

Planning Agreement

Middleton Grange Town Centre

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

Manta Group Pty Ltd ACN 149 474 699 and

AI-Somai Developments Pty Ltd ACN 601 533 019 (**Developer**)

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Planning Agreement

Middleton Grange Town Centre

Parties

Council	Name	Liverpool City Council
	Address	Ground Floor 33 Moore Street Liverpool NSW 2170
	ABN	84 181 182 471
Developer	Name	Manta Group Pty Ltd
	Address	Unit 6, 5-7 Ross Street, Parramatta NSW 2150
	ACN	149 474 699
	Name	Al-Somai Developments Pty Ltd
	Address	Unit 6, 5-7 Ross Street, Parramatta NSW 2150
	ACN	601 533 019

Background

- A The Developer owns the Land.
- B The Instrument Change has been made, however will only come into effect on 1 November 2022.
- C The Developer proposes to carry out the Development and provide 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.

2 DEFINITIONS

2.1 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.

2.2 Interpretation

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

3 APPLICATION AND OPERATION OF DOCUMENT

3.1 Planning Agreement

This document is a planning agreement:

- (1) within the meaning set out in section 7.4 of the Act; and
- (2) governed by Subdivision 2 of Part 7 of the Act.

3.2 Application

This document applies to both the Land and the Development.

3.3 Operation

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

4 APPLICATION OF SECTIONS 7.11 & 7.12

4.1 Application

This document excludes the application of section 7.11 or section 7.12 of the Act to the Development.

4.2 Section 7.24

This document does not exclude the application of section 7.24 to the Development.

5 PROVISION OF CONTRIBUTIONS

5.1 Total Development Contribution

- (1) The Total Contribution Amount is \$19,514,304 and includes the Contributions Value.
- (2) Subject to and in accordance with this document, the Developer will provide the Total Contribution Amount through Contributions comprising:

(a)	Works amounting to:	\$11,504,000
(b)	Monetary Contributions of up to:	\$8,000,000
(c)	Dedication of Designated Land	No cost to Council

5.2 Designated Land

- (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 legal and registration costs associated with the dedication of the Designated Land in accordance with paragraph (1), including any legal costs reasonably incurred by Council in relation to that dedication.
- (3) For the purpose of this document but subject to clause 5.3, Designated Land is dedicated to Council:

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- (a) if the relevant land is dedicated in a plan registered at the NSW Land Registry Services, when that plan is so registered; or
 - (b) otherwise when the Developer delivers to Council:
 - (i) a transfer of the relevant land in registrable form;
 - (ii) any consent required by an interested party in the land;
 - (iii) the original Certificate of Title for the relevant land; and
 - (iv) any document in registrable form 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.

5.3 Timing of dedication of Designated Land

Notwithstanding clause 5.2, the Developer must not dedicate the Designated Land to Council unless any Works required to be constructed on that land have been Completed.

5.4 Works

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 in accordance with this document by the time specified in Schedule 4; and
- (3) carry out and complete the Works:
 - (a) in accordance with the specifications referred to in Schedule 4 for the relevant item of Work;
 - (b) in accordance with any relevant Development Consent;
 - (c) in accordance with the requirements of, or consents issued by any other Authority;
 - (d) in accordance with any reasonable requirement and directions of the Council notified in writing to the Developer before the work is completed for the purposes of this document, that are not inconsistent with this document or any Development Consent for the Development,
 - (e) ensuring that:
 - (i) all necessary measures are taken to protect people, property, and the Environment;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided;
 - (iii) nuisances and unreasonable noise and disturbances are prevented; and

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- (iv) 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) are complied with,
 - (f) where relevant, in accordance with applicable Australian Standards, performance solution or the National Construction Code; and
 - (g) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

5.5 Design and specification

- (1) The Developer must:
 - (a) consult with Council with respect to the development of the concept design, detailed design plans, documentation and specification of each item of the Works; and
 - (b) include the reasonable requirements of Council or any other consent authority in any such design plans, documentation and specifications.
- (2) The design and specification for the item of Work must be prepared by the Developer having specific regard and consideration to:
 - (a) the specification for that Work set out in **Schedule 4**;
 - (b) any prior written agreement between Council and the Developer with respect to the design and standards of that item of Works;
 - (c) any relationship with other interrelated consent or associated works; and
 - (d) the Contribution Value of the relevant item of Work.
- (3) Before commencing construction of an item of Work, the Developer must submit to Council:
 - (a) for its approval, the detailed design and specification for that item of Work;
 - (b) a report from a Quantity Surveyor which estimates the cost to complete the relevant item of Work in accordance with the detailed design;
 - (c) a project work plan for the relevant item of Work;
 - (d) contact details for the principal contractor and site supervisor.
- (4) The Developer acknowledges and agrees that for the purpose of this document, and in particular paragraphs (2) and (3), the Contribution Values for the Works do not include the following costs:
 - (a) Project management, inspection or other professional fees.
 - (b) Designs, plans, surveys, documentation and application or referral fees.
 - (c) Site management costs.
 - (d) Construction and land rates, penalties, charges insurance.

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- (e) Taxes.
 - (f) Costs of rectifying Defects and maintenance costs.
- (5) If, within thirty (30) days of the date of submission referred to in paragraph (3):
- (a) Council notifies the Developer in writing of its approval of the design and specification; the Developer is to carry out and complete the item of Work in accordance with that design and specification; or
 - (b) Council notifies the Developer in writing that it does not approve of the design and specification and provides reasons and reasonable details and suggested modifications with respect to the submitted design and specification, the Developer may:
 - (i) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 5.5 applies to that amendment; or
 - (ii) refer the relevant matter for dispute resolution in accordance with this document.
- (6) If Council fails to notify the Developer in writing that it approves or does not approve of the design and specification within the time required under paragraph (5), then Council is deemed to have accepted the relevant design and the Developer may proceed to carry out and complete the item of Work in accordance with its design and specification.

5.6 Access to the Land by Council

- (1) The Developer must permit Council, its authorised 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) Council must give the Developer prior reasonable notice before it enters the Land and ensure that Council and its employees comply with all reasonable directions of the Developer and all site construction requirements including without limitation all workplace health and safety requirements and reporting to a site office or site superintendent.
- (3) If Council complies with paragraph (1), the Developer must enable Council, its authorised officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.
- (4) Nothing in this document creates or gives Council any estate or interest in any part of the Land.

5.7 Access to the Council Land by Developer

- (1) Provided the Developer:
 - (a) obtains any necessary Approvals, including without limitation approvals under the *Roads Act 1993* (NSW) and any other Laws; and
 - (b) gives the Council reasonable written notice; and
 - (c) complies with those Approvals and Laws,

Council authorises the Developer its agents and contractors, to enter, occupy and use the Council Land for the purpose of performing its obligations under this document in respect of the Council Land

- (2) Nothing in this document creates or gives the Developer any estate or interest in any part of the Council Land.
- (3) In so far as the Developer or its Principal Contractor has management or control of the workplace where work is required to be provided, the Developer is to ensure or procure that its Principal Contractor ensures that the workplace and the means of entering and existing the workplace, and anything arising from the workplace, including fixtures, fittings and plant, are without risks to the health and safety of any person.

5.8 Milestone Reporting

- (1) The Developer must provide Council with a quarterly milestone project report plan with respect to the Works required to be undertaken by the Developer under this document, including any revised timeframes, program amendments and changed contract details.
- (2) In addition to the reports required under paragraph (1), the Developer must promptly provide Council with any updates concerning the progress of the Works requested by Council from time to time.

5.9 Monetary Contributions

- (1) Subject to the terms of this document, the Developer must pay the Monetary Contributions in accordance with **Schedule 4**.
- (2) A Monetary Contribution is made 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) Council must apply the Monetary Contributions made by the Developer under this document towards a public purpose that will benefit the Middleton Grange Community, including but not limited to local and regional facilities.

5.10 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:

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

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.

6 COMPLETION OF WORKS

6.1 Issue of Completion Notice

- (1) If the Developer considers that any particular item of the Works is complete it must serve a notice on Council which:
 - (a) is in writing;
 - (b) identifies the particular item of the Works to which it relates;
 - (c) includes a full works as executed plan for the item;
 - (d) includes the technical or operational manual, specifications and warranties (if any) for any product that forms part of the items;
 - (e) includes a cost of works conducted by a quantity surveyor and valuation of asset; and
 - (f) specifies the date on which the Developer believes the relevant item of the Works was completed,

(Completion Notice).

- (2) The Developer acknowledges and agrees that:
 - (a) a Completion Notice is not a 'compliance certificate' issued under a development consent or with respect to the registration of plan of subdivision; and
 - (b) a Completion Notice may only be validly served on Council if it is served on Council's Contribution Planning team.

6.2 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) Where Council is unable to inspect the Works due to inclement weather, limited access or reasons beyond the control of Council, Council will advise the Developer within 24 hours and provide an alternate inspection date, within a reasonable and acceptable timeframe.
- (3) If Council fails to carry out an inspection required under paragraph (1) or (2) the Works referred to in the relevant Completion Notice will be deemed to be Complete.
- (4) The Developer is responsible for any and all fees associated with inspections undertaken by Council in accordance with Council's Fees and Charges schedule.

6.3 Certificate of Completion or Rectification Notice

- (1) Within fourteen (14) Business Days of inspecting the Works set out in a Completion Notice Council must provide notice in writing to the Developer that the Works set out in the Completion Notice:
 - (a) have been Completed (**Certificate of Completion**); or
 - (b) have not been Completed, in which case the notice must also detail:
 - (i) those aspects of the Works which have not been Completed (if any); and
 - (ii) Defects in the Works (if any),
(Rectification Notice).
- (2) If Council does not provide the Developer with a Certificate of Completion or a Rectification Notice in accordance with paragraph (1), the Works set out in the Completion Notice will be deemed to have been Completed.
- (3) Where Council serves a Rectification Notice on the Developer, the Developer must:
 - (a) complete or rectify the Works (as the case may be) the subject of that notice; or
 - (b) serve a Dispute Notice on Council in respect of the Rectification Notice.
- (4) Where the Developer:
 - (a) serves a Dispute Notice on Council in accordance with paragraph (3)(b), the provisions of clause 14 apply; or
 - (b) completes or rectifies the Works (as the case may be) in accordance with paragraph (3)(a),

it must serve upon Council a new Completion Notice for the Works it has rectified in which case the process in this clause 6.3 is repeated.

6.4 Acceptance of Works

- (1) Council accepts ownership, possession and control of any Works carried out on Designated Land or Council Land when:
 - (a) those Works are Completed; and
 - (b) where the Works are carried out on Designated Land, the relevant land is dedicated to Council.
- (2) The Developer at its own cost, must repair and make good to the satisfaction of the Council (acting reasonably) any loss or damage to a Work item from any cause whatsoever which occurs before the Work is Completed.

7 DEFECTS LIABILITY

7.1 Defects Notice

- (1) Where any part of the Works has been Completed but those Works contain a Defect, Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
 - (a) the nature and extent of the Defect; and
 - (b) the time within which the Defect must be rectified (which must be a reasonable time and not less than ten (10) Business Days).

7.2 Developer to Rectify Defects

- (1) Where Council serves a Defects Notice on the Developer, the Developer must:
 - (a) comply with the Defects Notice; or
 - (b) serve a Dispute Notice on Council in respect of the Defects Notice.
- (2) Where the Developer:
 - (a) serves a Dispute Notice on Council in accordance with clause 7.2(1)(b), the provisions of clause 14 apply; or
 - (b) complies with the Defects Notice in accordance with clause 7.2(1)(a), the parties must follow the procedure set out in clauses 6.1 to 6.3 in respect of the satisfaction of the Defects Notice.
- (3) Council must do such things as are reasonably necessary to enable the Developer to comply with a Defects Notice that has been given to it including without limitation providing access to Council Land or Designated Land.
- (4) Upon the expiry of the Defects Liability Period in respect of the Works (or part thereof), the Developer will cease to be responsible for Defects in such Works (or part thereof) under this document or otherwise.

7.3 Right of Council to Step-In

- (1) If:
 - (a) the Developer has failed to:
 - (i) comply with a Defects Notice; or
 - (ii) serve a Dispute Notice on Council in respect of the Defects Notice; and
 - (b) Council has thereafter given the Developer ten (10) Business Days prior written notice of its intention to do so, Council may, acting reasonably, enter upon the Land for the purpose of rectifying the Defects the subject of that Defects Notice.

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- (2) Where the Developer has served a Dispute Notice on Council in respect of the Defects Notice, the provisions of clause 14 will apply.

7.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 7.3 then:

- (1) Council may:
- (a) enter upon any part of the Land that it requires access to in order to rectify the Defects the subject of the Defects Notice; and
 - (b) rectify the Defects the subject of the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

7.5 Costs of Council

Where Council exercises its step-in rights in accordance with this clause 7.5, Council may by notice in writing to the Developer demand payment of all reasonable costs actually incurred by Council in rectifying the relevant Defects within 14 Business Days from the date of such notice and may, if the costs have not been paid by the Developer, thereafter have recourse to the Defects Security provided by the Developer pursuant to clause 11 and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Defects Security and the costs the subject of the notice of demand.

8 VARIATION OF SCOPE OR TIMING FOR PROVISION OF WORKS

8.1 Variation to the scope of an item of Work

- (1) The Developer may request that Council approve in writing a minor variation to the scope, design or specification of any item of Work.
- (2) The scope, design or specification of an item of Work is not to be varied unless Council and the Developer agree in writing to the minor variation.
- (3) Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 8.1(1).
- (4) Council may make a written request to the Developer to agree to a minor variation to the scope, design or specification of a Work.
- (5) The Developer is not to unreasonably delay or withhold its agreement to a request made by the Council under clause 8.1(4).

8.2 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:
- (a) it is unable to Complete any item of the Works by the time specified in Schedule 4; or
 - (b) 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,

(**Proposed Deferral**), then the Developer may seek Council's approval to defer the Completion of the relevant item of the Works or obligation (as the case may be) by providing written notice to Council:

- (c) identifying the relevant item of Work or obligation that the Developer proposes to defer;
 - (d) specifying the reason for the request to defer the Completion of that item of the Works or obligation; and
 - (e) identifying the anticipated time for Completion of the relevant item of Work or obligation.
- (2) Council, acting reasonably, must give the Developer a written notice within thirty (30) days of the date upon which the Developer serves written notice upon Council in accordance with 8.2(1) stating:
- (a) whether or not it consents to the Proposed Deferral;
 - (b) the revised date for Completion assessed by Council; and
 - (c) 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),
- (3) If Council consents to the Proposed Deferral, then the following applies:
- (a) The Developer must comply with any conditions required by Council under clause 8.2(2)(c) above.
 - (b) 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 Works or other obligation the subject of the Proposed Deferral by the time for Completion specified in this document.
 - (c) The time for completion of the Works or other obligation (as the case may be) the subject of the Proposed Deferral under this document is the revised date for Completion assessed by Council.

9 DEVELOPER WARRANTIES AND INDEMNITIES

9.1 Warranties

The Developer warrants to Council that:

- (1) it is legally and beneficially entitled to the Land;
- (2) it is 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.

9.2 Care of the Works and Indemnity by Developer

- (1) To the extent that the Works are being performed on Council Land, the Developer shall be responsible for the care of the Works (or the relevant part thereof):
 - (a) from and including the date of commencement of the Works (or the relevant part thereof) until the date on which Council accepts ownership, possession and control of, and risk in, such Works; and
 - (b) in respect of Work involved in the rectification of Defects, during the performance of the rectification works.
- (2) To the extent that the Works are being performed other than Council Land or the Land, the Developer shall be responsible for the care of the Works (or the relevant part thereof):
 - (a) from and including the date of commencement of the Works (or the relevant part thereof) until the date of Completion of such Works; and
 - (b) in respect of Work involved in the rectification of Defects, during the performance of the rectification works.

9.3 Developer Indemnity

The Developer indemnifies Council against:

- (1) loss or damage to Council's property;
- (2) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of the Works whilst such Works are in the care of the Developer, but the indemnity shall be reduced proportionally to the extent that the act or omission of Council, its employees, agents or contractors (not being engaged by the Developer for the performance of the Works) may have contributed to the loss, damage, injury or death.

10 CONTAMINATION

10.1 Definitions

For the purpose of this clause 10:

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 which are applicable to the Works or the land on which they are being performed.

10.2 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.

10.3 Remediation

- (1) If at any time after the date of this document, Council becomes aware 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 clause 10.3(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 clause 10.3(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.

11 SECURITY

11.1 Provision of Security

Primary Security

- (1) The Developer must deliver to Council a Security Instrument prior to the issue of a Construction Certificate in respect of the Development other than a Construction Certificate with respect to that part of the Development undertaken in accordance with DA/64/2007/C (as modified from time to time), for the amount equivalent to the Security Value (**Primary Security**) for those items of Work where Security is required as stipulated in column 7 of the table at Schedule 4.
- (2) For the purpose of calculating the Security Value of the Primary Security, if a Quantity Surveyor has valued the Works as specified in Council's approval of

design and specifications under clause 5.5, the value so determined by that Quantity Surveyor is the Contribution Value.

- (3) If:
- (a) an item of the Works with respect to which Primary Security is required to be provided under this clause 11.1 has been partially completed at the time that Primary Security is required; and
 - (b) the Developer provides Council with a report from a Quantity Surveyor which estimates the cost to complete the relevant item of the Works (**Estimated Cost to Complete**),

then the amount of the Primary Security required to be provided by the Developer with respect to that item of the Works under this clause 11.1 is reduced to the Estimated Cost to Complete.

Defects Security

- (1) As a pre-condition to Completion of an item of the Works, the Developer must deliver to Council a Security Instrument for an amount equivalent to fifteen (15%) of the Contribution Value of the relevant item of the Works, (**Defects Security**).
- (2) The Developer may satisfy its obligations under this clause 11.1 (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.

11.2 Replacement of Security Instrument

- (1) The Developer may replace any Security Instrument provided by it at any time with another form of Security Instrument, 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 Instrument, Council must immediately release the Security Instrument being replaced and return it to the Developer.

11.3 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.

11.4 Top up of Security

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

11.5 Release of Primary Security

- (1) Provided that the Developer is not in breach of this document at the relevant time, Council must release and return the Primary Security, or any part of it to which recourse has not been made in accordance with this document, to the Developer within the later of:

-
- (a) 14 days of the date on which the Works to which the Primary Security relates are Completed; and
 - (b) receipt of the Defects Security for the Works to which the Primary Security relates.

11.6 Release of Defects Security

- (1) Provided that the Developer is not in breach of this document at the relevant time, Council must release and return the Defects Security, or any unused part of it to the Developer within 14 days of the later of:
 - (a) if no Defects Notice has been issued, the end of the Defects Liability Period; or
 - (b) if one or more Defects Notices have been issued, the date that all Defects the subject of those Defects Notices have been rectified.

11.7 Indexation of value of Security Value

- (1) The Security Value for the Works and any Security provided for the Works will be indexed bi-annually in accordance with the Producer Price Index (Heavy and Civil Engineering Construction) published by the Australian Bureau of Statistics.
- (2) The Developer must ensure that the Security held by Council at all times equals the indexed amount published by the Australian Bureau of Statistics and notified to the Developer by Council.
- (3) Without limiting clause 11.2, the Developer may satisfy its obligations under paragraph (2) by providing Council an additional Security Instrument

11.8 Release of Security on sale or transfer

If the Developer sells or transfers the Land, or assigns its rights and obligations under this document or novates this document in accordance with clause 13 "Assignment", Council must release and return the Primary Security or the Defects Security (as the case may be) or any part of them to which recourse has not been made in accordance with this document to the Developer within 14 days after the date the purchaser, transferee, assignee or novatee provides Council a replacement Primary Security or Defects Security (as the case may be) following such a sale, transfer, assignment or novation in the full amount of the Primary Security or Defects Security (as the case may be) that Council is entitled to hold under this document.

11.9 Compulsory acquisition of the Designated Land

- (1) The Developer consents to the compulsory acquisition of the Designated Land:
 - (a) in accordance with the Acquisition Act; and
 - (b) on the terms set out in this clause 11.9.
- (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:

-
- (a) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act will be \$1.00; and
 - (b) 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 11.9 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:
- (a) acquires the Designated Land under paragraph (3); and
 - (b) 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:
- (c) within ten (10) Business Days of demand for payment being made by Council; and
 - (d) prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Development.

11.10 Developer must not deal with property

- (1) This clause 11.10 only applies during any period in which this document is not registered on the title of the Land.
- (2) The Developer 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 which must not be unreasonably refused.
- (3) Council may, at its absolute discretion, refuse its consent or give consent with conditions.

11.11 Council may withhold Subdivision Certificate

- (1) The Developer may only make, 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:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

11.12 Council may withhold Occupation Certificate

- (1) The Developer may only make, or cause, or suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligations to make any Development Contribution under this document.
- (2) An Occupation Certificate must not be issued for any stage of the Development until:
 - (a) each Development Contribution referent to that stage of the Development in "Timing" in Column 5 of Schedule 4 is made; and
 - (b) where a Development Contribution is not made and Council calls upon the Security provided by the Developer in respect of that Development Contribution in accordance with clause 11.3, the Security called upon is applied towards provision of that Development Contribution.

12 REGISTRATION OF THIS DOCUMENT

12.1 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 12.2, Council will undertake that registration at the cost of the Developer.

12.2 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 Council reasonably requires, to procure:
 - (a) the consent of each person who:
 - (i) has an estate or interest in the Land; or
 - (ii) is seized or possessed of an estate or interest in the Land;
 - (b) the execution of any documents; and
 - (c) the production of the relevant certificates of title,to enable the registration of this document in accordance with clause 12.1.
- (2) The Developer, at its own expense, will take all practical steps, and otherwise do anything that Council reasonably requires:
 - (a) 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

-
- (b) 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.

12.3 Discharge from the Register

- (1) The parties must do such things as are reasonably necessary to remove any notation relating to this document from the title to the Land on the earlier of:
 - (a) the Developer's obligations under this document have been satisfied; and
 - (b) this document is terminated or otherwise comes to an end for any other reason.
- (2) For the purposes only of clause 12.3(1), Council must do what is reasonably necessary (at the Developer's cost) to facilitate the removal of any notation relating to this document from the title to the Land in accordance with clause 12.3(1) promptly upon receiving a request from the Developer to do so including, without limitation signing and delivering to the Developer in registrable form an instrument requesting cancellation or removal of this document on the title to the Land.

13 ASSIGNMENT

13.1 Restriction on Assignment

Other than in accordance with this clause 13 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

13.2 Procedure for Assignment

- (1) If the Developer:
 - (a) wishes to Assign any part of the Land; and/or
 - (b) wishes to Assign its rights or obligations under this document,then the Developer must:
 - (c) provide a written request to Council for the consent of Council to the relevant Assignment;
 - (d) 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;
 - (e) obtain written consent of Council to the relevant Assignment; and
 - (f) at no cost to Council, procure:
 - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and

-
- (ii) 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.
- (2) Council is under no obligation to consider granting its consent to any request made by the Developer under clause 13.2(1)(c) if, at the time the request is made, the Developer is in breach of this document.

14 DISPUTE RESOLUTION

14.1 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:
- (a) is in writing;
 - (b) adequately identifies and provides details of the Dispute;
 - (c) stipulates what the First Party believes will resolve the Dispute; and
 - (d) designates its representative (**Representative**) to negotiate the Dispute, (**Dispute Notice**).
- (2) The Second Party must, within five (5) Business Days of receipt of the Dispute Notice, 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**).

14.2 Conduct pending resolution

- (1) The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to perform or complete (as the case may be) the matter which is the subject of the Dispute until its final resolution.
- (2) For the purpose of clarity, nothing in this clause 14 affects the operation of clauses 5.2(1), 5.9(1), 11.11, 11.12 and the Developer is not relieved of its obligation under this document to provide any Contribution by the time required under this document.

14.3 Further steps required before proceedings

Subject to clauses 14.11 and 14.12 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 14.5 or determination by an expert under clause 14.6, 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 14.1(2) is served.

14.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute within the period referred to in clause 14.3, or such later period as may be agreed by the parties, then the parties

must endeavour to agree within five (5) Business Days to either refer the matter to mediation under clause 14.5 or expert determination under clause 14.6.

14.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 14.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, in the absence of agreement within a further 5 Business Days, by a person appointed by the Chair of Resolution Institute, or the Chair's designated representative.
- (2) The Resolution Institute Mediation Rules will apply to the mediation.
- (3) If the mediation referred to in clause 14.5(1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 14.6.

14.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 14.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
 - (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of agreement as to the independent expert within five (5) Business Days after the date that the matter is agreed to be referred to expert determination pursuant to clause 14.4 or 14.5, either party may request a nomination or the expert from the Chair of Resolution Institute or the Chair's designated representative,
 - (c) subject to clause 14.9 and 14.10, the expert determination shall be conducted in accordance with the Resolution Institute Expert Determination Rules.

14.7 Other courses of action

If:

- (1) the parties cannot agree in accordance with clause 14.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 14.5 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.

14.8 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:

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- (a) subject to clause 14.8(2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law or any Authority to do so; and
 - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
- (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
 - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
 - (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

14.9 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 manifest error, fraud or misfeasance by the expert.

14.10 Costs

- (1) Except to the extent otherwise specified in the expert's determination, each party must:
- (a) bear its own costs of the expert determination; and
 - (b) contribute equally to the expert's costs in making the determination.

14.11 Remedies available under the Act

This clause 14 does not operate to limit the availability of any remedies available to Council under the Act.

14.12 Urgent relief

This clause 14 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

15 FORCE MAJEURE

15.1 Definition

In this clause, 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.

15.2 Consequences of Force Majeure Event

- (1) If a party is unable by reason of Force Majeure to carry out wholly or in part its obligations under this document, it must:
 - (a) give to the other party prompt notice of the Force Majeure with all material particulars; and
 - (b) suggest an alternative method, if any, of satisfying its obligations under this document.
- (2) 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.

15.3 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 Works apportioned, if necessary, in such manner as may be fair and reasonable, including by taking into consideration the extent and value of any Complete or partially Complete Works.
- (3) In reference to paragraph , Council may call on the Bank Guarantees (or any part of it) pursuant to clause .

15.4 Exclusion of operation

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

15.5 Dispute

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

16 BREACH OF THIS DOCUMENT

16.1 Breach Notice

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

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- (a) the nature and extent of the alleged breach;
 - (b) if:
 - (i) 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
 - (ii) 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;
 - (c) the time within which Council requires the breach to be rectified or compensation to be paid (as the case may be), which must be a reasonable time of not less than forty (40) Business Days.
- (2) Where Council serves a Breach Notice on the Developer, the Developer must:
- (a) comply with the Breach Notice; or
 - (b) within fourteen (14) Business Days of receipt of the notice, serve a Dispute Notice on Council.
- (3) Where the Developer serves a Dispute Notice on Council in accordance with clause 16.1(2)(b), the dispute resolution provisions of this document apply and the Developer is not in breach and no Event of Default will be deemed to have occurred until the dispute resolution procedures in this document have been exhausted.

16.2 Events of Default

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

- (1) following receipt of a Breach Notice, fails to comply with a Breach Notice;
- (2) following receipt of a Breach Notice, fails to issue a Dispute Notice in accordance with clause 16.1(2)(b); or
- (3) becomes subject to an Insolvency Event.

16.3 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 any Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

17 TERMINATION, RESCISSION OR DETERMINATION

17.1 Termination

This document terminates in the following events:

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- (1) the parties agree in writing to terminate the operation of this document at any time, including where the parties agree that the Instrument Change will not be made; or
 - (2) Council serves notice on the Developer terminating this document as a consequence of the Developer committing an Event of Default.

17.2 Consequence of termination

Upon termination of this Planning Agreement:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all accrued rights and obligations of the parties continue to subsist.

18 POSITION OF COUNCIL

18.1 Consent authority

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

18.2 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).

18.3 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:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 18 is substantially satisfied; and
 - (b) in the event that clause 18.3(1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
 - (c) 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.

18.4 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 or Instrument Change, the Land or the Development in a certain manner.

19 CONFIDENTIALITY

19.1 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.

19.2 Other Confidential Information

- (1) The parties acknowledge that:
 - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
 - (c) Subject to clauses 19.2(2) and 19.2(3), each party agrees:
 - (i) 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
 - (ii) 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:
 - (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

20 GST

20.1 Defined GST Terms

Defined terms used in this clause 20 have the meaning ascribed to them in the GST Law.

20.2 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.

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- (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.

20.3 GST Obligations to Survive Termination

This clause 20 will continue to apply after expiration of termination of this document.

21 MISCELLANEOUS

21.1 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.

21.2 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 clause 21.2(1) within ten (10) Business Days of receipt of a Tax Invoice from Council; and
- (3) except to the extent otherwise provided in this document, pay or reimburse the reasonable legal costs and disbursements of Council arising from the enforcement of this document to the extent resulting from the breach by the Developer of its obligations under this document.

22 ADMINISTRATIVE PROVISIONS

22.1 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:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by email to that person's address.

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- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
- (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by email to a person's email address at the time of being sent provided that the sender does not receive notice of delayed or unaffected delivery.
- (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.

22.2 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.

22.3 Waiver

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

22.4 Cooperation

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

22.5 Counterparts

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

22.6 Amendment

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

22.7 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.

22.8 Power of Attorney

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

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- (1) the revocation or suspension of the power of attorney by the grantor; or
 - (2) the death of the grantor.

22.9 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*.
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Schedule 1

Requirements under section 7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application – (Section 7.4(1))</p> <p>The Developer has:</p> <p>(i) sought a change to an environmental planning instrument.</p> <p>(ii) made, or proposes to make, a Development Application.</p> <p>(iii) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Both.</p>
<p>Description of land to which this agreement applies – (Section 7.4(3)(a))</p>	<p>Lots 2, 3, 4, 5 and 6 in DP1207518; Lot 1 in DP1078564; and Lot 12 in DP1108343. Lot 102, DP 1128111</p>
<p>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</p>	<p>Liverpool Local Environmental Plan 2008 (Amendment No 63)</p>
<p>Application of section 7.11 of the Act – (Section 7.4(3)(d))</p>	<p>Does not apply</p>
<p>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</p>	<p>Does not apply</p>
<p>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</p>	<p>Does not apply</p>
<p>Mechanism for Dispute resolution – (Section 7.4(3)(f))</p>	<p>See clause 14.</p>
<p>Enforcement of this agreement (Section 7.4(3)(g))</p>	<p>See clause 11.</p>
<p>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</p>	<p>See clause 17.</p>

Schedule 2

Defined Terms and Interpretation

Part 1 – Definitions

Acquisition Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Approval	includes approval, consent, licence, permission or the like.
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ol style="list-style-type: none">(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.
Breach Notice	has the meaning ascribed in clause 16.1.
Business Day	means a day other than: <ol style="list-style-type: none">(1) a Saturday, Sunday or public holiday in the state of New South Wales; or(2) 27, 28, 29, 30 or 31 December in any year.
Certificate of Completion	has the meaning ascribed to it in clause 6.3.
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 or Completion	means completed in accordance with the requirements of this document.
Completion Notice	has the meaning ascribed in clause 6.1.
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: <ul style="list-style-type: none"> (1) is by its nature confidential; (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise); (3) any party knows or ought to know is confidential; (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(a) of the Act.
Contributions	means the Works, the Designated Land and the Monetary Contributions.
Contribution Value	means the amount specified in Schedule 3 and Schedule 4 in the column headed "Contribution Value" for each item of the Contributions as adjusted in accordance with this document from time to time.
Contribution Value of Works	means the total amount specified in the column headed "Contribution Value" in Schedule 4
Council Land	means Lot 102 in DP1128111.
Defect	means any part of the Works which is defective or otherwise not in accordance with this document.
Defects Notice	has the meaning ascribed to it in clause 7.1.
Defects Liability Period	means twelve (12) months commencing on the date that the relevant item of the Works is Completed.
Defects Security	has the meaning ascribed to it in clause 11.
Designated Land	means that part of the Land generally consistent with the land identified as "PARK 2" coloured blue on the plan that is attached at Schedule 5, and being the land not presently owned by Council which is zoned RE1 under the Instrument Change.
Development	means the development of the Middleton Grange Town Centre on the Land permitted under the Instrument Change including redevelopment of the Land for mixed use buildings, retail and commercial uses, residential apartments a town square and designated parklands and recreation areas.
Development Application	means an application for the Development Consent.
Development Consent	means a consent issued under the Act for the Development.

Dispute	has the meaning ascribed to it in clause 14.1.
Dispute Notice	has the meaning ascribed to it in clause 14.1.
Encumbrance	means an interest or power: <ul style="list-style-type: none"> (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 16.2.
Force Majeure	has the meaning ascribed to it in clause 15.
Gross Floor Area	has the meaning ascribed to that term in the <i>Liverpool Local Environmental Plan 2008</i> .
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Index	means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics.
Insolvency Event	means the happening of any of the following events: <ul style="list-style-type: none"> (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 <i>Corporations Act 2001</i> (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 <i>Corporations Act</i> .
	(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 <i>Corporations Act</i> 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 <i>Liverpool Local Environmental Plan 2008</i> (Amendment No 63).
Land	means the lands legally described as: <ul style="list-style-type: none"> (1) Lots 2, 3, 4, 5 and 6 in DP1207518; (2) Lot 1 in DP1078564; (3) Lot 102 DP 1128111 and (4) Lot 12 in DP1108343.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Location Plan 1	means the plan that is attached as Schedule 6.
Location Plan 2	means the plan that is attached as Schedule 10
Local Government Act	means the <i>Local Government Act 1993</i> (NSW).
Monetary Contributions	means the monetary contributions set out in Schedule 4.
New Park 2	means an area of the Land designated as "New Park 2" on the plan contained in Schedule 5 and zoned RE1 pursuant to the Instrument Change.
NSW Legislation Website	means a website with the URL www.legislation.nsw.gov.au .
Occupation Certificate	has the same meaning as in section 6.4(c) of the Act.

Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Primary Security	has the meaning ascribed to it in clause 11.
Proposed Deferral	has the meaning ascribed to it in clause 8.2(1).
Quantity Surveyor	<p>means a person who:</p> <ol style="list-style-type: none"> (1) is a member of their respective professional organisation and has been for at least five (5) years; (2) practises as a quantity surveyor for works of the same nature as the relevant Works; (3) is active as a quantity surveyor at the time of his appointment; (4) has at least three (3) years' experience in valuing works of the same nature as the relevant Works; and (5) undertakes to act fairly and promptly in accordance with the requirements of this document.
QS Agreement	<p>means an agreement between the Developer and a Quantity Surveyor which includes the following provisions:</p> <ol style="list-style-type: none"> (1) a provision obliging the Quantity Surveyor to warrant that no conflict of interest exists or is likely to arise in connection with its performance of its role; (2) a provision obliging the Quantity Surveyor immediately to notify the Developer and the Council immediately upon becoming aware of any conflict or risk of conflict arising and complying with all reasonable requests or directions of the parties jointly in relation to such conflict or risk of conflict; (3) a representation and warranty to the Developer and Council that it owes a duty of care and professional responsibility to the Developer and the Council in connection with the performance of its role; (4) an obligation to act independently, impartially, diligently, fairly and honestly in the performance of its role; (5) an obligation to exercise reasonable skill, care and diligence expected of a reasonably competent and diligent quantity surveyor performing such a role on comparable projects; (6) an obligation to comply with the confidentiality provisions under this document; (7) an obligation to effect and maintain workers compensation insurance as required by law for the duration of its appointment; and

	(8) an obligation to effect and maintain professional indemnity insurance of an amount which is not less than \$10 million for the duration of its appointment and thereafter for a period of 7 years.
Rectification Notice	has the meaning ascribed to it in clause 6.3.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW)
Security	means collectively the Primary Security and the Defects Security.
Security Instrument	means a Bank Guarantee from an Australian bank in favour of Liverpool City Council.
Security Value	means the amount specified in Schedule 4 in the column headed "Security Value" for each item of the Works.
Stage 1	means the non-residential component of that part of the Development undertaken on Lot 5 and Lot 6 in DP 1207518.
Subdivision Certificate	has the same meaning as in section 6.4(d) of the Act.
Total Contribution Amount	has the meaning given to it in clause 5.1.
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
The whole of the Designated Land	Prior to the issue of any Occupation Certificate in Stage 1 of the Development.	\$1,200,000

Schedule 4 Works and Monetary Contributions

Item	Contribution Type	Works Description	Specification	Timing	Contribution Value	Security Value
B1	Dedication	New Park 2	Dedication of New Park 2 to Council. The area comprising the New Park 2 will be generally consistent with the area coloured blue and marked "PARK 2" at Schedule 5. The land within New Park 2 to be dedicated to Council is the land not currently owned by Council that will be zoned RE1.	Prior to the issue of any Occupation Certificate in Stage 1 of the Development.	\$1,200,000	Nil.
B2	Works	New Park 2	The embellishment of New Park 2.	Prior to the issue of any Occupation Certificate in Stage 1 of the Development.	\$240,000	50% of the Contribution Value
C1	Works	Intersections to the Town Centre	Construction of a signalised intersection at Main Street and Flynn Avenue and the intersection for the new proposed access lane and Flynn Avenue, being the location marked "A" on the plan at Schedule 7.	On or before the issue of any Occupation Certificate in Stage 1 of the Development.	\$480,000	50% of Contribution Value
C2	Works	Intersections to the Town Centre	Construction of a roundabout at Southern Cross Avenue and Main Street, being the location marked "B" on the plan at Schedule 7.	On or before the issue of any Occupation Certificate in Stage 1 of the Development.	\$350,000	50% of Contribution Value
C3	Works	Intersections to the Town Centre	Construction of a T-intersection at Southern Cross Avenue and Middleton Drive (Road No.9), being the location marked "C" on the plan at Schedule 7.	On or before the issue of any Occupation Certificate in Stage 1 of the Development.	\$185,000	50% of Contribution Value
C4	Works	Intersections to the Town Centre	Construction of a T-intersection at Southern Cross Avenue and Bravo Avenue, being the location marked "D" on the plan at Schedule 7.	On or before the issue of any Occupation Certificate in Stage 1 of the Development.	\$120,000	50% of Contribution Value

Item	Contribution Type	Works Description	Specification	Timing	Contribution Value	Security Value
D	Works	Cowpasture Road Intersection, and Flynn Avenue to Ulm Street upgrade and provision of an additional lane works to enable delivery of 4 lanes	<p>Construction of an upgrade to Cowpasture Road intersection, Flynn Avenue from Qantas Boulevard to Ulm Street as a widened 4 lane road within the existing road reserve, in consultation with Council, generally consistent with:</p> <ul style="list-style-type: none"> the Cowpasture to Ulm Street road works plan at Schedule 8; and the Location Plan at Schedule 6 showing the extent of the upgrade to Cowpasture Road intersection, Flynn Avenue from Qantas Boulevard to Ulm Street, hatched in the colour green. 	Prior to the issue of any Occupation Certificate in Stage 1 of the Development.	\$4,359,000	100% of Contribution Value.
E	Works	Upgrade of Southern Cross Avenue	Construction of a road upgrade and services for Southern Cross Avenue to a standard comparable to the existing Southern Cross Drive between the western boundary of the Land to the Middleton Grange Primary School, as shown by green hatching in the Location Plan at Schedule 6 and including the section of unconstructed road opposite the site as indicated in the area outlined in red at Schedule 10.	<p>Prior to the issue of any Occupation Certificate for the retail development on Lots 5 and 6.</p> <p>The upgrade will be included in the development application for Lots 5 and 6.</p>	\$950,000	100% of Contribution Value.
F	Works	Culvert, drainage and shared road works wholly within lot 102 DP 1128111 – Public Reserve	Construction of the culvert and drainage works approved under the Modification DA-64 2007C Wholly within lot 102 DP 1128111.	Prior to the issue of any Occupation Certificate in Stage 1 of the Development.	\$3,620,000 Shared road works component: \$300,000.	50% of the Contribution Value of the shared road works.
H	Monetary Contribution	Not applicable	A total Monetary Contribution of up to \$8,000,000 calculated by reference to the Gross Floor Area of each building in the	Prior to the issue of any Occupation Certificate for the relevant building	Up to \$8,000,000	Nil.

Item	Contribution Type	Works Description	Specification	Timing	Contribution Value	Security Value
			<p>Development above the threshold of 72,000 m² of Gross Floor Area in the Development</p> <p>Calculation of rate</p> <p>The rate per square metre for the total Monetary Contribution of \$8,000,000 is calculated as follows:</p> $\frac{\$8,000,000}{(98,000 \text{ m}^2 - 72,000 \text{ m}^2)} = \$307.69 \text{ per m}^2.$ <p>Application of threshold</p> <p>No Monetary Contribution is payable for Gross Floor Area of each building in the Development below the threshold of 72,000 m². That is, the payments will commence once Gross Floor Area for a building exceeds 72,000 m².</p> <p>For Gross Floor Area in the Development above the threshold of 72,000 m², payment of the Monetary Contribution will be required on a pro rata basis up to a maximum amount of \$8,000,000 calculated by reference to the cumulative Gross Floor Area of each building in the Development (subject to separate development approval) at a rate of \$307.69 per m² of Gross Floor Area.</p> <p>No Monetary Contribution will be paid for Gross Floor Area between 98,000 m² and 108,000 m², as the \$8,000,000 will be paid prior to the Occupation Certificate for the relevant building creating Gross Floor Area of 98,000 m².</p> <p>Example</p> <p>Stage 1 of the Development provides 40,000 m² of Gross Floor Area. No</p>	creating Gross Floor Area.	\$307.69 per m ² of Gross Floor Area exceeding 72,000 m ²	

Item	Contribution Type	Works Description	Specification	Timing	Contribution Value	Security Value
			<p>Monetary Contribution is payable because this is less than 72,000 m².</p> <p>Stage 2 of the Development provides 48,500 m² of Gross Floor Area. The 72,000 m² threshold is now reached and the Monetary Contribution payable is:</p> $[(40,000 + 48,500) - 72,000] = 16,500 \text{ m}^2 \text{ of Gross Floor Area}$ <p>x</p> $[\$307.69 \text{ per m}^2 \text{ of Gross Floor Area}]$ <p>=</p> <p>\$5,076,923.08 Monetary Contribution is payable.</p>			

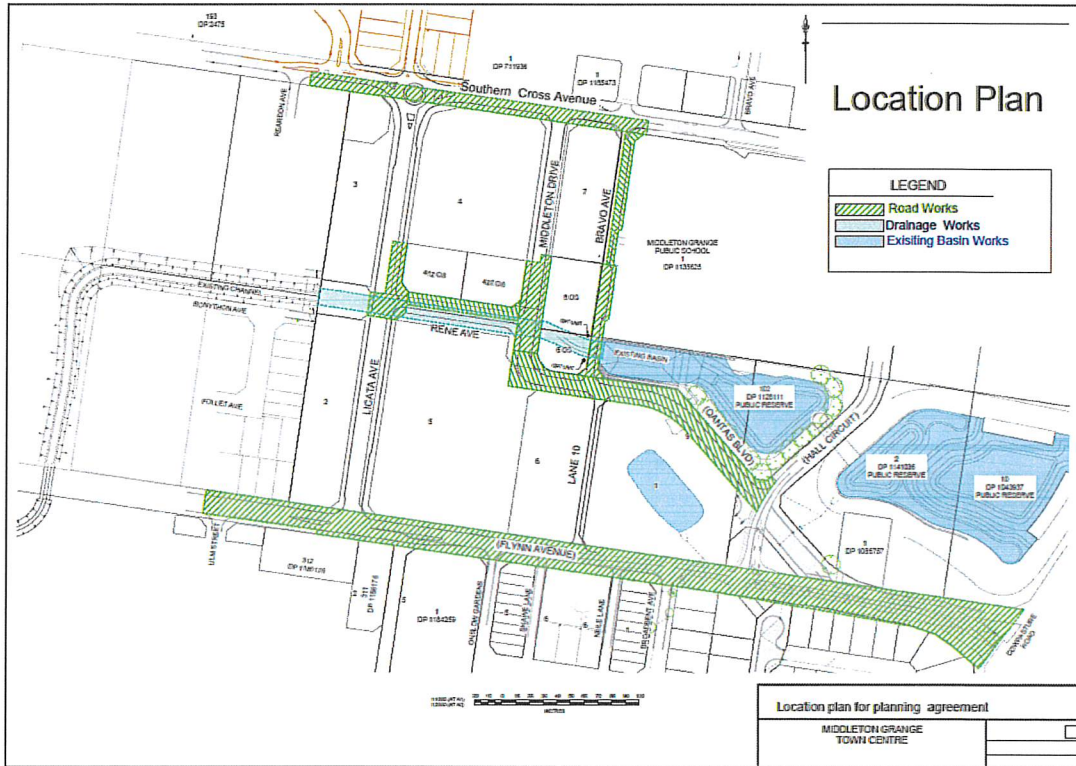
Schedule 5 Plan of Designated Land

Designated Land shaded in Blue:



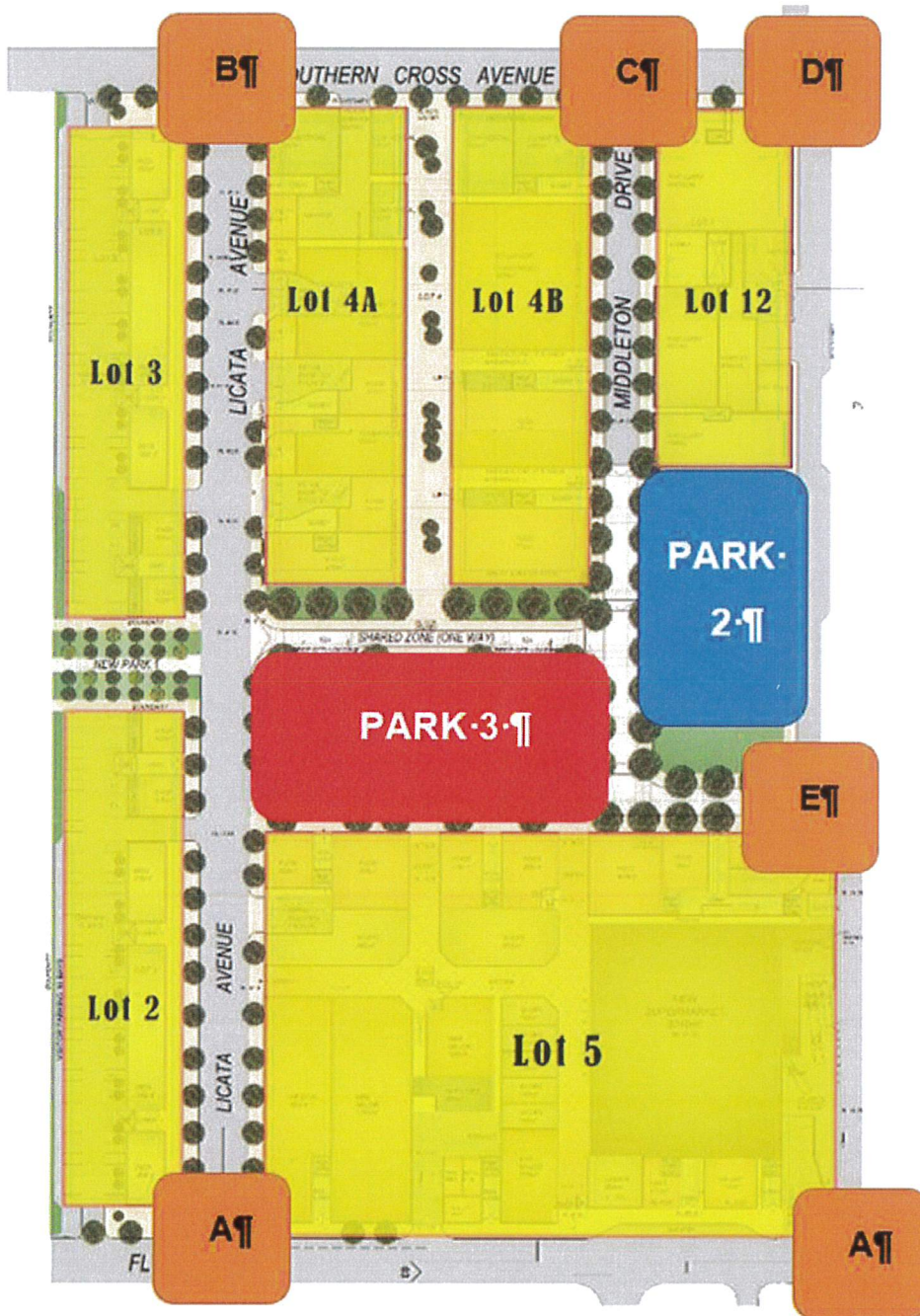
Schedule 6

Location Plan 1



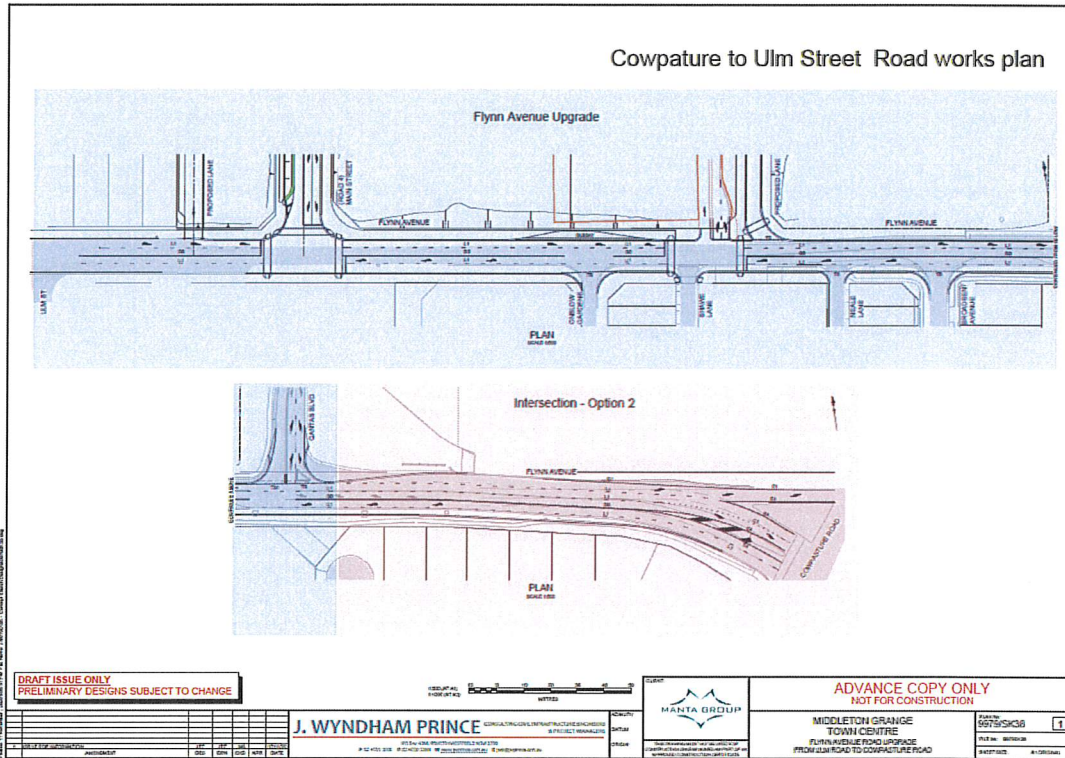
Schedule 7

Intersections to the Town Centre



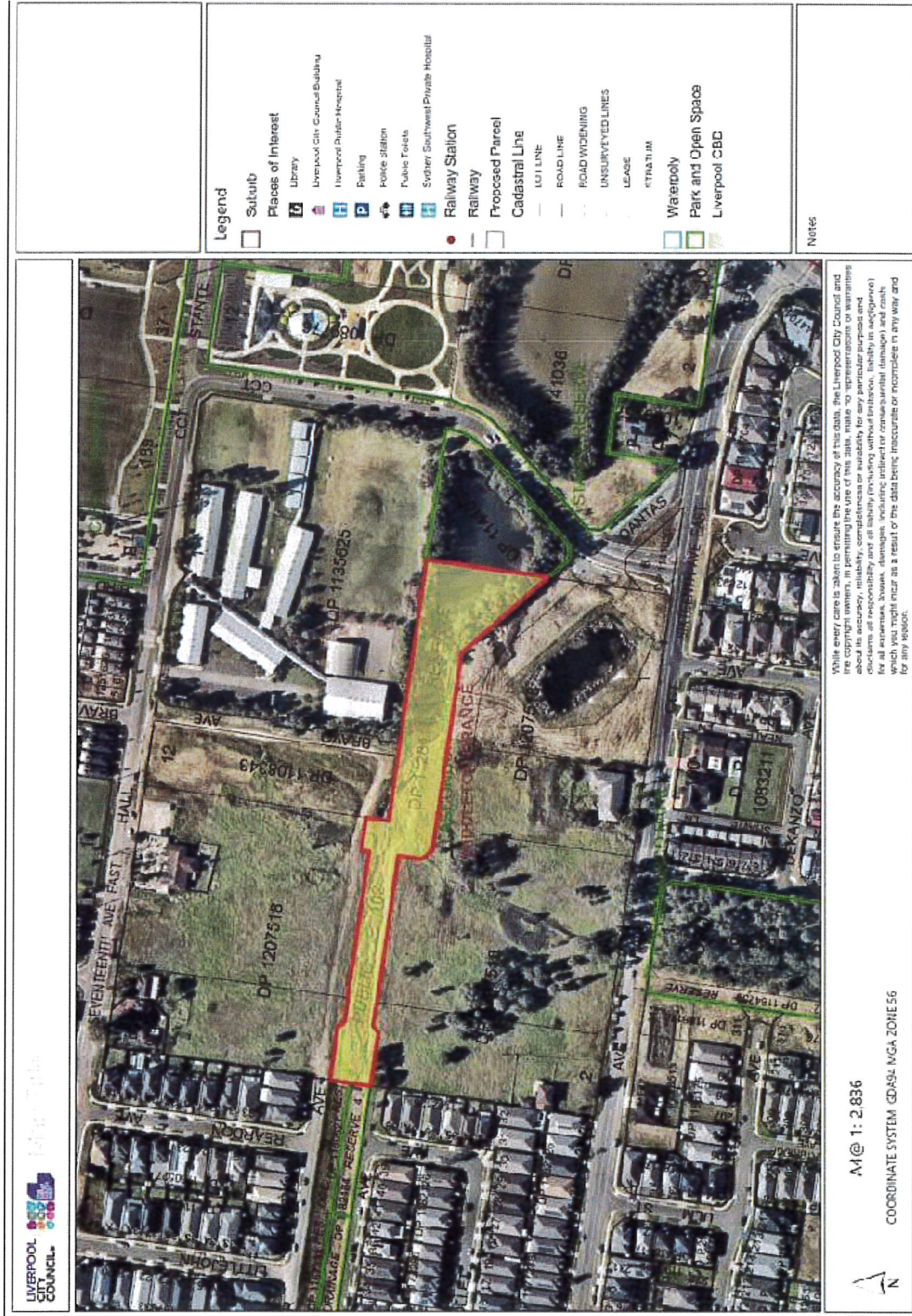
Schedule 8

Cowpasture Road Intersection - Flynn Avenue to Ulm Street upgrade and provision of an additional lane



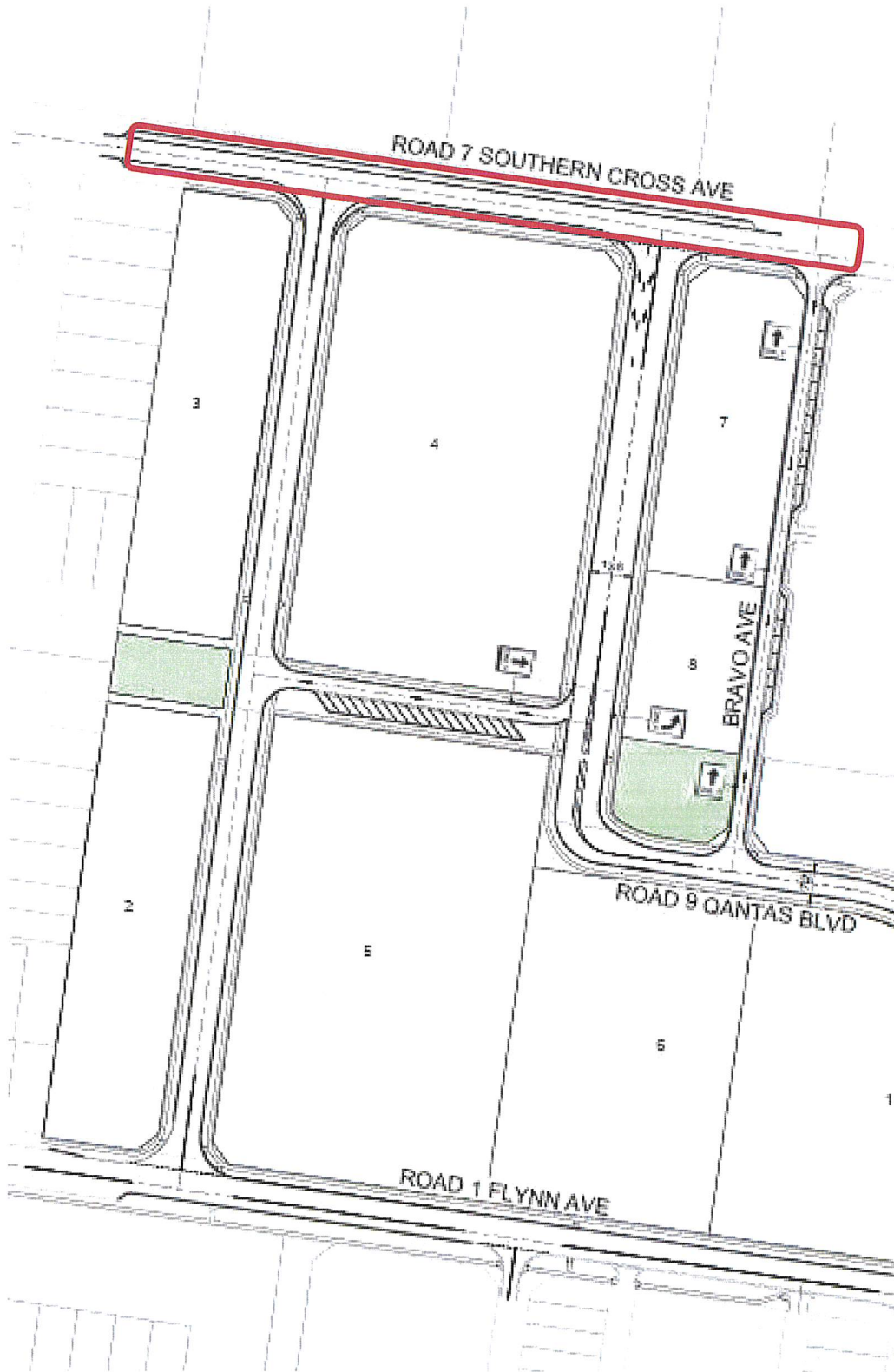
Schedule 9

Culvert, drainage and road works



Schedule 10

Location plan 2



Execution page

Executed as an agreement.

Dated: 24 November 2022

Executed by Liverpool City Council by its duly appointed attorney under Power of Attorney Book No



Witness (Signature)



Attorney (Signature)

Deborah Cuthbertson

Name of Witness (Print Name)

Tina Beno

Name of Attorney (Print Name)

Executed by Manta Group Pty Ltd ACN 149 474 699 in accordance with section 127(1) of the Corporations



Director/Secretary (Signature)

Director (Signature)

GEORGE ISAAC

Name of Director/ Secretary (Print Name)

GEORGE ABOUHAMAD

Name of Director (Print Name)

Executed by Al-Somai Developments Pty Ltd ACN 601 533 019 in accordance with section 127(1) of the



Director/Secretary (Signature)

Director (Signature)

GEORGE ISAAC

Name of Director/ Secretary (Print Name)

GEORGE ABOUHAMAD

Name of Director (Print Name)
