

## **Planning Agreement**

### **Planning Proposal - 4 – 8 Hoxton Park Road, Liverpool**

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

ZHC Investments Pty Limited (ACN 161 211 721) (**Developer**)

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## Planning Agreement

### Planning Proposal - 4 – 8 Hoxton Park Road, Liverpool

#### Parties

|                  |                |   |
|------------------|----------------|---|
| <b>Council</b>   | <b>Name</b>    | Liverpool City Council                                |
|                  | <b>Address</b> | Ground Floor<br>33 Moore Street<br>Liverpool NSW 2170 |
|                  | <b>ABN</b>     | 84 181 182 471  |
| <b>Developer</b> | <b>Name</b>    | ZHC Investments Pty Limited                           |
|                  | <b>Address</b> | 1/200 Hoxton Park Road, Hoxton Park, NSW, 2171        |
|                  | <b>ACN</b>     | 161 211 721   |

#### Background

- A** The Developer owns the Land.
- B** The Developer has lodged a Planning Proposal with respect to the Instrument Change.
- C** The Developer has agreed to make the Development Contributions on and subject to the terms of this document.

#### Operative Provisions

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##### 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.

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##### 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.

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##### 3 Application and operation of document

###### 3.1 Planning Agreement

This document is a planning agreement:

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(1) within the meaning set out in s7.4 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**

(1) Subject to paragraph (2), this document operates from the date it is executed by both parties.

(2) The following clauses of this document will only operate if and when the Instrument Change is made in accordance with the terms set out in the Planning Proposal and published on the NSW Legislation website:

(a) Clause 4.

(b) Clause 5.

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## **4 Application of s7.11 and s7.12**

### **4.1 Application**

This document does not exclude the application of section 7.11 or section 7.12 of the Act to the Development.

### **4.2 Consideration of benefits**

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

### **4.3 Section 7.24**

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

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## **5 Provision of Contributions**

### **5.1 Provision of Affordable Housing**

(1) As part of the Development the Developer must provide the Affordable Housing in accordance with **Schedule 3**.

(2) Any Development Application, which relies upon the Instrument Change must:

(a) incorporate the allocation of the Affordable Housing Lots in accordance with **Schedule 3**; and

(b) nominate the Affordable Housing Lots.

(3) A restrictive covenant under s88B of the *Conveyancing Act 1919* (NSW) must be registered on the title of each Affordable Housing Lot by the Developer upon the creation of those lots. The restrictive covenant must:

(a) be on terms acceptable to Council, acting reasonably;

(b) identify the Council as the benefitted party; and

- 
- (c) clearly nominate that the restrictive covenant may not be varied or removed from the title without the consent of the Council.
  - (4) The Affordable Housing Lots must be allocated to a Community Housing Provider within twenty eight (28) days of the registration of the strata plan which creates those lots.
  - (5) For clarity, the Affordable Housing Lots will be allocated at the discretion of the Developer.

## **5.2 Monetary Contributions**

- (1) The Developer must pay the Monetary Contribution by the time specified in **Schedule 4**.
- (2) A Monetary Contribution is made for the purposes of this document when Council receives the full amount of the contribution payable under this document in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

## **6 Developer Warranties**

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### **6.1 Warranties of Developer**

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.

### **6.2 Council may withhold Certificates**

- (1) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation under this document until such time as the breach is rectified.
- (2) The Developer must comply with the following clauses of this document prior to the issue of an Occupation Certificate with respect to the Development:
  - (a) Clause 5.1(2).
  - (b) Clause 5.2.
  - (c) Clause 7.
  - (d) Clause 16.2.
- (3) Further to clause (2), prior to the issue of an Occupation Certificate for the Development, the Developer must have obtained the consent of the Council to the restrictive covenants required to be registered on the Affordable Housing Lots in accordance with this document.

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## **7 Registration of this document**

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### **7.1 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 7.2, Council will undertake that registration at the cost of the Developer.

### **7.2 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 the 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 duplicate certificates of title,to enable the registration of this document in accordance with clause 7.1.
- (2) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the 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.

### **7.3 Discharge from the Register**

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

- (1) the obligations under this document have been satisfied;
- (2) the Instrument Change is not approved on the terms proposed in the Planning Proposal;  
or
- (3) if this document is terminated or rescinded.

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## **8 Assignment**

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### **8.1 Restriction on Assignment**

Other than in accordance with this clause 8 the Developer may not:

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

### **8.2 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 paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.
  - (3) Council must not unreasonably withhold its consent to a request by the Developer to assign any part of the Land or the Developers rights or obligations under this document.

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## **9 Dispute Resolution**

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### **9.1 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.
- (2) The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

## **9.2 Conduct pending resolution**

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

## **9.3 Further steps required before proceedings**

Subject to clauses 9.14 and 9.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 9.5 or determination by an expert under clause 9.6, 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 9.1(2) is served.

## **9.4 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 9.5 or expert resolution under clause 9.6.

## **9.5 Disputes for mediation**

- (1) If the parties agree in accordance with clause 9.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 9.6.

## **9.6 Choice of expert**

- (1) If the Dispute is to be determined by expert determination, this clause 9.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
- (a) as agreed between and appointed jointly by the parties; or
- (b) in the absence of an agreement within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:

- 
- (a) must have a technical understanding of the issues in dispute;
  - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into an agreement with the expert appointed under this clause 9.6 setting out the terms of the expert's determination and the fees payable to the expert.

#### **9.7 Directions to expert**

- (1) In reaching a determination in respect of a dispute under clause 9.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
  - (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.

#### **9.8 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 9.6 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.

#### **9.9 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) is not a hearing and is not an arbitration.

#### **9.10 Other courses of action**

If:

- (1) the parties cannot agree in accordance with clause 9.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 9.5 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.

#### **9.11 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:
  - (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
  - (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.

#### **9.12 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.

#### **9.13 Costs**

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

#### **9.14 Remedies available under the Act**

This clause 9 does not operate to limit the availability of any remedies available to Council under the Act.

#### **9.15 Urgent relief**

This clause 9 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

### **10 Force Majeure**

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#### **10.1 Definition**

In this clause 10, 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.

#### **10.2 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 reasonably full 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.

### **10.3 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.

### **10.4 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 9.

## **11 Breach of this document**

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### **11.1 Breach Notice**

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

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

### **11.2 Events of Default**

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

- (1) fails to comply with a Breach Notice; or
- (2) becomes subject to an Insolvency Event.

### **11.3 Consequences of Events of Default**

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law, exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice.

## **12 Termination, Rescission or Determination**

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### **12.1 Termination**

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.

- 
- (2) Council serves notice on the Developer terminating this Planning Agreement where the Developer has failed to comply with a notice issued in accordance with clause 9.1.
  - (3) The Instrument Change is not made in accordance with the Planning Proposal.

#### **12.2 Consequence of termination**

Upon termination of this Planning Agreement:

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

#### **12.3 Determination**

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

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### **13 Position of Council**

#### **13.1 Consent authority**

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

#### **13.2 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).

#### **13.3 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 13, 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 13 is substantially satisfied;
  - (b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
  - (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.

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#### **13.4 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 Instrument Change, the Land or the Development in a certain manner.

### **14 Confidentiality**

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#### **14.1 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.

#### **14.2 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;
  - (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this document; and
  - (c) subject to paragraphs (2) and (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 14 do not extend to information which is public knowledge other than as a result of a breach of this clause 14.

### **15 GST**

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#### **15.1 Defined GST Terms**

Defined terms used in this clause 15 have the meaning ascribed to them in the GST Law.

#### **15.2 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.

- 
- (2) This clause 15 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.

### **15.3 GST obligations to survive Termination**

This clause 15 will continue to apply after expiration of termination of this document.

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## **16 Miscellaneous**

### **16.1 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.

### **16.2 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 paragraph (1) within ten (10) business days of receipt of a Tax Invoice from Council; and
- (3) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document.

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## **17 Administrative Provisions**

### **17.1 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 facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause 17 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 17 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.

#### **17.2 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.

#### **17.3 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.

#### **17.4 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.

#### **17.5 Counterparts**

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

#### **17.6 Amendment**

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

#### **17.7 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.

#### **17.8 Power of attorney**

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

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

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#### 17.9 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 s7.4

| REQUIREMENT UNDER THE ACT  | THIS PLANNING AGREEMENT  |
|--|--|
| <b>Planning instrument and/or development application – (Section 7.4(1))</b><br>The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul> | <ul style="list-style-type: none"> <li>(a) Yes.</li> <li>(b) No.</li> <li>(c) No.</li> </ul>   |
| <b>Description of land to which this agreement applies – (Section 7.4(3)(a)).</b>  | Lot 1 DP 860799.   |
| <b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b)).</b>   | Amendment to amend Liverpool Local Environmental Plan 2008 so as to change the zoning of Land from B6 Enterprise Corridor to B4 Mixed Use. |
| <b>Application of section 7.11 of the Act – (Section 7.4(3)(d)).</b>   | Section 7.11 of the Act is not excluded by this document.  |
| <b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d)).</b>   | Section 7.12 of the Act is not excluded by this document.  |
| <b>Applicability of section 7.24 of the Act – (Section 7.4(3)(d)).</b>   | Section 7.24 of the Act is not excluded by this document.  |
| <b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e)).</b>   | Refer to clause 4.2 of the Planning Agreement.   |
| <b>Mechanism for Dispute resolution – (Section 7.4(3)(f)).</b>   | See clause 9.  |
| <b>Enforcement of this agreement – (Section 7.4(3)(g)).</b>  | See clause 6.2, 7 and 11.3.  |
| <b>No obligation to grant consent or exercise functions – (Section 7.4(9)).</b>  | See clause 13.   |

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## Schedule 2 – Defined terms and interpretation

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### Part 1 – Definitions

|                                   |  |
|-----------------------------------|--|
| <b>Act</b>                        | means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).   |
| <b>Affordable Housing</b>         | means the allocation of the Affordable Housing Lots in accordance with this document.  |
| <b>Affordable Housing Lot</b>     | means a strata lot within the Development that is allocated for Affordable Housing in accordance with <b>Schedule 3</b> .  |
| <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:<br><br><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>Bank Guarantee</b>             | means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:<br><br><ul style="list-style-type: none"><li>(1) Australia and New Zealand Banking Group Limited.</li><li>(2) Commonwealth Bank of Australia.</li><li>(3) Macquarie Bank.</li><li>(4) National Australia Bank Limited.</li><li>(5) St George Bank Limited.</li><li>(6) Westpac Banking Corporation.</li><li>(7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.</li></ul> |
| <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>Community Housing Provider</b> | means a Community Housing Provider registered under the <i>Housing Act 2001</i> (NSW) and the <i>Housing Regulation 2009</i> (NSW).  |
| <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:  |

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|                                 |   |
|---------------------------------|---|
|                                 | <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 confidential (whether in writing or otherwise);</li> <li>(3) any party knows or ought to know is confidential; or</li> <li>(4) is information which may be reasonably considered to be of a confidential nature.</li> </ul>   |
| <b>Construction Certificate</b> | has the same meaning as in section 6.4(d) of the Act.   |
| <b>Contributions</b>            | means the allocation of the Affordable Housing Lots and the Monetary Contribution.  |
| <b>Contribution Value</b>       | means the amount specified in <b>Schedules 3 and 4</b> in the column headed "contribution value" for each item of the Contributions.  |
| <b>Development</b>              | means any future development of the Land permitted as a result of the Instrument Change.  |
| <b>Development Application</b>  | means an application for the Development Consent.   |
| <b>Development Consent</b>      | means any development consent issued for the Development.   |
| <b>Dispute</b>                  | has the meaning ascribed to it in clause 9.   |
| <b>Encumbrance</b>              | <p>means an interest or power:</p> <ul style="list-style-type: none"> <li>(1) reserved in or over an interest in any asset;</li> <li>(2) arising under, or with respect to, a Bio-Banking Agreement;</li> <li>(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</li> <li>(4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</li> </ul> |
| <b>Encumber</b>                 | means to grant an Encumbrance.  |
| <b>Event of Default</b>         | has the meaning ascribed to it in clause 11.2.  |
| <b>Force Majeure</b>            | has the meaning ascribed to it in clause 10.  |
| <b>Gross Floor Area</b>         | has the same meaning as in the Liverpool Local Environmental Plan 2008.   |
| <b>GST Law</b>                  | 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.  |

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|--------------------------|--|
| <b>Index</b>             | means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics.   |
| <b>Insolvency Event</b>  | <p>means the happening of any of the following events:</p> <ul style="list-style-type: none"> <li>(8) 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.</li> <li>(9) 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.</li> <li>(10) 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.</li> <li>(11) 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.</li> <li>(12) A body corporate is or states that it is insolvent.</li> <li>(13) As a result of the operation of section 459F(1) of the <i>Corporations Act 2001</i> (Cth) (<b>Corporations Act</b>), a body corporate is taken to have failed to comply with a statutory demand.</li> <li>(14) 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>.</li> <li>(15) 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.</li> <li>(16) 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.</li> <li>(17) A receiver, manager or receiver and manager is appointed to the Company.</li> <li>(18) 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.</li> <li>(19) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.</li> </ul> |
| <b>Instrument Change</b> | means the amendment of the Liverpool Local Environmental Plan 2008 on the terms set out in the Planning Proposal.  |
| <b>Land</b>              | means the "Land" set out in <b>Schedule 1</b> .  |

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|-------------------------------|--|
| <b>Law</b>                    | means all legislation, regulations, by-laws, common law and other binding order made by any Authority.           |
| <b>Monetary Contributions</b> | means the monetary contributions set out in <b>Schedule 4</b> .  |
| <b>Occupation Certificate</b> | has the same meaning as in section 6.4(c) of the Act.  |
| <b>Planning Legislation</b>   | means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).                   |
| <b>Planning Proposal</b>      | means the application for a Planning Proposal lodged on 29 March 2018 by Architecture Design Studio NSW Pty Ltd. |

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## 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 document.  |
| <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 includes plural</b>              | 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. |

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|                          |   |
|--------------------------|---|
| <b>next day</b>          | 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.    |
| <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 paragraphs) are for convenience only and do not affect the interpretation of this document. |
| <b>agreement</b>         | a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.                |
| <b>Gender</b>            | a reference to one gender extends and applies to the other and neuter gender.   |

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**Schedule 3 – Affordable Housing**

| Item                    | Specification   | Time for Completion  |
|-------------------------|---|--|
| Affordable Housing Lots | <p>The aggregate Gross Floor Area of the Affordable Housing Lots must be no less than five per cent (5%) of the Gross Floor Area of all residential lots within the Development and must comprise at a minimum the following composition of Affordable Housing Lots:</p> <p>(1) 1 x 1 Bedroom Affordable Housing Lot.<br/>(2) 2 x 2 Bedroom Affordable Housing Lot.<br/>(3) 1 x 3 Bedroom Affordable Housing Lot.</p> <p>The Affordable Housing Lots must be to a similar and comparable standard to all other residential lots within the Development.</p> | Upon the registration of any strata plan of subdivision with respect to the Development. |

Schedule 4 – Monetary Contributions

| Item                   | Time for Completion   | Contribution Value |
|------------------------|---|--------------------|
| Monetary Contributions | Within sixty (60) days of the Instrument Change being made. | \$77, 750          |

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## Execution page

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Executed as an agreement.

Dated:

Executed by Liverpool City Council by its Attorney pursuant to Power of Attorney registered Book 4756 Number 447 in the presence of:



Witness (Signature)



Attorney (Signature)

Name of Witness (Print Name)

Name of Attorney (Print Name)

Position of Attorney

Executed by ZHC Investments Pty Limited in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.



Director/Secretary (Signature)

Director (Signature)



Name of Director/ Secretary (Print Name)

Name of Director (Print Name)