

LIVERPOOL CITY COUNCIL

SYDNEY WEST JOINT REGIONAL PLANNING PANEL

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JRPP No.	2013SYW069
Development Application No.	DA-517/2013
Proposed Development	Construction of seven holes at Greenwood Golf Course over proposed Lots 4 and 5 (in a re-subdivision of Lot 2210 DP 1090818 and Lot 52 DP 717957)
Property Description	Lot 2210 DP 1090818, Lot 52 DP 717957
Applicant	Mirvac Homes (NSW)
Land Owner	New Brighton Golf Club, Liverpool City Council
Cost of Work	\$5, 229, 629
Recommendation	Approval, subject to conditions



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1. EXECUTIVE SUMMARY

1.1 Reasons for the Report

Pursuant to the requirements of Schedule 4A of the *Environmental Planning and Assessment Act 1979*, the proposed development is referred to the Sydney West Joint Regional Planning Panel (JRPP) for consideration and determination as the Development Application has a Capital Investment Value over \$5 million and Council is the owner of portions of the land on which the development is to be undertaken.

This report summarises the key issues in consideration of the proposal in accordance with the provisions of the *Environmental Planning and Assessment Act*.

1.2. The Proposal

Council has received a Development Application for the construction of seven golf holes on the historic former Greenwood Golf course.

1.3 The Site

The subject site is known as Lot 2210 DP 1090818 and Lot 52 DP 717957 Stewart Avenue, Hammondville. Lot 52 is known as Cantello Reserve. Proposed Lots 4 & 5 on which the development is proposed were approved in DA-1941/2012 and align with the RE2 and RE1 zoning boundaries. The golf holes are to be constructed over proposed Lot 4.

1.4 The issues

Assessment of the application has identified that the site contains observed sightings of a threatened species, and potential habitat for threatened species and endangered ecological communities as listed under *Environmental Protection and Biodiversity Conservation Act 1999* and *Threatened Species Conservation Act 1995*. Assessment of the impact of the development on the fauna and ecological communities has been undertaken in accordance with each act and recommendations including management plans have been made to ensure the development does not have an unacceptable impact.

1.5 Exhibition of the proposal

The proposal was exhibited from 12 June 2013 to 12 July 2013 in accordance with Liverpool Development Control Plan 2008. Three submissions were received in response to the proposal raising objections. Assessment and consideration of the issues raised in the submissions is canvassed in detail later in this report.

1.6 Conclusion

The application has been assessed pursuant to the provisions of the *Environmental Planning and Assessment Act 1979*, the *Environmental Protection and Biodiversity Conservation Act 1999* and the *Threatened Species Conservation Act 1995*. Based on the assessment of the application, it is recommended that the application be approved subject to the imposition of conditions.

2. SITE DESCRIPTION AND LOCALITY

2.1 The Site

The subject site is known as Lot 2210 DP 1090818 and Lot 52 DP 717957 Stewart Avenue, Hammondville. Lot 2210 is owned by the New Brighton Golf Club. Lot 52 is known as Lieutenant Cantello Reserve, a Council public reserve. The existing New Brighton Golf Club is located to the north of the site. The M5 Motorway runs between existing course and the subject development site and access is available underneath the M5 Motorway at the eastern end of the properties. The residential suburb of Hammondville is located to the west; the Georges River is located to the east; and Harris Creek to the south. The subject site is shown below in Figure 1.

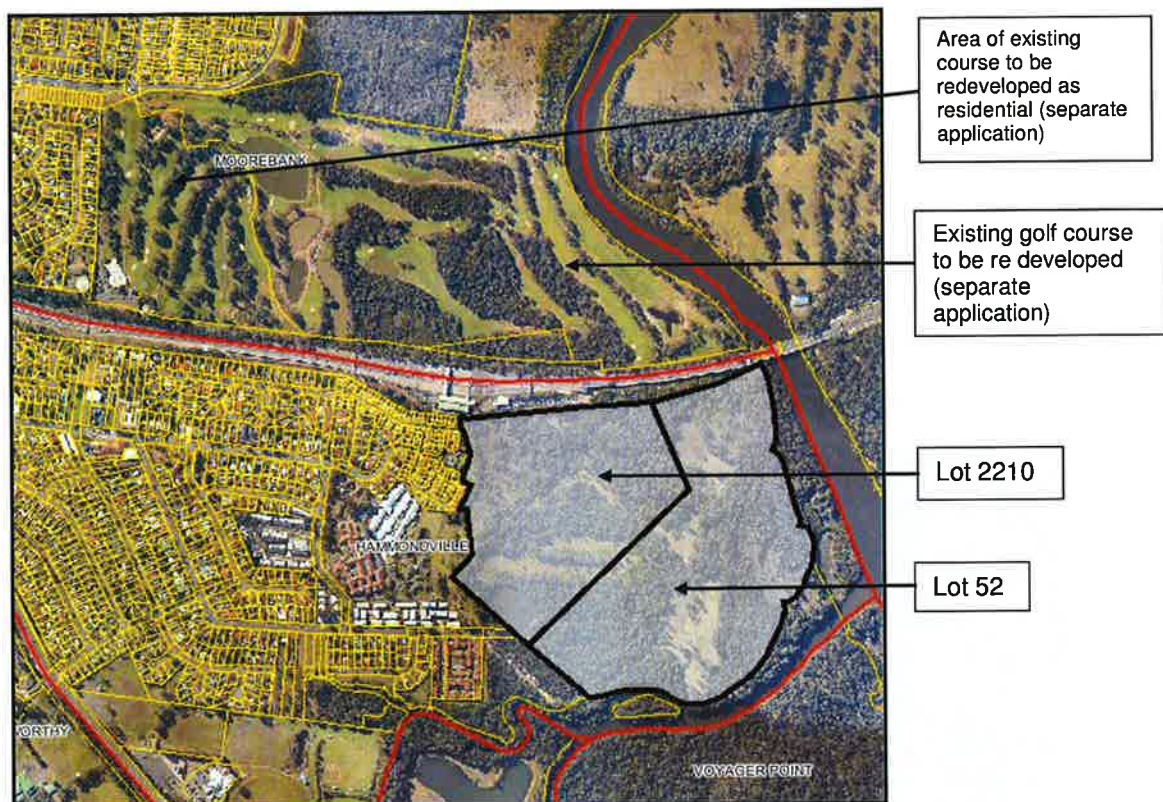


Figure 1: Subject site

Improvements on Lot 52 include a war memorial, toilet facilities, off leash dog park, car parking, walking tracks and picnic tables and chairs. Lot 2210 contains a dam. The former Greenwood Golf Course was located across portions of both allotments.

Proposed Lots 4 & 5 were approved in DA-1941/2012. The plan of subdivision is shown below in Figure 2. The new property boundaries are in alignment with the RE2 Private Recreation and RE1 Public Recreation zone boundaries.

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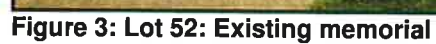
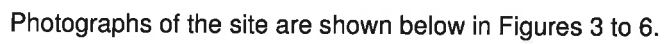




Figure 4: Lot 52: Off leash dog park



Figure 5: Former fairway area



Figure 6: Residential area adjoining course to the west (near Hole 8)

2.2 The Locality

The surrounding locality of Hammondville to the west is characterised as an established residential area containing a mixture of single and double storey free standing dwellings and a large seniors living facility. A private community estate, Northbrook Estate, is located to the west of the site. Voyager Point Bushland Reserve is located to the south beyond Harris Creek. An aerial view of the locality is shown below in Figure 7.

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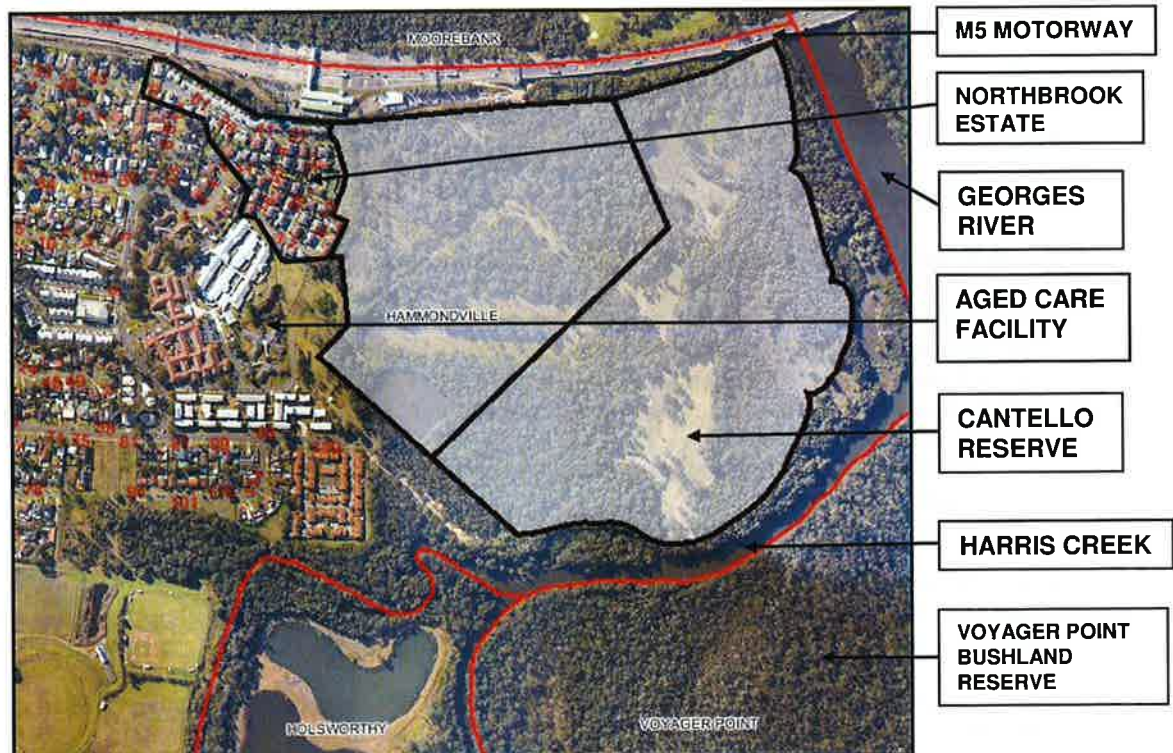


Figure 7: Aerial view of locality

2.1 Background to Development Application

Planning Proposal

In September 2011, Council resolved to seek a number of amendments to Liverpool Local Environmental Plan 2008 to rezone 16.75 hectares of the New Brighton Golf Course land at Moorebank from RE2 Private Recreation to R2 low Density Residential. The planning proposal sought to facilitate the development of 310 new dwellings in this precinct.

To support the proposed residential development, the planning proposal also included the reconfiguration of the golf course by relocating a number of the holes to land located south of the M5 Motorway, some of which is Council owned land.

This land swap between the golf club and Council is being facilitated as part of a voluntary planning agreement (VPA) between Council and New Brighton Golf Club. The land swaps which form part of the VPA not only facilitate the reconfigured golf course (the subject of this DA) but will also secure for Council river foreshore land and land considered to be of high ecological value. This landswap will facilitate public access to the Georges River foreshore which is in accordance with the Liverpool City – Wide Recreation Strategy 2020 Draft South West Sub Region Strategy.

Rezoning

Council at its meeting of 23 July 2012 resolved to proceed in making Draft Liverpool Local Environmental Plan 2008 Amendment 25. Council also resolved to endorse the VPA which will facilitate the land swap and dedicate land to Council for environmental and recreation purposes.

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A copy of this Council resolution and report are attached to this report.

The amendment No. 25 to Liverpool Local Environmental Plan 2008 was gazetted on 19 April 2013.

A copy of the VPA is attached to this report.

3. DETAILS OF THE PROPOSAL

The development application seeks consent for construction of seven golf holes as follows:

- Construction of seven golf holes utilising the layout of the former Greenwood Golf Course.
- Construction of golf course within proposed Lot 4 approved in DA-1941/2012.
- Implementation of Vegetation Management Plan including removal of vegetation on proposed fairways and greens and conservation and rehabilitation of vegetation on surrounding land.
- 1.6 hectares of intact constrained vegetation to be cleared, 0.01 degraded constrained vegetation to be cleared.
- Implementation of water quality management via control ponds and swales.

Access to the golf holes would be from the New Brighton Golf Club to the north via an access bridge underneath the M5 Motorway. An easement for public access as part of a voluntary planning agreement has been negotiated between Council, New Brighton Golf Course, Interlink and RMS.

Relocation of the existing dog park has been approved under separate application as part of a voluntary planning agreement.

The plan of the proposed golf holes is shown below in Figure 8. The former fairways of the former Greenwood Golf Course are shown below in Figure 9 to compare to the proposed layout of the current proposal.



Figure 8: Proposed golf holes

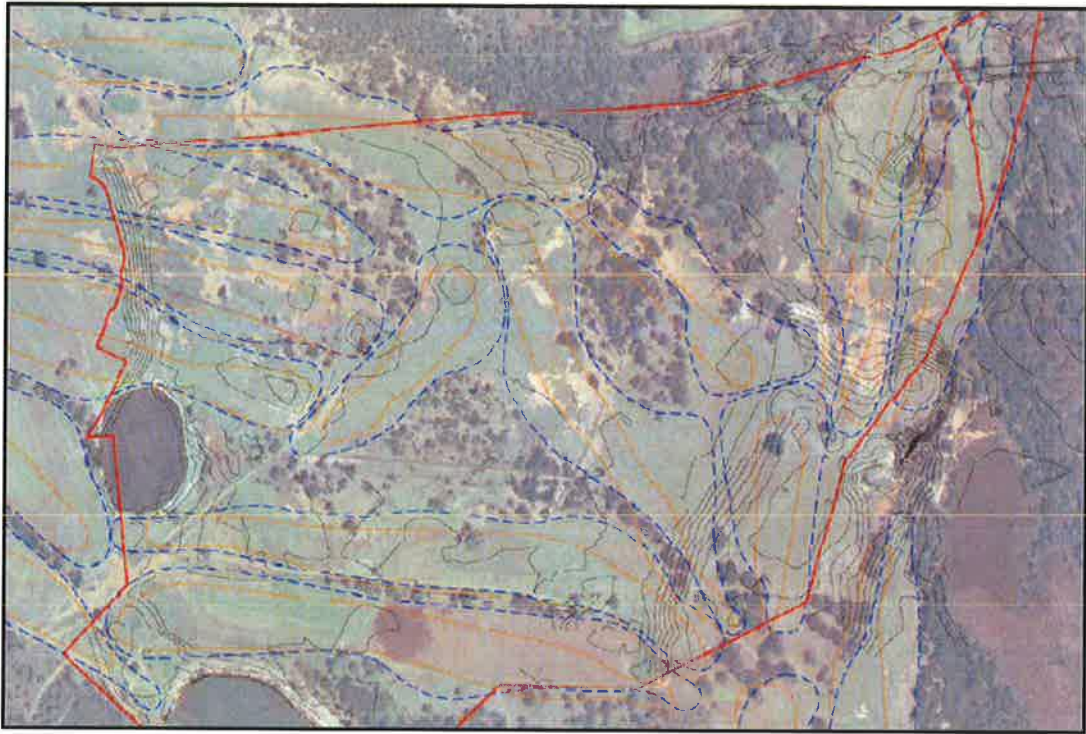


Figure 9: Former fairways 1977 aerial view of Greenwood Golf Course

4. STATUTORY CONSIDERATIONS

4.1 Zoning

Proposed Lot 4 over which the golf holes are proposed to be constructed is zoned RE2 Private Recreation pursuant to Liverpool Local Environmental Plan 2008 (LLEP2008). The proposal is defined as 'recreation facility (outdoor)' which is defined in LLEP 2008 as follows:

recreation facility (outdoor) means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

Recreation facilities (outdoor) are permissible in the RE2 Private Recreation Zone with Council consent.

An extract from LLEP 2008 zoning map is shown below in Figure 10.

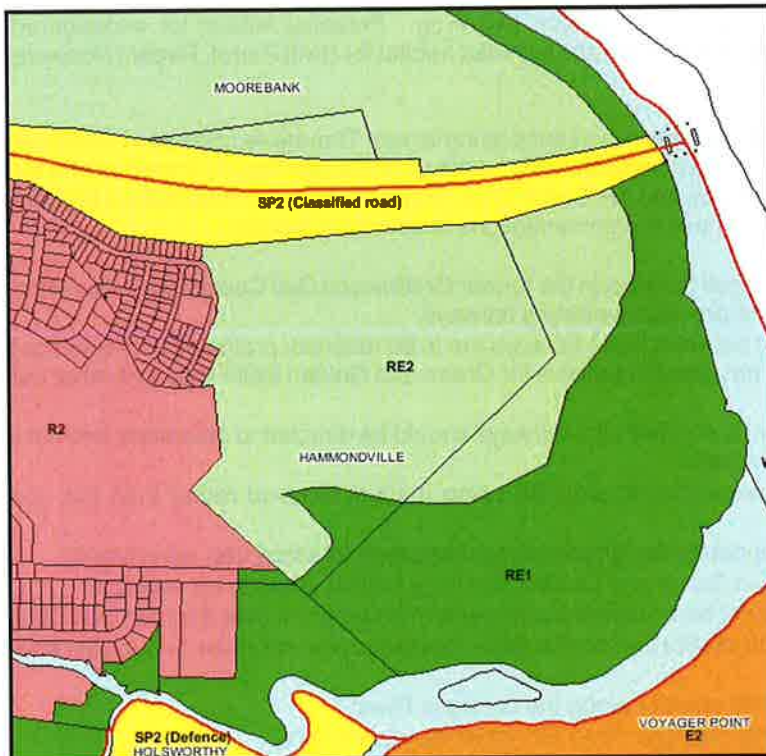


Figure 10: Extract of LLEP 2008 zoning map

4.2 Relevant matters for consideration

The following legislation, Environmental Planning Instruments (EPI's), Development Control Plan and Codes or Policies are relevant to this application:

- Environmental Protection and Biodiversity Conservation Act 1999
- Threatened Species Conservation Act 1995
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy (Infrastructure) 2007
- Liverpool Local Environmental Plan 2008
- Liverpool Development Control Plan 2008

5. ASSESSMENT

5.1 Environment Protection and Biodiversity Conservation Act 1999 (Cth)

The applicant has submitted a fauna assessment for the proposal that includes the Tests of Significance for threatened and regionally significant fauna species and populations that would be potentially impacted on by the proposed developed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Endangered or vulnerable species observed within the locality (10km of subject site) as listed under

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the EPBC Act include the Green and Golden Bell Frog. Potential habitat for endangered or vulnerable fauna species identified on the site includes habitat for Swift Parrot, Regent Honeyeater, and Grey-headed Flying-fox.

The Fauna Assessment includes seven-part tests (criteria from Threatened Species Conservation Act 1995) that conclude that the proposed development would not significantly impact on the status of the Green and Golden Bell Frog and the Swift Parrot, provided the recommendations included in the report are implemented. These recommendations in summary include:

- Where possible, new golf fairways in the former Greenwood Golf Course are to be restricted to the footprints of the previously existing fairways.
- Remnant vegetation between these fairways are to be retained, protected and enhanced to provide habitat and movement corridors for Green and Golden Bell Frogs and other native fauna.
- All water and nutrient runoff from the fairways should be directed to bioswales and not into remnant vegetation areas.
- Implementation of weed-control program using manual removal rather than the use of pesticides.
- Installation of appropriately-designed road underpasses to assist frog movements.
- Artificial light spill to in Green and Golden Bell Frog habitat areas to be avoided.
- Installation of frog-proof fence barrier along western boundary of New Brighton Golf Course.
- Provide a north-south wildlife corridor for native fauna and plan materials through the subject site.
- Widen regional wildlife corridor along the Georges River.
- Improve habitat along Georges River for native fauna and flora.
- Natural drainage on low lying land to be re established to allow water movement to the Georges River.
- Trees to and other vegetation to be removed should be conducted with minimal disturbance to the soil.
- Trees to be removed to be checked for the presence of active nests of birds and arboreal mammals. These plants not to be removed or pruned until animals that are nesting in them have completed breeding cycle. Trees to be checked before and after clearing or pruning.

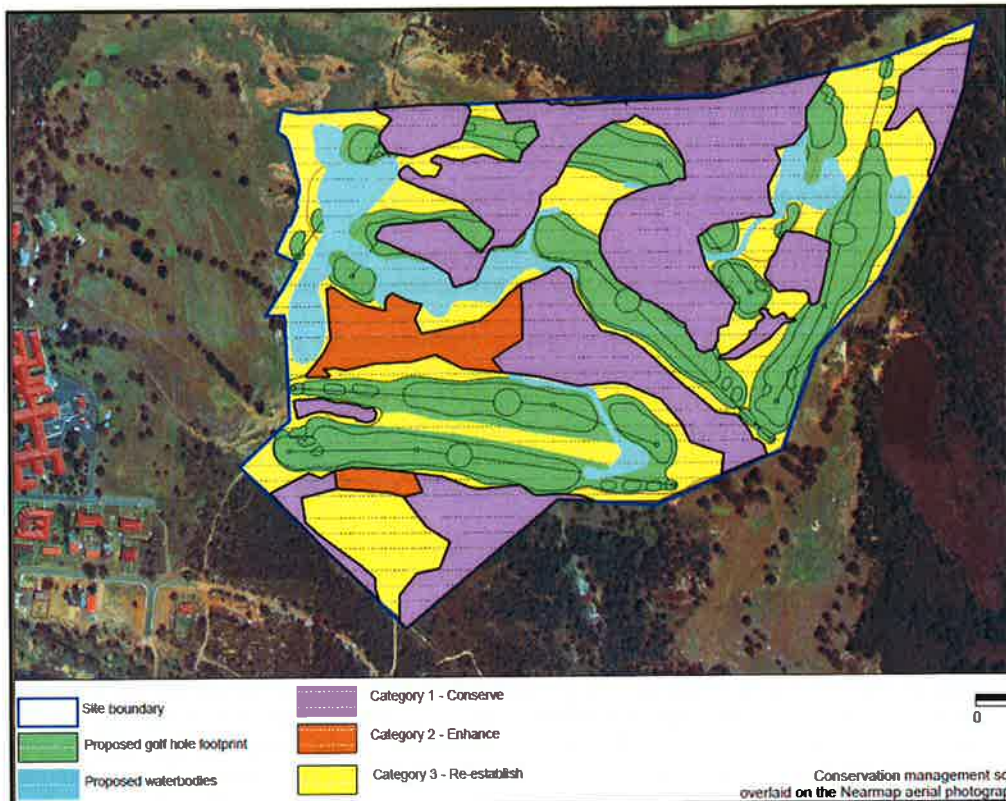


Figure 11: Extract of diagram from Vegetation Management Plan

A management plan for the Green and Golden Bell Frog has been submitted which explains in more detail measures to minimise impacts to the population and habitat during the construction of the golf course.

The Fauna Assessment has also considered the Matters of National Environmental Significance - *Significant impact guidelines* of the EPBC Act for the Grey-headed Flying-fox, a nationally vulnerable fauna species and the Swift Parrot and Regent Honeyeater, nationally endangered species. The report concludes that these three species would not be significantly impacted on by the proposal.

A submitted flora report notes that although there were potential locations for habitat for Cumberland Plain Shale Woodlands and Shale-Gravel Transition Forest, "none of the vegetation sampled on the site meets all the criteria in the Commonwealth Listing Advice for Cumberland Plain Shale Woodlands and Shale-Gravel Transition Forest" (Clements 31).

The information contained in the fauna report and the flora report has been reviewed by Council's Natural Resource Planner. The following comments have been made:

- The recommendations in the Green Bell Frog management Plan are to be implemented as part of any consent.
- It is not clear if the revised flora assessment and revised assessment of significance on threatened flora species, populations and ecological communities is based on current proposal plans as contained in conservation management plan. More details are requested.

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These comments have been incorporated into the recommended conditions of consent. Whilst the plans in the revised flora assessment and revised assessment of significance on threatened flora species, populations and ecological communities, the location of the fairways and greens in the current plan is located on the unconstrained vegetation that is not mapped as being part of an endangered ecological community (Figure 12).

5.2 Threatened Species Conservation Act 1995 (NSW)

The applicant has submitted a fauna assessment and a flora assessment that addresses considerations under the *Threatened Species Conservation Act 1995* (TSC Act).

The Fauna Assessment includes seven-part tests of significance for each of the following species listed pursuant to the TSC Act: Green and Golden Bell Frog, Little Eagle, Glossy Black-Cockatoo, Little Lorikeet, Swift Parrot, Powerful Owl, Square-tailed Kite, Flame Robin, Varied Sittella, Regent Honeyeater, Black-chinned Honeyeater, Grey-headed Flying-fox, Eastern Freetail-bat, Eastern False Pipistrelle, Yellow-bellied Sheath-tail Bat, Eastern Bent-wing Bat, Large-eared Mouse-eared Bat, Greater Broad-nosed Bat, and the Cumberland Plain Land Snail.

The report concludes that the proposed development would not significantly impact on the status of each of the species provided the recommendations included in the report are implemented. These recommendations are those discussed above at Item 5.1

The applicant has submitted a flora assessment report that has considered the assessment of significance on threatened flora species, populations and ecological communities on the subject land. The flora assessment identifies the following endangered ecological communities as being located on the subject site: Cooks River Castlereagh Ironbark Forest, River-Flat Eucalypt Forest on Coastal Floodplains, Sydney Basin, and Swamp Oak Floodplain Forest, Sydney Basin. The report notes that the remnant bushland is located between the former fairways, and has been invaded by grasses and exotic species. Mapping of the ecological communities is shown below in Figure 12.

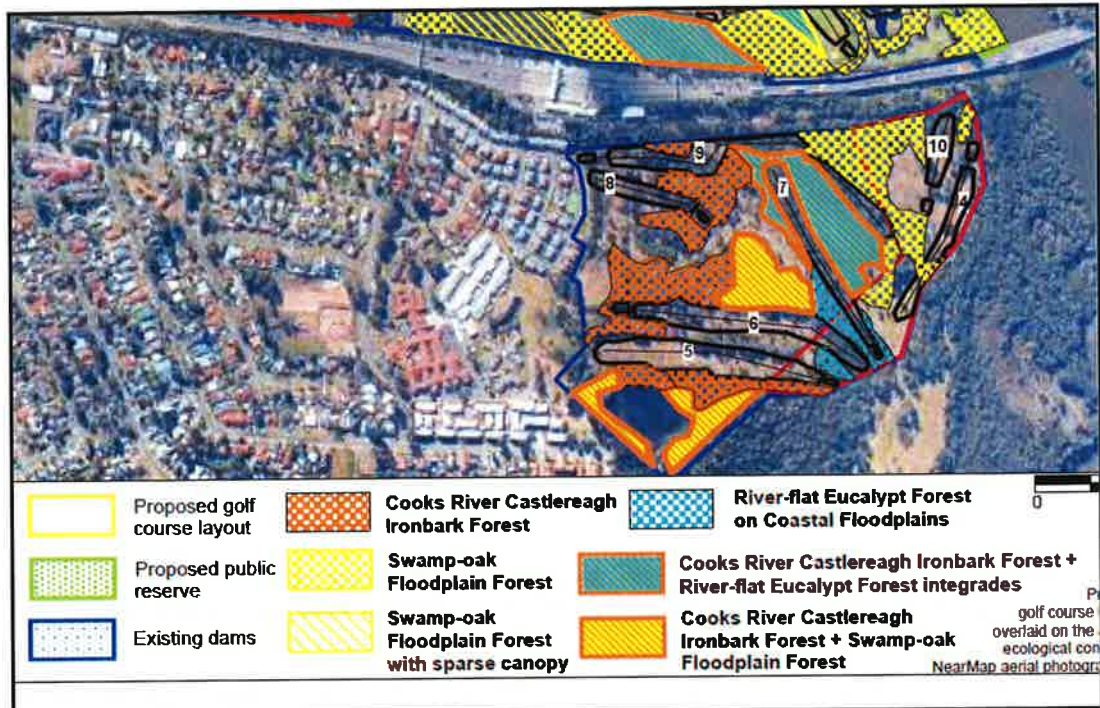


Figure 12: Mapping of endangered ecological communities

The flora report addresses the items for the assessment of significance under the Assessment Guidelines for the factors to be considered under the TSC Act. In summary the report finds that risk of direct and indirect impact to the ecological community is minimised as the design incorporates the use of the former fairways. The proposal will not substantially modify the composition of the ecological community. The ecological community will not be further fragmented. The proposal is consistent with the objectives and actions of the Cumberland Plain Recovery Plan.

The flora assessment recommends that:

- The design of the golf course is to utilise the existing and former fairways as far as practicable.
- The design of the golf course is to be located on the existing and additional raised free-draining land.
- All water and nutrient runoff from the fairways should be directed to bioswales rather than running into the vegetation between fairways.
- The constrained land between fairways (including endangered ecological communities) should be conserved and regenerated as part of a conservation management plan.
- Any loss of constrained land should be offset in a ratio of 1:8 for rehabilitation of existing degraded constrained land.

The information contained in the fauna report and the flora report has been reviewed by Council's Natural Resource Planner. The following comments have been made:

- The recommendations in the Green Bell Frog management Plan are to be implemented as part of any consent.
- It is not clear if the revised flora assessment and revised assessment of significance on threatened flora species, populations and ecological communities is based on current

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proposal plans as contained in conservation management plan. More details are requested.

These comments have been incorporated into the recommended conditions of consent. Whilst the plans in the revised flora assessment and revised assessment of significance on threatened flora species, populations and ecological communities, the location of the fairways and greens in the current plan is located on the unconstrained vegetation that is not mapped as being part of an endangered ecological community (Figure 12).

5.3 Environmental Planning and Assessment Act 1979

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the Environmental Planning and Assessment Regulation as follows:

5.3 Section 79C(1)(a)(1) – Any Environmental Planning Instrument

(a) Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (now a deemed SEPP)

The subject land is located within the Georges River Catchments and as such the *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment* applies to the application.

The *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment* generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries.

When a consent authority determines a development application planning principles are to be applied (Clause 7(2)). Accordingly, a table summarising the matters for consideration in determining development application (Clause 8 and Clause 9), and compliance with such is provided below.

Clause 8 General Principles	Comment
(a) the aims, objectives and planning principles of this plan,	The plan aims generally to maintain and improve the water quality and river flows of the Georges River and its tributaries.
(b) the likely effect of the proposed plan, development or activity on adjacent or downstream local government areas,	Proposal reviewed by Council's Land Development and Floodplain Drainage Engineers. Water quality features to be incorporated into design of course.
(c) the cumulative impact of the proposed development or activity on the Georges River or its tributaries,	A stormwater management plan submitted and reviewed by Council's development engineers. Conditions of consent applied.
(d) any relevant plans of management including any River and Water Management Plans approved by the Minister for Environment and the Minister for Land and Water Conservation and best practice guidelines approved by the Department of Urban Affairs and Planning (all of which are available from the respective offices of those Departments),	The site is located within an area covered by the Liverpool District Stormwater Management Plan, as outlined within Liverpool City Council Water Strategy 2004.
(e) the <i>Georges River Catchment Regional Planning Strategy</i> (prepared by, and available from the offices of, the Department of Urban Affairs and Planning),	Consistent with the strategy.

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(f) all relevant State Government policies, manuals and guidelines of which the council, consent authority, public authority or person has notice,	Assessed in regards to relevant policies and manuals.
(g) whether there are any feasible alternatives to the development or other proposal concerned.	The site is located in an area nominated for recreation development.
When this Part applies the following must be taken into account:	Planning principles are to be applied when a consent authority determines a development application
Clause 9 Specific Principles	
(1) Acid sulfate soils	The land is identified as containing acid sulphate soils on LLEP 2008 Acid Sulfate Soil mapping. Acid Sulfate Management Plan submitted and to be implemented during construction.
(2) Bank disturbance	No disturbance of the bank or foreshore along the Georges River and its tributaries is proposed.
(3) Flooding	Subject land flood affected. Proposal reviewed by Floodplain Engineers and have advised proposal is acceptable.
(4) Industrial discharges	Not applicable.
(5) Land degradation	An erosion and sediment control plan aims to manage salinity and minimise erosion and sediment loss.
(6) On-site sewage management	Not applicable.
(7) River-related uses	Not applicable.
(8) Sewer overflows	Not applicable.
(9) Urban/stormwater runoff	Stormwater Management Plan submitted.
(10) Urban development areas	<p>The site is not identified as being located within the South West Growth Centre within the Metropolitan Strategy.</p> <p>The site is identified as being an Urban Release Area under LLEP 2008 and being suitable for recreation development.</p>

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(11) Vegetated buffer areas	Not applicable.
(12) Water quality and river flows	Erosion and sediment control to be implemented in construction. Salinity measures to be implemented in earthworks and construction. Acid sulfate management to be implemented. Bioswales incorporated into design of fairways.
(13) Wetlands	Not applicable.

In conclusion the application is considered to achieve the aims and principles of the *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*.

(b) State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) applies to the site.

The objectives of SEPP 55 are:

- *to provide for a state wide planning approach to the remediation of contaminated land.*
- *to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

Pursuant to the above SEPP, Council must consider:

- whether the land is contaminated.
- if the land is contaminated, whether it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the proposed use.

The proposal involves a change of use of land with the potential (*agricultural/horticultural activities*) under the SEPP 55 guidelines to be a site that could be contaminated.

The applicant has submitted a stage one preliminary contamination investigation for the site as part of the application. The report has assessed the potential of contamination for the site and the following findings have been made:

- There is evidence of filling on the land.
- Acid sulphate soils are present.
- There is potential for contamination, further assessment is required.

Accordingly, Council is required to undertake a merit assessment of the proposed development. The following table summarises the matters for consideration in determining development application (Clause 7).

Clause 7 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	

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(a) it has considered whether the land is contaminated, and	A preliminary contamination assessment has been submitted as part of this application and reviewed by Council's Environmental Health Staff.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The submitted assessment identified that further testing is required to identify is contaminants are present. Conditions of consent require further testing have been included in draft conditions.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	Land is to be remediated as required prior to use.

Therefore based on the above assessment the subject site is suitable for the proposed development subject to remediation works being undertaken where required.

(c) State Environmental Planning Policy No. 19 – Bushland in Urban Areas

State Environmental Planning Policy No. 19 – Bushland in Urban Areas (SEPP 19) applies to the proposal.

The general aims of SEPP19 are:

- (1) to protect and preserve bushland within the urban areas because of:
 - (a) its value to the community as part of the natural heritage,
 - (b) its aesthetic value, and
 - (c) its value as a recreational, educational and scientific resource.

The SEPP includes the following relevant Definitions:

bushland means land on which there is vegetation which is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation.

The submitted flora assessment has identified remnant bushland and bushland on the subject sites including Cooks River Castlereagh Ironbark Forest, River-Flat Eucalypt Forest on Coastal Floodplains, Sydney Basin, and Swamp Oak Floodplain Forest, Sydney Basin.

The site both adjoins and contains land zoned RE1 Public Recreation under LLEP 2008. Accordingly, Council is required to undertake a merit assessment of the proposed development against Clause 9 *Land adjoining land zoned or reserved for public open space*. Following is a table summarising the matters for consideration in determining development application (Clause 9), and compliance with such.

9 Land adjoining land zoned or reserved for public open space	Comment
(1) This clause applies to land which adjoins bushland zoned or reserved for public open space purposes.	The site adjoins RE1 Public Recreation land.

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<p>(2) Where a public authority: (a) proposes to carry out development on land to which this clause applies, or (b) proposes to grant approval or development consent in relation to development on land to which this clause applies, the public authority shall not carry out that development or grant the approval or development consent unless it has taken into account:</p>	<p>The application involves granting of development consent on land to which this clause applies.</p>
<p>(c) the need to retain any bushland on the land,</p>	<p>The proposal golf course seeks to utilise the fairway layout of the former Greenwood Golf Course and so minimal removal of bushland is proposed. Bushland in between fairways is to be maintained and rehabilitated in accordance with VMP.</p>
<p>(d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and</p>	<p>The proposed golf holes are on RE2 land adjacent to RE1 land. Bioswales are proposed to redirect water runoff from the proposed fairways away from the bushland to be conserved and rehabilitated. VMP also proposes manual removal of weeds.</p>
<p>(e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.</p>	<p>The proposed golf course incorporating rehabilitating works is compatible with the adjoining RE1 land and will only require minimal removal of bushland on the subject site and not impact upon the adjoining land.</p>

In conclusion the proposal generally complies with the requirements of SEPP 19.

(e) State Environmental Planning Policy (Infrastructure) 2007

The subject site is located adjacent to the M5 Motorway. The M5 Motorway is not listed as a classified road by the Roads and Maritime Services (RMS), however the proposal was referred to the RMS for comment. No issues were raised by RMS with respect to the proposal. An easement under the M5 Motorway will be required to be created to access the course from the New Brighton Golf Course. This is currently being drafted as part of the VPA for the site and would be required to be implemented prior to the use of the golf holes commencing.

(f) State Environmental Planning Policy No 44 – Koala Habitat

State Environmental Planning Policy No. 44 – Koala Habitat (SEPP 44) applies to the proposal (the Liverpool local government area as listed in Schedule 1 of the SEPP).

The general aims of SEPP 44 are 'to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.'

The SEPP includes the following relevant Definitions:

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potential koala habitat means areas of native vegetation where the trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.

Accordingly, Council is required to satisfy itself whether or not the land is a potential koala habitat. Following is a table summarising the matters for consideration in determining development application (Clause 7), and compliance with such.

Clause 7	Comment
(1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies, it must satisfy itself whether or not the land is a potential koala habitat.	This part applies to land within the Liverpool LGA.
(2) A council may satisfy itself as to whether or not land is a potential koala habitat only on information obtained by it, or by the applicant, from a person who is qualified and experienced in tree identification.	The Fauna Assessment submitted with the application identified the subject site contains Forest Red Gum which is a species under Schedule 2 of SEPP 44 (p.23, 40 of assessment). However there are no known sightings of koalas and no observable signs of koalas in the area.
(3) If the council is satisfied: (a) that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or (b) that the land is a potential koala habitat, it must comply with clause 8.	The evidence provided indicates there is no likelihood that the land contains potential or core koala habitat.

It is considered that the findings in the fauna assessment report can be accepted and that the subject land is not potential koala habitat.

(f) **Liverpool Local Environmental Plan 2008**

(i) **Permissibility**

The subject land is zoned RE2 Private Recreation and RE1 Public Recreation under the provision of LLEP 2008. The golf course is proposed within proposed Lot 4 which is zoned RE2 Private Recreation. Recreation facilities (outdoor) are permitted in the RE2 Private Recreation Zone with development consent.

(ii) **Objectives of the zone**

Objectives of the RE2 Private Recreation Zone are as follows:

- *To enable land to be used for private open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To enable land uses that are compatible with, and complimentary to, recreational uses.*

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The proposal is considered to be compatible with the objectives of the RE2 Private Recreation Zone.

(iii) Development Standards and Other Provisions

The following provisions of the LLEP 2008 are applicable to the proposal:

Clause 5.9 Preservation of trees or vegetation

The objective of Clause 5.9 is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. A person may not cut down or remove vegetation without development consent.

The applicant has proposed to remove vegetation on fairways as described in the VMP and rehabilitate vegetation between fairways. The removal of vegetation would form part of a development consent.

Clause 5.10 Heritage conservation

Hammondville Home for Senior Citizens located on land adjacent to the subject allotments is listed as an item of Local Heritage Significance in LLEP 2008.

Council's Heritage Officer has reviewed the subject development proposal and has advised that the proposal is compatible with the heritage item and would not negatively impact on the heritage significance of the home.

Clause 7.6 Environmentally sensitive land

Parts of the subject land are mapped as environmentally sensitive land (ESL) pursuant to LLEP 2008 as shown in Figure 10 below.

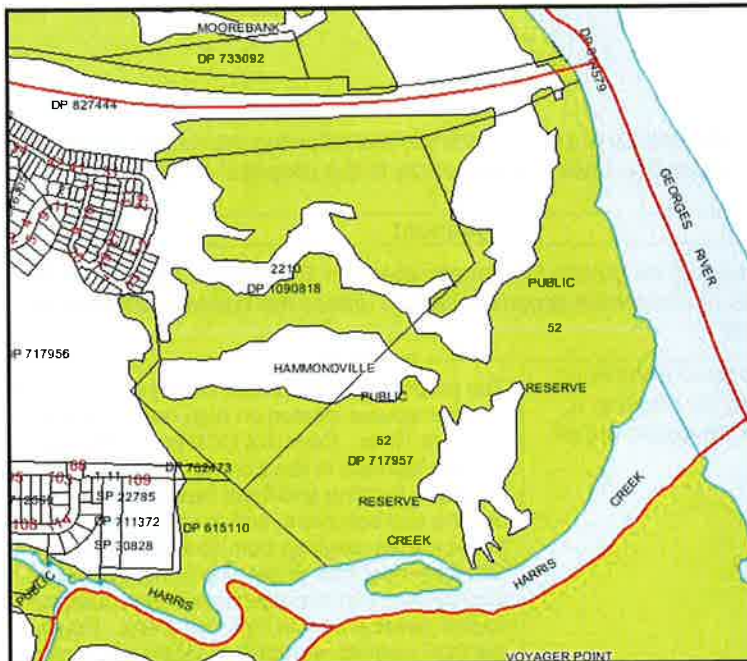


Figure 10: LLEP 2008 Map, Environmentally Sensitive Land

As discussed above in this report, the proposal utilises the fairways of the former Greenwood Golf Course in the design of the new holes which are in areas that are principally land that is not mapped as environmentally significant land. As discussed above it is considered that if the recommendations contained in the fauna assessment and flora assessment are implemented that there would be minimal impacts on the natural environment, including the areas mapped as ESL.

Clause 7.7 Acid sulfate soils

Parts of the subject land are mapped as Class 3, 4 and 5 Acid Sulfate Soils. Development consent is required for works where:

- Class 3: Works more than 1 metre below the natural ground surface or works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.
- Class 4: Works more than 2 metres below the natural ground surface or works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.
- Class 5: Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

It is not clear from the information provided by the applicant whether the earthworks proposed will meet any of these criteria, however an acid sulfate soils management plan has been submitted as part of the application regardless.

The plan has been prepared in accordance with the Acid Sulfate Soils Manual and other relevant legislation by suitably qualified consultants and it is considered that the recommendations contained in the report will ensure that the development will not cause

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environmental damage.

Clause 7.8 Flood planning

The subject land is in a flood affected area and accordingly the following provisions contained in Clause 7.8 of LLEP 2008 regarding flood assessment apply to the proposal as follows:

Provision	Comment
<i>(3) Development consent must not be granted to development on flood prone land (other than development for the purposes of residential accommodation) unless the consent authority is satisfied that the development:</i>	
<i>(a) will not adversely affect flood behaviour and increase the potential for flooding to detrimentally affect other development or properties, and</i>	<p>The proposed development involves construction of a golf course located on high risk flood zone of Georges River. Council's DCP provides guideline for development in flood prone land to reduce the impact of flooding and flood liability on individual owners and occupiers, and to reduce private and public losses resulting from flooding. The DCP prohibits most type of developments that would be inconsistent with the objectives of discouraging further development in high risk areas. However, the DCP permits recreational facilities in high risk flood zone considering minimal or no risks to life and or properties. The proposed Golf Course development is considered to be consistent with objectives of Council's flood policy.</p> <p>The applicant has undertaken flood modelling and flood impact assessment undertaken by Cardno Consulting Engineers dated 21 February 2012 for the proposed development. The flood impact assessment has demonstrated that the proposed development will not adversely affect flood behaviour and increase the potential for flooding to detrimentally affect other development or properties.</p>
<i>(b) will not significantly alter flow distributions and velocities to the detriment of other properties or the environment, and</i>	Applicant's flood impact report has demonstrated that the proposed development will not significantly alter flow distribution or velocities and any changes will be localised and contained within the property. No private property will be adversely affected.
<i>(c) will enable the safe occupation and evacuation of the land, and</i>	The proposed Golf Course development will not involve permanent occupation of flood prone land. However, the applicant is required to develop a fail-safe emergency evacuation plan to ensure safe evacuation of the land during a flood event as a condition of consents for the DA (please refer to DA referral condition).
<i>(d) will not have a significant detrimental affect on the environment or cause</i>	The applicant's flood modelling results and flood impact report have demonstrated that there will be

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<i>avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of any riverbank or watercourse, and</i>	no significant change in flow depth or flow velocity resulting from the proposed development. Therefore it is considered that the proposed development will not have any detrimental affect on the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of any riverbank or watercourse, and
<i>(e) will not be likely to result in unsustainable social and economic costs to the flood affected community or general community as a consequence of flooding, and</i>	The proposed golf course development does not involve construction of any building or structure. Any damage in a flood event is considered to be limited within the golf course and will have no adverse social or economic impact to the community.
<i>(f) if located in the floodway, will be compatible with the flow of flood waters and with any flood hazard on that floodway.</i>	The proposed golf course development involves construction of ponds and earth mounds and the development is not located on floodway.

Clause 7.31 Earthworks

The proposal involves earthworks and accordingly the following provisions contained in Clause 7.31 of LLEP 2008 are to be considered in the assessment of the proposal:

- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters:*
- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
 - (b) *the effect of the proposed development on the likely future use or redevelopment of the land,*
 - (c) *the quality of the fill or the soil to be excavated, or both,*
 - (d) *the effect of the proposed development on the existing and likely amenity of adjoining properties,*
 - (e) *the source of any fill material and the destination of any excavated material,*
 - (f) *the likelihood of disturbing relics,*
 - (g) *the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Council's Land Development Engineers have reviewed the proposal and provided draft conditions of consent for the proposal. Further, any land to be removed or introduced to the site will be required to have undergone a contaminated site assessment and in the case of material being removed, be taken to a facility licensed to receive the material.

5.2 Section 79C(1)(a)(ii) - Any Draft Environmental Planning Instrument

No applicable draft planning instruments apply to the proposal.

5.3 Section 79C(1)(a)(iii) - Provisions of any Development Control Plan

Liverpool Development Control Plan 2008 (LDCP 2008) applies to the site. Part 1.1 – General Controls for all Development; Part 1.2 – Additional General Controls for Development; Part 2.15

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– New Brighton Golf Course are relevant to the proposed development. An assessment of the proposal against the controls contained within LDCP 2008 are outlined in the table below:

CONTROLS	COMMENT	COMPLIES
PART 1.1 – GENERAL CONTROLS FOR ALL DEVELOPMENT		
TREE PRESERVATION	Submitted VMP identifies bushland areas to be retained, rehabilitated and vegetation to be removed.	Yes
LANDSCAPING	Trees to be retained where possible and new landscaping on course.	Yes
BUSHLAND AND FAUNA HABITAT PRESERVATION	Land contains Bushland, ESL and threatened species. Plans of management proposed.	Yes
BUSH FIRE RISK	Land is bushfire affected. Referred to NSW RFS for comment. No issues have been raised.	Yes
WATER CYCLE MANAGEMENT	A Stormwater Strategy Plan submitted and reviewed by Council's Land Development Engineers.	Yes
DEVELOPMENT NEAR CREEKS AND RIVERS	Site located within 40m of Georges River. Referred to Office of Water as integrated development. Flooding affectation assessed.	Yes
EROSION AND SEDIMENT CONTROL	An Erosion and Sediment Control details submitted.	Yes
FLOODING RISK	Subject land is in flood affected area. Flood evacuation plan required as draft condition of consent.	Yes
CONTAMINATION LAND RISK	A preliminary contamination assessment has been provided and concludes additional testing required prior to use.	Yes
SALINITY RISK	Salinity assessment and management plan submitted. Recommendations to be implemented.	Yes
ACID SULFATE SOILS RISK	The subject site is identified on the Acid Sulfate Soils Map. Management plan to be implemented during construction.	Yes
WEEDS	Noxious plants to be removed.	Yes
DEMOLITION OF EXISTING DEVELOPMENT		N/A
ON-SITE SEWERAGE DISPOSAL	No on-site sewage disposal proposed.	Yes
ABORIGINAL ARCHAEOLOGY	No identified items.	Yes
HERITAGE AND ARCHAEOLOGICAL SITES	Heritage item adjacent. Impact on item by proposed development considered to be minimal.	Yes
NOTIFICATION OF APPLICATIONS	The proposal was advertised and notified in accordance with LDCP 2008 and regulations. Submissions are discussed below.	Yes
PART 1.2 – ADDITIONAL GENERAL CONTROLS FOR DEVELOPMENT		
CONTROLS	PROVIDED	COMPLIES
PRELIMINARY	Applies to proposed development.	

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CAR PARKING: No specific requirement, subject to report	No car parking proposed on subject land. Existing car parking located at New Brighton Golf Course.	As subject course will replace existing holes traffic generation estimated to be minimal.
LANDFILL	Cut and fill proposed. Any fill to be VENM.	Draft conditions regarding cut and fill materials included.
WASTE DISPOSAL AND RE-USE Waste management plan WMP to be submitted and implemented.	WMP and VMP for construction submitted.	Yes
OUTDOOR ADVERTISING	No signage proposed.	N/A
PART 2.15 – NEW BRIGHTON GOLF COURSE		
CONTROLS	PROVIDED	COMPLIES
4. GOLF COURSE DESIGN Design to limit vegetation lost. Design to utilise the previous fairways of former Greenwood Golf Course as practical. Proposal to be referred to Office of Environment and Heritage Green and Golden Bell Frog Management Plan is to be submitted	The design of the golf holes has used the layout of the former Greenwood Golf Course. The proposal was referred to the Office of Environment and Heritage. A Green and Golden Bell Frog Management Plan has been submitted as part of the application.	Yes
4.2 VEGETATION OFFSETTING Offsetting to be in accordance with Council's Biodiversity strategy Vegetation offsetting to be referred to Office of Environment and Heritage	Generally in accordance with Council's Biodiversity strategy. No formal Biobanking proposed. The Vegetation offsetting contained in VMP was referred to the Office of Environment and Heritage.	Yes
4.3 SAFETY Mitigation measures to be implemented where a golf hole is located in close proximity to public roads, public areas or private property	The tee off area of Hole 8 is the only area of the course located in close proximity to public roads and private property. No details of safety measures have been provided, however it is considered that suitable safety measures can be implemented in the areas and details provided prior to the issue of a construction certificate.	Yes

5.4 Section 79C(1)(a)(iv) – The Regulations

The proposal was referred to NSW Office of Water, NSW Rural Fire Service, Roads and

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Maritime Services, NSW Office of Environment and Heritage in accordance with the regulations. Their responses are discussed below.

5.5 Section 79C(1)(b) – The Likely Impacts of the Development

Natural and Built Environment

Natural Environment

The impacts of the development on the natural environment have been assessed and the development is considered to be acceptable and unlikely to cause adverse impacts. Issues considered included, but were not limited to: soil contamination; earthworks; flooding; stormwater management; erosion and sediment control; acid sulfate soils, flora and fauna, ecological communities.

Under Part 5 of the EP&A Act Council has a duty to consider the environmental impact of the development as follows:

Section 111 – Duty to consider environmental impact

(4) Without limiting subsection (1), a determining authority must consider the effect of an activity on:

- (a) critical habitat, and
- (b) in the case of threatened species, populations and ecological communities, and their habitats, whether there is likely to be a significant effect on those species, populations or ecological communities, or those habitats, and
- (c) any other protected fauna or protected native plants within the meaning of the *National Parks and Wildlife Act 1974*.

The proposal has been assessed with respect to the *Environmental Protection and Biodiversity Conservation Act 1999* and the *Threatened Species Conservation Act 1995* above in this report. The potential impacts of the proposal on critical habitat, threatened species, populations and ecological communities and their habitats have been assessed with respect to the relevant legislation. The proposal has been deemed to be acceptable with respect to the potential impacts with the implementation of a range of management plans to ensure impacts on fauna, habitat and ecological communities are minimised to an acceptable level.

Built Environment

Visual Impacts

The proposed golf holes will be visible from the adjoining aged care facility and from Whitfield Parade. Elements that would be visible include fairways, greens, tee off areas and water features. Bush areas between fairways are to be conserved and regenerated. The current outlook from the adjoining aged care facility and from Whitfield Parade is of bushland with overgrown grass on the former fairways. This outlook would change to bushland with new development predominantly within the former fairways. The visual impact on the adjoining sites is considered to be minimal.

Traffic Generation

The proposed seven holes will replace seven holes on the existing New Brighton Golf Course which are to be redeveloped for residential dwellings at a latter date as part of a separate application. The golf course will remain an 18 hole course. Council's Traffic Engineers have advised that the

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proposal is not expected to result in a significant traffic generation and that the existing access to the golf course is suitable. Access to the new holes will be via a sealed public access under the M5 Motorway which is the subject of a separate VPA.

Car Parking

The proposal would use the existing car park at the New Brighton Golf Course. The proposal does not generate demand for additional car parking.

Noise and Compatibility with Residential Areas

The majority of the proposed golf holes are located a large distance from dwellings and the adjoining aged care facility. The greens for Holes 5 and 7 and the tee off areas for Holes 6 and 8 are located towards the western boundary adjoining the HammondCare aged care facility and residents along Whitfield Parade.

The green for Hole 5 and the tee off area for Hole 6 are located towards the boundary of the HammondCare aged care facility. The dwellings in the aged care facility are set back over 80 metres from the boundary to this point. The green for Hole 7 is located approximately 40 metres from the western boundary. The tee off area for Hole 8 is located a minimum 10 metres from the boundary to the adjoining dwelling on Whitfield Parade (and up to 20 metres depending on the position of the tee off) and 20 metres to the street.

The golf holes are to be used during daylight hours only and it is considered that the noise generated from the proposal would not be significant.

Flooding

The subject site is located within a high risk flood zone. Council's Flooding Engineers have reviewed the proposal including the Flood Impact Assessment submitted with the proposal. The proposal is considered to be suitable subject to an evacuation plan being prepared and maintained considering the risks of flood.

Social Impacts and Economic Impacts

The proposal is unlikely to cause any adverse social impacts in the locality. Overall, the proposal is likely to contribute positively to the locality by providing a recreation facility. The subject application is part of an overall redevelopment of the existing New Brighton Golf Club.

The potential economic impacts of the development in the locality are acceptable. The development is likely to have a positive contribution to the local economy via the capital investment value associated with the proposal and on going employment opportunities.

5.6 Section 79C(1)(c) – The Suitability of the Site for the Development

The subject site contains areas that were fairways of the former Greenwood Golf Course. These areas contain a mixture of exotic grasses and vegetation and do not possess the same environmental value as the in between fairway areas. These former fairway areas are suitable for the proposed development and rehabilitation of the in between fairway areas and offsetting for removed vegetation will ensure that the proposal has minimal impact on the environmentally significant land.

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5.7 Section 79C(1)(d) – Any submissions made in relation to the Development

(a) Internal Referrals

The following comments have been received from Council's Internal Departments:

DEPARTMENT	COMMENTS
Engineering	Approval subject to conditions
Environmental Health	Approval subject to conditions
Flooding	Approval subject to conditions
Traffic	Approval subject to conditions
Strategic	Recommendations for assessment
Heritage	Approval
Property	Approval
Sustainable Environment	Additional information requested
Open Space Construction	No objection

(b) External Referrals

DEPARTMENT	COMMENTS
NSW Office of Water	Awaiting final comments
NSW Rural Fire Service	No issues raised
Roads and Maritime Services	No issues raised
NSW Office Environment and Heritage	Not able to make submission
Gandangara Aboriginal Land Council	No comments received

(c) Community Consultation

The proposal was exhibited from 12 June 2013 to 12 July 2013 in accordance with Liverpool Development Control Plan 2008. Three submissions were received in response to the proposal each raising objections. The total number of objectors is four persons and a submission on behalf of Northbrook Estate Community Association.

The range of issues which were raised in the submissions, and a response to each, are summarised below:

Issue 1: Location of tee off Hole 8

Concerns have been expressed that the proposed location of tee off area for Hole 8 is located too close to the adjoining residence at 21 Whitfield Parade and the communal areas of the Northbrook Estate (located to the west of the site). This would result in noise issues and the possibility of stray golf balls entering the adjoining land.

Comment

The proposed tee off area for Hole 8 is located a minimum distance of 10 metres from the boundary to the adjoining dwelling with a maximum distance of up to 20 metres. The tee off area is a minimum distance of 20 metres from the street boundary. As the course is only utilised during

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daylight hours it is considered that the potential noise generated from golfers hitting balls would be within acceptable limits.

Access to Hole 8 from Hole 7 is via a bridge across the water feature and golfers would not be required to pass along the rear of the residences on Whitfield Parade.

Safety features such as fencing are not proposed. The designer of the course has noted that the hole is short (131 metres) and that the dimensions of the setbacks to the green are generous. There is existing vegetation adjacent to Whitfield Parade that provides screening and additional plantings are proposed.

Issue 2: Access to the site

Concerns have been expressed that access for construction may be requested across the Northbrook Estate. Further concerns have also been expressed that golfers may gain access to the site from Northbrook Estate.

Comment

The applicant has provided preliminary details of access for construction from Stewart Avenue. Access for golfers would be via the existing New Brighton Golf Course on a bridge underneath the M5 Motorway which is part of the an existing voluntary planning agreement.

5.8 Section 79C(1)(e) – The Public Interest

The proposal is considered to be in the public interest as will provide a community benefit. The merits of the proposal and the potential impacts have been assessed and it is considered that the objects of the planning and environmental controls can be achieved by the implementation of management plans for threatened fauna, acid sulfate soils, contamination, erosion and sediment and control and vegetation management.

6. DEVELOPMENT CONTRIBUTIONS

Contributions are not required for the proposed development.

7. CONCLUSION

The application has been assessed under the provisions of the Environmental Planning and Assessment Act 1979. The proposed development is permissible with consent in the RE2 Private Recreation Zone.

The proposal is situated on land that contains observed sightings of a threatened species, and potential habitat for threatened species and ecological communities as listed under Environmental Protection and Biodiversity Conservation Act 1999 and Threatened Species Conservation Act 1995. Assessment of the impact of the development on the fauna and ecological communities has been undertaken in accordance with each act and recommendations including management plans have been made to ensure the development does not have an unacceptable impact.

The proposal has been assessed against the relevant Environmental Planning Instruments and generally complies with the relevant planning controls.

Approval of the application is therefore recommended subject to conditions.

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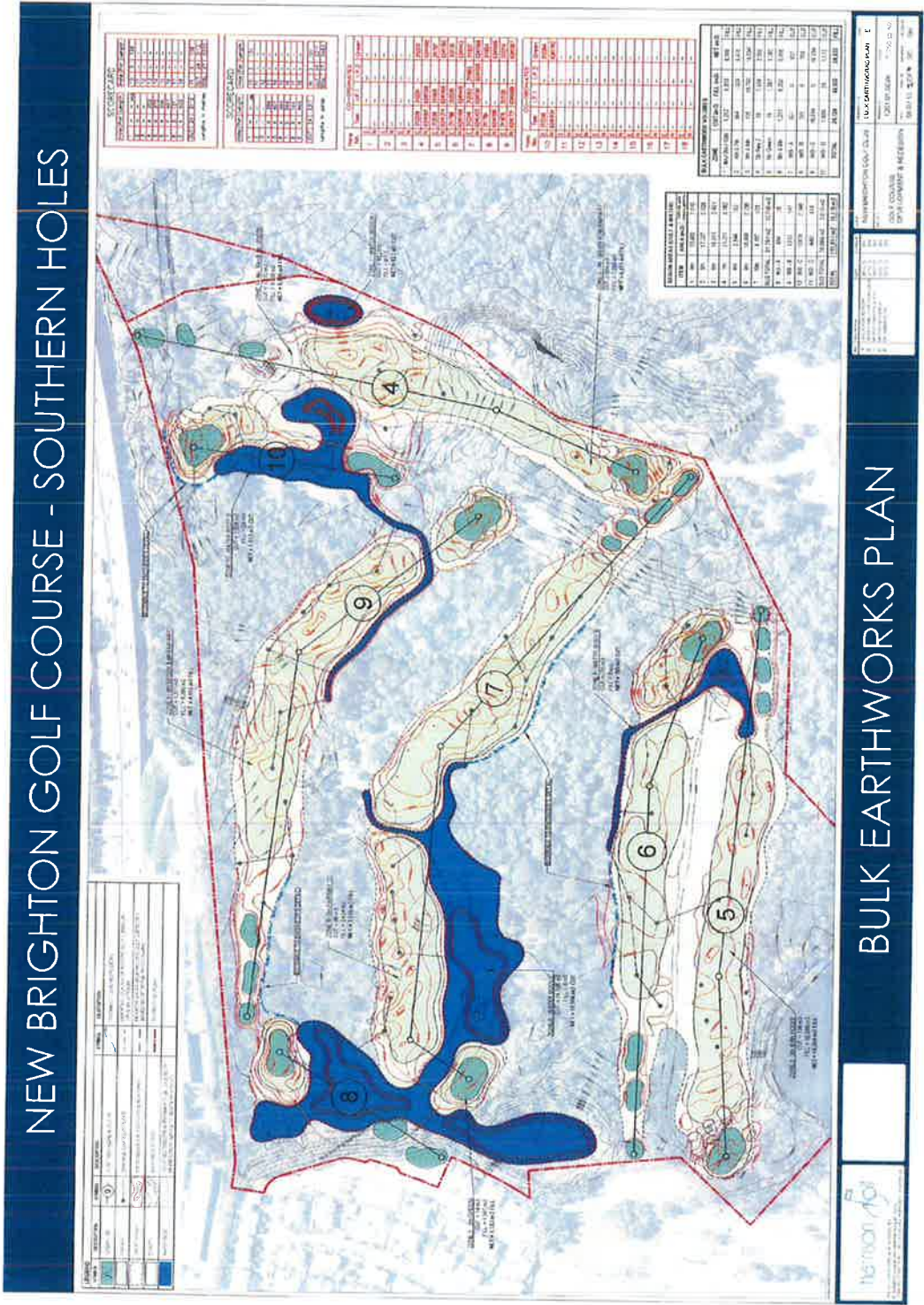
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8. RECOMMENDATION

- (a) That the report for Development Application DA-517/2013 for the construction of seven holes at Greenwood Golf Course over proposed Lots 4 and 5 (in a re-subdivision of Lot 2210 DP 1090818 and Lot 52 DP 717957) be received; and
- (b) That Development Application DA-517/2013 be approved, subject to conditions being imposed.

9. ATTACHMENTS

- 1. Plans of the proposal;
- 2. Recommended conditions of consent;
- 3. Council resolution and report;
- 4. Voluntary planning agreement.



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Attachment 2:

DEFINITIONS

AEP	Annual Exceedance Probability
NCC	National Construction Code (formerly Building Code of Australia)
Council	Liverpool City Council
DCP	Liverpool Development Control Plan 2008
DECC	Department of Environment and Climate Change and Water
CC	Construction Certificate
1% AEP Flood	The 1 in 100 year flood
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
LPI Service	Land and Property Information Service
OC	Occupation Certificate
PCA	Principal Certifying Authority
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
RMS	Roads and Maritime Services

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A. THE DEVELOPMENT

Approved Plans

1. Development the subject of this determination notice must be carried out strictly in accordance with the following plans/reports marked as follows:
 - (a) Plans prepared by Harrison Golf including:
 - Concept plan Issue D
 - Bulk earthworks plans Issue E (four sheets).
 - (b) Landscape plan prepared by Harrison Golf, Ref 1201.01.LC, Dated 29.04.13
 - (c) Green and Golden Bell Frog Management Plan prepared by Ambrose Ecological Services, Ref: 200916r2(a), Dated 18.09.13
 - (d) Erosion and sediment control plan prepared by Cardon, Ref 600279-SK04, Dated, 21.03.13
 - (e) Waste management plan prepared by Mirvac, Dated 6.03.13
 - (f) Preliminary Acid Sulfate Soil Assessment prepared by Cardno, Dated February 2013
 - (g) Conservation Management Plan (Vegetation and Habitat Management Plan) prepared by Anne Clements & Associates, Dated 27.03.13
 - (h) Stage One Contamination Assessment prepared by GHD, Dated June 2011.
 - (i) Water Balance Assessment prepared by Cardno, Ref: 6000279_WBA_v4, Dated 1.10.13
 - (j) Salinity assessment and management plan prepared by Cardno, Ref:600279, Dated February 2013.
 - (k) Fauna survey and assessment prepared by Ambrose Ecological Services, Ref 200916r1(g), Dated 10.03.13
 - (l) Acid Sulfate Soil Management Plan prepared by Cardno, Ref: 600279/R2751 Rev 3, Dated February 2013.
 - (m) Revised Assessment of Significance on threatened flora species, populations and ecological communities, prepared by Anne Clements & Associates, Dated 3004.12
 - (n) Bushfire report prepared by Australian Bushfire Protection Planners, Ref B111457, Dated 30.03.11
 - (o) Aboriginal Cultural Heritage Assessment prepared by AHMS, Dated March 2013

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(p) Aboriginal Archaeological Report prepared by AHMS, Dated March 2013

(q) Statement of Heritage Impact prepared by AHMS, Dated January 2013

except where modified by the undermentioned conditions.

General Terms of Approval

2. All General Terms of Approval issued by Roads and Maritime Services, shall be complied with prior, during, and at the completion of construction, as required in accordance with the General Terms of Approval dated 16.07.13. A copy of the General Terms of Approval are attached to this decision notice.
3. All General Terms of Approval issued by NSW Rural Fire Service, shall be complied with prior, during, and at the completion of construction, as required in accordance with the General Terms of Approval dated 14.06.13. A copy of the General Terms of Approval are attached to this decision notice.

B. PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions are to be complied with or addressed prior to issue of a Construction Certificate by the Principal Certifying Authority:

Amended Flora Report

4. An amended revised flora assessment and revised assessment of significance on threatened flora species, populations and ecological communities based on the current plans for the golf course is to be submitted and approved by Council prior to the release of a CC.

Fee Payments

5. Unless otherwise prescribed by this consent, all relevant fees or charges must be paid. Where Council does not collect these payments, copies of receipts must be provided. For the calculation of payments such as Long Service Levy, the payment must be based on the value specified with the Development Application/Construction Certificate.

The following fees are applicable and payable:

- (a) Damage Inspection Fee – relevant where the cost of building work is \$20,000 or more, or a swimming pool is to be excavated by machinery.
- (b) Fee associated with Application for Permit to Carry Out Work Within a Road, Park and Drainage Reserve.
- (c) Long Service Levy – based on 0.35% of the cost of building work where the costing of the CC is \$25,000 or more.

These fees are reviewed annually and will be calculated accordingly.

Dilapidation Report

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6. A dilapidation report is to be undertaken. This shall include clear photos and descriptions of all existing Council infrastructure adjacent to the subject site. A copy of the dilapidation report shall be submitted to Council.

Notification

7. The certifying authority must advise Council, in writing of:
 - (a) The name and contractor licence number of the licensee who has contracted to do or intends to do the work, or
 - (b) The name and permit of the owner-builder who intends to do the work.

If these arrangements are changed, or if a contract is entered into for the work to be done by a different licensee, Council must be immediately informed.

Permit to Carry out Works

8. A separate application for a permit to carry out works must be issued by Council for –
 - (a) A Permit to carry out works in Council's road reserve, pursuant to Section 138 of the Roads Act, 1993. The work(s) in the existing road reserve requiring a Council Section 138 permit are/is Stewart Avenue.

Stormwater

9. Stormwater is to be collected within the site and conveyed in a pipeline to the appropriate point of discharge as directed by Council and as detailed on the approved plans.
10. A stormwater drainage plan, including hydraulic calculations based on a 1 in 5 year storm (ARI), is required. The plan must show how the stormwater generated by this site, and other inter-allotment overland flow water entering onto this site, is to be collected within the site and conveyed in a suitable pipeline to the most appropriate point of discharge as advised by Council.

This plan shall also show existing and proposed surface contours within the site and along its boundaries with immediately adjacent properties, and shall define overland flow paths for storms which exceed the capacity of the underground pipe system.

The applicant is to contact Council to determine maximum allowable discharge from site. (Council engineers to nominate maximum discharge flow from site). If drainage investigations reveal that downstream drainage pipes are not capable of catering for the discharge, then Council requires the design and construction of an on-site detention system. This is to be designed in accordance with Council's On Site Detention Policy

11. Erosion and sediment control measures shall be designed in accordance with the requirements of Liverpool DCP and Council specifications, and to the satisfaction of the PCA. Approved measures shall be implemented prior to commencement and maintained during construction and until all disturbed areas have been revegetated and established to the satisfaction of the PCA.

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12. That further soil sampling shall be undertaken as per GHD Pty Ltd report dated June 2011. Should the assessment find soil contamination; a remedial action plan will need to be developed. Once remedial works have been carried out, a validation report will be required to be submitted to the PCA certifying that the site has been remediated for its intended use.

C. PRIOR TO WORKS COMMENCING

The following conditions are to be complied with or addressed prior to works commencing on the subject site/s:

13. Detailed engineering plans and specifications relating to the work shall be endorsed with a CC, in accordance with Section 81A of the EP&A Act, and a copy submitted to Council, with payment of any relevant fees.

Notification/Principal Certifying Authority

14. The applicant shall advise Council of the name, address and contact number of the Accredited Certifier, in accordance with Section 81A (4) of the Act.
15. The PCA must advise Council of the intended date to commence work which is the subject of this consent by completing a notice of commencement of building works or subdivision works form, available from Council's Customer Service Centre. A minimum period of two (2) working days notice must be given.

Facilities

16. Toilet facilities must be available or provided at the work site and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet must:

- (a) be a standard flushing toilet connected to a public sewer, or
- (b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
- (c) be a temporary chemical closet approved under the *Local Government Act 1993*.

Site Notice Board

17. A sign must be erected in a prominent position on the premises on which work is to be carried out. The sign is to be maintained during work, and removed at the completion of work. The sign must state:
 - (a) The name, address and telephone number of the principal certifying authority for the work; and
 - (b) The name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
 - (c) Unauthorised entry to the premises is prohibited.

Notification of Service Providers

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18. The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site www.sydneywater.com.au for:

- *Quick check agents details – see Building and Developing then Quick Check and*
- *Guidelines for Building Over/Adjacent to Sydney Water Assets – see Building and Developing then Building and Renovating*

or telephone 13 20 92.

Waste Classification

19. Prior to the exportation of waste (including fill or soil) from the site, the material shall be classified in accordance with the provisions of the POEO Act and NSW DECCW, (EPA) 'Environmental Guidelines: Assessment, Classification and Management of Non-Liquid Wastes'. The classification of the material is essential to determine where the waste may be legally taken. The POEO Act provides for the commission of an offence for both the waste owner and transporters if waste is taken to a place that cannot lawfully be used as a waste facility for the particular class of waste. For the transport and disposal of industrial, hazardous or Group A liquid and non liquid waste advice should be sought from the DECCW (EPA).

Environmental Management

20. An Environmental Management Plan (EMP) shall be developed and submitted to the Principal Certifying Authority for approval. The EMP shall provide a comprehensive and complete action and implementation plan to ensure that the anthropological and natural environment is not unacceptably impacted upon by the proposal. The EMP shall include but not be necessarily limited to the following measures:
- (a) Measures to control noise emissions from the site;
 - (b) Measures to suppress odours and dust emissions;
 - (c) Selection of traffic routes to minimise residential noise intrusions;
 - (d) Soil and sediment control measures;
 - (e) Measures to identify hazardous and industrial wastes and the procedures for removal and disposal including asbestos; and
 - (f) Community consultation.
21. Adequate soil and sediment control measures shall be installed and maintained. Furthermore, suitable site practices shall be adopted to ensure that only clean and unpolluted waters are permitted to enter Council's stormwater drainage system during construction/demolition. Measures must include, as a minimum:
- (a) Siltation fencing;
 - (b) Protection of the public stormwater system; and
 - (c) Site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.

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D. DURING CONSTRUCTION

The following conditions are to be complied with or addressed during construction:

Hours of Construction Work and Deliveries

22. Construction work/civil work/demolition work, including the delivery of materials, is only permitted on the site between the hours of 7:00am to 5:00pm Monday to Saturday. No work will be permitted on Sundays or Public Holidays, unless otherwise approved by Council.

Security Fence

23. A temporary security fence to WorkCover Authority requirements is to be provided to the property during the course of construction.

Note. Fencing is not to be located on Council's reserve area.

General Site Works

24. Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.
25. Existing hydrological regimes shall be maintained so as not to negatively impact vegetation to be retained on site and downslope/downstream of the site.
26. The development, including construction, shall not result in any increase in sediment deposition into any water body, wetland, bushland or environmentally significant land.
27. All dangerous and/or hazardous material shall be removed by a suitably qualified and experienced contractor, licensed by WorkCover NSW. The removal of such material shall be carried out in accordance with the requirements of WorkCover NSW. The material shall be transported and disposed of in accordance with DECCW (EPA) requirements.

Traffic Management

28. If a works zone is required, an application must be made to Council's Transport Planning section. The application is to indicate the exact location required and the applicable fee is to be included. If parking restrictions are in place, an application to have the restrictions moved, will need to be made.
29. Notice must be given to Council's Transport Planning section of any interruption to pedestrian or vehicular traffic within the road reserve, caused by the construction of this development. A Traffic Control Plan, prepared by an accredited practitioner must be submitted for approval, 48 hours prior to implementation. This includes temporary closures for delivery of materials, concrete pours etc.
30. A monitoring report on the progress of the Vegetation Management Plan's implementation shall be prepared and submitted to Council upon completion of

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the primary planting and then at six monthly intervals until the end of the five year maintenance period. A final report shall also be submitted upon completion of the maintenance period.

Acid Sulfate Soils

31. The excavation and treatment of all potential and actual acid sulfate soils shall be carried out in strict accordance with the provisions of the approved Acid Sulfate Soils Management Plan prepared for the site.
32. All fill introduced to the site must undergo a contaminated site assessment. This assessment may consist of either:
 - (a) a full site history of the source of the fill (if known) examining previous land uses or geotechnical reports associated with the source site to determine potential contamination as per the NSW DECCW 'Waste Classification Guidelines' April 2008; or
 - (b) clearly indicate the legal property description of the fill material source site;
 - (c) provide a classification of the fill material to be imported to the site in accordance with the 'NSW DECCW 'Waste Classification Guidelines' April 2008.
 - (d) a chemical analysis of the fill where the site history or a preliminary contamination assessment indicates potential contamination or contamination of fill material; and
 - (e) must provide Council with copies of validation certificate verifying the material to be used is free of contaminants and fit for purpose re use in residential, commercial or industrial use.

Air Quality

33. Dust screens shall be erected and maintained in good repair around the perimeter of the subject land during land clearing, demolition, and construction works.
34. Where operations involve excavation, filling or grading of land, or removal of vegetation, including ground cover, dust is to be suppressed by regular watering until such time as the soil is stabilised to prevent airborne dust transport. Where wind velocity exceeds five knots the PCA may direct that such work is not to proceed.
35. All vehicles involved in the delivery, demolition or construction process departing from the property shall have their loads fully covered before entering the public roadway.
36. The site surface levels are to be designed so that site surface stormwater is deflected away from buildings and neighbours boundary fences and does not cause nuisance or flooding of those areas for storm events less than a 1% AEP.

Erosion Control

37. All disturbed areas shall be progressively stabilised and/or revegetated so that no areas remain exposed to potential erosion damage for a period of greater than 14 days.

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38. Sediment and erosion control measures are to be adequately maintained during the works until the establishment of grass.
39. Vehicular access to the site shall be controlled through the installation of wash down bays or shaker ramps to prevent tracking of sediment or dirt onto adjoining roadways. Where any sediment is deposited on adjoining roadways is shall be removed by means other than washing. All material is to be removed as soon as possible and the collected material is to be disposed of in a manner which will prevent its mobilisation.

Water Quality

40. All topsoil, sand, aggregate, spoil or any other material shall be stored clear of any drainage line, easement, water body, stormwater drain, footpath, kerb or road surface and there shall be measures in place in accordance with the approved erosion and sediment control plan.

Pollution Control

41. The developer is to maintain all adjoining public roads to the site in a clean and tidy state, free of excavated "spoil" material.
42. The recommendations included in Green and Golden Bell Frog Management Plan prepared by Ambrose Ecological Services (dated 18.09.13) are to be implemented before, during and after construction.
43. The *Hygiene protocol for the control of disease in frogs*, prepared by the Department of Environment & Climate Change NSW is to be followed during construction.

E. PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

The following conditions are to be complied with or addressed prior to issue of either an Interim or Final Occupation Certificate by the Principal Certifying Authority:

Flooding

44. An evacuation plan shall be developed and maintained, including suitable warning systems, signage and exits, to ensure the safe evacuation of people during floods up to and including the Probable Maximum Flood.

Certificates

45. Two copies, both marked up in red, of a "Work As Executed Plan", prepared by a registered surveyor, must be submitted to and approved by Council clearly showing all aspects of the constructed Drainage and/or On-site Detention systems. The plan must include:
 - (a) Sufficient levels and dimensions to verify the constructed storage volumes
 - (b) Location and surface levels of all pits.
 - (c) Invert levels of the internal drainage line, orifice plates fitted and levels

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- within the outlet control pit.
- (d) Finished floor levels of all structures and driveways
- (e) Verification that trash screens and/or GPT's have been installed
- (f) Locations and levels of any overland flow paths
- (g) The work-as-executed plan information should be shown on a (h) stamped copy of the approved civil works drawings.

Vegetation Maintenance Period

- 46. The approved Vegetation Management Plan shall be implemented, and all works the subject of the Vegetation Management Plan carried out.
- 47. The proposed maintenance access of Stewart Ave must be completed to the satisfaction of the Council. These works are subject to a separate application for a Construction Certificate that must be approved by the PCA prior to the commencement of any Construction.
- 48. The proposed access under the M5 motorway and associated easements must be completed and registered prior to the issue of an Occupation Certificate. These works are subject to a separate application for a Construction Certificate that must be approved by the PCA prior to the commencement of any Construction.
- 49. The proposed plan of consolidation approved in DA-1941/2012 must be registered.

E. CONDITIONS RELATING TO USE

The following conditions relate to the ongoing use of the premises:

- 50. Recommendations included in the Green and Golden Bell Frog Management Plan are to be implemented.
- 51. The approved Vegetation Management Plan is to be implemented and ongoing maintenance continued for a period of not less than five years.

F. ADVISORY

- a) If you are dissatisfied with this notice of determination or the conditions contained within this notice of determination, Section 82A of the Environmental Planning and Assessment Act 1979 gives you the right to request a review of the determination within 6 months after the date on which the application is taken to have been determined.
- b) If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within 6 months after the date on which the application is taken to have been determined.
- c) In accordance with Section 95 of the Environmental Planning and Assessment Act 1979, unless otherwise stated by a condition of this consent, this consent will lapse unless the development is commenced within two (2) years of the date of this notice.

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- d) The Planning Assessment Commission has not, conducted a review of the application.
- e) These conditions are imposed to control development, having regard to 79C of the Environmental Planning and Assessment Act 1979.
- f) "DIAL BEFORE YOU DIG" DIAL 1100

Underground assets may exist in the area that is subject to your application. In the interest of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contact the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

- g) TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800 810 443.

- h) The cost of any necessary adjustments to utility mains and services shall be borne by the applicant.
- i) Care shall be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicant's agents may be liable to pay compensation to any adjoining owner if, due to construction works, damage is caused to such an adjoining property.

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Attachment 3:

PLAN 03

ITEM NO: PLAN 03
FILE NO: RZ-9/2011
SUBJECT: DRAFT AMENDMENT NO 25 TO LIVERPOOL LOCAL ENVIRONMENTAL PLAN 2008 - NEW BRIGHTON GOLF COURSE NUWARRA ROAD MOOREBANK DEVELOPMENT CONTROL PLAN AMENDMENT NO 7 AND DRAFT VOLUNTARY PLANNING AGREEMENT

RECOMMENDATION

That Council:

1. Proceed with the making of Draft Liverpool Local Environmental Plan 2008 Amendment No. 25 to:
 - a) Rezone the western portion of the New Brighton Golf Club site from RE2 Private Recreation to R1 General Residential.
 - b) Rezone a section of foreshore land 40 metres wide (including a 5 metre wide strip of land connecting the foreshore land to existing Council owned land) from RE2 Private Recreation to RE1 Public Recreation.
 - c) Reclassify part of Lt Cantello Reserve from community to operational and rezone that land from RE1 Public Recreation to RE2 Private Recreation.
 - d) Rezone a portion of land south of the M5 Motorway from RE2 Private Recreation to RE1 Public Recreation to assist in strengthening core support of that vegetation community.
 - e) Rezone a portion of land near Brickmakers Drive from RE2 Private Recreation to E2 Environmental Conservation to assist in strengthening core support of that vegetation community.
2. Writes to the Director-General of Department of Planning and Infrastructure requesting the making of Draft Liverpool Local Environmental Plan 2008 Amendment No. 25.
3. Adopts the amended draft Liverpool Development Control Plan 2008 (Amendment No 7) to introduce a chapter relating to the development of the New Brighton Golf Course lands.
4. Endorses the draft Voluntary Planning Agreement in its current form noting that it requires the developer to dedicate land, remediate the designated land, construct a shared bicycle and pedestrian paths and relocate and reconstruct an off leash dog park in Lt Cantello Reserve.

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5. Delegates to the General Manager the functions of the Council in relation to deciding whether to enter into and entering into the voluntary planning agreement in the form that is publicly exhibited or with such alterations as the General Manager thinks fit provided that the General Manager is satisfied that no significant alterations are required to the voluntary planning agreement as publicly exhibited after considering any submissions made about the voluntary planning agreement. It is noted that this delegation is within the powers that can be dedicated under Section 633 of the Local Government Act 1993.
6. Notes the reclassification and rezoning of land mentioned in resolution 1(c) does not infer sale of the land as part of this report.

COUNCIL DECISION

Motion: **Moved: Cllr Napoletano** **Seconded: Cllr Hadchiti**

That the recommendation be adopted.

On being put to the meeting the motion was declared CARRIED.

Councillors voted unanimously for the motion.

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CITY PLANNING REPORT

ORDINARY MEETING

23/07/2012

ITEM NO:	PLAN 03	FILE NO:	RZ-9/2011
SUBJECT:	DRAFT AMENDMENT NO 25 TO LIVERPOOL LOCAL ENVIRONMENTAL PLAN 2008 - NEW BRIGHTON GOLF COURSE NUWARRA ROAD MOOREBANK DEVELOPMENT CONTROL PLAN AMENDMENT NO 7 AND DRAFT VOLUNTARY PLANNING AGREEMENT		
COMMUNITY STRATEGIC PLAN REFERENCE:	DECISION MAKING PROCESSES ARE TRANSPARENT AND THE COMMUNITY HAS OPPORTUNITIES TO BE INVOLVED		

EXECUTIVE SUMMARY:

At its meeting of 28 September 2011, Council considered a report proposing to amend the Liverpool Local Environmental Plan 2008 (Amendment No. 25). The main purpose of the draft planning proposal is to rezone 16.75 hectares of the New Brighton Golf Course (NBGC) land at Moorebank from RE2 Private Recreation to R1 General Residential. The proposed residential development is proposed be guided by a site specific chapter in the Liverpool Development Control Plan (DCP) 2008.

The draft LEP and DCP seek to facilitate the development of 310 dwellings on New Brighton Golf Course land. The proposed development will reduce the number of golf holes on land north of the M5 Motorway. The applicant has suggested that a full 18 hole golf course could be maintained with a reconfiguration of the golf course. It is suggested that a number of the fairways could be relocated to land south of the M5 Motorway, some of which is Council owned land.

The draft LEP and draft DCP chapter was on public exhibition from 30 May 2012 to 27 June 2012. Council received four submissions regarding the planning proposal. A summary of the main issues and Council responses are outlined in this report.

The developer has offered to enter into a Voluntary Planning Agreement (VPA) to provide land dedication including foreshore land, regeneration of vegetation, construction of a shared pedestrian and cycleway and reconstruction and relocation of an off leash dog park. Exhibition of the draft Voluntary Planning Agreement commenced 18 July 2012 and concludes 15 August 2012.

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It is recommended that Council proceed with the making of Draft LLEP 2008 Amendment No. 25, adopt the Draft Liverpool Development Control Plan 2008 Amendment No 7. Further it is recommended that Council delegate the responsibility to General Manager to enter into the Voluntary Planning Agreement.

DETAILED REPORT:

Introduction

Further to Council's resolution of 28 September 2011, Council Officers have proceeded with the preparation of an LEP amendment (Amendment No. 25) seeking to rezone a portion of New Brighton Golf Course to allow residential development via an R1 General Residential zoning.

Council also prepared and exhibited a draft DCP chapter to provide site specific controls to apply to the potential future development of the site (Amendment 7).

In recognition of the need for facilities and services generated by the development, the developer has provided a draft VPA which secures provision of a number of works and land dedication within the vicinity of the development.

Each of these matters will be discussed further in this report.

Planning Proposal (Draft LLEP 2008 Amendment 25)

The Planning Proposal has been prepared to facilitate the rezoning of five parcels of land as well as the reclassification of one of those parcels (Area C). Each parcel is illustrated in Figure 1 and is described below.

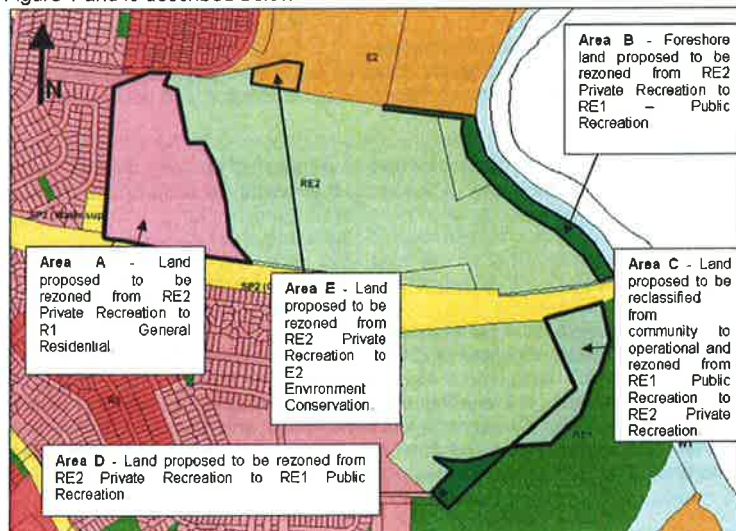


Figure 1 - Land to which this rezoning applies.

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Area A - Residential Component

The purpose of the rezoning of Area A is to facilitate a maximum of 310 residential dwellings. The resultant housing mix is likely to be a combination of attached, detached and studio dwellings. The concept master plan prepared for the residential precinct provides for housing, an area of local open space with facilities for the future residents, a landscape buffer between existing and proposed residential areas, as well as walkways and embellished park areas.

An R2 Low Density Residential zone was recommended by Council officers in the September 2011 council report, however the Department of Planning and Infrastructure preferred the land be rezoned to R1 General Residential. Further, the Department of Planning and Infrastructure recommended an amendment to Part 7 Additional Local Provisions of the LLEP 2008 to allow the development of subdividable studios through the definition of "Multi Dwelling Housing". This is further explained within the attached Planning Proposal. Both these suggested amendments are accepted and have been incorporated into the draft planning proposal.

Area B - Dedication of Foreshore land along Georges River

As part of the planning proposal it is proposed that a 40 metre wide strip along the foreshore be rezoned from RE2 Private Recreation to RE1 Public Recreation and dedicated to Council (at no cost). This is consistent with Council's objective to acquire land along the Georges River foreshore with the view to facilitate public access along its length. The VPA will secure the revegetation of the land with locally occurring vegetation species and the provision of a public shared pedestrian cycleway. This dedication includes a 5 metre wide strip of land connecting the foreshore land to adjacent Council land to enable the connection of a shared cycleway and allows continuous public access.

Area C - Rezoning of Part of Lt Cantello Reserve

Part of Council land known as Lt Cantello Reserve south of the M5 is proposed to be rezoned from RE1 Public Recreation to RE2 Private Recreation and reclassified from "Community" to "Operational".

The proposed reclassification does not infer sale or disposal of the land. Should Council choose to enter negotiations for sale of this land, that would be subject to a separate process.

The subject area currently contains an off leash dog park. The draft VPA requires the reconstruction of this facility by the developer within another part of Lt Cantello Reserve.

Area D - Rezoning of land South of M5 Motorway

The rezoning of a part of New Brighton Golf Course land from RE2 Private Recreation to RE1 Public Recreation will supplement and consolidate the existing open space and secure in Council ownership the existing endangered ecological community. Area D consists of both Cooks River Castlereagh Ironbark Forest and Swamp-oak Floodplain Forest which are both endangered listed vegetation communities that will be protected by Council ownership. The RE1 Public Recreation zone is consistent with the surrounding zone.

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Area E - Rezoning of land North of M5 Motorway (near Brickmakers Drive)

The rezoning of part of the New Brighton Golf Course land from RE2 Private Recreation to E2 Environmental Conservation will supplement and support the core vegetation community. Area E consists of an endangered ecological community known as Cooks River Castlereagh Ironbark Forest. The E2 Environment Conservation zone acknowledges the value of the vegetation and is consistent with the surrounding zones.

Consistency with State and Local Strategies

The rezoning of land for residential purposes on this infill development site is consistent with the Draft South-West Subregional Strategy as it provides for infill development which utilises existing infrastructure in an appropriate locality.

The redevelopment of the golf course land will deliver a 40 metre wide strip of land along the Georges River foreshore into public ownership and a linkage under the M5 Motorway to Lt. Cantello Reserve. The new foreshore public open space will be revegetated and will contain a public shared pedestrian cycleway. The foreshore reserve is part of an important link providing a connection along the foreshore which in time could link back to the Liverpool City Centre as identified in the Draft South West Sub-Regional Strategy.

Community benefit

The rezoning will secure public land along the Georges River which will link to existing Council owned lands. The proposed land swap will also enable the long term conservation of Area D and Area E which contains endangered ecological communities.

The proposal seeks to secure the long-term viability and survival of the New Brighton Golf Course. Clubs, such as the NBGC, provide an important community function in terms of recreational facility, a local restaurant, bar facilities, and a meeting place for entertainment purposes and celebrations.

Reclassification of Council Land (Part of Lt Cantello Reserve)

This planning proposal provides for the reclassification of part of Council land to 'operational' classification. The reclassification does not infer sale of the land; that would need to be subject to a separate process.

Gateway Determination

On 7 December 2011, Council received Gateway Determination allowing Council to progress the Planning Proposal subject to a number of conditions which included:

- The recommendation to utilise the R1 General Residential or R3 Medium Density Residential zone rather than Councils proposed R2 Low Density Residential zone.
- Council work with the Department's Regional Planning Team to develop a local provision to allow the development of multi unit dwellings.

Council has satisfied the conditions of the Department of Planning and Infrastructure's Gateway Determination and has prepared this report recommending that Council proceed with finalising the planning proposal.

Conclusions of Consultant Reports

As stated in the Council report on 28 September 2011, the rezoning was supported by a number of background reports considering traffic, flora and fauna, contamination, flooding, European and Indigenous Archaeology and bushfire assessment. The Department of Planning and Infrastructure recommended two additional reports be prepared, being an Acid Sulfate Soils Management Plan and a Floodplain Management Strategy and placed on public exhibition. These reports were prepared and all the supporting documentation was placed on public exhibition.

Traffic Impact Assessment

The Roads and Maritime Services (RMS) reviewed the initial traffic and transport assessment report and raised no formal objection. The RMS did advise however that further consideration should be given to the intersection of Nuwarra Road and Brickmakers Drive.

The proposed development has the potential to generate approximately 230 vehicles during week day peak traffic periods. This traffic would have some impact on the local road network.

The applicant has provided a traffic impact statement report that has assessed traffic conditions as a result of the proposed development for 2016 and 2026 traffic conditions. The analysis has identified that a single lane roundabout at the Brickmakers Drive/Christiansen Intersection would be expected to operate with a satisfactory level of service (by 2016).

Due to its importance in the local road network Council requested the applicant provide sensitivity analysis on the performance of the Nuwarra Road/Brickmakers Drive Intersection under 2026 traffic conditions (i.e. 10 years after occupation of the proposed development). Intersection performance analysis carried out with SIDRA Modelling has identified that right turn movements into Brickmakers Drive (from Nuwarra Road) would be expected to experience traffic delays with or without the proposed development. In addition northbound traffic at the intersection would also experience some traffic delays. It is noted however, that the existing road reservation would not permit road widening to achieve increased capacity in this location.

Council's Traffic section advised that the proposed development from a traffic perspective can be supported. Council's Traffic section also recommended some additional controls be inserted into the DCP, including:

- The modification of the roundabout at the Brickmakers Drive/Christiansen Drive intersection to a four way roundabout.
- Providing appropriate road bays for public transport facilities i.e. bus stop and bus shelters.
- It may be appropriate for a bus route through the proposed development to be discussed with the local bus operator and Liverpool Traffic Committee to ensure that residents would be within 400 metres of the bus route.

These matters have been incorporated into the draft DCP chapter.

Flora Report

The Environmentally Sensitive Lands Map accompanying Liverpool LEP 2008 identifies all the between fairway areas on the NBGC course and former Greenwood Golf Course as being environmentally sensitive lands. This mapping was based on broad National Parks and Wildlife data.

Anne Clements and Associates Pty Ltd and Ambrose Ecological Services Pty Ltd reviewed the flora and fauna constraints on the site, respectively and concluded as follows:

"The upper slopes in the western (proposed residential) section of the New Brighton Golf Course has little or no remnant vegetation between fairway vegetation generally consisting of planted trees" (p 92) According to the findings of the Flora Report the vegetation on the western portion of the existing NBGC is not significant and does not need to be retained.

As such the mapping is to be modified to remove identification of the land as significant vegetation where detailed site analysis has found there to be none.

The Flora Report also concluded that any re-design of golf holes south of the M5 Motorway should be predominantly limited to the existing and former fairways which largely contain re-established vegetation of limited conservation value. Should any conservation constrained land (i.e. any land that contains River Flat Eucalypt Forest) be affected by a future development application, an appropriate offset strategy will be implemented as a condition of the Voluntary Planning Agreement. This vegetation condition has been addressed in the draft VPA.

Fauna Report

The proposed development is unlikely to result in the loss of biodiversity due to the relatively small area to be developed, the degraded nature of habitats that presently occurs over much of the site and the unlikelihood of threatened or regionally significant species being significantly placed at risk. Any loss of fauna habitat will be offset by the creation of a riparian zone along the western bank of the Georges River (north of the M5) and through vegetation rehabilitation works to be secured through the VPA.

The Fauna Report also recommended that a Green and Golden Bell Frog Management Plan be prepared, aimed at protecting sub-populations of this species and their habitats that occur on the subject site and in adjoining areas. This has been included in the draft Development Control Plan.

Contamination Assessment

A 'Stage One' Contamination Assessment (including discussion of acid sulphate soils) found that the site does not appear to have been subject to widespread development or excavation. Historic aerial photographs indicate that the site has remained as a golf course with some dams and minor associated buildings for a prolonged period (based on photography from 1951, 1961, 1970 and 1986). There have been areas of cut and fill predominantly associated with construction of tees and greens and for draining the fairways. As such there is very limited risk of contamination within the site.

Acid Sulfate Soils

In regards to Acid Sulfate Soils, the Department of Planning an Infrastructure's Gateway Determination required the developer to prepare an Acid Sulfate Soils Management Plan.

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This document was prepared and placed on public exhibition in accordance with the Gateway Determination.

Flooding Report

The flooding and drainage investigations confirm that the area proposed to be zoned R1 General Residential is located above the one per cent flood level. Further the report confirmed that the proposed residential subdivision can utilise the existing golf course dams to retain and treat stormwater from the development prior to discharge through drainage lines within the golf course.

The Department of Planning and Infrastructure's Gateway Determination required the developer to prepare a Floodplain Management Strategy. This document was prepared and placed on public exhibition in accordance with the Gateway Determination.

European and Indigenous Heritage

An historical archaeological assessment report has been undertaken. No evidence of historical European archaeology was apparent for the proposed developable areas.

As part of consultations with the Office of Environment and Heritage the developer was required to undertake further investigations of Aboriginal Heritage which included:

- A search of AHIMS Database;
- Site inspections;
- Further mapping of disturbance and remnant topsoil;
- Review of sensitive mapping;
- Detailed of the inspections of the soil heaps; and
- Consideration the potential impact of the planting of the foreshore reserve, and the establishment of walking / cycle trail.

This approach is consistent with the reporting for the South West Growth Centres. It is noted that the Aboriginal and Historical Archaeological Assessment recommended that further detailed investigations are to be undertaken for Areas 1, 2 and 3 identified as Potential Archaeological Deposit sites as part of the future development application process.

Council has used DCP controls to secure the required further assessment of Areas 1, 2 and 3 prior to lodgement of a development application. The controls will require the Potential Archaeological Deposit sites to be further evaluated and resolved as part of the subdivision layout.

It is noted that the Office of Environment and Heritage recommended that further assessment should be undertaken prior to the rezoning. However, it is considered that Council has created and inserted appropriate controls within the draft Development Control Plan that will ensure that, if Aboriginal Artefacts are found there are controls in place to ensure the appropriate management protocols in those areas.

Bushfire Assessment

The preliminary Bushfire Constraints Report identifies that there is no requirement to provide asset protection zones between the golf course and residential development. The report also identifies access for fire fighting operations and water supply requirements.

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As part of the Department of Planning and Infrastructure's Gateway Determination, Council was required to consult with the Commissioner of the NSW Rural Fire Service. The NSW Rural Fire Service supports the rezoning in principle and advises that a detailed bush fire report will be required to demonstrate compliance with Planning for Bush Fire Protection 2006 as part of a future development application.

State Agency Consultation

In accordance with the Department of Planning and Infrastructure's Gateway Determination, Council has consulted with the following agencies:

- Office of Environment and Heritage,
- Roads and Maritime Services (formally Roads and Traffic Authority),
- Catchment Management Authority – Sydney Metro,
- Fire and Rescue NSW, and
- Bankstown City Council.

Council also consulted with the Commissioner of the NSW Rural Fire Service who has not objected to the proposal.

There are no outstanding objections to the current proposal from State or Commonwealth Authorities.

NSW Rural Fire Service

As part of the Department of Planning and Infrastructure's Gateway Determination, Council was required to consult with the Commissioner of the NSW Rural Fire Service. Council forwarded a copy of the Bushfire Assessment to the Commissioner and a letter was received which stated that the NSW Rural Fire Service supports the rezoning in principle and advises that a detailed bush fire report will be required to demonstrate compliance with Planning for Bush Fire Protection 2006 as part of a future development application.

Office of Environment and Heritage

The Office of Environment and Heritage (OEH) initially raised concerns with the Flora and Fauna information however the applicant provided updated information and figures which resolved the OEH issues. It should be noted that Council has also included a section with the draft DCP which stipulates that golf holes on the southern side of the M5 Motorway should be aligned where possible with the former Greenwood Golf Course fairways to minimise disturbance of vegetation.

OEH also recommended that Council request further Aboriginal Archaeological testing as discussed above. The findings of the Preliminary Aboriginal and Historical Archaeological Assessment (February 2012) makes a number of recommendations including that:

"Further investigation of Sensitive Areas 1, 2 and 3 should consist of geotechnical bore-holing to establish whether any of the original soil remains. Bore-holes should be placed on a grid system with spacing appropriate to the size of the area (10-20m)."

The Preliminary Aboriginal and Historical Archaeological Assessment also states:

"Requirements for further investigation and assessment to address remnant topsoil mapping and impact assessment as recommended by OEH (as well as other applicable

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matters outlined below) should be included in any Development Control Plan (DCP), Masterplan or similar document that may be developed for the study area."

As a result a section within the Draft DCP that states that residential development cannot occur within Sensitive Areas without further testing being completed and assessment of significance through the Section 90 process of the National Parks and Wildlife Act 1974.

Roads and Maritime Services (RMS)

The RMS reviewed the initial traffic and transport assessment report and raised no formal objection. The RMS did advise that further consideration should be given to the intersection of Nuwarra Road and Brickmakers Drive. The applicant provided additional detailed modelling and it has been determined that the traffic delays will be experienced with or without the development. Further it was found that the existing road reservation would not permit road widening to achieve increased capacity in this location.

It was also advised that this development requires an easement (licence) from Interlink to provide public access underneath the M5 Motorway. This requirement has been discussed with RMS and Interlink. It was advised that an appropriate arrangement needs to be formalised for the easement by the developer as part of the redevelopment of this site (not subject to this planning proposal).

Bankstown City Council

Bankstown City Council raised concerns with the potential sea level rise and the impact of flood affectation of land. It is noted that Council's Flooding Engineers have not raised an objection or concerns with the proposed western portion of the existing golf course to be rezoned for residential purposes.

Council's Floodplain Engineers stated:

"The western part of the existing NBGC proposed for residential development (RE2 to R1) is not affected by the one per cent AEP (1 in 100 year) flood. However, the lower section of the land is affected by the probable maximum flood (PMF). Council's flood control policy does not restrict residential development on lands above the one per cent AEP flood level. Therefore, in principle we do not have any objection with respect to the proposed rezoning of this land for residential development."

It is noted within the Flood and Water Sensitive Urban Design Report states:

"All habitable floor levels would be located above the Flood Planning Level associated with flooding in the Georges River. Based on Part 1, Section 9 of the Liverpool City Council Development Control Plan 2008 it is proposed that Flood Planning Levels be adopted that locate habitable floor levels of buildings with a freeboard of 500 mm above 100-year ARI flood levels. For the site existing ground levels are such that filling will not be required to locate floor levels at or above the flood planning level."

As the area to be rezoned to R1 General Residential is not flood liable concerns relating to inundation are not valid.

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Flora Concerns

Bankstown City Council raised comments relating to the management of vegetation in the golf course (see below). Council will be requiring the developer to prepare a Vegetation Management Plan as part of a Voluntary Planning Agreement which will ensure that if any offsetting is required it will be managed in accordance to best practise. As stated in the recommendation of the Flora Assessment any future re-design of the golf course should utilise the existing and former fairways on the two golf courses, as far as practicable. As a result of this recommendation and OEH advice Council has inserted controls within the draft DCP which states:

- Any proposed golf course layout should as far as practical limit the amount of vegetation lost through the re-design of golf holes on the southern side of the M5 Motorway.
- Any proposed golf holes on land south of the M5 should as far as practical utilise the previous fairways from the former Greenwood Golf Course.
- Any reconfiguration of the golf course shall be referred to the Office of Environment and Heritage.

Bankstown Council was notified when the planning proposal was placed on public exhibition. There was no further comment received.

Development Control Plan (Amendment No 7)

To assist in providing appropriate objectives and controls for the residential development, the Liverpool Development Control Plan 2008 is proposed to be amended by inserting a site specific chapter that relates to the proposed residential precinct. The draft DCP prepared is generally consistent with the most recent DCP chapters adopted by Council for new residential in release areas.

The proposed residential precinct will have an interface with existing residential properties along Clyde Avenue, Moorebank. The draft DCP seeks to introduce open space along this interface which along with certain development controls seeks to alleviate potential impacts, visual or otherwise, upon these properties. The landscape strip proposed on the western edge of the proposed development includes a shared pedestrian and cycleway linkage (see Figure 2).

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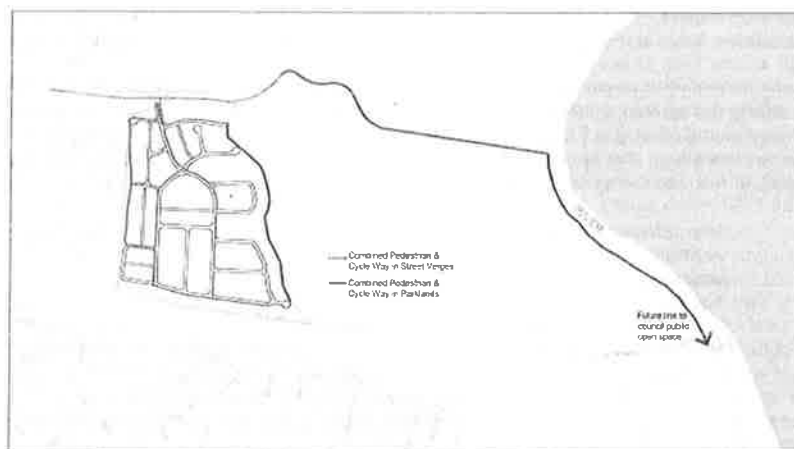


Figure 2 - Shared pedestrian and cycle paths plan from the draft Liverpool DCP.

Public exhibition period

The Planning Proposal and Draft DCP were placed on public exhibition from 30 May 2012 to 27 June 2012.

Council received four submissions regarding the Planning Proposal and the Draft Development Control Plan. The issues raised and Council comments are outlined below.

There were no written objections received relating to the reclassification of part of Lt Cantello Reserve from community to operational.

Comments on submissions

Issue: Retain rear access to my property

Council response: The proposed development control plan and proposed street layout provides for this land owner to retain rear access to their property.

Issue: Reduction in property values if housing was permitted adjoining our property.

Council response: The impact to property values is not a consideration under the planning framework, however it is noted that a landscape strip is provided along the western edge of the proposed development site which seeks to protect amenity and retain a vegetation buffer between existing and new development.

Issue: Overshadowing of our pool

Council response: The draft Development Control Plan provides for a 20 metre wide landscape strip along the western edge of the New Brighton Golf Course lands adjoining the existing residential lands. Therefore there will be very little if any solar impact on these properties due to potential residential development on neighbouring land. The DCP requires solar impact to be assessed as part of all development applications.

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Issue: We were told by Gabrielle Kibble Administrator that when Georges Fair and Brickmakers Drive was approved there would be no further housing development in our area.

Council response: Council cannot make a comment on what may or may not have been said during the rezoning of the Georges Fair Development. It is noted that rezoning of land for residential purposes on this infill development site is consistent with the Draft South-West Sub-Regional Strategy as it provides for infill development which utilises existing infrastructure in an appropriate locality.

Issue: I believe Liverpool Council has a tree policy - for each tree removed, three Eucalyptuses would be replaced.

Council response: Council has a Vegetation Offsetting Strategy and a Tree Management Policy that applies to bushland. The vegetation in between fairways is not regarded as bushland. It should be noted that the recommendations of this report does not give authorisation for vegetation to be removed. Any tree removal will need to be assessed as part of a future development application. It is noted that as the proposed section within the DCP be amended to includes controls for the retention of existing vegetation within the proposed community park and the land within the landscape strip be further vegetated with natural occurring species.

Issue: If we are to lose our view and privacy we should be entitled to at least have access to walking and bike track to the river and some form of green belt between the existing and proposed residential development

Council response: The draft Development Control Plan provides for a landscape strip between the existing residential area and shared pedestrian and cycleway links to the Georges River. These are to be provided by the developer at no cost to Council.

Issue: The physical features of the area should be retained and enhanced

Council response: The vegetation and habitat areas have been assessed and areas of conservation value are protected through zoning and proposed Council ownership. The proposal seeks to provide public access to the Georges River and connections along the foreshore to other environmental and recreation areas. Where practical the DCP required the retention of vegetation and the embellishment with landscaping.

Issue: The identified open space, parklands and pedestrian and cycleway in parklands needs to preserved and enhanced

Council response: Council has included an additional clause within the DCP to retain where possible existing vegetation on the proposed community park and the retention and revegetation of the landscape strip as appropriate.

Issue: Section 2.4 states its objective to retain and integrate existing landscape elements, where practical, such as vegetation and topographic features, in the design of new development. Existing trees, tree stands and vegetation within open space areas retained where possible.

Council response: The design of the proposed subdivision will need to comply with the DCP and form part of a future development application. The DCP also provides for a proposed pedestrian and cycle paths as shown in figure 2 of this report, this will ensure that there are linkages to the proposed shared pedestrian cycleway to connect to the Georges River and environmental and recreation areas beyond.

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Issue: Lot sizes and dimensions should take into account the slope of the land to minimise cut and fill and facilitate the retention of existing trees.

Council response: The size of lots and lot dimensions will not be known until the detailed planning for the subdivision is prepared through a development application. Lot size is controlled through the LEP and the maximum cut and fill is controlled by the DCP provisions.

Issue: Most importantly open space, existing vegetation and amenity be provided to the wider community, which includes the mandatory inclusion of the combined pedestrian and cycleway to the parklands described in figure 6.

Council response: As part of the draft Voluntary Planning Agreement the developer must provide a shared pedestrian cycleway in accordance with Figure 2 of this report. As mentioned above, the detail of what trees will be retained will not be known until Council receives a future development application.

Changes to the DCP resulting from the public exhibition

As part of the public exhibition of the DCP, Council received four submissions addressing a number of areas of the DCP which have been addressed above. To address these concerns Council has proposed a number of minor changes to the draft DCP which should address the residents' concerns. A marked up version of the DCP is attached.

Public Hearing

In accordance with Section 29 of the Local Government Act 1993 which relates to the reclassification of land, a public hearing was held at Liverpool City Library on Wednesday, 13 June 2012. The public hearing was attended by ten residents.

As required by the Local Government Act 1993, an independent person facilitated the meeting and an independent report was prepared. The report was made available to the public for viewing once received. The independent report was also sent by mail to the attendees of the public hearing.

There were no objections received to the reclassification of part of Lt. Cantello Reserve from community to operational.

A copy of the Public Hearing Report is attached.

Comments from the Public Hearing

Issue: The letter inviting residents to the public hearing made no reference of the meeting being solely focused on 'reclassification'

Council response: Liverpool Local Environmental Plan 2008 (draft Amendment No 25) proposes to rezone a number of properties and reclassify part of Lt Cantello Reserve. A public hearing is required under the Local Government Act when reclassifying community land to operational. The Council officer at the public hearing provided an overview of the Planning proposal and reclassification.

Issue: Request for information about the relationship between reclassification and rezoning.

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Council response: The Council officer at the Public hearing provided an overview of the difference between a rezoning under the Environmental Planning and Assessment Act 1979 and a reclassification under the Local Government Act 1993.

Issue: Concern expressed about the ecological value loss as a result of this land reclassification.

The Council officer at the public hearing outlined the ecological benefits of the land swap that could be achieved through the rezoning process including the protection of zone provisions and the potential for threatened species to be embellished and come into Council ownership.

Issue: Request for information on the timing of the finalisation of the modified golf course.

Council response: Council cannot provide a time frame for when development could start or finish. The recommendations in this report do not approve any development. A development application would still need to be submitted, publicly exhibited and assessed by Council.

Issue: Concern New Brighton Golf Course may deviate from the golf course plans outlined in Council's Development Control Plan.

Council response: The draft DCP which is proposed to be endorsed as part of this Council report provides guidelines on the proposed redevelopment of the New Brighton Golf Course site. As stated above, a development application would still need to be submitted, publicly exhibited and assessed by Council against the provisions. Any deviation from the DCP would need to be discussed as part of the development application process.

Voluntary Planning Agreement (VPA)

Council at its meeting 28 September 2011 resolved to enter into a VPA to ensure provision by the developer of the works and facilities, the need for which is generated by the development.

The proposed development generates the need for additional public works and facilities which is to be facilitated through a VPA. The draft VPA facilitates the collection of monetary contributions, shared pedestrian cycleways, land dedication and the rehabilitation of existing vegetation which provide environmental, social and recreational benefits to the community.

Given the timing of the upcoming council elections, and that the schedule of works and contributions secured through the VPA are considered to meet the needs of the incoming population and deliver positive public recreation and environmental outcomes, it is proposed to delegate to the General Manager the functions of the Council in relation to deciding whether to enter into and entering into the voluntary planning agreement. In exercising this delegation the General Manager must consider any public submissions and determine to enter into the VPA in the form that is publicly exhibited or with such alterations as the General Manager thinks fit.

A copy of the Draft VPA is attached (under separate cover) and is currently on public exhibition.

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Monetary Compensation

It is noted that if Council endorses the recommendations of this report, Council would need to enter into a Deed of Agreement for the possible future land swap of part of Lt. Cantello Reserve with the New Brighton Golf Course as part of a separate process.

Conclusion

In order to facilitate the development of western portion of the New Brighton Golf Course it is recommended that Council proceed with amending the LLEP as outlined in this report and adopt the draft DCP (as amended).

It is also recommended that Council resolve to delegate to the General Manager the functions of the Council in relation to deciding whether to enter into and entering into the voluntary planning agreement in the form that is publicly exhibited or with minor alterations.

FINANCIAL IMPLICATIONS:

The proposal to enter into a VPA with the landowner will secure the provision of infrastructure items, land swaps and monetary contributions to support the proposed residential development, to facilitate a reconfigured golf course and secure Georges River foreshore land in Council ownership. The VPA secures a total contribution of \$3,943,700. The provision of these items is in line with community need generated by the development.

The VPA provides for the provision of assets that will need to be maintained by Council routinely. The maintenance burden is minimised by requiring the developer to undertake maintenance in accordance with the Vegetation Management Plan.

RECOMMENDATION:

That Council

1. Proceed with the making of Draft Liverpool Local Environmental Plan 2008 Amendment No. 25 to:
 - a. Rezone the western portion of the New Brighton Golf Club site from RE2 Private Recreation to R1 General Residential.
 - b. Rezone a section of foreshore land 40 metres wide (including a 5 metre wide strip of land connecting the foreshore land to existing Council owned land) from RE2 Private Recreation to RE1 Public Recreation.
 - c. Reclassify part of Lt Cantello Reserve from community to operational and rezone that land from RE1 Public Recreation to RE2 Private Recreation.
 - d. Rezone a portion of land south of the M5 Motorway from RE2 Private Recreation to RE1 Public Recreation to assist in strengthening core support of that vegetation community.

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- e. Rezone a portion of land near Brickmakers Drive from RE2 Private Recreation to E2 Environmental Conservation to assist in strengthening core support of that vegetation community.
2. Writes to the Director-General of Department of Planning and Infrastructure requesting the making of Draft Liverpool Local Environmental Plan 2008 Amendment No. 25.
3. Adopts the amended draft Liverpool Development Control Plan 2008 (Amendment No 7) to introduce a chapter relating to the development of the New Brighton Golf Course lands.
4. Endorses the draft Voluntary Planning Agreement in its current form noting that it requires the developer to dedicate land, remediate the designated land, construct a shared bicycle and pedestrian paths and relocate and reconstruct an off leash dog park in Lt Cantello Reserve.
5. Delegates to the General Manager the functions of the Council in relation to deciding whether to enter into and entering into the voluntary planning agreement in the form that is publicly exhibited or with such alterations as the General Manager thinks fit provided that the General Manger is satisfied that no significant alterations are required to the voluntary planning agreement as publicly exhibited after considering any submissions made about the voluntary planning agreement. It is noted that this delegation is within the powers that can be dedicated under Section 633 of the Local Government Act 1993.
6. Notes the reclassification and rezoning of land mentioned in resolution 1(c) does not infer sale of the land as part of this report.

SIGNED BY:

Milan Marecic
Director
City Planning

Attachments:

1. List of Board of Directors
2. Planning Proposal (under separate cover)
3. Draft Development Control Plan - Marked Up version (under separate cover)
4. Public Hearing Report
5. Draft Voluntary Planning Agreement (under separate cover)

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Attachment 1

List of Board of Directors

New Brighton Golf Course Limited
180 Nuwarra Road Moorebank NSW 2170
ABN

Ray Wood, Chipping Norton NSW
Matthew Bramston Wattle Grove NSW
Gary Stubbs, Wattle Grove NSW
Hugh Gilchrist, Moorebank NSW
Robert Hidson, Moorebank NSW
Desmond Young, Prestons NSW
Ralph Trenear, Chipping Norton NSW
Mark Williamson, Voyager Point NSW
Peter Stevens, Moorebank NSW

Mirvac Homes (NSW) Pty Limited
60 Margaret Street Sydney NSW 2000

John Mulcahy: Cremorne, NSW
Elana Rubin: Melbourne, VIC
James MacKenzie: Docklands, VIC
John Peters: Teneriffe, QLD
James Millar: Gordon, NSW
Marina Darling: Toorak, VIC
Peter Hawkins: South Yarra, VIC
Nicholas Collishaw: Balmain, NSW

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Attachment 4

Public Hearing Report

straight Talk



Liverpool Local Environment Plan 2008 Amendment No.25 Public Hearing

New Brighton Golf Course Nuwarra Road, Moorebank:
Liverpool City Council

DATE

10 June 2012

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PREPARED BY Dawn Woodbank and James Page. Contact dawn@straight-talk.com.au (08) 77 020 008
DATE 15 June 2013
JOB NUMBER 1000396
DOCUMENT NAME Liverpool Local Environment Plan 2008 Amendment NO. 18, New Brighton Golf Course/Melasma Road, Moreland. Public Hearing Liverpool City Council
VERSION v 1.00 This document is printed on paper produced using sustainable forestry practices and chlorine free pulp.

straight Talk

Background

Liverpool City Council is seeking to reclassify 5.4 hectares of land at the Lieutenant Castello Reserve to the south of the M5 corridor near New Brighton Golf Course (NBGC), Nuwara Road, Moorebank. The reclassification forms part of the planning proposal known as Local Environment Plan 2008 (LEP) Amendment No.25 (the Amendment).

The land is currently owned by Council but a reclassification from 'community' to 'operational' land will allow for a land swap with NBGC to allow for the reconfiguration of the golf course.

The public hearing

A public hearing on the Amendment was held on Wednesday 13 June 2012 from 6pm until 6.45pm, at Liverpool Library, in accordance with clause 29 of the Local Government Act 1993. Straight Talk independently chaired the hearing in accordance with requirements of the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979.

The public hearing was attended by ten community members, of which five made verbal submissions during the hearing. No written submissions were received at the hearing.

The meeting was opened by Dave Woolbank from Straight Talk. For the record, Mr Woolbank has never been an employee or held the position of Councillor at Liverpool City Council.

Dave Woolbank explained the public hearing was for the reclassification alone not the rezoning of land.

Murray Wilson, Senior Strategic Planner from Liverpool City Council gave an overview of the application to reclassify the land. Part of this overview covered the rezoning proposal.

It was noted Straight Talk would independently prepare a report to document the issues raised at the public hearing and the report would be provided to Council to inform their decision about the Amendment. It was noted the report would be publically available and sent to all attendees, by Council.

Site

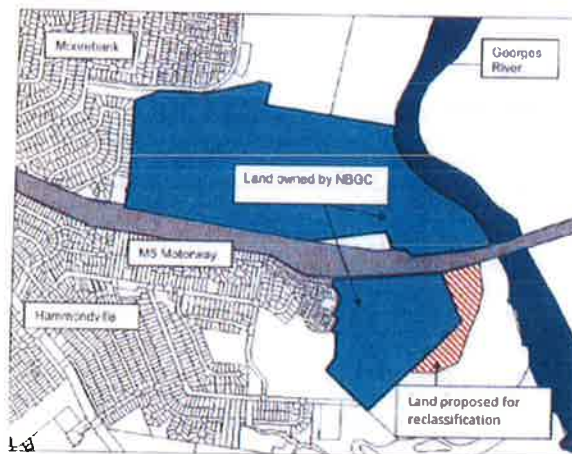
The reclassification under consideration covers the land south of the M5 Motorway and east of NBGC's existing land holdings (see diagram on page 4).

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[REDACTED]
straight talk



Legislative context

Public Land is any land vested in, or under the control of Council. The subject site is currently classified as 'community land' and, as such, the 'land swap' could only occur if the land is reclassified as 'operational' as stipulated within the Local Government Act 1993.

A Public Hearing must be held in relation to the reclassification of land from community to operational land.

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straight talk

2 Site considerations

Verbal submissions received in response to the proposed Amendment follow.

Reason for reclassification

The land is currently classified as 'community' under the Local Government Act and is zoned for RE1 Public Recreation under the Liverpool Local Environment Plan 2008.

The site (part of Lt Cantello Reserve) consists of 5.4 hectares of constrained vegetation comprising of three endangered ecological communities:

- Swampy-oak Floodplain Forest,
- River-flat Eucalypt Forest on Coastal Floodplains and
- Cooks River Castlereagh Ironbark Forest

To enable the potential swap of council owned land, the subject site is required to be reclassified to operational.

Verbal submission

Five people gave verbal submissions during the public hearing. The majority of submissions asked for greater clarity about the purpose of the meeting and the process for reclassification. No participants said they opposed the reclassification.

Key issues raised are summarised below:

- That the letter inviting residents to the public hearing made no reference of the meeting being solely focused on 'reclassification'
- Request for information about the relationship between reclassification and rezoning
- Concern expressed about the ecological value loss as a result of this land reclassification
- Request for information on the timing of the finalisation of the modified golf course
- Concern NBGC may deviate from the golf course plans outlined in Council's Development Control Plan.

Some community members requested they be given the opportunity to discuss the rezoning of the land from RE1 Public Recreation to RE2 Private Recreation. In good faith, and given there were no further verbal submissions relating to the reclassification of land, Dave Woolbank closed the reclassification session and opened discussions addressing the topic of land rezoning.

Comments included:

- Concern expressed about further rezoning to R2 Low Density Residential once the land is operational at RE2 Private Recreation
- Concerns that NBGC may not undertake adequate community consultation on land rezoning

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straight talk

- Concerns about the rezoning of other areas of land associated with the NBGC Development Application. Particular fear raised about traffic increase associated with new development and changes in road layouts without sufficient consultation.

Participants were encouraged to raise the above rezoning issues with Council through the existing communication channels outlined in the consultation letter. Council was asked to follow-up on the aforementioned rezoning issues with participants.

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straight talk.

3 Conclusion and recommendations

No objections were made to the reclassification of land; it can therefore be assumed participants attending this public hearing supported the land reclassification. Some concerns were expressed about the ecological loss in land value and concerned that once this land parcel was reclassified to 'operational', it will in turn, be easier for this land to be rezoned as R2 Low Residential in the future.

In respect of the subject land and the proposed adoption of the Local Environment Plan 2008 Amendment No.25, to reclassify the land at Lieutenant Cantello Reserve from 'community' to 'operational' land, Dave Woolbank, as the Independent chair of the hearing, is of the view that the adoption of Local Environment Plan 2008 Amendment No.25 is appropriate having regard to the circumstances of the site.

It is recommended that:

- Council adopt Local Environment Plan 2008 Amendment No.25
- Council ensure thorough community consultation is undertaken to inform the decision making around the rezoning of other areas of land associated with the NBGC Development Application.

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Attachment 4:

Deed of Variation

Voluntary Planning Agreement – New Brighton Golf Course

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

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

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

MARSDENS LAW GROUP

Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560

Tel: 02 4626 5077
Fax: 02 4626 4826
DX: 5107 Campbelltown
Ref: 65 35 7894



Marsdens_2829870_1

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Deed of Variation

Deed of Variation

Voluntary Planning Agreement – New Brighton Golf Course

Parties

Council	Name	Liverpool City Council
	Address	33 Moore Street, Liverpool NSW 2170
	ABN	64 181 182 471
	Telephone	(02) 9821 9222
	Facsimile	(02) 9821 9333
	Email	gm@liverpool.nsw.gov.au
	Representative Contact	Farooq Portelli
Developer	Name	Mirvac Homes (NSW) Pty Limited
	Address	60 Margaret Street SYDNEY NSW 2000
	ABN	22 006 922 998
	Telephone	(02) 9080 8050
	Facsimile	(02) 9080 8187
	Email	Nino_Babani@mirvac.com
	Representative Contact	Nino Babani
Landowner	Name	New Brighton Golf Club Limited
	Address	180 Nuwarra Road MOOREBANK NSW 2170
	ABN	19 000 032 137
	Telephone	(02) 9602 8072
	Facsimile	(02) 9602 8393
	Email	andrew@newbrightongolf.com.au
	Representative/Contact	Andrew Terry

Background

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

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Deed of Variation

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

Operative Provisions

1 Definitions and interpretation

1.1 Defined terms

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

1.2 Interpretation

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

2 Amendment

2.1 Relation with VPA

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

2.2 Tracked changes to VPA

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

3 Affirmation

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

4 Costs

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

5 Administrative Provisions

5.1 Notices

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

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Deed of Variation

- (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
- (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this deed or another address of which that person may from time to time give notice to each other person.

5.2 Entire agreement

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

5.3 Waiver

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

5.4 Cooperation

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

5.5 Counterparts

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

5.6 Amendment

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

5.7 Unenforceability

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

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Deed of Variation

5.8 Power of Attorney

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

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

5.9 Governing law

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

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

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Deed of Variation

**Annexure 1:
Tracked VPA**

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Deed of Variation

Execution page

Executed as a deed

Dated:

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

Witness (Signature)

Attorney (Signature)

Name of Witness (Print Name)

Name of Attorney (Print Name)

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

Director/Secretary (Signature)

GARY WOOD

Name of Director/Secretary (Print Name)

Director (Signature)

RAYMOND CRAIG SPRIGGS

Name of Director (Print Name)

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

Director/Secretary (Signature)

DRS Kaula

Name of Director/Secretary (Print Name)

Director (Signature)

M. Bramston

Name of Director (Print Name)



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SYDNEY WEST JOINT REGIONAL PLANNING PANEL

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Planning Agreement
New Brighton Golf Course

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

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

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

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Planning Agreement

New Brighton Golf Club

Parties

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

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

Background

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

Operative provisions

1 Definitions and interpretation

1.1 Defined terms

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

1.2 Interpretation

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

2 Application and operation of deed

2.1 Application

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

2.2 Operation

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

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

3 Application of s94 & s94A

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

4 Dedication of land

4.1 The Georges River Foreshore Land

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

4.2 Terms of dedication

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

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

4.3 Compulsory acquisition of the Georges River Foreshore Land

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

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5 Monetary Contributions

5.1 Contribution for Torrens Lots

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

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

where:

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

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

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

5.2 Contribution for Strata Lots

(1) The parties acknowledge and agree that:

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

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

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

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

6 Indexation of amounts in this deed

6.1 Indexation

The Security Amount and each Monetary Contribution will be indexed in accordance with the following formula:

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

where:

A = the indexed amount;

B = the relevant amount as set out in this deed;

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

D = the Index current as at March 2012.

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

6.2 Timing of indexation

For the purpose of clause 6.1:

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

7 Application of Development Contributions by the Council

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

8 Provision of Works

8.1 Obligations of the Developer

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

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

8.2 Delay In Completion of an Item of Work

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

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

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

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(or such other time as Council agrees).

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

8.3 Contribution Values

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

8.4 Standard of Construction of Works

The Developer must construct and complete each Item of Work:

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

8.5 Acceptance of Risk

Council accepts ownership, possession and control of:

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

9 Completion of Works

9.1 Completion Notice

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

9.2 Council must inspect

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

9.3 Notice by Council

Within the earlier of:

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

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

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

9.4 Deemed Completion

If the Council does not provide the Developer with notice in accordance with **clause 9.3**, the Item of Work set out in the Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.

9.5 Effect of Council notice

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

10 Defects liability

10.1 Defects Notice

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

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

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- (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.
- (3) If the work required to be undertaken by the Developer to rectify any Defect is required to be carried out on the Georges River Foreshore Land after that land is transferred or dedicated to Council, Council grants a licence to the Developer on the terms of the Access Licence to enter the Georges River Foreshore Land to carry out that work.

10.3 Right of Council to Step-In

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

10.4 Consequence of Step-In

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

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

10.5 Costs of Council

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

11 Developer warranties and indemnities

11.1 Warranty

The Developer warrants to Council that:

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

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

11.2 Indemnity

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

12 Contamination

12.1 Definitions

For the purpose of this clause 12:

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

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

Contaminated means subject to Contamination.

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

12.2 Warranties and Indemnities

The Developer:

- (1) warrants that as far as it is aware, and other than as disclosed to the Council, the Georges River Foreshore Land is not Contaminated; and
- (2) indemnifies and must keep indemnified the Council against all liability for and associated with all Contamination present in, on and under the Georges River Foreshore Land before the date of this deed including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of the Department of Environment and Conservation and any other relevant Authority.

12.3 Remediation

- (1) If the Council becomes aware or reasonably suspects that any part of the Georges River Foreshore Land was Contaminated before the date of this deed, the Council may as soon as practicable notify the Developer in writing to that effect.
- (2) As soon as practicable after receipt of the notice pursuant to paragraph (1) the Developer will at its cost (with the assistance of qualified experts) carry out all reasonable investigations (including investigations which the Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the Contamination in, on, under the surface of, and leaving from the relevant part of

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

- (3) As soon as practicable after receipt by the Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Georges River Foreshore Land might be dealt with so that it is no longer Contaminated.
- (4) Following the discussions pursuant to **paragraph (3)** the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as the Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Georges River Foreshore Land is no longer Contaminated.

13 Determination of this deed

13.1 Satisfaction of obligations

- (1) This Planning Agreement will determine upon the Developer satisfying all of the obligations imposed on it in full (including any obligations under **clause 10**).
- (2) For the purpose of clarity:
 - (a) the Developer will not have discharged all of its obligations under this deed by virtue of the payment of Monetary Contributions on Multi Dwelling Lots; and
 - (b) the Developer only have discharged all of its obligations under this deed when it has paid all Monetary Contributions on Strata Lots created on the subdivision of Multi Dwelling Lots.

13.2 Refusal of Development Consent

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

14 Registration of this deed

14.1 Obligation to Register

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

14.2 Discharge from the Land

Council will:

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

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

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

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

15 Assignment

15.1 Prohibition

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

15.2 Assignment of Land

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

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

16 Provision of Security

16.1 Delivery to Council of Bond or Bank Guarantee

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

16.2 Council may call on Bond or Bank Guarantee

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

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16.3 Top up of Bond or Bank Guarantee

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

16.4 Replacement of Bond or Bank Guarantee

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

16.5 Return of Bond or Bank Guarantee for Defects Liability Amount

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

17 Force majeure

17.1 Definition

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

17.2 Consequences of Force Majeure Event

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

17.3 Inability to complete Works

- (1) The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure Event or ameliorate its effects as quickly as practicable.
- (2) If the Developer is unable to Complete any Item of Work due to a Force Majeure Event, the Developer must pay to Council the Security Amount with respect to that Item of Work and the amount payable to Council may be apportioned, if necessary, in such manner as may be fair and reasonable.

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

17.4 Exclusion of operation

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

17.5 Dispute

If the parties are unable to agree on the existence of an event of Force Majeure Event or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure Event, that dispute must be referred for determination under **clause 19**.

18 Review and amendment

18.1 Review

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

18.2 Amendment

If the parties agree to amend this deed as a result of a review conducted under this **clause 18** then any such amendment must be made:

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

19 Dispute resolution

19.1 Notice of dispute

If a dispute or lack of certainty between the parties arises in connection with this deed or its subject matter (a **dispute**), then either party (the **First Party**) must give to the other (the **Second Party**) a notice of dispute in writing adequately identifying and providing details of the dispute and designating as its representative a person to negotiate the dispute. The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the dispute (the representatives designated by the Parties being together, the **Representatives**).

19.2 Conduct pending resolution

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

19.3 Further steps required before proceedings

Subject to **clauses 19.14 and 19.15** and except as otherwise expressly provided in this deed, any dispute between the parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation, mediation under **clause**

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19.5 or determination by an expert under clause 19.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days.

19.4 Disputes for mediation or expert determination

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

19.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 19.4 to refer the dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by LEADR.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 19.6.

19.6 Choice of expert

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

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19.7 Directions to expert

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

19.8 Expert may commission reports

- (1) Subject to **paragraph (2)**:
 - (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
 - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with **clause 19.6(5)** of this deed.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

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19.9 Expert may convene meetings

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

19.10 Other courses of action

If:

- (1) The parties cannot agree in accordance with **clause 19.4** to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in **clause 19.5** has not resulted in settlement of the dispute and has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation;

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

19.11 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agrees as a condition of his or her appointment:
 - (a) subject to **paragraph (b)**, 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

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information, documents or facts would be discoverable in judicial or arbitral proceedings.

19.12 Final determination of expert

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

19.13 Costs

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

19.14 Remedies available under the Act

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

19.15 Urgent relief

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

20 Position of Council

20.1 Consent authority

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

20.2 Agreement does not fetter discretion

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

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

20.3 Severance of provisions

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

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20.4 No obligations

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

21 Confidentiality

21.1 Agreement not Confidential

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

21.2 Other Confidential Information

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

22 GST

22.1 Defined GST Terms

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

22.2 GST to be Added to Amounts Payable

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

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otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this deed are exclusive of GST.

22.3 GST Obligations to Survive Termination

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

23 Miscellaneous

23.1 Obligation to act in good faith

The parties must at all times:

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

23.2 Legal costs

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

24 Administrative provisions

24.1 Notices

- (1) Any notice, consent or other communication under this deed must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address;
 - (c) transmitted by facsimile to that person's address; or
 - (d) emailed to the person's email address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting;

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

24.2 Entire agreement

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

24.3 Waiver

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

24.4 Cooperation

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

24.5 Counterparts

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

24.6 Amendment

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

24.7 Unenforceability

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

24.8 Power of Attorney

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

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

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24.9 Governing law

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

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

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Schedule 1

Part 1 – Commercial details

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

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Part 2 - Requirements Under Section 93F of the Act

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

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Schedule 2 Defined Terms And Interpretation

Part 1 - Definitions

Access Licence	means the terms and conditions set out in Schedule 6 .
Act	means the <i>Environmental Planning & Assessment Act 1979</i> (NSW).
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: (1) federal, state or local government; (2) department of any federal, state or local government; (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
Bond or Bank Guarantee	means an irrevocable and unconditional undertaking by a financial institution approved by the Council, to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council.
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 an Item of Work means that particular item has been completed to the standard required under this deed to the satisfaction of Council, and Completed and Completion have a commensurate meaning.
Completion Notice	means a notice setting out an Item of Work that the Developer believes is complete and which is: (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: (1) is by its nature confidential; (2) is designated, or marked, or stipulated by either party as

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

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

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Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular plural	includes the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this deed to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of clauses) are for convenience only and do not affect the interpretation of this deed.
deed	a reference to any agreement, deed or instrument includes the same

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	as varied, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other and neuter gender.

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Schedule 3
Description of the Works, Values and Timing

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

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Item of Work	Description of Work	Security Amount	Defects Liability Amount	Contribution Value	Timing of Work
	(b) Riparian Planting within the Public Recreation Land along the foreshore (in accordance with an approved Vegetation Management Plan) and adjacent to cycleway links and golf course land. This includes the allowance for potential vegetation offsetting*.	\$727,710	\$36,385	\$727,710	Prior to the release of a Subdivision Certificate for a plan that when registered would create the 201 st Residential Lot
	(c) Construction of a perimeter fence around the basin located on the southern boundary of Lot 2210 DP1050818 (adjacent to Area 5 as shown in the Plan attached as Annexure 3.3), the design of which must be approved by Council in writing. **	\$25,000	\$1,000	\$25,000	The later of the Golf Course (south of M5) being open to the public, or a Subdivision Certificate being issued for a plan that when registered will create the 201 st Residential Lot
	(d) Landscaping and recreational facilities provided on Lot 1 within the Community Scheme established as part of the Development comprising community swimming pool, mixed use court, cabana and meeting place, seating and BBQs.	\$750,000	\$37,500	\$0.00	Prior to the release of a Subdivision Certificate for a plan that when registered would create the first Residential Lot fronting the proposed work
	(e) Reconstruction of Cantello Reserve Dog Park within Cantello Reserve (refer to 'Relocation of Dog Park Plan' in Annexure 3.3).	\$60,000	\$3,000	\$60,000	The later of the Golf Course (south of M5) being open to the public, or a Subdivision Certificate being issued for a plan that when registered will create the 201 st Residential Lot
	(f) Construction of 8 metre wide access and easement to enable the public to traverse under the M5 Motorway as shown in Annexure 3.3. The design must be approved by Council in writing.	\$55,000	\$2,750	\$55,000	The later of the Golf Course (south of M5) being open to the public, or a Subdivision Certificate being issued for a plan that when registered will create the 201 st Residential Lot
3. Public access to Link Georges River Foreshore and Cantello Reserve.					

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

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

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

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

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Schedule 4 Georges River Foreshore Land

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

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Schedule 5
Calculation of Monetary Contributions

Item No.	Public Purpose	Timing of Payment	Amount per lot (\$)					Total Amount
			Large lot	Small lot	3+ bed	2 bed	1 bed	
1.	Community Facilities	Prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered would create a Residential Lot.	484	464	464	345	180	\$4840 \$125,280 \$9230 \$3450
2.	Recreation -William Centre Extensions -District -Local (nil offset by land and works proposed in schedule 3)	Prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered would create a Residential Lot.	965	935	935	693	362	\$9650 \$252450 \$18700 \$6930
3.	Administration	Prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered	52	50				\$520 \$13500

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

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Schedule 6 Access Licence

1 Definitions

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

2 Licence

2.1 Personal rights

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

2.2 Leasehold interest

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

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

3 Compliance with authorities

3.1 No warranty as to suitability for use

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

3.2 Compliance with the terms of consents

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

3.3 Compliance with directions from Authorities

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

3.4 Obtaining further consents

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

4 Limitation of the Licensor's liability

4.1 Insurances

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

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(c) a comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the conduct of the Purpose; and

(d) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the Purpose.

(2) The policies referred to in paragraphs (1)(a), (1)(c) and (1)(d) must note the interest of the Licensor as principal.

4.2 Inspection of insurance

(1) The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.

(2) The Licensor may carry out random audits to verify insurances held by the Licensee. the Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies whenever requested by the Licensor.

4.3 Cancellation of insurance

If any policy is cancelled either by the Licensee or the insurer the Licensee must notify the Licensor immediately.

4.4 Risk

The Licensee uses and occupies the Land at its own risk.

4.5 Indemnity

The Licensee indemnifies the Licensor against any Claim (of whatever nature) made in respect of the Licensee's use and occupation of the Land.

4.6 OH & S

For the purposes of this deed and in accordance with the *Work Health and Safety Regulation 2011* (NSW) (**WH&S Regulation**), the Licensor:

(1) will appoint as the "principal contractor" for any part of the Purpose conducted on the Land, the head civil works contractor specified by the Licensee from time to time; and

(2) will authorise the nominated head civil works contractor to exercise such authority of the Licensor as is necessary to enable the head civil works contractor to discharge the responsibilities imposed on a principal contractor under the WH&S Regulation.

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

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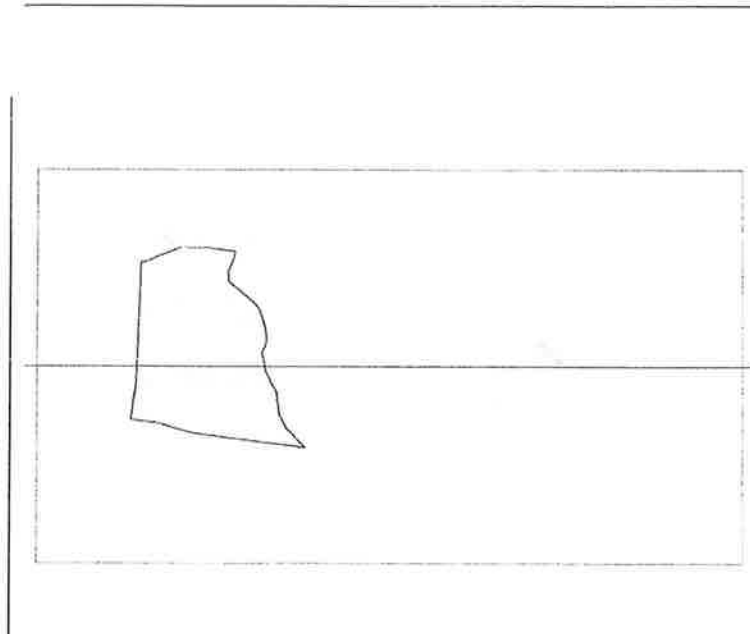
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Annexure 2
Residential Development Area

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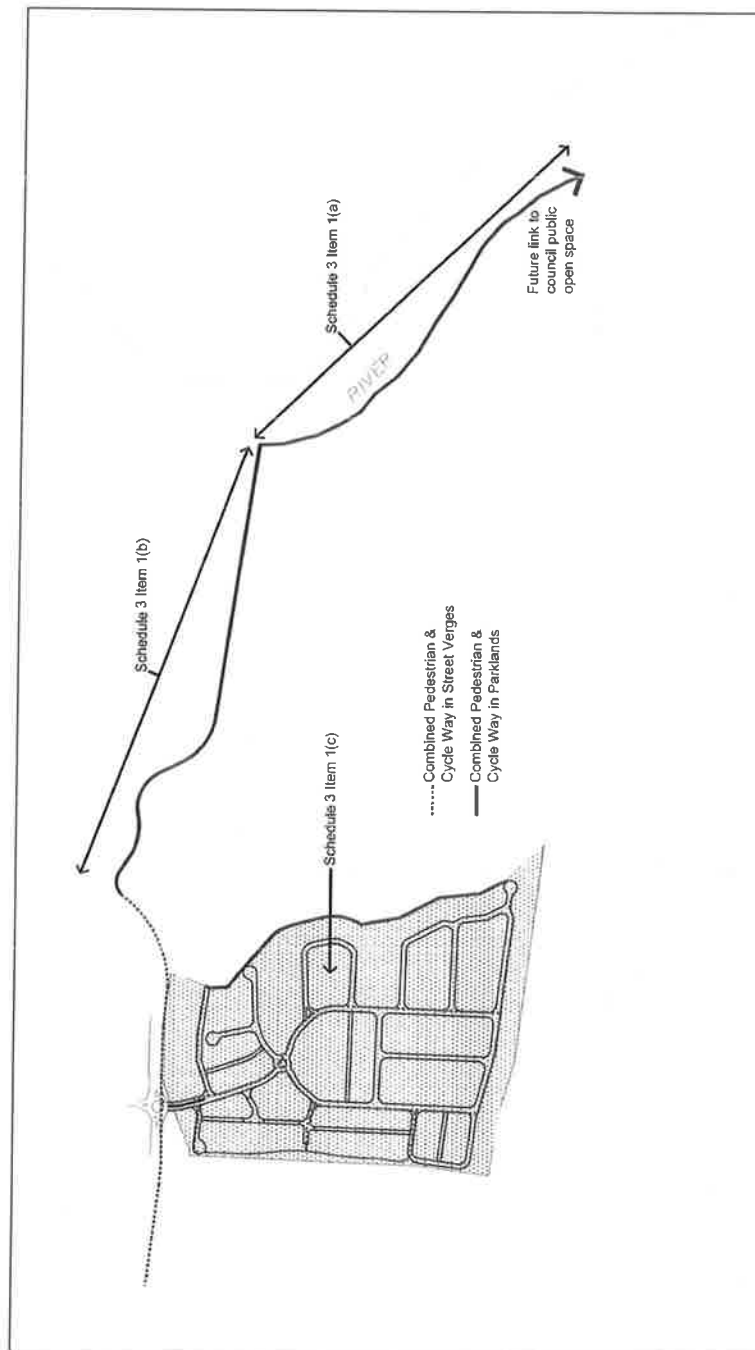
Annexure 23.1:
Shared Pedestrian / Bike Path

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Annexure 2.1 - Shared Pedestrian/ Bike Plan



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Annexure 32.2 Vegetation Offsetting

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

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

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

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

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

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

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

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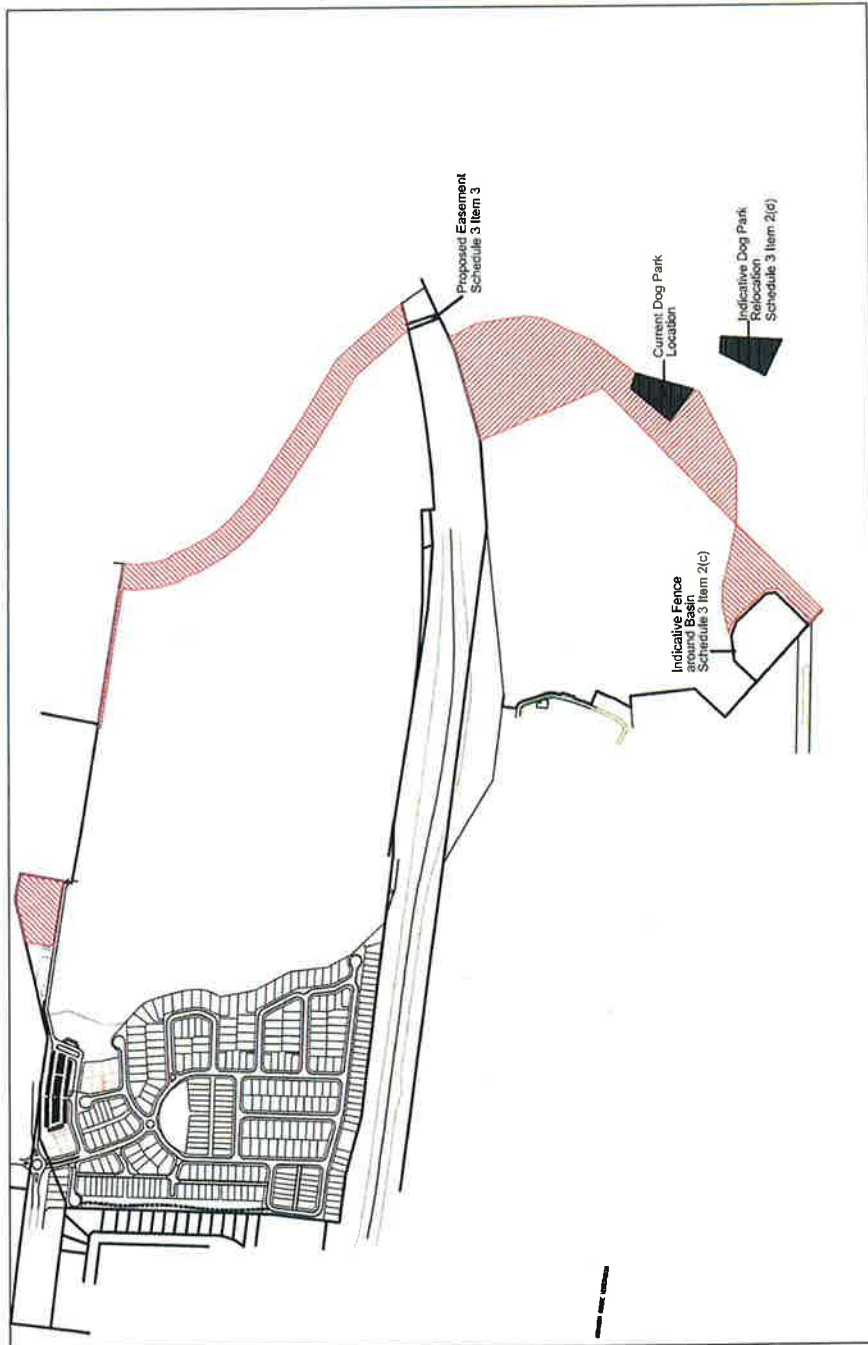
Annexure 32.3:
**Map of Fencing of Basin, Relocation of Dog Park and Map of Indicative
Easement under the M5 Motorway**

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Annexure 2.3 - Basin Fencing, Relocation of Dog Park
& Proposed Easement To M5 Motorway

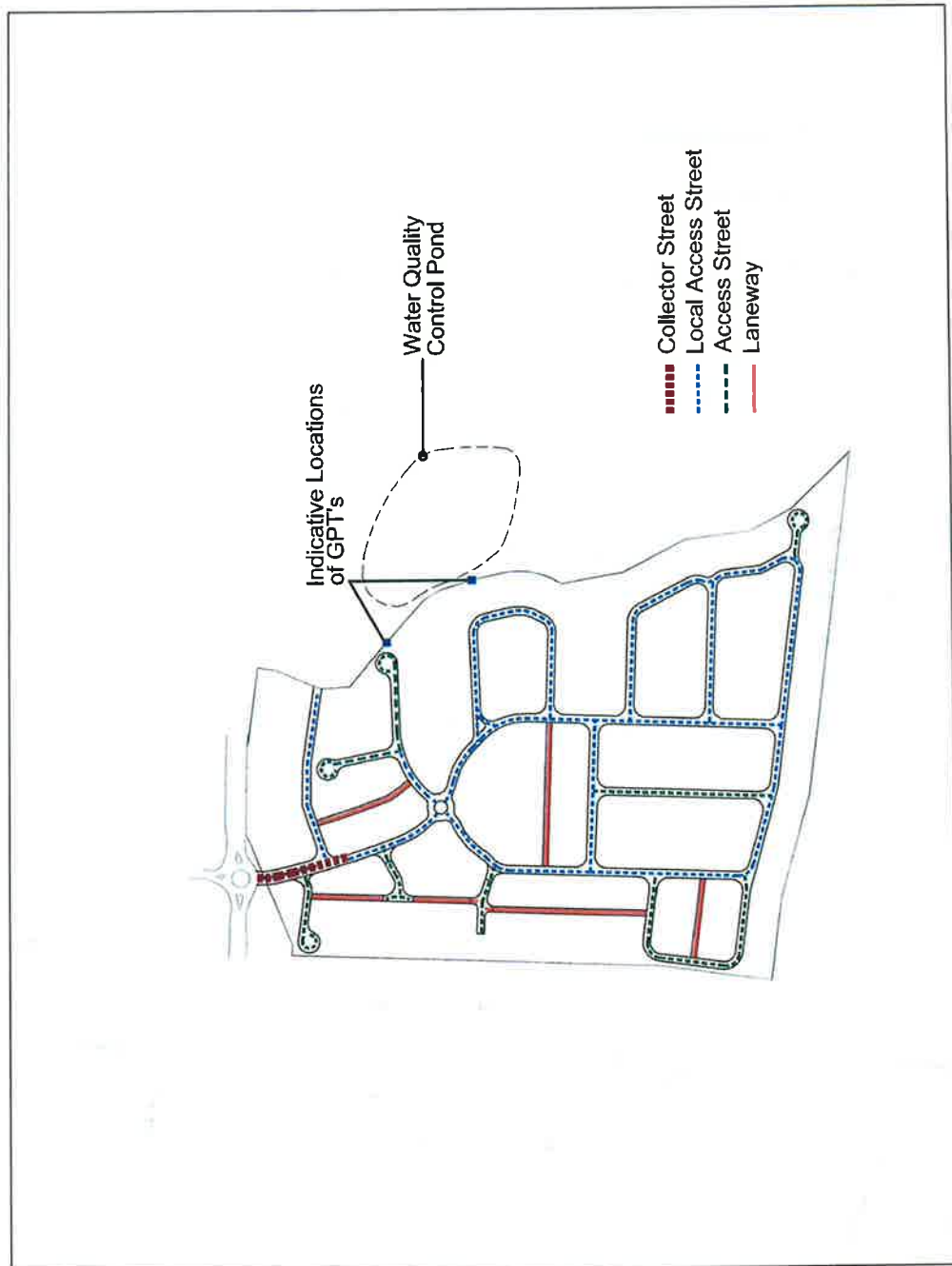


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Annexure 32.4:
Construction of Drainage Structures

Annexure 2.4 - Construction of Drainage Structures



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Execution page

Executed as a deed

Dated:

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

Director/Secretary (Signature)

GARY WOOD

Name of Director/ Secretary (Print Name)

Director (Signature)

RAYMOND CRAIG SPRIGGS

Name of Director (Print Name)

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

Director/Secretary (Signature)

Name of Director/ Secretary (Print Name)

Director (Signature)

Name of Director (Print Name)

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

Witness (Signature)

Name of Witness (Print Name)

Attorney (Signature)

Name of Attorney (Print Name)