

Voluntary Planning Agreement

8 February 2017

Liverpool City Council
ABN 84 181 182 471

Lateral Estate Pty Ltd
ACN 169 623 269

Autus Properties Pty Ltd
ACN 163 592 452

Lucror Developments Pty Ltd
ACN 163 534 861

Newcastle

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Agreement

Date

Parties

First party

Name Liverpool City Council (**Council**)
ABN 84 181 182 471
Contact Christopher White
Telephone (02) 9821 9593

Second party

Name Lateral Estate Pty Ltd (**Developer**)
ACN 169 623 269
Contact Benjy Levy
Telephone (02) 8570 8888

Third party

Name Autus Properties Pty Ltd (**Autus**)
ACN 163 592 452
Contact Terry Andriotakis
Telephone (02) 8570 8888

Fourth party

Name Lucror Developments Pty Ltd (**Lucror**)
ACN 163 534 861
Contact Terry Andriotakis
Telephone (02) 8570 8888

Background

- A. On 28 June 2016, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this agreement to make contributions for public purposes if Development Consent is granted.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

Act means the *Environmental Planning and Assessment Act 1979* (NSW);

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Collingwood House means the dwelling known as such and located in the Collingwood Heritage Precinct (Item 43, Schedule 5 of the *Liverpool Local Environmental Plan 2008*) located at 13 Birkdale Crescent, Liverpool;

Construction Certificate means a construction certificate as defined under s 109C of the Act;

Contributions Plan has the same meaning as under the Act;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Development means the construction of new residential floor space and alterations to existing buildings approved by DA-578/2014 as proposed in accordance with Development Application DA-582-2016;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Fax Number means a party's facsimile number set out in the Notices clause of this agreement;

GST has the same meaning as in the GST Law;

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

Land means Lot 103 DP 1205804, known as 446 Macquarie Street, Liverpool;

Landowners means Autus and Lucror;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Modification Application means any application to modify the Development Consent under section 96 of the Act;

Monetary Contribution means the monetary contribution payable by the Developer under clause 6 of this agreement;

Occupation Certificate means an occupation certificate as defined under section 109C of the Act, and includes an interim Occupation Certificate or a final Occupation Certificate;

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

Regulation means the *Environmental Planning and Assessment Regulation 2000*;

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth).

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;

- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred

to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;

- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 93F of the Act.
- (b) Schedule 1 of this agreement summarises the requirements for planning agreements under s 93F of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Development, and
- (b) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 *Monetary Contribution*

- (a) The Developer will pay to Council a monetary contribution of \$230,000 or an amount calculated in accordance with the following formula, whichever is the greater:

$$\$230,000 \times \frac{\text{the CPI at the time of payment}}{\text{the CPI as at the date of this agreement}}$$

- (b) The Monetary Contribution must be paid to Council prior to the issue of a Construction Certificate for the Development or any part of the Development.
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies the Developers in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards restoration works to Collingwood House.

7 Application of s 94, s 94A and s 94EF of the Act to the Development

- (a) This agreement does not exclude the application of section 94 of the Act to the Development.
- (b) This agreement does not exclude the application of section 94A of the Act to the Development.
- (c) This agreement does not exclude the application of section 93EF of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 94 of the Act.

8 Registration of this agreement

8.1 *Developer and Landowners Interest*

The Landowners represent and warrant to the Council that on the date of this agreement they are the registered proprietors of the Land.

8.2 *Registration of this agreement*

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 93H of the Act.
- (b) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) The consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
 - (iii) The execution of any documents; and
 - (iv) The production of the relevant duplicate certificates of title,to enable the registration of this agreement in accordance with clause 8.2.
- (c) The Landowners consent to the registration of the agreement in accordance with this clause 8.2.
- (d) The Developer and Landowners, at their own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date or after the

date on which the Plan of Subdivision is registered, whichever occurs the earliest; and

- (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

8.3 *Removal from Register*

The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

8.4 *Caveat*

- (a) The Developer and Landowners acknowledge and agree that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and the Landowners are 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 a caveat over the Land notifying that interest;
 - (ii) the Landowners will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor will the Landowners 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.
- (b) The Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with clause 8.2 and must not lodge any other caveats on the titles to any of the Land.

9 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

10 Dispute Resolution

10.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 20 business days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;

- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) Agreed upon and appointed jointly by the parties; and
 - (ii) In the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or

- (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 *Litigation*

If the dispute is not finally resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

11 Enforcement

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 *Bank Guarantee*

- (a) On the execution of this agreement the Developer must provide to the Council a Bank Guarantee or Bank Guarantees in the amount of \$230,000.00 to secure the payment of the Monetary Contribution.
- (b) The Council may call on a Bank Guarantee provided under this clause if:
 - (i) the Developer are in material or substantial breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 11.1 of this agreement; or
 - (ii) the Developer becomes insolvent.
- (c) Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause (a), the Developer must provide Council with one or more replacement Bank Guarantees (replacement Bank Guarantee) in an amount calculated in accordance with the following:

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

Where:

A is the amount of the replacement Bank Guarantee,

B is the amount of the Bank Guarantee to be replaced,

C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,

D is the CPI for the quarter ending immediately before the date of the replacement Bank Guarantee,

provided A is greater than B.

- (d) On receipt of a replacement Bank Guarantee provided under clause 11.2(c), the Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (e) At any time following the provision of a Bank Guarantee under this clause, the Developer may provide the Council with one or more replacement Bank Guarantees totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.
- (f) Subject to this clause and the provisions of this agreement, the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
 - (i) any obligation of the Developer under this agreement, and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (g) Nothing in this clause 11.2 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,

that is not or cannot be satisfied by calling on a Bank Guarantee.

11.3 Restriction on the issue of Certificates

- (a) In accordance with section 109F of the Act and clause 146A of the Regulation, the obligation to provide a Bank Guarantee under clause 11.2 must be satisfied prior to the issue of a Construction Certificate for the Development or any part of the Development.

11.4 General Enforcement

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.

- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

12 Assignment and Dealings

12.1 Assignment

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

12.2 Arrangements with Mortgagee

- (a) The Developer and Landowners agree with the Council that if the Developer and Landowners mortgage the Land after this agreement is entered into they must use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Developer and Landowners, and the mortgagee so that the mortgagee accepts that the responsibilities set out in this agreement are binding upon the mortgagee in the event that the Developer and Landowners default on the mortgage and the mortgagee takes possession of the Land.
- (b) The terms of the adoption of the obligations of the Developer and Landowners by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Developer and Landowners.

12.3 Transfer of Land

- (a) The Developer and Landowners may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) The Developer and Landowners satisfy the Council that the proposed Transferee is financially capable of complying with the Developer and Landowners' obligations under this agreement;
 - (ii) The Developer and Landowners satisfy the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer and Landowners under this agreement;

- (iv) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
- (v) The Developer and Landowners and the Transferee pay the Council's reasonable costs in relation to the assignment.

13 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 *Discretion*

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

14.2 *No fetter*

No provision of this agreement is intended to constitute any fetter on the exercise of 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 a 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 is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

15.1 *Notices*

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;

- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this agreement:
- (i) to Liverpool City Council: Locked Bag 7064, Liverpool NSW 1871
Fax: (02) 9821 9333
Email: whitec@liverpool.nsw.gov.au
Attention: Christopher White
 - (ii) to Lateral Estate Pty Ltd: c/- Kamper Chartered Accountants, Level 3, 8-10 King Street, Rockdale NSW 2216
Fax: **(02) 9529 7488**
Email: apapaioannou@kamper.com.au
Attention: **Anthony Papaionnou**
 - (iii) to Autus Properties Pty Ltd: c/- Kamper Chartered Accountants, Level 3, 8-10 King Street, Rockdale NSW 2216
Fax: **(02) 9529 7488**
Email: apapaioannou@kamper.com.au
Attention: **Anthony Papaionnou**
 - (iv) to Lucror Developments Pty Ltd: c/- Kamper Chartered Accountants, Level 3, 8-10 King Street, Rockdale NSW 2216
Fax: **(02) 9529 7488**
Email: apapaioannou@kamper.com.au
Attention: **Anthony Papaionnou**
- (c) is taken to be given or made:
- (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 Notices sent by email:

- (a) A party may serve a Notice by email if the Notice:
 - (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;

- (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
- (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
- (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:

(A) to Liverpool City Council: Attention: Christopher White
whitec@liverpool.nsw.gov.au

(B) to Lateral Estate Pty Ltd: Attention: **Benjy Levy**
apapaioannou@kamper.com.au

(C) to Autus Properties Pty Ltd: Attention: **Benjy Levy**
benjy@lateralestate.com

(D) to Lucror Developments Pty Ltd: Attention: **Benjy Levy**
benjy@lateralestate.com

- (b) The recipient of a Notice served under this clause 15.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 15.2 does not invalidate service of a Notice under this clause.

15.3 *Receipt of Notices sent by email*

- (a) A Notice sent under clause 15.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,whichever occurs first.
- (b) If under clause 15.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 *Relationship between parties*

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.

- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.5 *No assignment*

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

16.6 *Counterparts*

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.7 *Legal expenses and stamp duty*

The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect and release and discharge of this agreement, including the Council's legal costs in obtaining advice about any such matters.

16.8 *Entire agreement*

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 *Representations and warranties*

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

16.10 Severability

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

16.11 Invalidity

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

16.13 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

16.14 Governing law and jurisdiction

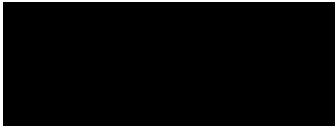
- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

Schedule 1 Summary of requirements (section 93F)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 93F(1)</p> <p>The Landowners have:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Description of the land to which the planning Agreement applies – Section 93F(3)(a)</p>	<p>The Land is defined in clause 1 as Lot 103 DP 1205804, also known as 446 Macquarie Street, Liverpool;</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 93F(3)(b)</p>	<p>Monetary Contributions must be paid prior to issue of a Construction Certificate. See clause 6.</p>
<p>Applicability of section 94 of the Act – Section 93F(3)(d)</p>	<p>Not excluded. See clause 7.</p>
<p>Applicability of section 94A of the Act – Section 93F(3)(d)</p>	<p>Not excluded. See clause 7.</p>
<p>Applicability of section 94EF of the Act – Section 93F(3)(d)</p>	<p>Not excluded. See clause 7.</p>
<p>Mechanism for dispute resolution – Section 93F(3)(f)</p>	<p>Yes. See clause 10.</p>
<p>Enforcement of the Planning Agreement – Section 93F(3)(g)</p>	<p>Bank Guarantee and restriction on the issue of a Construction Certificate. See clause 11.</p>
<p>Registration of the Planning Agreement – Section 93F(3)(g)</p>	<p>Yes. See clause 8.</p>
<p>No obligation to grant consent or exercise functions – Section 93F(9)</p>	<p>See clause 14 (no fetter).</p>

Executed as an agreement

Executed by Liverpool City Council)
by its Chief Executive Officer pursuant to authority)
delegated to her in accordance with a)
resolution of Council on 16 November 2016)



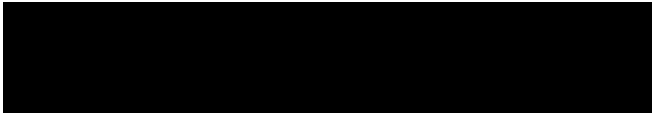
Kirsten Fishburn, CEO

Date: 19.5.17

Before me:

Name of witness: Deborah Cuthbertson.

Executed by Lateral Estate Pty Ltd)
ACN 169 623 269 in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)



Signature of Sole Director and Sole
Secretary

NICK ANDRIOTAKIS

Print name of Sole Director and Sole
Secretary

Executed by **Autus Properties Pty Ltd**)
ACN 163 592 452 in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)

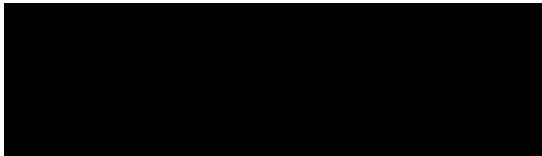


.....
Signature of Sole Director and Sole
Secretary

TERRY ANORIO TAKIS

.....
Print name of Sole Director and Sole
Secretary

Executed by **Lucror Developments Pty**)
Ltd ACN 163 534 861 in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)



.....
Signature of Sole Director and Sole
Secretary

TERRY ANORIO TAKIS

.....
Print name of Sole Director and Sole
Secretary

Annexure A Explanatory note

Explanatory Note
Exhibition of draft Voluntary Planning Agreement
Lot 103 DP 1205804,
known as 446 Macquarie Street, Liverpool

Environmental Planning & Assessment Regulation 2000 (clause 25E)

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 93F of the *Environmental Planning and Assessment Act 1979* (**the Act**).

The Planning Agreement will require the provision of a monetary contribution in relation to the proposed development of land at Lot 103 DP 1205804, known as 446 Macquarie Street, Liverpool.

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (**the Regulations**).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

Lateral Estate Pty Ltd (**the Developer**) made an offer to Liverpool City Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with a Development Application relating to the subject land.

Description of subject land

The land to which the Planning Agreement applies is described as Lot 103 DP 1205804, known as 446 Macquarie Street, Liverpool (**the Land**).

Description of the Development Application to which the Planning Agreement applies

Development Application DA-582/2016 for the construction of new residential floor space and alterations to existing buildings approved by DA-578/2014 including site excavation; construction of an additional half level of basement carparking beneath Building C; other carparking changes; new and amended floor space on Levels 26 – 28 of Building C; and construction of additional residential Levels 29 and 30 to Building C.

Summary of Objectives, Nature and Effect of the Planning Agreement

Monetary Contribution

The Planning Agreement requires a monetary contribution in the amount of \$230,000.00.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Planning Agreement promotes the following objective of the *Environmental Planning and Assessment Act 1979*:

- to encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

The draft Planning Agreement promotes the public interest by providing a public benefit in the contribution of funds towards the restoration of Collingwood House. Collingwood House is part of the Collingwood Heritage Precinct and is highly significant in the history of Liverpool. The Collingwood Heritage Precinct is listed as a Heritage Item in the Liverpool Local Environmental Plan 2008 and is identified as a place of State significance.

The Planning Purposes served by the Planning Agreement

The monetary contribution will be used towards restoration of Collingwood House located at 13 Birkdale Crescent, Liverpool.

How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter

The Planning Agreement is consistent with the following purposes of the *Local Government Act 1993*:

- to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government, and
- to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

The Planning Agreement promotes the following guiding principles for Councils (section 8A of the *Local Government Act 1993*):

- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way,
- Councils should work with others to secure appropriate services for local community needs,
- Councils should recognise diverse local community needs and interests,
- Councils should consider the long term and cumulative effects of actions on future generations,
- Councils should consider the principles of ecologically sustainable development, and
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

These principles are promoted through the use of funds towards the restoration of an item and place of heritage significance to the community and local government area generally to ensure the preservation of Collingwood House for future generations.

Whether the Planning Agreement Conforms with the Council's Capital Works Program

The Planning Agreement conforms with Council's Capital Works Program.

Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Planning Agreement specifies that the following requirements must be met prior to the issue of a construction certificate:

- Payment of the monetary contribution; and
- Provision of a bank guarantee.