

**Deed of Assignment – Voluntary Planning Agreement – 20, 26, 28, 31,  
32 – 34 & 33 Shepherd Street, Liverpool**

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## Deed of Assignment – Voluntary Planning Agreement

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### Deed of Assignment Voluntary Planning Agreement 20, 26, 28, 31, 32 – 34 & 33 Shepherd Street, Liverpool Parties

<b>Council</b>	<b>Name</b>	Liverpool City Council
	<b>Address</b>	33 Moore Street Liverpool NSW 2170
	<b>ABN</b>	84 181 182 471
<b>Assignor</b>	<b>Name</b>	Shepherd Property Nominee Pty Ltd
	<b>Address</b>	61 George Road Leppington NSW 2179
	<b>ACN</b>	606 262 784
<b>Assignee</b>	<b>Name</b>	NA Brightfields Pty Ltd (ACN 633 927 643) in its own capacity and as trustee for NGAB Trust
	<b>Address</b>	Level 3, 8-10 King Street Rockdale NSW 2216
	<b>ABN</b>	63 731 924 787
	<b>Name</b>	TA Brightfields Pty Ltd (ACN 633 927 830) in its own capacity and as trustee for TGAB Trust
	<b>Address</b>	Level 3, 8-10 King Street Rockdale NSW 2216
	<b>ABN</b>	94 945 455 052
	<b>Name</b>	BTS Greenfields Pty Ltd (ACN 649 109 615) in its own capacity and as trustee for BTS Greenfields Trust
	<b>Address</b>	Level 3, 8-10 King Street Rockdale NSW 2216
	<b>ABN</b>	93 201 269 960

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## Background

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- A The Assignor, Council and the Developer are parties to the Planning Agreement.
- B The Planning Agreement applies to the Land.
- C The Assignor has entered into a Contract to transfer the Land to the Assignee.
- D Under the Planning Agreement, the Assignor and Developer each acknowledge that Council has the sole discretion (acting reasonably) to grant consent to, and give effect to, the Assignment by entering into an agreement with the Assignee on terms reasonably acceptable to Council.
- E At the request of the Assignor and the Assignee Council has agree to provide its consent to the Assignment pursuant to the Assignment Clause, on and subject to the terms set out in this document.

## Operative Provisions

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### 1 Definitions & interpretation

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#### 1.1 Defined Terms

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

#### 1.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 1** apply in the interpretation of this document.

### 2 Assignment

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#### 2.1 Registered Planning Agreement

The parties acknowledge that the Planning Agreement is registered on the title to the Land pursuant to s7.6 of the Act, and by virtue of the Act is binding and enforceable on:

- (1) the Assignor prior to the Effective Date; and
- (2) the Assignee on and from the Effective Date.

#### 2.2 Assignment of Planning Agreement

On and from the Effective Date:

- (1) the Assignor assigns its rights and obligations as Participant under the Planning Agreement to the Assignee; and
- (2) the Assignee accepts the assignment of the Assignor's rights and obligations as Participant under the Planning Agreement,

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(Assignment).

### **2.3 Council's Consent**

Council consents to the Assignment.

### **2.4 Effect of Assignment**

As a consequence of the Assignment, on and from the Effective Date:

- (1) the Assignee replaces the Assignor as if it were the Participant under the Planning Agreement;
- (2) a reference in the Planning Agreement to the Assignor as Participant is read as a reference to the Assignee;
- (3) the Assignee is entitled to all rights and benefits of the Participant under the Planning Agreement; and
- (4) the Assignee must perform all obligations and discharge all liabilities under the Planning Agreement which the Assignor would have otherwise been required to perform or discharge as Participant.

### **2.5 Consideration for entry into this document**

Each party warrants to the others that:

- (1) it receives valuable consideration for the execution of this document;
- (2) it is in its interest and for its benefit to execute this document; and
- (3) this document has, where necessary, been approved by all necessary corporate action.

### **2.6 Assignee's Warranty**

The Assignee warrants that it is:

- (1) able to fully comply with its obligations under this document;
- (2) it has full capacity to enter into this document; and
- (3) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

## **3 Costs**

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### **3.1 Costs of this document**

The parties agree that:

- (1) the Assignee must:

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(a) bear its own; and

(b) pay or reimburse Council its reasonable;

legal costs incurred in relation to the negotiation, preparation and execution of this document; and

(2) the Assignor must bear its own costs incurred in relation to the negotiation, preparation and execution of this document.

### 3.2 Taxes

The Assignor must bear any Taxes payable in respect of this document.

## 4 Administrative provisions

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### 4.1 Notices

(1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

(a) delivered to that person's address; or

(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; and

(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 document or another address of which that person may from time to time give notice to each other person.

### 4.2 Entire Agreement

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

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### **4.3 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.

### **4.4 Cooperation**

- (1) Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.
- (2) Each party agrees that it will do all such acts and things as are reasonably necessary to:
  - (a) perfect the assignment of the Planning Agreement; and
  - (b) otherwise give effect to the transactions recorded in this document.

### **4.5 Counterparts**

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this document.

### **4.6 Amendment**

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

### **4.7 Unenforceability**

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

### **4.8 Power of Attorney**

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

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

### **4.9 Joint parties**

If two or more parties are included within the same defined term in this document:

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- (1) a liability of those parties under this document is a joint liability of all of them and a several liability of each of them; and
- (2) a right given to those parties under this document is a right given severally to each of them; and
- (3) a representation, warranty or undertaking made by those parties is made by each of them.

### 4.10 Governing law

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

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

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## Schedule 1: Defined terms and Interpretation

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### Part 1 - Definitions

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<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Authorities or Authority</b>	means (as appropriate) any: <ul style="list-style-type: none"><li>(1) federal, state or local government; or</li><li>(2) department of any federal, state or local government; or</li><li>(3) any court or administrative tribunal; or</li><li>(4) statutory corporation or regulatory body.</li></ul>
<b>Assignment</b>	has the meaning ascribed to it in clause 2.1.
<b>Assignment Clause</b>	means clause 13.2 of the Planning Agreement.
<b>Claim</b>	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Contract</b>	means a contract for the sale of the Land between the Assignor and Assignee.
<b>Developer</b>	means the developer from time to time defined or referred to as “Developer” under the Planning Agreement, which, on the date of this document, included the following parties (jointly and severally): <ul style="list-style-type: none"><li>(1) Shepherd Street Developments Pty Limited (ACN 660 668 120).</li><li>(2) Coronation (33 Shepherd St) Pty Limited (ACN 601 903 682).</li><li>(3) Coronation (28 Shepherd St) Pty Limited (ACN 600 861 907).</li><li>(4) Coronation (26 Shepherd St) Pty Limited (ACN 612 253 308).</li></ul>
<b>Effective Date</b>	means the date that the Land is transferred to the Assignee.
<b>Land</b>	means the following parcels of land which constitutes part of the land defined as “Land” under the Planning Agreement:

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- (1) Lot 6 in Deposited Plan 247485.
- (2) Lot 2 in Deposited Plan 1266735.

<b>Participant</b>	means the participant from time to time defined or referred to as "Participant" under the Planning Agreement
<b>Planning Agreement</b>	means the Voluntary Planning Agreement entitled " <i>Planning agreement – 20, 26, 28, 31, 32-34 &amp; 33 Shepherd Street, Liverpool</i> " dated 8 November 2017 of which Council and the Assignor are parties.
<b>Tax and Taxes</b>	means any tax, duty, impost, fee, levy or other charge imposed by any Authority.

### Part 2 - Interpretational Rules

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<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
<b>variations or replacements</b>	a document (including this document) includes any variation or replacement of it.
<b>reference to statutes</b>	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	an accounting term is a reference to that term as it is used in accounting standards under the <i>Corporations Act 2001</i> (Cth) or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
<b>reference to a group of</b>	a group of persons or things is a reference to any two or

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<b>persons</b>	more of them jointly and to each of them individually.
<b>meaning not limited</b>	the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
<b>next day</b>	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
<b>agreement</b>	a reference to any agreement, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>gender</b>	a reference to one gender extends and applies to the other and neuter gender.

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### Execution page

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Executed as a deed

Dated: 9 June 2022

**Signed, sealed and delivered by Liverpool City Council** by its Attorney under Power of Attorney Book 4756 No 447.

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Attorney (Signature)

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Witness (Signature)

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Name of Attorney (Print Name)

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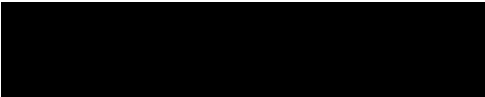
Name of Witness (Print Name)

**Signed, sealed and delivered by Shepherd Property Nominee Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.



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Director/Secretary (Signature)




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Director (Signature)



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Name of Director/ Secretary (Print Name)



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Name of Director (Print Name)

**Signed, sealed and delivered by NA Brightfields Pty Ltd (ACN 633 927 643) in its own capacity and as trustee for NGAB Trust** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its sole director and secretary.

## Deed of Assignment – Voluntary Planning Agreement

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Signed, sealed and delivered by **TA Brightfields Pty Ltd (ACN 633 927 830)** in its own capacity and as trustee for **TGAB Trust** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its sole director and secretary.



Signed, sealed and delivered by **BTS Greenfields Pty Ltd (ACN 649 109 615)** in its own capacity and as trustee for **BTS Greenfields Trust** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its sole director and secretary.

