

# 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.

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## **6 Developer Warranties and Indemnities**

### **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.

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## **7 Security**

### **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

### 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!**

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**Reference source not found.** or expert resolution under clause **Error! Reference source not found.**

#### 10.5 Disputes for mediation

- (1) If the parties agree in accordance with clause **Error! Reference source not found.** 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 the President of the Law Society of New South Wales for the time being.
- (2) If the mediation referred to in paragraph **Error! Reference source not found.** 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 **Error! Reference source not found.**

#### 10.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause **Error! Reference source not found.** 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 document 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.
- (3) 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.
- (4) The expert appointed to determine a Dispute:
  - (a) must have a technical understanding of the issues in dispute;
  - (b) 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
  - (c) 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.
- (5) The parties must promptly enter into a document with the expert appointed under this clause **Error! Reference source not found.** setting out the terms of the expert's determination and the fees payable to the expert.

#### 10.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause **Error! Reference source not found.**, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (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.

#### 10.8 Expert may commission reports

- (1) Subject to paragraph **Error! Reference source not found.**:
  - (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 **Error! Reference source not found.** 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.

#### 10.9 Expert may convene meetings

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

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**10.10 Other courses of action**

If:

- (1) the parties cannot agree in accordance with clause **Error! Reference source not found.** to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause **Error! Reference source not found.** 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.

**10.11 Confidentiality of information provided in dispute resolution process**

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
  - (a) subject to paragraph **Error! Reference source not found.**, 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 or any Authority to do so; 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.

**10.12 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.

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**10.13 Costs**

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

**10.14 Remedies available under the Act**

This clause 100 does not operate to limit the availability of any remedies available to Council under the Act.

**10.15 Urgent relief**

This clause 10 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

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**11 Force Majeure****11.1 Definition**

In this clause 11, force majeure (**Force Majeure**), means any physical or material restraint beyond the reasonable control of a party claiming the Force Majeure and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes.

**11.2 Consequences of Force Majeure Event**

If a party is unable by reason of Force Majeure to carry out wholly or in part its obligations under this document, it must:

- (1) give to the other party prompt notice of the Force Majeure with reasonably full particulars; and
- (2) suggest an alternative method, if any, of satisfying its obligations under this document.
- (3) If a party is unable to satisfy its obligations under this document by an alternative method, the obligations of the parties so far as they are affected by the Force Majeure are then suspended during continuance of the Force Majeure and any further period as may be reasonable in the circumstances.

**11.3 Inability to complete Works**

- (1) The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.
- (2) If the Developer is unable to Complete any part of the Works due to a Force Majeure event the Developer must pay to Council the Contribution Value of the relevant works and the amount payable to Council may be apportioned, if necessary, in such manner as may be fair and reasonable.
- (3) In reference to paragraph (2), Council may at its absolute discretion call on the Bank Guarantees (or any part of it) pursuant to clause 7.3.

**11.4 Exclusion of operation**

The parties agree that this Force Majeure provision does not apply to an obligation of a party to transfer land or to pay money.

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### 11.5 Dispute

If the parties are unable to agree on the existence of an event of Force Majeure or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure, that dispute must be referred for determination under clause 10.

## 12 Breach of this document

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### 12.1 Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- (1) the nature and extent of the alleged breach;
- (2) if:
  - (a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
  - (b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.

### 12.2 Events of Default

The Developer commits an **Event of Default** if it:

- (1) fails to comply with a Breach Notice; or
- (2) becomes subject to an Insolvency Event.

### 12.3 Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

- (1) exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or
- (2) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

## 13 Termination, Rescission or Determination

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### 13.1 Termination

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) 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 12.1.
- (3) The Development Consent lapses.

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**13.2 Consequence of termination**

Upon termination of this Planning Agreement:

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

**13.3 Determination**

This Planning Agreement will determine upon the Developer satisfying all of the obligations imposed on it in full.

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**14 Position of Council****14.1 Consent authority**

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

**14.2 Document does not fetter discretion**

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

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

(Discretion).

**14.3 Severance of provisions**

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document 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 14 is substantially satisfied; and

- (b) in the event that paragraph (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 document has full force and effect; and

- (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

- (2) 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 document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

**14.4 No Obligations**

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

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## **15 Confidentiality**

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### **15.1 Document not Confidential**

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

### **15.2 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 document; and
  - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
  - (c) Subject to paragraphs (2) and (3), each party agrees:
    - (i) not to disclose any Confidential document received before or after the making of this document 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 document 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, or the requirements of any Authority; 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.

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## **16 GST**

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### **16.1 Defined GST Terms**

Defined terms used in this clause 16 have the meaning ascribed to them in the GST Law.

### **16.2 GST to be Added to Amounts Payable**

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

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**16.3 GST Obligations to Survive Termination**

This clause 16 will continue to apply after expiration of termination of this document.

**17 Miscellaneous**

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**17.1 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 their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) 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 document; and
- (4) be just and faithful in their activities and dealings with the other parties.

**17.2 Legal costs**

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document;
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within ten (10) business days of receipt of a Tax Invoice from Council; and
- (3) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document.

**18 Administrative Provisions**

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**18.1 Notices**

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

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(c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.

(3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

#### **18.2 Entire Document**

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

#### **18.3 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.

#### **18.4 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 document and the rights and obligations of the parties under it.

#### **18.5 Counterparts**

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

#### **18.6 Amendment**

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

#### **18.7 Unenforceability**

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

#### **18.8 Power of Attorney**

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

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

#### **18.9 Governing law**

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

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and

- 
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
-

**Schedule 1– Requirements under s7.4**

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p><b>Planning instrument and/or development application – (Section 7.4(1))</b></p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) Not applicable</p>
<p><b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b></p>	Lot 16, Section 2 in DP 2650
<p><b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b></p>	No
<p><b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b></p>	Does not apply
<p><b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b></p>	Does not apply
<p><b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b></p>	Refer to clause 4.3 of the Planning Agreement.
<p><b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b></p>	See clause 10.
<p><b>Enforcement of this agreement (Section 7.4(3)(g))</b></p>	See clause 7.
<p><b>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</b></p>	See clause 13.

## Schedule 2 – Defined Terms and Interpretation

### Part 1 – Definitions

<b>Acquisition Act</b>	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Assign</b>	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.
<b>Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"> <li>(1) federal, state or local government;</li> <li>(2) department of any federal, state or local government;</li> <li>(3) any court or administrative tribunal; or</li> <li>(4) statutory corporation or regulatory body.</li> </ol>
<b>Bank Guarantee</b>	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ol style="list-style-type: none"> <li>(1) Australia and New Zealand Banking Group Limited.</li> <li>(2) Commonwealth Bank of Australia.</li> <li>(3) Macquarie Bank.</li> <li>(4) National Australia Bank Limited.</li> <li>(5) St George Bank Limited.</li> <li>(6) Westpac Banking Corporation.</li> <li>(7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.</li> </ol>
<b>Claim</b>	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Completed</b>	means completed in accordance with the requirements of this document.
<b>Confidential Information</b>	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: <ol style="list-style-type: none"> <li>(1) is by its nature confidential;</li> <li>(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);</li> </ol>

	(3) any party knows or ought to know is confidential;
	(4) is information which may be reasonably considered to be of a confidential nature.
<b>Construction Certificate</b>	has the same meaning as in section 6.4(d) of the Act.
<b>Contributions</b>	means the Monetary Contribution specified in Schedule 3.
<b>Contribution Value</b>	means the amount specified in <b>Schedules 3</b> in the column headed "contribution value" for each item of the Contributions.
<b>Development</b>	Means the proposed development under DA-116/2022 (PAN-190703)
<b>Development Application</b>	means DA-116/2022 and its related applications
<b>Development Consent</b>	means the consent issued under the Act for the Development.
<b>Dispute</b>	has the meaning ascribed to it in clause 10.1.
<b>Encumbrance</b>	means an interest or power: <ul style="list-style-type: none"> <li>(1) reserved in or over an interest in any asset;</li> <li>(2) arising under, or with respect to, a Bio-Banking Agreement;</li> <li>(3) 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</li> <li>(4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</li> </ul> <p><b>Encumber</b> means to grant an Encumbrance.</p>
<b>Event of Default</b>	has the meaning ascribed to it in clause 12.2.
<b>Force Majeure</b>	has the meaning ascribed to it in clause 11.
<b>GST Law</b>	means <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.
<b>Index</b>	means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics.
<b>Insolvency Event</b>	means the happening of any of the following events: <ul style="list-style-type: none"> <li>(8) 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.</li> <li>(9) 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</li> </ul>

a body corporate or one of them is appointed, whether or not under an order.

- (10) 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.
- (11) 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.
- (12) A body corporate is or states that it is insolvent.
- (13) 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;
- (14) 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*.
- (15) 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.
- (16) 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.
- (17) A receiver, manager or receiver and manager is appointed to the Company.
- (18) 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.
- (19) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

<b>Land</b>	means the "Land" set out in <b>Schedule 1</b> .
<b>Law</b>	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
<b>Location Plan</b>	means the plan that is attached as <b>Annexure 2</b> .
<b>Monetary Contributions</b>	means the monetary contributions set out in <b>Schedule 3</b> .
<b>Occupation Certificate</b>	has the same meaning as in section 6.4(c) of the Act.
<b>Planning Legislation</b>	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
<b>Primary Security</b>	has the meaning ascribed to it in clause 7.
<b>Quantity Surveyor</b>	means a person who:

- (1) is a member of their respective professional organisation and has been for at least five (5) years;
- (2) practises as a quantity surveyor for works of the same nature as the relevant Works;
- (3) is active as a quantity surveyor at the time of his appointment;
- (4) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and
- (5) undertakes to act fairly and promptly in accordance with the requirements of this document.

**Security**

means collectively the Primary Security and the Defects Security.

**Subdivision Certificate**

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

**Works**

means the works specified or described in **Schedule 4**.

**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 document.

**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,

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	when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
<b>next day</b>	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
<b>agreement</b>	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>Gender</b>	a reference to one gender extends and applies to the other and neuter gender.

---

**Schedule 3 – Monetary Contributions**

Item	Time for Completion	Contribution Value
Monetary Contributions	Prior to the issue of a construction certificate in respect of any development to be carried out on the Land.	4.6% of the total cost of works provided under DA-116/2022 as at [date] and adjusted by any later modifications.

---

**Execution page**

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**Executed as an agreement.**

Dated:

**Executed by Liverpool City Council** by its Attorney pursuant to Power of Attorney registered Book 4756 Number 447 in the presence of:

---

Witness (Signature)

---

Attorney (Signature)

---

Name of Witness (Print Name)

---

Name of Attorney (Print Name)

---

Date

---

Position of Attorney

**Executed by Tanya Borg**

---

Tanya Borg (Signature)

---

Tanya Borg (Print Name)

---

Date

## Planning Agreement

### Explanatory Note

#### 145 Mersey Road, Bringelly of Lot 16 Section 2 DP 2650

#### 1. Introduction

This Explanatory Note has been prepared in accordance with Section 205 of the *Environmental Planning & Assessment Regulation 2021* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the parties under s93F of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**).

#### 1 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (1) Liverpool City Council (**Council**).
- (2) Tanya Borg (**Developer**).

#### 2 Description of the Subject Land

The land to which the Planning Agreement relates is set out in the table below.

Folio Identifier	Location
Lot 16 Sec 2 DP 2650	145 Mersey Road, Bringelly

#### 3 Summary of objects, nature and effect of the Planning Agreement

The offer made by the Developer as set out in the Planning Agreement is largely based on the needs identified by:

- (1) State Environmental Planning Policy (Precincts – Western Parkland City) 2021;

The intent of the Planning Agreement is to ensure that development application DA-116/2022 can be determined for the proposed development located at 145 Mersey Street, Bringelly, when currently no contributions plan is in force for the Western Sydney Aerotropolis Precinct for which the development site is located.

The contributions to be provided by the Developer under the Planning Agreement are described in the table below.

Description of Contributions
The Developer is required to pay a Monetary contribution to Council at a rate of 4.6% of the total cost of works provided under DA-116/2022 and adjusted by any later modifications.

---

## **4 Assessment of the merits of the Planning Agreement**

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### **4.1 The planning purposes served by the Planning Agreement**

In accordance with Section 7.4 of the EPA Act, the Planning Agreement promotes the following public purpose:

- (1) the provision of public amenities and public services; and
- (2) the monitoring of the planning impacts of development of the Land.

### **4.2 How the Planning Agreement promotes the public interest**

In accordance with the objects of the EPA Act, the Planning Agreement promotes the public interest in the following manner:

- (1) the proper management, development and conservation of land;
- (2) the promotion and co-ordination of the orderly and economic use and development of land; and
- (3) the Planning Agreement will not preclude the public being provided with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to be involved with the development assessment and are invited to make comment on the Planning Agreement, particularly with regard to the public interest.

### **4.3 How the Planning Agreement promotes the elements of Council's charter**

The Planning Agreement promotes a number of elements of Council's Charter under section 8 of the *Local Government Act 1993* (NSW), as follows:

- (1) the exhibition of the Planning Agreement facilitates the involvement of members of the public, while council staff were involved in the development of the Planning Agreement;
  - (2) this explanatory note is prepared for the purposes of keeping the local community and the State government (and through it, the wider community) informed about its activities; and
  - (3) the Planning Agreement makes it clear that Council has a statutory role as consent authority for development and that the Planning Agreement is not intended to unlawfully influence the exercise of its regulatory functions, ensuring that Council will act consistently and without bias, particularly where an activity of the Council is affected.
-

## Voluntary planning agreement

275 Adams Road, Luddenham, New South Wales, 2745

—

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

Liverpool City Council (**Council**)

—

## Voluntary planning agreement

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

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## 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

## 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 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 Schedule 1;
  - (ii) to the extent or in the amount referred to in Column 3 of the table in 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 4 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.

## 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.	<p>The Capital Investment Value (CIV) is subject to either of the following conditions:</p> <p>a) If a Contributions Plan is adopted by Council on or before to 31 December 2027 the monetary contributions will be calculated in accordance with adopted plan; or</p> <p>b) If a Contributions Plan is not adopted by Council on or before 31 December 2027, the Monetary Contribution will be 10% of the CIV.</p>	Prior to issuing the first construction certificate for Development on the Development Site,

## 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.

**DATED:**

**Executed by Liverpool City Council** by the **CEO** who will sign under Power of Attorney (BK 4756, No. 477)

**Signed** for and on behalf of **Liverpool City Council** (ABN 84 181 182 471) in accordance with a resolution of the Council on **16 November 2022** by:

\_\_\_\_\_  
Signature of CEO

\_\_\_\_\_  
Signature of CEO secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of CEO (print)

\_\_\_\_\_  
Name of CEO secretary (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**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)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Explanatory Note

### Planning Agreement (VPA-49) associated with State Significant Development Application SSD-10446 at 275 Adams Road, Luddenham

**This Explanatory Note has been prepared in accordance with the Section 205 of the Environmental Planning and Assessment Regulation 2021**

#### 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 SSDA 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 Proposed Development Application

It is proposed to pay a monetary contribution to be applied towards a Public Purpose in respect of development the subject of State significant development application SSD-10446

#### Summary of Objectives, Nature and Effect of the Draft Planning

##### **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 a planning 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 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 Planning Agreement**

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

The draft Planning Agreement:

- promotes and co-ordinates of 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, 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 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, occupation certificate or 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.

## Draft Voluntary planning agreement

275 Adams Road, Luddenham, New South Wales, 2745

—

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

Liverpool City Council (**Council**)

—

draft

## Draft Voluntary planning agreement

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

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## 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.

draft

# Agreed terms

## 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 at the time the Development Contributions become due and payable under **Schedule 1**.

**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 per column 4 of the table in 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 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 Schedule 1;
  - (ii) to the extent or in the amount referred to in Column 3 of the table in Schedule 1 (being the Development Contribution); and
  - (iii) at the Delivery Date referred to in Column 4 of table 1 in Schedule 1.
- (b) Payment of monetary Development Contributions
- (i) The Developer is to pay to the Council the Development Contribution specified in column 3 in the table in Schedule 1 in the manner specified in Column 4 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 Agreement in accordance with the following formula:

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

LCPI

where:

Contribution Amount = the relevant amount as set out in this Deed for the Development Contribution

CPI = the last CPI published before the due date for payment of that 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.

## 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 **Error! Reference source not found.** 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.

draft

## Schedule 1 – Development Contributions (clause 10)

Column 1	Column 2	Column 3	Column 4
Contribution	Public Purpose	Manner & Extent	Timing
Monetary contribution	The provision of a Public Purpose.	<p>Ten percent (10%) of the CIV subject to the following conditions:</p> <p>(a) the Developer agrees that should the monetary contribution in the made Contribution Plan that applies to the Development Site be greater than 10% of the CIV, the Developer will pay the variable difference; and</p> <p>(b) the Council agrees that should the monetary contribution in the made Contribution Plan that applies to the Development Site be less than 10% of the CIV, the Council will refund the variable difference, less any administrative costs; and</p> <p>(c) If no Contribution Plan has been made prior to the release of the first Construction Certificate for the Development Site, the monetary contribution shall be 10% of the CIV.</p>	Prior to the release of the first construction certificate for Development on the Development Site.

## 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.

draft

# 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)

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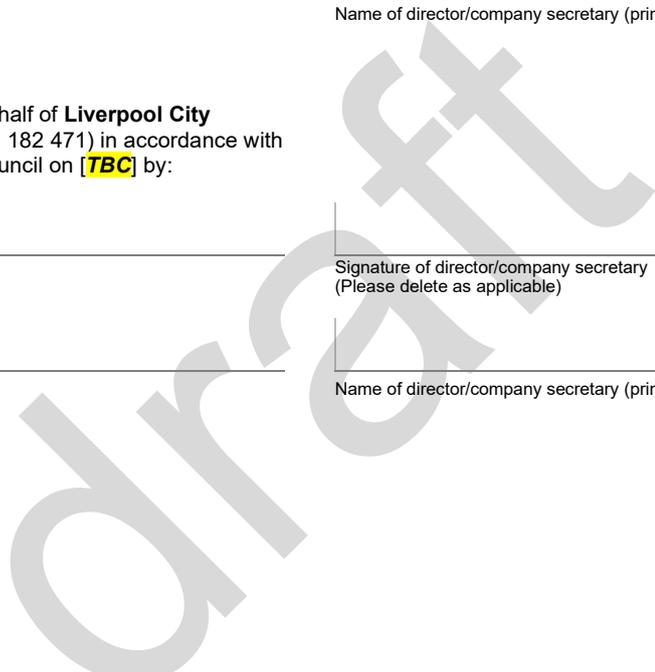
**Signed** for and on behalf of **Liverpool City Council** (ABN 84 181 182 471) in accordance with  
a resolution of the Council on **[TBC]** by:

\_\_\_\_\_  
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 – SSDA 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 SSDA 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**

Liverpool City Council (ABN 84 181 182 471) Ground Floor, 33 Moore Street, Liverpool 2170 (**Council**).

CFT No 13 Pty Limited atf Coombes Family Trust No 13 (ABN 32 528 255 331), Level 5, 2 Grosvenor Street, Bondi Junction NSW 2022 (**Developer**).

### **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 Proposed Development Application**

It is proposed to pay a monetary contribution to be applied towards a Public Purpose in respect of development the subject of State significant development application SSD-10446

### **Summary of Objectives, Nature and Effect of the Draft Planning**

#### **Objectives of Draft Planning Agreement**

The objective of the draft Planning Agreement is to provide Council with a monetary contribution to be put towards a Public Purpose.

#### **Nature of Draft Planning Agreement**

The draft Planning Agreement is a planning 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 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 Planning Agreement**

##### **The Planning Purposes Served by the 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, 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 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, occupation certificate or 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.

FINAL FEBRUARY 2024

# PLAN OF MANAGEMENT

# PHILLIPS PARK



**Document Status**

Responsible Directorate	Community and Lifestyle
Contact Position	Co-ordinator Community Planning
Council Meeting Date	07.02.2024
Minute Number	
Trim Number	022854.2024
Status	Final
Lifespan	5 - 10 years or until superseded
Scope	This Plan of Management refers to all Lots described in section 2.4.1

**Version Control**

Version	Adoption Date	Reason for Change
1	07.02.2024	Compliance with <i>Crown Land Management Act 2016</i> and <i>Local Government Act 1993</i>

# ACKNOWLEDGEMENT OF COUNTRY

## **ACKNOWLEDGEMENT OF COUNTRY**

Liverpool City Council acknowledges the traditional custodians of the land that now resides within Liverpool City Council's boundaries, the Cabrogal clan of the Darug Nation. We acknowledge that this land was also accessed by peoples of the Dharawal and Darug Nations.

## **ACCESS AND EQUITY STATEMENT**

Liverpool City Council acknowledges and respects First Nations people as the original inhabitants of the land which now resides within the Liverpool Local Government Area, the people of the Dharug (Darug) and Tharawal (Dharawal) nations. Liverpool City Council also acknowledges and respects Liverpool's multicultural communities and their varied cultural backgrounds, languages, traditions, religions and spiritual practices.

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# 1 INTRODUCTION

## 1.1 What is a Plan of Management?

A Plan of Management provides the framework for managing public land. It sets out how public land is intended to be used, managed, maintained and enhanced in the future.

The NSW *Local Government Act 1993* requires a Plan of Management to be prepared for all public land that is classified as community land under the Act. This requirement applies to community land owned by Liverpool City Council, and Crown land for which Council is Crown Land Manager.

## 1.2 Background to this Plan of Management

Before adoption of this Plan of Management, Phillip Park (known locally as Phillips Park), was subject to Liverpool City Council's Generic Plan of Management for Sportsgrounds (2007) and Community Facilities Plan of Management (2005). At that time Phillips Park comprised sporting fields, four tennis courts, a small sports amenities building, a small community hall and play space and a small playground to the east.

The Lurnea Community Hub project was planned by Council from 2016 to act as a catalyst for wider urban renewal and economic regeneration in a suburb characterised by low socio-economic status and high levels of ethnic diversity through the development of community and recreational infrastructure, coupled with the adaptation of under-utilised land.

This Plan of Management for Phillips Park reflects the recently completed upgrades to its sporting, community and recreation facilities undertaken in 2022, including construction of the Lurnea Community Hub.

Upon adoption, this Plan of Management will supersede the Sportsgrounds and Community Facilities Generic Plans of Management as they apply to Phillips Park.

## 1.3 Land to which this Plan of Management applies

This Plan of Management applies to Phillips Park in Lurnea, as shown in Figure 1.

Figure 1 Phillips Park study area



Key features of Phillips Park include:

- a community hub comprising community facilities and a café
- a turf double senior sports field with cricket wicket
- recreational facilities including play area, basketball court, outdoor gym and picnic facilities.



## 1.4 Objectives of this Plan of Management

The objectives of this plan are to:

- provide a framework for the ongoing use, maintenance, management and improvement of Phillips Park for the next 10 years
- comply with relevant legislation, particularly the *Crown Land Management Act 2016*, *Native Title Act 1993*, and the *Local Government Act 1993*
- be consistent with Liverpool City Council's relevant strategies, plans and policies
- reflect the values and expectations of the community, user groups, local residents, and other users who will use and enjoy Phillips Park
- protect, enhance and balance the community/social, sport and recreational, open space and access values
- guide future uses and developments of Phillips Park
- authorise leases, licences and other estates on the land
- categorise community and Crown land within Phillips Park to reflect proposed uses
- include clear and achievable management strategies, actions and performance targets which reflects Council's corporate planning goals and plans
- identify priority actions for the allocation of resources to inform future capital works and maintenance programs consistent with identified community and user needs.

## 1.5 Process of preparing this Plan of Management

### 1.5.1 Introduction

The general process of preparing this Plan of Management is outlined below in Figure 2. Figure 3 shows the process for preparing a Plan of Management for Crown land.

Figure 2 Process of preparing this Plan of Management

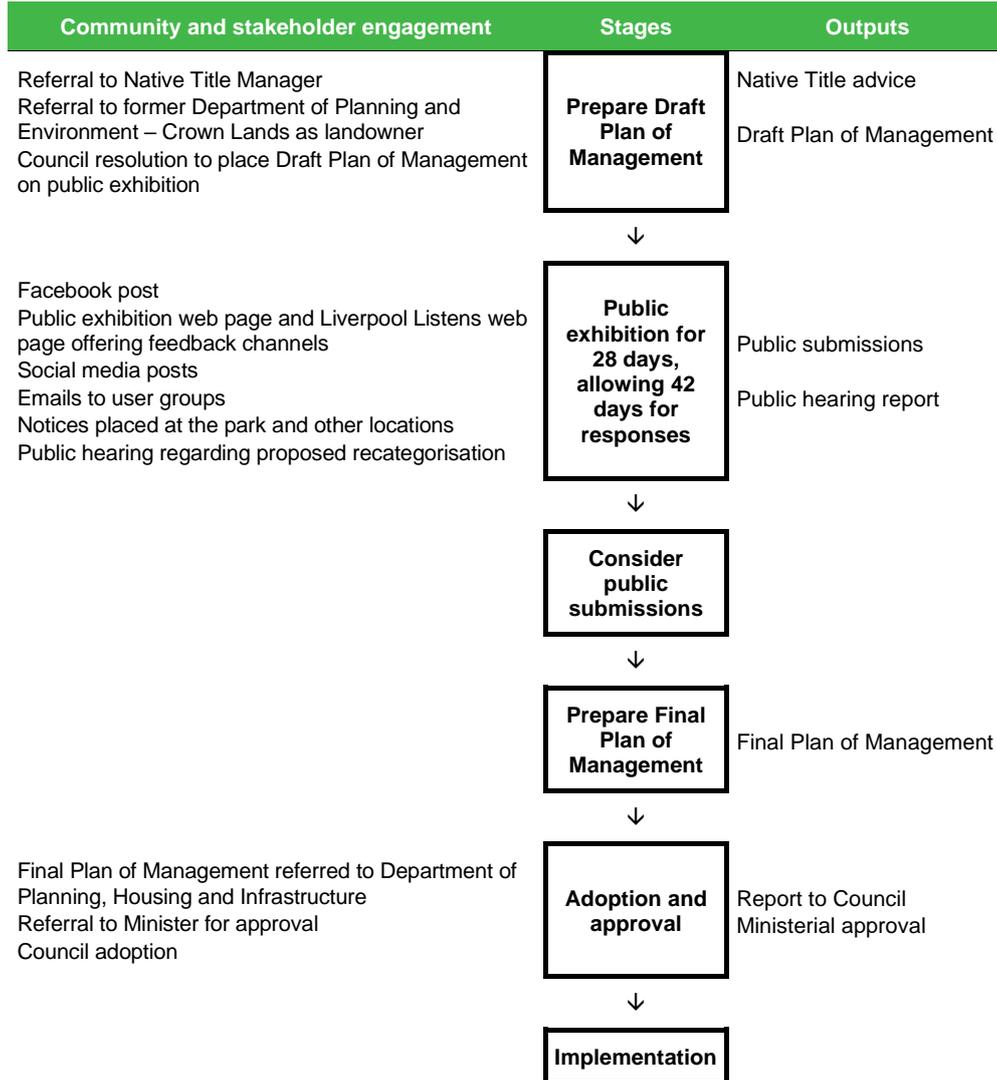
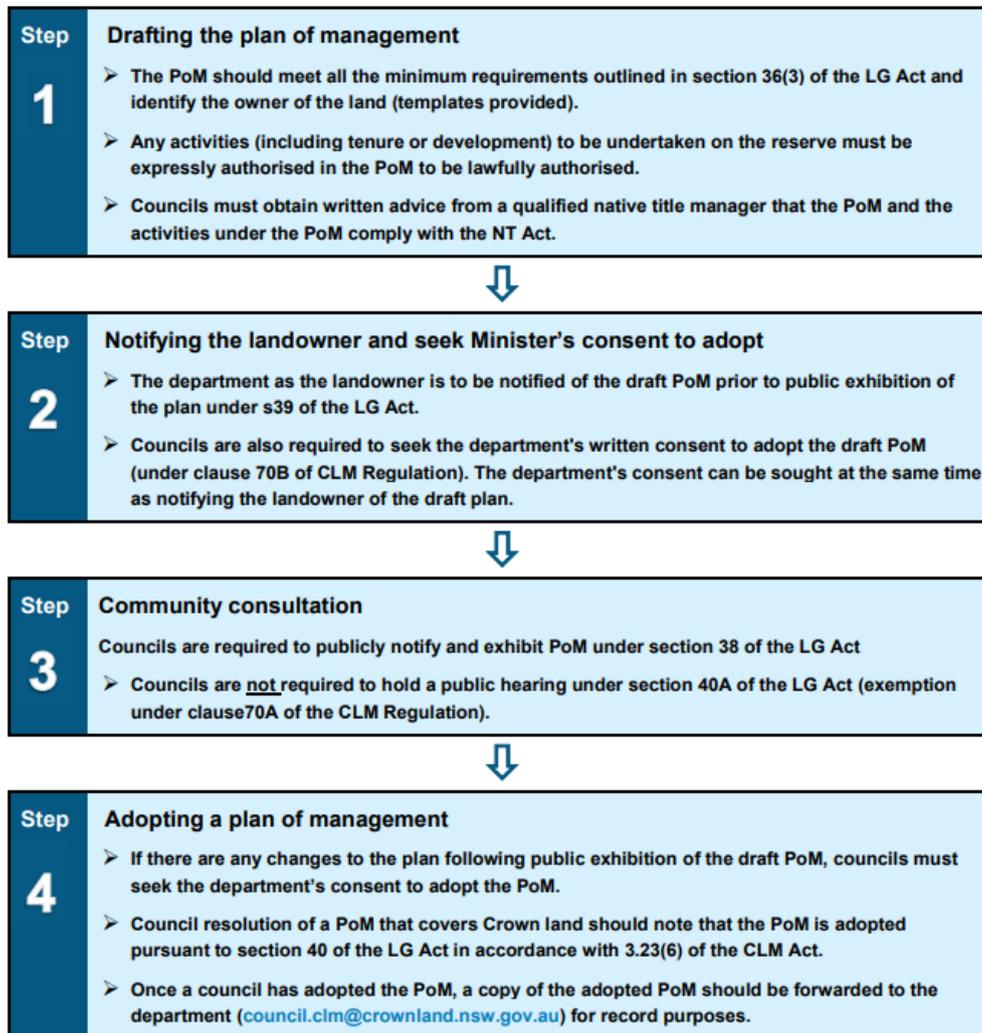


Figure 3 Process of preparing a Plan of Management for Crown Land



### 1.5.2 Community and stakeholder engagement

A comprehensive community and stakeholder engagement program was undertaken by Council in March 2016 to seek community input and to establish community needs for new community facilities and improved recreation opportunities in Phillips Park. The community and stakeholder engagement included an online survey, intercept surveys on-site and in Lurnea Village Centre, interviews with park and hall hirers, a workshop with Lurnea High School students, a community workshop and a community drop-in session and barbecue. An assessment of the community's desired facilities, as well as benchmarking local community, sport and recreation facilities, recommended a multi-purpose community hub, sports oval/cricket pitch, and informal/passive recreation spaces (Cred Consulting, 2016). Based on this brief, a draft master plan was prepared, which received community support when feedback was sought on the park design in early 2018. The park upgrade was completed in 2022, reflecting many of the facilities desired by the community, expressed during the consultation.

After advice from the Native Title Manager was received, the Draft Plan of Management was approved by Council to be referred to the Department of Planning and Environment – NSW

Crown Lands (DPE-NSWCL), with provisions required by DPE-NSWCL being included in the Draft Plan of Management.

Council delivered engagement activities during preparation of this plan in line with best practice and maintained its principles of engagement, equity, access, rights and participation.

The draft Plan of Management was exhibited for public comment in accordance with Section 38 of the *Local Government Act 1993*. Community feedback and input was sought through the 42-day public exhibition and submissions period using an online survey/email mechanism via the Council website. No public submissions were received during the public exhibition.

The *Crown Land Management Amendment (Plan of Management) Regulation 2021* exempts Council from the requirement to hold a public hearing into the proposed categorisation of Crown land in accordance with Section 40(A) of the *Local Government Act 1993*. However, a public hearing was required to recategorise the Council-owned community land in Phillips Park categorised as Sportsground in the Generic Plan of Management for Sportsgrounds in 2007 and as General Community Use in the Generic Plan of Management for Community Facilities in 2005. With no objections being received, the public hearing report recommended that the recategorisation of community land proposed in the Draft Plan of Management be adopted in the final Plan of Management.

## 1.6 Plan of Management requirements for community and Crown land

Requirements for a Plan of Management for community land and for Crown land, managed by a Council, are as provided by the *Local Government Act 1993*. These requirements and where they can be found in this Plan, are listed in Table 1.

Table 1 Contents of a Plan of Management for community land

Requirement of the Local Government Act	How this plan satisfies the Act
A description of the condition of the land, and of any buildings or other improvements on the land as at the date of adoption of the Plan of Management	Section 2
A description of the use of the land and any such buildings or improvements as at the date of adoption of the Plan of Management.	Section 2
Categorisation of community land	Section 3
Core objectives for management of the land	Section 4
The purposes for which the land, and any such buildings or improvements, will be permitted to be used.	Section 5
The purposes for which any further development of the land will be permitted, whether under lease or licence or otherwise.	Section 5
A description of the scale and intensity of any permitted use or development.	Section 5
Authorisation of leases, licences or other estates over community land.	Section 5
Objectives and performance targets.	Section 6
Means by which the plan's objectives and performance targets will be achieved.	Section 6
Means for assessing achievement of objectives and performance targets.	Section 6

This Plan of Management has also been prepared according to the requirements of the *Crown Land Management Act 2016*. A Plan of Management will satisfy the *Crown Land Management Act 2016* if the points in Table 2 are addressed.

Table 2 Contents of a Plan of Management required by the Crown Land Management Act 2016

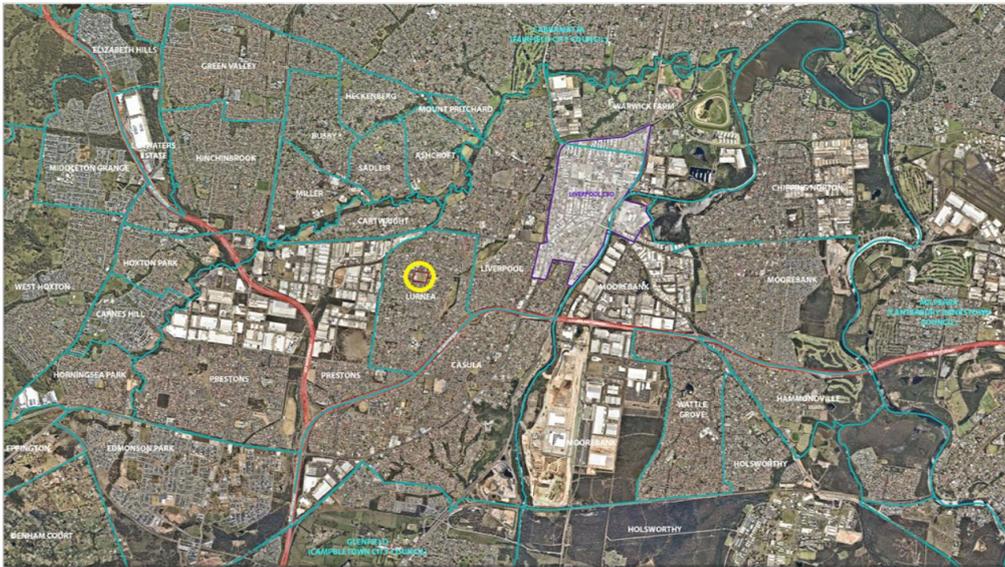
A Plan of Management prepared by a Council crown land manager satisfies the Crown Land Management Act if:	How this plan satisfies the Act
It is consistent with the purposes the land has been reserved or dedicated. (Sections 3.13 and 2.12 of the Act)	This Plan has been prepared consistent with the purpose(s) of the reserves and dedications.
It has been prepared under the <i>Local Government Act 1993</i> and is classified community land that is either dedicated or reserved Crown land. (Sections 3.32 (1)(b) and Section 3.23 (6))	All Crown land that this Plan of Management has been prepared for is either dedicated or reserved Crown land under the management of Liverpool City Council, or is community land under the <i>Local Government Act 1993</i> and therefore required to have a Plan of Management.
Plans of Management for the land are to be prepared and adopted in accordance with the provisions of Division 2 or Part 2 of Chapter 6 of the <i>Local Government Act 1993</i> (Section 3.23 (7) (d))	This Plan has been prepared to satisfy the requirements of the <i>Local Government Act 1993</i>
If the draft Plan of Management alters the categories assigned as provided by this section, the council manager must obtain the written consent of the Minister to adopt the plan if the re-categorisation would require an addition to the purposes for which the land is dedicated or reserved	Written consent of the Minister will be obtained through the review of the draft Plan by the Crown.
Hold public hearing under section 40A of the <i>Local Government Act 1993</i> . (Section 3.23 (7) (d))	The <i>Crown Land Management Amendment (Plan of Management) Regulation 2021</i> exempts Council from the requirement to hold a public hearing into the proposed categorisation of Crown land in accordance with Section 40(A) of the <i>Local Government Act 1993</i> . A public hearing is required under section 40A of the <i>Local Government Act 1993</i> to recategorise community land in Phillips Park.
Excepting where the relevant land is excluded land, the written advice of at least one Native Title Manager that it complies with any applicable provisions of the Native Title legislation has been obtained. (Section 8.7 (1) (d))	Council has received the advice of a native title manager that the plan complies with the <i>Native Title Act 1993</i> (Cwth).
Council must comply with any requirements of the native title legislation in relation to the land (Section 8.10)	The Plan of Management has been prepared to ensure any impacts on native title will be appropriately addressed under the future act provisions of the <i>Native Title Act 1993</i> . Council shall meet the notification requirements of Section 24JB of the <i>Native Title Act 1993</i> in relation to the construction or establishment of a public work prior to further approval.

## 2 DESCRIPTION OF PHILLIPS PARK

### 2.1 Location and context

Figure 4 shows the location and context of Phillips Park.

Figure 4 Location and context of Phillips Park



Phillips Park is located at 66 Hill Road in the suburb of Lurnea within the Liverpool local government area. The park is approximately 3 kilometres south-west of Liverpool City Centre.

Phillips Park is bound to the north by Reilly Street, with several commercial properties comprising the Lurnea Shopping Precinct beyond including Lurnea Liquor, Lurnea Service Station, and Lurnea Auto Repairs Powerfuel. A large residential subdivision lies to the north of the site. Maxwells Creek lies approximately 470 metres to the north-west of the site.

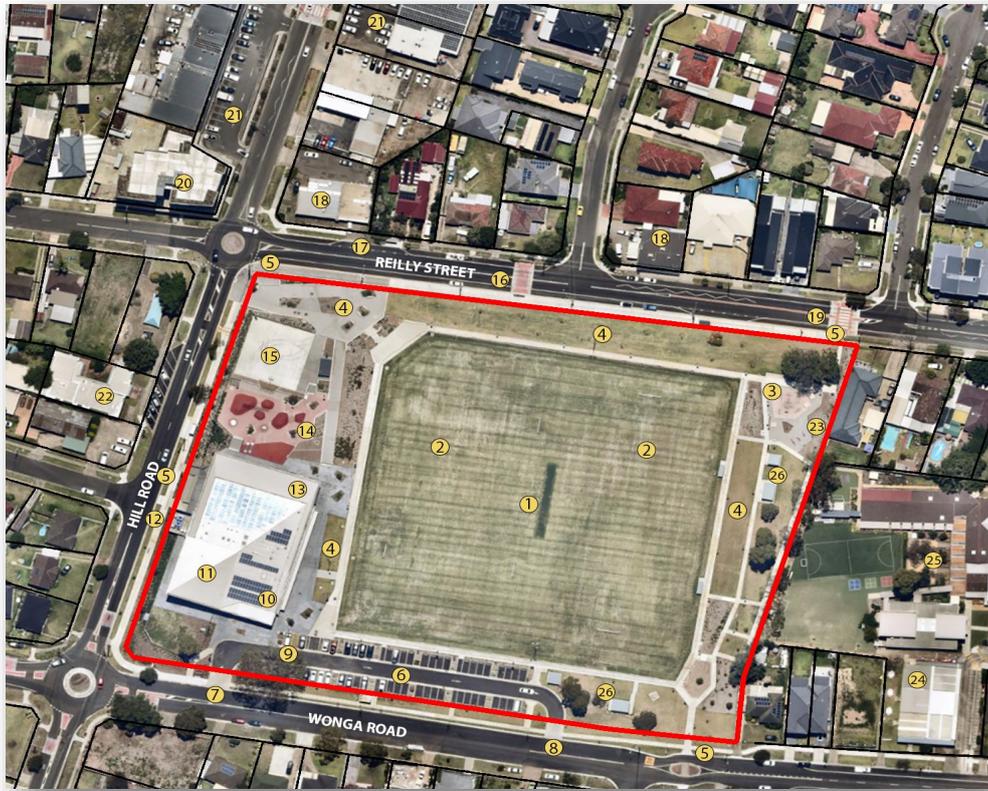
To the south site is bound by Wonga Road with a large residential subdivision beyond.

Residential properties and the St Francis Xavier Catholic Church and St Francis Xavier Primary School lie to the east of the site. Step by Step Pre-school is also situated east of the site. Brickmakers Creek lies approximately 500 metres east of the site.

The site is bound to the west by Hill Road with a large residential subdivision beyond. Lurnea Public School is located west of West Street.

Figure 5 shows the location and features of Phillips Park.

Figure 5 Location and features of Phillips Park

**Key**

1. Cricket Pitch	2. Soccer Fields
3. Outdoor Gym	4. Grassed Seating areas
5. Accessible Pedestrian Entry points	6. Public Carpark
7. Carpark Entry	8. Carpark Exit
9. Accessible Car spaces	10. Solar Panels
11. Community Centre	12. AC condenser units
13. Cafe	14. Playground
15. Half Basketball Court	16. Speed Hump
17. Bus Stop	18. Local Shops
19. Pedestrian Crossing	20. Residential Flat Building
21. Local Shopping Village	22. Childcare Facility
23. Bike Racks	24. St Francis Xavier Primary School
25. St. Francis Xavier Catholic Church	26. Benches/Shaded Tables

## 2.2 History and cultural heritage

### 2.2.1 History of Phillips Park

#### Aboriginal

South-western Sydney is and has been a landscape of deep significance for Aboriginal people for over 40,000 years. The region encompassing Liverpool City Council along Georges River was a significant meeting place for the Tharawal and Dharug people due to the valuable natural resources of the area. There are no documented Aboriginal sites or relics within Phillips Park itself, however the Park lies within a rich archaeological context.

European settlement in the 18th century resulted in significant disruption for traditional lifestyles for these Indigenous communities, breaking traditional territorial boundaries and causing significant displacement.

The suburb of Lurnea is believed to be named from the Aboriginal word meaning 'platypus' or 'resting place.'

According to the Australian Bureau of Statistics, 265 Aboriginal and Torres Strait Islander people resided in Lurnea in 2021, making up 2.6% of the area's total population.

#### Post-European

##### Historical events

Land in the suburb of Lurnea was granted to Eber Bunker and Patrick Garney in 1803, establishing the Collingwood estate which occupied the area between the Georges River to Webster Road, and Hoxton Park Road and Kurrajong Road, approximately 200 metres east of Lurnea Park. Following World War I, the area was established as the Hillview Soldiers' Settlement, where former soldiers could purchase affordable land and housing. The land comprising the present Phillips Park was the epicentre of activity for the Hillview Soldiers' Settlement. The manager's house, produce store, two soldier settlers' houses and the Hillview Hall, a community hall used for social and religious activities, all fronted Reilly Street. The first meetings of the RSL Liverpool Sub-branch were held in the Hillview Hall. Tennis courts were added in the 1920's. During World War II, the American Navy personnel from Hargrave Park attended socials on Saturday nights organised by the wives of the settlers.

In the 1960's the NSW Housing Commission began developing the area for residential purposes, transforming Hillview into the suburb of Lurnea. Phillips Park is named after the Phillips family, long term farming residents of Lurnea since Clarence William Phillips purchased his farm in 1920 and his son Clarrie purchased the adjacent farm in 1938. Since the 1970's Phillips Park has catered for formal and informal sports use, ranging from cricket, soccer and rugby games on the sporting fields, and tennis.

George Bates Hall was constructed in 1977, named after George Bates (born June 25, 1912) an early resident of Hill Road, Lurnea. Bates worked in the Liverpool area from circa 1928, living in Hillview (Lurnea) from 1962. He became Grand Master of the Ancient Order of Foresters of the area of Liverpool, and also joined the St Vincent de Paul Society.

On 17 February 1961, land at Phillip Park was reserved for the public purposes of public recreation and public hall. The land was reserved pursuant to Section 13 of the *Closer Settlement (Amendment) Act 1914* by publication of a notice in the NSW Government Gazette. On 21st February 1997, by publication in the NSW Government Gazette, the reserved land was assigned to the Phillip Park Reserve Trust as trustee of the land pursuant to Section 92(1) of the *Crown Lands Act 1989* (now repealed). On 28th February 1997 the Minister published a notice in the NSW Government Gazette pursuant to Section 95 of the *Crown Lands Act 1989* appointing Council to manage the affairs of the Phillip Park Reserve

Trust. Liverpool City Council was appointed Crown land manager of the former trust land on 1 July 2019.

The Lurnea Community Hub urban renewal project between June 2020 and July 2022 was undertaken to support the social, economic, and recreational needs of the community and to stimulate confidence in the area. The upgrade to Phillips Park was delivered by a \$13 million grant from the Australian and NSW Governments under the Western Parkland City Liveability Program. The redevelopment included a multi-purpose community hub including a commercially run café, multi-purpose community centre, dual soccer/cricket sports oval and half basketball court, a children's playground, outdoor fitness equipment, picnic facilities and footpath network, providing residents with access to facilities that help improve their quality of life. The café promotes activation, engagement and use of the community space. It also provides a rental return that offsets the operational and outgoing costs of the community facility, in turn promoting long-term sustainability of the space for community use.

## 2.2.2 Heritage significance

### Aboriginal

#### Aboriginal interests and land claims

Liverpool City Council and Gandangara Local Aboriginal Land Council have entered into a Memorandum of Understanding (MoU) (2023 - 2026) which allows each party to seek to collaborate on important mutual issues. The MoU ensures a working group collaborates on undetermined land claims and involves Gandangara in land use planning decisions that potentially affect Aboriginal interests. Council complies with its obligations under the *Native Title Act 1993* (Cth) and the *NSW Aboriginal Land Rights Act 1983* and any commitments made to Gandangara.

The Gandangara Aboriginal Land Council and the NSW Aboriginal Land Council have lodged claims over Crown land at Phillips Park.

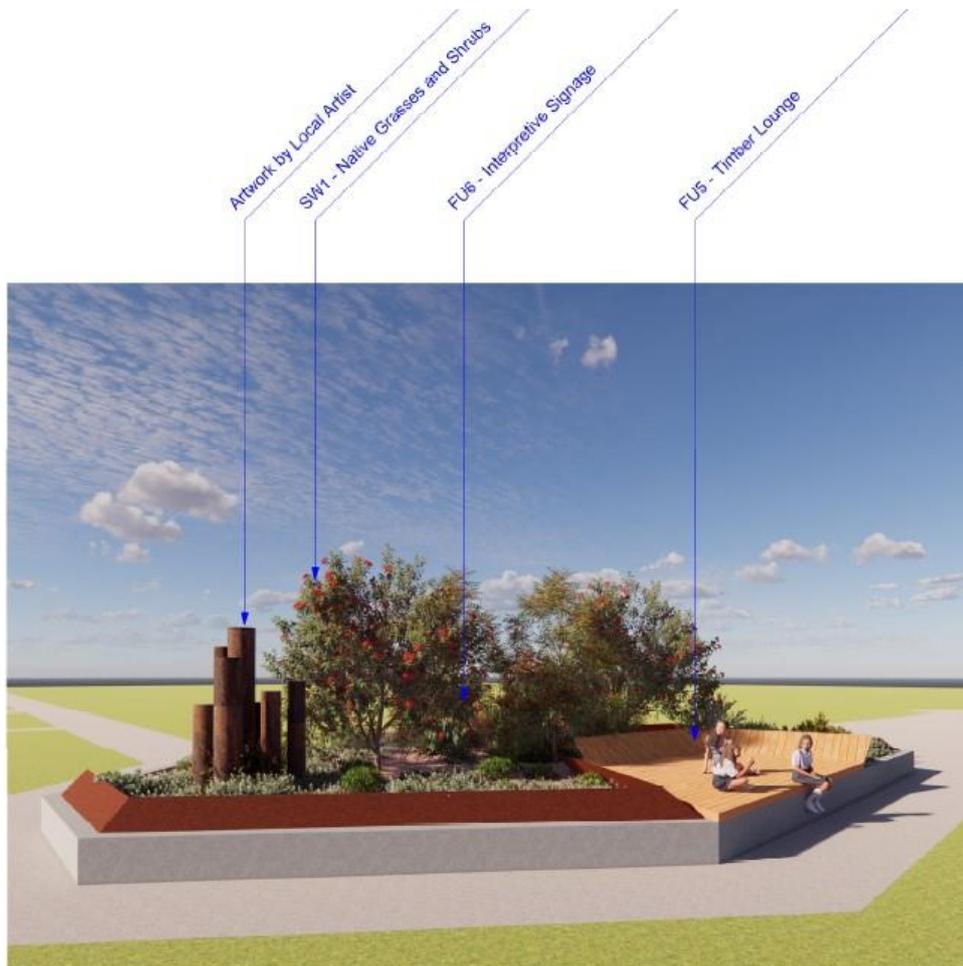
Table 3 outlines the current Aboriginal Land Claim status of Phillips Park. The status of these claims may alter at any time.

Table 3 Aboriginal land claims over Phillips Park, Lurnea

Claim number	Land parcels	Date lodged	Status
18291 and 18274	Lot 317 DP 752060 Lot 339 DP 752060	2/7/2009	Under investigation
42491	Lot 317 DP 752060 Lot 339 DP 752060	19/12/2016	Under investigation

An Aboriginal garden was designed in 2023 in conjunction with the Gandangara Aboriginal Land Council and as part of the Gandangara-Liverpool City Council MoU partnership as a way to pay respect to the local aboriginal heritage. Figure 6 shows the concept render of the Aboriginal garden in the south east corner of the park, which consists of native planting and a seating deck area that is available to everyone. Aside from it being a serene meeting place with rich heritage the Aboriginal garden includes natural edible flora. The garden was officially opened to the public in September 2023.

Figure 6 Concept render of the Aboriginal garden in Phillips Park



### Post-settlement

The park or its component land and structures do not have any formally recognised heritage significance.

## 2.3 Significance of Phillips Park

Phillips Park is a District Park for Lurnea, which serves two or more neighbourhoods and provides for a diverse range of recreational opportunities, providing activity nodes in an attractive high maintained landscape setting.

The park is visited by residents from a wide area, much of who will drive or cycle to it. Visitors will stay for several hours at the park and will use it predominately on weekends. Facilities include a large highly developed playground catering for a wide range of ages and abilities, a range of infrastructure including car parking, picnic shelters, barbeques and irrigation. It also includes strong public transport routes, public art and landscaping. Phillips Park is a major recreation or sports park that offers a wide variety of opportunities to a broad section of residents. Large in size and well known among residents as a sporting destination.

The park is significant to the area as Lurnea has a high proportion of children (20.3% of children are aged between 0 to 11 years compared to 15.5% Greater Sydney) and young people (19.2% aged 12 to 24 years compared to 16.9% Greater Sydney). It ranks in the seventh percentile for most disadvantaged suburbs in NSW<sup>1</sup>, and NAPLAN results indicate that primary and high school students in Lurnea perform well below average. Socio-economic disadvantage indicators include a significantly lower household income of \$882 per week compared to \$1,447 across Greater Sydney, low broadband connectivity (59.1% compared to 70.6% Greater Sydney), and higher social housing (12.3% compared to 7% Liverpool LGA and 5.8% Greater Sydney).

**The Lurnea community hub** in Phillips Park provides a central gathering place for local residents. It serves as a meeting point where people from diverse backgrounds can come together to socialise, share ideas, and build a sense of community. This promotes inclusivity and strengthens community bonds and addresses social isolation. The hub has become a venue for cultural groups to promote cultural celebrations, art exhibitions and educational programs. This enhances community members' access to arts and education, promoting a rich and vibrant cultural environment. The hub also hosts National Disability Insurance Scheme services which improves residents' well-being and quality of life and stimulates economic growth in the area. Having a dedicated space for community events and activities encourages residents to get involved in volunteering and civic engagement. This leads to a stronger sense of ownership and responsibility for the neighbourhood.

The significance and outcomes of the Lurnea Community Hub largely depends on the specific initiatives and activities it hosts at any one time.

## 2.4 Land ownership and management

### 2.4.1 Land ownership

The ownership and management of the seven parcels of land which comprise Phillips Park are detailed in Table 3 and shown in Figure 7.

Figure 7 Land parcels comprising Phillips Park

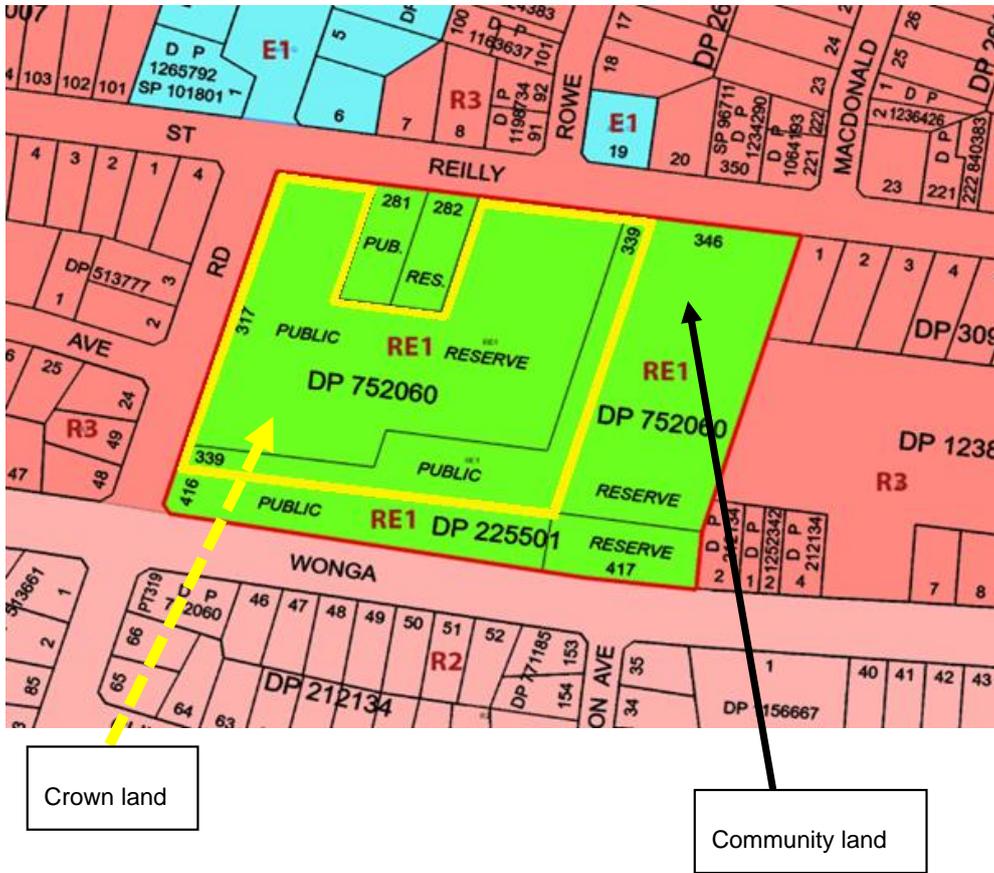


Table 4 Ownership and management of Phillips Park

Reserve number	Reserve name	Public Purposes	Owner	Manager	Lot and DP no.	Area (m <sup>2</sup> )	Zoning	Categorisation	Features	Use agreements
R83052	Phillip Park, George Bates Hall	Public Hall, Public Recreation	Crown	Liverpool City Council as Crown Land Manager	Pt Lot 317 DP 752060	13,630 m <sup>2</sup>	RE1 Public Recreation	Park, General Community Use, Sportsground	Multi-purpose community hub, café, children's playground, small basketball court, park edge and sportsground	Community hub: hire, lease. Sports fields: seasonal, casual use
-	Gazetted 17/02/1961	-	Liverpool City Council	Liverpool City Council	Lot 339 DP 752060	3,775 m <sup>2</sup>	RE1 Public Recreation	Park, General Community Use, Sportsground	Multi-purpose community hub, café, park edge around the sports fields and sports field	Community hub: hire, lease. Sports fields: seasonal, casual use
-	-	-	Liverpool City Council	Liverpool City Council	Lot 281 DP 752060	993 m <sup>2</sup>	RE1 Public Recreation	Park, Sportsground	NW corner of the sports fields and park edging with path and landscaping and grass verge	Sports fields: seasonal, casual use
-	-	-	Liverpool City Council	Liverpool City Council	Lot 282 DP 752060	993 m <sup>2</sup>	RE1 Public Recreation	Park, Sportsground	NW corner of the sports fields and park edging incorporating path and landscaping and grass verge	Sports fields: seasonal, casual use
-	-	-	Liverpool City Council	Liverpool City Council	Lot 346 DP 752060	7,778 m <sup>2</sup>	RE1 Public Recreation	Park, Sportsground	Western section of the sports fields and park edging incorporating path and landscaping and grass verge	Sports fields: seasonal, casual use
-	-	-	Liverpool City Council	Liverpool City Council	Lot 416 DP 752060	3,490 m <sup>2</sup>	RE1 Public Recreation	General Community Use	Public carpark with accessible parking, stormwater drainage and feature trees	No
-	-	-	Liverpool City Council	Liverpool City Council	Lot 417 DP 752060	1,524 m <sup>2</sup>	RE1 Public Recreation	Park	Pathway and landscaping, with pedestrian access path and shade trees	No
<b>TOTAL</b>						<b>32,183 m<sup>2</sup></b>				

Phillips Park is 3.2 hectares in size.

There are no easements over the park.

### Crown land

Phillips Park is in the Parish of St Luke, County of Cumberland.

Approximately 55% of the land subject to this Plan of Management is Crown land (R83052) which is dedicated/ reserved for Public Hall and Public Recreation. Liverpool City Council is Crown Land Manager.

### Community land

Lots 281, 282, 346, 416, 417 DP 752060 in Phillips Park is land owned in fee simple by Liverpool City Council and classified as community land under the *Local Government Act 1993*. All land classified as community land must be managed in accordance with the *Local Government Act 1993*.

#### 2.4.2 Management

Phillips Park is managed by Liverpool City Council. The planning and development of Phillips Park is led by the City and Culture Directorate, with the Property team regarding freehold and facilities leasing, and the Community and Recreation team in respect of community hub management, community bookings, and sports field and recreational access. These teams are also supported by others across the organisation in relation to Phillips Park, including:

- Recreation and Community Outcomes – sporting field and parks bookings and event support
- Community Facilities – community hub bookings and cleaning
- City Works - cleansing of the park
- City Presentation – community hub repair and maintenance
- Environmental Health
- City Futures – community planning
- Operations – infrastructure capital works
- Communications – communications, marketing and branding
- Planning and Compliance – strategic planning, social planning
- Corporate Services – procurement, IT, Finance, Strategy and performance
- People and Culture – resourcing customer service, and administrative support for user queries.

Council is also responsible for review of this Plan of Management, when necessary, to enable changing circumstances and community needs to be considered and incorporated.

#### 2.4.3 Public access

Public access is available to the parkland areas in Phillips Park at all times.

Council also issues seasonal and casual hire agreements to sporting groups and other community groups, for use of sports fields and community facilities throughout the year. The sports fields are only available through booking arrangements and are not open for public access outside of this. Access to the fenced sporting fields is restricted to players and officials during matches.

During and after wet weather Council will close all sports grounds for training and playing. A decision will be made by 9:30am for weekday use and by 3:30pm on the Friday for weekend use. Updates are made on the Wet Weather web page. Clubs will be liable for any damage

caused to the playing surface of any field if they choose to continue to play and train during ground closures and may forfeit hiring rights.

The community facilities are available for use after making a booking through Council. The hub, where there is availability can be booked at the following times:

Mondays to Thursdays: 8am to 11pm  
 Fridays: 8am to 3pm | 4pm to 12 midnight  
 Saturdays: 8am to 3pm | 4pm to 12 midnight  
 Sundays: 8am to 3pm | 4pm to 11pm

The café is accessible during its opening hours.

#### 2.4.4 Key stakeholders at Phillips Park

Stakeholders responsible for management of land, facilities and/or use at Phillips Park are listed in Table 5.

Table 5 Stakeholders in Phillips Park

Organisation	Interest/Responsibilities
Minister for Lands and Property Department of Planning and Environment – NSW Crown Lands	Landowner of Crown land Use of the park according to public purpose Use agreements over Crown land
Liverpool City Council	Landowner Management Asset management Community and stakeholder engagement Community safety Bookings Maintenance Funding Native Title provisions, Native Title Manager advice
Gandangara Local Aboriginal Land Council	Memorandum of Understanding
Community hub use agreement holders: Matavi, National Disability Insurance Scheme	Community activities and services Operation of the community hub, which does not have any on-site employees. Lease and licence holders have swipe card access and casual users have temporary pin code access.
Sporting groups: - South West Wanderers Football Club Fairfield/Liverpool Cricket Association	Meet requirements of use agreements
Café licensor Other lessees/licensees and users	Meet requirements of use agreements
Local residents	Neighbours Users
NSW Police	Crime prevention

## 2.5 Physical characteristics

### 2.5.1 Climate

Regional meteorological data has been sourced from the Bureau of Meteorology (2019) ([www.bom.gov.au](http://www.bom.gov.au), verified 07/01/2020) with monthly rainfall data received from Bankstown Airport AWS (located approximately 9 km to the north-east of the site).

Table 6 Average monthly climate data

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Maximum Temperature (°C)	28.5	27.9	26.4	23.8	20.6	17.8	17.4	19	21.7	24.0	25.5	27.5
Minimum Temperature (°C)	18.3	18.2	16.3	12.8	9.4	6.8	5.1	6.0	8.7	11.9	11.4	16.7
Rainfall (mm)	91.9	101.0	100.5	83.0	63.5	80.3	42.7	49.2	44.6	60.1	45.4	67.2

### 2.5.2 Geology and soils

#### Geology

Phillips Park is located south of the Fairfield Basin, within a region primarily consisting of Triassic shales of the Wianamatta Group and Quaternary alluvium reserves of Cabramatta Creek and Georges River. As a result, west Lurnea is underlain by Bringelly Shale, which is typically located near estuarine landscapes.

#### Soils

This residual Blacktown soil landscape (Chapman and Murphy, 1989) is characterised by broad rounded crests and ridges with gently inclined slopes, cleared eucalypt woodland and tall open-forest (wet sclerophyll forests).

#### Acid sulfate soils

According to the Australian Acid Sulfate Soils (ASS) risk map, Phillips Park is identified as being within a Class 5 ASS Risk area which corresponds with an extremely low likelihood of ASS occurrence during any excavation works.

#### Contamination

Liverpool City Council (LCC) engaged Environmental Earth Sciences NSW in 2020, before the development of the community hub and upgrades to the fields and park area, to identify sources of contamination, historical contaminating uses and impacted areas. Environmental Earth Sciences NSW concluded there was an overall Low risk of contamination on site at that time. However, this risk was considered to rise to Low to Moderate during the proposed development works.

The key contamination source identified at the site was the presence of localised uncontrolled fill material one metre under the surface and beneath a Blaxland's Stringybark (*Eucalyptus blaxlandii*) tree in the south-west corner of the park. The tree is 16 metres in height with good to fair health and structure and moderate ecological significance, as

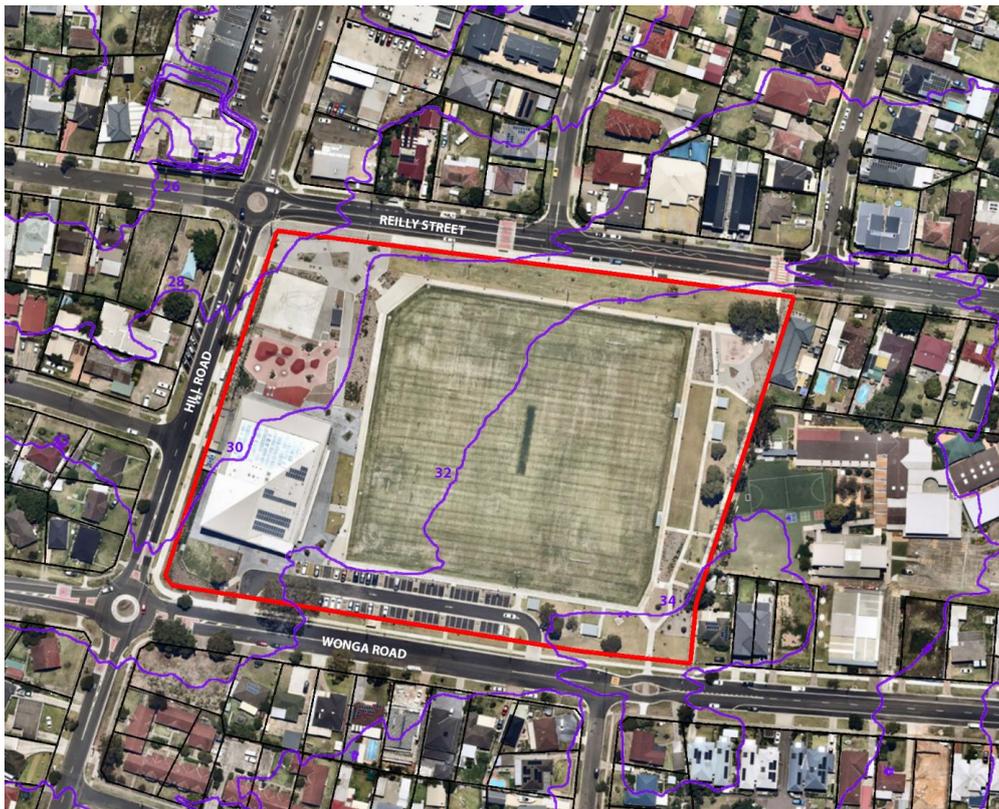
referenced in the Arboricultural Impact Assessment and Tree Management Plan (Tree Services Australia, 2018).

Based on the current land use of Phillips Park, the current potential sources of contamination and their associated chemicals of potential concern (CoPC) have been identified as uncontrolled fill material in several locations in the park, with asbestos recorded in uncontrolled fill in one sample location. Results from the site investigation indicate that there is no evidence of above ground uncontrolled filling. Council has implemented recommendations consistent with its Asbestos Policy 2020. Any potential risks are managed by the implementation of an Environmental Management Plan (EMP), under which a Council team carries out periodic inspections to ensure the asbestos under the tree remains undisturbed.

### 2.5.3 Landform and topography

The landform falls gradually by 6 metres from the south-eastern corner along Wonga Road towards the north-western corner at the intersection of Hill Road and Reilly Street as shown in Figure 8. However, the overall topography of Phillips Park is relatively flat, given the footprint of active recreation facilities, buildings and the carpark. Notable topographic features are embankments and the feature terracing on the southern, northern and western borders of the sports fields and at the main entry to park on the corner of Hill Road and Reilly Street.

Figure 8 Contours of Phillips Park



## 2.5.4 Hydrology and drainage

There are no natural watercourses in Phillips Park.

Flood risk and flood inundation maps available from Liverpool City Council (<https://eplanning.liverpool.nsw.gov.au/Pages/lcc.maps/maps.aspx> accessed 07/01/2020) revealed that the park does not lie within a flood risk planning area for 1% Annual Exceedance Probability (AEP) floods. There are no immediate flooding considerations for the site apart from periodic inundation of the sports fields during heavy rain events.

An automatic irrigation system with associated sprinklers, controllers, timers and connections waters the sports field. A dedicated sports field drainage system is connected to a buried water tank, pump and reticulation system.

## 2.5.5 Flora and fauna

### Flora

Several vegetation typologies within Phillips Park include:

- Residential buffer – informal plantings along the eastern boundary to provide screening and transition between the residential dwellings and the park, consisting of native canopy and understory species.
- Shade trees – positioned along embankments on the perimeter of the sports fields, amongst passive recreational areas and shelters, outdoor gym and fitness circuits, to increase amenity and encourage user participation.
- Street trees – defining the site boundary along Reilly Street, Hill Road and Wonga Road. Typically native species.
- Feature trees – positioned at key nodes, including park and community building entrances, or mature trees with distinct form and character. Typically exotic, deciduous species.
- Plaza planting – evenly spaced trees providing spatial definition to hardscaped areas while creating strong axial lines along pathways.



Trees in Phillips Park include Smooth-barked Apple (*Angophora costata*), Swamp Oak (*Casuarina glauca*) and Spotted Gum (*Corymbia maculata*).



Street trees are planted to provide a green edge to the park and shade to users.

The Liverpool Biodiversity Management Plan 2012 indicates there are no endangered ecological communities within Phillips Park.

## Fauna

No fauna surveys have been carried out in the park, so comprehensive information on fauna is not available.

## 2.6 Visual assessment

Phillips Park is approximately 3.2 hectares in size, including two sport fields (1.6 ha), community hub and surrounding park, passive recreation areas and adventure play area for all ages.

Phillips Park is located in a highly visible and prominent location with three street frontages, and has visual and physical connections to Lurnea Shopping Precinct on the western side. There's a strong indoor/outdoor connection which is integrated into the landscape.

The park is characterised by its open grassed nature largely due to the two sports fields, with the benched landform created to accommodate the fields.

The western boundary of the site is characterised by the community facility building and playground. The combination of topography and location of the community building restricts views into the site limiting passive surveillance from the west side.

Stands of native trees and small areas of garden bed and screen planting, mostly located around the park areas, creates and emphasises a sense of arrival and an inviting environment for visitors and spectators. The park areas invite people in which to walk, play, picnic or exercise. Due to the high visibility and lighting of the park, there is a sense of safety within a densely populated area.

## 2.7 Access and circulation

Phillips Park is easily accessible by foot, bicycle, public bus services, and by private and authorised vehicles.

An accessible network of formal and informal pedestrian pathways and road crossings link the park with adjoining residential areas and Lurnea shops. A network of formal and informal

pedestrian pathways link together around the park to enable people to access the informal recreation areas and to watch sport on the fields from all sides.



Phillips Park is cycle friendly, offering connectivity to a wider cycle network along Regional Route 4; 5.14 Lurnea Route [RR4] (Liverpool Bicycle Plan, 2018) which can provide bike access to suburban areas of Fairfield to Campbelltown and Glenfield via Lurnea, as an alternative route to the Hume Highway.

A bike parking rack for 12 bikes is located near the outdoor gym in the north-east corner.

Bus routes 865 (Liverpool-Casula Station) and 869 (Liverpool-Ingleburn) operate on streets adjoining Phillips Park. A bus shelter is located on the park verge in Reilly Street.

Access for maintenance and emergency vehicles is from Wonga Road into the carpark. This is the same vehicle entrance that is utilised by the public. The carpark off Wonga Road has been designated as an access route for emergency vehicles, as it ensures quick and unobstructed passage to reach nearby fields or open spaces during emergencies.

Within the park, the community hub is a flexible open space for community use catering for a range of community groups and users with potential for informal games. The hub also houses a café which opens to an open paved community space which connects to a playground and half basketball court.

The park is not entirely accessible for people with disabilities. Although toilets for people with disabilities and level access from carparks to some buildings and picnic facilities is provided, it is relatively difficult for people with disabilities to access the informal areas in the park. Two accessible parking spaces are provided in the carpark closest to the main entrance to the community hub, café and fields.

Directional and facility identification signage is available throughout the park.



## 2.8 Utilities

Connections to utility service infrastructure including electricity, water, sewer, gas, and telecommunications are available in Phillips Park.

Six solar panels on the roof of the community hub provide electricity to the power supply.

Mains water is available in the hub and across the site. An irrigation tank for the sporting fields is situated on the south-western side of the field, adjacent to an on-site stormwater storage tank, with a second on-site detention tank located in the north-west corner of the park.

## 2.9 Condition of the land, buildings and other improvements

The condition of Phillips Park and its buildings and structures is in Table 6.

Table 7 Condition of land, buildings and structures in Phillips Park

Area/ facility	Description	Condition	Images
Community Hub/ Facilities Building	<p>Porte Cochere and foyer</p> <p>Combined Areas - café, internet kiosk, waste enclosure and toilets</p> <p>Community Centre – large function room, multi-purpose room, boardroom, meeting room, offices, commercial kitchen, kitchenette, toilets and change facilities, storage spaces, fenced outdoor space</p> <p>Licensed Area – professional suite for community service provider, toilets</p> <p>Sport Amenities – home and away changing rooms, canteen, first aid, toilets, storage areas</p> <p>Vehicular service access</p> <p>Floorspace m2</p>	Very good. Recently constructed and maintained by Council	   
Community Sports Field	<p>1.3 hectare natural turf area with synthetic cricket wicket.</p> <p>Sports field is a cricket oval during summer.</p> <p>Two non-competition and training football fields for juniors to seniors during winter.</p>	Good. Recently constructed and maintained by Council	
Adventure Play Area	<p>Variety of proprietary and bespoke play equipment and structures suitable for age ranges 2 – 12 years.</p> <p>Sand and rubber soft fall surfacing</p>	Very good. Recently constructed and maintained by Council	

Area/ facility	Description	Condition	Images
Toddlers Play Area	Variety of proprietary and bespoke play equipment suitable for ages up to 2 years. Rubber soft fall surfacing	Very good. Recently constructed and maintained by Council	
Outdoor Gym Facilities	Gym equipment Instructional signage Rubber soft fall surfacing	Very good. Recently constructed and maintained by Council	
Flexible Sports /Multi-Court Area	Asphalt playing surface with coloured surface treatment Coloured linemarking for basketball (half-court), handball, soccer, cricket and netball Rebound wall with markings for soccer, cricket and other ball games	Very good. Recently constructed and maintained by Council	
Picnic Shelters	Timber shelters with metal roof	Very good. Recently constructed and maintained by Council	
Car Parking Area (accessed from Wonga Road)	Vehicle crossings Asphalt road pavement Linemarking	Very good. Recently constructed and maintained by Council	
External Paving and Footpaths	1.5m and 2.5m insitu concrete footpaths with broom brush finish Feature exposed aggregate insitu concrete paving. Decomposed granite paving Kerb ramps	Very good. Recently constructed and maintained by Council	
Fencing	0.9m high timber painted picket fencing around sports fields Black mesh netting between sports fields and Reilly Street	Very good. Recently constructed and maintained by Council	

Area/ facility	Description	Condition	Images
Structures	450mm high x 500mm wide insitu concrete seat/ retaining wall	Very good. Recently constructed and maintained by Council	
Lighting and Electrical (Park)	Sports field flood lighting to suitable Lux level for training and events. According to Australian Standard - Sports Lighting (AS 2560.2.3-2007) Part 2.3: Specific applications – Lighting for football (all codes), the lux level for training is 50 and 100 for competition and events. General park lighting Associated Main Switch Board (MSB), meter boxes, connections, pits etc.	Very good. Recently constructed and maintained by Council	
Furniture	Bench seating Water bubblers Rubbish bins (separate general waste and recycling) Bicycle racks Bollards	Very good. Recently constructed and maintained by Council	 
Softworks	Mulched garden beds and tree pits Turfed areas Native and exotic trees Low maintenance native shrubs and groundcovers	Very good. Recently constructed and maintained by Council	



Area/ facility	Description	Condition	Images
Irrigation	Dedicated irrigation to sports field Drip irrigation in garden beds Pop-up sprinklers in turf areas Associated controllers, valves, connections, pits, meters etc.	Very good. Recently constructed and maintained by Council	
Drainage	Sand slit trenching and subsoil drainage connected to water tank Subsoil drainage in garden beds and tree pits Associated pumps, pipes, inspection openings, connections to sewer etc.	Very good. Recently constructed and maintained by Council	 
Artwork	Bespoke commissioned artwork	External artwork installed July 2023	

## 2.10 Uses of Phillips Park

### 2.10.1 Introduction

Users of Phillips Park participate in a variety of informal and organised active sporting, recreation and social/community activities offered by the facilities and settings in the park.

The catchment of park users varies from local (parkland) to district (sporting and community facilities) catchments depending on the use or activity.



Uses of facilities and settings in Phillips Park are set out below.

Table 8 Use of facilities and settings in Phillips Park

Item	Uses
<b>Community facilities</b>	
Community Hub	Classes, meetings, seminars, private hire, offices Seniors wellbeing and social group Cultural and community programs and activities Private family events Community facility hired for sporting and community/ social uses: Hub is open 98hrs a week and accessed 109.5hrs week. NDIS- Mon to Friday 9am to 3pm Player and spectator facilities (canteen, toilets)
Wonderwood Café	Food and beverage Cafe-8am to 2.30pm Monday to Sunday
<b>Park</b>	
Play space	Children's play
Basketball court	Informal ball games
Outdoor gym	Informal fitness training
Aboriginal garden	Sitting, relaxing
Picnic tables/ shelters	Picnics, sitting, relaxing, watching sport
Seating	Sitting, relaxing, watching sport
<b>Sportsground</b>	
Phillips Park sports fields	Summer: Cricket Club Hire: 1 September - 29 February Tuesday, Thursday 3pm to 7pm – Saturday, Sunday 7am to 7pm 34.75 hours per week of use in summer

Item	Uses
	Winter: Football Club Hire: 1 March - 31 August Monday to Friday 4pm to 10pm – Saturday, Sunday 8am to 5pm 50.75 hours per week of use in winter
	Other: year round – Fridays 9am to 2.30pm
Player facilities: home and away teams	Shelter for home and away teams
Seating	Viewing sport and activities on the fields

Groups that wish to use the sport ground for seasonal hire complete an application form, where they agree to Council's Hire of Playing Fields Policy. The application is reviewed by council. Once approved, a confirmation letter is issued to the user group.

Casual hirers also complete an application form at least 10 days before use and agree to Council's terms and conditions for hire of sports grounds or passive parks.

### 2.10.2 Use agreements

Several use agreements apply to the use of land and facilities in Phillips Park as set out below.

#### Community facilities

Table 9 Use agreements for community facilities in Phillips Park

Type of use agreement	Licence	Licence
Licensor	Liverpool City Council (Crown Land Manager)	Liverpool City Council (Crown Land Manager)
Licensee	Tunza Pty Ltd	MK Care Pty Ltd
Area	Café premises located in Lurnea Community Hub: 78m <sup>2</sup> of café space (kitchen, serving area, indoor seating) located inside the building 80m <sup>2</sup> of external concrete area to be used for outdoor seating	Professional suite located inside Lurnea Community Hub building. Includes toilets, store, cupboard
Permitted uses	Operation of café, including alfresco dining for customers of café	Office (NDIS service provider)
Minimum trading/ activity hours	Monday-Sunday 8:00am-2:30pm excluding public holidays 45.5 hours/week	Monday-Friday 9am-3pm Closed public holidays 30 hours / week
Exclusivity	Licence does not provide licensee with exclusivity in relation to the permitted use of premises. Licensor has right to allow others to use all or part of the licensed area while not in use by the licensee	Licence does not provide licensee with exclusivity in relation to the permitted use of premises. Licensor has right to allow others to use all or part of the licensed area while not in use by the licensee
Term	12 months	12 months

Type of use agreement	Licence	Licence
Commencement date	1 October 2022	1 September 2023
Expiry date	30 September 2023	31 August 2024
Option to renew	No – The current tenant Tunza Pty Ltd is seeking a new five year lease/licence for the café premises	Not applicable
Key responsibilities of licensor	Fit out works for operation of safe and compliant café Keep premises in good repair and condition	Keep premises in good repair and condition
Considerations	Licence may be terminated under s. 3.43 of the <i>Crown Land Management Act 2016</i> if Aboriginal land claim is successfully determined by the Minister	Licence may be terminated under s. 3.43 of the <i>Crown Land Management Act 2016</i> if Aboriginal land claim is successfully determined by the Minister
Act	<i>Crown Land Management Regulation 2018</i> and <i>Local Government Act 1993</i>	<i>Crown Land Management Regulation 2018</i> and <i>Local Government Act 1993</i>
Land	Crown reserve	Crown reserve and community land

## Sporting facilities

Several seasonal licence agreements apply for use of the sporting facilities at Phillips Park by sporting groups. The sports fields are open for booking during the following hours: 4-10pm Monday-Friday and 7am-10pm on weekends.

Current seasonal use agreements with sporting groups are in Table 9.

Table 10 Seasonal agreements for use of sporting facilities at Phillips Park

	South West Wanderers Football Club	Fairfield/Liverpool Cricket Association
Land owner/manager	Liverpool City Council and Liverpool City Council as Crown Land Manager	Liverpool City Council and Liverpool City Council as Crown Land Manager
Facility/area	Sporting fields, Community Hub -bathrooms, changing rooms and kitchen	Sporting fields, Community Hub – bathrooms, changing rooms and kitchen
Hire Agreement type	Application for the Use of Sportsgrounds (Seasonal)	Application for the Use of Sportsgrounds (Seasonal)
Terms and Conditions	Hire of Playing Fields Policy	Hire of Playing Fields Policy
Season	Summer	Summer
Permitted times	Monday to Friday 4pm to 10pm, Saturday and Sunday 8am to 5pm	Tuesday and Thursday 3pm to 7pm, Saturday and Sunday 7am to 7pm

	South West Wanderers Football Club	Fairfield/Liverpool Cricket Association
Term and expiry	1 September 2023 to 29 February 2024	1 September 2023 to 29 February 2024
Hirer responsibilities	Provide advertising and DA permits, follow irrigation restrictions, meet sporting codes health and safety standards, 25% minimum major maintenance contribution, cover utility costs, leave fields, bathrooms, hub free of rubbish, turn off lights, lock doors	Provide advertising and DA permits, follow irrigation restrictions, meet sporting codes health and safety standards, 25% minimum major maintenance contribution, cover utility costs, leave fields, bathrooms, hub free of rubbish, turn off lights, lock doors
Land	Crown and Community land	Crown and Community land
Act	Crown Land Management Regulation 2018 and Local Government Act 1993	Crown Land Management Regulation 2018 and Local Government Act 1993

## Other use agreements

Bookings are taken by Council for casual use of Phillips Park including ceremonies, community events/fun day, group picnics, sport, filming, and family parties. Conditions of use for casual and seasonal hirers are set by Council.

Fees and charges for use of Phillips Park are included in Council's Fees and Charges Schedule and are reviewed every year.

## 2.11 Maintenance and cleaning

Phillips Park is maintained year-round by full time staff employed by Liverpool City Council. General maintenance tasks undertaken in the park, and their frequency, are outlined below:

- inspecting the park for litter 4 days per week (Monday, Wednesday, Saturday, Sunday). Bins are emptied 5 days a week (Monday, Wednesday, Friday, Saturday, Sunday).
- mowing the field of play once per week and the surrounds every three weeks.
- renovation of the sports fields (aeration, scarification, top-dressing) in spring-summer
- applying herbicide as needed, with two broadleaf weed sprays per year.
- fertilising four times a year
- pathways cleared or blown weekly.
- garden and tree maintenance as needed for regular servicing every 3 weeks.
- large scale under pruning and mulching once per year in winter.
- watering of the sports field 3 times per week in summer, and twice a week in spring and autumn.
- deep watering gardens once per week
- inspecting play equipment weekly (Level 1 inspection), every four weeks (Level 2), and yearly (Level 3 external inspection)
- spraying pests three times a year.

Other maintenance tasks include line marking in carparks, installation and repair of bollards, and lighting, etc. All other park maintenance tasks are done as required.

Cleaning of the Lurnea Community Hub is carried out to the following timetable:

- ☐ Community Centre, Multi-Purpose Room (including office space), Meeting Room, Boardroom: Monday to Friday
- ☐ Café toilets: Monday to Friday
- ☐ Recreation/Events toilets: Tuesday and Thursday.

## 2.12 Revenue and costs

The costs of maintaining Phillips Park exceed income from use of the park, with an approximate cost recovery of 67%.

Approximate annual revenue from use of Phillips Park in 2022-23 is \$112,000 and is derived from:

- ☐ Licence agreements for use of Phillips Park
- ☐ Café agreement
- ☐ Hire of sports fields by seasonal sporting groups and casual hire by Casula Public School
- ☐ Hub room/space hire:
  - Casual – Active Fest – Young people sports
  - Matavai – Multicultural arts and activities
  - Permanent – Collective Leisure – Seniors wellbeing and social group
  - Global Islamic Youth Centre – cultural programs and activities

Direct major ongoing costs associated with Phillips Park include:

- ☐ Maintenance of Community Hub building (average \$67,750 per year)
- ☐ Cleaning, security and presentation of Community Hub (\$40,000 per year)
- ☐ Maintaining the playing surface for district sporting events (\$30,000 per year)
- ☐ Operation of the floodlights (\$10,000 per year)
- ☐ Maintenance of the park (\$10,000 per year)
- ☐ Water used for irrigation (\$8,250 per year).

## 3 PLANNING CONTEXT

### 3.1 Introduction

This section describes the wider legislative and policy framework applying to Phillips Park.

Full versions of the legislation referred to below are found on-line at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) and [www.austlii.edu.au](http://www.austlii.edu.au). Liverpool City Council's website is [www.liverpool.nsw.gov.au](http://www.liverpool.nsw.gov.au).

Table 10 outlines the national, state, regional and local planning context which influences the use, development and management of Phillips Park.

Table 11 Planning context of Phillips Park

	Land use planning and management	Open space / active and informal recreation	Community and culture	Environment
<b>International</b>		International Charter of Physical Education, Physical Activity and Sport United Nations Convention on the Rights of the Child	United Nations Convention on the Rights of Persons with Disabilities 2006	International climate change commitments
<b>Commonwealth</b>	<i>Native Title Act 1993</i> <i>Telecommunications Act 1997</i>	Sport 2030 Australian Standards for Play Spaces Australian Human Rights Commission Advisory Note on streetscape, public outdoor areas, fixtures, fittings and furniture 2013	<i>Native Title Act 1993</i> <i>Disability Discrimination Act 1992</i> Australian National Disability Strategy 2021-2031 <i>Work Health and Safety Act 2011</i> Australian Standards for access for people with disabilities, built facilities, and environmental management systems	Intergovernmental Agreement on the Environment 1997
<b>NSW</b>	<i>Aboriginal Land Rights Act 1983</i> <i>Crown Land Management Act 2016</i> <i>Local Government Act 1993</i>	NSW Public Open Space Strategy 2022 NSW Public Spaces Charter NSW Public Spaces Practitioner's Guide	<i>National Parks and Wildlife Act 1974</i> <i>Heritage Act 1977</i>	<i>Pesticides Act 1999 and Pesticides Regulation 2017</i> <i>Water Management Act 2000</i>

	Land use planning and management	Open space / active and informal recreation	Community and culture	Environment
	<p><i>Local Government (General) Regulation 2021</i></p> <p><i>Environmental Planning and Assessment Act 1979</i></p> <p><i>Roads Act 1993</i></p> <p><i>Local Land Services Act 2013</i></p> <p><i>SEPP (Transport and Infrastructure) 2021</i></p> <p>Crown Land 2031 – State Strategic Plan for Crown Land (2021)</p>	<p>Great Public Spaces Guide</p> <p>Great Public Spaces Toolkit</p> <p>COVID Safe Public Space Guide</p> <p>NSW Smart Public Open Spaces Guide</p> <p>NSW Smart Places Playbook</p> <p>Greener Places 2017</p> <p>Draft Greener Places Design Guide (Issue 04 2020): 1. Open space for recreation, 2. Urban tree canopy; 3. Bushland and Waterways</p> <p>Everyone Can Play Guideline for Inclusive Playspaces 2019</p> <p><i>Companion Animals Act 1998</i> and Regulation 2008</p> <p>NSW Premier's Priorities</p> <p>Better Placed Policy</p> <p>Her Sport Her Way: Women in Sports</p> <p>Future Sports Plans Delivering Sport and Active Recreation in NSW</p>	<p><i>Anti-Discrimination Act 1997</i></p> <p><i>Disability Inclusion Act 2014</i></p> <p>NSW Disability Inclusion Action Plan 2020-2025</p> <p>NSW Ageing Strategy</p> <p>NSW Strategic Plan for Children and Young People 2022-2024</p>	<p><i>Biosecurity Act 2015</i></p> <p><i>Resilience and Hazards SEPP 2021</i></p> <p>SEPP (Vegetation in Non-Rural Areas) 2017</p> <p><i>Protection of the Environment Operations Act 1997</i></p> <p><i>Local Land Services Act 2013</i></p> <p><i>Smoke-free Environment Act 2000</i> and <i>Smoke-free Environment Regulation 2016</i></p> <p><i>Soil Conservation Act 1938</i></p> <p><i>National Parks and Wildlife Act 1974</i></p>
<b>Sydney</b>	A Metropolis of Three Cities: Greater Sydney Region Plan 2017	<p>50-Year Vision for Greater Sydney's Open Space and Parklands 2021</p> <p>Greater Sydney Green Grid 2017</p> <p>Greater Sydney Outdoors Survey 2021</p>		<p>Sydney Metropolitan Catchment Action Plan 2013-2023</p> <p>Greater Sydney Regional Strategic Weed Management Plan 2017-2022</p> <p>5MT for Greater Sydney</p>
<b>Regional/District</b>	<p>Western Sydney District Plan</p> <p>Western Sydney City Deal</p>	<p>Sydney Green Grid – South West District</p> <p>Western City District Sport Facility Plan</p>	<p>South West Metropolitan Regional Emergency Management Plan 2017</p>	

	Land use planning and management	Open space / active and informal recreation	Community and culture	Environment
<b>Liverpool LGA</b>	Liverpool Local Strategic Planning Statement: Connected Liverpool 2040 Liverpool Community Strategic Plan 2022-2032 Liverpool Local Environmental Plan 2008 Liverpool Contributions Plan- Established Areas 2018 <b>Policies:</b> Property Acquisition 2018 Signage on Council Owned Land	Liverpool Green Grid Implementation Study 2020 Parks and Open Space Asset Management Plan Recreation, Open Space and Sports Strategy 2018-2028 Bike Plan 2018-2023 <b>Policies:</b> Hire of Playing Surfaces 2015 Mobile Food Vehicles	Aboriginal Reconciliation Action Plan 2017-2020 Disability Inclusion Action Plan 2017-2021 Community Facilities Strategy 2017 Community Facilities Action Plan 2019 Cultural Strategy 2017-2021 Crime Prevention Plan 2019-21 Homelessness Strategy and Action Plan <b>Policies:</b> Draft Social Justice Cultural Policy Public Arts Public Safety CCTV Markets	Sustainable Resilient Liverpool Strategy 2020 Biodiversity Management Plan 2012 Climate Action Plan <b>Policies:</b> Asbestos Policy 2020 Climate Change Tree Management 2016 Water Management
<b>Phillips Park Plan of Management</b>				

Key legislation and planning requirements are set out below.

## 3.2 Commonwealth legislation

### 3.2.1 Native Title Act 1993

The Commonwealth *Native Title Act 1993* recognises and protects the traditional ownership and interest in land and waters that indigenous Australians hold according to their traditions, laws and customs. The objectives of the Native Title Act are to:

- provide for the recognition and protection of native title
- establish ways in which future dealings affecting native title may proceed and to set standards for those dealings
- establish a mechanism for determining claims to native title
- provide for, or permit, the validation of past acts invalidated because of the existence of native title.

The Act describes the process for the recognition of native title rights, including mechanisms for Aboriginal and Torres Strait Islander People to establish the existence of native title, lodge native title claims, determine and validate the extinguishment of native title, and dealing with land and waters where native title persists.

All Crown land in NSW can be subject to a native title claim under the Native Title Act. A native title claim does not generally affect Crown land where native title has been extinguished or it is considered excluded land.

The Native Title Act may affect use of Crown land, particularly development and granting of tenure. Under the Crown Land Management Act it is mandatory for Council to nominate or engage a qualified Native Title Manager who provides advice regarding how Council's dealings and activities on Crown land can be valid or not valid in accordance with the Native Title Act. Council must obtain the written advice from a Native Title Manager that Council complies with any applicable provisions of the native title legislation when:

- granting leases, licences, permits, forestry rights, easements or rights of way over the land
- mortgaging the land or allowing it to be mortgaged
- imposing, requiring or agreeing to covenants, conditions or other restrictions on use (or removing or releasing, or agreeing to remove or release, covenants, conditions or other restrictions on use) in connection with dealings involving the land
- approving (or submitting for approval) a plan of management for the land that authorises or permits any of the kinds of dealings referred to above.

The NSW *Crown Land Management Act 2016* requires that on Crown land (including where managed by a local council) native title rights/interests must be addressed (unless native title has been surrendered, extinguished or legally determined to no longer exist). Any dealings in land or water by a Crown land manager that affect (impair or extinguish) native title are classified as "future acts" and must comply with the Act. Examples of a "future act," on Crown land, might include the granting of freehold title, or a lease or licence, or the construction of public works. The Native Title Act sets out procedures to follow before such "future acts" can be validly carried out.

Liverpool City Council has complied with the requirements of the *Native Title Act 1993* and sought and considered written advice from an accredited Native Title Manager, under the provisions of Section 3.23 of the *Crown Land Management Act 2016* and Division 2 of the *Local Government Act 1993*.

### 3.2.2 Telecommunications Act 1997

The *Telecommunications Act 1997* (Cth) provides for telecommunication facilities being permitted on community land without authorisation in a Plan of Management.

## 3.3 NSW government legislation and plans

The NSW legislation most affecting use and management of Phillips Park is the *Crown Land Management Act 2016*, *Aboriginal Land Rights Act 1983*, *Local Government Act 1993*, and the *Environmental Planning and Assessment Act 1979*.

### 3.3.1 Crown Land Management Act 2016

Most of Phillips Park is Crown land. Crown land in NSW is governed by the *Crown Land Management Act 2016*, which provides a framework for the state government, local Councils and members of the community to work together to provide care, control and management of Crown reserves. Liverpool City Council is Crown land manager under the *Crown Land Management Act 2016* and continues to have management responsibility for Phillips Park.

Under Section 1.4 of the CLM Act, Crown land is required to be managed according to the objects and principles of Crown land management (refer to Section 4 of this Plan).

Section 3.21 of the *Crown Land Management Act 2016* authorises a local Council that has management responsibility for an area of dedicated or reserved Crown land (a “council manager”), as Liverpool City Council does for Phillips Park, to manage that land in accordance with the public land provisions of the *Local Government Act 1993*. With some exceptions, Section 3.22(1) of the *Crown Land Management Act 2016* requires that a Council manager of dedicated or reserved Crown land “must manage the land as if it were community land under the *Local Government Act 1993*” and has “for that purpose all the functions that a local Council has under that Act in relation to community land (including in relation to the leasing and licensing of community land)”. Notwithstanding, Crown land must be managed in accordance with the purpose(s) of the land and cannot be used for an activity incompatible with its purpose(s).

Section 3.23 of the *Crown Land Management Act 2016* requires a Council manager of dedicated or reserved Crown land to:

- ❑ categorise the land to one or more categories of community land referred to in Section 36(4) of the *Local Government Act 1993*. The assigned category(s) must be closely related to the purpose(s) for which the land is dedicated or reserved. The proposed multiple categorisations of Phillips Park which correspond with the current reserve purposes of Public Recreation and Public Hall is in Figure 9.
- ❑ prepare and adopt a Plan of Management for the dedicated or reserved Crown land in accordance with the Plan of Management provisions of Division 2 of Part 2 of Chapter 6 of the *Local Government Act 1993*.

The *Crown Land Management Act 2016* provides that any existing lease, licence or permit issued under the *Crown Lands Act 1989* will continue for its agreed term. From 1 July 2018 all new leases, licences and permits are issued under the new legislation.

Section 3.15 of the CLM Act also allows the Minister to make, and publish in the NSW Government Gazette, Crown land management rules “for or with respect to the management of dedicated or reserved Crown land by Crown land managers”.

The *Crown Land Management Regulation 2018* supports the new *Crown Land Management Act 2016*. Crown Land Managers must comply with Crown land regulations which prescribe principles and rules relating to the use and management of Crown land in NSW.

Crown land has significant spiritual, social, cultural and economic importance to the Aboriginal people of NSW. The Crown Land Management Act recognises and supports Aboriginal rights, interests and involvement in Crown land.

## Crown Land 2031 – State Strategic Plan for Crown Land June 2021

This 10-year vision will guide how Crown land in NSW will be used for the years to come.

The plan includes a roadmap of priorities, outcomes and enablers that are all steps in delivering a vision where Crown lands supports resilient, sustainable and prosperous communities across NSW. The plan also sets out an approach that will enable the use of Crown land to evolve to meet changing community needs.

### 3.3.2 Aboriginal Land Rights Act 1983

The *Aboriginal Land Rights Act 1983* (ALR Act) recognises the rights of Aboriginal people in NSW. The Act seeks to compensate Aboriginal peoples (who may or may not also be native title holders) for past dispossession, dislocation and removal of land in NSW.

Aboriginal land claims may be placed on any Crown land in NSW at any time. The Department of Planning and Environment is responsible for investigating claims as defined in the ALR Act. If a claim is established, the land is transferred to the Aboriginal Land Council as freehold land.

At the time of preparing this Plan of Management the Crown reserve subject to this Plan of Management are affected by an undetermined Aboriginal land claim.

### 3.3.3 Local Government Act 1993

#### Classification

Lots 281, 282, 346, 416, 417 DP 752060 in Phillips Park are owned by Liverpool City Council and are classified as community land under the *Local Government Act 1993*. Council owned land which is classified as 'community' land must be managed and kept for the purposes of the community. Community land must be managed according to the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*.

Community land:

- must have a Plan of Management prepared for it, which sets out guidelines for use and management of the land. Until a Plan of Management is adopted, the nature and use of the land must not change.
- must be kept for the use of the general community and must not be sold. Council has no power to sell, exchange or otherwise dispose of community land, except for the purpose of enabling that land to become, or be added to, a Crown Reserve or land reserved or dedicated under the *National Parks and Wildlife Act 1974*.
- cannot be leased or licensed for a period of more than 21 years, or for 30 years with consent from the Minister.

#### Categorisation

Community land must be categorised in accordance with the *Local Government Act 1993*. A category assigned to community land, using the guidelines for categorisation in the *Local Government (General) Regulation 2021*, reflects Council's intentions for future management and use of the land.

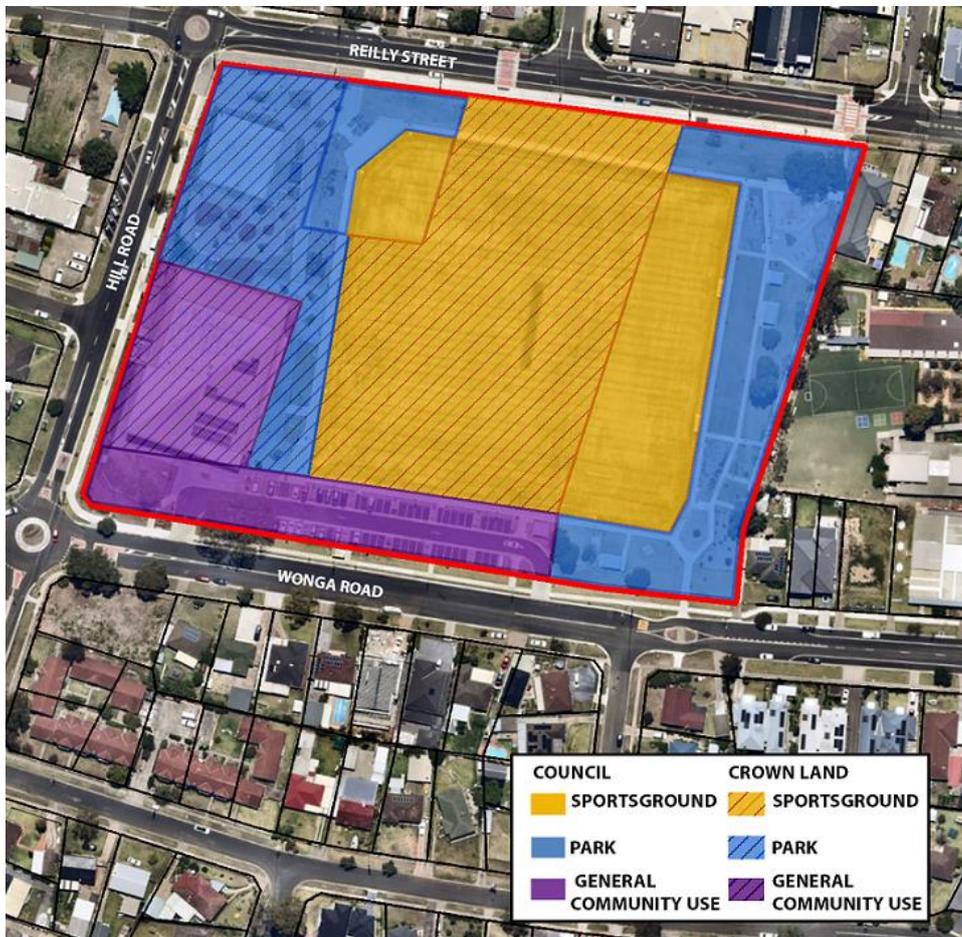
The *Crown Land Management Act 2016* requires categorisation of Crown land according to the *Local Government Act 1993* and consistent with the public purpose(s) of the Crown reserve.

Phillips Park was categorised as Sportsground in the adopted Generic Plan of Management for Sportsgrounds 2007. The adopted Generic Plan of Management: Community Facilities 2005 applied to the George Bates Community Centre and Phillip Park Office which were categorised as General Community Use.

The categorisation of Crown land in Phillips Park as Sportsground, Park and General Community Use was approved by DPE-NSW Crown Lands in July 2023. These initial categorisations of Phillips Park, noted in existing generic Plans of Management, were reviewed.

This site-specific plan now includes the categories of Sportsground, General Community Use and Park to best reflect the current and future uses of Phillips Park. Figure 9 shows the categorisation of community and Crown land in Phillips Park.

Figure 9 Categorisation of Phillips Park



The guidelines and core objectives of the Park, Sportsground and General Community Use categories are set out below.

Table 12 Guidelines for categories of Crown and community land at Phillips Park

Category	Guidelines <sup>1</sup>	Areas of Phillips Park
Sportsground	Land that is used or proposed to be used primarily for active recreation involving organised sports or the playing of outdoor games.	Sporting fields and surrounds
Park	Land that is, or is proposed to be, improved by landscaping, gardens or the provision of non-sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.	Park entries Half basketball court Play spaces Outdoor gym Picnic shelters Hard and soft landscaping

Category	Guidelines <sup>1</sup>	Areas of Phillips Park
General Community Use	Land that may be made available for use for any purpose for which community land may be used, whether by the public at large or by specific sections of the public.	Lurnea Community Hub Carpark

<sup>1</sup> Local Government (General) Regulation 2021

Refer to Section 4.5 for the core objectives of the Park, General Community Use and Sportsground categories.

### Use agreements

The requirements of the *Local Government Act 1993* regarding leases, licences and other estates are in Section 6.

### 3.3.4 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (EPA Act) establishes the statutory planning framework for environmental and land use planning in NSW through:

- State Environmental Planning Policies (SEPPs).
- Local Environmental Plans (LEPs). The Liverpool Local Environmental Plan 2008 applies to Phillips Park.

### State Environmental Planning Policy (Transport and Infrastructure) 2021

The SEPP (Transport and Infrastructure) assists local Councils and communities by simplifying the process for providing essential infrastructure and enabling greater flexibility in the location, development and maintenance of infrastructure and service facilities. It includes specific planning provisions and development controls for a range of infrastructure works or facilities including parks and other public reserves, roads, emergency services, electricity delivery, and telecommunications networks. The clauses relevant to permissible works at Phillips Park are in Section 5 of this plan.

## 3.4 Liverpool City Council plans

The local planning framework is governed by the Liverpool Local Strategic Planning Statement, Community Strategic Plan, Delivery Plan and Operational Plan, the Liverpool Local Environmental Plan 2008, and Development Control Plan.

# 4 BASIS FOR MANAGEMENT OF PHILLIPS PARK

## 4.1 Introduction

This section defines the specific roles and objectives for Phillips Park based on community values and management directions of Liverpool City Council and the Department of Planning, Housing and Infrastructure.

## 4.2 The local community

The characteristics of the 10,057 residents who lived in the suburb of Lurnea at the 2021 Census are:

- 2.6% identify as Aboriginal and/or Torres Strait Islander
- 42% were born overseas, with the main countries of birth being Iraq (10%), Lebanon (6%) and Vietnam (3%). Key community languages are Arabic and Vietnamese.
- live in a household comprising couples with children (38%), lone person (19%), and one parent (18%)
- mainly parents aged 25 to 39 years (32%) and their children aged 5 to 11 years (12%)
- median age = 32 years
- live in a household with an average of 3.18 people which earns a median household income of \$1,239 per year
- live in a separate house (75% of dwellings).
- have access to at least one car (81%).

## 4.3 Community and stakeholder engagement

### 4.3.1 Introduction

A summary of feedback received from the community during preparation of this plan is provided below.

### 4.3.2 Process of community and stakeholder engagement

Planned and completed community and stakeholder engagement relevant to this Plan of Management was undertaken as below:

1. Community needs assessment completed in 2016 - 2018.
2. Public exhibition of the Draft Plan of Management in November 2023 - January 2024.

Issues and suggestions raised are addressed in the Action Plan tables in Section 6.

## 4.4 Community values of Phillips Park

The Liverpool and Lurnea communities and park users value various aspects of Phillips Park for different reasons. By understanding the reasons why the community and users value Phillips Park, the role that the community expects Phillips Park to play in the future may be determined.

The community of Liverpool City places a high value on sportsgrounds, community facilities and parks which are an integral part of the area in which they live.

The values outlined in Table 12 below reflect the outcomes from local residents and park users the community engagement process in 2016.

Table 13 Values of Phillips Park

Value	Values of Phillips Park
Community/social	Meeting place Community space to build community pride and cohesion Provide for needs of family, sporting and school users
Sport and recreation	Sporting fields for a range of team sports Recreation opportunities for families
Open space	Valuable open green space in an urban area Good size for the area
Access	Centrally located to shops, transport and residential areas Easy bus access and vehicle parking

The sportsgrounds at Phillips Park have value in that they:

- are an integral part of the open space system in the Liverpool LGA
- are buffers to the built environment
- provide natural vegetation and habitats for fauna
- contribute to the quality of life
- are facilities with a specific public purpose
- can be used by all members of the local community
- are focal points for the local community
- are predominantly used by the local community
- are adaptable for a variety of uses
- have ancillary facilities that support usage
- provide opportunities for sport and recreation activities
- support a range of health, play, charitable and fundraising activities
- support a range of educational, environmental and rehabilitation activities
- support a range of social, community, family, religious and cultural activities.

## 4.5 Vision and management objectives for Phillips Park

### 4.5.1 State government

#### Principles of Crown land management

Phillips Park will be managed according to the principles of Crown land management embodied in the *Crown Land Management Act 2016* which are:

- (a) that environmental protection principles be observed in relation to the management and administration of Crown land, and
- (b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible, and
- (c) that public use and enjoyment of appropriate Crown land be encouraged, and
- (d) that, where appropriate, multiple use of Crown land be encouraged, and
- (e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and
- (f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

### Core objectives for categories of community and Crown land

Phillips Park is categorised as Sportsground, Park and General Community Use as shown in Figure 9.

Phillips Park will be managed according to the core objectives under the *Local Government Act 1993* for each relevant category for Crown and community land as set out below.

#### Sportsground

The core objectives for community land categorised as **Sportsground** are to:

- encourage, promote and facilitate recreational pursuits in the community involving organised and informal sporting activities and games.
- ensure that such activities are managed having regard to any adverse impact on nearby residences.

#### Park

The core objectives for community land categorised as **Park** are to:

- encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities
- provide for passive recreational activities or pastimes and for the casual playing of games
- improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.

#### General Community Use

The core objectives for community land categorised as **General Community Use** are to:

- promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public in relation to:
  - public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public.
  - purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).

#### Reserve purposes

The Crown land within Phillips Park will be managed consistent with its purposes of Public Recreation and Public Hall.

### 4.5.2 Council objectives

Planning objectives relevant to Phillips Park are outlined below.

Table 14 Liverpool City Planning priorities

Theme	Planning Priority	Council will:	Actions:
Liveability: Our Home	6: High-quality, plentiful and accessible community facilities, open space and infrastructure aligned with growth	Ensure community facilities, open space and recreation facilities meet the needs of a growing population across the entire LGA	6.4: Develop community and recreation hub at Phillips Park, Lurnea (short term)
		Ensure place-based integrated services by co-locating social services within neighbourhoods	
		Encourage integrated planning with community facilities for all major new and redeveloped recreation precincts	

Source: Local Strategic Planning Statement

### Community Strategic Plan 2022-2032

Council's Vision for Liverpool City is: A Vibrant Global City of Lifestyle and Opportunity.

Objectives and strategies following on from the vision are in Table 14.

Table 15 Objectives and strategies of Liverpool Community Strategic Plan

Strategic Objectives	10-year strategies
Healthy, Inclusive, Engaging	Improve liveability and quality of life for the community by delivering vibrant parks, places and facilities
	Support an inclusive community by fostering access and equity for all
	Deliver great and exciting events and programs for our people and visitors
	Support active and healthy lifestyles by improving footpaths, cycleways and walkways and other infrastructure that promotes and supports active transport
Liveable, Sustainable Resilient	Deliver a beautiful, clean and inviting city for the community to enjoy
	Deliver effective and efficient planning and high-quality design to provide best outcomes for a growing city

### Land use zoning objectives

Liverpool City Council's objectives for the RE1 Public Recreation zone are to:

- enable land to be used for public open space or recreational purposes.
- provide a range of recreational settings and activities and compatible land uses
- protect and enhance the natural environment for recreational purposes

- provide sufficient and equitable distribution of public open space to meet the needs of residents
- ensure the suitable preservation and maintenance of environmentally significant or environmentally sensitive land.

### Liverpool City Council Disability Inclusion Action Plan 2017-2021

Council's strategies regarding disability inclusion are in Table 15.

Table 16 Strategies for disability inclusion

Disability Inclusion Focus Area	Strategies	Actions
Creating Liveable Communities	2.1 Improve access and inclusion in parks, playgrounds and sporting facilities	Include disability access requirements in sport and recreation facilities renewal and upgrade program
	2.2 Support programs that increase social inclusion and community connection	Investigate options to encourage people with disability accessing cultural and leisure programs and events
	2.3 Contribute towards liveable and accessible public places	Undertake audits of Council facilities for accessibility as required
	2.4 Continuously upgrade and renew Council's assets to deliver above compliance accessibility	Incorporate specific considerations for needs of people with disability in Council's Facilities Strategy, including inclusive programming and accessibility requirements
	2.6 Improve accessible paths of travel to and parking at key destinations	Evaluate availability of accessible parking across the LGA, particularly parking close to services

### Liverpool Recreation, Open Space and Sports Strategy (2018)

Council's vision for the Liverpool LGA under this Strategy is:

*"To create best practice recreation, open space and sports facilities for the community that connect residents and foster a healthy community."*

Guiding principles for open space management, sports and recreation facilities are:

- Planning for the future
- Creating a 'sense of place'
- Equity and access
- Multi-purpose
- Connections
- Promoting social capital
- Green infrastructure
- Safety and security
- Commercial development
- Building partnerships.

Council's vision for the management of sportsgrounds in the Recreation, Open Space And Sports Strategy 2018-2028 is:

*A network of sustainable sportsgrounds that best meets the needs of formal activities, sports and games as well as informal wider community use, whilst minimising any negative impacts on surrounding residents and adjoining land uses and natural assets.*

Council aims to ensure the role of its sportsgrounds is to:

- provide value for money through their cost effective and efficient management
- provide an acceptable level of customer satisfaction
- be adaptable and can cater for a variety of uses
- meet the changing demands of the local community
- meet relevant standards and legislative requirements.

Phillips Park has been identified in the Recreation, Open Space and Sports Strategy (Liverpool Council, 2017) as a pilot project and is currently a strategic project-action in the Local Sports Strategy section (10.5) to demonstrate the economic and social benefits of a community and recreational hub model.

### Community Facilities Strategy (2017)

Lurnea has been identified in the Community Facilities Strategy (Liverpool Council, 2017) as a key growth precinct within the Liverpool Local Government Area (LGA). Council's vision underpinning this strategy is:

*"To build a world-class 21st century network of multi-purpose community facilities that inspire and connect residents, and act as focal points for community life."*

#### 4.5.3 Vision for Phillips Park

Council's vision for Phillips Park is:

*"Phillips Park will be considered a valuable asset by the local community and act as a primary hub that supports the delivery of physical, social and mental wellness initiatives.*

*It will become a focal point for community life for residents of Lurnea, where people from all backgrounds come to meet, share ideas, learn, and most importantly have fun.*

*It will promote Lurnea as a liveable, vibrant, healthy, and exciting village contributing to the cultural identity of Liverpool.*

*It will support the renewal of the Lurnea Village Centre and promote investment more generally in Lurnea.*

*A new multi-purpose community facility, major play space and both formal and informal recreation opportunities will provide a diverse range of age and culturally appropriate opportunities that unlock and harvest the skills and knowledge in Lurnea."*

#### 4.5.4 Management principles and objectives for Phillips Park

Following on from the values of and vision for Phillips Park, it is important to establish some management principles against which recommendations for uses and development of the park will also be made. As owner of land within the park and Crown Land Manager, Liverpool City Council intends to manage Phillips Park to:

- preserve the aspects of the park that are particularly valued

- keep major changes to the park to a minimum
- limit additional developments that do not relate to the park's roles
- ensure continued public access
- continue to provide high quality and well-maintained facilities
- maintain the current balance of sporting/active recreation facilities to local informal recreation areas
- provide opportunities for informal recreation, community uses, cultural activities, and social interaction
- minimise intensification of uses that have impacts on park users and the local community
- ensure future uses are compatible with existing activities and the carrying capacity of facilities and settings
- ensure safety of visitors to the park
- build on the Park's strengths as a sporting venue
- strengthen community and cultural use
- promote best value by ensuring a balance between social and financial benefits.

Council has undertaken community consultation with local residents and stakeholders in 2016 and more recently. The community's priorities and objectives for Phillips Park are to:

- provide flexible and affordable spaces for a broad range of community activities, programs and services
- deliver improved social and educational outcomes for children as well as educational and employment outcomes for young people
- increase opportunities for the community to recreate, socialise and stay healthy
- provide publicly accessible toilets, amenities and sports changing rooms
- facilitate a safe and well maintained park and suburb
- ensure an inclusive park that builds community pride and cohesion
- provide a park for informal and community use
- retain open space for local sports
- ensure a balance between local sport and recreation
- cater for informal recreation activities within the park
- promote greater community use of the park through activation and programs
- facilitate cultural and place making activities
- ensure sustainability through effective governance and management.

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# 5 FUTURE USES AND DEVELOPMENTS

## 5.1 Permitted future uses and developments

### 5.1.1 Introduction

Phillips Park will continue to be developed and used for a broad range of permitted uses consistent with the public purposes of the Crown reserve, and its categorisation.

### 5.1.2 Legislative requirements

#### Introduction

Permissible uses and developments at Phillips Park must be in accordance with relevant legislation, particularly:

- ❑ *Crown Land Management Act 2016*:
  - reserve purposes
  - any interests and rights granted under the *Crown Land Management Act 2016*.
- ❑ *Native Title Act 1993*
  - future acts and public works
- ❑ *Aboriginal Land Rights Act 1983*
  - the inchoate interests of Aboriginal people where an undetermined Aboriginal Land Claim exists
- ❑ *Local Government Act 1993*:
  - guidelines for and core objectives of the relevant categories of community land under the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*.
- ❑ SEPP (Transport and Infrastructure) 2021
- ❑ Liverpool Local Environmental Plan 2008: zoning
- ❑ Liverpool Development Control Plan 2008
- ❑ uses for which leases, licences and other estates may be granted on community and Crown land under the *Local Government Act 1993*, *Crown Land Management Act 2016*, and the *Crown Land Management Regulation 2018*.
- ❑ Commonwealth legislation.
- ❑ Council policies.
- ❑ any interests held on title.

#### Crown Land Management Act 2016

Use of Crown land must be consistent with:

- ❑ the principles of Crown land management

- the public purposes for Public Recreation and Public Hall under the *Crown Land Management Act 2016*
- any interests and rights granted under the *Crown Land Management Act 2016*.

### Native Title Act 1993

Native title rights and interests must be considered on Crown land unless native title has been extinguished or surrendered or determined by a court to no longer exist.

When proposing any act that may affect native title on Crown land or Crown reserves the act must be authorised through Part 2 Division 3 of the *Native Title Act 1993*.

Examples of acts which may affect native title on Crown land or reserves managed by Council include:

- construction of new buildings and other facilities such as toilet blocks, walking tracks, tennis courts, grandstands and barbecues
- construction of extensions to existing buildings
- construction of new roads or tracks
- installation of infrastructure such as powerlines, sewerage pipes, etc.
- creation of an easement
- issue of a lease or licence
- undertaking of major earthworks.

The *Native Title Act 1993* also contains provisions regarding public works. The Act defines a public work as:

- (a) any of the following that is constructed or established by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities:
  - (i) a building, or other structure (including a memorial), that is a fixture; or
  - (ii) a road, railway or bridge; or
  - (iia) where the expression is used in or for the purposes of Division 2 or A of Part 2--a stock-route; or
  - (iii) a well, or bore, for obtaining water; or
  - (iv) any major earthworks; or
- (b) a building that is constructed with the authority of the Crown, other than on a lease.

Major earthworks are defined as: earthworks (other than in the course of mining) whose construction causes major disturbance to the land, or to the bed or subsoil under waters.

To undertake a future act (including the adoption of a Plan of Management) on Crown land, Council must comply with the future act provisions of the *Native Title Act 1993* and meet the requirements of Section 8.7 the *Crown Land Management Act 2016*. Generally, Section 24JA of the *Native Title Act 1993* allows most actions that a Council would want to undertake on Crown land. To utilise Section 24JA the reservation must have been validly created prior to 23 December 1996. Council will be able to utilise Section J for future acts over the part of Reserve R.83052 comprising Phillips Park.

Where it is proposed to construct or establish a public work on reserved or dedicated Crown land, where native title is not extinguished, prior to approval Council will notify and give an opportunity to comment any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the

land or waters covered by the reservation or lease as required under the *Native Title Act 1993*.

### Aboriginal Land Rights Act 1983

The *Aboriginal Land Rights Act 1983* provides land rights for Aboriginal people in NSW. The lodgement of an Aboriginal land claim by a Land Council creates an inchoate (unformed) interest in the land. The full extent of that interest is not known until the claim is investigated and a determination is made by the relevant Minister.

A Plan of Management must consider the inchoate interests of Aboriginal people where an undetermined Aboriginal Land Claim exists.

### Local Government Act 1993

According to the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*, uses and developments on land classified as community land must be consistent with the guidelines for each relevant category and the core objectives of the relevant category. The guidelines and core objectives for the Sportsground, Park, and General Community Use categories which apply to Phillips Park are outlined above.

All activities which are consistent with the guidelines for categorisation as Sportsground, Park, and General Community Use which meet the core objectives of those categorisations, are expressly authorised by this Plan.

### Liverpool Local Environmental Plan 2008

The Liverpool Local Environmental Plan 2008 sets out in general terms what types of developments are permissible within the RE1 Public Recreation zone.

All proposed uses, development and building works in this Plan of Management should be permissible under the applicable zoning in the Liverpool Local Environmental Plan 2008 and assessed if required through a Development and Building Application process consistent with the *Environmental Planning and Assessment Act 1979*.

Works and activities permitted under the RE1 Public Recreation zone in Liverpool City Council are listed in Table 16.

Table 17 Permissible activities in the RE1 Public Recreation zone in Liverpool City

Permitted without consent	Permitted with consent	Prohibited
Environmental protection works	Aquaculture	Information and education facilities
Home occupations	Boat sheds	Kiosks
	Building identification signs	Marinas
	Business identification signs	Mooring pens
	Camping grounds	Places of public worship
	Caravan parks	Recreation areas
	Centre-based child care facilities	Recreation facilities (indoor)
	Charter and tourism boating facilities	Recreation facilities (major)
	Community facilities	Recreation facilities (outdoor)
	Entertainment facilities	Respite day care centres
	Environmental facilities	Roads
	Flood mitigation works	Water recreation structures
		Any other development

Any Development Applications, proposed works and major management issues will be advertised to the community for information and to invite comment.

## State Environmental Planning Policy (Transport and Infrastructure) 2021

Division 12 of the *SEPP (Transport and Infrastructure) 2021* provides for development which is:

- permitted without consent on a Crown reserve if the development is to implement an adopted Plan of Management for the land (Clause 65 (2) (d)).
- for certain purposes by or on behalf of Council without consent on a public reserve under the control of or vested in Council (Clause 65 (3)).
- exempt from planning consent if it is carried out by or on behalf of a public authority on a public reserve (Clause 66).

Clause 66 of SEPP allows for certain construction or maintenance works to be undertaken as “exempt development”, subject to certain conditions and compliance requirements set out in Clause 20 in parks and other public reserves, including Crown land under a Crown land manager. Such exempt development must involve “no greater disturbance of native vegetation than necessary” and “not result in an increase in stormwater run-off or erosion.”

Clause 65 of the SEPP also permits specified works to be undertaken on community land or Crown land under a Crown land manager without consent “if the development is for the purposes of implementing a plan of management adopted for the land”.

## Commonwealth legislation

Council recognises that under the *Telecommunications Act 1997* Phillips Park may be a desirable location for the location of a telecommunications installation. ‘Low impact’ telecommunications installations are permissible on community land without authorisation in a Plan of Management and without Council approval.

This Plan of Management authorises the granting of a lease or licence for the erection and use of telecommunications towers and infrastructure, subject to the proposal being put on public exhibition prior to Council approval, and a rental fee payable to Council to be used for the improvement of Phillips Park.

### 5.1.3 Authorised uses and development at Phillips Park

#### Introduction

Phillips Park is intended to continue to be used for sport, active recreation, informal recreation, community/social/cultural activities and events, and other compatible activities. Developments and structures are limited to those which support the desired activities.

This Plan of Management expressly authorises development of new buildings and structures, and future redevelopment/refurbishment of buildings and structures, which support the desired uses of Phillips Park for sporting, recreation and community/ social activities.

Permitted uses and developments must support and enhance the values of Phillips Park including community/social, access, open space, sport and recreation.

Any use or development that would further encroach on the open space of Phillips Park should be minimised, unless it can be shown that the proposed use or development:

- is a more efficient use of the space,
- has a community benefit, and
- is consistent with the objectives of this Plan of Management.

## Authorised uses and developments

Generally, this Plan permits (subject to the requirements of relevant legislation, zoning of the land and Council consents) the future development of the land for the following purposes:

- Alterations and improvements to existing land and buildings to provide improved facilities for the uses of this plan
- Works associated with the maintenance and repair of buildings and free standing structures
- Works associated with grounds and equipment maintenance, landscape maintenance and replacement
- Works associated with environmental enhancement and protection
- Works associated with storm water detention
- Bushfire hazard reduction
- Works associated with Council adopted strategies, plans and policies
- Works associated with legislation requirements
- Alterations to car parking layouts and service roads to improve parking and vehicular access
- The provision of new or improvements to existing sports or play facilities
- The provision of new infrastructure enhancements to existing infrastructure
- Erection and maintenance of signage
- Granting of easements.

This Plan of Management authorises the following uses and developments at Phillips Park, including but not limited to those listed in Tables 17 and 18. Some of the activities and developments listed below may require development consent.

The facilities on community land may change over time, reflecting the needs of the community.

Table 18 Future uses of Phillips Park

Purpose / Use	Sportsground category	Park category	General Community Use category
Advertising - internally oriented	●	●	●
Art, including painting, sculpture	●	●	●
Before and after school care, vacation care	●	●	●
Ceremonies	●	●	●
Charity fund raising	●	●	●
Classes (sport, leisure, recreation, training)	●	●	●
Commercial uses - small-scale	●		●
Community, special and cultural events, gatherings	●	●	●
Concerts (music, outdoor theatre)	●	●	●

Purpose / Use	Sportsground category	Park category	General Community Use category
Corporate days, promotions, displays	●	●	●
Cycling – leisure, active transport/ transit		●	
Delivering a public address or speech	●	●	●
Disability care and services	●	●	●
Dog exercise (prohibited on sportsfields, and within 10 metres of the playground, cafe and picnic areas. On-leash only elsewhere)		●	
Earthworks	●	●	●
Education	●	●	●
Emergency purposes, including training	●	●	●
Environmental management and monitoring	●	●	
Environmental protection works	●	●	
Event “live site”	●	●	
Family and children’s services	●	●	●
Filling, levelling or draining of land	●	●	●
Filming and photography, subject to Council approval	●	●	●
Flora, fauna and archaeological surveys	●	●	●
Food and beverage service and sales	●	●	●
Functions		●	●
Habitat creation		●	
Health services			●
Helicopter take-off and landing (on sportsfields in medical emergencies only)	●		
Indoor and outdoor sporting and recreational activities compatible with the use of all facilities	●	●	●
Informal ball games and recreation	●	●	●
Interpretation (historical, environmental)	●	●	●
Irrigation and drainage	●	●	●
Landscaping, gardening	●	●	●
Maintenance and emergency vehicle access	●	●	●

Purpose / Use	Sportsground category	Park category	General Community Use category
Maintenance of sporting and recreation facilities	●	●	●
Markets and fairs	●	●	●
Meetings			●
Organised and unstructured active and passive sporting and recreational activities and programs	●	●	●
Outdoor cinema	●	●	
Performances including concerts, stage	●	●	●
Personal and group fitness training, subject to Council approval	●	●	●
Pest control (invertebrate and vertebrate)	●	●	●
Picnics and barbecues		●	
Play activities (all ages, abilities)		●	●
Political conferences, meetings, functions			●
Product launches	●	●	●
Religious services			●
Revegetation, returfing	●	●	
Running / jogging	●	●	
School sport	●	●	●
Sports administration	●		●
Sporting activities including training, competition, events, coaching, school sport	●	●	●
Stormwater collection, treatment and/or retention	●	●	●
Vehicle parking			●
Walking	●	●	
Weed management	●	●	

Table 17 Permissible developments to facilitate uses at Phillips Park

Development to facilitate uses	Sportsground category	Park category	General Community Use category
Access for people of all abilities	●	●	●
Amenities		●	●
Barbecues		●	
Bicycle related storage facilities/racks		●	●
Café / Kiosk			●
Carparks		●	●
Commercial development ancillary to and supporting existing uses		●	●
Community facilities for social, cultural and recreation purposes			●
Community garden		●	●
Complying and exempt development	●	●	●
Drainage works: complementary to the natural drainage patterns on the land, and to protect roads, services, or other facilities on the land	●	●	●
Easements to private property: temporary or permanent access across Phillips Park where appropriate and in compliance with the requirements of the <i>Local Government Act 1993, Local Government (General) Regulation 2021</i> and other relevant legislation and policy.		●	
Educational facilities			●
Environmental facilities	●	●	●
Environmental protection works	●	●	●
Fencing	●	●	●
Fitness/exercise equipment		●	
Flagpoles or smart poles		●	●
Food and beverage outlet (mobile, temporary)	●	●	●
Food preparation and related facilities		●	●
Hardstand for event structures		●	
Irrigation and drainage structures and systems	●	●	●
Landscaping (hard and soft), including landscape structures or features		●	
Lighting: for public safety and the protection of assets	●	●	●

Development to facilitate uses	Sportsground category	Park category	General Community Use category
Park furniture		●	
Park maintenance staff amenities		●	●
Pathways		●	●
Picnic tables, shelters and barbecues		●	
Play equipment, softfall, shade structures		●	
Public utilities	●	●	●
Scoreboard and scoring infrastructure	●	●	●
Seating		●	●
Shelters and shade structures		●	●
Signage – locational, directional, interpretive, regulatory	●	●	●
Sport ancillary purposes	●		●
Sporting facilities for conducting organised sport	●		●
Sports courts (indoor, outdoor)	●	●	
Sports lighting – field lighting to Australian standards for relevant sporting activities	●		
Stormwater storage tanks and pipes	●	●	●
Take away food or drink premises		●	●
Temporary advertising structures which relate to approved uses/activities, are internally directed and approved by Council	●	●	●
Toilets		●	●
Utility installations	●	●	●
Vehicle access, parking and loading/unloading areas (emergency and authorised vehicles only)	●	●	●
Vehicle barriers		●	●
Viewing area / platform		●	●
Walking tracks/paths, raised paths/boardwalks, ramps, stairs, gates		●	●
Waste management	●	●	●
Water sensitive urban design structures such as rain gardens, swales	●	●	●

Development to facilitate uses	Sportsground category	Park category	General Community Use category
Work sheds or storage required in connection with maintenance of Phillips Park		●	●

#### 5.1.4 Restricted and prohibited activities

Activities that are prohibited or restricted at Phillips Park include, but are not limited to:

- breaking or leaving any bottle, glass, syringe or other objects likely to endanger the safety of any person
- camping or staying overnight
- depositing rubbish
- discharging of rifles or firearms
- dogs off leash
- dogs within 10 metres of playgrounds and food preparation areas
- fireworks without approval
- flying of model aeroplanes or drones
- any game or activity likely to damage property, injure, endanger or cause nuisance to any other person
- helicopter landings, except in emergencies
- horse riding
- interfering with or damaging any Council building, equipment, furniture, landscaping, tree, plant or flora
- leaving of dogs' faeces (removal and proper disposal is required)
- lighting of fires, except in Council constructed fireplaces or portable barbecues
- practising of golf or archery
- remote control vehicles including model aeroplanes and cars
- taking of unauthorised motor vehicles or motorised bikes, except in constructed carparks and driveways.

Conduct which is prohibited in dedicated or reserved Crown land are listed in Clause 9 of the *Crown Land Management Regulation 2018*.

Activities that can be prohibited on Crown land by direction or notice under Part 9 of the *Crown Land Management Act 2016* are listed in Clause 13 of the Regulation.

Activities at Phillips Park must be consistent with the RE1 Public Recreation zoning.

Activities at Phillips Park may be prevented or restricted by public health orders such as during a pandemic.

#### 5.1.5 Guidelines for buildings and other structures

This Plan of Management expressly authorises development of new buildings and structures, and redevelopment/refurbishment of existing buildings and structures, which support the desired uses of Phillips Park and are consistent with the reserve purposes of Public Recreation and Public Hall, and the categorisation.

The location, size and scale of future buildings and structures at Phillips Park will be consistent with:

- community needs
- physical site constraints
- best practice design standards including Australian Standards and NSW Better Places guidelines.

### 5.1.6 Scale and intensity of future uses and development

#### Introduction

In accordance with the *Local Government Act 1993* a Plan of Management for community land must set out the scale and intensity of proposed uses and developments.

Phillips Park is generally intended to be used for active sport, informal and passive recreation, informal games, and social and cultural events.

The scale and intensity of future uses and development at Phillips Park is dependent on:

- the nature of the approved future uses and developments
- the carrying capacity of facilities and spaces at Phillips Park
- impact on adjoining residents and land uses in terms of noise, lighting, traffic and vehicle parking
- consistency with the reserve purposes and categorisation

Any proposal to use buildings, structures and spaces at Phillips Park will be considered on merit and balanced against physical constraints and the amenity of adjoining residents and land uses.

The benchmarks for the scale and intensity of future uses and developments permissible at Phillips Park will be physical disturbance and damage to facilities and spaces. The physical impacts of activities and uses on facilities and spaces should be regularly monitored by condition assessment. Review of permissible activities and developments will occur if site monitoring shows any deterioration from the present condition of Phillips Park resulting from those activities or developments.

Activities at Phillips Park which may attract high numbers of people include sporting activities and community events. The intensity of use, multiple activities/uses, and real or perceived crowding/congestion or competition for space across Phillips Park will be managed so as not to unreasonably compromise the amenity of park users and the community.

#### Scale and intensity of use by category

The scale and intensity of use of each community land category in Phillips Park are connected and complementary to that of the other categories. An increase or decrease in the scale or intensity of use within one category may impact upon another category.

While weekday use may be considered as modest, on weekends use of Phillips Park increases through greater informal use, sports, visiting the café, and community events and special events. The scale and intensity of overlapping use is to be planned, addressed and managed to ensure that the scale and intensity of use of Phillips Park is consistent with this plan.

#### General Community Use

The community hub offers a wide range of facilities that provide community services to local residents and the wider community. These facilities include leased and tenanted spaces,

community spaces such as halls for hire, and integrated café, public amenities and waste facilities.

It is anticipated that the community hub and facilities would be used consistently throughout the week. Weekdays would see the use of facilities by tenants and community support providers and weeknights by various sporting groups and groups offering services to local residents and community members. It is anticipated that weekend use would be predominantly sports related with the use of public amenities and the café during training and sports events.

While the use of the community facilities have been anticipated the ongoing monitoring of the use of these facilities is critical to ensuring that scale and intensity of uses are consistent with this plan.

### Park

The facilities and furniture in the Park category cater for a range of unstructured recreational activities for the community, users and visitors to the park, supported by facilities in the community hub. Phillips Park and all elements within the park can be accessed and used all year round.

The majority of users will be local community members, and visitors and spectators during sports events. Usage levels of the park have not yet been determined and will need to be monitored across all categories with respect to the provision of off street car parking and traffic impacts on surrounding roads, businesses and residents.

### Sportsground

The sports fields cater for both summer and winter sporting codes providing all year round access to weekend local club competition, sporting programs, weekday school use and weekday evening training, subject to Council approval.

The sports fields will be used for training, competition and sports programs. The majority of users will be playing participants, match officials, coaches, volunteers and spectators. Usage levels will need to be negotiated with clubs, organisations, schools and other parties interested in hiring the fields. Council may limit the use of the sportsfields during and after rain, and if excessive wear of turf occurs.

In addition to sporting uses, the space may be used for a range of non-sport related activities such as unstructured and informal recreation or Council organised community and special events.

### Public health directives

At times, such as during the COVID-19 pandemic, Council is required to implement public health directives to ensure social distancing at public open spaces and facilities, which may involve temporarily preventing or limiting access to specific facilities or areas.

Conversely, the response to a pandemic or similar situation would increase demand for walking, cycling, picnics and outdoor informal recreation opportunities. Phillips Park is ideally placed to offer such local outdoor open space and exercise opportunities.

## 5.2 Use agreements

### 5.2.1 What are use agreements?

Under Section 46(1)(b) of the *Local Government Act 1993* a lease, licence, other estate or easement (also referred to as use agreements) may be granted over all or part of community land as a way of formalising the use of community land. The *Crown Land Management Act 2016* contains similar provisions for Crown land managed by Council Crown Land Managers.

Leases and licences may be held by organisations such as sporting clubs and associations, community groups, schools, non-government organisations, charities, community welfare services, non-profit organisations and government authorities, or by private/commercial organisations or people providing facilities and/or services for public use.

A lease will be typically required where exclusive use or control of all or part of Phillips Park is desirable for effective management. A lease may also be required due to the scale of investment in facilities, the necessity for security measures, or where the relationship between a major user and facilities on community land justifies such security of tenure.

Licences allow multiple and non-exclusive use of a particular facility or area. A licence may be required where intermittent or short-term use or control of all or part of Phillips Park is proposed. A number of licences for different users can apply to the same area at the same time, provided there is no conflict of interest.

In accordance with Section 46A of the *Local Government Act 1993* a Plan of Management for community land is to specify and authorise any purpose for which a lease, licence or other estate may be granted over community land during the life of a Plan of Management. Under Section 46 of the Act, Council may lease or licence community land for purposes consistent with the categorisation and zoning of the land.

The lease or licence must be for uses consistent with the reserve purpose(s), the assigned categorisation and zoning of the land, be in the best interests of the community as a whole, and enable, wherever possible, shared and multiple use of community land.

Any lease or licence proposal will be individually assessed and considered, including the community benefit, compatibility with this Plan of Management, and the capacity of the community land and the local area to support the activity.

### 5.2.2 Authorisation of current use agreements

Several use agreements (leases, licences and other estates) currently apply to Phillips Park as listed in Tables 8 and 9. These agreements are authorised until the end of their current term before the exercising of any options.

### 5.2.3 Leases and licences over community land

The *Local Government (General) Regulation 2021* sets out requirements for issuing of leases, licences and short term/casual permits on community land.

The maximum period for leases and licences on community land allowable under the *Local Government Act* is 21 years, or 30 years if consent from the Minister is required (including any period for which the lease or licence could be renewed by the exercise of an option) for purposes consistent with the categorisation and core objectives of the particular area of community land. Community land may only be leased or licensed if public notice is given according to the requirements of the *Local Government Act*.

Under Section 47, Council may grant a lease, licence or other estate exceeding five years if it gives public notice of the proposal to the owner, the public and all stakeholders, and invites

and considers public submissions. If an objection to the proposal is made, Council may not grant a lease, licence or other estate without consent of the Minister for Local Government.

For proposed leases, licences and other estates of five years or less, Council must publicly advertise the proposal in the same way as for leases, licences and other estates over 5 years. Final approval of the lease rests with Council, but the Minister for Local Government has the discretion to call in a proposed lease and determine the matter in place of Council. However, some short-term and other types of leases, licences and other estates, such as providing underground pipes and connections, are exempt from the need to advertise.

Any leases or licences for emergency services organisations, and not-for-profit and community groups after 30 June 2021 must be authorised by an adopted Plan of Management, or Minister's consent must be sought to manage the land as if it were operational land under the *Local Government Act 1993*.

## 5.2.4 Considerations for use agreements over Crown land

### Requirements for use agreements over Crown land

The *Crown Land Management Act 2016* sets out requirements for granting leases, licences, permits, easements or right of way including secondary interests on dedicated or reserved Crown land.

Table 19 Leases and licences over dedicated or reserved Crown land

Section of Crown Land Management Act 2016	Lease and licence requirements
3.22 Functions of Council as Crown Land Manager	As Crown Land Manager, Council must manage the land as if it were community land under the <i>Local Government Act 1993</i> . Council as Crown Land Manager can exercise all the functions that a local Council has under that Act in relation to community land, including in relation to leasing and licensing of community land.
8.77 Advice of Native Title Manager required to grant interests	Where Council is Crown Land Manager, a native title report must be prepared prior to granting a lease, license or other permit, in accordance with Native Title legislation. This requirement also extends to capital works on Crown reserves.
2.20 & 3.17 and <i>Crown Land Regulation 2018</i> Section 31 Short term licenses over dedicated or reserved Crown land	<p>Council as Crown Land Manager may issue short term licences on Crown land as if it were community land under the <i>Local Government Act 1993</i> for uses including:</p> <ul style="list-style-type: none"> <li>- Access through a reserve</li> <li>- Advertising</li> <li>- Camping using a tent, caravan or otherwise</li> <li>- Catering</li> <li>- Community, training or education</li> <li>- Emergency occupation</li> <li>- Entertainment</li> <li>- Environmental protection, conservation or restoration or environmental studies</li> <li>- Equestrian events</li> <li>- Exhibitions</li> <li>- Filming (as defined by the <i>Local Government Act 1993</i>)</li> <li>- Functions</li> <li>- Grazing</li> <li>- Hiring of equipment</li> <li>- Holiday accommodation</li> <li>- Markets</li> <li>- Meetings</li> <li>- Military exercises</li> <li>- Mooring of boats to wharves or other structures</li> <li>- Sales</li> <li>- Shows</li> <li>- Site investigations</li> <li>- Sporting and organised recreational activities</li> <li>- Stabling of horses</li> <li>- Storage.</li> </ul>

Section of Crown Land Management Act 2016	Lease and licence requirements
2.19, 3.17 Secondary interests over dedicated or reserved Crown land	The Minister or Council may issue a secondary interest where they are satisfied it is in the public interest and would not be likely to materially harm use of the land for the purposes for which it is dedicated or reserved.
2.18 Special provisions relating to Minister's powers over dedicated or reserved Crown land	The Minister may grant a lease, licence, permit, easement or right of way over dedicated or reserved Crown land for a facility or infrastructure, or any other purpose the Minister thinks fit. Before doing so, the Minister must consult the Crown land manager or the relevant government agency if the land is used, occupied or administered by an agency or the Minister to whom that agency is responsible. If the land is to be used or occupied under the relevant interest for any purpose except a purpose for which it is currently dedicated or reserved, a notice is to be published specifying the purposes for which the land is to be used or occupied under the relevant interest and be satisfied that it is in the public interest to grant the relevant interest.

## Native title and Aboriginal land rights considerations in relation to leases, licences and other estates

A tenure (lease, licence), short term use agreement or easement on Crown land may impact native title rights and interests. Any such tenure or use agreement issued on Crown land must be issued in accordance with the future act provisions of the *Native Title Act 1993* and in accordance with Part 8 of the *Crown Land Management Act 2016* unless native title is extinguished. For Crown land which is not excluded land, this will require written advice from Council's Native Title Manager that it complies with any applicable provisions of the native title legislation. The advice of an independent Native Title Manager was sought before this Plan of Management was adopted in relation to R.83052 which is not excluded land.

Subject to the *Native Title Act 1993*, any secondary interest or short-term licence on Crown land described in Division 2.5 of the *Crown Land Management Act 2016* may be issued.

The granting of easements over Crown land will be subject to the provisions of the *Native Title Act 1993* and Division 8.7 of the *Crown Land Management Act 2016*.

### 5.2.5 Express authorisation of future use agreements

#### Authorisation of future use agreements

Use agreements over community and Crown land are dealt with in Sections 46, 46A and 47 of the *Local Government Act 1993*, Clauses 116 to 119 of the *Local Government (General) Regulation 2021*, Division 3.4 of the *Crown Land Management Act 2016*, and Clause 70 of the *Crown Land Management Regulation 2018*.

In accordance with Section 46A of the *Local Government Act 1993* a Plan of Management for community land is to specify and authorise any purpose for which a lease, licence or other estate may be granted over community land during the life of a Plan of Management.

This Plan of Management expressly authorises the issue of leases, licences and other estates over the land covered by this Plan of Management, provided that:

- the purpose is consistent with the purpose for which it was dedicated or reserved, and any purposes which have been added to the reserve

- ❑ the purpose is consistent with the guidelines and core objectives for the category of the land
- ❑ the lease, licence or other estate is for a permitted purpose listed in the *Local Government Act 1993* or the *Local Government (General) Regulation 2021*
- ❑ the issue of the lease, licence or other estate and the provisions of the lease, licence or other estate can be validated by the provisions of the *Native Title Act 1993* (Cth)
- ❑ where the land is subject to a claim under the *Aboriginal Land Rights Act 1983* the issue of any lease, licence or other estate will not prevent the land from being transferred in the event the claim is granted
- ❑ the lease, licence or other estate is granted and notified in accordance with the provisions of the *Local Government Act 1993* or the *Local Government (General) Regulation 2021*
- ❑ the issue of the lease, licence or other estate will not materially harm the use of the land for any of the purposes for which it was dedicated or reserved.

Depending on the nature of the proposed lease or licence, Council would develop specific objectives and requirements tailored to the proposed use. Terms and conditions of a lease, licence or other estate should reflect the interest of the Council, protect the public, and ensure proper management and maintenance.

This Plan of Management expressly authorises the issue of leases, licences and other estates over the land in Phillips categorised as Sportsground, Park and General Community Use as set out in Table 19 (below).

### Food and beverages

Leasing and licensing for the operation of cafes, canteens, kiosks or other food outlets are expressly authorised for a period of up to 21 years. The applications, approval and operation of which may be subject to separate legislative or Council processes not covered by this Plan.

Granting of liquor licenses are subject to separate approval processes and are not at the sole discretion of Council. This Plan expressly authorises Council permission as the landowner for granting liquor licenses on community land subject to other necessary approvals. Applications for liquor licenses will be considered on a case by case by Council and only when Council are satisfied that the licensee can meet the *Liquor and Gaming NSW Liquor Act 2007* for the responsible service of alcohol.

### Events

This Plan authorises limited approved public cultural events which are ancillary to and supportive of the public recreational use of the park, and that have acceptable impacts on public recreational, residential and open space amenity.

Events and activities may be subject to compliance with the Liverpool City Council Event Organiser's Information Kit: Event Guidelines, Council policies, development applications, separate Council approval processes, conditions or exemptions not covered by this Plan.

### Easements

This Plan expressly authorises Council to grant easements for authorities, organisations or individuals in favour of private lands identified in this Plan, providing that Council are satisfied that there is no reasonable alternative and that appropriate benefits are obtained for the land.

## Public Utilities

This plan expressly authorises Council to enter into leases and licenses or other forms of agreement with relevant authorities, organisations or individuals in relation to the provision of services or utilities for a public purpose.

## Sport facilities

The granting of leases and licences is expressly authorised by this Plan for sports activities and uses which comply with the Liverpool City Council Hire of Playing Surfaces Policy (2015). Such uses include casual use of sportsgrounds and school use of sportsgrounds.

The range of sports and activities permissible should include active sports but is not limited to seasonal formal and informal sports games, and activities associated with health and fitness.

### 5.2.6 Short term licences

Short term licences and bookings will be issued in accordance with the *Local Government (General) Regulation 2021 and CLM Act 2016 and Regulation 2018*.

### 5.2.7 Use agreements by tender

Section 46A of the *Local Government Act 1993* requires that Plans of Management must specify purposes for which a lease, licence or other estate may be granted only by tender. A lease or licence for a term exceeding five years may be granted only by tender unless it is granted to a non-profit organisation. However, Council may apply a tender process in respect to granting any particular lease, licence or estate.

Leases, licences and other estates for the following purposes will be granted only after a public competitive tender process in accordance with the *Local Government Act 1993*:

- advertising
- commercial activities
- operation of a café
- a lease or licence for a term exceeding five years, unless granted to a non-profit organisation
- other leases/licences Council may want to tender.

If Council proposes to grant a lease, licence or other estate in respect of community land, it must follow certain notification procedures as outlined in Section 47 of the *Local Government Act 1993*.

### 5.2.8 Sub-leases

Where a lease arrangement has been entered into with Council over community land, sub-leasing of the land must be in accordance with the requirements of Section 47C of the *Local Government Act 1993* i.e., the purpose for which the land was to be used under the lease.

Community land that is the subject of a lease cannot be sublet for a purpose other than:

- the purpose for which the land was to be used under the lease; or
- a purpose prescribed by the Regulations.

Under Clause 119 of the *Local Government (General) Regulation 2021*, community land leased by a sporting club may be sub-let for refreshment kiosks, dances and private parties.

Table 20 Express authorisation of leases, licences and other estates at Phillips Park

Type of tenure arrangement	Maximum term	Park category	Sportsground category	Purpose for which tenure may be granted	General Community Use category
Lease	21 years, or 30 years with approval from the Minister	-	-	-	<ul style="list-style-type: none"> <li>- use of indoor community facilities and spaces</li> <li>- commercial retail uses associated with the facility such as sale of merchandise and sale or hire of sports goods</li> <li>- commercial activities associated with and ancillary to Phillips Park and aligned with its values, function, scope and scale</li> <li>- café/kiosk for refreshment purposes, including outdoor seating and tables, with or without liquor licence</li> <li>- educational purposes, including classes, workshops</li> <li>- family, children, disability and other community services delivery and provision</li> <li>- arts and cultural purposes, including concerts, dramatic productions</li> <li>- recreational, community and leisure purposes, including fitness classes, dance classes, games</li> <li>- sporting uses developed/operated by a private operator</li> </ul>
Licence	-	<ul style="list-style-type: none"> <li>- mobile food/beverage vans</li> <li>- health, fitness, lifestyle activities</li> <li>- advertising aligned with Phillips Park values, uses and Council's policies</li> </ul>	<ul style="list-style-type: none"> <li>- use for training and competition matches</li> <li>- health, fitness, lifestyle activities</li> <li>- hire or sale of sporting equipment</li> <li>- mobile food/beverage vans</li> <li>- advertising aligned with park values, uses and Council's policies</li> </ul>	<ul style="list-style-type: none"> <li>- use of indoor facilities/spaces in community hub</li> <li>- café/kiosk for refreshment purposes, including outdoor seating and tables, with or without liquor licence</li> <li>- health, fitness, lifestyle activities</li> <li>- indoor sports centre</li> </ul>	

Type of tenure arrangement		Purpose for which tenure may be granted		
Maximum term	Park category	Sportsground category	General Community Use category	
	<ul style="list-style-type: none"> <li>- hire or sale of recreational equipment</li> <li>- sporting, community, recreational and related activities</li> <li>- before and after school care, vacation care</li> <li>-</li> </ul>	<ul style="list-style-type: none"> <li>- sporting activities fixtures and events including ticketed events</li> <li>- sporting, community, recreational and related activities</li> <li>- before and after school care, vacation care</li> <li>- commercial activities associated with and ancillary to Phillips Park and aligned with its values in function, scope and scale</li> <li>- including management and maintenance of sporting and related infrastructure and the sporting fields</li> <li>- health or sports medicine services (physiotherapy etc.) available to the public</li> <li>- education and training such as sport coaching clinics</li> <li>-</li> </ul>	<ul style="list-style-type: none"> <li>- before and after school care, vacation care</li> <li>- mobile food/beverage vans</li> <li>- advertising aligned with Phillips Park's values and Council's policies</li> <li>- commercial activities associated with and ancillary to Phillips Park and aligned with the values in function, scope and scale</li> <li>- educational purposes, including education classes, workshops</li> <li>- health or sports medicine services (physiotherapy etc.) available to the public</li> <li>- arts and cultural purposes, including concerts, dramatic productions</li> <li>- recreational, community and leisure purposes, including fitness classes</li> <li>- sporting, community, recreational and related activities</li> </ul>	
Short-term licence	<ul style="list-style-type: none"> <li>- Depending on activity</li> <li>- Access through a reserve</li> <li>- Advertising</li> <li>- Before and after school care, vacation care</li> <li>- Catering</li> <li>- Ceremonies</li> <li>- Charity, fundraising and religious activities (by organisation permitted under the <i>Charitable Fundraising Act 1991</i>).</li> </ul>	<ul style="list-style-type: none"> <li>- Including but not limited to:</li> <li>- Access through a reserve</li> <li>- Advertising</li> <li>- Before and after school care, vacation care</li> <li>- Broadcasting or filming of sporting fixtures and still photography</li> <li>- Broadcasts associated with any event, concert, or public speech</li> <li>- Catering</li> <li>- Ceremonies</li> </ul>	<ul style="list-style-type: none"> <li>- Including but not limited to:</li> <li>- Access through a reserve</li> <li>- Advertising</li> <li>- Auctions and similar activities</li> <li>- Before and after school care, vacation care</li> <li>- Broadcasting or filming of sporting fixtures and still photography</li> <li>- Catering</li> <li>- Ceremonies</li> </ul>	

Type of tenure arrangement	Maximum term	Park category	Sportsground category	General Community Use category
-	-	Coaching clinics for basketball, skating and the like	Charity, fundraising and religious activities (by organisation permitted under the <i>Charitable Fundraising Act 1991</i> ).	Charity, fundraising and religious activities (by organisation permitted under the <i>Charitable Fundraising Act 1991</i> ).
-	-	Community services and activities	Coaching clinics for sporting activities	Cinema
-	-	Community events and festivals	Community events and festivals	Coaching clinics for recreational, sporting activities
-	-	Community training or education	Community services and activities	Community events and festivals
-	-	Delivering a public address	Community training or education	Community services and activities
-	-	Emergency occupation	Delivering a public address	Community training or education
-	-	Engaging in an appropriate trade or business	Emergency occupation	Delivering a public address
-	-	Entertainment	Engaging in an appropriate trade or business	Displays, exhibitions, fashion parades, shows
-	-	Environmental protection, conservation or restoration or environmental studies	Entertainment	Emergency occupation
-	-	Exhibitions	Environmental protection, conservation or restoration or environmental studies	Engaging in an appropriate trade or business
-	-	Family and children's services	Equestrian events	Entertainment
-	-	Filming (as defined by the <i>Local Government Act 1993</i> ), including for cinema/television	Event 'live' site	Exhibitions
-	-	including temporary erection or use of buildings or structures necessary to enable a filming project to be carried out	Exhibitions	Family and children's services
-	-	Functions – family, community, corporate	Family and children's services	Filming (as defined by the <i>Local Government Act 1993</i> ), including for cinema/television including temporary erection or use of buildings or structures necessary to enable a filming project to be carried out
-	-	Hiring of equipment	Filming (as defined by the <i>Local Government Act 1993</i> ), including for cinema/television including temporary erection or use of buildings or structures necessary to enable a filming project to be carried out	carried out
-	-	Markets, fairs	Fireworks display	Functions – family, community, corporate (e.g., commemorative functions, book launches, film releases, similar activities)
-	-	Meetings	Functions – family, community, corporate	Hiring of equipment
-	-	Military exercises	Helicopter take-off/ landing	Markets, fairs
-	-	Mobile food/beverage vans	Hiring of equipment	
-	-	Outdoor cinema	Markets, fairs	

Type of tenure arrangement	Maximum term	Purpose for which tenure may be granted	
		Park category	
		Sportsground category	
		General Community Use category	
-	Performances, playing a musical instrument or singing for fee or reward	Meetings	Meetings
-	Photography (still, commercial)	Military exercises	Military exercises
-	Picnics	Mobile food/beverage vans	Performances, playing a musical instrument or singing for fee or reward
-	Private celebrations (weddings and family gatherings)	Outdoor cinema	Photography (still, commercial)
-	Rural fire services	Performances, playing a musical instrument or singing for fee or reward	Private celebrations (weddings and family gatherings)
-	Sales	Photography (still, commercial)	Private celebrations (weddings and family gatherings)
-	Scientific studies, surveys	Private celebrations (weddings and family gatherings)	Promotion or enhancement of sporting groups, fixtures and events (for example 'guest' events for juniors, gala days, club meetings)
-	Shows	Promotion or enhancement of sporting groups, fixtures and events (e.g., 'guest' events for juniors, gala days, club meetings)	Rural fire services
-	Signage	Rural fire services	Sales
-	Site investigations	Scientific studies, surveys	Scientific studies, surveys
-	Organised recreational activities	Seminars and presentations, including educational programs	Seminars and presentations, including educational programs
-		Shows	Signage
-		Signage	Shows
-		Site investigations	Site investigations
-		Sporting and organised recreational activities, fixtures and events including ticketed events	Sporting and organised recreational activities, including ticketed events
-		Sports ancillary ceremonies (for example, rehearsals, opening and closing ceremonies, cheer squads, etc.)	Storage
-		Sports and fitness training and classes	
-		Storage	

Type of tenure arrangement	Maximum term	Park category	Sportsground category	Purpose for which tenure may be granted	General Community Use category
Other estates		<p>This Plan of Management expressly authorises Council to grant 'an estate' over Crown and community land for the provision of public utilities and works associated with or ancillary to public utilities and provision of services, or connections for premises adjoining the community land to a facility of the council or public utility provider on the community land in accordance with the <i>Local Government Act 1993</i>. The granting of easements of over Crown land will also be subject to the provisions of the <i>Native Title Act 1993</i>, Division 8.7 of the <i>Crown Land Management Act 2016</i>, and other applicable legislation.</p> <p>This Plan of Management authorises the construction of structures for the purposes of stormwater management, treatment and/or retention as prescribed in Section 28 of the <i>Local Government (General) Regulation 2021</i>. This Plan authorises the continued use of drains, channels and easements, and the creation of new drains, channels and easements.</p> <p>This Plan of Management expressly authorises the granting of easements over community land at Phillips Park for public utilities, providing pipes, conduits or other connections under the ground surface. This is limited to easements which connect premises adjoining community land to an existing water, sewer, drainage or electricity facility of Council or another public utility provider that is situated on the land. Such easements are authorised provided that:</p> <ul style="list-style-type: none"> <li>• there is no feasible alternative to connecting to a facility on the community land</li> <li>• there is no significant impact on the condition or use of the community land</li> <li>• in all cases, the applicant is to be responsible for all costs incurred by Council in the creation of the easement.</li> </ul> <p>Granting of easements for public utilities and stormwater management at Phillips Park is subject to conditions as required to ensure the protection of park assets, values and uses; and demonstration of a community and/or environmental benefit. Council will oppose the creation of any additional (foreign) services or utility installations, or easements, in or through Phillips Park unless there is an advantage for Phillips Park and its management, or an overriding community or environmental benefit.</p> <p>Granting of easements above or on the surface of community land is not within the authority of this Plan of Management. These easements include, but are not limited to, piping to a natural watercourse, piping from a facility on community land to a facility on private land, and private vehicular or pedestrian access.</p>			

### 5.2.9 Exclusive occupation and private purposes

Exclusive use of any area of community and Crown land is not desirable, as Phillips Park should be available for use by anyone in the community. An exception is a use where the exclusion of the public is desirable for security of assets and public safety.

The exclusive occupation or use of Phillips Park is only permitted for the purposes of any lease to which Sections 47 and 47A of the *Local Government Act 1993* applies.

Section 46 of the *Local Government Act 1993* generally prevents Councils from granting leases, licences or other estates over community land for private purposes. However, the Act enables short-term casual licences to be issued by Councils for purposes prescribed by the Regulation. The purpose of the lease, licence or other estate must be consistent with the core objectives for the relevant category of community land.

### 5.2.10 Prohibited use agreements

This Plan prohibits leases, licenses and other estates being granted for over the General Community Use, Park and Sportsground categories in Phillips Park for the following activities that:

- are prohibited by the zoning of the land
- are not consistent with the core objectives for each category of the land
- are not consistent with this Plan
- require exclusive use of facilities while preventing multiple use of the facilities by multiple users.

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## 6 ACTION PLAN

### 6.1 Introduction

Actions to realise the vision and to resolve management issues at Phillips Park (consistent with the community's values) are presented in the following tables. Table headings are:

#### Value

<b>Issue</b>	Consideration or problem to be addressed.										
<b>Objective</b>	Reflects the value of Phillips Park and provides direction for the action.										
<b>Action</b>	Specific task or action required to address issues, consistent with the objective.										
<b>Priority</b>	Importance or urgency of the action: <table> <tr> <td><b>High</b></td> <td>Short-term actions – safety issues, essential functions, eliminate and/or reduce severe issues, address an urgent community need</td> </tr> <tr> <td><b>Medium</b></td> <td>Mid-term actions:           <ul style="list-style-type: none"> <li>- ongoing preventative and remedial maintenance of existing assets</li> <li>- work needed to ameliorate adverse environmental conditions: (shade planting, pedestrian circulation and access)</li> <li>- work to protect and conserve remnant indigenous vegetation</li> <li>- works aimed at reducing ongoing maintenance costs</li> </ul> </td> </tr> <tr> <td><b>Low</b></td> <td>Long-term actions</td> </tr> <tr> <td><b>Ongoing</b></td> <td>A continuing responsibility</td> </tr> <tr> <td><b>Annual</b></td> <td>Action to be undertaken on a yearly basis</td> </tr> </table>	<b>High</b>	Short-term actions – safety issues, essential functions, eliminate and/or reduce severe issues, address an urgent community need	<b>Medium</b>	Mid-term actions: <ul style="list-style-type: none"> <li>- ongoing preventative and remedial maintenance of existing assets</li> <li>- work needed to ameliorate adverse environmental conditions: (shade planting, pedestrian circulation and access)</li> <li>- work to protect and conserve remnant indigenous vegetation</li> <li>- works aimed at reducing ongoing maintenance costs</li> </ul>	<b>Low</b>	Long-term actions	<b>Ongoing</b>	A continuing responsibility	<b>Annual</b>	Action to be undertaken on a yearly basis
<b>High</b>	Short-term actions – safety issues, essential functions, eliminate and/or reduce severe issues, address an urgent community need										
<b>Medium</b>	Mid-term actions: <ul style="list-style-type: none"> <li>- ongoing preventative and remedial maintenance of existing assets</li> <li>- work needed to ameliorate adverse environmental conditions: (shade planting, pedestrian circulation and access)</li> <li>- work to protect and conserve remnant indigenous vegetation</li> <li>- works aimed at reducing ongoing maintenance costs</li> </ul>										
<b>Low</b>	Long-term actions										
<b>Ongoing</b>	A continuing responsibility										
<b>Annual</b>	Action to be undertaken on a yearly basis										
<b>Responsibility</b>	Staff position within Council responsible for implementing the action.										
<b>Performance target</b>	The desired outcome in implementing and achieving the action.										
<b>Monitoring method</b>	How Council intends to measure its performance in implementing and achieving the action over time.										

## 6.2 Action Plan

### 6.2.1 Community/social actions

Table 21 Actions to address community/social issues

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
Changing community demands	Ensure that the community hub facilities meet the demands of an increasing and changing population	Analyse 2021 Census and other demographic data to assess the implications of relevant population changes on the future demands for the community hub facilities	High	Manager Recreation and Community Outcomes, Customer Service, IT, Marketing, Community Development, Events	Recreation and Community Outcomes	Community hub meets user needs and future community demand	Management reports User group feedback Booking data Occupancy rates Customer service reporting mechanisms Revenue generation Budgets
		Adapt the internal community hub spaces in response to demand while retaining the current footprint	High	Manager Recreation and Community Outcomes	Recreation and Community Outcomes	Increase in utilisation of the community hub	
		Proactively seek opportunities, through key external stakeholders, to identify gaps in program delivery and create new program initiatives	High	Coordinator Recreation and Community	Recreation and Community Outcomes	Program gaps identified, New programs commenced	Bookings, Program of activities at community hub
		Establish a range of commercial and community users of the community hub	High	Coordinator Recreation and Community	Recreation and Community Outcomes	Increase in number of users	List of past, current and potential users

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
		Deliver programs and services that address social and community needs	Medium	Manager Recreation and Community Outcomes	Recreation and Community Outcomes	Recreation and Community Outcomes strategic objectives	User feedback User data and bookings Social outcome measurement Return on investment
Quality and presentation of hub spaces	Maintain a high level of presentation, function, service and facility management and maintenance	Maintain high sports field surface level provision	High	Manager City Operations	Operational	Industry Standard for Tier 1 Sports fields. Weekly facilities and sports ground cleaning of schedules met	User group feedback Facility asset reports Booking data Revenue generation
Cultural and place making activities	Strengthen community and cultural use of the park  Facilitate cultural and place making activities  Apply the LCC Reconciliation Action Plan 2023 principles	Uphold the Gandangara partnership committee and Memorandum of Understanding  Implement staff training and communication including Recreation and Community Outcomes team Reconciliation Action Plan (RAP) training and effective communication with Community Development team	High  Medium, ongoing	Manager Recreation and Community Outcomes  Manager Recreation and Community Outcomes  Manager Community Development	Operational  Operational	Compliance with Memorandum of Understanding  Staff receive RAP training	Positive feedback from Gandangara partnership committee  Training program schedule

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
		Maintain the Aboriginal artwork and garden	Ongoing	Manager City Operations	Recreation and Community Outcomes	Aboriginal artwork and garden in very good condition	Asset condition assessment Positive feedback from the community
Community engagement and events	Ensure that events in Phillips Park reflect and engage a cross section of the local community	Prepare and deliver on an annual calendar of community and significant cultural events	High	Key Venues Coordinator	Sports and Recreation	Events calendar prepared. High attendance at community and significant cultural events	Visitor monitoring
Emergency/evacuation venue	Maximise the use of the Lurnea Community Hub as a community facility	Activate the Lurnea Community Hub as an emergency/evacuation venue facility	Medium	Director Operations	Operations	Lurnea Community Hub meets the criteria for use as an emergency/evacuation venue facility	State Emergency Service advice

6.2.2 Recreation and sport actions

Table 22 Actions to address recreation and sport issues

Issue	Strategies	Actions	Priority	Respons-ibility	Budget source	Performance target	Means of assessment
Demand for sports facilities	Ensure that the sports facilities at Phillips Park meet the demands of an increasing and changing population and are fit for purpose	Analyse 2021 Census, other demographic data and sport participation data to assess the implications of relevant population changes on the future demands for sports facilities	Medium, ongoing	Manager Recreation and Outcomes, Key Venues Coordinator, City Works, Property	Recreation and Community Outcomes	Sporting facilities meets user needs and future community demand	Management reports User group feedback Booking data Occupancy rates Customer service reporting mechanisms Revenue generation Budgets
		Replace the football nets with rugby league or AFL posts	Medium	Manager Recreation and Community Outcomes, City Works	Recreation and Community Outcomes	Increased use of the sporting fields	Bookings Budget income Recreation and Community Outcomes management reporting
Ensure sporting facilities have the capacity to be utilised for a variety of purposes	Ensure that sporting facilities have the capacity to meet community needs across a comprehensive span of operating hours	Re-mark the field for rugby league or AFL	Medium	Manager Recreation and Community Outcomes, City Works	Recreation and Community Outcomes	Field marked for rugby league or AFL	Observation

6.2.3 Open space actions

Table 23 Actions to address open space issues

Issue	Strategies	Actions	Priority	Respons-ibility	Budget source	Performance target	Means of assessment
Presentation and quality of playing field surface	Improve and maintain the playing field surface provision	Increase maintenance frequency of sporting fields to the following cyclical standard:	High	City Operations	Operational	Industry Standard for Tier 1 Sports fields	User group feedback, sports field assessment reports, booking frequency
		- Mowing playing surface weekly					
		- Mowing field surrounds 3 weekly					
		- Turf fertilisation quarterly					
		- Pest management quarterly					
- Broadleaf weeding quarterly							
- Annual irrigation system audit							
Presentation and quality of play gym equipment	Improve and maintain playground and play gym equipment to AS 4685.0:2017 Playground equipment and surfacing development installation inspection maintenance and operation	Maintain playground and gym equipment to the required standard	High	City Operations	Operational	L1- Weekly check L2 - Quarterly check L3- Annual check	User group feedback Level 1, 2, 3 playground inspections
Precinct presentation / landscape	Improve and maintain the landscaping presentation Ensure a high standard of park maintenance	Maintain precinct surrounds on a regular cycle including but not limited to mulching, weeding, mowing, fertilising, watering, plant replacement, vandalism/damage/graffiti repair, litter patrol and tree/plant pruning	High	City Operations, Manager Recreation and Community Outcomes	Operational	3 weekly service schedule Litter patrol 4 days per week	User group feedback Parks audits and assessment reports

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
Litter / waste collection	Improve and maintain the amenity by regular waste and recycling collection	Remove and collect waste from fixed and mobile litter bins	High	City Operations	Operational	Waste is removed from the site in accordance with Council's Waste Policy	User group Feedback Waste audits and assessment reports
						Waste bin collection – 4 days per week	
		Ensure that all future leases, licences and hire agreements contain requirements for user responsibility for waste management	Medium	Manager Recreation and Community Outcomes	Operational	User responsibility for waste management is included in future lease/licences	Legal advice Annual review of lease/licences
Low risk soil contamination	Mimimise the impacts of site contamination on park users	Prepare an Environmental Management Plan including an Asbestos Remediation Plan for Phillips Park	Low	Co-ordinator Asbestos and Remediation	Operations, City Environment	Environmental Management Plan quality control No contamination risk to park users	Environmental Management Plan process and pathways Annual testing, monitoring and reporting

6.2.4 Access and connections actions

Table 24 Actions to address access and connection issues

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
Accessibility	Ensure that facilities at Phillips Park meet the diverse and contemporary needs of the Liverpool community  Provide accessible and inclusive places suitable for people with a disability and other marginalised populations	Undertake bi-annual facility accessibility audits	High	Coordinator Asset Planning and Management,	Operations	Bi-annual facility audits	Access Audit Report
		Prepare and deliver action plans that support access for people with a disability	High	Coordinator Recreation and Community Key Venues Coordinator	Operations	Access Action Plans prepared	Access Action Plan Asset management reports
		Undertake periodical facility access upgrades and embellishments	Ongoing	Manager Infrastructure Delivery	Operations	Access upgrades and embellishments undertaken as required	Asset management reports Positive feedback from facility users
Visitor parking	Minimise disruption to local street parking and residents during large community events	Prepare a Traffic and Parking Plan for large community events	Medium	Recreation and Community Outcomes, Traffic and Transport, Infrastructure Planning	Recreation and Community Outcomes	Traffic and Parking Plan complete	Event and Traffic and Transport management reports Community feedback
		Conduct internal communications with City Works and Traffic and Transport teams to adjust the Traffic and Parking Plan according to the nature of each event	Low	Recreation and Community Outcomes, Traffic and Transport, Infrastructure Planning	Recreation and Community Outcomes	Changes to Traffic and Parking Plan	Amended Traffic and Parking Plan

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
		Debrief with the City Works and Traffic and Transport teams after each event	Ongoing	Recreation and Community Outcomes, Traffic and Transport, Infrastructure Planning	Recreation and Community Outcomes	Meeting held after each event	Event and Traffic and Transport management reports Community feedback
Wayfinding and signage	Ensure effective awareness and wayfinding so park visitors can find their way to and within the park	Update venue signage to include community languages/dialects	High	Key Venues Co-ordinator	Sports and Recreation	All venue signs include translated community languages/dialects	Positive feedback from community language speakers
	Ensure that all internal signage is inclusive of languages and dialects other than English and based on the diversity of the community	Install auditory signage	High	Key Venues Co-ordinator	Sports and Recreation	Auditory signage installed	Positive feedback from people reliant on auditory signage
	Include auditory signage to support people with vision impairment.						
Security access to community hub building	Ensure secure and easy access to the community hub by authorised users	Liaise with City Works, IT and Recreation and Community Outcomes about security access for authorised users to the community hub	Ongoing	Recreation and Community Outcomes, City Works and IT	Recreation and Community Outcomes	Documented processes	Monthly reporting Customer service/issue management tracking

6.2.5 Management actions

Table 25 Actions to address management issues

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
Park management	Build on the park's strengths as a sporting venue and as a community events location	Engage with Council's Community Development and Events teams regarding management processes and outcomes for Phillips Park	High	Manager Recreation and Community Outcomes	Recreation and Community Outcomes	Management processes and outcomes for Phillips Park agreed and documented	Management Plan for Phillips Park
	Ensure maximum internal and community support for the community hub as a key community venue	Document roles and responsibilities for management of Phillips Park, including clear lines of communication between internal stakeholder teams, performance measures, and reporting mechanisms	High	Manager Recreation and Community Outcomes	Recreation and Community Outcomes	Reporting mechanisms in place	Use data Bookings analysis, User feedback, Social media outcome measurement, Return on investment
Asset management	Manage the assets of Phillips Park to international standards	Ensure assets are managed to International Infrastructure Financial Management Manual (IIFMM) 2020 standards	High, ongoing	City Operations	Operations	Asset management meets IIFMM 2020 standards	Monthly reporting mechanism
	Maximise the life of assets	Undertake periodical asset inspections and subsequent remediation and embellishment strategies	High, ongoing	Coordinator Asset Planning and Management	Operations	Asset inspections undertaken as requirement	Asset condition reports

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
Environmental management	Minimise the environmental impact of Phillips Park and its use	Prepare preventative maintenance plans for all fixed (mechanical, electrical and plant and equipment) and environmental assets	High, ongoing	Manager Facilities Maintenance	Operations	Preventative maintenance plans for fixed and environmental assets prepared	Monthly reporting mechanism
		Fit Phillips Park with effective mechanisms such as sustainable materials that minimise its impact on the environment	High	Key Venues Coordinator	City Assets	Compliance with Building Management Systems	Asset Management Plans and reporting
		Manage Building Management Systems in accordance with facility use and demand	High, ongoing	Manager Facilities Maintenance	Recreation and Community Outcomes	Compliance with Building Management Systems	Building Management Systems reports
Stakeholder engagement	Increase the engagement of internal and external stakeholders with Phillips Park	Provide waste disposal units that separate landfill and organic waste	High	Manager Waste	Operations	Waste disposal units installed Separation of landfill and organic waste	Analysis of waste disposal behaviour
		Prepare a key internal and external stakeholder strategy that showcases the opportunities within the Phillips Park precinct	High	Manager Community Recreation, Property	Operational	Stakeholder Strategy agreed and complete	Stakeholder Strategy

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
Marketing and promotion	Maximise community awareness of community/social, sport and recreation opportunities at Phillips Park using digital and traditional platforms	Prepare an annual Marketing Plan for Phillips Park, including online advertising, social postings, print collateral, internal newsletter, stakeholder e-newsletters, local media	High	Manager – Marketing and Communications Manager Recreation and Community Outcomes, Customer Service, IT, Marketing, Community Development, Events	Recreation and Community Outcomes	Marketing Plan complete Internal and external leadership support	Feedback from internal and external stakeholders
Bookings system	Facilitate a user-friendly, efficient and effective mobile online bookings system for Phillips Park facilities and spaces	Implement the Phillips Park Marketing Plan  Develop an online multi-lingual bookings system for all facilities and spaces in Phillips Park	High, Ongoing	Manager Recreation and Community Outcomes, Customer Service, IT, Marketing, Community Development, Events	Recreation and Community Outcomes	Increase in number and diversity of activities booked and held at Phillips Park	Use data Bookings analysis, User feedback, User testimonials, Promotional videos, Social outcome measurement, return on investment
			High	Manager Recreation and Community Outcomes, Customer Service, IT, Marketing, Manager Community Recreation	Recreation and Community Outcomes	Responsive IT and Customer Service support	Internal feedback, user group feedback

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
	<p>Ensure booking administration procedures are delivered in an effective manner</p> <p>Increase community awareness of the bookings process</p> <p>Deliver sports field bookings administration in an efficient and effective manner, consistent with Hire of Playing Surfaces Policies</p>	<p>Promote the bookings process to existing and potential user groups across all marketing channels – digital web, social media, print media, onsite collateral, internal communications and leadership support</p>	High, ongoing		Recreation and Community Outcomes	Increase in number of online bookings	User group feedback, Booking data, Sports and Recreation reports, Customer Service reporting mechanisms, Revenue generation, Budgets
Health and safety	<p>Ensure the health and safety of park users and Council staff</p>	<p>Ensure asset management is maintained via regular assessment and reporting, ensure all safety signage is installed</p>	High	Manager Recreation and Community Outcomes	Recreation and Community Outcomes	Facilities meet LCC Asset Management Policy 2022	Workplace Health and Safety audits
Consumption of alcohol	<p>Ensure that facility users conform to booking policy and liquor licence legislation when applying for approval to sell alcohol at a community facility</p>	<p>Review the alcohol sale and consumption policy for the café</p>	High	Manager Recreation and Community Outcomes, Legal Counsel	Recreation and Community Outcomes	Alcohol sale and consumption policy included in booking policy, and in all future use agreements	Legal advice and compliance and standards reporting

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
Safety and security	Provide access to emergency services at all times	Prepare an effective Emergency Management Plan that defines critical incident response and evacuation procedures	High	Key Venues Coordinator	Operations	Emergency Management Plan prepared	Positive feedback from Council staff and park users
		Monitor Phillips Park by a comprehensive CCTV system that will include both fixed and mobile CCTV units	High, ongoing	Chief Information Officer	Operations	Installation of fixed and mobile CCTV system Reduction in security breaches	CCTV monitoring reports
		Monitor Phillips Park by regular security patrols 24/7, including the use of static guards as required	High, ongoing	Manager Community Recreation, Information and Communication Technology	Operations	Reduction in security breaches Reduction in response time	Security patrol reports
Social behaviour	Ensure a secure and safe facility for all of the community	Conduct quarterly facility safety audits with all non-compliances rectified within 30 days (pending risk rating)	High, ongoing	Key Venues Coordinator	Recreation and Community Outcomes	Quarterly facility safety audits completed. Non-compliances rectified in 30 days	Facility safety audit reports
		Install electronic signage solutions that support safety as well as promotional messaging	Medium	Key Venues Coordinator	Recreation and Community Outcomes	Electronic signage installed	Positive feedback from park users
		Ensure lighting and security access is maintained	High	Manager Recreation and Community Outcomes	Recreation and Community Outcomes	Internal communications channels and reporting in place	Monitoring of user and community feedback Monthly reporting mechanism

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
	Maintain a high level of social behaviour on site	Maintain relationships with local NSW Police	Ongoing	Manager Recreation and Community Outcomes	Recreation and Community Outcomes	Police presence on site when required and possible	Audit Risk and Improvement team reports Positive feedback from local NSW Police
Use agreements	Provide access to community groups, organisations and residents across a range commercial and community leasing, licencing and hire agreements and consistent with planning approvals	Ensure that contract management processes are in place	Medium	Manager Recreation and Community Outcomes Manager Community Recreation	Recreation and Community Outcomes	Tender processes follow legislative requirements. Agreed deliverables met. Renewal secured	Recreation and Community Outcomes monthly reporting mechanisms. Income generation/ budget reporting.
	Reduce administrative barriers of use agreements where possible	Review terms and conditions of use agreements regularly	Medium, ongoing	Manager Recreation and Community Outcomes	Recreation and Community Outcomes	Use agreements reviewed annually	Legal advice
		Implement formal and informal use agreements	High, ongoing	Manager Recreation and Community Outcomes Manager Community Recreation	Recreation and Community Outcomes	Use agreements in place	Summary of use agreements

Issue	Strategies	Actions	Priority	Responsibility	Budget source	Performance target	Means of assessment
Financial performance	Effectively manage financial performance and debtors	Undertake monthly financial performance reviews	High, ongoing	Manager Recreation and Community Outcomes	Recreation and Community Outcomes	Revenue and expense streams meet annual budget targets	Monthly financial performance reviews
		Develop a mechanism that ensures all accounts receivable are payable within 30 days.	High, ongoing	Booking and Activation Officer	Recreation and Community Outcomes	Unrecovered debtors is less than 5% every month Clear consequences of not paying on time	Account payment records

## 7 IMPLEMENTATION AND REVIEW

### 7.1 Management

Phillips Park will continue to be managed by Liverpool City Council as Crown Land Manager and land owner in terms of facility management, use, improvements and maintenance.

Council will have oversight of any use agreements for activities on the site.

Day-to-day management of any leased and licensed areas will be the responsibility of any lease or licence holder according to the terms of the lease or licence agreement.

Allocation of staff for management, maintenance and capital works will be monitored by Council on an ongoing basis to ensure that standards are maintained. If new facilities or extensive works are required then the need for additional staff or contractors will be assessed.

Development of new facilities will be carried out only by Council staff or contractors engaged by Council. Council may also engage contractors to assist with the maintenance of Phillips Park.

Council's Community Planning team will be responsible for the implementation and evaluation of this Plan. A Phillips Park Plan of Management Working Group that includes the Community Planning Co-ordinator, the Property Manager and the Recreation and Community Outcomes Manager, will be formed to meet and annually review plans.

### 7.2 Maintenance

Council will be responsible for the maintenance of Phillips Park including the community hub to a standard that responds to the requirements outline in this Plan of Management. Council utilises Council staff, contractors and voluntary resources to assist in meeting the targets identified.

Council may choose to enter into an agreement with tenants, hirers or other user groups with regard to sharing or transferring the responsibility of maintaining spaces or elements within Phillips Park in which those external parties benefit from.

### 7.3 Implementation

Once a Plan of Management for a Crown reserve has been approved and adopted by the Minister, the Crown Land Manager must carry out and give effect to the plan. Once Liverpool City Council adopts this Plan of Management it is Council's responsibility to implement this Plan of Management.

Implementation of actions in this Plan of Management according to their assigned priorities will be monitored through the preparation of annual performance reports, budgets, and capital works programs.

It should be recognised that commencement and completion of the actions in this Plan of Management depends on available Council resources, funding, and Council's priorities in its annual works program. The priority of each action should be reassessed annually to determine if the stated priority is still relevant.

Implementation of this Plan of Management will be monitored through the preparation of annual operational and capital works programs and budgets. Performance standards and works programs for administration, maintenance and upgrading works are revised each year to meet allocated budgets and works priorities determined in Council's Resourcing Plan.

## 7.4 Funding

Liverpool City Council can take several approaches in funding the implementation of this Plan of Management, including:

- Council sources, including capital funds, developer contributions, fees and charges for use
- Partnerships with sporting and other user and community groups
- Applying for Commonwealth and state government grants, including Crown Reserves Improvement Fund, sports and recreation, and environmental.

## 7.5 Reporting

Council will report on the progress of implementing this Plan of Management in the following ways:

- within Council's Integrated Planning and Reporting framework
- including achieved and proposed actions in its quarterly and annual reports
- when preparing capital works and maintenance budgets
- issuing media releases and information on its website
- providing information flyers and newsletters to adjoining residents and other stakeholders.

## 7.6 Change and review of this Plan of Management

This Plan of Management will require regular review to align with community values and changing community needs, and to reflect changes in Council priorities. Council has determined that it will update the Plan of Management within 5 to 10 years of its adoption. However, the performance of this Plan of Management as set out in the Action Plan will be reviewed on an annual basis by the Recreation and Community Outcomes management team to ensure that Phillips Park is being managed in accordance with the Plan of Management, is well maintained, and provides a safe environment for public enjoyment.

Council may continue to acquire or divest land for the benefit of the community. Land may also come into Council's ownership by dedication of land for open space.

This Plan of Management will be evaluated on an annual basis and will include:

- review of the Plan of Management objectives
- progress report on the process of implementation
- recommendations on any alterations or amendments that may be required.

Council's Recreation Planner will undertake the process of evaluation. Once completed, a report will be presented to Council for consideration.

In the event of the reclassification of any of the land covered by this Plan of Management the Plan will be revised to reflect the changed circumstances.

The community will have the opportunity to participate in reviews of this Plan of Management.

User and community feedback is captured on the use and facilities of the park via an annual survey on email and on social media. When a future plan of management is required, Council will engage in recommended, best practice community consultation process.

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## 8 REFERENCES

- Clouston Associates (2018) *Lurnea Community Hub Concept Masterplan*. Prepared for Liverpool City Council.
- Cred Consulting (2016) *Community Needs Analysis for Phillips Park, Lurnea*. Prepared for Liverpool City Council.
- Department of Planning and Environment (2019) *Everyone Can Play: A Guideline to Create Inclusive Playspaces*.
- Department of Planning and Environment (2019) *Greater Sydney Outdoors Study*.
- Environmental Earth Sciences (2020) *Detailed Site Investigation at Phillips Park*
- Government Architect NSW (2017) *Greener Places: establishing an urban green infrastructure policy for New South Wales*.
- Greater Sydney Commission (2017) *Our Greater Sydney 2056: A Metropolis of Three Cities – connecting people*.
- Greater Sydney Commission (2017) *Western City District Plan*.
- IPWEA (2020) *International Infrastructure Financial Management Manual (IIFMM) 2020*.
- Judith Stubbs and Associates (2019) *Liverpool Population and Social Infrastructure Study*. Prepare for Liverpool City Council.
- Liverpool City Council (2012) *Liverpool Biodiversity Management Plan 2012*.
- Liverpool City Council (2017) *Disability Inclusion Action Plan*.
- Liverpool City Council (2018) *Recreation, Open Space and Sports Strategy 2018-2028*
- Liverpool City Council (2022) *Asset Management Strategy and Plans*
- Liverpool City Council (2023) 166534.2023 *Proposed Crown Reserve Land Categories*.
- McGregor Coxall (2020) *Liverpool Green Grid Implementation Study: The Green Grid and Priority Project Identification*
- Tyrrell Studio and Office of the Government Architect (2017) *Sydney Green Grid: Spatial Framework and Project Opportunities*.
- Liverpool City Council (2016) *Tree Management Policy*

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**Department of Planning and Environment**

Our ref: DOC23/199094

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Liverpool City Council  
Locked Bag 7064  
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via email: [summersj@liverpool.nsw.gov.au](mailto:summersj@liverpool.nsw.gov.au)  
cc: [lcc@liverpool.nsw.gov.au](mailto:lcc@liverpool.nsw.gov.au)

22 November 2023

Subject: Liverpool City Council draft Plan of Management – Phillips Park

Dear Ms Summers

Thank you for submitting the draft Plan of Management (PoM) for Phillips Park on 14th September 2023 followed by the updated draft PoM on 14th November 2023.

I have reviewed the draft PoM and support it being placed on public exhibition.

Council should conduct a final review of the document to ensure all legislation referenced is currently in force, departmental names are up to date, and spelling, grammar and formatting is correct and consistent.

Subject to no changes following public exhibition, as a delegate for the Minister for Lands and Property, I consent to council to adopt the PoM under clause 70B of the Crown Land Management Regulation 2018.

If the PoM is amended after public exhibition (except for minor editorial and formatting changes), council must resubmit the draft PoM for Minister's consent to adopt. With the amended PoM, please provide the following documents:

- a table of PoM amendments or tracked changes.
- summary report of submissions from public exhibition (if any)
- council reports on the proposed adoption (if any)

If there are no amendments to the PoM, please provide a copy of the adopted PoM. All documents must be sent to [council.clm@crowland.nsw.gov.au](mailto:council.clm@crowland.nsw.gov.au).

Please remember, an adopted PoM authorises the lawful use and occupation of Crown land. Council must ensure that any activities planned on the reserve are expressly authorised in the adopted PoM and native title obligations are met.

If you have any further questions or need assistance, please contact the Reserves Programs Team at [council.clm@crowland.nsw.gov.au](mailto:council.clm@crowland.nsw.gov.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read "D Heather".

Daniel Heather  
Manager, Reserves Programs  
Department of Planning and Environment – Crown Lands and Public Spaces

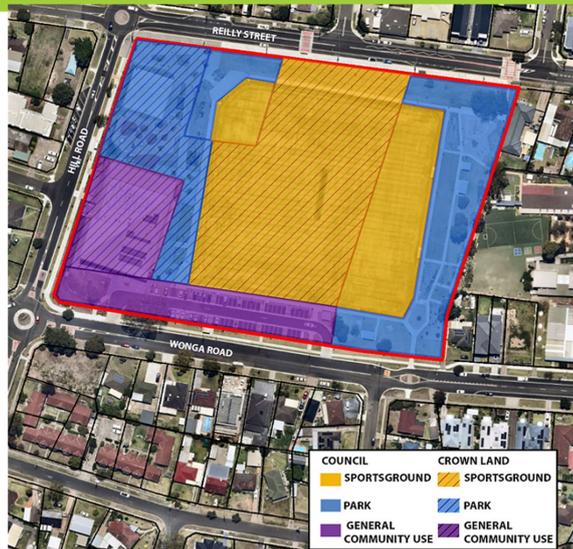


# PROPOSED RECATEGORISATION OF PARTS OF PHILLIPS PARK

## PUBLIC HEARING AND SUBMISSIONS REPORT

FINAL

24 JANUARY 2024



LIVERPOOL CITY COUNCIL

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PROPOSED RECATEGORISATION OF  
PARTS OF PHILLIPS PARK

PUBLIC HEARING AND SUBMISSIONS REPORT

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FINAL

24 JANUARY 2024

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**DIRECTOR: Sandy Hoy**

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# 1 INTRODUCTION

## 1.1 Purpose of this report

The purpose of this report is to convey to Liverpool City Council ('Council') the submissions made in relation to a public hearing held on Tuesday 12 December 2023 regarding the proposed recategorisation of parts of Phillips Park in Lurnea.

This report has been prepared under Section 40A of the *Local Government Act 1993*.

## 1.2 Land covered by this report

Phillips Park in Lurnea is shown in Figure 1.

Figure 1 Location of Phillips Park



## 1.3 Background to the public hearing

Phillips Park in Lurnea comprises Crown land and community land owned by Liverpool City Council. Community land and Crown land are required to be categorised under the *Local Government Act 1993*.

Phillips Park was categorised as Sportsground in the adopted Generic Plan of Management for Sportsgrounds 2007. The adopted Generic Plan of Management: Community Facilities 2005 applied to the former George Bates Community Centre and Phillip Park Office which were categorised as General Community Use. Liverpool City Council proposes to recategorise parts of Phillips Park as Sportsground, Park and General Community Use, which is consistent with the recent upgrades and improvements to Phillips Park, the

guidelines for categorisation of the *Local Government (General) Regulation 2021*, and the core objectives for each category in the Local Government Act.

Community land is also required to be subject to a Plan of Management prepared under the Local Government Act. A Draft Plan of Management has been prepared for Phillips Park which was on public exhibition for comment until Tuesday 16 January 2024.

A public hearing is required under Section 40A of the *Local Government Act 1993* ('the Act') to receive submissions about proposed categorisation of community land. Under the Act the public hearing must be chaired by an independent facilitator.

## 1.4 This report

The remainder of this report presents the relevant requirements of the *Local Government Act 1993* regarding Plans of Management and categorisation of community land, and submissions regarding the proposed recategorisation of parts of Phillips Park.

The submissions comprise verbal submissions made at the public hearing held on Tuesday 12 December 2023. No online or written submissions were received by Council between Tuesday 28 November 2023 and Tuesday 16 January 2024.

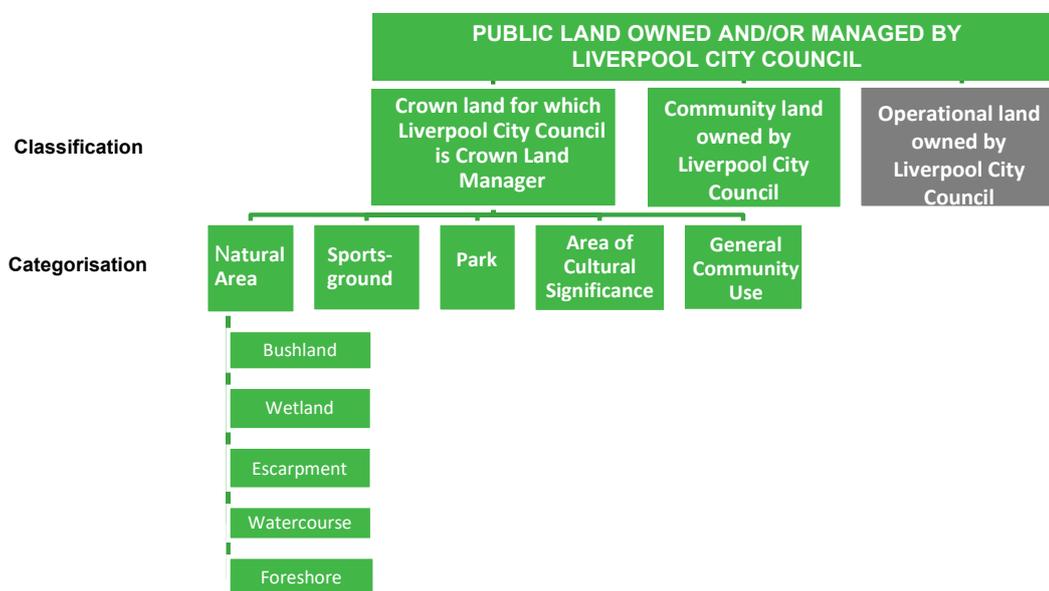
## 2 PLANNING CONTEXT

### 2.1 What is community and Crown land?

The *Local Government Act 1993* and *Crown Land Management Act 2016* set out a range of requirements for the management of public land that Liverpool City Council is legally bound to adhere to.

Section 26 of the *Local Government Act 1993* requires that all public land owned by Council must be classified as "community" or "operational" land. Phillips Park comprises community land owned by Liverpool City Council and Crown land managed by Liverpool City Council.

Figure 2 Classification and categorisation of community and Crown land



Community land is intended to be managed for use by the community for purposes including environmental protection, recreational, cultural, social and educational activities. Community land may only be leased or licensed for up to 21 years without the Minister's consent or up to 30 years with the Minister's consent, it cannot be sold, and its use is restricted to the above purposes.

Conversely, operational land is land that can be used for any purposes deemed fit by Council, may be used for commercial purposes, be leased for a longer period of time, and can be sold.

Under the *Crown Lands Act 1989* categorisation was not applicable to parcels of Crown land under Council's care and control. However, from 1 July 2018 the *Crown Land Management Act 2016* required the appointment of Council as Crown Land Manager and for these Crown lands to be managed as if they were public land under the *Local Government Act 1993*. This requirement included the application of land categorisation and preparation of a Plan of Management for Crown land. Under the *Crown Land Management Act 2016*, initial land categorisations were applied to Crown land within Phillips Park by the Department of Planning, Housing and Infrastructure (DPHI).

## 2.2 What are the categories of community land?

The *Local Government Act 1993* requires that all land owned by the Council which is classified as Community land be categorised.

As shown in Figure 2, Community land may be categorised as one or more of the following under Section 36(4):

- Natural Area.
- Sportsground.
- Park.
- Area of Cultural Significance.
- General Community Use.

Land that is categorised as a Natural Area is to be further categorised as one or more of the following under Section 36(5) of the Act:

- Bushland.
- Wetland.
- Escarpment.
- Watercourse.
- Foreshore.
- A category prescribed by the regulations.

## 2.3 What are the guidelines for categorising community land?

Guidelines for categorising Community land as a particular category are in Clauses 102 to 111 of the *Local Government (General) Regulation 2021*.

The Department of Local Government's revised *Practice Note on Public Land Management* (Department of Local Government, 2000) made general recommendations on the guidelines for categorising Community land. The *Practice Note* stated:

*"Council must have regard to the guidelines in determining a category (cl.9) but are not required to adopt any category merely because the land fits the description in the guidelines. Council should look at all the circumstances of the land in making a decision as to categorisation. For example, a piece of land may seem to satisfy the guidelines for more than one category. Council has a discretion in this case to look at the land in context, taking into account all relevant material before determining a category. It is important that Council be able to justify a decision."*

*Also, Council may have a piece of Community land, parts of which may be best managed as different categories, for example a piece of land with remnant bushland in one part and children's play equipment in another. Council is able to categorise land as part 'Natural Area – Bushland' and part 'Park'. It is strongly recommended that the land in each category not overlap. Overlapping categories may cause conflict in management objectives and will create confusion in the minds of Council staff and the community."*

## 2.4 Core objectives for managing community land

Each category and sub-category of community land has core objectives that apply to it under the *Local Government Act 1993*. The core objectives outline the approach to management of the land covered by the particular category. The core objectives for each category of community land are set out in Sections 36E to 36N of the *Local Government Act 1993*.

## 2.5 Guidelines and core objectives for proposed categories for Phillips Park

The guidelines and core objectives for the proposed Sportsground, Park, and General Community Use categories are in Table 1.

Table 1 Guidelines and core objectives for proposed categories of community land

Category	Guidelines <sup>1</sup>	Core objectives <sup>2</sup>
Sportsground	If the land is used or proposed to be used primarily for active recreation involving organised sports or the playing of outdoor games.	<ul style="list-style-type: none"> <li>- encourage, promote and facilitate recreational pursuits in the community involving active recreation involving organised sports and informal sporting activities and games, and</li> <li>- ensure that such activities are managed having regard to any adverse impact on nearby residences.</li> </ul>
Park	Land that is, or is proposed to be, improved by landscaping, gardens or the provision of non-sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.	<ul style="list-style-type: none"> <li>- encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities, and</li> <li>- provide for passive recreational activities or pastimes and for the casual playing of games, and</li> <li>- improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.</li> </ul>
General Community Use	Land that may be made available for use for any purpose for which community land may be used, whether by the public at large or by specific sections of the public.	<ul style="list-style-type: none"> <li>- promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public in relation to: <ul style="list-style-type: none"> <li>- public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public.</li> </ul> </li> <li>- purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).</li> </ul>

1 *Local Government (General) Regulation 2021*

2 *Local Government Act 1993*

## 2.6 Plans of Management for Community land

Council must prepare a Plan of Management for Community land (Section 36(1)).

Community land is required to be used and managed according to a Plan of Management applying to the land (Section 35).

Among the requirements of the *Local Government Act 1993* for the contents of a Plan of Management for Community land are:

- categorisation of the land
- core objectives for management of the land.

## 2.7 Public hearings

### 2.7.1 Why hold a public hearing?

A public hearing is required under Section 40A of the *Local Government Act 1993* and Section 3.23(7)(d) of the *Crown Land Management Act 2016* if:

- a Plan of Management proposes to categorise (that is, the Plan has not been previously prepared and adopted by Council, or has not categorised Community land) the public land covered by the Plan of Management.
- a Plan of Management proposes to re-categorise (changing the adopted category) the public land covered by the Plan of Management.

Note: Public hearings regarding categorisation or re-categorisation of community land are not related to reclassification. Reclassification is when community land is re-classified as operational land that can then be managed differently and has the ability to be sold by Council. Community land is protected under the *Local Government Act 1993* and cannot be sold.

### 2.7.2 Who conducts a public hearing?

An independent chairperson conducts the public hearing, and provides a report to Council with recommendations on the proposed recategorisation of community land.

Under Section 47G of the *Local Government Act 1993*, the person presiding at a public hearing must not be:

- a) A Councillor or employee of the Council holding the public hearing.
- b) A person who has been a Councillor or employee of that Council at any time during the 5 years before the date of his or her appointment.

### 2.7.3 What happens after the public hearing?

Council must make a copy of the report regarding the outcomes of the public hearing available for inspection by the public at a location within the area of Council no later than four days after it has received the final report from the person presiding at the public hearing.

This Public Hearing Report will be presented to Council for its information when it considers adopting the proposed recategorisation of parts of Phillips Park and the draft Plan of Management for Phillips Park.

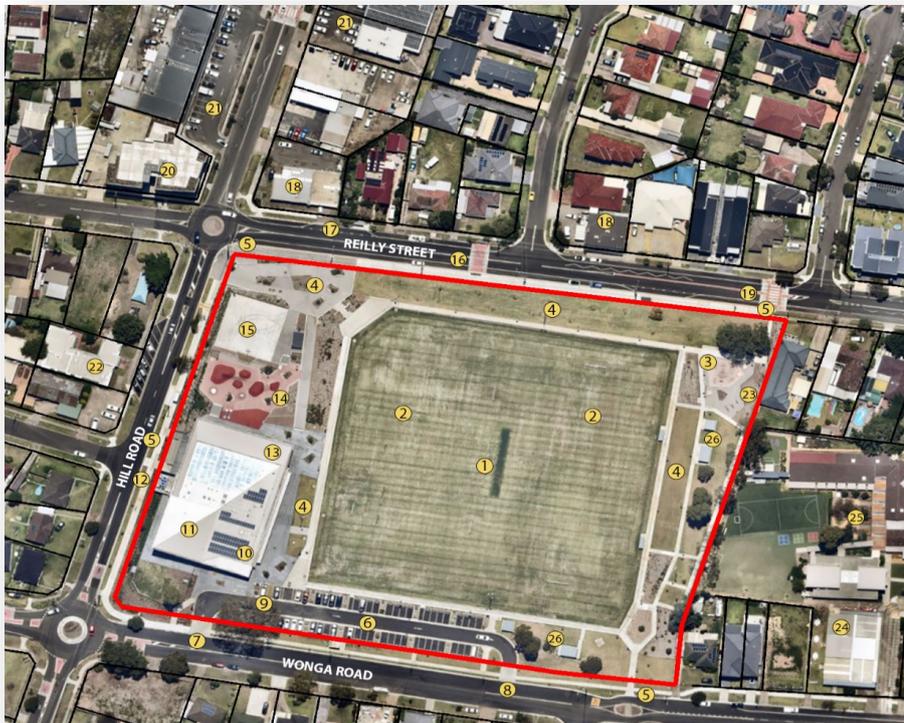
Pending the outcome of the public hearing and if Council adopts the proposed recategorisation of parts of Phillips Park, Council will update associated maps, plans, documents and records to reflect the change in categorisation. Notification of the Council resolution for the land recategorisation and Plan of Management will be provided to community and stakeholders.

# 3 PROPOSED RECATEGORISATION OF PARTS OF PHILLIPS PARK

## 3.1 Features of Phillips Park

The site features of Phillips Park are in Figure 3.

Figure 3 Features of Phillips Park



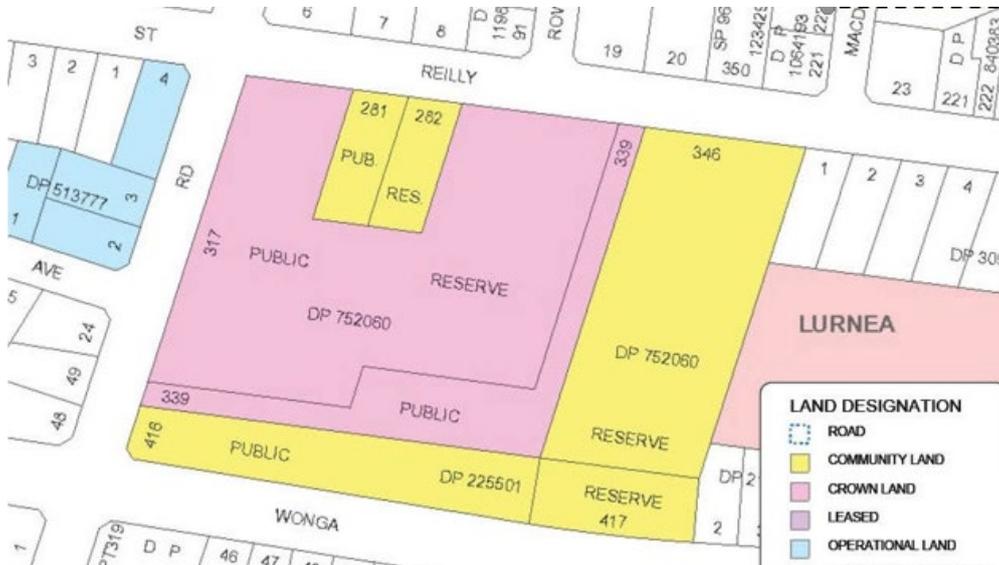
### Key

1. Cricket Pitch	2. Soccer Fields
3. Outdoor Gym	4. Grassed Seating areas
5. Accessible Pedestrian Entry points	6. Public Carpark
7. Carpark Entry	8. Carpark Exit
9. Accessible Car spaces	10. Solar Panels
11. Community Centre	12. AC condenser units
13. Cafe	14. Playground
15. Half Basketball Court	16. Speed Hump
17. Bus Stop	18. Local Shops
19. Pedestrian Crossing	20. Residential Flat Building
21. Local Shopping Village	22. Childcare Facility
23. Bike Racks	24. St Francis Xavier Primary School
25. St. Francis Xavier Catholic Church	26. Benches/Shaded Tables

### 3.2 Land ownership

Phillips Park comprises Crown land and land owned by Liverpool City Council as shown in Figure 4 below.

Figure 4 Ownership of land parcels in Phillips Park



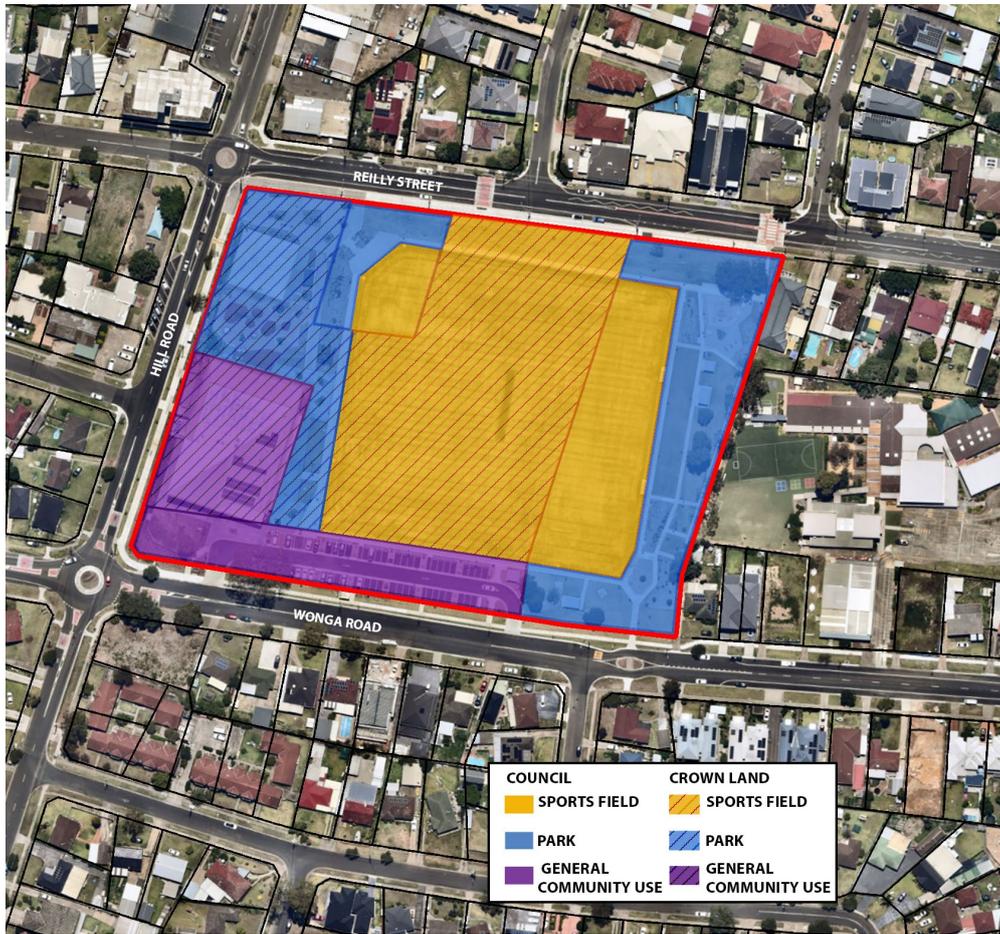
### 3.3 Current and proposed categorisation of Phillips Park

Phillips Park was categorised as Sportsground in the adopted Generic Plan of Management for Sportsgrounds 2007. The adopted Generic Plan of Management: Community Facilities 2005 applied to the former George Bates Community Centre and Phillip Park Office which were categorised as General Community Use. Maps of the categories as they apply to Phillips Park were not included in both Plans of Management.

In 2005-2007 Crown land was not required to be categorised. The *Crown Land Management Act 2016* which came into effect in 2018 requires that Crown land is categorised and managed as if it is community land under the *Local Government Act 1993*. As required, Council as Crown Land Manager submitted initial land categorisations for Crown land in Phillips Park to the NSW Office of Crown Lands as Sportsground, Park and General Community Use. The categorisation of Crown land in Phillips Park as Sportsground, Park and General Community Use was approved by the Department of Planning, Housing and Infrastructure in July 2023.

Council proposes to recategorise parts of the Council-owned community land in Phillips Park as Sportsground, Park and General Community Use, which is consistent with the Crown land categorisation, current and proposed uses, and the recent improvements to Phillips Park, as shown in Figure 5.

Figure 5 Proposed recategorisation of Phillips Park



Source: Draft Phillips Park Plan of Management 2023

The features of Phillips Park in each proposed category are shown in Figure 6 below.

Figure 6 Features of Phillips Park by category



Park category	Park entries Half basketball court Play spaces	Outdoor gym Picnic shelters Hard and soft landscaping
		
		
General Community Use category	Lurnea Community Hub Carpark	
		
		

# 4 THE PUBLIC HEARING

## 4.1 Advertising and notification

### 4.1.1 Public notification and exhibition requirements

Section 38 of the *Local Government Act 1993* states that Councils must give “public notice” of a draft Plan of Management, and the length of time that it must be on public exhibition and for submissions to be made. The public notice contents are set out in Section 705 of the Act.

### 4.1.2 Online notification

#### Social media

Facebook and Instagram posts on 28 November and 6 December 2023 are in Figure 7.

Figure 7 Social media posts

#### Instagram 28 November 2023



46 likes  
 liverpoolcitycouncil We have developed our new Draft Plan of Management for Phillips Park, Lurnea an... more  
 View all 2 comments  
 28 November 2023

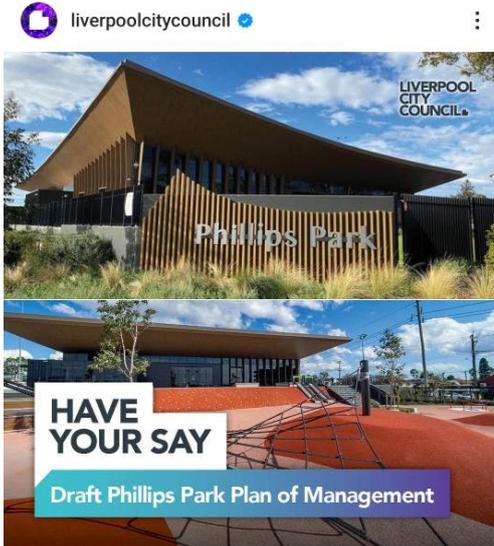
#### Facebook 28 November 2023



**Instagram**

6 December 2023

← Posts



18 likes

**liverpoolcitycouncil** REMINDER: Have your say on our Draft Phillips Park Plan of Management by registering for our public hearing:

🕒 12 December 2023 | 7.30pm  
📍 Lurnea Community Hub, 66 Hill Road, Lurnea

Visit link in our bio:  
👉 to view the plan  
👉 have your say by completing the survey  
👉 register for the public hearing on 12 December at Lurnea Community Hub

6 December 2023

**Facebook**

6 December 2023

**Liverpool City Council Australia** December 6, 2023

REMINDER: Have your say on our Draft Phillips Park Plan of Management by registering for our public hearing:

🕒 12 December 2023 | 7.30pm  
📍 Lurnea Community Hub, 66 Hill Road, Lurnea

Visit <https://ow.ly/UxH+50QfN6i>:  
👉 to view the plan  
👉 have your say by completing the survey  
👉 find out more / register for the public hearing on 12 December at Lurnea Community Hub

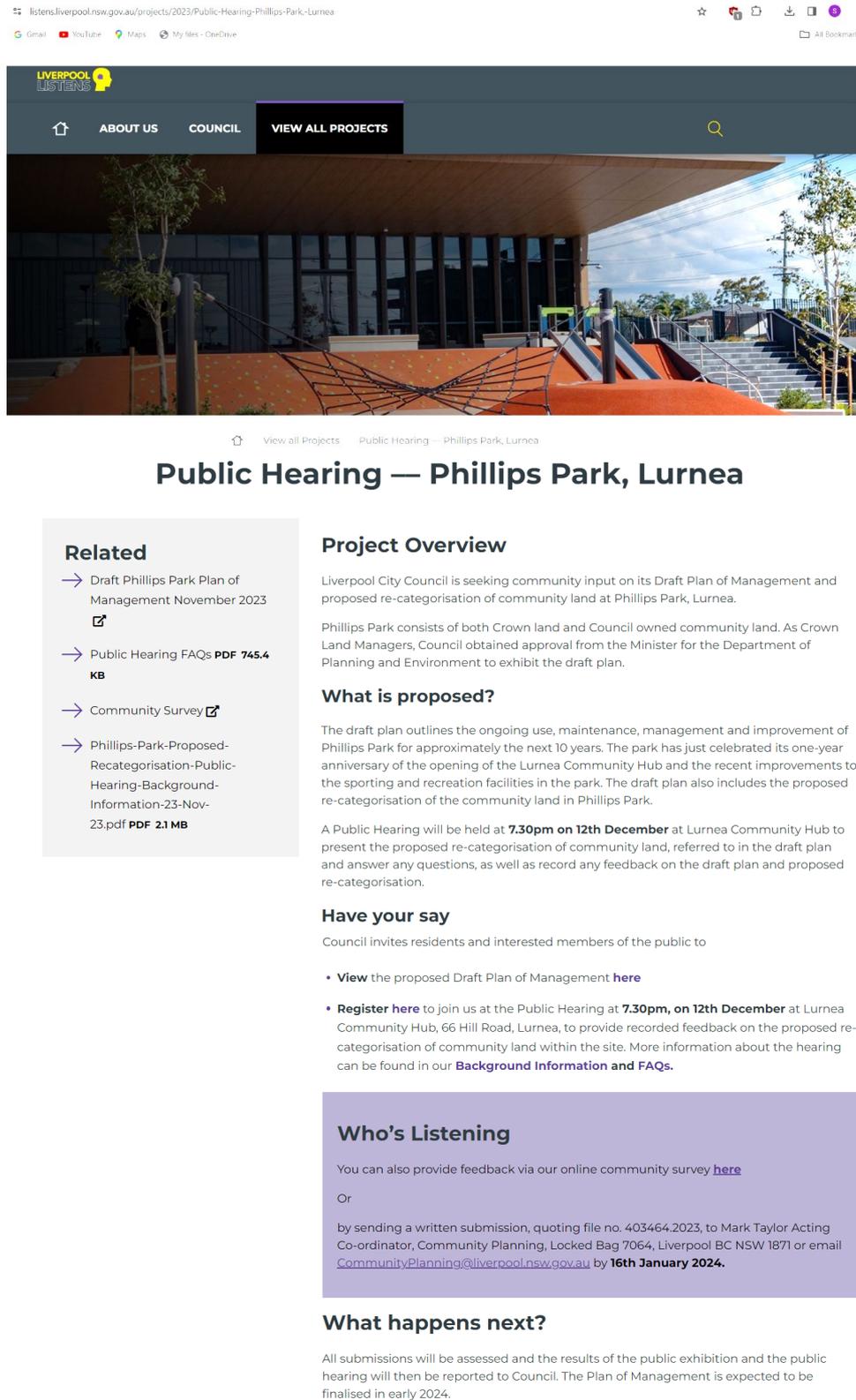


**Liverpool Listens**

Council notified the community of the public hearing on its 'Liverpool Listens' webpage <https://www.liverpool.nsw.gov.au/ll/projects/2023/Public-Hearing-Phillips-Park,-Lurnea> from Tuesday 28 November 2023 until Tuesday 16 January 2024.

The webpage on 'Liverpool Listens' is shown in Figure 8. A background information document explaining the proposed recategorisations, the public hearing, and an online submission form, were also provided on the web page.

Figure 8 Public hearing information on Council's website



## Public exhibition webpage

The notice in Figure 9 was posted on Council's Public Exhibition webpage from 28 November 2023 to Tuesday 16 January 2024.

Figure 9 Public exhibition webpage notice

The screenshot shows the Liverpool City Council website navigation menu on the left, with 'Public Exhibitions and Notices' selected. The main content area features a purple header for the 'Public Hearing and Exhibition - Phillips Park Draft Plan of Management and Public Hearing for proposed re-categorisation of community land.' Below the header, the text states: 'Liverpool City Council is holding a public hearing for the re-categorisation of community land proposed in the Draft Plan of Management for Phillips Park, Lurnea. The objective of the plan is to outline the ongoing use, maintenance, management, and improvement of Phillips Park for approximately the next 10 years. Council invites residents and interested members of the public to:'

- **View** the proposed Draft Plan of Management [here](#)
- **Register** [here](#) to join us at the Public Hearing at **7.30pm - 8.30pm, on 12th December** at Lurnea Community Hub, 66 Hill Road, Lurnea, to provide recorded feedback on the proposed re-categorisation of community land within the site. More information about the hearing can be found in our Background Information [here](#) and FAQs [here](#)
- Complete our online Community Survey on the draft plan and proposed re-categorisation of community land [here](#)
- Provide feedback by sending a written submission, quoting file no. 403464.2023, to Mark Taylor Acting Co-ordinator, Community Planning, Locked Bag 7064, Liverpool BC NSW 1871 or email [CommunityPlanning@liverpool.nsw.gov.au](mailto:CommunityPlanning@liverpool.nsw.gov.au)

### 4.1.3 Other notification methods

In addition to the online methods shown above, Council also notified park users and the community about the public hearing by:

- posting 100 x A4 posters across local sites and at the Phillips Park Community Hub
- distributing 100 x A5 flyers at the Phillips Park Community Hub, Liverpool Library, Liverpool Museum, and Casula Powerhouse Arts Centre.

## 4.2 Public hearing arrangements

The public hearing was held on Tuesday 12 December 2023 at 7.30pm in the Boardroom of the Liverpool Community Hub, 66 Hill Road, Lurnea.

No community members registered in advance to attend the public hearing.

## 4.3 Attendance at the public hearing

As required under Section 47G of the *Local Government Act 1993*, Council appointed an independent chairperson, Sandy Hoy, Director of Parkland Planners, to chair the public hearing.

Mark Taylor (Acting Co-ordinator, Community Planning), Craig Lambeth (Manager Community Recreation) and Jill Summers (Project Officer) provided information and answered questions on Council's behalf during the public hearing.

Five community members attended the public hearing:

- representative of South West Wanderers Football Club
- representative of Wonderwood Café
- 3 community members.

## 4.4 The public hearing

Ms Hoy opened the public hearing at 7.30pm.

Ms Hoy explained the purpose of the public hearing, the legislative basis for categorisation of community land, and the requirement for public hearings, based on the background information document provided online.

The question that the Chair asked people attending the hearing to address was:

**Do you agree or not with the proposal to categorise Crown and community land comprising Phillips Park as Sportsground, Park and General Community Use as shown in the Phillips Park Draft Plan of Management and Figure 4 of the background information document? Why or why not?**

The community members asked questions and made comments about the proposed recategorisation of land, and matters relating to use and management of the park at the public hearing. The content of verbal submissions which are relevant to the proposed recategorisation are outlined in more detail in Section 5 of this report. Other comments and questions were noted but are outside the scope of this report.

With there being no further submissions or questions, Ms. Hoy closed the hearing at 8.20pm.

## 4.5 Submissions

Submissions about the proposed recategorisation of parts of Phillips Park could be made:

- verbally at the public hearing** on 12 December 2023
- via the online submission form** on Council's 'Liverpool Listens' page at <https://www.liverpool.nsw.gov.au/ll/projects/2023/Public-Hearing-Phillips-Park,-Lurnea> by Tuesday 16 January 2024
- email to Council** [communityplanning@liverpool.nsw.gov.au](mailto:communityplanning@liverpool.nsw.gov.au) by Tuesday 16 January 2024
- in writing to Council** quoting file no. 308576.2023, to Mark Taylor, Acting Co-ordinator, Community Planning, Locked Bag 7064, Liverpool BC NSW 1871 by Tuesday 16 January 2024.

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# 5 CONSIDERATION OF SUBMISSIONS

## 5.1 Introduction

Feedback on the proposed recategorisation of parts of Phillips Park was received via the five community members who attended the public hearing. No written submissions were received.

## 5.2 Submissions about the proposed recategorisation

Questions and comments about the proposed recategorisation are in Table 2.

Table 2 Questions and comments about proposed recategorisation

Question/comment	Chair response
The recategorisation map looks good the way it is.	Noted
Could a water park be included in General Community Use?	Yes, and it also could be in the Park category

## 5.3 Comments outside the scope of the public hearing

Submissions made at the public hearing which are not related to the proposed recategorisation are set out in Table 3. It is recommended that Council consider these comments while finalising the Plan of Management for Phillips Park.

Table 3 Verbal submissions outside the scope of the public hearing

Question/comment	Council response
Everything [the park] looks good, it's fantastic. It is excellent the way the park is set up.	Noted
Suggestion for a water park in Phillips Park, because the kids will love it.	A splash park has not been considered for Phillips Park at this stage. The approximate cost to construct a major splash park of significant magnitude would be significant - up to \$2.5 million (allowing for contingencies and escalations). Council has two splash parks at Bigge Park and Stante Reserve that have varying levels of popularity – noting weather dependencies. Annual attendances at Bigge Park are approximately 8,000-10,000 persons. Regrettably both venues have attracted significant anti-social behaviour in the past. Annual operation costs are also significant. Cleaning of a splash park would cost \$100,000 per year. Security to manage anti-social behaviour would cost \$240,000 per year.

Question/comment	Council response
	A splash park in Phillips Park may be desirable in future but not now. As improvements to the community hub are made a splash pad would be possible. Inflatable water parks are an option because they are covered by public liability insurance.
Looking forward to seeing the Indigenous garden with the bridge and rocks. Where is it?	It is in the park.
The community doesn't look after the land. The community has to want to look after the park. Rubbish and bottles are thrown everywhere. Education is needed.	Noted
The park has improved since the old tennis courts	Noted
More play equipment might be better than a splash pad.	Noted
The black fence around the park was installed to stop children running on to the road to chase balls.	Noted
People are here in the park in summer. People enjoy and appreciate the field.	Partnership opportunities to increase activation of parks include Red Bull 3x3 basketball competition at Collimore Park in February 2024.
Indoor soccer would be good here, and would attract primary school children.	An indoor basketball court would cost \$3,500,000.
Feedback from café patrons is to provide play equipment for older children 10 years and above. The equipment in the play area is not as engaging for them. There is plenty of room for equipment for older children to keep them occupied.	Sensory play experiences would be valuable. A sensory play space like Livvi's Place is in Lieutenant Cantello Reserve.
Enlarge the rock wall.	Noted
How much did the community hub cost to build?	The building cost \$19 million. It is our best venue, being a state-of-the-art building to wedding venue quality. The building is sustainable, practical and useful. Phillips Park is also one of the best venues in Liverpool City for sport.
How do we find out what is going on locally?	Attend the Mayoral Forums which offer Q&A for the community. Social media (Facebook, Instagram). Ask to be put on the mailing list for the District Forums.
Traffic on Hoxton Park Road is getting worse. Is that because of population growth?	The opening of the airport in 2026 won't impact traffic here, but population growth will increase traffic.

## 6 RECOMMENDATIONS

### 6.1 Consideration of submissions

The verbal submissions regarding the proposed recategorisation of parts of Phillips Park were carefully considered and assessed.

There was demonstrated support for the proposed recategorisation, and no objections to the proposed recategorisations.

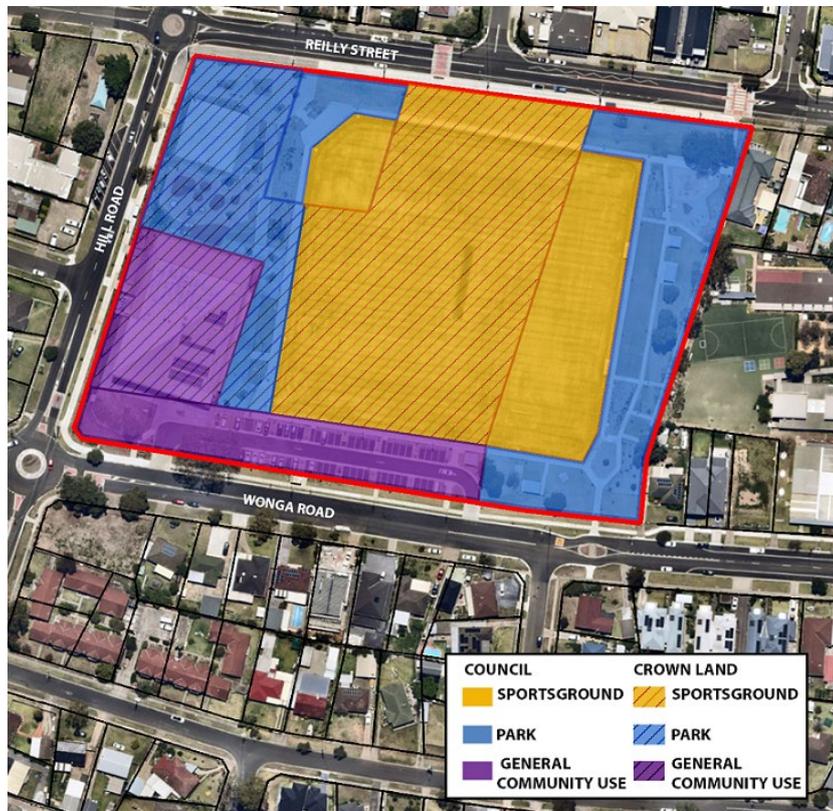
The proposed recategorisation of the community land in Phillips Park reflects the recent improvements to the park and the intended uses of the facilities and spaces in the park.

### 6.2 Recommendations

Based on the representations to the public hearing on 12 December 2023 my recommendations to Liverpool City Council are that Council:

1. Note the verbal submissions made at the public hearing as set out in Section 5.
2. Recategorise parts of Phillips Park according to the proposed categorisation map which was publicly exhibited, as shown in Figure 10 below.

Figure 10 Recommended categorisation of Phillips Park



### 6.3 Adoption of proposed recategorisation

This public hearing report will be presented to Council for its information as part of its approval of the proposed recategorisation, adoption of the Phillips Park Plan of Management, and subsequent implementation of the Plan of Management.

Section 114 of the *Local Government (General) Regulation 2021* states that if Council receives any submission objecting to the proposed categorisation of land, and the Council adopts the categorisation without amending the categorisation that gave rise to the objection, the resolution by which Council adopts the categorisation must state the Council's reasons for categorising the relevant land in the manner that gave rise to the objection. No objections were received.

If Council adopts the proposed recategorisation of parts of Phillips Park Council will update its Land Register and maps to reflect the changes in categorisation.

If Council decides to alter the proposed recategorisation of community land from that considered at the public hearing, Council must hold a further public hearing (Section 40A(3) of the *Local Government Act 1993*).

### 6.4 Reporting

Within four days of receiving this final report, Council is required under Section 47G(3) of the *Local Government Act 1993* to make a copy of this report available for inspection by the public at a location within the area of the Council. It is recommended that Council:

- send a copy of the public hearing report to the people who attended the public hearing
- keep a copy of the public hearing report for inspection at Council's Customer Service Centre and at Liverpool Library
- post an electronic copy of the public hearing report on Council's website.



**Sandy Hoy**  
Director  
Parkland Planners

24 January 2024