

# Voluntary planning agreement

275 Adams Road, Luddenham, New South Wales, 2745

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CFT No 13 Pty Limited atf Coombes Family Trust  
No 13 (**Developer**)

Liverpool City Council (**Council**)

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**275 Adams Road, Luddenham, New South Wales, 2745**

<b>Information table</b>	<b>4</b>
Parties	4
Items	4
Background	5
<b>Agreed terms</b>	<b>6</b>
<b>Part A – Preliminary</b>	<b>6</b>
<b>1. Defined terms &amp; interpretation</b>	<b>6</b>
1.1 Defined terms	6
1.2 Interpretation	8
<b>2. Status of this Deed</b>	<b>9</b>
<b>3. Commencement</b>	<b>9</b>
<b>4. Registration of Planning Agreement</b>	<b>9</b>
<b>5. Application of this Deed</b>	<b>10</b>
<b>6. Developer Warranties and Indemnities</b>	<b>10</b>
<b>7. Further agreements</b>	<b>10</b>
<b>8. Surrender of right of appeal, etc.</b>	<b>10</b>
<b>9. Term</b>	<b>10</b>
<b>Part B – Development Contributions</b>	<b>10</b>
<b>10. Provision of Development Contributions</b>	<b>10</b>
<b>11. Contributions to be made under this document</b>	<b>11</b>
<b>12. Application of 7.11, 7.12 and 7.24 of the Act</b>	<b>11</b>
<b>Part C – Dispute resolution</b>	<b>11</b>
<b>13. Dispute Resolution – general</b>	<b>11</b>
<b>14. Dispute resolution – expert determination</b>	<b>13</b>
<b>15. Dispute resolution - mediation</b>	<b>14</b>
<b>Part D - Enforcement</b>	<b>15</b>
<b>16. Breach of obligations</b>	<b>15</b>
<b>17. Enforcement in a court of competent jurisdiction</b>	<b>15</b>
<b>18. Construction Certificate may be withheld</b>	<b>15</b>
<b>19. Subdivision Certificate may be withheld</b>	<b>15</b>
<b>20. Occupation Certificate may be withheld</b>	<b>16</b>
<b>Part E – Restriction on dealings</b>	<b>16</b>
<b>21. Restriction on dealings</b>	<b>16</b>
<b>Part F – Indemnities and Insurance</b>	<b>16</b>
<b>22. Release</b>	<b>16</b>

<b>23. Indemnity and Insurance</b>	<b>16</b>
<b>Part G – Other provisions</b>	<b>17</b>
<b>24. Operation of Deed in Certain Circumstances</b>	<b>17</b>
<b>25. Notices</b>	<b>17</b>
<b>26. Approvals and consent</b>	<b>17</b>
<b>27. Costs</b>	<b>17</b>
<b>28. Entire agreement</b>	<b>17</b>
<b>29. Further acts</b>	<b>18</b>
<b>30. Governing law and jurisdiction</b>	<b>18</b>
<b>31. No fetter</b>	<b>18</b>
<b>32. Illegality</b>	<b>18</b>
<b>33. Severability</b>	<b>18</b>
<b>34. Amendment</b>	<b>19</b>
<b>35. Waiver</b>	<b>19</b>
<b>36. GST</b>	<b>19</b>
<b>37. Termination</b>	<b>19</b>
<b>38. Consequences of termination</b>	<b>20</b>
<b>39. Confidentiality</b>	<b>20</b>
<b>40. Good faith</b>	<b>20</b>
<b>41. Counterparts</b>	<b>21</b>
<b>42. Explanatory note</b>	<b>21</b>
<b>Schedule 1 – Development Contributions (clause 8)</b>	<b>22</b>
<b>Schedule 2 – Land to which this Planning Agreement relates (clause 1)</b>	<b>24</b>
<b>Signing page</b>	<b>25</b>
<b>Appendix</b>	<b>26</b>

# Information table

## Date

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## Parties

Name	<b>CFT No. 13 Pty Limited atf Coombes Family Trust No. 13</b>
ABN	32 528 255 331
Short form name	<b>Developer</b>
Notice details	Coombes Property Group, Level 5, 2 Grosvenor Street, Bondi Junction, New South Wales 2022 Telephone: +61 2 9389 6111 Email: notice@coombesgroup.com.au Attention: General Counsel

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Name	<b>Liverpool City Council</b>
ABN	84 181 182 471
Short form name	<b>Council</b>
Notice details	Ground Floor, 33 Moore Street, Liverpool, New South Wales 2170 Facsimile: # Email: # Attention: #

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## Items

<b>Item 1</b>	<b>Development Site</b>	See definition of Development Site in clause 1.1
<b>Item 2</b>	<b>Development</b>	See definition of Development in clause 1.1
<b>Item 3</b>	<b>Development contributions</b>	See Schedule 1
<b>Item 4</b>	<b>Security</b>	See Part D - Enforcement
<b>Item 5</b>	<b>Registration</b>	This Deed will be registered on the titles to the Development Site in accordance with clause 4 of this Deed.
<b>Item 6</b>	<b>Restriction on dealings</b>	See clause 21.
<b>Item 7</b>	<b>Dispute resolution</b>	See Part C – Dispute Resolution

## Background

- A The Developer owns the Development Site
- B The Developer is the proponent of the Development.
- C The Council is the relevant local government authority in respect of the Development Site.
- D The Minister for Planning and Public Spaces is the consent authority in relation to the Development.
- E The Developer acknowledges that the grant of Development Consent for the Development is likely to increase the demand for the provision of public facilities.
- F As a consequence of the matters set out in paragraph E above, the Developer has offered to pay the Development Contributions pursuant to the terms of this Deed if development consent is granted for the Development.

# Agreed terms

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## Part A – Preliminary

### 1. Defined terms & interpretation

#### 1.1 Defined terms

In this Deed:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Approval** includes approval, authority, consent, licence or permission.

**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 any state, federal or local government, a Minister of the Crown, a federal, state or local government department, a public authority or statutory corporation established by or under any Act, a council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act, including a commission, panel, court, tribunal and the like.

**CIV** means the capital investment value amount of \$20,438,722 (excluding GST), in accordance with the Quantity Surveyor Report prepared by WT Partnership dated 9 February 2021 accompanying the Development Application.

**Claim** includes an action, claim, demand, remedy, suit, injury, damage, loss, Cost, debt, liability, action, order, judgment, proceeding or right of action howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise..

**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:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential;
- (d) is information which may be reasonably considered to be of a confidential nature.

**Construction Certificate** has the same meaning as in section 6.4(d) of the Act.

**Contribution Plan** means any Contribution Plan made by Council pursuant to s 7.18 of the Act that applies to the Development Site and is applicable to the Development.

**Cost** means a cost, charge, expense, outgoing, payment, fee, legal costs and other expenditure of any nature.

**CPI** means the published Consumer Price Index (All Groups – weighted average of eight capital cities), or if that index is no longer published, then any other index which, in the reasonable opinion of the Parties, is an equivalent index.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Delivery Date** means the time by which the Development Contributions are to be provided as determined in accordance with column 4 of Part 1 of Schedule 1.

**Development** means the development the subject of the Development Application.

**Development Application** means State significant development application SSD-10446 for the construction and operation of a resource recovery facility with capacity to receive and process up

to 600,000 tonnes per annum of general solid waste (non-putrescible), comprising of construction and demolition waste and commercial and industrial waste for recycling.

**Development Consent** means any development consent issued in relation to the Development Application that will permit the conduct of the Development.

**Development Contributions** means the monetary contributions as specified in, and determined in accordance with, this Deed including Schedule 1.

**Development Site** means the land specified in Schedule 2.

**Dispute** has the meaning ascribed to it in clause 13(a) to this Deed.

**Enactment Date** means be the date on which the Development Consent is granted for the Development.

**Encumbrance** means an interest in relation to the Development Site:

- (a) reserved in or over an interest in any asset on the Development Site;
- (b) arising under, or with respect to, a Bio-Banking Agreement;
- (c) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or
- (d) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

**Encumber** means to grant an Encumbrance.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Insolvency Event** means the happening of any of the following events:

- (a) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.
- (b) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.
- (c) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (d) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (e) A body corporate is or states that it is insolvent.
- (f) As a result of the operation of section 459F(1) of the Corporations Act 2001 (Cth) (Corporations Act), a body corporate is taken to have failed to comply with a statutory demand;
- (g) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
- (h) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.

- (i) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
- (j) A receiver, manager or receiver and manager is appointed to the Company.
- (k) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (l) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Occupation Certificate** has the same meaning as in section 6.4(c) of the Act.

**Party** means a party to this Deed.

**Public Purpose** has the same meaning as in 7.4(2) of the Act.

**Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

**Subdivision Certificate** has the same meaning as in section 6.4(d) of the Act.

**Term** has the meaning ascribed to it in clause 9.

## 1.2 Interpretation

In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- (e) A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- (f) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (g) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, assigned, novated, supplemented or replaced.
- (h) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (i) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (j) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (k) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (l) References to the word 'include' or 'including' are to be construed without limitation.
- (m) A reference to this Deed includes the agreement recorded in this Deed.
- (n) A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- (o) A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- (p) Any schedules, appendices and attachments form part of this Deed.

- (q) Notes appearing in this Deed are operative provisions of this Deed.

## 2. Status of this Deed

This Deed is a planning agreement pursuant to section 7.4(1)(b) of the Act and governed by Subdivision 2 of Part 7 of the Act.

## 3. Commencement

- (a) The Deed commences when it has been executed by all the Parties.
- (b) The Developer's obligation to provide the Development Contributions is to occur by the Delivery Date. This Deed otherwise has no binding obligations on the Developer with respect to the Development Contributions.
- (c) The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

## 4. Registration of Planning Agreement

- (a) The Parties agree that promptly after this Deed comes into operation and prior to the Enactment Date:
  - (i) The Deed will be lodged with the Registrar General in registrable form for registration on the title of the Development Site; and
  - (ii) receipt of lodgement to NSW Land Registry Services (LRS) will be provided to the Council no later than twenty-four (24) hours after practical lodgement has occurred.

The Developer agrees that the Deed must be registered on the title to the Development Site prior to the first to occur of:

- (i) the issue of the first Construction Certificate with respect to the Development; and
- (ii) within 6 months from the commencement of this Deed;

pursuant to section 7.6 of the Act.

- (b) The Developer will, at its own expense, do all things necessary to procure the registration of the Deed to occur in accordance with clause 4(a), including, but not limited to, attending to any requisitions raised by the Registrar General in relation to registration as soon as possible.
- (c) The Developer will reimburse Council all of its costs in respect of registration up to \$3,000.
- (d) When the Development Contributions have been provided in accordance with the Deed, and all obligations under the Deed have been met, to the Council's reasonable satisfaction, or where the Developer notifies Council it does not propose to act on the Development Consent for the Development, or where the Deed is terminated or rescinded, the Developer may request that the Deed be released from the title of the Development Site.
- (e) The Council will not withhold its consent to the release of the Deed from the title to the Development Site under this clause provided the terms of this Deed have been complied with and the Developer pays all costs, expenses and fees of the Council relating to such release.
- (f) Prior to lodgement for registration, the Developer will obtain any necessary express written consent, and the execution of any documents necessary, to register this Deed on the title to the Development Site under section 7.6 of the Act, including:

- (i) if this Deed relates to land on the Development Site under the *Real Property Act* 1900, each person who has an estate or interest in the Land registered under that Act; or
  - (ii) if this Deed relates to land on the Development Site not under the *Real Property Act* 1900, each person who is seized or possessed of an estate or interest in the Land.
- (g) The Parties will co-operate with each other to ensure that the Deed is registered on the title to the Development Site by the Registrar General (LRS) as provided for in section 7.6 of the Act as soon as possible.

## 5. Application of this Deed

This Deed applies to the Development Site and to the Development.

## 6. Developer Warranties and Indemnities

The Developer warrants to Council that they:

- (a) are legally and beneficially entitled to the Development Site;
- (b) have full capacity to enter into this Deed;
- (c) are able to fully comply with their obligations under this Deed; and
- (d) there is no legal impediment to it entering into this Deed, or performing the obligations imposed under this Deed.

## 7. Further agreements

The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

## 8. Surrender of right of appeal, etc.

The Parties are not to commence or maintain, or to cause or procure the commencement or maintenance of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed in so far as the subject-matter of the proceedings relates to this Deed.

## 9. Term

The Term of this Deed is the period commencing on the Enactment Date and ending upon the termination of this Deed.

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# Part B – Development Contributions

## 10. Provision of Development Contributions

The Developer is to make the Development Contributions to the Council in accordance with the Delivery Date and the terms of this Deed, in particular clause 11.

## 11. Contributions to be made under this document

- (a) The Developer agrees that it will make the Development Contributions to Council which are to be made:
- (i) for the Public Purpose specified in Column 2 of the table in Part 1 of Schedule 1;
  - (ii) to the extent or in the amount referred to in Column 3 of the table in Part 1 of Schedule 1 (being the Development Contribution); and
  - (iii) at the Delivery Date calculated in accordance with Schedule 1.
- (b) Payment of monetary Development Contributions
- (i) The Developer is to pay to the Council the Development Contribution calculated in accordance with Schedule 1 in the manner specified in Column 3 of the table in Schedule 1 and by the Delivery Date.
  - (ii) The amount of the Development Contribution is to be indexed from the date of this Deed in accordance with the following formula:

$$\frac{\text{Contribution Amount} \times \text{CPI}}{\text{LCPI}}$$

where:

Contribution Amount = the relevant amount determined in this Deed for the Development Contribution

CPI = the last CPI published before the due date for payment of that Development Contribution; and

LCPI = the last CPI published before execution date of this Deed.

If the Indexed Amount is less than the Contribution Amount, then the amount of the relevant Development Contribution will not change.

- (iii) A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

## 12. Application of 7.11, 7.12 and 7.24 of the Act

This Deed does not exclude the application of sections 7.11, 7.12 and 7.24 of the Act to the Development. Section 7.11(6) of the Act applies to the Development Contributions that are to be provided under this Deed and are to be taken into account in determining any section 7.11, 7.12 and 7.24 of the Act contributions for the Development in accordance with this clause.

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## Part C – Dispute resolution

### 13. Dispute Resolution – general

- (a) If a dispute or lack of certainty between the parties arises in connection with this Deed or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
- (i) is in writing;
  - (ii) adequately identifies and provides details of the Dispute;
  - (iii) stipulates what the First Party believes will resolve the Dispute; and
  - (iv) designates its representative (**Representative**) to negotiate the Dispute.

- (b) 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**).
- (c) 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 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.
- (d) Except as otherwise expressly provided in this Deed, any Dispute must, as a condition precedent to the commencement of litigation, mediation or determination by an expert, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under paragraph (a) is served.
- (e) 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 15 or expert resolution under clause 14.
- (f) If:
  - (i) the parties cannot agree in accordance with clause to refer the matter to mediation or determination by an expert; or
  - (ii) the mediation has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,
 then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.
- (g) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
  - (i) subject to paragraph (h), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
  - (ii) not to disclose any confidential documents, information and other material except:
    - (A) to a party or adviser or consultant who has signed a confidentiality undertaking; or
    - (B) if required by Law or any Authority to do so; and
  - (iii) 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.
- (h) 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:
  - (i) 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;
  - (ii) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
  - (iii) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

- (i) This Part C of the Deed does not operate to limit the availability of any remedies available to Council under the Act.
- (j) This Part C of the Deed does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this Deed.

#### 14. Dispute resolution – expert determination

- (a) This clause applies to a Dispute between the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
  - (i) the Parties to the Dispute agree that it can be so determined; or
  - (ii) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body and the parties agree to determine the Dispute by expert determination.
- (b) The Dispute must be determined by an independent expert in the relevant field:
  - (i) agreed between and appointed jointly by the parties; or
  - (ii) in the absence of agreement within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (c) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (d) The expert appointed to determine a Dispute:
  - (i) must have a technical understanding of the issues in dispute;
  - (ii) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - (iii) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (e) The parties must promptly enter into an agreement with the expert appointed setting out the terms of the expert's determination and the fees payable to the expert.
- (f) In reaching a determination in respect of a Dispute, the independent expert must give effect to the intent of the parties entering into this Deed and the purposes of this Deed.
- (g) The expert must:
  - (i) act as an expert and not as an arbitrator;
  - (ii) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
  - (iii) not accept verbal submissions unless both parties are present;
  - (iv) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (v) 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;
  - (vi) 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);

- (vii) 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;
  - (viii) issue a final certificate stating the expert's determination (together with written reasons); and
  - (ix) act with expedition with a view to issuing the final certificate as soon as practicable.
- (h) 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:
- (i) a short statement of facts;
  - (ii) a description of the Dispute; and
  - (iii) any other documents, records or information which the expert requests.
- (i) Subject to paragraph (j):
- (i) 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
  - (ii) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with paragraph (e) of this Deed.
- (j) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.
- (k) 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. The parties agree that this meeting is not a hearing and is not an arbitration.
- (l) The parties agree that the expert determination is final and binding on the Parties except in the case of fraud or misfeasance by the expert.
- (m) Unless the independent expert awards costs, each Party is to bear its own Costs arising from or in connection with the appointment of the expert and the expert determination.
- (n) The Parties are to share equally the Costs of the President, the expert, and the expert determination.

## 15. Dispute resolution - mediation

- (a) This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 13 applies.
- (b) If the Dispute is not resolved in accordance with clause 13(e), the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time.
- (c) The mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society for the time being.
- (d) If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may agree to have the matter determined by expert determination under clause 14.
- (e) Each Party is to bear its own Costs arising from or in connection with the appointment of a mediator and the mediation.

- (f) The Parties are to share equally the Costs of the President, the mediator, and the mediation.

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## Part D - Enforcement

### 16. Breach of obligations

- (a) If the Council considers that the Developer is in breach of any obligation under this Deed (acting reasonably), or becomes aware that the Developer is subject to an Insolvency Event, it may give a written notice to the Developer specifying the nature and extent of the breach and requiring the Developer to rectify the breach.
- (b) If the Developer fails to fully comply with a notice referred to in clause 16(a) within 40 business days, the Council may, without further notice to the Developer, and without limiting any other provision of this Deed, enforce this Deed in any court of competent jurisdiction.
- (c) Nothing in this clause 16 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer

### 17. Enforcement in a court of competent jurisdiction

- (a) Subject to clause 13 nothing in this Deed prevents:
  - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
  - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

### 18. Construction Certificate may be withheld

- (a) The Developer may only make, or cause, suffer or permit the making of, an application for a Construction Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation;
  - (i) to register this Deed on the Development Site; and
  - (ii) to make any Development Contribution under this Deed.
- (b) A Construction Certificate may be withheld if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this Deed until such time as the breach is rectified.

### 19. Subdivision Certificate may be withheld

- (a) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Development Contribution under this Deed.
- (b) A Subdivision Certificate may be withheld if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this Deed until such time as the breach is rectified.

## 20. Occupation Certificate may be withheld

- (a) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Development Contribution under this Deed.
- (b) An Occupation Certificate may be withheld if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this Deed until such time as the breach is rectified.

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## Part E– Restriction on dealings

### 21. Restriction on dealings

- (a) The Developer cannot Assign, Encumber or otherwise deal with the Development Site or its interest in the Development Site, or Assign its rights or obligations under this Deed, or attempt or purport to do so unless
  - (i) with respect to Assignment, this Deed is registered on the title of the Development Site in accordance with this Deed,
  - (ii) the Developer has given the Council a written notice of the relevant Assignment or Encumbrance ,
  - (iii) with respect to Assignment, the Developer has provided Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this Deed that are to be Assigned to it;
  - (iv) with respect to Assignment, the Developer has at no cost to Council procured from any Assignee the execution of an appropriate agreement in favour of Council whereby the Assignee is contractually bound by this Deed.
- (b) The Developer cannot Assign or otherwise deal with the Development Site or its interest in the Development Site, or Assign its rights or obligations under this Deed, or attempt or purport to do so without the Council's consent if the Developer is in breach of this Deed.
- (c) This clause ceases to apply once the Developer has complied with its obligations to make the Development Contributions.

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## Part F – Indemnities and Insurance

### 22. Release

The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### 23. Indemnity and Insurance

The Developer indemnifies and releases Council against all damage, expenses, losses, liabilities, Costs (including legal costs on a full indemnity basis), charges or Claims incurred or received by Council to the extent that it arises from any act or omission by the Developer (or any person or agent contracted or engaged or employed by the Developer) in connection with any breach of this Deed by the Developer.

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## Part G – Other provisions

### 24. Operation of Deed in Certain Circumstances

The Parties agree that this Deed may be released from the title of the Development Site if

- (a) the Development Contributions have been provided to the Council's reasonable satisfaction in accordance with clause 10; or
- (b) this Deed is terminated under clause 37.

### 25. Notices

- (a) Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
  - (i) delivered or posted to that Party at its address set out in the Details Page, or
  - (ii) emailed to that Party at its email address set out in the Details Page.
- (b) If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- (c) Any notice, consent, information, application or request is to be treated as given or made if it is:
  - (i) delivered, when it is left at the relevant address,
  - (ii) sent by post, 2 business days after it is posted,
  - (iii) or
  - (iv) sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- (d) If any notice, consent, information, application or request is delivered, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

### 26. Approvals and consent

Except as otherwise set out in this Deed, and subject to any statutory obligations, an Authority may give or withhold an Approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.

### 27. Costs

The Developer is to pay the Council's reasonable legal costs and disbursements for:

- (a) the review, negotiation, preparation and execution of this Deed; and
  - (b) the ongoing administration and enforcement of this Deed,
- to a maximum of \$10,000.00 within 14 days of the provision of an itemised invoice.

### 28. Entire agreement

- (a) This Deed contains all matters about which the Parties have agreed in relation to the matters it deals with.

- (b) No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

## 29. Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

## 30. Governing law and jurisdiction

- (a) This Deed is governed by the law of New South Wales.
- (b) The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- (c) The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

## 31. No fetter

- (a) The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the *Local Government Act 1993* (NSW), the *Roads Act 1993* (NSW) and the Act.
- (b) Nothing in this Deed shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way Council's exercise of any statutory power or discretion or duty, or Council's power to make any law.
- (c) If, contrary to the operation of this clause, any provision of this Planning Agreement is held by a Court of competent jurisdiction to constitute an unlawful fetter on any discretion, power or duty, the Parties agree:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied, and
  - (ii) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (d) Where the law permits Council to contract out of a provision of that law or gives Council power to exercise a discretion, then if Council has in this Deed contracted out of a provision or exercised a discretion under this Deed, then to the extent of this Deed is not to be taken to be inconsistent with the law.
- (e) Nothing in this Deed will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Land or the Development in a certain manner.

## 32. Illegality

If this Deed or any part of it becomes illegal, unenforceable or invalid for any reason, including as a result of any change to a law, this Deed is to have no effect, subject to clause 33.

## 33. Severability

- (a) If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

- (b) If any clause or part of a clause is illegal, unenforceable or invalid, then to the extent permitted by law that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

### 34. Amendment

No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 203 of the Regulation.

### 35. Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

### 36. GST

- (a) In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (the **GST Act**).
- (b) If a Party to this Deed (the **Supplier**) makes a supply under or in connection with this Deed and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply (the **Recipient**) will be increased by an amount equal to the GST paid or payable by the Supplier on that supply (**GST Amount**).
- (c) If this Deed requires a Party to pay for, or reimburse any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another Party, the amount required to be paid, or reimbursed by the first Party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other Party is entitled in respect of the reimbursable expense.
- (d) If a party to this Deed has the benefit of an indemnity for a cost, expense, loss or outgoing (**indemnified cost**) under this Deed, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.
- (e) The Recipient need not pay the GST Amount for a supply until the Supplier has issued it with a tax invoice for that supply.
- (f) Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Deed are GST exclusive.
- (g) This clause will continue to apply after expiration or termination of this Deed.

### 37. Termination

This Agreement will terminate:

- (a) on the declaration by a court of competent jurisdiction that the Development Consent for the Development on the Land is invalid;
- (b) the date of expiration of the Development Consent for the Development;

- (c) the date the Development Consent for the Development is surrendered in accordance with s 4.63 of the Act;
  - (d) Council serves notice on the Developer terminating this Planning Agreement where the Developer has failed to comply with a notice issued in accordance with clause 16(a); or
  - (e) at the end of the Term,
- whichever is the earliest to occur.

### 38. Consequences of termination

Upon termination of this Deed:

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

### 39. Confidentiality

- (a) 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.
- (b) The parties acknowledge that:
  - (i) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this Deed; and
  - (ii) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
  - (iii) Subject to paragraphs (c) and (d), each party agrees:
    - (A) not to disclose any Confidential document 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
    - (B) 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.
- (c) A party may disclose Confidential Information in the following circumstances:
  - (i) in order to comply with the law, or the requirements of any Authority; or
  - (ii) 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.
- (d) 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.

### 40. Good faith

The parties must at all times:

- (a) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this Deed;
- (b) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (c) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this Deed; and

- (d) be just and faithful in their activities and dealings with the other parties.

## 41. Counterparts

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

## 42. Explanatory note

- (a) The Appendix contains the Explanatory Note relating to this Deed required by clause 205 of the Regulation.
- (b) Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

# Schedule 1 – Development Contributions (clause 10)

## Part 1 – Details of Contribution

Column 1	Column 2	Column 3	Column 4
Contribution	Public Purpose	Manner & Extent	Timing
Monetary contribution	The provision of a Public Purpose.	Ten percent (10%) of the CIV, as indexed in accordance with clause 11(b)(ii) and subject to Part 2 of this Schedule 1 below.	Prior to the release of the first construction certificate for Development on the Development Site, or otherwise in accordance with Part 2 of this Schedule 1 below.

## Part 2 – Adjustment of Monetary Contribution

- (1) The provisions of this Part 2 apply in the event that a Contributions Plan is adopted by Council on or before 31 December 2027.
- (2) For the purpose of clarity –
  - (a) if a Contributions Plan is not adopted by Council on or before 31 December 2027, the Monetary Contribution will be 10% of the CIV;
  - (b) if release of a construction certificate is sought prior to adoption of a Contributions Plan, the Developer must pay the Monetary Contribution prior to release of the construction certificate in the amount of ten percent (10%) of the CIV, as indexed in accordance with clause 11(b)(ii), as set out in Part 1, but the payment will be subject to subsequent adjustment in accordance with this Part 2.
- (3) If:
  - (a) the Contributions Plan reflects that a condition of the Development Consent could have been imposed by Council under ss7.11 or 7.12 of the Act requiring the payment of a monetary contribution if the Contributions Plan was in force at the time that Development Consent was granted; then

- (b) the Development Contribution for the purpose of this Deed is the amount of the monetary contribution that would have been required to be paid in accordance with any such condition of the Development Consent, adjusted in accordance with clause 11(b)(ii).
  - (4) For the purpose of clarity, for the purpose of clause 11(b)(ii):
    - (a) the Contribution Amount is the Development Contribution determined under paragraph (3); and
    - (b) the due date for the payment of the Development Contribution is the date specified in this Part 2.
  - (5) If the Development Contribution has not been paid at the time that it is determined under this Part 2, then the Developer must pay the amount so determined to Council as the Development Contribution in accordance with the timing set out in Part 1, i.e. prior to the release of the first construction certificate for Development on the Development Site.
  - (6) If the Development Contribution has been paid prior to it being determined under this Part 2, then the following applies:
    - (c) If the amount of the Development Contribution determined under this Part 2 is greater than the relevant amount paid, the Developer must pay the difference to Council.
    - (d) If the amount of the Development Contribution determined under this Part 2 is less than the relevant amount paid, Council must pay the difference to the Developer.
  - (7) If an Occupation Certificate has not been issued at the time that the Development Contribution is determined under this Part 2, then any amount required to be paid under paragraph (6) must be paid prior to the issue of an Occupation Certificate with respect to the Development.
  - (8) If an Occupation Certificate has been issued prior to the time that the Development Contribution is determined under this Part 2, then any amount required to be paid under paragraph (6) must be paid within twenty (20) business days of Council notifying the Developer of the amount required to be paid under paragraph (6).
-

# Schedule 2 – Land to which this Planning Agreement relates (clause 1)

## Land to which this Planning Agreement relates

1. The land in Lot 3 DP 623799 known as 275 Adams Road, Luddenham NSW 2745.

# Signing page

**EXECUTED** as a deed.

**Executed by CFT No 13 Pty Limited**  
(ABN 32 528 255 331) in accordance with  
Section 127 of the *Corporations Act 2001*

\_\_\_\_\_

Signature of director

\_\_\_\_\_

Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_

Name of director (print)

\_\_\_\_\_

Name of director/company secretary (print)

**Signed** for and on behalf of **Liverpool City Council** (ABN 84 181 182 471) in accordance with  
a resolution of the Council on **[TBC]** by:

\_\_\_\_\_

Signature of director

\_\_\_\_\_

Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_

Name of director (print)

\_\_\_\_\_

Name of director/company secretary (print)

# Appendix

Environmental Planning and Assessment Regulation 2021 (Clause 205)

## Explanatory Note

Voluntary Planning Agreement – 275 Adams Road, Luddenham – SSSA 10446

### Draft Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Voluntary Planning Agreement (**Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The draft Planning Agreement includes contributions for works associated with the carrying out of State significant development application SSSA 10446.

This Explanatory Note has been prepared jointly between the parties in accordance with clause 205 of the *Environmental Planning and Assessment Regulation 2021 (Regulation)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

### Parties

<b>Name</b>	<b>CFT No. 13 Pty Limited atf Coombes Family Trust No. 13</b>
<b>ABN</b>	32 528 255 331
<b>Short form name</b>	<b>Developer</b>
<b>Notice details</b>	Coombes Property Group, Level 5, 2 Grosvenor Street, Bondi Junction, New South Wales 2022

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<b>Name</b>	<b>Liverpool City Council</b>
<b>ABN</b>	84 181 182 471
<b>Short form name</b>	<b>Council</b>
<b>Notice details</b>	Ground Floor, 33 Moore Street, Liverpool, New South Wales 2170

### Description of the Land to which the draft Planning Agreement applies.

The draft Planning Agreement applies to the following lot:

275 Adams Road, Luddenham 2745 NSW, Lot 3 DP 623799 (Development Site).

### Description of the Proposed Development Application

The proposal is a State Significant Development application (SSD-10446) for the construction and operation of a resource recovery facility with capacity to receive and process up to 600,000 tonnes per annum of general solid waste (non-putrescible), comprising of construction and demolition waste and commercial and industrial waste for recycling.

### Summary of Objectives, Nature and Effect of the draft Planning Agreement

#### **Objectives of draft Planning Agreement**

The objective of the draft Planning Agreement is to enable the determination of SSD-10446 and provide Council with a monetary contribution to be used towards a Public Purpose.

#### **Nature of draft Planning Agreement**

The draft Planning Agreement is an agreement under s 7.4(1)(b) of the *Environmental Planning and Assessment Act 1979* (Act). The draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 11 and Schedule 1 of the draft Planning Agreement) are made by the Developer for various public purposes (as defined in s7.4(2) of the Act).

### **Effect of the draft Planning Agreement**

The draft Planning Agreement:

- relates to the carrying out by the Developer of Development on the Development Site,
- requires the Developer to provide the Development Contribution;
- is to be registered on the title to the Development Site;
- imposes restrictions on the Parties assigning an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation;
- provides that the agreement is governed by the law of New South Wales.

### **Assessment of the Merits of the draft Planning Agreement**

#### ***The Planning Purposes Served by the draft Planning Agreement***

The draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which the agreement applies;
- addresses the need for waste and resource recovery infrastructure to meet the projected demand associated with future development activities within the Aerotropolis and surrounding areas;
- provides an environmentally beneficial means of dealing with non-putrescible solid wastes by recycling waste received and contributing to meeting of NSW government recycling targets;
- provides ongoing employment of about 70 people (FTE) once at full production; and
- facilitates the money for the public purposes.

#### **How the draft Planning Agreement promotes the Public Interest**

The draft Planning Agreement promotes the Public Interest by addressing and promoting the objects of the Act as set out in s1.3.

#### **For Planning Authorities:**

##### ***Development Corporations - How the draft Planning Agreement promotes its statutory responsibilities.***

N/A

##### ***Other Public Authorities – How the draft Planning Agreement promotes the objects (if any) of the Act under which it is constituted***

In accordance with section 7 of the Local Government Act 1993, the draft Planning Agreement

- facilitates engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government; and
- promotes a system of local government that is accountable to the community and that is sustainable, flexible and effective.

##### ***Councils – How the draft Planning Agreement promotes the elements of the Council's Charter***

The draft Planning Agreement promotes the elements of the Council's charter (now s8 of the Local Government Act 1993) by:

- providing value for residents and ratepayers;
- gives councils the ability to provide goods, services and facilities and to carry out activities, appropriate to the current and future needs of local communities and the wider public; and
- is consistent with the principle of ecologically sustainable development.

##### ***All Planning Authorities – Whether the draft Planning Agreement conforms with the Authority's Capital Works Program***

N/A

***All Planning Authorities – Whether the draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, an occupation certificate or a subdivision certificate is issued***

The draft Planning Agreement requires:

- (a) the registration of the planning approval on the title of the Development Site to be within 6 months of the agreement commencing;
- (b) the Development Contribution to be paid before any construction certificate is issued for the Development.