

PARTIES

Lane Cove Council

and

BMAX Advisory Pty Limited ACN 122 575 151

Draft Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)

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Dated this day of 2014

Parties

Lane Cove Council ABN 42 062 211 626 of 48 Longueville Road, Lane Cove, New South Wales (**Council**)

and

BMAX Advisory Pty Limited ACN 122 575 151 of Level 3, 115 Pitt Street, Sydney, New South Wales (**Developer**)

Background

- A The Developer has sought the lodgement of the Planning Proposal which relates to the Land.
- B The Planning Proposal will facilitate the development of the Land by the Developer on the basis that the Planning Proposal, if approved, will amend:
 - 1. the LCLEP by changing the zoning of the Land from B3 Commercial Core to B4 Mixed Use; and
 - 2. the *Lane Cove Development Control Plan 2010* by, inter alia, increasing the Land's height controls from 72 metres to 138 metres, from the highest point of the existing ground level.
- C The Developer has offered to enter into this Agreement to:
 - 1. secure the amendments to the planning instruments noted in recital B1 and B2; and
 - 2. in the expectation that, if the Planning Proposal is approved, the Developer will submit a Development Application seeking Development Consent for the Development.
- E Subject to approval of the Planning Proposal and the grant of Development Consent for the Development, the Developer will provide the Development Contribution in accordance with the terms of this Agreement.
- F The Council will apply the Monetary Contribution provided as part of the Development Contribution for the Agreed Public Purposes, subject to the terms of this Agreement.

Operative provisions

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Agreement these terms have the following meanings:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Agreed Public Purposes	means the funding of (a) the St Leonards Rail Plaza and Bus Interchange to increase the amenity of the St Leonards commercial precinct, including a possible child care centre for residents and the workforce of the site and other sites; (b) the Tenant Attraction Scheme for St Leonards; (c) the provision of affordable/key worker housing in St Leonards; and (d) public domain upgrade works (excluding on any private land) upon or immediately surrounding 498 Pacific Highway, St Leonards, being Council land known as Friedlander Place and its immediate surrounds to a similar standard to the Lane Cove Plaza.
Agreement	means this voluntary planning agreement including any schedules and annexures.
Amending DCP	means the amendments to the <i>Lane Cove Development Control Plan 2010</i> proposed by the Planning Proposal as specified in Annexure A .
Amending LEP	means the amendments to the LCLEP proposed by the Planning Proposal as specified in Annexure A .
Authority	means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
Bank Bill Rate	means the average bid rate for Bills having a tenor of 90 days as displayed on the “BBSY” page of the Reuters Monitor System on the day the relevant payment is due (Due Date). However, if the average bid rate is not displayed

by 10:30 AM on the Due Date or if it is displayed but there is an obvious error in the rate, Bank Bill Rate means:

- (a) the rate the Council calculates as the average of the bid rates quoted at approximately 10:30 AM on the day by each of five or more institutions chosen by the Council which provides rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the Council is unable to calculate the rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rates set by the Council in good faith at approximately 10:30 AM on the day, having regard, to the extent possible, to the rates otherwise bid for Bills of the 90 day tenor at around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The Council may calculate a rate under paragraph (a) or (b) before 11 AM on the due date, but if the average bid rate appears on the "BBSY" page by 11 AM and there is no obvious error in it, the "BBSY" page rate applies as the Bank Bill Rate under this agreement despite any calculation by the Council under paragraph (a) or (b).

Bank Guarantee

means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council, issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (v) St George Bank Limited,
 - (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council acting reasonably.

Bond

means a documentary performance bond which

must be denominated in Australian dollars and include an unconditional undertaking which:

- (a) is signed and issued by an Australian Prudential Regulation Authority (“**APRA**”) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia as agreed to by the Council acting reasonably;
- (b) has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor’s Rating Services or Fitch Ratings Ltd or A3 or higher by Moody’s Investor Services Limited or a comparable rating from an internationally recognised credit rating agency;
- (c) be issued on behalf of the Developer;
- (d) have no expiry or end date;
- (e) have the beneficiary as the Council; and
- (f) state the purpose of the deposit required in accordance with this Agreement.

Business Day

means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Component

means a component of the Development comprising a separate building structure if the Development comprises more than one building structure.

Complying Development Certificate

means a complying development certificate referred to in section 85 of the Act.

Consent Authority

means an Authority having the function to determine the Development Application under the Act.

Construction Certificate

in respect of the Development, has the same meaning as under section 109C of the Act, but excludes any construction certificate issued for early works.

Council’s Obligation

means the obligations of Council in regard to the Development Contribution as outlined in **Column 2 of Schedule 4**.

CPI

means the All Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics.

Council Apartments

means the Strata Lots identified at **Item 3 in Column 1 of Schedule 4** created as part of the Development to be Transferred to Council as part

	of the Development Contribution in accordance with this Agreement.
Development	means the proposed development of the Land if amalgamated with Perpetual's Land (and not otherwise) consisting of a multi-storey mixed use residential and commercial building generally in accordance with the Design Report submitted by the Developer to the Council on 15 May 2014.
Development Application	means a development application made under Part 4 of the Act for the Development.
Development Consent	means the consent granted by the Consent Authority to the Development Application and has the same meaning as in the Act and includes any amendment or modification of the Development Consent, including a Section 96 Modification.
Development Contribution	means the total quantum of the development contribution calculated in accordance with the formula specified in Item 1 of Column 1 of Schedule 4 and comprising the Council Apartments and Monetary Contributions.
Development Contribution Schedule	means Schedule 4.
Development Contribution Value	means the value of the Development Contribution calculated in accordance with the formula specified in Item 1 of Column 1 of Schedule 4 .
DP&E	means the New South Wales Department of Planning and Environment.
Explanatory Note	the Explanatory Note attached at schedule 2 .
Force Majeure	means any physical or material restraint beyond the reasonable control of the Party claiming force majeure.
Gross Floor Area	has the same meaning as provided by the LCLEP at the date of this Agreement.
GST	has the same meaning as in the GST Law.
GST Law	has the meaning given to that term in <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.
Interest Rate	in relation to interest payable on any payment due under this Agreement means the rate which is the Bank Bill Rate plus a margin of 2% per annum.
Item	means an item referred to in the applicable Schedule.
Land	the land located at 500 Pacific Highway, St

	Leonards and contained in the folio identifiers listed in Schedule 3 .
Land Owners	means Paul Gallo and Nella Gallo; The Owners – Strata Plan 82937 and Australian Executor Trustees Limited ABN 84 007 869 794.
Law	means: (a) the common law including principles of equity, and (b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority, that presently apply or as they may apply in the future.
LCLEP	means the <i>Lane Cove Local Environmental Plan 2009</i> .
LPI	means the Land and Property Information Office of New South Wales or any other authority replacing it.
Monetary Contribution	means the monetary contribution(s) to be provided as part of the Development Contribution, adjusted in accordance with clause 6.3 and described in Item 3 of Column 1 of Schedule 4 .
Novation Deed	means the draft deed generally in the form set out in Annexure B .
Party	a party to this Agreement, including their successors and assigns.
Perpetual's Land	the land located at 504 Pacific Highway and 95 Nicholson Street, St Leonards and contained in the folio identifiers listed in Schedule 3B .
Planning Proposal	means the planning proposal for 472-520 Pacific Highway and 95 Nicholson Street, St Leonards submitted to Council on 28 October 2013 and endorsed by the Department of Planning on 5 March 2014.
Public Purpose	has the same meaning as in section 93F(2) of the Act.
Real Property Act	means the <i>Real Property Act 1900</i> (NSW).
Registration on Title	means the registration of this Agreement under section 93H of the Act in the folio of the Register kept under the Real Property Act in relation to the Land, and Registered on Title refers to the state of the Agreement being so registered.

Regulation	the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Schedule	means a schedule to this Agreement and forming part of this Agreement.
Security	means a Bank Guarantee or a Bond.
Security Amount	means the Development Contribution Value.
Section 96 Modification	means any modification of the Development Consent pursuant to section 96 of the Act.
Stage	refers to a stage in the Development where the development comprises the construction of more than one Component and where completion of each Component comprising a residential building, as evidence by the issue of a final Occupation Certificate, is to be viewed as the completion of a separate stage of the Development.
Strata Lot	means a lot that forms part of the Land and is to be created by the registration of a Strata Plan and has been or is being developed as part of the Development for residential, commercial or retail purposes.
Strata Plan	means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.
Strata Schemes Act	means the <i>Strata Schemes (Freehold Development) Act 1973</i> (NSW) or any other legislation replacing it.
Transfer	means the provision by the Developer to Council of an instrument(s) in registrable form that, when registered, will effect the transfer of title to Council of the Strata Lot(s) comprising the Council Apartments consistent with clause 6.5 . Transferred and Transfers have the same meaning.
Threshold	is defined in Item 1 of Column 1 of Schedule 4 .
Type	means one, two or three bedroom apartments.
VPA Contribution Offset	means the amount agreed between the Parties as representative of the value of public domain improvement works undertaken upon or immediately surrounding 498 Pacific Highway, St Leonards, being Council land known as Friedlander Place (excluding work carried out on any privately owned land), based on a landscape plan submitted by the Developer to the Council setting out the proposed public domain works at the time that the Development Application is submitted and which the Developer may agree to carry out on behalf of Council. Where the value

is not agreed, it will be the value determined by an independent, qualified estimator.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) if the day on or by which any act, must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (f) '\$' or 'dollars' is a reference to Australian currency and all amounts payable under this Agreement are payable in Australian dollars;
- (g) a reference in this Agreement 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;
- (h) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (i) a reference to a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of or to this Agreement;
- (j) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (k) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns;
- (l) any schedules and annexures form part of this Agreement;
- (m) headings do not affect the interpretation of this Agreement; and
- (n) this Agreement is not binding on any Party unless it or a counterpart has been duly executed by each person named as a Party to this Agreement.

1.3 Compliance with New Laws

- (a) If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the Developer is obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Agreement, then, to the extent that the relevant obligation is required under the New Law and the Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Agreement.

- (b) For the avoidance of doubt any New Law will not relieve the Developer from its obligation to make the Development Contribution.

2 Planning Agreement under the Act

- (a) The Parties agree that this Agreement is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.
- (b) **Schedule 1** of this Agreement sets out the mandatory requirements of section 93F of the Act and the corresponding provisions of this Agreement.

3 Application of this Agreement

This Agreement applies to:

- (a) the Land; and
- (b) the Planning Proposal; and
- (c) the Development.

4 Operation of this Agreement

- (a) This Agreement operates on and from the date that this Agreement is entered into as required by clause 25C(1) of the Regulation.
- (b) This Agreement will remain in force until:
 - (i) it is terminated by operation of Law; or
 - (ii) all obligations are performed or satisfied; or
 - (iii) it is otherwise discharged or released in accordance with the terms of this Agreement.
- (c) If a legal challenge to the Development Consent by a third party results in the Development Consent being rendered invalid or unenforceable, then the Developer may, in its absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.
- (d) This Agreement does not impose an obligation on the Council to grant or modify any Development Consent.
- (e) For avoidance of doubt, **clause 4(d)** does not affect any obligation of the Consent Authority (under section 79C(1)(a)(iia) of the Act) to take this Agreement into consideration.

5 Condition Precedent

The obligations of the Developer under this Agreement are conditional on:

- (a) the approval of the Planning Proposal; and
- (b) the grant of Development Consent for the Development.

6 Development Contribution to be made under this Agreement

6.1 Provision of Development Contribution

- (a) Subject to this Agreement, the Developer must make the Development Contribution in **Column 1 of Schedule 4** as a portion of the Development Contribution Value at the point in time set out in the corresponding **Column 3 of Schedule 4** of the relevant **Item**.
- (b) Nothing in this Agreement precludes the Developer from electing to make a Development Contribution earlier than it is required to do so.
- (c) If the Development Contribution specified in **Column 1 of Schedule 4** is not made at the point in time set out in **Column 3 of Schedule 4** then the Council may immediately have recourse to the Security equivalent to the value of the Development Contribution outstanding.

6.1A Determination of Residual Land Value

- (a) The Developer and Council agree that the residential Residual Land Value ("**RLV**") for the purpose of calculating the Development Contribution Value is \$2,600 per square metre ("**Rate**") for the period of two (2) years from the date that the LCLEP is gazetted.
- (b) If at any time and prior to provision of the Development Contribution the Developer forms the reasonably held opinion due to changes in economic conditions that the amount of \$2,600 per square metre makes the project unviable the Developer may propose an alternative RLV to Council.
- (c) If the Developer proposes an alternative RLV under **clause 6.1A(b)**, the Developer must:
 - (i) submit a notice to Council proposing the alternative RLV per square metre ("**RLV Notice**") and
 - (ii) provide evidence in support of the alternative RLV amount.
- (d) The Council must accept or reject the alternative RLV amount specified in the RLV Notice within 20 Business Days of receiving the RLV Notice. If the Council rejects the alternative RLV amount in the RLV Notice, it must submit to the Developer the Council's alternative RLV amount, which must not be higher than \$2,600 per square metre ("**Council RLV Notice**").
- (e) If the Developer does not agree with the RLV amount specified in the Council RLV Notice, then the Developer must provide written notice to the Council within 20 Business Days of receiving the Council RLV Notice that a dispute has arisen regarding the applicable RLV amount ("**RLV Dispute**"). The Parties agree that any RLV Dispute will be resolved in accordance with **clause 6.1B**.
- (f) After the expiration of the two (2) year period referred to in **clause 6.1A(a)**, the Developer must increase the Rate (including the Rate as amended in accordance with **clause 6.1A** or **clause 6.1B**) in the manner described in **clause 6.3**.

6.1B Valuer to determine Residual Land Value

- (a) Within 20 Business Days of the Developer providing Council with the RLV Dispute notice under **clause 6.1A(e)**, the Council must nominate in writing:
 - (i) three (3) independent and qualified valuers with a minimum of ten (10) years' experience in hypothetical medium or high density residential land valuation in Sydney; and
 - (ii) three (3) independent and qualified quantity surveyors,for the Developer's consideration in determining the RLV Dispute.
- (b) If the Developer:
 - (i) agrees to the appointment of one of the valuers ("**Valuer**") and one of the quantity surveyors proposed by Council under **clause 6.1B(a)**, that Valuer and quantity surveyor will be jointly appointed by the Parties to resolve the RLV Dispute in accordance with this clause; or
 - (ii) does not agree to the appointment of any of the valuers and/or quantity surveyors proposed by Council under **clause 6.1B(a)**, then the RLV Dispute is to be determined by an independent and qualified valuer ("**Valuer**") and quantity surveyor (nominated by the president of the Australian Property Institute (NSW Division)).
- (c) The Council and the Developer may make written submissions to the Valuer and quantity surveyor appointed in accordance with this clause.
- (d) The Parties must direct the quantity surveyor to provide to the Valuer all relevant construction cost calculations and information required by the Valuer to determine the RLV. In providing any information required by the Valuer, the quantity surveyor must take into account the matters outlined in **clause 6.1B(e)**.
- (e) In determining the RLV, the Valuer must:
 - (i) take into account any written submission provided by the Parties under **clause 6.1B(c)**;
 - (ii) act as an expert and not as an arbitrator but where his/her decision will be final and binding on the Parties (except to the extent that a manifest error has occurred);
 - (iii) determine the RLV as at the date of the RLV Notice:
 - (A) taking into account residential sales based on comparable sales by floor level for comparable developments both within and outside the Land;
 - (B) on the assumption that the relevant sale of the Land is between a willing but not anxious vendor and a willing but not anxious purchaser; and
 - (C) any other valuation considerations determined by the Valuer;
 - (iv) provide a written report to the Parties which outlines the RLV determination and provides details of the basis upon which the RLV was determined by the Valuer including all information from

the quantity surveyor relied upon by the Valuer and details of all comparable sales.

- (f) The Valuer must determine which Party is responsible for the payment of the costs of the Valuer and quantity surveyor in determining the RLV in accordance with this clause.

6.2 Provision of Development Contribution Where Staged Development

Where the Development comprises more than one Stage, the Parties agree that:

- (a) the Development Contribution payable is to be calculated on a proportional basis such that the Development Contribution Value is calculated with reference to each individual Stage and where the timing of payments of any Monetary Contribution or transfer of any Council Apartments is determined by reference to the relevant milestones for each Stage of the Development; and
- (b) the overriding principle of this Agreement is that the Development Contribution Value payable in relation to each Stage is capped at the amount so calculated subject only to adjustment with any movement in the CPI.

6.3 Indexation

The Development Contribution Value calculated in accordance with **clause 6.1** is to be indexed in accordance with any movement in the CPI calculated in the manner specified in **Item 2 of Column 1 of Schedule 4**.

6.4 Delivery of Monetary Contributions

- (a) The Monetary Contribution is made for the purposes of this Agreement when either:
 - (i) cleared funds are deposited by means of electronic funds transfer into a bank account nominated by the Council; or
 - (ii) a bank cheque is provided to Council by the Developer.
- (b) The Developer is to give the Council not less than 10 Business Days written notice of:
 - (i) its intention to pay the Monetary Contributions; and
 - (ii) the amount proposed to be paid and the details of the calculation of the Monetary Contribution using the formula in **Item 4 of Column 1 of Schedule 4**.
- (c) If a tax invoice is by law required to be provided to the Developer by the Council:
 - (i) the Developer is not required to pay the Monetary Contribution under this Agreement until the Council, after having received the Developer's notice under **clause 6.4(b)**, has given to the Developer a tax invoice for the amount of the Monetary Contribution;
 - (ii) the Developer is not in breach of this Agreement if it fails to pay the Monetary Contribution at the time required by this Agreement by

reason only of the Council's failure to give to the Developer a tax invoice in relation to the Monetary Contribution; and

- (iii) a failure by Council under this **clause 6.4(c)** will not prevent the issue of a Construction Certificate for the Development.

6.5 When Council Apartments are taken to be Transferred

A Development Contribution that involves the transfer of Council Apartments is taken to have been made when the Council is given an instrument by the Developer in registrable form that, when registered, will effect the transfer of title to Council of the Strata Lot(s) comprising the Council Apartments consistent with this Agreement.

6.6 Ancillary obligations of the parties in relation to the Transfer of Council Apartments

- (a) When the Council has been given an instrument by the Developer under **clause 6.5** the Council must promptly do all things reasonably necessary to:
 - (i) enable registration of the instrument of transfer to occur; and
 - (ii) classify the relevant Strata Lots as operational land pursuant to section 31 of the *Local Government Act 1993* (if this has not already occurred).
- (b) The Developer must ensure that the Strata Lot(s) for the Council Apartments are free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), when the Developer Transfers the Strata Lot(s) to the Council under this Agreement.
- (c) Despite **clause 6.6(b)**, if, despite having used its best endeavours, the Developer cannot ensure that the Strata Lot(s) to be Transferred are free from any relevant encumbrance and affectation, then:
 - (i) the Developer may request that the Council agree to accept the Strata Lot subject to those encumbrances and affectations; and
 - (ii) if the encumbrance or affectation:
 - (A) does not prevent the future use of the Strata Lot for the purpose for which it is to be transferred under this Agreement; and
 - (B) is not a charge against the Strata Lot,the Council must not withhold its agreement unreasonably, and, otherwise, the Council may withhold its agreement at its absolute discretion.

6.7 Methodology for calculating value of Council Apartments

- (a) The Parties agree that:
 - (i) the value of the Council Apartments will be determined based on the market value (**MVA**) of the Council Apartments at the time of issue of the first Construction Certificate for the Development (or the relevant Stage, if applicable) other than an early works Construction Certificate;

- (ii) the MVA of the Council Apartments will take into consideration the average value of comparable apartments within the Development, having the same dimensions, fit out, finishes, configuration and aspect; and
 - (iii) the MVA calculated under this clause will be taken to be the GST inclusive market value of the Council Apartments.
- (b) If a dispute arises regarding the MVA of the Council Apartments under **clause 6.7(a)**, the dispute must be resolved in accordance with **clause 6.9**.

6.8 Methodology for determining allocation of Council Apartments

- (a) Subject to **clause 6.8(b)** the parties will, within 14 days of issue of a Notice of Determination of the Development Consent, acting reasonably, expeditiously and in good faith jointly agree on the number and Type of Council Apartments to be Transferred having regard to the value of the individual Council Apartments, being 50% of the Development Contribution Value (adjusted, as necessary, to the nearest Apartment price) (**Transfer Percentage**). The Developer will provide the Council with indicative plans that include apartment layouts, schedules of finishes, prices and generally with sufficient information to enable the Parties to give effect to the operation of this subclause. In the absence of agreement on the Type of apartments to be Transferred, the Type is to be determined on the basis that the Council Apartments to be Transferred will be in similar proportions to the overall Type and location of apartments in the Development (**Allocation**).
- (b) Where the Developer seeks to commence the marketing of the sale of apartments within the Development prior to the lodgement of a Construction Certificate application, the Developer will provide the Council with indicative plans that include apartment layouts, schedules of finishes, prices and generally with sufficient information to enable the Parties to give effect to the operation of **clause 6.8(a)** for the purpose of making a provisional allocation of the Council Apartments (**Provisional Allocation**). Within 20 Business Days of receipt of such indicative plans, the Council must notify the Developer in writing of the Type of Council Apartments to be Transferred.
- (c) Where a Provisional Allocation is made, then following the grant of Development Consent and at the issue of the first Construction Certificate for the proposed building in the Development, the Parties agree to review the Provisional Allocation in light of the approved first Construction Certificate and if:
- (i) there is no material difference between the apartment layouts originally considered and those approved in the first Construction Certificate, the Provisional Allocation is confirmed; and
 - (ii) if a material difference exists between the apartment layouts originally considered and those depicted in the plans accompanying the first Construction Certificate, then the Provisional Allocation of Council Apartments may be varied, but only to the extent necessary to respond to the material difference.

- (d) In this **clause 6.8**, “material difference” means a difference resulting in a change in the overall MVA of the Council Apartments.
- (e) If at any time the Council and the Developer agree to increase the Type or number of Council Apartments to be Transferred, then the Development Contribution Value will be adjusted accordingly.
- (f) If the Parties cannot agree on the Allocation, the Provisional Allocation or any necessary adjustment in accordance with this **clause 6.8**, then the Parties must resolve the dispute in accordance with **clause 6.9**.

6.9 Resolving Value Disputes

- (a) With respect to the resolution of disputes that may arise regarding the calculation of the MVA (as noted in **Item 3 of Column 1 of Schedule 4**) or under **clause 6.8(f)**, the Parties agree that:
 - (i) if the Parties cannot agree on a value then the value is to be determined by an independent and qualified Valuer (acceptable to the Parties and nominated by the president of the Australian Property Institute (NSW Division)); and
 - (ii) the valuer will act as an expert and not as an arbitrator but where the Valuer’s decision will be final and binding on the Parties (except to the extent that a manifest error has occurred).
- (b) When preparing a valuation report in respect of the MVA of the Council Apartments, the nominated valuer must have regard to the matters specified in **clause 6.7(a)**.

6.10 Use of Council Apartments

- (a) For the period of time that the Council owns the Council Apartments, the Council warrants that it will:
 - (i) ensure that each apartment is subject to a residential tenancy agreement for a term of at least three months; and
 - (ii) comply with the by-laws of the owners corporation for the Strata Plan;
 - (iii) not permit more than two adults to occupy any one bedroom and no bedroom shall contain more than 2 beds (excluding children’s beds, cots and bassinets).
 - (iv) not permit the total number of adults residing in one apartment to exceed twice the number of approved bedrooms;
 - (v) not permit any apartment to be used for short term accommodation or share accommodation.

6.11 Stamp Duty payable on Council Apartments

The Council is not liable for the payment of any stamp duty for the Transfer of the Council Apartments and which, if applicable, is payable by the Developer, but will be offset against the Development Contribution Value so as to reduce the Development Contribution required to be made.

7 Application of the Monetary Contributions

The Council must, acting reasonably and in good faith, apply the Monetary Contributions received from the Developer under this Agreement towards the Agreed Public Purposes including, but not limited to, doing all things necessary to facilitate the public domain upgrade works upon or immediately surrounding 498 Pacific Highway, St Leonards (Friedlander Place) within a reasonable timeframe.

However, if the Council determines that the Agreed Public Purposes cannot be realised (in whole or in part) then, after having given written notice to the Developer of this fact, the Council must apply the Monetary Contributions received from the Developer under this Agreement towards infrastructure for a Public Purpose that is located generally within the Lane Cove Local Government Area.

8 Application of sections 94, 94A and 94EF of the Act to the Development

- (a) This Agreement does not exclude the application of:
 - (i) sections 94, 94A and 94EF of the Act; or
 - (ii) any other monetary contributions required under the Act;in connection with any Development Consent (including any Section 96 Modifications) that is granted for the Development.
- (b) Any benefits under this Agreement are not to be taken into account in determining a development contribution under section 94 of the Act.

9 Registration of this Agreement

- (a) The Developer must, at its expense take all practical steps to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title, to enable the Registration on Title of this Agreement.
- (b) The Parties will take all practical steps to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after the Agreement is entered into by the Parties.
- (c) The Parties agree that on registration by the Registrar General the Agreement will be binding on and enforceable against the owners of the Land from time to time as if each owner of the Land for the time being had entered into this Agreement.

- (d) Subject to **clause 9(f)**, until such time as this Agreement is Registered on Title, the Developer agrees that the Council may lodge a caveat to prevent the transfer of the Land but no other dealing.
- (e) If the Council lodges a caveat in accordance with **clause 9(d)**, then the Council will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay either the Registration on Title of this Agreement or any dealing with the Land other than a transfer; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this Agreement in accordance with **clause 9(a)**.
- (f) Despite **clause 9(d)**, the Council as caveator must consent to registration of a transfer of the Land or any part of the Land from the Developer to a third party if that third-party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 15**.
- (g) Following the Agreement being Registered on Title, the Council will do all things reasonably necessary and provide its consent but without fettering its discretion acting as a consent authority, to permit the registration of:
 - (i) any Strata Plan consistent with the Development Consent; and
 - (ii) any transfer of the Land or any part of the Land from the Developer to a third party if that third-party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 15**.
- (h) If after 120 Business Days, the Developer has failed or has been unable to register this Agreement on any of the Land in accordance with **clause 9(a)**, the Developer must pay the Council's reasonable costs and expenses, including legal costs, of exercising its rights under **clause 9(d)** of this Agreement.
- (i) Following the Transfer of the Council Apartment's and payment of the Monetary Contribution in accordance with this Agreement, the Council will promptly execute any form and supply such other information as reasonably required by the Developer to enable to removal of the Agreement from the title of the Land (including the title as varied by the Strata Plan).

10 Default

10.1 Notice

In the event a Party considers another Party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to that Party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time.

10.2 Reasonable Time

In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes or causes a public nuisance or raises other circumstances of urgency or emergency.

10.3 Suspension of time-dispute

If a Party disputes the Default Notice it may refer that dispute to dispute resolution under **clause 11** of this Agreement.

11 Dispute Resolution

11.1 Reference to dispute

If a dispute arises between the Parties in relation to this Agreement, then either Party may seek to resolve that dispute in accordance with this clause unless this Agreement expressly states that the dispute is to be resolved in accordance with **clause 6.9**.

11.2 Notice of dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

11.3 Representatives of parties to meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided in accordance with **clause 11.2**), meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution);
 - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

11.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with **clause 11.3**; and

- (b) the Parties have been unable to reach an outcome identified in **clauses 11.3(b)(i) to 11.3(b)(iii)**; and
- (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 11.3**,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

12 Security and Enforcement

12.1 Developer to provide security

Section 93F(3)(g) of the Act requires the enforcement of a planning agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the Agreement by the Developer. The intention of the Parties is that this **clause 12** satisfies this obligation through the provision of a Bank Guarantee or Bond to Council as Security and the enforcement provisions.

12.2 Security to be provided to Council

- (a) The Developer must provide Security for the Security Amount to the Council prior to the issue of the first Construction Certificate for the Development.
- (b) Within a reasonable period after each anniversary of the date the Security was provided under **clause 12.2(a)**, the Developer must provide a replacement Security to Council which is equal to the Security Amount indexed annually in accordance with the CPI from the date the Security was provided.

12.3 Release of security to the Developer

- (a) The Council must release the Security provided by the Developer as follows:
 - (i) within 10 Business Days of the Transfer of the Council Apartments to the Council;
 - (ii) within 10 Business Days of the payment of the Monetary Contribution to Council; and
 - (iii) immediately upon an alternative Security being provided by a Transferee pursuant to **clause 15**.
- (b) Where the Security is required to be released in accordance with **clause 12.3(a)**, and there are still outstanding Development Contributions to be made by the Developer under this Agreement, the Developer must immediately provide the Council with a replacement Security for the outstanding Development Contribution Value, indexed in accordance with **clause 6.3**.
- (c) The Council must also release the Security provided by the Developer within 10 Business Days of any of the following events:
 - (i) the Development Consent lapses; or

- (ii) the Development Consent is declared invalid by a court.

12.4 Call on Security

- (a) Subject to **clause 12.3**, the Security provided in **clause 12.2** is given to secure performance by the Developer of its obligation to make the Development Contribution.
- (b) The Council must only exercise its rights under the Security in accordance with this **clause 12.4**.
- (c) If the Developer does not comply with its obligation to Transfer the Council Apartments or pay any part of the Monetary Contribution payable under this Agreement, then Council may, after giving the Developer no less than 10 Business Days' notice of the default so that the Developer may seek to remedy any default, call on all or part of the Security and apply the proceeds as its own property in order to recover Council's loss arising from the failure of the Developer to make the Development Contribution (in whole or part)
- (d) If the Developer becomes insolvent, a receiver, receiver and manager, administrator, provisional liquidator or liquidator is appointed in respect of the Developer or any of its property or the Developer abandons the Development prior to completion of the Development then Council may, after giving the Developer no less than 10 Business Days' notice of the default so that the Developer may seek to remedy any default, call on all or part of the Security and apply the proceeds as its own property in order to recover Council's loss arising from the failure of the Developer to make the Development Contribution (in whole or part).
- (e) In **clause 12.4(d)** "**abandons**" means if at any time after construction of the Development commences the Council forms the reasonable opinion that construction work has ceased and no construction activity has taken place for a period exceeding 90 days.

12.5 Enforcement by any party

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; or
 - (ii) the Council from exercising any function under the Act or any other law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

13 Notices

13.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Lane Cove Council

Attention: The General Manager
Address: 48 Longueville Road, Lane Cove, NSW
Fax Number: 02 9911 3600
Email: lccouncil@lanecove.nsw.gov.au

Developer

Attention: The Company Secretary
Address: Level 3, 115 Pitt Street, Sydney NSW 2000

13.2 Change of details

If a Party gives the other Party three Business Days' notice of a change of its postal address, fax number or email address then any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest postal address, fax number or email address.

13.3 Giving of notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address;
- (b) If it is sent by post, two Business Days after it is posted;
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number;
- (d) If it sent by email, when a delivery confirmation report is received by the sender, unless subsequently the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered.

13.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day , or if on a Business Day , after 5.00 pm 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 .

14 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 Assignment and dealings

15.1 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Party.
- (b) Any purported dealing in breach of this **clause 15** is of no effect.

15.2 Transfer dealings

- (a) Subject to **clause 15.2(b)**, the Developer must not transfer all or any part of the Land under this Agreement to another party (**Transferee**) unless the Transferee delivers to the Council a Novation Deed signed by the Transferee and the Developer.
- (b) **Clause 15.2(a)** does not apply to any transfer of any part of the Land that is a Strata Lot.

16 Transfer

16.1 Consent for transfer of Council Apartments

- (a) The Developer must not transfer the Council Apartments or any part of the Council Apartments allocated in accordance with **clause 6.8** to any person without the consent of the Council.
- (b) This **clause 16.1** does not apply to the dedication of the Council Apartments to the Council.

17 GST

17.1 Construction

In this **clause 17** words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

17.2 Intention of the Parties

Without limiting the operation of this **clause 17**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in connection with this Agreement;

- (b) Except as provided in **clause 6.4(c)**, no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 17.4** below) on account of GST.

17.3 Consideration GST exclusive

All prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

17.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 17.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 17.4(b)** or **17.4(c)** (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clause 17.4(c)**), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.
- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
 - (i) a payment of money; nor
 - (ii) a taxable supply,

(Non-taxable non-monetary consideration),

the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST-inclusive market value of the non-taxable non-monetary consideration.
- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **clause 17.4(a)**:
 - (i) subject to **clause 17.4(d)(ii)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply;
 - (ii) however, if taking into account any liability for GST of, any input tax credit of, and any amount payable under **clauses 17.4(b) or 17.4(c)** by a Supplier or Recipient, a Supplier or Recipient, or the representative member of a GST group of which they are a member, has a net amount of GST payable that it is not able to recover from another Party under this **clause 17**, the Parties must negotiate in good faith to agree on an appropriate treatment of GST as between them. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter is to be resolved in the same way as a dispute under **clause 17.5(b)**.

- (e) The recipient will pay the GST Amount referred to in this **clause 17.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

17.5 Valuation of non-monetary consideration

- (a) The Parties agree that the GST-inclusive market value of the Council Apartments is the value determined under **clause 6.7** and that nothing in this **clause 17** requires any additional Development Contribution to be made.
- (b) The Parties will seek to agree upon the market value of any non-monetary consideration, other than the Council Apartments, which the Recipient is required to provide under **clause 17.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

17.6 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **clause 17.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

17.7 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **clause 17.4** will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

17.8 Reimbursements

Where a party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another party, the amount to be paid, indemnified or reimbursed by the first party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party, or to which the representative member of a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under **clause 17.4** in respect of that reimbursement.

17.9 No Merger

This **clause 17** does not merge in the completion, discharge, rescission or termination of this Agreement or on the transfer of any property supplied or to be supplied under this Agreement.

18 Costs

The Parties agree to bear their own costs of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.

19 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier agreement, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by Law.

20 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 Agreement and all transactions incidental to it.

21 Governing law and jurisdiction

This Agreement and the transactions contemplated by this Agreement are governed by and are to be construed in accordance with the Laws applicable in New South Wales. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

22 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

23 No fetter

Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

24 Representations and warranties

- (a) The Developer represents and warrants that on the date of this Agreement:
 - (i) the Land Owners are the legal and beneficial owners of the Land;

- (ii) the Land Owners have provided written consent to:
 - (A) the Developer entering into and performing its obligations under this Agreement;
 - (B) the registration of this Agreement in the relevant folio of the Land titles;
 - (C) the lodgement by the Council of caveats notifying its interest in the Agreement in the relevant folio of the Land titles, up until such time as the Agreement is registered in the relevant folios of the register held by LPI pertaining to the Land.
- (b) The Land Owners have agreed, promptly upon request, to lodge at the LPI the relevant certificates of title to enable the registration of the Agreement in the relevant folios of the Land titles.
- (c) The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

25 Severability

If a clause or part of a clause of this Agreement 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. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

26 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. 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.

27 Effect of Schedules

The Parties agree to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

28 Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

29 Further steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

30 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one Agreement.

31 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

32 Confidentiality

The Parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.

33 Force Majeure

- (a) If a Party is unable by reason of Force Majeure to carry out wholly or in part its obligations under the Agreement, it must give to the other Party prompt notice of the Force Majeure with reasonably full particulars.
- (b) 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.
- (c) 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.
- (d) 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 the Agreement.

34 Explanatory Note

The Explanatory Note must not be used to assist in construing this Agreement.

35 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties.

36 Reservation of Developer's rights

- (a) If, following entry into this Agreement until the date which is six (6) months after the date of issue of the first Construction Certificate for the Development, the Council:
 - (i) enters into a voluntary planning agreement under the Act with any other person ("**Alternative Planning Agreement**") which in whole or part provides for the delivery of development contributions for the Agreed Public Purpose in circumstances where a change to the LCLEP and/or the *Lane Cove Development Control Plan 2010* which is the subject of the Alternative Planning Agreement is materially the same as the changes sought by the Planning Proposal; and
 - (ii) the Council has agreed, for the purposes of that Alternative Planning Agreement, to apply a different formula to that applied in **Item 1 of Schedule 4** of this Agreement to determine the equivalent of the Development Contribution Value under the Alternative Planning Agreement,

the Developer reserves its right to seek a modification of this Agreement under **clause 35** to reflect the formula applied in the Alternative Planning Agreement.

- (b) In this **clause 36**, "materially the same" means an amendment to the zoning and/or increases to height controls or floor space ratios applying to land.

Schedule 1

Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) Yes
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this Agreement applies- (Section 93F(3)(a))	The Land.
Description of the development to which this Agreement applies- (Section 93F(3)(b)(ii))	The Development.
The scope, timing and manner of delivery of Development Contribution required by this Agreement - (Section 93F(3)(c))	See clause 6 .
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is not excluded by this Agreement.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is not excluded by this Agreement.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded by this Agreement.
Benefits to be taken into account (Section 93F(3)(e))	No, the benefits under the Agreement are not be taken into consideration when determining a development contribution under section 94 of the Act.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clauses 6.9 and 11 .
Enforcement of this Agreement - (Section 93F(3)(g))	See clause 12 .
Registration of this Agreement (Section 93H)	See clause 9 .
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 23 .

Schedule 2

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

[See separate document]

Schedule 3A

Land title details

The whole of the land in Certificate of Title Auto Consol 12121-163 comprising:

<i>Strata Plan</i>
SP 82937

Schedule 3B

Perpetual's Land title details

The whole of the land in Certificate of Title Auto Consol 12121-163 comprising:

<i>Lot Number</i>	<i>Deposited Plan</i>
Lot 2, Section 17	Deposited Plan 3175
Lot 3, Section 17	Deposited Plan 3175
Lot 4, Section 17	Deposited Plan 3175
Lot 5, Section 17	Deposited Plan 3175
Lot 6, Section 17	Deposited Plan 3175

Schedule 4

Development Contribution Schedule

1. Development Contribution

The Developer undertakes to provide the following Development Contribution as set out and provided for in the Table below.

Column 1	Column 2	Column 3
Development Contribution	Council's Obligations	Timing
Total Development Contribution		
1. The value of the total Development Contribution payable is to be calculated by applying the following formula: DCV = (50% x RLV x GFA) less the VPA Contribution Offset (if any) Where: DCV means the Development Contribution Value; RLV = the Residual Land Value of the Site (expressed as a rate of GFA/m²); and GFA = the gross floor area of the Development, as approved above the Threshold; and Threshold = 72 metres plus the height of the minimum number of commercial floors within the building that are required to provide the amount of commercial floor space included in the Development; and VPA Contribution Offset is a defined term (see clause 1.1); and Site means Land.		The DCV is to be calculated following entry into the Planning Agreement and prior to the issue of the first Construction Certificate for the Development as approved ("Effective Date").
Indexation		
2. The DCV will be adjusted in accordance with any movement in the CPI calculated from the Effective Date (see definition in Item 1		

Column 1	Column 2	Column 3
Development Contribution	Council's Obligations	Timing
Column 3) to the date that payment of the Monetary Contribution is made or on Transfer of the Council Apartments.		
Column 1	Column 2	Column 3
Transfer of Council Apartments	Council's Obligations	Timing
3. The Transfer to Council, at no cost to Council, the unencumbered fee simple legal interest and title to the Council Apartments (comprising either 1, 2 or 3 bedroom apartments) constructed as part of the Development equivalent in value to 50% of the DCV and where the market value of the Council Apartments ("MVA") is to be calculated by reference to the criteria and methodology set out in clause 6.7 .	Council is to receive and manage the Council Apartments as operational land and use the Council Apartments for the public purpose of providing affordable/key worker housing.	Council Apartments to be Transferred to Council within: (i) 6 weeks of registration of Strata Plan for the Development; or (ii) earlier by written agreement between the parties. Council Apartments to be classified as "operational land" within 3 months of the Transfer of the Council Apartments to Council.
Payment of Monetary Contributions		
4. The Developer is to pay a Monetary Contribution (MC) to Council in accordance with the following formula: $MC = DCV - MVA$ Where: DCV means the Development Contribution Value; MVA = market value of the transferred Council Apartments. For the avoidance of doubt, the DCV will be adjusted in accordance with any movement in the CPI (See Item 2 above)	Council is to utilise the Monetary Contribution in accordance with clause 7 of this Agreement.	Monetary Contribution to be paid prior to the issue of first Occupation Certificate for the Development (or a Stage, if applicable) and after Transfer of the Council Apartments.

Execution

Executed as an agreement.

Executed by Lane Cove Council by its)
duly appointed attorney pursuant to)
Power of Attorney registered book 4637)
No.811 in the presence of:

.....
Witness

.....
Name of Witness (print)

.....
Attorneys Signature

CRAIG ANTHONY WRIGHTSON

.....
Name of Attorney (print)

Executed by BMAX Advisory Pty)
Limited ACN 122 575 151 in)
accordance with section 127(1) of the
Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Name of Company Secretary/Director
(print)

.....
Director

.....
Name of Director (print)

Annexure A – Draft DCP Amendments and Draft LEP Amendment

This is **Annexure A** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and **The Trust Company Limited** ABN 59 004 027 749 as custodian and agent for Charter Hall Direct Property Management Limited ABN 56 073 623 784 as trustee for the 504 Direct Trust (**Developer**)

Dated the day of 2014

ATTACHMENT 1

Draft Development Control Plan Amendments: 472-520 Pacific Hwy, St Leonards

Lane Cove Development Control Plan 2010 – DRAFT Amendment 21 July 2014

Part D – Commercial Development and Mixed Use Localities

• 472-520 Pacific Highway, St Leonards

- No.500 Pacific Highway refers to SP 82937.
- Nos. 472-494 Pacific Highway refers to Lot 1 DP 628513 and SP 73071.
- Nos. 504-520 Pacific Highway refers to Lots 2-6 DP 3175.

This precinct is located in the precinct area bound by Pacific Highway on the north and east, Nicholson Street to the south, the eastern boundary of 472 Pacific Highway and the western boundary of 504-520 Pacific Hwy.

Note: This DCP section prevails over the remainder of DCP 2010 where inconsistency occurs.

Objectives:

1. Create a landmark precinct including taller and slender towers, of triangular form on 472-494 Pacific Hwy and rounded on 500 Pacific Hwy fronting Friedlander Place, at this prominent corner of the Pacific Highway to provide visual interest upon approach from all directions.
2. Achieve design excellence and iconic new development in the centre of St Leonards.

3. Create a distinctive architectural character to the Pacific Highway frontage with engaging and legible 'entrance' points to reinforce St Leonards as a key location as an activity centre.
4. Provide a new public space integrated with Friedlander Place to create a distinctive sense of place for residents, workers and visitors.
5. Activate and integrate existing and new public spaces with appropriate ground floor retail and other uses, specifically Friedlander Place and the new retail plaza on 472-4994 Pacific Hwy and the colonnade fronting No.500.
6. Increase the amenity of Nicholson Street and the adjoining public access ways, maximising casual surveillance and activation.
7. Provide viewlines through Friedlander Place, the new plaza on 472-494 Pacific Hwy and the new towers on that site.
8. Promote site amalgamation to avoid the creation of isolated sites within the precinct.

Tables

Notes:

- Controls in all tables below are to be applied to the relevant properties.
- Setbacks are to apply to the outer edge of balconies.
- "Friedlander Place" refers to Lot 1 DP 1179636.

Nos 504 and 500 Pacific Hwy (regardless of amalgamation)

CONTROL	PROVISION	NOTES
Floor space ratio	1.5:1 min. (non-residential) 15.5:1 max (residential) 17:1 max (total	
Setbacks – ground level retail	4.0 m min.	Colonnade form to Pacific Hwy and Friedlander Place
Setbacks – non-residential podium	0 m from all boundaries	All commercial, except where retail colonnade provided
Setbacks – residential tower	4.0 m min. from Pacific Hwy	
Setbacks – all levels	0 m	Along common boundary between 500 & 504

Levels – non-residential (including retail)	4 levels min.	To be floorplates above Pacific Hwy extending across the entire site area for buildings fronting Pacific Hwy
Floor to floor height - non-residential - ground level - non-residential - each level, other than retail	4.8 m min. 3.6 m min.	Above ground level Pacific Hwy
Balcony area	10.0 m2 min.	
Balcony articulation zone	2.0 m min.	Behind all building setbacks
Building separation	24 m min.	To residential towers east of Friedlander Place.
Vehicle access	From Nicholson St/ rear lane/ Friedlander Place	Via rights of way as necessary
Pedestrian link	Within private property at rear of site. Rear lane to be redesigned to provide clear line of sight.	From rear lane to Friedlander Place

No.504 Pacific Hwy – not amalgamated

Site area approx.	1,834 m2	
Height	138 m	Above ground level Pacific Hwy
Building floor plate	800 m2 max.	Excluding balconies
Setbacks –residential tower	9.0 m min.	From western boundary with No.530 (Telstra) - to edge of balconies
Setbacks – residential tower	4.0 m min.	From rear lane
Building length	40.0 m max.	

No.500 Pacific Hwy – not amalgamated

Site area approx.	435m2	From SP
Height	72 metres max.	Above ground level Pacific Hwy
Setbacks – all levels	0 m	All boundaries

Nos 504-520 and 500 Pacific Hwy - if amalgamated: These two sites must be amalgamated as a condition of development consent in order for the controls below to apply.

Site area approx.	2,277 m2	
Height	138 metres max.	Above ground level Pacific Hwy
Building floor plate	1,075 m2 max. GFA	Excluding balconies
Setbacks – all levels	0 m min. from rear lane	
Setbacks - residential	4.0 m min from Pacific Hwy 7.0 m min. from western boundary with No.530	
Building length	51 m max. measured along the central east-west axis of the amalgamated site.	To a max. of 10 m from eastern boundary of 504. Rounded or stepped building form required – see diagrams.

Nos 472-494 (Leighton): These two sites must be amalgamated as a condition of development consent in order for the controls below to apply.

Floor space ratio	1.5:1 min. (non-residential) 10.5:1 max (residential) 12:1 max (total)	
Building height	91m max. – building at front (Pacific Hwy) 115 m max. – building at rear (Nicholson St)	Above ground level Pacific Hwy
Floor to floor height - non-residential - ground level - non-residential - each level, other than retail	4.8 m min. 3.6 m min.	Above ground level Pacific Hwy
Building floorplate of each residential tower	850 m2 max. GFA	Excluding balconies
Levels – non-residential	4 levels min.- front building	To be entire levels of the building fronting Pacific Highway
Setbacks – ground level	4.0 m min. from Pacific Hwy 2m min. elsewhere in site	Colonnade form

Setbacks – non-residential podium	0 m from all boundaries, except:- 20 m min from Friedlander Place – front building	All commercial, except where retail colonnade provided
Setbacks – residential tower	4.0 m min. from Pacific Hwy - front building 0 m min. from Nicholson St – rear building 7.0 m min. from side boundary with No.470 0 m from side boundary with Friedlander Place	
Balcony area	10.0 m2 min.	
Balcony articulation zone	2.0 m min.	Behind all building setbacks
Building separation	22 m min. between balconies	
Retail plaza width	22 m min.	
Vehicle access	From Nicholson St/ Friedlander Place	Via rights of way as necessary
New Public Open Space	The proposed new public open space at the northern end of the site is to have a minimum area of 325sqm.	To ensure that the new public open space is provided at that location and contributes a desirable quality of public amenity.
Pedestrian link	2.0. m min. within the property	To boundary with No.470 Pacific Hwy

All developments:

Uses	Encourage uses which operate during evening and early morning hours, such as local retail convenience stores, cafes and restaurants, community facilities, gymnasiums and other facilities, to encourage activity and safety outside of office hours. Provide active uses at street level, and flanking public spaces. In the tower form, provide a range of housing options, including more affordable housing with less required parking.	Ground level floor heights must allow for commercial or retail uses. Upper level non-residential uses may include gymnasium and child care.
Podium form	Podium height to be expressed through external façade material changes to reinforce commercial land use character	

Car parking	Parking rates to comply with applicable rates in Table 2 of Part R, Draft DCP amendment, as at 31 August 2014.	
Landscaping/ open space	New street trees, paving and verge upgrades to be incorporated into the site development.	Tree species and paving design upgrades and specifications to be agreed with Council.
Pedestrian network/ mid-block connections	Future development to satisfy the precinct plan to provide new and enhanced connections in the precinct	
Public Domain	A public domain plan is required to be submitted ensuring that development contributes positively to the overall precinct wide public domain outcome. The plan is to include details of materials and the like in consultation with Council.	
Façade colours and materials	A mixture of non-reflective façade materials and colours are required to emphasise the podium level non-residential form and residential towers as separate elements. External materials to be durable with a high quality finish. Façade detailing to also address shading, wind protection and solar access considerations.	
Facade articulation	Articulation of façades is to be designed to express a base and top, with layering of levels of the building complemented by the composition of rhythm, texture, and materials. Roof form should be integrated with the overall design of the building. The elements comprise balconies, sun-shading devices, bay windows and other similar elements, depending on internal programme and orientation.	The intent of the building wall articulation control is to incorporate sufficient modulation in the architectural façade to reduce the scale and massing of the building form, adding visual interest and diversity to the overall design.
Balconies floor space	An LEP cl.4.6 objection may be favourably considered for balconies with potential to be fully enclosed as noise control, to increase floor space for balconies of apartments in a direct line of sight of Pacific Hwy. These should have fully enclosable balconies, double glazed/thick glass windows and acoustic treatment measures for internal amenity.	
Solar access	The guideline that new developments should achieve 2 hours direct sunlight for at least 70% of apartments, under	

	the NSW Residential Flat Design Code, should be applied as a rule of thumb with discretion in Major Centres/ Specialized Centres where densities are high.	
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ATTACHMENT 2**Draft LEP Amendment for 472-520 Pacific Hwy - 21 JULY 2014****Draft Amendment to Local Environmental Plan 2009**

The following clause is to be added:-

Clause 4.4(3):

In relation to 472-520 Pacific Highway, St Leonards:-

(i) Floor space ratio:

- a. The floor space ratio for 472-494 Pacific Highway (Lot 1 DP 628513 and SP 73071 respectively) is to comprise a minimum of 1.5:1 non-residential floor area within the total FSR of 12:1.
- b. The floor space ratio for 500 and 504-520 Pacific Highway, whether developed separately or following amalgamation, is to comprise a minimum of 1.5:1 non-residential floor area within the total FSR of 17:1.

(ii) Height:

The height of No.500 Pacific Highway, St Leonards (SP 82937) may be a maximum of 138 metres subject to a condition of development consent that the site is to be amalgamated with Nos. 504-520 Pacific Highway (Lots 2-6 DP 3175) prior to development.

(iii) Site amalgamation:

The LEP amendments to amend the zoning, floor space ratio and height for these properties are permitted to be applied only if a condition of development consent for each property is approved that:-

- a. Lot 1 DP 628513 and SP 73071, known as Nos. 472-494 Pacific Highway, are to be amalgamated prior to development.
- b. Lots 2-6 DP 3175, known as 504-520 Pacific Highway, are to be amalgamated prior to development.

Annexure B – Novation Deed

This is **Annexure B** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and **The Trust Company Limited** ABN 59 004 027 749 as custodian and agent for Charter Hall Direct Property Management Limited ABN 56 073 623 784 as trustee for the 504 Direct Trust (**Developer**)

Dated the day of 2014
