

Murray,

Please find enclosed the executed VPA in duplicate.

We look forward to the return of one copy executed by Liverpool City Council.

Please return this to Catherine Maddox at the below address.

Many thanks,

Brad McAndrew.



Received By

17/11/11
K. J. J.

Planning Agreement

**Lot 1 DP 1162276, Governor Macquarie Drive, Warwick
Farm**

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

Hydrox Nominees Pty Limited (ACN 139 262 123) (**Developer**)

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Planning Agreement

Lot 1 in DP 1162276 – Governor Macquarie Drive, Warwick Farm

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	NobleR@liverpool.nsw.gov.au
	Representative / Contact	Carl Wulff
Developer	Name	Hydrox Nominees Pty Limited
	Address	3 City View Road PENNANT HILLS NSW 2120
	ACN	139 262 123
	Telephone	(02) 8885 1152
	Facsimile	(02) 8888 1152
	Email	bmcandrew@masters.com.au
	Representative / Contact	Brad McAndrew – Development Manager

Background

- A The Developer owns the Land and proposes to undertake the Development.
- B The conditional Development Consent for the Development was granted on 28 February 2013 for the development of a Masters Home Improvement store.
- C The Developer has applied to Council to modify the Development Consent for the Development under section 96 of the Act.
- D The Developer acknowledges that if the Development Consent for the Development is modified as proposed and the Development carried out, it is likely to increase the demand for the provision of public facilities. Specifically, that the Development is likely to increase the demand for flood mitigation work in relation to the Georges River.
- E As a consequence of the matters set out in C and D above, the Developer has offered to make the contributions if Development Consent for the Development is modified on the terms set out in this deed.
- F This offer is separate and additional to the Planning Agreement connected with the Development and the Land entered into between Council and the Australian Jockey Club registered on the Land (and registered on 12 December 2011, dealing no. AG679159T).

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 interpretation 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 deed applies to both the Land and the Development, as modified by the section 96 modification application proposed.

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, the requirements of that section being set out in Part 2 of **Schedule 1**; 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 Regulation; and
- (d) the application to amend the conditions of consent is approved.

3 Application of s94 and s94A

3.1 Sections 94 and 94A

This deed does not exclude the application of section 94 and section 94A of the Act to the Development.

3.2 Section 94EF

This deed does not exclude the application of section 94EF of the Act to the Development.

4 Monetary Contributions

4.1 Contribution

- (1) The Developer must pay the Monetary Contribution to Council in accordance with the timing specified in **Schedule 3**.
- (2) The Monetary Contribution must be paid to the Council by way of bank cheque or direct deposit into a bank account nominated by the Council.
- (3) The Monetary Contribution will be made for the purposes of this deed when the Council receives a record that cleared funds have been deposited into a bank account nominated by the Council.
- (4) The parties agree and acknowledge that the Monetary Contribution is made for the public purposes identified in **Schedule 3**.

5 Indexation of amounts in this deed

5.1 Indexation

The Monetary Contribution will be indexed in accordance with the following formula:

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

where:

- A** = the indexed amount of the Monetary Contribution;
- B** = the Monetary Contribution as set out in this deed;
- C** = the Index most recently published before the date that the Monetary Contribution is paid; and
- D** = the Index current as at the quarter immediately preceding the date of this deed.

5.2 Timing of indexation

For the purpose of clause 5.1, each component of the Monetary Contribution is indexed as at the date it is paid to Council.

6 Developer warranties and indemnities

6.1 Warranty

The Developer warrants to Council that:

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

7 Determination of this deed

7.1 Satisfaction of obligations

This deed will determine upon the Developer paying the Monetary Contribution to Council in full in accordance with this deed.

8 Registration of this deed

8.1 Ownership

The Developer represents and warrants to the Council that on the date of this deed it is the legal owner of the Land and holds the Land in its capacity as registered proprietor.

8.2 Bank Guarantee

- (1) On or within 5 Business Days of the date of this deed, the Developer must provide the Bank Guarantee to Council as security for the performance of the Developer's obligations under this deed.
- (2) If the Developer does not comply with its obligation to pay the Monetary Contribution under this deed, then Council may, after giving the Developer no less than 10 Business Days' notice of the default, call on all or part of the Bank Guarantee and apply the proceeds as its own property in order to recover Council's loss arising from the failure to pay the Monetary Contribution.
- (3) When the Developer has paid the Monetary Contribution to Council in full in accordance with this deed, Council must promptly (and in any event within 10 Business Days) do all acts and things necessary to return the Bank Guarantee to the Developer.
- (4) For the purposes of section 109H(2) of the Act, the requirements of this deed will be satisfied if the Council has called on the security under this **clause 8.2** in relation to the payment of the Monetary Contributions.

8.3 Caveat

- (1) Subject to the Developer providing the Bank Guarantee to Council in accordance with clause 8.2, Council agrees that it will not lodge or attempt to lodge a caveat against the title of the Land in respect of Council's interest under this deed.
- (2) If the Developer defaults in its obligation to provide the Bank Guarantee, the parties acknowledge and agree that:
 - (a) when this deed is executed by the Developer, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently, the Council will have a sufficient interest in the Land in respect of which to lodge with the LPI a caveat notifying that interest;
 - (b) the Development Consent predominantly relates to the Land;
 - (c) despite its rights under 8.3(2)(a), Council agrees that any caveat lodged by it will only be lodged in respect of the Land; and
 - (d) for so long as the Developer is in default of its obligation to provide the Bank Guarantee under **clause 8.2**, the Developer will not object to the Council lodging a caveat against the Land nor will it seek to remove any caveat lodged by the Council against the Land, provided the caveat does not prevent registration of any dealing or plan other than a transfer.

The Council must, at the Developer's cost, register at the LPI a withdrawal of any caveat lodged by Council under clause 8.3 (2) within 10 Business Days after the Developer has paid the Monetary Contribution to Council or where the Developer has provided the Bank Guarantee under **clause 8.2** and Council must not lodge any other caveats on the titles to any of the Land.

9 Assignment

9.1 Prohibition

The Developer must not Assign its rights under this deed without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).

9.2 Assignment of Land

The Developer must not Assign the whole or any part of its interest in the Land unless:

- (1) the Developer satisfies the Council, acting reasonably, that the proposed Assignee is financially capable of complying with the Developer's obligations under this deed;
- (2) the rights of the Council are not diminished or fettered in any way;
- (3) the Council consents to the Assignment, acting reasonably;

- (4) the Developer 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 was a reference to the Assignee;
- (5) any default by the Developer has been remedied by the Developer or waived by the Council; and
- (6) the Developer and the Assignee pay the Council's reasonable costs in relation to the Assignment.

9.3 Land transfer to an Authority or utility service provider

This **clause 9** does not apply to the Assignment of any part of the Developer's interest in the Land to an Authority or utility service provider.

10 Provision of Security

10.1 Construction Certificate

For the purposes of section 109F(1) of the Act and clause 146A of the Regulation the Developer must pay the Monetary Contribution to the Council in accordance with this deed prior to the issue of any Construction Certificate for the Development or any part of the Development.

10.2 Security

Council acknowledges that:

- (1) the restrictions on assignment of the Land under **clause 9**;
- (2) the requirement under **clause 10.1** for the Monetary Contribution to be paid prior to the issue of any Construction Certificate for the Development, and
- (3) the provision of a Bank Guarantee in the form set out in **clause 8.2** of this deed;

constitute adequate security for the purposes of this deed and section 93F(3)(g) of the Act.

10.3 Enforcement by any party

- (1) Without limiting any other remedies available to the parties, this deed may be enforced by any party in any court of competent jurisdiction.
- (2) Nothing in this deed prevents:
 - (a) 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; and
 - (b) the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this deed or any matter to which this deed relates.

11 Review and amendment

11.1 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.

11.2 Amendment

If the parties agree to amend this deed as a result of a review conducted under this **clause 11** then any such amendment must be made:

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

12 Dispute resolution

12.1 Notice of dispute

- (1) 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.

- (2) The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the dispute (the representatives designated by the Parties being together, the **Representatives**).
- (3) Notwithstanding **clause 12.1(2)**, if it is necessary for the Council to meet and pass a resolution to appoint a Representative, the Council will not be required to provide the notice under that clause until 5 Business Days after the Council has met and resolved to appoint a person as the Representative.

12.2 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.

12.3 Further steps required before proceedings

Subject to **clauses 12.14 and 12.15** 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 12.5** or determination by an expert under **clause 12.6**, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days.

12.4 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 12.5** or expert resolution under **clause 12.6**.

12.5 Disputes for mediation

- (1) If the parties agree in accordance with **clause 12.4** 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 **clause 12.5(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 12.6**.

12.6 Choice of expert

- (1) If the parties agree to have the matter determined by expert determination, this **clause 12.6** 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 12.6** setting out the terms of the expert's determination and the fees payable to the expert.

12.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under **clause 12.6**, 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.

12.8 Expert may commission reports

- (1) Subject to **clause 12.8(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 12.6(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.

12.9 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 **clause 12.9(1)** is not a hearing and is not an arbitration.

12.10 Other courses of action

If:

- (1) The parties cannot agree in accordance with **clause 12.4** to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in **clause 12.5** 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.

12.11 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 **clause 12.11(1)(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 information, documents or facts would be discoverable in judicial or arbitral proceedings.

12.12 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.

12.13 Costs

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

12.14 Remedies available under the Act

This **clause 12** does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the Act.

12.15 Urgent relief

This **clause 12** does not prevent a party from seeking urgent injunctive or declaratory relief.

13 Position of Council

13.1 Consent authority

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

13.2 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,

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

13.4 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 current assessment to the application made by the developer pursuant to Section 96 of the Act.

14 Confidentiality

14.1 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.

14.2 Other Confidential Information

- (1) The parties acknowledge that:
 - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this 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 **clauses 14.2(2) and 14.2(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.

15 GST

15.1 Defined GST Terms

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

15.2 GST to be Added to Amounts Payable

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

15.3 GST Obligations to Survive Termination

This **clause 15** will continue to apply after expiration or termination of this deed.

16 Miscellaneous

16.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to 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.

16.2 Legal costs

- (1) The Developer agrees to pay the Council's legal costs and disbursements in connection with the:
 - (a) negotiation, preparation, execution, and stamping of this deed; and
 - (b) ongoing administration of this deed.
- (2) The parties acknowledge and agree that the Monetary Contribution has been calculated to include the Council's legal costs and that payment of the Monetary Contribution specified in **Schedule 3** by the Developer to the Council will satisfy the obligation under **clause 16.2(1)**.

17 Administrative provisions

17.1 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;
 - (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.

17.2 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.

17.3 Waiver

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

17.4 Cooperation

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

17.5 Counterparts

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

17.6 Amendment

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

17.7 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.

17.8 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.

17.9 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*.

Schedule 1

Part 1 – Commercial details

Land	Lot 1 in DP 1162276 Governor Macquarie Drive Warwick Farm
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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> <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument; (b) made, or proposes to make, a Development Application; or (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) Not applicable
Description of land to which this deed applies – (Section 93F(3)(a))	The whole of the Land.
Description of the development to which the agreement applies– (Section 93F(3)(b))	See definition of “Development”.
Nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made – (Section 93F(3)(c))	<p>See Schedule 3 for the nature and extent of the provision to be made and the time by which the provision is to be made.</p> <p>See clauses 4.1(2) and 4.1(3) for the manner by which the provision is to be made.</p>
Application of section 94 of the Act – (Section 93F(3)(d))	Section 94 of the Act is not excluded.
Applicability of section 94A of the Act – (Section 93F(3)(d))	Section 94A of the Act is not excluded.
Applicability of section 94EF of the Act (Section 93F(3)(d))	Section 94EF of the Act is not excluded.
Mechanism for Dispute resolution – (Section 93F(3)(f))	See clause 12 .
Enforcement of this deed (Section 93F(3)(g))	See clauses 10 .
No obligation to grant consent or exercise functions – (Section 93F(3)(9))	See clause 13 .

Schedule 2

Defined Terms and Interpretation

Part 1 - Definitions

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.
Bank Guarantee	Means the bank guarantee for the amount of AUD\$550,000 provided by the Developer in favour of Council.
Business Day	means any day except for a Saturday or Sunday or a day which is a public holiday in Sydney.
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 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 as in section 109C of the Act.
Development	means the construction of a commercial building and associated car parking, service infrastructure and landscaping to be used as a home improvement centre subject of development consent DA1321-2011.
Development Application	means the development application to modify the Development under section 96 of the Act being, development application DA-1321/2011/a.
Development Consent	means any development consent issued under the Act to the Development Application.
Development Contribution	means the Monetary Contribution.
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.

Index	All Groups Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics
Land	means the "Land" set out in of Schedule 1 .
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
LEADR	means LEADR - Association of Dispute Resolvers (see www.leadr.com.au).
Legislation	means the Act and the <i>Local Government Act 1993</i> (NSW).
LPI	means the Land and Property Information.NSW.
Monetary Contribution	means a monetary contribution in the amount of \$550,000.00, indexed in accordance with clause 5 and payable in accordance with clause 4 and Schedule 3 .
Occupation Certificate	has the meaning given to that term in the Act.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).

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 includes plural	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 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.

Schedule 3

Calculation of Monetary Contributions

Item No.	Public Purpose	Timing of Payment	Total Amount
1.	Contribution toward the Georges River Flood Mitigation Reserve.	Prior to the issue of any Construction Certificate for the Development or part of the Development.	\$550,000.00
Total Monetary Contribution			\$550,000.00

Execution page

Executed as a deed

Dated:

~~Executed by Hydrox Nominees Pty Limited~~ in accordance with section 127(1) of the Corporations Act by authority of its directors.

[Redacted Signature]

Director/Secretary (Signature)

Witness

MARIA LIU
1 Woolworths Way
Bella Vista NSW 2153

Name of Director/ Secretary (Print Name)

Signed by Hydrox Nominees Pty Ltd
by its Attorney RODNEY ALBINO BORDIGNON
pursuant to Power of Attorney registered dated 6/6/2014
who has no notice of revocation of the said
Power of Attorney.

[Redacted Signature]

Director (Signature) Attorney

Name of Director (Print Name)

Executed by Liverpool City Council by its duly constituted Attorney, Carl Wulff 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)

