, NSW (Council)

Shepherd Street Developments Pty Limited ACN 660 668 120, Coronation (33 Shepherd St) Pty Limited ACN 601 903 682, Coronation (26 Shepherd St) Pty Limited ACN 600 861 907 and Coronation (28 Shepherd St) Pty Limited ACN 612 253 308 all of Level 2, 66 Wentworth Avenue, Surry Hills, NSW (Developer)

Shepherd Property Nominee Pty Limited ACN 606 262 784 of 61 George Street, Leppington, NSW (Participant)

Recitals

- A The Developer and the Participant are (or entitled to be) the registered proprietors of land parcels that together make up the Land.
- B The Developer has made an application for the Instrument Change.
- C The Developer and the Participant acknowledge that if the Instrument Change occurs, Development Consent granted and the Development carried out it is likely to increase the demand for the provision of public facilities.
- D As a consequence of the matters set out in recital C the Developer and the Participant have offered to carry out the Works and make the Monetary Contributions on the terms of this agreement if the Instrument Change occurs and the Development Consent is granted.

The parties agree

1 Definitions and interpretation

1.1 Definitions

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

2 Application and operation of agreement

2.1 Planning agreement

The parties agree that this agreement is a planning agreement:

- (a) within the meaning set out in section 93F of the Act; and
- (b) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2.2 Application

This agreement applies to both the Land and the Development.

2.3 Operation

- (a) Subject to clause 2.3(b) this agreement operates from the date it is executed by all of the parties.
- (b) The following clauses of this agreement will only operate if and when the Instrument Change occurs and the Council grants the Development Consent:
 - (i) clause 3 relating to the provision of contributions;
 - (ii) clause 4 relating to design of the Works;
 - (iii) clause 5 relating to completion of the Works;
 - (iv) clause 6 relating to the Riverbank Stabilisation Works and the Riverwalk Works;
 - (v) clause 7 relating to defects liability;
 - (vi) clause 9 relating to the application of section 94 and 94A of the Act; and
 - (vii) clause 14 relating to force majeure.

3 Provision of contributions

3.1 Monetary Contributions

The Developer and the Participant must pay the Monetary Contributions in accordance with this agreement, and in particular in accordance with **Schedule 3**.

3.2 Works Contribution

The Developer must carry out and complete the Works in accordance with this agreement, and in particular in accordance with **Schedule 3**.

3.3 Standard of Construction

The Developer must construct and complete the Works:

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

3.4 Timing

Each item of the Works must be completed to the reasonable satisfaction of the Council by the time for completion for each item of the Works set out in **Schedule 3**.

3.5 Completion Value

Upon Completion of any item of the Works the Developer must give the Council a notice that includes a certificate from a Quantity Surveyor that sets out the Completed Value of the relevant item of the Works.

3.6 Indexation of Amounts payable by Developer

The Contribution Value for each item of the Works will be increased in accordance with the following formula:

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

where:

Index means the Construction Industry Producer Output Price Index (Non-Residential Construction - Sydney) as published by the Australian Bureau of Statistics or any replacement index published from time to time.

A = the indexed amount;

B = the relevant amount as set out in this agreement;

C = the Index most recently published before the date that the relevant item of the Works is Completed; and

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

If A is less than B, then the amount of the Contribution Value for the relevant item will not change.

4 Design and specification of Works

4.1 Developer must submit design

- (a) Before commencing construction of an item of Work, the Developer must submit to Council for its approval, the detailed design and specification for the relevant item of Work.
- (b) The design and specification for the item of Work must have specific regard to the description of the item of Work contained in this agreement.

4.2 Council to respond to design and specification

- (a) If, within twenty (20) business days of the date of submission referred to in clause 4.1:
 - (i) Council notifies the Developer in writing of its approval of the design and specification, the Developer is to carry out and complete the relevant item of Work in accordance with that design and specification;
 - (ii) Council fails to notify the Developer in writing that it approves or does not approve of the design and specification, Council is taken to have approved the design and specification of the item of Work and the Developer may carry out and complete the item of Work in accordance with that design and specification; or
 - (iii) Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
 - (A) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 4 applies to that amendment; or
 - (B) if the Developer does not agree with the modifications requested by Council, refer the matter for dispute resolution under this agreement.
- (b) For the purposes of this clause 4, except with the agreement of the Developer, Council cannot require the Developer to:
 - (i) comply with the design approved under this clause if it is inconsistent with the relevant development consent; and
 - (ii) make modifications to the design and specification of an item of Work that results in a change to the nature and scope of that item of Work as set out in this agreement.

5 Completion of the Works

5.1 Developer to notify

The Developer must provide a Completion Notice to the Council within ten (10) Business Days of Completing any item of the Works.

5.2 Inspection

The Council must inspect the Works set out in a Completion Notice within ten (10) Business Days of the receipt of the notice given under clause 5.1.

5.3 Council to notify

- (a) Within the earlier of:

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- (i) ten (10) Business Days of inspecting the item of the Works set out in a Completion Notice; and
 - (ii) twenty (20) Business Days from the receipt of the relevant Completion Notice,

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

- (iii) have been Completed; or
 - (iv) have not been Completed, in which case the notice must also detail:
 - (A) those aspects of the relevant item which have not been Completed; and
 - (B) the work the Council requires the Developer to carry out in order to rectify those deficiencies.
- (b) If the Council does not provide the Developer with notice in accordance with clause 5.3(a) the Works set out in the Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.
- (c) Where the Council serves notice on the Developer pursuant to clause 5.3(a)(iv) the Developer must:
- (i) rectify the deficiencies in that item in accordance with that notice within three (3) months from the date it is issued by the Council; or
 - (ii) serve a notice on the Council that it disputes the matters set out in the notice. If the Developer serves notice on the Council in accordance with this clause 5.3(c)(ii) the dispute resolution provisions of this agreement will apply.

5.4 Developer's further notification

- (a) Where the Developer rectifies the Works in accordance with clause 5.3(c)(i) it must serve upon the Council a new Completion Notice for the item of the Works it has rectified (**New Completion Notice**).
- (b) The provisions of this clause 4 apply to any New Completion Notice issued by the Developer.

5.5 Deferral of Works

- (a) Notwithstanding any other provision of this agreement, if the Developer forms the view at any time, that it is unable to Complete any item or items of the Works (**Deferred Works**) by the time required under this agreement, then the Developer may seek Council's approval to defer the relevant Works by providing written notice to the Council:
 - (i) identifying the relevant item of Work that the Developer proposes to defer; and
 - (ii) identifying the anticipated time for Completion of the relevant item of Work.

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- (b) The Council, acting reasonably, must give the Developer a written notice within fifteen (15) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (a) stating:
- (i) whether or not it consents to the deferral of the Deferred Works;
 - (ii) the revised date for Completion required by Council; and
 - (iii) any reasonable conditions Council requires with respect to the deferral (including any requirement for additional Security on account of that deferral, but only to the extent necessary to ensure that Council holds adequate security based on the then estimated cost to complete the relevant Works).
- (c) If the Council consents to the deferral of the Deferred Works, then the following applies:
- (i) The Developer must comply with any conditions required by Council under paragraph (b) above.
 - (ii) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this agreement as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this agreement.
 - (iii) The time for completion of the Deferred Works under this agreement is the revised date for Completion approved by Council.

5.6 Works-As-Executed-Plan

No later than forty (40) business days after an item of Work is Completed, the Developer must provide to the Council with:

- (a) a full Works-As-Executed-Plan in respect of the relevant item of Work that has been Completed; and
- (b) all appropriate certificates to verify that the item of Work have been carried out in accordance with relevant standards.

6 Riverbank & Riverwalk Works

6.1 Acknowledgement

The parties acknowledge and agree that:

- (a) The Riverbank Stabilisation Works are works that will be subject to Part 5 of the Act, and accordingly the Developer is not able to apply for development consent for those items of Works.
- (b) Clause 19 applies to any approval required for those items of Works under Part 5 of the Act.

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- (c) Council is under no obligation to seek, or to grant, any Approval required to allow for the Riverbank Stabilisation Works to be undertaken.
 - (d) The Riverwalk Works cannot be undertaken unless and until the Riverbank Stabilisation Works have been undertaken.
 - (e) For the purpose of clauses 6 and 8 the Riverbank Stabilisation Works and the Riverwalk Works are collectively referred to as the **Riverbank Works**.

6.2 Notification

- (a) The Developer may provide notice to Council as to the time by which it wishes to commence the Riverbank Stabilisation Works.
- (b) Council will notify the Developer promptly if the approvals necessary to allow the Riverbank Stabilisation Works have been granted.

6.3 Deferral

For the purpose of any request to defer the Riverbank Works under clause 5.5:

- (a) Council cannot refuse a request for the deferral of those works under clause 5.5 if the reason for the request is that the approvals required to carry out those Works have not then been granted;
- (b) Council may to seek additional Security from the Developer to secure that deferral for an amount no greater than two hundred per cent (200%) of the Contribution Value for the relevant item of Works; and
- (c) the Developer must not request a deferral beyond the earlier of:
 - (i) the Completion of the Development of the Land; and
 - (ii) 1 December 2020,(referred to as the **Riverbank Sunset Date**).

6.4 If Riverbank Works not completed by Riverbank Sunset Date

If the Riverbank Works are not Completed by the Riverbank Sunset Date then the following applies:

- (a) Council may by notice to the Developer elect to require the Developer to make a monetary contribution for an amount equal to the value of the Riverbank Works not completed at the relevant time determined by a Quantity Surveyor.
- (b) No later than 20 Business Days after being given a notice under clause 6.4(a), the Developer must give Council:
 - (i) a certificate from a Quantity Surveyor setting out value of the Riverbank Works not completed at the relevant time; and
 - (ii) a monetary contribution for the amount stated in the certificate from the Quantity Surveyor .

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- (c) Upon the payment of that monetary contribution to Council under this clause 6.4, the Developer is relieved of its obligation under this agreement to Complete the Riverbank Works and Council must within 10 Business Days return to the Developer all Security provided in relation to the Riverbank Works.

7 Defects liability

7.1 Defects notice

- (a) At any time during the Defects Liability Period (in respect of an item of Work), the Council may inspect the relevant item of Work for the purpose of ascertaining what defects and omissions (if any) in that item of Work require rectification (**Defect**).
- (b) The Council may, acting reasonably, give notice in writing to the Developer (**Defect Notice**) that:
- (i) states that part of the item of Work that is defective, giving details;
 - (ii) specifies the works which the Council considers are required to rectify the defect; and
 - (iii) allows the Developer a reasonable period to rectify such works.

7.2 Developer to rectify

The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.

7.3 Right of Council to step-in

- (a) The Council may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer not less than ten (10) Business Days written notice of its intention to do so.
- (b) If the Council elects to exercise the step-in rights granted to it under this clause 7.3 then:
- (i) the Council may:
 - (A) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
 - (B) rectify the relevant Defects in accordance with the Defects Notice; and
 - (ii) the Developer must not impede or interfere with the Council in undertaking that work.
- (c) Where the Council exercises its step-in rights all costs incurred by Council in rectifying the relevant Defects may be claimed by Council as a liquidated debt owed by the Developer.

8 Security

8.1 Provision of Security

Subject to paragraph 8.2, prior to the issue of a Construction Certificate or equivalent approval authorising the conduct of a relevant item of Works, Council must be given separate irrevocable and unconditional undertakings:

- (a) for the amount equivalent to the Contribution Value for the relevant item of Works, or if a Quantity Surveyor has valued the works as specified in Council's approval of design and specifications under clause 4, the value so determined by that Quantity Surveyor (**Primary Security**); and
- (b) for an amount equivalent to fifteen (15%) of the Contribution Value for the relevant item of Works, or if a Quantity Surveyor has valued the works as specified in Council's approval of design and specifications under clause 4, the value so determined by that Quantity Surveyor (**Defects Security**),

(collectively referred to as the **Security**).

Council acknowledges and agrees that any security required to be provided under this clause 8.1 may be comprised of separate bank guarantees from each of the Developers and/or the Participant, the aggregate of which equals the amount of the security required to be provided.

8.2 Replacement of Security

- (a) A party who has provided a Security may replace any Security they have provided at any time, provided that the amount of that replacement is not less than that which is required to be provided under this agreement.
- (b) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the party who provided it.

8.3 Council may call on Security

- (a) If the Developer commits an Event of Default Council, without limiting any other remedies available to it, may call on any Security provided to it.
- (b) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

8.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security which Council is entitled to hold at that time under this agreement.

8.5 Release of Primary Security

Unless:

- (a) Council has made a demand against the Primary Security provided to it;

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- (b) if applicable, the Development Contributions on account of which that Security was provided have not been paid;
 - (c) at the relevant time the relevant item of Works to which the Primary Security relates has been Completed; or
 - (d) at the relevant time the Developer has not remedied a breach of this agreement that it has been given notice of by Council,

Council, upon a written request being made by the party who provided it, must return the Primary Security within ten (10) Business Days of such a request being made.

8.6 Release of Primary Security – Riverbank Works

- (a) This clause 8.6 applies to any Security provided on account of the Riverbank Works.
- (b) The parties agree that it is their intention for Security provided on account of the Riverbank Works to be released on a staged basis according to the extent to which the Riverbank Works reach Completion in accordance with this clause 8.6.
- (c) The parties will act reasonably in the design of the Riverbank Works (under clause 4 and generally) and the preparation of the program referred to in this clause 8.6.
- (d) The parties agree that the design of the Riverbank Work to be approved under clause 4 is to include a program for the conduct of the Riverbank Works setting out milestones (**Milestones**) for the Riverbank Works.
- (e) At each Milestone, the Developer may request the return of any Security provided with respect to that part of the Riverbank Works that has been Completed at the relevant Milestone.
- (f) Any request for the return of Security under this clause 8.6 must be accompanied by a certificate from a Quantity Surveyor setting out the estimated cost to complete the then remaining Riverbank Works.
- (g) Upon receipt of a request from the Developer under paragraph (e) and a certificate under paragraph (f), Council must return so much of the Security then held by it for the Riverbank Works in excess of an amount calculated by multiplying the amount contained in the certificate provided under paragraph (f) by two (2).

8.7 Release of Defects Security

Unless:

- (a) Council has made a demand against the Defects Security provided to it;
- (b) the relevant Defects Liability Period has not expired; or
- (c) at the relevant time the Developer has not remedied a breach of this agreement that it has been given notice of by Council,

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) Business Days of such a request being made.

8.8 Indexation of value of Security value

The Developer must ensure that, on an annual basis from the date of commencement of this agreement, that the Security then held by Council equals the indexed amount of the Contribution Values for the relevant Works.

9 Application of sections 94, 94A and 94EF of the Act

9.1 Application

- (a) This agreement excludes the application of section 94 of the Act to the Development but only to the following extent:
 - (i) With respect to any contributions required to be made by the Developers under s94 of the Act in accordance with a condition of development consent on account of the Riverbank Stabilisation Works.
 - (ii) With respect to any contributions required to be made by the Developers under s94 of the Act in accordance with a condition of development consent on account of the Riverwalk Works.
- (b) This agreement excludes the application of section 94A of the Act to the Development but only to the following extent:
 - (i) With respect to any contributions required to be made by the Developers under s94 of the Act in accordance with a condition of development consent on account of the Riverbank Stabilisation Works and the works referred to in item 10 of Schedule 3 (Rehabilitation of riparian zone); and
 - (ii) With respect to any contributions required to be made by the Developers under s94 of the Act in accordance with a condition of development consent on account of the Riverwalk Works and the works referred to in item 9 of Schedule 3 (Pedestrian & cycle Pathway Upgrade).
- (c) This agreement does not exclude the application of section 94EF of the Act to the Development.

9.2 Consideration of benefits

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

9.3 Contributions paid by the Developer as at the date of this agreement

- (a) The Council acknowledges that before the date of this agreement, monetary contributions have been paid by the Developer to Council in accordance with conditions imposed under ss94 and/or 94A of the Act with respect to the Development, including contributions that are excluded under clause 9.1.
- (b) Promptly after the formation of this agreement, Council will refund to the Developer any contribution referred to in paragraph (a) to the extent that the relevant contribution is excluded under clause 9.1.

9.4 Monetary payments

The parties agree that any Monetary Contribution payable under this agreement:

- (a) must be paid by way of bank cheque in favour of the Council or by deposit by means of electronic funds transfer into an account specified by the Council; and
- (b) will be taken to have been made when the Council gives written notification to the party who made the relevant payment that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.

10 Registration of this planning agreement

10.1 Obligation to register

- (a) The parties agree that this agreement will be registered on the title of the Land pursuant to section 93H of the Act.
- (b) The Developer and the Participant must:
 - (i) do all things necessary to allow the registration of this agreement to occur under clause 10.1(a) against the title to the Land they respectively own; and
 - (ii) pay any reasonable costs incurred by the Council in undertaking that registration.

10.2 Partial discharge of agreement - Developer

- (a) For the avoidance of doubt the parties agree that this agreement is to be removed from the title to any Land owned by the Developer or the Participant (as the case may be) if:
 - (i) the Developer or the Participant gives Council a written notice requesting removal of the title to the Land specified in the notice; and
 - (ii) the party giving the notice has complied with its obligations under this agreement with respect to that part of the Land to which such notice relates.
- (b) Upon receipt of a notice under this clause, Council will do all things necessary to remove this agreement from the title to the Land specified in the notice as quickly as practicable if the party giving the notice has complied with its obligations under this agreement with respect to that part of the Land to which such request relates.

11 Warranties and Indemnities

11.1 Warranty by the Developer

The Developer warrants to Council to the best of its knowledge and belief as the date of this agreement that:

- (a) it is legally and beneficially entitled to the Land which it owns;
- (b) it is able to fully comply with its obligations under this agreement;
- (c) it has full capacity to enter into this agreement; and
- (d) there is no legal impediment to it entering into this agreement, or performing the obligations imposed under it.

11.2 Warranty by the Participant

The Participant warrants to Council to the best of its knowledge and belief as the date of this agreement that:

- (a) it is legally and beneficially entitled to the Land which it owns;
- (b) it is able to fully comply with its obligations under this agreement;
- (c) it has full capacity to enter into this agreement; and
- (d) there is no legal impediment to it entering into this agreement, or performing the obligations imposed under it.

12 Determination of this agreement

12.1 Determination

This agreement will determine upon each of the Developer and the Participant satisfying all of their obligations imposed on them under this agreement in full.

12.2 Consequences

Upon the determination of this agreement the Council will do all things necessary to allow the Developer and the Participant to remove this agreement from the title of the whole or any part of the Land as quickly as possible.

13 Assignment

13.1 Prohibition

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

13.2 Assignment of Land

The Developer or the Participant must not Assign their respective interest in the Land unless:

- (a) Council consents to the Assignment, acting reasonably; and
- (b) the proposed assignee enters into an agreement on terms reasonably acceptable to Council under which the assignee agrees to be bound by the terms of this agreement to the extent the rights and obligations of the parties continue to subsist at the time of the relevant Assignment.

13.3 Assignments concerning 31 Shepherd Street and 32 – 34 Shepherd Street Liverpool

- (a) The parties acknowledge that before the date of this agreement legally binding arrangements were entered into with respect of the conveyance of the following properties:
 - (i) the land comprised in certificate of title folio identifier 23/859055 and known as 26 Shepherd Street Liverpool (from Shepherd Property Nominee Pty Limited (ACN 606 262 784) to Coronation (26 Shepherd Street) Pty Limited (ACN 612 253 308);
 - (ii) the land comprised in certificate of title folio identifier 6/247485 and known as 31 Shepherd Street Liverpool (from Coronation (33 Shepherd Street) Pty Limited (ACN 601 903 682) to Shepherd Property Nominee Pty Limited (ACN 606 262 784);
 - (iii) the land comprised in certificate of title folio identifier 5/247485 and known as 33 Shepherd Street Liverpool (from Coronation (33 Shepherd Street) Pty Limited (ACN 601 903 682) to Shepherd Property Nominee Pty Limited (ACN 606 262 784); and
 - (iv) the land comprised in certificates of title folio identifiers 3 & 4/247485 and known as 32 - 34 Shepherd Street Liverpool (from Shepherd Property Nominee Pty Limited (ACN 606 262 784) to Coronation (33 Shepherd Street) Pty Limited (ACN 601 903 682).
- (b) For the purpose of clause 13.2(a) Council consents to the Assignment of each of the properties described in paragraph (a).

14 Force Majeure

14.1 Definition

In this clause 14, force majeure (**Force Majeure**), means any physical or material restraint beyond the reasonable control of a party claiming the Force Majeure and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes.

14.2 Consequences of Force Majeure Event

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

14.3 Inability to complete Works

- (a) The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.
- (b) If the Developer is unable to Complete any part of the Works due to a Force Majeure event the Developer must pay to the Council the amount specified in **Schedule 3** of the relevant works and the amount payable to Council may be apportioned, if necessary, in such manner as may be fair and reasonable.

14.4 Exclusion of operation

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

14.5 Dispute

If the parties are unable to agree on the existence of an event of Force Majeure or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure, that dispute must be referred for determination under clause 16.

15 Review & Amendment

15.1 Review

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

15.2 Amendment

If the parties agree to amend this agreement as a result of a review conducted under clause 15.1 then any such amendment must be made:

- (a) in writing signed by all of the parties; and

-
- (b) subject to the provisions of the Act.

16 Dispute resolution

16.1 Notice of dispute

If a dispute or lack of certainty between the parties arises in connection with this agreement or its subject matter (a **dispute**), then any party (the **First Party**) must give to the other parties (the **Second Party**) a notice of dispute in writing adequately identifying and providing details of the dispute and designating as its representative a person to negotiate the dispute. The Second Party must, within 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**).

16.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this agreement if there is a dispute but will not be required to complete the matter the subject of the dispute, unless the appropriate party indemnifies the other relevant parties against costs, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying party.

16.3 Further steps required before proceedings

Subject to clauses 16.14 and 16.15 and except as otherwise expressly provided in this agreement, any dispute between the parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation, mediation under clause 16.5 or determination by an expert under clause 16.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within 5 Business Days.

16.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the dispute, then the parties must agree within 5 Business Days to either refer the matter to mediation under clause 16.5 or expert resolution under clause 16.6.

16.5 Disputes for mediation

- (a) If the parties agree in accordance with clause 16.4 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 5 Business Days, then by a mediator appointed by the Resolution Institute.
- (b) If the mediation referred to in clause 16.5(a) 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 16.6.

16.6 Choice of expert

- (a) If the parties agree to have the matter determined by expert determination, this clause 16.6 applies.

-
- (b) The dispute must be determined by an independent expert in the relevant field:
 - (i) agreed between and appointed jointly by the parties; or
 - (ii) in the absence of agreement within 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.
 - (c) If the parties fail to agree as to the relevant field within 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.
 - (d) The expert appointed to determine a dispute:
 - (i) must have a technical understanding of the issues in dispute;
 - (ii) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (iii) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
 - (e) The parties must promptly enter into an agreement with the expert appointed under this clause 16.6 setting out the terms of the expert's determination and the fees payable to the expert.

16.7 Directions to expert

- (a) In reaching a determination in respect of a dispute under clause 16.6, the independent expert must give effect to the intent of the parties entering into this deed and the purposes of this agreement.
- (b) The expert must:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) not accept verbal submissions unless all parties are present;
 - (iv) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to each other party;
 - (v) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;

-
- (vi) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (vii) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party 10 Business Days to make further submissions;
 - (viii) issue a final certificate stating the expert's determination (together with written reasons); and
 - (ix) act with expedition with a view to issuing the final certificate as soon as practicable.
- (c) 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:
- (i) a short statement of facts;
 - (ii) a description of the dispute; and
 - (iii) any other documents, records or information which the expert requests.

16.8 Expert may commission reports

- (a) Subject to clause 16.8(b):
 - (i) 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
 - (ii) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 16.6(e) of this agreement.
- (b) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

16.9 Expert may convene meetings

- (a) 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.
- (b) The parties agree that a meeting under clause 16.9(a) is not a hearing and is not arbitration.

16.10 Other courses of action

If:

- (a) the parties cannot agree in accordance with clause 16.4 to refer the matter to mediation or determination by an expert; or

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- (b) the mediation referred to in clause 16.5 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 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.

16.11 Confidentiality of information provided in dispute resolution process

- (a) The parties agree, and must procure that the mediator and the expert agrees as a condition of his or her appointment:
 - (i) subject to clause 16.11(b), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (ii) not to disclose any confidential documents, information and other material except:
 - (A) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (B) if required by Law to do so or State Government policy or local government policy or any listing rule; and
 - (iii) 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.
- (b) 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:
 - (i) 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;
 - (ii) admissions or concessions made by a party during the mediation or expert determination in relation to the dispute; and
 - (iii) 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.

16.12 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.

16.13 Costs

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

16.14 Remedies available under the Act

This clause 16 does not operate to limit the availability of any remedies available to the Council under sections 123, 124 and 125 of the Act.

16.15 Urgent relief

This clause 16 does not prevent a party from seeking urgent injunctive or declaratory relief.

17 Default in performance

17.1 Events of Default

A party will be in default under this agreement if any of the following occur (**Event of Default**):

- (a) it breaches an essential term of this agreement; or
- (b) it breaches a non-essential term of this agreement and fails to rectify that breach within a reasonable time (which must not be less than 10 Business Days) of being requested to do so by the other parties.

17.2 Consequences of Events of default

Where a party commits an Event of Default the non defaulting party may terminate this agreement by notice in writing to the defaulting party that states a termination date that is no earlier than 10 Business Days after the date on which such notice is given to the defaulting party.

17.3 No restriction on rights

The rights vested in the Council pursuant to clause 17.2 do not prevent the Council from exercising any other rights that it may possess at law.

18 Termination

18.1 Termination

This agreement may be terminated if the parties agree in writing to terminate it.

18.2 Consequence of termination

Upon termination of this agreement:

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

19 Position of the Council

19.1 Consent authority

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

19.2 Agreement does not fetter discretion

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

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

19.3 Severance of provisions

- (a) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 19 is substantially satisfied; and
 - (ii) in the event that clause 19.3(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect.
- (b) Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to that extent this agreement is not to be taken to be inconsistent with the Law.

19.4 No obligations

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

20 Confidentiality

20.1 Agreement not Confidential

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

20.2 Other Confidential Information

- (a) The parties acknowledge that:

-
- (i) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this agreement; and
 - (ii) The parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
 - (iii) Subject to clauses 20.2(b) and (c), each party agrees:
 - (A) not to disclose any Confidential agreement received before or after the making of this agreement to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (B) to take all reasonable steps to ensure all Confidential Information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.
- (b) A party may disclose Confidential Information in the following circumstances:
- (i) in order to comply with the Law, state government policy, local government policy or any listing rule; or
 - (ii) 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.
- (c) 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.

21 GST

21.1 Defined GST Terms

Defined terms used in this clause 21 have the meaning ascribed to them in the GST Law.

21.2 GST free supply

To the extent that Divisions 81 and 82 of the GST Law apply to a taxable supply made under this agreement:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

21.3 GST to be added to amounts payable

If GST is payable on a taxable supply made under, by reference to or in connection with this agreement, the party providing the consideration for that taxable supply must also pay the GST amount as additional consideration. This clause 21 does not apply to the extent that the consideration for the taxable supply is expressly agreed to be GST inclusive, Unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this agreement are exclusive of GST.

21.4 GST obligations to survive termination

This clause 21 will continue to apply after expiration of termination of this agreement.

22 Miscellaneous

22.1 Obligation to act in good faith

The parties must at all times:

- (a) cooperate and use their best endeavours to profitably and professionally give effect to the rights and obligations of the parties set out in this agreement; and
- (b) not unreasonably delay any action, approval, direction, determination or decision which is required of it; and
- (c) make decisions that are required of it in good faith and in a manner consistent with the completion of the transactions set out in this agreement; and
- (d) be just and faithful in its activities and dealings with the other parties.

22.2 Legal costs

- (a) Any legal costs and disbursements borne by Council in connection with the negotiation, preparation, execution, and stamping of this agreement are to be paid by the Developer.
- (b) The Developer must pay or reimburse the Council for the reasonable legal costs and disbursements the Council incurs in connection with the lawful enforcement of this agreement including any breach or default by the Developer of its obligations under this agreement. The Developer will pay such reasonable legal costs and disbursements no later 20 Business Days after receipt of a tax invoice from the Council or the Participant (as the case may be) setting them out.
- (c) The Participant must pay or reimburse the Council for the reasonable legal costs and disbursements the Council incurs in connection with the lawful enforcement of this agreement including any breach or default by the Participant of its obligations under this agreement. The Participant will pay such reasonable legal costs and disbursements no later 20 Business Days after receipt of a tax invoice from the Council or the Developer (as the case may be) setting them out.

23 Administrative provisions

23.1 Notices

- (a) Any notice, consent or other communication under this agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (i) delivered to that person's address; or

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

23.2 Entire agreement

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

23.3 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.

23.4 Cooperation

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

23.5 Counterparts

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

23.6 Unenforceability

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

23.7 Power of Attorney

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of:

- (a) the revocation or suspension of the power of attorney by the grantor; or
- (b) the death of the grantor.

23.8 Governing law

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

- (a) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this agreement ; and
- (b) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of forum non conveniens.

EXECUTED as a deed

Planning agreement - 20, 26, 28, 31, 32 - 34 & 33 Shepherd Street, Liverpool

Schedule 1 - Details

1.1 Commercial Terms

Developer	Name	Shepherd Street Developments Pty Limited ACN 660 668 120, Coronation (33 Shepherd St) Pty Limited ACN 601 903 682, Coronation (26 Shepherd St) Pty Limited ACN 612 253 308 and Coronation (28 Shepherd St) Pty Limited ACN 600 861 907
	Address	Level 2, 66 Wentworth Avenue, Surry Hills NSW
	Telephone	(02) 8316 9100
	Facsimile	
	Email	
	Representative Contact	Aras Labutis
Council	Name	Liverpool City Council ACN 181 182 471
	Address	Suite 2, 33 Moore Street, Liverpool NSW 2170
	Telephone	(02) 9821 9222
	Facsimile	(02) 9821 9222
	Email	MorganJf@liverpool.nsw.gov.au
	Representative Contact	John F Morgan
Participant	Name	Shepherd Property Nominee Pty Limited ACN 606 262 784
	Address	61 George Street, Leppington, NSW
	Telephone	
	Facsimile	
	Email	
	Representative Contact	Thomas Normoyle

Land The whole of the land contained in Certificates of title folio identifiers:

- 1 / 247485;
- 3 / 247485;
- 4 / 247485;
- 5 / 247485
- 6 / 247485
- 22 / 859055;
- 23 / 859055,

and known as 20, 26, 28, 31, 32 – 34 and 33 Shepherd Street,
Liverpool, NSW.

Current LEP Refer to the defined term appearing in **Schedule 2**.

Draft LEP Refer to the defined term appearing in **Schedule 2**.

1.2 Requirements under section 93F

Requirements under the Act	This planning agreement
Planning instrument and/or development application — (section 93F(1))	
The Developer has:	
(a) sought a change to an environmental planning instrument;	(a) Yes
(b) made or proposes to make, a Development Application;	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) Not applicable
Description of land to which this deed applies — (section 93F(3)(a))	The whole of the Land
Description of change to the environmental planning instrument to which deed applies — (section 93F(3)(b))	The description appears in the defined term Draft LEP.
Application of section 94 of the Act — (section 93F(3)(d))	The application of section 94 is excluded to the extent specified in clause 9.1(a).
Applicability of section 94A of the Act — (section 93F(3)(d))	The application of section 94A is not excluded.
Consideration of benefits under this deed if section 94 applies — (section 93F(3)(e))	Benefits are not to be taken into consideration.
Mechanism for Dispute resolution — (section 93F(3)(f))	See clause 16.
Enforcement of this deed (section 93F(3)(g))	See clause 13.
No obligation to grant consent or exercise functions — (section 93F(3)(9))	See clause 19.

Planning agreement - 20, 26, 28, 31, 32 - 34 & 33 Shepherd Street, Liverpool

Schedule 2 - Defined terms and interpretation

1.1 Definitions

Act	means the <i>Environmental Planning & Assessment Act 1979</i> (NSW).
agreement	means this document and includes all Schedules, annexures and attachments to it.
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: <ul style="list-style-type: none">(a) federal, state or local government;(b) department of any federal, state or local government;(c) any court or administrative tribunal; or(d) statutory corporation or regulatory body.
Business Day	means any day except a bank holiday or public holiday in New South Wales.
Claim	means any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Complete	with respect to an item of the Works means that particular item has been completed to the standard required under this agreement.
Completion Notice	means a notice setting out an item of the Works that the Developer believes is complete and which is: <ul style="list-style-type: none">(a) in writing; and(b) issued by an Independent Engineer; and(c) contains an acknowledgement from the Independent Engineer that it is recognised that the Council relies upon the certification provided by that Engineer.
Completion Value	means the value of a particular item of the Work stated in a certificate under clause 3.5.
Confidential	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each

Information	<p>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:</p> <ul style="list-style-type: none"> (a) is by its nature confidential; (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise); (c) any party knows or ought to know is confidential; and (d) is information which may be reasonably considered to be of a confidential nature.
Contribution Value	means the value for each respective item of Work as set out in Schedule 3 .
Council	means the party described as the 'Council' in Schedule 1 .
Current LEP	means Liverpool Local Environmental Plan 2008.
Defects Liability Period	means the period of twelve (12) months after a Completion Notice has been issued for a particular item of the Works.
Developer	means the party described as the 'Developer' in Schedule 1 .
Development	means any development of the Land permitted after the Instrument Change is made (which for the purpose of clarity includes any development undertaken on the land as at the date of this agreement in accordance with development consent(s)).
Development Consent	means consent for the Development issued or modified under the Act after this agreement is formed.
Development Contributions	means the Monetary Contributions and the Works.
Dispute	means a dispute regarding the terms or operation of this agreement.
Draft LEP	<p>means a local environmental plan that amends the Current LEP generally in accordance with the changes sought under the planning proposal (Council reference RZ-17/2015) including the following amendments:</p> <ul style="list-style-type: none"> (a) An amendment to the floor space ratio (FSR) controls, to provide maximum FSR controls of: <ul style="list-style-type: none"> (i) 3.3:1 at 20 Shepherd Street; (ii) 3.7:1 at 26 & 28 Shepherd Street Liverpool; (iii) 3.5:1 at 31-33 Shepherd Street Liverpool; and

	(iv)	3.6:1 at 32-34 Shepherd Street Liverpool.
	(b)	An amendment to the height of building (HOB) controls to provide maximum HOB controls of:
	(i)	24m, 29m and 76m at 20 Shepherd Street Liverpool;
	(ii)	46m at 26 Shepherd Street Liverpool;
	(iii)	20m, 68m, and 58m at 28 Shepherd Street Liverpool;
	(iv)	56m at 32-34 Shepherd Street Liverpool; and
	(v)	24m, 65m, and 77m at 31-33 Shepherd Street Liverpool.
Event of Default		has the meaning ascribed to that term in clause 17.1.
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.
Independent Engineer		means an appropriately qualified and experienced civil engineer who is a member of the Institute of Engineers Australia (now known as ENGINEERS AUSTRALIA) or the Association of Professional Engineers, Scientists and Managers, Australia that is approved by the Council (which approval must not be unreasonably withheld) prior to engagement by the Developer.
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.
Legislation		means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Monetary Contributions		means the monetary contributions required to be paid under this agreement as set out in Schedule 3 .
Occupation Certificate		has the meaning given to that term in the Act.
Participant		means the party described as the 'Participant' in Schedule 1 .
Quantity Surveyor		means a person who:
	(a)	is a member of their respective professional organisation and has been for at least five (5) years;
	(b)	practices as a quantity surveyor for works of the same

	nature as the relevant Works;
	(c) is active as a quantity surveyor at the time of his appointment;
	(d) has at least three (3) years' experience in valuing works of the same nature as the relevant Works; and
	(e) undertakes to act fairly and promptly in accordance with the requirements of this agreement.
Riverbank Stabilisation Works	means the works described in Item 7 of Schedule 3 .
Riverwalk Works	means the works described in Item 8 of Schedule 3 .
Schedule	means a schedule to this agreement.
Security	means an unconditional bank guarantee provided in favour of Council by a financial institution approved by Council.
Works	means all works set out in Schedule 3 .

1.2 Interpretation rules

Clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.
Reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
Singular includes plural	the singular includes the plural and vice versa.
Person	the word 'person' includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
Executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
Dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
Calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
Reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
Accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not

inconsistent with those standards, in accounting principles and practices generally accepted in Australia.

Reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
Meaning not limited	the words 'include', 'including', 'for example' or 'such as' are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
Next day	if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
Next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
Time of day	time is a reference to Sydney time.
Headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.
Documents	a reference to any agreement, deed or other 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.

Planning agreement - 20, 26, 28, 31, 32 - 34 & 33 Shepherd Street, Liverpool

Schedule 3 – Works and contributions description

Item	Contribution Type	Works description (heading)	Works description (summary)	Timing	Contribution Value
1.	Works	Transport service	<p>Establish and operate a publicly accessible shuttle bus service that connects the Development to the Liverpool CBD on the following basis:</p> <ol style="list-style-type: none"> 1 The service is to be at no cost to the public. 2 The service must operate between the Development and Liverpool Railway Station. 3 The service must collect and drop off passengers at the Development, Casula Railway Station and Liverpool Station. 4 The service must be provided on each weekday during the year that is not a public holiday in NSW. 5 Shuttle bus to undertake 6 trips at 20 minutes intervals in each of the AM peak hour and the PM peak hours. The first trip in the AM peak hour will depart the Development at 07:15. The first trip in the PM peak hour will depart Liverpool Station at 17:45. 6 The service must be provided using a wheelchair accessible air conditioned vehicle with a capacity of approximately 70 passengers. 	<p>The bus service must:</p> <ol style="list-style-type: none"> 1 commence on a date that is prior to the issue of any Occupation Certificate for the 600th dwelling within the Development; and 2 continue for five (5) years from the date of the issue of any Occupation Certificate for the 600th dwelling within the Development. 	\$833,750

Item	Contribution Type	Works description (heading)	Works description (summary)	Timing	Contribution Value
2.	Works	Bike share pods	Construction of three (3) bike share pods (being one (1) at the Development, one (1) at Liverpool railway station and one (1) at Casula railway station, each having an area of approximately 3 sq metres.	On or before the issue of any Occupation Certificate for the 600 th dwelling within the Development.	\$75,000
3.	Works	Publicly accessible car share spaces	Line marking of parking spaces in the public domain for approximately three (3) but not more than four (4) cars used in car sharing arrangements.	On or before the issue of any Occupation Certificate for the 600 th dwelling within the Development.	Nil
4.	Works	Woodbrook Road pedestrian and cycle underpass	Location proposed to be on street frontage in front of 20 Shepherd Street retail. Undertake works to the Woodbrook Road underpass sufficient to allow the underpass to be re-opened for pedestrians and cyclists only, including pedestrian and cycle pathway, removing fences and landscaping beautification works.	Prior to the issue of any Occupation Certificate for the 600 th dwelling within the Development.	\$255,000
5.	Monetary Contribution	Local Traffic Infrastructure Contribution	Contribution towards local traffic and transport infrastructure and service infrastructure. The contribution must be paid for each dwelling erected on 20 Shepherd Street in excess of 309. The contribution must be paid for each dwelling erected on 26 Shepherd Street in excess of 87. The contribution must be paid for each dwelling	On or before the issue of a Construction Certificate for the relevant dwelling.	\$6,000 for each relevant dwelling

Item	Contribution Type	Works description (heading)	Works description (summary)	Timing	Contribution Value
6.	Monetary Contribution	Regional Traffic Infrastructure Contribution	<p>erected on 28 Shepherd Street in excess of 184.</p> <p>The contribution must be paid for each dwelling erected on 32-34 Shepherd Street in excess of 126.</p> <p>The contribution must be paid for each dwelling erected on 31 Shepherd Street in excess of 127.</p> <p>The contribution must be paid for each dwelling erected on 33 Shepherd Street in excess of 119.</p>	<p>On or before the issue of any Occupation Certificate for the relevant dwelling.</p>	<p>\$10,000 for each relevant dwelling</p>

Item	Contribution Type	Works description (heading)	Works description (summary)	Timing	Contribution Value
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erected on 33 Shepherd Street in excess of 119.

7.	Works	Bank stabilisation works	<p>1. Construction of bank stabilisation works based on the specialist engineering design satisfactorily approved through an independent peer review process. Scope of the stabilisation works is defined by the necessary geomorphic assessment ensuring that the proposed stabilisation works will have no adverse impact to the downstream of the river up to the Liverpool Weir at both side of the riverbank. Any mitigation works including but not limited to the riverbank stabilisation works at the opposite side of the riverbank necessitated as a result of the geomorphic impact assessment of the proposed slope stabilisation works will also form part of the scope.</p> <p>2. scope of the works is also defined by fully certified engineering design to a) protect the proposed properties and buildings along the Shepherd Street b) protect the proposed Riverwalk works as per item 8 and specified below.</p> <p>3. design methodology, option and material selection shall be based on the due consideration of ongoing operation and maintenance expenses.</p> <p>4. construction of the stabilisation works will ensure the accommodation of the Riverwalk works included in item 8 and the Riverwalk works may be constructed not directly over the stabilized bank, but</p>	<p>On or before the issue of any Occupation Certificate for the 500th lot within the Development.</p>	\$13,000,665
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Item	Contribution Type	Works description (heading)	Works description (summary)	Timing	Contribution Value
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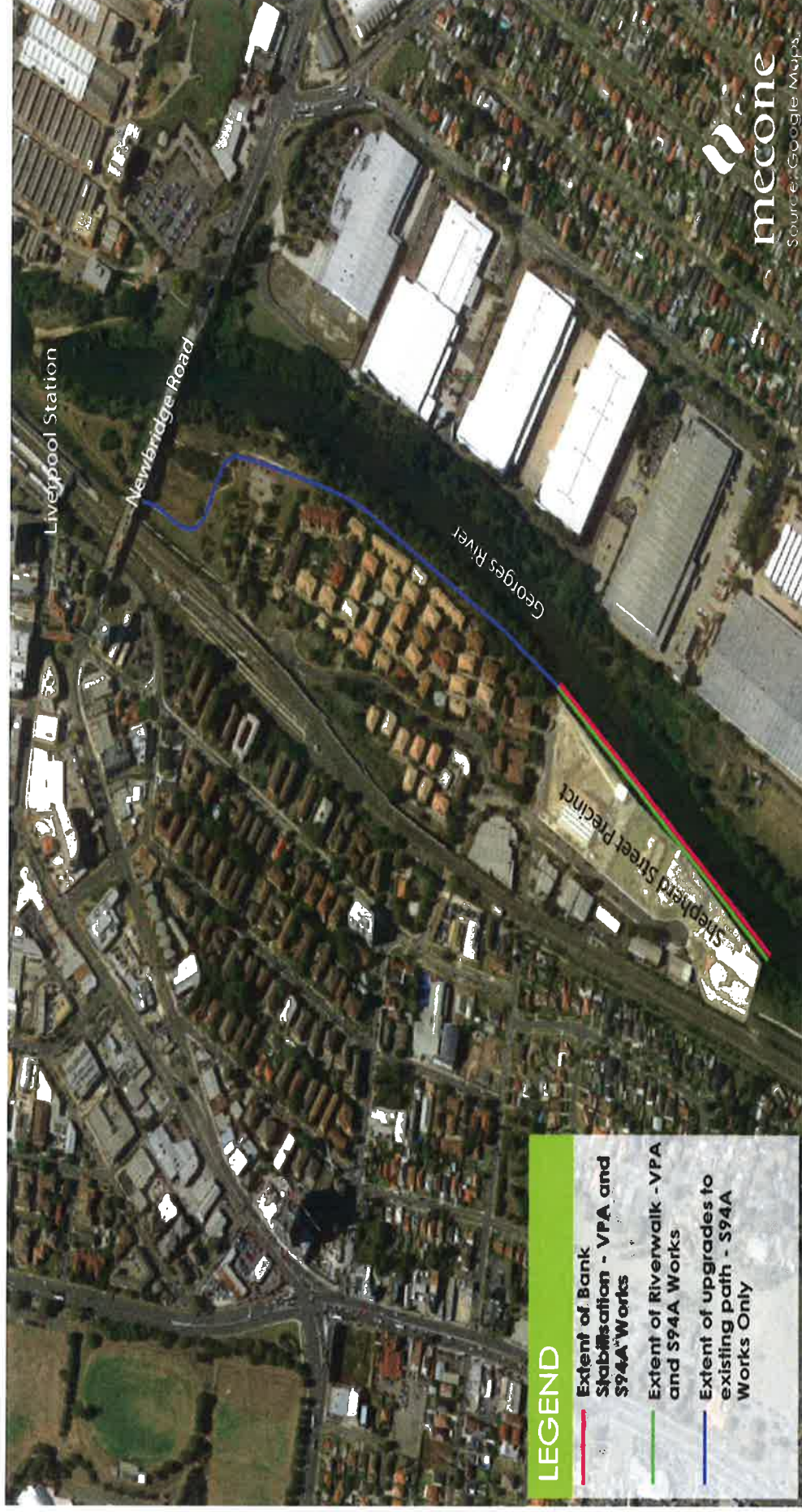
also on available ground in front of the river subject to an agreed future design.

8.	Works	Riverwalk works	<p>1. Construction of Riverwalk works (with minimum 3.5m clear width) either along the riparian zone including necessary transitional connection of Riverwalk and existing pedestrian/cycleway pathway at Mill Park as per the design works being undertaken by Council, and up to the existing footpath at Atkinson Street; or along Shepherd Street including necessary transitional connection of Riverwalk and existing pedestrian/cycleway pathway at Mill Park and up to the existing footpath at Atkinson Street.</p> <p>2. Construction of at least one viewing platform</p>	On or before the issue of any Occupation Certificate for the 500 th dwelling within the Development.	
9.	Works	Pedestrian & cycle Pathway Upgrade	Construction of an upgrade to the existing path way along the riparian zone north of the Development through Lighthorse Park to Newbridge Road as shown on the plan attached as Annexure 1 , to be 4m wide reinforced concrete/fibrecrete with lighting.	On or before the issue of any Occupation Certificate for the 310 th dwelling within the Development.	\$1,306,000
10.	Works	Rehabilitation of riparian zone	Rehabilitation of the riparian zone along the river adjacent to the Development and north to Lighthorse Park, including replanting where relevant. . Rehabilitation is as per Ecology, Biodiversity, Flora Fauna and Riparian Assessment report prepared by	On or before the issue of any Occupation Certificate for the 600 th dwelling in the Development	\$461,000

Item	Contribution Type	Works description (heading)	Works description (summary)	Timing	Contribution Value
11.	Monetary Contribution	Open Space Contribution	<p>ACS Environmental Pty Ltd dated March 2016, including rehabilitation of degraded vegetation areas, and restoration of native vegetation in accordance with the species identified in the report, including replanting where relevant.</p> <p>Monetary contribution to be used by Council for Open Space within the Liverpool City Centre.</p> <p>The contribution must be paid for each dwelling erected on 20 Shepherd Street in excess of 309.</p> <p>The contribution must be paid for each dwelling erected on 26 Shepherd Street in excess of 87.</p> <p>The contribution must be paid for each dwelling erected on 28 Shepherd Street in excess of 184.</p> <p>The contribution must be paid for each dwelling erected on 32-34 Shepherd Street in excess of 126.</p> <p>The contribution must be paid for each dwelling erected on 31 Shepherd Street in excess of 127.</p> <p>The contribution must be paid for each dwelling erected on 33 Shepherd Street in excess of 119.</p>	On or before the issue of any Occupation Certificate for the relevant dwelling	\$10,000 for each relevant dwelling

Planning agreement - 20, 26, 28, 31, 32 - 34 & 33 Shepherd Street, Liverpool

Annexure 1 – Plan of Works

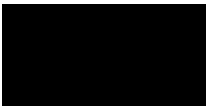


Planning agreement - 20, 26, 28, 31, 32 - 34 & 33 Shepherd S

Signing page

SIGNED SEALED AND DELIVERED by
LIVERPOOL CITY COUNCIL by its attorney,
pursuant to the Power of Attorney Registered
Book 4675 No.791 in the presence of:

I certify that I am an eligible witness and that
the delegate signed in my presence



Signature of witness

JOANNE NOUSEIR

Name of witness (please print)



Signature of attorney

DAVID MAGUIRE

Name of attorney (please print)

PUBLIC OFFICER

SIGNED SEALED AND DELIVERED by
**SHEPHERD STREET DEVELOPMENTS PTY
LIMITED ACN 660 668 120** in accordance
with section 127 of the *Corporations Act 2001*
(Cth) by being signed by the following officers:

Signature of director

Name of director (please print)



Signature of director/company secretary

JOSEPH NAHAS

Name of director/company secretary
(please print)

SIGNED SEALED AND DELIVERED by
**CORONATION (33 SHEPHERD ST) PTY
LIMITED ACN 601 903 682** in accordance
with section 127 of the *Corporations Act 2001*
(Cth) by being signed by the following officers:

Signature of director

Name of director (please print)



Signature of director/company secretary

JOSEPH NAHAS

Name of director/company secretary
(please print)

SIGNED SEALED AND DELIVERED by
**CORONATION (28 SHEPHERD ST) PTY
LIMITED ACN 600 861 907** in accordance
with section 127 of the *Corporations Act 2001*
(Cth) by being signed by the following officers:

Signature of director

Name of director (please print)



Signature of director/company secretary

JOSEPH NAHAS

Name of director/company secretary
(please print)

SIGNED SEALED AND DELIVERED by
**CORONATION (26 SHEPHERD ST) PTY
LIMITED ACN 612 253 308** in accordance
with section 127 of the *Corporations Act 2001*
(Cth) by being signed by the following officers:

Signature of director

Name of director (please print)

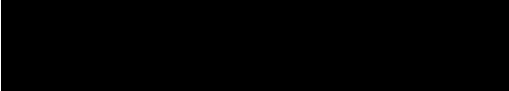


Signature of director/company secretary

JOSEPH NAHAS

Name of director/company secretary
(please print)

SIGNED SEALED AND DELIVERED by
**SHEPHERD PROPERTY NOMINEE PTY
LIMITED ACN 606 262 784** in accordance
with section 127 of the *Corporations Act 2001*
(Cth) by being signed by the following officers:



Signature of director

BERDINE NORMAYLE

Name of director (please print)



Signature of director/company secretary

THOMAS NORMAYLE

Name of director/company secretary
(please print)