Planning Agreement

[Insert Name of Development or details of Property]

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

[Insert name of Developer (ABN Insert )] (**Developer**)

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Planning Agreement

[Insert Name of Development or details of Property]

Parties

|  |  |  |
| --- | --- | --- |
| **Council** | **Name** | Liverpool City Council |
| **Address** | Ground Floor33 Moore StreetLiverpool NSW 2170 |
| **ABN** | 84 181 182 471 |
| **Developer** | **Name** | [Insert] |
| **Address** | [Insert] |
| **ABN** | [Insert] |

Background

[Note: The Background must reflect the specific factual circumstances and in particular reflect compliance with 7.4(1) of the Act.]

1. The Developer owns the Land.
2. The Developer wishes to carry out the Development.
3. The Developer has applied, or proposes to apply, for the [Development Consent/Instrument Change].
4. The Developer has agreed to make the Development Contributions on and subject to the terms of this document.

Operative Provisions

1. Agreement

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

1. Definitions
	1. Defined Terms

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

* 1. Interpretation

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

1. Application and operation of document
	1. Planning Agreement

This document is a planning agreement:

* + 1. within the meaning set out in s7.4 of the Act; and
		2. governed by Subdivision 2 of Part 7 of the Act.
	1. Application

This document applies to both the Land and the Development.

* 1. Operation

[Option 1: This clause is usually used when the VPA is associated with a Development Consent.]

* + 1. Subject to paragraph (2), this document operates from the date it is executed by both parties.
		2. The following clauses of this document will only operate if and when Council grants the Development Consent/Instrument Change [MLG Comment: delete as applicable]:
			1. [MLG Comment: the clauses of the document that only apply on the granting of the Development Consent/Instrument Change need to be inserted, e.g. the obligation to provide security.]

[Option 2: This clause reflects what would usually apply if the VPA was associated with an Instrument Change.]

This document operates from the date it is executed by both parties.

1. Application of s7.11 & s7.12
	1. Application

This document [does/does not/partly] exclude[s] the application of section 7.11 or section 7.12 of the Act to the Development.

[MLG Drafting Note: Section 7.4(3) of the Act allows a Planning Agreement to exclude the application of section 7.11 and 7.12 in whole or in part. The drafting of this clause will depend on the extent to which those contributions are excluded. If the document partly excludes the operation of section 7.11, then detailed provisions need to be inserted in the document setting out the exact extent to which those sections are excluded.]

* 1. Consideration of Benefits

Section 7.11(6) of the Act [does/does not] apply to the Contributions that are to be carried out or provided pursuant to this document.

[MLG Drafting Note: If section 7.11(6) applies, Council must take into account the land, money or other material public benefit that the Developer has provided under this document when imposing contributions under s7.11 for developments in the area, or adjacent to the area of the Development.]

* 1. Section 7.24

[Note: Section 7.24 is the section dealing with SIC and as such, this section can only be excluded by the Minister.]

This document does not exclude the application of s7.24 to the Development.

1. Provision of Contributions
	1. Designated Land [Note: This clause should only be included if land is being dedicated]
		1. The Developer must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in **Schedule 3**.
		2. The Developer must meet all costs associated with the dedication of the Designated Land in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.
		3. For the purpose of this document, Designated Land is dedicated to Council:
			1. if the relevant land is dedicated in a plan registered at the Land & Property Information Office of NSW, when that plan is so registered; or
			2. **otherwise when the Developer delivers to Council:**
				1. a transfer of the relevant land in registrable form;
				2. the original Certificate of Title for the relevant land; and
				3. any document in registrable which, when registered, will remove any Encumbrances registered on the title of that land, excluding encumbrances that would not in the Council’s opinion, acting reasonably, impede the intended use of all or any part of the Designated Land to be dedicated to the Council including but not limited to easements and covenants for services and drainage.
	2. Works [Note: This clause should only be included if works are being carried out]

The Developer, at its cost, must:

* + 1. obtain Development Consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works;
		2. carry out and complete the Works to the satisfaction of the Council by the time specified in **Schedule 4**; and
		3. carry out and complete the Works:
			1. in accordance with the specifications referred to in **Schedule 4** for the relevant item of Work;
			2. in accordance with any relevant Development Consent;
			3. in accordance with the requirements of, or consents issued by, any Authority;
			4. ensuring that:
				1. all necessary measures are taken to protect people, property, and the Environment;
				2. unnecessary interference with the passage of people and vehicles is avoided;
				3. nuisances and unreasonable noise and disturbances are prevented; and
				4. all relevant laws and regulations with respect to water, air, noise and land pollution (including ‘pollution incidents’) as defined under the *Protection of the Environment Operations Act 1997* (NSW);
			5. in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
			6. in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.
	1. Contribution Value

If the Developer’s actual cost of carrying out the Works, including any costs incurred pursuant to this document, determined at the date on which the Works are Completed, differs from the Contribution Value, then subject to the Works having been sufficiently completed in accordance with this document, neither party will be entitled to claim credit or reimbursement, as the case may be, for the difference.

* 1. Access to the Land and location of Works
		1. The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works.
		2. The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.
	2. Monetary Contributions [Note: This clause should only be included if a monetary contribution is being paid]
		1. Subject to clause 5.6 the Developer must pay the Monetary Contributions by the time specified in **Schedule 5**.
		2. A monetary development contribution is made for the purposes of this document when Council receives the full amount of the contribution payable under this document in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.
	3. Monetary Contribution (Acquisition Land) [Note: this is optional and will depend on the circumstances. See my comments in clause 6 below for further details on when this may apply]

The Developer must make the Acquisition Land Payment to Council on and subject to the provisions of clause 6.

* 1. Indexation of Amounts payable by Developer

The Monetary Contributions are to be increased (with the calculation to be made as from the date any such amount is due to be paid under this document) in accordance with the following formula:

**A = B x C**

**D**

where:

**A** = the indexed amount;

**B** = the relevant amount as set out in this document;

**C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

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

If **A** is less than **B**, then the amount of the relevant Monetary Contribution will not change.

1. Land Acquisition

[Note: this clause 6 and clause 5.6 should be used where there is land that is proposed to be dedicated to, or acquired by, Council as a public road or open space land in the future, but which the Developer does not yet own. If the relevant land is not dedicated to Council as a public road (i.e. if, and when, the Developer becomes the owner, or by a third party), then it requires the Developer to pay for the costs incurred by Council in acquiring/purchasing the relevant land itself, if it elects to do so. If this is not applicable, this clause 6 and clause 5.6 (as well as the definitions in Part 1 of Schedule 1 of ‘Acquisition Land’ and ‘Acquisition Land Payment’ should be removed]

* 1. Acquisition of the Acquisition Land
		1. The Developer acknowledges that Council is under no obligation to acquire the Acquisition Land, however it may choose to do so at its absolute discretion.
		2. If Council acquires the Acquisition Land by compulsory acquisition (as defined in the Acquisition Act) (**Compulsory Acquisition**) or private treaty, Council must serve a notice on the Developer to confirm that the acquisition has occurred.
	2. Dedication of the Acquisition Land

The Acquisition Land Payment will not be required to be made if the Acquisition Land is dedicated to Council as a public road or open space land (by the Developer or otherwise) without any obligation on Council to make any payments contained within the definition of *Acquisition Land Payment* contained in **Schedule 1**.

* 1. Security
		1. The Developer must provide Council with a Bank Guarantee on account of the Acquisition Land Payment in accordance with this clause 6.3.
		2. If Council proposes to acquire the Acquisition Land by private treaty, then it may serve notice on the Developer requiring the Developer to provide Council with a Bank Guarantee in an amount equal to Council’s then reasonable estimate of the Acquisition Land Payment.
		3. If Council proposes to acquire the Acquisition Land by Compulsory Acquisition then, provided it has obtained the consent of the Minister and the Governor to publish an acquisition notice with respect to that land, it may serve notice on the Developer requiring the Developer to provide Council with a Bank Guarantee in an amount equal to the aggregate of:
			1. one hundred and twenty per cent (120%) of the amount Council believes (supported by an independent valuer) it will be required to pay on account of the acquisition; and
			2. any reasonable costs likely to be incurred by Council in undertaking that acquisition.
		4. The Developer must provide Council with a bank guarantee in accordance with this clause 6.3 within three (3) months of receiving a notice from Council under clause 6.3(2) or 6.3(3). In any event, the Developer must provide the Bank Guarantee required by this clause 7.3 prior to [Note: relevant timing to be included, i.e. Occupation Certificate or Subdivision Certificate].
		5. Council may immediately call on any Bank Guarantee provided under this clause 6.3 if the Developer fails to pay the Acquisition Land Payment by the time required under this clause 6.
	2. Timing of payment
		1. If Council acquires the Acquisition Land by private treaty, then the Developer must pay the Acquisition Land Payment on the later of:
			1. completion of that acquisition by Council; and
			2. five (5) business days after Council provides written notice to the Developer of the amount required to be paid.
		2. If Council acquires the Acquisition Land by Compulsory Acquisition, then the Developer must pay the Acquisition Land Payment on the later of:
			1. the date on which Council is required to make payment of compensation to any relevant interested party on account of that acquisition; and
			2. five (5) business days after Council provides written notice to the Developer of the amount required to be paid.
1. Completion of Works [Note: This clause should only be included if works are being carried out]
	1. Issue of Completion Notice

If the Developer considers that any particular item of the Works is complete it must serve a notice on Council which:

* + 1. is in writing;
		2. identifies the particular item of the Works to which it relates; and
		3. specifies the date on which the Developer believes the relevant item of the Works was completed,

(**Completion Notice**).

* 1. Inspection by Council
		1. Council must inspect the Works set out in a Completion Notice within ten (10) business days of the receipt of that notice.
		2. If Council fails to carry out an inspection required under paragraph (1) the Works referred to in the relevant Completion Notice will be deemed to be Complete.
	2. Rectification Notice
		1. Within twenty (20) business days of inspecting the Works set out in a Completion Notice Council must provide notice in writing (**Rectification Notice**) to the Developer that the Works set out in the Completion Notice:

#### have been Completed; or

#### have not been Completed, in which case the notice must also detail:

* + - * 1. those aspects of the Works which have not been Completed; and
				2. the work Council requires the Developer to carry out in order to rectify the deficiencies in those Works.
		1. If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (1), the Works set out in the Completion Notice will be deemed to have been Completed.
		2. Where Council serves a Rectification Notice on the Developer, the Developer must:
			1. rectify the Works in accordance with that notice; or
			2. serve a notice on the Council that it disputes the matters set out in the notice.
		3. Where the Developer:
			1. serves notice on Council in accordance with paragraph (3)(b), the dispute resolution provisions of this document apply; or
			2. rectifies the Works in accordance with paragraph (3)(a), it must serve upon the Council a new Completion Notice for the Works it has rectified.
	1. Acceptance of Works [Note: This clause should only be included if land is to be dedicated to Council]

Council accepts ownership, possession and control of, and risk in, any Works carried out on Designated Land when:

* + 1. those Works are Completed; and
		2. the relevant land has been dedicated to Council.
1. Defects Liability [Note: This clause should only be included if works are being carried out]
	1. Defects Notice
		1. Where any part of the Works has been Completed but those Works contain a material defect which:
			1. adversely affects the ordinary use and/or enjoyment of the relevant Works; or
			2. will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect;

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

* + 1. A Defects Notice must contain the following information:
			1. the nature and extent of the Defect;
			2. the work Council requires the Developer to carry out in order to rectify the Defect; and
			3. the time within which the Defect must be rectified (which must be a reasonable time and not less than ten (10) business days).
	1. Developer to Rectify Defects
		1. The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
		2. The Developer must follow the procedure set out in clause 6 in respect of the satisfaction of the Defects Notice.
	2. Right of Council to Step-In

Council, at its absolute discretion, 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 five (5) business days written notice of its intention to do so.

* 1. Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 8.3 then:

* + 1. Council may:
			1. 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
			2. rectify the relevant Defects in accordance with the Defects Notice; and
		2. the Developer must not impede or interfere with Council in undertaking that work.
	1. Costs of Council

Where Council exercises its step-in rights all, costs incurred by Council in rectifying the relevant Defects may call upon the Defects Security provided by the Developer pursuant to clause 12 and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Defects Security and the costs incurred by the Council in rectifying the Defects.

1. Variation of scope or timing for provision of Works [MLG Comment: This is included to provide flexibility in respect of the Works and to allow the Developer to request a variation to the timing/scope of the works if Council agrees]
	1. Variation to the scope of an item of Work
		1. The Developer may request that Council approve in writing a variation to the scope any item of Work.
		2. The scope of an item of Work is not to be varied unless Council and the Developer agree in writing to the variation.
		3. Council may withhold its consent to a variation of an item of Work at its absolute discretion.
	2. Deferral of the timing of Completion of an item of the Works
		1. Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:
			1. it is unable to Complete any item of the Works by the time specified in **Schedule 4**; or
			2. it believes that there is a risk of damage to any item of the Works if they are delivered by the time required in **Schedule 4**,

(**Deferred Works**), then the Developer may seek Council’s approval to defer the Completion of the relevant item of the Works by providing written notice to the Council:

* + - 1. identifying the relevant item of Work that the Developer proposes to defer;
			2. specifying the reason for the request to defer the Completion of that item of the Works; and
			3. identifying the anticipated time for Completion of the relevant item of Work.
		1. The Council, acting reasonably, must give the Developer a written notice within thirty (30) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
			1. whether or not it consents to the deferral of the Deferred Works;
			2. the revised date for Completion required by Council; and
			3. 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 item of the Works).
		2. If the Council consents to the deferral of the Deferred Works, then the following applies:
			1. The Developer must comply with any conditions required by Council under paragraph (2)(c) above.
			2. Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document.
			3. The time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.
1. Developer Warranties and Indemnities
	1. Warranties

The Developer warrants to Council that it is:

* + 1. legally and beneficially entitled to the Land;
		2. able to fully comply with its obligations under this document;
		3. it has full capacity to enter into this document; and
		4. there is no legal impediment to it entering into this document, or performing the obligations imposed under it.
	1. Indemnity

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

1. Contamination [Note: Should only be included if Land is to be dedicated to Council]
	1. Definitions

For the purpose of this clause 11:

**Contamination** means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

* + 1. result in an Authority issuing a notice, direction or order under an Environmental Law; or
		2. which would constitute a violation of contribution of contravention of any Environmental Law.

**Contaminated** means subject to Contamination.

**Environmental Law** means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

* 1. Warranties and Indemnities

The Developer:

* + 1. warrants that as far as it is aware, and other than as disclosed to Council, the Designated Land is not Contaminated; and
		2. indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Designated Land including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of the Department of Environment and Conservation and any other relevant Authority.
	1. Remediation
		1. If Council becomes aware or reasonably suspects that any part of the Designated Land was Contaminated before the date of this document, Council may as soon as practicable notify the Developer in writing to that effect.
		2. As soon as practicable after receipt of the notice pursuant to paragraph (1) the Developer will at its cost (with the assistance of qualified experts) carry out all reasonable investigations (including investigations which Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the Contamination in, on, under the surface of, and leaving from the relevant part of the Designated Land and provide copies of all reports on such investigations to Council (**Investigation Reports**).
		3. As soon as practicable after receipt by Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Designated Land might be dealt with so that it is no longer Contaminated.
		4. Following the discussions pursuant to paragraph (3) the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Designated Land is no longer Contaminated.
1. Security

### [MLG Drafting Note: Section 7.4(3)(g) requires the Planning Agreement to provide for enforcement of the Planning Agreement by suitable means such as a bond or bank guarantee. The form and value of security is likely to be a matter for negotiation between the parties and will depend on the nature and extent of the contributions being provided. The form of the following clause may require amendment to reflect the negotiated position, however is a standard provision for security by bank guarantee and dedication of land.]

* 1. Provision of Security
		1. Subject to paragraph (2), prior to the issue of a Construction Certificate in respect of the Development, the Developer must deliver to Council separate Bank Guarantees, bonds or other forms of security to the satisfaction of the Council:
			1. for the amount equivalent to the sum of the Contribution Values (**Primary Security**) for all items of Work which are required to be Completed prior to the issue of a Subdivision Certificate or an Occupation Certificate with respect to that part of the Development to which the relevant Construction Certificate relates; and
			2. for an amount equivalent to fifteen (15%) of the sum of those Contribution Values (**Defects Security**),

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

* + 1. The Developer may satisfy its obligations under paragraph (1) (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this document.
	1. Replacement of Security
		1. The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.
		2. On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.
	2. Council may call on Security
		1. If the Developer commits an Event of Default Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.
		2. 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.
	3. 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 Council is entitled to hold at that time under this document.

* 1. Release of Primary Security

Unless:

* + 1. Council has made or intends to make a demand against any Security provided by the Developer;
		2. the Development Contributions on account of which that Security was provided have not been made; or
		3. the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Primary Security within ten (10) business days of such a request being made.

* 1. Release of Defects Security

Unless:

* + 1. Council has made or intends to make a demand against any Security provided by the Developer for that Stage;
		2. the relevant Defects Liability Period has not expired; or
		3. the Developer is in breach of this document at the relevant time,

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.

* 1. Indexation of value of Contribution Value
		1. The Contribution Values for the Works and any Security provided for the Works will be indexed quarterly in accordance with [insert building and construction index (to be confirmed)] provided by the Australian Bureau of Statistics.
		2. The Developer must ensure that the Security held by Council at all times equals the indexed amount notified to the Developer by Council.
	2. Compulsory acquisition of the Designated Land [Note: This clause should only be included if land is being dedicated]
		1. The Developer consents to the compulsory acquisition of the Designated Land:
			1. in accordance with the Acquisition Act; and
			2. on the terms set out in this clause 12.8.
		2. Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect the dedication of that land under this document.
		3. If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
			1. the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is $1.00; and
			2. Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
		4. The parties agree that the provisions of this clause 12.8 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.
		5. If Council:
			1. acquires the Designated Land under paragraph (3); and
			2. is required to pay any compensation to a third party as a result of that acquisition,

then the Developer must pay Council the amount of that compensation as a Monetary Contribution:

* + - 1. within ten (10) business days of demand for payment being made by Council; and
			2. prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Development.
	1. Developer and Owners must not deal with property [Note: This clause should only be included if land is being dedicated]
		1. The Developer and Owners must not during the term of this document sell, transfer, mortgage, charge or grant a lease or license or any other right of occupancy to any person over the Designated Land without first obtaining Council’s consent in writing.
		2. Council may, at its absolute discretion, refuse its consent or give consent with conditions.
	2. Council may withhold Subdivision Certificate
		1. The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Contribution under this document.
		2. Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Contribution under this document until such time as:
			1. the breach is rectified; or
			2. Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.
1. Registration of this document
	1. Registration of this document

The Developer acknowledges and agrees that:

* + 1. this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
		2. subject to clause 13.2, Council will undertake that registration at the cost of the Developer.
	1. Obligations of Developer
		1. The Developer, at its own expense, will promptly after this document comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
			1. the consent of each person who:
				1. has an estate or interest in the Land; or
				2. is seized or possessed of an estate or interest in the Land;
			2. the execution of any documents; and
			3. the production of the relevant duplicate certificates of title,

to enable the registration of this document in accordance with clause 13.1.

* + 1. The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
			1. to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than sixty (60) business days after that date; and
			2. to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.
	1. Discharge from the Register

The Council will provide a release and discharge of this document so that it may be removed from the folios of the Register for the Land (or any part of it) when:

* + 1. the obligations under this document have been satisfied; or
		2. if this document is terminated or rescinded.
1. Assignment
	1. Restriction on Assignment

Other than in accordance with this clause 14 the Developer may not:

* + 1. Assign any part of the Land; and/or
		2. Assign their rights or obligations under this document.
	1. Procedure for Assignment
		1. If the Developer:
			1. wishes to Assign any part of the Land; and/or
			2. wishes to Assign its rights or obligations under this document,

then the Developer must:

* + - 1. provide a written request to Council for the consent of Council to the relevant Assignment;
			2. provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
			3. obtain written consent of Council to the relevant Assignment; and
			4. at no cost to Council, procure:
				1. the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
				2. the provision of all Securities to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
		1. Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.
1. Dispute Resolution
	1. Notice of dispute
		1. If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
			1. is in writing;
			2. adequately identifies and provides details of the Dispute;
			3. stipulates what the First Party believes will resolve the Dispute; and
			4. designates its representative (**Representative**) to negotiate the Dispute.
		2. The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).
	2. Conduct pending resolution

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

* 1. Further steps required before proceedings

Subject to clauses 15.14 and 15.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 15.5 or determination by an expert under clause 15.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 15.1(2) is served.

* 1. Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 15.5 or expert resolution under clause 15.6.

* 1. Disputes for mediation
		1. If the parties agree in accordance with clause 15.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
		2. If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 15.6.
	2. Choice of expert
		1. If the Dispute is to be determined by expert determination, this clause 15.6 applies.
		2. The Dispute must be determined by an independent expert in the relevant field:
			1. agreed between and appointed jointly by the parties; or
			2. in the absence of document within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
		3. If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
		4. The expert appointed to determine a Dispute:
			1. must have a technical understanding of the issues in dispute;
			2. 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
			3. must inform the parties before being appointed of the extent of the expert’s understanding of each party’s business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
		5. The parties must promptly enter into an document with the expert appointed under this clause 15.6 setting out the terms of the expert’s determination and the fees payable to the expert.
	3. Directions to expert
		1. In reaching a determination in respect of a dispute under clause 15.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
		2. The expert must:
			1. act as an expert and not as an arbitrator;
			2. proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
			3. not accept verbal submissions unless both parties are present;
			4. on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
			5. 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;
			6. 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);
			7. issue a draft certificate stating the expert’s intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
			8. issue a final certificate stating the expert’s determination (together with written reasons); and
			9. act with expedition with a view to issuing the final certificate as soon as practicable.
		3. The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
			1. a short statement of facts;
			2. a description of the Dispute; and
			3. any other documents, records or information which the expert requests.
	4. Expert may commission reports
		1. Subject to paragraph (2):
			1. 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
			2. the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 15.6(5) of this deed.
		2. The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.
	5. Expert may convene meetings
		1. The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert’s discretion.
		2. The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.
	6. Other courses of action

If:

* + 1. the parties cannot agree in accordance with clause 15.4 to refer the matter to mediation or determination by an expert; or
		2. the mediation referred to in clause 15.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

* 1. Confidentiality of information provided in dispute resolution process
		1. The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
			1. subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
			2. not to disclose any confidential documents, information and other material except:
				1. to a party or adviser or consultant who has signed a confidentiality undertaking; or
				2. if required by Law or any Authority to do so; and
			3. not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
		2. The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
			1. 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;
			2. admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
			3. 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.
	2. 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.

* 1. Costs

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

* 1. Remedies available under the Act

This clause 15 does not operate to limit the availability of any remedies available to Council under the Act.

* 1. Urgent relief

This clause 15 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

1. Force Majeure
	1. Definition

In this clause 16, 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.

* 1. Consequences of Force Majeure Event

If a party is unable by reason of Force Majeure to carry out wholly or in part its obligations under this document, it must:

* + 1. give to the other party prompt notice of the Force Majeure with reasonably full particulars; and
		2. suggest an alternative method, if any, of satisfying its obligations under this document.
		3. If a party is unable to satisfy its obligations under this document 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.
	1. Inability to complete Works
		1. The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.
		2. If the Developer is unable to Complete any part of the Works due to a Force Majeure event the Developer must pay to Council the Contribution Value of the relevant works and the amount payable to Council may be apportioned, if necessary, in such manner as may be fair and reasonable.
		3. In reference to paragraph (2), Council may at its absolute discretion call on the Bank Guarantees (or any part of it) pursuant to clause 12.3.
	2. 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.

* 1. 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 15.

1. Breach of this document
	1. Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

* + 1. the nature and extent of the alleged breach;
		2. if:
			1. the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
			2. the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
		3. the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.
	1. Events of Default

The Developer commits an **Event of Default** if it:

* + 1. fails to comply with a Breach Notice; or
		2. becomes subject to an Insolvency Event.
	1. Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

* + 1. exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or
		2. call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.
1. Termination, Rescission or Determination
	1. Termination

This document terminates in the following events:

* + 1. The parties agree in writing to terminate the operation of this document at any time.
		2. Council serves notice on the Developer terminating this Planning Agreement where the Developer has failed to comply with a notice issued in accordance with clause 17.1.
		3. The Development Consent lapses.
	1. Consequence of termination

Upon termination of this Planning Agreement:

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

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

1. Position of Council
	1. Consent authority

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

* 1. Document does not fetter discretion

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

* + 1. the power of Council to make any Law; or
		2. the exercise by Council of any statutory power or discretion,

(**Discretion**).

* 1. Severance of provisions
		1. No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
			1. 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
			2. in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
			3. to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
		2. Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.
	2. No Obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the [Development Consent and/or Instrument Change], the Land or the Development in a certain manner.

1. Confidentiality
	1. Document not Confidential

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

* 1. Other Confidential Information
		1. The parties acknowledge that:
			1. Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
			2. The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
			3. Subject to paragraphs (2) and (3), each party agrees:
				1. not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
				2. to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
		2. A party may disclose Confidential Information in the following circumstances:
			1. in order to comply with the Law, or the requirements of any Authority; or
			2. to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
		3. The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.
1. GST
	1. Defined GST Terms

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

* 1. GST to be Added to Amounts Payable
		1. If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
		2. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
		3. Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.
	2. GST Obligations to Survive Termination

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

1. Miscellaneous
	1. Obligation to act in good faith

The parties must at all times:

* + 1. cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
		2. not unreasonably delay any action, approval, direction, determination or decision which is required of them;
		3. make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
		4. be just and faithful in their activities and dealings with the other parties.
	1. Legal costs

The Developer agrees to:

* + 1. pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document;
		2. pay the reasonable legal costs and disbursements referred to in paragraph (1) within ten (10) business days of receipt of a Tax Invoice from Council; and
		3. pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of it obligations under this document.
1. Administrative Provisions
	1. Notices
		1. Any notice, consent or other communication under this document 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:
			1. delivered to that person’s address;
			2. sent by pre-paid mail to that person’s address; or
			3. transmitted by facsimile to that person’s address.
		2. A notice given to a person in accordance with this clause is treated as having been given and received:
			1. if delivered to a person’s address, on the day of delivery if a Business Day, otherwise on the next Business Day;
			2. if sent by pre-paid mail, on the third Business Day after posting; and
			3. if transmitted by facsimile to a person’s address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
		3. For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.
	2. Entire Document

This document 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 document.

* 1. Waiver

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

* 1. 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 document and the rights and obligations of the parties under it.

* 1. Counterparts

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

* 1. Amendment

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

* 1. Unenforceability

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

* 1. Power of Attorney

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

* + 1. the revocation or suspension of the power of attorney by the grantor; or
		2. the death of the grantor.
	1. Governing law

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

* + 1. submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
		2. may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

Schedule 1– Requirements under s7.4

|  |  |
| --- | --- |
| **REQUIREMENT UNDER THE ACT**  | **THIS PLANNING AGREEMENT**  |
| **Planning instrument and/or development application –** (Section 7.4(1))The Developer has: sought a change to an environmental planning instrument. made, or proposes to make, a Development Application. entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.  | (a) Yes/No(b) Yes/No(c) Yes/No/Not applicable |
| **Description of land to which this agreement applies –** (Section 7.4(3)(a)) | [insert folio identifiers of relevant land] |
| **Description of change to the environmental planning instrument to which this agreement applies –** (Section 7.4(3)(b)) | Yes/No |
| **Application of section 7.11 of the Act –** (Section 7.4(3)(d)) | Applies/Does not apply |
| **Applicability of section 7.12 of the Act –** (Section 7.4(3)(d)) | Applies/Does not apply |
| **Consideration of benefits under this agreement if section 7.11 applies –** (Section 7.4(3)(e)) | Refer to clause 4.2 of the Planning Agreement. |
| **Mechanism for Dispute resolution –** (Section 7.4(3)(f)) | See clause 15. |
| **Enforcement of this agreement** (Section 7.4(3)(g)) | See clause 12. |
| **No obligation to grant consent or exercise functions –** (Section 7.4(3)(9)) | See clause 18. |

Schedule 2 – Defined Terms and Interpretation

**Part 1 – Definitions**

|  |  |  |
| --- | --- | --- |
| **Acquisition Act** |  | means the *Land Acquisition (Just Terms Compensation) Act* 1991. |
| **Acquisition Land** |  | means that part of the Land outlined [Insert colour/hatching] on the plan that is attached as **Annexure 1**. |
| **Acquisition Land Payment** |  | means:* + 1. if Council acquires the Acquisition Land by private treaty, the aggregate of:
			1. the purchase price for that land being an amount in accordance with the assessment of the market value of the Acquisition Land provided by a Certified Practising Valuer within 6 months of the date of acquisition;
			2. any stamp duty payable on the contract for the acquisition of that land;
			3. any reasonable costs incurred by Council in undertaking that acquisition (including the cost of obtaining a valuation of the Acquisition Land); and
			4. any other amount Council is required to be paid to the relevant owner of that land in conjunction with and on account of, the acquisition; or
		2. if Council acquires the Acquisition Land by compulsory acquisition (as defined in the Acquisition Act) the aggregate of:
			1. the compensation Council is required to pay under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) on account of that acquisition, including for the avoidance of doubt any amount required to be paid by Council as a result of an order in any proceedings commenced by the relevant interested parties against Council on account of that acquisition; and
			2. any reasonable costs likely to be incurred by Council in undertaking that acquisition including for the avoidance of doubt any legal or other costs incurred by Council in defending any proceedings commenced by the relevant interested parties in Class 3 of the Land and Environment Court but excluding any other fees associated with any other type of legal proceedings against Council on account of that acquisition.
 |
| **Act** |  | means the *Environmental Planning and Assessment Act 1979* (NSW). |
| **Assign** |  | as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest. |
| **Authority** |  | means (as appropriate) any:1. federal, state or local government;
2. department of any federal, state or local government;
3. any court or administrative tribunal; or
4. statutory corporation or regulatory body.
 |
| **Bank Guarantee** |  | means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:1. Australia and New Zealand Banking Group Limited.
2. Commonwealth Bank of Australia.
3. Macquarie Bank.
4. National Australia Bank Limited.
5. St George Bank Limited.
6. Westpac Banking Corporation.
7. Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.
 |
| **Claim** |  | against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise. |
| **Completed** |  | means completed in accordance with the requirements of this document. |
| **Completion Notice** |  | has the meaning ascribed in clause 7.1. |
| **Confidential Information** |  | means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other’s activities or services which is not already in the public domain and which:1. is by its nature confidential;
2. is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
3. any party knows or ought to know is confidential;
4. is information which may be reasonably considered to be of a confidential nature.
 |
| **Construction Certificate** |  | has the same meaning as in section 6.4(d) of the Act. |
| **Contributions** |  | means the Works, the Designated Land and the Monetary Contributions. |
| **Contribution Value** |  | means the amount specified in **Schedules 3**, **4** and **5** in the column headed “contribution value” for each item of the Contributions. |
| **Defect** |  | has the meaning ascribed to it in clause 8.1. |
| **Defects Notice** |  | has the meaning ascribed to it in clause 8.1. |
| **Defects Liability Period** |  | means [Insert period of time e.g. 12 Months]. |
| **Defects Security** |  | has the meaning ascribed to it in clause 12. |
| **Designated Land** |  | means that part of the Land outlined [Insert colour/hatching] on the plan that is attached as **Annexure 1**.  |
| **Development** |  | means [Insert here a full description of the proposed development]. |
| **Development Application [Delete definition if Agreement only applies to an Instrument Change]** |  | means an application for the Development Consent. |
| **Development Consent [Delete definition and any references to Development Consent if Agreement applies to an Instrument Change only]** |  | means the consent issued under the Act for the Development. |
| **Dispute** |  | has the meaning ascribed to it in clause 15.1. |
| **Encumbrance** |  | means an interest or power:1. reserved in or over an interest in any asset;
2. arising under, or with respect to, a Bio-Banking Agreement;
3. created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or
4. by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

**Encumber** means to grant an Encumbrance. |
| **Event of Default** |  | has the meaning ascribed to it in clause 17.2. |
| **Force Majeure** |  | has the meaning ascribed to it in clause 16. |
| **GST Law** |  | means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST. |
| **Index** |  | means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics. |
| **Insolvency Event** |  | means the happening of any of the following events:1. Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.
2. An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.
3. Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
4. A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
5. A body corporate is or states that it is insolvent.
6. As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
7. A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
8. A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
9. A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
10. A receiver, manager or receiver and manager is appointed to the Company.
11. A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
12. Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
 |
| **Instrument Change** |  | means [MLG Drafting Note: set out the nature of the instrument change being sought (if applicable)]. |
| **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. |
| **Location Plan** |  | means the plan that is attached as **Annexure 2**. |
| **Monetary Contributions** |  | means the monetary contributions set out in **Schedule 5**. |
| **Occupation Certificate** |  | has the same meaning as in section 6.4(c) of the Act. |
| **Owners** |  | means [Insert name of any owners of the Land other than the Developer if applicable]. |
| **Planning Legislation** |  | means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW). |
| **Primary Security** |  | has the meaning ascribed to it in clause 12. |
| **Quantity Surveyor** |  | means a person who:is a member of their respective professional organisation and has been for at least five (5) years;practises as a quantity surveyor for works of the same nature as the relevant Works;is active as a quantity surveyor at the time of his appointment;has at least three (3) years experience in valuing works of the same nature as the relevant Works; andundertakes to act fairly and promptly in accordance with the requirements of this document. |
| **Rectification Notice** |  | has the meaning ascribed to it in clause 7.3. |
| **Security** |  | means collectively the Primary Security and the Defects Security. |
| **Subdivision Certificate** |  | has the same meaning as in section 6.4(d) of the Act. |
| **Works** |  | means the works specified or described in **Schedule 4**. |

Part 2 - Interpretational Rules

|  |  |  |
| --- | --- | --- |
| **clauses, annexures and schedules** |  | a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document. |
| **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 document 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 document. |
| **agreement** |  | a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time. |
| **Gender** |  | a reference to one gender extends and applies to the other and neuter gender. |

Schedule 3 – Designated Land

|  |  |  |
| --- | --- | --- |
| **Item** | **Time for Completion**  | **Contribution Value**  |
| [Insert description of the relevant part of the Designated Land to be dedicated e.g. “The whole of the Designated Land” or “That part of the Designated Land identified as Public Reserve”]  | [Insert time by which dedication of the whole or the relevant part of the Designated Land is to occur] | [Insert amount] |

Schedule 4- Works

|  |  |  |  |
| --- | --- | --- | --- |
| **Item of Works** | **Specification** | **Time for Completion**  | **Contribution Value** |
| [Insert description of the relevant item of the Works that is to be carried out by the Developer eg “Embellishment of the area identified as “open space” on the Location Plan” ] | [Insert details of the scope of the relevant item of the Works] | [Insert time by which the relevant item of the Works is to be Completed] | [Insert agreed value of the works] |

Schedule 5 – Monetary Contributions

|  |  |  |
| --- | --- | --- |
| **Item** | **Time for Completion**  | **Contribution Value**  |
| Monetary Contributions  | [Insert time by which the Monetary Contribution must be paid to the Council][Drafting Note: In respect of timing, it will be most likely that the relevant Monetary Contribution will be required to be provided upon the earlier of:1. the issuing of a subdivision certificate to create a lot in the subdivision; or
2. the issuing of a construction certificate in respect of any development to be carried out on the Land.

However, there may be different timing requirements.] | [Insert amount of the Monetary Contribution] |

Annexure 1- Plan of Designated Land

Annexure 2 – Location Plan

Execution page

**Executed as an agreement**.

Dated:

|  |
| --- |
| **Executed** by **Liverpool City Council** by its Attorney pursuant to Power of Attorney registered Book 4756 Number 447 in the presence of: |
|  |  |  |
| Witness (Signature) |  | Attorney (Signature) |
|  |  |  |
| Name of Witness (Print Name) |  | Name of Attorney (Print Name)

|  |
| --- |
|  |
| Position of Attorney  |

 |

|  |
| --- |
| **Executed** by **[INSERT NAME OF COMPANY]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors. |
|  |  |  |
| Director/Secretary (Signature) |  | Director (Signature) |
|  |  |  |
| Name of Director/ Secretary (Print Name) |  | Name of Director (Print Name) |