

PARTIES

Lane Cove Council

and

Northern Terrace 88 Pty Ltd as trustee
for the Northern Terrace Trust

Planning Agreement

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

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Dated this day of 2016

Parties

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

and

Northern Terrace 88 Pty Ltd ACN 604 950 325 as trustee for The Northern Terrace Trust ABN 21 563 159 579 of Level 1, 74 Macquarie Street, Parramatta, New South Wales (**Developer**)

Background

- A The Developer owns or will own the Land.
- B The Developer has lodged the Planning Proposal which relates to the Land.
- C If made, the Planning Proposal will facilitate the development of the Land by the Developer as it will amend the LCLEP by:
1. rezoning the Land from B3 Commercial Core to B4 Mixed Use;
 2. rezoning part of Lithgow Street (which lies adjacent to the Land) from B3 Commercial Core to B4 Mixed Use;
 3. including a site specific clause to:
 - i. enable residential car parking on the Land;
 - ii. enable residential car parking under Christie Lane and Site B;
 - iii. provide for an additional 2:1 floor space ratio (FSR) on the Land for the provision of a 300 space public car park;
 - iv. provide for an additional 1.6:1 FSR (pro-rated) on the Land for amalgamation of the properties within Site B, or part thereof; and
 - v. require a minimum amount of non-residential FSR of 2.5:1, which can be reduced to 1.5:1 (pro-rated) based on amalgamation of the properties within Site B, or part thereof; and
 4. increasing the maximum building height on the Land from 65m up to RL227.4.
- D The Developer has offered to enter into this Agreement to:
1. secure the amendments to LCLEP noted in recital C1 to C4; and
 2. in the expectation that, if the Amending LEP via the Planning Proposal is made, the Developer will submit a Development Application seeking Development Consent for the Development.

- E Subject to the making of the Amending LEP via the Planning Proposal and the grant of Development Consent for the Development, the Developer will provide the Development Contribution and subject to the Council performing its obligations in Schedule 5, the Developer must carry-out and deliver the Works in Kind in accordance with the terms of this Agreement.
- F The Council will apply the Development Contribution provided as part of the Development Contribution for the Agreed Public Purposes, subject to the terms of this Agreement.

draft

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: <ul style="list-style-type: none">(a) St Leonards Rail plaza and bus interchange;(b) construction of the eastern deck of the proposed St Leonards plaza and park;(c) a public library; and(d) other items.
Agreement	means this voluntary planning agreement including any schedules and annexures.
Amending LEP	means the amendments to the LCLEP proposed by the Planning Proposal broadly 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: <ul style="list-style-type: none">(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 is:

- (a) 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.

Bonus FSR

means the additional floor space ratio as set out in paragraphs 5 and 6 of **Annexure A**.

Business Day

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

Consent Authority

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

Construction Certificate

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 clause 1 of Schedule 5**.

Concept Design

means the concept design for **items 1, 2, 3 and 4 of clause 1 of Schedule 5**.

CPI

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

Development

means the proposed redevelopment of the Land consisting of a proposed mixed use commercial and residential development with associated basement car parking, which may or may not include land outside the Land, pursuant to a Development Application to be lodged by the Developer.

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 monetary development contribution calculated in accordance with the formula specified in Column 1 of Schedule 4 .
Development Contribution Schedule	means Schedule 4 and Schedule 5 .
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 .
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 75-79 Lithgow Street and 84-90 Christie Street, St Leonards and contained in the folio identifiers listed in Schedule 3 .
Law	means: <ul style="list-style-type: none"> (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> .
Lot	means a lot in a registered deposited plan that forms part of the Land.
LPI	means the Land and Property Information Office of New South Wales or any other Authority replacing it.
Novation Deed	means the draft deed generally in the form set out in Annexure B .
Occupation Certificate	has the same meaning as under section 109C of the Act.
Party	a party to this Agreement, including their successors and assigns.
Permitted Encumbrances	means any easements required to be created by Council in favour of the Developer as specified in clause 1 of Schedule 5, any easements in favour of utility service providers or required by any Authority or as otherwise agreed in writing by the Council.
Planning Proposal	means the planning proposal for the Land substantially in accordance with that submitted to Council 1 October 2015 and endorsed by the Department of Planning on 21 October 2015 (as amended).
Practical Completion	means in relation to the Works in Kind in Column 1 of clause 1 of Schedule 5 , the point of time at which the Works in Kind are fit for use and occupation, and are capable of being used and occupied for their intended purpose as set out in the Development Consent.
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: <ul style="list-style-type: none"> (a) the Development Contribution Value; and (b) the value of the Works-in-Kind specified in Column 1 of Clause 1 of Schedule 5 to be delivered for that Stage (but excluding Item 5 in Clause 1 of Schedule 5). <p>The value of the Works-in-Kind are to be determined in accordance with clause 13.2.</p>
Section 96 Modification	means any modification of the Development Consent pursuant to section 96 of the Act.
Site A	means the Land.
Site B	means 546-564 Pacific Highway, St Leonards being the properties fronting Pacific Highway between Lithgow Street and Christie Street and Christie Lane to the south, comprising all or part of Lots A and B in DP415468, Lot 1 in DP656501, Lot 1 in DP651204, Lot C in DP 339273, Lots 1 and 2 in DP20031, and Lot 1 in DP 1083362.
SP4116	means Lots 1 and 2 in SP4116.
Subdivision Certificate	has the same meaning as under section 109C of the Act.
Stage	refers to a stage in the construction of the Development.
Strata Lot	means a strata lot in a Strata Plan.
Strata Plan	means a strata plan or strata plan of subdivision within the meaning of the <i>Strata Schemes</i>

	<i>(Freehold Development) Act 1973 (NSW) or any other legislation replacing it.</i>
Threshold	is defined in Item 1 of Column 1 of Schedule 4.
Transferee	has the meaning given to it under clause 16.2(a).
Transfer Lands	means that land (including a stratum lot) that is to be dedicated to Council in accordance with Items 1, 4 and 6 in clause 1 of Schedule 5.
Trust	means The Northern Terrace Trust ABN 21 563 159 579.
VPA Contribution Offset	means the amount as determined under clause 2 of Schedule 5 being the value of public domain improvement works in Items 1, 2, and 4 of clause 1 of Schedule 5.
Works in Kind	means each of the Works in Kind to be carried out by the Developer specified in Column 1 of clause 1 of Schedule 5.

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;
- (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;
 - (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 Amending LEP or the Development Consent by a third party results in either or both of them 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 making by gazettal of the Amending LEP;
- (b) the grant of Development Consent for the Development; and
- (c) the Council performing its obligations set out in **Column 2** of **clause 1 Schedule 5**.

6 Development Contribution to be made under this Agreement

6.1 Provision of Development Contribution

- (a) Subject to this Agreement:
 - (i) 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**; and
 - (ii) subject to the Council performing its obligations in **Column 2** of **clause 1** of **Schedule 5**, the Developer must carry-out and deliver

the Works in Kind and dedicate the Transfer Land to Council at the point in time set out in the corresponding **Column 3** of **clause 1** of **Schedule 5**.

- (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 \$2,644.20 per square metre ("**Rate**") for the period of two (2) years from the date that the Amending LEP is published on the NSW legislation website.
- (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 \$2,644.22 per square metre makes the Development 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 \$2,644.22 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 adjust 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;
and
- (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 Capped Development Contribution

The Parties agree that the overriding principle of this Agreement is that the Development Contribution Value payable in relation to the Development is capped at the amount so calculated subject only to adjustment with any movement in the CPI in accordance with clause 6.1A(f).

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 Development Contributions

- (a) The Development 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 Development Contribution; and
 - (ii) the amount proposed to be paid and the details of the calculation of the Development Contribution using the formula in **Item 1 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 Development 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 Development Contribution;
 - (ii) the Developer is not in breach of this Agreement if it fails to pay the Development 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 Development Contribution; and

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

6.5 Design of Works in Kind

- (a) The Developer is to submit the Concept Design to the Council for comment at least one (1) month prior to the lodgement of the Development Application.
- (b) Within 21 days of the date of submission of the relevant Concept Design referred to in **clause 6.5(a)**, Council must notify the Developer in writing:
 - (i) of its comments on the relevant Concept Design; or
 - (ii) that, acting reasonably, it requires modifications to the relevant Concept Design, in which case the Developer may:
 - (A) incorporate the modifications requested in Council's notice under **clause 6.5(b)(i)**; or
 - (B) if the Developer does not agree with the modifications requested by Council, refer the matter for dispute resolution under **clause 12**.
- (c) The Developer is not required to incorporate any design modifications requested by Council under **clause 6.5(b)** if that modification would result in an exceedance of the contribution cap specified in **Items 1, 2, 3 and 4 of clause 1 in Schedule 5**.

6.6 Delivery of Works in Kind

- (a) The Developer will give Council 10 Business Days notice of the date upon which the Developer anticipates that Practical Completion comprising a Work in Kind under **Schedule 5** will be reached.
- (b) When the Developer is of the reasonable opinion that Practical Completion has been reached, the Developer must notify the Council in writing, specifying the date on which, in its opinion, Practical Completion has been reached.
- (c) If the Council does not consider that Practical Completion has been reached, it must provide the Developer with notice in writing, within 10 Business Days after the date nominated by the Developer as being the date on which Practical Completion has been reached, setting out all matters that the Council reasonably considers must be completed in order for Practical Completion to be reached.
- (d) The Developer must undertake the Works in Kind specified by Council under **clause 6.5(c)**, as soon as practicable or, if it does not agree with

the matters set out in the Council notice, notify the Council that a dispute has arisen under **clause 12** of this Agreement.

- (e) **Clauses 6.5(a)** and **6.5(b)** operate in respect of further Works in Kind undertaken by the Developer under **clause 6.5(d)**.

6.7 Failure to deliver Work in Kind

Subject to **clause 11**:

- (a) If the Developer fails to complete any of the Works in Kind required by this Agreement by the time specified in **Column 3** of **clause 1** of **Schedule 5** for that item of Work in Kind, the Council may elect to complete that item or such part or parts as are outstanding as at the date specified in **Column 3** of **clause 1** of **Schedule 5** or otherwise as agreed, or appoint a contractor to carry out these works on the Council's behalf.
- (b) If **clause 6.6(a)** applies:
 - (i) The Developer must allow the Council, its officers, employees, agents and contractors to enter the Land for the purposes of completing the relevant Work in Kind; and
 - (ii) The costs which the Council incurs in completing the relevant Works in Kind will be a debt due and payable by the Developer to the Council within 30 Business Days after the production of a valid tax invoice and which may be recovered as a debt due in a court of competent jurisdiction.

6.8 Deferral of Work

- (a) Notwithstanding any other provision of this Agreement, if the Developer forms the view at any time, that it is unable to complete a Work in Kind by the time specified in **Column 3** of **clause 1** of **Schedule 5**, then:
 - (i) the Developer must provide written notice to the Council to that effect and, if only part of the Works in Kind is to be made, the notice must identify the relevant part of the Works in Kind that is proposed to be deferred;
 - (ii) the Developer must provide to Council, for Council's approval, a revised completion date for the relevant Works in Kind (or part of the Works in Kind);
 - (iii) Council can approve, or not approve a revised completion date in its discretion, and if the Council does not approve the Developer's revised completion date for the Works in Kind (or part of the Works in Kind), the Council and Developer must negotiate in good faith and agree upon a revised completion date for the Works in Kind (or part of the Works in Kind); and
 - (iv) the time for completion of the Works in Kind (or part of the Works in Kind) and the dedication of the relevant Land under this

Agreement in **column 3** of **clause 1** of **Schedule 5** will be taken to be the revised completion date approved by the Council or as agreed between the parties under **clause 6.7(a)(iii)** and nothing prevents the issuing of a Subdivision Certificate or Occupation Certificate that may be issued before that time.

- (b) If the Developer complies with **clause 6.7(a)**, then:
 - (i) it will not be considered to be in breach of this Agreement as a result of a failure to Complete all or part of the Work in Kind by the time specified in **Column 3** of **clause 1** of **Schedules 5**;
 - (ii) if applicable, any relevant Subdivision Certificate or Occupation Certificate may be issued if the time for compliance for the completion of a Work in Kind or dedication of the relevant Land is required prior to the issue of a Subdivision Certificate or Occupation Certificate in **Column 3** of **clause 1** of **Schedule 5**; and
 - (iii) in the event that only part of the Work in Kind has been completed and the balance remains to be completed as agreed with Council in **clause 6.7(a)**, then the Developer will be taken to have completed that part of the Work for the purposes of this Agreement.
- (c) If the Work in Kind (or part of the Work in Kind) is not completed by the revised date for completion of the Work in Kind (or part of the Work in Kind) agreed under **clause 6.7(a)(iv)** then the Council may call on the Security to meet any of its reasonable costs incurred under this Agreement in respect of the failure to complete the Work in Kind (or part of the Work in Kind) by the revised date for completion.
- (d) The Security held by the Council is to be reduced for that portion of the completed Works in Kind in accordance with the provisions of **clause 13**.

6.9 Dedication of Transfer Lands

- (a) The Developer must take all steps necessary to register at the LPI the transfer for the relevant part of the Transfer Lands in accordance with the timing specified in **Column 3** of **clause 1** of **Schedule 5** by either:
 - (i) dedication of the Transfer Lands on the registration of a deposited plan which indicates that the relevant portion of the Transfer Lands is intended to be dedicated to the Council; or
 - (ii) delivery to the Council of:
 - (A) a form of transfer in respect of the relevant portion of the Transfer Lands executed by the Developer in registrable form transferring that land for \$1.00; and
 - (B) the certificates of title for the relevant part of the Transfer Lands; and

(C) subject to **clause 10(e)**, withdrawal of any caveat, mortgage or charge registered on the title to the Transfer Lands which would prevent registration of the transfer to Council,

and the Developer must otherwise take any other necessary action (other than paying stamp duty associated with the transfer) to give effect to the transfer of the title of the relevant portion of the Transfer Lands to the Council.

- (b) The Council agrees that it will accept the Transfer Lands subject to the Permitted Encumbrances.

6.10 Council's obligations

- (a) The Council must perform the obligations specified in **Column 2 of Clause 1 of Schedule 5** by the times specified and in the event that Council is required to grant an easement in the Developer's favour, the Council must negotiate the terms of the easement on reasonable and standard terms.
- (b) Council must do all things reasonably necessary to obtain all approvals and give all consents to enable the Developer to carry out the Works in Kind including by Council authorising the Developer to carry out those works on its behalf under any State Environmental Planning Policy, Part 5 of the Act or under the *Roads Act 1993* (NSW) and *Local Government Act 1993* (NSW).

7 Application of the Development Contributions

The Council must, acting reasonably and in good faith, apply the Development Contribution 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 75-79 Lithgow Street and 84-90 Christie Street, St Leonards 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 Development Contribution 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 Access to land by Developer

- (a) The Council authorises the Developer, for no licence fee, rent or other cost, to enter, occupy and use any land owned or controlled by the Council for the purpose of performing its obligations under this Agreement.

- (b) The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, for no licence fee, rent or other cost, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Agreement.
- (c) Nothing in this Agreement creates or gives the Developer any estate or interest in any part of the land referred to in **clause 8(a)** or **8(b)**.

9 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) Except to the extent specified in **Column 2** of **clause 1** of **Schedule 5**, any benefits under this Agreement are not to be taken into account in determining a development contribution under section 94 of the Act.

10 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 10(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 10(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, the transfer of any Transfer Lands to Council or any dealing with the Land other than a transfer to a third party (other than Council); and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this Agreement in accordance with **clause 10(a)**.
- (f) Despite **clause 10(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 16**.
- (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;
 - (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 16**; and
 - (iii) any other dealing deemed necessary by the Developer acting reasonably.
- (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 10(a)**, the Developer must pay the Council's reasonable costs and expenses, including legal costs, of exercising its rights under **clause 10(d)** of this Agreement.
 - (i) The Council must promptly do all things reasonably required by the Developer to release and discharge this Agreement with respect to any Lot or Lots forming part of a relevant Stage or any lot, including a Strata Lot, created or to be created on subdivision of the Land on satisfaction by the Developer of the obligation to provide:
 - (i) the Development Contributions in **Schedule 4**; and
 - (ii) Works in Kind (but excluding **Item 5 of clause 1 of Schedule 5**) and any land dedications in **Schedule 5** relevant to that Stage.

- (j) For the avoidance of doubt, in the event that Council agrees to the deferral of a Works-in-Kind under **clause 6.8**, Council must still take the actions specified in **clause 10(i)** to release and discharge the Agreement from the relevant Lot or Lots and Council agrees that the retention of any Security Amount for the Works-in-Kind subject of the deferral will be satisfactory security for the purposes of section 93F(3)(g) of the Act.

11 Default

11.1 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.

11.2 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.

11.3 Suspension of time-dispute

If a Party disputes the Default Notice it may refer that dispute to dispute resolution under **clause 12** of this Agreement.

12 Dispute Resolution

12.1 Reference to dispute

If a dispute arises between the Parties in relation to this Agreement, then the Parties 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 another clause.

12.2 Notice of dispute

The Party wishing to commence the dispute resolution processes must notify the others 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).

12.3 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 12.2**), 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); or
 - (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.

12.4 Parties may not constrain

If:

- (a) at least one meeting has been held in accordance with **clause 12.3**;
- (b) the Parties have been unable to reach an outcome identified in **clauses 12.3(b)(i) to 12.3(b)(iii)**; and
- (c) the Parties, acting in good faith, form the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 12.3**,

then, a Party may, by 14 Business Days written notice to the other Parties, 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.

13 Security and Enforcement

13.1 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 the following clauses satisfy this obligation:

- (a) this **clause 13** through the provision of a Bank Guarantee or Bond to Council as Security and the enforcement provisions; and
- (b) **clause 10** through the registration of this Agreement on the title of the Land.

13.2 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 that Stage of the Development that contains the delivery of the first residential units or any commercial development.
- (b) In determining the Security Amount for each of the Works-in-Kind (but excluding **Item 5 in Clause 1 of Schedule 5**):
 - (i) the Developer must appoint a quantity surveyor who is to prepare a report which identifies the estimated value of the Works-in-Kind (**Security Amount QS Report**);
 - (ii) the Developer must provide that Security Amount QS Report to Council at least [30] days prior to the requirement for the Developer to provide the Security to Council;
 - (i) Within 5 Business Days of receipt of the Security Amount QS Report by Council, Council must provide written notification to the Developer of either:
 - (A) Council's agreement to the Security Amount identified in the Security Amount QS Report; or
 - (B) Council's objection to the Security Amount identified in the Security Amount QS Report.
 - (ii) In the event that Council objects to the offset amount under **clause 13.2(b)(i)(B) (Security Amount Dispute)**, the Council must nominate in writing three (3) independent and qualified quantity surveyors, for the Developer's consideration in determining the Security Amount Dispute.
 - (iii) If the Developer:
 - (A) agrees to the appointment of one of the quantity surveyors proposed by Council under **clause 13.2(b)(ii)** then that quantity surveyor will be jointly appointed by the Parties to resolve the Security Amount Dispute in accordance with this **clause 13.2**; or
 - (B) does not agree to the appointment of any of quantity surveyors proposed by Council under **clause 13.2**, then the Security Amount Dispute is to be determined by an independent and qualified quantity surveyor (nominated by the president of the Australian Property Institute (NSW Division)).
 - (iv) The Council and the Developer may make written submissions to the quantity surveyor appointed in accordance with this clause.
 - (v) In determining the Security Amount Dispute, the quantity surveyor must:

- (A) take into account any written submission provided by the Parties under **clause 13.2(b)(iv)**;
 - (B) 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); and
 - (C) provide a written report to the Parties which outlines the Security Amount Dispute determination and provides details of the basis upon which the offset was determined by the quantity surveyor (**Determination**).
- (vi) The parties agree that costs shall follow the event such that if the Determination results in an amount greater than the amount specified in the Security Amount QS Report then the costs are to be met by the Developer and if the Determination results in an amount that is equal to or less than the amount specified in the Security Amount QS Report then the costs are to be met by the Council.
 - (vii) Within a reasonable period after each anniversary of the date the Security was provided under clause 13.2(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.

13.3 Release of security to the Developer

- (a) The Council must release the Security provided by the Developer as follows (and where this Agreement takes into consideration any Stage of the Development such that any release of a Security relates to a milestone having been achieved in relation to that Stage):
 - (i) for that part of the Security Amount provided for the Development Contributions, within 10 Business Days of the payment of the Development Contribution to Council;
 - (ii) for that part of the Security Amount provided for a Works-in-Kind, within 10 Business Days of the delivery to the Council of notice of Practical Completion of the relevant Works-in-Kind under **clause 6.5(b)** or, if applicable, **clause 6.5(e)**; and
 - (iii) immediately upon an alternative Security being provided by a Transferee pursuant to **clause 16**.
- (b) 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.

13.4 Call on Security

- (a) Subject to **clause 13.3**, the Security provided in **clause 13.2** is given to secure performance by the Developer of its obligation to make the Development Contribution and deliver the Works in Kind.
- (b) The Council must only exercise its rights under the Security in accordance with this **clause 13.4**.
- (c) If the Developer does not comply with its obligation to pay any part of the Development Contribution payable under this Agreement or deliver any of the Works in Kind, 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) or deliver any of the Works in Kind.
- (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) or deliver any of the Works in Kind.
- (e) In **clause 13.4(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.

13.5 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.

14 Notices

14.1 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

Northern Terrace 88 Pty Ltd

Attention: Sam Fayad
Address: Level 1, 74 Macquarie Street, Parramatta NSW
Fax Number: 02 8320 8287
Email: sam.fayad@dyldam.com.au

14.2 Change of details

If a Party gives another 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.

14.3 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;
or

- (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.

14.4 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.

15 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.

16 Assignment and dealings

16.1 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Parties. Council must not unreasonably withhold or delay its written consent and must respond within 15 Business Days.
- (b) Any purported dealing in breach of this **clause 16** is of no effect.

16.2 Transfer dealings

- (a) Subject to **clause 16.2(c)**, the Developer must not transfer all or any part of their rights, interests or the Land (as applicable) 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) The Council must, within 20 Business Days of receipt of the signed Novation Deed in **clause 16.2(a)**, execute the Novation Deed and provide a copy of the signed Novation Deed to both the Transferee and the Developer.
- (c) The Council acknowledges that the Developer has rights to acquire SP4116 which may be exercised shortly after this Agreement is entered into. The Council agrees that **clauses 16.1** and **16.2(a)** do not apply to the transfer to the Developer of SP4116.

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 Law 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; and
 - (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

The Parties will seek to agree upon the market value of any non-monetary consideration 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 Developer must pay Council its reasonable legal and other costs and expenses of negotiating, preparing, executing, stamping and registering this Agreement to a maximum amount of \$5,000. Except as expressly stated otherwise in this Agreement, each Party must pay its own legal and other costs and expenses of performing its obligations under 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 Trustee Limitation of Liability

- (a) The Trustee enters into the Agreement only in its capacity as trustee of the Trust constituted under the Trust Deed dated 25 March 2015 (and as varied on 11 August 2015) (**Trust Deed**) and in no other capacity. A liability arising under or in connection with this Agreement is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. Subject to **clause 24(c)**, this limitation of the Trustee liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (b) No party to this Agreement may sue the Trustee in any capacity other than as the Trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- (c) The provisions of this **clause 24** shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under this Agreement or by operation of law, there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust as a result of the Trustee's failure to properly perform its duties as Trustee of the Trust.

- (d) The Trustee is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless its liability is limited in the same manner as set out in **subclauses 24(a) – (c)**.
- (e) Subject to **subclauses 24(a) – (d)**, the Trustee has authority under the Trust Deed to enter into this Agreement and comply with its obligations under this Agreement and that entry into this Agreement will not result in any breach of Laws.
- (f) The Trustee warrants that at the date of entering into this Agreement, the Land is an asset of the Trust.
- (g) In this **clause 24**, Trustee means the Developer.

25 Representations and warranties

- (a) The Developer represents and warrants that on the date of this Agreement:
 - (i) 75-79 Lithgow Street and 86-90 Christie Street, St Leonards is an asset of the Trust; and
 - (ii) SP4116 will be an asset of the Trust at the time the Development Application is lodged.
- (b) The Developer has 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 Council represents and warrants that it has power to enter into this Agreement and comply with its obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.
- (d) The Council acknowledges that the Developer holds the Land on trust for the Trust.

26 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.

27 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.

28 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.

29 Relationship of parties

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

30 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.

31 Counterparts

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

32 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.

33 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.

34 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 Parties 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.

35 Explanatory Note

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

36 Modification

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

37 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 each Stage of 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 36** to reflect the formula applied in the Alternative Planning Agreement.

- (b) In this **clause 37**, “materially the same” means an amendment to the zoning and/or increases to height controls or floor space ratios applying to land.

draft

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))	Except to the extent specific in Column 2 of clause 1 of Schedule 5 , the benefits under the Agreement are not to be taken into consideration when determining a development contribution under section 94 of the Act.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 12 .
Enforcement of this Agreement - (Section 93F(3)(g))	See clause 13 and 10 .

Provision of the Act	This Agreement
Registration of this Agreement (Section 93H)	See clause 10 .
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 23 .

draft

Schedule 2

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

draft

Explanatory Note – St Leonards Planning Agreement, Northern Terrace

Clause 25E

Environmental Planning and Assessment Regulations 2000

Summary

The purpose of this Explanatory note is to provide a plain english summary to support the notification of a draft Voluntary Planning Agreement (“**The Planning Agreement**”) under section 93F of the *Environmental Planning and Assessment Act 1979* (“**the Act**”).

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (“**the Regulations**”).

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

Parties

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

Northern Terrace 88 Pty Ltd ACN 604 950 325 as trustee for The Northern Terrace Trust ABN 21 563 159 579 of Level 1, 74 Macquarie Street, Parramatta, New South Wales (**Developer**)

Description of the Subject Land

The land is located at 84 – 90 Christie Street, 75 – 79 Lithgow Street and the 546 – 564 Pacific Highway, St Leonards and contained in the following folio identifiers:

- (a) Site A (Christie Street sites) – being Lot 71 & 72 in DP 542079, Lot 10 in Section 18 in DP 3175, Lot 50 in Section 18 in DP 3175, Lot 4 in DP 560889, and Lots 1 and 2 in SP 4116.
- (b) Site B (Pacific Highway sites) – being Lot 1 in DP 1083362, Lots 1 & 2 in DP 200301, Lot C in DP 339273, Lots A & B in DP 415468, Lot 1 in DP 656501, Lot 1 in DP 651204 and Christie Lane.

Description of the Planning Proposal and Development to which the Planning Agreement Applies

The Planning Proposal seeks to amend the zoning of the Land under the *Lane Cove Local Environmental Plan 2009 (LCLEP)* from B3 Commercial Core to B4 Mixed Use. It also proposes to increase the Land's height control from 65m to 95m (the western residential tower) and 149m (the eastern residential tower), measured from existing ground level.

The Planning Proposal does not seek to change the floor space ratio (FSR) standard of 14:1 which applies to the Land. Rather, it seeks to include a site specific incentives clause that enables additional FSR of up to 4.6:1, if the development of the site provides specific public benefits that have been identified by Council.

If the Planning Proposal is approved, the Developer will submit a development application seeking development consent for the construction of a multi-storey mixed use residential development and a commercial building on the Land (“**Development**”).

Summary of Objectives, Nature and Effect of the Planning Agreement

The Developer proposes to provide both monetary contributions, works-in-kind and dedicate land to Council.

Subject to approval of the Planning Proposal and grant of the development consent for the Development, the Planning Agreement provides for the provision of the following:

Monetary Contribution

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). The RLV included in the Planning Agreement is **\$2,644.20**.

GFA = the Gross Floor Area of the Development, as approved above the Threshold, less any additional Gross Floor Area in the Development achieved under the LCLEP for Bonus FSR.

Threshold = 65 metres (measured from the Plaza ground level) 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 part of the Development that is located on the Land.

VPA Contribution Offset means the amount as determined under clause 2 of Schedule 5 being the value of public domain improvement works in Items 1 (Library), 2 (St Leonards Plaza Works), and 4 (New Christie Lane embellishment) as identified in clause 1 of Schedule 5.

Site means the Land.

The monetary contribution will be used for the following purposes:

- (a) St Leonards Rail plaza and bus interchange;
- (b) construction of the eastern deck of the proposed St Leonards plaza and park;
- (c) a public library; and
- (d) other items.

Works in Kind and Land Dedications

1. **Library:** Library up to a minimum Gross Floor Area of 1,000m², with provision for fit-out allowance up to a maximum of \$2.4 million. The cold shell is estimated at \$4 million making the combined maximum amount of the contribution \$6.4 million. To be delivered prior to the issue of an Occupation Certificate in relation to that stage of the development that contains the delivery of the first residential units or any commercial development on Site A.
2. **St Leonards Plaza:** Construct and embellish the first stage of the St Leonards Plaza including integration with rail tunnel (to a maximum value of \$1,708,000 covering a total area of approximately 1,708m² located adjacent to the Development, in the area currently occupied by Lithgow Street). To be delivered prior to the issue of an Occupation Certificate for the final building in relation to that construction stage of the development that contains the delivery of the first residential units or any commercial development on Site A.
3. **Christie Lane through-site link:** Embellishment (to a maximum value of \$388,000) of the Christie Lane through-site link. To be delivered prior to the issue of an Occupation Certificate for that stage of the development that contains the delivery of the first residential units or any commercial development on Site A.
4. **New Christie Lane:** Acquire, embellish and dedicate the New Christie Lane. To be delivered prior to the issue of an Occupation Certificate for that stage of the development that contains the delivery of the first residential units or any commercial development on Site A.

5. **Design Standards:** Adopting International standard of architecture achieved at the interface with the St Leonards Plaza. To be delivered on a stage by stage basis.
6. **300 public car parking places:** Construction and dedication to Council of a stratum lot for a 300 space basement public carpark as close to the proposed supermarket as reasonably possible beneath the Development. To be delivered prior to the issue of an Occupation Certificate in relation to that stage of the development that contains the delivery of the first residential units or any commercial development on Site A.
7. **Supermarket:** Deliver a retail space of a minimum Gross Floor Area of 3,000m² in the basement of the Development and use best endeavours to deliver a fully operational Supermarket or where unachievable, an alternative retail offering as agreed with Council. To be delivered prior to the issue of an Occupation Certificate in relation to that construction stage of the development that contains the delivery of the first residential units or any commercial development on Site A.

The value of Items 1, 2 and 4 are to be offset as against the Monetary Contributions payable.

Sections 94, 94A and 94EF of the EPA Act are not excluded as they apply to the Development.

Security is to be provided for the delivery of the Monetary Contributions and Works-in-Kind prior to the issue of the Construction Certificate for that Stage of the Development that contains the delivery of the first residential units or any commercial development on Site A.

The Planning Agreement is to be registered on the title of the Land and released upon delivery of the Contributions.

Assessment of the Merits of the Planning Agreement

1. How the Planning Agreement Promotes the Objects of the Act and the Public Interest

The Planning Agreement promotes the following objectives of section 5(a) of the Environmental Planning and Assessment Act 1979:

- ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
- iv) *the provision of land for public purposes,*
- v) *the provision and co-ordination of community services and facilities, and*

The draft Planning Agreement promotes the public interest by:

- Requiring the construction and embellishment of the first stage of the St Leonards Rail Plaza and Bus Interchange, which will provide public domain improvements that will benefit existing and future residents and workers in the area. Council's vision is to provide a public plaza and bus interchange over the rail corridor at St Leonards, which will be facilitated by the draft Planning Agreement. The western façade of the building at the interface with the Plaza will be designed to an International standard of architecture.
- Providing significant public domain upgrades including the embellishment of Christie Lane as a pedestrian through-site link, and construction of a new public laneway referred to as New Christie Lane.
- Providing a minimum of 1,000m² of floor space within the development which will be dedicated to Council for use as a public library.
- Delivery of a supermarket within the development of a minimum Gross Floor Area of 3,000m² and construction and dedication of a 300 space basement car park to Council.

2. How the Planning Agreement promotes the elements of the Council's Charter under section 8 of the Local Government Act 1993

The Planning Agreement is consistent with the following purposes of the *Local Government Act 1993*:

- To give 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.
- To give councils a role in the management, improvement and development of the resources of their areas.

The Planning Agreement promotes the following elements of the Council's Charter:

- To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.

This element of the Council's Charter is promoted through:

- The Development facilitates the construction and embellishment of the first stage of the St Leonards Rail Plaza and Bus Interchange, provides a new public library, and will deliver enhancements to the public domain including construction of a new public laneway. The development will also facilitate the delivery of a 300 space public carpark and construction of a new supermarket.

3. The Planning Purpose served by the Planning Agreement

The development contributions and works in kind proposed to be provided under the Planning Agreement will be used to achieve the following planning purposes:

- Enhancements to public open space and transport infrastructure through the construction and embellishment of the first stage of the St Leonards Rail Plaza and Bus Interchange.
- Provision of a new public library.
- Provision of significant public domain and accessibility upgrades in and around the site.
- Provision of a new 300 space public car park in conjunction with a new supermarket.
- The Planning Agreement provides for a reasonable means of achieving these planning purposes.

4. Whether the Planning Agreement Conforms with the Council's Capital Works Program

Yes, the Planning Agreement is in conformity with Council's Capital Works Program.

Requirements of the agreement that must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Security is to be provided prior to the issue of the Construction Certificate for that stage of the development that contains any residential units or commercial development.

The Monetary Contribution and all of the Works in Kind (except Item 5) and land dedications are to occur prior to the issue of an Occupation Certificate for that stage of the development that contains any residential units or commercial development. Item 5 is to be provided on a stage by stage basis (and prior to the issue of an OC for the relevant stage).

Schedule 3

Land (Site A) title details

Lot/DP	Address
Lots 1 and 2 SP4116	84 Christie Street, St Leonards
Lot 4 DP560889 and Lot 50 in Section 18 in DP3175 (comprising Auto- Consol 12242- 99)	86 – 90 Christie Street, St Leonards
Lot 71 DP542079	79 Lithgow Street, St Leonards
Lot 72 DP542079	77 Lithgow Street, St Leonards
Lot 10 Section 18 in DP3175	75 Lithgow Street, St Leonards

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 3
Development Contribution		Timing
Total Development Contribution		
<p>1. The value of the total Development Contribution payable is to be calculated by applying the following formula:</p> <p>DCV = (50% x <i>RLV</i> x <i>GFA</i>) less the VPA Contribution Offset (if any)</p> <p>Where:</p> <p>DCV means the Development Contribution Value;</p> <p>RLV = the Residual Land Value of the Site (expressed as a rate of GFA/m²);</p> <p>GFA = the Gross Floor Area of the Development, as approved above the Threshold, less any additional Gross Floor Area in the Development achieved under the LCLEP for Bonus FSR;</p> <p>Threshold = 65 metres (measured from the Plaza ground level) 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 part of the Development that is located on the Land;</p> <p>VPA Contribution Offset is a defined term (see clause 1.1); and</p> <p>Site means the Land.</p>		<p>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") and the contribution paid prior to the earlier of the:</p> <p>(a) issue of the first Occupation Certificate for the Development; or</p> <p>(b) 30 days after a written request is made by Council for payment for the purposes of the construction of the St Leonards Plaza but such request can only be made if Council has commenced construction of the St Leonards Plaza and only after the issue of the first Construction</p>

Column 1		Column 3
Development Contribution		Timing
		Certificate for the Development.
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 3) to the date that payment of the Development Contribution is made.		Not applicable.

draft

Schedule 5

Works in Kind Schedule

1 Works in Kind

Subject to Council performing its obligations specified in this **Schedule 5**, the Developer undertakes to provide the following Works in Kind and associated dedication of the Transfer Lands in the manner set out in the table below.

Column 1	Column 2	Column 3
Works in Kind Contribution	Council's Obligations	Timing
<p>1 In a strata or stratum parcel (at the Developer's discretion), fitted out and dedicated to Council at no cost a new library for public purposes (Library). The Library will be up to a minimum Gross Floor Area of 1,000m², with provision for fit-out allowance up to a maximum of \$2.4 million. The Library will be located in a high pedestrian activity area within the Development.</p> <p>The Strata or Stratum cold shell structure is estimated to be \$4 million.</p>	<p>To offset the cost of the works (\$6.4 million) against the Development Contribution.</p> <p>The offset amount is to be calculated in accordance with clause 2 of Schedule 5.</p> <p>(Note: There is no offset for the value of the land dedicated to Council).</p>	<p>To be provided prior to the issue of an Occupation Certificate in relation to that Stage of the Development that contains the delivery of the first residential units or any commercial development on Site A.</p>

Column 1	Column 2	Column 3
Works in Kind Contribution	Council's Obligations	Timing
<p>2 Construct and embellish the first stage of the St Leonards Plaza including integration with rail tunnel as generally shown on the plan attached at Annexure D (to a maximum value of \$1,708,000 covering a total area of approximately 1,708m² located adjacent to the Development, in the area currently occupied by Lithgow Street).</p> <p>Subject to the cost cap of \$1,708,000, St Leonards Plaza is to be built to a structural specification that will facilitate future construction of the remaining section of the Plaza by Council-appointed contractors.</p> <p>The Council retains the right to require cash in lieu for the embellishment works provided the Council has notified the Developer in writing prior to issue of any Construction Certificate for the embellishment works.</p>	<p>To offset the cost of the embellishment works against the Development Contribution. In the event the Council requests a cash contribution in lieu of the embellishment works, the offset will be calculated equal to that which is paid to Council this Item. In the event that the Developer carries out the Works-in Kind under this Item, the offset amount is to be calculated in accordance with clause 2 of Schedule 5.</p> <p>Grant at no cost to the Developer other than the Works in Kind in Item 3 below, an easement limited in height in favour of the Development for vehicular and pedestrian access underneath the new St Leonards Plaza (currently Lithgow Street), to the access basement car parking and loading dock.</p>	<p>To be provided prior to the issue of an Occupation Certificate in relation to that Stage of the Development that contains the delivery of the first residential units or any commercial development on Site A.</p>
<p>3 Embellishment (to a maximum value of \$388,000) of the Christie Lane through-site link.</p>	<p>Closure of Lithgow Street and Christie Lane, with Christie Lane becoming a pedestrian thoroughfare.</p>	<p>To be provided prior to the issue of an Occupation Certificate in relation to that Stage of the Development that contains the delivery of the first residential units or any commercial development on Site A.</p>

Column 1	Column 2	Column 3
Works in Kind Contribution	Council's Obligations	Timing
<p>4 Acquire, construct and dedicate to Council a stratum lot for a new public laneway (8m wide in total including 6m wide carriageway plus 2m wide shared foot/cycle path on one (1) side) on land being:</p> <p style="padding-left: 40px;">(a) Lot 11 Section 18 DP 3175; and</p> <p style="padding-left: 40px;">(b) Lot 46 Section 18 DP 3175.</p> <p>The cost of the construction of the new public laneway is capped at a cost of \$768,000.</p>	<p>Transfer of a stratum parcel under New Christie Lane to the Developer at no cost to the Developer.</p> <p>Grant by Council at no cost to the Developer an easement benefiting the Development for overhang and encroachment into New Christie Lane for, including but not limited to window box frames, architectural features, bi-folds and awnings).</p> <p>To offset the cost of the construction of the new public laneway (not the land dedication) against the Development Contribution. The offset amount is to be calculated in accordance with clause 2 of Schedule 5.</p>	<p>To be provided prior to the issue of an Occupation Certificate in relation to that Stage of the Development that contains the delivery of the first residential units or any commercial development on Site A..</p>
<p>5 International standard of architecture achieved at the interface with the St Leonards Plaza as identified at Annexure C. In the event that the Developer proposes to amend the design the parties will, in good faith, seek to agree an international standard that is of a similar standard to the design in Annexure C.</p>	<p>Grant by Council at no cost to the Developer of an easement benefiting the Development for overhang (encroachment into St Leonards Plaza ground level of 4m above Lithgow Street (with encroachment area limited to a maximum of 40% of articulation of the façade in a randomised configuration generally consistent with the style of articulation set out in Annexure C as attached) which area is able to be used as habitable space.</p>	<p>For each Stage, to be provided prior to the issue of an Occupation Certificate in relation to the relevant Stage of the Development.</p>

Column 1	Column 2	Column 3
Works in Kind Contribution	Council's Obligations	Timing
<p>6 Construction and dedication to Council of a stratum lot for a 300 space basement public carpark as close to the proposed supermarket as reasonably possible beneath the Development (Basement Public Car Park).</p>	<p>Grant by Council of an easement for vehicular and pedestrian access through the Basement public Car Park stratum lot for vehicular and pedestrian access to the residential car parking spaces within the Development in favour of the Development at no cost to the Developer.</p> <p>Transfer at no cost to the Developer of a stratum lot under Christie Lane to be used by the Developer for subterranean vehicular parking.</p> <p>Acceptance of the dedication of the Basement Public Car Park carpark as a stratum parcel.</p> <p>[Note: This carpark satisfies all carparking requirements for retail uses in the Development.]</p>	<p>To be provided prior to the issue of an Occupation Certificate in relation to the relevant Stage of the Development that contains the delivery of the first residential units or any commercial development on Site A.</p>

Column 1	Column 2	Column 3
Works in Kind Contribution	Council's Obligations	Timing
<p>7 The Developer must deliver:</p> <p>(a) a retail space of a minimum Gross Floor Area of 3,000m² in the basement of the Development; and</p> <p>(b) use its best endeavours to deliver a fully operational Supermarket within the retail space and in the event that this cannot be achieved the Developer must provide written evidence to Council (subject to any confidentiality arrangements that might be required) of all approaches made to the supermarket chains in respect of leasing or purchasing the supermarket area. The parties may otherwise agree upon the delivery of a different form of retail offering within the retail space and as a result, it is at Council's option to waive the requirement to provide an operational Supermarket prior to the timing specific in Column 3 and for the Developer to deliver the agreed alternate form of retail offering at an agreed time if Council is satisfied (acting reasonably) with the evidence provided by the Developer.</p>	-	<p>To be provided prior to the issue of an Occupation Certificate in relation to the relevant Stage of the Development that contains the delivery of the first residential units or any commercial development on Site A.</p>

2 Calculation of Offset

- (c) For the purposes of calculating the offset in **Items 1, 2, 3 and 4 of clause 1 of Schedule 5**, the Developer must appoint a quantity surveyor to determine the value of the completed Works in Kind (**Quantity Surveyor Report**);
- (d) The Developer must, within a reasonable time prior to the claiming of the offset against the Development Contributions, provide Council with a copy of the Quantity Surveyor Report;
- (e) Within 5 Business Days of receipt of the Quantity Surveyor Report by Council, Council must provide written notification to the Developer of either:
 - (i) Council's agreement to the offset amount identified in the Quantity Surveyor Report; or
 - (ii) Council's objection to the offset amount identified in the Quantity Surveyor Report.
- (f) In the event that Council objects to the offset amount under **Schedule 5, clause 2(c)(ii) (Offset Dispute)**, the Council must nominate in writing three (3) independent and qualified quantity surveyors, for the Developer's consideration in determining the Offset Dispute.
- (g) If the Developer:
 - (i) agrees to the appointment of one of the quantity surveyors proposed by Council under **clause 2(d) of Schedule 5** and that quantity surveyor will be jointly appointed by the Parties to resolve the Offset Dispute in accordance with this **clause 2 of Schedule 5**; or
 - (ii) does not agree to the appointment of any of quantity surveyors proposed by Council under **clause 2(d) of Schedule 5**, then the Offset Dispute is to be determined by an independent and qualified quantity surveyor (nominated by the president of the Australian Property Institute (NSW Division)).
- (h) The Council and the Developer may make written submissions to the quantity surveyor appointed in accordance with this clause.
- (i) In determining the Offset Dispute, the quantity surveyor must:
 - (i) take into account any written submission provided by the Parties under **clause 2(f) of Schedule 5**;
 - (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); and
 - (iii) provide a written report to the Parties which outlines the Offset Dispute determination and provides details of the basis upon which the offset was determined by the quantity surveyor.

- (j) The quantity surveyor must determine which Party is responsible for the payment of the costs of the quantity surveyor in determining the Offset Dispute in accordance with this **clause 2 of Schedule 5**.

draft

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 Northern Terrace 88 Pty)
Ltd ACN 604 950 325 atf the Northern)
Terrace Trust ABN 21 563 159 579 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 LEP Amendment

This is the **Annexure A** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and **Northern Terrace 88 Pty Ltd (Developer)**

Dated the day of 2016

Draft Amendment to Lane Cove Local Environmental Plan 2009

The following clause is to be added at **clause 6.6** of the LCLEP:-

6.6 St Leonards Plaza Precinct

(1) This clause applies to the following land known as the “St Leonards Plaza Precinct”:

- (a) Site A (Christie Street sites) – being Lot 71 & 72 in DP 542079, Lot 10 in Section 18 in DP 3175, Lot 50 in Section 18 in DP 3175, Lot 4 in DP 560889, and Lots 1 and 2 in SP 4116.
- (b) Site B (Pacific Highway sites) – being Lot 1 in DP 1083362, Lots 1 & 2 in DP 200301, Lot C in DP 339273, Lots A & B in DP 415468, Lot 1 in DP 656501, Lot 1 in DP 651204 and Christie Lane.

(2) The objective of this clause is to:

- (a) Ensure a minimum non-residential FSR is provided on the site; and
- (b) Provide for additional FSR on Site A if the development of the site provides specific public benefits.

(3) The non-residential floor space ratio for Site A must not be less than 2.5:1.

(4) Despite clause 4.4, the gross floor area of a development on Site A may exceed the maximum permitted as a result of the floor space ratio shown for the land on the Floor Space Ratio Map by an amount no greater than the sum of any one or more of the following for which the development may be eligible under paragraphs (5) or (6).

(5) Development that includes amalgamation of Site B is eligible for:

- (a) An additional floor space ratio of up to 1.6:1 on Site A. Should the development only include amalgamation and redevelopment of part of Site B, the additional floor space ratio is to be applied proportionally based on the area of Site B that forms part of the development. The consent authority may grant consent to development within Site B or Christie Lane for basement car parking that is ancillary to a residential use within Site A even though development for that purpose would otherwise not be allowed by this Plan.

- (b) A reduction in the non-residential floor space ratio set out in (3), to a minimum of 1.5:1. Should the development only include amalgamation and redevelopment of part of Site B, the minimum non-residential floor space ratio to be provided on Site A can be reduced proportionately based on the area of Site B (excluding Christie Lane) that forms part of the development.
- (6) Development that includes provision of a 300 space public car park is eligible for an additional floor space ratio of 2:1 on Site A.

draft

Annexure B – Novation Deed

This is **Annexure B** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and **Northern Terrace 88 Pty Ltd (Developer)**

Dated the day of 2016

draft

Draft No []
[Date]

Lane Cove Council

[Original Developer]

[New Developer]

Deed of Novation for Voluntary Planning Agreement

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Date

Parties

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

[Original Developer] ACN [insert] of [insert address] New South Wales (**Original Developer**)

[New Developer] ACN [insert] of [insert address] New South Wales (**New Developer**)

Background

- A The Council and the Original Developer are parties to the Original Agreement.
 - B The Original Agreement relates to the whole of the Land [or part of].
 - C The Original Developer wishes to transfer the whole [or part] of the Land to the New Developer.
 - D The Original Developer wishes to novate all [or part] of its rights and obligations under the Original Agreement to the New Developer.
-

Agreed terms

1 Definitions

In this document these terms have the following meanings:

Council	Lane Cove Council.
Effective Date	[insert date upon which the novation becomes effective]
Land	Has the meaning given to that term in the Original Agreement.
Original Agreement	The voluntary planning agreement dated [insert] and made between the Council and the Original Developer.
Party	means a party to this document.

2 Novation

2.1 Original Agreement

Subject to **clause 2.2** and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a Party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a Party to the Original Agreement instead of the Original Developer; and
- (c) the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement.

[Note: Amend the above if only part of the Land is being transferred]

2.2 Reference in Original Agreement

All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer.

[Note: Amend the above if only part of the Land is being transferred]

2.3 Address for notices

The Council must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer:

Address: [insert]

Fax: [insert]

Contact Person: [insert]

Email: [insert]

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this document, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this document, the Original Agreement will continue in full force and effect.

4 Indemnities

The New Developer indemnifies the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or

incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

[Note: Amend the above if only part of the Land is being transferred]

5 Warranties and representations

5.1 Warranties

Each Party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other Party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a Party; or
 - (iv) any obligation of it to any other person.

5.2 Survival of warranties

The warranties and representations in **clause 5.1** survive the execution of this document and the novation of the Original Agreement.

6 GST

Where a supply made under this document gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) will be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this document. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

7 Stamp duty and costs

The New Developer will pay all stamp duty arising directly or indirectly from this document.

8 Further acts

- (a) Each Party will take all steps, execute all deeds and do everything reasonably required by any other Party to give effect to any of the actions contemplated by this document.
- (b) This document binds each Party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

9 Amendment

This document may only be varied or replaced by a document executed by the parties.

10 Governing law and jurisdiction

- (a) This document and the transactions contemplated by this document are governed by and are to be construed in accordance with the laws applicable in New South Wales.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

11 Counterparts

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

12 General

12.1 Construction

Unless expressed to the contrary, in this document:

- (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) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

- (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
- (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

12.2 Headings

Headings do not affect the interpretation of this document.

draft

Execution

Executed as a deed/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

.....
Attorneys Signature

.....
Name of Witness (print)

.....
Name of Attorney (print)

Executed by **[Original Developer]**)
ABN [insert] in accordance with)
section 127(1) of the *Corporations Act*
2001 (Cth):

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Executed by **[New Developer] ABN**)
[insert] in accordance with section)
127(1) of the *Corporations Act 2001*
(Cth):

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Annexure C – Planning Proposal Randomised Façade Plan – Indicative Only

This is **Annexure C** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and **Northern Terrace 88 Pty Ltd (Developer)**

Dated the day of 2016

draft



Annexure D – First Stage of St Leonards Plaza

This is **Annexure D** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and **Northern Terrace 88 Pty Ltd (Developer)**

Dated the day of 2016

draft

