

Planning Agreement

MegaCenta Site, Orange Grove Road, Warwick Farm

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

Gazcorp Pty Ltd (ABN 41 001 696 073) (**Developer**)

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Planning Agreement

MegaCenta Site, the Grove Liverpool

Orange Grove Road, Warwick Farm

Parties

| | | |
|------------------|---------------------------------|---|
| Council | Name | Liverpool City Council |
| | Address | Ground Floor 33 Moore Street LIVERPOOL NSW 2170 |
| | ABN | 84 181 182 471 |
| | Telephone | (02) 9821 9222 |
| | Facsimile | (02) 9821 9333 |
| | Email | gm@liverpool.nsw.gov.au |
| | Representative / Contact | General Manager |
| Developer | Name | Gazcorp Pty Ltd |
| | Address | Level 10, 60 Park Street, Sydney NSW 2000 |
| | ABN | 41 001 696 073 |
| | Telephone | 02 9817 7488 |
| | Facsimile | 02 9879 0341 |
| | Email | headoffice@gazcorp.com |
| | Representative / Contact | Nicholas Gazal |

Background

- A** The Developer is the registered proprietor of the Land.
- B** In March 2015, the Developer lodged the Initial Planning Proposal with Council.
- C** On 18 November 2016, the Department of Planning and Environment determined the planning proposal should proceed, subject to the conditions in the Gateway Determination.
- D** The Updated Planning Proposal was lodged with Council in February 2017 in accordance with the Gateway Determination.
- E** If the Instrument Change occurs, any development subsequently carried out is likely to increase the demand for the provision of public facilities.
- F** As a consequence of the matters set out above, the Developer has offered to provide the Development Contributions on, and subject to, the terms set out in this Planning Agreement if the Instrument Change occurs.

Operative provisions

1 Agreement

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

2 Definitions and interpretation

2.1 Defined terms

In this Planning Agreement, words beginning with a capital letter that are defined in Part 1 of **Schedule 3** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 3** apply in the interpretation of this Planning Agreement.

3 Application and operation of Planning Agreement

3.1 Application

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

3.2 Planning Agreement

This Planning Agreement is a planning agreement:

- (1) within the meaning set out in s93F of the Act; and
- (2) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3.3 Commencement

The Planning Agreement operates, and becomes legally binding on both parties if:

- (1) the Planning Agreement is entered into as required by clause 25C(1) of the Regulation; and
- (2) the Council executes this Deed.

4 Application of s94 & s94A

4.1 Application

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

4.2 Consideration of Benefits

Section 94(6) of the Act does not apply to any contributions that are to be carried out or provided pursuant to this Planning Agreement.

5 Registration of this Planning Agreement

5.1 Registration of this Planning Agreement

The Developer acknowledges and agrees that:

- (1) this Planning Agreement must be registered on the title to the Land pursuant to section 93H of the Act; and
- (2) subject to clause 5.2, Council will undertake that registration at the cost of the Developer.

5.2 Obligations of Developers

- (1) The Developer, at its own expense, will promptly after this Planning Agreement 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; and
 - (b) the execution of any documents; and
 - (c) the production of the relevant duplicate certificates of title,to enable the registration of this Planning Agreement in accordance with clause 4.1.
- (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 Planning Agreement with the Registrar-General as soon as reasonably practicable after this Planning Agreement 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 Planning Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this Planning Agreement is lodged for registration.

5.3 Caveat

- (1) The Developer acknowledges and agree that:
 - (a) when this Planning Agreement is executed by the Developer, the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of s74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge with the LPI a caveat notifying that interest; and
 - (b) it will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the

Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.

- (2) The Council must, at the Developer's cost, register at the LPI a withdrawal of any caveat in respect of the Land within five (5) business days after this Planning Agreement is registered on the title of the Land and must not lodge any other caveats on the titles to any of the Land, providing the withdrawal of the caveat will only apply in respect of such parts of the Land in respect of which registration of this Planning Agreement is procured.

5.4 Discharge from the Register

The Council will provide a release and discharge of this Planning Agreement so that it may be removed from the folios of the Register for the Land (or any part of it) when the obligations under this Planning Agreement have been satisfied or terminate, or if the Planning Agreement is terminated or rescinded.

6 Monetary Contributions

6.1 Monetary Contribution 1 (Capital Investment Value)

- (1) Prior to the issue of an Occupation Certificate for the Development, the Developer must pay to Council a Monetary Contribution calculated as the greater of the following:
 - (a) $MC = CIV \times 3\%$
where:
MC = the Monetary Contribution; and
CIV = Agreed Capital Investment Value agreed between the parties or determined in accordance with this clause 6.1; and
 - (b) $MC = SQMF \times \$100$
where
MC = the Monetary Contribution; and
SQMF = 21,000 sqm.
- (2) For the purpose of determining the Agreed Capital Investment Value, the Developer must submit to Council:
 - (a) the Capital Investment Value it proposes; and
 - (b) a report from a Quantity Surveyor supporting that value.
- (3) Within twenty (20) business days of receiving the Capital Investment Value proposed by the Developer under paragraph (2) of this clause Council may advise the Developer in writing:
 - (a) that it accepts the proposed Capital Investment Value, in which case that will be the Agreed Capital Investment Value; or
 - (b) that it does not accept the proposed Capital Investment Value.
- (4) If Council fails to advise the Developer in accordance with paragraph (3) of this clause, then it is deemed to have accepted the Capital Investment Value proposed by the Developer as the Agreed Capital Investment Value.
- (5) If Council does not agree with the proposed Capital Investment Value submitted by the Developer under paragraph (2) of this clause it may commission a Quantity Surveyor to determine the Capital Investment Value. Council must provide its proposed Capital Investment Value to the Developer as soon as possible.

- (6) After receiving the Capital Investment Value proposed by Council, the Developer may:
 - (a) advise Council that it accepts the proposed Capital Investment Value, in which case that will be the Agreed Capital Investment Value; or
 - (b) refer the determination of the Capital Investment Value for dispute resolution under this Planning Agreement.
- (7) Council agrees that the Monetary Contribution made pursuant to clause 6.1 will be applied by Council towards works and amenities within the Liverpool City Centre and/or Warwick Farm precinct.

6.2 Monetary Contribution 2 (Homepride Avenue Land Acquisition)

The Developer must make the Homepride Avenue Land Acquisition Payment to Council on and subject to the provisions of clause 7.

7 Homepride Avenue Land Acquisition

7.1 Acquisition of the Homepride Avenue Land

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

7.2 Dedication of the Homepride Avenue Land

The Homepride Avenue Land Payment will not be required to be made if the Homepride Avenue Land is dedicated to Council as a public road (by the Developer or otherwise) without any obligation on Council to make any payments contained within the definition of *Homepride Avenue Land Payment* contained in **Schedule 3**.

7.3 Security

- (1) The Developer must provide Council with a bank guarantee from an Australian bank on account of the Homepride Avenue Land Payment in accordance with this clause 7.3.
- (2) If Council proposes to acquire the Homepride Avenue Land by private treaty, then it may serve notice on the Developer requiring the Developer to provide Council with a bank guarantee in an amount equal to the Council's then reasonable estimate of the Homepride Avenue Land Payment.
- (3) If Council proposes to acquire the Homepride Avenue Land by Compulsory Acquisition then, provided it has obtained the consent of the Minister and the Governor to publish an acquisition notice with respect to that land, it may serve notice on the Developer requiring the Developer to provide Council with a bank guarantee in an amount equal to the aggregate of:
 - (a) one hundred and twenty per cent (120%) of the amount Council believes (supported by an independent valuer) it will be required to pay on account of the acquisition; and
 - (b) any reasonable costs likely to be incurred by Council in undertaking that acquisition.
- (4) The Developer must provide Council with a bank guarantee in accordance with this clause 7.3 within three (3) months of receiving a notice from Council under clause 7.3(2) or 7.3(3). In any event, the Developer must provide the bank guarantee

required by this clause 7.3 prior to the grant of the Occupation Certificate for the Development.

- (5) Council may immediately call on any bank guarantee provided under this clause 7.3 if the Developer fails to pay the Homepride Avenue Land Payment by the time required under this clause.
- (6) If Council does not acquire the Homepride Avenue Land by Compulsory Acquisition or private treaty within five (5) years of the date on which the Developer provides the bank guarantee pursuant to clause 7.3(4), Council must return the bank guarantee. If however Council proceeds to acquire the Homepride Avenue Land by Compulsory Acquisition or private treaty following the return of the bank guarantee, the Developer agrees to provide Council with the security as outlined in clause 7.3(3) within three (3) months of receiving a notice from Council under clause 7.3(2) or 7.3(3).

7.4 Timing of payment

- (1) If Council acquires the Homepride Avenue Land by private treaty, then the Developer must pay the Homepride Avenue Land Payment on the later of:
 - (a) completion of that acquisition by Council; and
 - (b) five (5) business days after Council provides written notice to the Developer of the amount required to be paid.
- (2) If Council acquires the Homepride Avenue Land by Compulsory Acquisition, then the Developer must pay the Homepride Avenue Land Payment on the later of:
 - (a) the date on which Council is required to make payment of compensation to any relevant interested party on account of that acquisition; and
 - (b) five (5) business days after Council provides written notice to the Developer of the amount required to be paid.

8 Provision of Works

8.1 Obligations of the Developer

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

- (1) must Complete the Works in accordance with the table in **Schedule 4**;
- (2) must obtain any form of consent required by a relevant Authority for the construction and use of the Works;
- (3) must submit to Council a concept design for the Works, and obtain the approval of Council to that concept design, prior to the issue of a Construction Certificate for the Development; and
- (4) at the time of submitting the concept design for the Works to Council, must submit the proposed costing of the Works to Council. If Council does not agree with the proposed costing of the Works put forward by the Developer it must issue a notice stating the reasons why Council does not accept the Developer's proposed costing and must propose alternative costing within 14 days of receiving the proposed costing of the Works from the Developer. The Developer within 14 days of receiving Council's notice, must either accept Council's alternative costing or provide a notice to Council that Council's alternative costing is not accepted. If the Developer issues a notice that Council's alternative costing is not accepted, the parties agree to refer the matter for expert determination pursuant to clause 13.6.

8.2 Commencement of Works

The obligation to undertake the Works will commence as outlined in **Schedule 4**.

8.3 Deferral of Works

- (1) This clause only applies after the date on which the obligation to undertake the Works has commenced pursuant to clause 8.2.
- (2) Notwithstanding any other provision of this Planning Agreement, if the Developer forms the view at any time, that it is unable to Complete the Works (**Deferred Works**) by the time required under this Planning Agreement, then the Developer may seek Council's approval to defer the Works by providing written notice to the Council:
 - (a) identifying why it is unable to complete those Works; and
 - (b) identifying the anticipated time for Completion of the Works.
- (3) The Council, acting reasonably, must give the Developer a written notice within twenty (20) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) of this clause stating:
 - (a) whether or not it consents to the deferral of the Deferred Works;
 - (b) the revised date for Completion required by Council; and
 - (c) any reasonable conditions Council requires with respect to the deferral (including any requirement for additional Security on account of that deferral, to the extent necessary to ensure that Council holds adequate security based on the then estimated cost to complete the relevant Works).
- (4) If the Council consents to the deferral of the Deferred Works, then the following applies:
 - (a) The Developer must comply with any conditions required by Council under paragraph (3) of this clause above.
 - (b) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this Planning Agreement as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this Planning Agreement.
 - (c) The time for completion of the Deferred Works under this Planning Agreement is the revised date for Completion approved by Council.

8.4 Works-As-Executed-Plan

No later than forty (40) business days after the Works are Completed, the Developer must provide the Council with:

- (1) a full Works-As-Executed-Plan in respect of the Works; and
- (2) all appropriate certificates to verify that the Works have been carried out in accordance with relevant standards.

8.5 Failure to Complete the Works

- (1) The Developer must complete the Works outlined in **Schedule 4**.
- (2) If the Developer fails to comply with paragraph (1) of this clause, Council, without limiting any other avenues available to it, may complete the Works in which case all costs incurred by it in doing so are a liquidated debt owed to Council by the Developer.

8.6 Contribution Values

If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this Planning Agreement, differs from the relevant Contribution Value, neither party is entitled to claim credit or reimbursement, as the case may be, for the difference.

8.7 Standard of Construction of Works

The Developer must construct and complete the Works:

- (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 Works; and
- (3) in a proper and workmanlike manner complying with current industry practice and standards relating to the Works.

8.8 Acceptance of Risk

Council accepts ownership, possession and control of the Works, upon the last to occur of:

- (1) completion of the Works in accordance with clause 9; and
- (2) Council becoming the owner of the land upon which the Works are undertaken.

9 Completion of Works

9.1 Completion Notice

The Developer must provide a Completion Notice to the Council when it considers it has completed the Works.

9.2 Council must inspect

The Council must inspect the Work set out in a Completion Notice within ten (10) business days of the receipt of that notice.

9.3 Notice by Council

Within the earlier of:

- (1) ten (10) business days of inspecting the Item of Work set out in a Completion Notice; and
- (2) twenty (20) business days from the receipt of the relevant Completion Notice,
the Council must provide notice in writing to the Developer that the Works set out in the Completion Notice:
 - (3) have been Completed; or
 - (4) have 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 Works.

9.4 Deemed Completion

If the Council does not provide the Developer with notice in accordance with clause 9.3, the 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) the Developer must:

- (a) Complete that item in accordance with that notice within two (2) 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) of this clause the dispute resolution provisions of this Planning Agreement apply; or
 - (b) completes the Work in accordance with paragraph (1)(a) of this clause it must serve upon the Council a new Completion Notice for the 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

10.1 Defects Notice

- (1) Where the Works are Complete but contain a material defect which:
 - (a) adversely affects the ordinary use and/or enjoyment of the Works; 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 the Works.
- (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 9 in respect of the completion of the rectification of any Defect.

10.3 Right of Council to Step-In

Council, at its absolute discretion, may enter upon any land which the Works are located 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.

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 and Council may also call on the Defects Security under clause 11 to the extent necessary to recover any such costs

11 Provision of Security

11.1 Restriction on the issue of an Occupation Certificate

An Occupation Certificate for the Development may not be issued unless and until the following has occurred:

- (1) If the Homepride Avenue Land Payment is required to be paid, the Homepride Avenue Land Payment has been made.
- (2) Monetary Contribution 1 has been paid.

11.2 Provision of Security

- (1) Subject to clause 11.3, the Developer must deliver to Council separate bank guarantees from an Australian Bank in favour of Council:
 - (a) prior to the issue of a Construction Certificate for the Development, for an amount equivalent to 100% of the sum of the Monetary Contribution 1 as outlined in clause 6.1 of this Planning Agreement (**Monetary Security 1**);
 - (b) prior to the issue of a Construction Certificate for the Development, for the amount equivalent to 100% of the sum of the Contribution Value specified for the Works (**Works Security**); and
 - (c) security as outlined in clause 7.3,(collectively referred to as the **Security**).
- (2) Council may retain 5% of the Works Security for the duration Defects Liability Period (**Defects Security**).

11.3 Replacement of Security

- (1) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this Planning Agreement.
- (2) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

11.4 Council may call on Security

- (1) If the Developer commits an Event of Default Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.
- (2) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

11.5 Top up of Security

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

11.6 Release of Works Security and Monetary Securities

Unless:

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

Council, upon a written request being made by the Developer, must return the Works Security and the Monetary Security (as the case may be) within ten (10) business days of such a request being made.

11.7 Release of Defects Security

Unless:

- (1) Council has made or intends to make a demand against the Defects Security provided by the Developer;
- (2) the relevant Defects Liability Period has not expired; or
- (3) the Developer is in breach of this Planning Agreement at the relevant time,

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

11.8 Provision of Security

If the Developer is required to provide Security to Council:

- (1) under this Planning Agreement; and
- (2) under a development consent,

with respect to the same Works, then the provision of Security under the relevant development consent is deemed to be held under this Planning Agreement as well.

12 Indexation of value of Monetary Contribution

- (1) The Monetary Contribution required to be paid pursuant to clause 6.1 is to be increased (with the calculation to be made as from the date any such amount is determined under this Planning Agreement) in accordance with the following formula:

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

D

where:

- A** = the indexed amount;
- B** = the relevant Monetary Contribution as set out in clause 6.1 of this Planning Agreement;
- C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the Monetary Contribution is to be made; and

D = the Index most recently published before the date that the amount of that Monetary Contribution is determined.

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

- (2) The Developer, if requested to do so by Council from time to time, must ensure that the Security held by Council at all times equals the indexed amount of the Monetary Contribution required to be paid by clause 6.1 from time to time.

13 Dispute Resolution

13.1 Notice of dispute

If a dispute or lack of certainty between the parties arises in connection with this Planning Agreement 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**).

13.2 Conduct pending resolution

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

13.3 Further steps required before proceedings

Subject to clauses 13.14 and 13.15 and except as otherwise expressly provided in this Planning Agreement, any dispute between the parties arising in connection with this Planning Agreement or its subject matter must, as a condition precedent to the commencement of litigation, mediation under clause 13.5 or determination by an expert under clause 13.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days.

13.4 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 13.5 or expert resolution under clause 13.6.

13.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 13.4 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) of this clause 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 13.10.

13.6 Choice of expert

- (1) If the parties agree to have the matter determined by expert determination, this clause 13.6 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 13.6 setting out the terms of the expert's determination and the fees payable to the expert.

13.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 13.6, the independent expert must give effect to the intent of the parties entering into this Planning Agreement and the purposes of this Planning Agreement.
- (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.

13.8 Expert may commission reports

- (1) Subject to paragraph (2) of this clause:
 - (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 13.6(5) of this agreement.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

13.9 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) of this clause is not a hearing and is not an arbitration.

13.10 Other courses of action

If:

- (1) the parties cannot agree in accordance with clause 13.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 13.5 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.

13.11 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) of this clause, 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
 - (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.

13.12 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.

13.13 Costs

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

13.14 Remedies available under the Act

This clause 13 does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the Act.

13.15 Urgent relief

This clause 13 does not prevent a party from seeking urgent injunctive or declaratory relief.

14 Breach

14.1 Breach Notice

If the Developer breaches this Planning Agreement, 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.

14.2 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.

14.3 Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law or under this Planning Agreement, call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

15 Termination, Rescission or Determination

15.1 Termination

- (1) This Planning Agreement terminates in the following events:
 - (a) The parties agree in writing to terminate the operation of this Planning Agreement at any time;
 - (b) 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 14.1.

15.2 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.

15.3 Determination

This Planning Agreement will determine upon the Developer satisfying all of the obligations imposed on it in full (including any contingent obligations and any obligations under clause 10).

15.4 Rescission

In the event that a change to the LEP or other environmental planning instrument is made so that Shops are no longer permissible on the Land prior to a Development Consent for the Development being approved, either party may rescind this Planning Agreement by written notice to the other party to that effect.

16 Assignment and Dealings

9.1. Prohibition

The Developer must not Assign its rights under this Planning Agreement without the prior written consent of the Council.

9.2. Assignment of Land

The Developer must not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (Transferee), unless before it sells, transfers or disposes of that right, title or interest:

- (1) The Developer satisfies the Council, acting reasonably:
 - (a) that the proposed Transferee is financially capable of complying with the Developers' obligations under this Planning Agreement; and
 - (b) the Council's interests will not be diminished or fettered in any way;
- (2) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council, containing provisions

under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this Planning Agreement;

- (3) Any default by the Developer under any provisions of this Planning Agreement have been remedied by the Developer or waived by the Council on such conditions as the Council may determine; and
- (4) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

17 Review and amendment of this Planning Agreement

17.1 Review

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

17.2 Amendment

If the parties agree to amend this Planning Agreement as a result of a review conducted under this clause 17.1 then any such amendment must be made:

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

18 Administrative provisions

18.1 Planning Agreement not Confidential

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

18.2 Approvals and Consent

The Parties acknowledge that:

- (1) except as otherwise set out in this Planning Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Planning Agreement in that Party's absolute discretion and subject to any conditions determined by the Party;
- (2) a Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions;
- (3) this Planning Agreement does not impose any obligation on a consent authority to:
 - (a) grant development consent; or
 - (b) exercise any function under the Act in relation to a change in an environmental planning instrument.

18.3 Confidential information

- (1) Subject to clause 18.1 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 Planning Agreement; and
 - (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this Planning Agreement.
 - (c) subject to paragraphs (1) and (2) of this clause, each party agrees:
 - (A) not to disclose any Confidential Information received before or after the making of this Planning Agreement to any person without the prior written consent of the party who supplied the Confidential Information; or

- (B) to take all reasonable steps to ensure all Confidential Information received before or after the making of this Planning Agreement is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
 - (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

18.4 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 Planning Agreement and the rights and obligations of the parties under it.

18.5 Counterparts

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

18.6 Enforcement and Security

The obligation to pay the Monetary Contribution must be satisfied prior to the issue of an Occupation Certificate for any part of the Development.

- (1) Without limiting any other remedies available to the Parties, this Planning Agreement may be enforced by any Party in any Court of competent jurisdiction.
- (2) Nothing in this Planning Agreement prevents:
 - (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Planning Agreement or any matter to which this Planning Agreement relates; and
 - (b) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Planning Agreement or any matter to which this Planning Agreement relates.

18.7 Entire agreement

This Planning Agreement 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 Planning Agreement.

18.8 Goods and Services Tax

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

18.9 Governing law

The law in force in the State of New South Wales governs this Planning Agreement. 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 Planning Agreement; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

18.10 Indemnity

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

18.11 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 Planning Agreement to an aggregate of fifteen thousand dollars (\$15,000.00) plus GST, 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 agreement including any breach or default by the Developer of its obligations under this Planning Agreement.
- (3) The Developer agrees to pay or reimburse the advertising and exhibition costs of this Planning Agreement (carried out in accordance with the Act), within three business days after receipt of a notice from the Council as to the amount of those costs.

18.12 No fetter

Nothing in this Planning Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

18.13 No obligations

Nothing in this Planning Agreement 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.

18.14 Non merger

The warranties, conditions, covenants and other obligations in this Planning Agreement (and all other instruments annexed to, referred to, or executed in accordance with this Planning Agreement) which remain to be performed or a capable of having effect do not merge on and remain in full force and effect after this Planning Agreement ends unless expressly stated otherwise in this agreement.

18.15 Notices

- (1) Any notice, consent or other communication under this Planning Agreement 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.
- (2) The address details are to match that as given in this Planning Agreement.

- (3) 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.
- (4) For the purpose of this clause the address of a person is the address set out in this Planning Agreement or another address of which that person may from time to time give notice to each other person.

18.16 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 Planning Agreement;
- (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 Planning Agreement; and
- (4) be just and faithful in its activities and dealings with the other parties.

18.17 Power of Attorney

Each attorney who executes this Planning Agreement 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.

18.18 Severability

- (1) The Parties acknowledge that under and by virtue of s93F(4) of the Act, any provision of this Planning Agreement is not invalid by reason only that there is no connection between the Development and the object of the expenditure of any money required to be paid by that provision.
- (2) The Parties agree that to the extent permitted by Law, this Planning Agreement prevails to the extent of its inconsistency with any Law.
- (3) If a clause or part of a clause of this Planning Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (4) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Planning Agreement, but the rest of this Planning Agreement is not affected.

- (5) No provision of this Planning Agreement is intended to, or does, constitute any unlawful fetter on Council's powers as a statutory authority. If, contrary to the operation of this clause, any provision of this Planning Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on Council's powers, the parties agree:
- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this **clause 18.18** is substantially satisfied; and
 - (b) in the event that paragraph (a) of this clause cannot be achieved without giving rise to an unlawful fetter on Council's powers, the relevant provision is to be severed and the remainder of this agreement has full force and effect.
- (6) Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a statutory or other power at Law, then if the Council has in this Planning Agreement contracted out of a provision or exercised that power under this Planning Agreement, then to that extent this Planning Agreement is not to be taken to be inconsistent with the Law.

18.19 Unenforceability

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

18.20 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.

18.21 Warranties

The Developer warrants that:

- (1) the execution and delivery of this Planning Agreement and any instrument referred or annexed to it has been properly authorised by all necessary action;
 - (2) it has full power and lawful authority to execute and deliver this Planning Agreement and to consummate and perform or cause to be performed their obligations under this Planning Agreement;
 - (3) this Planning Agreement constitutes a legal, valid and binding obligation on it;
 - (4) it is able to fully comply with its obligations under this Planning Agreement;
 - (5) it has full capacity to enter into this Planning Agreement; and
 - (6) there is no legal impediment to it entering into this Planning Agreement, or performing the obligations imposed under it.
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Schedule 1:
Commercial details

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| Land | That part of Lot 101 DP 1043160 shown outlined in red in the plan attached as Annexure 1 . |
| Draft LEP | <p>Amendment to the LEP which amends Schedule 1 of the LEP to permit Shops as an additional use up to a maximum GFA of 21,000 square metres on the Land as follows:</p> <p>(1) Inserting the following wording in an additional clause of Schedule 1 of the LEP (potentially Clause 22):</p> <p><i>“Use of certain land at Warwick Farm</i></p> <p>(1) <i>This clause applies to part of Lot 101 DP 1043160, 2-10 Viscount Place, Warwick Farm, as shown coloured red on the Key Sites Map.</i></p> <p>(2) <i>Development for the purposes of shops is permitted with consent if the total gross floor area of shops on the site does not exceed 21,000 metres squared”; and</i></p> <p>(2) Amending the Key Site Map as shown in Figure 13 of the Updated Planning Proposal.</p> |

Schedule 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) No</p> |
| Description of land to which this Planning Agreement applies – (Section 93F(3)(a)) | That part Lot 101 DP 1043160 shown outlined in red in the plan attached as Annexure 1 . |
| Description of change to the environmental planning instrument to which Planning Agreement applies – (Section 93F(3)(b)) | Sought an amendment to Schedule 1 of the LEP to permit Shops as an additional use, up to a maximum GFA of 21,000 square metres on the Land. |
| Application of section 94 of the Act – (Section 93F(3)(d)) | Section 94 is excluded from the Development to the extent set out in clause 4. |
| Applicability of section 94A of the Act – (Section 93F(3)(d)) | Section 94A is excluded from the Development to the extent set out in clause 4. |
| Mechanism for Dispute resolution – (Section 93F(3)(f)) | See clause 13 Dispute Resolution |
| Enforcement of this Planning Agreement (Section 93F(3)(g)) | See clauses 5 Registration and 11 Security |
| No obligation to grant consent or exercise functions – (Section 93F(3)(9)) | See clause 18 Administrative Provisions |

Schedule 3: Defined Terms and Interpretation

Part 1 - Definitions

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| Act | means the <i>Environmental Planning & Assessment Act 1979</i> (NSW). |
| Agreed Capital Investment Value | means the Capital Investment Value as agreed between the parties or determined pursuant to clause 6.1(2) |
| Assign | as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest. |
| Authority | means (as appropriate) any: <ul style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body. |
| Capital Investment Value | means the capital investment value of the Development at the time of lodgement of the development application including the costs and expenses listed in sub-clause 25J(1) of the Regulation but excluding the costs and expenses listed in sub-clause 25J(3) of the Regulation. |
| Claim | against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise. |
| Complete | with respect to the Works means that they have been completed to the standard required under this Planning Agreement to the satisfaction of Council, and Completed and Completion have a commensurate meaning. |
| Compulsory Acquisition | has the same meaning ascribed to that term in the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> . |
| Completion Notice | means a notice setting out the Works that the Developer believes are complete and which is: <ul style="list-style-type: none">(1) in writing;(2) issued by an Independent Engineer; and(3) contains an acknowledgement from the Independent Engineer that it is recognised that the Council relies upon the certification provided by that Engineer. |
| Confidential Information | means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ul style="list-style-type: none">(1) is by its nature confidential;(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);(3) any party knows or ought to know is confidential; 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. |

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| Contribution Value | means the "Contribution Value" specified in Schedule 4 . |
| Event of Default | has the meaning ascribed to it in clause 14.2. |
| Dealing, in relation to the Land | means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land. |
| Defects Liability Period | means twelve (12) months after the Works are Complete. |
| Development | <p>means the development of premises on the Land to be used for Shops having an aggregate GFA of up to 21,000 square metres. Development excludes:</p> <ol style="list-style-type: none"> (1) the fitout of Shops (the fitout of Shops will be subject to separate development applications); and (2) any redevelopment of the bulky goods premises or other uses currently permissible in the B5 zoned areas of the Land. |
| Development Consent | has the same meaning as in the Act. |
| Development Contributions | means the payment of the Monetary Contributions and the completion of the Works. |
| Draft LEP | means the "Draft LEP" set out in Schedule 1 . |
| Gateway Determination | means the gateway determination attached to a letter sent to Council from the Department of Planning and Environment dated 18 November 2016. |
| GST | has the same meaning as in the GST Law |
| GFA | means gross floor area as defined in the LEP. |
| 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. |
| Homepride Avenue Land | means the section of land running along the eastern boundary of Lots 1 and 2 in DP 1088280 which are subject of an easement for access, which is located north of the intersection of Lawrence Hargrave Road and Homepride Avenue and which is shown as highlighted in yellow on the plan attached as Annexure 2 . |
| Homepride Avenue Land Payment | <p>means:</p> <ol style="list-style-type: none"> (1) if Council acquires the Homepride Avenue Land by private treaty, the aggregate of: <ol style="list-style-type: none"> (a) the purchase price for that land being an amount in accordance with the assessment of the market value of the Homepride Avenue Land provided by a Certified Practising Valuer within 6 months of the date of acquisition; (b) any stamp duty payable on the contract for the acquisition of that land; (c) any reasonable costs incurred by Council in undertaking that acquisition (including the cost of obtaining a valuation of the Homepride Avenue Land); and (d) any other amount Council is required to be paid to the relevant owner of that land in conjunction with and on account of, the acquisition; or (2) if Council acquires the Homepride Avenue Land by Compulsory |

Acquisition the aggregate of:

- (a) the compensation Council is required to pay under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) on account of that acquisition, including for the avoidance of doubt any amount required to be paid by Council as a result of an order in any proceedings commenced by the relevant interested parties against Council on account of that acquisition; and
- (b) any reasonable costs likely to be incurred by Council in undertaking that acquisition including for the avoidance of doubt any legal or other costs incurred by Council in defending any proceedings commenced by the relevant interested parties in Class 3 of the Land and Environment Court but excluding any other fees associated with any other type of legal proceedings against Council on account of that acquisition.

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 - Sydney) as provided by the Australian Bureau of Statistics

Initial Planning Proposal

means the updated Planning Proposal dated and lodged with Council in March 2015 which sought to:

- (1) rezone part of the Land to B2 Local Centre; and
- (2) amend Schedule 1 of the LEP to permit "shops" as an additional permitted use up to a maximum GFA of 21,000m² on the Land.

Insolvency Event

means the happening of any of these events:

- (1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.
- (2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.
- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (5) A body corporate is or states that it is insolvent.
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an

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| | event described in section 459C(2)(b) or section 585 of the Corporations Act. |
| | (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate. |
| | (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event. |
| | (10) A receiver, manager or receiver and manager is appointed to the Company. |
| | (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court. |
| | (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction. |
| Instrument Change | means the making of the Draft LEP. |
| Item of Work | means an individual item of the Works as set out in Schedule 4 . |
| Land | means the "Land" set out in Schedule 1 . |
| Law | means all legislation, regulations, by-laws, common law and other binding order made by any Authority. |
| LEADR | means LEADR - Association of Dispute Resolvers (see www.leadr.com.au). |
| Legislation | means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW). |
| LEP | means Liverpool City Local Environment Plan 2008. |
| LPI | means Land and Property Information NSW or any similar department established from time to time. |
| Monetary Contribution | means a monetary contribution to be paid by the Developers to the Council in accordance with this Planning Agreement. |
| Occupation Certificate | means any occupation certificate as defined under s109C of the Act, including an interim Occupation Certificate or a final Occupation Certificate. |
| Party | means a party to this Planning Agreement, including their successors and assigns. |
| Public Purpose | has the same meaning as in s93F(2) of the Act. |
| Representatives | means the Representative/Contact nominated in "Parties" in this Planning Agreement. |
| Register | means the Torrens Title register maintained under the <i>Real Property Act 1900</i> (NSW). |
| Regulation | means the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW). |
| Security | has the meaning ascribed to it in clause 11.2. |
| Shop | has the same meaning as in the Dictionary of the LEP. |
| Updated Planning Proposal | means the updated Planning Proposal dated and lodged with Council February 2017 seeking to amend Schedule 1 of the LEP to permit "shops" as an additional permitted use up to a maximum GFA of 21,000m ² on the Land. |

Works means the works specified in **Schedule 4** (including any design, project management and advice from consultants in relation to the provision of those works).

Part 2 - Interpretational Rules

In this Planning Agreement the following interpretation rules apply:

- (1) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Planning Agreement.
- (2) 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.
- (3) the singular includes the plural and vice versa.
- (4) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
- (5) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- (6) Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
- (7) 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.
- (8) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (9) 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.
- (10) a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
- (11) 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.
- (12) if an act under this Planning Agreement 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.
- (13) 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.
- (14) time is a reference to Sydney time.
- (15) headings (including those in brackets at the beginning of clauses) are for convenience only and do not affect the interpretation of this Planning Agreement
- (16) a reference to any agreement, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time.
- (17) a reference to one gender extends and applies to the other and neuter gender.
- (18) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (19) if a Party is required to do something, that includes a requirement to cause that thing to be done. If a Party is prohibited from doing anything, it is also prohibited from doing or omitting to do anything which allows or causes that thing to be done;
- (20) a reference to a statute, ordinance, code or law includes a state ordinance code or law of the Commonwealth of Australia;

- (21) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
 - (22) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Planning Agreement;
 - (23) any capitalised term used, but not defined in this Planning Agreement, will have the meaning ascribed to it under, and by virtue of, the Act;
 - (24) a reference in this Planning Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney;
 - (25) a reference in this Planning Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
 - (26) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Planning Agreement, unless otherwise stated;
 - (27) a reference to this Planning Agreement includes the agreement recorded in this Planning Agreement; and
 - (28) any schedules and attachments form part of this Planning Agreement
-

Schedule 4: Description of the Works, Values and Timing

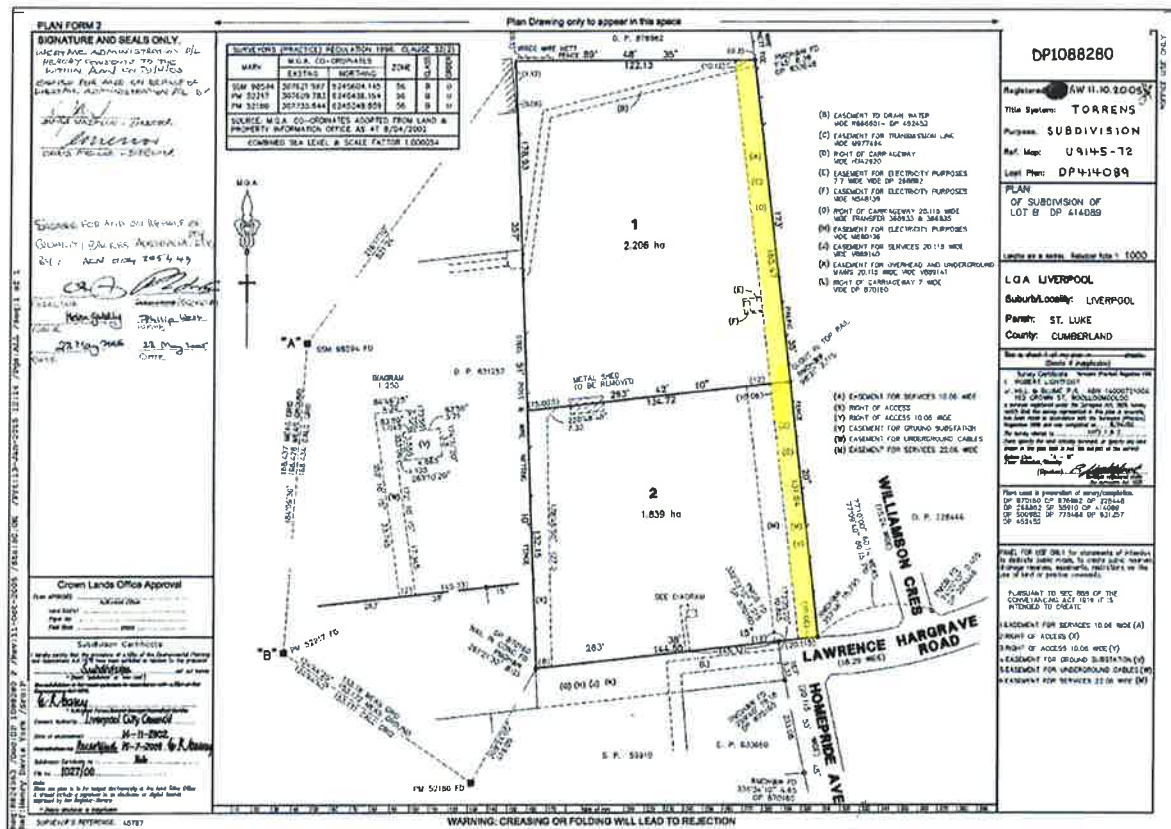
| Item of Work | Description of Work | Indicative Contribution Value | Timing of Work |
|---|---|--|--|
| 1. Homepride Avenue Roadworks | Roadworks which will include the rehabilitation of the road surface and construction of a pedestrian access on the Homepride Avenue Land as shown in Annexure 2. | \$975,425 | <p>Commencement</p> <p>The obligation to undertake this Item of Work will commence on the earlier of:</p> <p>(1) three (3) months after the receipt of a notice under clause 7.1(2); or</p> <p>(2) on the date the Developer enters into an agreement or other transaction which enables it to undertake the Works.</p> <p>Completion</p> <p>The Developer must Complete the Works In accordance with this Planning Agreement within six (6) months of commencement of work.</p> |
| 2. RMS Roadworks - Orange Grove Road/ Viscount Place Intersection | <p>Roadworks which will include:</p> <p>(a) Construction of a 90 metre long left turn slip lane on the north approach to the signalised intersection of Orange Grove Road and Viscount Place. Any land components required for the provision of the slip lane will be dedicated to RMS by the Developer as public road at no cost to RMS; and</p> <p>(b) Extend dual right turn lanes on the south approach to 120 (adjacent median) and 180 metres (adjacent through lane); and</p> <p><i>(note – the above road works shall be designed and constructed in accordance with Austroads and RMS supplements)</i></p> | <p>Works:</p> <p>\$720,000</p> <p>Land:</p> <p>\$441,000</p> | <p>Commencement</p> <p>The obligation to undertake this Item of Work will commence following the granting of the Construction Certificate for the Development.</p> <p>Completion</p> <p>The Developer must Complete the Works in accordance with this Planning Agreement prior to the issue of an Occupation Certificate for the Development.</p> |

| Item of Work | Description of Work | Indicative Contribution Value | Timing of Work |
|--|--|-------------------------------|--|
| 3. RMS Roadworks – Hume Highway/ Homepride Avenue Intersection | <p>A geometric road design concept plan of the roadworks outlined in this Item of Work below on either a scaled aerial photograph and/or survey plan.</p> <p>Roadworks which will include an extension of the existing right turn storage bay on the east approach to Homepride Avenue within the constraints of the existing Hume Highway corridor.</p> | \$443,000 | <p>The geometric road concept plan is to be submitted to RMS for review and "in principle" endorsement prior to the granting of Development Consent for the Development.</p> <p>Roadwork Commencement</p> <p>The obligation to undertake this Item of Work will commence following the granting of the Construction Certificate for the Development.</p> <p>Roadwork Completion</p> <p>The Developer must Complete the Works in accordance with this Planning Agreement prior to the issue of an Occupation Certificate for the Development.</p> |
| Total Works Value | | \$2,579,425 | |

Annexure 1 - Land to which this Planning Agreement applies



Annexure 2 – Homepride Avenue Land Map



Execution page

Executed as an agreement

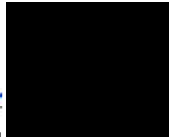
Dated: ~~4 MAY, 2018~~ 25 May 2018

Signed by Gazcorp Pty Limited in accordance with section 127(1) of the Corporations Act by authority of its directors:


Director/ Secretary (Signature)

GEORGE AYOUB

Name of Director/ Secretary (Print Name)


Director (Signature)

NICHOLAS GAZAL


Name of Director (Print Name)

Signed by Liverpool City Council by its Attorney pursuant to the registered Power of Attorney Book 4675 No 791 in the presence of:


Witness (Signature)

ELIZABETH ESPINOSA

Name of Witness (Print Name)


Attorney (Signature)

ELLEN M WHITTINGSTALL

Name of Attorney (Print Name)
