

## **Deed of Variation**

### **Voluntary Planning Agreement – New Brighton Golf Course**

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

Mirvac Homes (NSW) Pty Limited (ABN 22 006 922 998) (**Developer**)

New Brighton Golf Club Limited (ABN 19 000 032 137) (**Landowner**)

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## Deed of Variation

### Voluntary Planning Agreement – New Brighton Golf Course

#### Parties

<b>Council</b>	<b>Name</b>	Liverpool City Council
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	<b>Representative/Contact</b>	Andrew Terry

#### Background

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A Council, the Developer and the Landowner have entered into the VPA.

## Deed of Variation

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- B** Pursuant to clause 24.6 of the VPA, the parties may agree to amend the provisions of the VPA.
- C** The Developer and the Landowner have requested, that the VPA be amended on the terms set out in this deed and Council has agreed to that request.

## Operative Provisions

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### 1 Definitions and interpretation

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#### 1.1 Defined terms

In this deed, words that are defined in the document entitled "*Planning Agreement – New Brighton Golf Course*" entered into between the Developer, the Landowner and Council dated 21 September 2012 (VPA) have the meaning ascribed to them in the VPA.

#### 1.2 Interpretation

The interpretational rules contained in Schedule 2 of the VPA apply in the interpretation of this deed.

### 2 Amendment

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#### 2.1 Relation with VPA

- (1) Except as this deed expressly provides otherwise, this deed does not affect a person's rights, obligations, powers or remedies under the VPA.
- (2) The provisions of this deed prevail to the extent of any inconsistency between them and the provisions of the VPA.

#### 2.2 Tracked changes to VPA

The parties acknowledge and agree that from the date of this deed, the VPA is varied and amended as shown in the "marked up" version of the VPA attached as **Annexure 1** to this deed.

### 3 Affirmation

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Except as amended by the terms of this deed, the parties affirm that the VPA remains, in all other respects, valid and effective.

### 4 Costs

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Each of the parties must pay their own legal costs and expenses incurred in relation to the negotiation, preparation, execution and registration of this deed.

### 5 Administrative Provisions

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#### 5.1 Notices

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

## Deed of Variation

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- (b) sent by pre-paid mail to that person's address; or
  - (c) 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:
  - (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 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 deed or another address of which that person may from time to time give notice to each other person.

### 5.2 Entire agreement

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

### 5.3 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.

### 5.4 Cooperation

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

### 5.5 Counterparts

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

### 5.6 Amendment

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

### 5.7 Unenforceability

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

## Deed of Variation

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### 5.8 Power of Attorney

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

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

### 5.9 Governing law

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

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

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## Annexure 1: Tracked VPA

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## **Planning Agreement**

### **New Brighton Golf Course**

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

Mirvac Homes (NSW) Pty Limited (ABN 22 006 922 998) (Developer)

New Brighton Golf Club Limited (ABN 19 000 032 137) (Landowner)



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# Planning Agreement

## New Brighton Golf Club

### Parties

<b>Council</b>	<b>Name</b>	Liverpool City Council
	<b>Address</b>	33 Moore Street LIVERPOOL NSW 2170
	<b>ABN</b>	84 181 182 471
	<b>Telephone</b>	(02) 9821 9222
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	<b>Representative / Contact</b>	Farooq Portelli
<b>Developer</b>	<b>Name</b>	Mirvac Homes (NSW) Pty Limited
	<b>Address</b>	60 Margaret St, SYDNEY 2000
	<b>ABN</b>	22 006 922 998
	<b>Telephone</b>	(02) 9080 8050
	<b>Facsimile</b>	(02) 9080 8187
	<b>Email</b>	Nino_Babani@mirvac.com
	<b>Representative / Contact</b>	Nino Babani
<b>Landowner</b>	<b>Name</b>	New Brighton Golf Club Limited
	<b>Address</b>	180 Nuwarra Road Moorebank NSW 2170
	<b>ABN</b>	19 000 032 137
	<b>Telephone</b>	(02) 9602 8072
	<b>Facsimile</b>	(02) 9602 8393



	Email	andrew@newbrightongolf.com.au
	Representative / Contact	Andrew Terry

## Background

- A The Developer has entered into a contract with the Landowner to develop the Land.
- B The Developer has made an application to the Council for the Instrument Change so as to enable an application to be made to the Council for the Development Consent.
- C The Developer acknowledges that if the Development Consent is granted and the Development carried out, it is likely to increase the demand for the provision of public facilities.
- D As a consequence of the matters set out in C above, the Developer has offered to make the Development Contributions if the Instrument Change is made on the terms set out in this deed.

## Operative provisions

### 1 Definitions and interpretation

#### 1.1 Defined terms

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

#### 1.2 Interpretation

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

### 2 Application and operation of deed

#### 2.1 Application

This Planning Agreement applies to both the Land and the Development.

#### 2.2 Operation

- (1) This document operates as a deed from the date that it is formed.
- (2) This document operates as a Planning Agreement:
  - (a) within the meaning set out in s93F of the Act; and
  - (b) governed by Subdivision 2 of Division 6 of Part 4 of the Act,
 form the later of the date that:
  - (c) it is entered into in accordance with the *Environmental Planning & Assessment Regulations 2000* (NSW);

- 
- (d) the Minister administering the Act causes the gazettal of the Draft LEP in the Government Gazette; and
  - (e) the Development Consent is granted.

### **3 Application of s94 & s94A**

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

### **4 Dedication of land**

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#### **4.1 The Georges River Foreshore Land**

The Landowner must transfer or dedicate, as the case may be, the Georges River Foreshore Land to Council by the time specified in the column headed "Time for transfer to Council" in **Schedule 4**.

#### **4.2 Terms of dedication**

The Georges River Foreshore Land must be transferred or dedicated, as the case may be, to Council:

- (1) at no cost to Council; and
- (2) free of any Encumbrances other than any covenants, easements or restrictions reasonably required by an Authority in relation to the Development.

#### **4.3 Compulsory acquisition of the Georges River Foreshore Land**

- (1) The Developer and the Landowner consent to the compulsory acquisition of the Georges River Foreshore Land:
  - (a) in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Acquisition Act**); and
  - (b) on the terms set out in this clause 4.3.
- (2) Council may only acquire the Georges River Foreshore Land compulsorily in accordance with the Acquisition Act if the Developer and the Landowner fail to dedicate or transfer that land under this Planning Agreement.
- (3) If Council acquires the Georges River Foreshore Land compulsorily in accordance with the Acquisition Act:
  - (a) the Developer and the Landowner agree that the compensation payable on account of that acquisition under the Acquisition Act is \$1.00; and
  - (b) Council must complete that acquisition within twelve (12) months of the relevant breach of this Planning Agreement by the Developer and the Landowner, and
- (4) The parties agree that the provisions of this clause 4.3 are an agreement with respect to the compulsory acquisition of the Georges River Foreshore Land for the purpose of s30 of the Acquisition Act.

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## 5 Monetary Contributions

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### 5.1 Contribution for Torrens Lots

Subject to **clause 6.1**, prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered would create a Torrens Lot, the Developer must pay to Council a Monetary Contribution calculated as follows:

$$MC = (LL \times \$1,501) + (SL \times \$1,449)$$

where:

**MC** = the Monetary Contribution to be paid in relation to the relevant plan of subdivision;

**LL** = the number of Large Lots in the relevant plan of subdivision; and

**SL** = the number of Small Lots in the relevant plan of subdivision.

### 5.2 Contribution for Strata Lots

(1) The parties acknowledge and agree that:

(a) as part of the Development, Multi Dwelling Lots are permitted to be further subdivided by way of strata subdivision; and

(b) it their intention to ensure that Monetary Contributions are paid under this deed with respect to any such Strata Lot created as part of the Development in addition to the Monetary Contributions that are payable on the relevant Multi Dwelling Lot.

(2) In addition to any Monetary Contributions payable on Multi Dwelling Lots (as Torrens Lots), the Developer must pay a Monetary Contribution to Council prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered would create a Strata Lot.

(3) The amount of any Monetary Contributions payable by the Developer to Council under paragraph (2) must be calculated in accordance with **Schedule 5**.

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## 6 Indexation of amounts in this deed

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### 6.1 Indexation

The Security Amount and each Monetary Contribution will be indexed 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 deed;

**C** = the Index most recently published before the date that the relevant item is provided, Completed or paid as the case may be; and

**D** = the Index current as at March 2012.



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

## **6.2 Timing of indexation**

For the purpose of **clause 6.1**:

- (1) the Security Amount is indexed as at the date the relevant Bond or Bank Guarantee is provided under this Planning Agreement; and
- (2) each component of the Monetary Contribution is indexed as at the date it is paid to Council.

## **7 Application of Development Contributions by the Council**

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Following provision by the Developer, the Council will make any Item of Work or Georges River Foreshore Land transferred pursuant to this Planning Agreement available for the Public Purpose for which it is required in the manner that best meets the demand for the facility created by the Development.

## **8 Provision of Works**

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### **8.1 Obligations of the Developer**

Subject to this Planning Agreement, the Developer, at its cost:

- (1) must Complete each Item of Work in accordance with the table in **Schedule 3**; and
- (2) must obtain any form of consent required by a relevant Authority, for the construction and use of each Item of Work.

### **8.2 Delay in Completion of an Item of Work**

- (1) If an Item of Work:
  - (a) is required under this Planning Agreement to have been Completed before a Subdivision Certificate is issued; and
  - (b) that Item of Work is not Completed at the time an application for that Subdivision Certificate is lodged,

Council may issue that Subdivision Certificate, provided the Developer has complied with the provisions of **clause 16.1(1)(b)**.

- (2) If an Item of Work is required to be carried out on the Georges River Foreshore Land, and is not Completed in accordance with this Planning Agreement before the Georges River Foreshore Land is transferred or dedicated to Council under this Planning Agreement, Council grants a licence to the Developer on the terms of the Access Licence to enter the Georges River Foreshore Land to Complete the Works.
- (3) The Developer must Complete any Item(s) of Work which are the subject of the Bond or Bank Guarantee delivered to the Council under **clause 16.1(1)(b)** by the earlier of:
  - (a) three (3) years after the relevant Subdivision Certificate was issued by the Council; and
  - (b) the date of registration of the plan of subdivision which creates the last Residential Lot,

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(or such other time as Council agrees).

- (4) If the Developer fails to comply with **paragraph (3)**, Council, without limiting any other avenues available to it, may Complete the Item(s) of Work in which case all costs incurred by it in doing so are a liquidated debt owed to Council by the Developer.

### **8.3 Contribution Values**

The parties agree that **Schedule 3** demonstrates the Contribution Value of each Item of Work, but the relevant Contribution Value does not otherwise determine the scope of the Works.

### **8.4 Standard of Construction of Works**

The Developer must construct and complete each Item of Work:

- (1) in accordance with the requirements of, or consents issued by, any Authority;
- (2) in accordance with any Australian Standards applicable to works of the same nature as the relevant Item of Work; and
- (3) in a proper and workmanlike manner complying with current industry practice and standards relating to the relevant Item of Work.

### **8.5 Acceptance of Risk**

Council accepts ownership, possession and control of:

- (1) the Georges River Foreshore Land when that land is transferred or dedicated to Council; and
- (2) any Item of Work on that land that has been Completed upon the later of:
  - (a) the date the Georges River Foreshore Land is transferred or dedicated to Council; and
  - (b) the Completion of the relevant Item of Work.

## **9 Completion of Works**

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### **9.1 Completion Notice**

The Developer must provide a Completion Notice to the Council when it considers it has Completed any Item of Work.

### **9.2 Council must inspect**

The Council must inspect the Item of Work set out in a Completion Notice within fourteen (14) days of the receipt of that notice.

### **9.3 Notice by Council**

Within the earlier of:

- (1) fourteen (14) days of inspecting the Item of Work set out in a Completion Notice; and
- (2) twenty-eight (28) days from the receipt of the relevant Completion Notice,

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the Council must provide notice in writing to the Developer that the Item of Work set out in the Completion Notice:

- (3) has been Completed; or
- (4) has not been Completed (in Council's reasonable opinion), in which case the notice must also detail:
  - (a) those aspects of the relevant item which have not be Completed; and
  - (b) the work the Council requires the Developer to carry out in order to Complete the Item of Work.

#### 9.4 Deemed Completion

If the Council does not provide the Developer with notice in accordance with **clause 9.39-3**, the Item of Work set out in the Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.

#### 9.5 Effect of Council notice

- (1) Where the Council serves notice on the Developer pursuant to **clause 9.3(4)9.3(4)** the Developer must:
  - (a) Complete that item in accordance with that notice within three (3) months from the date it is issued by the Council (or within such other time as is reasonable in the circumstances); or
  - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (2) Where the Developer:
  - (a) serves notice on the Council in accordance with **paragraph (1)(b)(1)(b)** the dispute resolution provisions of this deed apply; or
  - (b) Completes the relevant Item of Work in accordance with **paragraph (1)(a)(1)(a)** it must serve upon the Council a new Completion Notice for the relevant Item of Work it has Completed (**New Completion Notice**).
- (3) The provisions of **clauses 9.2 to 9.5** (inclusive) apply to any New Completion Notice issued by the Developer.

### 10 Defects liability

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#### 10.1 Defects Notice

- (1) Where any Item of Work is Complete but that item contains a material defect which:
  - (a) adversely affects the ordinary use and/or enjoyment of that item; or
  - (b) will require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect,

(Defect) Council may, during the Defects Liability Period, issue a notice to the Developer (**Defects Notice**) concerning that Item of Work.
- (2) A Defects Notice must contain the following information:

- (a) the nature and extent of the Defect;
- (b) the reasonable work Council requires the Developer to carry out in order to rectify the Defect; and
- (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than fourteen (14) days).

#### **10.2 Developer to Rectify Defects**

- (1) The Developer must rectify the Defects contained within a Defects Notice within the time set out in the Defects Notice as referred to in **clause 10.1(2)(c)**.
- (2) The Developer must follow the procedure set out in **clause 99** in respect of the completion of the rectification of any Defect.
- (3) If the work required to be undertaken by the Developer to rectify any Defect is required to be carried out on the Georges River Foreshore Land after that land is transferred or dedicated to Council, Council grants a licence to the Developer on the terms of the Access Licence to enter the Georges River Foreshore Land to carry out that work.

#### **10.3 Right of Council to Step-In**

- (1) Council may, at its absolute discretion, enter upon the Land for the purpose of rectifying a Defect set out in the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer seven (7) days written notice of its intention to do so.
- (2) The terms of the Access Licence apply to any access to the land by Council under **paragraph (1)**.

#### **10.4 Consequence of Step-In**

If Council elects to exercise the step-in rights granted to it under **clause 10.3** then:

- (1) Council may:
  - (a) enter upon any part of the Land; and
  - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with the Council in exercising those rights.

#### **10.5 Costs of Council**

Where Council exercises its step-in rights under **clause 10.3** all costs incurred by Council in rectifying the relevant Defects may be claimed by Council as a liquidated debt owed by the Developer, except to the extent that such costs result from the negligence or mismanagement of Council in rectifying the relevant Defects.

### **11 Developer warranties and indemnities**

#### **11.1 Warranty**

The Developer warrants to Council that:

- (1) it is able to fully comply with its obligations under this deed;



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

## 11.2 Indemnity

The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all Claims arising from the Developer carrying out the Works or performing any other obligation under this deed, except to the extent that the Claim is caused or occasioned by the Council or its employees, officers, agents, contractors and workmen.

## 12 Contamination

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### 12.1 Definitions

For the purpose of this **clause 12.1**:

**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.

### 12.2 Warranties and Indemnities

The Developer:

- (1) warrants that as far as it is aware, and other than as disclosed to the Council, the Georges River Foreshore Land is not Contaminated; and
- (2) indemnifies and must keep indemnified the Council against all liability for and associated with all Contamination present in, on and under the Georges River Foreshore Land before the date of this deed 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.

### 12.3 Remediation

- (1) If the Council becomes aware or reasonably suspects that any part of the Georges River Foreshore Land was Contaminated before the date of this deed, the 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 the 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

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the Georges River Foreshore Land and provide copies of all reports on such investigations to Council (**Investigation Reports**).

- (3) As soon as practicable after receipt by the Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Georges River Foreshore 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 the Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Georges River Foreshore Land is no longer Contaminated.

### **13 Determination of this deed**

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#### **13.1 Satisfaction of obligations**

- (1) This Planning Agreement will determine upon the Developer satisfying all of the obligations imposed on it in full (including any obligations under **clause 1040**).
- (2) For the purpose of clarity:
  - (a) the Developer will not have discharged all of its obligations under this deed by virtue of the payment of Monetary Contributions on Multi Dwelling Lots; and
  - (b) the Developer only have discharged all of its obligations under this deed when it has paid all Monetary Contributions on Strata Lots created on the subdivision of Multi Dwelling Lots.

#### **13.2 Refusal of Development Consent**

This deed may be rescinded by either party by written notice to the other parties to that effect upon the Development Consent lapsing, becoming inoperative or becoming invalid or unenforceable.

### **14 Registration of this deed**

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#### **14.1 Obligation to Register**

- (1) The Landowner and the Developer acknowledge and agree that:
  - (a) this deed will be registered on the title to the Land pursuant to section 93H of the Act as soon as practicable after this deed is formed; and
  - (b) that Council will undertake that registration at the cost of the Developer.
- (2) The Landowner and the Developer, at their cost, must do all things necessary, including signing any documents, to allow this deed to be registered on the title to the Land in accordance with paragraph (1).

#### **14.2 Discharge from the Land**

Council will:

- (1) provide to the Developer a release and discharge of this deed in registrable form relating to any:

- 
- (a) Torrens Lots other than Multi Dwelling Lots; and
  - (b) Strata Lots,

within a plan of subdivision, at the same time as, or immediately after, it issues a Subdivision Certificate for the plan of subdivision upon registration of which those Torrens Lots or Strata Lots (as the case may be) will be created; and

- (2) provide to the Developer a total release and discharge of this deed in registrable form upon the determination of this deed.

## **15 Assignment**

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### **15.1 Prohibition**

Neither the Developer nor the Landowner may Assign their rights under this deed without the prior written consent of the Council.

### **15.2 Assignment of Land**

The Developer or Landowner must not Assign the whole or any part of their respective interest in the Land (if any), other than a Residential Lot or as required under this deed, unless:

- (1) the Council consents to the Assignment, acting reasonably; and
- (2) the Developer or Landowner has, at no cost to the Council, first procured the execution by the person to whom the Land (or part of it) is to be Assigned, of a deed in favour of the Council binding the relevant Assignee to the terms of this deed as if a reference in this deed to the Developer or the Landowner as the case may be was a reference to the Assignee.

## **16 Provision of Security**

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### **16.1 Delivery to Council of Bond or Bank Guarantee**

- (1) Contemporaneously with the lodgement of an application for a Subdivision Certificate for a plan which when registered will create a Residential Lot, the Developer must deliver to the Council a Bond or a Bank Guarantee in an amount equal to:
  - (a) for each Item of Work referable to that Subdivision Certificate application (as determined by **Schedule 3**) that has been Completed and the Defects Liability Period has not expired, the sum of the Defect Liability Amounts for each Completed Item of Work; and
  - (b) in circumstances where **clause 8.2(1)** applies, the aggregate of the Security Amounts for each Item of Work that has not been Completed.
- (2) The Council may decline to issue a Subdivision Certificate referred to in paragraph (1) unless that paragraph has been complied with.

### **16.2 Council may call on Bond or Bank Guarantee**

Council may call on any Bond or Bank Guarantee provided to it under this deed without notice to the Developer in order to satisfy any amount due and owing to Council by the Developer or the Landowner under this deed.



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### 16.3 Top up of Bond or Bank Guarantee

- (1) Where a Bond or a Bank Guarantee has been delivered under **clause 16.1**, the Developer must ensure that the amount secured by any Bond or Bank Guarantee is maintained to the relevant Security Amount.
- (2) If the Developer fails to comply with paragraph (1), it must rectify that non-compliance within seven (7) days of being requested in writing to do so by the Council.

### 16.4 Replacement of Bond or Bank Guarantee

At any time following the provision of a Bond or Bank Guarantee, the Developer may provide Council with one or more replacement Bonds or Bank Guarantees totalling the amount of all Bonds or Bank Guarantees required to be provided under this deed for the time being. On receipt of such replacement Bond or Bank Guarantee, the Council must release and return to the Developer, as directed, the Bonds and Bank Guarantees which it holds that have been replaced.

### 16.5 Return of Bond or Bank Guarantee for Defects Liability Amount

The Council must release and return each Bond or Bank Guarantee to the Developer it holds which is referable to a Defects Liability Amount within one (1) month of being requested to do so by the Developer, provided the Developer is no longer under an obligation to provide that Bond or Bank Guarantee under this deed.

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## 17 Force majeure

### 17.1 Definition

In this **clause 17, Force Majeure Event** means any physical or material restraint beyond the reasonable control of a party claiming the Force Majeure Event and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes.

### 17.2 Consequences of Force Majeure Event

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

### 17.3 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 Event or ameliorate its effects as quickly as practicable.
- (2) If the Developer is unable to Complete any Item of Work due to a Force Majeure Event, the Developer must pay to Council the Security Amount with respect to that Item of Work and the amount payable to Council may be apportioned, if necessary, in such manner as may be fair and reasonable.

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- (3) If the Developer makes a payment to Council under **paragraph (2)**, Council must return any Bond or Bank Guarantee then held by it with respect to the relevant Item of Work and being the Security Amount.

#### **17.4 Exclusion of operation**

The parties agree that this **clause 17** does not apply to an obligation of a party to transfer land or to pay money.

#### **17.5 Dispute**

If the parties are unable to agree on the existence of an event of Force Majeure Event or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure Event, that dispute must be referred for determination under **clause ~~19.19~~**.

### **18 Review and amendment**

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#### **18.1 Review**

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

#### **18.2 Amendment**

If the parties agree to amend this deed as a result of a review conducted under this **clause ~~18.18~~** then any such amendment must be made:

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

### **19 Dispute resolution**

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#### **19.1 Notice of dispute**

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

#### **19.2 Conduct pending resolution**

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

#### **19.3 Further steps required before proceedings**

Subject to **clauses ~~19.14~~19.14** and **~~19.15~~19.15** and except as otherwise expressly provided in this deed, any dispute between the parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation, mediation under **clause ~~19.5~~19.5** or determination by an expert under **clause ~~19.6~~19.6**, first be referred to the

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Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days.

#### **19.4 Disputes for mediation or expert determination**

If the Representatives have not been able to resolve the dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 19.5 or expert resolution under clause 19.6.

#### **19.5 Disputes for mediation**

- (1) If the parties agree in accordance with clause 19.4 to refer the dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by LEADR.
- (2) If the mediation referred to in 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 19.6.

#### **19.6 Choice of expert**

- (1) If the parties agree to have the matter determined by expert determination, this clause 19.6 applies.
- (2) The dispute must be determined by an independent expert in the relevant field:
  - (a) agreed between and appointed jointly by the parties; or
  - (b) in the absence of agreement within five (5) Business Days after the date that the parties agree to have the matter determined by expert determination, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the parties agree to have the matter determined by expert determination, either party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a dispute must:
  - (a) have a technical understanding of the issues in dispute;
  - (b) not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - (c) inform the Parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into an agreement with the expert appointed under this clause 19.6 setting out the terms of the expert's determination and the fees payable to the expert.



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#### 19.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under **clause 19.6**, the independent expert must give effect to the intent of the parties entering into this deed and the purposes of this deed.
- (2) The expert must:
  - (a) act as an expert and not as an arbitrator;
  - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
  - (c) not accept verbal submissions unless both parties are present;
  - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
  - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
  - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
  - (h) issue a final certificate stating the expert's determination (together with written reasons); and
  - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within the time period specified by the expert, give the expert:
  - (a) a short statement of facts;
  - (b) a description of the dispute; and
  - (c) any other documents, records or information which the expert requests.

#### 19.8 Expert may commission reports

- (1) Subject to **paragraph (2)**:
  - (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
  - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with **clause 19.6(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.

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#### 19.9 Expert may convene meetings

- (1) The expert must hold a meeting with all of the parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under **paragraph (1)(4)** is not a hearing and is not an arbitration.

#### 19.10 Other courses of action

If:

- (1) The parties cannot agree in accordance with **clause 19.419.4** to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in **clause 19.519.5** has not resulted in settlement of the dispute and has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation;

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

#### 19.11 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agrees as a condition of his or her appointment:
  - (a) subject to **paragraph (b)(b)**, to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
  - (b) not to disclose any confidential documents, information and other material except:
    - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
    - (ii) if required by Law to do so or State Government policy or local government policy or any listing rule; and
  - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
  - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
  - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the dispute; and

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- (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.

#### **19.12 Final determination of expert**

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

#### **19.13 Costs**

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

#### **19.14 Remedies available under the Act**

This **clause 19** does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the Act.

#### **19.15 Urgent relief**

This **clause 19** does not prevent a party from seeking urgent injunctive or declaratory relief.

### **20 Position of Council**

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#### **20.1 Consent authority**

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

#### **20.2 Agreement does not fetter discretion**

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

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

#### **20.3 Severance of provisions**

- (1) No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
  - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this **clause 20** is substantially satisfied; and
  - (b) in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this deed has full force and effect.
- (2) Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this deed



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contracted out of a provision or exercised a Discretion under this deed, then to that extent this deed is not to be taken to be inconsistent with the Law.

#### **20.4 No obligations**

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

### **21 Confidentiality**

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#### **21.1 Agreement not Confidential**

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

#### **21.2 Other Confidential Information**

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

### **22 GST**

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#### **22.1 Defined GST Terms**

Defined terms used in this **clause 22** have the meaning ascribed to them in the GST Law.



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## **22.2 GST to be Added to Amounts Payable**

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

## **22.3 GST Obligations to Survive Termination**

This clause 22 will continue to apply after expiration or termination of this deed.

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## **23 Miscellaneous**

### **23.1 Obligation to act in good faith**

The parties must at all times:

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

### **23.2 Legal costs**

- (1) The Developer agrees to pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this deed to an aggregate of fifteen thousand dollars (\$15,000), within fourteen (14) days of receipt of a Tax Invoice from Council.
- (2) The Developer agrees to pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this deed including any breach or default by the Developer of its obligations under this deed.

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## **24 Administrative provisions**

### **24.1 Notices**

- (1) Any notice, consent or other communication under this deed must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (a) delivered to that person's address;
  - (b) sent by pre-paid mail to that person's address;
  - (c) transmitted by facsimile to that person's address; or
  - (d) emailed to the person's email address.

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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;
  - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day; and
  - (d) if sent by email to a person's email address before close of a business day, the on the day of delivery at that person's email address if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this deed or another address of which that person may from time to time give notice to each other person.

#### **24.2 Entire agreement**

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

#### **24.3 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.

#### **24.4 Cooperation**

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

#### **24.5 Counterparts**

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

#### **24.6 Amendment**

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

#### **24.7 Unenforceability**

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

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#### **24.8 Power of Attorney**

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

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

#### **24.9 Governing law**

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

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

### Part 1 – Commercial details

<b>Land</b>	<p>Residential Land being <del>part of Lot 103 DP 1070029, Lot 102 DP 1070029, Lot 47 DP 1107187 and part of Lot 22 DP 733092</del> Lot 31 DP 1181985 as shown on the plan attached as <b>Annexure 1</b>.</p> <p>Golf Course Land being <del>part of Lot 52 DP 717957, part of Lot 32 DP 1181985, Lot 103 DP 1070029, Lot 2210 DP1090818, part of Lot 22 DP 733092, Lot 23 DP 733092 and Lot 1 DP85111</del> as shown on the plan attached as <b>Annexure 1</b>.</p>
<b>Current LEP</b>	Liverpool Local Environmental Plan 2008.
<b>Draft LEP</b>	Amendment to Liverpool Local Environmental Plan 2008 which rezones the Land from RE2 Private Recreation to –R1 - General Residential, for the residential land, RE2 to RE1 – Public Recreation (for the Georges River foreshore land) and RE–1 - Public Recreation to RE2 – Private Recreation (for the golf course land to the south of the M5).

**Part 2 - Requirements Under Section 93F of the Act**

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application – (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Not applicable</p>
Description of land to which this deed applies – (Section 93F(3)(a))	The whole of the Land.
Description of change to the environmental planning instrument to which agreement applies – (Section 93F(3)(b))	The amendments to be made by the draft LEP.
Application of section 94 of the Act – (Section 93F(3)(d))	Section 94 is excluded.
Applicability of section 94A of the Act – (Section 93F(3)(d))	Section 94A is excluded.
Mechanism for Dispute resolution – (Section 93F(3)(f))	See <del>clause 19</del> <u>clause 1919</u> .
Enforcement of this deed (Section 93F(3)(g))	See <u>clauses 4.3, 8.2(4), 10.3 &amp; 16</u> .
No obligation to grant consent or exercise functions – (Section 93F(3)(9))	See <u>clause 20</u> <del>20</del> <u>2020</u> .



## Schedule 2

### Defined Terms And Interpretation

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#### Part 1 - Definitions

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<b>Access Licence</b>	means the terms and conditions set out in <b>Schedule 6</b> .
<b>Act</b>	means the <i>Environmental Planning &amp; Assessment Act 1979</i> (NSW).
<b>Assign</b>	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.
<b>Authority</b>	means (as appropriate) any: <ul style="list-style-type: none"> <li>(1) federal, state or local government;</li> <li>(2) department of any federal, state or local government;</li> <li>(3) any court or administrative tribunal; or</li> <li>(4) statutory corporation or regulatory body.</li> </ul>
<b>Bond or Bank Guarantee</b>	means an irrevocable and unconditional undertaking by a financial institution approved by the Council, to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council.
<b>Claim</b>	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.
<b>Complete</b>	with respect to an Item of Work means that particular item has been completed to the standard required under this deed to the satisfaction of Council, and Completed and Completion have a commensurate meaning.
<b>Completion Notice</b>	means a notice setting out an Item of Work that the Developer believes is complete and which is: <ul style="list-style-type: none"> <li>(1) in writing;</li> <li>(2) issued by an Independent Engineer; and</li> <li>(3) contains an acknowledgement from the Independent Engineer that it is recognised that the Council relies upon the certification provided by that Engineer.</li> </ul>
<b>Confidential Information</b>	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"> <li>(1) is by its nature confidential;</li> <li>(2) is designated, or marked, or stipulated by either party as</li> </ul>

		confidential (whether in writing or otherwise);
		(3) any party knows or ought to know is confidential; or
		(4) is information which may be reasonably considered to be of a confidential nature.
Construction Certificate		has the same meaning ascribed to that term in the Act.
Contributions Plan		means the Liverpool Contributions Plan 2001 (as amended) as at the date of this deed.
Contribution Value		means the amount for each Item of Work specified in <b>Schedule 3</b> and which is the agreed value of that Item of Work for the purpose of this Planning Agreement.
Defects Period	Liability	means twelve (12) months after the relevant Item of Work is Complete.
Defects Amount	Liability	for each Item of Work means the amount specified in respect of each Item of Work in <b>Schedule 3</b> as the "Defects Liability Amount".
Development		means the development of the Land for residential and ancillary purposes which would be permitted to be carried out under the Draft LEP if it was made.
Development Consent		means any development consent issued under the Act for the Development.
Development Control Plan or DCP		means a Development Control Plan under the provisions of the Act, as adopted by Liverpool City Council.
Development Contribution		means the Monetary Contributions, the Georges River Foreshore Land and the Works.
Draft LEP		means the "Draft LEP" set out in <b>Schedule 1</b> .
Georges River Foreshore Land		means that part of the Land specified in column 2 of <b>Schedule 4</b> under the heading "Description of Georges River Foreshore Land".
GST Law		means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other act or regulation relating to the imposition or administration of the GST.
Independent Engineer		means an appropriately qualified and experienced civil engineer who is a member of the Institute of Engineers Australia (now known as ENGINEERS AUSTRALIA) or the Association of Professional Engineers, Scientists and Managers, Australia that is approved by the Council (which approval must not be unreasonably withheld).
Index		means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician from time to time.
Instrument Change		means the making of the Draft LEP.
Item of Work		means an individual item of the Works as set out in <b>Schedule 3</b> .



Land	means the "Land" set out in <b>Schedule 1</b> .
Large Lot	means a Torrens Lot greater than 450m <sup>2</sup> in area.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
LEADR	means LEADR - Association of Dispute Resolvers (see <a href="http://www.leadr.com.au">www.leadr.com.au</a> ).
Legislation	means the Act and the <i>Local Government Act 1993</i> (NSW).
Monetary Contribution	means a monetary contribution payable pursuant to <b>clause 5</b> .
Public Purpose	has the same meaning as in s93F(2) of the Act.
Public Recreation Land	means that part of the Land zoned RE1 (Public Recreation)
Multi Dwelling Lot	means a Torrens Lot which: <ul style="list-style-type: none"> <li>(1) has an area of 600 square metres or more;</li> <li>(2) is a corner lot;</li> <li>(3) has direct vehicular access to a laneway; and</li> <li>(4) may be further subdivided by way of a strata plan of subdivision into a maximum of three (3) strata lots each comprising a dwelling.</li> </ul>
Residential Lot	means a Torrens Lot or a Strata Lot as the case may be.
Security Amount	means the amount specified in respect of an Item of Work in <b>Schedule 3</b> as "Security Amount".
Small Lot	means a Torrens Lot of 450m <sup>2</sup> or less in area.
Stage	means a stage of the Development.
Strata Lot	means a lot comprising part of a Multi Dwelling Lot and which is created on the registration of a strata plan of subdivision.
Subdivision Certificate	has the meaning ascribed to that term in the Act.
Torrens Lot	means a lot comprising part of the Land, other than a Strata Lot, that is intended to be used for the purpose of a dwelling or a dwelling house. For the purpose of clarity, a Torrens Lot includes a lot created in a community plan or a neighbourhood plan and also includes a Multi Dwelling Lot.
Works	means the works specified in <b>Schedule 3</b> (including any design, project management and advice from consultants in relation to the provision of those works).

## Part 2 - Interpretational Rules

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<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed.
<b>reference to statutes</b>	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.
<b>singular plural</b> includes	the singular includes the plural and vice versa.
<b>person</b>	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	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.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	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.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>meaning not limited</b>	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.
<b>next day</b>	if an act under this deed to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	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.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of clauses) are for convenience only and do not affect the interpretation of this deed.
<b>deed</b>	a reference to any agreement, deed or instrument includes the same

**Schedule 3**  
**Description of the Works, Values and Timing**

Item of Work	Description of Work	Security Amount	Defects Liability Amount	Contribution Value	Timing of Work
1. Pedestrian path / Cycleway.	(a) Construction of a 2.5m shared pedestrian /bike path within the Georges River foreshore land to be dedicated to Council (as shown in the Plan attached as <b>Annexure 23.1</b> ).	\$150,000	\$7,500	\$150,000	Prior to the release of a Subdivision Certificate for a plan that when registered would created the 201st Residential Lot
	(b) Construction of a 2.5m shared pedestrian/bike path linking between the Georges River foreshore and Residential Land along the northern boundary of Lot 103 DP 1070029 to Brickmakers Drive (as shown on the Plan attached as <b>Annexure 23.1</b> ).	\$120,000	\$6,000	\$120,000	Prior to the release of a Subdivision Certificate for a plan that when registered would created the 201st Residential Lot
	(c) Construction of a 2.5m shared pedestrian / bike network within the residential area in accordance with figure 5 of the DCP (as shown on the Plan attached as <b>Annexure 32.1</b> ).	\$249,000	\$12,450	\$249,000	Prior to the release of a Subdivision Certificate for a plan that when registered would create the first Residential Lot fronting the proposed work
2. Landscaping and improvements to open space areas.	(a) Preparation of a Vegetation Management Plan to the satisfaction of Council that defines planting offsets required as a consequence of any possible clearing works.(See <b>Annexure 32.2</b> Vegetation Offsetting Requirements).	\$10,000	\$500	\$10,000	Prior to the lodgement of the Development Application for the Development which includes the first Residential Lot, or the proposed Works to be undertaken on the Golf Course located on the Land, whichever comes first.

Item of Work	Description of Work	Security Amount	Defects Liability Amount	Contribution Value	Timing of Work
	(b) Riparian Planting within the Public Recreation Land along the foreshore (in accordance with an approved Vegetation Management Plan) and adjacent to cycleway links and golf course land. This includes the allowance for potential vegetation offsetting*.	\$727,710	\$36,385	\$727,710	Prior to the release of a Subdivision Certificate for a plan that when registered would create the 201 <sup>st</sup> Residential Lot
	(c) Construction of a perimeter fence around the basin located on the southern boundary of Lot 2210 DP1090818 (adjacent to Area 5 as shown in the Plan attached as <b>Annexure 32.3</b> ), the design of which must be approved by Council in writing. **	\$25,000	\$1,000	\$25,000	The later of the Golf Course (south of M5) being open to the public, or a Subdivision Certificate being issued for a plan that when registered will create the 201 <sup>st</sup> Residential Lot
	(d) Landscaping and recreational facilities provided on Lot 1 within the Community Scheme established as part of the Development comprising community swimming pool, mixed use court, cabana and meeting place, seating and BBQs.	\$750,000	\$37,500	\$0.00	Prior to the release of a Subdivision Certificate for a plan that when registered would create the first Residential Lot fronting the proposed work
	(e) Reconstruction of Cantello Reserve Dog Park within Cantello Reserve (refer to 'Relocation of Dog Park Plan' in <b>Annexure 32.3</b> ).	\$60,000	\$3,000	\$60,000	The later of the Golf Course (south of M5) being open to the public, or a Subdivision Certificate being issued for a plan that when registered will create the 201 <sup>st</sup> Residential Lot
3. Public access to link Georges River Foreshore and Cantello Reserve.	(a) Construction of 8 metre wide access and easement to enable the public to traverse under the M5 Motorway as shown in Annexure 32.3. The design must be approved by Council in writing.	\$55,000	\$2,750	\$55,000	The later of the Golf Course (south of M5) being open to the Public, or a Subdivision Certificate being issued for a plan that when registered will create the 201 <sup>st</sup> Residential Lot



Item of Work	Description of Work	Security Amount	Defects Liability Amount	Contribution Value	Timing of Work
4. Local Drainage facilities	(a) Installation of two (2) Gross Pollutant Traps (GTPs). (refer to 'Street Design and Treatment Plan' in <b>Annexure 32.4</b> ). The design must be approved by Council in writing.	\$82,400	\$4,120	\$82,400	Prior to the release of a Subdivision Certificate for a plan that when registered would created the first Residential Lot
	(b) Construction of water quality control ponds (refer to 'Street Design and Treatment Plan' in <b>Annexure 32.4</b> ). The design must be approved by Council in writing.	\$508,360	\$25,418	\$508,360	Prior to the release of a Subdivision Certificate for a plan that when registered would created the first Residential Lot
<b>Total Works Value</b>		\$2,737,470	\$136,623	\$1,987,470	

Note: Upper limit allowance. May not be required if no clearing is proposed. Refer to Annexure 32.2 for appropriate vegetation offset policy. Actual areas approved for clearing to be confirmed within the Vegetation Management Plan.

\* The Community Facilities will be provided by the Developer at its expense and placed in the ownership of the Community Association formed with respect to the Development to reduce Council's ongoing maintenance. These Community Facilities may not be available for use by the public and the use of those facilities will be subject to, and in accordance with, the relevant Community Management Statement.

\*\* The perimeter fencing will be completed prior to the dedication of Area A5 (as shown in the Plan attached as **Annexure 32.3**) to Council. The final type of fencing will permit species migration and must be approved by Council prior to commencement of construction.

**Schedule 4**  
**Georges River Foreshore Land**

Public Purpose	Description of Georges River Foreshore Land	Time for transfer to Council	Value
Public recreation	A 40m wide strip of land running parallel to the Mean High Water Mark of the nearest bank of the Georges River.	By the earlier to occur of:  (1) completion of the new golf tees, fairway and greens within that part of the Golf Course located on the southern side for the M5 Motorway and completion of riparian planting and landscape works within the Public Recreation Land (being Works listed in <b>Schedule 3</b> , Item 2, Description of Works (a); and  (2) the issue of a Subdivision Certificate for a plan that when registered will create the 201 <sup>st</sup> Residential Lot.	\$760,260
<b>Total Land Value</b>			<b>\$760,260</b>
<b>Total Works Value + Total Land Value</b>			<b>\$3,497,730</b>

**Schedule 5**  
**Calculation of Monetary Contributions**

Item No.	Public Purpose	Timing of Payment	Amount per lot (\$)					Total Amount
					Multi dwelling housing			
			Large lot	Small lot	3+ bed	2 bed	1 bed	
1.	Community Facilities	Prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered would create a Residential Lot.	484	464	464	345	180	\$4840
								\$125,280
								\$9280
								\$3450
2.	Recreation  -Whitlam Centre Extensions  -District  -*Local (nil offset by land and works proposed in schedule 3)	Prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered would create a Residential Lot.	965	935	935	693	362	\$9650
								\$252450
								\$18700
								\$6930
3.	Administration	Prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered	52	50				\$520
								\$13500

		would create a Residential Lot.			50	37	20	\$1000 \$370
Total Monetary Contribution per lot / dwelling – clause 5.1			\$1501	\$1449	\$1449	\$1075	\$562	
Total Monetary Contribution								\$445970
Contributions are based on Liverpool City Council Established Areas Section 94 catchment September 2011 Rates.								



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## Schedule 6 Access Licence

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### 1 Definitions

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- (1) In this schedule, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** of this deed have the meaning ascribed to them in that schedule.
- (2) For the purpose of this **Schedule 6**:
  - (a) **the Land** means the land being accessed in accordance with this licence;
  - (b) **the Licensor** means the party that owns the land being accessed under this licence;
  - (c) **the Licensee** means the other party; and
  - (d) **the Purpose** means the purpose for which the Licensee is accessing the Land from time to time.

### 2 Licence

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#### 2.1 Personal rights

- (1) The Licence is personal to the Licensee.
- (2) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- (3) The Licensor may refuse the granting of consent under paragraph (2) without reason and at its absolute discretion.

#### 2.2 Leasehold interest

- (1) This agreement does not grant to the Licensee a leasehold interest in the Land. The parties agree that:
  - (a) subject to any contrary terms of this agreement, this licence does not confer exclusive possession of the Land on the Licensee; and
  - (b) the Licensee may not exclude the Licensor, its officers, employees and invitees from:
    - (i) entry onto the Land; and/or
    - (ii) the performance of any works on the Land;provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the Purpose; and
- (2) the Licensee does not have any right to quiet enjoyment of the Land; and

- 
- (3) the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensee.

### **3 Compliance with authorities**

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#### **3.1 No warranty as to suitability for use**

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the Purpose.

#### **3.2 Compliance with the terms of consents**

In the conduct of the Purpose and compliance with its obligations under this agreement, the Licensee must comply with the requirements of all Authorities.

#### **3.3 Compliance with directions from Authorities**

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Licensor and which arise from the conduct of the Purpose on the Land by the Licensee.

#### **3.4 Obtaining further consents**

- (1) If the Licensee requires further consents to conduct the Purpose it must:
- (a) make such applications itself; and
  - (b) bear all costs incurred by it in relation to obtaining the relevant consent.
- (2) The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application for consent to any Authority.

### **4 Limitation of the Licensor's liability**

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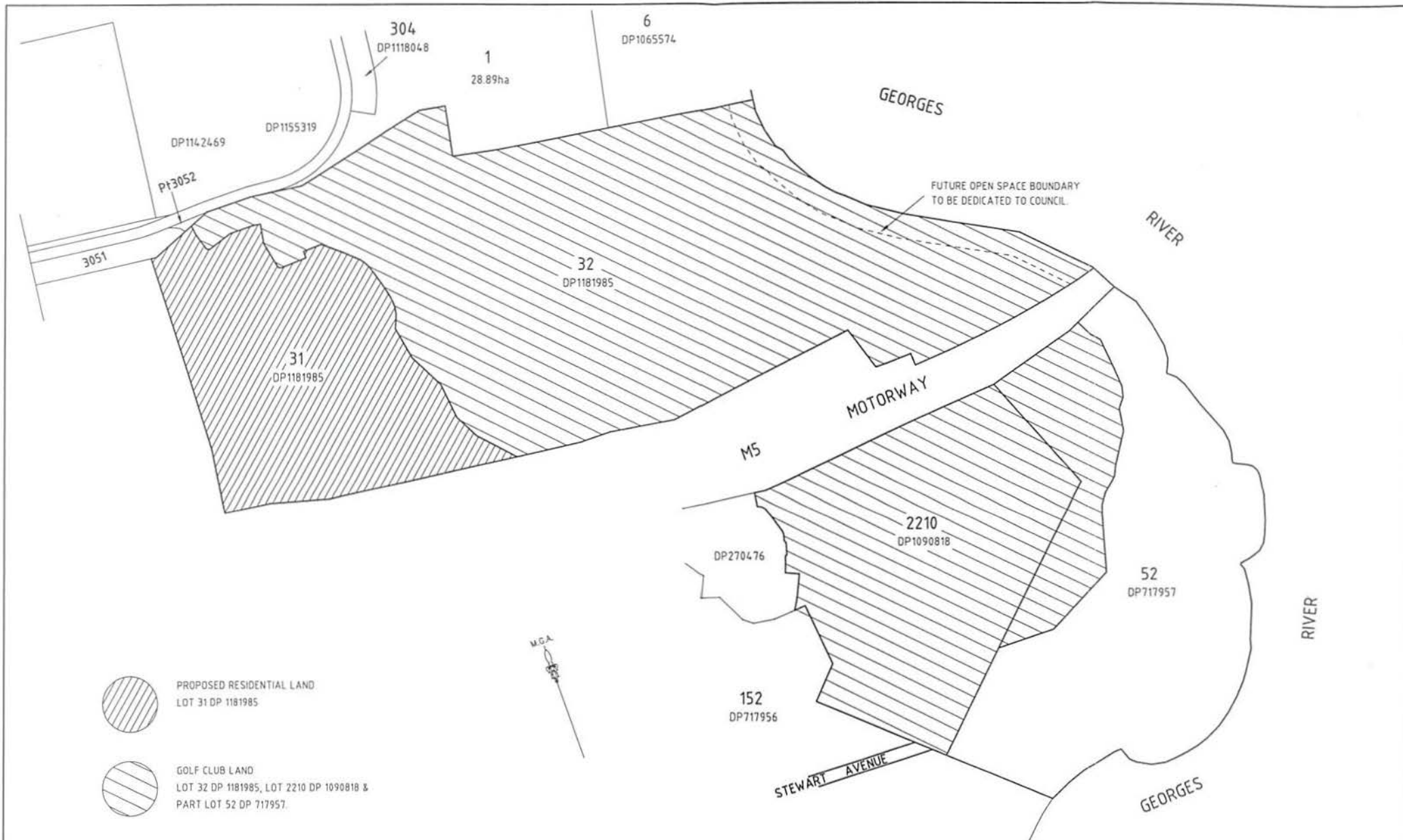
#### **4.1 Insurances**

- (1) The Licensee must effect and keep current and in force the following policies of insurance:
- (a) a Broad form Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
    - (i) personal injury or death of any person; and
    - (ii) loss of or damage to property,
  - (b) workers compensation insurance under the *Workers Compensation Act 1987* (NSW) covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the Purpose;

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**Annexure 1**  
**Deposited Plans Plan of the Land**

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Rev	DATE	REVISIONS	Des	CHK
H	09.07.2013	31 & 32 DP1181985 ADDED	TB	GM
G	22.01.2013	HEAVY LINE LOT 52 ADDED	TB	GM
F	22.01.2013	ADDITION OF ORIGINAL LOTS	TB	GM
D	18.01.2013	PROPOSED RESIDENTIAL LAND	TB	GM
B	08.01.2013	Remove Lot 23	TB	GM

DRAWN: G.M.	A2
CHECKED: T.B.	
DATUM: N/A	
ORIGIN OF LEVELS: N/A	
CONTOUR INTERVAL: N/A	
SCALE: 1:4,000	

**Cardno**  
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Email: [info@cardno.com.au](mailto:info@cardno.com.au)

**MIRVAC**  
PROPOSED RESIDENTIAL LAND AND GOLF CLUB LAND  
HAMMONDVILLE / MOOREBANK

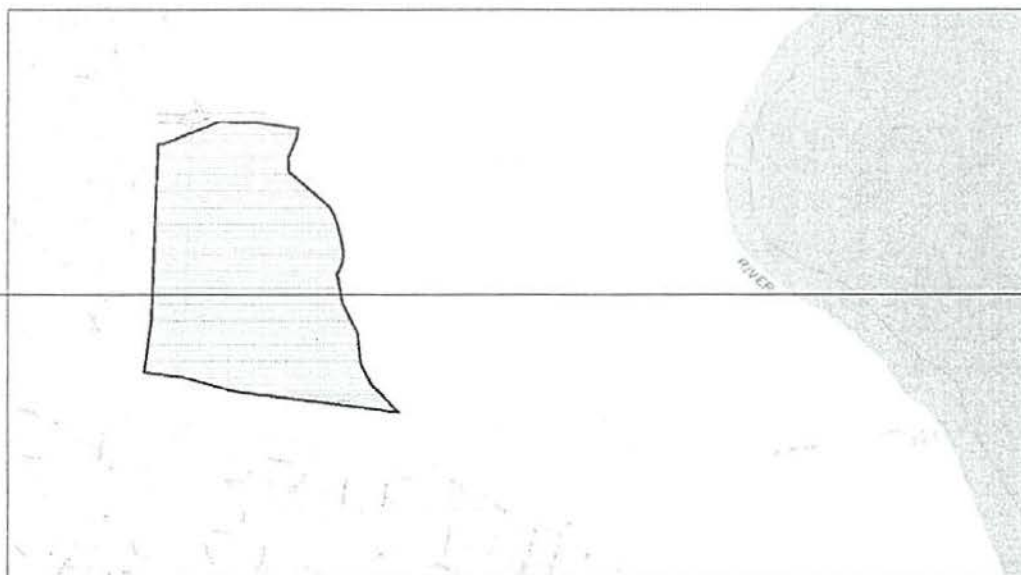
DATE: 09-07-2013	Rev
DRAWING No: 600279SP-03	H



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**Annexure-2**  
**Residential Development Area**

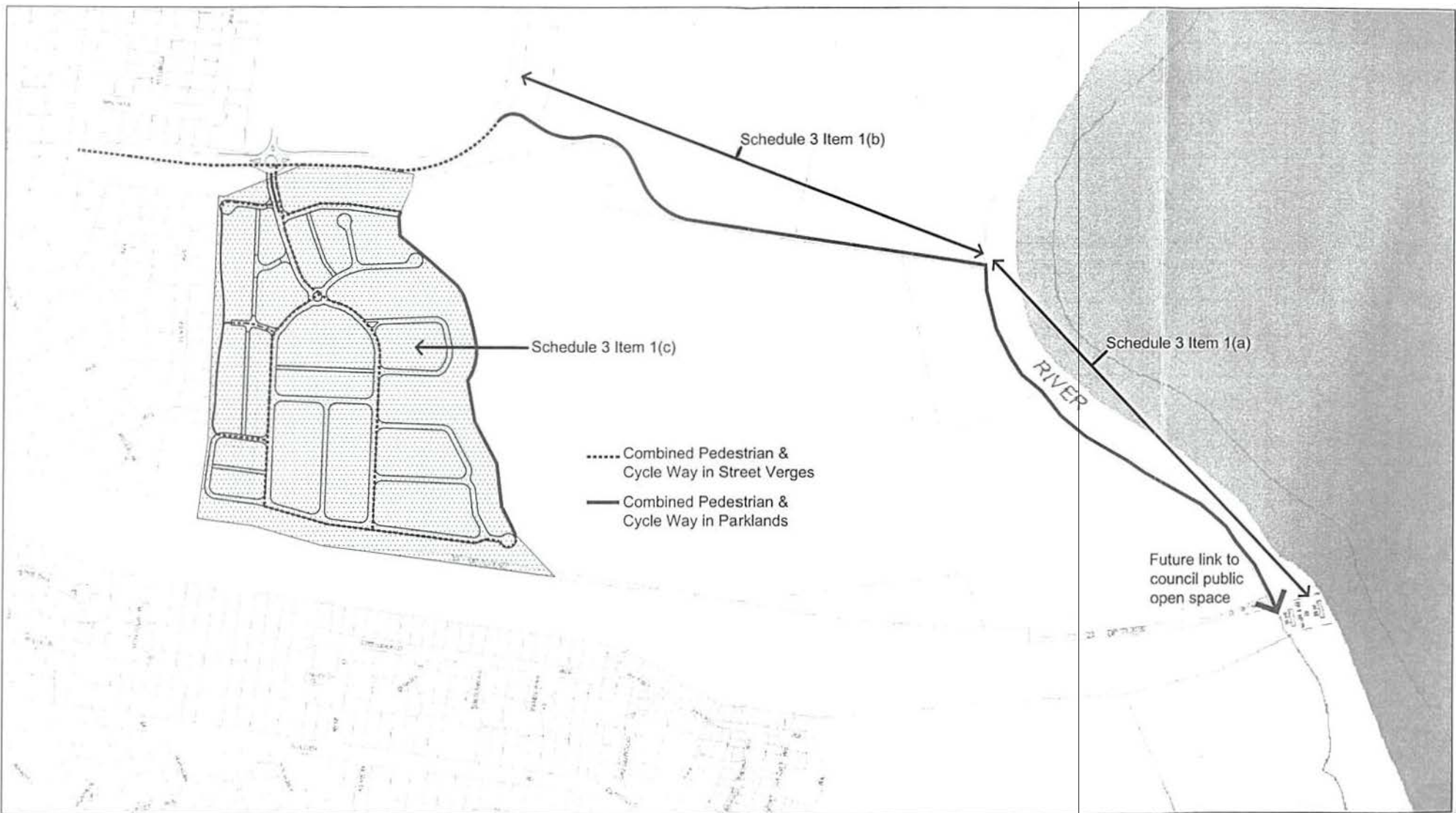
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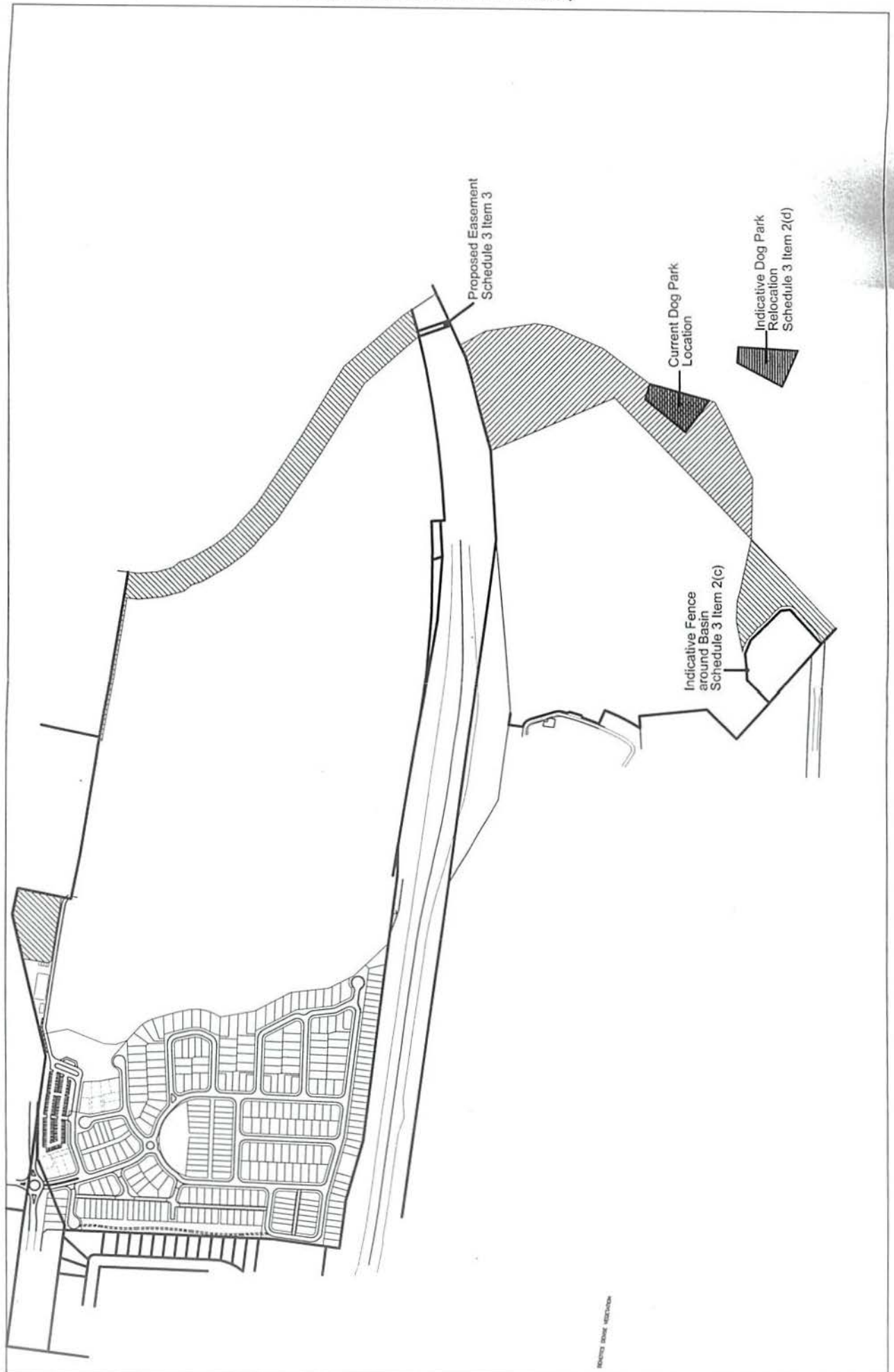
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**Annexure 23.1:**  
**Shared Pedestrian / Bike Path**

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## Annexure 2.2 - Vegetation Offsetting

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## Annexure 32.2 Vegetation Offsetting

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The final approved golf course design must avoid, where possible, the constrained vegetation. To this end the golf course holes shall be aligned to utilise previous fairways and cleared areas of the historic Greenwood Golf Course. If any minor clearing is required then offsetting needs to be implemented consistent with the Commonwealth and NSW offsetting policies. The NSW Principles for the use of biodiversity offsets are summarised by Justice Jayne Jagot (Sanctuary Investments Pty Ltd & Ors v Baulkham Hills Shire Council [2006]) as:

*the offset for any particular development should reflect six principles – namely:*

- 1. preference should be given to a "like for like" offset.*
- 2. the offset should be greater than the area cleared.*
- 3. the offset should preferably be in proximity to the area impacted.*
- 4. the offset actions should be located in strategic, targeted areas.*
- 5. offsets should be in addition to existing initiatives and should not duplicate or replicate existing schemes or programs.*
- 6. the offset must be secure and long-term*

Liverpool Council's offset policy (Eco Logical Australia, 2003) provides a Habitat Multiplier Table for calculating the amount of offset considered by Council:

Conservation classification of land being impacted on by the activity	Offset action to be applied to the receiving land		
	Protect	Enhance	Create
Core Region	2	8	NA
Core Local	1.5	6	NA
Support for Core	1	4	8
Urban Remnant	NA	NA	NA
Other	NA	2	4

If any offsetting is required, then there should be sufficient in the approximately 24.9 ha of existing vegetation and about 1.35 ha of existing fairway in the 40 m wide riparian corridor available to regenerate, enhance or establish new vegetation in these areas. It is envisaged that after minor modification of the golf course layout to align with existing and former fairway, there should be no or minimal need for offsetting.

However, should minor clearing occur, there are more than sufficient potential offset areas available to enhance existing vegetation and/or planting in the newly dedicated reserve along the Georges River. Any proposed vegetation offsets will be cleared in accordance with the Vegetation Management Plan.

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**Annexure 32.3:**  
**Map of Fencing of Basin, Relocation of Dog Park and Map of Indicative  
Easement under the M5 Motorway**

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**Annexure 32.4:**  
**Construction of Drainage Structures**

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## Annexure 2.4 - Construction of Drainage Structures



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## Execution page

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### Executed as a deed

Dated:

**Signed, sealed and delivered by Mirvac Homes (NSW) Pty Limited** in accordance with section 127(1) of the Corporations Act by authority of its directors.

---

Director/Secretary (Signature)

---

Director (Signature)

---

Name of Director/ Secretary (Print Name)

---

Name of Director (Print Name)

**Signed, sealed and delivered by New Brighton Golf Club Limited** in accordance with section 127(1) of the Corporations Act by authority of its directors.

---

Director/Secretary (Signature)

---

Director (Signature)

---

Name of Director/ Secretary (Print Name)

---

Name of Director (Print Name)

**Signed, sealed and delivered by Liverpool City Council** by its duly constituted Attorney, Farooq Portelli pursuant to the registered Power of Attorney Book 4418 No 998 in the presence of:

---

Witness (Signature)

---

Attorney (Signature)

---

Name of Witness (Print Name)

---

Name of Attorney (Print Name)

---

## Deed of Variation

### Execution page

Executed as a deed

Dated: 14 November 2013

Signed, sealed and delivered by Liverpool City Council by its duly constituted Attorney, Farooq Po [redacted] Power of Attorney Book 4418 No 998 in the presence of:

Witness (Signature)

Attorney (Signature)

Name of Witness (Print Name)

Name of Attorney (Print Name)

Signed, sealed and delivered by Mirvac Homes (NSW) Pty Limited in accordance with section 127(1) of the Corporations Act by authority of its directors:

Dir

Dir

Name of Director/Secretary (Print Name)

Name of Director (Print Name)

Signed, sealed and delivered by New Brighton Golf Club Limited in accordance with section 127(1) of the Corporations Act by authority of its directors:

Director/Secretary (Signature)

Director (Signature)

Name of Director/Secretary (Print Name)