

# ATTACHMENT BOOKLET

ORDINARY COUNCIL MEETING  
7 FEBRUARY 2024

BOOK 2

LIVERPOOL  
CITY  
COUNCIL



LIVERPOOL CIVIC PLACE COUNCIL CHAMBERS,  
LEVEL 1, 52 SCOTT STREET, LIVERPOOL

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**Planning Agreement**  
**145 Mersey Road, Bringelly**

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

Tanya Borg (**Developer**)

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## Planning Agreement 145 Mersey Road, Bringelly

### Parties

<b>Council</b>	<b>Name</b>	Liverpool City Council
	<b>Address</b>	Ground Floor 33 Moore Street Liverpool NSW 2170
	<b>ABN</b>	84 181 182 471
<b>Developer</b>	<b>Name</b>	Tanya Borg
	<b>Address</b>	145 Mersey Road, Bringelly
	<b>ABN</b>	N/A

### Background

- A The Developer owns the Land.
- B The Developer wishes to carry out the Development.
- C The Developer has applied for Development Consent (DA-116/2022) for the continued use and works of the Land for Landscape Materials Supplies business at 145 Mersey Road, Bringelly.
- D The Developer has agreed to make the Development Contributions on and subject to the terms of this document.

### Operative Provisions

#### 1 Agreement

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

#### 2 Definitions

##### 2.1 Defined Terms

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

##### 2.2 Interpretation

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

### **3 Application and operation of document**

#### **3.1 Planning Agreement**

This document is a planning agreement:

- (1) within the meaning set out in s7.4 of the Act; and
- (2) governed by Subdivision 2 of Part 7 of the Act.

#### **3.2 Application**

This document applies to both the Land and the Development.

#### **3.3 Operation**

- (1) This document operates from the date it is signed by both parties and when the consent authority grants Development Consent for DA-116/2022

### **4 Application of s7.11 & s7.12**

#### **4.1 Application**

This document excludes the application of section 7.11 and section 7.12 of the Act to the Development.

#### **4.2 Section 7.24**

This document does not exclude the application of s7.24 to the Development.

#### **4.3 Consideration of Benefits**

Section 7.11(6) of the Act does not apply to the Contributions that are to be carried out or provided pursuant to this document.

### **5 Provision of Contributions**

#### **5.1 Monetary Contributions**

- (1) The Developer must pay the Monetary Contributions by the time specified in **Schedule 3**.
- (2) A Monetary Contribution is made for the purposes of this document when Council receives the full amount of the Contribution payable under this document. Payment is to be made by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

#### **5.2 Indexation of Contributions payable by Developer**

The Monetary Contributions are to be increased (with the calculation to be made as from the date any such amount is due to be paid under this document) in accordance with the following formula:

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

where:

- 
- A** = the indexed amount;
- B** = the relevant amount as set out in this document;
- C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D** = the Index most recently published before the commencement date of this document.
- If **A** is less than **B**, then the amount of the relevant Monetary Contribution will not change.

## **6 Developer Warranties and Indemnities**

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### **6.1 Warranties**

The Developer warrants to Council that it is:

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

## **7 Security**

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### **7.1 Provision of Security**

- (1) Subject to Clause 7.2, prior to the issue of a Construction Certificate in respect of the Development, the Developer must deliver to Council separate Bank Guarantees, bonds or other forms of security to the satisfaction of the Council:
  - (a) for the full Contribution Values required to be paid prior to the issue of a Subdivision Certificate or a Construction Certificate with respect to the Development consent relates
- (2) The Developer must satisfy its obligations under Clause 7.1(1) and provide proof of payment prior to directing Council to retain any Security held by Council which is required to be released by Council under this document.

### **7.2 Council may withhold Construction Certificate**

- (1) 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 to make any Contribution under this document.
- (2) Council may withhold the issue of a Construction Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Contribution under this document until such time as:
  - (a) the breach is rectified; or
  - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.



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### 7.3 Replacement of Security

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

### 7.4 Council may call on Security

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

### 7.5 Top up of Security

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

### 7.6 Release of Security

Unless:

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

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

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## 8 Registration of this document

### 8.1 Registration of this document

The Developer acknowledges and agrees that:

- (1) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 8.2, Council will undertake that registration at the cost of the Developer.

### 8.2 Obligations of Developer

- (1) The Developer, at its own expense, will promptly after this document comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:

- 
- (a) the consent of each person who:
- (i) has an estate or interest in the Land; or
  - (ii) is seized or possessed of an estate or interest in the Land;
- (b) the execution of any documents; and
- (c) the production of the relevant duplicate certificates of title,
- to enable the registration of this document in accordance with clause 8.1.
- (2) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
- (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than sixty (60) business days after that date; and
  - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

### 8.3 Discharge from the Register

The Council will provide a release and discharge of this document so that it may be removed from the folios of the Register for the Land (or any part of it) when:

- (1) the obligations under this document have been satisfied; or
- (2) if this document is terminated or rescinded.

## 9 Assignment

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### 9.1 Restriction on Assignment

Other than in accordance with this clause 9 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

### 9.2 Procedure for Assignment

- (1) If the Developer:
  - (a) wishes to Assign any part of the Land; and/or
  - (b) wishes to Assign its rights or obligations under this document,

then the Developer must:

- (c) provide a written request to Council for the consent of Council to the relevant Assignment;
- (d) provide 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 document that are to be Assigned to it;

- (e) obtain written consent of Council to the relevant Assignment; and
- (f) at no cost to Council, procure:
  - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
  - (ii) the provision of all Securities to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
- (2) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.

## 10 Dispute Resolution

### 10.1 Notice of dispute

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

### 10.2 Conduct pending resolution

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

### 10.3 Further steps required before proceedings

Subject to clauses **Error! Reference source not found.** and **Error! Reference source not found.** and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause **Error! Reference source not found.** or determination by an expert under clause **Error! Reference source not found.**, 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 clause **Error! Reference source not found.** is served.

### 10.4 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 **Error!**





























































































































































































































































































































































































































































